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

In the matter of an Application for Special Leave to Appeal under and in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The Democratic Socialist Republic of Sri Lanka.

COMPLAINANT

S.C. (Spl) L.A. Application No. 24/2024

C.A. Appeal No. 297 – 301/2014 **Vs.**

High Court of Colombo Case No.

HC 4027/07

1. Agampodi Gnanasiri De Soyza Jayathilleke
2. Wickramasinghe Ambepitiya
3. Rasheed Mohammed Mursheed
4. Bakeer Mohammed Rifaaz
5. Mohammed Subair Fauzool Avami
6. Mohammed Moujool Ameer Irshad alias Mohammed Nazeer Cader
7. Nagoor Adumey Mohammed Nazmi alias Abdul Ibrahim
8. Mohammed Kamil Kuthubdeen
9. Abdul Wadood Mohammed Saafi alias Meera Saibu Liyakan Ali
10. Sinnaiah Subramanium
11. Salawdeen Mohammed Ashroff
12. Mohammed Cassim Mohammed Safeek
13. Mohammed Ismail Mohammed Rizwin

14. Sahadeen Abdulla

ACCUSED

AND BETWEEN

5. Mohammed Subair Fauzool Avami

6. Mohammed Moujool Ameer Irshad alias Mohammed Nazeer Cader

7. Mohammed Kamil Kuthubdeen

ACCUSED – APPELLANTS

Vs.

Hon. Attorney General

Attorney Gneral's Department

Colombo 12.

COMPLAINANT - RESPONDENT

AND NOW BETWEEN

Mohammed Kamil Kuthubdeen

8TH ACCUSED – APPELLANT – PETITIONER

Hon. Attorney General

Attorney Gneral's Department

Colombo 12.

COMPLAINANT - RESPONDENT - RESPONDENT

Before: **Janak De Silva, J.**

Mahinda Samayawardhena, J.

Arjuna Obeyesekere, J.

Counsels: Faisz Musthapha, PC, with Upul Kumarapperuma, PC, and Amila Perera instructed by Sanjeewa Kaluarachchi for the 8th Accused – Appellant - Petitioner.

Shanil Kularatne, PC, ASG, with Ms. Maheshika Silva, DSG, instructed by Ms. Rizni Firdous, SSA, for the Complainant – Respondent - Respondent.

Argued on: 09.06.2025

Decided on: 11.07.2025

Janak De Silva, J.

The 8th Accused-Appellant-Petitioner (Petitioner) together with 13 other accused persons were indicted by the Complainant-Respondent-Respondent (Respondent) by an indictment dated 08.09.2007 before the High Court of Colombo on 34 counts including aiding, abetting, conspiring and the commission of misappropriation of public funds punishable in terms of Section 386 of the Penal Code and Section 5(1) of the Public Property Act No. 12 of 1982 as amended. Out of the 34 counts, 13 counts pertained to the Petitioner. This case has now come to be referred to as the "VAT Case".

After trial, the Petitioner was found guilty of all the charges against him and sentenced to 20 years rigorous imprisonment in respect of each count (to run concurrently), fines of three times the value of the amounts set out in each charge and the forfeiture of all property of the Petitioner.

The Petitioner, along with several other accused who were convicted, appealed to the Court of Appeal in C.A. Appeal Nos. 297-301/2014. The Court of Appeal by majority (Abayakoon, J. with Gurusinghe, J. agreeing) dismissed the appeal (majority judgment). Karunaratne, J. (President, Court of Appeal) acquitted the Petitioner from all charges.

Aggrieved by the majority judgment, the Petitioner filed this Special Leave to Appeal application on 23.01.2024. The Petitioner sought *inter alia* an interim order staying the implementation and/or execution of the majority judgment. The Petitioner moved that this matter be listed on 27.06.2024, 02.07.2024 or 03.07.2024 to support for interim relief. The listing judge specified the date of support as 27.06.2024.

On that date, this matter was refixed for support on 27.02.2025 as learned SDSG who was appearing for the Respondent was overseas.

Thereafter, the Respondent filed a motion dated 27.09.2024 along with a copy of a petition filed by the Petitioner in the Court of Appeal marked X1, a copy of motion the Respondent had filed in response marked X2 objecting to the application of the Petitioner and a copy of the written submissions tendered by the Respondent on 18.09.2024 marked X3 and moved that it be filed of record.

According to these papers, the Petitioner had filed a petition dated 27.06.2024 (*per incuriam* application) in C.A. Appeal Nos. 297-301/2014 seeking *inter alia* the following relief:

(a) Declare that the majority judgment dated 13.12.2023 is made *per incuriam*;
(b) Quash and set aside and/or vacate the majority judgment;
(c) As an alternative to above prayer, quash and/or set aside and/or vacate the portion of the majority judgment pertaining to the Petitioner;
(d) Set aside the conviction entered against the Petitioner;
(e) Acquit and/or discharge the Petitioner;
(f) As an alternative, re-hear and/or order to re-hear the appeal of the Petitioner.

The core complaint made by the Petitioner in the *per incuriam* application is that several documents that were marked during the trial in the High Court did not form part and parcel of the original case record in C.A. Appeal Nos. 297-301/2014. As such these documents were mistakenly not included in the case record (i.e. docket and judges' briefs) and therefore not made available to the Court of Appeal at the time of the hearing of the appeal and therefore were not considered by the Court of Appeal in

arriving at the majority judgment. In the aforesaid circumstances, the Petitioner contended that the majority judgment was made *per incuriam* and that the Court of Appeal has the inherent power to set aside the majority judgment and to repair the injury caused to the Petitioner.

The Respondent objected to the *per incuriam* application. It was contended that there has been wilful suppression by the Petitioner from the Court of Appeal of having invoked the jurisdiction of this Court by way of Special Leave to Appeal. Moreover, it was contended that the Court of Appeal was now *functus officio* and that the Petitioner is seeking the identical relief from both the Supreme Court and the Court of Appeal.

The Respondent further submitted that the Petitioner was represented in the Court of Appeal by learned President's Counsel and that no application was made to call for and examine any specific document/documents at the argument stage. All documents which were required by both parties at the stage of argument were available and there was no complaint whatsoever by either party at the stage of the argument that any document that such party required was missing at the argument stage.

By the motion dated 27.09.2024, the Respondent further averred that the Court of Appeal has heard Counsel for the Petitioner in support of the *per incuriam* application and had fixed the matter for written submissions of parties on whether a 5-judge bench of the Court of Appeal should hear it and that the order pertaining to the said application made by the Petitioner is fixed for 30.09.2024.

On 17.02.2025, the Petitioner filed a motion and moved that this Special Leave to Appeal application be taken out of the list of cases fixed for support on 27.02.2025 and mentioned on that day. The reason adduced was that the senior counsel appearing for the Petitioner would be abroad from 25.02.2025 to 01.03.2025 and as such unable to appear before Court. The listing judge had made a minute directing that the motion be supported on the next date.

On 21.02.2025, the Respondent filed a further motion and strongly objected to the Petitioner seeking to maintain two separate proceedings in the Court of Appeal and

the Supreme Court and asserted that the Petitioner will necessarily have to decide on which application he wishes to pursue. The Respondent asserted that this application was made while resisting both applications as neither has any merit whatsoever.

When this matter was taken up for support on 27.02.2025, junior counsel appearing for the Petitioner supported the motion dated 17.02.2025 and submitted that the senior counsel for the Petitioner is presently overseas and unable to participate in these proceedings. He moved that this matter be re-fixed for Special Leave to Appeal.

Learned ASG submitted that for reasons he expounded in open court, he wishes to raise a preliminary objection regarding the maintainability of this application seeking Special Leave to Appeal against the majority judgment.

In view of the circumstances stated in the submissions of the learned ASG, my learned brother Kodagoda, PC, J., the Presiding Judge, requested my learned brother Obeyesekere, J. to assign an exceptionally early date for inquiry into the preliminary objection. Junior counsel then indicated that the senior counsel cannot take a date in March, due to his non-availability during that month.

Court then fixed this matter for support on 01.04.2025 on top of the list.

Thereafter, the Respondent filed a further motion dated 10.03.2025 apprising Court on the steps taken in the *per incuriam* application in the Court of Appeal. The inquiry into the *per incuriam* application came up for inquiry on 04.03.2025 and the Petitioner informed Court that he is ready for inquiry. The learned ASG had then brought to the attention of the Court of Appeal that a complaint was made to the Supreme Court and that hearing on the objection was fixed for 01.04.2025 and moved to differ the hearing in the Court of Appeal until that complaint is properly looked in to by the Supreme Court.

However, the Court of Appeal had permitted the Counsel for the Petitioner to make his submission since the senior counsel for the Petitioner informed that the *per incuriam* application can be heard despite the Special Leave to Appeal application pending in the Supreme Court. The learned ASG then suggested that a joint motion can be filed if

necessary to expedite the hearing in the Supreme Court but the senior counsel for the Petitioner had made an application to the Court of Appeal to take up the matter and suggested several dates in March 2025. Thereupon, the Court of Appeal proceeded to hear the matter and adjourned further hearing for 19.03.2025.

Having appraised this Court of these developments, the Respondent sought a suitable direction/order of Court since the *per incuriam* application before the Court of Appeal is made urging similar relief.

These matters were brought to the attention of the listing judge, my learned brother, Obeyesekere, J. who made a minute that the matters referred to in the motion occurred in open court when this matter was taken up on 27.02.2025. My learned brother directed that this matter be referred to my learned brother Kodagoda, PC, J. who presided on that date. My learned brother Kodagoda, PC, J. had then made a minute on 21.03.2025 that the date fixed for support of this application shall stand.

On 28.03.2025, the Petitioner filed a motion stating that the Respondent had filed several documents pertaining to the *per incuriam* application but the Respondent has not tendered the copy of the brief marked "Z" marked with the motion and moved that it be filed of record.

On 01.04.2025 this application could not be reached as there were a number of cases connected with the Local Government elections. However, learned ASG submitted that there is an urgency in this matter and moved that this be listed on top of the list. He further informed Court that he has received a set of papers on Friday and that he reserves his right to raise objections to them. This matter was re-fixed for support on 15.05.2025 on top of the list.

Thereafter, the Respondent filed a motion dated 07.05.2025 setting out further steps that had been taken place on 19.03.2025 in the *per incuriam* application. It appears that on 19.03.2025, the learned ASG could not appear before the Court of Appeal due to personal reasons and an application for a postponement had been made. The Petitioner had insisted for a very short date and the Court of Appeal had specially fixed

that matter for 20.03.2025 at 9.30 a.m. On that day, the Court of Appeal had directed both parties to file written submissions by 04.04.2025 and fixed the matter to decide whether notice should be issued in the *per incuriam* application.

On 15.05.2025, this Special Leave to Appeal application could not be taken up as it appears that the Court was not properly constituted. The matter was fixed for support on 09.06.2025 on top of the list.

On that day, junior counsel appearing for the Petitioner moved that the matter be refixed as the senior counsel appearing for the Petitioner was indisposed. Learned ASG strongly objected to this application and marked ready and drew the attention of Court to the several motions he had filed drawing attention to the parallel proceedings in the Court of Appeal and the Supreme Court. He submitted that this was an abuse of the process of Court and that he wanted to make an application to stay the proceedings in the Court of Appeal.

We heard junior counsel for the Petitioner. He submitted that the *per incuriam* application before the Court of Appeal was filed on the basis that the majority of the marked documents were not available before the Judges at the time of writing the judgment. The Petitioner had come to know that situation after filing this Special Leave to Appeal application. He denied that there is an abuse of the process of court. Junior counsel then submitted that senior counsel had instructed him to withdraw this Special Leave to Appeal application in view of the objection raised by the learned ASG. Junior counsel for the Petitioner further made an application that the senior counsel be given a date to reply to the submissions of the learned ASG as he is down with Chikungunya.

We gave careful consideration to the matters brought to the attention of Court. An interim order was issued preventing the Court of Appeal from delivering any order in the *per incuriam* application until an order is made by this Court on the preliminary objection raised by the State.

The Petitioner was granted time until 20.06.2025 to file written submissions with notice to the State. No further date was to be granted for the written submissions.

The Petitioner then filed a motion dated 16.06.2025 informing Court that having considered the preliminary objection raised by the Respondent, the Petitioner has instructed to withdraw the instant Special Leave to Appeal application with permission of Court and therefore it may not be necessary to burden Court with the inquiry on the preliminary objection. An application was made therein to mention this matter on a date prior 20.06.2025 (preferably 17/06/2025, 18/06/2025 or 19/06/2025) to enable counsel to make an application for withdrawal.

Since junior counsel for the Petitioner had made a similar application on 09.06.2025 and Court thereafter fixed this matter for order or judgment on the preliminary objection raised by the State, we did not proceed to list this matter in open court.

On 20.06.2025, both the Petitioner and Respondent filed written submissions as directed.

The Respondent in the motion tendering the written submissions submitted that if the Court is inclined to allow the application made by the Petitioner to withdraw this Special Leave to Appeal application, permission to do so should be granted only on the following conditions:

(1) Court of Appeal judgment in CA Appeal Nos. 297-301/2014 delivered on 13.12.2024 is affirmed by Court and the Court of Appeal judgment is considered as final;
(2) Direction made to the Court of Appeal not to re-open C.A. Appeal Nos. 297-301/2014 on any ground whatsoever in view of the affirmation of the Court of Appeal judgment dated 13.12.2024 by this Court and the provisions of Article 118 of the Constitution;
(3) Costs to be awarded to the State for the abuse of process attempted by the Petitioner who is a person absconding from the entirety of the judicial process from the High Court stage onwards;
(4) Any other suitable direction/order be made by this Court with regard to the contumacious and contemptuous conduct on the part of the Petitioner and the

unprecedented and gross abuse of process attempted on behalf of the Petitioner.

Rule 15 of the Supreme Court Rules regulates any application for withdrawal of a Special Leave to Appeal application. It reads as follows:

> *"The Petitioner in an application for Special Leave to Appeal* ***may*** *apply, at any time, to withdraw such application, having served notice of such application to withdraw on every Respondent who has entered an appearance at the Registry; and* ***the Court may after making any necessary inquiry into the matter permit the withdrawal*** *of such application* ***on such terms as to costs and otherwise as it thinks fit****."* (emphasis added)

A petitioner does not have an absolute right to withdraw a Special Leave to Appeal application made to this Court. It can be done only with the prior permission of Court. The application may be allowed by Court after necessary inquiry. The inquiry must be directed towards examining *inter alia* whether a petitioner has wasted the valuable resources of court in filing that application or whether there has been any abuse of the process of Court. After such inquiry, the application for withdrawal may be allowed on such terms as to costs and otherwise as Court thinks fit. Rule 15 does not specify the *other terms*, other than an order for costs, envisaged therein. Abuse of process of Court is a matter that Court can take into consideration in determining such terms.

Abuse of Process of Court

The core contention of the learned ASG is that the *per incuriam* application is an abuse of the process of Court as the same issue is impugned in these proceedings as well.

In ***Saskatchewan (Environment) v. Metis Nation Saskatchewan*** **[2025 SCC 4]** it was held that a multiplicity of proceedings which engage the same issues can amount to an abuse of process; duplicative proceedings might waste the resources of the parties, courts and witnesses, or might risk inconsistent results and therefore undermine the credibility of the judicial process. However, the fact that there are two or more ongoing legal proceedings which involve the same, or similar, parties or legal issues, is in itself

not sufficient for an abuse of process. There may be instances where multiple proceedings will enhance, rather than impeach, the integrity of the judicial system, or where parties have a valid reason for bringing separate, but related proceedings. The analysis should focus on whether allowing the litigation to proceed would violate the principles of judicial economy, consistency, finality or the integrity of the administration of justice.

The contention of the Petitioner is that upon obtaining a certified copy of the Court of Appeal brief from the Registry of the Court of Appeal for the purpose of tendering to this Court, it was discovered that key documents material to both the defence and the prosecution were missing in the certified copy. Thereafter, with permission of Court, the Attorney-at-Law for the Petitioner inspected the original case record. It was then found that the missing documents were part of the productions in the safe custody of the Registry of the Court of Appeal as called for by Court consequent to an application made by the Respondent from the High Court. The Registry confirmed that these documents were not included in the case record since they were not called for during the appeal hearing. Evidently, these documents have not formed part of the judge's brief.

Subsequently, by motion dated 22.04.2024, the Petitioner requested certified copies of these productions which have now been tendered to this Court marked "Z". According to the Petitioner, these include crucial financial records and other documents referred to in the majority judgment. As these documents were not available to the Court of Appeal at the time of the appeal hearing, they could not have been considered in delivering the judgment dated 13th December 2023. The productions marked "Z" contain critical documents which were referred in the majority judgment. The Petitioner submits that had the Court of Appeal perused and appreciated the contents of these documents, the Court would have reached a wholly different finding regarding the involvement of the Petitioner. It is on this basis that the Petitioner filed the *per incuriam* application.

At the outset, it must be stated that the position of the Petitioner is based on a complete misunderstanding of the procedure relating to criminal appeals from the High Court. Where an appeal is lodged in the High Court addressed to the Court of Appeal against a judgment of the High Court exercising its criminal jurisdiction, the productions of the case are generally not sent to the Court of Appeal as part of the appeal brief unless and until the Court of Appeal *ex mero motu* or on the application of a party, calls for such productions from the High Court.

This practise is reflected in the letter dated 17.06.2019 sent by the Registrar of the High Court to the Registrar of the Court of Appeal. The appeal brief was sent to the Court of Appeal from the High Court with this letter which is found at Vol. I of our brief attached to the motion dated 21.05.2024 submitted by the Petitioner. The last paragraph therein specifically states that the productions of this case is retained in the High Court Production Branch.

This being the inveterate practice, it was open for the Counsel for the Petitioner and other appellants as well as the State to have called for any of these productions had they considered it material to their case. It appears that the State had made such an application and some of the productions were called for. The Petitioner did not although defended by senior President's Counsel well experienced in criminal proceedings. The written submissions filed on behalf of the Petitioner in the Court of Appeal on 27.04.2021 do not make reference to any specific productions. The necessary conclusion is that they were not material to the grounds of appeal of the Petitioner.

Moreover, the contention of the Petitioner that the majority judgment makes reference to several productions not part of the original brief is misconceived in fact. The majority judgment discusses the culpability of the Petitioner from pages 68-76 which includes the grounds of appeal urged by the Petitioner and their consideration. There is no reference made therein to any specific document.

The notion of *per incuriam* has generally been given a narrow interpretation. A *per incuriam* decision is a decision given by a Court in ignorance of the terms of a statute or binding decision [See ***Young v. British Aeroplane Co. Ltd.*** **(1944) 1 KB 718;** ***Huddersfield Police Authority v. Watson*** **(1947) KB 842;** ***Peter Limb v. Union Jack Removals Ltd. & Anor*** **(1998) 1 WLR 1354;** ***Billimoria v. Minister of Lands and Land Development & Mahaweli Development and Others*** **(1978-79-80) 1 Sri LR 10;** ***Hettiarachchi v. Seneviratne, Deputy Bribery Commissioner and Others*** **(1994) 3 Sri LR 293**].

Nevertheless, the Petitioner submits that there a contemporary wider interpretation of the notion [See ***Morelle LD. v. Wakeling*** **(1955) 2 QB 379;** ***Broome v. Cassell & Co. Ltd.*** **(1971) 2 All ER 187;** ***Gunasena v. Bandaratilleke*** **(2000) 1 Sri LR 292;** ***Kariyawasam*** **(supra);** ***Indika Lakmini Pathirana v. AG*** **(C.A. 225/2014, C.A.M. 02.10.2018);** ***Cargills Agrifoods Ltd. v. Kalyani Dahanayake, Commissioner General of Inland Revenue and 6 Others*** **(C.A. (Writ) 198/2012);** ***Mohamed Haneefa Ishaththu Nawma v. Mohamed Abdul Wahab Mohamed Gouse and Others*** **(C.A. 784/1992(F), C.A.M. 19.10.2018),** ***Rose Mary Barnadus v. O.M.D.S. Pester Perera and Others*** **(C.A. PHC 09/2013, C.A.M. 28.09.2018)**].

However, there is a binding decision of 5 judges of this Court in ***Subasinghe Mudiyanselage Rosalin Bertha v. Maththumagala Kankanamge Juwan Appu*** **[S.C. Appeal No. 160/2016, S.C.M. 02.12.2022]** where my learned brother Samayawardhena, J. (with my learned brother Obeyesekere, J. also agreeing) held (at page 20) as follows:

> *"[…] a decision per incuriam is one given in ignorance or forgetfulness of the law by way of statute or binding precedent, which, had it been considered, would have led to a different decision. It must be reiterated that a decision will not be regarded as per incuriam merely on the ground that another Court thinks that it was wrongly decided; the fault must derive from ignorance of statutory law or binding authority. Also the authority must be a binding rule of law and not merely an authority that is distinguishable.*

This does not mean that a decision per incuriam is only a decision given in ignorance of either statute or binding precedent; there can be other instances where a decision may be regarded as per incuriam, but such instances are rare. However, of these two exceptions also (i.e. failure to follow a statutory provision and failure to abide by binding precedent), ignorance or forgetfulness of a statute is undoubtedly an instance of a decision given per incuriam."

I agree that the notion *per incuriam* does not only cover a decision given in ignorance of either statute or binding precedent. In ***Rose Mary Barnadus*** **(supra)**, I have examined the broader notion of *per incuriam*. However, assuming that several productions material to the defence of the Petitioner, were not available for examination by the judges of the Court of Appeal, that does not make the majority judgment one made *per incuriam*. This situation is not different from one where all the material productions were available but Court delivered judgment without examining them. Both these grounds may be urged in appeal.

For the foregoing reasons, I conclude that the majority judgment was not one made *per incuriam*.

The narrative of this Special Leave to Appeal application and the *per incuriam* application makes it clear that the sole intention of the Petitioner was to avoid this Court from making any determination on the Special Leave to Appeal application and the objections raised therein. This was done in order to ensure that the *per incuriam* application is taken up first and determined by the Court of Appeal. The Petitioner must be aware of the reasons for attempting to do so. Towards this end, the Petitioner sought to employ several machinations including not taking dates in March, 2025 in the Supreme Court while at the same time urging the Court of Appeal to grant and then accepting dates in March, 2025. These practices must be condemned in the strongest terms. Unfortunately, the Court of Appeal, for reasons best known to the Court, became a willing partner in this unethical and unacceptable process by sprinting to make a determination on the *per incuriam* application before this Court determined on the preliminary objection of the State.

In ***Kumarasinghe v. Weliveriya*** **[S.C. Spl. L.A. 37/2012, S.C.M. 12.11.2013]**, Court was confronted with a situation where there was blatant abuse of the process of Court by the petitioner filing multiple actions that had caused an unnecessary delay in the deliverance of justice and a poor allocation of the resources at the Court's disposal. Tilakawardane, J. held (at page 7) that the Court cannot over emphasize the need to appropriately deal with litigants who attempt to abuse the process of Court and thereby cause unnecessary delay and costs to other parties in order to ensure that, in the future, litigants will not be tempted to indulge in such ill-conceived practices.

The application made by the Petitioner to withdraw this Special Leave to Appeal application is not one made *bona fide*. The *per incuriam* application was filed on 27.06.2024. The learned ASG objected to that application by motion dated 31.07.2024 and tendered written submissions on 18.09.2024. Further written submissions of the Respondent on whether notice should be issued in the *per incuriam* application was filed in the Court of Appeal dated 07.04.2025. This Special Leave to Appeal application was taken up on 15.05.2025. The Petitioner did not make any application to withdraw it on that day. It is only after the learned ASG reiterated his objections on his feet on 09.06.2025 was a belated application made to withdraw this Special Leave to Appeal application. By a strange coincidence the Court of Appeal had by then concluded the hearing on the question of notice in the *per incuriam* application and was to deliver its order.

I have no hesitation in concluding that the *per incuriam* application of the Petitioner is an abuse of the process of Court. The Petitioner went to extraordinary levels to render nugatory the jurisdiction of this Court in the Special Leave to Appeal application with a view to obtaining an order from the Court of Appeal in the *per incuriam* application. This amounts to contemptuous conduct on the part of the Petitioner. This Court has a bounden duty as the highest and final superior Court of record in the Republic to safeguard its constitutional jurisdiction and condemn in the strongest terms any attempt to render its jurisdiction nugatory by any litigant by resorting to abuse of process of Court.

For the foregoing reasons, we allow the application for withdrawal of the Special Leave to Appeal application filed on 23.01.2024 against the majority judgment of the Court of Appeal delivered on 13.12.2023, subject to the payment of Rs. 500,000/= as state costs by the Petitioner.

In view of the withdrawal of the Special Leave to Appeal application by the Petitioner, we affirm the majority judgment of the Court of Appeal. It follows that, upon this Court affirming the said judgment, the matter stands conclusively determined, and the Court of Appeal does not have any power to deal with the *per incuriam* application. Accordingly, the Court of Appeal shall not entertain the *per incuriam* application any further.

Judge of the Supreme Court

Mahinda Samayawardhena, J.

I agree.

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court