

PETITION

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

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

SC (FR) Application No.

- 1. Centre for Environmental Justice (Guarantee)
Limited,**
No. 20/A, Kuruppu Road, Colombo 08.

- 2. Withanage Don Hemantha Ranjith Sisira
Kumara,**
Executive Director,
Center for Environmental Justice,
20 A, Kuruppu Road, Colombo 08.

- 3. Wijethunge Appuhamyge Herman Kumara,**
No.10, Malwatta Road, Negombo.

- 4. Aruna Roshantha Fernando,**
No. 87/D, Pitipana Veediya, Negombo

PETITIONERS

Vs.

- 1. Marine Environment Protection Authority,**
177 Nawala Road,
Colombo 05.

- 2. Sri Lanka Ports Authority,**
No 19, Chaithya Road, Colombo 01.

- 2A. General (Retd) R. M. Daya Ratnayake,**
Chairman, Sri Lanka Ports Authority,
No 19, Chaithya Road, Colombo 01.
- 3. A W Seneviratne,**
Director General, Merchant Shipping,
Merchant Shipping Secretariat,
27 Bristol St, Colombo 00100.
- 4. Central Environmental Authority,**
No.104, Denzil Kobbekaduwa Mawatha,
Battaramulla.
- 4A. Hemantha Jayasinghe,**
Director General,
Central Environmental Authority,
No.104, Denzil Kobbekaduwa Mawatha,
Battaramulla.
- 5. R.A.S Ranawake,**
Director General,
Coastal Conservation and Coastal Resource
Management Department,
4th Floor, Ministry of Fisheries Building,
New Secretariat, Maligawatta,
Maradana, Colombo 10.
- 6. Dr. Palitha Kithsiri,**
Director General,
National Aquatic Resources Research and
Development Agency,
Crow Island, Colombo 15.

- 7. S.J. Kahawatta,**
Director General,
Department of Fisheries and Aquatic Resources,
3rd Floor, New Secretariat,
Maligawatta, Colombo 10.
- 8. Rohitha Abeygunawardena,**
Minister of Ports and Shipping,
Ministry of Ports and Shipping,
No. 19, Chaithya Road,
Colombo 01.
- 9. Mahinda Amaraweera,**
Minister of Environment,
Ministry of Environment, "Sobadam Piyasa",
416/C/1, Robert Gunawardana Mawatha,
Battaramulla.
- 10. Dr. Nalaka Godahewa,**
State Minister,
Urban Development, Coast Conservation, Waste Disposal and Community Cleanliness,
Ministry of Urban Development, Coast Conservation, Waste Disposal and Community Cleanliness,
17th and 18th Floors, "SUHURUPAYA",
Subhuthipura Road, Battaramulla.
- 11. X-Press Feeders,**
Represented by its local Agent
Sea Consortium Lanka (Pvt) Ltd,
4th floor, Setmil Maritime Centre,
256, Srimath Ramanathan Mawatha,

Colombo 15.

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

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

RESPONDENTS

On this 02nd day of June 2021,

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

The PETITION of the Petitioners above named, appearing by Ms. Nimmi Sanjeevani their Registered Attorney-at-Law states as follows:

THE PETITIONERS

1. The Petitioners are citizens of the Democratic Socialist Republic of Sri Lanka.
2. The **1st Petitioner** is a body incorporated under the laws of Sri Lanka as a company limited by guarantee and may sue and be sued in such name.

True copies of the Memorandum and Articles of Association and Certificate of Incorporation of the 1st Petitioner is annexed to the Petition marked "P1(a)", "P1(b)", "P1(c)", respectively and pleaded as part and parcel hereof.

3. The 1st Petitioner is a non-profit making public organization having *inter-alia* as its

objectives the protection, preservation, conservation of nature and environment, promotion and advancement of the concepts of environmental justice and good governance in the interest of the general public, to safeguard the riches of the environment and further the interests, rights and privileges of the people by affording the paramount consideration towards the governing laws of the country.

4. The 1st Petitioner is, and continues to be, genuinely concerned with the implementation and enforcement of the laws relating to the protection of nature and environment, and in performing the fundamental duty cast on every person under **Article 28(f) of the Constitution of the Republic to protect nature and conserve its riches**. The 1st Petitioner being a social conscience legal entity had been in the forefront of the people's struggle to protect and preserve nature and the environment for the present and future generation and in its capacity has invoked the jurisdiction of Your Lordships' Court and other Courts on several matters relating to the environment and has obtained relief in pursuance of its aims.

*A brief note describing the 1st Petitioner's contribution towards the protection of the environment particularly through constitutional remedies is annexed to the Petition marked as **"P2"** and pleaded part and parcel hereof.*

5. The 2nd **Petitioner** above-named is a Biological Science Graduate from the University of Kelaniya in 1985. He held positions as the Environmental Officer, Senior Environmental Scientist and the Executive Director at the Environmental Foundation Ltd from 1990 to 2003 and co-founded the Centre for Environmental Justice in 2004. He was an Executive Committee member of the Friends of the Earth International (2010-2018) and the incumbent International Convener of the NGO Forum on Asian Development Bank. He had instituted a number of cases over the years aimed at protecting the environment of the island.

*A list of cases instituted by the 2nd Petitioner for the protection of the environment is annexed hereto marked **"P3"** and pleaded as part and parcel of this Petition.*

6. The 3rd **Petitioner** above-named is a Biological Science Graduate from the University of Peradeniya and he had been engaged in the fisheries sector since 1992. He served as the General Secretary of World Forum of Fisher Peoples (WFFP) from 2004 to 2011. He currently serves as the Chairperson of the Praja Abilasha Land Rights Network, board

members of Right to Life HR Organization and Savistri Women Organization and a Special Invitee of World Forum of Fisher Peoples (WFFP).

7. He is the incumbent National Convener of National Fisheries Solidarity (NAFSO) in Sri Lanka, which is working with fisheries communities in 12 coastal districts and 3 inland fisheries areas and constitutes a membership of over 12,000. NAFSO strives to ensure the protection of natural resources and human rights, food sovereignty, gender justice, environmental justice, peace and ethnic harmony among the communities in Sri Lanka. Furthermore, NAFSO had received many awards such as Margarita Liarraga Award of FAO due to NAFSO's engagement to popularize the Code of Conduct for Responsible Fisheries (CCRF) in 1995, the Food Sovereignty Award of US Food Sovereignty Alliance in 2002 and TODO human rights award of European Tourism Agencies in 2018.
8. The 4th **Petitioner** above name is a traditional fisherman who has been residing in the said area for over several decades. He serves as the President of the All Island Fishermen's Trade Union since 2004 and the President of the Pitipana Meesam United Fishermen's Association from 1999 to date. He also served as the Vice President of the Trade Union Alliance.
9. The Petitioners being citizens of the country and stakeholders of the welfare of the country in view of their citizenry, are filing this application both on their own account and also beg the leave of Your Lordships' Court to plead this application "in the public interest" on behalf of the general public, like-minded citizenry and the future generations under Article 126 of the Constitution, particularly, *inter alia*, to ensure due compliance with environmental protection laws, regulations and procedures, and to ensure performance of the Respondents' entrusted duties and obligations thereto, as contemplated in Articles 27(14), 28(d) and 28(f) of the Constitution of this Republic, for and on behalf of the citizenry of this Republic upon whom all such powers of government are absolutely and inalienably vested by virtue of their sovereign entitlement.

RESPONDENTS

10. The Petitioners state that-
 - a) the 1st **Respondent** is the Marine Environment Protection Authority, the apex body statutorily constituted under the Marine Pollution Prevention Act No. 35 of 2008, with

the sole responsibility to prevent, control, and manage the pollution of Sri Lanka's Marine Environment and is liable for the fundamental rights violations hereinafter more fully described;

- b) the **2nd Respondent** is the Sri Lanka Ports Authority a body corporate statutorily constituted under the provisions of the Sri Lanka Ports Authority Act, No. 51 of 1979 as amended by Act No. 7 of 1984 and Act No. 35 of 1984 and the 2A Respondent is the public officer holding the statutory post of Chairman of the said Authority. The 2nd and 2A Respondents are responsible for the acts and/or omissions of the Harbour Master and other main Port Administrative Officers and thus liable for the fundamental rights violations hereinafter more fully described;
- c) the **3rd Respondent** is the Director General of Merchant Shipping Secretariat which is the shipping administration arm of Sri Lanka has the overall responsibility for overseeing maritime concerns and is governed by the Merchant Shipping Act No.52 of 1971 as amended and mandated and duty bound to give effect to the provisions of the Merchant Shipping Act especially of the provisions of Sections 15, 239, 240, 242, 244, 247, 249, 252, 250 & 293 of the same and is liable for the fundamental rights violations hereinafter morefully described;
- d) the **4th Respondent** is the Central Environmental Authority (hereinafter referred to as the “CEA”) statutorily established under the National Environmental Act No. 47 of 1980 as amended (hereinafter referred to as the “NEA”). CEA is responsible for the implementation and administration of the NEA and Regulations made thereunder. It is mandated to give effect to the provisions of the NEA, especially with regard to the provisions of Sections 10, 17, 18, 23(H)(2)(d), 23(J), 23(k), 23(S), 23(T), 24(A), 25 and is generally responsible for the prevention of pollution and the improvement of the environmental quality. The 4A Respondent is the public officer holding the statutory post of Director General of the said Authority and are liable for the fundamental rights violations hereinafter morefully described;
- e) the **5th Respondent** is the Director General of the Coastal Conservation and Coastal Resource Management Department (hereinafter sometimes referred to as “CCD”) and is mandated to give effect to the provisions of the Coast Conservation and Coastal

Resource Management Act, No. 57 of 1981 as amended, specially the provisions of Sections 4(c) & 25 of the same and is liable for the fundamental rights violations more fully described hereof;

- f) the **6th Respondent** is the Director General of the National Aquatic Resources Research and Development Agency (NARA) is the apex national institute vested with the responsibility of carrying out and coordinating research, development and management activities on the subject of aquatic resources in Sri Lanka. The NARA is a statutory body duly established by NARA Act of No. 54 of 1981;
- g) The **7th Respondent** is the Director General of the Department of Fisheries and Aquatic Resources, is responsible for development and management of the fisheries industry which is a key sector in Sri Lanka which is capable of making a greater contribution towards the GDP of the country. The 7th Respondent is duty bound to give effect to the provisions of Sections 27(3), 37(b), 46(4)(d), 46(4)(e), 46(4)(g), 49 and 50 of Fisheries and Aquatic Resources Act No. 02 of 1996 as amended and is liable for the fundamental right violations hereinafter more fully described;
- h) The **8th Respondent** is the Minister of Ports and Shipping. The vision of the said Ministry is the provision of high quality and user-friendly Marine services by developing Sri Lanka as the most competitive hub of maritime activities in the South Asian Region and exercising ministerial purview over the Merchant Shipping Secretariat and Sri Lanka Ports Authority and had failed to perform his duties and thus is liable for the fundamental rights violations hereinafter morefully described;
- i) the **9th Respondent** is the Minister of Environment who is duty bound to preserve and protect the environment of the country and to make regulations to give effect to the provisions of the National Environmental Act. Furthermore, the said Respondent is entrusted with the task of protecting the environment and adhering to the obligations stipulated in Article 27 of the Constitution of the Republic. He has failed to formulate relevant laws and regulations and is liable for the fundamental right violations hereinafter morefully described;
- j) the **10th Respondent** is the State Minister of Urban Development, Coast Conservation,

Waste Disposal and Community Cleanliness and holds the ministerial purview over the Marine Environment Protection Authority and Coast Conservation and Coastal Resource Management Act. He had failed to perform his duties under the provisions of the Marine Environment Protection Authority Act and to formulate relevant laws, make timely amendments and regulations and to ratify the relevant international conventions and is liable for the fundamental rights violation hereinafter morefully described;

- k) the **11th Respondent** is the owner and operator of “**X-Press Pearl**” which forms the subject matter of this application and is made a party to this application as it is primarily responsible for the damages caused to the environment, economy in general including the fishing industry and health hazards imminent on coastal communities as well as to the general public of Sri Lanka as hereinafter morefully described. Accordingly, the 11th Respondent is strictly liable for the multiple damages caused to the country due to the negligent and willful acts of its agents, servants, assignees and authorized persons.
- l) the **12th Respondent** was incorporated in 1994 and is a group company of Setmil Group of Companies. It is BOI approved joint venture and the Sri Lankan extension of X-Press Feeders and is made a party to this application as it is the local agent of the MV X-Press Pearl and is primarily responsible for the damages caused to the environment, the economy in general including the fishing industry and health hazards imminent on the coastal communities as well as to the general public of Sri Lanka as hereinafter morefully described. Accordingly, the 11th Respondent is liable for the multiple damages caused to the country due to the negligent and willful acts of its agents, servants, assignees and authorized persons;
- m) the **13th Respondent** is the Hon. Attorney General and has been made a party to this application in terms of Article 134(1) of the Constitution and in terms of the Rules of Your Lordships’ Court.

11. The Petitioners further state that the impugned actions and omissions and intended activities complained of, on the part of one or more of the Respondents named above in the instant application, constitute “**administrative and executive action**” within the meaning of Article 17 and Article 126 of the Constitution of the said Republic.

INTRODUCTION

12. Petitioners state that Sri Lanka is in an enviable location in the Indian Ocean. The busy East-West shipping route passes just six to ten nautical miles south of the island. More than 60,000 ships ply this route annually, carrying two-thirds of the world's oil and half of all container shipments. Sri Lanka is also at the doorstep of a dynamic market – India.

13. Petitioners state that the port of Colombo has always played a significant role in Sri Lanka's growth trajectory. The strategic location of Sri Lanka in the Indian Ocean enables this growth and provides the country with the unique opportunity to emerge as a maritime and logistics hub in Asia. A massive amount of maritime cargo, nearly 45% from the Indian Sub-Continent transfers through the Port of Colombo and enables the country to provide global and regional connectivity to transport freight to and from Asia to the rest of the world. In 2018, the Port of Colombo was ranked as the World's number one container growth port among the top 30 container ports and reached the 22nd position amongst global container ports.

14. Petitioners state that Sri Lanka also has some of the most pristine coastline in Asia, with many unspoiled sandy beaches with palm trees and turquoise waters. With nearly 1600 km of palm fringed Coastline baked to perfection surrounding the country Sri Lanka is the ideal destination for beach lovers worldwide.

15. Petitioners also state that as an island with a territorial sea of 21,500 km² and a coastline of nearly 1600 km, Sri Lanka has a rich supply of fish and seafood. The fishing industry plays an important role in Sri Lanka's Social and Economic sectors and the country is home to a large fisheries community, who reside along the coastline. Today, Sri Lanka has emerged as a quality fish and seafood exporter, supplying fish, crabs, prawns, and molluscs species to international markets.

MV X-PRESS PEARL FIRE: "WORST MARINE ECOLOGICAL DISASTER"

16. Petitioners state that MV X-Press Pearl is a Singaporean container ship which was built in 2021 and it is around 186 meters (610ft 3 in) long. It is owned and operated by X-Press Feeders which is regarded as the largest feeder operator in the world.

17. Petitioners state that on May 20, 2021, the, 'MV X-Press Pearl' which was en route from the Indian port of Hazira to Singapore, with 1,486 containers caught fire as it waited to enter Colombo harbor and remained anchored some 9.5 nautical miles North West of the Colombo and waiting to enter the port.

18. Petitioners state that apart from the 325 metric tonnes of bunker oil, the vessel was loaded with 1,486 containers carrying 25 tonnes of hazardous Nitric Acid, caustic soda, Sodium Methylate, plastic, lead ingots, lubricant oil, quick lime and highly reactive and inflammable chemicals such as Sodium Methoxide, High Density Polyethylene (HDPE), Low Density Polyethylene (LDPE) "Lotrene", Vinyl Acetate, Methanol, bright yellow sulphur, urea, cosmetics etc.

A copy of the list of contents in the containers which were on board the ship, obtained by the Petitioners under the Right to Information Act No. 12 of 2016 is annexed to the Petition, marked as "P4" and pleaded as part and parcel hereof.

19. Petitioners state that on 20th May 2021, the containership reported smoke from cargo hold while at Colombo anchorage and hours later, the vessel reported fire on deck. Firefighters were deployed by the Sri Lankan Ports Authority and a Sri Lankan Air Force helicopter provided support to help fight the fire.

20. Petitioners state that although the fires were initially doused it reignited on 24th May and spread fanned by strong winds. The condition worsened on 25th May 2021 due to an explosion in the vessel. All the 25 crew members and the salvage team were evacuated from the ship. The explosion had caused multiple containers to go overboard, in turn causing a massive amount of debris to wash up on the shorelines of Sri Lanka.

21. Petitioners state that on 26th May, the vessel was seen almost entirely engulfed in flames and thick black smoke.

22. Petitioners state that India has dispatched a fleet of coast guard vessels and a maritime reconnaissance aircraft to help fight the fire and contain an oil spill, on an emergency request made by the Sri Lankan Navy and deployed multiple assets to douse the fire.

23. Petitioners state that X-press Pearl burnt for over 10 days just outside the Colombo Harbour which caused Sri Lanka's worst maritime environmental disaster. On 2nd June 2021 water submerged the MV X-Press Pearl's quarterdeck, a day after national and international firefighters extinguished the blaze burning for 12 days and had started to sink fast with nearly 300 tonnes of oil still in its fuel tanks and the Petitioners fear an even greater disaster should the 278 tonnes of bunker oil and 50 tonnes of gas in the ship's fuel tanks leak into the Indian Ocean.

X-PRESS PEARL WAS NOT ALLOWED TO OFFLOAD THE LEAKING BOX IN INDIA AND QATAR PRIOR TO SRI LANKA CALL

24. Petitioners state that it has been reported in Splash 247.com website on 30th May 2021, that speaking to Splash Tim Hartnoll, the executive chairman of X-Press Feeders had stated that that poor packaging was responsible for the acid leak, which the crew had detected while in the Arabian Sea thousands of kilometers away from Sri Lanka. On detecting the leak, the ship's captain then contacted two ports – Hazira on the west coast of India and Hamad in Qatar – requesting to offload the containers in question. The requests were denied and the ship made its way to Sri Lanka.

A copy of the article published on 30.05.2021 in Splash 247.com website is annexed to the Petition marked as "P5" and pleaded as part and parcel of this Petition.

25. Petitioners state that it is reported that applications made to Hazira and Hamad ports to offload a container that was leaking nitric acid was declined as there were no specialist facilities or expertise immediately available to deal with the leaking acid.

26. Petitioners further state that Petitioners as well as Environmentalist and like-minded citizenry fear that this vessel was carrying dangerous mercury, arsenic and lead which are much more harmful than nitric acid which the authorities claim was carried by the said vessel.

27. Petitioners state that in a shocking revelation, Professor Chamdima Wijegunawardena, a lecturer attached to the Princess Nourah Bint Abdul Rahman University in Riyadh states that the International Police (INTERPOL) had informed South Asian countries including

India, Pakistan and Bangladesh of two ships carrying poisonous oil and other dangerous chemicals roaming around the Indian Ocean and she is of the view that X-Press Pearl could be one of the said ships.

28. In the aforesaid circumstances Petitioners state that despite the higher probability of a disaster the Sri Lankan Port authorities including the Director General of Merchant Shipping had acted thoughtlessly in allowing the MV X-Press Pearl to enter into the Sri Lankan waters without assessing the nature and status of the cargo and had particularly failed to consult and obtain proper information from the relevant Ports in the region and had disregarded the risk to the national security, smooth operations of the Port, economy in general and the impact on marine and coastal ecology, which constitutes a violation of the fundamental rights of the Petitioners as well as the general public and the citizenry.
29. The Petitioners state that the authorities had acted with ulterior motives in accepting the entry of the said ship without evaluating the capacity, capability and expertise of the Ports Authority to handle an exigency. The relevant authorities had failed to act promptly when the leakage of the container and fire on board had been informed to the Ports Authority. Furthermore, the failure of the relevant authorities to implement an efficient system of managing maritime issues of this nature constitutes a violation of the fundamental rights as hereinafter more fully described.
30. Petitioners state that the Captain and the crew members of the MV X-Press Pearl who apparently knew about the nitric acid leak from about 11th May 2021, nine days before the blaze started has willfully failed to inform the Sri Lankan authorities of such risk. Furthermore, they have committed the offences under Sections 261, 277, 278 and 279 of the Penal Code and are liable to pay compensation as pleaded in the prayer to this application.
31. Petitioners state that in the said circumstances it is vital to conduct an independent investigation to determine as to who had given permission for the ship to enter Sri Lankan waters and into the vicinity of Colombo Port and whether the ship was allowed into Sri Lankan waters despite knowing the gravity of the risk and whether the crew members had provided vital information to the Sri Lankan authorities when it was approaching the Sri Lankan waters.

32. The Petitioners annexes hereto photographs depicting the blazing of the ship and the unprecedented damage caused to the coasts of the island collectively marked as **“P6”** and pleaded as part and parcel hereof.

33. Moreover, the Petitioner annexes hereto news articles published by national and international media with regard to the blaze in MV X-Press Pearl and the irreversible damaged caused, collectively marked **“P7”** and pleaded as part and parcel hereof.

INADEQUACY OF PREPAREDNESS AND RESPONSE MECHANISMS

34. Petitioners state that Sri Lanka has now experienced two major maritime incidents in the span of nine months (MT New Diamond), both of which have highlighted the inadequacy of preparedness and response mechanisms locally to deal with such fires. Positioned as we are among the world’s top cargo ports on one of the world’s busiest sea routes, Sri Lanka needs to take stock of its readiness to ensure its maritime resources are safeguarded from the potential fallout of incidents such as the fire engulfing the MV X-press Pearl, and oil spills in particular. Thus, the failure of the Respondents to have a proper system in place to handle such situations in spite of the recent experience with MT New Diamond constitutes a continuous violation of the fundamental rights.

35. Petitioners state that firefighting efforts in Sri Lanka’s territorial waters are usually led by the Sri Lanka Navy, which often calls upon neighboring India to bolster its capabilities. Petitioners further state that the failure of the Sri Lankan authorities to augment its maritime safety by setting up a dedicated and expertise unit to respond to similar emergencies constitutes a continuous violation of the fundamental rights.

36. Petitioners state that the massive and irremediable devastation caused to the coastline around the Western and the Southern Provinces from one ship – the X-Press Pearl – underlines the dire need for our country which claims to be a global maritime hub to learn change management. Petitioners state that for several days, the Sri Lankan maritime authorities were unable to douse the fire for want of required equipment such as water pumps, fireboats and boomers.

UNPRECEDENTED DAMAGE CAUSED TO THE ENVIRONMENT

37. Petitioners state that what were once serene sandy beaches in Sri Lanka is now covered in debris which has washed ashore from the blazing MV X-Press Pearl. A blanket of charred plastics covers the shores near Colombo and navy personnel clad in hazmat suits are employed to scoop up the mass waste with shovels and bulldozers. Thus, public money utilized for the purpose of cleaning and restoration of the environment should be recovered from the 11th and 12th Respondents.
38. Petitioners further state that the Negombo beach, a popular tourist destination, is a similar bleak sight of ashy shores and murky waters.
39. Petitioners state that the inevitable contamination of the coastal areas between Negombo and Panadura had already taken place and the environmental pollution which was initially limited to Negombo and the vicinity is now spreading further over to the Southern Coast of the country. By 30th of May the debris and plastic pellets had washed ashore and polluted a long stretch from Kalpitiya to Galle.
40. Petitioners state that thick plumes of black smoke can be seen in the horizon from the ship. And the authorities warned that the charred debris and the burnt chemicals flowing in with sea water as well as the air could be toxic. According to experts, there is a possibility of toxic precipitation that could in turn result in acid rains.
41. Petitioners state that the coastlines are swamped with plastic pellets and debris of the blazing ship and the plastic pellets floating in the waters of the coastal area are badly affecting the marine and the coastal ecology in the respective areas thereby posing a significant threat to the environment as they do not disintegrate or decay for a significant period.
42. Petitioners state that these plastic pellets are a type of primary micro plastics and these are the building blocks of any plastic item. When they get released into the marine environment, sea birds, turtles and fish eat it. As they feel unnaturally full after ingesting pellets, they do not eat real food and hence starve to death. Furthermore, once these plastic pellets are in waterways, they absorb any harmful chemicals like sponges and thus become more toxic.

When these chemicals enter the bodies of fish, they leech into them and bio accumulates and biomagnifies through the food chain. Furthermore, it was observed that the dead fish washed ashore had plastic pellets trapped in their gills.

43. Petitioners state that the blazing ship and the chemical spill and plastic pellets have already caused untold, irreversible and irremediable damage to Sri Lanka's marine ecosystem and pristine beaches, including popular tourist destinations, which beaches are thickly coated in plastic pellets. These plastic pellets used to make plastic bags are fatal to marine life and dead sea turtles and fish have already begun washing up to beaches and fears are arising of an unprecedented catastrophe.
44. Furthermore, the Petitioners state that even though these pellets washed over to the beach are being collected by the authorities a considerable part will be left behind in the coastal lines and in sea beds.
45. Petitioners state that Sri Lanka's coastal belt consists of several important and sensitive ecosystems such as coral reefs, seagrass beds, estuaries, lagoons and beaches where turtles frequently nest. The ocean around Sri Lanka is also a rich habitat for marine mammals such as whales and dolphins. Thus, the Petitioners fear that the highly corrosive nitric acid and other chemicals spilled over to the sea would make the marine fauna and flora to perish soon. The damage caused to the marine and coastal ecosystem could take decades to repair.
46. Thus, the Petitioners state that the X-Press Pearl debacle will cause permanent and irremediable damage to the marine and coastal ecosystems. The much dreaded and destructive coastal and marine pollution is already on us in full measure. Moreover, this could be the worst hazardous chemical on slaughter unleashed on our environment.
47. Petitioners further state that environmentalists including the Petitioners fear that as the ship is already sinking, hundreds of tonnes of bunker oil could leak into the sea causing an even greater disaster and irreversible consequences for marine ecosystems. Thus, the Petitioners state that the Respondents who are responsible to take proactive measures to prevent and/or mitigate such danger have so far failed to implement a proper mechanism to avert such disaster and the failure to do so on the part of the Respondents constitutes a violation of the fundamental rights of the Petitioners, citizenry and future generations.

THREAT TO THE PUBLIC HEALTH

48. Petitioners state that the fish and other sea creatures in the polluted areas are most likely to have consumed toxic debris and plastic pellets and eventually when people consume the same fish and other sea creatures; it would pose a threat to the health of the human beings.
49. Petitioners further state that the chemicals mixed with the plastic and other debris could also have a long term impact on the health of people in the area who come in contact with the said material, as a result of the acts /failures of some of the Respondents thus, causing a violation and/or an imminent violation of the fundamental rights of the Petitioners, citizenry of Sri Lanka and future generations.
50. Furthermore, the Petitioners state that the chemicals released to the atmosphere could change the composition of the air, posing a health concern, thus, causing an imminent threat of violation of the fundamental rights of the public including the Petitioners. Furthermore, the Petitioners state that there is a duty cast on the Central Environmental Authority to monitor the air quality in the affected areas and to examine the extent of the pollution /damages caused.

LOSS OF LIVELIHOOD

51. Petitioners state that the fishermen living in the coast from Kalpitiya to Hikkaduwa are predominantly engaged in fisheries related occupations and the livelihood of these fishermen have been severely affected due to acts / failures of some of the respondents and coastal fisheries have been halted in the Western coast thereby amounting to a violation of the fundamental rights of fishing community in the affected areas including the 3rd Petitioner.
52. Petitioners state that area under direct impact of the event, the western coast harbours large fish harvest including offshore fishing, near shore fishing and lagoon fishing. Dikowita Fishing Harbour is the main fisheries harbour in the Wattala Divisional Secretariat located only less than 10 km from Colombo. About 349 boats, 272 rafters and 33 multi day boats ply out of this harbor. Over 6000 fishermen live along Uswetakeiyava to Negombo coastal stretch. Approximately 2000 boats go for fishing in the ocean. Negombo lagoon has 3000 fishermen and 1300 boats and fishing crafts.

53. Petitioners state that the impact on the livelihood caused by the incident would be immense in the long run due to the rapid depletion of the stocks of fish and other sea creatures due to the catastrophe and specially owing to the fact that the area from Uswetakeiyawa to Negombo being a high fish breeding area, thus, affecting the future harvest. Petitioners state that this situation is caused as a result of the acts/ failures on the part of some of the respondents and this amounts to a violation of the fundamental rights of the fishing community including the 3rd and 4th Petitioners guaranteed under article 12(1) and 14(1)(g) of the Constitution.

LOSS OF SCENIC BEAUTY AND AESTHETIC VALUE OF THE BEACHES

54. Colombo and Gampaha are the two most populated districts in Sri Lanka and many of the people use the beach for recreational purposes and tourism is also popular in these areas. This accident has caused significant damage to the visual quality of the beach which will last for years causing a negative impact on the tourism industry thereby violating the fundamental rights of parties engaged in the tourism industry guaranteed under 14 (1) (g) of the Constitution and violating the fundamental rights of the general public of the country guaranteed under article 12 (1) of the Constitution.

LACUNAS IN THE EXISTING LAW AND THE FAILURE TO RATIFY AND ACCEDE TO INTERNATIONAL MARITIME CONVENTIONS

55. Petitioners state that the Respondents had failed to ratify and accede to the **Hazardous and Noxious Substances Convention (HNS Convention 1996) and the 2010 Protocol**. Had Sri Lanka become a signatory to the said convention and incorporated the convention into the domestic law the country would have been able to claim compensation for the damage under such convention too. The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 – known as the HNS Convention – aims to ensure adequate, prompt and effective compensation for damage to persons and property, costs of clean up and reinstatement measures and economic losses resulting from the maritime transport of hazardous and noxious substances such as chemicals.

56. Petitioners state that although Sri Lankan authorities claim that we are a maritime hub; we are way behind in the implementation of international conventions and laws. Hence, it is the duty of the relevant authorities to ensure that the local legislature is in par with the evolving international laws and conventions to be a fully-fledged maritime hub.
57. Petitioners state that the authorities must urgently review and strengthen the national laws by incorporating the international conventions into the national legal regime and to amend the lacunas in the Marine Pollution Prevention Act No. 35 of 2008 to govern incidents such as these. Failure to do so over the years has resulted in polluters getting away by paying a minimum compensation in order to do away with their liability. Petitioners state that the failure of the Respondents to perform their duties as described above constitutes a violation of the fundamental rights of the general public and the citizenry including the Petitioners, guaranteed under Article 12 (1) of the Constitution.

LACK OF TRANSPARENCY IN THE UTILIZATION OF COMPENSATION

58. Petitioners state that given the remarks made by an incumbent Senior Cabinet Minister with regard to the utilization of compensation that may be awarded to Sri Lanka and the past experience with regard to the lacking transparency on the receipt and utilization of compensation pertaining to the encounter with MT New Diamond which suffered a fire on board last year in the territorial waters of Sri Lanka, the Petitioners and the citizenry of Sri Lanka also on whose behalf this application is maintained dread that any compensation or damages Sri Lanka may be awarded will not be transparently and best utilized for the restoration of the environment, payment of compensation for fishermen and other individuals affected and to strengthen the capacity of the Ports Authority with sophisticated equipment to face similar and a more deadly situations in the future.
59. Thus, the Petitioners urge that Your Lordships' Court be pleased to direct the Respondents to report back to Your Lordships' Court with regard to the manner in which the compensation and/or damages awarded are utilized and/or intended to be utilized.
60. Petitioners reiterate that Sri Lanka sits along a busy international shipping lane, which makes it critically important that the country is prepared for contingencies like the X-Press Pear's fire in order to protect our invaluable marine ecosystem. The inadequacy of

preparedness and response mechanisms, the extraneous and collateral considerations of the Respondents had contributed to this massive and irreparable damage caused to the marine and coastal ecosystems thus violating the Precautionary Principle which is a guiding light of modern environmental law. Furthermore, this amounts to a continuous violation of the fundamental rights of the Petitioners, the citizenry and the future generations.

61. Petitioners state that this marine disaster will have adverse implications on the livelihood of the fisheries communities of the affected coastal areas, on the health of the general public and furthermore the citizenry of Sri Lanka and the future generations have been deprived of their right to a clean and healthy environment thus violating the Trusteeship Principle which is a part and parcel of our law and the fundamental rights of the present and future generations.

62. Petitioners state that the primary responsibility for the protection, preservation and conservation of the country's biological diversity and ecological heritage including the invaluable maritime and coastal ecosystems in the country for the well-being, development and advancement of the people of Sri Lanka lies with the Government, of which the said Respondents are components and/or agents, as the guardian of the natural resources of Sri Lanka on behalf of the present and future generations of the people of Sri Lanka, as upheld by Their Lordships in **Watte Gedara Wijebanda Vs. Conservator General of Forest and Eight Others (SC Application No. 118/2004)**, in **Bulankulama and others Vs. Secretary, Ministry of Industrial Development and others (2000, 3 SLR 243)** and in **Ravindra Gunawardena Kariyawasam Vs. Central Environmental Authority and 10 Others (SC FR Application No. 141/2015) (Chunnakam Case)** and in **Centre for Environmental Justice (Guarantee) Ltd v Anura Satharasinghe, Conservator General and 8 Others (CA Writ 291/15)**.

63. The Petitioners state that the recognition of such responsibility by the Government of Sri Lanka is manifest by it becoming a contracting party and subsequently ratifying, or acceding to/ or becoming a signatory to a number of international conventions and declarations relating to environmental conservation such as **Stockholm Declaration on Human Environment, 1972, Paris Convention for the Protection of the World Cultural and Natural Heritage, 1972, Rio Convention on Biological Diversity, 1992. Rio Declaration on Environment and Development, 1992, Paris Declaration on the Responsibilities of**

Present Generation towards Future Generations, 1997, Johannesburg Declaration on Sustainable Development, 2002, Paris Convention, 2016 and RAMSAR Convention.

64. Petitioners state that the Constitution in **Article 27 (14) of the Directive Principles of State Policy** enjoins the State to protect, preserve and improve the environment. **Article 28(f)** refers to the Fundamental Duty upon every person in Sri Lanka to protect nature and conserve its riches. The Respondents which are agencies of the State are to be guided by these Directive Principles and Fundamental Duties when carrying out their statutory and regulatory duties.
65. Accordingly, the Petitioner states that the aforementioned actions and/or negligence and/or omissions of the above named Respondents are inconsistent with and/or repugnant to the Directive Principles of State Policy and Fundamental Duties, particularly those enunciated in Articles 27(2)(a), 27(14), 28(c), 28 (e) and 28 (f) of the Constitution. According to Article 27(1), the Directive Principles of State Policy are the guiding principles for the legislature and executive in the enactment of laws and the governance of the country. They are in the nature of an instrument of instructions, which both the legislature and executive must respect and follow.
66. It is respectfully submitted further that the organs of the government in which the said Respondents are component and/or an agent, are the guardians to whom the people have committed the care and preservation of natural resources, including the biodiversity of the country and thus, in making the said order and by the said inaction and/or failure to act and/or neglect to perform duty the said Respondents has failed and/or neglected to perform his duty in the said capacity of the 'Public Guardian' as the said concept is judicially formulated.
67. It is further submitted with respect that the said inactions and/or failure to act and or neglect to perform duty of/by the Respondents are in violation and/or derogation of the Concepts and Principles of Environmental Law enshrined in the international conventions and declarations, particularly **the Concepts of Inter-generational Equity, Principle of Precautionary Action, Doctrine of Public Trust** which as has been judicially determined have become part of the domestic law of Sri Lanka.

68. In view of the aforesaid circumstances, the Petitioner state that the fundamental rights guaranteed to the Petitioners, the citizenry of the country and the future generations under Article 12(1) of the Constitution have been violated and/or continuously being violated and the fundamental rights guaranteed to the 3rd Petitioner and the fishing communities and the parties who are engaged in the tourism industry of the affected areas under Articles 14(1)(g) Constitution have been violated and/or continuously being violated by the actions and/or omissions and/or negligence and/ or failure of any one or more or all of the Respondents as morefully described hereinbefore.

THE POLLUTER PAYS PRINCIPLE

69. Petitioners state that as per the "Polluter Pays Principle" which is considered as a part of the law of this country as recognized in the decisions in cases of **Ravindra Gunawardena Kariyawasam Vs. Central Environmental Authority and 10 Others (SC FR Application No. 141/2015)** popularly known as the "Chunnakam Case" and **Centre for Environmental Justice (Guarantee) Ltd v Anura Satharasinghe, Conservator General and 8 Others (CA Writ 291/15)** popularly known as the "Wilpattu judgment" the ship owner as well as the local agent of the shipping company should be held liable for the unprecedented and irreversible damages caused on the environment, economy of the country as well as damages caused to the general public, the Petitioners and particularly to the fishing community and persons engaged in the tourism industry.

70. Petitioners further state that the 11th and the 12th Respondents have violated the rules and laws pertaining to the shipping industry and the maritime legal regimes and failed to take precautionary measures as expected by the law and specially under the precautionary principle which is considered as a part of the local legal regime, by willfully refraining from revealing the existence of a chemical leak and the possible threat of a fire breaking out on board in advance to the maritime authorities of the country and hence be held liable to pay the compensation as claimed by the Petitioners.

71. Petitioners further state that the plastic pellets or nurdles, that fell overboard during the explosion and carpeting beaches along the coast of Western and Southern coasts and the various debris that have washed ashore should be disposed in an environmental friendly manner and if Sri Lanka lacks the necessary facilities to dispose such waste, the 11th and the

12th Respondents should be directed to re-export such waste to a country which has the facilities to safely dispose of it, at their cost.

72. Petitioners further state that since there had been similar incidents in the recent past where the authorities had failed to effectively claim damages due to the country, the Petitioners urge that Your Lordships' Court to be pleased to issue directions on the Respondents to formulate a scientific methodology in calculating damages caused to each and every sector affected, to tender a report to Your Lordships' Court with regard to the same, to claim such compensation diligently from the polluters and to report back to Your Lordships' Court.

73. The Petitioners state particularly that in view of the circumstances including the prevailing situation of the country due to the Covid -19 pandemic and restraints of time under which the Petitioners were compelled to complete and submit this Petition, the Petitioners beg the indulgence of Your Lordships' Court to reserve his right to-

- a) amend the Petition and/or add any person/persons as parties to this application in the event of any future material revealing their complicity in respect of the actions complained of in the preceding paragraphs;
- b) tender any such other further documents the Petitioners have called for, in exercising its rights in terms of the Right to Information Act No. 12 of 2016, if and when released by the relevant authorities and/or as and when the Petitioner collects such documents; and
- c) to tender any such other further Affidavits and documents as may be required and/or necessary.

74. An affidavit of the 2nd Petitioner is annexed hereto in support of the averments contained herein.

75. The Petitioners have not previously invoked the jurisdiction of Your Lordships' Court in respect of the subject matter of this application.

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

- a) Grant leave to proceed to this application and issue notice on the Respondents;

- b) Declare that the Fundamental Rights of the Petitioners as well as the rights of the entire citizenry and the future generations guaranteed to them under Articles 12(1) and 14(1)(g) have being infringed and/or are continuing to be infringed and/or are in imminent danger of being infringed by the action and/or inactions of any one or more or all of the 1st, 2nd, 2A, 3rd, 4th, 5th, 6th, 7th, 8th, 9th and 10th Respondents;
- c) Declare that the Fundamental Rights of the 3rd and 4th Petitioners as well as the rights of the fishing communities and of those who are engaged in the tourism industry in the affected areas guaranteed to them under Articles 14(1)(g) have being infringed and/or are continuing to be infringed and/or are in imminent danger of being infringed by the action and/or inactions of any one or more or all of the 1st, 2nd, 2A, 3rd, 4th, 5th, 6th, 7th, 8th, 9th and 10th Respondents;
- d) Direct the Respondents and/or any one or more of them to conduct an independent and impartial investigation into the said fire on MV X-Press Pearl in order to ascertain the cause of the said fire and parties responsible for the unprecedented harm and to submit a report to Your Lordships' Court;
- e) Direct the Respondents and/or any one or more of them to assess the damage caused to the environmental with the assistance of the relevant authorities by appointing an expert committee comprising of national and/or international experts in all relevant fields and submit a preliminary and a final report to Your Lordships' Court;
- f) Direct the 11th and the 12th Respondents to pay compensation to the environmental damage and pollution caused to the marine and coastal ecology of Sri Lanka and the atmosphere under the 'Polluters Pay Principle' and the failure to act according to the expected standards of the Precautionary Principle;
- g) Direct the Respondents and/or any one or more of them to assess the damage caused to the fisheries industry and the fishing communities and the tourism industry with the assistance of the relevant authorities and experts and submit a preliminary and a final report to Your Lordship's Court;
- h) Direct any one or more or all of the Respondents to pay compensation for the loss caused to the fishermen and to the fishing industry in the affected areas;

- i) Direct any one or more or all of the Respondents to pay compensation to the loss caused to the tourism industry and those engaged in tourism in the affected areas;
- j) Direct any one or more or all of the Respondents to assess the health impacts caused and imminent to the public with the assistance of the relevant authorities by appointing an expert committee and submit a preliminary and a final report to Your Lordships' Court;
- k) Direct any one or more or all of the Respondents and the Hon. Attorney General to take necessary actions to obtain compensation in terms of the provisions of the Marine Pollution Prevention Act No. 35 of 2008 or any other laws;
- l) Direct the 4th, A4 Respondent and/or the Hon. Attorney General to act according to Sections 10, 17, 18, 23(H)(2)(d), 23(J), 23(k), 23(S), 23(T), 24(A), 25 of the National Environmental Act No. 47 of 1980 as amended;
- m) Direct the 7th Respondent and/or the Hon. Attorney General to act according to Sections 27(3), 37(b), 46(4)(d), 46(4)(e), 46(4)(g), 49 and 50 of the Fisheries and Aquatic Resources Act No. 02 of 1996 as amended;
- n) Direct any one or more of the Respondents to dispose the plastic pellets/nurdles and other debris of MV X-Press Pear in an environmental friendly manner or in the alternative to direct the 11th and 12th Respondents to re-export such waste;
- o) Direct any one or more or all of the Respondents to credit all damages and compensation awarded to a dedicated account and to report back to Your Lordships' Court with regard to the manner in which the compensation and/or damages awarded are utilized and/or intended to be utilized;
- p) Direct Hon. Attorney General to prosecute all State Officials who have willfully failed and/or neglected and/or omitted to act with due diligence and to perform their statutory and regulatory duties, under Sections 112, 289 and 327 of the Penal Code and if any collusion or corruption is revealed to prosecute under Section 70 of the Bribery Act;

- q) Direct Respondents and/or any one or more of them to formulate a National Policy and/or Contingency Plan to augment the maritime safety and to successfully and promptly respond to any sort of maritime disaster;
- r) Direct the 8th, 9th and 10th Respondents to formulate required guidelines, enter into to relevant agreements and to take steps to ratify the relevant international conventions in order to face scenarios of this nature;
- s) An Interim Order/Order directing the 1st and 3rd Respondents and Hon. Attorney General to take necessary steps to detain the Captain and the crew of the ship and to institute necessary criminal and civil actions against them, the ship owners and its agent(s), especially to deal with them under the provisions of Sections 7, 12, 21, 24, 26, and 34 of the Marine Pollution Prevention Act No. 35 of 2008 and Sections 242, 244, 252, 283, 290, 293, 309, 311 of the Merchant Shipping Act No.52 of 1971 as amended;
- t) Grant such relief/or issue such directions as may deemed just and equitable by Your Lordships' Court under and in terms of Article 126(4) of the Constitution, taking into account all the facts and circumstances enumerated by the Petitioners in this Application;
- u) Grant Costs to the Petitioners which will enable the Petitioners to engage in Public Interest Litigation matters; and
- v) Grant such other and further relief as Your Lordships' Court shall seem meet.

ATTORNEY-AT-LAW FOR THE PETITIONERS

Settled by:

Savanthi Ponnampereuma

Ravindranath Dabare, Esq.

Attorneys-at-Law