

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

**PETITION**

*In the matter of an application in respect of the violation of Fundamental Rights in terms of Article 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.*

1. Rajapaksha Arachchilage Namal Ajith  
Rajapaksha  
Attorney-at-Law  
44/48, Agoda Village,  
Kandy Road,  
Peliyagoda.

Application No:  
**SC / FRA /        / 2024**

2. Sardha Kumara Manjula Pathiraja  
No. 24/7/D,  
Kohalwila Road,  
Gonawala,  
Kelaniya.

**PETITIONERS**

**VS.**

1. Mr. T. M. W. D. Tennakoon  
Inspector General of Police (Acting)  
Police Headquarters  
Church Street,  
Colombo 1.

2. Hon. Mahinda Yapa Abeywardena  
Speaker of the Parliament  
Chairman of the Constitutional  
Council  
Parliament of Sri Lanka  
Parliament Approach Road,  
Sri Jayawardenepura Kotte.
  
3. Hon. Dinesh Gunawardena  
Prime Minister  
Prime Minister's Office  
No. 58,  
Sir Ernest De Silva Mawatha,  
Colombo 07.
  
4. Hon. Sajith Premadasa  
Leader of the Opposition  
Office of the Leader of the Opposition  
No. 30,  
Sir Marcus Fernando Mawatha,  
Colombo 07.
  
5. Hon. Nimal Siripala De Silva  
Minister of Ports, Shipping and  
Aviation  
Ministry of Ports, Shipping and  
Aviation  
No. 19,  
Chaithya Road,  
Colombo 01.

6. Hon. Sagara Kariyawasam  
Member of the Parliament  
Parliament of Sri Lanka  
Parliament Approach Road,  
Sri Jayawardenepura Kotte.
  
7. Hon. Kabir Hashim  
Member of the Parliament  
Parliament of Sri Lanka  
Parliament Approach Road,  
Sri Jayawardenepura Kotte.
  
8. Dr. Prathap Ramamnujam  
Member of the Constitutional Council  
(nominated by the Leader of the  
Opposition)  
Parliament of Sri Lanka  
Parliament Approach Road,  
Sri Jayawardenepura Kotte.
  
9. Dr. (Mrs.) Dilkushi Anula  
Wijesundara  
Member of the Constitutional Council  
(nominated by the Leader of the  
Opposition)  
Parliament of Sri Lanka  
Parliament Approach Road,  
Sri Jayawardenepura Kotte.

**10. Dr. (Mrs.) Dinesha Samararatne**  
Member of the Constitutional Council  
(nominated by the Leader of the  
Opposition)  
Parliament of Sri Lanka  
Parliament Approach Road,  
Sri Jayawardenepura Kotte.

**11. Mr. E. W. M. Lalith Ekanayake**  
Chairman  
National Police Commission  
Block 9, BMICH Premises,  
Buddhaloka Mawatha,  
Colombo 07.

**12. Mrs. Thamara D. Perera**  
Secretary  
National Police Commission  
Block 9, BMICH Premises,  
Buddhaloka Mawatha,  
Colombo 07.

**13. Mrs. D.K.Renuka Ekanayake**  
Member,  
National Police Commission  
Block 9, BMICH Premises,  
Buddhaloka Mawatha,  
Colombo 07.

**14. Mr. K. Karunaharan**

Member,  
National Police Commission  
Block 9, BMICH Premises,  
Bauddhaloka Mawatha,  
Colombo 07

**15. Mr. Dilshan Kapila Jayasuriya**

Member,  
National Police Commission  
Block 9, BMICH Premises,  
Bauddhaloka Mawatha,  
Colombo 07

**16. Mr. A.A.M Illiyas**

Member,  
National Police Commission  
Block 9, BMICH Premises,  
Bauddhaloka Mawatha,  
Colombo 07

**17. Hon. Tiran Alles**

Minister for Public Security  
Ministry of Public Security  
15<sup>th</sup> Floor,  
“Suhurupaya”,  
Battaramulla.

**18. Mr. Viyani Gunathilaka**  
Secretary of Public Security  
Ministry of Public Security  
15<sup>th</sup> Floor,  
“Suhurupaya”,  
Battaramulla.

**19. Hon. Attorney General**  
Attorney General’s Department,  
Hulftsdorp,  
Colombo 12.

**RESPONDENTS**

On this 12<sup>th</sup> day of January 2024,

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

The Petition of the Petitioner above named appearing by Miss M. A. Madara N. Perera Attorney-at-Law states as follows;

**PETITIONER**

- 1. The 1<sup>st</sup> Petitioner is an Attorney-at-Law of the Supreme Court of the Democratic Socialist Republic of Sri Lanka.**

2. The 2<sup>nd</sup> Petitioner is an Attorney-at-Law of the Supreme Court of the Democratic Socialist Republic of Sri Lanka.

## **RESPONDENTS**

3. The Petitioners state that,

- The 1<sup>st</sup> Respondent is the Inspector General of Police (Acting);
- The 2<sup>nd</sup> Respondent is the Speaker of the Parliament of Sri Lanka, who is also the Chairman of the Constitutional Council;
- The 3<sup>rd</sup> Respondent is the Prime Minister of Sri Lanka;
- The 4<sup>th</sup> Respondent is the Leader of the Opposition;
- The 5<sup>th</sup> Respondent is the Minister of Ports, Shipping and Aviation;
- The 6<sup>th</sup> Respondent is a Member of the Parliament of Sri Lanka;
- The 7<sup>th</sup> Respondent is a Member of the Parliament of Sri Lanka;
- The 8<sup>th</sup> Respondent is the Member of the Constitutional Council who nominated by the Leader of the Opposition;
- The 9<sup>th</sup> Respondent is the Member of the Constitutional Council who nominated by the Leader of the Opposition;
- The 10<sup>th</sup> Respondent is the Member of the Constitutional Council who nominated by the Leader of the Opposition;
- The 11<sup>th</sup> Respondent is the Chairman of the National Police Commission;
- The 12<sup>th</sup> Respondent is the Secretary of the National Police Commission;
- The 13<sup>th</sup> - 16<sup>th</sup> Respondents are members of the National Police Commission
- The 17<sup>th</sup> Respondent is the Minister for Public Security;
- The 18<sup>th</sup> Respondent is the Secretary of Public Security;
- The 19<sup>th</sup> Respondent is the Hon. Attorney General and is made a Respondent in this application in compliance with the Constitution of the Republic and the Rules of Your Lordships' Court.

## **BACKGROUND FACTS**

4. The Petitioners state that, this Fundamental Rights Application respectfully submitted before Your Lordships' Court is regarding the appointment of the Senior DIG Deshabandu Tennakoon as the "acting" Inspector General of Police by the President and being approved by the Constitutional Council.
5. The Petitioners state that, the 1<sup>st</sup> Respondent, Mr. Deshabandu Tennakoon, the Senior Deputy Inspector General of Police (SDIG) overseeing the Western Province, was appointed to the post of Acting Inspector General of Police (IGP) on the 29<sup>th</sup> of November 2023, and is anticipated to be confirmed in the position of Inspector General of Police after a period of 3 months.
6. However, the Petitioners state that, this appointment of the 1<sup>st</sup> Respondent raises concerns regarding the principles of transparency, fairness, and the rule of law of the country, which shall be morefully discussed in the course of this Petition.
7. The Petitioners state that, the Petitioners submit this application before Your Lordships' Court in view of the recently delivered Judgement of the Supreme Court delivered by His Lordship Justice S. Thuraiaraja PC, Her Ladyship Justice Kumudini Wickremasinghe and His Lordship Justice K. Priyantha Fernando of the case bearing case number, ***SC (FR) Application No.107/2011*** and also with regard to several other pending cases against the 1<sup>st</sup> Respondent.

*(In proof of the same, a copy of the said Judgement of the Supreme Court of the case numbered **SC (FR) Application No.107/2011** is annexed herewith marked as "P-1" and is pleaded as part and parcel of this application.)*

8. The Petitioners state that, the aforementioned case was regarding an arrest and consequent torture of one Weheragedara Ranjith Sumangala who was the Petitioner of the said Case,



that took place on the 17<sup>th</sup> of December 2010 on the ‘reasonable suspicion’ that he was part of a thieving gang connected to several thefts which occurred in the Moragahahena-Padduka area.

9. The Petitioners state that, the said Application claimed that the individual of the matter was unlawfully arrested and succumbed to inhumane torture treatment by the Officer in Charge – Emergency Unit along with several other Police Officers of Mirihana Police Station.
10. The Petitioners state that the 1<sup>st</sup> Respondent served as the Superintendent of Police - Nugegoda Division at the time the Application bearing *SC (FR) Application No.107/2011* was filed was named as the 5<sup>th</sup> Respondent in the said Application.
11. The Petitioners state that, the said officers of Mirihana Police Station claimed that the investigations, and the arrest, taking into custody and the subsequent detention of the individual were conducted as per the instructions and directions of the 1<sup>st</sup> Respondent who served as the Superintendent of Police - Nugegoda Division at the time who was the 5<sup>th</sup> Respondent in the said Application bearing *SC (FR) Application No.107/2011*; acting on an anonymous public complaint as to several thefts in the area.
12. The Petitioners state that, the said Judgement marked and annexed herewith as **P1** clearly states that the 1<sup>st</sup> Respondent is directly associated with the incident of inflicting torture on the said individual, violating his fundamental rights enshrined under the Constitution and further held as below;

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- *“...the 5<sup>th</sup> Respondent to have violated the fundamental rights of the Petitioner guaranteed under Articles 11, 12(1), 13(1) and 13(2) of the Constitution.”*

13. In addition to that, the Petitioners emphasise what is mentioned in page 49 of the said Judgement which reads;

- *“Persons in detention, regardless of the charges or accusations against them, are entitled to the fullest protection of their human dignity and physical integrity. State institutions and those who serve the State are sternly reminded of their obligation to ensure that persons in detention are treated not only within the bounds of legality but with an uncompromising adherence to the principles of humanity. This stance is not only a legal mandate, but also a relentless moral imperative.”*

**14.** The Petitioners also state that, the said Judgement, reads as follows;

- *“The manner in which the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents, being officers of the law, have conducted themselves, in concert with the 4<sup>th</sup> Respondent, is a stark betrayal of the Rule of Law. They have acted in a manner entirely repugnant to the virtues of a democratic republic. In these circumstances, I have no qualm holding the treatment the Petitioner had undergone to be a gross violation of his fundamental rights recognised under Article 12(1) of the Constitution.”*

**15.** Furthermore, the Petitioners quote the following from the said Judgement by Honourable Justice S. Thirairaja PC, in order to further accentuate how the Supreme Court determined the infringements of fundamental rights caused by the 1<sup>st</sup> Respondent;

- *“The Petitioner’s fundamental rights under Articles 11, 12(1), 13(1) and 13(2) have been blatantly violated by the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents. The kind of conduct on display, judged even by the lowest of standards, amounts to a magnificent failure of all that the Rule of Law stands for.”*

**16.** The Petitioners further state that, in the said Judgement Honourable Justice S. Thirairaja PC determines, withing pages 56 to 60, that the 1<sup>st</sup> Respondent to have conducted torture and grave violations of fundamental rights enshrined in the Constitution, by quoting the following;

- *“I find the 5<sup>th</sup> Respondent to have tortured the Petitioner in violation of his fundamental rights guaranteed under Article 11 of the Constitution. For this very reason, and by the very fact, I find the 5<sup>th</sup> Respondent to have further violated the Petitioner's rights under Article 12(1) of the Constitution. [...] I hold the 5<sup>th</sup> Respondent, too, to have violated the fundamental rights of the Petitioner enshrined under Articles 13(1) and 13(2) of the Constitution.”*

**17.** The Petitioners state that, in the overall said Judgement, the three-judge bench of the Supreme Court on 14/12/2023, unanimously held that the Police Officer including the incumbent Acting IGP Deshabandu Tennakoon has violated the fundamental rights of a former army soldier to freedom from torture, unlawful arrest, and arbitrary administrative action that denied equal protection of the law; subsequently ordering the National Police Commission to take disciplinary action against Tennakoon and the other Police Officers for the multiple infringements of fundamental rights, unlawful arrest and detention, and torture, discussed above.

**18.** The Petitioners state that, through the said Judgement, the Supreme Court highlighted that the concept of commission by omission is well recognized in constitutional jurisprudence and that *“supervising officers are to be directly held liable for the conduct of their subordinates in appropriate instances, even in the absence of direct participation. Supervising officers can be held liable where there is affirmatory participation or participatory presence on the part of such supervising officers; or, where they have, directly or indirectly, implemented or enabled unconstitutional policies by turning a blind eye towards unconstitutional practices directly under their authority”*.

**19.** Further, the Petitioners point out that, in the said Judgement, His Lordships and Her Ladyship in the said judgement ordered that the Respondents in the said case to pay compensation to the Petitioner of the said case and thereby ordered the 1<sup>st</sup> Respondent to pay a sum of Rs. 500,000/- (Rupees Five-Hundred Thousand) as compensation.

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- *“5. The 5<sup>th</sup> Respondent is ordered to pay as compensation a sum of Rs. 500,000/- (Rupees Five-Hundred Thousand).  
The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents are to pay the aforementioned sums, within six months from the date of judgement, out of their personal funds.”*

**20.** In addition, the Petitioners state that, the Human Rights Commission of Sri Lanka (HRCSL) noted 24 custodial deaths in three main districts in Western Province and 13 encounter deaths, the majority in Western Province and Galle District, involving the police. The period of these deaths is from January 2020 to August 2023 and Mr. Tennakoon has been the Senior Deputy Inspector General of Police (SDIG) for the Western Province for this period until now.

**21.** Furthermore, the Petitioners state that His Lordship Justice Thurairajah in his judgement in Application *SC (FR) Application No.107/2011* stated that in the event that when wrongdoings have taken place over a period of time that it can be concluded that such wrongdoings have taken place with the knowledge and blessings of the superiors, and the superior in this circumstance being the 1<sup>st</sup> Respondent in this Application before Your Lordships.

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- *“What is revealed to us in the instant case, apparent from what I have cited above from the affidavits, is a pattern of grave derelictions, which has persisted for a considerable period of time. Where such a pattern is observable, what other inference are we to draw than, either the wrongdoings have taken place with the blessings of the direct supervisors or that such supervisors have slept on the wheel? In either case, such supervisors are directly complicit in the actions so enabled.*

*From the circumstances established in the instant case, it is clear that the 5<sup>th</sup> Respondent has enabled, through his actions as well as inaction, the conduct of the*

*1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents, making him directly liable for the fundamental rights violations hereinbefore established.”*

- 22.** It is the submission of the Petitioners that, when the Supreme Court consisting of a three-bench judges decide that the 1<sup>st</sup> Respondent is an official who has violated several Articles of the Constitution in his capacity as a State Official whose duties are to protect and execute the law of the country, and if the same individual (1<sup>st</sup> Respondent) is allowed to continue as the Head of the Police (the chief law enforcement authority) of the Country; Inspector General of the Police, it is then deemed as the State has failed to uphold the Rule of Law and thereby have completely neglected the judgement given by the country’s highest court; the Supreme Court.
- 23.** The Petitioners submit that, the said judgment further directs the National Police Commission (NCP) and other relevant authorities to take appropriate action against the officers who are made responsible through the said judgment, and thereby these authorities have been given orders by the Supreme Court to take disciplinary action against the 1<sup>st</sup> Respondent as well.

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- *“Therefore, we direct the National Police Commission and other relevant authorities to take appropriate disciplinary action against the officers we have found to be responsible.”*

- 24.** However, the Petitioners state that, the said judgement was delivered on the 14<sup>th</sup> of December and until now none of the authorities nor the NCP have taken any measures to take disciplinary action against the 1<sup>st</sup> Respondent despite being removed from his current position or denying the possibility of being appointed as the IGP.
- 25.** The Petitioners further state that, this inaction and the failure to adhere to a Supreme Court judgement by the relevant authorities is thereby deemed to be an infringement and imminent infringement of the Fundamental Rights guaranteed under **Article 12 (1)** of the Constitution which reads;

- *12. (1) All persons are equal before the law and are entitled to the equal protection of the law.*

**26.** In addition to that, the Petitioners also state that, the said failure to adhere to a Supreme Court judgement by the relevant authorities is also deemed to be in violation of the following Directive Principles of State Policy and Fundamental Duties enshrined under Chapter VI of the Constitution;

- *27 (2) The State is pledged to establish in Sri Lanka a Democratic Socialist Society, the objectives of which include –*
  - (a) the full realization of the fundamental rights and freedoms of all persons;*
  - (b) the promotion of the welfare of the People by securing and protecting as effectively as it may, a social order in which justice (social, economic and political) shall guide all the institutions of the national life;*
  - (3) The State shall safeguard the independence, sovereignty, unity and the territorial integrity of Sri Lanka.*
  - (9) The State shall ensure social security and welfare.*
  - (15) The State shall promote international peace, security and co-operation, and the establishment of a just and equitable international economic and social order and shall endeavour to foster respect for international law and treaty obligations in dealings among nations.*

**27.** The Petitioners state that, in these circumstances, there exists a clear cause of action to remove Mr. Deshabandu Tennakoon (1<sup>st</sup> Respondent) from his current position as Acting IGP, and further to prevent him from accepting any appointment as Inspector General of Police as such acceptance would constitute an infringement and imminent infringement of the fundamental rights guaranteed to the Petitioners and other citizens under Article 12(1) of the Constitution.

**28.** The Petitioners state that, they respectfully reserve the right to amend this petition and/or add other parties and/or adduce further material in the event it becomes necessary and/or expedient to do so depending on the disclosure emanating from the pleadings and/or submissions made on behalf of the respondents.

**29.** The Petitioners state that they have not invoked the jurisdiction of Your Lordships' Court in this regard previously.

**WHEREFORE** the Petitioner humbly pray that Your Lordships' Court may be pleased to,

- a) Issue Notices to all Respondents,
- b) Grant Leave to Proceed,
- c) Declare that the action of the 1<sup>st</sup> to 19<sup>th</sup> Respondents have violated the Petitioners' Fundamental Rights guaranteed under Article 12 of the Constitution,
- d) An order not to extend the term of the 1<sup>st</sup> Respondent from the post of "Acting Inspector General of Police",
- e) An order to restrain the appointment of the 1<sup>st</sup> Respondent as "Inspector General of Police" in the future,
- f) An order to the National Police Commission to initiate inquiry against the 1<sup>st</sup> Respondent and to submit the final report of the inquiry against the 1<sup>st</sup> Respondent on a date decided by Your Lordships' Court,
- g) An interim order to restrain the appointment of the 1<sup>st</sup> Respondent as "Inspector General of Police" until the final determination of this application before Your Lordships' Court,

**h)** Grant cost and,

**i)** Such other and further reliefs as Your Lordships' Court shall seem meet.

**Attorney-at-Law for the Petitioners**