

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

In the matter of an application under and in terms of Article 126 of the Constitution of Republic of Sri Lanka.

Nagananda Kodituwakku,
99, Subadrarama Road,
Nugegoda.

Petitioner

SC/FR/214/2016

Vs.

01. The Attorney General,
The Attorney General's Department,
Colombo-12.
02. Ravi Karunanayake,
Minister of Finance,
General Secretariat,
z
Colombo-01.
03. Vajira Narampanawa
Secretary
Ministry of Parliamentary Reforms
464B, Pannipitiya Road
Palawatta
Battaramulla
04. The Attorney General,
The Attorney General's Department,
Colombo-12.



Respondents

**To: THE HONOURABLE CHIEF JUSTICE AND THE OTHER HONOURABLE JUSTICES OF
THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI
LANKA**

On this 24rd day of June, 2016

The Petition of the Petitioner above named (hereinafter referred to as the “**Petitioner**”) appearing in person respectfully states as follows.

1. The Petitioner, citizen of Sri Lanka respectfully states that this petition is presented to Your Lordships’ Court in exercising his humble and faithful duty to uphold and defend the Constitution and the law of the said Republic as an Attorney-at-Law as well as in exercising his Constitutionally dictated Fundamental Duties as a Citizen of the said Republic to uphold and defend the Constitution and the law, to preserve and protect public property and to combat misuse and waste of public property, to respect the rights & freedoms of others [Articles 28 (a), (d) & (e)] and as well as being the former head of the Sri Lanka Customs Revenue Task Force and in General and Public interest, seeking to invoke Your Lordship’s Court Just and Equitable Jurisdiction under and in terms of Article 126 of the Constitution read with Article 17 thereof, to seek redress for his grievances, which shall be morefully asserted hereinafter.

(In proof thereof, a true photocopy of the National Identity Card of the Petitioner marked as “P1” is respectfully annexed hereto.)

Parties to the Application

2. The Petitioner respectfully states that:
 - a. The **01rd Respondent** above named is the Attorney General, who has been so named **for Maithripala Sirisena, the Executive President of the Democratic Socialist Republic of Sri Lanka** in terms of **Article 35(1)**, who is responsible and answerable to the actions and/or inactions of his Constitutional Duties and also to the actions and/or inactions of the **02nd Respondent**.
 - b. The **02nd Respondent** above named is the incumbent Minister of Finance of the said Republic, who is responsible for the grant of the impugned Tax

benefits to Members of Parliaments (MPs) morefully averred hereinafter in this application.

- c. The **03rd Respondent** is the issuing authority of the said tax free car permits to the Members of the Parliaments (4)
 - d. The **04th Respondent** above named is the Attorney General who is mandatorily made as a party to this application as per the Article 134 of the Constitution and in terms of the Rules of Your Lordships' Court.
3. The Petitioner respectfully states that several acts on the part of the 01st, 2nd and 3rd Respondents, which shall be morefully averred hereinafter, constitute "administrative and/or executive action" within the meaning of Article 17 and Article 126 of the Constitution.
 4. The Petitioner states that the matters involved in the instant application, relates to a 'administrative and/or executive decision' taken by the 1st Respondent (Executive President Mithripala Sirisena's administration) for the issuance of car permits to all 225 Members of Parliament (MPs) to import expensive luxury vehicles (Diesel, Petrol or otherwise) up to the value of US \$ 62,500.00 with no engine capacity specified absolutely tax free.

(A true copy of one such car permit issued to a Member of Parliament marked P2 is attached hereto)

5. The Petitioner states that adoption of such a self-serving decision amounts to a clear violation of the Financial Management (Responsibility) Act No 3 of 2003 (as amended) and Directive Principles of State Policy contained and dictated by Article 27 of the Constitution and demonstrates the failure of the 1st Respondent to uphold the Constitution and the law and his ignorance of the responsibility of the office of the Executive President that requires the person who holds the office to perform the function of the office of the Executive President faithfully with due respect and regard to immutable sovereign rights of the people that the bearer of the office exercises purely on trust.

Abuse of people's executive power to misappropriate government tax revenue

6. The Petitioner states that further to the said 'administrative and/or executive decision' taken by the government under the guise of 'economic development of the country', the required tax exemption has been gazetted in this regard **(No 1965/2 of 02 May 2016) under Section 3C of the Excise (Special Provisions) Act, No 13 of 1989 (as amended)** by the 2nd Respondent to facilitate the importation of the vehicles absolutely free from any taxes.

(A true copy of the said Gazette No 1965/2 of 02 May 2016 marked P3 is attached hereto)

7. The Petitioner states that Section 3C (1) of the Excise (Special Provisions) Act, No 13 of 1989 (as amended) allows the 2nd Respondent to exempt payment of levies on certain category of goods that shall be specified in the Gazette published under the said Section 3C (1) **ONLY having regard to the 'Economic Development of the country' and subject to such conditions that shall be imposed on such goods to protect the government revenue.**

8. The Petitioner states that the 3C(3) of the said Section referred to above also provides that where any goods specified in any such Order made under subsection 3C(1) by the Minister are subsequently sold or disposed of, contrary to the conditions specified for such goods, importation of which is permitted tax free such goods shall be liable to the same Excise Duty, as is payable under the Act on like goods which are subject to Excise Duty and the consignee of such articles shall prior to such sale or disposal, obtain the permission of the Director-General and pay the Excise Duty.

(a true copy of the Section 3C of the Excise (Special Provisions) Act, No 13 of 1989 marked P4 is attached hereto)

9. The Petitioner states that the 2nd Respondent has listed motor vehicles as an 'Exercisable Article' under the Gazette notification marked P3, but on the permit issued to MPs by the 3rd Respondent to import luxury high valued motor vehicles under the exemption granted under Section 3C above, **no conditions whatsoever have been specified, that would make such permits erroneous, wanting for statutory legality and therefore a nullity**, as the inclusion of such restrictions required to be imposed on the vehicles imported under such permits have been deliberately and surreptitiously avoided, to permit the MPs to sell their permits and thereby to misappropriate huge sums of the government tax revenue as they please.

10. The Petitioner states that tax component of such a vehicle imported by any other citizen without such exemption is well over 30 million rupees (charged at the rate of 300%) and thus there is a heavy demand for these permits in the motor vehicle trade, as buyers of these permits issued by the 3rd Respondent are allowed to import any vehicle of their choice, with no restriction on the engine capacity and with no restriction whatsoever imposed on the sale or transfer of the vehicles. Therefore, the Petitioner states that right now, these permits easily fetch a very high price tag going up to over 25 million rupees in the motorcar market.
11. The Petitioner states that investigations conducted by him into the abuse of these permits reveal that those who are engaged in the motor vehicle import trade have bought these permits and already have placed orders for the importation of high valued vehicles, which in some cases the transaction value is well over £100,000.00.
12. The Petitioner states that however the importers do not declare the true transaction values of the vehicles they import under these tax free permits but declare false values for Customs purposes that would be in line with the unrealistic values predetermined by the 2nd Respondent, under Article 10 of the Schedule E of the Customs Ordinance, a procedure that is absolutely inconsistent with the WTO General Agreement on Trade and Tariff (Article VII) that requires that the Customs value of any imported goods shall always be the transaction value.

(A true copy of the Schedule E of the Customs Ordinance marked P5 and an Advertisement marked P6 published in the popular motor vehicle website autotrader.co.uk that advertises used and new cars with true selling price of one such popular vehicle (used Range Rover Sport vehicle) that is being imported from the UK under these permits, of which the true transaction value is over £100,000.00 are attached hereto)

13. The Petitioner states that it is common knowledge that selling of these permits and sharing of the defrauded tax revenue with car importers by MPs are not only illegal but morally and ethically wrong, as such actions amount to **pure abuse of office of the MP to favour themselves and for unjust enrichment, which is a punishable offence under Section 70 of the Bribery Act**. The Petitioner states further that this fraudulent practice of issuing tax free permits to defraud the government revenue is in clear breach of the fiscal policy enacted by the government that requires the **government should have regard to the financial impact of such policy**

decisions on future generations as stipulated in Section 3 (g) of the Fiscal Management (Responsibility) Act No 3 of 2003 (as amended).

- 14. The Petitioner states further that said that financial strategy of the government shall always be based on the ‘principles of responsible fiscal management’ as set out in the *Fiscal Management (Responsibility) Act* that has been enacted *inter alia* to ensure and facilitate public scrutiny of fiscal policy and performance of the government.**

(A true copy of the relevant provisions referred above in the said Fiscal Management (Responsibility) Act No 3 of 2003 marked P7 is attached hereto)

15. The Petitioner states that 1st 2nd and 3rd Respondents are fully aware that the tax-free permit schemes are fundamentally wrong and go against the ‘principles of responsible fiscal management’ as enacted by the Parliament, as it allows fraudster elements to embezzle billions of government revenue, causing a huge impact on the government revenue collection.
16. The Petitioner states that having considered the people’s severe criticism of the fiscal policy adopted by the previous regime (Rajapakse regime defeated in 2015) causing colossal losses to government revenue by adopting tax free car permit schemes, the 1st Respondent’s new administration was compelled to pledge the people that they would abandon such schemes altogether.
17. Accordingly, the Petitioner states that in the government’s fiscal policy statement (Budget speech for the year 2015-2016), the 2nd Respondent referred to heavy losses caused by the said tax-free car permit schemes adopted by the previous Rajapakse regime as follows and proposed to abolish the said permit schemes.

‘... Honorable Speaker, the vehicle permit schemes have been politicized and misused and have created a huge revenue loss over Rs. 40 billion a year to the Government. I propose to abolish all the vehicle permits granted under different schemes, including to Parliamentarians. However, I ensure all government officers will be financially compensated for the benefit foregone. Further, all the vehicles purchased to the Government will be subject to all applicable taxes and necessary allocations will be provided in the Budget...’

(A true copy of the relevant page of the Parliamentary Hansard that contained 2nd Respondent's Budget speech delivered on 20th Nov 2015 marked P8 is attached hereto)

People's right to examine government's financial policy and its performance

18. The Petitioner states that the 1st Respondent assumed office of the Executive President in January 2015, upon taking and subscribing the oath as set out in the 4th Schedule of the Constitution to uphold the Constitution and the law and to discharge the duties of the office of the Executive President in accordance with the Constitution and the law and to be faithful to the Constitution.

(A true copy of the Fourth Schedule of the Constitution referred above marked P9 is attached hereto)

19. However, the Petitioner states that the conduct of the 1st Respondent concerning the re-launching of impugned tax-free permit schemes clearly suggests his willingness to follow the very same adverse fiscal policy adopted by the previous regime, ignoring the severe detrimental impact that it would cause to the National Economy, which the 2nd Respondent referred to in the paragraph 17 above in the government's Fiscal policy statement for the fiscal year 2015/2016 referred to above.

20. The Petitioner respectfully states that the actions and/or inactions on the part of the 1st Respondent, (concerning the tax free car permit scheme re-launched for MPs) **who is mandated to ensure, the Constitution is respected and upheld** in terms of Article 33(1)(a) as the Head of the State, as the Head of the Executive and as the Head of the Government [Article 30(1)] as the Head of Cabinet of Ministers (Article 42(3), is a vehement infringement of the sovereignty in the people enshrined in Article 3 of the Constitution and their Fundamental Rights duly recognised and protected in Article 12(1) & 12(2) of the Constitution, as the citizens who have elected the 1st Respondent and the 225 MPs (including 29 through the National List) have been clearly discriminated by these unlawful, immoral and deceitful actions, where the MPs have been afforded with unfettered privileges to abuse the government revenue whilst the citizenry have been heavily burdened with unbearable taxes imposed on essential commodities including hospital, Electricity, Water, Telephone and other bills.

21. The Petitioner states that therefore, having observed the total departure from its own fiscal policy statement, and instead an extremely detrimental fiscal policy being

followed by the 1st and 2nd Respondents that would have an adverse impact on future generations, the Petitioner states that, he served Notice on the 1st Respondent on or around 01st June 2016, demanding him to take appropriate corrective measures forthwith to stop this blatant abuse and misappropriation of public funds for the benefit of self-serving interests of MPs, the entire process of which amounts to **vehement breach of Petitioner's Fundamental Rights guaranteed by the Articles 12(1) & 12(2) of the Constitution and also of the citizenry of the Republic of Sri Lanka, whilst breaching the Rule of Law and the Public Trust Doctrine through a process that clearly discriminates against the citizenry.**

(A true copy of the Notice served on the 03rd Respondent dated 01st June 2016 marked P10 and the proof of recorded delivery of the same marked P11 are attached hereto)

22. The Petitioner states in the said Notice, the 1st Respondent was notified of this organised financial crime and the *modus operandi* adopted by the 2nd Respondent to abuse the government revenue, and that in the event of 1st Respondent's inaction to initiate appropriate corrective measures to stop this abuse within a period of 14 days of the said Notice, the Petitioner would seek redress from the Judiciary.
23. The Petitioner states there was no response whatsoever yet, to the said Notice from the 1st Respondent, which is in total contrast to the declaration he made to the international community at the Anti-Corruption Summit held in London on 12th May 2016 against corruption, which is reproduced below.

'... Corruption is one of the factors that promote political violence and other forms of human rights abuses. Sri Lanka went through such a stage during the previous administration. The people reacted strongly against corruption by changing the corrupt administration by the power of the ballot in January 2015 at the Presidential election and again at the Parliamentary election in the August 2016...'

'... The people acting democratically got rid of the corrupt leaders and their supporters. The current national unity government consists of the two major political parties in the parliament under my leadership and the other led by Prime Minister Hon. Ranil Wickremesinghe. We were elected to office on the policy platform of democracy, good governance and rule of law. Therefore, we consider our prime duty to root out of corruption from the country. We have already taken significant measures for this purpose. I am happy to inform this forum that with the introduction of the 19th amendment to the constitution I handed over most of

the executive powers to the Parliament except those powers Supreme Court decided cannot be transferred. However, even under this limited situation as a demonstration of my commitment to transparency, accountability and the rule of law and my firm determination to route out corruption I established an anti-corruption secretariat, a special presidential commission to investigate. I also appointed a commission to investigate allegations of bribery and corruption. The Right to Information Act has been presented to the Parliament and the National Audit Act will be presented to the Parliament shortly. All these institutions are working satisfactorily. A special division within the police titled Financial Crimes Investigation Division (FCID) was established to expedite investigations on major financial crimes. They have been given all necessary facilities to carry out their duties. They have already commenced flings of several major financial charges. We note with appreciation the support and cooperation already extended to Sri Lanka by several countries including UK, USA, India and Switzerland as well as the World Bank to strengthen the investigative agencies regarding the stolen assets. We are in the process of seeking information and assistance to trace them. We are happy that summit proposes to establish an International Anti-Corruption Centre, all of us as leaders need to act collectively to strengthen our own law enforcement agencies to track the corrupt and recover the proceeds of corruption...'

'... Sri Lanka is fully committed to such firm action ...'

(A true copy of the statement referred to above published by President's Media Division on 13th May 2016 marked P12 is attached hereto)

24. Therefore, the Petitioner states that in the aforesaid circumstances the disregard of the Notice dated 01st June 2016 by the 01st Respondent and his inaction to respect his Constitutional obligations and the Rule of Law is not only immoral but a clear violation of his constitutional duties and is inimical to his constitutional oath, wherein he has made a pledge to the people to perform the office of the Executive President faithfully with due regard and respect to the Constitution and the law as much as:
- a. the said inaction offends and violates the fundamental expectations of the people of Sri Lanka whose sovereign right of executive power is being abused by the 1st Respondent,
 - b. it offends the trust and confidence placed in the 1st Respondent by the people

belong to all communities who are being deceived by the 1st Respondent by resorting to adopt the same adverse procedure concerning tax-free permit schemes which had been followed by the previous regime and expressly condemned by the 1st Respondent in the Legislature and also in the international forums;

- c. the said inaction has been influenced by irrelevant considerations, encouraging the MPs to deceive the people and to defraud the government tax revenue for unjust enrichment
- d. it offends the National Interest and will have a detrimental impact on future generations;

Heavy National responsibility vested in the Judiciary to restore the Rule of Law

25. The Petitioner states that whereas the 1st Respondent, the Executive President and the MPs, elected to office by the people, with a great hope that they would discharge the duties vested in their respective offices faithfully, whilst honouring their constitutional obligations to the people, they ruthlessly abuse their respective offices for their private benefit, absolutely betraying their constitutional obligations to the people and the rule of law. And therefore, the Petitioner states that there is an unavoidable National Duty vested in the Judiciary, to take cognizance of these financial crimes and deal with wrongdoers decisively and appropriately and become a symbol of hope for the people of Sri Lanka, who have completely lost their confidence in the corrupt elements that abuse the people's legislative and executive powers, who talk morality in public but practice completely the opposite.

26. The Petitioner states that he has not previously invoked the jurisdiction of the Court in respect of the matter hereinbefore set out, and pleads that documents attached hereto marked as 'P1' to 'P12' are respectfully deemed to be part and parcel hereof.

27. The Affidavit of the Petitioner is appended hereto in support of the averments contained herein.

WHEREFORE, the Petitioner respectfully prays that Your Lordship's Court be pleased to;

- a. **grant leave to proceed with this Application in the first instance;**

- b. make Order to issue Notice of this Application on the Respondents;**
- c. nominate a Special Bench for the hearing and disposal of this Application in terms of Article 132(3) (iii) of the Constitution considering its national importance;**
- d. grant and ISSUE INTERIM ORDER directing the 1st Respondent to stay the operations of the tax exemption granted to MPs to import vehicles upto the value of \$62,500/- which has been gazetted (No 1965/2 of 02 May 2016) Under Section 3C of the Excise (Special Provisions) Act, No 13 of 1989 (as amended) by the 2nd Respondent, until the final determination of this case by Your Lordships' Court;**
- e. make an order for EXPEDITIOUS hearing of this application within two months of the filing of this application in terms of Article 126 (5) of the Constitution;**
- f. declare that the 1st 2nd and 3rd Respondents have violated the fundamental rights of the Petitioner and other citizens of Republic of Sri Lanka guaranteed under Article 12(1) & 12(2) of the Constitution of Sri Lanka;**
- g. Make Just and Equitable orders as Your Lordships Court shall seem meet, under and in terms of Article 126(4) of the Constitution directing the 1st and/or the 2nd Respondent to impose following conditions on all tax-free car permits forthwith;**
 - I. that no vehicle imported on permits issued to MPs shall be disposed of without payment of the same exercise duty as was payable on such goods on like goods under Section 3C (3) of the Exercise (Special Provisions) Act No 13 of 1989 (as amended).**
 - II. direct the Director General of Customs (DGC), to seize and confiscate any vehicle imported under the tax-free permit scheme offered to MPs in the event of declaring false value declarations for Customs purposes that would become such vehicles liable to be forfeited under Section 52 of the Customs Ordinance.**

- III. direct the Registrar of Motor Vehicle (RMV) to register a special condition in the vehicle registration certificate, stipulating a restriction on the disposal of vehicles imported under the tax-free permits for MPs issued under Section 3C (1) of the Exercise (Special Provisions) Act No 13 of 1989 without obtaining prior approval of the Commissioner of Exercise and pay the Excise duty**
- h. Make further and other Just and Equitable orders, as Your Lordships Court shall seem meet, under and in terms of Article 126(4) of the Constitution.**
- i. Grant costs of this Application and**
- j. Grant such other and further relief as to Your Lordships' Court shall seem fit and meet.**

N. Kodituwakku


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Attorney-at-Law & Commissioner for Oaths
99, Subadrarama Rd, Nugegoda.

Nagananda Kodituwakku

Petitioner & Public Interest Litigation Activist