

**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 Article 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC. FR Application No. 495/2011

U.G. Chandima Priyadeva  
No.64, Kandy Road  
Kiribathgoda,  
Kelaniya

**Petitioner**

Vs.

- 1A. Director General,  
Director General's Office of  
Merchant Shipping,  
Ministry of Ports & Highways,  
1<sup>st</sup> Floor, Bristol Building  
No. 43-89, York Street  
Colombo 1.
1. Shantha Weerakoon,  
Former Director General,  
Director General's Office of  
Merchant Shipping,  
Ministry of Ports & Highways,  
1<sup>st</sup> Floor, Bristol Building  
No. 43-89, York Street  
Colombo 1
2. Rathna Bharathi,  
Acting Shipping Officer,  
Director General's Office of

Merchant Shipping,  
Ministry of Ports & Highways,  
1<sup>st</sup> Floor, Bristol Building  
No. 43-89, York Street  
Colombo1

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

**Respondents**

Before : Sisira J de Abrew J  
Murdu Fernando PC J  
S. Thurairaja PC J

Counsel : Uditha Egalahewa PC with Ranga Dayananda for the Petitioner  
Rajiv Goonathilake SSC for the Attorney General

Argued on : 13.5.2019  
Decided on : 6.6.2019

Sisira J de Abrew J

The Petitioner filed this action in this court alleging that his fundamental rights guaranteed by Article 12(1) and 14(1)(g) of the Constitution were violated by the Respondents. This court by its order dated 3.11.2011 granted leave to proceed for the alleged violation of fundamental rights of the Petitioner guaranteed by Article 12(1) and 14(1)(g) of the Constitution.

The Petitioner who is a seaman left for Japan in 2004 on a tourist visa and returned to Sri Lanka in 2007. In March 2011, the Petitioner, in order to obtain his Certificate of Watch Keeping, which is a necessary certificate to continue in his

profession of seaman, submitted his Continuous Discharge Certificate (hereinafter referred to as the CDC) to the 2<sup>nd</sup> Respondent. The 2<sup>nd</sup> Respondent did not return the said CDC to the Petitioner. The 2<sup>nd</sup> Respondent after an inquiry suspended the said CDC for a period of six years. The Petitioner therefore contends that his fundamental rights guaranteed by Article 12(1) and 14(1)(g) of the Constitution have been violated by the 2<sup>nd</sup> Respondent.

The 2<sup>nd</sup> Respondent who is the Acting Shipping Officer in his affidavit filed in this court has submitted the following facts. Learned SSC who appeared for the Respondents too submitted the same facts.

1. In order to consider the application of the Petitioner regarding his Certificate of Watch Keeping, the 2<sup>nd</sup> Respondent held an inquiry.
2. At the said inquiry the Petitioner admitted that he went to Japan on a tourist visa and overstayed in Japan for a period of three years and that the Petitioner was deported by the Immigration officials of Japan.
3. The 2<sup>nd</sup> Respondent being satisfied of the material submitted at the inquiry acting under Regulation 8 of the Merchant Shipping Regulations 1980 (R1), suspended the CDC of the Petitioner for a period of six (6) years.

When I consider the above matters, the most important question that must be considered is whether the 2<sup>nd</sup> Respondent has the power to suspend the CDC of the Petitioner under the said Regulations. Regulation 8(a) of the Merchant Shipping Regulations 1980(R1) published in Government Gazette No.99/6 dated 29.7.1980 reads as follows.

*“Notwithstanding anything contained in these regulations, the Shipping Officer may suspend, cancel or confiscate the Continuous Discharge Certificate of any seaman who is shown to the satisfaction of the Shipping*

*Officer to have deserted his ship or is found guilty of smuggling, theft, misbehavior or such other offence, as may, in the opinion of the Shipping Officer, makes him unsuitable for employment on board a ship.”*

Learned President’s Counsel for the Petitioner tried to contend that the decision of the 2<sup>nd</sup> Respondent to suspend the CDC of the Petitioner was a malicious decision since the Petitioner has a family dispute with the 1<sup>st</sup> Respondent. I am unable to agree with this contention since it is the 2<sup>nd</sup> Respondent who has taken the said decision. The following facts are undisputed.

1. The Petitioner illegally overstayed in Japan for a period of three years.
2. The Petitioner was, due to his illegal overstay in Japan, deported.

Learned Senior State Counsel (SSC) who appeared for the Respondents contended that such a person has a tendency to desert his ship during his employment in the ship. I think there is merit in this argument. Learned President’s Counsel for the Petitioner contended that for the 2<sup>nd</sup> Respondent to act under the Regulation 8(a) of the Merchant Shipping Regulations 1980, there must be a conviction of the Petitioner by a court of law under the said section. But the Regulation 8(a) of the said Regulations does not speak about a conviction by a court of law. Therefore, I am unable to agree with the said contention of learned President’s Counsel for the Petitioner. When I consider Regulation 8(a) of the Merchant Shipping Regulations 1980 (R1), I hold the view that under the said Regulation, if a seaman, in the opinion of the Shipping Officer, is guilty of an offence which renders him (the seaman) unsuitable for employment in a ship, the Shipping Officer can suspend or cancel the CDC of the seaman. It has to be noted here that the 2<sup>nd</sup> Respondent (the Shipping Officer) has taken the decision to suspend the CDC of the Petitioner after

an inquiry conducted him. The Petitioner who illegally overstayed in Japan for a period of three years was deported by the Immigration Officials of Japan. When the Petitioner enjoys such a reputation, can the Shipping Officer decide that the Petitioner is suitable for employment in a ship? In my view such a person is not suitable to be employed in a ship. For the above reasons, I hold that the Shipping Officer, the 2<sup>nd</sup> Respondent was correct when he, acting in terms of Regulation 8(a) of the Merchant and Shipping Regulations 1980, decided to suspend the CDC of the Petitioner for a period of six years. In my view, the Petitioner has failed to prove that his fundamental rights had been violated as alleged by him. For the above reasons, I dismiss the petition of the Petitioner with costs.

Judge of the Supreme Court

Murdu Fernando PC J

I agree.

Judge of the Supreme Court

S. Thuraiaraja PC J

I agree.

Judge of the Supreme Court

