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

In the matter of the exercise of the Jurisdiction of the Supreme Court, under and in terms of Articles 120 and 121 of the Constitution, to determine whether the Bill titled 'FINANCE', or any part thereof, is inconsistent with the Constitution.

Yapa Mudiyansele Punchibanda,
Tholabothanna, Mailapitiya.

Petitioner

Supreme Court
(Special Determination) No.

Vs

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

Respondent

On this 13th day of March 2013

**TO 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 "*Finance*" (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 & Planning* and placed on the Order Paper of Parliament on 8th March 2013. This was among the 21 Bills placed on the order paper on the same day.

True copies of the said Bill (in Sinhala, Tamil and English) are annexed hereto marked 'P1a', 'P1b', and 'P1c'.

4. The long title of the said Bill describes it as a Bill "*to amend the Finance Act, No. 16 of 1995, the Finance Act, No. 25 of 2003, the Finance Act No. 12 of 2012 and the Finance Act, No. 11 of 1963; to provide for the imposition of a crop insurance levy; and to provide for matters connected therewith and incidental thereto*".

EXEMPTION OF CERTAIN ENTERPRISES FROM THE APPLICATION OF THE PROVISIONS OF CERTAIN ACTS

5. The Petitioner states that exemptions contemplated in **Clauses 7, 8, 9 & 10** of the Bill seek to amend *Part IV* of the *Finance Act No. 12 of 2012*.
6. The exemptions contemplated under *Clauses 7, 8 & 9* of the Bill, permit the Minister to declare a Bonded Area, by regulations, giving exemptions to certain revenue that should otherwise accrue to the State.
7. Further, the Minister would be permitted under **Clause 10** to grant exemptions to certain enterprises, from the application of the provisions of the Acts referred to in the Schedule to the Bill, thereby permitting the Minister, without any approval of Parliament, to decide on the revenue.

8. The Petitioner further states that the effect of the proposed amendments stipulated in the Bill on *Part IV* of the *Finance Act No. 12 of 2012* is to authorize the Minister to give to certain activities, tax concessions, including Income Tax and Customs Levy, without the approval of Parliament. Therefore, such scheme amounts to abdication of legislative power of Parliament, and is arbitrary and irrational, and contrary to Articles 12(1), 3, 4(a) and 148 of the Constitution.
9. The proposed Clause 10 also inserts a new *section 18C* and introduces certain activities to be covered under the *Strategic Development Projects Act No. 14 of 2008* as read with the *Board of Investment of Sri Lanka Law No. 4 of 1978*, thereby purporting to grant exemptions notwithstanding that the activities may not come within the requisite definitions set out in the aforesaid Act, resulting in arbitrary, irrational action, which would deprive the State of revenue.
10. The Petitioner states that Clause 12 of the Bill introduces a new *Section 19A* which authorizes the Minister to introduce Regulations to declare Free Ports and Bonded Areas for the purposes of the Act. The Petitioner states that the Free Ports and Bonded Areas have inherent tax concessions and revenue limitations, and thereby the Minister will be the sole authority on the revenue that should accrue to the State, thus excluding Parliamentary involvement. The scheme therefore amounts to abdication of the Legislative power of the Parliament and is arbitrary, irrational and inconsistent with Articles 12(1) 3, 4(a) and 148 of the Constitution .
11. The Petitioner states that the aforesaid scheme as a whole, centralizes all decision making powers in one individual, thus, the proposed Clauses 7,8,9 & 10 read with the Minister's regulation making powers in Clause 12 of the Bill is *inter alia*, arbitrary, irrational and overbroad, and violative of Articles 3, 4(a) 12(1), and 148 of the Constitution, especially considering that the Minister is authorized to decide criteria under which tax exemptions are granted..

IMPOSITION OF CROP INSURANCE LEVY

12. The Bill introduces a new levy titled *Crop Insurance Levy* to be charged and levied from institutions coming under the purview of the Acts specified in the Schedule of the Bill (namely the *Banking Act No. 30 of 1988*, *Finance Companies Act, No. 78 of 1988* and *Regulation of Insurance Industries Act, No. 43 of 2000*).
13. Clause 14 of the Bill, read with the Schedule therefore enables the Government to collect a new tax from private or semi-government institutions. However, the Bill does not specify specific implementation of the provisions of this new proposed amendment, nor does it specify management of the separate account to be maintained and administered by the *National Insurance Trust Fund Board* established under the *National Insurance Trust Fund Act, No. 28 of 2006*.
14. Clause 14(3) of the Bill gives an unbridled power to the Minister to introduce Regulations, without the Parliament first having decided the limitations of the provisions of the Regulations. For convenience of Your Lordships' Court, the provision is reproduced verbatim below;
- “**14(3)** The provisions which may be necessary in the implementation of the provisions of this Part of this Act shall be prescribed by regulations under this Act.”
15. The Petitioner states that Clause 14(3) read with Clause 15(1) are contrary to Article 12(1) of the Constitution, inasmuch as, *inter alia*, it is arbitrary and overbroad.
16. The Petitioner further states that, the Minister being authorized to decide on his own, on legislative matters pertaining to the management of a levy &/or tax, without the approval of Parliament, amounts to a violation Articles 12(1), 3, 4(a) and 148 of the Constitution.

17. The Petitioner states that in the circumstances hereinbefore morefully enumerated, the entire Bill &/or one or more of the clauses thereof, cannot become Law, unless passed by two-thirds of the whole number of members in Parliament **and** approved by the People at a referendum.

18. The Petitioner states that he has not invoked the jurisdiction of Your Lordships' Court previously in respect of matters stated herein.

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

(a) Hear the Petitioner;

(b) Determine that the provisions of Clauses 7, 8, 9, 10 12, 14(3), 15(1) & 19 of the said Bill is inconsistent with and / or in contravention of the provisions of Articles 3, 4(a), 12(1), and 148 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.

Attorney-at-Law for the Petitioner