
**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 "Betting and Gaming Levy (Amendment)" or any part thereof is inconsistent with the Constitution.

Wickrema Arachchige Samarasinghe,
398/24 Kurunduwatte 1st Lane,
Athurugiriya

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 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 "*Betting and Gaming Levy (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 marked 'P1a', 'P1b', 'P1c' and pleaded as part and parcel hereof.

4. The long title of the said Bill describes it as a Bill "*to amend the Betting and Gaming Levy Act, No.40 of 1988*".
5. 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

6. 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 Betting and Gaming Levy (Amendment) Act, No. _____ of 2013 and shall be deemed for all purposes to have come into operation on January 1, 2013.*
7. 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.
8. 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 a violation of Article 12(1) of the Constitution.

CLAUSE 2 OF THE BILL

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

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.

10. 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.

11. The impugned provision of the Bill would thus result in exemptions from VAT and NBT being granted to such businesses (covered under the Act), and possibly carried out unlawfully.
12. The impugned provision will also result in the grossly irrational and arbitrary reduction of tax revenue, especially in the context where high taxes are levied on essential items to meet State expenditure.
13. The Petitioner respectfully states Clause 2 of the Bill, and especially the portion highlighted above, purports to grant exemptions from VAT and NBT, and is thus discriminatory (not applying to ALL businesses uniformly), and also arbitrary, grossly unreasonable and irrational inasmuch as it seeks to give concessions to businesses carried out unlawfully, and thus and otherwise violates Article 12(1) of the Constitution which guarantees equality and equal protection of the law.

CLAUSE 3 OF THE BILL

14. The Petitioner respectfully states that the impugned clause 3 of the Bill purports to have retrospective effect, and thus violates Article 12(1) of the Constitution which guarantees equal protection of the law.
15. 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 a violation of Article 12(1) of the Constitution.

CLAUSE 5 OF THE BILL

16. The Petitioner respectfully draws Your Lordships' attention to the provisions of Clause 5 of the aforesaid Bill:

5. *The amount of the levy charged and collected by the Commissioner General or any person authorized under this Act, from any person, during the period commencing from January 1, 2013 and ending on 31st March 2013, shall be deemed to have been validly charged and collected by the Commissioner General or by any person under this Act.*

...

17. The Petitioner respectfully states that the impugned clause 5 of the Bill thus purports to retrospectively grant powers to and / or sanctions the acts of the Commissioner General and / or others in having collected Levies, prior to the legislature having authorised the collection of same.

18. The Petitioner respectfully states that the impugned clause 5 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 which guarantees equal protection of the law.

CLAUSE 6 OF THE BILL

19. The Petitioner respectfully draws Your Lordships' attention to the provisions of Clause 6 of the aforesaid Bill, and especially the amendment sought to be made to Part II of the Schedule to the Principal Enactment.

20. The Petitioner respectfully states that the impugned clause 6 of the Bill purports to impose a levy with effect from April 1, 2013.

21. The Petitioner states that unless the Bill is enacted into law prior to April 1, 2013, the Bill would have retrospective effect, and thus violate Article 12(1) of the Constitution which guarantees equal protection of the law.
22. 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 a violation of Article 12(1) of the Constitution.

CLAUSES 1 AND 2 OF THE BILL AND PARLIAMENTARY CONTROL OVER PUBLIC FINANCE

23. Additionally, clauses 1 and 2 of the Bill also, by seeking to grant irrational and arbitrary exemptions from the application of the Value Added Tax Act No. 14 of 2002 and the Nation Building Tax Act No. 9 of 2009, would also amount to an irrational and arbitrary exercise of Parliament's Constitutionally mandated control over public finance, especially as the impugned provisions will also result in the grossly irrational and arbitrary reduction of tax revenue, especially in the context where high taxes are levied on essential items to meet State expenditure.
24. Consequently, the Sovereignty of the People is also thereby eroded.
25. Thus and otherwise clauses 1 and 2 also violate Articles 148, and consequently Articles 4(a) and 3 of the Constitution.

- 26.** The Petitioner further respectfully states that the provisions of the instant Bill must also be analysed in the light of the amendments sought to be made by Clause 2 of the Strategic Development Projects (Amendment) Bill (also placed on the Order Paper of Parliament on 8th March 2013), which is to enable the grant of exemptions from the provisions of the Betting and Gaming Levy Act to strategic development projects (in which case even payment of the levy would be exempted).
- 27.** 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.
- 28.** The Petitioner has not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.
- 29.** 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.
- 30.** 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 are inconsistent with and / or in contravention of the provisions of Articles 12(1), 148, 4(a) and 3 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;
- (b) Determine that the provisions of Clauses 3, 5 and 6 of the said Bill are inconsistent with and / or in contravention of the provisions of Articles 12(1) of the Constitution and cannot be enacted into law except if approved by a two-thirds vote of the whole number of the members of Parliament in favour as required by Article 84(2) 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**