

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

*In the matter of an application under
Articles 17 and 126 of the Constitution.*

DR. AJITH C.S. PERERA

Chief Executive/Secretary General,
"IDIRIYA", No. 18/1, Arthur's Place,
Dehiwala.

PETITIONER

SC FR Application No. 273/2018

VS.

1. HON. DAYA GAMAGE

Minister of Social Services and
Social Welfare and the Chairman of
the National Council for Persons with
Disabilities,
80/5, Govijana Mandiraya,
Rajamalwatta Avenue, Battaramulla.

2. HON. FAISER MUSTHAPA

Minister of Provincial Councils, Local
Government and Sports,
No. 330, Dr. Colvin R. de Silva
Mawatha, Colombo 02.

3. HON. SAJITH PREMADASA

Minister of Housing and
Construction, 2nd Floor,
"Sethsiripaya", Battaramulla.

**4. HON. PATALI CHAMPIKA
RANAWAKA**

Minister of Megapolis and Western
Development,
17th and 18th Floors, "Suhurupaya".
Subhuthipura Road, Battaramulla.

**5. HON. AKILA VIRAJ
KARIYAWASAM**

Minister of Education,
"Isurupaya", Pelawatta, Battaramulla.

- 6. HON. (MRS.) THALATHA ATUKORALA**
Minister of Justice and Prison Reform,
Superior Courts Complex,
Colombo 12.
- 7. SRI LANKA TOURISM DEVELOPMENT AUTHORITY**
No. 80, Galle Road, Colombo 03.
- 8. THE URBAN DEVELOPMENT AUTHORITY**
6th and 7th Floors, "Sethsiripaya",
Battaramulla.
- 9. HON. ATTORNEY GENERAL**
Attorney General's Department,
Colombo 12.

RESPONDENTS

BEFORE: Prasanna Jayawardena, PC, J.
V. K. Malalgoda, PC, J.
Murdu N.B. Fernando, PC, J.

COUNSEL: Petitioner appeared in person.
Rajitha Perera, SSC for the 8th and 9th Respondents.

ARGUED ON: 29th November 2018.

WRITTEN SUBMISSIONS FILED: By the petitioner on 11th December 2018.

DECIDED ON: 18th April 2019.

Prasanna Jayawardena, PC, J,

The background to this application

The petitioner graduated from the University of Colombo in 1975 with a B.Sc (Hons.) Degree. Subsequently, he read for and was awarded a M.Sc. He later qualified as a Chartered Chemist. He is a Fellow of the Institute of Chartered Chemistry, Ceylon, and a Fellow of the Royal Society of Chemistry, London. He has been awarded an Honorary Ph.D. His working career included a period when he was a lecturer in the Department of Chemistry of the University of Colombo and, thereafter, employment as a senior manager at two multi-national companies. The petitioner was also accredited as a Test Umpire by the Sri Lanka Cricket Board [as it then was]. He led a physically active life. In 1992, the petitioner was gravely injured and left with paraplegia when a wayside tree fell on to his car. Since then, the petitioner has actively campaigned to resolve the difficulties which physically disabled people face in day-to-day life in the community. In 2005, the petitioner founded an organisation named "IDIRIYA". That organisation works on "*disability related access issues*" which affect physically disabled people in day-to-day life.

On 19th May 2009, the petitioner filed SC FR Application No. 221/2009 pleading that he was filing the application in the public interest and for and on behalf of persons with disabilities. He pleaded, *inter alia*, that "*the non-implementation and (non-) enforcement in full of the provisions of the Protection of Rights of Persons with Disabilities Act No. 28 of 1996 and the Disabled Persons (Accessibility Regulations) Regulations No. 1 of 2006*" have violated the fundamental rights guaranteed by Article 12 (1), Article 14 (1) (g) and 14 (1) (h) of the Constitution to the petitioner and others who are similarly circumstanced. The petitioner prayed for an array of reliefs.

On 24th March 2009, the petitioner was granted leave to proceed under Article 12 (1) and Article 14 (1) (g) of the Constitution. Subsequently, this Court made an initial Order and an Order on 14th October 2009 clarifying its previous Order. Later, the Court made a final Order dated 27th April 2011 granting the reliefs set out in that final Order. The said final Order dated 27th April 2011 is reproduced *verbatim* below:

"This case is called for the purpose of clarifying the order that was recorded on 14/10/2009.

After hearing the submissions, the Court replaced the order made on 14/10/2009, with the following order:

This Court recognizes that people have different levels of ability to move freely, and that many - specially the growing numbers of Seniors, Disabled Persons and Pregnant Mothers are restricted in their movement.

This Court further recognizes that in terms of the protection of the Rights of Person with Disabilities Act No. 28 of 1996, as amended, and the regulations made thereunder, no person should be discriminated against on the ground of disability and their mobility restricted in a manner which precludes or impedes them from enjoying equally their inherent right for access, safety and accommodation in day-to-day life at man-made public buildings, public places and facilities provided there.

Accordingly, this Court orders that Parts of NEW public buildings or public spaces, specially toilet facilities as defined in the Accessibility Regulations No. 01 of 2006 made under the Protection of Persons with Disabilities Act No. 28 of 1996, as amended, hereafter shall be designed and constructed in accordance with the 'design requirements' specified in the regulations in force.

The Court further orders that compliance with this Court order is mandatory in order to gain approval of building plans, to certify buildings on completion and to issue the certificate of conformity and to issue the certificate of conformity and hence all authorities that are empowered to do so shall refrain from doing so in respect of all constructions which would violate this order.

Failure to comply with the Court order shall be a serious punishable offence and shall attract punitive repercussions as set out in the law.

These proceedings are terminated. In case of any violation a fresh action could be filed to deal with that situation."

Subsequently, the petitioner filed motions dated 03rd May 2013 and 14th May 2013 and moved that a further Order be made including newly constructed public structures and facilities within the scope of the aforesaid Order. In pursuance of these motions, this Court heard the petitioner and learned Deputy Solicitor General on 17th June 2013 and made the following Order on the same day, which is reproduced *verbatim*:

"This Court has heard Mr. Ajith Perera, the Petitioner in person. Court has also heard Deputy Solicitor General, Mr. Rajaratnam.

Mr. Rajaratnam brings it to the notice of Court that by Circular No. MSS/7/8/ACC dated 04th October 2012 very comprehensive directions have been given to ensure compliance with the court order and that it has been addressed to all the Ministries, all Provincial Ministries and Secretaries and all District Secretaries. This Court makes the observation that the Circular is very comprehensive and would encourage the Agencies of the State to implement the Circular to ensure that those of them who are otherwise disabled or with restricted ability to be given every opportunity to integrate freely with the community.

The Registrar is directed to communicate this order to the Secretary of the Ministry of Social Services forthwith.

The learned Deputy Solicitor General is requested to ensure that the Circular is given its full effect by directing the authorities to take immediate steps to sensitize the private sector to the need to take cognizance of the aforementioned circular and to take appropriate steps in compliance."

Circular No. MSS/7/8/ACC referred to in the aforesaid Order, has been issued by the Secretary to the Ministry of Social Services. It is addressed to all Secretaries to the Ministries, all Chief Secretaries of the Provincial Councils and all District Secretaries. The Circular, *inter alia*, draws the attention of the addressees to the 'Disabled Persons (Accessibility) Regulations No. 1 of 2006' made under the Protection of the Rights of Persons with Disabilities Act No. 28 of 1996 and the amendment dated 18th September 2009 to these Regulations. The Circular states that all public buildings and public places must provide access facilities for persons with disabilities which are in compliance with the aforesaid regulations, should be constructed in a manner which complies with the aforesaid regulations and that newly constructed public buildings should not be issued a certificate of conformity unless they are constructed in compliance with the aforesaid regulations. The Circular also draws the attention of the addressees to the Order dated 27th April 2011 made by this Court in SC FR Application No. 221/2009 and a previous Cabinet Decision dated 29th April 2009. The Circular directs that access facilities for persons with disabilities must be provided, before 16th October 2014, in all public buildings coming under the purview of the addressees. The documents referred to in the Circular were annexed to the Circular.

As mentioned earlier, the Order dated 27th April 2011 in SC FR Application No. 221/2009 had permitted the petitioner to make a new application, in the event the Order was violated.

The petitioner's present application

On 03rd September 2018, the petitioner filed the present SC FR Application No. 273/2018, by way of a petition and affidavit. He later filed an amended petition.

The respondents to the present application are: (i) the Hon. Minister of Social Services and Social Welfare *and* Chairman of the National Council for Persons with Disabilities; (ii) the Hon. Minister of Provincial Councils and Local Government; (iii) the Hon. Minister of Housing and Construction; (iv) the Hon. Minister of Megapolis and Western Development; (v) the Hon. Minister of Education; (vi) the Hon. Minister of Justice and Prison Reform; (vii) the Sri Lanka Tourism Development Authority; (viii) the Urban Development Authority and (ix) the Hon. Attorney General.

The petitioner states that he makes this application in the public interest and on behalf of a large number of people in Sri Lanka who have physical disabilities which impede their mobility. He says he files this application to secure their basic human dignity

The petitioner refers to section 23 (2) and section 23 (3) of the Protection of the Rights of Persons with Disabilities Act No. 28 of 1996, as amended by Act No. 33 of 2003 [“the Act”]. The petitioner states that, in pursuance of the statutory powers vested in him by the Act, the Minister, has made the ‘Disabled Persons (Accessibility) Regulations No. 1 of 2006’ published in the Extraordinary Gazette No. 1467/15 dated 17th October 2006 as amended by the Regulation dated 18th September 2009 published in the Extraordinary Gazette No. 1619/24 dated 18th September 2009. [The ‘Disabled Persons (Accessibility) Regulations No. 1 of 2006’ as amended by the Regulation dated 18th September 2009 are hereinafter compositely referred to as “the Regulations”].

The petitioner pleads that the aforesaid Regulations specify the manner in which various parts or areas of public buildings, public places and places where common services are available, shall be designed so that persons with disabilities can safely and easily access those places. The Regulations also declare that all existing public buildings, public places and places where common services are available, must be brought into conformity with the provisions of the Regulations within an aggregate period of 11 years from when the Regulations became operative.

Further, the Regulations specify that no certificate of conformity shall be issued in respect of the construction or renovation of any public building or structure located in a public place unless the related building plan conforms to the ‘performance specifications’ and ‘designs’ set out in the Regulations.

The petitioner points out that Government of Sri Lanka was a signatory to the United Nations Convention on the Rights of Persons with Disabilities [“UNCRPD”] on 30th March 2007 and has, subsequently, ratified the UNCRPD on 08th February 2016.

The petitioner pleads that, despite the Regulations and the aggregate period of 11 years granted for compliance and despite the aforesaid Order made in Application No.SC FR 221/2009, there has been no “*satisfactory or meaningful*” compliance with provisions of the Regulations in numerous public buildings, public places and places where common services are available. The petitioner further pleads that certificates of conformity have been frequently issued for newly constructed or renovated public building or public structures, despite the fact that that these buildings or structures do not conform to the requirements, ‘performance specifications’ and ‘designs’ set out in the Regulations.

The essence of the plaintiff’s application is his complaint that the aforesaid non-compliance with the provisions of the Act and the Regulations, has placed the petitioner and others who are similarly circumstanced, in a position where they cannot access a large number of public buildings, public places and places where common services are

available or where they have to face difficulties and have their safety jeopardised when they access such buildings and places. The petitioner pleads that, thereby, he and other persons with disabilities who are similarly circumstanced, are subject to unfair and unlawful discrimination, disadvantage and marginalisation.

Accordingly, the petitioner pleads that the failure of the respondents to ensure the enforcement of and compliance with the provisions of the Act and the Regulations, has resulted in a continuous violation of the fundamental rights guaranteed by Article 12 (1), 12 (2) and 14 (1) (h) of the Constitution to the petitioner and others who are similarly circumstanced.

Further, the petitioner refers to proposed large-scale projects for the provision of public facilities and infra-structure and urges that it is essential that when these large-scale projects are implemented, their design and construction must be in compliance with the requirements, 'performance specifications' and 'designs' set out in the Regulations.

The petitioner prayed for, *inter alia*, a direction that the respondents shall forthwith take all necessary measures to ensure that the provisions of the Act and the Regulations are fully implemented and enforced - *vide*: prayer (b); and a direction to the respondents to issue regulations, rules or by-laws which will have the effect of making owners and occupiers of premises and structures falling within the ambit of the Act and the Regulations liable for non-compliance with the provisions of the Regulations - *vide*: prayers (c) and (d).

Notices were served on all nine respondents. When this application was subsequently taken up on 20th September 2018, learned Senior State Counsel appeared and stated that he had limited instructions from the 1st respondent and that he wished to also get instructions from the 8th respondent. The 2nd to 7th respondents were not represented, despite the service of notice on them.

Thereafter, this application was taken up on 04th October 2018. Learned Senior State Counsel appeared for the Hon. Attorney General. Having heard submissions, this Court granted the petitioner leave to proceed under Article 12 (1) and Article 14 (1) (h) of the Constitution.

When this application was next taken up on 15th November 2018, learned Senior State Counsel stated that he appeared for the 8th respondent - the Urban Development Authority - in addition to appearing for the 9th respondent - the Hon. Attorney General. On that day, Court fixed this application to be taken up for argument on 29th November 2018. Court also directed learned Senior State Counsel to contact the 1st to 7th

respondents and ascertain whether they had any instructions to give in this matter. In pursuance of that request, learned Senior State Counsel undertook to contact the Secretaries to the relevant Ministries and obtain their instructions, if any. We will proceed on the basis that this was done.

Subsequently, an affidavit dated 21st May 2019 affirmed to by the Acting Director of the National Secretariat for Persons with Disabilities has been filed. The documents marked "R1" to "R20" are annexed to this affidavit.

At the time this affidavit was filed, the National Secretariat for Persons with Disabilities was placed under the purview of the Ministry of Housing and Social Welfare, as stated in the affidavit. However, with the subsequent appointment of a new Cabinet of Ministers in January this year, the National Secretariat for Persons with Disabilities now comes under the purview of the Ministry of Primary Industries and Social Empowerment.

The Acting Director of the National Secretariat for Persons with Disabilities takes up the position that the State and its agencies have taken and continue to take measures to implement and ensure compliance with the provisions of the Act and the Regulations. On that basis, he denies that there has been any violation of the fundamental rights of the petitioner.

When the application was taken up for argument on 29th November 2018, the petitioner made submissions in person and learned Senior State Counsel made brief submissions. The 2nd to 7th respondents did not enter an appearance and were not represented despite having been served notice of this application and despite being later contacted by learned Senior State Counsel to ascertain their instructions, if any. They are, undoubtedly, aware of this application but have chosen not to appear and be represented in these proceedings. In these circumstances, the 1st to 8th respondents will all be bound by the judgment and orders made in this application.

Determination

In its 2012 Census, the Department of Census and Statistics reported that an estimated 8.6% of the people of Sri Lanka have some form of disability. That means one in every twelve people of our country has to deal with his or her disabilities in the course of living their day-to-day lives. This is not the case only in Sri Lanka. The same difficulties are faced by persons with disabilities in all parts of the world.

The then Secretary General of the United Nations highlighted this when, on the occasion of the 'International Day for Persons with Disabilities' on 03rd December 2009, he observed:

"We are all vulnerable to disability, temporary or permanent, especially as we grow older. In most countries, at least one person in ten is disabled by physical, mental or sensory impairment. A quarter of the global population is directly affected by disability as care-givers or family members. Persons with disabilities encounter many disadvantages. They are often the poorest and most excluded members of society. Yet they routinely show tremendous resilience, and achieve great heights in all spheres of human endeavor."

Ban Ki-moon was referring to the spirit of resilience and commitment to achievement which persons with disabilities share with others in the community. That spirit and commitment was well illustrated when Helen Keller, who was left both blind and deaf at the age of nineteen months as a result of a disease and went on to graduate *phi beta kappa* from Radcliffe College and become a famed author, traveller and social and political activist, declared "*I am only one; but still I am one. I cannot do everything, but I can still do something; I will not refuse to do something I can do.*". The Supreme Court of India cited this declaration in the recent decision of JEEJA GHOSH vs. UNION OF INDIA [2016 Indlaw SC 381 at para. 29], referred to later on. However, it should be mentioned that it has been said Keller was quoting the author, Edward Everett Hall.

These remarks serve to highlight the now widely accepted norm that the duties of a State to its people, include taking reasonable and adequate measures to ensure that persons with disabilities - who comprise a significant portion of the community - have the opportunity to go about their day-to-day activities and live fulfilling and successful lives, just as others in the community have that opportunity.

Historically, society tended to deal with this by endeavouring to provide medical care, health care and taking other measures aimed at assisting persons with disabilities to improve their physical capabilities and by providing separate facilities for the accommodation, welfare and protection of persons with disabilities. This approach came to be known as the 'medical model' of the State dealing with the need to support persons with disabilities.

However, from the late 1960s onwards, an alternative approach gained wide acceptance. It was based on the experience that the 'medical model' approach often resulted in a degree of marginalisation and sometimes even isolation of persons with disabilities from the rest of the community. This experience gave rise to the belief that difficulties encountered by persons with disabilities when living their day-to-day lives could be more effectively countered by *also* taking measures to ensure that such

persons were able to live their day-to-day lives on a platform of equality with others in the community. The theory was that this could be achieved to a significant extent by providing facilities which enabled persons with disabilities to easily access and use public buildings and public facilities, to receive information, to communicate, to learn and to work in the community together with others; and by changing any negative attitudes which the community may have towards persons with disabilities. The underlying belief was that effecting improvements in the way society was organised to meet the needs of persons with disabilities will enable them to integrate with the community, as equals. This approach was termed the 'social model of disability' by the British academic, Prof. Michael Oliver.

The 'social model' of dealing with obstacles faced by persons with disabilities in their interaction with the community, rests on the premise that a State should provide equal opportunities for persons with disabilities to live, learn and work in the community along with other members of the community. Judith Heumann, the renowned disability rights activist who served as the Special Advisor on disability rights to the State Department of the United States of America, summed up the effectiveness of this approach, when she observed "*disability only becomes a tragedy for me when society fails to provide the things we need to lead our lives - job opportunities or barrier-free buildings, for example. It is not a tragedy to me that I am living in a wheel chair*".

Wide acceptance that an approach on the lines conceptualised by the 'social model' was a necessary concomitant of the 'medical model' approach, was one of the factors which led to the United Nations General Assembly adopting the 'Standard Rules on the Equalization of Opportunities for Persons with Disabilities' on 20th December 1993. The 22 Rules therein were formulated, drawing from the key concepts of both models referred to earlier, to guide States in their efforts to assist persons with disabilities by *inter alia*: (i) providing medical care, rehabilitation and support services; *and* (ii) by providing access facilities, educational assistance, employment opportunities, recreational and cultural opportunities, increasing public awareness of the rights of persons with disabilities and other social initiatives, which are aimed at ensuring that persons with disabilities could participate on an equal footing with others in the day-to-day affairs of the community.

To move one, it is evident from the discussion set out earlier that in today's world, there is recognition of a duty placed upon each State to provide persons with disabilities with the opportunity to live their day-to-day lives on a platform of equality with others in the community.

In keeping with this duty, the Parliament of Sri Lanka passed the Act and the Regulations were made. It should be mentioned that this was done long prior to the UNCRPD, which was signed by Sri Lanka in 2007 and subsequently ratified in 2016.

Some years later, the National Policy on Disability formulated by the Ministry of Social Welfare in 2003, stated that:

*“The National Policy on Disability promotes and protects the Rights of People who have Disability in the spirit of social justice. **They will have opportunities for enjoying a full and satisfying life and for contributing to national development their knowledge, experience and particular skills and capabilities as equal citizens of Sri Lanka.**”* [emphasis added].

A perusal of the provisions of the Act and the National Policy on Disability make it clear that the stated policy of the State is to protect, promote and advance the rights of persons with disabilities and, in the course of doing so, to, *inter alia*, ensure that equal opportunities are provided for persons with disabilities so that they are not placed at a disadvantage *vis-à-vis* others and are not subjected to discrimination or marginalisation.

It also evident from a perusal of the provisions of the Act and the Regulations made thereunder, that the State has undertaken a duty to implement this policy and has given the discharge of that duty statutory and regulatory sanction, by means of the provisions of the Act and the Regulations.

Thus, the Long Title of the Act states it is *“AN ACT TO PROVIDE FOR THE PROMOTION, ADVANCEMENT AND PROTECTION OF RIGHTS OF PERSONS WITH DISABILITIES IN SRI LANKA”*.

The Act sets up the ‘National Council for Persons with Disabilities’. The Council is chaired by the Minister and has 20 other members, all of whom are appointed by His Excellency, the President.

Section 12 of the Act declares that:

“The principle function of the council shall be to ensure the promotion, advancement and protection of the rights of persons with disabilities.”

Section 13 of the Act lists 22 specific functions which the Council is required to perform in the performance of its duties relating to its aforesaid principal function. Among them is section 13 (b) of the Act which requires the Council to:

“take all such measures as are necessary to promote the furtherance of, and safeguarding, the interests and rights of persons with disabilities.”.

Section 5 (j), section 5 (k), section 5 (o) and section 5 (p) of the Act are particularly relevant to the present application. These statutory provisions state that the functions of the Council include:

“to ensure a better standard of living for persons with disabilities”; “to ensure that the requirements of persons with disabilities are met adequately.”; “to encourage and provide facilities for full participation by persons with disabilities in all activities”; and “to introduce programmes to make the physical environment accessible to persons with disabilities and implement schemes to provide access to information and communication by persons with disabilities.”.

In pursuance of the aforesaid policy of protecting, promoting and advancing the rights of persons with disabilities and ensuring that persons with disabilities are treated equally with others and provided equal opportunities, section 23 (2) stipulates that:

“No person with a disability shall, on the ground of such disability, be subject to any liability, restriction or condition with regard to access to, or use of, any building or place which any other member of the public has access to or is entitled to use, whether on the payment of a fee or not.”

Thereafter, section 23 (3) provides that:

“The manner and mode of providing facilities to allow access by disabled persons to public buildings, public places and common services, shall be as prescribed.”.

Section 25 of the Act empowers the Minister to make Regulations in respect of any matter required by this Act.

In pursuance of section 23 read with section 25 of the Act, the Minister made the Regulations [which were referred to earlier]. These Regulations set out, in a structured manner and in considerable detail, the design and performance specifications which must be present in public buildings, public places and places where common services are available and which must be adhered to when constructing or renovating public buildings, public places and places where common services are available. This was done in order to ensure that persons with disabilities could, as far as is reasonably possible, access public buildings, public places and places where common services are available and use the facilities in those places and, thereby, participate on an equal footing with others in the day-to-day affairs of the community.

The Regulations also stipulate requirements which apply to vehicles used for public transport such as buses, trains, aircraft and ships. Further, the Regulations specify additional safety measures to be installed in public areas for the guidance of persons who are visually impaired.

A perusal of the amended petition establishes that the scope of the petitioner's application is his complaint with regard to non-compliance with the Regulations in public buildings, public places and places where common services are available. The petitioner's application does not refer to or canvass the implementation of section 23 (1) of the Act which stipulates that no person with a disability will be discriminated against on the ground of that disability in recruitment for employment or admission to an education institution.

Keeping in mind the scope of the petitioner's application which is before us, some of the Regulations which are relevant to the subject matter of the present application are reproduced *verbatim* below:

Regulation 2 (1), as amended by the Regulations stipulates that:

*"The provisions of these regulations shall be applicable to all **public buildings, public places and to places where common services are available**, to which buildings, places and services persons with disabilities have access. [emphasis added]*

*Provided that **all existing public buildings, public places and places where common services are available, shall within a period of eight years from the coming into operation of these regulations, be made accessible to persons with disabilities in compliance with the provisions of these regulations.**" [emphasis added]*

Thereafter, Regulation 3 (1) and Regulation 3 (2) specify that:

" 3 (1) No person shall construct any public building or structure in any public place or re-construct or renovate any public building or structure in any public place unless any plan which relates to such building or structure conforms.

(a) to the performance specifications as set out in Part I of the Schedule I to these regulations; and

(b) to the designs as set out in Part II of the Schedule I to these regulations.

3 (2) No certificate of conformity shall be issued by any 'relevant authority' in respect of any building, construction, reconstruction or renovation of a public building, unless the relevant authority is satisfied that the plan referred to in subsection (1) conforms.

- (a) *to the performance specifications as set out in Part I of the Schedule I to these regulations; and*
- (b) *to the designs as set out in Part II of the Schedule I to these regulations.”.*

Regulation 4 (1) and Regulation 4 (2) require that:

“ 4 (1) Adequate space as specified in Part IIA of the schedule I to these regulations shall be allocated for persons using mobility devices such as wheel chairs, crutches and walkers, in any public building, public place or place where common services are available.”.

“ 4 (2) A minimum of five percentum (5%) of all houses in housing schemes having a minimum of twenty (20) units shall be constructed in accordance with the designs relating to the different parts as specified in part IIB of Schedule I to thee regulations.”.

Regulation 5 states that:

“ In order to provide persons using mobility devices such as wheel chairs, crutches and walkers and for the persons moving with the assistance of another person with easy access to any public building, public place or place where common services are available, the following part of any public building, public place or place where common services are available, shall be designed in accordance with the design requirements specified in Part IIB of schedule I to these regulations.

1. *Parking areas;*
2. *Pathways and corridors;*
3. *Ground and floor surfaces;*
4. *Pavements, public roads and pedestrian crossings (kerb ramps);*
5. *Hand rails and grab bars;*
6. *Steps and stairs;*
7. *Ramps;*
8. *Lifts and elevators;*
9. *Doorways and entrances to any public buildings;*
10. *Toilets;*
11. *Parks, zoos and other places of recreation;*
12. *Bus stops;*
13. *Railways stations;*
14. *Windows, bed rooms, basins, kitchens, storage space, tables, switches and outlets, lighting and communication system.”*

Regulation 10 defines “public buildings” as:

“buildings used for

- (i) *residential purposes, including staff residences located within multiple dwellings and high rise residential units and tenements;*
- (ii) *for commercial purposes, including office buildings, hotels, motels, inns, guest houses and other public lodgings, shopping centres, super markets, restaurants, general wholesale and retail stores and car parks;*
- (iii) *industrial purposes, including factories and work shops and ware houses;*
- (iv) *community, social and educational purposes including educational institutions, schools, hospitals, nursing homes, medical center dispensaries, home for elderly persons, temples, churches and mosques and other religious places, police stations, courthouses, assembly halls, village halls, community centres, auditoriums, convention halls, libraries, museums, exhibition halls, public toilets and such other buildings; and*
- (v) *recreational purposes, including cinema halls, theatres, concert halls, opera houses, art galleries, stadiums, sports complexes, sports venues and other places of recreation.”.*

Further, Regulation 10 describes “*public places*” as including:

“pedestrian crossings, walkways, pavements, roads, streets, off-street and on-street parking spaces, out door staircases, steps, lifts, traffic signals and sign parks, botanical gardens, zoological gardens and places of tourist interest and attraction;”.

Regulation 10 also defines “*common services*” as:

- “(a) public transportations services and facilities connected to such public transportation and shall include passenger buses, passenger trains, bus stops, depots and terminals, railways stations, air crafts, airport terminal buildings and airports and water transport;*
- (b) public communication services and facilities connected to such communication services and shall include post offices, communication centres and telephone booths.”.*

Finally, Regulation 10 defines “*relevant authority*” as:

“`relevant authority’ means any local authority or any officer, persons or body of persons appointed for the purpose of granting approval for any construction or reconstruction of any public building or for the purpose of issuing the required licenses or permits in connection with vehicles providing public transportation under any written law.”.

Schedule I [consisting of Part I, Part II A and Part II B] of the Regulations, sets out the design and performance specifications which must be followed when constructing or renovating public buildings, public places and places where common services are available. Thereafter, Schedule II [consisting of Part I and Part II] of the Regulations, lists the design and performance specifications which are to be followed with regard to vehicles used for public transport and associated facilities. Lastly, Schedule III of the Regulations set out safety measures to be taken in relation to visually impaired persons.

It is unnecessary, for the purposes of this judgment, to describe those design and performance specifications. It will suffice for the purpose of illustration to mention that: (i) Part I of Schedule I referred to in Regulation 3 (1) (a) requires, *inter alia*, that entrances and exits to high-rise residential units, post offices, banks, financial service institutions and shops shall be accessible by a ramp which conforms to the designs specifications set out in Part IIB of Schedule I to the Regulations; and (ii) community centres, auditoriums, concert halls, assembly halls, cinemas, theatres, village halls and other places of public assembly shall be accessible to persons with disabilities and shall provide doorways and accessible toilet facilities which conform to the designs specifications set out in Part IIB of Schedule I to the Regulations.

Having referred to the relevant statutory provisions and Regulations, it is necessary to now consider the material placed before us by the petitioner and the respondents with regard to the petitioner's complaint that numerous public buildings, public places and places where common services are available, do not comply with the requirements of the Act and the Regulations.

Before doing so, it would be apt to observe with regard to the subject matter of the application before us, that the aforesaid provisions of the Act, Regulations and the National Policy on Disability make it clear that the State's duty of protecting, promoting and advancing the rights of persons with disabilities, requires the State and its agencies to, *inter alia*, ensure that public buildings and public facilities are designed and constructed in a manner which ensures that persons with disabilities can enter, exit and use such public buildings and public facilities with relative ease and without danger.

The petitioner pleaded in his amended petition that, despite the extension of the time limit given for compliance with the requirements of the Regulations, "*..... compliance with the Regulations has still not been achieved, hence this new Petition.*"_ He goes on to state "*..... on receipt of numerous complaints and grievances by the General public, as well as Medical Practitioners, about Continuous failures to comply with your Lordship's Court Order he personally visited at his own cost several NEW*

constructions and several more modifications to existing constructions, and has observed the correctness of their grievous complaints as many building parts recognised in the Regulations, Toilets, Steps & Railings and Ramps in particular, either have NOT been built at all or incorrectly positioned or their construction violates the mandatory requirements set out in Gazette No. 1,4657 dated 17th October 2006.". In his affidavit, the petitioner has, referring to aforesaid complaints and grievances voiced by members of the public, stated *"I have personally visited reputed hospitals, city hotels, supermarkets and shops and even places of education and have observed the correctness of their cries and recognised the fear for the safety of their life."* Further, the petitioner has made statements in his affidavit to the effect that, despite the Order dated 27th April 2011 made in SC FR Application No. 221/2009, he has observed that several new buildings have been issued certificates of conformity even though these new buildings do not comply with the provisions of the Act and the Regulations. The affidavits marked "X3(a)" and "X3(b)" furnished by two senior and reputed medical practitioners set out their personal observations that several new hospitals do not provide adequate access facilities, toilets and washing facilities which can be easily and safely used by persons with disabilities. Further, the photographs and other documents referred to by the petitioner when he made submissions, support his statements referred to earlier.

To turn to the material placed before us by the respondents, the documents marked "R2" to "R4", "R6" to "R12K" and "R20" indicate that the 1st, 4th and 8th respondents have been cognizant of the need to ensure compliance with the requirements of the Act and the Regulations and have sought to ensure that compliance by issuing several instructions and circulars to local authorities, government departments, boards, statutory institutions, State agencies and public officers, they control or work with.

Thereafter, the letters and documents marked "R14" to "R18f" relate to the Project to construct a Light Rail Transit System in Colombo, the Western Region Aero City Development Project, the Colombo Port City Development Project and the Multi-Modal Transport Hub at Makumbura and several projects in Kandy under the Strategic Cities Development Project. These letters and documents give a heartening indication that new large scale projects coming under the aegis of the Ministry of Megapolis and Western Development and the Urban Development Authority are being planned keeping in mind the aforesaid obligation and duty of the State to provide persons with disabilities with facilities which comply with the provisions of the Act and the Regulations.

It is important that all other similar projects to be undertaken by the State and its agencies or approved by the State and its agencies, follow the same path.

However, although those letters and documents give a measure of assurance with regard to the future, what of the present ?

In this regard, the letters marked “R13a” to “R13e” written by the Bank of Ceylon, the Department of Posts, the Sri Lanka Transport Board and the Sri Lanka Railway establish that these State agencies are aware of the need to provide facilities in their premises and transport systems, which comply with the provisions of the Act and the Regulations. It also appears that the Bank of Ceylon and particularly, the Department of Posts have endeavoured to comply with these requirements and achieved considerable success within the limitations they faced. However, it seems that the Sri Lanka Transport Board and the Sri Lanka Railway are yet at the stage of planning for compliance over a period of time. Overall, the letters marked “R13a” to “R13e” reveal that much remains to be done to achieve compliance with the provisions of the Act and the Regulations within the premises and public transport systems of these institutions. It appears that, by and large, compliance with the provisions of the Act and the Regulations is still not more than work-in-progress or work in the pipeline, despite the many years which have elapsed since the Regulations were made.

It would be not unreasonable to infer that much the same position is likely to prevail in the case of many other agencies of the State.

In fact, the National Policy for Disability categorically stated, in 2003:

“The majority of public buildings are inaccessible to wheelchair users and other people who have mobility disability and use walking aids. Most urban workplaces, educational and vocational training institutions and public buildings have steps at the entrance, are often multistoried and not always have lifts. People in wheelchairs cannot use public transport. In rural areas many roads are not tarred and often have very uneven surfaces. Bus services are scarce. But even when there are services many individuals are unable to use them because they are inaccessible –the height of buses, doorways too narrow etc. Only 55% of people who have mobility disability use buses and even less – 36% - use trains. Taking all the disability groups together the figures are not much better – only 73% travel by bus and 45% by train. Most people who have disability (83%) use three wheel taxis to get around, which is an added expense. Inaccessibility to transportation severely limits employment and educational opportunities for this group of individuals. Among inaccessible places which people who have disability need to use are banks and places of religious worship. Toilets in most public buildings, hotels, rest houses, cinemas, theaters, schools etc. are inaccessible due to narrow entrances and the arrangement of fittings.”

There is no material before us which suggests that there has been a tangible improvement in across-the-board compliance with the requirements specified in the

Regulations, despite 16 years having passed since the National Policy on Disability made the aforesaid observations in 2003.

In these circumstances, the unavoidable conclusion is that there has been and there continues to be, substantial non-compliance with and non-enforcement of the provisions of the Act and the Regulations.

It should be said here that a perusal of the Regulations leaves one with the impression that the Regulations are comprehensive and easily understood. It also appears that the Regulations have been tailored in a manner which enables compliance without causing unreasonable difficulty or unbearable expense, especially in the case of new constructions and new acquisitions. In other words, the Regulations do not seem to call for taking measures which overstep the benchmark of “*reasonable accommodation*” fixed by the States Parties to the UNCRPD and defined in Article 2 of the UNCRPD as:

“necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;”

Thus, the stark truth is that there has been large scale non-compliance with the Regulations despite the passage of about 13 years since the Regulations were made and the passage of more than one and half years after the expiry of the time limit allowed for compliance.

It follows that the fault lies not in the Regulations but in compliance by the State and its agencies with the Regulations, if I am to paraphrase Cassius in Shakespeare’s Julius Caesar [Act I Scene ii Line 140-141]. It seems that much the same problem exists in neighbouring India too, which led Sikri J to observe in JEEJA GHOSH vs. UNION OF INDIA [at para. 2]:

“India also has come out with various legislations and schemes for the upliftment of such differently abled persons, but the gap between the laws and reality still remains.”

I must now turn to the question of whether large scale non-compliance with the Regulations has violated the fundamental rights guaranteed by Article 12 (1) and Article 14 (1) (h) of the Constitution to the petitioner and other persons with disabilities who are similarly circumstanced.

In this connection, it has been estimated, as mentioned earlier, that about 9% of the population of Sri Lanka have disabilities. Among them are war heroes, senior citizens,

students and others. The petitioner is a member of this group. There are close to two million others in Sri Lanka, who will fall within that broad category.

There can be no doubt that the aforesaid failure on the part of the State and its agencies to satisfactorily implement and enforce the provisions of the Act and the Regulations, has caused substantial prejudice to the petitioner and other persons with disabilities who, due to that failure on the part of the State and its agencies, are prevented from accessing numerous public buildings, public places and places where common services are available and using the facilities within these places or have difficulty and are sometimes placed in danger of injury, when accessing such places and using the facilities within these places.

It is clear from the record in the previous SC FR Application No. 221/2009 and the eventual Order dated 27th April 2011 that the Order was not based upon the consent of the respondents. Thus, when making the Order, this Court undoubtedly proceeded on the basis that the petitioner had established discrimination and a violation of his fundamental rights. The present application is on comparable facts. Further, the failure to comply with the Act and the Regulations despite the lapse of several more years aggravates the position and lends great force to the petitioner's present complaint. As mentioned earlier, the Order in SC FR Application No. 221/2009 expressly granted the petitioner the right to make a fresh application in the event of non-compliance with the Act, Regulations and Order.

In these circumstances, I need look no further to reach the conclusion that, in the present application too, the material placed before us and referred to earlier, entitles the petitioner to a declaration that his fundamental rights have been violated.

However, it will be useful to further consider the manner in which the failure on the part of the State and its agencies to satisfactorily implement and enforce the provisions of the Act and the Regulations, violates the fundamental rights guaranteed by Article 12 (1) of the Constitution to the petitioner and others who are similarly circumstanced.

When doing so, it is relevant to keep in mind that the UNCRPD was signed and later ratified by Sri Lanka. Article 3 (f) of the UNCRPD declares that one of its eight General Principle is "*Accessibility*".

Thereafter, Article 9 (1) declares that all States Parties to the UNCRPD:

"..... shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and

communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and rural areas

No doubt, this undertaking given by the State when it signed and ratified the UNCRPD does not amount to law in our country until Parliament enacts legislation giving effect to that undertaking. Nevertheless, this Court has recognised that International Conventions of this nature entered into by Sri Lanka form a type of “*soft law*” which may be taken into account when reviewing executive or administrative action and inaction in relation to fundamental rights - *vide*: BULANKULAMA vs. MINISTRY OF INDUSTRIAL DEVELOPMENT [2000 3 SLR 243 at p.274], WIJEBANDA vs. CONSERVATOR GENERAL OF FORESTS [2009 1 SLR 337 at p.359] and the recent decision in KARIYAWASAM vs. CENTRAL ENVIRONMENTAL AUTHORITY [SC FR 141/2015 decided on 04th April 2019].

In the recent case of JEEJA GHOSH vs. UNION OF INDIA, the petitioner, who is an activist for disabled rights, was ‘de-boarded’ from a commercial airline because she had cerebral palsy. That was in breach of the published ‘Civil Aviation Requirements’. The petitioner sought the intervention of the Supreme Court of India, *inter alia*, by way of writs and directions requiring the respondents to comply with the applicable ‘Civil Aviation Requirements’. The Supreme Court of India, holding with the petitioner, commented [at para. 39]:

*“In international human rights law, equality is founded upon two complimentary principles: non-discrimination and reasonable differentiation. **The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. Equality not only implies preventing discrimination (example the protection of individuals against unfavourable treatment by introducing anti-discrimination laws) but also goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation. The move from the patronising and paternalistic approach to persons with disabilities represented by the medical model to viewing them as members of the community with equal rights has also been reflected in the evolution of international standards relating specifically to disabilities, as well as moves to place the right of persons with disabilities within the category of universal human rights.**”* [emphasis added].

The Supreme Court of India went on to state [at para. 42]:

“The subject of the rights of persons with disabilities should be approached from the human rights perspective, which recognised that persons with disabilities were entitled to enjoy the full range of internationally guaranteed rights and freedoms without discrimination on the ground of

disability. This creates an obligation on the part of the State to take positive measures to ensure that in reality persons with disabilities get enabled to exercise those rights. There should be insistence on the full measure of general human rights guarantees in the case of persons with disabilities, as well as developing specific instruments that refine and give detailed contextual content to those general guarantees. There should be full recognition of the fact that persons with disability were integral part of the community, equal in dignity and entitled to enjoy the same human rights and freedoms as others.”. [emphasis added].

These words of the Supreme Court of India fortify the observation I made earlier in this judgment that the aforesaid provisions in our Act and Regulations exist to implement the policy of the State that persons with disabilities must be provided the opportunity to live their day-to-day lives on a platform of equality with others in the community, and that there is a duty placed upon the State and its agencies to implement and ensure compliance with the aforesaid provisions of the Act and the Regulations.

It is also plain to see that the Act and the Regulations have been enacted and made by way of ‘*affirmative action*’ under the authority of Article 12 (4) of the Constitution which recognises that special provisions may be made by law, subordinate legislation or executive action, for the advancement of women, children or disabled persons. Fernando J observed in RAMUPPILLAI vs. PERERA [1991 1 SLR 11 at p.13]:

“Paragraph (2), (3) and (4) of Article 12 are essentially explanatory and declaratory of the principle of equality and do not add to or detract from that principle. Article 12 (4) in particular does not authorise ‘affirmative action’ for women, children and disabled persons, but out of an abundance of caution, declares that nothing in Article 12 shall prevent affirmative action; apart from proved ‘inequality’;”.

As observed earlier, having enacted the Act, declared a Policy and made the Regulations, the State and its agencies have a duty to implement and ensure compliance with the provisions of the Act and the Regulations so that persons with disabilities are provided the opportunity to live their day-to-day lives on a platform of equality with others.

However, the material placed before us demonstrates that there has been a failure on the part of the State and its agencies to satisfactorily implement, comply with and enforce the provisions of the Act and the Regulations. It follows that this failure on the part of the State and its agencies has denied the petitioner and others who are similarly circumstanced, of the opportunity to live their day-to-day lives on a platform of equality with others in the community *vis-à-vis* their ability to access numerous public buildings, public places and places where common services are available and use the facilities within these places. Further, that failure on the part of the State and its agencies has

denied the petitioner and others who are similarly circumstanced, of the protection held out to them by the provisions of the Act and the Regulations with regard to their ability to access numerous public buildings, public places and places where common services are available and use the facilities within these places.

Accordingly, I hold that the failure on the part of the State and its agencies to satisfactorily implement, comply with and enforce the provisions of the Act and the Regulations has denied and continues to deny the petitioner and others who are similarly circumstanced, of the opportunity of equality and the protection assured to them by the provisions of the Act and the Regulations and, thereby, has violated the fundamental rights guaranteed by Article 12 (1) of the Constitution to the petitioner and others who are similarly circumstanced.

In my view, the aforesaid determination will suffice for the purposes of deciding this application. I see no necessity to proceed further to consider whether there is also a violation of Article 14 (1) (h) of the Constitution.

Before proceeding to deal with the Orders and Directions which should be issued, I would like to mention in passing, that it seems to me that the concept of human dignity, which is the entitlement of every human being, is at the core of the fundamental rights enshrined in our Constitution. It is a fountainhead from which these fundamental rights spring forth and array themselves in the Constitution, for the protection of all the people of the country. As Aharon Barak, former Chief Justice of Israel has commented [Human Dignity – The Constitutional Value and the Constitutional Right (2015)]:

“Human dignity is the central argument for the existence of human rights. It is the rationale for them all. It is the justification for the existence of rights.”. and *“The constitutional value of human dignity has a central normative role. Human dignity as a constitutional value is the factor that united the human rights into one whole. It ensures the normative unity of human rights.”*

Thus, it seems to me that when Article 12 (1) declares that *“All persons are equal before the law and are entitled to the equal protection of the law”*, it entitles persons with disabilities to be protected from an arbitrary or unreasonable failure on the part of the State and its agencies to satisfactorily implement, comply with and enforce the provisions of the Act and the Regulations which will have the effect of denying persons with disabilities of the protection of the provisions of the Act and the Regulations and place them in a position of inequality with others in the community with regard to their ability to access public buildings, public places and places where common services are available and use the facilities within these places. Next, there can be no dispute that when that failure on the part of the State and its agencies results in persons with disabilities being, in effect, debarred from accessing public buildings, public places and

places where common services are available or results in persons with disabilities having to publicly deal with inconvenience, difficulty and fear or even, at times, undergo public embarrassment or humiliation in the course of their attempts to access these places and use the facilities within these places, their human dignity is likely to be gravely impaired. This stark truth buttresses the determination reached earlier that there has been and continues to be a violation of the fundamental rights guaranteed by Article 12 (1) of the Constitution to the petitioner and others who are similarly circumstanced.

It is also relevant to draw attention to section 24 (1) of the Act which provides that:

“Where there has been a contravention of the provisions of section 23, any person affected by such contravention or the Council on behalf of such person may apply to the High Court established under Article 154P of the Constitution for the Province in which the person affected by such contravention resides, for relief or redress.”.

Thereafter, Section 24 (3) enacts that:

“The High Court shall have power to grant such relief or make such directions as it may deem just and equitable in the circumstances in respect of any application referred to in subsection (1).”.

Further, we note that section 34 (e) of the Act stipulates:

“Any person who contravenes the provisions of this Act or any regulation or rule made thereunder, shall be guilty of an offence under this Act and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding ten thousand rupees or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.”.

Section 35 provides that: where such an offence is committed by a body corporate, the directors, secretary and officers of that body corporate shall be deemed guilty of the offence, and where the offence is committed by a firm, every partner of the firm shall be deemed guilty of the offence; unless such a person proves that the offence was committed without his knowledge and that he exercised due diligence to prevent to the commission of the offence.

There is no material before us which suggests that these specific provisions of the Act have been utilised. We think it appropriate to draw the attention of the National Council for Persons with Disabilities, the National Secretariat for Persons with Disabilities and the other respondents to the aforesaid provisions of the Act so that they could, in appropriate circumstances, consider resorting to these provisions in their efforts to ensure compliance with the provisions of the Act and the Regulations.

To conclude, we declare that the fundamental rights guaranteed by Article 12 (1) of the Constitution to the petitioner and other persons with disabilities who are similarly circumstanced, have been violated by the State and its agencies, including those coming under the purview or control of the 1st to 8th respondents.

In this connection, it should be mentioned here that the 1st to 8th respondents have not furnished material to us which would suggest that, apart from issuing some instructions and providing for compliance in the case of projects which have been recently completed or are still in the pipe-line, the requirements of the Act and the Regulations have been complied with in all the existing premises and facilities which are under the purview or control of 1st to 8th respondents or which are under the purview or control of local authorities, government departments, boards, statutory institutions and State agencies under 1st to 8th respondents.

With regard to the relief referred to in prayer (b) of the amended petition:

- (i) We hereby issue a Direction to the 1st to 8th respondents and the Secretaries to the Ministries of the 1st to 6th respondents, to take or cause to be taken, effective measures to ensure the provisions of the Disabled Persons (Accessibility) Regulations No. 1 of 2006, as amended, are forthwith implemented and complied with in the case of and/or in respect of public buildings, public places and places where common services are available [as defined in clause 10 of the Disabled Persons (Accessibility) Regulations No. 1 of 2006] which come under purview or control of the 1st to 8th respondents and/or under the purview or control of local authorities, government departments, boards, statutory institutions, State agencies and public officers under the 1st to 8th respondents,.

However, if valid practical and/or budgetary considerations necessitate that such implementation and compliance in an existing public building, public place and place where common services are available [as defined in clause 10 of the Disabled Persons (Accessibility) Regulations No. 1 of 2006], be temporarily deferred, that may be done, provided that, in such instances, implementation and compliance is achieved at the earliest possible opportunity;

- (ii) We hereby issue a further Direction to the 1st to 8th respondents and the Secretaries to the Ministries of the 1st to 6th respondents, to forthwith issue or cause to be issued, circulars or directions to all local authorities, government

departments, boards, statutory institutions, State agencies and public officers under the purview or control of the 1st to 8th respondents, specifying that:

- (a) Approvals for the construction or renovation of public buildings, public places and places where common services are available [as defined in clause 10 of the Disabled Persons (Accessibility) Regulations No. 1 of 2006] shall not be granted unless the building plans, designs and drawing relating to such construction or renovation, comply with the provisions of the Disabled Persons (Accessibility) Regulations No. 1 of 2006;
 - (b) Certificates of conformity in respect of public buildings, public places and places where common services are available [as defined in clause 10 of the Disabled Persons (Accessibility) Regulations No. 1 of 2006] shall not be issued unless it has been established, after inspection, that such buildings and places, comply with the provisions of the Disabled Persons (Accessibility) Regulations No. 1 of 2006, as amended;
- (iii) We hereby issue a further Direction to the 1st to 8th respondents and the Secretaries to the Ministries of the 1st to 6th respondents, to take or cause to be taken, appropriate follow-up action, on a continuing and regular basis, to monitor compliance with the subject matter of Direction (i) and Direction (ii) (a) and (ii) (b) above, by local authorities, government departments, boards, statutory institutions, State agencies and public officers under the purview or control of the 1st to 8th respondents;
- (iv) We hereby issue a further Direction to the 1st to 8th respondents and the Secretaries to the Ministries of the 1st to 6th respondents, to instruct local authorities, government departments, boards, statutory institutions and State agencies and public officers under the purview or control of the 1st to 8th respondents, to take or cause to be taken, where reasonably considered appropriate, disciplinary proceedings against public officers who are found to have granted approvals or issued certificates of conformity in breach of and/or in violation of and/or in disregard of the provisions of the Disabled Persons (Accessibility) Regulations No. 1 of 2006;
- (v) We hereby issue a further Direction to the 1st to 8th respondents and the Secretaries to the Ministries of the 1st to 6th respondents to direct local authorities, government departments, boards, statutory institutions, State agencies and public officers under the purview or control of the 1st to 8th respondents, to institute or cause the institution of prosecutions in the Magistrate's Court under the provisions of 34 of the Protection of the Rights of

Persons with Disabilities Act No. 28 of 1996, as amended, in instances where they detect that there has been a breach and/or violation and/or failure to comply with the provisions of the Disabled Persons (Accessibility) Regulations No. 1 of 2006 in the case of and/or with regard to a public building, public place and/or place where common services are available *and* they reasonably consider it appropriate to institute such a prosecution or cause such a prosecution to be instituted.

With regard to the relief referred to in prayers (c) and (d) of the amended petition:

- (i) We hereby issue a Direction to the National Council for Persons with Disabilities acting together with the National Secretariat for Persons with Disabilities, to place appropriate, effective and prominent notices in the national newspapers in all three languages, on three separate occasions which are each one month apart, drawing the attention of the public:
 - (a) To the requirement that all public buildings, public places and places where common services are available [as defined in clause 10 of the Disabled Persons (Accessibility) Regulations No. 1 of 2006] must comply with the provisions of the Disabled Persons (Accessibility) Regulations No. 1 of 2006, as amended; and
 - (b) That a failure to comply could entail the liability to be prosecuted in the Magistrate's Court for the commission of an offence under the Act and, if found guilty, to be liable to punishment, as set out in the Act.
- (ii) We hereby issue a further Direction to the National Council for Persons with Disabilities acting together with the National Secretariat for Persons with Disabilities, to, in addition to the above, carry out an appropriate and effective public awareness programme designed to increase public awareness of the relevant provisions of the Protection of the Rights of Persons with Disabilities Act No. 28 of 1996 Act, as amended and the mandatory requirements of the Disabled Persons (Accessibility) Regulations No. 1 of 2006, as amended. In this connection we draw attention to section 13 (r) of the said Act which specifies that one of the functions of the Council is *"to make the public aware of the condition and needs of persons with disabilities through publications and programmes."*
- (iii) We hereby issue a further Direction to the National Council for Persons with Disabilities acting together with the National Secretariat for Persons with Disabilities:

- (a) To take measures to provide facilities to assist, by way of legal advice and assistance, persons with disabilities and others who wish to enforce their rights under the Protection of the Rights of Persons with Disabilities Act No. 28 of 1996, as amended, and the Disabled Persons (Accessibility) Regulations No. 1 of 2006, as amended, by recourse to the High Court or the Magistrate's Court, as the case may be; and
- (b) In instances where there has been a breach and/or violation and/or failure to comply with the provisions of the Disabled Persons (Accessibility) Regulations No. 1 of 2006, as amended, to institute or cause the institution of proceedings in the High Court under the provisions of section 24 of the Protection of the Rights of Persons with Disabilities Act No. 28 of 1996, as amended, and/or prosecutions in the Magistrate's Court under the provisions of 34 of the said Act, as amended, in instances where they reasonably consider it appropriate to do so.

The State will pay the petitioner a sum of Rs. 50,000/- on account of costs.

Judge of the Supreme Court

Vijith Malalgoda, PC, J.
I agree.

Judge of the Supreme Court

Murdu Fernando, PC, J.
I agree.

Judge of the Supreme Court