
**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 “Tax Appeals Commission (Amendment)” or any part thereof is inconsistent with the Constitution.

UMAGILIYAGE PIYASENA, No.506/21,
Hirana Road, Kuruduwatte, Panadura

Petitioner

S.C. (S.D.) No:

- VS -

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

Respondent

On this 13th day of March 2013

**TO: THE HIS LORDSHIP THE CHIEF JUSTICE AND THEIR LORDSHIPS THE
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 Bill titled “*Tax Appeals Commission (Amendment)*” (hereinafter referred +

4. 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 purported to have been 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 Tax Appeals Commissions Act, No.23 of 2011*”.

NON COMPLIANCE OF STANDING ORDER 45

5. Standing order 45 of Parliament provides as follows;

“PROCEDURE AS TO PRESENTATION OF BILLS

45. A Minister of the Cabinet or a Deputy Minister may after notice, subject to the provisions of Article 78 of the Constitution present a Bill without an order of Parliament for its introduction and when a Bill is so presented at the commencement of Public Business, the title of the Bill shall be read by the Secretary-General and the Bill shall then be deemed to have been read the first time and to have been ordered to be printed and shall stand for Second Reading on a date not earlier than a week from the date on which it was presented :”

6. The Petitioner states that the 1st order paper did not contain the “presentation” of the 21 Bills to Parliament. Subsequently the Revised Edition of the order paper contained the Title of the Bills to be “presented”. However, the Petitioner has been advised and verily believes that no “notice” as mandated by standing order 45 was given.

7. The Petitioner states that the said non-compliance of the standing orders affect the very root of the “Legislative Omnicom potent” character of Parliament.

CLAUSES OF THE BILL

8. The Petitioner respectfully states that the impugned clauses of the Bill has rendered the main Act without meaning and is against the intention of the legislature thus violates Article 12(1) of the Constitution that guarantees equal protection of the law.
9. The Petitioner states further that the said Bill has no provisions with regard to existing orders/appeals hence legally affecting the rights of the citizens who are either before the Tax Appeals Commissions or of a citizen expecting an order from the Tax Appeals Commission.
10. The Petitioner respectfully states that the impugned clauses of the Bill thus purports to have retrospective effect and / or retrospectively sanction actions taken unlawfully and / or without lawful authority, and thus violates Article 12(1) of the Constitution that guarantees equal protection of the law.
11. Further the impugned Bill and the Clauses of the said Bill is against common right and reason and/or repugnant. The clauses of the said Bill are against natural equity.
12. The said Bill is inconsistent with Article 3, 4 of the Constitution.

DOCTRINE OF IMPLIED REPEAL

13. The Petitioner further states that the Bill that is the subject matter of this application is inconsistent with the main Act, namely, Tax Appeals Commission Act No.23 of 2011 and rest of the legislation, more particularly, the Acts contained in Schedule 1 of Section 10 of the Tax Appeals Commission (Amendment) Bill.
14. 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.
15. The Petitioner has not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.
16. 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.
17. 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, 2, 3, 5 and 6 of the said Bill are inconsistent with and / or in contravention of the provisions of Articles 12(1), 3, 4, 148 and 150 of the Constitution and cannot be enacted into law as it stands;
- (b) In the alternative to determine that the provisions of Clauses 1, 2, 3, 5 and 6 of the said Bill are inconsistent with and / or in contravention of the provisions of Articles 12(1), 3, 4, 148 and 150 of the Constitution and cannot be enacted into law except if approved by the People at a Referendum in addition to a two-thirds vote of the whole number of the members of Parliament in favour as required by Article 83(a) of the Constitution;
- (c) Grant such further and other reliefs as to Your Lordships' Court shall seem meet.

**Registered Attorney at Law
for the Petitioner**