

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,
Lotus Road,
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 25th July 2016

Written Submission in support of A Fuller Bench

1. The Petitioner respectfully submits that the complaint made to Your Lordship's Court refers to total breach of trust not only by the Respondents cited in this case but the other members holding office in the Legislature and the Executive as well, who have pledged to the people to be of their trustees, exercising people's legislative and executive power faithfully, working for the creation of a JUST AND FREE SOCIETY, whilst assuring due performance of their respective offices according to the Constitution and the Rule of Law, which however has been proved meaningless and inoperative when the fiscal strategy of the government is not based on principles of responsible fiscal management, ensuring that the fiscal policy decisions of the government will have regard to the financial impact of such decisions on further generation.
2. The Petitioner submits further that those who hold office in the Legislature and the Executive have acknowledged their obligations to the People and their duty to preserve people's rights and privileges, so that the dignity and freedom of the citizens would be assured and a Just, Social, Economic and Cultural Order attained, however their conduct concerning the matters involved in this case demonstrates patent violation of their Constitutional obligations.
3. The Petitioner submits that whereas the corruption in the Executive and the Legislature complained herein with plausible evidence reveals, that those who have been elected to the offices in these organs of the government, have compromised their integrity for unjust enrichment, thereby causing an enormous damage to the norm of the Representative Democracy, effectively nullifying the equality, fundamental rights and the doctrine of Democratic Governance enshrined in the Constitution.
1. The Petitioner submits that the implied actions complained herein clearly undermine the sovereignty in the people and betray the trust and confidence placed in the people appointed or elected to the legislature and executive by the people and such actions are unlawful and clearly fall within the Offence of Corruption as defined in the Section 70 of the Bribery Act.

Modus Operandi adopted to subvert the operation of Law

2. The Petitioner submits that the Fiscal levy exemption on vehicle permits to all 225 MPs has been granted under Section 3C of the Excise (Special Provisions) Act No 13 of 1989 by the Minister of Finance, apparently '*having regard to the economic development of the country*', facilitating them to discharge the functions of their respective offices effectively. And in no way the law does authorize selling of such permits to third parties, thereby misappropriating the fiscal levy element (over 30 million rupees) that would have been otherwise charged had such vehicle been imported with no such exemptions.
3. The Petitioner respectfully submits that the Section 3C(3) 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, 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 of Excise and pay the Excise Duty.
4. The Petitioner submits 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**. The Petitioner submits that the inclusion of such restrictions are not optional but mandatory in the interest of protecting the national economy, but they have been deliberately and surreptitiously avoided, permitting the MPs to sell their permits, and thereby misappropriating huge sums of the government tax revenue.
4. The Petitioner submits further that tax component of such a vehicle imported by any other citizen without such an exemptions 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 are allowed to import any vehicle of their choice (sometimes tax component of the luxury vehicles imported on these permits is well over 60 million rupees), with no restriction on the engine capacity and with no restriction whatsoever imposed on the sale or transfer of the vehicles. Therefore, the Petitioner submits that right now, these permits easily fetch a very high price tag going up to over 25 million rupees in the motorcar market.

5. The Petitioner submits 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 for unjust enrichment, which on the other hand is a punishable offence under Section 70 of the Bribery Act**. The Petitioner states further that this fraudulent practice of issuing tax free permits allowing defrauding of government revenue is in clear breach of the fiscal policy enacted by law, which requires the **government to 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).

6. **The Petitioner submits further that the 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 No 3 of 2003 that has been enacted *inter alia* to ensure and facilitate public scrutiny of fiscal policy and performance of the government, which are being deliberately violated by the Respondents with no regard or respect to their constitutional obligations.**

5. The Petitioner submits further that 1st, 2nd and 3rd Respondents are fully aware that the tax-free permit schemes are fundamentally wrong and completely against the 'principles of responsible fiscal management' as enacted by the Parliament, as they allows fraudster elements to embezzle billions of government revenue, causing a huge impact on the government revenue collection and therefore, having considered the people's severe criticism of tax free permit schemes adopted by the previous regime (Rajapakse regime defeated in 2015) causing colossal losses to government revenue, the 1st Respondent's new administration was compelled to pledge the people that they would abandon such schemes altogether (ref: **P8** at page 45).

Gross abuse of the trust placed in the Legislature and the Executive

7. It is respectfully submitted that those who hold public office as in the case of 1st, 2nd and 3rd Respondents hold such offices exercise inalienable Legislative power and Executive power vested in the people in terms of the Article 4 (a) and 4(b) of the Constitution, purely on trust on a social contract entered with the people. These Respondents have subscribed to an Oath under the Constitution and are therefore required to perform their respective offices faithfully and according to the Rule of Law.

Role of the Judiciary as the watchdog of the people

8. The Petitioner with due respect submits that the Respondents referred to in this right violation petition have betrayed their constitutional obligations to the people and their duty to respect and honour the rule of law. And therefore, the Petitioner respectfully submits that there is an unavoidable National Duty vested in the Judiciary ,as the judges exercise judicial power of the people purely on trust, 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.

Heavy responsibility vested in the Hon’ Office of the Chief Justice

9. It is respectfully submitted that in the ceremonial address made by Your Lordship, the Chief Justice, on being appointed to the office of the Chief Justice on 09th Jan 2015, declared *inter alia* that;
- a) “ *...The administration of Justice draws its legal sanction from the Constitution, its credibility rests in the faith of the people. Indispensable to that faith is the Independence of the Judiciary. **Public confidence in the administration of Justice is imperative to its effectiveness, because ultimately the ready acceptance of a judicial verdict gives relevance to the justice system.** We should always try to see that our Courts of law should be the Temple of Justice and it is our proud privilege to work together in order to make democracy of our country to be the best symbol and emblem for the whole region...*”
 - b) *‘Credibility of the Judiciary rests in the faith of the people. Indispensable to that faith is the independence of the Judiciary’*
 - c) ***‘The power of the Judiciary depends largely on its reputation for independence, integrity and wisdom’***
 - d) *‘The members of the legal profession should strive to occupy a prominent place in the heart of the people and the public life in the country. Thus, the strength and stability of a democratic state rests upon the vision and wisdom of its legislature, the efficiency of the Executive and the integrity, impartiality and independence of its Judiciary’ and*

e) *'It is for the Judiciary to uphold the constitutional values and to enforce the constitutional limitations that is the essence of the Rule of Law. The fundamental right to move this Court can, therefore, be appropriately described as the corner stone of the democratic edifice raised by the Constitution'*

WHEREFORE, with due respect and honour to the Supreme Court, the Petitioner respectfully prays that;

- a) the Supreme Court would fearlessly uphold the people's sovereign rights as enshrined in Article 105 of the Constitution and appoint a **Fuller Bench for the hearing and disposal of this Application expeditiously in terms of Article 132 (3) (iii) of the Constitution, considering the General and Public Importance attached to this case.**

N. Kodituwakku


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

Nagananda Kodituwakku

Petitioner, Public interest litigation activist & Attorney-at-Law in person