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

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*In the matter of an application in terms of Article 121 read with Article 120 of the Constitution to determine whether the Bill titled "Fiscal Management (Responsibility) (Amendment)" or any part thereof is inconsistent with the Constitution.*

1. Centre for Policy Alternatives (Guarantee) Limited,  
No.24/2 28<sup>th</sup> Lane, Off Flower Road,  
Colombo 7.
2. Dr. Paikiasothy Saravanamuttu  
No. 03, Ascot Avenue,  
Colombo 5.

***Petitioners***

**S.C. (S.D.) No:** - VS -

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

***Respondent***

**On this 13<sup>th</sup> 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 Petitioners above named appearing by Lilanthi de Silva their Registered Attorney-at-Law states as follows:

1. The 1<sup>st</sup> Petitioner is a body incorporated under the laws of Sri Lanka (and duly re-registered in terms of the Companies Act No.7 of 2007) and is made up of members, more than three-fourths of whom are citizens of Sri Lanka

and is entitled to make this application in terms of Article 121(1) of the Constitution.

2. The primary objects of the 1<sup>st</sup> Petitioner are *inter alia* to make inputs into public policy-making and implementation process in constitutional, legislative and administrative spheres to ensure responsible and good governance, and to propose to the government and parliament and all other policy-making bodies and institutions, constructive policy alternatives aimed at strengthening and safeguarding democracy, pluralism, the rule of law, human rights and social justice.

True copies of the Certificate of Incorporation and Memorandum and Articles of Association of the 1<sup>st</sup> Petitioner are annexed hereto marked 'P1' and 'P2' respectively and pleaded as part and parcel hereof.

3. The 2<sup>nd</sup> Petitioner is a citizen of Sri Lanka and the Executive-Director of the 1<sup>st</sup> Petitioner above-named.

4. The Attorney General is made a Respondent under and in terms of the requirements of Article 134(1) of the Constitution.

5. The Bill titled "*Fiscal Management (Responsibility) (Amendment)*" (hereinafter referred to as "the Bill") was published in the Gazette of the Democratic Socialist Republic of Sri Lanka Part II of 22<sup>nd</sup> February 2013 issued on 26<sup>th</sup> February 2013 on the order of the Minister of Finance and Planning and placed on the Order Paper of Parliament on 8<sup>th</sup> March 2013.

True copies of the said Bill (in Sinhala, Tamil and English) are annexed hereto compendiously marked 'P3a', 'P3b', 'P3c' and pleaded as part and parcel hereof.

6. The long title of the said Bill describes it as a Bill “*to amend the Fiscal Management Responsibility Act, No. 3 of 2003*”.
7. The Bill was among a total of 21 Bills placed on the Order Paper of 8<sup>th</sup> 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**

8. The Petitioners respectfully draw Your Lordships’ attention to the provisions of Clause 1 of the aforesaid Bill:
  1. (1) *This Act may be cited as the Fiscal Management Responsibility (Amendment) Act, No. \_\_\_\_\_ of 2013 and shall be deemed for all purposes to have come into operation on January 1, 2013.*
9. The Petitioners respectfully state 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.
10. 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.
11. The Petitioners further state that in the context of the contents of the impugned clause 2(a) and (b) of the Bill, the retrospective operation sought by clause 1 would also result in the violation of Articles 148, 150, 4(a) and 3 of the Constitution.

## **CLAUSE 2 OF THE BILL**

**12.** The Petitioners respectfully draw Your Lordships' attention to the provisions of Clause 2 of the aforesaid Bill:

2. *Section 3 of the Fiscal Management (Responsibility) Amendment Act No. 3 of 2003 is hereby amended as follows:-*

(a) *in paragraph (e) of that section by substitution, for the words and figures "4.5 percentum" ; of the figures and words "7 per centum"; and*

(b) *in paragraph (f) of that section by substitution for the words and figures "January 1, 2006" , "eighty five percentum" and January 1, 2013", of the words and figures "January 1, 2013" ,"eighty percentum" and "January 1, 2020" respectively.*

**13.** The Petitioners respectfully state that the legislative purpose and objective of the provisions of section 3(e) of the Fiscal Management Act was to ensure a limitation of government guarantees in borrowing and its accountability, minimizing financial risks to the State. It further strengthened the stability of fiscal management whereby the Parliament was able to effectively engage in full control of public finance.

**14.** By increasing the permissible levels of Government guarantees for Borrowing (obtained by State and non-State institutions), under the proposed Amendment, the financial status of the country and the public finance would be adversely affected, exposing generations of citizens to financial risks (inasmuch as the guarantees may be called upon, and the potential financial exposure of the citizenry being increased).

- 15.** Guarantees thus given are not and / or may not be individually authorized by Parliament (which is Constitutionally vested with full control over public finance) as Constitutionally mandated, and such guarantees (if called upon) will have a negative effect on public finance / assets inasmuch as the Public will be forced to bear the cost of honoring the guarantee notwithstanding the lack of Parliamentary approval.
- 16.** Thus the effect of the proposed clause 2(a) of the Bill will be to increase the Guarantees granted without Parliamentary approval and in violation of the Constitutional requirement as to Full Control over Public Finance, by Parliament.
- 17.** Thus clause 2(a) of the Bill is inconsistent with Article 3 read with Articles 4(a), 12(1) and 148 and 150 of the Constitution.
- 18.** The Petitioners further state that the objective of section 3(f) of the Fiscal Management Act was to ensure that the total liabilities of the Government including the external Debts are lowered by target dates, with a defined transparent and efficient fiscal management practices.
- 19.** Instead of meeting those targets, the proposed amendment has been introduced to nullify the effect of the original statute, while departing from responsible fiscal management principles. Thus the proposed Bill and in particular clause 2(b) thereof have the effect of repealing the relevant fiscal management objective of the original Act, thereby undermining the objective criteria envisaged in the Fiscal Management Act.

- 20.** The impugned clause 2(b) also seeks to enable and / or sanction the maintenance of a reliance on debt, and, especially in the context of other recent enactments such as the Appropriation Act (enacted notwithstanding the Determination of the Supreme Court as to the unconstitutionality of certain provisions), will result in further abdication and / or alienation and / or loss of Parliamentary Control over Public Finance, and adversely affect Public Finance and the Sovereignty of the People.
- 21.** Thus clause 2(b) of the Bill is inconsistent with Article 3 read with Articles 4(a), 12(1) and 148 and 150 of the Constitution.
- 22.** The Petitioners respectfully urge 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.
- 23.** The Petitioners have not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.
- 24.** The Petitioners respectfully reserves the right to furnish such further facts and documents in support of the matters set out herein at the hearing of this Application should the Petitioners become possessed of any such material.
- 25.** An affidavit of the 2<sup>nd</sup> Petitioner is appended hereto in support of the averments contained herein.

**WHEREFORE** the Petitioners respectfully pray that Your Lordships' Court be pleased to:

- (a) Determine that the provisions of Clause 1 and 2 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;
- (b) Grant such further and other reliefs as to Your Lordships' Court shall seem meet.

**Registered Attorney at Law  
for the Petitioners**