

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

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

SC/FR/Application No.168/2021

1. Centre for Environmental Justice
(Guarantee) Limited
No. 20/A, Kuruppu Road, Colombo 08
2. Withanage Don Hemantha Ranjith Sisira Kumara
Executive Director,
Center for Environmental Justice,
20 A, Kuruppu Road, Colombo 08
3. Wijethunge Appuhamyge Herman Kumara
No.10, Malwatta Road, Negombo
4. Aruna Roshantha Fernando
No. 87/D, Pitipana Veediya, Negombo

PETITIONERS

Vs.

1. Marine Environment Protection Authority
177 Nawala Road, Colombo 05
2. Sri Lanka Ports Authority
No 19, Chaithya Road, Colombo 01

2A. Capt. Nihal Keppetipola
Chairman, Sri Lanka Ports Authority,
No 19, Chaithya Road, Colombo 01

2AA. Dr. Prashantha Jayamanna
Chairman, Sri Lanka Ports Authority,
No 19, Chaithya Road, Colombo 01.
3. A W Seneviratne
Director General, Merchant Shipping,
Merchant Shipping Secretariat,
27 Bristol St, Colombo 00100
4. Capt. K.M Nirmal Silva
Harbour Master, Sri Lanka Ports Authority,
No 19, Chaithya Road, Colombo 01
5. Central Environmental Authority
No.104, Denzil Kobbekaduwa Mawatha,
Battaramulla

- 5A. Hemantha Jayasinghe
Director General,
Central Environmental Authority,
No.104, Denzil Kobbekaduwa Mawatha,
Battaramulla
6. R.A.S Ranawake
Director General,
Coastal Conservation and Coastal Resource
Management Department,
4th Floor, Ministry of Fisheries Building,
New Secretariat, Maligawatta,
Maradana, Colombo 10
7. S.J. Kahawatta
Director General,
Department of Fisheries and Aquatic
Resources,
3rd Floor, New Secretariat,
Maligawatta, Colombo 10
8. Rohitha Abeygunawardena
Minister of Ports and Shipping,
Ministry of Ports and Shipping,
No. 19, Chaithya Road,
Colombo 01
- 8A. Minister of Ports and Shipping
Ministry of Ports and Shipping
No.19, Chaithya Road
Colombo 01
9. Mahinda Amaraweera
Minister of Environment,
Ministry of Environment, "Sobadam Piyasa",
416/C/1, Robert Gunawardana Mawatha,
Battaramulla
- 9A. Minister of Environment
Ministry of Environment, "Sobadam Piyasa",
416/C/1, Robert Gunawardana Mawatha,
Battaramulla
10. Mohan Priyadarshana De Silva
State Minister,
Urban Development, Coast Conservation,
Waste Disposal and Community Cleanliness,
Ministry of Urban Development, Coast
Conservation, Waste Disposal and
Community Cleanliness,
17th and 18th Floors, "SUHURUPAYA",
Subhuthipura Road, Battaramulla

10A. State Minister,
Urban Development, Coast Conservation,
Waste Disposal and Community Cleanliness,
Ministry of Urban Development, Coast
Conservation, Waste Disposal and
Community Cleanliness,
17th and 18th Floors, "SUHURUPAYA",
Subhuthipura Road, Battaramulla

11. ESO RO PTE. LTD.,
18, Robinson Road, #20-02,
18 Robinson, Singapore 048547

11A. ESO RO PTE. LTD.,
18, Robinson Road, #20-02,
18 Robinson, Singapore 048547

Represented by
Sea Consortium Lanka (Pvt) Ltd, 4th floor,
Setmil Maritime Centre,
256, Srimath Ramanathan Mawatha,
Colombo 15

12. X-Press Feeders
11, Duxton Hill,
Singapore, 089595

12A. X-Press Feeders
11, Duxton Hill,
Singapore, 089595

Represented by its local agent:

Sea Consortium Lanka (Pvt) Ltd,
4th floor, Setmil Maritime Centre,
256, Srimath Ramanathan Mawatha,
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13. Sea Consortium Lanka (Pvt) Ltd.,
4th floor, Setmil Maritime Centre,
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Colombo 15

14. Chandana Sooriyabandara
Director General of Wildlife Conservation,
Department of Wildlife Conservation,
No. 811A, Jayanthipura,
Battaramulla

15. His Excellency the President
Gotabaya Rajapaksha

Appearing by:

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

16. C.D Wickramaratne
Inspector of General Police,
Police Headquarters
Colombo 01

17. Hon. Attorney General
Attorney General's Department,
Colombo 12

RESPONDENTS

AND NOW

*IN THE MATTER OF AN APPLICATION UNDER
AND IN TERMS OF ARTICLE 134(3) OF THE
CONSTITUTION*

1. Transparency International Sri Lanka
2. Ashala Nadishani Perera

Both at:

No.366, Nawala Road
Nawala, Rajagiriya

INTERVENIENT-PETITIONERS

-Vs-

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Executive Director,
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Director General of Wildlife Conservation,
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Appearing by:

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

16. C.D Wickramaratne
Inspector of General Police,
Police Headquarters
Colombo 01

17. Hon. Attorney General
Attorney General's Department,
Colombo 12

RESPONDENTS - RESPONDENTS

On this 12th day of June 2023

TO: HIS LORDSHIP THE HONOURABLE CHIEF JUSTICE AND THE OTHER HONOURABLE
JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI
LANKA

The PETITION of the INTERVENIENT PETITIONERS above-named appearing by Thushari Jayawardena their registered Attorney-at-Law states as follows:

THE INTERVENIENT PETITIONERS

1. The 1st Intervenient Petitioner [hereinafter also referred to as 'the 1st Petitioner'] is a body incorporated under and in terms of the Companies Act, No.7 of 2007, and is a juristic person with the capacity to sue and be sued, and is represented by a membership of whom more than three-fourths are citizens of Sri Lanka.
2. The primary objects of the 1st Petitioner are, *inter alia* to encourage the growth of democratic concepts, practices and governance in Sri Lanka, to promote accountability, the eradication of bribery and corruption in public institutions, departments, and other areas of both government and private sector entities, to take steps to promote and bring about transparency and integrity in governance, and to work towards the eradication of corruption from all spheres of life in Sri Lanka.
3. The 2nd Intervenient Petitioner [hereinafter also referred to as 'the 2nd Petitioner'] is the Executive Director of the 1st Petitioner, and a citizen of Sri Lanka.
4. In terms of Article 3 of the Constitution, sovereignty is vested in the People of the Republic of Sri Lanka, and sovereignty includes the powers of government, fundamental rights and franchise.
5. The Petitioners have filed the instant application in the public interest, and also in the interest of the 1st Petitioner's members, *inter alia* in terms of Article 28 of the Constitution, to uphold and defend the Constitution and the law, to further the national interest, to preserve and protect public property, to combat bribery and corrupt practices which is detrimental to the interests of the general public, and to uphold the rights and freedoms of the general public of Sri Lanka, including the Petitioner-Respondents.
6. The Petitioners state they have a clear and direct interest to intervene in this application, being concerned by the serious allegations of bribery and corruption surrounding the X-Press Pearl disaster. The Petitioners are gravely concerned that the general public of Sri

Lanka, along with the Petitioner-Respondents, are poised to be adversely affected by the acts and/or omissions of one or more Respondent-Respondents, in particular by the failure to obtain the optimum quantum of compensation due to Sri Lanka for the damages caused by the X-Press Pearl disaster, as morefully stated hereinafter.

Copies of the Certificate of Incorporation of the 1st Petitioner, the names and particulars of the Directors of the 1st Petitioner, and its Articles of Association, compendiously marked P1 are annexed hereto and pleaded as part and parcel hereof.

7. The Petitioners state that they are respectfully seeking to intervene in this application, as it would be necessary for Your Lordships' Court to hear them, in the circumstances of this case, as will be morefully averred hereinafter, and further demonstrated at the hearing of this application for intervention.

SERIOUS ALLEGATIONS OF IRREGULARITY, MISHANDLING, SABOTAGE, AND/OR BRIBERY AND CORRUPTION SURROUNDING THE CLAIM FOR COMPENSATION ARISING FROM THE X-PRESS PEARL DISASTER

8. Commencing around the early part of 2022, serious expressions of doubt surfaced in the public domain, about the manner in which the claim for compensation arising from the X-Press Pearl disaster was being handled.
9. This alarmingly included serious allegations being made against named public officers, even to the extent of a written communication being directed to the President of the Republic, dated 15/03/2022, ostensibly by a 'group of consultant-scientists'.

A copy of the said letter dated 15/03/2022, marked P2 is pleaded herein as a part and parcel hereof. However, in view of the sensitive nature of the same, and in particular, the fact that unsubstantiated and unproven allegations are made against named public officers therein, the Petitioners very respectfully seek the permission of Your Lordships' Court to tender the same under confidential cover, at the hearing of this application for intervention.

10. The said letter makes grave allegations against public officers, both named and unnamed, of;
 - a) a conflict of interest in the assessment of the claim for compensation;
 - b) the lack of transparency, and alarming irregularity, involved in assessing the quantum of compensation due to Sri Lanka from the X-Press Pearl disaster;

- c) the apparent understatement of the claim, non-use of scientific evidence which supports Sri Lanka's claim for compensation, intervention by private parties with vested interests in the computation of the claim for compensation;
 - d) deliberate delay in processing the claim, and the possibility of threats being levelled at individuals involved in the assessment of the claim; and,
 - e) sabotaging the legal process to obtain compensation.
11. The Petitioners are very mindful of the fact that the contents of the said letter are unsubstantiated and unproven, and only bring the same to the attention of Your Lordships' Court, to demonstrate how vitally important it is to have a proper and exhaustive inquiry into the circumstances surrounding the process to claim compensation arising from the X-Press Pearl disaster, both in order to ensure that unfair speculation against public officers are prevented, whilst anyone in fact guilty of wrongdoing are held accountable.

This is particularly so, in view of the statements made by the Minister of Justice himself in Parliament thereafter, as averred below, which statements are in no way speculative, but very definite and emphatic in their claim that bribery and/or corruption surround the claim for compensation arising from the X-Press Pearl disaster.

12. On or around 25/04/2023, the Parliament convened a debate on steps taken to claim compensation arising from the X-Press Pearl disaster. The debate commenced with the Leader of the Opposition stating that the allowable period for the institution of a claim to recover compensation for Sri Lanka was about to lapse. The Leader of the Opposition further stated that the damages caused to Sri Lanka, can be estimated at nearly USD 6.4 billion, and that the government had failed to take steps to recover the said quantum of compensation duly owed to Sri Lanka.

A copy of the relevant extract of the Hansard dated 25/04/2023 marked P3 is annexed hereto and pleaded as part and parcel hereof.

13. During the course of the said debate, the Minister of Justice, made a startling revelation that one Chamara Gunasekara had received a payment of USD 250 million into a private bank account in connection with the X-Press Pearl disaster, and that the Minister of Justice had made a complaint regarding the same to the Criminal Investigation Division (CID), with the intervention of the Inspector General of Police.

A copy of the relevant extract of Gazette Extraordinary No.2289/43 dated 22/07/2022 which stipulates the duties and functions of the Minister of Justice marked P4 is annexed hereto and pleaded as part and parcel hereof.

14. The said revelation brought into serious question the procedure adopted to claim compensation from the shipping company which owned the X-Press Pearl, which caused severe ecological and socio-economic damage to Sri Lanka, and would mean that the entire citizenry of Sri Lanka, along with the Petitioner-Respondents, would be denied compensation that is justly owed and due to them.
15. Thwarting the claim for compensation through bribery and/or corruption is a serious concern with significant ramifications entailing on the general public and the Petitioner-Respondents, requiring immediate probing into such allegations to ascertain their veracity.
16. The X-Press Pearl disaster took place on 20/05/2021, and entailed the release of harmful inflammable chemicals, oil, and plastic into the territorial waters of Sri Lanka, which resulted in severe affectation to the marine ecology, sea bed, fishing communities, the tourism industry, and the coast of Sri Lanka.
17. Efforts were taken over a significant period of time to cleanse the beaches of plastic and debris which emanated from the disaster, amounting to significant costs expended on such measures to restore the beaches to their previous condition.
18. A further debate into the steps taken to recover compensation arising from X-Press Pearl disaster was held in Parliament on 09/05/2023.

A copy of the relevant extracts from the Hansard dated 09/05/2023 marked P5 is annexed hereto and pleaded as part and parcel hereof.

19. On 10/05/2023 and 11/05/2023, the debate in Parliament continued on the institution of action regarding the X-Press Pearl disaster. Several Parliamentarians were heard to comment, *inter alia*, on the transfer of USD 250 million to the account of one Chamara Gunasekara *alias* Manjusiri Nissanka, the delay in instituting legal proceedings, and the decision to select Singapore as the forum for the adjudication of the claim for compensation for the damages caused to Sri Lanka.

A copy of the relevant extracts from the Hansard dated 10/05/2023 marked P6 is annexed hereto and pleaded as part and parcel hereof.

A copy of the relevant extracts of the Hansard dated 11/05/2023 marked P7 is annexed hereto and pleaded as part and parcel hereof.

20. The Petitioners state that the claims made in Parliament are mirrored in media coverage of the issue, and also reflect the public sentiment about the same.

A copy of a newspaper article which buttress the aforesaid, marked P8 is annexed hereto and pleaded as part and parcel hereof.

21. The Petitioners have also learnt that the Committee on Public Enterprises (COPE) has also raised concerns regarding the quantum of compensation disbursed to Sri Lanka by the insurance company of the X-Press Pearl for the damages caused by the disaster and of the same being significantly less than it ought to have been.

A copy of the report of the COPE dated 14/03/2022 marked P9 is annexed hereto and pleaded as part and parcel hereof.

22. It is also learnt by the Petitioners that one Chinthaka Waragoda, who reportedly invented a machine which enabled the removal of debris which washed ashore subsequent to the X-Press Pearl disaster, during a talk-show which was aired on public television, made reference to the insurers of the X-Press Pearl ship being closely associated with certain officials of the Marine Environment Protection Authority (MEPA).

It was also stated that the insurers of the ship offered the said Chinthaka Waragoda payment for discontinuing the use of his invention to clean the beaches affected by the disaster, to thereby avoid detection of the unprecedented level of plastic debris which washed ashore subsequent to the disaster. It is further claimed that those acts have taken place with the knowledge of certain officers of MEPA, indicating their collusion in reducing the claim for insurance/compensation made by Sri Lanka.

If corroborated, the said acts of the insurers of the ship would demonstrate their vested interest in reducing the claim for insurance by discontinuing the discovery and/or collection of plastic debris which washed ashore, the entirety of which would have significantly increased the claim for insurance made by Sri Lanka.

A CD containing the video of the talk-show aired on television marked P10 is annexed hereto and pleaded as part and parcel hereof.

23. In this context, being gravely concerned about the serious allegations of bribery and corruption surrounding the claim for compensation arising from the X-Press Pearl disaster, the Petitioners, on 09/06/2023, made several requests for information in terms of the Right to Information Act, No. 12 of 2016 [hereinafter 'RTI Act'] from the Ministry of Justice, the Attorney General's Department, MEPA, and the Commission to Investigate Allegations of Bribery and Corruption (CIABOC).

Copies of the requests made under the RTI Act, dated 09/06/2023, marked P11, P12, P13, and P14 are annexed hereto and pleaded as part and parcel hereof.

24. On 09/06/2023, the Petitioners also tendered a complaint to the CIABOC, raising concerns regarding, *inter alia*, the process of recovering compensation from the private shipping company, prejudicial use of sensitive information, and the procedure adopted to handle the claim for compensation, which taken as a cumulative, would indicate collusive action by persons with vested interests to understate the claim for compensation due.

A copy of the complaint made to the CIABOC, dated 09/06/2023, marked P15 is annexed hereto and pleaded as part and parcel hereof.

25. In view of the violation of the fundamental rights of the entire citizenry of Sri Lanka, a complaint was filed in the Human Rights Commission (HRC) on 09/06/2023, on behalf of the 2nd Petitioner, by her Attorney-at-Law. The 2nd Petitioner cited the violation of the rights of the general public of Sri Lanka, and herself, as guaranteed by under Articles 12(1), 14A and 14(1)(g) of the Constitution of the Republic.

A copy of the complaint filed in the HRC dated 09/06/2023 marked P16 is annexed hereto and pleaded as part and parcel hereof.

26. The totality of the aforesaid reeks of the possibility of bribery and corruption, by private parties with vested interests, of individuals vested with the duty to independently assess the claim for compensation and present a case which is most beneficial to Sri Lankan interests.
27. The Petitioners categorically state that the possibility of interference by third parties with vested interests in the claim for compensation due to the general public of Sri Lanka, including the Petitioner-Respondents, must be investigated and probed into to ensure that the general public, including the Petitioner-Respondents, are not deprived of compensation that is justly owed to them.

THE INTERVENTION OF THE INTERVENIENT-PETITIONERS

28. The Petitioners state that the relief sought by the Petitioner-Respondents from Your Lordships' Court include, *inter alia*:

- (i) ensuring that the private parties involved in the X-Press Pearl incident make payment of the compensation for the damage and pollution caused to the marine and costal ecology of Sri Lanka;

- (ii) payment of compensation for the loss caused to the fishing communities, the fishing industry, those engaged in tourism and the tourism industry;
- (iii) direct the Respondent-Respondents to take necessary action to obtain compensation under the Marine Pollution Prevention Act No.35 of 2008 or any other law;
- (iv) direct one or more Respondent-Respondents to prosecute State officials who have willfully failed and/or neglected and/or omitted to act with due diligence to perform statutory and regulatory duties;
- (v) prosecution of State officials for acts of collusion or corruption under the Bribery Act; and
- (vi) causing the investigation of the various aspects of the disaster to finalize the claim for damages caused by the incident.

29. As evinced from the aforesaid, the Petitioners are engaged in their own inquiries into the allegations of bribery, corruption, absence of transparency, and the dearth of and/or deliberate concealment of information surrounding the assessment and/or submission of the claim for compensation from the X-Press Pearl disaster, and the initiation of legal proceedings in respect of the same.

30. Being equipped with better resources than the Petitioner-Respondents to probe further into the allegations surrounding the claim for compensation, the Petitioners are placed in a better position to obtain information on the numerous allegations of bribery and corruption linked to the said claim for compensation.

31. The Petitioners verily believe that such information would assist Your Lordships' Court, in particular to adjudicate on the claims for compensation, to make orders regarding the failure and/or neglect and or omission of one or more Respondent-Respondents to act with due diligence when performing statutory duties, and to make orders for prosecution of any one or more Respondent-Respondents for acts of corruption and/or colluding with private parties with vested interests to underestimate and/or wrongfully assess the claim for compensation due to Sri Lanka.

32. The Petitioners state that the allegations of bribery, corruption, the absence of transparency and other allegations surrounding the claim for compensation have a direct and significant bearing on the relief prayed for by the Petitioner-Respondents, and the general public who stand to benefit from the quantum of compensation awarded to Sri Lanka.

33. Obtaining the highest quantum of compensation due to Sri Lanka is vital in a context where significant ecological and socio-economic harm was caused by the X-Press Pearl disaster. The loss of marine life, damage caused to the coast and seabed of the territorial waters of Sri Lanka, and pollution caused to the air, constitutes a fraction of the harms entailing on the environment in Sri Lanka. Additionally, a significant economic impact was felt by the fishing communities and the tourism industry, both of which were adversely affected by the disaster.
34. The Petitioners state that the circumstances surrounding the application of the Petitioner-Respondents have been gravely affected by several supervening events, as stated above, which are currently ongoing and are constitutive of a continuing violation of the fundamental rights of the Petitioners, the Petitioner-Respondents and the general public of Sri Lanka.
35. The Petitioners state that the revelations relating to bribery and corruption are of a continuing nature, and therefore constitutes a continuing and/or imminent violation of the fundamental rights of the Petitioners, the Petitioner-Respondents and the general public of Sri Lanka.
36. The Petitioners state that Your Lordships' Court has previously taken cognizance of the salutary, legitimate, *bona fide* and laudable objectives of the 1st Petitioner to counter corruption and corrupt practices, and to unearth acts of bribery which have the potential to affect the general public of Sri Lanka.
37. The Petitioners are, in this instance as well, motivated by the same objectives, to enable the general public to reap the benefits of obtaining the highest quantum of compensation being paid to Sri Lanka, as the same is justly due to the citizenry of Sri Lanka, including the Petitioner-Respondents to this application.
38. As such, the Petitioners being made party to this application will eventuate in contributing to the realization of the relief sought by the Petitioner-Respondents, in particular *vis-à-vis* the claim to compensation, the benefits of which will permeate to the general public of Sri Lanka.
39. In view of the totality of the foregoing reasons, the Petitioners state that the Petitioners are necessary parties to this application, and are entitled to be heard by Your Lordships' Court.
40. The Petitioners state that they respectfully reserve the right to submit any other documents and/or amend this Petition, if necessary, during the course of the proceedings of this application.

41. The Petitioners state that they have not previously invoked the jurisdiction of Your Lordships' Court with respect to the subject matter of this application.

42. An affidavit of the 2nd Petitioner, in support of the contents of this Petition, is annexed hereto.

WHEREFORE the Intervenant Petitioners respectfully pray that Your Lordships' Court be pleased to:

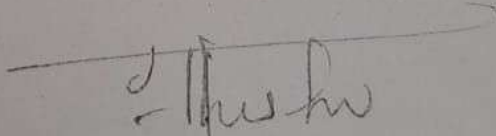
(a) Issue Notice of this application on the Petitioner-Respondents and the Respondent-Respondents;

(b) Allow the application for intervention made by the Intervenant Petitioners, and make order that the Intervenant Petitioners be added as party Respondents to the main application bearing No. SC(FR) 168/2021;

(c) Permit the Intervenant Petitioners to file necessary documents before Your Lordships' Court, including Statements of Objections, once the Intervenant Petitioners are added as Respondents to the main application bearing No. SC(FR) 168/2021;

(d) Grant Costs, and;

(e) Grant such other and further relief as to Your Lordships' Court shall seem meet.


ATTORNEY-AT-LAW FOR THE
INTERVENIENT PETITIONERS

[16]


G.D.I. Thushari Jayawardena
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