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

In the matter of an application in terms of Article 121 read with Article 120 of the Constitution to determine whether the Bill titled “Strategic Development Projects (Amendment)” or any part thereof is inconsistent with the Constitution.

Mahajuwana Kankanamalage Hemapala
59/C, Veera Mawatha
Kalalgoda, Pannipitiya

Petitioner

SC (SD) No: /2013

- v -

The Attorney General,
Attorney General’s Department,
Colombo 12.

Respondent

On this 13th day of March 2013

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

The ***Petition*** of the Petitioner above named appearing by Lilanthi de Silva his Registered Attorney-at-Law states as follows:

1. The Petitioner is a citizen of Sri Lanka and is entitled to make this application in terms of Article 121(1) of the Constitution.
2. The Attorney General is made a Respondent under and in terms of the requirements of Article 134(1) of the Constitution.
3. The Petitioner states that this application is made in his personal interest and also in the wider public interest.
4. The Bill titled "*Strategic Development Projects (Amendment)*" (hereinafter referred to as "the Bill") was published in the Gazette of the Democratic Socialist Republic of Sri Lanka Part II of February 22, 2013 issued on 26th February 2013 on the order of the Minister of Finance and Planning and placed on the Order Paper of Parliament on 8th March 2013.

True copies of the said Bill (in Sinhala, Tamil and English) are annexed hereto compendiously marked '**P1a**', '**P1b**', '**P1c**' and pleaded as part and parcel hereof.

5. The long title of the said Bill describes it as a Bill “*to amend the Strategic Development Projects Act, No.14 of 2008*”, (hereinafter sometimes referred to as ‘the principal enactment’).
6. The Bill was among a total of 21 Bills placed on the Order Paper of 8th March 2013, and must also be viewed in the context of the ‘objectives’ of the other Bills, and what is sought to be achieved collectively by such Bills.

CLAUSE 1 OF THE BILL

7. The Petitioner respectfully draws Your Lordships’ attention to the provisions of Clause 1 of the aforesaid Bill:
 1. (1) *This Act may be cited as the Strategic Development Projects (Amendment) Act, No. _____ of 2013 and shall be deemed for all purposes to have come into operation on January 1, 2013.*
8. The Petitioner respectfully states that the impugned clause of the Bill thus purports to have retrospective effect, and thus violates Article 12(1) of the Constitution which guarantees equal protection of the law.
9. The Petitioner respectfully states that any attempt to make the Bill have retrospective effect (i.e. come into effect prior to its enactment) would constitute inconsistency with Article 12(1) of the Constitution.
10. This is particularly in the context of the fact that such retrospective operation is meaningless, unless some benefit has been surreptitiously granted to some party prior to the placing of the Bill on the Order Paper of Parliament. Any such steps would be contrary to the open and transparent processes required to be adopted especially where projects of national or large scale nature are concerned, and undermines the requirements of equal treatment and

protection of business interests, and is thus and otherwise inconsistent with and/or contrary to Article 12(1) of the Constitution.

11. The Petitioner states that this would facilitate disrespect and/or non-securing and/or non-advancement of fundamental rights by enabling such practices which undermine the rule of law and would be inconsistent with and contrary to Article 4(d) of the Constitution, and thereby also constitute inconsistency with Article 3 of the Constitution.

CLAUSE 2 OF THE BILL

12. The Petitioner respectfully draws Your Lordships' attention to the provisions of Clause 2 of the aforesaid Bill:

The Schedule to the Strategic Development Projects Act, No. 14 of 2008 is hereby amended, by the addition immediately after item 10 of the Schedule, of the following new items:

11. The Sri Lanka Export Development Act No. 40 of 1979

12. The Betting and Gaming Levy Act No. 40 of 1988

13. The Petitioner states that Section 6 of the Strategic Development Projects Act No. 14 of 2008 provides as follows:

Section 6. *Unless the context otherwise requires, "Strategic Development Project" means a project which is in the national interest and which is likely to bring economic and social benefit to the country and which is also likely to change the landscape of the country, primarily through -*

(a) the strategic importance attached to the proposed provision of

goods and services, which will be of benefit to the public ;

(b) the substantial inflow of foreign exchange to the country ;

(c) the substantial employment which will be generated and the enhancement of the income earning opportunities; and

(d) the envisaged transformation in terms of technology.

- 17.** The Petitioner respectfully states that thus, a “Strategic Development Project” as stipulated in the Principal Act of 2008, requires that there must of national interest and of *both* economic *and* social benefit to the country which is additionally likely to change the landscape of the country primarily in the four means (a) to (d) in the said Section 6 of the Strategic Development Projects Act No. 14 of 2008.
- 18.** The Petitioner states that by seeking to permit exemption from *The Betting and Gaming Levy Act No. 40 of 1988* through Clause 2 of the said Bill, no social benefit is caused, in as much as gambling and betting are universally considered addictive vices that have the effect of destroying lives and families.
- 19.** The Petitioner states that accordingly, any purported Strategic Development Project given an exemption in respect of *The Betting and Gaming Levy Act No. 40 of 1988* as sought through Clause 2 of the said Bill would cease to serve the social benefit of the country and amount to incentivization of social harm.
- 20.** The Petitioner states that accordingly, the amendment of the Schedule of *Strategic Development Projects Act, No.14 of 2008* to include *The Betting and Gaming Levy Act No. 40 of 1988* as the twelfth (12th) item of the said

Schedule would be irrational, arbitrary and constitute inconsistency with the equal protection guaranteed under Article 12(1) of the Constitution.

21. The Petitioner states that the objectives of the principal enactment are to *inter alia*, “*promote strategic development projects*” and “*to provide a tax free period in relation to identified strategic development projects*”.

22. The Petitioner further respectfully states that the provisions of the instant Bill must be analysed in the light of the amendments sought to be made by Clause 2 of the Bill titled “*Betting and Gaming Levy (Amendment)*” which was also published in the Gazette of the Democratic Socialist Republic of Sri Lanka Part II of February 22, 2013 issued on 26th February 2013 on the order of the Minister of Finance and Planning and placed on the Order Paper of Parliament on 8th March 2013.

23. The Petitioner respectfully draws Your Lordships’ attention to the provisions of Clause 2 of the aforesaid Bill titled “*Betting and Gaming Levy (Amendment)*”:

2. *Section 2 of the Betting and Gaming Levy Act, No.40 of 1988 (hereinafter referred to as the “principal enactment”, as last amended by Act, No.9 of 2005 is hereby amended by the insertion immediately after subsection (1) of that section of the following new subsection:-*

(1A) *Every person who is liable to pay the levy under subsection (1) shall, in addition to the payment of such levy, be charged a levy at the rate of five per centum, on the gross collection of the businesses referred to in paragraphs (a) or (b) of subsection (1) carried on by him in respect of each month.*

Provided however, the person who is liable to pay the levy under this subsection, shall not be liable to pay the Value Added Tax under the Value Added Tax Act, No.14 of 2002 or the Nation Building Tax under the Nation Building Tax Act, No.9 of 2009, on such collection.

Provided further, that any person whose gross collection in respect of the businesses referred to in paragraphs (a) or (b) of subsection (1) does not exceed twelve million per annum or three million per quarter, such person shall not be liable to pay the levy required to be paid under this subsection.

- 24.** The Petitioner respectfully states that Section 2(1) of the Betting and Gaming Levy Act No.40 of 1988 specifically recognized that the levy would be chargeable irrespective of the legality or otherwise of the business carried out.
- 25.** The impugned provision of that Bill thus clearly results in exemptions from VAT and NBT being granted to such businesses (covered under the Act), and carried out unlawfully.
- 26.** The Petitioner states that in the circumstances, the inclusion of *The Betting and Gaming Levy Act No. 40 of 1988* in the Schedule of the Principal Act as sought through Clause 2 of the *Strategic Development Projects (Amendment) Bill* aggravates the denial of the equal protection of the law guaranteed under Article 12(1) of the Constitution, in as much as such an amendment would have the effect of permitting further loss to the State through exemption of revenue due in respect of certain projects to engage in betting and/or gaming, while facilitating social detriment and damage. The Petitioner states that accordingly, the said exemption in respect of *The Betting and Gaming Levy Act No. 40 of 1988* would be arbitrary and irrational.
- 27.** The Petitioner further states that in the context of greater burdens being placed on the masses through increased levies, taxes etc. on essential items and necessary commodities such as motor vehicles, such exemptions to select 'projects' would be grossly unreasonable, and is thus and otherwise inconsistent with the rights guaranteed to the citizenry through Article 12(1) of the Constitution.

28. The Petitioner respectfully urges that Your Lordships be pleased to consider the need to address and redress the matters and concerns urged through this application, given the reality that the Sovereignty of the People, the Rule of Law and the Supremacy of the Constitution would be imperiled through the provisions of the said Bill that are inconsistent with and / or in contravention of the provisions of the Constitution, and thus ought not be permitted to pass validly into law through a simple majority in Parliament alone.
29. The Petitioner has not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.
30. The Petitioner respectfully reserves the right to furnish such further facts and documents in support of the matters set out herein at the Hearing should the Petitioner become possessed of any such material.
31. An affidavit of the Petitioner is appended hereto in support of the averments contained herein.

WHEREFORE the Petitioner respectfully prays that Your Lordships' Court be pleased to:

- (a) Determine that the provisions of Clauses 1, and 2 of the said Bill jointly and severally are inconsistent with and/or in contravention of the provisions of Article 3, Article 4 and Article 12(1) of the Constitution and cannot be enacted into law except if approved by not less than a two-thirds vote of the whole number of the members of Parliament in favour as required by the Constitution, and in addition is approved by the People at a Referendum as required under and in terms of Article 83(a) of the Constitution;
- (b) Grant costs; and
- (c) Grant such further and other reliefs as to Your Lordships' Court shall seem meet.

Registered Attorney at Law for the Petitioner