

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

In the matter of an application under Article 140 of the Constitution read with Section 24 of the Commission to Investigate Allegations of Bribery or Corruption Act No 19 of 1994 for a Mandate in the nature of Writ of ***Mandamus***

1. Nagananda Kodituwakku  
99, Subadrarama Road  
Nugegoda

**Petitioner**

**Vs**

**SC (Writ) Application No: /2015**

1. Commission to Investigate Allegations of Bribery or Corruption  
No 36 Malalasekera Mawatha,  
Colombo 07
2. D.J.De S. Balapatabendi (Chairman)
3. L.K Wimalachandra (Member)
4. Jayantha Wickramaratne (Member)
5. Dilrukshi Wickramasinge (Director General)

**Respondents**

To: THE HON' CHIEF JUSTICE AND THE OTHER HON' JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

On this 12<sup>th</sup> May 2015

The **Petition** of the Petitioner above-named appearing in person states as follows:-

**Parties to the Application**

1. The Petitioner states that he is an Attorney-at-Law and Solicitor (UK), a citizen of Sri Lanka & UK and a former Head of the Customs Revenue Task Force of the Customs Department of Sri Lanka.

2. The **1<sup>st</sup>** Respondent is the Commission to Investigate Allegation of Bribery or Corruption, the **2<sup>st</sup>** Respondent is the Chairman of the Commission, the **3<sup>nd</sup>** and **4<sup>rd</sup>** Respondents are members of the Commission whilst the **5<sup>th</sup>** Respondent is the Director General of the Commission.

### **Complaint of Corruption made to the Commission**

3. The Petitioner states that the Section 10 of the Customs Ordinance requires 'the several duties of Customs, as the same are respectively inserted, described, and set forth in figures in the table of duties (Schedule A) shall be levies and paid upon ALL GOODS, wares, and merchandise imported into or exported from Sri Lanka. And the Chapter 87 of the said Schedule 'A' sets out the import duties payable on motor vehicles classified under different HS Codes, according to the type of the vehicle and engine capacity etc.
4. The Petitioner states that according to the said Schedule 'A', statutory levy on over 2500cc Diesel Motor vehicles classified under the HS Code 87033359 is 300% of the CIF value, whereas the statutory levy on a very small motor car of less than 1000cc, classified under HS Code 87032169 is 135% of the CIF value.

*A true copy of the relevant page of the Schedule 'A' of the Customs Ordinance, which specify the statutory levy for diesel motor vehicles of over 2500 cc classified under the HS Code 87033359 marked **P1** and a Cusdec No 21781 dated 12<sup>th</sup> May 2015 which specify the total levies paid for a vehicle with cylinder capacity Rs. 4,741,461.00 whereas total duty of Rs Rs.8,188,846.00 has been waived by the Director General of Customs marked **P2** and a Cusdec No 4797 of 09<sup>th</sup> Feb 2015 which specify the total duty paid of Rs. 1,485,039.00 for a used 650cc Suzuki Alto Petrol car marked **P3** are attached hereto.*

5. The Petitioner states that under Article 148 of the Constitution the Parliament has the absolute control of the Public Finance. And according to the Section 10 (1) (a) of the Customs Ordinance no statutory levies chargeable on imported goods can be varied without the approval of the Parliament and according to the Section 19A of the Customs Ordinance, no such levies can be exempted or waived by the Minister of Finance without the approval of the Parliament.
6. The Petitioner states that under the Section **19A** of the Customs Ordinance the Minister in charge of Public Finance is authorized to waive the statutory levies chargeable on

imported goods in limited circumstances only, if the Minister deems it expedient in the Public Interest so to do. The law permits the Minister, by Order to exempt any goods imported by, or consigned to, any person specified in the said Order from the whole or any part of the duties of Customs chargeable thereon, subject to such condition (to be fulfilled before or after clearance) as may be specified in the Order so made by the Minister.

7. The Petitioner states that the law requires that [Section 19A (2) of the Customs Ordinance] every such Order made by the Minister shall be published in the Gazette and be tabled in Parliament and if the Parliament revokes any such Order, the law requires (Section 145 of Customs Ordinance) the duties of Customs payable on any such exempted goods shall be paid by the importer of such goods with overdue interest up to the date of payment.
8. The Petitioner states however, that the provisions referred to in Section 19A of the Customs Ordinance, which permits the Minister to waive the statutory levies (tax exemptions) chargeable on imported goods, is being openly abused by the Members of Parliament and also by the Cabinet of Ministers, for unjust enrichment, violating people's Legislative and Executive power exercised by them purely on trust, as provided by Article 4 (a) and 4 (b) of the Constitution.
9. The Petitioner states that the 'Tax-Free Permit Scheme' introduced in good faith to grant permits to import vehicles free from stipulated fiscal levies chargeable thereon, enabling Members of Parliament and the Cabinet of Ministers to effectively discharge their office, has since been abused by exploiting the said tax-free permit scheme for unjust enrichment by means of selling the permits in the open market and thereby defeating the very objective of issuance of such permits in the public interest.
10. The Petitioner states that under the circumstances a formal complaint was made by him to the Commission to Investigate allegations of Bribery or Corruption on 11<sup>th</sup> December 2014, wherein it was stated that *'all conditions pertaining to the issuance of these tax-free permits have been withdrawn encouraging the MPs and Ministers to sell their permits in the open market and thereby embezzling tens of millions of ill-gotten wealth'* by unlawful means which falls within the ambit of the Section 70 of the Bribery Act and therefore, urging the Commission to initiate a proper investigation into this fraud.

*True copy of said written complaint made to the Commission to Investigate allegations of Bribery or Corruption on 11<sup>th</sup> December 2014 marked P4 is attached hereto*

**Failure of Commission to act required by Law**

11. The Petitioner states that under Section 4 of the Commission to Investigate Allegations of Bribery or Corruption Act No 19 of 1994, whenever a plausible complaint is made disclosing the commission of any offence under the Bribery Act or the Declaration of Assets and Liabilities Law, No. 1 of 1975, the Commission is under duty to inquire into it under Section 3 of the said law and to conduct a proper investigation and direct 'institution of proceedings in the appropriate Court of Law'.
12. The Petitioner states that despite the plausible complaint made by him to the Commission, as referred to in paragraph 10 above, the Commission has failed to initiate any investigation into it. Instead the Petitioner has been informed as follows, in its communication sent on 04<sup>th</sup> March 2015.

*'...The Conditions in the tax-free permits were decided as policy of the government. Therefore any loss caused to the government due to the implementation of such government policy will not fall within the scope of Section 70 of the Bribery Act. Accordingly, please note that the Commission will not take further action on your complaint.'*

*True copy of the letter dated 04<sup>th</sup> March 2015 received from the Commission to Investigate allegations of Bribery or Corruption marked P5 is attached hereto*

13. The Petitioner states that originally the tax-free permits were introduced subject to stringent conditions, barring disposal of such permits in any manner (that is to arrest any form of abuse). Therefore the Petitioner states that the withdrawal of the said conditions has been aimed at inducing and encouraging the Cabinet of Ministers and the Members of Parliament to dispose such permits in any manner as they pleased, thereby causing tremendous loss of revenue to the government. As these permits have been issued to facilitate the importation of motor vehicles and use them to discharge their office effectively, the Petitioner states that the disposal of these permits in the open market and thereby misappropriating government revenue for unjust enrichment amounts to violation of the law. This requires enforcement of penal sanctions as provided by Section 19A (3) of the Customs Ordinance and to initiate recovery process in terms of Section 145 of the Customs Ordinance, in the event any penalties or forfeitures that may be imposed on the violators are not honoured.

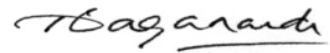
14. Therefore, the Petitioner states that the failure on the part of the Commission to act as required by law, amounts to violation of the trust and confidence placed in the Commission by the people of Sri Lanka, whose executive power is being exercised by the Commission on trust. Therefore, the Petitioner states that the failure on the part of the Commission and or the members of the Commission is unlawful, inapt, ultra vires and abuse of process/power as much as:
- a. the said inaction offends and violates the fundamental expectations of the people of Sri Lanka whose executive power is being abused by the Commission
  - b. it offends the trust and confidence placed in it by the people
  - c. the said inaction has been apparently influenced by irrelevant considerations and apparently made with the collusion of the Executive and the Lawmakers who have abused the privilege of tax-free permits for unjust enrichment.
15. The Petitioner, reserves the right to furnish any further material as the Petitioner might be able to obtain including the certified copies, which may pertain to the aforesaid matters but not currently available in further proof thereof.
16. The Affidavit by the Petitioner is appended hereto in support of the averments contained herein.
17. The Petitioner states that he has not invoked the jurisdiction of the Supreme Court previously in respect of the matters pleaded herein and pleads that documents P1 to P5 be deemed to be part and parcel hereof.

**WHEREFORE**, the Petitioner prays that the Supreme Court would;

- a) issue **Notice** on the Respondents;
- b) issue a Writ in the nature of a Writ of **Mandamus** compelling the 1<sup>st</sup> Respondent Commission and/or members of the Commission (2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents) to direct the 5<sup>th</sup> Respondent to initiate a formal investigation/inquiry on the plausible complaint made by the Petitioner, against the abuse of the tax-free permit scheme for improper purpose of unjust enrichment by Lawmakers and Cabinet of Ministers, causing tremendous loss of tax revenue, as expeditiously as possible

c) grant cost and

d) grant such other and further relief and/or declaration as to Your Lordships' Court shall seem fit and meet

Handwritten signature in cursive script, appearing to read "T. Bagaranda".

Petitioner in person

Attorney-at-Law (Sri Lanka) & Solicitor (UK)