

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

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In the matter of applications under Article  
121 (1) of the Constitution

A Bill titled "Divineguma"

**Before :** Dr. Shirani A. Bandaranayake - Chief Justice  
Priyasath Dep, PC - Judge of the Supreme Court  
Eva Wanasundera, PC - Judge of the Supreme Court

**S.C. Special Determination  
No. 01/2012**

Chamara Madduma Kaluge,  
No.14/1, Sri Devananda Road,  
Thumbowila,  
Piliyandala.

**Petitioner**

**Counsel :** J.C.Weliamuna with Shantha Jayawardane,  
Senura Abeywardane and Mevan Kiriella Bandara

**Vs.**

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

**Respondent**

**Counsel** : Y.J.W. Wijayatilaka, PC., Solicitor General with  
Bimba Jayasinghe Tillekaratne, PC., ASG., Suhada Gamlath,  
PC., ASG., Indika Demuni de Silva, DSG., Nerin Pulle, SSC.,  
Suharshani Herath, SC., Yuresha Fernando, SC., and  
Avanthi Perera, SC.,  
For the Attorney General

Nikulasge Renuka Kusum Priyanthi,  
No.532, Munamale Waththa,  
Kaluaggala,  
Hanwella.

**Intervenient-Respondent**

**Counsel** : Ikram Mohamed, PC., with M.S.A. Wadood,  
Nilantha Udalagama, Nadeeka Galhena and Milhan Mohamed

Dr. Nanayakkarawasam  
Carijjawattege Vijitha,  
No.73 C, Kenhinda Road,  
Uda Eriyagama,  
Peradeniya.

**Intervenient-Respondent**

**Counsel** : Manohara de Silva, PC., with Pubudini Wickramaratne and  
Palitha Gamage

Sri Lanka Nidahas Samurdhi Kalamanakaruwange  
Ha Sambandikarana Niladaringe Sangamaya,  
No.3, Miriswatta,  
Kotugoda.

**Intervenant-Respondent**

**Counsel :** Kushan D' Alwis with Kaushalya Navaratne and  
Chamath Fernando

Edirisinghe Vithanage Prasad Rasanga Harischandra,  
Galkaduwa,  
Imaduwa.

**Intervenant-Respondent**

**Counsel :** Ikram Mohamed, PC., with M.S.A. Wadood,  
Nilantha Udalgama, Nadeeka Galhena and Milhan Mohamed

Singamkutti Arachchige Chandrakanthi Sandalatha,  
No.374/D, Medalanda,  
Dompe.

**Intervenant-Respondent**

**Counsel :** Dr. Jayatissa de Costa, PC., with Dr. Codlin Waidyaratna and  
Palitha Gamage

Dimi Adurage Padma Silva,  
No.284/3, Pitipana West,  
Homagama.

**Intervenant-Respondent**

**Counsel** : Sagara Kariyawasam

Sumithra Arachchige Don Jagath Kumara,  
No.569, Udumulla Road,  
Battaramulla.

**Intervenant-Respondent**

**Counsel** : Faisz Musthapha, PC., with Sanjeeva Jayawardane,  
Faiszer Musthapha and Niranjan Arulpragasam

Solanga Arachchige Sunil Wickramasinghe,  
No.506/469, Ikkiliweva,  
Attanakadawala.

**Intervenant-Respondent**

**Counsel** : M.U.M. Ali Sabry with Ruwanthi Cooray

Mohoppu Thanthilage Rupasinghe,  
No.244/4, Parangoda,  
Dekatana.

**Intervenant-Respondent**

**Counsel** : Priyantha Jayawardena

Bogodage Prajith Rohana Karunaratne  
1170/A, Pannipitiya Road,  
Battaramulla.

**Intervenant-Respondent**

**Counsel** : Chandana Liyanapatabendy with Hejjaz Hizbullah

**S.C. Special Determination  
No. 02/2012**

P.B.D.J.W. Nanayakkara,  
418/4, Kotte Road,  
Pita Kotte.

**Petitioner**

**Counsel** : Senany Dayaratne with Eshanthi Mendis

**Vs.**

1. Hon. Basil Rajapaksa MP,  
Minister of Economic Development,  
Ministry of Economic Development,  
464, T.B. Jayah Mawatha,  
Colombo 10.
2. Hon. The Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondents**

**Counsel**

:

Manoharà de Silva, PC., with Pubudini Wickramaratne and Palitha Gamage for 1<sup>st</sup> Respondent.

Y.J.W. Wijayatilaka, PC., Solicitor General with Bimba Jayasinghe Tillekaratne, PC., ASG., Suhada Gamlath, PC., ASG., Indika Demuni de Silva, DSG., Nerin Pulle, SSC., Suharshani Herath, SC., Yuresha Fernando, SC., and Avanthi Perera, SC.,

For the Attorney General.

Sri Lanka Nidahas Samurdhi Kalamanakaruwange  
Ha Sambandikarana Niladaringe Sangamaya,  
No.3, Miriswatta,  
Kotugoda.

**Intervenient-Respondent**

**Counsel**

:

Kushan D' Alwis with Kaushalya Navaratne and Chamath Fernando

Solanga Arachchige Sunil Wickramasinghe,  
No.506/469, Ikkiliweva,  
Attanakadawala.

**Intervenient-Respondent**

**Counsel**

:

M.U.M. Ali Sabry with Ruwanthi Cooray

Ranasinghe Arachchige Chathurika Dinushi  
Gangani Perera,  
No.150/9, Parakrama Mawatha,  
Hokandara North,  
Hokandara.

**Intervenient-Respondent**



**Counsel :** Faisz Musthapha, PC., with Sanjeeva Jayawardane,  
Faiszer Musthapha and Niranjan Arulpragasam

**S.C. Special Determination  
No. 03/2012**

1. Centre for Policy Alternatives (Guarantee) Limited,  
24/2, 28<sup>th</sup> Lane,  
Off Flower Road,  
Colombo 07.
2. Dr. Paikiasothy Saravanamuttu,  
No.03, Ascot Avenue,  
Colombo 05.

**Petitioners**

**Counsel :** M.A. Sumanthiran with Bhavani Fonseka and  
G.D. Gunatillake

**Vs.**

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

**Respondent**

**Counsel**

Y.J.W. Wijayatilaka, PC., Solicitor General with  
Bimba Jayasinghe Tillekaratne, PC., ASG., Suhada Gamlath,  
PC., ASG., Indika Demuni de Silva, DSG., Nerin Pulle, SSC.,  
Suharshani Herath, SC., Yuresha Fernando, SC., and  
Avanthi Perera, SC.,  
For the Attorney General

Malani Hettiarachchi,  
No.25 A, Samagi Pura,  
Hokandara South,  
Hokandara.

**Intervenant-Respondent**

**Counsel**

Faisz Musthapha, PC., with Sanjeeva Jayawardane,  
Faiszer Musthapha and Niranjan Arulpragasam

Court assembled at 10.45 a.m. on 27.08.2012 and 11.30 a.m. on 29.08.2012.

A Bill bearing the title "Divineguma" was published on the Gazette of the Republic of Sri Lanka on 27.07.2012 and placed on the Order Paper of Parliament on 10.08.2012. Four petitioners have challenged the Constitutionality of this Bill by three separate petitions presented to this Court and have thereby invoked the jurisdiction of this Court in terms of Article 121 (1) of the Constitution.

Hon. The Attorney General was given due notice of the petitions.



At the time the petitions were taken into consideration, several learned Counsel sought permission to be added as intervenients, on whose behalf papers have been filed as a party to these proceedings. Although relevant papers were filed late and no copies had reached the petitioners, on inquiry learned Counsel for the petitioners submitted that they have no objection to the said requests been granted, if the Court so desires. Accordingly all interventions were allowed and they were added as intervenient respondents.

Learned Counsel representing the petitioners, learned President's Counsel representing the 1<sup>st</sup> respondent in 02/2012, learned President's Counsel and learned Counsel representing intervenient respondents and the learned Solicitor General on behalf of the Hon. The Attorney General were heard before this Bench at the sittings held on 27.08.2012 and 29.08.2012.

Before the Bill was taken into consideration, learned Solicitor General took up a preliminary objection stating that the two petitions, namely SC SD 02/2012 and SC SD 03/2012, should be rejected *in limine*, for non compliance with the mandatory procedure stipulated in Article 121 (1) of the Constitution.

The contention of the learned Solicitor General was that in terms of Article 121 (1) of the Constitution it is necessary to deliver copies to the Hon. Speaker within the specified time period, in order to duly invoke the jurisdiction of this Court. The Bill, having been placed on the Order Paper of Parliament on 10.08.2012, the period of one week would elapse on 17.08.2012 and therefore the petitioners should have presented the petition to the Supreme Court and the delivery of the copies to the Hon. Speaker should have been done on or before 17.08.2012.

Learned Solicitor General submitted that the petition in SC SD 02/2012 had been delivered only on 20.08.2012. It was also submitted that the petition in SC SD

03/2012, although had been sent on or before 17.08.2012 it had been delivered not to the Hon. Speaker, but to the Secretary-General of Parliament. The contention of the learned Solicitor General in this regard was that the provisions contained in Article 121 (1) of the Constitution are mandatory and relied on the determinations of this Court in **Sri Lanka Telecommunications Bill** (SC SD Nos.5/91, 6/91 and 7/91), **Social Security Benefits Bill** (SC SD No.13/91) and **Agrarian Development Bill** (SC SD 6/2000).

In **Sri Lanka Telecommunications Bill** (Supra) reference was made to the provisions contained in Article 121 (1) of the Constitution and this Court had determined that the provisions in that Article as to the manner in which the jurisdiction of the Court could be invoked are mandatory. Article 121 of the Constitution deals with the ordinary exercise of Constitutional jurisdiction in respect of Bills. Article 121 (1), which is the relevant Article in regard to the objection raised by the learned Solicitor General, reads as follows:

" The jurisdiction of the Supreme Court to ordinarily determine any such question as aforesaid may be invoked by the President by a written reference addressed to the Chief Justice, or by any citizen by a petition in writing addressed to the Supreme Court. Since reference shall be made, or such petition shall be filed, within one week of the Bill being placed on the Order Paper of the Parliament, and a copy thereof shall at the same time be delivered to the Speaker. In this paragraph "citizen" includes a body, whether incorporated or unincorporated, if not less than three-fourths of the members of such body are citizens."

The provisions contained in the aforementioned Article, sets out the procedure that has to be followed in order to ordinarily exercise the Constitutional jurisdiction of the Supreme Court in regard to Bills. In that it is necessary firstly to bring the relevant Bill to the attention of the Supreme Court within a specified time duration of one week. Whilst bringing it to the attention of the Supreme Court, it would also be necessary to deliver a copy of the petition to the Hon. Speaker. As determined by this Court in **Sri Lanka Telecommunications Bill** (Supra) the provisions contained in Article 121 are mandatory in its nature and therefore it is necessary for strict compliance by parties who would be invoking the said jurisdiction.

In the instant applications, viz., in 02/2012, as stated earlier, the petition had been delivered to the Hon. Speaker only on 20.08.2012 whereas in 03/2012, it had been delivered on 17.08.2012, not to the Hon. Speaker, but to the Secretary- General of the Parliament.

In terms of the provisions contained in Article 121 (1) of the Constitution, the petition should be filed within one week of the Bill being placed on the Order Paper of the Parliament and a copy thereof **shall at the same time be delivered to the Speaker**. This Court has considered one week to be a period of 7 days (**Sri Lanka Telecommunications Bill** (Supra)). Since the Bill had been placed on the Order Paper of the Parliament on 10.08.2012 the petition had to be filed before this Court in terms of the 121 (1) of the Constitution on or before 17.08.2012.

Learned Counsel for the petitioners in SC SD 03/2012 submitted that the petitioner has filed the petition before the Supreme Court on 17.08.2012 and copy of the said documents had been served on the Hon. Speaker in terms of Article 121 (1) of the Constitution. In fact in Registered Attorneys for the petitioners in their motion has stated thus:



" . . . . . AND WHEREAS in terms of Article 121 (1) and 134 (1) of the Constitution, a copy of this motion together with the Petition, Documents marked "P1" to "P3c" and the Affidavit thereto has been served on the Honourable Speaker of Parliament and the Honourable Attorney General by Registered Post and the relevant Registered Postal Article Receipts are annexed hereto in proof of same . . . . . "

On the Receipt of the aforesaid documents, the Registrar of the Supreme Court, had made entry in the Docket, which reads thus:

" Sinnadurai, Sundaralingam & Balendra, Attorneys-at-Law file Proxy, Petition, Affidavit and Documents marked P1 to P3c and the receipt No. 22I 730418 of 17.08.2012 for Rs.200."

The date stamp of Supreme Court Registry on the petition reads as 17 August 2012.

Thus it is apparent that the petition had been filed before the Supreme Court on 17.08.2012 and at the same time a copy of the said set of documents were sent under Registered Post to the Hon. Speaker in Parliament. The petitioners have also submitted copies of the postal Receipt Article to this Court. The date stamp of the said Postal Receipt Article indicates that it had been sent under Registered Post on 17.08.2012.

Learned Solicitor General had submitted that the petition of the petitioners in SC SD 03/2012 had been delivered to the Hon. Speaker only on 20.08.2012.

The question that arises at this point is as to the meaning that should be given to the word **delivered** in terms of Article 121 (1) of the Constitution. The said meaning has to be considered in the light of the provisions contained in Article 121 (1) of the Constitution with regard to the filing of the petition in the Supreme Court to invoke the Constitutional jurisdiction in respect of Bill by a citizen. The relevant sentence in the provision, referred to earlier, is repeated henceforth:

" . . . . Such reference shall be made, or **such petition shall be filed, within one week of the Bill being placed on the Order Paper** of the Parliament, and **a copy thereof shall at the same time be delivered** to the Speaker."

It is therefore necessary for the petitioners to take steps firstly to file the petition in the Supreme Court within a period of one week of the Bill being placed on the Order Paper of the Parliament. Thereafter, a copy has to be delivered to the Hon. Speaker **at the same time**. This means that a petitioner, in order to comply with the provisions stipulated in Article 121 (1) of the Constitution will have act simultaneously to see that the petition is filed in the Supreme Court and to be delivered to the Hon. Speaker.

The petition in SC SD 02/2012 was filed on 17.08.2012 and had sent the same to Hon. Speaker on the same day by Registered Post. The meaning of the word "delivery" could be defined as mailed or dispatched. The Oxford English Dictionary (2<sup>nd</sup> Edition (Volume IV), Page 362) defines the word delivery as the action of handing over or conveying into the hands of another, especially the action of a carrier in delivering letters or goods entrusted to him for a conveyance to a person at a distance. Such could be easily carried out by way of

posting and in the present matter the documents had been sent by Registered Post on the same day it was filed in the Supreme Court. In the determination of this Court in **Sri Lanka Telecommunications Bill** (Supra) the relevant Bill had been placed on the Order Paper of Parliament on 05.03.1991 and the period of one week came to an end on 12.03.1991. The petition to the Supreme Court had been submitted within one week on 12.03.1991; the copy to the Hon. Speaker had been posted only on 13.03.1991. This Court referring to the above stated thus:

" Although the petition to the Supreme Court has been presented within one week (on 12.03.1991) the copy to the Speaker has however been posted on 13.03.1991. The Court considered one week to be a period of 7 days.

Having said that, the Court went on to determine that,

" In the instant case, as the copy of the petition had not been delivered to the Hon. Speaker at the same time as the petition was presented to the Supreme Court there had been no proper invocation of the jurisdiction of the Supreme Court to hear and determine the matters in the petitions."

Therefore it is apparent that in terms of Article 121 (1) of the Constitution a petition has to be filed within the stipulated 7 days period after the relevant Bill is placed on the Order Paper of the Parliament and at the same time the said documents should be sent to the Hon. Speaker. In the process what matters is the filing and the posting of the petitions to be simultaneous and carried out within the stipulated period of 7 days.



In such circumstances, it is clearly evident that the petitioners had properly invoked the jurisdiction of the Supreme Court to hear and determine the matters in the petition in terms of Article 121 (1) of the Constitution.

The second objection, as stated earlier, was on the basis that the petition had been sent to the Secretary-General of the Parliament instead of addressing it to the Hon. Speaker.

Learned Counsel for the petitioner contended that the said objection is analogous to a submission that pleadings delivered to the Registrar of this Court not reaching the Chief Justice. It was also said that the objection is utterly frivolous and contrary to the spirit and purpose of Article 121 (1) of the Constitution.

The purpose of the provisions contained in Article 121 (1) regarding the delivery of a copy of the petition, which had been submitted to the Supreme Court is quite clear and is stated in Article 121 (2) of the Constitution. This provision is as follows:

“ Where the jurisdiction of the Supreme Court has been so invoked no proceedings shall be had in Parliament in relation to such Bill until the determination of the Supreme court has been made, or the expiration of a period of three weeks from the date of such reference or petition, whatever occurs first.”

The objective and the purpose therefore is to ensure that parliamentary proceedings in respect of the Bill in question are suspended during the pendency of the inquiry before the Supreme Court. Whilst, that process of sending the petition filed in the Supreme Court within the specified period to the Hon. Speaker is mandatory, it cannot be said that the documents being sent to the

Secretary-General of the Parliament within the stipulated time frame is not in compliance with Article 121 (1) of the Constitution.

For the reasons aforesaid the preliminary objections raised by the learned Solicitor General are overruled.

The Bill, according to its long title is to provide for the "establishment of a Department to be called and known as the Department of Divineguma Development by amalgamating the Samurdhi Authority of Sri Lanka established by Act, No.30 of 1995, Southern Development Authority of Sri Lanka established by Act, No.18 of 1996, the Udarata Development Authority of Sri Lanka established by Act, No.26 of 2005; to establish Divineguma Community Based Organizations at rural level and to provide for a co-ordinating network at the district level and national level; to establish Divineguma Community Based Banks and Divineguma Community Based Banking Societies, to repeal Samurdhi Authority of Sri Lanka, Act, No.30 of 1995, Southern Development Authority of Sri Lanka, Act, No.18 of 1996 and Udarata Development Authority of Sri Lanka, Act, No.26 of 2005 and to provide for matters connected therewith or incidental thereto."

When the three petitions were taken for consideration all learned Counsel for the petitioners agreed that all petitions could be taken together.

Learned Counsel for the petitioners contended that the Bill in question intends to repeal the Samurdhi Authority of Sri Lanka Act, No.30 of 1995, Southern Development Authority Act, No.18 of 1996, and the Udarata Development Authority Act, No.26 of 2005 in order to form one Department known as the Divineguma Development Department. Several submissions were made by the learned Counsel for the petitioners regarding the inconsistencies with the provisions of the Constitution.

Learned Counsel for the petitioners further submitted that the Bill has been placed on the Order Paper of the Parliament contrary to Article 154 (G) (3) of the Constitution, as the Bill deals with several subject matters that are referred to in the Provincial Council List of the Ninth Schedule to the Constitution. Therefore it was decided, first to consider the ground of challenge on the basis of the requirement to comply with Article 154 (G) (3) of the Constitution.

Article 154 (G), which was introduced along with the 13<sup>th</sup> Amendment to the Constitution, deals with the statutes of Provincial Councils and Article 154 (G) (3) reads as follows:

" No Bill in respect of any matter set out in the Provincial Council list shall become law unless such Bill has been referred by the President, after its publication in the *Gazette* and before it is placed on the Order Paper of Parliament, to every Provincial Council for the expression of its views thereon, within such period as may be specified in the reference, and

- a) Where every such Council agrees to the passing of the Bill, such Bill is passed by a majority of the Members of Parliament present and voting; or
- b) Where one or more Councils do not agree to the passing of the Bill, such Bill is passed by the special majority required by Article 82;

Provided that where on such reference, some but not all the Provincial Councils agree to the passing of a Bill, such Bill shall become law applicable only to the Provinces for which the Provincial Councils agreeing to the Bill have been established, upon such Bill being passed by a majority of the Members of Parliament present and voting."

The submission of all learned Counsel for the petitioners was briefly that several Clauses of the Bill in question were dealing with several subjects contained in the Provincial Council List in the Ninth Schedule to the Constitution. Learned Counsel for the petitioners in SC SD 03/2012 had tabulized the subjects in the Bill that have a co-relation to the items in the Provincial Council list. The said Table is given below:

**Table I**

Clause in the Bill	Related item in Ninth Schedule to the Constitution (List I – Provincial Council List)
Clause 4(a) – Carrying out development activities as may be required to alleviate poverty and to bring about a society guaranteeing social equity (Divineguma Development Department)	Item 2 – Planning – Implementation of provincial economic plans  Item 10 – Rural Development



Clause 4(c) – Food security for each individual and family (Divineguma Deevdevelopment Department)	Item 16 – Food supply and Distribution within the Province
Clause 4(f) – Physical and social; infrastructure facilities for development of livelihoods (Divineguma Development Department)	<p>Item 5:3 – Construction activity in respect of any subject in the Provincial Council List</p> <p>Item 6 – Roads and bridges and ferries within the Province</p>
Clause 4(i) – Social security network for those in need of social security (Divineguma Development Department)	<p>Item 7:2 – The Rehabilitation of destitute persons and families</p> <p>Item 7:3 – Rehabilitation and welfare of physically, mentally and socially handicapped persons</p> <p>Item 7:4 – Relief of the disabled and unemployable</p>

<p>Clause 5(c) – Centres for storage, marketing and processing products of divineguma beneficiaries and to make available physical and financial resources for the said purpose (Divineguma Development Department)</p>	<p>Item 15 – Market fairs</p>
<p>Clause 5(k) – Implement and operate programmes which will economically and socially uplift living standards of people and to develop infrastructure facilities (Divineguma Development Department)</p>	<p>Item 2 – Planning – Implementation of provincial economic plans</p> <p>Item 5:3 – Construction activity in respect of any subject in the Provincial Council List</p> <p>Item 6 – Roads and bridges and ferries thereon within the Province</p> <p>Item 10 – Rural Development</p>
<p>Clause 9 – Community Based Organizations</p>	<p>Item 17:1 – Co-operative undertakings and the organization, registration, supervision and audit of co-operative Societies within the Province</p>



	<p>Item 17:2 – Co-operative Development within the Province</p> <p>Item 28 – Regulation of unincorporated trading, literary, scientific, religious and other societies and associations</p>
<p>Clause 11(k) – to undertake and implement development programmes launched with the labour contribution of the community (Community Based Organizations)</p>	<p>Item 2 – Planning – Implementation of provincial economic plans</p> <p>Item 10 – Rural Development</p>
<p>Clause 15(1) – Divineguma Regional Organizations</p>	<p>Item 17:1 – Co-operative undertakings and the organization, registration, supervision and audit of co-operative societies within the Province</p> <p>Item 17:2 – Co-operative development within the Province</p> <p>Item 28 – Regulation of</p>

	unincorporated trading, literary, scientific, religious and other societies and associations
Clause 16(e) -- Provide technical assistance and other services for the development of agricultural or any other products of its beneficiaries in the region (Divineguma Regional Organizations)	Item 9:1 -- Agriculture, including agricultural extension, promotion and education for provincial purposes and agricultural services
Clause 16 (f) -- maintain centres for the purchase, storage and marketing of products and raw-material and organize trading centres and shopping centres (Divineguma Regional Organizations)	Item 15 -- Market fairs

<p>Clause 18(e) – Provide raw-material, technology and other related services for the development of products at regional level and provide facilities for marketing of the same (Divineguma Regional Organizations)</p>	<p>Item 10 – Rural Development</p> <p>Item 15 – Market fairs</p> <p>Item 21 – subject to the formulation and implementation of National Policy in regard to development and planning, the power to promote, establish and engage in agricultural, industrial, commercial and trading enterprises and other income generating projects within the Province</p>
<p>Clause 18 (f) – Provide assistance for the social security programme being implemented by the Divineguma Community Based Organizations (Divineguma Regional Organizations)</p>	<p>Item 7:3 – Rehabilitation and welfare of physically, mentally and socially handicapped persons</p> <p>Item 7:4 – Relief of the disabled and unemployable</p>
<p>Clause 26 (d) – Provide credit facilities to divineguma beneficiaries (Divineguma Community Based Banks)</p>	<p>Item 35 – The borrowing of money to the extent permitted by or under any law made by Parliament</p>
<p>Clause 31 (b) – Invest its funds, grant credit facilities and disburse profits (Divineguma Community Based Banking Societies)</p>	<p>Item 35 – The borrowing of money to the extent permitted by or under any law made by Parliament</p>



Learned Solicitor General submitted that the Bill in question in its entirety does not impinge on the powers and functions of the Provincial Councils or any other matters stipulated in the Provincial Councils list. In support of this contention learned Solicitor General relied on the majority determination in **In Re the Thirteenth Amendment to the Constitution, Bill and the Provincial Council Bill** (SC SD Nos. 7 - 48/87) where it was stated that Provincial Councils do not exercise sovereign legislative power and are only subsidiary bodies exercising limited legislative powers. It was also submitted that in terms of Article 76 (1) of the Constitution, the Parliament shall not abdicate or in any manner alienate its legislative power and shall not set up any authority with any legislative power.

It is correct that in the determination regarding the Thirteenth Amendment to the Constitution, the majority judgment had clearly referred to the aforementioned position. In that in the majority decision the Supreme Court had held that delegated legislation is legal and permitted and does not involve any abandonment or abdication of legislative power in favour of any newly created legislative authority. It further said that no new legislative body armed with general legislative authority is created when a new body is empowered to make subordinate legislation.

However, the question which has arisen here is not with regard to the authority that has been given to the Provincial Councils. Provincial Councils were empowered to make statutes and what had been submitted by the learned Solicitor General referring to the majority judgment in the determination regarding the 13<sup>th</sup> Amendment was based on the said power for the Provincial Councils to enact statutes. The question before this Court is with regard to the authority of the Central Government to pass legislation on subjects stipulated in the Provincial Council list of the Ninth Schedule to the Constitution.

The main purpose of the 13<sup>th</sup> Amendment to the Constitution was to introduce Provincial Councils in the country. Article 154 (A) (1) of the Constitution had made provision for a Provincial Council to be established for every Province. The purpose of the introduction of Provincial Councils in 1987, was to devolve power which was hitherto vested in the Central Government to Provincial Councils.

As referred to in the determination in **Town and Country Planning (Amendment) Bill** (SC SD 03/2011), in the Supreme Court determination in **In RE Thirteenth Amendment to the Constitution Bill and the Provincial Councils Bill** (Supra), it was clearly stated that the introduction of the Provincial Councils was for the purpose of devolution of authority, which included, *inter alia*, legislative devolution. This position was emphasized by the Supreme Court in **Madduma Bandara v Assistant Commissioner of Agrarian Services** ([2003] 2 Sri L.R. 80) where it was stated thus:

" The 13<sup>th</sup> Amendment to the Constitution, which came into effect in November 1987, was chiefly introduced for the purpose of devolving power from the Central Government to the Provincial Councils."

In devolving such power, the Provincial Councils were empowered to make Statutes. Article 154 (G) of the Constitution, which deals with the Statutes of Provincial Councils, refer to the applicability of the three lists enumerated in the 9<sup>th</sup> Schedule to the Constitution where Provincial Councils are exercising their power to make such Statutes. At the same time Article 154 (G) refers to instances where His Excellency the President of the Republic has to refer certain Bills to the Provincial Councils for the expression of the views of the Provincial Councils. For instance, Article 154 (G) (2) clearly states that a Bill for the purpose of amendment or repeal of the provisions of Chapter XVII A of the Constitution has to be referred to the Provincial Council for the expression of its

views after its publication in the Gazette and before it is placed on the Order Paper of Parliament. Whilst Article 154 (G) (2) refer to the Chapter containing Articles 154 A to 154 V, Article 154 (G) (3) refer to a Bill in respect of matters set out in the Provincial Council list. The said Article 154 (G) (3), which was referred to earlier, clearly provided for the procedure that has to be followed by the Central Government when it become necessary to legislate on a subject which is contained in the Provincial Council List of the Ninth Schedule to the Constitution. In that, if the Bill in question deals with a subject matter set out in the Provincial Council List, soon after its publication in the Gazette and before it is placed on the Order Paper of Parliament, it is necessary for His Excellency the President to refer it to every Provincial Council for the expression of its views.

Considering the purpose on which the 13<sup>th</sup> Amendment was introduced, and the establishment of the Provincial Councils, this procedure laid down in Article 154 (G) (3) has to be regarded as mandatory since otherwise the object of the said Article would be defeated. Moreover it is to be noted that this has been the intention of the legislature and the word **shall** has been repeatedly used in the Article 154 (G) (3) of the Constitution.

In fact in the determination of **In Re Thirteenth Amendment to the Constitution and the Provincial Councils Bill** (Supra), the majority decision has referred to the steps that were taken in the direction of devolving authority to Provincial Councils. Referring to this position it was stated thus:

“ Healthy democracy must develop and adapt itself to changing circumstances. The activities of Central Government now include substantial powers and functions that should be exercised at a level closer to the people. Article 27 (4) has in mind the aspirations of the local people to participate in the governance of



their regions. The Bills envisage a handing-over of responsibility for the domestic affairs of each province, within the framework of a united Sri Lanka. They give new scope for meeting the particular needs and desires of the people of each province. Decentralization is a useful means of ensuring that administration in the provinces is founded on an understanding of the needs and wishes of the respective provinces. The creation of elected and administrative institutions with respect to each province - that is what devolution means - gives shape to the devolutionary principle."

It is therefore evident that in terms of Article 154 (G) (3) of the Constitution, with regard to the subject matters referred to in the Provincial Council List, it is mandatory for the Central Government to consult the Provincial Councils before placing such type of a Bill on the Order Paper of Parliament. When such authority has been attributed to the Provincial Councils, by way of provisions contained in the Constitution, that cannot be taken away unless by way of following the procedure laid down in order to amend such constitutional provisions. Where the intention and the language of a piece of legislation are clear and when there are no ambiguities, there should not be any necessity for any type of construction or interpretation of such provisions.

As shown earlier in Table I, the Bill in question deals with several matters that come directly under the Provincial Council List. In the circumstances, in terms of Article 154 (G) (3), it is mandatory that before placing the Bill on the Order Paper of the Parliament, for it to be referred to the Provincial Councils for the expression of their views. Learned Solicitor General, submitted that the Provincial Councils have no power or authority on the subjects stated in List II of

the Ninth Schedule to the Constitution. He further contended that the first item in the said list is the **National Policy on all subjects and functions**. Learned Solicitor General relied on the enactment of the National Transport Commission Act, No.37 of 1991 and stated that some of the provisions of that Act are in conflict with Item 8 of the Provincial Council List, but as the Act relates to National Policy its constitutional validity was upheld by the Supreme Court and it had passed by a simple majority. Reference was also made to the determination of this Court is **In Re Agrarian Services (Amendment) Bill**, (SC SD 02/91 and 04/91) and stated that all matters dealt with in that Bill were matters of National Policy and therefore it fell within List II of the Ninth Schedule to the Constitution. The contention of the learned Solicitor General was that since the Bill deals with National Policy and in terms of the reserved list of the Ninth Schedule, National Policy on all subjects is a matter only for the Central Government, the Bill in question does not come within the purview of Article 154 (G) (3) of the Constitution.

Learned President's Counsel for the 1<sup>st</sup> respondent in SC SD No.02/2012, contended that the Directive Principles of State Policy stipulated in Chapter VI of the Constitution is the National Policy framework of the State.

Chapter VI of the Constitution as stated by the learned President's Counsel deals with the Directive Principles of State Policy. As clearly stated in Article 27 (1) of the Constitution, the said directive principles set out in Article 27 (2) are to guide Parliament, the President and the Cabinet of Ministers in the enactment of laws and governance of the country. Article 27 (2) of the Constitution gives a general outlook of several areas on which a democratic socialist society would be established as pledged by the State.

It is not disputed that National Policy on all subjects and functions is a matter within the scope of the Central Government and the Provincial Councils have no

power to legislate on national policy nor is there a requirement for the Central Government to consult the Provincial Councils if the Centre has decided to legislate on a matter based on national policy.

However, the National Policy within a country cannot be equated to the directive principles of the State Policy, as it would vary from one subject area to another.

It is not feasible to categorise a subject or subject areas as dealing with National Policy merely because it has been referred to in Chapter VI of the Constitution. There have been various methods adopted to decide as to whether a subject area referred to in a Bill deals with National Policy. In the determination in **Water Services Reference Bill** (SC SD 24/2003 and 25/2003) the functional test was applied to decide whether the matter contained in the Bill referred to National Policy. In **Kamalawathei and Others v The Provincial Public Service Commission, North Western Province** ([2001] 1 Sri L.R. 1), the Supreme Court referring to teacher transfers stated that Circular No.95/11 sets out the National Policy on teacher transfers, which is an important aspect of education.

These instances clearly show that National Policy has to be carefully considered and duly formulated prior to its promulgation, in respect of different subject areas.

The question which arises at this juncture is whether the Bill is on national policy.

In the determination on **Water Services Reference Bill** (Supra), this Court has laid down that the test to be used to determine on the question of national policy would be the functional test. This test was referred to in the determination on **Town and Country Planning Amendment Bill** (Supra), and this Court had stated thus:



" In determining the question as to whether a subject matter is dealing with the National Policy or not, it would therefore be necessary to consider the nature of the provisions contained in the Bill, its purpose and object in the light of the provisions contained in the Thirteenth Amendment to the Constitution and the three Lists enumerated in the Ninth Schedule to the Constitution."

It would therefore be necessary to consider the purpose and the object of the Bill in deciding the question as to whether the Bill deals with the National Policy of the relevant subject.

The long title of the Bill, stated earlier, refer to the establishment of a Department known as the Department of Divineguma Development. This would be established by the amalgamation of three Authorities which are currently functional. These three Authorities would be the Samurdhi Authority, Southern Development Authority and Udarata Development Authority. The Bill also provides for the establishment of Divineguma Community Based Organizations at rural level with a network at the district level and national level. It is also intended to establish Divineguma Community Based Banks and Divineguma Community Based Banking Societies. In the process, provision is to be made to repeal the Samurdhi Authority, Southern Development Authority and Udarata Development Authority.

It was contended that in the Preamble reference has been made to National Policy. The Preamble reads as follows:

"WHEREAS, in furtherance of the economic development process and in giving effect to the

national policy of alleviating poverty and ensuring social equity, it has become necessary to improve the individual, family and group centered livelihood development activities."

This clearly demonstrates that except for the word national policy the rest of the items are functional and includes several subject areas which are referred to in the Provincial Council List. For instance, when the long title and the Preamble are considered together they refer to the development at grass root level of the society. This is undoubtedly based on rural development. Item 10 of the List I deals with rural development and the entire subject is therefore devolved. It is also to be noted that in Item 21 of List I, the functional aspects of the power to promote, establish and engage in agricultural, industrial, commercial and trading enterprises and other income generating projects within the Province is vested in the Provincial Councils.

Learned Solicitor General contended that the Bill is based on the *Mahinda Chintanaya* that was approved by the Cabinet and that it was in respect of National Policy, which is an area reserved for the Central Government. Learned Counsel for the petitioners submitted that the said *Mahinda Chintanaya* or any other document by the Government should not override and contradict the Constitution of Sri Lanka.

It is to be borne in mind that the Constitution is the basic and fundamental law of the land, which reigns supreme and all other documents are subject to provisions contained in the Constitution. It is also relevant to note that in terms of Article 120 of the Constitution, the Supreme Court has the sole and exclusive jurisdiction to determine any question as to whether any Bill or any provision thereof is inconsistent with the Constitution.

As clearly examined earlier several subjects contained in the Bill come within the Provincial Council List in the Ninth Schedule to the Constitution. The subjects were compared with the relative items in the Ninth Schedule in Table I. It is also quite clear that the provisions of the Bill are functional in nature, which are closely linked to the matters contained in the Bill. Accordingly the Bill cannot be considered as setting out national policy and therefore does not come within the purview of List II of the Ninth Schedule to the Constitution. It is not disputed that the Provincial Councils came into being as a result of the introduction of the Thirteenth Amendment to the Constitution in 1987. The object was to achieve a more democratic constitutional regime on the basis of the power which was hitherto vested with the Central Government, being devolved to the Provincial Centres. By this process, in terms of Article 154 (G), certain restrictions have been placed with regard to enacting laws by the Centre over the subjects which are specifically devolved to the Provincial Councils. When there are such restrictions, those cannot be overcome by a mere reference of national policy. Such actions would only negate the whole purpose of the introduction of Provincial Councils in order to devolve power. As Bindra (Interpretation of Statute, 7<sup>th</sup> edition, 80) has correctly pointed out and as has been referred to in **Maithripala Senanayake v Mahindasoma** ([1998] 2 Sri L.R. 333),

"Unless the words are clear, the Courts should not so construe the proviso as to attribute to the Legislature **to give with one hand and take away with another**" (emphasis added).

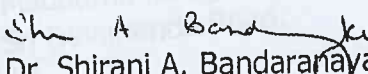
Learned Solicitor General submitted that the Bill under reference had not been referred by His Excellency the President to the Provincial Councils as stipulated in Article 154 (G) (3) of the Constitution.

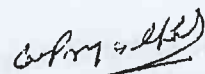


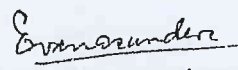
Since such procedure has not been complied with, we make a determination in terms of Article 120 read with Article 123 of the Constitution that the Bill in question is in respect of matters set out in the Provincial Council List and shall not become law unless it has been referred by His Excellency the President to every Provincial Council as required by Article 154 (G) (3) of the Constitution.

As the Bill has been placed in the Order Paper of Parliament without compliance with provisions of Article 154 (G) (3) of the Constitution, no determination would be made at this stage on the other grounds of challenge.

We shall place on record our deep appreciation of the valuable assistance given by all learned Counsel for the petitioners, learned President's Counsel for the 1<sup>st</sup> respondent in 02/2012, all learned President's Counsel and learned Counsel for the intervenient respondents and the learned Solicitor General who appeared on behalf of the Attorney General.

  
Dr. Shirani A. Bandaranayake,  
Chief Justice

  
Priyasath Dep, PC.,  
Judge of the Supreme Court

  
Eva Wanasundera, PC.,  
Judge of the Supreme Court