

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

S.C.Reference No.5/2012
(Writ) Application No.362/2012

In the matter of reference under and C.A.
in terms of Article 125 of the Constitution
of the Democratic Socialist Republic of
Sri Lanka.

Ven.Maduluwawe Sobhitha,
Thero
Kotte Sri Naga Viharaya,
Pita Kotte,
Kotte.

Petitioner.

Vs.

1. Hon.Anura Priyadarshana Yapa, M.P.
Eeriyagolla,
Yakwila.

2. Hon.Nimal Siripala de Silva,
M.P.
93/20, Elvitigala Mawatha,
Colombo 08.

3. Hon.A.D.Susil Premajyantha,
M.P.
123/1, Station Road,
Gangodawila,
Nugegoda.
4. Hon.Dr.Rajitha Senaratne, M.P.
C.D.85, Gregory's Road,
Colombo 07.
5. Hon.Wimal Weerawansa, M.P.
18, Rodney Place,
Cotta Road,
Colombo 08.
6. Hon.Dilan Perera M.P.
30, Bandaranayake Mawatha,
Badulla.
7. Hon.Neomal Perera, M.P.
3/3, Rockwood Place,
Colombo 07.
8. Hon.Lakshman Kiriella, M.P.
121/1, Pahalawela Road,
Palawatta,
Battaramulla.

9. Hon. John Amaratunga M.P.
88, Negombo Road,
Kandana.

10. Hon. Rajavaritham
Sampathan, M.P.
2D, Summit Flats,
Keppitipola Road,
Colombo 05.

11. Hon. Vijitha Herath, M.P.
44/3, Medawaththa Road,
Mudungoda, Miriswaththa,
Gampaha.

Respondents.

22.11.2012

Before : AMARATUNGA, J.
SRIPAVAN, J.
DEP, P.C. J.

Counsel : K. Kanag-Isvaran P.C. with Buddhike Illangatillake and
Thishya Weragoda for the Petitioner in 03/2012.

Sanjeeva Jayawardena P.C. with Senany Dayaratna for
Petitioner in 4/2012

G.Alagaratnam P.C. with Ranjith Coomaraswamy, Chanaka de Silva, M.I.M. Adamaly and L.Gurusinghe for Petitioner in 05/2012.

Shibly Aziz P.C. with U. Egalahewa P.C. and Chishmal Warnasuriya for Petitioner in 06/2012

Uditha Egalahewa P.C. with Gihan Galabadge R. Dayananda and Amaranath Fernando for the Petitioner in 7/2012

Chrishmal Warnasuriya with Reven Weerasinghe, Wardani Karunarathne and D. Kularathne in 08/2012.

Pulasthi Hewamanne for Petitioner in 09/2012.

Palitha Fernando P.C. A.G. with A. Gnanathan P.C. ASG, Shavindra Fernando DSG., S.Rajarathnam DSG, Janak de Silva DSG, A.H.M.D. Nawaz DSG and N.Pulle SSC. for A.G.

Argued &

Decided on : 22.11.2012

AMARATUNGA, J

We have heard the learned President's Counsel who appeared in support of the Reference Nos. 3/2012, 4/2012, 5/2012, 6/2012, 7/2012 and the learned counsel who appeared in support of the Reference Nos.8/2012 & 9/2012- and we have also heard the Hon. the Attorney-General who appeared on very short notice. The Court of Appeal acting in terms of Article 125 of the Constitution has referred the following question relating to the interpretation of the Constitution.

“Is it mandatory under Article 107(3) of the Constitution for the Parliament to provide for matters relating to the forum before which the allegations are to be proved, the mode of proof, the burden of proof, the standard of proof etc. of any alleged misbehavior or incapacity in addition to the matters relating to the investigation of the alleged misbehavior or incapacity?”

Article 125(2) of the Constitution mandates that the question referred to the Supreme Court shall be determined within 2 months of the date of the reference. In terms of Rule 64(1) of the Supreme Court Rules of 1978 certain

procedural steps have to be followed before a determination is made by this Court.

It was the submission of all Learned President's Counsel and the learned counsel who appeared in support of the motion that the inquiry before the Select Committee of Parliament would commence at 10.30 am tomorrow, i.e. 23.11.2012 and irreparable damage would be caused to the person noticed that is the Hon. the Chief Justice if proceedings before the Select Committee are not stayed by this Court. According to the pleadings filed in the Court of Appeal and the submissions made by all learned counsel in this Court, standing order 78(A) of the Parliament contravenes Article 4(c) read with Article 3, Article 12(1) and 13(5) of the Constitution and are also contrary to the accepted norms relating to the burden of proof. These questions will be addressed once the procedural rules are complied with.

However, at this stage, this Court whilst reiterating that there has to be mutual respect and understanding founded upon the rule of law between Parliament and the Judiciary for the smooth functioning of both the institutions, wishes to recommend to the members of the Select Committee of Parliament that it is prudent to defer the inquiry to be held against the Hon. the

Chief Justice until this Court makes its determination on the question of law referred to by the Court of Appeal. The desirability and paramount importance of acceding to the suggestions made by this Court would be based on mutual respect and trust and as something essential for the safe guarding of the rule of law and the interest of all persons concerned and ensuring that justice is not only be done but is manifestly and undoubtedly seem to be done.

We direct the Court of Appeal to inform the Respondents to file written submissions in terms of the Rule 64(1)(b) of the Supreme Court Rules.

The Registrar of the Supreme Court is also directed to send copies of the written submissions lodged under the aforesaid Rule to the Hon. the Attorney-General and the written submissions of the Hon. the Attorney-General could be filed in terms of the aforesaid rules.

The Registrar is directed to serve certified copies of this order ^{to} ~~in~~ all Respondent members of the Select Committee of the Parliament together with the certified copy of the Petition and affidavit filed in the Court of

Appeal and also a copy of the order of reference made by the Court of Appeal.

A copy of today's order is to be served on the Hon. the Attorney-General as well.

The Registrar is also directed to send a certified copy of today's order to the Registrar of the Court of Appeal. Petitioners are also entitled to obtain certified copies of this order on payment of usual charges.

Mention on 28.11.2012, before the same bench.

Sgd

JUDGE OF THE SUPREME COURT

SRIPAVAN, J.

I agree.

Sgd

JUDGE OF THE SUPREME COURT

DEP, PC, J.

I agree.

Sgd.

JUDGE OF THE SUPREME COURT

I do hereby certify that the foregoing is a true copy of the judgment dated 22.11.2012, filed of record in SC Reference No.05/2012.

Typed by :- MD

Compared with:-