



JSA News Letter

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The Front Page Story: see Editorial



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web: www.jsasl.org

e-mail: secretary@jsasl.org



Editorial

fiat justitia ruat caelum

The Latin maxim "*fiat justitia ruat caelum*" - "let justice be done though the heavens fall" signifies the concept that justice must be dispensed regardless of consequences. Since its origin, it has been used irrespective of the controversial nature of cases. This serves as the motto of the Sri Lankan Judges' Institute as well and according to late Justice J.F.A. Soza, Founder Director of the Judges' Institute, "*The motto is ancient but its validity has never been doubted. Age cannot wither nor custom stale the axiomatic truism it embodies. Justice disregards party, friendship, hindred and is therefore always represented as blind. It extorts no reward, no kind of price and is sought for, its own safe.*" This saying emphasizes the importance of holding the scales evenly by judges independently at every time. However, during the last 2 - 3 years our judicial system faced numerous obstacles as a consequence of the global pandemic and still it has not come to an end. But it is a pleasure that Sri Lankan judges have dispensed justice independently to their maximum level even during that hard period. Further, with the ongoing economic, political and social crises in the country, the task of judges in the process of administering justice has become harder ever than before. Even if any party who is affected by a decision of a court, could appeal or follow the procedure prescribed by the law, criticisms of judges and their orders on social media, sometimes over very trivial matters are not rare. Besides, attempts by some sectors of the society including politicians to interfere with the judiciary are also ascending. As it was stated by Lord Denning in *R v Commissioner of Police of the Metropolis, ex parte Blackburn* [(1968) 2 Q.B. 150], "*It is the right of every man, in Parliament or out of it, in the press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask those who criticize us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication.*" Nevertheless, almost all the Sri Lankan judges are dedicated to fulfill their utmost task of administering justice independently disregarding baseless, scandalous criticisms and every other hurdles they are facing now with the ongoing crises. Perhaps, this hardest period would be the golden time of implementing the aforesaid maxim. However, it is the duty of all to rise up against destructive criticisms since they would undermine the public confidence in the justice system and independence of the judiciary. Finally let me conclude reminding you the rest of the above statement of Lord Denning in *R v Commissioner of Police of the Metropolis, ex parte Blackburn*: "*Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this pen or that, will deter us from doing what the occasion requires, provided that, it is pertinent to the matter in hand. Silence is not an option when things are ill done.*"

“

*As a solid rock is unshaken by the wind,
even so the wise are unshaken by praise or blame.*

- The Dhammapada -

”



JSA writes to JSC regarding the difficulty of obtaining fuel by Judges

By a letter dated 17.05.2022, JSA brought to the notice of JSC regarding the difficulty of obtaining fuel by Magistrates and District Judges with the prevailing fuel issue in the country. Further JSA has requested JSC to make a proper mechanism for obtaining fuel and that letter is published below for your notice.

2022.05.17

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අධිකරණ සේවා කොමිෂන් සභාව,
කොළඹ 12.

නිල රථ සඳහා ඉන්ධන ලබාගැනීම.

දැනට රට තුළ උද්ගත වී ඇති ඉන්ධන අර්බුදය හේතුවෙන් දිසා විනිසුරුවරුන්ට හා මහෙස්ත්‍රාත්වරුන්ටද දෛනික රාජකාරි සඳහා තම නිලරථ වලට ඉන්ධන සපයා ගැනීමේදී දැඩි දුෂ්කරතාවයන්ට මුහුණ දීමට සිදුවන බවත්, ඒ හේතුවෙන් එදිනෙදා රාජකාරි වලට වාර්තා කිරීමටද සමහර අවස්ථාවන්හිදී බාධා ඇතිවන බවත් අප සංගමයේ සාමාජික විනිසුරුවරුන් විසින් දැනුම්දී ඇත.

අනෙකුත් අත්‍යාවශ්‍ය සේවා සඳහා ඉන්ධන නිකුත් කිරීම මේ වන විටත් සිදු කරනු ලබන අතර, දිසා විනිසුරුවරුන් හා මහෙස්ත්‍රාත්වරුන් දෛනිකව සේවයට වාර්තා කිරීම නීතියේ ආධිපත්‍යය පවත්වාගෙන යාම සඳහා අත්‍යාවශ්‍ය වේ. එසේ හෙයින් දෛනික රාජකාරි සඳහා දිසා විනිසුරුවරුන්ගේ සහ මහෙස්ත්‍රාත්වරුන්ගේ නිල රථ සඳහාද ඉන්ධන ලබා ගැනීමට අවශ්‍ය ක්‍රමවේදයක් සකස් කර දෙන මෙන් ගෞරවයෙන් ඉල්ලා සිටිමි.

තවද, එසේ ක්‍රමවේදයක් සකස් කිරීමට අධිකරණ සේවා කොමිෂන් සභාව මැදිහත්වීම අවශ්‍ය නොවන බවට තීරණය කරන්නේ නම්, අධිකරණ සේවා සංගමය ලෙසට අදාළ බලධාරීන් වෙත ඉල්ලීමක් සිදුකර, නියමිත කාර්යපටිපාටිය අනුව, සුදුසු ක්‍රමවේදයක් සකස් කර ගැනීමට කටයුතු කිරීමට අවසර ලබාදෙන ලෙසද ගෞරවයෙන් ඉල්ලා සිටිමි.

පසාන් අමරසේන,
ලේකම්,
අධිකරණ සේවා සංගමය.

Consequently, JSC by its letter dated 02.08.2022 which was addressed to secretary of JSA has informed that JSC has already informed relevant authorities to intervene for implementing a proper mechanism for that and JSA is waiting for a favourable result.



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JSA forwards its observations on the possible adverse effects of the Industrial Disputes (Special Provisions) Bill of 2022 to the Sri Lankan administration of justice system

After the new Industrial Disputes (Special Provisions) Bill was published in the Gazette dated 08.04.2022, JSA immediately decided to forward its observations regarding the possible adverse effects of the same to the Sri Lankan administration of justice system, when it is passed as a law. Accordingly, a letter was sent to the Hon. Minister of Labour and Foreign Employment and, it is published here for your information.

මනුෂ්‍ය නානායක්කාර මැතිතුමා,
ගරු කමිකරු හා විදේශ සබඳතා අමාත්‍ය,
කමිකරු අමාත්‍යාංශය,
කොළඹ 05.

2022 කාර්මික ආරවුල් (විශේෂ විධිවිධාන) පනත් කෙටුම්පත නීතිගත වුවහොත් ශ්‍රී ලංකාවේ යුක්තිය පසිඳලීමේ ක්‍රියාදාමයට සිදුවනු ලබන අහිතකර බලපෑම.

2022 මාර්තු මස 25 වන දින රජයේ ගැසට් පත්‍රයේ පළකොට 2022 අප්‍රේල් මස 08 වන දින අග්‍රාමාත්‍යවරයා විසින් ශ්‍රී ලංකා පාර්ලිමේන්තුව වෙත, 2022 කාර්මික ආරවුල් (විශේෂ විධිවිධාන) පනත කෙටුම්පත ඉදිරිපත් කර ඇත. අනතුරුව මෙම පනත් කෙටුම්පත ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 120 සහ 121 ව්‍යවස්ථාවන් යටතේ ගරු ශ්‍රේෂ්ඨාධිකරණය ඉදිරියේදී අභියෝගයට ලක් කිරීමක් සිදු කර ඇති අතර, ඒ හා සම්බන්ධයෙන් ශ්‍රේෂ්ඨාධිකරණයේ මතය කථානායකවරයා වෙත දැනුම් දීමෙන් අනතුරුව ශ්‍රේෂ්ඨාධිකරණයේ මතය කථානායකවරයා විසින් 2022 මැයි මස 04 වන දින ශ්‍රී ලංකා පාර්ලිමේන්තුව වෙත ඉදිරිපත් කරන ලදී.

යථෝක්ත පනත් කෙටුම්පත පාර්ලිමේන්තුව තුළ සම්මත වුවහොත් ඒ මගින් ශ්‍රී ලංකාවේ යුක්තිය පසිඳලීමේ ක්‍රියාවලිය හා අධිකරණ පද්ධතිය තුළ පහත විස්තර කරනු ලබන ව්‍යාකූල හා අහිතකර බලපෑම් ඇතිවීමේ අවදානමක් උද්ගත විය හැකි බවට අප විසින් නිරීක්ෂණය කරන ලදී.

- I. ඉහත විස්තර කරන ලද කාර්මික ආරවුල් (විශේෂ විධි විධාන) පනත් කෙටුම්පත සඳහා ශ්‍රේෂ්ඨාධිකරණය වෙත නීතිපතිවරයා විසින් යෝජනා කරන ලද සංශෝධන මගින් 1950 අංක 43 දරණ කාර්මික ආරවුල් පනතේ 31 වන වගන්තිය අනුව කමිකරු අමාත්‍යවරයා විසින් පිහිටුවනු ලබන "කමිකරු විනිශ්චය සභාවන්, මුල් අවස්ථා අපරාධ අධිකරණ බලය ක්‍රියාත්මක කරනු ලබන මහෙස්ත්‍රාත් අධිකරණ වශයෙන් සලකා කටයුතු කිරීමට යෝජනා කර ඇත. කාර්මික ආරවුල් පනත මගින් කාර්මික ආරවුල් පමණක් නිරවුල් කිරීම සඳහා පිහිටුවනු ලැබූ කමිකරු විනිශ්චය සභාවන් වෙත යථෝක්ත පනත් කෙටුම්පතෙහි පළමුවන උපලේඛනයෙහි විස්තර කරනු ලබන දැනට ශ්‍රී ලංකාවේ ක්‍රියාත්මක වන පනත් හා ආඥා පනත් 48කට අදාළ විධි විධාන ක්‍රියාත්මක කිරීම සඳහා මහෙස්ත්‍රාත් අධිකරණයන් වශයෙන් සලකා කටයුතු කිරීමට අධිකරණ බලය ලබා දෙන බවට සඳහන් කර ඇත. විශේෂයෙන් කමිකරු විනිශ්චය සභාවක් මගින් සිදු කරන ලබන නෛතික ක්‍රියාදාමය තුළ හුදු කාර්මික ආරවුල් විසඳීමට අදාළ "විනිශ්චය සභාවක්" වශයෙන් පමණක් කටයුතු කරන අතර, අපරාධ අධිකරණ බලය ක්‍රියාත්මක කරන මහෙස්ත්‍රාත් අධිකරණයන් වශයෙන් සලකා එම අපරාධ අධිකරණ බලය හා දඬුවම් නියම කිරීමේ බලය හුදු විනිශ්චය සභාවක් තුළින් ක්‍රියාත්මක කිරීම සඳහා කිසිදු නෛතික පදනමක් නොමැත. විශේෂයෙන් එවැනි ආකාරයට විනිශ්චය සභාවක් මගින් අපරාධ අධිකරණ බලය ක්‍රියාත්මක කිරීම මගින් හා දඬුවම් නියම කිරීමේ ක්‍රියාවලිය සිදු කිරීම තුළින් දැනට ක්‍රියාත්මක වනු ලබන යුක්තිය පසිඳලීමේ ක්‍රියාදාමය බරපතල අපගමනයකට හා දෝෂ සහගත තත්ත්වයකට පත්වන බව අප විසින් නිරීක්ෂණය කර ඇත.



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- II. ශ්‍රී ලංකාවේ මහෙස්ත්‍රාත් අධිකරණ වෙත දැනටමත් අධිකරණ බලය ලබා දී ඇති, ඉහත පනත් කෙටුම්පතෙහි පළමුවන උපලේඛනයෙහි විස්තර කර ඇති, පනත් සහ ආඥා පනත් 48කට අදාළව කම්කරු විනිශ්චය සභාවට අපරාධ අධිකරණ බලය පැවරීම යෝජනා කර ඇත. එසේ වුවද එම පනත් හා ආඥා පනත්වලට අදාළව කිසිදු සංශෝධනයක් සිදු කිරීමකින් තොරව මෙම පනත් කෙටුම්පතට වගන්ති 4ක් පමණක් ඇතුළත් කර එම පනත් හා ආඥා පනත් වලට අදාළ සියලු විධි විධාන ක්‍රියාත්මක කිරීම සඳහා කම්කරු විනිශ්චය සභාව වෙත මහෙස්ත්‍රාත් අධිකරණ බලතල ලබාදීමට යෝජනා කිරීම හේතුවෙන් දැනට මහෙස්ත්‍රාත් අධිකරණ මගින් ක්‍රියාත්මක කරනු ලබන අධිකරණ ක්‍රියාදාමය මුළුමනින්ම අහිතකර බලපෑම් වලට ලක් විය හැකිය.
- III. ඉහත විස්තර කරන ලද කාර්මික ආරවුල් (විශේෂ විධි විධාන) පනත් කෙටුම්පත මගින් දැනට ක්‍රියාත්මක කරනු ලබන කම්කරු විනිශ්චය සභාවන් ඒ ආකාරයටම මහෙස්ත්‍රාත් අධිකරණ වශයෙන් ද ක්‍රියාත්මක කිරීමට යෝජනා කර ඇත. විශේෂයෙන් කාර්මික ආරවුල් පනත යටතේ පිහිටුවනු ලබන කම්කරු විනිශ්චය සභාවක් මගින් කාර්මික ආරවුල් විසඳීමට අදාළව පමණක් කටයුතු කරන අතර, ඒ අනුව කම්කරු විනිශ්චය සභාවක් මගින් ලබා දෙන නියෝගයන් "සාධාරණ හා යුක්ති සහගත" සිද්ධාන්ත මත පිහිටා තීරණය කරනු ලබයි. එසේම කම්කරු විනිශ්චය සභාවන්හි නඩු කටයුතු වලට පාර්ශ්වයන් වෙනුවෙන් නීතිඥවරයෙක් නොවන නියෝජිතයින් (Representatives) ද විනිශ්චය සභාව ඉදිරියේ පෙනී සිටිනු ලබයි. මෙලෙස කම්කරු විනිශ්චය සභාවක් සඳහා දැනට මුල් අවස්ථා අපරාධ අධිකරණ බලය ක්‍රියාත්මක කරනු ලබන මහෙස්ත්‍රාත් අධිකරණවලට අදාළ පනත් කෙටුම් උපලේඛනයේ විස්තර කරනු ලබන පනත් 48කට අදාළ අපරාධ අධිකරණය බලය ලබා දීම හේතුවෙන් එම නඩු කටයුතු සඳහාද ඉහත විග්‍රහ කරන ලද නීතිඥයින් නොවන නියෝජිතයින් කම්කරු විනිශ්චය සභාවන්හි පෙනී සිටීමට කටයුතු කළහොත් ඒ තුළින් ශ්‍රී ලංකාවේ අධිකරණ ක්‍රියාවලිය හා යුක්තිය පසිඳලීමේ ක්‍රියාදාමය මුළුමනින්ම ව්‍යාකූල සහගත තත්ත්වයකට පත්වනු ලබයි.
- IV. එමෙන්ම යථෝක්ත පනත් කෙටුම්පතෙහි 03(2) උපවගන්තිය අනුව කම්කරු විනිශ්චය සභාවක් තුළ අපරාධ හා විශේෂයෙන් සිවිල් නඩු ඇසීම, නඩු විභාග කිරීම, තීරණය කිරීම සහ අවසන් කිරීම සඳහා සාක්ෂි ආඥා පනත සහ අපරාධ නඩු විධාන සංග්‍රහය අදාළ කර ගත යුතු බවට සඳහන් කිරීම තුළ ඉහත විස්තර කරන ලද ව්‍යාකූලතාවය තවදුරටත් තීව්‍ර වන බව පෙනී යයි.
- V. ශ්‍රී ලංකාවේ අධිකරණ ථේරාවලිය තුළ මුල් අවස්ථා අපරාධ අධිකරණ බලය මහෙස්ත්‍රාත් අධිකරණයන් සතු වේ. ඒ අනුව අධිකරණ ථේරාවලිය තුළ මුල් අවස්ථා අධිකරණයක් ලෙස අපගේ නීති පද්ධතිය විසින් පිළිගෙන නොමැති කම්කරු විනිශ්චය සභාවක් සඳහා මහෙස්ත්‍රාත් අධිකරණ මගින් ක්‍රියාත්මක කරන මුල් අවස්ථා අපරාධ අධිකරණ බලය සහ දඬුවම් නියම කිරීමේ බලය ක්‍රියාත්මක කිරීම සඳහා ඉහත පනත් කෙටුම්පත මගින් යෝජනා කිරීම තුළ දැනට ශ්‍රී ලංකාවේ ක්‍රියාත්මක වන අධිකරණ පද්ධතිය මුළුමනින්ම ව්‍යාකූල තත්ත්වයකට පත්විය හැකිය. විශේෂයෙන් ශ්‍රී ලංකාවේ මුල් අවස්ථා අධිකරණ වල පරිපාලන කටයුතු ක්‍රියාත්මක කරනු ලබන අධිකරණ සේවා කොමිෂන් සභාවෙන් ඊට අදාළ යෝජනා ලබා ගැනීමකින් තොරව ඉහත විග්‍රහ කරන ලද ආකාරයේ අධිකරණ ක්‍රියාවලියේ වෙනස්කම් සිදු කිරීම ප්‍රායෝගිකව සිදු කළ නොහැකිය.
- VI. මුල් අවස්ථා අපරාධ අධිකරණ බලය ක්‍රියාත්මක කරනු ලබන මහෙස්ත්‍රාත් අධිකරණවල මහෙස්ත්‍රාත්වරුන් හා කාර්මික ආරවුල් නිරවුල් කිරීමේ කාර්යය සිදු කරනු ලබන කම්කරු විනිශ්චය සභා සභාපතිවරුන් පත් කිරීමේ ක්‍රියාවලිය, ඔවුන්ගේ රාජකාරි කටයුතු සහ විශේෂයෙන් එම ආයතනයන් ක්‍රියාත්මක වීම එකිනෙකට වෙනස් වූ ක්‍රියාවලියක් තුළ සිදු කරනු ලබන අතර, මෙම පනත් කෙටුම්පත මගින් කම්කරු විනිශ්චය සභාවන් අපරාධ අධිකරණ බලය ක්‍රියාත්මක කිරීම හා දඬුවම් නියම කිරීම සඳහා මහෙස්ත්‍රාත් අධිකරණ වශයෙන් සලකා කටයුතු කිරීමට යෝජනා කිරීම හේතුවෙන් දැනට මුල් අවස්ථා අපරාධ අධිකරණ බලය ශ්‍රී ලංකාවේ අධිකරණ පද්ධතිය තුළ ක්‍රියාත්මක කරනු ලබන මහෙස්ත්‍රාත් අධිකරණවල ක්‍රියාදාමය මුළුමනින්ම ව්‍යාකූල තත්ත්වයකට පත්විය හැකි බව අප විසින් වැඩිදුරටත් නිරීක්ෂණය කරන ලදී.



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VII. ශ්‍රේෂ්ඨාධිකරණය විසින්, කථානායකවරයා වෙත යොමු කරන ලද පනත් කෙටුම්පත අභියෝගයට ලක් කිරීමට අදාළ තීරණය තුළ, නීතිපතිවරයා විසින් යථෝක්ත පනත් කෙටුම්පත කාරක සභා අවස්ථාවේදී යම් සංශෝධන කිහිපයකට ලක් කිරීමට යෝජනා කළද, එම යෝජනා මගින් ඉහත විග්‍රහ කරන ලද කිසිදු ගැටළුවකට ප්‍රායෝගික විසඳුම් යෝජනා කර නොමැත. එමෙන්ම එම සංශෝධන මගින් පනත් කෙටුම්පතෙහි පළමුවන උප ලේඛනයෙහි විස්තර කර ඇති අයිතම් අංක 49 වන කමිකරු වන්දි ආඥා පනත පමණක් ඉවත් කිරීමට යෝජනා කර ඇති අතර, එලෙස එම පනත පමණක් උපලේඛනය තුළින් ඉවත් කිරීමට යෝජනා කර ඇත්තේ කුමන නෛතික පදනමක් මතද යන්න නීතිපතිවරයා විසින් සඳහන් කිරීමක්ද සිදු කර නොමැත.

VIII. ඒ අනුව යථෝක්ත කාර්මික ආරවුල් (විශේෂ විධි විධාන) පනත් කෙටුම්පත නීතිගත වීම තුළින් දැනට ශ්‍රී ලංකාවේ ක්‍රියාත්මක වන පනත් කෙටුම්පතෙහි දෙවන උපලේඛනයේ විස්තර කර ඇති කමිකරු විනිශ්චය සභාවන් 37කට අදාළව පමණක් එම කමිකරු විනිශ්චය සභාවන් පිහිටි බල ප්‍රදේශය තුළ ක්‍රියාත්මක කරනු ලබන මහෙස්ත්‍රාත් අධිකරණවල අධිකරණ බලය පමණක් ක්‍රියාත්මක කිරීම සඳහා බලය ලබා දීමට කටයුතු කිරීමට යෝජනා කර ඇති අතර, ඒ මගින් දැනට මහෙස්ත්‍රාත් අධිකරණ මගින් ක්‍රියාත්මක කරනු ලබන ඉහත පළමුවන උපලේඛනයේ විස්තර කරනු ලබන පනත් හා ආඥා පනත් වලට අදාළ නඩු කටයුතු සියල්ල ඉතා කාර්යක්ෂම හෝ කඩිනමින් කමිකරු විනිශ්චය සභා මගින් විසඳා අවසන් කිරීමට ප්‍රායෝගිකව නොහැකි වන බව පෙනී යයි. මන්දයත්, දැනට ශ්‍රී ලංකාව තුළ මහෙස්ත්‍රාත් අධිකරණ 200කට අධික ප්‍රමාණයක් ක්‍රියාත්මක වන අතර, මෙම පනත් කෙටුම්පත මගින් ඉහත විස්තර කරන ලද පරිදි කමිකරු විනිශ්චය සභා 37කට අදාළ මහෙස්ත්‍රාත් අධිකරණ 37කට අදාළ නඩු කටයුතු පමණක් විසඳීම සඳහා යෝජනා කර ඇත. ඒ අනුව මෙම පනත් කෙටුම්පත මගින් ප්‍රායෝගික ලෙස කාර්මික ආරවුල් කඩිනමින් අවසන් කිරීමේ හැකියාවක් සිදු නොවන බවට ඉතා පැහැදිලිව පෙනී යයි.

ඉහත විග්‍රහ කරන ලද දෝෂ සහගත තත්ත්වයන් හේතුවෙන් මෙම 2022 කාර්මික ආරවුල් (විශේෂ විධි විධාන) පනත් කෙටුම්පත ශ්‍රී ලංකාවේ නීතිගත වුවහොත් එමගින් යුක්තිය පසිඳලීමේ ක්‍රියාදාමය හා අධිකරණ පද්ධතිය දැඩි අවධිමත්භාවයකට හා ව්‍යාකූල තත්ත්වයට පත් වනු ලබන බවට ඉතා පැහැදිලිව පෙනී යයි. ඒ අනුව මෙම පනත් කෙටුම්පත ශ්‍රී ලංකා පාර්ලිමේන්තුව මගින් සම්මත කර නීතිගත කිරීම අත්හිටුවන ලෙස කාරුණිකව ඉල්ලා සිටිමු. යම් ලෙසකින් කාර්මික ආරවුල් විසඳීමේ ක්‍රියාවලිය කඩිනමින් සිදු කිරීම සඳහා යම් ක්‍රියාදාමයක් නැවත යෝජනා කරන්නේ නම් ඒ සම්බන්ධ යුක්තිය පසිඳලීමේ ක්‍රියාදාමය තුළ සිටින සියලුම ආයතන සමග විධිමත් අධ්‍යයනයකින් හා සාකච්ඡාවකින් පසුව එලෙස කටයුතු කිරීමට ඉදිරියට පියවර ගන්නා මෙන්ද කාරුණිකව ඉල්ලා සිටිමු.

ප්‍රසන්න අල්විස්,
සභාපති,
අධිකරණ සේවා සංගමය.

පසාන් අමරසේන,
ලේකම්,
අධිකරණ සේවා සංගමය.

වර්ෂ 2022ක් වූ මැයි මස 31 වන දිනදී ය.

Although JSA as the sole organization representing the Magistrates and District Judges of the country, has forwarded its concerns over the above issues in advance, the aforesaid Industrial Disputes (Special Provisions) Bill was passed by the Parliament. Since it has not yet come into operation by publishing a Gazette notification, JSA again decided to convey its concerns to JSC over the possible negative impacts of this new Act, with its operation and request the JSC to inform them to the relevant authorities as well. JSA believes that JSC will intervene to take steps to minimize the possible adverse impacts of the Act to the Sri Lankan administration of justice system.



JSA stands for the sake of independence of the judiciary

Recently, several articles were circulated via social media about an alleged attempt by the former secretary to the Ministry of Public Security to interfere with the functions of the Magistrates in relation to ongoing public unrest issues. Consequently, JSA decided to find out the truth of that attempt and take immediate action, if necessary. As the initial step, JSA made a request to the secretary to the Ministry of Public Security under the provisions of section 24(I) of Right to Information Act No.12 of 2016 to obtain a copy of the letter which was sent to His Lordship the Chief Justice by the former secretary during the early part of May 2022, slamming the judges of lower courts. The letter of JSA is published here for your attention.

21. 06. 2022

Mr. S. Hettiarachchi,
Secretary,
Ministry of Public Security,
14th Floor, "Suhurupaya",
Battaramulla.

Dear Secretary,

Request under Section 24 (I) of Right to Information Act No. 12 of 2016

It is brought to the notice of the Executive committee of Judicial Service Association of Sri Lanka about several articles being circulated via social media alleging that, Major General (Retired) Jagath Alwis, former Secretary to the Ministry of Public Security had in a letter addressed to His Lordship the Chief Justice of Sri Lanka, attempted to interfere with the function of the Judiciary.

The Executive committee directed me to make a request under section 24(I) of Right to Information Act No. 12 of 2016, to obtain a copy of the letter sent by former Secretary to the Ministry of Public Security, Major General (Retired) Jagath Alwis to His Lordship the Chief Justice during the early part of May 2022.

Please be good enough to issue a copy of the letter aforementioned to P. M. Amarasena, Secretary, Judicial Service Association, District/Magistrate's Court, Pugoda, subject to any cost.

Thank you,

P. M. Amarasena,
Secretary - Judicial Service Association.

Copy: Honorable Secretary, Judicial Service Commission

Consequently, on 15.08.2022 President's Media Division had issued a press release to all heads of government institutions informing them to avoid direct correspondence with the JSC or judges of higher or lower courts. However, since the relevant secretary has not yet complied with the aforesaid provisions of the Right to Information Act, JSA is considering the possibility of taking next steps under the provisions of the Act.



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JSA writes to Inspector General of Police to strengthen the security of court complexes

After it was reported very recently, that a person who was among the people inside the Magistrate's Court of Mount Lavinia fired at an accused while a case was taken up for trial before the Magistrate and escaped the scene after shooting near the gate of the court as well, JSA wrote to the Inspector General of Police requesting him to take proper actions in order to avoid reoccurrence of such incidents and assure the security of courts and judges. That letter is published here for your information.

පොලිස්පතිතුමා,

පොලිස් මූලස්ථානය,

කොළඹ 01.

2022.08.10

පොලිස්පතිතුමනි,

අධිකරණවල සහ විනිසුරුවරුන්ගේ ආරක්ෂාව තහවුරු කිරීම

පසුගිය 2022.08.04 දින ගල්කිස්ස මහෙස්ත්‍රාත් අධිකරණයේ විවාහ අධිකරණ කටයුතු පැවැත්වෙන අවස්ථාවේදීම විවාහ අධිකරණය තුළට වෙඩි ප්‍රහාරයක් එල්ල කළ පුද්ගලයෙකු අධිකරණ සංකීර්ණයේ ආරක්ෂක කුටියටද වෙඩි ප්‍රහාරයක් එල්ල කර පලා යාමේ සිද්ධිය පිළිබඳව අප සංගමයේ දැඩි අවධානය යොමු වී ඇත.

එවැනි සිදුවීම් නැවත සිදු නොවීමට කඩිනමින් ගත යුතු නීති ක්‍රියාමාර්ග ගන්නා ලෙසට ඔබට දැනුම් දීමට අප සංගමයේ විධායක කමිටුව විසින් මා වෙත නියම කර ඇත.

ඒ අනුව අධිකරණය සහ විනිසුරුවරුන්ගේ ආරක්ෂාව තහවුරු කිරීමට ගතයුතු කඩිනම් ක්‍රියාමාර්ග ගන්නා මෙන් කාරුණිකව දන්වා සිටිමි.

පසාන් අමරසේන,

ලේකම්,

අධිකරණ සේවා සංගමය.

JSA expects that the Inspector General of Police would consider about the gravity of the hidden issues behind the incident as well and take prompt actions in order to strengthen the security of court complexes and judges.

“

"No state is safe with a subservient judiciary.

It is the bane of a country,

and it enfeebles a nation and makes cowards of its citizens".

- Former Chief Justice Hema Basnayake QC

”



Civil Procedure Code (Amendment)

Act, No. 17 of 2022

[Certified on 23rd of June, 2022]

L.D.—O.58/2021

AN ACT TO AMEND THE CIVIL PROCEDURE CODE (CHAPTER 101)

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

1. This Act may be cited as the Civil Procedure Code (Amendment) Act, No. 17 of 2022.
2. The following new section is hereby inserted immediately after section 154 of the Civil Procedure Code (Chapter 101) and shall have effect as section 154A of that Code:-

Insertion of
new section
154A into
Chapter 101

"Proof of deed
or
document
unnecessary in
certain
events

154A. (1) Notwithstanding the provisions of the Evidence Ordinance (Chapter 14), in any proceedings under this Code, it shall not be necessary to adduce formal proof of the execution or genuineness of any deed, or document which is required by law to be attested, other than a will executed under the Wills Ordinance (Chapter 60), and on the face of it purports to have been duly executed, unless-

- (a) in the pleadings or further pleadings in an action filed under regular procedure in terms of this Code, the execution or genuineness of such deed or document is impeached and raised as an issue; or
- (b) the court requires such proof:

Provided that, the provisions of this section shall not be applicable in an event, a party to an action seeks to produce any deed or document not included in the pleadings of that party at any proceedings under this Code.

(2) The provisions of subsection (1), shall *mutatis mutandis* apply in the actions on summary procedure under this Code."

Transitional Provisions 3. Notwithstanding anything contained in section 2 of this Act, and the provisions of the Evidence Ordinance, in any case or appeal pending on the date of coming into operation of this Act -

- (a) (i) if the opposing party does not object or has not objected to it being received as evidence on the deed or document being tendered in evidence; or
- (ii) if the opposing party has objected to it being received as evidence on the deed or document being tendered in evidence but not objected at the close of a case when such document is read in evidence,

the court shall admit such deed or document as evidence without requiring further proof;

- (a) if the opposing party objects or has objected to it being received as evidence, the court may decide whether it is necessary or it was necessary as the case may be, to adduce formal proof of the execution or genuineness of any such deed or document considering the merits of the objections taken with regard to the execution or genuineness of such deed or document.

4. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Sinhala text to
prevail in case of
inconsistency



New Enactments || New Enactments || New Enactments || New Enactments || New Enactments

Code of Criminal Procedure (Amendment)

Act, No. 18 of 2022

[Certified on 23rd of June, 2022]

L. D.-O. 45/2017

AN ACT TO AMEND THE CODE OF CRIMINAL PROCEDURE ACT,
No. 15 of 1979

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows: -

1. This Act may be cited as the Code of Criminal Procedure (Amendment) Act, No. 18 of 2022. Shorttitle

2. Section 442 of the Code of Criminal Procedure Act, No. 15 of 1979 (hereinafter referred to as the "principal enactment") is hereby repealed and the following section is substituted therefor: - Replacement
of section 442
of Act, No. 15
of 1979

442. If any person affected by a judgment or final order of a criminal court desires to have a copy of the judgment or the final order or any deposition or other part of the record, he shall on applying for such copy, be furnished therewith by the court, upon payment therefor, of a fee determined from time to time by the Secretary to the Ministry of the Minister assigned the subject of Justice, by Notification published in the Gazette, unless the court for some special reason thinks fit to furnish it free of cost:

Provided however, the complainant and every accused person of the respective case shall be furnished with one certified copy each, of the judgment or final order of the record, free of cost."

Amendment of
section 443 of the
principal
enactment

3. Section 443 of the principal enactment is hereby amended in paragraph (b), by the substitution for the words and figures, "on payment made at the rates mentioned in section 442" of the words and figures "subject to the provisions of section 442".

Sinhala text to prevail
in case
of inconsistency

4. In the event of any inconsistency between the Sinhala and the Tamil texts of this Act, the Sinhala text shall prevail.

Industrial Disputes (Special Provisions) 1

Act, No. 19 of 2022

[Certified on 23rd of June, 2022]

L.D.-O.22/2020

AN ACT TO MAKE SPECIAL PROVISIONS TO EMPOWER THE LABOUR TRIBUNALS TO HEAR, TRY, DETERMINE AND DISPOSE OF ALL ENFORCEMENT PROCEEDINGS AND PROSECUTIONS UNDER THE PROVISIONS OF SPECIFIED ENACTMENTS AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

I. This Act may be cited as the Industrial Disputes (Special Provisions) Act, No. 19 of 2022 and shall come into operation on such date as the Minister may, in consultation with the Minister assigned the subject of Justice, appoint by Order published in the Gazette.

Short title
and date of
operation



New Enactments || New Enactments || New Enactments || New Enactments | New Enactments

2. (1) Every labour tribunal established under section 31A of the Industrial Disputes Act (Chapter I31) shall, in addition to the powers and duties conferred by written law, exercise the powers conferred upon a Magistrate for the purpose of enforcement of any award made by any arbitrator or industrial court or any order made by the labour tribunal under the provisions of the Industrial Disputes Act (Chapter I31) or any decision of the Commissioner or recovery of payment upon a certificate issued by the Commissioner or implementation of the provisions incidental hitherto of the enactments specified in the Schedule I hereto (in this Act referred to as the "specified enactments").
- (2) For the purposes of this Act, the jurisdiction of a labour tribunal as mentioned above shall, subject to the provisions of sub section (3), be limited to a judicial division of a Magistrate's Court as may be demarcated under subsection (3) of section 5 of the Judicature Act, No. 2 of 1978 where the labour tribunal is situated.
- (3) The jurisdiction of a labour tribunal referred to in Column I of the Schedule II hereto shall be limited to the judicial division of the Magistrate's Court referred to in the corresponding entry in Column II of that Schedule.
- (4) For the avoidance of doubt, it is hereby declared that the Magistrate's Court shall continue to exercise such other powers other than the powers under sub section (1) of this section as specified in the specified enactments in any judicial division of the Magistrate's Court including judicial division specified in Column II of Schedule II.

Labour tribunal
to exercise the
power of a
Magistrate

Applicability
of the
provisions
of Code of
Criminal
Procedure
Act, No.15
of 1979 and
Evidence
Ordinance
(Chapter 14)

3. (1) The President of a labour tribunal specified in Column I of Schedule II shall have the power and authority to hear, try, determine and dispose of cases in a summary way by virtue of the provisions of the Code of Criminal Procedure Act, No.15 of 1979 in relation to the enforcement of any award made by any arbitrator or industrial court or any order made by the labour tribunal under the provisions of the Industrial Disputes Act (Chapter I31) or any decision of the Commissioner or recovery of payment upon a certificate issued by the Commissioner or implementation of the provisions of the specified enactments.

- (2) There shall be a duly appointed Registrar and an incidental staff for the purpose of implementing the functions specified under subsection (1) of section 2 of this Act.
- (3) The provisions of the Code of Criminal Procedure Act, No. 15 of 1979 and Evidence Ordinance (Chapter 14) shall *mutatis mutandis* apply to and in relation to the procedure to hear, try, determine and dispose of the suits or prosecutions before the labour tribunal:

Provided that, the provisions of Evidence Ordinance (Chapter 14) shall not apply for the conduct of proceedings under section 31B of the Industrial Disputes Act (Chapter I31) by the labour tribunal.

Sinhala text
to prevail in
case of
inconsistency

4. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail



New Enactments || New Enactments || New Enactments || New Enactments | New Enactments

Schedule I

[section2(I)]

1. Allowances to Plantation Workers Act, No.72 of 1981
2. Budgetary Relief Allowance of Workers Law (No.I) Law, No.I of 1978
3. Budgetary Relief Allowance of Workers (No. 2) Law, No.18 of 1978
4. Budgetary Relief Allowance of Workers Act, No.36 of 2005
5. Budgetary Relief Allowance of Workers Act, No.4 of 2016
6. Chauffeurs Regulation Ordinance (Chapter73)
7. Control of Labour (Change of Designation) Ordinance, No.22 of 1945
8. Diseases (Labourer's) Ordinance (Chapter 225)
9. Employees' Councils Act, No.32 of 1979
10. Employees' Holiday Act, No.6 of 1959
11. Employees' Provident Fund Act, No.15 of 1958
12. Employees' Provident Fund (Special Provisions) Act, No.6 of 1975
13. Employees' Trust Fund (Special Provisions) Act, No.19 of 1993
14. Employees' Trust Fund Act, No.46 of 1980
15. Employment of Trainees (Private Sector) Act, No.8 of 1978
16. Employment of Women, Young Persons and Children Act, No.47 of 1956
17. Estate Labour (Indian) Ordinance (Chapter 133)
18. Estate Quarters (Special Provisions) Act, No.2 of 1971
19. Factories Ordinance (Chapter 128)
20. Fuel Conservation Five Day Week Act, No.II of 1978
21. Holiday Act, No.29 of 1971
22. Indian Immigrant Labour Ordinance (Chapter132)
23. Industrial Disputes Act (Chapter131)
24. Inspector of Labour (Change of Designation) Act, No.7 of 1958
25. Interim Devaluation Allowance of Employees Act, No.40 of 1968
26. Labour Inspections (Maintenance of Secrecy) Act, No.13 of 1972
27. Maternity Benefits Ordinance (Chapter 140)
28. Medical Wants Ordinance (Chapter 223)
29. Mines (Prohibition of Female Labour Underground) Ordinance (Chapter 130)
30. Mines and Minerals Law, No.4 of 1973
31. Mines, Quarries and Minerals Ordinance (Chapter 210)
32. Minimum Retirement Age of Workers Act, No.28 of 2021
33. Minimum Wages (Indian Labour) Ordinance (Chapter 135)
34. National Apprenticeship Act, No.49 of 1971
35. National Minimum Wages of Workers Act, No.3 of 2016
36. Payment of Gratuities & Other Monetary Benefits to Indian Repatriates (Special Provisions) Act, No.34 of 1978
37. Payment of Gratuity Act, No.12 of 1983
38. Privilege Leave (Private) Law, No.14 of 1976
39. Registration of Domestic Servants Ordinance (Chapter 137)
40. Service Contracts Ordinance (Chapter 72)
41. Shop & Office Employees (Regulation of Employment & Remuneration) Act (Chapter 129)
42. Special Allowances of Workers Law, No.17 of 1978
43. Supplementary Allowances of Workers Act, No.65 of 1979
44. Termination of Employment of Workmen (Special Provisions) Act, No.45 of 1971
45. Trade Union Ordinance (Chapter 138)
46. Trade Union Representatives (Entry into Estates) Act, No. 25 of 1970
47. Tundu Prohibition Ordinance (Chapter 134)
48. Wages Boards Ordinance (Chapter 136)



New Enactments || New Enactments || New Enactments || New Enactments | New Enactments

Schedule II

[section 2(3)]

	Labour tribunal	Relevant jurisdiction of theMagistrate's Court
1	Labour Tribunal No. 1	Chief Magistrate's Court,Colombo I2
2	Labour Tribunal No. 2	Chief Magistrate's Court,Colombo I2
3	Labour Tribunal No. 8	Chief Magistrate's Court,Colombo I2
4	Labour Tribunal No. 13	Chief Magistrate's Court,Colombo I2
5	Labour Tribunal No. 33, Maharagama	Magistrate's Court, Homagama
6	Labour Tribunal No. 32, Ratmalana	Magistrate's Court, Mount Lavinia
7	Labour Tribunal No. 1/ Additional and Magistrate's Court,No. 2/ Additional, Battaramulla	Magistrate's Court, Kaduwela
8	Labour Tribunal No. 30, Kaduwela.	Magistrate's Court, Kaduwela
9	Labour Tribunal No. 19, Avissawella.	Magistrate's Court, Avissawella
10	Labour Tribunal No. 24, Gampaha	Magistrate's Court, Gampaha
11	Labour Tribunal No. 31, Wattala	Magistrate's Court, Wattala
12	Labour Tribunal No. 21, Negombo and No. 21/ Additional, Negombo	Magistrate's Court, Negombo'
13	Labour Tribunal No . 25, Panadura.	Magistrate's Court,Panadura
14	Labour Tribunal No. 18, Kalutara	Magistrate's Court, Kalutara
15	Labour Tribunal No. 04, Galle	Magistrate's Court, Galle
16	Labour Tribunal No. 26, Matara	Magistrate's Court, Matara
17	Labour Tribunal No. 34, Kotapola	Magistrate's Court, Morawaka
18	Labour Tribunal No. 03, Kandy	Magistrate's Court, Kandy
19	Labour Tribunal No. 39, Palapathwala	Magistrate's Court, Matale
20	Labour Tribunal No. 38, Nawalapitiya	Magistrate's Court, Nawalapitiya
21	Labour Tribunal No. 37, Thalawa kele	Magistrate's Court,Thalawakele
22	Labour Tribunal No. 10, Hatton	Magistrate's Court, Hatton
23	Labour Tribunal No. 09, Nuwara-Eliya	Magistrate's Court, Nuwara-Eliya
24	Labour Tribunal No. 05, Badulla	Magistrate's Court, Badulla
25	Labour Tribunal No. 36, Bandarawela	Magistrate's Court, Bandarawela
26	Labour Tribunal No. 44, Ampara	Magistrate's Court, Ampara
27	Labour Tribunal No. 06(R), Ratnapura	Magistrate's Court, Ratnapura
28	Labour Tribunal No. 40, Balangoda	Magistrate's Court,Balangoda
29	Labour Tribunal No. 06(E), Embilipitiya	Magistrate's Court,Embilipitiya
30	Labour Tribunal No. 42, Kegalle	Magistrate's Court, Kegalle
31	Labour Tribunal No. 23, Kurunegala	Magistrate's Court,Kurunegala
32	Labour Tribunal No. 46, Kuliapitiya.	Magistrate's Court, Kuliapitiya
33	Labour Tribunal No. 28, Chilaw	Magistrate's Court, Chilaw
34	Labour Tribunal No. 27, Anuradhapura	Magistrate's Court,Anuradhapura.
35	Labour Tribunal, Trincomalee.	Magistrate's Court,Trincomalee.
36	Labour Tribunal No. 22, Batticaloa.	Magistrate's Court, Batticaloa
37	Labour Tribunal, Jaffna	Magistrate's Court, Jaffna



Index of Circular Nos. 401- 453 issued by JSC

This is the continuation of index of JSC circulars published in JSA News Letter 2020 Vol.02 and you can easily refer them through www.jsas.lk very soon.

- Web Master

- 401 Destroying Old Case Records
- 402 සිතාසි හා වරෙන්තු අධිකරණ මගින් පොලිසි වෙත යොමු කරලීම.
- 403 ආයතන පරිශ්‍රය තුළ බෙංගු මදුරුවන් බෝවන ස්ථාන නිරන්තර පරීක්ෂාව හා බෙංගු මදුරුවන් බෝවීම අවම කිරීම බෙංගු මර්දන විශේෂ ක්‍රෙමාසික වැඩසටහන.
- 404 අධිකරණ කලාප සංශෝධනයෙන් පසුව නොතාරිස්වරුන්ගේ පුද්ගලික ලිපිගොනු අදාළ අධිකරණ කලාපවලට යොමු කිරීම.
- 405 Right to Information Act No.12 of 2016
- 406 2006 වර්ෂයේ අයවැය යෝජනා මත රාජ්‍ය සේවයේ වැටුප් ප්‍රතිව්‍යුහගත කිරීම. (කම්කරු විනිශ්චය සභා සභාපතිවරුන්ට අදාළ වේ.)
- 407 භාෂණ පරිවර්තක සේවයේ තාවකාලික අනුයුක්ත කිරීම (දෙමළ/සිංහල, දෙමළ/ඉංග්‍රීසි, ඉංග්‍රීසි/සිංහල)
- 408 ජාතික ගමනාගමන කොමිෂන් සභා පනතේ දඩ මුදල් සංශෝධනය කිරීම.
- 409 නඩු භාණ්ඩ වශයෙන් ඉදිරිපත් කර ඇති වාහන හා යන්ත්‍රෝපකරණ සම්බන්ධව.
- 410 නීති කෘතීන් (සාක්ෂි සටහන්) සංශෝධනය කිරීම. (අවලංගු කර ඇත.)
- 411 අධිකරණ පරිපාලන කමිටු පිහිටුවීම.
- 412 Legal Examinations on Suspects of the Sexual Harassment Cases
- 413 Recording Complaints relating to torture
- 414 Right to Information Act No.12 of 2016 (relevant to Presidents of Labour Tribunals)
- 415 මහාධිකරණ විනිශ්චයකාර සහ ශ්‍රී ලංකා අධිකරණ සේවයේ නිලධාරීන් සඳහා වන වැටුප් ව්‍යුහය.
- 416 විශ්‍රාමික උපලේඛනගත රජයේ නිලධාරීන් නැවත සේවයේ යෙදවීම.
- 417 Enforcing Release of Remand Prisoners Act No. 08 of 1991
- 418 Transfer of Judicial Officers who have completed 02 years or more at the present station
- 419 කම්කරු ආඥා පනත්, පනත් සහ ඒවා යටතේ මහෙස්ත්‍රාත්වරුන් වෙත පවරා ඇති අධිකරණ බලය ක්‍රියාත්මක කිරීම සඳහා කම්කරු විනිශ්චයකාර සභාපතිවරුන්/වරියන් ද පත් කිරීම.
- 420 ප්‍රායෝගික පුහුණුව සඳහා අභ්‍යාසලාභීන් අධිකරණ වලට අනුයුක්ත කිරීම.
- 421 දැනට ක්‍රියාත්මක වන කැපැල් සේවක වැඩ වර්ජනය හේතුවෙන් අධිකරණ කටයුතුවලදී උද්ගතව ඇති ගැටලු.
- 422 නඩු භාණ්ඩ නිශ්කාෂණය කිරීම.
- 423 නීති කෘතීන් (සාක්ෂි සටහන්) සංශෝධනය කිරීම.
- 424 පූජ්‍ය/පූජක පක්ෂය සහභාගි වන නඩු කටයුතු.
- 425 Invitation to Judicial Officer
- 426 රජයට අයත් රථ වාහන රිය අනතුරුවලට ලක්වීම.
- 427 වාර්ෂික වැටුප් වර්ධක ලබාදීම සම්බන්ධව මාර්ගෝපදේශ.
- 428 පූර්ව අනුමැතියකින් තොරව නිවාඩු ලබා ගැනීම.
- 429 1999 අංක 46 දරණ ප්‍රජා පාදක විශෝධන පනත නිසි අයුරින් ක්‍රියාත්මක කිරීම.
- 430 අතුරු තහනම් නියෝග/අනෙකුත් නියෝග ලබාදීම සම්බන්ධව.
- 431 පුරාවිද්‍යා දෙපාර්තමේන්තුව විසින් අධිකරණ වෙත සපයන වාර්තා සඳහා ව්‍යාජ අත්සන් සහිත කුට ලේඛන ඉදිරිපත් කිරීම.
- 432 Cancelled by JSC
- 433 අධිකරණ වෙත ලිපි යොමු කිරීම.
- 434 කම්කරු විනිශ්චයකාර සභාපතිවරු නිවාඩු මත සේවා ස්ථානයෙන් බැහැරව සිටියදී ඉදිරිපත් විය හැකි 2018.07.13 දිනැති අංක 2080 දරණ ගැසට් පත්‍රයේ පළ කරන ලද 2018 අංක 642 ගැසට් නිවේදන සහ 2018.07.16 දිනැති අධිකරණ සේවා කොමිෂන් සභා චක්‍රලේඛ අංක 419න් පවරා ඇති සීමිත බලය ප්‍රකාරව කාරුණික අවධානය යොමු විය යුතු නඩු කටයුතු සම්බන්ධව.
- 435 වාර්ෂික වැටුප් වර්ධක ලබාදීම.
- 436 වාර්ෂික වැටුප් වර්ධක ලබාදීම. (කම්කරු විනිශ්චය සභා සභාපතිවරුන්ට අදාළ වේ.)
- 437 ඖෂධ වලට ඇබ්බැහි වූ තැනැත්තන් රැකබලා ගැනීම හා පුනරුත්ථාපනය සඳහා වූ මධ්‍යස්ථානය - විරවිල.
- 438 සැකකරුවන්ගේ/වූදිනයන්ගේ විදෙස් ගමන් තහනම් කිරීම හා හෝ විදෙස් ගමන් තහනම ඉවත් කිරීම.
- 439 පරිවාස කාලය අවසානයේ සේවයේ ස්ථිර කිරීම.
- 440 ළමුන් පාර්ශ්වකරුවන් වන නඩු කටයුතු වලදී ඔවුන් මුහුණදෙන ගැටළු.
- 441 පූර්ව සේවා ස්ථානයන්ට අදාළව ප්‍රකාශයට පත් කිරීමට නියමිත තීන්දු/නියෝග පිළිබඳ දත්ත ඉදිරිපත් කිරීම.
- 442 කොවිඩ් 19 ව්‍යාප්තවීමේ අවධානම අවම වන පරිදි ක්‍රියාත්මක වීම.
- 443 උසාවි කොමසාරිස්වරුන් වශයෙන් කටයුතු කරන බලයලත් මිනිස්දෝරුවරුන්ට බලපාන ගැටලු.
- 444 අධිකරණ සේවා කොමිෂන් සභාවේ ලේකම්/චේෂ්ඨ සහකාර ලේකම්වරු හමුවීමේ දිනය සඳුදා ලෙස සංශෝධනය/වෙනස් කිරීම.
- 445 අධිකරණ කළමනාකරණ සහකාර සේවයට අයත් අතිරේක ලිපිකරු, අධිකරණ භාෂා පරිවර්තක, අධිකරණ ලඝු ලේඛක සහ අධිකරණ යතුරු ලේඛක නිලධාරීන් 11 ශ්‍රේණියේ සිට 1 ශ්‍රේණියට උසස් කිරීම.
- 446 එක් කම්කරු විනිශ්චය සභාවකින් වෙනත් කම්කරු විනිශ්චය සභාවකට නඩු මාරු කිරීම.
- 447 මනෝ වෛද්‍ය වාර්තා කැඳවීම හා මනෝ වෛද්‍ය ප්‍රතිකාර සහ පරීක්ෂණ සඳහා මනෝ වෛද්‍යවරුන් වෙත පුද්ගලයන් ඉදිරිපත් කිරීම.
- 448 කම්කරු විනිශ්චයාධිකාර සභාපතිවරුන් වෙත වාර්ෂික වැටුප් වර්ධක ලබාදීම සම්බන්ධව නිර්ණායක.
- 449 මහාධිකරණවල විභාග වන ළමා අපයෝජන නඩු ගොනු සංකේතකරණය කිරීම.
- 450 Reports filed outside the purview of the law
- 451 Notices in relation to the language of the courts
- 452 අධිකරණ නිලධාරීන් නිවාඩු ලබාගැනීම සම්බන්ධව.
- 453 උපලේඛනගත රජයේ නිලධාරීන්ගේ අනිවාර්ය විශ්‍රාම යාමේ වයස අවුරුදු 65 දක්වා දීර්ඝ කිරීම.



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SUPREME COURT

JSALR 2022 /II//I

**Weerappuli Gamage Gamini Ranaweera Vs.
Matharage Dharmasiri and others**

SC Appeal No. 56/2020

Before : Murdu N.B. Fernando, P.C., J.
A.L. Shiran Gooneratne, J.
Mahinda Samayawardhena, J.

**Section 2 of the Prevention of Frauds Ordinance,
Section 31, 33 of the Notaries Ordinance, Section
64, 65, 68 of the Evidence Ordinance, section 162
of the Civil Procedure Code.**

Decided on : 20. 05. 2022

Mahinda Samayawardhena, J.

The plaintiff filed this action in the District Court seeking a declaration of title to and ejectment of the defendant from the land in suit. The defendant filed answer seeking dismissal of the action. At the trial, the defendant raised an issue claiming prescriptive title to the land. After the conclusion of the trial, the District Court entered judgment for the plaintiff. On appeal, the High Court of Civil Appeal set aside the judgment of the District Court on the basis that the plaintiff failed to establish legal title to the land.

The short question to be decided in this appeal is whether deed No. 1986 has been properly executed in terms of section 2 of the Prevention of Frauds Ordinance, No. 7 of 1840, as amended.

Held:

- I. To prove due execution of a deed, this section requires proof of four matters:
 - (a) the deed was signed by the executant (b) it was signed in the presence of a licensed notary public and two or more witnesses (c) the notary public and the witnesses were present at the same time (d) the execution of the deed was duly attested by the notary and the witnesses
2. It may be relevant to note that under section 2 of the Prevention of Frauds Ordinance, the document shall be signed by the executant in the presence of the notary and the two witnesses present at the same time.

3. However, the section does not expressly state that the document shall also be signed by the two witnesses and the notary in the presence of the executant at the same time.
4. Execution and attestation are two different things: the former by the maker/executant and the latter by the notary and the witnesses.
5. Attestation is two-fold: due attestation by the notary and the witnesses as stated in section 2 of the Prevention of Frauds Ordinance, and formal attestation by the notary as stated in section 31 of the Notaries Ordinance, No. 1 of 1907, as amended.
6. In the execution of deeds, the requirements under section 2 of the Prevention of Frauds Ordinance are mandatory, and noncompliance renders a deed invalid. Conversely, non-compliance with the Rules made for notaries set out in section 31 of the Notaries Ordinance does not invalidate a deed as expressly provided for in section 33 of the Notaries Ordinance.
7. What constitutes the attestation and the form of attestation are set out in sections 31(20) and 31(21) of the Notaries Ordinance; this is the formal attestation appended by the notary at the end of the deed. This is different from attesting a deed by the notary and witnesses as contemplated in section 2 of the Prevention of Frauds Ordinance. If the formal attestation of a deed is defective, the notary can be prosecuted under the Notaries Ordinance, but the deed's validity is unaffected.
8. What is compulsory is compliance with the provisions of section 2 of the Prevention of Frauds Ordinance; non-compliance with the other provisions of the Prevention of Frauds Ordinance or the Notaries Ordinance does not *ipso facto* make the deed invalid.
9. Following the ordinary dictionary meaning of "attest" which is "to bear witness to", a person who sees the document signed by the



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executant is a witness to it; if he subscribes as a witness, he becomes an attesting witness.

10. Although section 2 of the Prevention of Frauds Ordinance does not require the witnesses and the notary to attest the deed before the executant, this section requires the execution of the deed to be "duly attested" by the notary and the two witnesses.
11. An instrument which is required by section 2 of the Prevention of Frauds Ordinance to be notarially attested must be signed by the notary and the witnesses at the same time as the maker and in his presence. This conclusion was reached giving due regard to the expression "duly attested" found in section 2 of the Prevention of Frauds Ordinance.
12. Even if the notary did not know the executant personally, he can still be an attesting witness but proof of execution of the deed is incomplete on his evidence alone. If the notary does not know the executant, he must know the witnesses and the witnesses must know the executant. In that eventuality, at least one of the two attesting witnesses needs to be called to prove due execution.
13. The notary is a competent witness to prove attestation, and if he knows the executant, he is a competent witness to prove attestation and execution, both of which are the *sine qua non* of proving due execution.

The Judgment of the Civil Appeal High Court was set aside. The judgment of the District Court was restored.

JSALR 2022 /II//II

Visenthi Baduge Piyasiri Vs. Dissanayaka Mudiyansele Gunarathna Banda

S.C. Appeal No. 42/2010

Before : L.T. B. Dehideniya, J.
Murdu N.B. Fernando, PC, J.
A.A.U. Wengappuli, J.

Section 66 of the Primary Courts Procedure Act, Right to revocation of a deed of gift.

Decided on : 17.06.2022

L.T. B. Dehideniya, J.

The Learned District Judge entered the judgment in favour of the Appellant holding that an irrevocable deed of gift cannot be revoked by a deed of revocation and the deed of gift executed by the Appellant (marked as P-3) is a valid gift and thereafter the Appellant got title from deeds P-4 to P-7.

The Appellant's case is based upon the ground that the Judges of the Civil Appellate High Court have come to the erroneous conclusion that deed No.970 (marked as P-3) and all the subsequent deeds after the deed of revocation No. 710 (marked as P-2) do not have any legal validity and therefore no title has been transferred to the Appellant.

When considering the legal context of the issue before this court and the evidence tendered by both parties, it appears that by the deed of revocation No. 710 dated 18.09.1976 attested by Charles Wirittamulla Notary Public, the donor (Vineetha Jayasuriya and Baby Champa Matilda) has revoked the deed of gift No. 645 and the Appellant has consented to the same.

Held:

1. In the eyes of the law it is competent for the donor to reserve to himself the right to revocation of a deed of gift.
2. Under the law, a deed of gift is irrevocable unless donor reserves the right to revoke the gift. This legal concept gives a right to the donee that he can retain the title without any disturbance from the donor.
3. If the donee, the person who receives the gift, is willing to return the gift to the donor, the person who gave the gift, donor, need not to reserve the right to revoke. The donee can give consent to revoke the gift.
4. It is a well-established legal principle under the Roman Dutch common law "*exceptio rei venditae et traditae*" provides that where a vendor/transferor sells without title but subsequently acquires one, this title adds



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to the benefit of the purchaser and those claiming through him.

5. A matter under section 66 of the Primary Court Procedure Act is not a civil action and the object is to prevent a breach of peace, not to decide any question of title or right to possession of the parties to the land. Accordingly, based on the Order made by the Magistrate's Court under the section 66 application, it cannot be justified one's possession or title rights to a land.

The appeal was dismissed.

JSALR 2022 /II//III

H.M. Chandrakanthi Vs. K.M. Gamini Kumara

SC Appeal No. 127/2019

Before : P. Padman Surasena, J.

A.H.M.D. Nawaz, J.

Mahinda Samayawardhena, J.

Decided on : 20.05.2022

Section 2(I) of the Maintenance Act, No. 37 of 1999, Proof of adultery at the maintenance inquiry.

Mahinda Samayawardhena, J.

After the inquiry into the Applicant's maintenance application, the learned Magistrate held that the allegation of adultery had not been proved to a high degree of proof. Hence, the Respondent was ordered to pay maintenance to the Applicant at a rate of Rs. 7,000/- per month.

On appeal, the High Court set aside the order of the Magistrate's Court on the basis that the Applicant was living in adultery at the time of filing the maintenance application and was therefore disentitled to maintenance in terms of the proviso to section 2(I) of the Maintenance Act.

Held:

- I. In order to prove "living in adultery", the Respondent spouse need not prove that the Applicant was living in adultery on the date of filing the application.

2. The words "living in adultery" means the Applicant shall be living in adultery at or about the time of filing the application.
3. No rule of thumb can be laid down in deciding what constitutes "at or about the time". It shall be decided on the unique facts and circumstances of each individual case.
4. The Court shall be able to depart from the plain meaning of statutory text when its literal application would lead to absurdity.
5. If "living in adultery" is strictly interpreted to mean that the Applicant shall be living in adultery on the date of or at the time of filing the application, an astute Applicant living in adultery can temporarily cease such adulterous cohabitation in order to bring his or her application within the ambit of section 2 of the Maintenance Act. This could never have been the intention of the legislature.
6. Proximity in time between living in adultery and filing a maintenance application is a question of fact. Each case shall be treated independently.

The judgment of the High Court was affirmed and the appeal was dismissed.

JSALR 2022 /II//IV

D.S.B.S. Chandrawathi Vs. Subadhra Irene Mangalika Wijewickrama

SC Appeal No. 177/2016

Before : E.A.G.R. Amarasekara, J.

Janak De Silva, J.

Arjuna Obeyesekere, J.

Decided on : 28.07.2022

Section 703, 218 (g), 218 (h) of the Civil Procedure Code, Article 23(I), 23 of the Constitution.

Janak De Silva, J.

The Learned Additional District Judge by order dated 20.II.2013 allowed the application of the Appellant and her pension was declared free from seizure. In doing so the learned Judge held that the term 'stipend'



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in section 218(g) of the Civil Procedure Code means and refers to the entire pension and hence the entire pension of the Appellant is exempt from seizure.

The High Court of Civil Appeal by order dated 27.01.2016 allowed the appeal and declared that the Respondent is entitled to seize the pension of the Appellant including her commuted gratuity. It was held that the pension of the Appellant is not exempt from seizure under section 218(g) as "the term used in section 218(g) is 'stipend' and not 'pension' and therefore it should mean something additional and distinct from the pension."

Held:

1. When the meaning of words or phrases used in a statute are unclear and has not been judicially interpreted, according to well established legal principles and principles of common sense, reference can be made to the historical evolution of the statute to understand its meaning.
2. Moreover, when interpreting legislation, it is a necessary requirement to always give effect to the intention of the legislature. Where there is ambiguity with regard to a meaning of a word or where a word is capable of having two meanings, reference can be made to the history of the statute to determine the intention of the legislature.
3. One of the basic rules in interpretation of statutes is to assume that words and phrases of legislature are used in their ordinary meaning.
4. When any word is statutorily defined or judicially interpreted, there is no scope for looking at the dictionary meaning; however, in the absence of such definition or interpretation, the court may seek aid of dictionaries to ascertain the meaning of a word in common parlance.
5. 'The' is the word used before nouns, with a specifying or particularizing effect as opposed to the indefinite or generalizing force of 'a' or 'an'. It determines what a particular thing

is meant, that is, what particular thing we are to assume to be meant. 'The' is always mentioned to denote a particular thing or a person.

6. The amendment of the word 'stipends' as 'The stipend' and the inclusion of the words 'the cost-of-living allowance' and 'the special allowances' reveals the intention of the legislature to distinctly identify the pension, 'the cost-of-living allowance' and 'the special allowances' from other allowances that are paid to government pensioners and clearly exempt the pension, 'the cost-of-living allowance' and 'the special allowances' from seizure.
7. This becomes clearer when one considers section 218(h) of the Civil Procedure Code. It originally exempted the salary of a public officer or servant from seizure. By the amendment made in 1949, even the cost-of-living allowance paid to a public officer was also excluded.
8. The object of paragraph 218(g) of the Civil Procedure Code is to protect pensions payable to Government officers.
9. The object behind the exemption of the pension from seizure is that a public servant pensioner should not be left high and dry and should have some financial means to carry on in old age when the need of the pensioners is greatest.
10. The commuted gratuity payable to the Appellant is liable for seizure towards satisfaction of the money decree the Respondent has obtained against the Appellant.
- II. In any event, where the legislature has specified that certain amounts are exempt from seizure, the question of unjust enrichment does not arise.

The Order of the High Court of Civil Appeal was set aside. The Order of the Additional District Judge was affirmed.



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JSALR 2022 /II//V

**Herathpathirannehelage Ranjan Herath Vs.
Ushettige Vinodanie Preethika Dayadarie Perera**

S.C. Appeal 80/2016

Before : Priyantha Jayawardena, PC, J.
E. A. G. R. Amerasekera, J.
Yasantha Kodagoda PC, J.

Decided on : 01.04.2022

Section 24, 73, 84, 86(2), 88(1) of the Civil Procedure Code, Section 115 of the Evidence Ordinance.

Priyantha Jayawardena PC, J.

During the inquiry held into the said application for purged default, whilst giving evidence, the appellant had produced a letter dated the 20th of February 2006, marked as "VI", whereby the respondent had allegedly instructed her registered attorney to withdraw the action under reference instituted against the appellant.

The appellant in his evidence had further stated that the said letter was given to him by the respondent and that the appellant did not file his answer on the 17th of May, 2006 because he believed that the said action would be withdrawn by the respondent's instructing attorney as per the instructions given to him in the said letter marked as "VI".

Therefore, the appellant stated that he had reasonable grounds for his default in filing the answer and that the ex parte judgment entered against him should be set aside in terms of section 86(2) of the said Code.

Held:

- I. Section 84 of the said Code requires a defendant to file his answer on the day fixed by the court for filing the same or the subsequent date fixed for filing the answer. Moreover, the said section confers power on the court to fix the case for ex parte trial if the defendant fails to file his answer on the date fixed or the subsequent date fixed for answer, if the court is satisfied that the defendant has been duly served with summons, or has received due notice of the day fixed for the subsequent filing of the answer.

2. If a client fails to give instructions to proceed with a case, a registered attorney is entitled to inform court that he does not appear for the defendant on that occasion, even though he has filed the proxy for the party. Otherwise, his appearance in court will *ipso facto* be an appearance for his client. When such a matter is brought to the notice of court, it should be recorded forthwith as a journal entry in the case record by the learned District Judge and the case should be fixed for ex parte trial unless the defendant is present in court and moves for a date to defend the action.

3. Jurisdiction of the court in respect of a section 86(2) inquiry is subject to two conditions being satisfied. Firstly, the application should be made by the defendant within fourteen days of the service of the decree on the defendant. Secondly, the defendant must satisfy the court that he had reasonable grounds for the said default. Accordingly, the learned judge must reach a finding on whether the defendant had reasonable grounds for his default based on the evidence led at the inquiry held under section 86(2) of the said Code. Once the said conditions are satisfied, it is imperative that the court vacate the ex parte judgment.

4. The wording of section 73 and section 84 when read together contemplate that a court can grant more than one extension of time. Accordingly, if further time is granted to file the answer, the defendant shall file the answer on the subsequent day fixed for filing of the answer. Granting of an extension of time is within the discretion of the court and such discretion shall be exercised judicially.

5. The mandatory requirement imposed by section 73 of the said Code on the appellant to file his answer on the date fixed by the court could not have been circumvented by an agreement of the parties, as fixing a date for an answer is a judicial act.



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6. Even in an arrangement to settle a case in court, the court has a duty and a right to consider whether such an arrangement is according to law and is in the interests of all the parties concerned, as entering into such settlement in court would become a judicial act.

7. Although courts should encourage settlement of disputes, common law prohibits a court from entering a consent decree under the guise of a judicial act if it violates the law or public policy. In the circumstances, the duty to file an answer subsequent to an order made by a court cannot be circumvented by consent of the parties as it amounts to a violation of the said provisions of the said Code and the judicial order granting a date to file the answer.

8. It is clear that when the legislator has specifically excluded the right to appeal against a judgment entered upon default, the question of whether the same court could review its own judgment cannot arise. In this regard, the doctrine of "*quando aliquid prohibetur ex directo*" which states that when anything is prohibited directly, it is not possible to do it indirectly, is applicable. Thus, when section 88(2) of the said Code acts as an ouster clause for appeals in respect of default judgments, it is not possible in law to use an inquiry for ex parte vacation as a means of appeal against an ex parte judgment.

9. Though it is not possible to canvass the legality of the ex parte judgment in an inquiry held under and in terms of section 86(2) of the said Code, a defendant who is served with an ex parte judgment is not without a legal remedy. He can canvass the merits and legality of such a judgment either by invoking the revisionary jurisdiction of an appropriate court or by way of an application for restitutio in integrum under Article 138 of the Constitution.

The appeal was dismissed.

COURT OF APPEAL

JSALR 2022 /II//VI

Kuttiali Mohommadu Marshooq Mohommadu Niyaz Vs. Officer-in-Charge Police Station and two others

CA /PHC / 203/2017

Before : Menaka Wijesundera, J.

Neil Iddawala, J.

Decided on : 21.06.2022

Confiscation of vehicles under Section 40 of the Forest Ordinance as amended by Act No.65 of 2009.

Neil Iddawala, J.

The Magistrate delivered his order dated 15.09.2016 and confiscated the vehicle on the basis that the appellant failed to take necessary precautions to prevent the commission of a forest offence with the use of his vehicle. Aggrieved by the said order, the appellant filed a revision application in the High Court of Kuliyaipitiya. The High Court delivered its order on 02.II.2017, dismissing the application.

Hence, the appellant has preferred the instant appeal to the Court of Appeal, seeking to set aside both the High Court order dated 15.09.2016 and Magistrate Court order dated 02.II.2017.

Held:

1. The matter of confiscation of a vehicle under the Act pivots on the issue of whether the claimant, professing to be an innocent third party, has dispensed the burden of proving on a balance of probability that he took all precautions to prevent the use of his vehicle for the commission of a forest offence under the Act.
2. It is amply clear that simply giving instructions to the driver is insufficient to discharge the burden cast on a vehicle owner. Therefore, merely giving instructions alone will not fall under the possible preventive measures ought to be taken by a vehicle owner
3. It is imperative to prove to the satisfaction of Court that the vehicle owner in question has



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not only given instructions but also has taken every possible step to implement them.

4. Courts are unlikely to be satisfied under the proviso to Section 40(I) of the Act if the claimant has conducted themselves unreasonably, both prior to the commission of the forest offence under the Act and before the Court, dispensing their legislative burden.
5. A vehicle owner employing a driver to carry out transportation of goods cannot reasonably be expected to physically visit each and every site to ensure that illegal activities are not carried out using his vehicle.
6. The role of the judge in applying the law related to the confiscation of property under the Act is to ensure that legislative intention is not undermined, which in its essence sought stringent legal measures to safeguard forests and the environment at large, whilst safeguarding individual rights.

Both Orders of the High Court and the Magistrate's Court were set aside and ordered that the vehicle be released to the appellant.

JSALR 2022 /II//VII

Nandani Sellaheewage Vs. Officer-in-Charge, Police Station, Gandara and others

CA /PHC/ APN/89/20

Before : Menaka Wijesundera, J.
Neil Iddawala, J.

Section 8I, 87 of the Criminal Procedure Code.

Decided on: 01.08.2022

Neil Iddawala, J.

On 20.12.2019, the Magistrate ordered the petitioner to enter into a bond of Rs.1 million for an indefinite period of time citing that the petitioner failed to show cause as to why such a bond should not be issued against her, thereby invoking the Magistrate's powers under Section 8I of the CPC. Aggrieved by the Magistrate's order dated 20.12.2022, the petitioner filed a revision application to the High Court on

08.06.2020. On 12.06.2020, the High Court dismissed the application of the petitioner in limine. Such dismissal was solely based on the determination that the petitioner is guilty of laches.

Held:

1. The Section provides for the taking of security from certain classes of people to keep the peace. This is a form of prevention and not punishment. Upon receiving information, if the Magistrate is satisfied that the facts stated are well founded, and that it is necessary or desirable to call upon the party complained against to keep the peace he must first call upon such party to show cause why such an order should not be made.
2. A plain reading of Section 8I of the CPC clearly establishes the legislative intention of limiting the period for which an accused is bonded over to keep the peace "A period not exceeding two years". Therefore, in framing Section 8I, the legislature requires the presiding judge to delineate a specific period when ordering the execution of a bond.
3. However, in the instant case the order made by the Magistrate under Section 8I of the CPC does not specify a time period. Thus, the Magistrate's order dated 20.12.2019 carries a fatal illegality as it is in direct contravention of Section 8I of the CPC.
4. While unexplained, inordinate delay may be significant in deciding whether the revisionary jurisdiction of the Court ought to be invoked or not, the purported delay must not be viewed in isolation. Such a construction is in line with the wide discretion vested under the revisionary jurisdiction, which allows rectification *ex mero motu*.
5. While Section 8I of the CPC does not indicate the manner of calculation, Section 87 may be of some guidance, as both Sections are under Chapter IV Prevention of Offences B - Security for keeping the peace in other cases and security for good behaviour.



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6. Section 87 provides that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive.

7. Hence it is clear that a Magistrate having been satisfied of breach of peace under Section 81 ought to set an amount which is not fanciful or arbitrary with due regard to the facts and circumstances of the case and the party concerned. The provisions of Chapter IV of the CPC should not be used with the object of imprisoning a person who has made himself obnoxious to others, he should be given a chance of obtaining his freedom by tendering security.

8. A point to be considered when setting the bond amount would be the party's status in life, and the sum demanded should never be such as to absolutely preclude him from being able to furnish the necessary security.

9. Though the Magistrate has discretion in deciding the quantum of the bond as he thinks fit, as examined above, he should act judiciously. Such quantum must be considered in light of the offence/ act committed and should not be imposed just for the sake of being imposed.

Both Orders of the High Court and the Magistrate's Court were set aside.

JSA LR 2022 /II/VIII

Kanapathipillai Arumugasamy and two others Vs. Public Health Inspector and another

C.A. /PHC 194/14

Before : Menaka Wijesundera, J.

Neil Iddawala, J.

Decided on : 02.06.2022

Section 18 (1) (a), 27 of Food Act No. 26 of 1980 as amended by Act No. 20 of 1991 and Act No. 29 of 2011, Section 60 (7), 69 (7) of the Consumer Affairs Authority Act No.09 of 2003, Section 10

(1), 51 (1) of the Exchange Control Act No. 24 of 1953.

Neil Iddawala, J.

The instant appeal seeks to set aside an order of the Magistrate dated 02.10.2012 and order of the High Court dated 17.12.2014 (which affirmed the former) whereby a preliminary objection raised by the appellants was dismissed. The said objection pertained to the maintainability of the case where it was argued that since the alleged offence was committed by a body corporate, the body corporate and its directors ought to be named as accused as per Section 27 of the Act. Thus, the instant appeal pivots on the issue of whether the appellants fall within the ambit of Section 27 of the Act.

Held:

1. The wording of the section indicates a class or a genus of people whereby the legislature has limited the liability of an offence under the Act to a director, general manager, secretary or other 'similar' officer.
2. It is the considered view of this Court that the words 'similar officer' should be read *ejusdem generis* to mean similar in nature to the class of persons who exert authority, make binding decisions and exert control over the business of the body corporate as a director, general manager or secretary.
3. The doctrine of *ejusdem generis* is applied when some specified words are followed by the general words. As such, the words 'director', 'general manager' and 'secretary' are specific words, and the words 'similar officer' is general.
4. This doctrine provides that the general words which follow the specified words will be restricted to the same class of the specified words.
5. When the legislature stipulated specific words of 'director, general manager, secretary', it is clear that their intention was to restrict the imposition of liability to those within



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the body corporate who has the authority and control to make high-level decisions regarding the business carried out and who amply represent the entire body corporate.

6. The words director and general manager signify persons who have authority and general oversight over the entire business of a company or a corporation. In a structural hierarchy of a company, these persons would constitute the topmost level of decision-makers exerting control over the entirety of the company.
7. Based on the above reasoning, this Court agrees with the contention of the appellants that the appellants do not fall within the ambit of Section 27 of the Act.

Appeal was allowed.

JSALR 2022 /II//IX

Usgoda Arachchige Rohan Janaka Sampath Alias Sagara Vs. Hon. Attorney General

CA /HCC/425/19

Before : K. Priyantha Fernando, J. (P/CA)
Wickum A. Kaluarachchi, J.

Decided on : 26.05.2022

Section 296 of the Penal Code, Section 6, 60 (ii) of the Evidence Ordinance, Turnbull Rules.

Wickum A. Kaluarachchi, J.

The accused-appellant was convicted of committing the murder of Cottaduwa Gamage Jayathissa on or about 29.05.2000 at Kinsey Road Borella, along with an unknown person, an offence punishable under Section 296 of the Penal Code.

The accused-appellant made a dock statement and no other witness was called on his behalf. The appellant's position was that he was never there in the vicinity at the time of the incident and he was arrested after 4 months when he was in a boutique near the Dematagoda Police Station.

This appeal has been preferred against the conviction and the death sentence imposed on the appellant.

The learned President's Counsel for the appellant advanced his argument on the issues of identification of the appellant and the motive of implicating the appellant. He advanced another argument regarding the item of evidence, the shouting of the crowd that the man who was running is the assailant. He contended that it is inadmissible hearsay evidence.

Held:

1. The motive that has not been suggested to PWI and that has not been stated by the appellant in his dock statement could not be believed and has to be rejected.
2. It is to be noted that the *Turnbull principle* applies to mistaken identity. According to the *Turnbull rules*, it has to be examined closely the circumstances in which the identification by each witness had been made. How long did the witness have the accused under observation? At what distance? In what light? are material factors to be considered. It is apparent that the aforesaid *Turnbull rules* do not apply to instant action because there is no question about mistaken identity.
3. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement.
4. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement but the fact that it was made. Such evidence is admissible and becomes direct evidence under Section 60 (ii) of the Evidence Ordinance as to the fact that the statement was made.
5. Since, in terms of section 6 of the Evidence Ordinance facts forming part of the same transaction are relevant, what was said by the crowd at the scene the moment after the incident is relevant and admissible evidence.

Appeal was dismissed.



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Designation	Telephone No.	Designation	Telephone No.
WESTERN PROVINCE		Mt Lavinia	
High Court Zone - Colombo		High Court Judge (1) (CAHC)	011 2722148
Colombo		High Court Judge (2) (CAHC)	011 2722198
High Court Judge (1)	011 2320129	District Judge	011 2716588
High Court Judge (2)	011 2431079	Addl. District Judge	011 2725267
High Court Judge (3)	011 2438892	Magistrate	011 2739646
High Court Judge (4)	011 2472768	Addl. Magistrate	011 2732366
High Court Judge (5)	011 2320801	Nugegoda	
High Court Judge (6)	011 2421861	District Judge	011 2809156
High Court Judge (7)	011 2336994	Magistrate	011 2823896
High Court Judge (8)	011 2328380	Addl. Magistrate	011 2822053
High Court Judge (1) (Commercial)	011 2441150	High Court Zone - Kalutara	
High Court Judge (2) (Commercial)	011 2444731	Kalutara	
High Court Judge (3) (Commercial)	011 2328418	High Court Judge	034 2222300
High Court Judge (4) (Commercial)	011 2444731	High Court Judge (1) (CAHC)	034 2222389
High Court Judge (1) (CAHC)	011 2478851	High Court Judge (2) (CAHC)	034 2222823
High Court Judge (2) (CAHC)	011 2478852	Kalutara	
Colombo		District Judge	034 2222700
District Judge (1)	011 2329246	Addl. District Judge	034 2222902
Addl. District Judge (2)	011 2320781	Magistrate	034 2229112
Addl. District Judge (3)	011 2344893	Addl. Magistrate	034 2222117
Addl. District Judge (4)	011 2329507	Mathugama	
Addl. District Judge (5)	011 2435440	District Judge	034 2247294
Addl. District Judge (6)	011 2344891	Addl. District Judge	034 2247293
Addl. District Judge (7)	011 2320732	Magistrate	034 2247291
Addl. District Judge (8)	011 2320783	Addl. Magistrate	034 2243697
Acting Addl. DJ (9)	011 2329507	High Court Zone - Panadura	
Colombo		Panadura	
Chief Magistrate (1)	011 2323266	High Court Judge	038 2232691
Addl. Magistrate (2)	011 2432856	District Judge	038 2228675
Addl. Magistrate (3)	011 2433165	Magistrate	038 2232531
Addl. Magistrate (4)	011 2390915	Addl. Magistrate	038 2245845
Addl. Magistrate (5)	011 3433557	Horana	
Addl. Magistrate (6)	011 2434345	District Judge	034 2263527
Addl. Magistrate (7)	011 2348774	Magistrate	034 2260208
Addl. Magistrate (8)	011 2543813	Kesbewa	
Addl. Magistrate (9)	011 2338128	District Judge	011 2180964
Colombo Fort		Addl. District Judge	011 2703542
Addl. Magistrate	011 2328982	Moratuwa	
Battaramulla		District Judge	011 2649170
Magistrate (Juvenile Court)	011 2888498	ADJ/Addl. Magistrate	011 2642769
Maligakanda			
Magistrate	011 2691578		
Addl. Magistrate	011 2667985		



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High Court Zone - Gampaha

Gampaha

High Court Judge (1)	033 2215977
High Court Judge (2)	033 2239430
High Court Judge (1) (CAHC)	033 2234310
High Court Judge (2) (CAHC)	033 2234481
District Judge	033 2222824
Addl. District Judge	033 2222385
Addl. District Judge	033 2223609
Magistrate	033 2222059
Addl. Magistrate	033 2222450

Attanagalla

District Judge	033 2287132
Addl. District Judge	033 2295111

Pugoda

DJ/Magistrate	011 2405030
ADJ/Addl. Magistrate	011 2405407

Mahara

District Judge	011 2926892
Magistrate	011 2926048
Addl. Magistrate	011 2926848

High Court Zone - Negambo

Negombo

High Court Judge	031 2227256
District Judge	031 2227202
Addl. District Judge	031 2227155
Magistrate	031 2227415
Addl. Magistrate	031 2227416

Minuwangoda

District Judge	011 2299048
Addl. District Judge	011 2284114

Welisara

District Judge	-
Magistrate	011 2933895

High Court Zone - Avissawella

Avissawella

High Court Judge	036 2222444
High Court Judge (CAHC)	036 2233661
High Court Judge (CAHC)	036 2233662
District Judge	036 2222247
Addl. District Judge	036 2222596
Magistrate	036 2222473

Homagama

High Court Judge	011 2098605
High Court Judge (1) (CAHC)	011 2086435
High Court Judge (2) (CAHC)	011 2086434

Designation Telephone No.

District Judge	011 2855814
Magistrate	011 2748647

Kaduvela

District Judge	011 2539406
Magistrate	011 2571062

CENTRAL PROVINCE

High Court Zone - Kandy

Kandy

High Court Judge (1) (CAHC)	081 2385368
High Court Judge (2) (CAHC)	081 2385367
High Court Judge (1)	081 2389648
High Court Judge (2)	081 2384663
District Judge (1)	081 2384677
Addl. District Judge (2)	081 2384664
Addl. District Judge (3)	081 2384679
Addl. District Judge (4)	081 2384722
Addl. District Judge (5)	081 2384677
Magistrate (1)	081 2384673
Addl. Magistrate (2)	081 2384674
Addl. Magistrate (3)	081 2384672

Gampola

DJ/Magistrate	081 2350532
ADJ/Addl. Magistrate	081 2352391

Teldeniya

DJ/Magistrate	081 2374066
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Galagedara

Magistrate	081 2061346
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Nawalapitiya

District Judge	054 2224216
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High Court Zone - Matale

Matale

High Court Judge	066 2058393
DJ/Magistrate	066 2232959
Addl. District Judge	066 2222691

Dambulla

DJ/Magistrate	066 2284827
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Naula

Magistrate	066 2246747
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High Court Zone - Nuwara Eliya

Nuwara Eliya

High Court Judge	052 2222392
District Judge	052 2222400
Magistrate	052 2222550

Walapane

District Judge	052 2279314
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Hatton

District Judge	051 2222625
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SOUTHERN PROVINCE

High Court Zone - Galle

Galle

High Court Judge	09I 2234350
High Court Judge (I) (CAHC)	09I 2234902
High Court Judge (2) (CAHC)	09I 2226702
District Judge	09I 2234760
Addl.District Judge	09I 2234450
Addl.District Judge	09I 2332856
Magistrate	09I 2234723
Addl.Magistrate	09I 2234490

Baddegama

DJ./Magistrate	09I 2292852
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Udugama

District Judge	09I 2285151
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High Court Zone - Balapitiya

Balapitiya

High Court Judge	09I 2257857
District Judge	09I 2258442
Magistrate	09I 2256600

Elpitiya

District Judge	09I 2290018
Magistrate	09I 2290352

High Court Zone - Matara

Matara

High Court Judge	04I 2222525
High Court Judge (I) (CAHC)	04I 2222344
High Court Judge (2) (CAHC)	04I 2222473
District Judge	04I 2222292
Addl.District Judge	04I 2232889
Addl.District Judge	04I 2222590
Magistrate	04I 2222470
Addl. Magistrate	04I 2221226

Morawaka

District Judge	04I 2271268
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Walasmulla

District Judge	047 2249339
Addl.District Judge	047 2245294

Deiyandara

Magistrate	04I 2268990
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High Court Zone - Hambantota

Hambantota

High Court Judge	047 2220164
District Judge	047 2220293

Tangalle

High Court Judge	047 2240120
District Judge	047 2240294
Addl.District Judge	047 2244633

Designation

Telephone No.

Thissamaharama

DJ/Magistrate	047 2237292
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Angunakolapelessa

Magistrate	047 2228292
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NORTHERN PROVINCE

High Court Zone - Jaffna

Jaffna

High Court Judge	02I 2223630
High Court Judge (I) (CAHC)	02I 2228833
High Court Judge (2) (CAHC)	02I 2228670
District Judge	02I 2224085
Magistrate	02I 2227432
Juvenile Mgt./Addl. Mag.	02I 2219576

Chavakachcheri

District Judge	02I 2270082
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Mallakam

District Judge	02I 2240942
Addl.District Judge	02I 2241123
Magistrate	-

Kytes

District Judge	02I 3215286
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Point Pedro

District Judge	02I 2260309
Magistrate	02I 2260214

High Court Zone - Vavuniya

Vavuniya

High Court Judge (I)	024 2226877
High Court Judge (2) (CAHC)	024 2226714
DJ/Magistrate	024 2223566
ADJ/Addl. Magistrate	024 2227391
ADJ/Addl. Magistrate	-

Mannar

High Court Judge	023 2251455
District Judge	023 2223311

Killinochchi

District Judge	02I 2285304
ADJ/Addl. Magistrate	02I 2282754

Mulativu

District Judge	024 2290010
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EASTERN PROVINCE

High Court Zone - Batticaloa

Batticaloa

High Court Judge	065 2224405
High Court Judge (CAHC)	065 2225474
District Judge	065 2224447
Magistrate	065 2224438



Designation	Telephone No.
<u>Valachchenai</u>	
District Judge	065 2257227
<u>Kaluwanchikudy</u>	
Magistrate	0774418228 (Registrar)

High Court Zone - Kalmunai

High Court Judge	067 2224983
High Court Judge (CAHC)	067 2224182
District Judge	067 2229059
Magistrate	067 2223728

High Court Zone - AmparaAmpara

High Court Judge	063 2223477
High Court Judge (CAHC)	063 2224208/2224182
DJ/Magistrate	063 2222414
ADJ/Addl. Magistrate	063 2222126

Akkaraipattu

District Judge	067 2279470
Magistrate	067 2278626

Sammanturai

Magistrate	067 2261426
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Potuvil

District Judge	063 2248380
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High Court Zone - TrincomaleeTrincomalee

High Court Judge	026 2221485
High Court Judge (CAHC)	026 2226013
District Judge	026 2222480
Magistrate	026 2227359
Addl. Magistrate	026 2227728

Kantale

District Judge	026 2234502
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Muttur

District Judge	026 2238591
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NORTH WESTERN PROVINCEHigh Court Zone - KurunegalaKurunegala

High Court Judge	037 2222295
High Court Judge (1) (CAHC)	037 2221643
High Court Judge (2) (CAHC)	037 2221113
District Judge	037 2222143
Adl. District Judge	037 2223769
Magistrate	037 2222143
Addl. Magistrate	037 2223769

Designation	Telephone No.
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Kuliyapitiya

High Court Judge	037 2059551
District Judge	037 2281427
Addl. District Judge	037 2283656
Magistrate	037 2281291

Maho

DJ/Magistrate	037 2275114
Addl. District Judge	037 2275293

Pilessa

Magistrate	037 2298291
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Galgamuwa

Magistrate	037 2253066
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Wariyapola

District Judge	037 2267695
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Rambadagalla

Magistrate	037 2251520
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Hettipola

Magistrate	037 2291019
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Nikaweratiya

DJ/Magistrate	037 2260306
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Polgahawela

Magistrate	037 2242644
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High Court Zone - ChilawChilaw

High Court Judge	032 2223665
DJ/Magistrate	032 2222196
ADJ/Addl. Magistrate	032 2222328

Marawila

DJ/Magistrate	032 2254598
ADJ/Addl. Magistrate	032 2254406

Anamaduwala

Magistrate	032 2226391
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High Court Zone - PuttalamPuttalam

High Court Judge	032 2265155
District Judge	032 2265584
ADJ/Addl. Magistrate	032 2267443

NORTH CENTRAL PROVINCEHigh Court Zone - AnuradhapuraAnuradhapura

High Court Judge (1)	025 2234031
High Court Judge (2)	025 2236499
High Court Judge (3)	025 2121515
High Court Judge (1) (CAHC)	025 2234968
High Court Judge (2) (CAHC)	025 2234969
District Judge	025 2234037
Magistrate	025 2234068
Addl. Magistrate	025 3898411



Designation Telephone No.

Kebithigollewa

District Judge 025 2298597

Kekirawa

District Judge 025 2264292

Kahatagasdigiliya

Magistrate 025 2247755

Nochchiyagama

Magistrate 071 0662873

Medawachchiya

Magistrate 025 2245216

Thambuttegama

Magistrate 025 2276257

High Court Zone - Polonnaruwa

Polonnaruwa

High Court Judge 027 2226526

District Judge 027 2222294

Addl. District Judge 027 2222288

Hingurakgoda

District Judge 027 2247631

Dehiattakandiya

District Judge 027 2250379

UVA PROVINCE

High Court Zone - Badulla

Badulla

High Court Judge 055 2222401

High Court Judge (I) 055 2224010

(CAHC)

High Court Judge (2) 055 2224488

(CAHC)

District Judge 055 2222059

Magistrate 055 2222049

Mahiyanganaya

District Judge 055 2258103

Bandarawela

District Judge 057 2223580

Magistrate 057 2223991

Welimada

DJ/Magistrate 057 2244340

High Court Zone-Monaragala

Monaragala

High Court Judge 0552277201

DJ/Magistrate 055 2276191

Wellawaya

DJ/Magistrate 055 2274758

Designation

Telephone No.

Siyambalanduwa

Magistrate 055 2279227

Bibile

Magistrate 055 2265053

SABARAGAMUWA PROVINCE

High Court Zone - Ratnapura

Ratnapura

High Court Judge 045 2222296

High Court Judge (I) 045 2226831

(CAHC)

High Court Judge (2) 045 2226831

(CAHC)

District Judge 045 2222218

Addl. District Judge 045 2225001

Magistrate 045 2232185

Addl. Magistrate 045 2222426

Balangoda

District Judge 045 2288255

Addl. District Judge 045 2287292

Pelmadulla

District Judge 045 2275601

High Court Zone - Embilipitiya

Embilipitiya

High Court Judge 047 2261921

District Judge 047 2230836

Magistrate 047 2230292

Addl. Magistrate 047 2261743

High Court Zone - Kegalle

Kegalle

High Court Judge 035 2223501/2232536

High Court Judge (I) 035 2222935

(CAHC)

High Court Judge (2) 035 2221235

(CAHC)

District Judge 035 2222292

Addl. District Judge 035 2222583

Addl. District Judge 035 2223995

Magistrate 035 2222049

Mawanelle

DJ/Magistrate 035 2246292

Ruwanwella

District Judge 036 2266970

Magistrate 036 2266914

Warakapola

District Judge 037 2278153

Addl. District Judge -



JUDICIAL SERVICE COMMISSION SECRETARIAT

General Nos: 2433119, 2451159 fax:2432854 e-mail:sjsc@sltnet.lk

Website: www.jsc.gov.lk

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Senior Assistant Secretary I	Mr. P.M.T.Bandara	011 2435352
Senior Assistant Secretary II	Mr. D.M.D.C.Bandara	011 2424167
Senior Assistant Secretary III	Miss. Anandi Kanagaratnam	011 2446111

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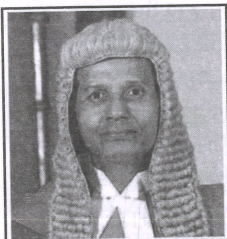
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Deputy Director	Hon. A.L.B. Wickramasooriya (Judge of the High Court)	0112333872	0718420620	-
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Academic Division	-	011 2541193	-	-

Ministry of Justice
Addl. Secretary

Name
Hon. M. K. A. Peirs
(Judge of the High Court)

Chamber
011 2086435

New Appointments and Retirements



On 16. 03. 2022 His Lordship Justice Mahinda Samayawardhena, who is serving as a Judge of Supreme Court, was appointed as the director of Sri Lanka Judges' Institute. Justice Samayawardhena is a career Judge who has served as a Magistrate, District Judge, High Court Judge and a Judge of the Court of Appeal.



Honourable Champa Janaki Rajaratne, who rendered a yeoman service for Sri Lankan judiciary as a Magistrate, a District Judge and a High Court Judge retired on August 2022. In 2011 she was the President for the Judicial Service Association and JSA takes this opportunity to wish her a happy retirement, good health and long life!

“

It is the duty of a judge to
administer the law as the
law stands, and not as some
would like it to be.

”



JSA News Letter

If undelivered, please return to:

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