

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

In the matter of an application under and in
terms Articles 17 and 126 of the Constitution of
the Democratic Socialist Republic of Sri Lanka.

Chandra Jayaratne,
No. 02,
Greenlands Avenue,
Colombo 05.

S.C.F.R. Application No. 275/2024

PETITIONER

Vs.

1. Abdul Hameed Muhammed Fawzi,
No. 408,
Buddhaloka Mawatha,
Colombo 07
Now at,
No. 78,
School Lane, Milagiriya,
Colombo 03.

2. Major General Udaya Herath,
Director General,
Disaster Management Centre,
120/2, Vidya Mawatha,
Colombo 07.

2A. Major General (Retired) Sampath
Kotuwegoda,
Director General,
Disaster Management Centre,
120/2, Vidya Mawatha, Colombo 07.

[Substituted 2nd A Respondent]

3. Siththi Marina Mohomed,
No. 5/1, Henry Pamunuwa Mawatha,
Dewala Road, Pamunuwa, Maharagama.

4. Justice W. M. N. P. Iddawala,
Chairman,
Commission to Investigate Allegations of
Bribery or Corruption,

5. K. B. Rajapakse,
Commissioner,
Commission to Investigate Allegations of
Bribery or Corruption,

6. Chethiya Goonesekera, P.C.,
Commissioner,
Commission to Investigate Allegations of
Bribery or Corruption,
4th to 6th Respondents at No. 36,
Malalasekara Mawatha, Colombo 07.

7. Dr. Nandika Sanath Kumanayake,
Secretary to the President,
President's Secretariat,
Galle Face Centre Road,
Colombo 12.

8. The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before : **Hon. P. Padman Surasena, C.J.,**
Hon. Janak De Silva, J.,
Hon. Arjuna Obeyesekere, J.

Counsel : Dilrukshi Dias Wickramasinghe, PC with Dilumi De
Alwis and Maneesha Dissanayake for the Petitioner

Ruwantha Cooray with Joshuwa Moraes for the 1st
Respondent

Nayanthara Balapatabendi, SC for the 3rd, 7th and 8th
Respondents

Asitha Anthony, DDG with Anusha Sammandapperuma
and Gaya Rajapaksha for the 4th to 6th Respondents

Written submissions : 19.06.2026 and 10.07.2026 by the Petitioner

22.06.2026 and 05.08.2026 by the 1st Respondent

Argued on : 23.06.2026

Decided on : 29.09.2026

Janak De Silva, J.

The 1st Respondent, Abdul Hameed Muhammed Fawzi, has been a politician for more than six decades. He was first elected as a Member of Parliament in 1994. Since then he has held around ten different ministerial portfolios.

The Petitioner has invoked the fundamental rights jurisdiction of the Court impugning the actions of the 1st Respondent in misusing public property, while he was holding the office of Minister of Disaster Management. The Petitioners allege that the impugned actions infringed the fundamental rights of the Petitioner and the citizens.

Leave to proceed has been granted under Article 12(1) of the Constitution.

Factual Matrix

On 03.11.2010, pursuant to agreements and related projects entered into with the International Centre for Emergency Techniques of the Government of the Netherlands, operating through the then Ministry of Provincial Governance together with the Ministry of Disaster Management, a brand-new Toyota Land Cruiser bearing registration No. WP-KI-4666 was handed over to the Disaster Management Centre (DMC).

The vehicle was valued at Rs. 19,500,000/= and had been obtained through a loan scheme intended to improve Stage II of the Emergency Responsive Network in Sri Lanka.

On or about 14.11.2010, the 1st Respondent, who was then holding office as the Minister of Disaster Management, contacted the 3rd Respondent, who was then the Secretary to the Ministry of Disaster Management, by telephone at approximately 7.00 p.m. By virtue of the office held by the 1st Respondent, the 3rd Respondent was induced to cause the said vehicle to be delivered to the residence of the 1st Respondent within one hour.

The 3rd Respondent, who was initially hesitant to comply with the said request, was induced to accede to the persistent and unrelenting requests of the 1st Respondent and thereafter directed the then Director General of the DMC to deliver the said vehicle to the residence of the 1st Respondent, as instructed.

In or around November 2010, the 1st Respondent vacated the office of Minister of Disaster Management and, with effect from 01.01.2011, assumed the post of Senior Minister of Urban Affairs within the Office of Senior Ministers.

Despite having ceased to hold ministerial responsibility for the DMC, the 1st Respondent failed and refused to return the said vehicle and continued to use the same for his personal benefit and interest.

Several reminders were dispatched to the 1st Respondent on the instructions of the 3rd Respondent. However, all such reminders were disregarded.

Further, between 08.04.2011 and 21.06.2014, the 1st Respondent induced officers of the Office of Senior Ministers to disburse public funds amounting to Rs. 1,073,334.93 for the maintenance of the said vehicle.

Upon the vehicle eventually being returned to the DMC on 20.01.2015, the then Technical Consultant of the DMC estimated the cost of the repairs required to address the damage sustained during the period of unauthorized use by the 1st Respondent at approximately Rs. 540,000/=.

Following his reappointment as Minister of Disaster Management in March 2015, the 1st Respondent once again requested the then Director General of the DMC to hand over the said vehicle to him. Accordingly, the vehicle was handed over to the 1st Respondent on 26.03.2015.

The vehicle was thereafter returned to the DMC on 17.09.2015. A further inspection report made at that stage estimated the cost of the repairs required at approximately Rs. 51,100/=.

On 02.11.2022, the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) filed an indictment against the 1st Respondent before the High Court of Colombo in Case No. HCB 195/2022. The 1st Respondent pleaded guilty to all four charges contained in the indictment. The learned High Court Judge thereafter sentenced the 1st Respondent to a term of two years' imprisonment, suspended for a period of ten years, and imposed a fine of Rs. 100,000/= in respect of each of the four charges, amounting in total to Rs. 400,000/=.

The Petitioner became aware of these matters through the print and social media on or about 27.08.2024 and thereafter obtained the full certified record of the proceedings in Case No. HCB 195/2022. The present application was filed on 25.09.2024, within one month of the Petitioner becoming aware of the aforesaid circumstances.

Position of the Petitioner

The impugned acts of the 1st Respondent were not private acts, but done under colour of his ministerial office and executive in nature.

The 1st Respondent has pleaded guilty to all four charges in the indictment which was filed against him by CIABOC and thereby stands convicted upon his admission.

Article 12(1) extends beyond the prohibition of overt discrimination to encompass the rule of law itself, the prohibition against the arbitrary or irrational exercise of executive power and the public trust doctrine.

The 1st Respondent was charged by the Constitution and the law with the stewardship of the executive power of the People of Sri Lanka in his capacity as a Cabinet Minister. He was entrusted with the resources of the Ministry of Disaster Management, including a

vehicle procured through a foreign loan repayable by the taxpayers of this country, to be used solely for the public purposes for which those resources were obtained. Instead, he appropriated that vehicle for his own personal use for approximately five years, treating a piece of critical public infrastructure as his personal property. This is a textbook betrayal of the public trust.

The equal protection of the law guaranteed by Article 12(1) is not satisfied where those entrusted with the power of the People treat the resources of the State as their own. The rule of law demands that no person is above the law. No Minister may lay hands on public property and put it to personal use, in violation of the law and circulars without constitutional consequence. The practical effect of such conduct is to create a two-tiered system: one in which ordinary citizens are subject to the law, and another in which those in power are not. That is antithesis of equal protection, and it is precisely that antithesis that Article 12(1) is designed to prevent.

Accordingly, by reason of the use of public property for his personal gain coupled with the admission and the conviction, the fundamental right of the Petitioner and the citizens to equality before the law and equal protection of the law guaranteed by Article 12(1) of the Constitution has been infringed by the 1st Respondent.

Position of the 1st Respondent

The application is misconceived in law. Without prejudice, the Petitioner's remedy (if any) lies in a civil court on the ground of public misfeasance.

The Petitioner cannot under the guise of a fundamental rights application run a trial of facts. The Petitioner's basis for establishing the compensation sought, entitlement and quantum, is a matter that requires weighing of evidence on a civil standard which must be tested in a trial to determine.

Accepting the Petitioner's case would result in an automatic finding of fundamental rights' violation merely based on a guilty plea (without trial) or conviction of guilt after trial. Such an application would eviscerate the necessity of burden and standard of proof required to be discharged by an applicant in proving an Article 12 violation since effectively the Petitioner ought only to annex a certified copy of the judgment/sentence to a fundamental rights application.

Where a person alleges that there is a violation of public trust, the burden is on that person to demonstrate which officials exercise public trust and demonstrate that such officials have failed to do so.

The new substantive or progressive definition of Article 12 pertains to the curtailment of arbitrary conduct. There is no arbitrary conduct that has been demonstrated by the Petitioner, especially in view of the fact that the 1st Respondent has been punished before a competent court.

There is no breakdown of public trust and culture of impunity, as sought to be alleged, since justice has been meted out already, the wrong-doer punished and sentence imposed by a competent court.

The whole factual narration of this application is based on the statements of varying witnesses made to the CIABOC and no evidential value can be placed on them.

Admission by the 1st Respondent

I shall first consider the evidentiary value of the plea of guilt entered by the 1st Respondent in the criminal proceedings.

The 1st Respondent, whilst represented by counsel, pleaded guilty on 27.08.2024 to all four charges contained in the indictment filed by the CIABOC in the Colombo High Court in Case No. HCB 195/2022. The Petitioner submitted that the said admission is of

considerable significance to the determination of the matters arising in these proceedings.

The four charges are as follows:

“01. වර්ෂ 2010 ක් වූ නොවැම්බර් මස 14 වන දින හෝ ඊට ආසන්න දිනයකදී අධිකරණ බල සීමාව තුළ පිහිටි කොළඹ දී ආපදා කළමනාකරණ අමාත්‍ය වශයෙන් සේවයේ යෙදී සිටි වූදින වන යුෂ්මතා අයුතු සහගත ලෙස හෝ නීති විරෝධී ලෙස තමා වෙත වාසියක් සිදු කිරීමේ චේතනාවෙන් ස්වකීය ධුරය කෙළින්ම හෝ අන්‍යාකාරයකින් හෝ පාවිච්චි කිරීමෙන් යම් ක්‍රියාවක් ඉටු කිරීමට ද 2010.11.14 දින සිට 2015.01.20 දින දක්වා වූ කාලය තුළ නීති විරෝධී ලෙස භාවිතයට ගන්නා ලද්දා වූ විදේශාධාර මත ශ්‍රී ලංකාවේ හදිසි අවස්ථා ප්‍රතිඡාලය වැඩි දියුණු කිරීම අයිඅයි අදියර යටතේ ආපදා කළමනාකරණ මධ්‍යස්ථානය වෙත ලබා දී තිබූ රු. 19,500,000/- (රුපියල් එක්කෝටි අනූපන් ලක්ෂය) ක් හෝ ආසන්න වටිනාකමක් ඇති WP KI -4666 දරණ නවතම වොයොටා ලැන්ඩ් ජීප් රථය (Brand New Toyota Land Cruiser Jeep) තමා වෙත මුදා හැරීමට අවශ්‍ය කටයුතු කිරීම සඳහා ආපදා කළමනාකරණ අමාත්‍යාංශයේ ලේකම් වූ සිත්ති මරිනා මොහොමඩ් යන අයව පෙළඹවීමෙන් 2018 අංක 22 හා 1994 අංක 20 දරණ පනතින් සංශෝධිත 1954 අංක 11 දරණ අල්ලස් පනතේ 70 වගන්තිය යටතේ දඬුවම් ලැබූ යුතු දූෂණය නම් වරද කළ බවය.

02. ඉහත 1 වන චෝදනාවේ සඳහන් වේලාවේදී, ස්ථානයේදී හා එකී ක්‍රියාවලියේදී ආපදා කළමනාකරණ අමාත්‍යවරයා වශයෙන් සේවයේ යෙදී සිටි වූදින වන යුෂ්මතා අයුතු සහගත ලෙස හෝ නීති විරෝධී ලෙස ආණ්ඩුවට පාඩු සිදු කිරීමේ චේතනාවෙන් හෝ එසේ සිදුවිය හැකි බව දැන දැනම ස්වකීය ධුරය කෙළින්ම හෝ අන්‍යාකාරයකින් හෝ පාවිච්චි කිරීමෙන් යම් ක්‍රියාවක් ඉටු කිරීමට එනම්, විදේශාධාර මත ශ්‍රී ලංකාවේ හදිසි අවස්ථා ප්‍රතිඡාල ඡාලය වැඩි දියුණු කිරීම II අදියර යටතේ ආපදා කළමනාකරණ මධ්‍යස්ථානය වෙත ලබා දී තිබූ රු. 19,500,000/- (රුපියල් එක්කෝටි අනූපන් ලක්ෂය) ක් හෝ ඊට ආසන්න වටිනාකමක් ඇති WP KI - 4666 දරණ නවතම වොයොටා ලැන්ඩ් ක්‍රැසර් ජීප් රථය (Brand New Toyota Land Cruiser Jeep), තමා වෙත මුදා හැරීමට අවශ්‍ය කටයුතු කිරීම සඳහා ආපදා කළමනාකරණ අමාත්‍යාංශයේ ලේකම් වූ සිත්ති මරිනා මොහොමඩ් යන අයව පෙළඹවීමෙන් 2018 අංක 22 හා 1994 අංක 20 දරණ පනතින් සංශෝධිත 1954 අංක 11 දරණ අල්ලස් පනතේ 70 වගන්තිය යටතේ දඬුවම් ලැබිය යුතු දූෂණය නම් වරද කළ බවය.

03. වර්ෂ 2011 ක් වූ අප්‍රේල් මස 08 වන දින සිට වර්ෂ 2014 ක් වූ ජුනි මස 21 වන දින දක්වා වූ කාල පරිච්ඡේදය තුළදී ඉහත 1 වන වෝදනාවේ සඳහන් ස්ථානයේදී හා එකී ක්‍රියාවලියේදීම ජ්‍යෙෂ්ඨ අමාත්‍යවරයකු වශයෙන් සේවයේ යෙදී සිටි ඉහත නම් සඳහන් වූදින වන යුෂ්මතා අයුතු සහගත ලෙස හෝ නීති විරෝධී ලෙස තමා වෙත වාසියක් සිදු කිරීමේ චේතනාවෙන් ස්වකීය ධූරය කෙළින්ම හෝ අත්‍යාකාරයකින් හෝ පාවිච්චි කිරීමෙන් යම් ක්‍රියාවක් ඉටු කිරීමට එනම්, විදේශාධාර මත ශ්‍රී ලංකාවේ හදිසි අවස්ථා ප්‍රතිචාර ජාලය වැඩිදියුණු කිරීම අයිඅයි අදියර යටතේ ආපදා කළමනාකරණ මධ්‍යස්ථානය වෙත ලබා දී තිබූ ඉහත 01 වන වෝදනාවේ සඳහන් WP KI - 4666 දරණ නවතම ටොයොටා ලැන්ඩ් ක්‍රසර් ජීප් රථය (Brand New Toyota Land Cruiser Jeep) නීති විරෝධී ලෙස තම භාවිතයට ලබාගෙන එහි නඩත්තුව සඳහා ජ්‍යෙෂ්ඨ අමාත්‍ය ලේකම් කාර්යාලයෙන් රු. 1,073,334.93 (දස ලක්ෂ හත්තැ තුන් දහස් තුන්සිය තිස් හතර ශත අනූ තුන) ක් හෝ ඊට ආසන්න මුදලක් වැය කිරීමට ජ්‍යෙෂ්ඨ අමාත්‍ය කාර්යාලයේ නිලධාරීන් අවස්ථානුකූලව පෙළඹවීමෙන් 2018 අංක 22 හා 1994 අංක 20 දරණ පනත් මගින් සංශෝධිත 1954 අංක 11 දරණ අල්ලස් පනතේ 70 වගන්තිය යටතේ දඩුවම් ලැබිය යුතු දූෂණය නම් වරද කළ බවය.

04. ඉහත 3 වන වෝදනාවේ සඳහන් වේලාවේදී, ස්ථානයේදී හා එකී ක්‍රියාවලියේදීම ජ්‍යෙෂ්ඨ අමාත්‍යවරයකු වශයෙන් සේවයේ යෙදී සිටි ඉහත නම් සඳහන් වූදින වන යුෂ්මතා අයුතු සහගත ලෙස හෝ නීති විරෝධී ලෙස ආණ්ඩුවට පාඩු සිදු කිරීමේ චේතනාවෙන් හෝ එසේ සිදුවිය හැකි බව දැන දැනම ස්වකීය ධූරය කෙළින්ම හෝ අත්‍යාකාරයකින් හෝ පාවිච්චි කිරීමෙන් යම් ක්‍රියාවක් ඉටු කිරීමට එනම්, විදේශාධාර මත ශ්‍රී ලංකාවේ හදිසි අවස්ථා ප්‍රතිචාර ජාලය වැඩි දියුණු කිරීම අයිඅයි අදියර යටතේ ආපදා කළමනාකරණ මධ්‍යස්ථානය වෙත ලබා දී තිබූ ඉහත 1 වන වෝදනාවේ සඳහන් WP KI - 4666 දරණ නවතම ටොයොටා ලැන්ඩ් ක්‍රසර් ජීප් රථය (Brand New Toyota Land Cruiser Jeep) නීති විරෝධී ලෙස තම භාවිතයට ලබාගෙන එහි නඩත්තුව සඳහා ජ්‍යෙෂ්ඨ අමාත්‍ය ලේකම් කාර්යාලයෙන් රු. 1,073,334.93 (දස ලක්ෂ හත්තැ තුන් දහස් තුන්සිය තිස් හතර ශත අනූ තුන) ක් හෝ ඊට ආසන්න මුදලක් වැය කිරීමට ජ්‍යෙෂ්ඨ අමාත්‍ය කාර්යාලයේ නිලධාරීන් අවස්ථානුකූලව පෙළඹවීමෙන් 2018 අංක 22 හා 1994 අංක 20 දරණ පනත් මගින් සංශෝධිත 1954 අංක 11 දරණ අල්ලස් පනතේ 70 වගන්තිය යටතේ දඩුවම් ලැබිය යුතු දූෂණය නම් වරද කළ බවය.”

The English translation reads as follows:

“Charge No. 1

That, on or about 14 November 2010, at Colombo, within the jurisdiction of this Court, you, the accused, whilst serving as the Minister of Disaster Management, with the intention of unlawfully or improperly securing a benefit for yourself, by directly or otherwise using your office, induced Siththi Marina Mohamed, who was the Secretary to the Ministry of Disaster Management, to take steps to release to you the brand-new Toyota Land Cruiser Jeep bearing registration No. WP-KI-4666, having a value of Rs. 19,500,000/- (Rupees Nineteen Million Five Hundred Thousand) or a value approximating thereto, which had been provided to the Disaster Management Centre under Stage II of the project for the enhancement of the Emergency Response Network in Sri Lanka, funded through foreign aid, and thereby committed the offence of corruption punishable under Section 70 of the Bribery Act No. 11 of 1954, as amended by Acts Nos. 20 of 1994 and 22 of 2018.

Charge No. 2

That, at the time, place and in the course of the same transaction referred to in Charge No. 1 above, you, the accused, whilst serving as the Minister of Disaster Management, with the intention of unlawfully or improperly causing loss to the Government, or knowing that such loss was likely to be caused, by directly or otherwise using your office, induced Siththi Marina Mohamed, who was the Secretary to the Ministry of Disaster Management, to take steps to release to you the brand-new Toyota Land Cruiser Jeep bearing registration No. WP-KI-4666, having a value of Rs. 19,500,000/- (Rupees Nineteen Million Five Hundred Thousand) or a value approximating thereto, which had been provided to the Disaster Management Centre under Stage II of the project for the enhancement of the Emergency Response Network in Sri Lanka, funded through foreign aid, and

thereby committed the offence of corruption punishable under Section 70 of the Bribery Act No. 11 of 1954, as amended by Acts Nos. 20 of 1994 and 22 of 2018.

Charge No. 3

That, during the period from 08 April 2011 to 21 June 2014, at the place and in the course of the same transaction referred to in Charge No. 1 above, you, the aforesaid accused, whilst serving as a Senior Minister, with the intention of unlawfully or improperly securing a benefit for yourself, by directly or otherwise using your office, induced, from time to time, officers of the Office of the Senior Ministers to take steps to expend a sum of Rs. 1,073,334.93 (Rupees One Million Seventy-Three Thousand Three Hundred and Thirty-Four and Cents Ninety-Three) or a sum approximating thereto, from the Office of the Senior Ministers for the maintenance of the brand-new Toyota Land Cruiser Jeep bearing registration No. WP-KI-4666, referred to in Charge No. 1 above, which had been provided to the Disaster Management Centre under Stage II of the project for the enhancement of the Emergency Response Network in Sri Lanka, funded through foreign aid, and which you had unlawfully obtained for your use, and thereby committed the offence of corruption punishable under Section 70 of the Bribery Act No. 11 of 1954, as amended by Acts Nos. 20 of 1994 and 22 of 2018.

Charge No. 4

That, at the time, place and in the course of the same transaction referred to in Charge No. 3 above, you, the aforesaid accused, whilst serving as a Senior Minister, with the intention of unlawfully or improperly causing loss to the Government, or knowing that such loss was likely to be caused, by directly or otherwise using your office, induced, from time to time, officers of the Office of the Senior Ministers to take steps to expend a sum of Rs. 1,073,334.93 (Rupees One Million Seventy-Three Thousand Three Hundred and Thirty-Four and Cents Ninety-Three) or a sum

approximating thereto, from the Office of the Senior Ministers for the maintenance of the brand-new Toyota Land Cruiser Jeep bearing registration No. WP-KI-4666, referred to in Charge No. 1 above, which had been provided to the Disaster Management Centre under Stage II of the project for the enhancement of the Emergency Response Network in Sri Lanka, funded through foreign aid, and which you had unlawfully obtained for your use, and thereby committed the offence of corruption punishable under Section 70 of the Bribery Act No. 11 of 1954, as amended by Acts Nos. 20 of 1994 and 22 of 2018.”

In ***Sinniah Nadarajah v. The Ceylon Transport Board and Another* [79 (2) NLR 48]**, it was held that, where the driver of a vehicle is sued together with his employer for the recovery of damages arising from an accident in which the plaintiff sustained injuries as a result of being knocked down by the vehicle, a plea of guilt tendered by the driver when charged before the Magistrate's Court in respect of the same accident is relevant as an admission made by him and ought to be taken into consideration by the Judge hearing the civil action.

The charges framed against the 1st Respondent in the criminal proceedings are directly relevant to the allegations made in the present application concerning the abuse of public resources. In that context, the plea of guilt entered by the 1st Respondent in the said criminal proceedings assumes relevance to the matters before this Court.

The chronology of events leading to the indictment by the CIABOC, and the sequence in which those events occurred, may perhaps disclose a matter of some interest for the perceptive eye. The investigations by the CIABOC against the 1st Respondent was pending at least from October, 2015. After more than 7 years of investigations, the 1st Respondent was indicted on 02.11.2022. A plea of guilt was tendered on 27.08.2024.

The reasons which may have prompted the 1st Respondent to enter a plea of guilt may perhaps be connected to the notably lenient sentence imposed upon him. However, that

consideration is not material to the determination of the present application. What is material is that the 1st Respondent has tendered an unconditional plea of guilty to the charges.

I hold that, by reason of the plea of guilt tendered by the 1st Respondent in the criminal proceedings, he has admitted to acts of bribery or corruption amounting to an abuse of public resources. Having made such an admission, he cannot now be heard to contend otherwise. In other words, he is estopped from resiling from that position.

Jurisdiction

This Court is vested with the sole and exclusive jurisdiction to hear and determine questions relating to infringements, or imminent infringements, of fundamental rights arising from executive or administrative action. Article 17 of the Constitution provides the constitutional gateway to the exercise of the fundamental rights jurisdiction of this Court, while Article 126(2) provides the mechanism by which such jurisdiction may be invoked. Further, Article 126(4) empowers this Court to make such directions as it may deem just and equitable, even in circumstances where no infringement or imminent infringement of a fundamental right has been found [***Noble Resources International Pte Limited v. Hon. Ranjith Siyambalapitiya*** (S.C.F.R. No. 394/2015, S.C.M; 24.06.2016); ***Dr. W. A. M. Udari L. Abeyasinghe v. Prof. W. M. Thilakaratne and Others*** (S.C.F.R. No. 81/2021, S.C.M. 08.05.2026)].

In ***Prem Chand Gard v. Excise Commissioner, U.P.*** [(1963) AIR 996], Gajendragadkar, C.J. held that:

"The fundamental right to move this Court can therefore be appropriately described as the cornerstone of the democratic edifice raised by the Constitution. That is why it is natural that the Court should, in the words of Patanjali Sastri, J. regard itself "as the protector and guarantor of fundamental rights" and should

*declare that it cannot consistently with the responsibility laid upon it, refuse to entertain applications seeking protection against infringement of such rights. In discharging the duties assigned to it, the Court has to play the role of "**sentinel on the qui vive**" and it must always regard it as its solemn duty to protect the said fundamental rights zealously and vigilantly". (emphasis added)*

These observations apply with equal force to the fundamental rights guaranteed by our Constitution. Article 4(d) expressly requires all organs of government to respect, secure and advance the fundamental rights guaranteed by the Constitution and further provides that such rights shall not be abridged, restricted or denied, except in the manner and to the extent provided by the Constitution.

This Court, being an organ of government and the final bulwark against infringements of fundamental rights arising from executive or administrative action, must remain steadfast in safeguarding those rights against any such infringement. Failure to discharge that responsibility would constitute an abdication of a fundamental constitutional duty vested in this Court.

Public Misfeasance

The preliminary objection of the 1st Respondent proceeds on the premise that, since the alleged conduct of the 1st Respondent gives rise to an action in public misfeasance, the Petitioner's remedy lies exclusively before a civil court. It was therefore submitted that the present petition should be dismissed *in limine*, on the basis that the Petitioner seeks to convert the fundamental rights jurisdiction of this Court into a forum for the summary determination of disputed questions of fact.

The attention of Court was drawn to many cases that explained the nature and scope of the tort of public misfeasance [See ***Dunlop v. Woollahra Municipal Council* (1981) 2 W. L. R. 693; *Henley v. The Mayor and Burgesses of Lyme* (1828) 5 Bing 91; *Jones v. Swansea***

***City Council* [1990] 1 W. L. R. 54; *Re Attorney General's Reference* (No. 3 of 2003) [2005] Q. B. 73; *Odhavji Estate v. Woodhouse* (2003) 3 S. C. 263].**

As a matter of principle, it is correct that the tort of public misfeasance is concerned with the abuse of public power. In a recent appeal before the Privy Council, Lord Sumption, in his dissenting opinion in ***Crawford Adjusters (Cayman) Ltd v. Sagicor General Insurance (Cayman) Ltd*[(2013) UKPC 17 at para 134]],** stated as follows:

“[T]he essence of the tort is the abuse of a public function for some collateral private purposes of the person performing it”.

The issue that arises for determination is whether the existence of a civil remedy operates to preclude or otherwise negate the Petitioner’s invocation of the fundamental rights jurisdiction of this Court.

In ***Kharak Singh v. State of Uttar Pradesh* [AIR 1963 SC 1295]**, it was contended that the impugned conduct could give rise to a claim in tort and, therefore, that the jurisdiction under Article 32 could not be invoked. The Supreme Court of India emphatically rejected that submission, observing that it proceeded on a fundamental fallacy. It was held (at page 11) that:

“It was said that if the act of the police involved a trespass to property, i. e., the trespass involved in the act of the police official walking into the premises of the petitioner and knocking at the door, as well as the disturbance caused to him, might give rise to claim in tort, since the action was not authorised by law and that for these breaches of the petitioner's rights damages might be claimed and recovered from the tortfeasor, but that the same could not constitute an infraction of a fundamental right. Similarly it was urged that the petitioner or persons against whom such action was taken might be within their rights in ejecting the trespasser and even use force to effectuate that purpose, but that for what was

a mere tort of trespass or nuisance the Jurisdiction of this Court under Art. 32 could not be invoked. These submissions proceed on a basic fallacy. The fact that an act by the State executive or by a State functionary acting under a pretended authority gives rise to an action at common law or even under a statute and that the injured citizen or person may have redress in the ordinary courts is wholly immaterial and, we would add, irrelevant for considering whether such action is an invasion of a fundamental right. An act of the State executive infringes a guaranteed liberty only when it is not authorised by a valid law or by any law as in this case, and every such illegal act would obviously give rise to a cause of action-civil or criminal at the instance of the injured person for redress. It is wholly erroneous to assume that before the, jurisdiction of this Court under Art. 32 could be invoked the applicant must either establish that he has no other remedy adequate or otherwise or that he has exhausted such remedies as the law affords and has yet not obtained proper redress, for when once it is proved to the satisfaction of this court that by State action the fundamental right of a petitioner under Art. 32 has been infringed, it is not only the right but the duty of this Court to afford relief to him by passing appropriate orders in that behalf.”
(emphasis added)

The fundamental rights jurisdiction vested in this Court by the Constitution is ancillary to the recognition of fundamental rights as forming part of the Sovereignty of the People. Such recognition would be rendered nugatory if this Court were to accept the proposition that remedies available under the common law prevail over constitutional remedies. The fundamental rights jurisdiction of this Court may be ousted or restricted only by a specific provision of the Constitution.

I find no merit in the proposition advanced by the 1st Respondent.

Criminal Offence v. Fundamental Rights

The fact that a particular act or omission may constitute a criminal offence does not, in itself, exhaust its legal character or preclude the same conduct from being examined from the standpoint of a fundamental right guaranteed by the Constitution.

Criminal liability is concerned with the commission of an offence created by law and with the penal consequences attendant upon such commission. It is considered an act against the State. Fundamental rights jurisdiction, on the other hand, is concerned with whether executive or administrative action, has infringed or is about to infringe a right guaranteed to a person or citizen by the Constitution.

The two jurisdictions, though they may arise from the same factual circumstances, are therefore conceptually distinct and serve different constitutional purposes. Article 126(1) of the Constitution confers upon this Court sole and exclusive jurisdiction to determine questions relating to the infringement or imminent infringement, by executive or administrative action, of a fundamental right or language right recognised by Chapters III and IV. The existence of criminal liability arising from the same conduct cannot, without more, displace that constitutionally conferred jurisdiction.

Criminal proceedings determine criminal culpability, whereas fundamental rights proceedings determine constitutional accountability for executive or administrative action.

The Vehicle

In determining this application, it is material to ascertain the purpose for which the vehicle, alleged to have been misused by the 1st Respondent, was acquired and placed at his disposal.

The vehicle in question was acquired for the DMC and is categorised as a “Vehicle Command”, being a specialised four-wheel-drive vehicle designed for operation under

the challenging conditions ordinarily encountered in disaster situations. It is equipped with a robust engine of high cylinder capacity. The vehicle is further distinguished by unique markings and glow-in-the-dark stickers intended to differentiate it from other vehicles during disaster situations. The Petitioner has further brought to the attention of this Court that the vehicle was equipped with an alarm system for the purpose of warning of natural disasters and was specifically imported into Sri Lanka to assist in preventing catastrophes such as the tsunami of 2004, in which over 46,000 people died.

It is not disputed that a Cabinet Minister requires an official vehicle for transportation in the discharge of his official functions and public duties. However, the particular vehicle which is the subject matter of the present application was acquired for the specific purpose of disaster management. The 1st Respondent is alleged to have appropriated and utilised the said vehicle for his personal benefit, wholly unrelated to the purpose for which it was authorised. Such alleged misuse constitutes a diversion of public property from the purpose for which it was acquired and entrusted, and raises a serious question concerning the breach of the public trust reposed in those entrusted with public resources.

Further, the petition reveals that, during the period in which the 1st Respondent served as Minister of Disaster Management, he had the use of five vehicles, including the vehicle in question, namely, JU-0786 Montero, PC-5786 Defender, GJ-0211 Prado, GL-4246 Nissan, and WP-KI-4666 Toyota Land Cruiser. This was in breach of State Expenses Management Circular No. CA/1/17/1 dated 14.05.2010, which permits a Minister to have a maximum of three vehicles for official and personal use. This raises a serious question as to the propriety and legality of the 1st Respondent's use of State property.

Article 12(1)

The 1st Respondent submitted that the Petitioner has failed to establish either unequal treatment or arbitrary conduct and, accordingly, that no infringement of Article 12(1) has occurred. This contention has, however, been considered and answered by a Divisional

Bench of this Court in ***Sampanthan v. Attorney General*** [S.C.F.R. 351–361/2018, S.C.M. 13.12.2018 at page 87], as follows:

*“Thus, I am unable to agree with the submission that Article 12 (1) of the Constitution recognizes classification as the only basis for relief. In a Constitutional democracy where three organs of the State exercise their power in trust of the People, it is a misnomer to equate ‘Equal protection’ with ‘reasonable classification’. It would clothe with immunity a vast majority of executive and administrative acts that are otherwise reviewable under the jurisdiction of Article 126. More pertinently, if this Court were to deny relief merely on the basis that the Petitioners have failed to establish ‘unequal treatment’, we would in fact be inviting the State to ‘equally violate the law’. It is blasphemous and would strike at the very heart of Article 4 (d) which mandates every organ of the State to “respect, secure and advance the fundamental rights recognized by the Constitution”. Rule of Law dictates that every act that is not sanctioned by the law and every act that violates the law be struck down as illegal. It does not require positive discrimination or unequal treatment. **An act that is prohibited by the law receives no legitimacy merely because it does not discriminate between people.**” (emphasis added)*

The origins of the doctrine of the Public Trust can be traced to the concept of *res publica* in Roman Law and to the concept of Trust in the Common law.¹

Although the Constitution does not expressly recognise the public trust doctrine, this Court has, from an early stage, adopted and developed the doctrine in the context of the protection and preservation of the natural environment, having regard to the principles of sustainable development and intergenerational equity.

¹ *Watte Gedara Wijebanda Vs. Conservator General of Forest and Others* [S.C.F.R. No. 118/2004, S.C.M. 05.04.2007], Dinesha Samararatne, 'Public Trust Doctrine: The Sri Lankan Version, Dialogues on Democracy, International Centre for Ethnic Studies (ICES), Sri Lanka (2011).

The doctrine has subsequently been developed in the context of judicial review exercised in fundamental rights jurisdiction, writ jurisdiction, and pre-enactment judicial review. Such judicial review has extended to the exercise of discretionary power, the management of public finance, and the requirement of public accountability, particularly in relation to acts of public authorities and the Executive which are inconsistent with the “Sovereignty of the People” guaranteed by Articles 3 and 4 of the Constitution.

This Court has affirmed that conduct amounting to a breach of the public trust doctrine constitutes a violation of the right to equality and the equal protection of the law guaranteed by Article 12(1) of the Constitution [*Bandara v. Premachandra* (1994) 1 Sri LR 301; *Jayawardene v. Wijayatilake* (2001) 1 Sri LR 132; *Premachandra v. Montague Jayawickrama* (1994) 2 Sri LR 90; *Bulankulama v. Secretary, Ministry of Industrial Development* (2000) Sri LR 243; *Watte Gedara Wijebanda v. Conservator General of Forest and Others* (S.C.F.R. No. 118/2004, S.C.M. 05.04.2007; *Environmental Foundation Ltd and others v. Mahaweli Authority and others* (S.C.F.R. 459/2008, S.C.M. 17.06.2010 (*Eppawala Case*); *Fernando v. Sri Lanka Broadcasting Corporation* (1996) 1 Sri LR 157 (*SLBC Case*); *Environmental Foundation Limited v. Urban Development Authority* (S.C.F.R. No. 47/2004, S.C.M. 28.11.2005 (*Galle Face Green Case*); *In Re the Nineteenth Amendment to the Constitution* (2002) 3 Sri LR 85].

Fernando, J., who made a significant contribution to the development of the jurisprudence on the public trust doctrine in Sri Lanka from its formative stages, expounded the doctrine in *Mundy and Others v. Central Environmental Authority and Others* [S.C. Appeal No. 58/2003, S.C.M. 20.01. 2004 at page 13] as follows:

"...this Court itself has long recognized and applied the "public trust" doctrine: that powers vested in public authorities are not absolute or unfettered but are held in trust for the public, to be exercised for the purposes for which they have been conferred, and that their exercise is subject to judicial review by reference to

those purposes... Besides, executive power is also necessarily subject to the fundamental rights in general, and to Article 12(1) in particular which guarantees equality before the law and equal protection of the law....." (emphasis added)

S.N. Silva, P.C., C.J., in ***Vasudeva Nanayakkara Vs. Choksy and Others*** (John Kells Case) [(2008) Sri LR 134 at 181] stated that:

*"[...] that as firmly laid down in the Determination of the Divisional Bench of Seven Judges of this Court in regard to the constitutionality of the proposed 19th Amendment to the Constitution (2002 3 SLR page 85) **the principle enunciated in Articles 3 and 4 of our Constitution is that the respective organs of Government, the Legislature, the Executive and the Judiciary are reposed power as custodians for the time being to be exercised for the People.** In *Bulankulame and others v Secretary, Ministry of Industrial Development* (5) this Court observed that **the resources of the State are the "resources of the People" and the organs of State are "guardians to whom the people have committed the care and preservation" of these resources (at p. 253). That, there is a "confident expectation (trust) that the Executive will act in accordance with the law and accountably in the best interests of the people of Sri Lanka (page 258).**" (emphasis added)*

In ***Sugathapala Mendis and another*** (Waters Edge Case) [(2008) 2 Sri LR 339 at 352, 353] the application of the doctrine is elucidated as follows:

*"concept that the powers held by the organs of the government are, in fact, powers that originate with the People, and are entrusted to the Legislature, the Executive and the Judiciary only as a means of exercising governance and **with the sole objective that such powers will be exercised in good faith for the benefit of the People of Sri Lanka. Public power is not for personal gain, favour, but always to be used to optimize the benefit of the People. To do otherwise would be to betray***

the trust reposed by the People within whom, in terms of the Constitution the Sovereignty reposes.” (emphasis added)

In ***Dr. Athulasiri Kumara Samarakoon and Others v. Hon. Ranil Wickremesinghe and Others*** [S.C.F.R. No. 195/2022, S.C.M. S.C.M. 14.11.2023] and ***Chandra Jayaratne and Others v. Hon. Attorney General and Others*** [S.C.F.R.No. 212/2022, S.C.M. 14.11.2023 at page 62] a divisional bench of this Court after analysing numerous cases held that:

“When we consider the jurisprudence of this Court it is clear that the scope and content of the Right to Equality guaranteed by Article 12 of the Constitution has evolved with the passage of time. Such evolution is in accord with the progressive changes that had taken place in other jurisdictions such as in India. In its current form this Right guarantees a protection from arbitrary exercise of power and discretion by state functionaries and enhances the Rule of Law. It further requires State authorities to ensure that their conduct will not breach the trust placed on them and make certain that public resources in their custody are protected and preserved for the benefit of the people and not to be exhausted for political or personal benefit. Furthermore, the exercise of discretionary powers in the decision-making process, should be guided by the Directive Principles as recognized by the Constitution and callous disregard of such principles will pollute decisions with arbitrariness. Thus, Rule of Law is not only rights and equality. It’s about functionality and efficiency for sustainable economic development of the nation and all of its People.”

Accordingly, the public trust doctrine provides a normative and constitutional basis for scrutinising the exercise of governmental power where public resources, public property, or the public interest are placed at risk by the arbitrary, improper, or self-interested exercise of public authority.

The public trust doctrine requires that public power and State resources be exercised lawfully, accountably, and for the benefit of the People. Any arbitrary, improper, or self-interested exercise of public power, particularly where such exercise involves the misuse of public resources, will constitute a breach of the public trust and a violation of the right to equality and the equal protection of the law.

The Petitioner submitted that the facts of the present case could scarcely provide a more direct application of these principles. I agree.

The 1st Respondent was entrusted, by the Constitution, with the stewardship of the executive power of the People of Sri Lanka in his capacity as a Cabinet Minister. He was entrusted, in that capacity, with the resources of the Ministry of Disaster Management, including a vehicle procured through a foreign loan repayable by the taxpayers of this country, for the sole purpose of serving the public purposes for which such resources had been obtained. Instead, the 1st Respondent appropriated the said vehicle for his personal use for approximately five years, thereby treating an item of critical public infrastructure as though it were his personal property.

Such conduct, represents a profound departure from the purpose for which the resource was entrusted and, in my view, constitutes a betrayal of the public trust.

I am mindful that the 1st Respondent is not a mere citizen; he was a Member of Parliament and moreover, a Cabinet Minister.

Article 63 of the Constitution mandates that except for the purpose of electing the Speaker, no Member shall sit or vote in parliament until he has taken and subscribed the following oath, or made and subscribed the following affirmation, before Parliament:

solemnly declare and affirm

*"I do ————— **that I will uphold***

swear

and defend the Constitution of the Democratic Socialist Republic of Sri Lanka.”
(emphasis added)

Accordingly, when the 1st Respondent assumed the duties as a Minister, he had sworn that:

"I..... do
solemnly declare and affirm
_____ that I will faithfully perform the duties
swear
and discharge the functions of the office of in accordance
with the Constitution of the Democratic Socialist Republic of Sri Lanka and the
law, and that I will be faithful to the Republic of Sri Lanka and that I will to the
best of my ability uphold and defend the Constitution of the Democratic Socialist
Republic of Sri Lanka.” (emphasis added)

In my view, these constitutional oaths cannot be regarded as mere ceremonial formalities. They mark the commencement of a constitutional relationship between the person taking the oath and the People, and constitute solemn constitutional undertakings assumed by every Member of Parliament and, with a heightened degree of responsibility, by a person appointed to ministerial office.

This relationship may properly be understood in the context of the constitutional conception of the social contract between the People and those entrusted with the exercise of public power. The legislative, executive and judicial powers exercised by the respective organs of government are, not powers originating in or belonging to the individual office-holder; they are powers of the People, entrusted to public institutions and to those who hold public office for the limited purpose of their lawful exercise in the

interests of the People. The constitutional oath undertaken by an office-holder must be understood against this fundamental constitutional principle.

The oath is, therefore, more than an undertaking of personal fidelity to the Constitution. It represents an assumption of public trust. The person who accepts public office thereby undertakes to exercise the authority entrusted to him or her faithfully, lawfully and for the purposes for which that authority has been conferred. A deliberate departure from that obligation is not merely a matter of political propriety or personal morality; it strikes at the constitutional relationship between the People, who are the repository of sovereignty, and the person entrusted with the exercise of a part of that sovereignty. In that sense, the constitutional oath gives juridical expression to the reciprocal relationship inherent in the constitutional social contract: the People confer public authority through the Constitution and the electoral process, while the holder of that authority assumes the corresponding obligation to exercise it in accordance with the Constitution, the law and the public interest.

A deliberate departure from these obligations cannot, in my view, be characterised as a mere failure of political propriety. It constitutes a breach of a solemn constitutional obligation undertaken to the Republic and, ultimately, to the People, whose sovereignty the office-holder is bound to uphold and defend.

In the **Anti-Corruption Bill Determination [S.C.S.D. No. 16-21/2023 at page 20]** I held (with Jayasuriya, C.J., and Fernando, J. agreeing) as follows:

“The preamble to the Constitution refers to the creation and preservation of a just and free society. There can be no just and free society where there is bribery or corruption within the executive, legislature or judiciary or for that matter the private sector. In such circumstances meritocracy is submerged by kleptocracy. The political stability and sustainable development of the State is threatened. In

Narendra Champaklal Trivedi v. State of Gujarat [(2012) 7 SCC 80 at para 30] it was held:

“It should be paramountly borne in mind that corruption at any level does not deserve either sympathy or leniency...The law does not so countenance and, rightly so, because corruption erodes the spine of a nation and in the ultimate eventuality makes the economy sterile.””

And further, (at page 20) it was held that:

“Accordingly, we hold that Sovereignty in Article 3 includes the right to a Government free of bribery or corruption.”

Fundamental rights are supplemented by *fundamental duties*. The exercise and enjoyment of rights and freedoms are inseparable from the performance of duties and obligations. Article 28(d) mandates that it is the duty of every person in Sri Lanka to *“preserve and protect public property and to combat misuse and waste of public property”*. This recognises that safeguarding public property and resources is not merely an administrative responsibility but *a constitutional responsibility* owed by every person to the public. No citizen can be exempted from this constitutional duty.

Adhamma Sutta of Aṅguttaranikāya discusses how corrupt leadership has adverse consequences not only on the entire social order but also on nature and the physical environment:

“Monks, at a time the kings are unethical, the royal servicemen become unethical. When the royal servicemen become unethical, the Brahmin householders become unethical. When the Brahmin householders become unethical, those in the townships and provinces become unethical. When the townships and provinces become unethical, the moon and sun move unevenly. When the moon and sun move unevenly, the stars and the constellations move unevenly. When the stars

and constellations move unevenly, then the night and day occur unevenly. When the night and day occur unevenly, the fortnights and months become uneven. When the fortnights and months become uneven, winds blow unevenly and in the wrong direction. When winds blow unevenly and in the wrong directions, deities become disturbed. When the deities become disturbed, the sky does not bring proper rainfall. When there is no proper rainfall, the grains ripen unevenly. When humans eat unevenly ripened grains, their life span is shortened, and they lose their beauty and power and are struck by many ailments. Monks, at a time the kings are ethical the opposite to the above happens. When cattle are crossing a (water way), if the leading bull goes crooked, all of them go crooked as the leading one has gone crooked. Even so, among humans, if one considered the chief behaves unethically, the rest will follow suit. If the king is unethical, the whole country rests unhappily. When cattle are crossing a (water way), if the leading bull goes straight, all of them go straight as the leading one has gone straight. Even so, among humans, if one considered the chief, indeed conducts oneself ethically all the rest follow suit. If the king is ethical, the whole country rests happily.”

[cited by Prof. P. D. Premasiri, Buddhist Principles of Good Governance, pages. 64-65, Nagananda International Vesak Festival, available at < <https://fbs.niibs.lk/wp-content/uploads/2021/01/premasiri-1-19012021104122.pdf> > accessed 22 May 2023]

Corruption is condemned many times in the Holy Quran.

Those who break the covenant of Allah after contracting it and sever that which Allah has ordered to be joined and cause corruption on earth. It is those who are the losers (2:27). And [recall] when Moses prayed for water for his people, so we said, “*Strike with your staff the stone.*” And there gushed forth from it twelve springs, and every people knew its watering place. “*Eat and drink from the provision of Allah, and do not commit abuse on*

the earth, spreading corruption (2:60). And when he goes away, he strives throughout the land to cause corruption therein and destroy crops and animals. And Allah does not like corruption (2:205).

The principles governing the proper use of public property and public funds are elaborated in the Hadiths narrated from the Messenger of Allah, Prophet Muhammad. In this regard, it has been reported on the authority of ‘Adi b. ‘Amira al-Kindi that he said:

“I heard the Messenger of Allah (ﷺ) say: Whosoever from you is appointed by us to a position of authority and he conceals from us a needle or something smaller than that, it would be misappropriation (of public funds) and will (have to) produce it on the Day of Judgment. The narrator says: A dark-complexioned man from the Ansar stood up - I can visualise him still - and said: Messenger of Allah, take back from me your assignment. He said: What has happened to you? The man said: I have heard you say so and so. He said: I say that (even) now: Whosoever from you is appointed by us to a position of authority, he should bring everything, big or small, and whatever he is given therefrom he should take, and he should restrain himself from taking that which is forbidden.” (Sahih Muslim 1833a)

A similar principle is articulated in the Hadith narrated on the authority of Abu Humaid as-Sa'idi, who said:

“The Messenger of Allah (ﷺ) appointed a man from the Azd tribe called Ibn al-Utbiyya, in charge of Sadaqat to be received from Banu Sulaim. When he came (back), the Messenger of Allah (ﷺ) asked him to render his account. He said: This wealth is for you (i.e. for the public treasury) and this is a gift (presented to me). The Messenger of Allah (ﷺ) said: You should have remained in the house of your father and your mother, until your gift came to you if you spoke the truth; then he addressed us. He praised God and extolled Him, and afterwards said: I appoint a man from you to a responsible post sharing with him authority that God has

entrusted to me, and he comes to me saying: This wealth is for you (i.e. for the public treasury) and this is a gift presented to me. Why did he not remain in the house of his father and his mother and his gift came to him, if he was truthful? By God, any one of you will not take anything from (the public funds) without any justification, but will meet his Lord carrying it on himself on the Day of judgment. I will recognise any one of you meeting Allah and carrying a growling camel, or a cow bellowing or a goat bleating. Then he raised his hands so high that whiteness of his armpits could be seen. Then he said: O my Lord, I have conveyed (Thy Commandments). The narrator says: My eyes saw (the Prophet standing in that pose) and my ears heard (what he said)." (Sahih Muslim 1832c)

This Hadith therefore establishes a strong principle of public trust, integrity, and accountability in public administration: public officials must not exploit their authority for private gain, and any benefit obtained because of their official position may amount to a betrayal of the trust placed in them. It also warns that those who unlawfully take or misuse public property will be held accountable before Allah on the day of judgment.

The same principle is reflected in the Hadith narrated by Khawlah al-Ansariyah (RAA), in which the Messenger of Allah (ﷺ) is reported to have said:

"Some people spend Allah's Wealth (i.e., Muslim's wealth) in an unjust manner; such people will be put in the (Hell) Fire on the Day of Resurrection." (Sahih Al Bukhari (English Translation), Volume 4 ,3118)

In simple terms, these Hadiths mean that a ruler or public official, who is given authority over others, must not deceive the people, neglect their interests, or misuse the power entrusted to him for personal benefit. If a person in authority betrays the trust of the people and dies without correcting his wrongdoing, this gives a very strong warning that he will be denied Paradise.

A citizen contributes to the State, both directly and indirectly, through the payment of taxes from his or her income, as part of the reciprocal relationship between the State and the citizen. In this country, taxation is embedded in virtually every aspect of daily life, extending from food and beverages to clothing, transportation and other necessities.

Although such taxation inevitably imposes a financial burden upon citizens and directly affects their living conditions, citizens continue to discharge their economic obligations towards the State. It must not be forgotten that the welfare system of the country, including free healthcare, free education, subsidised transportation and other public services, is sustained by the contributions made by its citizens.

The discharge of these obligations by citizens must be understood as forming part of a broader chain of reciprocal duties between the citizen and the State. The economic contribution made by the citizen is not an end in itself. It is intended to be converted into public benefit and to serve the collective interests and welfare of the People. This reciprocal relationship may properly be understood as forming part of the broader conception of the social contract and as one of the foundations upon which representative democracy rests.

In the present case, however, the conduct attributed to the 1st Respondent constitutes a dereliction of that reciprocal public duty. It amounts to a disregard of the democratic social order and a breach of the relationship of mutual obligation between the State and the tax-paying public.

This responsibility assumes even greater significance in the context of a State undergoing a severe economic crisis. At a time when ordinary citizens are required to bear an increasing economic burden, including through taxation and the rising cost of essential goods and services, public representatives and public officials bear a heightened responsibility to ensure that every item of public expenditure is justified by a legitimate public purpose. The moral and constitutional legitimacy of taxation rests, in substantial

measure, upon the assurance that the resources collected from the People will be utilised honestly, prudently and for the advancement of the public interest. The authority of the State to collect and expend public money cannot, therefore, be divorced from the corresponding obligation to account for the manner in which such resources are utilised.

Those entrusted with public office must consequently recognise that public wealth is not the personal property of the State, nor of those who temporarily exercise governmental power. Every rupee of public money represents, directly or indirectly, the labour, sacrifice and economic contribution of the People. Public power is, therefore, accompanied by an equally compelling obligation of stewardship. Those who exercise such power are required to administer public resources with the highest degree of integrity, prudence and accountability, ensuring that every rupee entrusted to them is utilised for the purpose for which it was allocated and, ultimately, for the benefit of the People.

The misuse of public property is, therefore, not merely a misuse of an asset belonging to the State. It constitutes the misuse of a resource held in trust for the People. Such misuse undermines public confidence, distorts the constitutional relationship between the citizen and the State, and erodes the very principles of accountability upon which representative democracy rests.

The greater the public office held, and the greater the public resources entrusted to the control of the office-holder, the greater, correspondingly, is the duty to act with fidelity to the public interest. The assumption of public office carries with it a heightened obligation of stewardship, requiring that the authority and resources entrusted to the office-holder be exercised solely and faithfully for the purposes for which they have been conferred.

It is not within the province of this Court to determine whether the 1st Respondent will be denied Paradise. It is, however, firmly within the constitutional mandate of this Court to determine whether, in the circumstances of the present application, the conduct of the

1st Respondent has resulted in an infringement of the fundamental rights of the Petitioner.

For all the foregoing reasons, I determine that the 1st Respondent has infringed the fundamental right of the Petitioner guaranteed by Article 12(1) of the Constitution.

The 1st Respondent is hereby directed to pay a sum of Rs. 1,664,334.93 to the Consolidated Fund of the Republic as compensation. This amount includes Rs. 1,073,334.93 incurred for the maintenance of the vehicle, Rs. 540,000/= incurred towards the cost of repairs and Rs. 51,100/= incurred in respect of the repairs. This amount of Rs. 1,664,334.93 should be paid within one month of the date of this judgment.

Bribery or corruption in any form within government must be condemned in the strongest terms. These evils can be eradicated only if courts adopt a policy of zero tolerance in determining appropriate relief in proceedings of this nature. Where politicians holding high public office, as well as the highest-ranking public officials, are found, following due legal process, to have committed acts of bribery or corruption, appropriate consequences must follow so as to mark the gravity of such conduct and to serve as a deterrent against its recurrence.

Accordingly, in the circumstances of the present case, I make a further order directing the 1st Respondent to pay a further sum of Rs. 5 million to the Consolidated Fund of the Republic by way of exemplary compensation in respect of the acts of bribery and corruption committed by him. This amount of Rs. 5 million should be paid within two months of the date of this judgment.

The 1st Respondent is hereby further directed, within one month from the date of this judgment, to publish a notice addressed to the public of Sri Lanka, in all three languages in the front page of Sunday Observer, Silumina and Thinakaran Varamanjari published on a Sunday, expressing his apology to the public for the misuse for his personal benefit of

public property entrusted to the DMC. This notice must be half a page in size and must carry a picture of the vehicle misused by the 1st Respondent.

Registrar is directed to take all steps to ensure the compliance of this judgment by the 1st Respondent.

JUDGE OF THE SUPREME COURT

P. Padman Surasena, C.J.

I agree.

CHIEF JUSTICE

Arjuna Obeyesekere, J.

I agree.

JUDGE OF THE SUPREME COURT