

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

In the matter of an application for
special leave to appeal in terms of
Art 128(2) of the Constitution of the
Democratic Socialist Republic of Sri
Lanka

SC Appeal 221/2025
SC SPL LA 220/2025
CA(Writ) Application 272/2024

Commander M.S.D Perera,
NRX 1229
No. 220, Shanthasiri,
Wewita, Bandaragama

PETITIONER

Vs.

1. Commander of Sri Lanka Navy
Sri Lanka Navy Headquarters
Sri Lanka Navy

2. Commodore L.A.R.D Hettiarachchi,
NRX 0816
President of the Court Martial
Sri Lanka Navy Headquarters
Sri Lanka Navy

3. Commodore H.M.B.P. Rupasinghe
NRX 0843
Member of the Court Martial
Sri Lanka Navy Headquarters

Sri Lanka Navy

4. T/Commodore A.M.D Amarakoon

NRX 0937

Member of the Court Martial

Sri Lanka Navy Headquarters

Sri Lanka Navy

5. Commodore (LS) M.A.D.S.L

Kularathna

NVA 5958

Judge Advocate

Sri Lanka Navy Headquarters

Sri Lanka Navy

6. Commodore (VNR) C Gunsekera

NVA 5872

Former Judge Advocate

Sri Lanka Navy Headquarters

Sri Lanka Navy

RESPONDENTS

And Now Between

1. Commander of Sri Lanka Navy

Sri Lanka Navy Headquarters

Sri Lanka Navy

2. Commodore L.A.R.D Hettiarachchi,

NRX 0816

President of the Court Martial
Sri Lanka Navy Headquarters
Sri Lanka Navy

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Sri Lanka Navy

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Kularathna
NVA 5958

Judge Advocate
Sri Lanka Navy Headquarters
Sri Lanka Navy

RESPONDENT-PETITIONER

Vs.

Commander M.S.D Perera,
NRX 1229
No. 220, Shanthasiri Wewita,
Bandaragama

PETITIONER-RESPONDENT

Before: **Justice A.L. Shiran Gooneratne**
 Justice K. Priyantha Fernando
 Justice Menaka Wijesundera

Counsel: Chaya Sri Nammuni, DSG instructed by Rizni Firdous, SA for the
 Respondent-appellants

 Shavindra Fernando, PC with Thivanka Artigalle instructed by
 Leonita Rishnie Fernandopulle for the Petitioner-Respondent.

Argued on: 12/01/2026

Decided on: 16/03/2026

A.L. Shiran Gooneratne J.

Factual Background

By Petition of Appeal dated 18/07/2025, the 1st to 5th Respondent-Appellants (hereinafter referred to as the Appellants) seek to set aside the Judgment of the Court of Appeal dated 17/06/2025 delivered in C.A. (Writ) Application No. 272/2024.

In the said Writ Application, the Petitioner therein, who was the Accused Officer before the Court Martial (hereinafter referred to as the Respondent), sought, *inter alia*, a writ of certiorari to quash the letter dated 04/03/2024 issued by the 1st Respondent therein, marked P5, titled “Warrant Appointing Judge Advocate,” by which the 5th Appellant was appointed to continue with the pending Court Martial, on the basis that such appointment violated Section 42(3) of the Navy Act No. 34 of 1950 (as amended). The Respondent further sought a declaration to set aside the summing up marked P7(a), a writ of certiorari to quash the Order

dated 02/04/2024 made by the 2nd to 4th Respondents therein, marked P7(b), and a writ of Mandamus directing and compelling the 1st Respondent to dissolve the existing Court Martial in terms of Section 42(3) of the Navy Act.

By Judgment dated 17/06/2025, the Court of Appeal issued a writ of Certiorari to quash the summing up of the Judge Advocate marked P7(a) and to quash the Order dated 02/04/2024 marked P7(b) and a writ of Mandamus directing the 1A Respondent to dissolve the existing Court Martial in terms of Section 42(3) of the Navy Act.

This Court granted special leave to appeal on the following question of law:

Did the Court of Appeal err in law and in fact by failing to correctly interpret and apply the provisions of section 42(3) of the Navy Act and section 48 of the Judicature Act on the facts and circumstances of this case?

In paragraphs 1 and 3 of the Petition, the Appellants state that the 6th Respondent in the Writ Application before the Court of Appeal was the former Judge Advocate who had served in the Court Martial. It is averred that upon his appointment to the Commission to Investigate Allegations of Bribery or Corruption, and at his own request, he was placed on Compulsory Unpaid Leave from the Sri Lanka Navy. Consequently, the 5th Respondent was appointed as Judge Advocate in place of the 6th Respondent.

The position of the Appellants.

The main arguments of the Appellant can be summarized as follows:

(a) Section 42(3) of the Navy Act contemplates situations where the Judge Advocate is unable to attend due to illness or death and does not extend to circumstances where the Judge Advocate is unable to continue by reason of a voluntary appointment to another public office. It is contended that the phrase

“or any other cause” in Section 42(3) must be construed *ejusdem generis* with illness and death, and therefore limited to causes of a similar nature, namely incapacity arising from ill health or comparable circumstances preventing attendance at the Court Martial.

(b) Where a factual situation does not fall squarely within the express terms of a particular statutory provision, recourse must be had to other applicable provisions of law which may lawfully and effectively resolve the matter.

(c) In view of the alleged ambiguity in the operation of Section 42(3) of the Navy Act, reliance is placed on Section 48 of the Judicature Act as providing the appropriate legal basis to meet the exigencies of the present case.

(d) It was further contended that, in view of the former Judge Advocate’s appointment to CIABOC and the consequent inability to continue in naval duties, a successor Judge Advocate had to be appointed, and that section 48 of the Judicature Act furnished the legal basis to continue the proceedings.

The position of the Respondent

The Respondent, on the other hand, contends that Section 42(3) of the Navy Act is clear, explicit, and admits of no ambiguity, and that the only permissible approach is a literal construction of the provision. It is submitted that once the Judge Advocate who commenced the Court Martial is unable to continue and a new Judge Advocate is appointed, the statute mandates the dissolution of the Court Martial in the manner contemplated by Section 42(3).

The Respondent further submits that, unlike a trial judge who exercises determinative authority over questions of fact and law, the role of the Judge Advocate under Section 39 of the Navy Act is confined to advising the Court Martial on matters of law and procedure relating to the charge or trial. It is emphasised that the Judge Advocate does not, at any stage, possess independent

decision-making authority in the course of the Court Martial, save with the prior permission of the Court.

In support of this proposition, the learned President's Counsel for the Respondent has relied on the decision in *Jayanetti v. Martinus* (71 NLR 49), in which the Supreme Court considered the legality of Court Martial proceedings under the Navy Act, and recognized that the Judge Advocate's function is primarily to guide the Court Martial on legal and procedural matters, in circumstances where such tribunals are not ordinarily composed of persons with legal training or judicial experience. On that basis, it was submitted that Section 48 of the Judicature Act has no application to a Judge Advocate.

Analysis

Section 42(3) of the Navy Act No. 34 of 1950 provides that;

“(3) Where the Judge-Advocate of a court martial dies or is unable to attend the court martial owing to illness or any other cause, the court martial shall adjourn and the president shall report the circumstances to the authority by whom the court martial was ordered to be held; and in the case of the death of the Judge-Advocate, or where the authority by whom the court martial was ordered to be held is of the opinion that it is inexpedient to delay the trial until the Judge-Advocate who is unable to attend the court martial is able to do so, the court martial shall be dissolved.”

The Appellants invite this Court to apply the ejusdem generis rule to the phrase “or any other cause” in section 42(3) of the Navy Act. In its accepted formulation, the rule is a maxim of statutory interpretation where general words following specific words are construed to be limited to things of the same kind or nature as the specifically enumerated.

“...according to a well-established rule in the construction of statutes, general terms following particular ones apply only to such persons or things as are ejusdem generis with those comprehended in the language of the Legislature” [**R v Cleworth (1864) 4 B & S 927**, cited in Maxwell on The Interpretation of Statutes, twelfth Edition by P St J Langan].

In my view, the principle of ejusdem generis is not an inflexible rule of statutory construction. It may be invoked where the language of a provision reveals a discernible class or genus, and where restricting the general words to that class is necessary to give the provision a coherent meaning consistent with its purpose. However, the principle cannot be applied to restrict or cut down the ordinary meaning of general words where the statutory language is otherwise clear and unambiguous.

Section 42(3), in my view, does not call for such a restrictive construction. It aims to practically address a situation where the Judge Advocate is unable to attend and continue in the Court Martial. The provision’s focus is on the convening authority’s assessment of whether it is expedient to delay the trial, rather than on any narrowing of the phrase “any other cause”. To confine those words to a narrow class, such as illness, would distract from that central inquiry and impose a limitation which the provision itself does not express. I therefore see no basis for applying ejusdem generis so as to restrict the scope of Section 42(3).

Section 42(3) of the Navy Act prescribes the procedure to be followed where the Judge Advocate appointed to a Court Martial is no longer able to continue. It identifies the relevant circumstance as one where the Judge Advocate “dies or is unable to attend the court martial owing to illness or any other cause”. In such an event, the Court Martial must adjourn, and the President of the Court Martial must report the circumstances to the convening authority.

The section then provides for the steps to be taken upon such report. In the event of death, dissolution follows. Where the Judge Advocate is unable to attend owing to illness or any other cause, the convening authority must determine whether it is “inexpedient to delay the trial” until the Judge Advocate is able to attend.

Therefore, it is clear that, the section contemplates only two possible courses. Following adjournment and a report, the convening authority must decide whether the trial should be delayed until the Judge Advocate is able to attend, or whether such delay would be inexpedient. Dissolution follows only in the latter event.

In the present case, it is not in dispute that the former Judge Advocate, upon his appointment to the Commission to Investigate Allegations of Bribery or Corruption, was placed on Compulsory Unpaid Leave from the Sri Lanka Navy, and that another Judge Advocate was appointed thereafter. In practical terms, the former Judge Advocate was no longer in a position to attend and continue in that capacity. That circumstance, in my view, falls within the phrase “unable to attend the court martial ... owing to ... any other cause”.

The next question that arises is whether the trial may nevertheless continue before a different Judge Advocate within the same Court Martial. In my view, the statute provides no such course. The appointment of a new Judge Advocate indicates that the convening authority proceeded on the basis that it was not expedient to delay the trial until the former Judge Advocate was able to return. Therefore, Section 42(3) mandates dissolution of the Court Martial. It provides no alternative procedure by which the same proceedings may continue before a substituted Judge Advocate, and it is not open to the Court to read such a procedure into the section.

This reading of subsection (3) is further supported when it is compared with subsection (2) of the same section, which reads as follows:

“(2) Where after the commencement of the trial of a case the president of a court martial dies or is otherwise unable to attend the court martial and the number of members of the court martial is not reduced below the minimum number of members required for the constitution of the court martial under this Act, the authority by whom the court martial was ordered to be held may appoint a senior member of the court martial, if he is of sufficient rank, to be president, and the trial shall proceed accordingly, but if he is not of sufficient rank, the court martial shall be dissolved.”

(emphasis is mine)

It is clear that the legislature has, intended for the continuation of a trial when President of the Court Martial dies or is otherwise unable to attend after the commencement of the trial. In that event, Section 42(2) authorizes the appointing authority to appoint a senior member of that Court Martial, if he is of sufficient rank, to act as President. Dissolution follows only where there is no member of sufficient rank. The fact that subsection (3) adopts no such language in relation to the Judge-Advocate strongly indicates that the legislature did not intend to permit the substitution of a Judge-Advocate to continue with the same court martial.

In light of the foregoing conclusion, it is unnecessary to embark upon a separate determination of Section 48 of the Judicature Act. The Appellants rely on that provision on the premise that Section 42(3) is ambiguous or insufficient to resolve the issue. That premise cannot be sustained once it is accepted that Section 42(3) is engaged. There is, therefore, no lacuna to be filled by recourse to Section 48. Nor can Section 48 be invoked to validate the continuation of the same Court Martial before a substituted Judge Advocate, when the Navy Act provides for no such course. Any determination of Section 48 in the circumstances of this case would therefore be purely academic, and I see no necessity to examine that issue.

Accordingly, I answer the question of law in the negative and affirm the judgment of the Court of Appeal dated 17/06/2025.

The Appeal is dismissed without costs.

Judge of the Supreme Court

K. Priyantha Fernando, J.

I agree

Judge of the Supreme Court

Menaka Wijesundera , J.

I agree

Judge of the Supreme Court