
**IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA.**

*In the matter of an application for the grant of Writ of
Mandamus & Certiorari under and in terms of Article
140 of the Constitution.*

CA(Writ)
Application No:

1. **Centre for Society and Religion,**
281,
Deans Road,
Colombo 10.
2. **Ranmuni Jude Vernon Rohan Silva,**
Director,
Centre for Society and Religion,
281,
Deans Road,
Colombo 10.
3. **Deewala Dewage Surach Nilanga,**
54/C,
Bulugahagoda,
Ganemulla.

PETITIONERS

Vs

1. **Inspector General of Police,**
Police Headquarters,
Colombo-01.
2. **Deegodagamage Nilantha Jayawardane,**
Senior Deputy Inspector General of Police.
Police Headquarters,
Colombo-01.
3. **Hon. Attorney General,**
Attorney General's Department,
Hulftsdorp,
Colombo 12.

RESPONDENTS

**TO HIS LORDSHIP THE PRESIDENT AND THEIR LORDSHIPS THE OTHER
HONORABLE JUDGES OF THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

On this 01st day of March 2024

The Petition of the Petitioners above named appearing by Ms. M. Manushika Kasuni Cooray their registered Attorney-at-Law, states as follows.

THE PETITIONER

1. The Petitioners state that;

- a) the 1st Petitioner is a body incorporated under the laws of Sri Lanka [and duly registered in terms of the *Companies Act No. 7 of 2007*], and the 2nd Petitioner is a citizen of Sri Lanka and the *Director* of the 1st Petitioner above named;
- b) the 3rd Petitioner is a 54-year-old citizen of Sri Lanka. The 3rd Petitioner lost his 20-year-old son, *Deenvala Devage Vihanga Thejantha*, in the Easter Sunday attack in April, who was employed as a waiter at *Shangri-La* at the time.

2. The Petitioners state that the primary objects of the 1st Petitioner are, *inter alia*, ‘to help in the integral human liberation and fulfilment of the people of Sri Lanka by their realization of human values in economic development with **social justice** and the deepening of our cultural and spiritual values’. The Petitioners state that in line with the 1st Petitioner’s objective of promoting social justice, they are engaged in protecting and promoting the interests of survivors and victims’ families in pursuing justice for *Easter Sunday Attacks* that took place in 2019. The Petitioners state that the 1st Petitioner has created a website <https://easterattack.info/> dedicated to this cause.

*Annexed herewith marked **P1(a)** and **P1(b)** and **P1(c)** are true copies of certificate of incorporation dated 27-11-2008 and Memorandum and Articles of Association. Further annexed marked **P1(d)** is a printout of the web page of the website <https://easterattack.info/>.*

3. In the instant application, *inter alia*, the Petitioners are seeking a *Writ of Mandamus* against the Respondents to conduct a credible investigation into the complaints made by the Petitioners and to take appropriate actions and/or institute criminal proceedings against the 2nd Respondent for his omission/inaction and serious dereliction of duty which led to the *Easter Sunday Bombing* in 2019.

THE RESPONDENTS

4. The Petitioners state that;

- a) The 1st Respondent is the *Inspector General of Police* and is made party to this application as the matter set out in the application below come within the general purview of this office and the said office has authority to take appropriate action in relation to the actions and/or omissions complained of hereinbelow;

- b) The 2nd Respondent is a *Senior Deputy Inspector General of Police (SDIG)*, and is made party to this application as the matter set out in the application below comes within the general purview of the 2nd Respondent's tenure as *Director, State Intelligence Services [hereinafter sometimes referred to as "SIS"]*, especially during January to April 2019;
- c) The 3rd Respondent is Hon. Attorney General and the chief legal officer of the Republic;
- d) The Petitioners respectfully reserve the right to add further parties as Respondents in the instant application, *in limine*, and/or in the event of further material revealing their complicity of the actions complained hereinafter.

BACKGROUND TO THE INSTANT APPLICATION

- 5. The Petitioners state that on 21 April 2019, within a span of 20 minutes from 8.45 a.m., seven suicide bomb attacks took place targeting several churches and hotels in *Colombo, Negombo* and *Batticaloa* resulting in the death of approximately 267 people and severe injuries to over 400 individuals. Two other suicide bomb attacks took place between 1.40 p.m., to 2.35 p.m. This series of bombings also known as the 'Easter Sunday bombings' resulted in untold pain and suffering to many hundreds of people directly affected by the bombings, as well as to the entire country who witnessed the carnage.
- 6. The Petitioners state that they have actively sought justice for the victims of 2019 Easter Sunday bombings. The 3rd Petitioner is an aggrieved party in the Trial at Bars at the *Colombo High Court HC (TAB) 2899/2021* and *HC (TAB) 2900/2021*. The Petitioners state that the High Court delivered Orders on 18 April 2022 acquitting former Defence Secretary *Hemasiri Fernando* and former IGP *Pujitha Jayasundara* respectively of the charges against them. The Petitioners are aware that the Hon. Attorney General has appealed both such orders and that these appeals are currently pending before the Supreme Court.

The Petitioners respectfully reserve the right to submit the orders dated 18-02-2022 in Colombo High Court HC (TAB) 2899/21 and HC (TAB) 2900/21 if and when deemed necessary by Your Lordships' Court.

- 7. The Petitioners state that Easter Sunday bombings revealed a serious breach of duty by the *State Intelligence Service*, and the Petitioners forwarded a complaint dated 20 April 2022 to the 1st Respondent (IGP), with evidence that points to the 2nd Respondent being directly responsible for serious dereliction of duty that led to the Easter Sunday bombings on 21 April 2019. Such complaint [P2] was hand delivered and reference *CR/555/22* given and the same complaint as pasted and annexed in the complaint book/register and given reference number *CIB III 294/22*. The Petitioners state that they;
 - a) called for immediate investigations into the 2nd Respondent; and

- b) the arrest of the 2nd Respondent for failure to take action to prevent the events of 21 April 2019 despite receiving information as to the imminent bombings, an offence falling within *Section 100 (iii)* of the *Penal Code*.

*Annexed herewith marked **P2** is a copy of the complaint dated 20-04-2022 [inclusive of annexures marked A-F] and marked **P3** is a true copy of the acknowledgment bearing both reference numbers*

8. The Petitioners further state that by letter dated 09 June 2022 addressed to the *Hon. Attorney General*, they notified the *Hon. Attorney General* that a complaint had been made to the 1st Respondent *IGP* requesting to investigate and prosecute the 2nd Respondent. However, since there has been no progress about such complaint, the Petitioners requested the *Hon. Attorney General* to advise the *IGP* to prosecute and take other actions as deemed necessary. The Petitioners state that there has been no response to such letter to date and therefore now verily believe that no steps have and/or will be taken.

*Copies of the abovementioned letter dated 09-06-2022 including annexures is compendiously annexed hereto marked **P4** and pleaded as part and parcel hereof.*

DERELICTION OF DUTIES BY THE 2ND RESPONDENT

9. The Petitioners state that the evidence led before the *Permanent High Court Trial-at-Bar HC 2899/2021* and *HC 2900/2021* points to the 2nd Respondent as being directly responsible for the Easter bombings on 21-04-2022 by failing to act on the information received as *Director, State Intelligence Service*. The said evidence indicates that details relating to the nature of a potential attack and those suspected to be involved were known to the 2nd Respondent well in advance of the said attack and demonstrates that the 2nd Respondent failed in preventing the suicide bombings on 21-04-2019

*True copies of evidence recorded at 11:35am on 13-12-2021 (page 8 and 9) and at 11:50am on 13-12-2021 (pages 6) and evidence recorded at 1:50pm on 24-11-2021 (page 5 and 6) in case bearing number HC TAB 2899/2021 are annexed hereto marked **P5(a)**, **P5(b)** and **P5(c)** and pleaded as part and parcel hereof.*

10. The Petitioners state the former President by way of an *Extraordinary Gazette No. 2141/88* dated 21-09-2019 appointed a five-member Commission under *Section 2* of the *Commission of Inquiry Act* to investigate and inquire into and report or take necessary action against those directly or indirectly responsible for those attack. It was considered “***in the best interest of public security and welfare*** to cause the conduct of investigations and inquiries into such complaints, allegations and information, in order to ascertain what measures should be taken to provide far and ensure that the law is appropriately enforced and wrong doers dealt with in terms of the law and that there will be no recurrence of such alleged acts and / or omissions, negligence or failure to perform duties amounting to offences and abuse or misuse of power or authority.”

*Attached herewith marked **P6** is a copy of the Extraordinary Gazette No. 2141/88 dated 21-09-2019 and is pleaded as part and parcel hereof.*

11. The Petitioners state that *Final Report of the Commission of Inquiry to Investigate and Inquire into and Report or Take Necessary Action on the Bomb Attacks on 21st April 2019* reveals that the 2nd Respondent received the following message via *WhatsApp* from an Indian counterpart warning the 2nd Respondent of a potential attack on Sri Lanka [evidence marked as *P8* presented by Witness No. 1057, *Former Director of Military Intelligence Brigadier (Retired) Chula Rathnasiri Kodituwakku* in *HC Permanent High Court Trial-at-Bar HC 2899/2021*];

“As per an input, Sri Lanka based Zabaran Hashmi of National Towheed Jamaat and his associates are planning to carry out suicide terror attacks in Sri Lanka shortly. They are planning to target some important churches. It is further learnt that they have conducted reconnaissance of the Indian High Commission Sri Lanka and it is one of the targets for the planned attack.

2. The input indicates that the terrorist may adopt any of the following modes of attack.

- a. Suicide attack*
- b. Weapon attack*
- c. Knife attack*
- d. Truck attack*

3. It is also learnt that the following are the likely team members of the planned suicide terror attack.

- i. Zabaran Hashmi*
- ii. Jal Al Quithal*
- iii. Rilwan*
- iv. Sajid Moulavi*
- v. Shahid*
- vi. Milban and others*

The input may kindly be enquired into on priority and feedback given to us”

*Annexed herewith marked **P7** is a copy of Chapter 13 “Early Warnings” of the Final Report of the Commission of Inquiry to Investigate and Inquire into and Report or Take Necessary Action on the Bomb Attacks on 21st April 2019 and is pleaded as part and parcel hereof. The Petitioners reserve the right to submit the full report if and when such is deemed necessary by Your Lordships’ Court.*

12. The Petitioners further state that the 2nd Respondent confirmed under oath that the information he received on 04-04-2019 was confirmed on the following day i.e., on 05-04-2019 by a foreign intelligence source. The Petitioners therefore state that the 2nd Respondent received corroboration of information by another foreign intelligence source

*Vide proceedings dated 24-11-2021 at pages 5 and 6 bearing the testimony of the 2nd Respondent in HC (TAB) 2899/2021 marked above as **P5(c)**.*

13. The Petitioners further state that it appears that the 2nd Respondent failed to present the intelligence information received through *WhatsApp* at the Intelligence Review meeting held on 09 April 2019 although it was relevant and imperative to do so. The Petitioners state **it was the 2nd Respondent’s duty to prepare the presentation for the Intelligence Review Meeting on 09 April 2019, in which the 2nd Respondent participated.** This is borne out in the testimony of *Retired Brigadier Koditumakku* in *HC (TAB) 2899/2021* on 13-12-2021 [*vide P5(a)*]. The relevant portion is reproduced for Your Lordships’ convenience;

“ප්‍ර. එතකොට නිලීන් ජයවර්ධන මහත්තයා නමින් නෙමෙයි ඒ කියන්නේ රාජ්‍ය බුද්ධි සේවයේ අධ්‍යක්ෂකවරයා හැටියට තමුන්ගේ ඉදිරිපත් කිරීම කරන අවස්ථාවේදී මේ තොරතුරු පැරි දරණ ලේඛනයේ සදහන් තොරතුරු ඒ වේලාවේ බුද්ධි සමාලෝචන මණ්ඩලයට ඉදිරිපත් කළාද?

උ. නැහැ ස්වාමිණි. මට හොද මතකයක් තිබෙනවා ඒක ඉදිරිපත් කළේ නැහැ කියලා ස්වාමිණි.

ප්‍ර. එවැනි තොරතුරු ඒ වගේ මහත්මයා කියන්නේ මේක ඉතා වැදගත් තොරතුරක් කියලා පැ. 8 සහ පැ. 15 පස්සේ ආපු එකක්, පැ. 8 දරණ තොරතුරු ඒ බුද්ධි සමාලෝචන මණ්ඩල රැස්වීමට ඉදිරිපත් කිරීමට මොනවා හරි බාධාවක් තිබෙනවාද? දැන් මහත්මයාගේ ඒ කියන්නේ මේක ආරක්ෂාව මේ වගේ දේවල් කතා නොකළ යුතු දෙයක් හැටියට ඒ වගේ මොනවා හරි බාධකයක් තිබෙනවාද එවැනි සමාලෝචන මණ්ඩලයට සාකච්චා කරන්න?

උ. ස්වාමිණි. මම හිතන්නේ නැහැ එහෙම බාධාවක් තිබෙනවා කියලා මොකද ඒක තමයි හොදම සහ සුදුසුම ස්ථානය. ඒ වගේ විශේෂ බුද්ධි තොරතුරක් ගැන සාකච්චා කරන්න. මොකද ඒක එකක් විශේෂයෙන්ම එතන සේරම විශ්වාසවන්ත පුද්ගලයෝ ඉන්නේ මොකද අපි අධ්‍යක්ෂකවරුන් විදිහට ඒ විශ්වාසවන්තභාවය උපරිමයෙන් තියෙන නිසා තමයි ස්වාමිණි පත් කරන්නේ. ඊට අමතරව මෙතන ආරක්ෂාව සම්බන්ධයෙන් විශාල පළපුරුද්දක්, දැනුමක් තිබෙන අයවලුන් කිහිප දෙනෙක්ම හිටියා. ඒ ඔතැන හමුදාපතිලා තුන්දෙනා. පොලිස්පති. ඉතින් මම හිතන්නේ අවධානය යොමු කළ යුතු ඉහළම තලයේ පුද්ගලයින් ආරක්ෂාව සම්බන්ධයෙන් එතැන ඉන්න තැනක්. ඉතින් ඒක මම හිතන්නේ හොද ම අවස්ථාව කියලා ඒ වගේ දෙයක් සාකච්චා කරන්න ස්වාමිණි.”

14. In fact, the testimony of *Retired Brigadier Koditumakku* in *HC (TAB) 2899/2021* on 13-12-2021 reveals that the 2nd Respondent never informed him anything about the information he received on 04-04-2019. This was even though, on 18-09-2019 during a phone call they discussed about an explosion that took place in *Batticaloa*. In his evidence, he further stated that the *State Intelligence Service* never tried to exchange intelligence information and did not cooperate with Military Intelligence [*vide P5(b) marked above*]

15. The Petitioners state that the Honorable Judge of the High Court *HC (TAB) 2899/2021* by his order dated 18-02-2022 highlighted that the 2nd Respondent had failed to convert the input received on 04-04-2019 into intelligence information or to direct the officers to further analyse it, and disapproved his failure to bring this matter to the attention of the Intelligence Review Board during his opening presentation at the meeting held on 09-04-2019 in his capacity as the *Director- State Intelligence Service*

Annexed herewith is a true copy of pages 1 and 131 of Order dated 18-02-2022 in HC TAB 2899/2021 marked P8 and pleaded as part and parcel hereof. The Petitioners reserve their right to submit to Your Lordship's Court the certified copy of the full Order in the event it becomes necessary to do so and has annexed only relevant portions hereto.

16. The relevant portion of **P8** is reproduced herein below for Your Lordships' convenience;

“245. ... 2019.04.04 ලද වැදගත් තොරතුරක් ඉක්මණින් බුද්ධි තොරතුරක් බවට පරිවර්තනය කරගැනීම සඳහා හෝ ඒ පිළිබඳ වැඩිදුර විශ්ලේෂණය කිරීම සඳහා අවශ්‍ය බලධාරීන්ගේ යොමු කිරීමේ මූලික වගකීම පැහැර හැර ඇත්තේ පැමිණිල්ලේ සාක්ෂි අංක 01 බව පෙනී යයි. රාජ්‍ය බුද්ධි සේවයේ අධ්‍යක්ෂකවරයා වශයෙන් 2019.04.09 වන දින බුද්ධි සමාලෝචන මණ්ඩල රැස්වීමේදී ආරම්භක දේශනය කරන අවස්ථාවේදී මෙම කරුණ සම්බන්ධයෙන් බුද්ධි සමාලෝචන මණ්ඩලයේ අවධානයට ලක් කිරීම පැහැර හැර එය ජාතික බුද්ධි ප්‍රධානී වෙත පැවරීමට ඔහු අධිකරණයේදී දරණ ලද උත්සාහය අනුමත කල නොහැකිය. රාජ්‍ය බුද්ධි සේවයේ අධ්‍යක්ෂකවරයා වශයෙන් එම තොරතුර වර්ධනය කරගෙන එහි සත්‍ය අසත්‍යතාවය හෝ එවැන්නක් සිදුවීමට ඇති සම්භාවිතාවය පිළිබඳ අවශ්‍ය අනෙකුත් අය සමග සාකච්චාවට බදුන් කිරීමේ මූලික වගකීම පැමිණිල්ලේ සාක්ෂි අංක 01 සතුව තිබුණු බව පෙනී යයි. විශේෂයෙන්ම යුධ හමුදා බුද්ධි අධ්‍යක්ෂක වශයෙන් කටයුතු කළ පැමිණිල්ලේ සාක්ෂි අංක 1057 පවසා සිටියේ 2019.04.18 වන දින තමාට දුරකතනයෙන් කතා කරන ලද පැමිණිල්ලේ සාක්ෂි අංක 01 මඩකලපුවේ සිදු වූ පිපිරීමක් සම්බන්ධයෙන් සාකච්චා කළද, 2019.04.04 ලද තොරතුර සම්බන්ධයෙන් කිසිදු දැනුම් දීමක් නොකල බවයි. විශේෂයෙන්ම එම සාක්ෂිකරු වැඩිදුරටත් පවසා සිටියේ රාජ්‍ය බුද්ධි සේවය කිසිදු අවස්ථාවක බුද්ධි තොරතුරු හුවමාරු කරගැනීමට උත්සාහ නොකළ බවත්, යුධ හමුදා බුද්ධි අංශය සමග රාජ්‍ය බුද්ධි සේවයේ සහයෝගයෙන් කටයුතු නොකළ බවත්ය. එසේම සාක්ෂිකරුගේ අවබෝධ අනුව පවසා සිටියේ මෙම කාලසීමාව තුළ රාජ්‍ය බුද්ධි සේවයේ අධ්‍යක්ෂකවරයාට ජනාධිපතිවරයා සමග නිසි ලෙස සම්බන්ධවීමේ හැකියාවක් තිබුණු බවයි”.

17. The Petitioners further state that Honourable High Court Judge in *HC (TAB) 2900/21* in his Order dated 18-02-2022 also pointed out that the 2nd Respondent had not sought any support from the intelligence units of the Military or tri-forces, in order to develop the input dated 04-04-2019 into intelligence information. The Court also noted, a special responsibility to do so in his capacity as *Director-State Intelligence Services*

Annexed herewith marked P9 is a true copy of pages 1, 149 and 150 of Order dated 18-02-2022 in HC TAB 2900/2021 and is pleaded as part and parcel hereof. The Petitioners reserve their right to submit to Your Lordship's Court the certified copy of the full Order in the event it becomes necessary to do so and has annexed only relevant portions hereto.

18. The relevant portion of the above marked **P9** recreated for Your Lordships' convenience;

“235. මෙහිදී මෙම තොරතුර බුද්ධි තොරතුරක් දක්වා වර්ධනය කර ගැනීම සඳහා රාජ්‍ය බුද්ධි සේවයේ අධ්‍යක්ෂකවරයා වශයෙන් යුධ හමුදා බුද්ධි අංශයෙන් හෝ ත්‍රිවිධ හමුදාවල බුද්ධි අංශ වලින් අවශ්‍ය කිසිදු සහයක් ලබා ගැනීමට කටයුතු කර නැත. පැමිණිල්ල වෙනුවෙන්ම කැඳවන ලද වර්තමාන පොලිස්පතිවරයාගේ සාක්ෂියට අනුව එසේ ත්‍රිවිධ හමුදා බුද්ධි අංශ සමග සාකච්චා කර බුද්ධි තොරතුරු හුවමාරු කර ගැනීමට, විශ්ලේෂණය කිරීමට බුද්ධි අධ්‍යක්ෂකවරයාට බාධාවක් නැත. ඔහු ශ්‍රී ලංකා පොලිසියේ බුද්ධි අධ්‍යක්ෂකවරයා නොව රාජ්‍ය බුද්ධි සේවයේ බුද්ධි අධ්‍යක්ෂකවරයා වේ. එබැවින් ලැබෙන තොරතුරු බුද්ධි තොරතුරු

බවට පරිවර්තනය කර ගැනීම සම්බන්ධයෙන් සුවිශේෂී වගකීමක් ඇත්තේ රාජ්‍ය බුද්ධි අධ්‍යක්ෂකවරයාට වේ”.

19. Therefore, the Petitioners state the 2nd Respondent’s failure to verify information received on 04-04-2019 and coordinate intelligence information with other relevant counterparts is a serious dereliction of his duty as the *Director-State Intelligence Services*. In fact, the testimony by Retired *Brigadier Chula Rathnasiri Kodithuwakku* in HC 2899/2021 on 13-12-2021 [on pages 3 & 4 of **P5(b)**] indicates that 2nd Respondent failed to coordinate intelligence information received as Director, State Intelligence Service, and evaluate the veracity of such information. The Petitioners state that the 2nd Respondent, in his capacity as *Director-State Intelligence Services* received all intelligence related information from various counterparts and that it was his duty to coordinate with counterparts and develop the intelligence information to present to the *Defence Secretary*.

20. The Petitioners state that they became aware of a fundamental rights application bearing *SC FR 64/2022* filed by the Petitioner, *Shani Abeyssekara*, the *Former Director of Criminal Investigations Department [CID]*. In his Affidavit dated 17-02-2022 submitted alongside the petition, he has *inter alia* included the following evidence;

- a) On or about 16-01-2019 the team of *CID* officers were able to locate a *NTJ* safe house and/or training base in an estate called *Lactowatte* in *Wanathavilluma, Puttalam*;
- b) The *CID* raided and recovered over a hundred kilograms of locally manufactured explosives (urea nitrate), 99 detonators, detonation cords, firearm parts, compasses, and other munitions inside the said safe house and/or training base;
- c) The *CID* arrested 4 suspects, namely *A.H.M. Mufiz*, *A.H.M. Hamas*, *M.N.M Nafrid* and *M.N.M Navid*, and the following was revealed from the suspects;
 - (i) *M.C.M Saharan* was the leader of *NTJ*;
 - (ii) Members of the organization were categorized into two teams, suicide attacks and lone wolf attackers;
 - (iii) *Saharan* and head members of the organization had engaged in collecting weapons and manufacturing explosives in *Lactowatte, Puttalam*;
 - (iv) *Saharan* had planned to establish a training camp in *Lactowatte*.
- d) The officers of *State Intelligence Service* were given the opportunity to question the four suspects [*vide* paragraph 37 of the Affidavit].

Annexed herewith marked P10 is a certified copy of the affidavit dated 17-02-2022 in SC FR 64/2022.

21. Therefore, the Petitioners state that the 2nd Respondent had information pertaining to *Sabaran* and *NTJ* group by January 2019. Thus, the failure to give serious consideration to and to act on the input received on 04-04-2019 via WhatsApp, in spite of possessing such

vast knowledge of *Saharan* and *NTJ*, is a dereliction of duty by the 2nd Respondent. In fact, in the Affidavit marked **P10** at paragraph 64, it is stated that;

“...the then SDIG SIS Nilantha Jayawardena, has sent a report to the CID for the first time providing full details of the NTJ command structure and evidence of their involvement in the killings of the two Police Constables in Vavuniathivu a few hours after the Easter Attacks. I state that the CID has been searching for M.C.M. Saharan for the past four months **with no support from the Intelligence Services** and if **this specific information related to the NTJ Command structure and the murder of the two constables in Vavunathivu were made available to CID or provided to the Security Council prior to the attacks by the then SDIG SIS Nilantha Jayawardena it may have been possible to prevent the attacks**”.

22. The Petitioners further state that several fundamental rights applications [SC FR 163/19, 165/19, 166/19, 184/19, 188/19, 191/19, 193/19, 195/19, 196/19, 197/19, 198/19, and 293/19] were filed against *inter alia*, the former President *Mr. Maithripala Sirisena*, *Hemasiri Fernando*, the then *Secretary to the Ministry of Defence*, *Pujith Jayasundera*, the then *Inspector General of Police*, *Sisira Mendis*, the *Chief of National Intelligence* and the 2nd Respondent [in this instant application] **Nilantha Jayawardena** [the then *Director, State Intelligence Service*] for their inaction which led to the Easter Sunday Bombings in 2019. The Petitioners are aware that a bench comprising of seven judges heard the applications, and delivered a judgment dated 12-01-2023. The Petitioners state that their Lordships of the Supreme Court after considering all the evidence presented before them, held the following against the 2nd Respondent;

a) That on 04-04-2019, the 2nd Respondent personally received information via WhatsApp that the *NTJ* leader and his associates were planning to carry out a suicide terror attack on important churches, and that such information was confirmed in writing on 05-04-2019. The Supreme Court in its judgement held;

“...the reason for the Director of SIS to treat the information as a mere input and not intelligence must have been set forth and explained in the affidavit, leave alone his omission to refer to his source in his communications...Come 4th April 2019, it is undeniable that Nilantha Jayawardena himself was too well equipped with a large volume of material on the likely assassins to plead ignorance of their identities and in these circumstances, **Nilantha Jayawardena cannot put forward a facile argument that the intelligence received on 04.04.2019 was nothing more than mere information.**

According to the final affidavit tendered by Nilantha Jayawardena, he had submitted to Pujith Jayasundara - the IGP, a number of reports during the period 20.04.2016 to 29.04.2019 relating to ISIS and Radicalization, including information about Zahran Hashim and his network. The summary of reports titled “*Reports sent to IGP on ISIS*”

Radicalization in Sri Lanka (including Sabran's network from 20th April 2016 to 30th April 2019)” shows a grand total of 97 reports, whilst reports sent to Secretary, Defence from 1st November 2018 to 25 April 2019 number around 11.

This testimony before this Court demonstrates that **Nilantha Jayawardena, and Pujith Jayasundara were both aware of the potential threats by Zahran, his cohorts and the NTJ long prior to the Easter Sunday attacks.** Even the Secretary, Defence cannot plead ignorance of the radicalization of Zahran and his complicit partners as he had continued to receive reports regarding this from November 2018.”

- b) The 2nd Respondent provided lists of persons who had been ‘radicalised’ to the former IGP, and the lists contained the names of *Zabran, Rilwan* (the brother of Zahran) and *Milhan*, the same persons who were mentioned in *WhatsApp* message sent to the 2nd Respondent. In this regard, the Supreme Court held;

“Both these two lists invariably contained the names of one and the same persons. For instance, a person called Jameel was on top of each list, and they also contained the names of Zahran, Rilwan (the brother of Zahran) and Milhan – the names that were mentioned by the Indian counterpart in its message to Nilantha Jayawardena on the 4th of April 2019. Therefore, these likely attackers were far too notorious to be overlooked by the security brass of this country including the IGP and the Secretary, Defence. The likes of Zahran had long been known in the interlocking network of intelligence of this country, and **when Nilantha Jayawardena received the message from India on the 4th of April 2019 naming the very same individuals, it is fatuous of Nilantha Jayawardena to contend before this Court that it was mere information and not intelligence.**

In the circumstances, it **cannot be accepted that Nilantha Jayawardena needed time to transform the so-called information into intelligence. In these circumstances it is too simplistic for him to aver in his affidavit that he needed to establish the true identities of the attackers,** as the very names mentioned in the so-called information of 4th of April 2019, and the places they had been frequenting were far too entrenched in the knowledge and domain of national security mechanisms set up by the Ministry of Defence.”

- c) There was greater burden and responsibility on the 2nd Respondent who requested the *IGP* a closure of investigations by others into Saharan which resulted in the SIS becoming the “**sole investigator into Zahran**” [*vide* page 74 of the judgment];

- d) The meeting on 09-04-2019 had an item titled “*Current Security/Intelligence Update*” at which the 2nd Respondent had to brief the participants. The 2nd Respondent did not alert the participants to the likelihood of the attacks [*vide* page 76] or the vital intelligence he had received on 04-04-2019 [*vide* page 77]. The Supreme Court [at page 78] held;

“Here is a Director of the State Intelligence Service who had given extensive briefing on the 13th of March 2019 on Zahran and his associates and by 9th April 2019, he had already written to the CNI about the delicate information from India. He had also personally briefed the Inspector General of Police via phone on the aforesaid intelligence information on the 7th April 2019. When he went for the ICM on 9th April 2019, there were ominous warnings of an impending disaster but he chose not to discuss the matter in his briefing, except for an informal discussion among himself, Sisira Mendis (CNI) and Secretary, Defence Hemasiri Fernando. This only shows that Nilantha Jayawardena attached little weight to the intelligence provided by the foreign counterpart. In view of the enormity of the intelligence gatherings, meetings, reports and events which had preceded the intelligence received on 04.04.2019, it is idle to contend that the information received was not actionable. It was of national interest that the Director, SIS should have brought this matter up at the ICM. In fact, he should have alerted and informed the Secretary to the President but he failed to do so.”

- e) The Supreme Court held that based on the narrative of inaction and omissions on the part of the 2nd Respondent, he is liable for the violation of fundamental rights under *Article 12(1)* and *14(1)(e)* of the Constitution [*vide* page 92];
- f) The Supreme Court directed the 2nd Respondent to pay Rs. 75 million as compensation and directed the State to ‘**take appropriate disciplinary action forthwith against the former Director, SIS Nilantha Jayawardena for his aforesaid lapses and failures**’ [*vide* page 121].

*Attached herewith marked **P11** is a copy of the judgment dated 12-01-2023 in SC FR 163/19, 165/19, 166/19, 184/19, 188/19, 191/19, 193/19, 195/19, 196/19, 197/19, 198/19 and 293/19 and is pleaded as part and parcel hereof.*

23. The Petitioners state that based on the information available in the public domain, that they unaware of any investigations or disciplinary action taken against the 2nd Respondent. In any event, the Petitioners state that there is plethora of evidence against the 2nd Respondent to institute criminal prosecution against him for his omissions/inactions and his failure to act on the intelligence received by him on 04-04-2019. The Petitioners state that there is a public duty upon the State, its law enforcement, and legal officers, to act the

manner set out in the above judgment [P11], and there are no good reasons for the failure to take disciplinary action and commence criminal investigations.

24. In fact, the Petitioners are aware that upon a motion filed by the Respondents in fundamental rights applications SC FR 163/19, 165/19, 166/19, 184/19, 188/19, 191/19, 193/19, 195/19, 196/19, 197/19, 198/19, and 293/19 regarding the payment of compensation ordered by the Supreme Court in its judgment dated 12-01-2023 marked **P11**. The applications were listed for support on 02-11-2023, and the Supreme Court ordered the *Hon. Attorney General* to file a comprehensive report setting out the actions/steps taken against the 2nd Respondent, former *Director of SIS- Nilantha Jayawardhana*.

*Attached herewith marked **P12** is a certified copy of the Order dated 02-11-2023 in SC FR 163/19, 165/19, 166/19, 184/19, 188/19, 191/19, 193/19, 195/19, 196/19, 197/19, 198/19, and 293/19 and is pleaded as part and parcel hereof.*

25. The Petitioners state that despite such overwhelming evidence and a recommendation by the *Presidential Commission of Inquiry* [marked **P7**] to institute criminal proceedings against the 2nd Respondent, he was promoted to the second highest senior officer of the Sri Lanka police, *Senior Deputy Inspector General of Police- Administration*. The Petitioners are also aware that the 2nd Respondent is one of the candidates to the next *Inspector General of Police*.

*Attached herewith marked **P13(a)** is a copy of an article titled "Easter-attacks-implicated SDIG Nilantha Jayawardena promoted" available online at <https://www.themorning.lk/articles/OMgQ8cBRE8ZnTrt1WQ8D>*

*Annexed herewith marked **P13(b)** is a copy of an article titled "Who will be the next IGP" available online at <https://www.adaderana.lk/news/91399/who-will-be-the-next-igp>*

ENTITLEMENT TO APPROPRIATE WRITS AND/OR DIRECTIONS

26. In the circumstances, the Petitioners state that they have no alternative but to seek recourse to legal proceedings in this matter and is advised and state that the instant application to Your Lordships' Court is the most efficacious and appropriate remedy to seek justice for the victims of the Easter Sunday bombings in 2019.
27. The Petitioners state that the several actions and/or omissions of the 2nd Respondent directly resulted in the death of nearly 267 individuals and grave and lifelong injuries and sufferings to many others.
28. The Petitioners state that no discretion vested in any official is absolute, but merely held in public trust for the good of the People. The Petitioners verily believe that the numerous recommendations and findings set out above, guide how any discretion should be exercised in this particular instance. The Petitioners state that there are no good reasons for the State

and the Executive to act in the manner set out above [as depicted in **P13(a)**] without taking disciplinary actions against the 2nd Respondent and initiating proper criminal investigations and prosecutions.

29. The Petitioners state that they forwarded a complaint against the 2nd Respondent with relevant extracts of evidence to the 1st Respondent and forwarded a Letter of Demand 21-05-2022 but no steps have been taken by the 1st Respondent to date.

*Attached herewith marked **P14** is a copy of the letter of demand sent by the 2nd Petitioner's legal representative.*

30. The Petitioners further state that the 3rd Petitioner too forwarded a letter of demand dated 27-11-2023 to the 1st Respondent, IGP to consult with the *National Police Commission* and make recommendations and/or take and/or continue disciplinary action against the 2nd Respondent in terms of *Article 155G* of the Constitution as set out in the judgment of the Supreme Court dated 12-01-2023 marked **P11**. The 3rd Petitioner further sent a letter 27-11-2023 to the Hon. Attorney General to initiate appropriate action to give effect to and / or facilitate the carrying out of the findings/recommendations of the *Presidential Commission of Inquiry* in relation to the 2nd Respondent.

*Attached herewith marked **P15(a)** and **P15(b)** are copies of letters of demand both dated 27-11-2023 sent by the 3rd Petitioner to the IGP and Hon. Attorney General respectively.*

31. The Petitioners state that the evidence presented against the 2nd Respondent is sufficient to initiate investigations against the said Respondent for his role in failing to take due steps to prevent the Easter attacks of 21-04-2019. In view of the provisions of the Law, and in particular, the provisions of the *Code of Criminal Procedure* [including *Section 393*] and *Article 12(1)* of the Constitution, as read with the judgment of the Supreme Court [**P11**] and the findings of the *Presidential Commission of Inquiry* [**P7**] such, places a constitutional, legal and public duty on the part of the 3rd Respondent *Attorney General* and/or 1st Respondent *IGP* to take disciplinary action and/or institute investigations and/or criminal proceedings against the 2nd Respondent [or recommend to the *National Police Commission* where appropriate]. The Petitioners state that though requested to act according to their constitutional and/or legal and/or public duty, the 1st and/or 3rd Respondents and/or officers serving thereunder and/or their agents, have failed to so act, and/or have failed to exercise their discretion (if any) in the manner required, in the specific instances of this application.

32. In the circumstances, hereinbefore morefully enumerated, the Petitioners state that, the decision (if any), not to take disciplinary action against the 2nd Respondent, contrary to the Supreme Court judgment marked **P11**, and the decision (if any), not to commence criminal investigations and/or criminal proceedings against the 2nd Respondent, contrary to the findings of the *Presidential Commission of Inquiry* [**P7**] read with the evidence available to the

State in, *inter alia*, HC (TAB) 2899/2021 & HC (TAB) 2900/21 [borne out by **P2**], read in light of the Supreme Court judgment marked **P11** is, for the following reasons amongst others that may be articulated by way of Counsel at the appropriate stage, unreasonable and/or irrational and/or contrary to the Principles of Fairness, Proportionality and Natural Justice and violative of the Petitioners' Legitimate Expectations. Such is also arbitrary, capricious, unwarranted, unreasonable, manifestly irregular, devoid of any valid reasoning and/or in fact no valid reasons exist therefore. Further, such has been reached **without relevant considerations being taken into account** [such as **P10**] or, conversely, as one in relation to which irrelevant considerations have been taken into account, and/or is based on procedural flaws and/or administrative delays solely the responsibility of any one or more of the Respondents and/or officers serving thereunder.

33. The Petitioners further state that independent and without prejudice to any and/or all of the above, the decisions (if any) not to take disciplinary action and/or commence criminal investigations and/or criminal proceedings against the 2nd Respondent amount to a violation of the constitutional rights of citizens of this Republic, particularly their right to Equality & Equal Protection of the Laws as guaranteed under Article 12(1) of the Constitution.
34. The Petitioners further state that the 1st Respondent IGP and the 3rd Respondent AG, have a public duty, to ensure justice is done, and proper disciplinary action and/or criminal investigations/proceedings are taken against public officers where necessary, the nature and effect of which attract judicial review. In fact, as borne out by the *the Extraordinary Gazette No. 2141/88 dated 21-09-2019* marked **P6**, the Commission was appointed in the 'best interest of public security and welfare' considering 'deadly injuries to a large number of persons and making a large number of people totally disabled and loss of lives and causing damages to a large number of properties. The Petitioners and especially the 3rd Petitioner is aggrieved by the failure of the 1st and/or 2nd Respondents to act and/or their undue delay in acting and/or in exercising any discretion vested in them, in the manner required by the several findings and evidence available, including the judgment of their Lordships of the Supreme Court marked **P11**.
35. As such, the Petitioners are entitled in law to seek a *Writ of Mandamus* on the 1st and/or 3rd Respondents to open an investigation against the 2nd Respondent forthwith and take necessary legal action to prosecute the 2nd Respondent for his breach of duty as *Director, SIS* which resulted in the easter bombings on 21-04-2019, and criminal prosecution under the *section 100* of the *Penal Code* and/or any other suitable provisions.
36. In the aforesaid circumstances, the Petitioners are entitled to invoke the jurisdiction of Your Lordships' Court to issue;

- a) A mandate in the nature of a *Writ of Certiorari*, calling for, and quashing, the decision (if any) of the Executive, and/or 1st and/or 3rd Respondents, and/or officers and/or agents serving thereunder, not to commence disciplinary action against the 2nd Respondent;

OR in the alternative to the above

A mandate in the nature of a *Writ of Certiorari*, calling for and quashing, (if any) any decision of the of the Executive and/or 1st and/or 3rd Respondents, and/or officers and/or agents serving thereunder not to facilitate the carrying out of the Judgment of their Lordships of the Supreme Court marked **P11**;

- b) A mandate in the nature of a *Writ of Certiorari*, calling for, and quashing, the decision (if any) of the Executive, and/or 1st and/or 3rd Respondents, and/or officers and/or agents serving thereunder, not to commence criminal investigations and/or proceedings, against the 2nd Respondent;

OR in the alternative to the above

- c) A mandate in the nature of a *Writ of Certiorari*, calling for and quashing, (if any) any decision of the of the Executive and/or 1st and/or 3rd Respondents, and/or officers and/or agents serving thereunder not to facilitate the carrying out of the findings/recommendations of the *Presidential Commission of Inquiry* marked **P7** in relation to the 2nd Respondent;

- d) A mandate in the nature of a *Writ of Mandamus*, directing the 1st Respondent IGP, and/or successors in office and/or officers and/or agents serving thereunder, to forthwith to consult with the *National Police Commission* and make recommendations and/or take and/or continue disciplinary action against the 2nd Respondent in terms of *Article 155G* of the Constitution, for his actions/inactions pertaining to the April 2019 Easter Sunday Bombings;

OR in the alternative to the above

- e) A mandate in the nature of a *Writ of Mandamus*, directing the 1st Respondent IGP, and/or successors in office and/or officers and/or agents serving thereunder, to forthwith take steps to initiate appropriate action to give effect to and / or facilitate the carrying out the Judgment of their Lordships of the Supreme Court marked **P11**;

- f) A mandate in the nature of a *Writ of Mandamus*, directing the 1st and/ and/or 3rd Respondents, and/or successors in office and/or officers and/or agents serving thereunder, to forthwith commence criminal investigations and/or proceedings,

against the 2nd Respondent for his actions/inactions pertaining to the April 2019 Easter Sunday Bombings;

OR in the alternative to the above

- g) A mandate in the nature of a *Writ of Mandamus*, directing the 1st and/ and/or 3rd Respondents, and/or successors in office and/or officers and/or agents serving thereunder, to forthwith take steps to initiate appropriate action to give effect to and / or facilitate the carrying out of the findings/recommendations of the *Presidential Commission of Inquiry* marked **P7** in relation to the 2nd Respondent and/or as required by *section 7*. of the *Commissions of Inquiry Act No. 17 of 1948 (Chapter 393) (as amended)* as they are duty bound to do.

37. The Petitioners respectfully seek the indulgence of Your Lordships' Court to reserve the right to:

- a) add any person/persons as parties to this application and seek further reliefs/prayers as necessary, in the event of further material revealing their complicity of the actions complained in the preceding paragraphs, including as may be necessary by disclosures by the Respondents;
- b) tender any further evidence or affidavits and documents as necessary substantiating the averments contained above;

38. The Petitioners have not previously invoked the jurisdiction of Your Lordships' Court in this matter.

WHEREFORE THE PETITIONERS MOST RESPECTFULLY PRAY THAT YOUR LORDSHIPS' COURT BE PLEASED TO:

- (a) Issue notice on the Respondents in the first instance;
- (b) To issue appropriate *interim orders*;
- i. Directing the 1st and / or 3rd Respondents and/or their successors in office and / or any other Respondent and/or any other officer serving thereunder, to notify Your Lordships Court of all steps taken to facilitate giving effect to the recommendations contained in the *Final Report* of the *Presidential Commission of Inquiry* as borne out by the document marked **P7** in relation to 2nd Respondent, including all steps taken to comply with any and all requirements therein, and to ensure adequate and timely compliance of the same, and / or steps not taken and reasons thereon;

- ii. Directing the 1st and / or 3rd Respondents and/or their successors in office and / or any other Respondent and/or any other officer serving thereunder, to notify Your Lordships Court of all steps taken to facilitate giving effect to the Judgment of their Lordships' of the Supreme Court as borne out by the document marked **P11** in relation to 2nd Respondent, including all steps taken to comply with any and all requirements therein, and to ensure adequate and timely compliance of the same, and / or steps not taken and reasons thereon;
 - iii. Directing the 1st and/or 3rd Respondents and/or their successor in office and / or any other Respondent and/or any other officer serving thereunder, to notify Your Lordships Court all consultations and/or recommendations with the relevant disciplinary authorities and/or other relevant institutions [including but not limited to, under *Article 155G* of the Constitution] with regard to disciplinary action and/or institution of criminal proceedings against the 2nd Respondent
- c) A mandate in the nature of a *Writ of Certiorari*, calling for, and quashing, the decision (if any) of the Executive, and/or 1st and/or 3rd Respondents, and/or officers and/or agents serving thereunder, not to commence disciplinary action against the 2nd Respondent;

OR in the alternative to the above

- d) A mandate in the nature of a *Writ of Certiorari*, calling for and quashing, (if any) any decision of the of the Executive and/or 1st and/or 3rd Respondents, and/or officers and/or agents serving thereunder not to facilitate the carrying out of the Judgment of their Lordships of the Supreme Court marked **P11**;
- e) A mandate in the nature of a *Writ of Certiorari*, calling for, and quashing, the decision (if any) of the Executive, and/or 1st and/or 3rd Respondents, and/or officers and/or agents serving thereunder, not to commence criminal investigations and/or proceedings, against the 2nd Respondent;

OR in the alternative to the above

- f) A mandate in the nature of a *Writ of Certiorari*, calling for and quashing, (if any) any decision of the of the Executive and/or 1st and/or 3rd Respondents, and/or officers and/or agents serving thereunder not to facilitate the carrying out of the findings/recommendations of the *Presidential Commission of Inquiry* marked **P7** in relation to the 2nd Respondent;
- g) A mandate in the nature of a *Writ of Mandamus*, directing the 1st Respondent IGP, and/or successors in office and/or officers and/or agents serving thereunder, to forthwith to consult with the *National Police Commission* and make recommendations and/or take and/or continue disciplinary action against the 2nd Respondent in terms of *Article 155G* of the Constitution, for his actions/inactions pertaining to the April 2019 Easter Sunday Bombings;

OR in the alternative to the above

- h) A mandate in the nature of a *Writ of Mandamus*, directing the 1st Respondent IGP, and/or successors in office and/or officers and/or agents serving thereunder, to forthwith take steps to initiate appropriate action to give effect to and / or facilitate the carrying out the Judgment of their Lordships of the Supreme Court marked **P11**;
- i) A mandate in the nature of a *Writ of Mandamus*, directing the 1st and/ and/or 3rd Respondents, and/or successors in office and/or officers and/or agents serving thereunder, to forthwith commence criminal investigations and/or proceedings, against the 2nd Respondent for his actions/inactions pertaining to the April 2019 Easter Sunday Bombings;

OR in the alternative to the above

- j) A mandate in the nature of a *Writ of Mandamus*, directing the 1st and/ and/or 3rd Respondents, and/or successors in office and/or officers and/or agents serving thereunder, to forthwith take steps to initiate appropriate action to give effect to and / or facilitate the carrying out of the findings/recommendations of the *Presidential Commission of Inquiry* marked **P7** in relation to the 2nd Respondent and/or as required by *Section 7* of the *Commissions of Inquiry Act No. 17 of 1948 (Chapter 393) (as amended)* as they are duty bound to do.
- (c) Grant exemplary costs, and;
 - (d) Any such relief as Your Lordships deem just and meet under *Chapter XVI* of the Constitution as read with *Article 105(3)* of the Constitution;
 - (e) Such other and further reliefs as to Your Lordships' Court shall seem fit.

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Attorney-at-law for the Petitioners