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

Mahajuwana Kankanamalage Hemapala
59/C, Veera Mawatha
Kalalgoda
Pannipitiya

Petitioner

SC (SD) No: /2013

- v -

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

Respondent

On this 13th day of March 2013

**TO: THE CHIEF JUSTICE AND 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 Petitioner makes this application in his personal interest and also in the wider public interest.
4. The Bill titled “*Notaries (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 compendiously marked ‘**P1a**’, ‘**P1b**’, ‘**P1c**’ and pleaded as part and parcel hereof.

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.
6. The long title of the said Bill describes it as a Bill “*to amend the Notaries Ordinance (Chapter 107)*”.

CLAUSE 1 OF THE BILL

7. 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 Notaries (Amendment) Act, No. _____ of 2013 and shall be deemed for all purposes to have come into operation on January 1, 2013.*
8. 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.
9. 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

10. The Petitioner respectfully draws Your Lordships' attention to the provisions of Clause 2 of the aforesaid Bill:
- Section 27 of the Notaries Ordinance (Chapter 107), (hereinafter referred to the "principal enactment") is hereby amended in subsection (3) of that section, by the substitution for the words 'and shall bear a stamp duty of ten rupees' of the words "and shall be paid a sum of rupees One thousand or such other amount as may be prescribed by the Minister from time to time".*
11. The Petitioner states that Section 27 of the Notaries Ordinance states that:
- (1) It shall be the duty of every Registrar of the High Court holden in every zone, on the application of any person entitled to practice as a notary within the jurisdiction of such court, to issue to him a certificate that such person is a notary and duly authorized to practice as such therein.*

(2) *All such certificates shall be applied for and granted on or before the first day of March in every year, and shall be in force for one year and no longer*

Provided, however, that if such certificate shall not be applied for within the time limited, and it shall be shown to the satisfaction of the High Court Judge that the delay was due to accident, misfortune or other unavoidable cause, the High Court Judge may direct the Registrar to issue the required certificate notwithstanding such delay as aforesaid.

(3) *Such certificate shall be in the form D in the Second Schedule, **and shall bear a stamp duty of ten rupees***

Provided that it shall be lawful for the Minister to authorize the issue of any such certificate on unstamped paper in any case in which the circumstances of any zone or place appear to him to render such a proceeding necessary or advisable

(Emphasis added)

12. The Petitioner thus respectfully states that as the impugned clause 2 of the Bill purports to have retrospective effect, it thus violates Article 12(1) of the Constitution which guarantees equal protection of the law.
13. 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 3 OF THE BILL

14. The Petitioner respectfully draws Your Lordships' attention to the provisions of Clause 3 of the aforesaid Bill:

Any fees charged or collected by or on behalf of the Registrar-General or any person authorized under this Act, for any purpose authorized by

this Act to charge or collect from January 1, 2013 and ending March 31, 2013, shall be deemed to have been validly charged or collected by the Registrar-General or by any such person authorized under this Act.

...

15. The Petitioner respectfully states that the impugned clause 3 of the Bill thus purports to retrospectively grant powers to and / or sanctions the acts of the Registrar General and/or others on his behalf and/or otherwise to charge or collect fees, prior to the legislature having authorised the collection of same.
16. The Petitioner respectfully states that the impugned clause 3 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.
17. 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.
18. 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.
19. The Petitioner has not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.

20. 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.

21. 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, and 3 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 the Constitution;

(b) Grant costs; and

(c) Grant such further and other reliefs as to Your Lordships' Court shall seem meet.

Registered Attorney at Law for the Petitioner