

IN THE SUPREME COURT OF THE
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

*In the matter of an Application under
and in terms of Article 126 read with
Article 17 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.*

SC FR Application No. 33/2021

Dilrukshi Dias Wickramasinghe
377/2,
Thalawathugoda Road,
Hokandara South.

PETITIONER

-Vs-

1. Hon. Upaly Abeyrathne,
Chairman
Presidential Commission of Inquiry to
inquire and obtaining information
pertaining to the alleged incidents of
Political Victimization of Public Officers,
Employees of State Corporations,
Members of Armed Forces and the Police
Service,
No. 42/10,
Beddagana North,
Pita Kotte.
2. Hon. Daya Chandrasiri Jayathilaka,
Member
Presidential Commission of Inquiry to
inquire and obtaining information
pertaining to the alleged incidents of
Political Victimization of Public Officers,
Employees of State Corporations,
Members of Armed Forces and the Police

Service,
No. 24,
Diyawanna Gardens,
Pelawatta,
Battaramulla.

3. Chandra Fernando,
Member
Presidential Commission of Inquiry to
inquire and obtaining information
pertaining to the alleged incidents of
Political Victimization of Public Officers,
Employees of State Corporations,
Members of Armed Forces and the Police
Service,
No. 1,
Shrubbery Gardens,
Colombo 4.

4. Ms. Pearl Weerasinghe
The Secretary of the Presidential
Commission of Inquiry to inquire and
obtaining information pertaining to the
alleged incidents of Political
Victimization of Public Officers,
Employees of State Corporations,
Members of Armed Forces and the Police
Service,

All of,

Presidential Commission of Inquiry to
inquire and obtaining information
pertaining to the alleged incidents of
Political Victimization of Public Officers,

Employees of State Corporations,
Members of Armed Forces and the Police
Service,
Room No. 210,
Block No. 02,
2nd Floor,
Bandaranaike International Conference
Hall,
Buddhaloka Mawatha,
Colombo 07.

5. Hon. Mahinda Rajapakse, M. P.,
Former: Prime Minister and Minister of
Finance,
Minister of Buddhasasana, Religious and
Cultural Affairs, Minister of Urban
Development and Housing
Ministry of Finance,
The Secretariat,
Colombo 01.
6. Hon. Nimal Siripala De Silva, M. P.,
Former Minister of Labour/ Minister of
Ports, Shipping and Aviation
Ministry of Ports, Shipping and Aviation.
7. Prof. G. L. Pieris, M. P.,
Former Minister of Education
Ministry of Education,
"Isurupaya",
Pelawatta,
Battaramulla.
8. Hon. (Mrs.) Pavithra Devi
Wanniarachchi, M.P.,

Former Minister of Health
Ministry of Health,
No. 385,
Ven. Baddegama Wimalawansa Thero
Mawatha,
Colombo 10.

9. Hon. Dinesh Gunawardana, M. P.,
Former Foreign Minister/ Prime Minister,
Minister of Public Administration, Home
Affairs, Provincial Councils and Local
Government
Ministry of Public Administration, Home
Affairs, Provincial Councils and Local
Government.

10. Hon. Douglas Devananda, M. P.,
Minister of Fisheries
Ministry of Fisheries,
Maligawatte Road,
Colombo 10.

11. Hon. Gamini Lokuge, M. P.,
Former Minister of Transport
Ministry of Transport,
7th Floor,
Sethsiripaya,
II Stage,
Battaramulla.

12. Hon. Bandula Gunawardena, M. P.,
Former Minister of Trade/ Minister of
Transport and Highways and Minister of
Mass Media
Ministry of Transport and Highways and

Ministry of Mass Media.

13. Hon. C. B. Rathnayake, M. P.,
Former Minister of Wildlife and Forest
Conservation
Ministry of Wildlife and Forest
Conservation,
No. 1090,
Jayawardenapura Road,
Rajagiriya.

14. Hon. Janaka Bandara Tennakoon, M. P.,
Former Minister of Public Services,
Provincial Councils and Local
Government
Ministry of Public Services,
Provincial Councils and Local
Government,
Independence Square,
Colombo 07.

15. Hon. Keheliya Rambukwella, M. P.,
Former Minister of Mass Media/ Minister
of Health and Minister of Water Supply
Ministry of Health and Ministry of Water
Supply.

16. Hon. Chamal Rajapaksa, M. P.,
Former Minister of Irrigation,
Ministry of Irrigation,
No. 500,
T. B. Jaya Mawatha,
Colombo 10.

17. Hon. Dullas Alahapperuma, M. P.,

Former Minister of Power
Ministry of Power,
No. 72,
Ananda Coomaraswamy Mawatha,
Colombo 07.

18. Hon. Johnston Fernando, M.P.,
Former Minister of Highways
Ministry of Highways,
8th Floor,
Maganeguma Mahamedura,
Denzil Kobbekaduwa Mawatha,
Koswatte,
Battaramulla.

19. Hon. Wimal Weerawansa, M.P.,
Former Minister of Industries
Ministry of Industries,
No. 73/1,
Galle Road,
Colombo 03.

20. Hon. Mahinda Amaraweera, M. P.,
Former Minister of Environment/
Minister of Wildlife and Forest Resources
Conservation and Minister of Agriculture
Ministry of Environment/ Minister of
Wildlife and Forest Resources
Conservation and Minister of Agriculture.

21. Hon. S. M. Chandrasena, M. P.,
Former Minister of Lands
Ministry of Lands,
"Mihikatha Madura",
Land Secretariat,

No. 1200/6,
Rajamalwatta Road,
Battaramulla.

22. Hon. Mahindananda Aluthgamage,
M. P.,
Former Minister of Agriculture
Ministry of Agriculture,
"Govijana Mandiraya",
Rajamalwatta Lane,
Battaramulla.

23. Hon. Wasudeva Nanayakkara, M. P.,
Former Minister of Water Supply
Ministry of Water Supply,
No. 35,
"Lak Diya Medura",
New Parliament Road,
Pellawatta,
Battaramulla.

24. Hon. Udaya Prabhath Gammanpila,
M. P.,
Former Minister of Energy
Ministry of Energy,
No. 80,
Sir Ernest De Silva Mawatha,
Colombo 07.

25. Hon. Ramesh Pathirana, M. P.,
Former Minister of Plantation/ Minister
of Industries and Minister of Plantation
Industries
Ministry of Industries and Ministry of
Plantation Industries.

26. Hon. Prasanna Ranatunga, M. P.,
Former Minister of Tourism/ Minister of
Urban Development and Housing
Ministry of Urban Development and
Housing.

27. Hon. Rohitha Abeygunawardene, M. P.,
Former Minister of Ports and Shipping
Ministry of Ports and Shipping,
No. 19,
1 Chaithya Road,
Colombo 01.

28. Hon. Namal Rajapakse, M. P.,
Former Minister of Youth and Sports
Ministry of Youth and Sports,
No. 9,
Philip Gunawardhana Mawatha,
Colombo 07.

29. Hon. Ali Sabry, M. P.,
Former Minister of Justice/ Minister of
Foreign Affairs
Ministry of Foreign Affairs.

30. Hon. Sarath Weerasekara, M. P.,
Former Minister of Public Security
Ministry of Public Security,
Independence Square,
Colombo 07.

31. Mr. W. M. D. J. Fernando
Secretary to the Cabinet
Office of the Cabinet of Ministers,

Republic Building,
Sir Baron Jayathilaka Mawatha,
Colombo 01.

32. Waduge Palitha Piyasiri Fernando
No. 6/6,
Suramya Mawatha,
Waththegedara,
Maharagama.

33. Pilapitiya Karunatileka Wijesundera
Rathnayake Mudiyanseelage Tissa
Bandara Pilapitiya
No. 182,
Elvitigala Mawatha,
Colombo 08.

34. Chandrasekara Rohitha Bandara
Bogollagama
No. 40/13,
Longdon Place,
Colombo 07.

35. Nissanka Senadhipathi
Avant Garde Maritime Services (Pvt) Ltd,
No. 613,
Bangalawa Junction,
Kotte Road,
Kotte.

36. Hon. Justice Eva Wanasundera
Chairperson and Member
Commission to Investigate Allegations of
Bribery or Corruption,
No. A 36,

Malalasekara Mawatha,
Colombo 07.

37. Hon. Justice Deepali Wijesundera

Member

Commission to Investigate Allegations of
Bribery or Corruption,

No. A 36,

Malalasekara Mawatha,
Colombo 07.

38. Chandra Nimal Wakishta

Member

Commission to Investigate Allegations of
Bribery or Corruption,

No. A 36,

Malalasekara Mawatha,
Colombo 07.

39. Janaka Bandara

No. 412,

3rd Lane,

Robert Gunawardene Mawatha,
Battaramulla.

40. A. Hon. Attorney General

Attorney General's Department,
Colombo 12.

(In terms of the Rule 44(1)(b) of the
Supreme Court)

40. B. Hon. Attorney General

Attorney General's Department,
Colombo 12.

(In terms of Article 35 of the

Constitution)

41. Hon. Susil Premajayantha, M. P.,
Minister of Education
Ministry of Education,
"Isurupaya",
Battaramulla.
42. Hon. (Dr.) Wijayadasa Rajapaksa, M. P.,
Minister of Justice, Prison Affairs and
Constitutional Reforms
Ministry of Justice, Prison Affairs and
Constitutional Reforms,
No. 19,
Sri Sangaraja Mawatha,
Colombo 10.
43. Hon. Harin Fernando, M. P.,
Minister of Tourism and Lands
Ministry of Tourism and Lands,
"Mihikatha Medura",
Land Secretariat,
No. 1200/6,
Rajamalwatte Road,
Battaramulla.
44. Hon. Vidura Wickramanayaka, M. P.,
Minister of Buddhasasana, Religious and
Cultural Affairs
Ministry of Buddhasasana, Religious and
Cultural Affairs,
No. 135,
Srimath Anagarika Dharmapala
Mawatha,
Colombo 07.

45. Hon. Kanchana Wijesekera, M. P.,
Minister of Power and Energy
Ministry of Power,
No. 437,
Galle Road,
Colombo 03.
And,
Ministry of Energy,
No. 80,
Sir Ernest De Silva Mawatha,
Colombo 07.
46. Hon. Naseer Ahamed, M. P.,
Minister of Environment
Ministry of Environment,
"Sobadam Piyasa",
No. 416/C/1,
Robert Gunawardane Mawatha,
Battaramulla.
47. Hon. Roshan Ranasinghe, M. P.,
Minister of Irrigation, Minister of Sports
and Youth Affairs
Ministry of Irrigation,
10th Floor,
No. 500,
T. B. Jayah Mawatha,
Colombo 10
And,
Ministry of Sports and Youth Affairs,
No. 09,
Philip Gunawardana Mawatha,
Colombo 07.

48. Hon. Manusha Nanayakkara, M. P.,
Minister of Labour and Foreign
Employment
Ministry of Labour and Foreign
Employment,
"Mehewara Piyasa",
Narahenpita,
Colombo 05.

49. Hon. Tiran Alles, M. P.,
Minister of Public Security
Ministry of Public Security,
14th Floor,
Suhurupaya,
Battaramulla.

50. Hon. Nalin Fernando, M. P.,
Minister of Trade, Commerce and Food
Security
Ministry of Trade, Commerce and Food
Security,
No. 492,
R. A. De Mel Mawatha,
Colombo 03.

51. Hon. Nandasena Gotabaya Rajapaksa
Former President and the Former Head
of the Cabinet of Minister of the
Democratic Socialist Republic of Sri
Lanka
No. 26/A,
Pangiriwatta Mawatha,
Mirihana,
Nugegoda.
And,

No. 308,
Malalasekara Mawatha,
Colombo 07.

RESPONDENTS

BEFORE : **P. PADMAN SURASENA, J.**
E.A.G.R. AMARASEKARA, J.
ACHALA WENGAPPULI, J.

COUNSEL : Chanaka de Silva, PC with Ms. Dilumi de Alwis and Ms. Dilrukshi Paul instructed by Upendra Gunasekara for the Petitioner.

Ikram Mohamed, PC with Roshaan Hettiarachchi and Harish Balakrishnan instructed by SB Dissanayake Associates for the 1st – 3rd Respondents.

Milinda Gunatilleke, PC with Ms. Yuresha de Silva, DSG for the 31st, 39th, 40th, 52nd and 73rd Respondents.

Dilan Ratnayake, PC, ASG with Mrs. T. Jayaneththi, ADL and S.M. Sabry, ADL for the 36th – 38th Respondents.

ARGUED ON : 29-01-2025
24-03-2025

DECIDED ON : 22-05-2025

P. PADMAN SURASENA, J.

1. BACKGROUND:

The Petitioner is a President's Counsel and was appointed the Solicitor General of Sri Lanka with effect from 10-05-2019.¹ She was interdicted with effect from 24-09-2019 and

¹ Paragraph 02 of the Amended Petition dated 28-12-2022 and Letter of Appointment by the Public Service Commission (**P1A**).

subsequently sent on compulsory leave from 15-10-2020, pending the conclusion of a preliminary investigation.

By the proclamation issued by His Excellency the President, published in the Gazette Extraordinary No. 2157/44 dated 09-01-2020,² a Commission of Inquiry was established in terms of Section 2 of the Commission of Inquiry Act (Chapter 393) as amended, to inquire into and obtain information in respect of the alleged political victimizations during the period commencing from 8th January 2015 and ending on 16th November 2019. His Excellency the then President of the Democratic Socialist Republic of Sri Lanka by the same Proclamation appointed the 1st to 3rd Respondents to be his commissioners to function in this Commission of Inquiry. Then His Excellency the President by the proclamation published in the Gazette extraordinary No. 2159/16 dated 22-01-2020 appointed the 1st Respondent to function as the chairman of the Commission of Inquiry and also set out its powers in more detail.

The afore-said Commission of Inquiry has conducted several inquiries against several persons. The Petitioner is one such person. The subject matter of this case primarily revolves around four inquiries conducted by the 1st to 3rd Respondents in which the Petitioner was identified as a Respondent. It was the 1st to 3rd Respondents who had functioned respectively as the Chairman and the other two members of the afore-said Commission of Inquiry.

This Court on the date the Petitioner supported this case, after considering the submissions of the parties, by its order dated 22-11-2023, has granted the Petitioner Leave to Proceed with her Petition which has complained of the alleged infringements of her Fundamental Rights.

The afore-said four inquiries conducted against the Petitioner by the aforesaid Commission of Inquiry could be identified under the following numbers which presumably the said Commission of Inquiry had assigned to each one of them. They are:

1. PCI/PV/01/Com./1807/2020
2. PCI/PV/01/Com./77/2020
3. PCI/PV/01/Com./184/2020
4. PCI/PV/01/Com./50/2020

² Produced by the Petitioner marked **P2(a)**.

The Petitioner in the instant Petition seeks to challenge the conclusions and the recommendations made by the said Commission of Inquiry against her in these four inquiries. For the purpose of this judgment, I will refer to each of the above inquiry respectively as Inquiry No. 01-04.

2. PRELIMINARY OBJECTION:

At the commencement of the argument, Mr. Ikram Mohamed, PC who appeared for the 1st - 3rd Respondents, raised a preliminary objection against the maintainability of this Petition on the ground that there is no Executive or Administrative action which could have infringed the Fundamental Rights of the Petitioner in the instant case. The learned President's Counsel for the 1st -3rd Respondents advanced this argument on the premise that any action taken by the three Commissioners of the said Commission of Inquiry does not amount to an Executive or Administrative action within the meaning of Article 126(1) of the Constitution. It is on that basis that the learned President's Counsel for the 1st -3rd Respondents sought to argue that this Court cannot have jurisdiction to entertain the instant Petition which is an application filed under Article 17 read with Article 126 (2) of the Constitution in respect of the alleged violation of the Fundamental Rights of the Petitioner.

However, the learned President's Counsel for the Petitioner countered the above Preliminary Objection citing before Court, the judgment of this Court in Padmini Nirmala Ranawaka Gunatilake vs. Hon. Upali Abeyrathne and others.³ I observe that the above case relied upon by the learned President's Counsel for the Petitioner is also a similar petition filed by another person against whom the same Commission of Inquiry consisting the 1st -3rd Respondents has conducted an inquiry. Indeed, as can be seen from the said judgment, this Court in that judgment has decided to entertain those nine Petitions filed by nine different petitioners. The same Commission of Inquiry consisting the 1st -3rd Respondents has conducted inquiries against all of those nine Petitions. I observe that the same Preliminary Objection has been raised in all those nine cases. This can be seen from the following passage taken from the said judgment:

³ SC FRA 27/2021 SC Minutes on 09-08-2024.

*"When these matters were supported for granting of Leave to Proceed, Mr. Ikram Mohomed, PC who represented the 1-3rd Respondents, the three Commissioners of the Commission of Inquiry, raised a preliminary objection with regard to the maintainability of these applications based on the ground that there was no Executive or Administrative decision taken by the three Commissioners and therefore this Court will have no jurisdiction to entertain the instant applications filed under Article 17 read with Article 126 (2) for the alleged violation of the fundamental rights of the Petitioners."*⁴

I also observe that it is the same Commission of Inquiry which has conducted the inquiries against the afore-said nine Petitioners which this Court by the said judgment has decided to quash. The fact that it is the same Commission of Inquiry involved in that case could be seen from the following paragraph taken from that judgment:

*"Several Petitioners have come before this Court challenging the recommendations of the Commission of Inquiry appointed by His Excellency the President under the Commission of Inquiry Act No. 17 of 1948 (as amended) and warrant published in the **Government Gazette Extraordinary 2157/44 dated 09-01-2020** and **Government Gazette Extraordinary 2159/16 dated 22-01-2020**.⁵ As per warrant published in the Government Gazette Extraordinary 2157/44 dated 09-01-2020, His Excellency the President had appointed;*

- 1. Hon. Upaly Abeyrathne*
- 2. Hon. Daya Chandrasiri Jayathilaka and*
- 3. Chandra Fernando"*⁶

Having considered the submissions of the parties, Vijith Malalgoda J (with Achala Wengappuli J and Arjuna Obeyesekere J agreeing) had decided to overrule the said Preliminary Objection. To make it clear, let me reproduce the following portion from the said judgment:

⁴ SC FR 27/2021, SC FR 57/2021, SC FR 58/2021, SC FR 74/2021, SC FR 80/2021, SC FR 115/2021, SC FR 125/2021, SC FR 129/2021, SC FR 132/2021 S. C. Minutes 09-08-2024, at page 52.

⁵ Emphasis added.

⁶ SC FR 27/2021, SC FR 57/2021, SC FR 58/2021, SC FR 74/2021, SC FR 80/2021, SC FR 115/2021, SC FR 125/2021, SC FR 129/2021, SC FR 132/2021 S. C. Minutes 09-08-2024, at page 51.

"Now I shall turn to discuss whether the Commission of Inquiry established under Act No. 17 of 1948 (as amended) carrying on functions that come within the purview of 'executive or administrative action' as contemplated in Article 17 read with Article 126 of the Constitution.

The Respondents claim that the nature and functions of the said Commission of Inquiry were quasi-judicial in nature and that quasi-judicial functions are not amenable to the fundamental rights jurisdiction of the Supreme Court, purportedly as they do not fall within the scope and ambit of 'executive or administrative actions'.

However, this claim is misconceived and erroneous as Commission of Inquiry is investigative or fact finding in nature and is incapable of making any binding decisions that have any effect on the rights of the parties which makes it starkly different from judicial tribunal which is capable of making decisions that are both binding and enforceable subject to appeal.

Any finding or recommendation made by the Commission of Inquiry at the conclusion of the inquiry is wholly dependent on the executive or administrative branch of the government for its implementation. Until the executive implements any findings or recommendations made by a Commission of Inquiry, such findings or recommendations have no force or avail in law. Therefore, it could be said that powers and functions exercised by the said Commission is neither judicial nor quasi-judicial in nature.

The Respondents further claim that Powers, functions, authority vested in the said Commission of Inquiry which the 1st to 3rd Respondents are the chairman and members is not an agency or instrumentality of the state as per the Commission of Inquiry Act No. 17 of 1948 and therefore not amenable to judicial review under Article 126 of the Constitution.

However, it is important to note that the then Executive President appointed 1st - 3rd Respondents as the members of the said Commission of Inquiry to investigate matters of Political Victimization that allegedly occurred during the period 08-01-2015 - 16-12-2019 by way of a warrant published in the

Government (Extra-Ordinary) Gazette notification bearing No. 2157/44 dated 09-01-2020 by virtue of powers vested in him qua President of the Republic, under the Commission of Inquiry Act No. 17 of 1948 (as amended) read together with Article 33 (2) of the Constitution, under the seal of the Republic. The terms reference and/or mandate and/or scope of the inquiry of the said Commission was determined and stipulated by the Executive President. Accordingly, the source of power of the said Commission of Inquiry and/or its members was clearly the Executive President.

Since the said Commission of Inquiry was created and/or brought into existence for the purpose of executing the said mandate of the President, the Commission was in fact an instrumentality and/or agent of then President/government and conducted themselves as such and consequently their actions vis a vis the Petitioners, were executive in nature.

Therefore the contention that the said Commission of Inquiry is not an instrumentality or agency of the government is untenable."

Thus, this Court in that case has already decided that the actions taken by the afore-said Commission of Inquiry consisting the 1st -3rd Respondents are Executive or Administrative action within the meaning of Article 126(1) of the Constitution. I agree with the conclusion arrived at by Hon. Vijith Malalgoda J. Hence I proceed to overrule the Preliminary Objection raised by the learned President's Counsel for the 1st -3rd Respondents that this Court does not have jurisdiction to entertain the instant application on the afore-said basis.

3. INQUIRY No. 01 - (PCI/PV/01/Com./1807/2020)

The Petitioner in her Petition has made many complaints with regard to the manner in which the 1st to 3rd Respondents (the Commissioners of this Commission of Inquiry) have conducted this inquiry against the Petitioner. However, for the speedy disposal of this case, it would suffice for me to advert to the two primary complaints made by the learned President's Counsel for the Petitioner regarding this inquiry.

The first of those primary complaints relevant to Inquiry No. 01 is based on the argument that the 32nd Respondent, who stood as the Complainant of the incident relevant to this inquiry,

does not fall under any of the four categories of persons set out in the mandate of the Commission of Inquiry. Therefore, let me at this stage briefly advert to the mandate of the Commission of Inquiry.

According to the proclamation issued by His Excellency the President, published in the Gazette Extraordinary No. 2157/44 dated 09-01-2020,⁷ the mandate given to the Commission of Inquiry was to investigate and inquire into and obtain information in relation to alleged political victimization of public officers, employees of state corporations, members of the armed forces and the police service who held posts during the period commencing 08-01-2015 and ending on 16-11-2019.

Thus, it is clear from the above proclamation that the Commission of Inquiry was mandated by the President to investigate and inquire into and obtain information in relation to alleged political victimization of following four categories of persons. They are (I) Public officers, (II) Employees of public corporations, (III) Members of the Armed services, and (IV) Members of the Police service.

This is also clear from the subsequent proclamation made by His Excellency the President published in the Gazette Extraordinary No. 2159/16 dated 22-01-2020,⁸ which reads as follows:

"WHEREAS the Government Officers and employees of State Corporations who held posts prior to the Presidential Election and/or General Election held in January and August 2015 respectively, member of the Armed Forces as well as of the Police Service have been reportedly politically victimized during the period commencing 08th January 2015 and ending on 16th November 2019 and a Presidential Commission of Inquiry has been established by the Warrant issued on 09th January 2020 under the seal of the Democratic Socialist Republic of Sri Lanka in terms of Section 2 of the Commission of Inquiry Act (Chapter 393) as amended to inquire into and make investigations in relation thereto,

⁷ Produced by the Petitioner marked **P2(a)**.

⁸ Produced by the Petitioner marked **P 2(b)**.

to be my commissioners to inquire into and obtain information in respect of the alleged political victimization during the period commencing 8th January 2015 and ending 16th November 2019 ..."

Moreover, the Petitioner has also produced a copy of another proclamation issued by His Excellency the President published in the Gazette Extraordinary No. 2201/5 dated 09-11-2020.⁹ This was to extend the period of time of the Commission of Inquiry by sixteen days to enable it to hand over its final report. The said proclamation also has re-iterated the mandate of the Commission of Inquiry in the following manner:

"inquire into and obtain information in relation to alleged Political Victimization of Public Officers, Employees of State Corporations, Members of the Armed Forces and the Police Service who held posts during the period commencing 08 January, 2015 and ending on 16th November, 2019."

It is the complaint of the Petitioner that the Commission of Inquiry could never have entertained the complaint which was the basis of Inquiry No. 01 as it is outside the mandate given to the commission by His Excellency the President.

The Complainant upon whose complaint the Commission of Inquiry conducted the Inquiry No. 1 is the 32nd Respondent (Waduge Palitha Piyasiri Fernando). The 32nd Respondent has claimed that he was the Chairman of Rakna Arakshaka Lanka Ltd. which is a company incorporated in Sri Lanka. Furthermore, the 32nd Respondent has retired from public service in the Army a long time ago. In those circumstances, it was the complaint made by the learned President's Counsel for the Petitioner that the 32nd Respondent, who stood as the said Complainant relevant to Inquiry No.01, does not fall under any of the four categories of persons set out in the mandate of the said Commission of Inquiry.

Indeed, even according to the report of the Commission of Inquiry in relation to Inquiry No. 01,¹⁰ the 32nd Respondent had retired from the Sri Lanka Army as far back as 31-12-2001.¹¹ This is almost twenty years before this Commission of Inquiry was set up by the proclamation published in the Gazette Extraordinary No. 2157/44 dated 09-01-2020. According to the report

⁹ Produced by the Petitioner marked **P2(c)**.

¹⁰ Produced by the Petitioner marked **[P4(1)]**.

¹¹ Page 1067 of the Report.

of the Commission of Inquiry in relation to Inquiry No. 01, the 32nd Respondent had resigned from the chairmanship of Rakna Lanka Ltd. on 26-01-2015. The report further states that Rakna Lanka Ltd. is a company incorporated under Companies Act. Therefore, it does not fall under the category of Public Corporation identified in the mandate. This clearly show that the Commission of Inquiry could never have entertained the complaint made to it by the 32nd Respondent which triggered Inquiry No. 01. This is because the 32nd Respondent does not fall within the category of persons whose alleged political victimization could lawfully have been the subject matter of any investigation or inquiry by the Commission of Inquiry. Thus, such an investigation or inquiry is clearly outside the mandate given to the Commission of Inquiry by His Excellency the President.

The second of those primary complaints relevant to Inquiry No. 01 is based on the argument that the Commission of Inquiry has not taken any interest to notify the Petitioner of the conduct of this inquiry. Petitioner has produced the decision of the aforesaid Presidential Commission of Inquiry with regard to the Inquiry No. 01 marked **P4 (1)** (*Item No. 9 XXXII - 1807/2020*). On the first page of **P4 (1)** itself, the name of the Petitioner has been mentioned as the 12th Respondent in a list of Respondents. Let me at this stage reproduce here two important sections from the Commissions of Inquiry Act:

Commissions of Inquiry Act Section 16

*Every person whose conduct is the subject of inquiry under this Act, or who is in any way implicated or concerned in the matter under inquiry, **shall be entitled to be represented by one or more attorneys-at-law at the whole of the inquiry**,¹² and any other person who may consider it desirable that he should be so represented may, by leave of the commission, be represented in the manner aforesaid,*

Commissions of Inquiry Act Section 23

Where a Commission of Inquiry appointed in terms of this Act, has been required by the President to conduct an investigation or inquiry or both an investigation and inquiry into any matter or incident, notwithstanding the generality of the powers conferred on such Commission, it shall be entitled to obtain the assistance of a public officer selected by the Commission, with the concurrence of the relevant appointing authority, and

¹² Emphasis added.

through such officer cause the conduct of investigations into any relevant matter or incident under its direction and supervision :

*Provided however, the Commission shall not arrive at any conclusion on such matter or incident investigated into, unless the Commission has examined the material collected in the course of such investigation and inquired into such matter or incident, **observing the rules of natural justice.***¹³

In the decision marked **P4 (1)** the Commission has recorded the following paragraph:

2020.10.26 දින අවසන් වශයෙන් මෙම පැමිණිල්ල සම්බන්ධයෙන් වූ විමර්ශනය පැවැත්වෙන ලද දිනය පරීක්ෂණ කොමිෂන් සභා පනතේ 16 වගන්තිය යටතේ ඉහත නම් සඳහන් 1 සිට 12 දක්වා වගඋත්තරකරුවන් වෙත දැනුම් දී නොතිබී නිකුත් කරන ලද නමුත් ඔවුන්ගේ පෙනී සිටීමක් හෝ ඔවුන් වෙනුවෙන් නීතිඥ නියෝජනයක් සිදු නොවී. එදින වැඩිදුර පැහැදිලි කිරීම් සඳහා පාලිත ප්‍රනාන්දු සාක්ෂියට කැඳවනු ලැබූ අතර ඔහු වෙත යොමු කෙරෙන ලද ප්‍රශ්නයට පිළිතුරු ලබා දෙමින් පහත සඳහන් කරුණු ප්‍රකාශ කරනු ලැබීණි. ¹⁴

Neither the learned Senior Additional Solicitor General nor the learned President's Counsel who appeared for the Commissioners (1st to 3rd Respondents) had submitted any documentation to establish that the Commission of Inquiry indeed had complied with the provisions of Section 16.

To the contrary, the Petitioner has averred in her affidavit that she never received any notification from the Commission informing her about the conduct of this inquiry against her. This could be seen from paragraph 37 of her affidavit which is as follows:

*37. I categorically state that I did not receive any Summons, notice or communication from the Commission of Inquiry with regard to the aforesaid Inquiry bearing No. PCI/PV/01/COM./1807/2020.*¹⁵

Mr. Ikram Mohommed, PC who appeared for the 1st to 3rd Respondents submitted to Court that the 1st to 3rd Respondents merely performed the role of the Inquirers as per provisions of the Commissions of Inquiry Act. It is the position of the 1st to 3rd Respondents that they do not possess any documentation pertaining to this inquiry. Although the 1st to 3rd Respondents

¹³ Emphasis added.

¹⁴ Page 63 of Volume I.

¹⁵ Paragraph 37 of Affidavit from Volume IV.

in their affidavits filed before this Court have stated that they complied with the Rules of Natural Justice when conducting this inquiry against the Petitioner, the said fact is not substantiated by any document either by the learned Senior Assistant Solicitor General or by the learned President's Counsel for the 1st to 3rd Respondents.

The Commissioners in the decision **[P4 (1)]** have not described the way in which they had complied with the Rules of Natural Justice when conducting this inquiry against the Petitioner.

Thus, the only acceptable version available before this Court with regard to the manner in which this inquiry was conducted by the 1st to 3rd Respondents is the version of the Petitioner. This is because the duty to comply with the Rules of Natural Justice when conducting this inquiry against the Petitioner is on the 1st to 3rd Respondents. The inference I can draw from the above material is the fact that the 1st to 3rd Respondents have failed to establish that they have complied with the Rules of Natural Justice when conducting this inquiry against the Petitioner.

I have already held above, that the Commission of Inquiry could never have entertained the complaint made to it by the 32nd Respondent which triggered Inquiry No. 01. The Petitioner could have brought the above illegality before the Commission of Inquiry had she been given notice of the impending proceedings against her by the Commission. I have already reproduced above, Sections 16 and 23 of the Commissions of Inquiry Act. The plain reading of these sections show that the compliance of those provisions are mandatory. I observe that despite the presence of those specific requirement in these provisions of law, the 1st - 3rd Respondents have failed to observe the Rules of Natural Justice in the course of this inquiry. The compliance of these Rules has been made mandatory by those specific provisions of law before the 1st - 3rd Respondents could have arrived at any conclusion/recommendation adverse to the Petitioner.

4. INQUIRY No. 2 - (PCI/PV/01/Com./77/2020)

The Complainant with regard to the inquiry No. 2 is Chief Inspector Pilapitiya of CIABOC. The said Complainant has alleged that he was transferred out of CIABOC by the Petitioner, who at that time had functioned as the Director General of CIABOC, for the reason that the said Complainant did not assist the Petitioner to fabricate evidence against the then President, Mr. Gotabhaya Rajapaksa.

The Petitioner in her affidavit has stated that she became aware that this inquiry was proceeding against her by the Commission of Inquiry through the newspaper report which she has produced with her Petition marked **P7**. Immediately after she became aware of the said proceedings from the media, the Petitioner has written the letter **P8** to the Commission of Inquiry on the very next day i.e., 20-10-2020. Thereafter, the Petitioner had received summons around 11.20 a. m. on 23-10-2020 which had required the Petitioner to appear before the Commission of Inquiry at 6 p. m. on the same day. Consequently on 23-10-2020 itself, the Petitioner had filed the Motion (**P9**) before the Commission of Inquiry requesting copies of the Complaints; the statements recorded by the investigation officers; all the other relevant documents; and copies of all relevant proceedings. The Petitioner through the same Motion had also requested that she be granted at least seven days which was to be counted from the date of handing over the requested material to her, to enable her to study the said material before she could actively participate in the inquiry.

Petitioner has stated in her affidavit that the 33rd Respondent has moved for a postponement of the inquiry on 23-10-2020 and got the inquiry refixed for 26-10-2020.

Thereafter, the Petitioner has filed another Motion marked **P10** on 26-10-2020 to inform the Commission of Inquiry that she had not received the requested material requested through the Motion dated 23-10-2020. However, the Petitioner states that the Commission of Inquiry, disregarding all the afore-stated requests made by the Petitioner, had proceeded to conclude the inquiry. It is on that basis that the Petitioner complains that the 1st - 3rd Respondents being the members of the Commission of Inquiry did not provide the Petitioner with any reasonable opportunity to defend herself before the Commission decided to make an adverse recommendation against her.

The findings / conclusions and recommendations made by the Commission against the Petitioner at the end of this inquiry is as follows :

1.

2. ගෝඨාභය රාජපක්ෂ මහතා හට එරෙහිව දූෂණ චෝදනා ඉදිරිපත් කිරීමට අසත්‍ය සාක්ෂි නිර්මාණය කරන මෙන් තමා යටතේ කටයුතු කරනු ලැබූ පොලිස් නිලධාරීන් පෙළෙඹවීමෙන් රාජ්‍ය සේවය අපකීර්තියට පත් කිරීමේ චෝදනාව යටතේ වග උත්තරකාරියට එරෙහිව රාජ්‍ය

සේවා කොමිෂන් සභාව මගින් විනය ක්‍රියාමාර්ග ගැනීම යුතු බව කොමිෂන් සභාව නිර්දේශ කරයි.

As has been pointed out by the learned President's Counsel for the Petitioner the above paragraph taken from the report shows that the findings / conclusions arrived at by the 1st - 3rd Respondents against the Petitioner are adverse conclusions.

Thus, in the above circumstances, it is clear to me that the Commission of Inquiry consisting of 1st - 3rd Respondents has failed to comply with the Rules of Natural Justice. This is despite the presence of a specific requirement in law, namely, Sections 16 and 23 of the Commissions of Inquiry Act. Therefore, I have to hold that the 1st - 3rd Respondents have failed to comply with those provisions of law in the Commissions of Inquiry Act before they arrived at the conclusion/recommendation which was clearly adverse to the Petitioner. Thus, I hold that the 1st - 3rd Respondents in this instance have clearly acted outside law to make adverse findings against the Petitioner due to their failure to follow mandatory steps specified in law.

I have already mentioned above that the duty to comply with the Rules of Natural Justice when conducting this inquiry against the Petitioner is on the 1st to 3rd Respondents. They have not submitted any documentation pertaining to this inquiry. Moreover, the Commissioners in their decision **[P4 (2)]** have not described the way in which they had complied with the Rules of Natural Justice when conducting this inquiry against the Petitioner. Thus, the inference I can draw from the above material is the fact that the 1st to 3rd Respondents have failed to establish that they have complied with the Rules of Natural Justice when conducting this inquiry against the Petitioner.

5. INQUIRY No. 3 - (PCI/PV/01/Com./184/2020)

The Complainant with regard to this inquiry is the 34th Respondent, Mr. Rohitha Bogollagama. The 34th Respondent has alleged that the Chairman of CIABOC was instrumental in filing charges against him at the Magistrate's Court under and in terms of the Bribery Act.

It is the position of the Petitioner that the CIABOC has initiated investigations against the 34th Respondent in 2006 which is outside the time limit of the mandate given to the Commission of Inquiry. The Petitioner also submits that the said investigation was conducted by the CIABOC well before the Petitioner assumed office as the Director General of CIABOC.

The Petitioner also complained that the Complainant Mr. Rohitha Bogollagama, the 34th Respondent, did not fall under any of the four categories of persons mentioned in the mandate of the Commission of Inquiry given by His Excellency the President.

The Petitioner has produced the report of the Commission of Inquiry in relation to Inquiry No. 03 marked **P4 (3)**. Even according to the said report there is no material to establish that the 34th Respondent falls under any of the four categories i.e., (I) Public officers, (II) Employees of public corporations, (III) Members of the Armed services, (IV) Members of the Police service. Thus, the Commission of Inquiry could never have entertained the complaint made to it by the 34th Respondent which triggered Inquiry No. 03 as the 34th Respondent does not fall within the category of persons whose alleged political victimization could lawfully have been the subject matter of any investigation or inquiry by the Commission of Inquiry. Thus, such an investigation or inquiry is clearly outside the mandate given to the commission by His Excellency the President.

The Petitioner has also brought to the notice of this Court that her successor in office, following the withdrawal of the charges in the Magistrate's Court at the first instance, had taken steps to forward an indictment to the High Court against the 34th Respondent on the same line of charges. The Petitioner has also brought to the notice of this Court that the Supreme Court has issued a Rule (SC Rule 02/2013) against the 34th Respondent who had failed to respond to notices issued by the CIABOC. This too had happened well before the starting point of the time period mentioned in the mandate of the Commission.

Petitioner also complains that the Commission of Inquiry did not issue summons on witnesses she wanted to summon to give evidence on her behalf before the Commission of Inquiry. Be that as it may, the findings / conclusions arrived at by the Commission of Inquiry with regard to inquiry No. 3 is as follows:

1. රෝහිත බෝගොල්ලාගම මහතාට එරෙහිව මහේස්ත්‍රාත් අධිකරණයේ පවරනු ලැබූ නඩුව සම්බන්ධයෙන් මහාධිකරණය විසින් ලබාදුන් නියෝගය අනුව විධිබද්ධව කරුණු මත ඔහු නිදහස් කරනු ලැබීමෙන් අනතුරුව කරුණු නැවත සලකා බැලීමකින් තොරව වහාම මහාධිකරණයට අධිචෝදනා පත්‍රයක් ඉදිරිපත් කිරීම දේශපාලන ප්‍රතිගාතීම ඉදිරියට පවත්වාගෙන යාමක් ලෙස බැලූබැල්මටම පෙනී යන හෙයින් යුක්ති සහගත ක්‍රියා පිළිවෙලක් මත මෙම අධිචෝදනා පත්‍රය ඉවත් කර ගැනීමට පියවර ගෙන නිදහස් වාතාවරණයක් තුළ

ස්වාධීන කොමිෂන් සභාව විසින් අදාළ චෝදනාවන්ට පාදක වූ කරුණු සලකා බලා තීරණයකට එළඹීම වඩා සුදුසු බැව් මෙම කොමිෂන් සභාව නිර්දේශ කරනු ලබයි.

2. වග උත්තරකාර හිටපු අල්ලස් හෝ දූෂණ විමර්ශනකොමිෂන් සභාවේ අධ්‍යක්ෂ ජනරාල් සහ වැඩිහිටිවරුන්ට ලක්ව සිටින සොලිසිටර් ජනරාල් දිල් රුක්මි ඩයස් වික්‍රමසිත්හ මහත්මිය රෝහිත බෝගොල්ලාගම මහතාට එරෙහිව චෝදනා ඉදිරිපත් කිරීමට කටයුතු කිරීමේදී අනුගමනය කර ඇති ක්‍රියා පටිපාටිය තුළ පෙළඹවීමක් මත ද්වේෂ සහගතව ක්‍රියා කිරීමක් බැලූබැල්මටම හෙළිදරව් වන බැවින් එලෙස කටයුතු කිරීමෙන් රාජ්‍ය සේවය අපකීර්තියට ලක් කිරීම පිළිබඳව ඇයට එරෙහිව රාජ්‍ය සේවා කොමිෂන් සභාව මගින් චෝදනා පත්‍රයක් ලබා දී විනය ක්‍රියා මාර්ග ගැනීම යුතු බවට කොමිෂන් සභාව නිර්දේශ කරනු ලබයි.¹⁶

The above paragraphs taken from the report **P4 (3)** shows that the findings / conclusions arrived at by the 1st - 3rd Respondents against the Petitioner are adverse conclusions.

I have already adverted to above, the proclamation issued by His Excellency the President, published in the Gazette Extraordinary No. 2157/44 dated 09-01-2020.¹⁷ Accordingly, the mandate given to the Commission of Inquiry was to investigate and inquire into and obtain information in relation to alleged political victimization of public officers, employees of state corporations, members of the armed forces and the police service who held posts during the period commencing 08-01-2015 and ending on 16-11-2019.

The fact that the Commission of Inquiry was mandated by the President to investigate and inquire into and obtain information in relation to alleged political victimization of the following four categories of persons i.e., (I) Public officers, (II) Employees of public corporations, (III) Members of the Armed services, and (IV) Members of the Police service is also clear from the subsequent proclamation made by His Excellency the President published in the Gazette Extraordinary No. 2159/16 dated 22-01-2020.¹⁸ As I have shown above, the proclamation issued by His Excellency the President published in the Gazette Extraordinary No. 2201/5 dated 09-11-2020,¹⁹ to extend the period of time of the Commission of Inquiry by sixteen days to enable it to hand over its final report, has also made the above position clear.

¹⁶ Paragraph 156 of the further written submissions by the Petitioner dated 28-01-2025.

¹⁷ Produced by the Petitioner marked **P2(a)**.

¹⁸ Produced by the Petitioner marked **P2(b)**.

¹⁹ Produced by the Petitioner marked **P2(c)**.

The 34th Respondent does not fall within the category of persons whose alleged victimization could lawfully have been the subject matter of any investigation or inquiry by the Commission of Inquiry. Therefore, the Commission of Inquiry could never have entertained the complaint made to it by the 34th Respondent which triggered Inquiry No. 03. Thus, such an investigation or inquiry is clearly outside the mandate given to the commission by His Excellency the President.

6. INQUIRY No. 4 - (PCI/PV/01/Com./50/2020)

The Complainant with regard to inquiry No. 04 is the 35th Respondent, Mr. Nissanka Senadhipathi. The Petitioner has produced the relevant complaint marked **P23**. In the said complaint, the 35th Respondent had alleged that the Petitioner had subjected him to political victimization alleging that the agreements in respect of Avant Garde Maritime Services Pvt. Ltd., of which he is the Chairman, were unlawfully terminated and its operations were taken over by the Sri Lanka Navy. The Petitioner complains that the 35th Respondent does not fall under any of the four categories of persons set out in the mandate given to the Commission of Inquiry by His Excellency the President. Petitioner states that the 35th Respondent has retired from the public service in the Army in 1996. The 35th Respondent is admittedly the Chairman of a private company. Even the Honorable Attorney General in his letter dated 22-07-2020 addressed to the Commission (this letter is marked **P29**) has stated the followings:

"In this context, I note that the Mandate of the CoI as set out in the Notification published in Gazette Extraordinary No. 2159/16 dated 22nd January 2020, the Mandate of the COI is to inquire into allegations of political victimization of "public officers, employees of public corporations, and members of the armed forces and police service who held such office prior to the Presidential Elections and/or General Elections held respectively in January and August 2015, being persons who had either resigned from or otherwise ceased to hold public office with the change of Government or continued to hold such office after such change, during the period commencing 08th January 2015 and ending 16th November 2016."

"I also note from the title of the CoI that, having undertaken such Mandate, the Commission itself has decided to confine its scope of inquiry into allegations made by the said categories of persons. However, a complaint from the said Complainant, Mr. Nissanka

Senadhipathi, who does not fall within any of the said categories of persons appears to have been entertained and is being inquired into by the CoI."

[...]

"Reiterating my observations above with regard to the Mandate of the CoI as set out in the Notification published in Gazette Extraordinary No. 2157/44 dated 09th January 2020, it appears that the purported Complainant has no locus standi to appear before and be heard by the CoI."

[...]

"In addition to the above, your attention is drawn to the fact that the Complainant is an Accused in the aforesaid cases pending before judicial fora, i.e., in Case No. TAB/751/2019 in the High Court of Colombo and Case No. HCB/25/2017 in the High Court of Colombo. Therefore, the matters in respect of which an officer of the Attorney General's Department has been summoned as a person of interest are sub judice."

[...]

*"It is clearly an attempt on the part of the Complainant to abuse the Mandate and process of the CoI for the collateral purpose of intimidating, harassing and embarrassing such officer and obstructing the discharge of his professional duties as a public officer, thereby attempting to derail the prosecution, subvert the course of justice and interfere with the judiciary, to the illegal and unlawful advantage of the Complainant."*²⁰

Thus, it is clear that the 1st - 3rd Respondents could not have lawfully entertained the complaint made by the 35th Respondent. Therefore, the 1st - 3rd Respondents also could not have conducted an inquiry against the Petitioner on such a complaint and arrived at conclusions

²⁰ Paragraph 180 of the further written submissions by the Petitioner dated 28-01-2025.

and made adverse recommendations against the Petitioner. The findings / conclusions arrived at by the 1st - 3rd Respondents against the Petitioner with regard to inquiry No. 04 is as follows:

1. මේ අනුව ඉහත නම් සඳහන් වග උත්තරකරුවන් විසින් දඬුවම් ලැබිය යුතු බොධ සාක්ෂි සැදීමේ වරද කර ඇති බැවින්ද,
2. එසේම, එකී වැරදි සිදු කිරීම සඳහා අනුබල දීමෙන් දඬුවම් ලැබිය යුතු අනුබල දීමේ වරද සිදු කර ඇති බැවින්ද,
3. එසේම, අල්ලස් පනතේ 70 වගන්තිය යටතේ දඬුවම් ලැබිය යුතු දූෂණය නැමැති වරද සිදු කර ඇති බැවින්ද,
4.
5.
6. වග උත්තරකරුවන්ට එරෙහිව නිසි අධිකරණ බලය ඇති අධිකරණ ඉදිරියේ චෝදනා පත්‍ර ගොනු කිරීම සඳහා මෙම නඩුවට අදාළ සාක්ෂි සහ ලේඛන ගොනු නීතිපතිවරයා වෙත සහ අල්ලස් හෝ දූෂණ විමර්ශන කොමිෂන් සභාව වෙත යැවීමට කොමිෂන් සභාව නිර්දේශ කර සිටී.
7.
8.

Furthermore, the following paragraphs taken from the report **P4 (4)** also show that the findings / conclusions arrived at by the 1st - 3rd Respondents against the Petitioner are adverse conclusions.

1. මෙම නඩුවේ ඉදිරිපත් වී ඇති සාක්ෂි පරීක්ෂාකාරී ලෙස විශ්ලේෂණය කිරීමෙන් අනතුරුව, පැමිණිලිකාර යාපා හෙට්ටිපතිරත්නභාලාගේ නිශ්ශන්ක යාපා සේනාධිපති යම් වරදකට හසුකරලීම සඳහා අසත්‍ය සාක්ෂි නිර්මාණය කරමින් ඔහු රක්ෂිත බන්ධනාගාර ගත කිරීමට කටයුතු කිරීමටත් එයට ආධාර සහඅනුබල දීමටත් ඉහත නම් සඳහන් පුද්ගලයන් ක්‍රියා කර ඇති බවට ප්‍රබල සාක්ෂි මගින් ඔප්පුකර ඇති බවට කොමිෂන් සභාව ඒකමතිකව තීරණය කර ඇත.
2. මෙම පැමිණිල්ල සම්බන්ධයෙන් ඉදිරිපත් කරන ලද සියලු සාක්ෂි සහ ලේඛන සලකා බැලීමෙන් පසුව, යාපා හෙට්ටිපතිරත්නභාලාගේ නිශ්ශන්ක යාපා සේනාධිපති මහතාට එරෙහිව ගාල්ල මහේස්ත්‍රාත් අධිකරණයෙහි ගොනු කර ඇති බී 32528/15 සහ 44146 දරන බී වාර්තාවෙහි සහ එම බී වාර්තාවට ගොනු කරන ලද වැඩිපුර වාර්තාවන් හී දැක්වෙන සියලුම චෝදනාවලින් පැමිණිලිකාර යාපා හෙට්ටිපතිරත්නභාලාගේ නිශ්ශන්ක යාපා සේනාධිපති නිදොස් කොට නිදහස් කළ යුතු බවට කොමිෂන් සභාව ඒකමතිකව තීරණය කර ඇත.

3. එසේම පැමිණිලිකරුට එරෙහිව කොළඹ මහාධිකරණයේ පවරා ඇති අංක HCB 25/2017 දරන අධිචෝදනා පත්‍රය ඉල්ලා අස්කර ගැනීම මගින් නියමුභා කර පැමිණිලිකරු එකී චෝදනාවලින් නිදොස් කොට නිදහස් කළ යුතු බවට කොමිෂන් සභාව ඒකමතිකව තීරණය කර ඇත.”²¹

In addition to the above, the Petitioner also complains that the Commission of Inquiry failed to serve summons on her and concluded the inquiry and made recommendations adverse to her in her absence. It is the position of the Petitioner that the Commission of Inquiry had decided to issue summons on Respondents identified by the Commission only after the 35th Respondent's evidence was concluded.

I have already adverted to the fact that the Commission of Inquiry was mandated by the President to investigate and inquire into alleged political victimization of the following four categories of persons only, i.e., (I) Public officers, (II) Employees of public corporations, (III) Members of the Armed services, (IV) Members of the Police service. In order to establish this fact, I have also already referred to the Gazette Extraordinary No. 2157/44 dated 09-01-2020,²² the Gazette Extraordinary No. 2159/16 dated 22-01-2020,²³ and the Gazette Extraordinary No. 2201/5 dated 09-11-2020.²⁴ It is clear that the 34th Respondent does not fall within any of the categories of persons whose alleged victimization could lawfully have been the subject matter of any investigation or inquiry by this Commission of Inquiry. Therefore, the Commission of Inquiry could never have entertained the complaint made to it by the 34th Respondent. It is that complaint which has triggered Inquiry No. 04. Thus, such an investigation or inquiry is clearly outside the mandate given to the commission by His Excellency the President.

7. GENERAL UNACCEPTABILITY OF THE REPORTS OF THE INQUIRIES:

In addition to the above material, the learned President's Counsel for the Petitioner submitted that His Excellency the President who appointed 1st - 3rd Respondents by the afore-said Proclamations has subsequently decided to seek further scrutiny of the findings of their Commission of Inquiry. I observe that it is a Special Presidential Commission of Inquiry that His Excellency the President has appointed by the proclamation published in Gazette No.

²¹ Paragraph 238 of the further written submissions by the Petitioner dated 28-01-2025.

²² Produced by the Petitioner marked **P2(a)**.

²³ Produced by the Petitioner marked **P2(b)**.

²⁴ Produced by the Petitioner marked **P2(c)**.

2221/54 dated 01-04-2021. The 31st Respondent (Secretary to the Cabinet of Ministers) has produced the said proclamation marked (**R5**) which has stated as follows:

*"And whereas, now, I am of the considered view that in consideration of the several specific findings, decisions and recommendations made against and/or in respect of the specific persons identified in the said report submitted to me by the Presidential Commission of Inquiry constituted by me by the warrant issued on 9th of January 2020, under the seal of the Democratic Socialist Republic of Sri Lanka in terms of Section 2 of the Presidential Commission of Inquiry Act (Chapter 393) as amended, that such specific findings, decisions and recommendations contained in the said Report, in respect of all such identified persons, should inter-alia in the public interest and for purposes of greater scrutiny, be further inquired into by you, and to report to me on the suitability and the justifications, if any, for the implementation and enforcement of the said findings, decisions and recommendations contained in the said Report of the Presidential Commission of Inquiry, as well as for the adoption of any action in respect thereof."*²⁵

Thus, it could be seen that His Excellency the President by the proclamation **R5** had appointed two Judges of this Court along with another Judge of the Court of Appeal in terms of Section 2 of the Special Presidential Commission of Inquiry Law No. 07 of 1978 to inquire into and report on the suitability and the justifications, if any, for the implementation and enforcement of the findings / recommendations contained in the reports of the Commission of Inquiry submitted to His Excellency by the 1st - 3rd Respondents with regard to the investigations that it had conducted. The aforementioned four inquiries are amongst them.

It is common ground that His Excellency the President did not extend the time given to the said Special Presidential Commission appointed by the said proclamation (**R5**) after its term came to an end. This led to a situation where the said Special Presidential Commission of Inquiry was unable to submit any report to His Excellency the President on the suitability and justifications if any for the implementation and enforcement of the findings / decisions / recommendations contained in the report prepared and submitted by the 1st -3rd Respondents

²⁵ Portion marked X, page 49, annexure **R5** of Volume IV.

with regard to the inquiries it conducted. The aforesaid four inquiries against the Petitioner were among them.

Learned Additional Solicitor General Mr. Milinda Gunatilleke PC who appeared for the Secretary to the Cabinet of Ministers drew the attention of Court to the cabinet decision marked **R8**. It is the 31st Respondent (Secretary to the Cabinet of Ministers) who has produced this document **R8**. The relevant part of this cabinet decision (**R8**) is as follows:

39. The Presidential Commission of Inquiry appointed on 2020-01-09 to inquire into Political Victimization and the Special Presidential Commission of Inquiry appointed on 2021-01-28 - the Secretary to the Cabinet tabled at this meeting, a letter dated 2022-10-07 sent by the Attorney General addressed to him -

1. Informing the judgment of the Court of Appeal pertaining to C. A. (Writ) Application No. 173/2021 in which the Court of Appeal has issued writs quashing the recommendations of the Presidential Commission of Inquiry appointed on 2020-01-09 and the relevant decisions of the Cabinet of Ministers respectively, with regard to the Petitioner of the said Application Mr. Janaka Bandara, an officer of the Attorney General's Department, and the following matters:

- a) That, there are more than ten (10) other Applications pending before the Court of Appeal and the Supreme Court, challenging the findings / recommendations of the aforesaid Presidential Commission of Inquiry;*
- b) That, the Special Presidential Commission of Inquiry appointed on 2021-01-28 to further inquire into the recommendations of the said Presidential Commission of Inquiry, has ceased to exist without submitting its findings / recommendations; and*

2. Requesting to bring the above matters to the cognizance of the Cabinet of Ministers to take a policy decision as to whether any of the findings, decisions and recommendations of the Presidential Commission of Inquiry appointed on 2020-01-09 should be relied upon and consequential steps taken thereon, in the aforesaid context.

The Secretary to the Cabinet further informed the Cabinet -

- (I) That, the following institutions have confirmed that they have not taken any action in terms of the Cabinet decision dated 2021-01-18 on CP No.*

21/0105/301/003 (as amended on 2021-02-15) to implement the recommendations of the Presidential Commission of Inquiry appointed on 2020-01-09 :

- *The Public Service Commission by letter dated 2022-10-26;*
- *The Commission to Investigate Allegations of Bribery or Corruption by letter dated 2022-10-27;*
- *The Attorney General's Department by letter dated 2022-12-27;*
and

(II) That, the Inspector General of Police by his letter dated 2022-10-27 has submitted a Report on the progress of the investigations and court cases referred to in the recommendations of the Presidential Commission of Inquiry appointed on 2020-01-09.

After discussion, the Cabinet observed -

- i. That, the relevant authorities referred to above, other than the Sri Lanka Police, have confirmed that they have not taken any action to implement the recommendations of the Presidential Commission of Inquiry appointed on 2020-01-09; and*
- ii. That, since the Special Presidential Commission of Inquiry appointed on 2021-01-28 by the then President has ceased to exist without submitting its findings / recommendations, the contention taken up by Mr. Sanjeewa Jayawardena, President's Counsel on behalf of the Secretary to the Cabinet of Ministers in CA (Writ) Applications No. 173/2021 and No. 174/2021 and by the Attorney General on behalf of the Secretary to the Cabinet of Ministers in other Applications before the Court of Appeal and the Supreme Court pertaining to this matter, appears to have no further validity.*

After further discussion, the Cabinet decided -

- a. That, the Cabinet of Ministers should not further intervene in this matter; and*
- b. To direct the Secretary to the Cabinet of Ministers to intimate the decision referred to at (a) above to the Attorney General for necessary action.*"²⁶

²⁶ Paragraph 39, Page 58, 59, 60 of the English Version of the Cabinet decision marked R8 in Volume IV of the proceedings.

Moreover, the learned Additional Solicitor General Mr. Dilan Rathnayake, PC, who appeared for the 36th, 37th and 38th Respondents (CIABOC), drew the attention of Court to the decision made by the CIABOC not to implement any of the recommendations made by the 1st - 3rd Respondents subsequent to the inquiries made by them in respect of the aforesaid four inquiries.

The above developments show clearly that all authorities concerned have by now decided to ignore the recommendations made by the Commission of Inquiry which consisted of the 1st – 3rd Respondents. Furthermore, I also observe that the Cabinet of Ministers as per **R8**, has also decided against taking any further action on the recommendations made by the Commission of Inquiry consisting of the 1st - 3rd Respondents subsequent to the inquiries they had conducted.

8. CONCLUSION:

Thus, for the reasons I have stated above, I hold that there is no material to hold that the 1st - 3rd Respondents have complied with Section 16 and Section 23 of the Commissions of Inquiry Act before making the impugned adverse recommendations against the Petitioner. I am also of the view that there is ample material before Court to conclude that the 1st - 3rd Respondents have failed to conduct lawful inquiries in relation to the afore-stated four complaints. For the foregoing reasons I hold that the Petitioner is entitled to succeed with her Petition.

In this judgment, I have held that the 1st - 3rd Respondents could never have entertained the complaint made to it by the 32nd Respondent which triggered Inquiry No. 01 as the 32nd Respondent does not fall within the category of persons whose alleged victimization could lawfully have been the subject matter of any investigation or inquiry by the Commission of Inquiry. I have also held that the 1st - 3rd Respondents, having unlawfully entertained the complaint made to it by the 32nd Respondent, then arrived at the conclusion/recommendation which was adverse to the Petitioner in the said Inquiry No. 01 without complying with the mandatory requirements in law as per Sections 16 and 23 of the Commissions of Inquiry Act. Therefore, with regard to Inquiry No. 01, I grant to the Petitioner, a declaration that the fundamental right of the Petitioner guaranteed by Articles 12(1) of the Constitution, has been infringed by the 1st, 2nd and 3rd Respondents.

I proceed to quash the Final Report of Inquiry No. 01 (PCI/PV/01/Com./1807/2020) (also identified as Item No. 9 XXXII - 1807/2020) produced by the Petitioner marked **P4 (1)** which contains the findings, decisions and recommendations of the Commission of Inquiry conducted by the 1st to 3rd Respondents.

I have held that the 1st - 3rd Respondents have conducted Inquiry No. 02 (PCI/PV/01/Com./77/2020) without complying with the specific mandatory requirements in law as per Sections 16 and 23 of the Commissions of Inquiry Act before they arrived at the conclusion/recommendation which was clearly adverse to the Petitioner. Therefore, with regard to Inquiry No. 02, I grant to the Petitioner, a declaration that the fundamental right of the Petitioner guaranteed by Articles 12(1) of the Constitution, has been infringed by the 1st, 2nd and 3rd Respondents. Therefore, I proceed to quash the Final Report of Inquiry No. 02 (PCI/PV/01/Com./77/2020) (also identified as Item No. 9 XLIV) produced by the Petitioner marked **P4 (2)** which contains the findings, decisions and recommendations of the Commission of Inquiry conducted by the 1st to 3rd Respondents.

In this judgment, I have held that the 1st - 3rd Respondents could never have entertained the complaint made to it by the 34th Respondent which triggered Inquiry No. 03 as the 34th Respondent does not fall within the category of persons whose alleged victimization could lawfully have been the subject matter of any investigation or inquiry by the Commission of Inquiry. I have also held that the 1st - 3rd Respondents, having unlawfully entertained the complaint made to it by the 32nd Respondent, then arrived at the conclusion/recommendation which was adverse to the Petitioner in the said Inquiry No. 03. Therefore, with regard to Inquiry No. 03, I grant to the Petitioner, a declaration that the fundamental right of the Petitioner guaranteed by Articles 12(1) of the Constitution, has been infringed by the 1st, 2nd and 3rd Respondents. I proceed to quash the Final Report of Inquiry No. 03 (PCI/PV/01/Com./184/2020) (also identified as Item No. 9 XXXIV) produced by the Petitioner marked **P4 (3)** which contains the findings, decisions and recommendations of the Commission of Inquiry conducted by the 1st to 3rd Respondents.

In this judgment I have held that the 1st - 3rd Respondents could never have entertained the complaint made to it by the 32nd Respondent which triggered Inquiry No. 04 (PCI/PV/01/Com./50/2020) as the 35th Respondent does not fall within the category of persons whose alleged victimization could lawfully have been the subject matter of any investigation or inquiry by the Commission of Inquiry. Thus, such an investigation or inquiry

relevant to Inquiry No. 04 (PCI/PV/01/Com./50/2020) is clearly outside the mandate given to the Commission of Inquiry by His Excellency the President. Therefore, with regard to Inquiry No. 04, I grant to the Petitioner, a declaration that the fundamental right of the Petitioner guaranteed by Articles 12(1) of the Constitution, has been infringed by the 1st, 2nd and 3rd Respondents. Therefore, I proceed to quash the Final Report of Inquiry No. 04 (PCI/PV/01/Com./50/2020) (also identified as Item No. 9 XXXI) produced by the Petitioner marked **P4 (4)** which contains the findings, decisions and recommendations of the Commission of Inquiry conducted by the 1st to 3rd Respondents.

JUDGE OF THE SUPREME COURT

E. A. G. R. AMARASEKARA, J.

I agree.

JUDGE OF THE SUPREME COURT

ACHALA WENGAPPULI, J.

I agree.

JUDGE OF THE SUPREME COURT