

IN THE SUPREME COURT OF
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application under and in
terms of Articles **125 & 126** of the
Constitution of Republic of Sri Lanka

D E W Gunasekara
General Secretary
Communist party of Sri Lanka
91, Dr N M Perera Mawatha
Colombo 8

Petitioner

Vs

SC/FR/344/2015

1. Commissioner of Elections
Elections Secretariat,
P.O. Box 02, Sarana Mawatha,
Rajagiriya

2. Susil Premajayantha and now
Wishwa Warnapala
General Secretary - UPFA
307, T B Jayah Mawatha
Colombo 10

3. Kabir Hashim
General Secretary
United National Party
400, Sirikotha
Pitakotte, Kotte

4. Tilvin Silva
General Secretary
Janatha Vimukthi Peramuna
464/20, Pannipitiya Road,
Pelawatta,
Battaramulla

5. S Thuraijasingham
General Secretary,
Ilankai Tamil Arasu Kadchi
30, Martin Road
Jaffna

6. U J Tilanga Sumathipala
Member of Parliament (UPFA)
Parliament Approach Road
Sri Jayawardenepura Kotte

7. B Mahinda Samarasinghe
Member of Parliament (UPFA)
Parliament Approach Road
Sri Jayawardenepura Kotte
8. S B Dissanayake
Member of Parliament (UPFA)
Parliament Approach Road
Sri Jayawardenepura Kotte
9. Lakshman Yapa Abeywardena
Member of Parliament (UPFA)
Parliament Approach Road
Sri Jayawardenepura Kotte
10. Angajan Ramanathan
Member of Parliament (UPFA)
Parliament Approach Road
Sri Jayawardenepura Kotte
11. A M H M Lebbe
Member of Parliament (UPFA)
Parliament Approach Road
Sri Jayawardenepura Kotte
12. G Vijith Wijayamuni Zoysa
Member of Parliament (UPFA)
Parliament Approach Road
Sri Jayawardenepura Kotte
13. M H M Navavi
Member of Parliament (UNP)
Parliament Approach Road
Sri Jayawardenepura Kotte
14. Sunil Handunnnethi
Member of Parliament (JVP)
Parliament Approach Road
Sri Jayawardenepura Kotte
15. Attorney General
Attorney General's Department
Colombo 11

Respondents

To: THE HONOURABLE CHIEF JUSTICE AND THE OTHER JUDGES OF THE SUPREME COURT OF
THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

On this 16th day of September 2015

Written Submission justifying the request to support the matter before the Full Bench of the Supreme Court

1. In the Motion filed before the Supreme Court, it is requested that the Petitioner's Petition of fundamental rights violation, be taken for support before the **Full Bench of the Supreme Court** on the basis that the matters concerning the case strictly deal with the sovereign rights of the citizens i.e. the franchise, enshrined in Article 3 of the Constitution, which cannot be taken away without a mandate being obtained from the people at a referendum (Article 83).
2. It is respectfully submitted that it is evident from the Petition filed in Court as to how the people's sovereign rights have been surreptitiously taken away, through the 14th Amendment to the Constitution, by the Legislature and the Executive without adhering to the due process established by Law.
3. It is further submitted that the Constitution requires (Article 82) that any law intending to amend the Constitution shall be placed on the Order Paper of the Parliament. However, the then Executive had deliberately avoided the due process being followed, thus denying the citizens to have access to the proposed 14th Amendment, through a gazette notification. It is observed only two ordinary citizens, namely, K Leelatunga and Dr Nath Amarakoon, have challenged this bill before the Supreme Court and pleaded the Court for a direction to the Registrar to issue a copy of the draft bill filed in Court for their perusal and to raise their objections but the Registry has informed them that 'citizens that ordinary citizens has no right to have access to the bill filed in Court', absolutely undermining the concept of REPRESENTATIVE DEMOCRACY recognised by the Supreme Law of the Land, the Constitution. It is patently clear that Executive President had referred only a 'Draft Bill' to the Supreme Court on 08th April 1988 for its determination, without the same being placed on the Order Paper of the Parliament by the Speaker who had been duly served with a copy of the bill. This process was not only unlawful but also went against the declared objectives of the State Policy as set out in Chapter VI of the Constitution.

4. It is respectfully submitted that the perusal of the Official Case Record (SC/SD/02/1988) confirms that the then Executive President had referred only a typed-written document (not a gazetted bill as required by law) to the Hon' Chief Justice, with reference LD 018/1988, in which the proposed Article 99A (permitting Party Secretaries to nominate defeated candidates at the General Election to the Parliament through the National List) had also been referred to, a provision that had not been agreed by the ALL PARTY SELECT COMMITTEE that had approved the 14th Amendment to the Constitution.
5. The Court's attention is respectfully drawn to the Official case record (SC/SD/02/1988) which affirms that the citizen named K Leelatunga had objected to this Amendment at the hearing before the Supreme Court held on 18th April 1988, and made a written submission to the Court *inter alia* the following.
 - a) The bill had not been made available to the citizens
 - b) It was not placed on the Order Paper of the Parliament
 - c) The request made to obtain a copy of the bill had been denied by the Registrar of the Supreme Court claiming that citizens had no right to obtain copies of the 'bill' filed in Court
 - d) That he came to know of the existence of such a bill only through the media
 - e) The bill had been referred to the Court during the Court vacation
 - f) Severe injustice would be caused to the citizens by not affording an opportunity to make representations on one of most important pieces of legislations introduced as the 14th Amendment to the Constitution
 - g) Therefore, a copy of the bill be made available, enabling him to make representations to the Court
6. The Official Case Record further reveals that the Court had disregarded the written request made by the Petitioner, K Leelatunga, and placed on record that its determination on the proposed amendment would be communicated to the President and the Speaker. The said determination, which is apparently flawed, had been communicated to the Parliament on 21st of April 1988.

7. It is submitted that only after the Supreme Court's determination (that the amendment was consistent with the Constitution) had been obtained on 21st April 1988, the then Prime Minister had placed the said 14th Amendment to the Constitution on the Order Paper of the parliament on 03rd May 1988 (P13). On the following day (04th May 1988) the Parliament had passed (P15) the said Amendment in complete contrast to the declared objectives of the state policy as set out in Chapter VI of the Constitution.
8. In this backdrop, it is respectfully submitted that the whole process adopted by the government in making this piece of legislation (14th Amendment) had been absolutely improper, as it had violated all norms of REPRESENTATIVE DEMOCRATIC GOVERNANCE.
9. It is respectfully submitted that the Government had no right whatsoever to amend the Supreme Law, the Constitution, in such an irresponsible manner. The Legislature and the Executive should have known that the Constitution, the Supreme Law of the Land deferred from the rest of the normal laws and it was under duty to respect and honour the Sovereign rights of the people. In support of this argument the following quotation of Justice **Aharon Barak** (the President of the Supreme Court of Israel - 1995-2006), is reproduced.

"To maintain real democracy and to ensure a delicate balance between its elements a formal constitution is preferable. To operate effectively, a constitution should enjoy normative supremacy, should not be as easily amendable as a normal statute, and should give judges the power to review the constitutionality of legislation. Without a formal constitution, there is no legal limitation on legislative supremacy, and the supremacy of human rights can exist only by the grace of the majority's self-restraint."

- Aharon Barak, 'A judge on judging: The role of a Supreme Court in Democracy, 116 Harvard Law Review 16 (2002)

10. It is respectfully submitted that in the given circumstances, the ceremonial address made by Your Lordship on 09th Jan 2015, is very pertinent wherein Your Lordship had declared *inter alia* that;
 - a) "...The administration of Justice draws its legal sanction from the Constitution, its credibility rests in the faith of the people. Indispensable to that faith is the Independence of the Judiciary. Public confidence in the administration of Justice

is imperative to its effectiveness, because ultimately the ready acceptance of a judicial verdict gives relevance to the justice system. We should always try to see that our Courts of law should be the Temple of Justice and it is our proud privilege to work together in order to make democracy of our country to be the best symbol and emblem for the whole region..."

- b) *'Credibility of the Judiciary rests in the faith of the people. Indispensable to that faith is the independence of the Judiciary'*
- c) *'The power of the Judiciary depends largely on its reputation for independence, integrity and wisdom'*
- d) *'The members of the legal profession should strive to occupy a prominent place in the heart of the people and the public life in the country. Thus, the strength and stability of a democratic state rests upon the vision and wisdom of its legislature, the efficiency of the Executive and the integrity, impartiality and independence of its Judiciary'*

WHEREFORE, the Petitioner respectfully submits that this Court is under duty to rectify the manifest error made by itself and recognising that this Court cannot turn a blind eye in a background where it is quite apparent that both the Executive and the Legislature absolutely disrespect their constitutional obligation to the people, whose sovereign power these institutions exercise purely on trust, and therefore demonstrating this country that the Supreme Court, the Guardian of the Rule of Law, with due respect to its constitutional obligation of **protecting, vindicating and enforcing the rights of the people** as set out in Article 105 of the Constitution, that it would not hesitate to **become a symbol of hope for the People of Sri Lanka** and would be pleased to determine that the matters involved in this case are of paramount public importance that falls well within the provisions of the Article 132 (3) (iii) of the Constitution and allow the Motion filed in Court for appointment of the **Full Bench of the Supreme Court** to hear and determined this case.

N. Kodituwakku


Attorney-at-Law for the Petitioner
Attorney-at-Law & Commissioner for Oaths
99, Subadrarama Rd, Nugegoda.