

Petition

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

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

1. **Mohomed Farook Mohamed Fahim**
225/236 A Ferguson Road
Colombo -15

2. **Fathima Shafnaz**
225/236 A Ferguson Road
Colombo -15

PETITIONERS

SC (FR) Application No. :

vs.

1. **Dr.Asela Gunawardena,**
Director General of Health Services,
385, Ven. Baddegama Wimalawansa Thero
Mawatha,
Colombo 10.

2. **Dr. G. Wijesuriya**
Director, Lady Ridgeway Hospital for Children
Dr. Dannister De Silva Mawatha,
Colombo 08

3. **Pavithra Devi Wanniarachchi,**

Minister of Health, Nutrition and Indigenous
Medicine,
385, Ven. Baddegama Wimalawansa Thero
Mawatha,
Colombo 10.

4. **Dr.Sudarshani Fernandopulle**

State Minister of Primary Healthcare, Epidemics
and Covid Disease Control
385, Ven. Baddegama Wimalawansa Thero
Mawatha,
Colombo 10.

5. **Dr. S.H.Munasinghe,**

Secretary,
Ministry of Health and Indigenous Medical
Services,
385, Ven. Baddegama Wimalawansa Thero
Mawatha,
Colombo 10.

6. **Dr. Amal Harsha De Silva,**

Secretary,
State Minister of Primary Healthcare, Epidemics
and Covid Disease Control
385, Ven. Baddegama Wimalawansa Thero
Mawatha,
Colombo 10.

7. **Hon. Attorney General,**

Attorney General's Department,
Hulftsdorf,
Colombo 12.

RESPONDENTS

On this 23rd day of December 2020.

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

The Petition of the Petitioners above named appearing by Mr. Sanjeewa Kaluarachchi , their registered Attorney-at-Law, states as follows:

1. The Petitioners are citizens of Sri Lanka and the Petitioners make this application before Your Lordships Court in respect of the infringement and/or imminent infringement and/or continuing infringement of their Fundamental Rights guaranteed by the Constitution of the Republic as morefully set out herein below. The Petitioners further state that they are adherents of the Islamic faith.

[The Petitioners compendiously annex hereto marked P1 and P1(a) true copies of their National Identity Cards and plead the same as part and parcel hereof]

2. The Petitioners were the parents of 20-day old infant son whose death and the subsequent disposal of the said infant's body was done in a cruel, inhuman degrading manner and in violation of the Petitioners right to freedoms guaranteed by the Constitution of the Republic which forms the subject matter of this Application.
3. The Petitioners make this application in their own interest as well as in the interest of the Public and state the averments contained hereinafter are to the best of their recollection. The Petitioners state that as a result of the events morefully described hereinafter, the Petitioners continue to suffer from shock and trauma.

4. The Petitioners state that:

(a) The 1st Respondent is the Director General of Health Services.

(b) The 2nd Respondent is the Director of the Lady Ridgeway Hospital for Children.

(c) The 3rd Respondent is the Minister of Health, Nutrition and Indigenous Medicine

- (d) The 4th Respondent is the State Minister of Primary Healthcare, Epidemics and Covid Disease Control
- (e) The 5th Respondent is the Secretary to the Ministry of Health and Indigenous Medical Services.
- (f) The 6th Respondent is the Secretary to the State Minister of Primary Healthcare, Epidemics and Covid Disease Control
- (g) The 7th Respondent is the Hon. Attorney-General of the Republic, who is made a party to this application in terms of the Constitution of the Republic and the rules of Your Lordships Court

The birth of the Petitioners' son

5. The 1st Petitioner who is by profession a Trishaw Driver married the 2nd Petitioner on 11th of October 2013. The 2nd Petitioner is a housewife.

[The Petitioners annex hereto marked P2 a true copy of their marriage certificate and pleads the same as part and parcel hereof]

6. The Petitioners state that;

- (a) They also have a 6-year-old daughter named Fathima Shifka who was born on the 7th of September 2014
- (b) The environs of their home situated within the Modera Police division in Colombo 15 were isolated since on or around the 30th of October 2020.
- (c) The 2nd Petitioner was expecting their second child at that time.
- (d) On or about 18th of November 2020 the 2nd Petitioner gave birth to a baby boy at the De Soysa Maternity Hospital, Colombo who was later named as Shaiq Faiz (hereinafter sometimes referred to as the "new born child").

(e) Thereafter, since the 2nd Petitioner and the new born child were in good health condition, they returned home on or about the 20th of November

[The Petitioners annex hereto compendiously marked P2(a) true copies of medical records related to the birth of the said new born child and plead the same as part and parcel hereof]

7. The Petitioners state that upon their return home, the Petitioners and the said new born child remained at home and had no contact with any persons from beyond home.

The 7th of December 2020

8. The Petitioners state that when matters remained as such, on or about 7th of December 2020 the said new born child developed a slight temperature with phlegmy condition. The condition worsened during the evening and accordingly the Petitioners decided to rush to the Lady Ridgeway Hospital (hereinafter referred to as the "Hospital") with their new born child at around 10.00PM.

9. The Petitioners state that upon the Petitioners' arrival to the hospital, their new born child was admitted thereto and pursuant to several examinations the Petitioners were informed that their new born child had contracted Pneumonia.

10. The Petitioners state that;

(a) At around 11.30 the Petitioners were informed that Medical Staff intend on conducting a test to detect if the new born child had contracted Covid- 19

(b) At around 12.30 AM, Medical Staff of the Hospital verbally informed the Petitioners that their new born child has tested positive for Covid-19.

(c) The Petitioners have also been informed that they had to undergo a test which was eventually done for the Petitioners.

(d) Thereafter, at around 3.00 AM in the morning, the Hospital Staff took their newly born child to the Medical Intensive Care Unit (MICU)

- (e) At around the same time, the Hospital staff informed the Petitioners that they had both tested Negative for Covid-19.
- (f) Immediately upon being informed that the Petitioners tested Negative for Covid-19, they were informed to leave their new born child at the Hospital and return home.

11. The Petitioners further state that;

- (a) The Petitioners were given the telephone number 0112693711 to call and obtain information regarding their new born child.
- (b) The Petitioners were also informed that since both of them had tested negative for Covid-19, the hospital intended conducting a second PCR test on their new born child.
- (c) The 2nd Petitioner pleaded with the hospital authorities to permit her to stay with her new born child.
- (d) She urged the authorities to permit her to attend to her son including by breast feeding the new born.
- (e) The authorities refuted all such pleas and ordered the Petitioners to return home immediately.
- (f) The Petitioners having no option, left the new born child with the Hospital authorities and returned home in absolute trauma.
- (g) The Petitioners were also informed by the Hospital authorities not to leave the house at any point.

12. The Petitioners state that the 1st Petitioner called the Hospital in the morning and thereafter in the afternoon in order to obtain details regarding their new born child who was now under the care and control of the Hospital.

13. The Petitioners state that during the call in the afternoon, the Petitioners were informed that the Hospital had performed a second PCR test on their new born child and that they were awaiting results of the said test.

Baby boy in Critical condition

14. The Petitioners state that between 1.30 PM and 2.00 PM on 8th of December 2020, the 1st Petitioner received a call from a person who identified himself as a Medical Doctor. He informed the 1st Petitioner that their new born child had tested positive according to the PCR test. He was also informed that the new born child's condition was critical.

15. The Petitioners were also informed that the Hospital staff would call them and provide an update in the next hour on the condition of their new born child.

News of Death

16. The Petitioners state that thereafter;

(a) They did not receive any call from the Hospital.

(b) Accordingly, the 1st Petitioner called the Hospital at around 5.15 PM and to the utter shock and dismay, the 1st Petitioner was informed that their new born child had died at 4.15 PM.

(c) The Petitioners were also informed to call the Hospital in hour and to come to the hospital upon being asked to do so.

(d) Thereafter, the 1st Petitioner following a call made to the hospital and being asked to come to the hospital arrived at the Medical Intensive Care Unit at around 6.30 PM.

17. The Petitioners state that they verily believed and had reason to believe that they were called to take the body of their child.

Forced Consent

18. The Petitioners state that;
- (a) Upon arrival to the Hospital, the 1st Petitioner was accosted by a Lady Doctor.
 - (b) She provided him a document and requested the 1st Petitioner's Signature.
 - (c) The 1st Petitioner inquired as to if the signature was required to release his son's body.
 - (d) Thereafter the 1st Petitioner was informed by the said Doctor that the body of his son could not be handed over to him, due to the son being tested positive for Covid-19.
 - (e) The 1st Petitioner was pressured to sign the said document.
 - (f) The 1st Petitioner was not made aware nor was he informed the contents of the said document.
 - (g) The Petitioners iterate that during this entire time the 1st Petitioner was suffering from severe mental anguish and trauma and was in no frame of mind to read the contents of the document.
 - (h) The 1st Petitioner declined signing the document.

No documentary proof of Test results

19. The Petitioners thereafter requested a PCR test to be conducted by a private hospital in order to ascertain and/or verify the veracity of the claim of their new born son being tested positive for Covid-19 made by the Hospital.
20. The Petitioners state that they had repeatedly inquired from the Hospital authorities as to the absolute impossibility of the new born contracting Covid-19 when both parents were tested negative.

21. The Petitioners state that during this entire period, the Petitioners were not provided with any documentary evidence and/or test results which clarify that their new born child had tested positive for Covid-19.

22. The Petitioners state that;

(a) The aforesaid Lady Doctor informed the 1st Petitioner that he could attempt to obtain a separate PCR test and accordingly to inform the Hospital of the status of the possibility on the next day.

(b) Thereafter, the 1st Petitioner left the hospital premises with clear intent of obtaining a separate test.

(c) The Petitioners thereafter contacted several hospitals and Medical Professionals regarding the possibility of conducting a PCR test and they informed the Petitioners that officials cannot enter a government hospital and conduct a test on a patient and/or body which was at the Government Hospital premises.

23. The Petitioners state that when matters remained as such;

(a) On the following morning one Private Hospital informed the 1st Petitioner that they could conduct a test if a blood sample was provided.

(b) The 1st Petitioner thereafter contacted the Lady Ridgeway Hospital for Children and requested for a blood sample of his new born child who was dead at that time.

(c) However, the Hospital authorities declined providing such sample.

(d) Thereafter at around 1.30 PM, the 1st Petitioner received a call from the Lady Ridgeway Hospital for Children informing him to come to the Medical Intensive Care Unit of the Hospital.

(e) The 1st Petitioner was informed that his signature was required for a document.

24. The Petitioners state that;

- (a) The 1st Petitioner was in no frame of mind to go back to the said Unit.
- (b) Instead, he was desperate to obtain a separate test on his son and was making every attempt to ensure that such test was conducted in order to obtain the body of his son.
- (c) Accordingly, the 1st Petitioner sent his brother-in Law named Mohomed Rifkan to the Hospital.
- (d) At the Hospital the 1st Petitioner's brother-in-law was informed that he could not see the body of the child.
- (e) The Hospital Authorities had informed the 1st Petitioner's brother-in-law that the only reason he was called was to sign a form.
- (f) The 1st Petitioner's brother- in law had declined to sign the said form without seeing the body of the child and returned home.
- (g) During this time certain documents were delivered by a Police officer to the 1st Petitioners house.
- (h) The Petitioners are now aware that it included an Inquirers Certificate of Death and a purported Molecular Diagnostic Test Report.

[The Petitioners annex hereto compendiously marked P3 true copies of the said documents and plead the same as part and parcel hereof]

Hurried cremation

25. The Petitioners state that they continued to make every attempt to obtain a second test report on the body of their new born child, in order to prevent the said new born child from being cremated.

26. The Petitioners state that thereafter at around 4 PM, the 1st Petitioner received a call from the Hospital Authorities and/or persons acting under the authority and control of one or more of the Respondent inquiring as to why he had not arrived at the Borella cemetery.
27. The Petitioners state that they were not given any information nor was any intimation made to them that the Hospital authorities were to cremate the body of their new born child on the said day nor were they requested to be present.
28. The Petitioners state that the Petitioners were in a frame of mind to be present at the cremation of their son. However, their close family members had visited the Borella cemetery and objected to the arbitrary and capricious conduct of the health authorities.
29. The Petitioners state that however, during the forced cremation health authorities acted with no empathy and/or compassion towards the Petitioners' grieving relatives.

*[The Petitioners annex hereto marked **P4** a Compact Disk containing video footage and as **P4(a)** a true copy of the transcript of the said Compact Disk detailing the conduct of the authorities during the forced cremation and plead the same as part and parcel hereof.]*

30. The Petitioner states that in fact the Petitioners were made aware that Professor Shehan Williams (MBBS (Jaffna), MPhil (Kel'ya) , MDPsych (C'bo), FRCPsych (UK), FSLCOP Professor in Psychiatry in an Electronic Mail sent to the Sri Lanka Medical Association inter collegiate committee, deplored the conduct of one or more or all of the Respondents, their servants and/or agents or those acting under their authority. In the said electronic mail widely circulated on social media and authenticated by Professor Williams, he states the following:

I am increasingly disturbed about the issue of cremations in this country and the impact it is having on a certain minority community, especially in the context of the recent death of a 20 day old infant at LRH.

>

> I am but a mere psychiatrist and am not adequately conversant on the scientific background of this which has to be clearly clarified by the infectious disease experts.

>

> My action is based on the psychological consequences resulting from this to

the persons concerned when they are unable to grieve for their loved ones in the context of their beliefs and rituals which have been practiced for centuries.

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> The recent incident at the LRH further highlights the communication and ethics of our professionals in the way it has been handled. I have no doubt that the doctors concerned would have done their best for the child in terms of the treatment. The issue however is that we fail in breaking bad news or empathising with our patients or their families and the senior most professional concerned does not take this responsibility in most instances in our country.

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> I feel the SLMA ICC (Sri Lanka Medical Association Inter Collegiate Committee) has a responsibility to present the scientific basis for the practice of cremation and whether it is really necessary or not !

>

> The silence of our medical profession really appals me when it comes to certain issues, making me wonder whether our establishment too is steeped in racism or is willing to ignore science and ethics due to fear.

>

> The issue of Dr. Shafi, who was vilified after the bomb blast was a classic case ! Where was the consultant obstetrician concerned when Dr. Shafi a mere MO/SHO did these alleged crimes? Was there no supervision of juniors ?

>

> I am sorry to disturb a hornet's nest but I cannot keep silent any longer.

>

> Thanks for lending your conscience to this for a moment.

>

Shehan Williams Consultant Psychiatrist

*[The Petitioners annex hereto marked **P4(b)** the said authentication by Prof. Shehan Williams MBBS (Jaffna), MPhil (Kel'ya) , MDPsych (C'bo), FRCPsych (UK), FSLCOP Professor in Psychiatry, to the Sri Lanka Medical Association and pleads the same as part and parcel hereof]*

31. The Petitioners state that there was absolutely no necessity to hurry the cremation of their new born child. The Petitioners are now aware that there were around 19 other bodies of Covid-19 positive persons which were in the morgue and were yet to be cremated.

32. The Petitioners state that the 2nd Respondent thereafter in an interview aired on the media deliberately misled the public with regard to the facts and circumstances relating to the death of their new born child.

[The Petitioner annex hereto marked P5 a Compact Disk containing the interview given by the 2nd Respondent and as P5 (a) a true copy of the transcript of the said interview and plead the same as part and parcel hereof.]

33. The Petitioners state that according to their religious beliefs and that of those professing the Islamic faith, death surrenders the body and soul to God and signifies a new beginning. The said life after death is at the very core of the belief of adherents of the Islamic faith.

34. The Petitioners state that the burial of the dead is a religious practice followed by the Petitioners and other followers of Islamic faith, based on their said belief. Accordingly, the non-burial of any person's body who professes the Islamic faith would result in the Petitionersthemselves failing in their religious duty: to ensure the burial of the said body, therefore, bounden by the religion to ensure that the dead are buried.

35. The aforementioned sequence of events grossly offends the religious thoughts and beliefs of the Petitioners as well as all adherents of the Islamic faith. Furthermore, the 1st to 6th Respondents and/or their officers have by their actions and/or inaction have egregiously deprived the Petitioners an opportunity of mourning the death of their infant child in a manner that accords them some means of observing the most fundamental tenets, beliefs and rituals of their religion.

Illegal detention

36. The Petitioners state that on the very next day, 10th of December 2020, the 1st Petitioner gave an interview to media institutions which denied the version of events of the 2nd Respondent and clarified the true factual circumstances.

37. The Petitioners state that immediately thereafter on the 11th of December with no information and/or without providing any reason whatsoever, a Police officer who failed to identity himself pasted a notice which stated that Petitioners' residence was a quarantined

area and those within their residence had to undergo self-quarantine and accordingly were prevented from leaving the premises.

*[The Petitioners annex hereto marked **P6(a)** a copy of the said notice and plead the same as part and parcel hereof]*

38. The Petitioners state that the said notice did not provide any details as to the dates nor was any information provided to the Petitioners.
39. The Petitioners iteratethat they were informed that they had tested negative for the Covid-19.
40. The Petitioners state that on or about 12th December 2020. PCR tests were carried out on them and those living in their home.
41. The Petitioners verily believe that their results are negative due to them not being informed of any requirement to undergo treatment.
42. However, the Petitioners brother-in-law was diagnosed to have been tested Positive for Covid-19. The Petitioner states that they doubt and have reason to doubt the authenticity of the diagnosis due to the circumstances referred to hereinabove. These include the fact that no tests were carried out for a period of 3 days, and no contacts of the Brother in Law who visited the cemetery and the Hospital were traced and/or required to quarantine.
43. The Petitioners verily and have legitimate reason to apprehend improper and sinister motives and objectives on the part of all authorities acting under the control and/or authority of either one or more of the Respondents.
44. The Petitioners state that this is more so, that on the night of 16th December 2020- following the pasting of an indefinite notice marked "**P6(a)**" two Police officers visited the home of the Petitioners and in small blue ink scribbled periods on which the Petitioners were required to quarantine.

*[The Petitioner annex hereto a copy of the said scribbled notice marked **P6(b)** and pleads the same as part and parcel hereof]*

45. The Petitioners respectfully reserve the right to amend pleadings and/or submit additional papers in respect of violations of their Fundamental Rights related to such detention with leave of Your Lordships Court in the event its deemed necessary, and state that they are strictly adhering to the said requirement as dutiful citizens.

The arbitrary, unreasonable and unjust procedure for disposing of bodies of persons who are suspected of having died due to Covid-19 virus

46. The Petitioners state that Professor Malik Peiris Chair Professor of Microbiology and Tam Wah-ching Professor of Medical Sciences at The University of Hong Kong, has specifically on record denied that the Virus can permeate from dead bodies.

47. In 2003, Professor Peiris played a key role in the discovery that a novel coronavirus was the cause of severe acute respiratory syndrome, or SARS and in understanding the pathogenesis of this new disease.

[The Petitioners annex hereto marked P7 a Profile of Professor Peiris as published on the website of the World Health Organization found in https://www.who.int/immunization/sage/members/bio_peiris/en/, as P7(a) an interview published on Ceylon Today found on <https://ceylontoday.lk/news/transmission-from-body-unlikely-prof-malik-peiris> and a CD containing an audio recording of Prof.Peiris speaking on the issue in a webinar organized by the Ceylon College of Internal Medicine as P7(b) and plead the same as part and parcel hereof]

48. The Petitioners state that Prof. Peiris in the said Webinar organized by the said Ceylon College of Internal Medicine Prof Peiris states as follows

Q: There is another question on whether the virus could replicate in dead bodies. Whether it is possible for the virus to replicate and whether there is an implication on with contaminating ground water; say in case of burial- whether there is evidence regarding that?

A: No. I mean that's a simple answer because viruses can only replicate on living cells. Unlike bacteria, you know certain types of bacteria can survive and replicate out in the

environment. But viruses by definition require living cells. So once the patient has died and the cells have died the virus can no longer replicate and the virus will die.

49. The Petitioners state that subsequently Prof. Peiris was also interviewed by the BBC Sinhala Service iterated the same position. In the said interview Professor Peiris states the following

කොරෝනා වෛරසය වැළඳී මියගිය කිසිවෙකු භූමදානය කිරීම හේතුවෙන් වෛරසය භූගත ජලයට එකතු වියහැකි බවට කිසිදු සාක්ෂියක් මෙතෙක් හමුවී නැති බව ජගන් කීර්තියට පත් ලොව ඉහළම පෙළේ වෛරස විද්‍යාව පිළිබඳ විද්‍යාඥයෙක් පවසයි.

"පළමුවෙනි දේ නමයි, අපි දැන ගන්න ඕන වෛරසයක් වැඩි වෙන්නේ (multiply වෙන්නේ) සජීව සෛලවල විතරයි," මහාචාර්ය මලික් පීරිස් පැහැදිලිකිරීම ආරම්භකලේ එලෙසිනි.

"සෛල මැරුණම වෛරසවලට multiply වෙන්න විදියක් නෑ. ඒනිසා වෛරසය පැතිරීමක් නවතිනවා."

එබැවින් කෝවිඩ් ආසාදනයක මියගිය පසු ශරීරයේ ඉතිරිව පවතින වෛරසවල ආයුකාලය ඉතාමත් කෙටි බවද වෛරස විද්‍යාව පිළිබඳ ශ්‍රීලාංකික විශේෂඥයා අවධාරණය කරයි.

[The Petitioner annexes hereto a copy of the article published on the BBC Sinhala website on the 18th of December 2020 found at <https://www.bbc.com/sinhala/sri-lanka-55348348> marked **P 7 (c)** and pleads the same as part and parcel hereof and as **P 7 (d)** an interview of Professor Peiris published in the Sunday Times of 20th December 2020 and pleads the same as part and parcel hereof]

50. The Petitioners state that the subsequent to the COVID-19 virus being declared a global pandemic, the World Health Organization (hereinafter referred to as the "WHO"), on 24th of March 2020, issued and "interim guidance on Infection Prevention and Control for the safe management of a dead body in the context of COVID-19"

[The Petitioners annex hereto marked **P8** a true copy of the WHO interim guidance on Infection Prevention and Control for the safe management of a dead body in the context of COVID-19 dated 24th March 2020 and pleads the same as part and parcel hereof]

51. The said Interim Guidance specifically states *inter alia* permits the burial of victims of Covid-19.

52. The Petitioners state that thereafter on or about 27th March 2020, the Ministry of Health in collaboration with Ceylon College of Physicians co-ordinated by the Epidemiology Unit of Ministry of Health issued Provisional Clinical Practice Guidelines on COVID-19 suspected and confirmed patients (Version 3) and the said guidelines *inter alia* permit both cremation and burial of dead bodies of persons suspected of having died of the Covid-19 virus.

[The Petitioners annex hereto marked P9 a copy of the document titled Provisional Clinical Practice Guidelines on COVID-19 suspected and confirmed patients (Version 3) issued by the Ministry of Health and Ceylon College of Physicians co-ordinated by Epidemiology Unit on the 27th of March 2020 and pleads the same as part and parcel hereof]

53. However, only several days later on or about 31st March 2020, the very same Regulatory Authorities which issued the guidelines referred to in Paragraph 44 hereinabove issued a document titled Provisional Clinical Practice Guidelines on COVID-19 suspected and confirmed patients (Version 4). The revised version *inter alia* provided that bodies of persons infected by COVID-19 be exclusively cremated.

[The Petitioners annex hereto marked P10 a copy of the document titled Provisional Clinical Practice Guidelines on COVID-19 suspected and confirmed patients (Version 4) issued by the Ministry of Health and Ceylon College of Physicians co-ordinated by Epidemiology Unit on the 31st of March 2020 and pleads the same as part and parcel hereof]

54. Thereafter On or about 1st April 2020, the then Director General of Health Services issued the circular No. EPID/400/2019 *n-cov* to all Provincial Directors and Regional Directors of Health Services and all Heads of the Institutions regarding Autopsy practice and disposal of dead bodies due to COVID-19 (Version date 31st March 2020). As per the said circular, exclusive cremation was prescribed for disposal upon death of bodies of persons who were Covid-19 patients of category I, II, and III.

[The Petitioners annex hereto marked P11 a true copy of the Circular No. EPID/400/2019 n-cov and pleads the same as part and parcel hereof.]

55. The Petitioners state that on or about 11th April 2020, the 2nd Respondent Minister of Health and Indigenous Medicine issued the Gazette (Extraordinary) No. 2170/8 in terms of Sections 2 and 3 of the Quarantine and Prevention of Diseases Ordinance

[The Petitioners annex hereto marked P12 a true copy of the Gazette (Extraordinary) No. 2170/8 dated 11th April 2020 issued by the 2nd Respondent and pleads the same as part and parcel hereof]

56. The Petitioners state that the said Gazette specifically referring to the amending of the "Regulations relating to Storage of Grain and Regulations relating to Anchylostomiasis published in Gazette No.7481 of August 28, 1925, as amended from time to time, are hereby further amended as follows" *inter-alia* states

61A. Cremation of Corpse of a person who has died of Coronavirus Disease 2019 (COVID-19)-

(1) Notwithstanding the provisions of regulations 61 and 62, the corpse of a person who has died or is suspected to have died, of Coronavirus Disease 2019 (COVID-19) shall be cremated-

(a) at the temperature of 800 to 1200 degrees Celsius for a minimum period of forty-five minutes to one hour for complete burning, for the purpose of prevention of any potential biological threat; and

(b) at a cemetery or place approved by the proper authority under the supervision of such authority, in accordance with the directions issued by the Director General of Health Services.

(2) No person shall hand over the corpse of a person who has died or is suspected to have died of Coronavirus Disease 2019 (COVID-19) to any person except to persons who undertake the necessary duties of cremation, nominated by the proper authority.

(3) The attire and the non-reusable personal protective equipment used by persons who handle the corpse at such cemetery or place, shall be incinerated by placing them with the coffin during cremation.

(4) There usable equipment shall be properly decontaminated and disinfected in accordance with the directions issued by the Director General of Health Services.

(5) The ashes of the corpse may be handed over to the next of kin, at the request of such next of kin."

57. The Petitioners state that the WHO has periodically revised the aforementioned interim guidance and the "interim guidance on Infection Prevention and Control for the safe management of a dead body in the context of COVID-19" dated 4th September 2020 also *inter alia* permits the burial of person who are deceased by reason of the Covid-19 virus.

[The Petitioners annex hereto marked P13 a copy of the WHO interim guidance on Infection Prevention and Control for the safe management of a dead body in the context of COVID-19 dated 4th September 2020 and pleads the same as part and parcel hereof]

58. Some of the key considerations of the said WHO interim guidance dated 4th September 2020 reads as follows;

- People may die of COVID-19 in health-care facilities, at home or in other locations.*
- There is a common assumption that people who died of a communicable disease should be cremated to prevent spread of that disease; however, there is a lack of evidence to support this. Cremation is a matter of cultural choice and available resources.*
- The safety and well-being of those who tend to dead bodies is critical. Before attending to a dead body, people should ensure that necessary hand hygiene supplies and facilities, PPE, and cleaning and disinfection supplies are readily available*
- The dignity of the dead, their cultural and religious traditions, and their families should be respected and protected throughout.*
- All measures should respect the dignity of the dead including avoiding hasty disposal of the body of a person who has died of COVID-19*
- Authorities should manage each dead body on a case by-case basis, balancing the rights of the family, the need to investigate the cause of death, and the risks of exposure to infection."*

59. The Petitioners state that despite the WHO consistently maintaining the aforesaid position that it is permissible to bury the bodies of persons who are deceased by reason of the Covid-19 virus, periodic revisions done to Clinical Practice Guidelines on COVID-19 suspected and confirmed patients by the Ministry of Health in collaboration with Ceylon College of Physicians including 'version 5' thereto dated 3rd July 2020, yet prescribes exclusive cremation.

[The Petitioners annex hereto marked P14 a true copy of the document titled Provisional Clinical Practice Guidelines on COVID-19 suspected and confirmed patients (Version 5) issued by the Ministry of Health and Ceylon College of Physicians co-ordinated by Epidemiology Unit on the 4th July 2020 and pleads the same as part and parcel hereof]

60. The Petitioners state that, in so far as the Petitioners are aware, out of the member nations and territories of the WHO, Sri Lanka is the only country which does not allow the burial of persons who have deceased by reason of the Covid-19 virus.

61. The Petitioners verily apprehend that the 1st to 6th Respondents were guided by malafides and verily believe that the motivation for such a policy was a result of racial and religious bias against those who profess the Islamic faith.

62. The Petitioners state that the said arbitrary, unreasonable and capricious policy adopted by the 1st to 6th Respondents lends itself to circumstances such as the tragic events morefully pleaded hereinabove since the said policy provides a veneer of official sanctity to the cruel, inhuman, degrading, discriminatory and unequal treatment meted out to the Petitioners.

Violation of the Petitioners' Fundamental Rights

63. The Petitioners state that in the aforesaid circumstances, the actions and/or inaction of any one, more or all of the 1st to 6th Respondents and/or their officers and/or of the state amounts to a violation of the freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of their guaranteed under Article 10 of the Constitution of the Republic since the aforesaid actions and/or inactions of the officers of the state have deprived the Petitioners of their right to grieve, mourn and perform the basic religious rituals after the tragic death of their infant child in accordance with their religion.

64. The Petitioners state that in the aforesaid circumstances, the actions and/or inaction of any one, more or all of the 1st to 6th Respondents and/or their officers and/or of the state amounts to subjecting the Petitioners and their deceased new born child to cruel, inhuman and degrading treatment which is a violation of the fundamental rights guaranteed under Article 11 of the Constitution of the Republic since the aforesaid actions and/or inactions of the officers of the state have deprived two parents of their right to pay last respects to their deceased infant child without any rational or legal basis.

65. The Petitioners state that in the aforesaid circumstances, the actions and/or inaction of any one, more or all of the 1st to 6th Respondents and/or their officers and/or of the state amounts to a violation of the fundamental rights guaranteed under Article 12(1) of the Constitution of the Republic since-

(a) The regulations and procedure pertaining to the disposal and cremation of bodies of persons deceased by the Covid-19 virus contained in the documents produced marked **P12** and **P14** are arbitrary, unreasonable, capricious and inequitable.

(b) The regulations and procedure pertaining to the disposal and cremation of bodies of persons deceased by the Covid-19 virus contained in the documents produced marked **P12** and **P14** are not founded on any reasonable or credible scientific evidence.

(c) The regulations and procedure pertaining to the disposal and cremation of bodies of persons deceased by the Covid-19 virus contained in the documents produced marked **P12** and **P14** are contrary to international norms, in particular the guidelines issued by the WHO.

(d) The formulation of the regulations and procedure pertaining to the disposal and cremation of bodies of persons deceased by the Covid-19 virus contained in the documents produced marked **P12** and **P14** have been guided by ulterior motive and irrelevant considerations.

66. The Petitioners state that in the aforesaid circumstances, the actions and/or inaction of any one, more or all of the 1st to 6th Respondents and/or their officers and/or of the state

amounts to a violation of the fundamental rights guaranteed under Article 12(2) of the Constitution of the Republic since the formulation, implementation and enforcement of the regulations and procedure pertaining to the disposal and cremation of bodies of persons deceased by the Covid-19 virus has been done in a manner which is discriminatory towards the Muslim community and those who profess the Islamic faith.

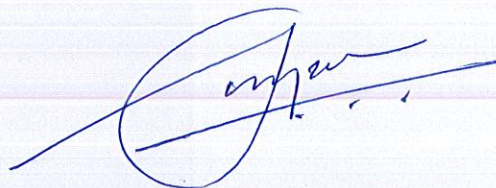
67. The Petitioners state that the aforesaid actions and/or inaction of any one, more or all of the 1st to 6th Respondents and/or their officers and/or the state amounts to Executive and/or Administrative action within the meaning of Article 126 of the Constitution of the Republic.
68. The Petitioners state that the aforementioned actions and/or inaction of the 1st to 6th Respondents and/or their officers and/or the state which resulted in the arbitrary, forcible and inhumane cremation of their deceased infant child in violation of the fundamental rights guaranteed to the Petitioners under the Constitution of the Republic has caused severe mental anguish, pain and trauma to the Petitioners.
69. The Petitioners state that irreparable loss and damage would be caused to the Petitioners and the instant application would be rendered nugatory unless Your Lordships' Court be pleased to grant and issue the interim order prayed for in the prayer to the Petition until the final hearing and determination of this application.
70. The Petitioners reserve their right to tender originals and/or certified copies of the documents pleaded above and further material, documents and affidavits to Your Lordships' Court in the course of the proceedings of this application. The Petitioners further reserve the right to add any further parties if deemed necessary during the course of the proceedings of this application.
71. The Petitioners have not previously invoked the jurisdiction of Your Lordships' Court in respect of the subject matter of this application.
72. A scanned copy of an Affidavit affirmed by the 1st Petitioner is annexed herewith in support of the averments pleaded hereinabove. The Petitioners state that the instant Petition and Affidavit were sent to them via electronic means and the contents thereof were read over and explained via telephone. The Petitioners further state that the Proxy of

the Petitioners and the corresponding affidavit thereto were signed by them before a Justice of Peace/ Commissioner of Oaths who obtained their signatures with the permission of the Public Health Inspector for their area whilst maintaining the requisite social distancing protocols. The original Proxy and the Affidavit are in the possession of the Petitioners and the Petitioners undertake to tender the same subject to necessary sanitation (if any) upon directed by Your Lordships' Court.

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

- (a) Issue Notice on the Respondents;
- (b) Grant Leave to Proceed to this application in the first instance;
- (c) Grant an Interim Order directing any one, more or all of the 1st to 6th Respondents and/or their officers and/or the state to produce to Your Lordships Court the entire record pertaining to the subject matter of this Application including all medical records pertaining to the hospitalization, death and disposal of the dead body of the infant child of the Petitioners named Shaiq Faiz;
- (d) Make an appropriate direction on one/or more or all of the Respondents to constitute/appoint a committee of experts, deemed suitable by Your Lordships' Court to review the regulations and procedure pertaining to the disposal and cremation of bodies of persons deceased by the Covid-19 virus contained in Regulation 61A of the Regulations produced marked "P12" and chapter 08 of the document produced marked "P14";
- (e) Declare that the Petitioners' fundamental right enshrined in Article 10 of the Constitution of the Republic has been infringed and/or is in danger of being imminently infringed by the actions and/or inaction of any one, more or all of the 1st to 6th Respondents and/or their officers and/or the state
- (f) Declare that the Petitioners' fundamental right enshrined in Article 11 of the Constitution of the Republic has been infringed and/or is in danger of being imminently infringed by the actions and/or inaction of any one, more or all of the 1st to 6th Respondents and/or their officers and/or the state;

- (g) Declare that the Petitioners' fundamental right enshrined in Article 12(1) of the Constitution of the Republic has been infringed and/or is in danger of being imminently infringed by the actions and/or inaction of any one, more or all of the 1st to 6th Respondents and/or their officers and/or the state;
- (h) Declare that the Petitioners' fundamental right enshrined in Article 12(2) of the Constitution of the Republic has been infringed and/or is in danger of being imminently infringed by the actions and/or inaction of any one, more or all of the 1st to 6th Respondents and/or their officers and/or the state;
- (i) Make Order Quashing Regulation 61A contained in the Gazette notification bearing No. 2170/8 dated 11th April 2020, produced marked **P12**;
- (j) Make Order quashing chapter 08 of the "Provisional Clinical Practice Guidelines on COVID-19 suspected and confirmed patients (Version 5) issued by the Ministry of Health and Ceylon College of Physicians co-ordinated by Epidemiology Unit on the 4th July 2020, produced marked **P14**;
- (k) Make Order directing the any one, more or all of the 1st to 6th Respondents and/or their officers and/or the state to pay unto the Petitioners compensation in a sum deemed just and reasonable by Your Lordships' Court;
- (l) Grant and issue such and further just and equitable directions that Your Lordships' Court may deem appropriate;
- (m) Grant costs, and
- (n) Grant such further and other relief Your Lordships' Court deem meet.



ATTORNEY-AT-LAW FOR THE PETITIONERS

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