

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

*In the matter of an Application for  
mandates in the nature of Writs of  
Certiorari and Prohibition under and in  
terms of Article 140 of the Constitution*

**Geological Survey and Mines  
Bureau,**  
No. 569,  
Epitamulla Road,  
Pitakotte.

**PETITIONER**

C.A. (Writ) Application No.

**-Vs-**

1. **Hon. Senthil Thondaman,**  
Governor of Eastern Province,  
Secretariat to the Governor,  
Eastern Province,  
Orr's Hill,  
Trincomalee.
2. **L.P. Madanayake,**  
Secretary to the Hon. Governor,  
Secretariat to the Governor,  
Eastern Province,  
Orr's Hill,  
Trincomalee.
3. **R.M.P.S. Rathnayake,**  
Chief Secretary- Eastern Provincial  
Council,  
Inner Harbour Road,  
Trincomalee.

4. **Chaminda Hettiarachchi,**  
District Secretary,  
District Secretariat of Trincomalee,  
4<sup>th</sup> Mile Post,  
Kandy Road,  
Trincomalee.
5. **Kalamathy Pathmarajah,**  
District Secretary,  
District Secretariat of Batticaloa,  
Fort Road,  
Batticaloa.
6. **Chinthaka Abeywickrama,**  
District Secretary,  
District Secretariat of Ampara,  
Kachcheri Road,  
Ampara.
7. **D.M.R.C. Dasanayake,**  
Commissioner- Department of Land  
Administration,  
Inner Harbour Road,  
Trincomalee.
8. **K. Kunanathan**  
Divisional Secretary- Kuchchaveli,  
Divisional Secretariat,  
Kuchchaveli.
9. **Hon. Naseer Ahamed,**  
Minister of Environment,  
Sobadam Piyasa,  
416/C/1,  
Robert Gunawardana Mawatha,  
Battaramulla.

**10. Dr. Anil Jasinghe,**  
Secretary,  
Ministry of Environment,  
Sobadam Piyasa,  
416/C/1,  
Robert Gunawardana Mawatha,  
Battaramulla.

**11. Hon. Harin Fernando,**  
7<sup>th</sup> Floor, Sri Lanka Institute of  
Tourism and Hotel Management,  
Galle Road,  
Colombo 03.

**12. H. M. B. P Herath,**  
Secretary,  
Ministry of Tourism and Lands,  
No. 696/4,  
Maradana Road,  
Colombo 10.

**RESPONDENTS**

On this      day of August, 2023.

**TO: HIS LORDSHIP THE HONOURABLE PRESIDENT OF THE COURT OF APPEAL AND THE OTHER HONOURABLE JUDGES OF THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

The **Petition** of the **Petitioner** above named appearing by                      his registered Attorney-at-Law states as follows;

**THE PETITIONER**

1. The Petitioner above named is a body corporate duly established under and in terms of section 2(1) of the Mines and Minerals Act No. 33 of 1992 as amended (hereinafter sometimes referred to as 'Mines and Minerals Act'), and according to section 2 (2) of the Mines and Minerals Act, the Petitioner can sue and be sued in its corporate name.
2. The Petitioner states that in terms of the Mines and Minerals Act the Petitioner is entitled to and therefore its operations *inter alia* comprise of geological mapping, multi-technique integrated mineral exploration, regulation of mining activities by the issue of licenses, tilting of exploration and mining leases (mineral titling). The Petitioner with its wide ranging demonstrated expertise acquired over twelve decades, functions as the primary source of fact-based information and is able to provide geo-scientific advice and professional services on either voluntary or commissioned basis to the government, industry, academia and the general public.

*A profile of the Petitioner is annexed herewith marked as "P1" and is pleaded as part and parcel hereof.*

3. In the instant Application the Petitioner is *inter alia* impugning the unlawful conduct of the 1<sup>st</sup> Respondent and several other Respondents acting under his dictation, which has resulted in the Petitioner being prevented from exercising its statutory functions and powers.

#### **THE RESPONDENTS**

4. The Petitioner states that;
  - a) 1<sup>st</sup> Respondent above named is the Governor of the Eastern Province appointed by his Excellency the President under and in terms of Article 154B of the Constitution of the Republic. The Petitioner further states that since the Board of Ministers of the North Western Province has ceased to hold office, the 1<sup>st</sup> Respondent presently exercises the functions of the said Board of Ministers.
  - b) The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents abovenamed are respectively the Secretary to the 1<sup>st</sup> Respondent and the Chief Secretary of the Eastern Province.

- c) The 4<sup>th</sup> to 6<sup>th</sup> Respondents abovenamed, are the District Secretaries to the administrative Districts of Trincomalee, Batticaloa and Ampara.
- d) The 7<sup>th</sup> Respondent is the Commissioner of the Department of Land Administration for the Eastern Province.
- e) The 8<sup>th</sup> Respondent is the Divisional Secretary of the Kuchchaveli Divisional Secretariat Division, which is within the Trincomalee Administrative District.
- f) The 9<sup>th</sup> and 10<sup>th</sup> Respondents are the Minister of Environment and the Secretary to the Ministry of Environment. The Petitioner is an entity functioning under the Ministry of Environment. The said Respondents have been named as Respondents in the instant application only for the purposes of notice.
- g) The 11<sup>th</sup> and 12<sup>th</sup> Respondents are the Minister and the Secretary to the Ministry of Tourism and Lands. The said Respondents have been named as Respondents in the instant application only for the purposes of notice.

**THE UNLAWFUL INTERFERENCES OF THE 1<sup>ST</sup> RESPONDENT AND THOSE ACTING UNDER HIM WITH THE POWERS AND FUNCTIONS OF THE PETITIONER**

5. The Petitioner states that;

- a) in terms of section 26 of the Mines and Minerals Act *inter alia* the ownership of minerals is hereby vested in the Republic, notwithstanding any right of ownership or otherwise which any person may have to the soil on, in or, under which minerals are found or situated.
- b) In terms of the preamble to the Mines and Minerals Act the Petitioner bureau has *inter alia* been established to regulate the exploration for, mining, transportation, processing, trading in or export of, minerals.

- c) In terms of section 13(1) of the Mines and Minerals Act, the Petitioner bureau is empowered to do anything necessary for, or conducive or incidental to, the bureau carrying the out its functions.
- d) In terms of section 13(1)(d) of the Mines and Minerals Act the Petitioner is vested with the power to issue licences for- (i) explorations consequent to the receipt of an application or by the advertising and calling for Expressions of Interest: (ii) mining; (iii) transport; (iv) trade-in; (v) storing; and (vi) export of minerals;
- e) In terms of section 19 of the Mines and Minerals it is only the Minister who is vested with the power to issue directions to the Board of the Petitioner bureau.
- f) In terms of section 46 and 46A of the Mines and Minerals Act, the Petitioner's authorized officers are *inter alia* entitled to enter into and inspect lands to carryout carry out geological and mineral investigations.
- g) In terms of the provisions stipulated in Part II of the Mines and Minerals Act, the Petitioner is the statutory authority vested with power issue licenses to explore minerals.
- h) Further Section 10 of the State Lands Ordinance provides that:  
*"No disposition of State land made under this Ordinance shall be deemed to confer any right to any mineral, mineral product or mineral oil in, under, or upon such State land unless otherwise expressly provided, in the instrument of disposition, and, save as so expressly provided, all such minerals, mineral products and mineral oils shall, notwithstanding any such disposition, be deemed to remain, and shall remain, the absolute property of the Republic."*

6. The Petitioner states that;

- a) A high proportion of the mineral wealth of the country is situated within the Eastern Province.

- b) Until the occurrence of the matters averred in this application, over a period of nearly three decades of its existence the Petitioner has never had any interference on its activities from other officers of the state.
- c) In the ordinary course of its activities the Petitioner would identify the possibility of valuable minerals existing within an area of several dozen square kilometres. As part of this process, the Petitioner is empowered to issue licenses to third parties.
- d) Thereafter the Petitioner's officers/agents and/ or those acting under the license of the Petitioner would notify the relevant state authorities and enter lands to conduct exploration.
- e) Exploration of minerals is an activity which occurs with minimum interference to the land since it only involves the boring of a hole in the ground.
- f) In the event there is a commercially viable mineral deposit, the Petitioner would undertake the process of taking steps to acquire the relevant lands.

7. The Petitioner states that;

- a) In the ordinary course of exercising its powers when the Petitioner was taking steps for the preliminary planning clearance for the proposed mineral sand exploration within the Trincomalee District, by letter dated 06.04.2023 bearing reference No. CC/P/GEN/Exploration/2023, the Coast Conservation and Coastal Resource Management Department (hereinafter sometimes referred to as 'CCCRMD') *inter alia* informed the Petitioner that CCCRMD has no objections subject to several conditions for the proposed exploration for mineral sand within the coast area in the district of Trincomalee.

*A true copy of letter dated 06.04.2023 by the Coast Conservation and Coastal Resource Management Department, is annexed hereto marked 'P2(a)' and is pleaded as part and parcel hereof.*

- b) Furthermore, by letter dated 11.04.2023, Director (Eastern Province) of the Urban Development Authority (hereinafter sometimes referred to as 'UDA') *inter alia* informed the Petitioner that UDA has no objection for the exploration activity within the land.

*A true copy of letter dated 11.04.2023 by Director (Eastern Province) of the Urban Development Authority, is annexed hereto marked '**P2(b)**' and is pleaded as part and parcel hereof.*

- c) Acting under the powers vested in it by statute, the Petitioner issued an Exploration License bearing No. EL/431 dated 15.06.2023 and an Exploration License bearing No. EL/432 dated 19.06.2023 to a company named Midwest Heavy Sands (Pvt) Ltd of No. 291/2, Havelock Road, Colombo 06.

- d) Under Exploration License bearing No. EL/431 dated 15.06.2023, the Petitioner had granted to the said Midwest Heavy Sands (Pvt) Ltd, the exclusive right to explore for mineral sand within the area located off the Eastern coast and comprising of 10 square kilometre grid unit designated by the metric grid co-ordinates stated in the said license. The said Exploration License bearing No. EL/432 is to be valid for a period of 24 months commencing from 16.06.2023 until 15.06.2025.

*A true copy of Exploration License bearing No. EL/431 dated 15.06.2023, is annexed hereto marked '**P2(c)**' and is pleaded as part and parcel hereof.*

- e) Under Exploration License bearing No. EL/432 dated 19.06.2023, the Petitioner had granted to the said Midwest Heavy Sands (Pvt) Ltd, the exclusive right to explore for mineral sand within the area located off the Eastern coast and comprising of 13 square kilometre grid unit designated by the metric grid co-ordinates stated in the said license. The said Exploration License bearing No. EL/432 is to be valid for a period of 24 months commencing from 20.06.2023 until 19.06.2025.

*A true copy of Exploration License bearing No. EL/432 dated 19.06.2023, is annexed hereto marked '**P2(d)**' and is pleaded as part and parcel hereof.*

f) Thereafter, since the Petitioner possessed the relevant expertise to conduct mineral explorations, the Midwest Heavy Sands (Pvt) Ltd entered into Exploration Contract dated 07.07.2023 to *inter alia* retain the services of the Petitioner for drilling and sampling under the Exploration Licenses bearing Nos. EL/431 and EL/432 in the Trincomalee District.

*A true copy of Exploration Contract entered between the said Midwest Heavy Sands (Pvt) Ltd and the Petitioner dated 07.07.2023, is annexed hereto marked 'P2(e)' and is pleaded as part and parcel hereof.*

8. The Petitioner states that when matters remained as such, the Petitioner became aware that by a letter dated 16.06.2023 bearing reference No. G/EPC/B/C/23/GA *inter alia* addressed to 4<sup>th</sup> to 6<sup>th</sup> Respondents copied to the 3<sup>rd</sup> Respondent and the 7<sup>th</sup> Respondent, the 2<sup>nd</sup> Respondent *inter alia* informed that the 1<sup>st</sup> Respondent had instructed the Divisional Secretaries to “hold processing of all the mineral sands and industrial minerals proposals and not to release any lands which have deposits of Mineral Sands and Industrial Minerals in their areas until the project is evaluated by the Provincial Minerals Evaluation Committee at the 1<sup>st</sup> Respondent’s Office and then forwarded to the DCC”.

*A copy of the letter dated 16.06.2023 bearing reference No. G/EPC/B/C/23/GA, is annexed hereto marked 'P3' and is pleaded as part and parcel hereof.*

9. Upon being aware of the aforesaid letter dated 16.06.2023 which is an egregious overstepping of the ambit of the 1<sup>st</sup> Respondent’s powers and which is inimical to the exercise of the Petitioner’s own statutory powers, by letter dated 07.07.2023 addressed to the 2<sup>nd</sup> Respondent, the Petitioner *inter alia* brought to the attention of the 2<sup>nd</sup> Respondent that the direction by the 1<sup>st</sup> Respondent to hold processing of all the mineral sands and industrial minerals proposals stated in the aforesaid letter dated 16.06.2023 cannot be issued by the 1<sup>st</sup> Respondent, and further states that the said direction is in violation of the Constitution and the powers conferred on the 1<sup>st</sup> Respondent because the subject of Minerals and Mines has been placed in the Reserve List of the Constitution as amended by the 13<sup>th</sup> Amendment to the Constitution.

*A copy of of the letter dated 07.07.2023 is annexed hereto marked 'P4' and is pleaded as part and parcel hereof.*

10. In the meanwhile, by letter dated 17.07.2023 bearing reference No. Geo/23/07/Ext/59 addressed to the 4<sup>th</sup> Respondent, the Petitioner informed that an exploration would be conducted for 2 months from 17.07.2023 onwards, under the Permits bearing Nos. EL/431 and EL/432 issued by the Petitioner, and sought the co-operation from the 7<sup>th</sup> Respondent for the said exploration.

*True copies of the letter dated 17.07.2023 bearing reference No. Geo/23/07/Ext/59, is annexed hereto marked 'P5' and is pleaded as part and parcel hereof.*

11. In reply to the Petitioner's letter produced marked as 'P4', the Petitioner received a letter dated 18.07.2023 bearing reference No. G/EPC/23/PS/GEN by the 2<sup>nd</sup> Respondent, inter alia purportedly informing the Petitioner that the 1<sup>st</sup> Respondent's direction stated in the letter dated 16.06.2023 was not intended to 'override the Constitutional Provisions regarding the regulation and development of Mines and Minerals' and had stated that the 1<sup>st</sup> Respondent acted on the powers contained in the 13<sup>th</sup> Amendment to the Constitution "to make social and economic evaluation of any lands before it is alienated or disposition to any citizen or any organisation of any such project."

*A true copy of the letter dated 18.07.2023 bearing reference No. G/EPC/23/PS/GEN, is annexed hereto marked 'P6' and is pleaded as part and parcel hereof.*

12. By letter dated 17.08.2023 bearing reference No. DS/KU/LND/SNPT/5/2 addressed to the Petitioner, upon the instructions of the 1<sup>st</sup> Respondent, the 8<sup>th</sup> Respondent Divisional Secretary of Kuchchaveli *inter alia* informed the Petitioner that the Divisional Secretariat of Kuchchaveli has temporarily suspended the sand mining survey works carried out at the Kallarava in Triyai Grama Niladhari Division of the Divisional Secretariat of Kuchchaveli by Midwest Heavy Sand Private Limited (but was in fact being carried out by the Petitioner itself) under the Permits bearing Nos. EL/431 and EL/432 issued by the Petitioner.

*A true copy of the said letter dated 17.08.2023 bearing reference No. DS/KU/LND/SNPT/5/2 in Tamil Language and the certified English translation thereof letter dated 17.08.2023 are annexed hereto marked 'P7' and 'P7(a)' and are pleaded as part and parcel hereof.*

THE PETITIONER'S ENTITLEMENT TO RELIEF FROM YOUR HONOUR'S COURT

13. The Petitioner states that in terms of the Reserved List (List II) of the Ninth Schedule to the Constitution of the Republic as amended by the 13<sup>th</sup> Amendment to the Constitution, Mines and Minerals is a subject for which power is exercised by the Central Government. The Reserved List of the Ninth Schedule to the Constitution further provides that "Minerals and Mines" would *inter alia* include "*Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Government of Sri Lanka is declared by Parliament by law to be expedient in the public interest*". Further, section 10 of the State Lands Ordinance, amplifies the rights vested in the Republic.
14. The Petitioner further states, that the power of a Provincial Council in respect of land is limited to the extent specified in item 18 of the Provincial Council List (List I) of the Ninth Schedule to the Constitution which reads as follows; "*Land - Land, that is to seek, rights in or over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement, to the extent set out in Appendix II*".
15. The Petitioner states that Appendix II of the 9<sup>th</sup> Schedule to the Constitution, which primarily deals with powers of a Provincial Council over State Land has been interpreted restrictively. The Petitioner states that delineating the limited extent of the powers in respect of land, vested in the Provincial Councils, their Lordships of the Supreme Court in the case of *The Superintendent, Stafford Estate And Two Others v. Solaimuthu Rasu* [(2013) 1 SLR 25], held that State Land continues to be a subject located in the Central Government, and further states as follows;

[...] "*Having regard to the fact that in a unitary State of Government no cession of dominium takes place, the Centre has not ceded its dominium over State Lands to the Provincial Councils except in some limited circumstances. ...* "

.....

*“Having adopted the above analysis and in light of the structure and scheme of the constitutional settlement in the 13th amendment to the Constitution, the irresistible conclusion is that Provincial Council subject matter in relation to State Lands would only mean that the Provincial Councils would have legislative competence to make statutes only to administer, control and utilize State Land, if such State Land is made available to the Provincial Councils by the Government for a Provincial Council subject.” [Emphasis is added]*

16. Therefore, the Petitioners state that the mere fact that the land is situated within the province does not vest the Governor with executive powers over the land nor does a Provincial Council automatically acquire power to administer and control over such land.
17. The Petitioner further state that, where the Government (and therefore, entities such as the Bureau exercising central government powers under law), require to utilise land situated in a Province, neither the Governor nor the Provincial Council has any power whatsoever to veto the utilisation of the land for the required purpose.
18. The Petitioner states that in any event the subject of mines and minerals and anything pertain to mines and minerals does not form a part of either the Provincial Council list or the Appendix II of the Ninth Schedule to the Constitution.
19. The Petitioner also states that the circumstances of the present case do not fall within the subject in respect of which a Governor may exercise executive power under and in terms of Article 154(c) of the Constitution.
20. Therefore, the Petitioner states that the 1<sup>st</sup> Respondent and/or his functionaries have no power to interfere with the exercise of powers, duties and functions by the 1<sup>st</sup> Respondent bureau which is the statutory body established by the legislation enacted by Parliament to *inter alia* regulate the exploration for, mining, transportation, processing, trading in or export of, minerals.

21. The Petitioner further states that 4<sup>th</sup> to 8<sup>th</sup> Respondents and/or anyone acting under them are not under any obligation to and in any event cannot by Law act under the dictates of the 1<sup>st</sup> Respondent contained in the document produced marked 'P3'.
22. The Petitioner further states that the decisions and/or directives of the 1<sup>st</sup> Respondent contained in the document produced marked 'P3' and the decisions and/or directives of the 8<sup>th</sup> Respondent which are ostensibly issued pursuant thereto contained in the document marked 'P7' are *ultra vires* the powers vested in the 1<sup>st</sup> Respondent in terms of the 13<sup>th</sup> Amendment to the Constitution and the powers exercised by the Petitioner in terms of the Mines and Minerals Act and is contrary to Law.
23. The Petitioners states that in the said circumstances the decisions, directives, actions and/or inaction of the 1<sup>st</sup> to 8<sup>th</sup> Respondents-
- a) Is Arbitrary, unreasonable, capricious and illegal.
  - b) Is ultra vires the 13<sup>th</sup> Amendment to the Constitution and the powers exercised by the Petitioner in terms of the Mines and Minerals Act.
  - c) Constitutes an abuse of authority.
  - d) Constitutes an unlawful interference on the exercise of statutory powers of a statutory body established by Parliament.
  - e) Constitutes a hinderance on the due exercise of statutory power by the Petitioner Bureau.
24. In totality of the foregoing circumstances, the Petitioner states that the Petitioner is entitled in Law to seek the following substantial reliefs from Your Lordships' Court
- a) A **Writ of Certiorari** quashing the decisions and/or directives contained in the documents produced marked 'P3' and 'P6';

- b) A **Writ of Certiorari** quashing the decisions and/or directives contained in the document produced marked 'P7';
- c) A **Writ of Prohibition** preventing any one, more or all of the 1<sup>st</sup> to 8<sup>th</sup> Respondents and their successors in office and/or their subordinates and/or anyone acting under the said Respondents from interfering with the Petitioner and/or its officers, licensees, agents and/or anyone acting under the Petitioner from exercising Petitioner's powers, duties and functions accorded to the Petitioner by Law;

25. The Petitioner states that as evident from the matters pleaded hereinabove, the 1<sup>st</sup> Respondent and persons acting under the dictates of the 1<sup>st</sup> Respondent has ex facie interfered with the Petitioner's exercise of its statutory powers in violation of the Law. Accordingly, grave prejudice would be caused to the Petitioner and the mineral exploration and other activities of the Petitioner within the Eastern Province would come to a grinding halt and grave and irreparable damage would be caused to the Petitioner and this application would be rendered nugatory, unless Your Lordships' Court grants the interim orders prayed for by the Petitioner.

26. In the said circumstances the Petitioner states that, unless the following interim orders are granted by Your Lordships Court, grave and irremediable loss and damage would befall the Petitioner and the application would be rendered nugatory;

- a) An Interim Order until the final hearing and determination of this Application, suspending the decisions and/or directives contained in the documents produced marked 'P3' and 'P6';
- b) An Interim Order until the final hearing and determination of this Application, suspending the decisions and/or directives contained in the document produced marked 'P7';
- c) An Interim Order until the final hearing and determination of this Application, restraining any one, more or all of the 1<sup>st</sup> to 8<sup>th</sup> Respondents and their successors in office and/or their subordinates and/or anyone acting under the said Respondents from interfering

with the Petitioner and/or its officers, licensees, agents and/or anyone acting under the Petitioner from exercising Petitioner's powers, duties and functions accorded to the Petitioner by Law;

27. The Petitioner reserves his right to tender originals and/or certified copies of the documents pleaded above and further material, documents and affidavits to Your Lordships Court in the course of the proceedings of this application. The Petitioner further reserve the right to amended his pleadings and/or add any further parties if deemed necessary during the pendency of this application.
28. The Petitioner has not previously invoked the jurisdiction in relation to the subject matter of this Application.
29. An affidavit of the Chairman of the Petitioner is annexed herewith in support of the averments pleaded herein.

**WHEREFORE THE PETITIONER RESPECTFULLY PRAYS THAT YOUR LORDSHIPS' COURT BE PLEASED TO:**

- a) Issue Notices on the Respondents;
- b) Call for and examine the record pertaining to the subject matter of this Application;
- c) Grant and issue a mandate in the nature of a **Writ of Certiorari** quashing the decisions and/or directives contained in the documents produced marked '**P3**' and '**P6**';
- d) Grant and issue a mandate in the nature of a **Writ of Certiorari** quashing the decisions and/or directives contained in the document produced marked '**P7**';
- e) Grant and issue a mandate in the nature of a **Writ of Prohibition** preventing any one, more or all of the 1<sup>st</sup> to 8<sup>th</sup> Respondents and their successors in office and/or their subordinates and/or anyone acting under the said Respondents from interfering with the Petitioner and/or its officers, licensees, agents

and/or anyone acting under the Petitioner from exercising Petitioner's powers, duties and functions accorded to the Petitioner by Law;

- f) Grant and issue an Interim Order until the final hearing and determination of this Application, suspending the decisions and/or directives contained in the documents produced marked 'P3' and 'P6';
- g) Grant and issue an Interim Order until the final hearing and determination of this Application, suspending the decisions and/or directives contained in the document produced marked 'P7';
- h) Grant and issue an Interim Order until the final hearing and determination of this Application, restraining any one, more or all of the 1<sup>st</sup> to 8<sup>th</sup> Respondents and their successors in office and/or their subordinates and/or anyone acting under the said Respondents from interfering with the Petitioner and/or its officers, licensees, agents and/or anyone acting under the Petitioner from exercising Petitioner's powers, duties and functions accorded to the Petitioner by Law;
- i) Grant Costs;
- j) Grant such other and further relief as to Your Lordships' Court shall seem meet.

**REGISTERED ATTORNEY-AT-LAW FOR THE PETITIONER**