

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: 07/2016

1. Commission to Investigate Allegations of Bribery or Corruption
No 36 Malalasekera Mawatha,
Colombo 07
2. T B Weerasuriya, Chairman to the Commission
3. W Lal Ranjith Silva, Member of the Commission
4. Chandranath Neville Guruge, Member of the Commission
5. Dilrukshi Dias Wickramasinghe
Deputy Solicitor General
Attorney General's Department
Colombo 12
6. Lakshman Yapa Abeywardena
State Minister of Finance
Ministry of Finance
General Secretariat
Colombo 1

7. Sujeewa Senasinghe, MP
8. Udaya P Gammanpila, MP
9. Shehan A Semasinghe, MP
10. Ramesh C B Pathirana, MP
11. Kanchana V Wijesekara, MP
12. Annamalai N Sivasakthi, MP
13. W Nimal Lansa, MP
14. Pavithra Wanniarachchi, MP
15. R D Priyantha Asoka MP
16. D Sitharthan, MP
17. Mahinda Samarasinghe, MP
18. Sathasivam Viyalanderan, MP
19. Mohan Lal Grero ,MP
20. Suddathcharige Premarathna, MP
21. B Hettiarachchige Wijepala, MP
22. M A K A K Mannapperuma, MP
23. H A A Don Indika Anuruddha, MP
24. Somasundaram Senadhirajah, MP
25. P K Thewarapperuma, MP

26. M H Priyal Nishantha de Silva, MP
27. Imran Maharoo, MP
28. J Wakkumbura, MP
29. Sivagnanam Shritharan, MP
30. J A Sisira Kumara Jayakody, MP
31. M A Don Hector H Appuhamy, MP
32. S C Muthukumarana, MP
33. Salinda Dissanayake, MP
34. Chamal Jayantha Rajapaksa, MP
35. J P Rohini Kumari Wijeratne, MP
36. P Sudarshini Fernandopulle, MP
37. S Sivamohan, MP
38. D V Chanaka Dinushan, MP
39. Athuraliye Ratana MP
40. Lohan E Ratwatte, MP
41. Wimal Weerawansa, MP
42. D T W Wimalaweera Dissanayake, MP
43. A. D Premadasa, MP

44. Palitha Rangebandara, MP
45. A B U D Pathirana, MP
46. Ranjith J Aluwihare, MP
47. U Priyankara Jayaratne, MP
48. Janaka Bandara Tennakoon, MP
49. Nishantha Muthuhettigamage, MP
50. Gamin I Lokuge, MP
51. L M V Srinial Maxim de Mel, MP
52. Kanchana Dasaratha Herath, MP
53. L V Chaminda Wijesiri, MP
54. Wasantha N P Senanayake, MP
55. Ajith P Perera, MP
56. M L A M Hizbullah, MP
57. Y A Anura Priyadarshana Yapa, MP
58. Ghanamuthu Srineshan, MP
59. P M K Anura Sidney Jayarathne, MP
60. Vijayakala Maheswaran, MP
61. Wasantha L Aluwihare, MP
62. Berugoda Arachchige Vijitha, MP

63. Amirthanathan Adaikalanathan, MP
64. K Sanath Nishantha Perera, MP
65. D Nuwan Wijewardene, MP
66. Sumedha G Jayasena
67. Bandula Gunawardana, MP
68. Mahindananda Aluthgamage, MP
69. Anuradha L P Jayaratne, MP
70. Sarath C Fonseka, MP
71. John A E Amaratunga, MP
72. Dilum Suraj Bandara Amunugama, MP
73. R Sampanthan, MP
74. Vadivel Suresh, MP
75. R G Sriyani Wijewickrama, MP
76. B Prasanna Rajaweera, MP
77. Lakshman Bandara Kiriella, MP
78. D M Swaminathan, MP
79. Malik Devapriya Samarawickrama, MP
80. Nalaka Prasad Colonne, MP

81. M S thowfeek, MP

82. K Arundhika W Fernando, MP

83. Sandesh Ravindra Karunanayake, MP

84. S Ali Zahir Maulana, MP

85. J C Alawathwala, MP

86. Thenuka Amith Widanagamage, MP

87. B Chandrasiri Gajadeera MP

88. L P J Seneviratne MP

89. N J Harin Fernando MP

90. Chandima Weerakkody MP

91. Kabir Hashim MP

All are at Parliament of the Republic of Sri Lanka
Parliament Approach Road
Sri Jayawardenepura Kotte

92. Ranil Wickramasinghe MP and

The Prime Minister
Prime Minister's Office
58, Sir Ernest De Silva Mawatha
Colombo 7

93. The Attorney General

Attorney General's Department
Hulftsdorp
Colombo 12

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 Monday, the 19th of December 2016

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

1. The Petitioner, a lawyer by profession and a Public Interests Litigation Activist and a citizen of Sri Lanka and the UK, respectfully states that this Petition is presented to the Supreme Court on behalf of the fellow citizens of his Native Country Sri Lanka, purely in the Public interest and in exercising Petitioner's Constitutional duty to uphold and defend the Constitution and the law as an Attorney-at-Law as well as in exercising his Constitutionally ordained Fundamental Duties as enshrined in the Article 28 (a), (d) and (e):-
 - a) to uphold and defend the Constitution and the law
 - b) to preserve and protect public property and to combat misuse and waste of public property
 - c) to respect the rights & freedoms of othersand
 - d) as well as being the former Head of the Sri Lanka Customs Revenue Task Force, seeking to invoke Supreme Court's jurisdiction to redress against the 1st to 5th Respondents who have failed to perform their statutory duty on the plausible complaint made on Corruption against the Members of Parliament and the Cabinet of Ministers who have patently abused the public office to defraud the government's tax-revenue for unjust enrichment morefully asserted hereinafter.

(In proof thereof, a true photocopy of the data page of the Sri Lanka passport marked as "X1" and the data page of the British Passport of the Petitioner marked 'X2" are annexed hereto.)

Parties to the Application

2. The Petitioner states that the 1st Respondent is the Commission to Investigate Allegation of Bribery or Corruption (hereinafter referred to as CIABOC), the 2nd Respondent is the Chairman of the CIABOC, the 3rd and 4th Respondents are Members of the CIABOC, whilst the 5th Respondent is now a Deputy Solicitor General and formerly Director General of the CIABOC for the period concerning the matters relevant to this Writ Application, 6th Respondent is the State Minister of Finance and 7th to 90th Respondents are the Members of the Parliament of the 8th Parliament, 91st Respondent is the General Secretary of the United National Party, MP and the Minister of Public Enterprise Development, 92th Respondent is the Prime Minister of the Republic of Sri Lanka and MP 93rd Respondent is the **Attorney General of the Republic of Sri Lanka** and is listed herein for the purpose of serving Notice only.

Constitutional duties conferred in Citizens & the law preserving public property

3. The Petitioner states that the law requires every person elected or appointed to any Public Office to uphold and defend the Constitution and to preserve and protect public property and to combat misuse and waste of public property with due respect to rights & freedoms of others [Articles 28 (a), (d) & (e)].
4. The Petitioner states that for the realisation of these fundamental objectives of preserving the resources belong to the people, the Fiscal Management (Responsibility) Act No 3 of 2003 (as amended) provides Directing Principles and State Policy, as to how a **government shall formulate its Fiscal and Economic Policy, having regard to the financial impact of its decisions on future generations [section 3 (g) of the said Act].** This law also provides that **financial strategy of the government shall always be based on the 'principles of responsible fiscal management' ensuring and facilitating public scrutiny of fiscal policy and performance of the government.**

Deception of citizenry has become customary for the dishonest politicians

5. The Petitioner states that in the Republic of Sri Lanka, when seeking a mandate from the people to come to power politicians belong to all political parties utter various deceitful statements to the constituency claiming to be the trustees of the people, which has become the order of the day, and once elected or appointed to the office, it has become

quite 'normal' that the social contract entered into with the people routinely becomes history and conveniently violated with no respect or regard to the rule of law and the Constitution, embezzling Nation's wealth by adopting varied kinds of fraudulent and utterly corrupt strategies to fulfill self-interests of the dishonest politicians.

Gross violation of the Public Trust Doctrine

6. The Petitioner states that in the Republic of Sri Lanka, every person holding office in the Legislature and the Executive are fully comprehended with their constitutional obligations to the people. However, except for a handful of honest people others pay no respect to the rule of law. These individuals do not perform their public office held in trust for public good, which is only to be exercised reasonably and in good faith and upon and lawful and relevant grounds of public interest, according to rules of reasons and justice and not for their personal benefit. The Petitioner states that these individuals instead, perform the office according to their private opinions for their personal benefit, compelling the citizenry to experience tremendous hardships.

Government's anti-corruption drive

7. The Petitioner states that after being elected to office in August 2015, the new regime promised the citizenry to adopt a policy based on corrupt free administration. The Petitioner states that Executive President of Republic of Sri Lanka, attending the World Anti-Corruption Summit held in London on 12th May 2016 declared that his government was committed to combat all forms of corruption, an extract of 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...'

'...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 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...'

(True copy of the text of the speech referred above marked X3 is attached hereto)

Study undertaken on abuse of MP tax-free permits & the 1st complaint to CIABOC

8. The Petitioner states that, as a lawyer and public interests litigation activist, who fight serious crimes being committed against the fellow countrymen by the dishonest persons holding public office, he always keeps an open eye into the affairs of those elected to public office who promise always to be the guardians of the Nation. The Petitioner states that one of the financial crimes on which he has been keeping a watchful eye is the abuse of the tax-free car permits issued to Parliamentarians.
9. The Petitioner states that in the process of a study conducted into the abuse of tax-free permits offered to MPs, he discovered that the government had been incurring a colossal loss of revenue under the previous Mahinda Rajapakse regime and a formal complaint was made on 11th Dec 2014 to the CIABOC to initiate an investigation into the matter forthwith. These losses amounting to over 40 billion rupees a year were evidenced in the content of the first fiscal policy statement (Budget speech for the year 2015-2016) made in the Parliament on 20th Nov 2015, by the 83rd Respondent (the Minister of Finance) where it was proposed to abolish such schemes altogether.

'... 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...'

(True copies of the formal complaint made to the CIABOC on 11th Dec 2014 marked X4 and the relevant page of the Hansard dated 20th Nov 2015 marked X5 attached)

5th Respondent declining to enforce law on the first complaint

10. The Petitioner states that his first complaint on the abuse of MP tax-free permits which was made to the CIABOC on 11th Dec 2014 with a request to initiate a credible and independent investigation was declined by the 5th Respondent, informing the Petitioner

on 04th March 2015 that the CIABOC would not initiate any action on the said complaint, a content of which is reproduced below.

'...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 reply received from the 5th Respondent dated 04th March 2015 marked X6 are attached hereto)

2nd Complaint to CIABOC on tax-free permits issued to MPs in the 8th Parliament

11. The Petitioner states that after having done a further detailed study, he made another complaint on the abuse of tax-free permits by the MPs in the 8th Parliament to the 5th Respondent on 26th August 2016 supported by irrefutable evidence and requesting the 5th Respondent to initiate a credible and independent investigation under Section 4 (2) of the CIABOC Act No 19 of 1994.

(True copy of the formal Complaint on the abuse of MP Tax-free permit abuse sent to the 5th Respondent dated 26th Aug 2016 marked X7 is attached hereto)

Significant facts discovered during the investigation process

- a. Issuance of MP tax-free permits by the Secretary to the Ministry of Parliamentary Reforms and Mass Media since **February 2016** with no legal authority.
- b. The 83rd Respondent (Minister of Finance) on **02nd May 2016** issuing the Gazette Notification No 1965/2 under Section 3C of the Excise (Special Provisions) Act, No 13 of 1989 (as amended by 08 of 1994), empowering the Secretary to the Ministry of Parliamentary reforms to grant total tax exemption to MPs for importation of motor vehicle up to the value of US \$ 62,500/- with no engine capacity or fuel type specified.

(True copy of the Gazette Notification No 1965/2 of 02 May 2016 marked X8 and the Section 3C of Excise (Special Provisions) Act 08 of 1994 marked X9 are enclosed)

- c. The law (Section 3C) permits the Minister to grant tax exemptions **ONLY having regard to the 'Economic Development of the country' facilitating the MPs to discharge their office efficiently and effectively.**
- d. The Section 3C (3) requires that in the event of sale or disposal of any goods imported tax-free to obtain prior approval from the Director General and to pay all levies prior sale or disposal of such goods.
- e. The 83rd Respondent (Minister of Finance), has intentionally excluded the conditions (in the Gazette Notification No 1965/2) specified by law (making such permits *void in limine*) enabling the MPs to encash their permits in the open market for a huge sum of over 25 million rupees.
- f. As at the date (26th Aug 2016) there were 35 vehicles imported on these permits for which only Rs 1750/- paid as levy, whilst the rest of the tax component of over 33 million rupees exempted for each vehicle.
- g. Most of the vehicles imported were registered with the Department of Motor Traffic (hereinafter referred to as DMT) in the name of the permit holder MP and simultaneously transferred in the name of new owners.

(True copy of the schedule 20 vehicles imported under MP tax-free permits and transferred in the name of the new owners marked X10 is attached hereto)

- h. These new owners of the vehicles imported under the tax-free permits are not entitled to enjoy the tax exemption granted only to the MPs for the vehicles otherwise charged fiscal levies at the rate of 300%.
- i. Some of the vehicles imported were registered in the name of the permit holder MP and being used by the new owners without affecting the transfer in their names.
- j. After the transfer-information of the vehicles along with the names of new owners was obtained from the Commissioner General of Department of Motor Traffic for investigation purposes, the buyers of such permits opted not to effect the transfers and instead to use the vehicles in the name of the MPs. For instance

the Toyota Land Cruiser jeep (Chassis No JTMHV05J404202354) imported on a permit issued in the name of the 41st Respondent' has been registered under his name (Reg No CAT 9797) and now being used by the new owner without effecting the necessary transfer which is an act prohibited by law.

(True copy of the Customs Declaration No 16167 of 08th Aug 2016 marked X11 and the Vehicle Registration Certificate issued by the DMT for the said vehicle marked X12 are attached hereto)

- k. The abuse of tax-free permits by the MPs for unjust enrichment has caused a colossal revenue loss to the government making it a criminal offence, as the public office held by the MPs has been used to confer benefits/favors to themselves and others (motorcar importers) hence the deceitful action committed by the MPs falls within the definition of the offence of Corruption (Section 70 of the Bribery Act).
- l. The selling of these permits and sharing of the government revenue defrauded with the motor vehicle trade is not only illegal but morally and ethically wrong.
- m. The issuance of the tax-free car permits with no conditions specified, enabling encashment in the open market defrauding government revenue and sharing the proceeds of crime with the vehicle importer trade is a clear breach of the Section 3 (g) of the of Fiscal Management (Responsibility) Act No 3 of 2003.

5th Respondent ignoring the 2nd complaint on the abuse of MP tax-free permits

- 12. The Petitioner states that the 5th Respondent did not initiate any action on the second complaint dated 26th August 2016 as well, and patently failed in her duty to uphold the rule of law. The Petitioner states that the inappropriate decision taken by the 5th Respondent with regard to the first complaint dated 11th Dec 2014 (ref: paragraph 9 above) would have been followed on the second complaint dated 26th Aug 2016 as well.
- 13. The Petitioner states that the view expressed by the 5th Respondent on the 1st complaint dated 11th Dec 2014, shows that she was completely ignorant about the government's own stand on the abuse of the MP tax-free permits scheme as exposed by the 83rd Respondent in the present Government's Fiscal Policy Statement (referred to in paragraph 9 above) that identified a colossal loss of government revenue due to the abuse

of the tax-free car permit schemes. That evidence itself was good enough for the 5th Respondent to have initiated a credible investigation into the permit abuse.

14. The Petitioner states that, the 5th Respondent was holding the public office on trust only to be used for public good and not according to her private opinion but to be exercised within the limits, to which an honest person competent to discharge of his office ought to confine. However the 5th Respondent's stand (ref: paragraph 10 above) on the permit abuse is completely flawed and it nullifies and made the definition of the offence of Corruption (Section 70 of the Bribery Act) meaningless, which was enacted to combat all forms of corruption, concerning any person holding any public office who confer a benefit or favour to himself or another person, whilst causing a loss to the government. Therefore, the Petitioner states that the government sponsored corruption of this nature, that permitted the dishonest MPs to defraud government revenue, will in no way exempt any such persons from the criminal liability.

15. The Petitioner states that his investigation also revealed the selling of tax-free permits and the vehicles imported on such permits has been a recurrent practice throughout, and in one such case, an MP (66th Respondent) had even resorted to initiate legal action against the buyer of tax-free vehicle for not settling the full purchase price agreed upon. This demonstrates the extent to which the ignorance of law and the lawlessness have been rampant amongst the members of the legislature.

(True copy of the Court proceedings (Case ref: 24692 initiated by the 66th Respondent in the Magistrate's Court Monaragala dated 04th July 2016 which has been dismissed by the Court marked X13 is attached here).

5th Respondent charged for Corruption

16. The Petitioner states that since the 5th Respondent abused the office of the Director General of CIABOC to suppress and/or ignore the credible and plausible complaint made against the Members of Parliament, he reported her to the 2nd Respondent on 26th Sep 2016, which was formally acknowledged by Secretary to the CIABOC on 05th Oct 2016.

(True copy of the complaint made against the 5th Respondent dated 26th Sept 2016 marked X14 and the formal acknowledgment of the complaint by the CIABOC dated 05th Oct 2016 marked X15 are attached hereto)

Continuation of embezzling public funds by corrupt MPs

17. The Petitioner states that further investigation conducted into the abuse after the submission of the 2nd complaint on 26th Aug 2016, revealed that the vehicles imported on tax free permits issued in the names of 7th, 10th, 11th, 16th, 19th, 25th, 26th, 27th, 30th, 32nd, 34th, 37th, 42nd, 45th, 48th, 49th, 54th, 58th, 61st, 64th, Respondents have been registered with the Department of Motor Traffic (hereinafter referred to as DMT), and have been transferred to the new owners, apparently who bought these permits, on the same day, the details of which is reproduced below.

Name of the MP	Current owner	Date of First reg	Date of Transfer
01. D Sridharan	P R A Fernando	22-08-2016	22-08-2016
02. S Ghanamuttu	Premadasa Jewellery Pvt Ltd	05-10-2016	05-10-2016
03. J A S K Jayakody	A D A K Kavinda	29-08-2016	29-08-2016
04. S C Muthukumarana	H M S Jayarathna	19-08-2016	19-08-2016
05. Chamal Rajapakse	R P Amarasooriya	26-08-2016	03-10-2016
06. S Sivamohan	S W I T Sandaruwan	05-09-2016	05-09-2016
07. A B U D Pathirana	B A J C Abeyrathna	18-08-2016	18-08-2016
08. Janaka B Tennakoon	Central Finance Co PLC	05-10-2016	05-10-2016
09. V N P Senanayake	Alliance Trust Pvt Ltd	24-08-2016	24-08-2016
10. W L Aluvihare	Maneesha Pvt Ltd	09-09-2016	09-09-2016
11. K S N Perera	King Aqua Services Pvt Ltd	05-10-2016	05-10-2016
12. R C B Pathirana	Finite Lanka Pvt Ltd	11-08-2016	11-08-2016
13. D T W W Dissanayake	D G D I Silva	20-09-2016	20-09-2016
14. N Muthuhettigamage	Colombo Logistics World Pvt Ltd	25-08-2016	25-08-2016
15. Sujeewa Senasinghe	Ali Akbar Salehbbhai	20-07-2016	20-07-2016
16. K W Wijesekara	Peoples Lanka Mocro Credit Ltd	27-09-2016	27-09-2016
17. Mohan Lal Grero	Lyceum International Pvt Ltd	15-08-2016	15-08-2016
18. P K Thewarapperuama	Kotuwe Kade Pvt Ltd	22-09-2016	22-09-2016
19. H M P N De Silva	W D A Hemantha	02-09-2016	02-09-2016
20. Imran Maharroof	L U B Liyanage	09-08-2016	09-08-2016

(The detailed lists certified and issued by the Commissioner General of Motor Traffic that would make the record unduly heavy is not attached hereto, and the Petitioner reserves the right to produce the detailed lists certified by the Commissioner General of Motor Traffic if required to do so by the Court)

18. The Petitioner states that as at 02nd December 2016, eighty (80) Vehicles had been imported on MP Tax-free car permits and the full list of the details of vehicles has been

presented to the Commissioner General of DMT, to obtain the registration-information of all the vehicles, including the vehicles transferred in the name of new owners.

(A true copy of the list of vehicles imported on MP tax-free car permits presented to the Commissioner General of Motor Traffic on 02nd December 2016 marked X16 is attached hereto and the relevant 80 numbers of Customs Declarations and permits that would make the record unduly heavy is not attached hereto and the Petitioner reserves the right to produce the same if required by the Court)

19. The Petitioner states that the probe conducted by him into this state sponsored fraud further revealed that in the absence of the rule of law these permits and vehicles are sold in the open market with **adverts** published in the print and electronic media with no shame whatsoever.

*(A true copy of an advert published by a motor car importer for the purchase of MPs tax-free car permits in the **Sunday Times** news paper **Hit Ads Auto Focus** publication dated 13th Nov 2016 marked X17 and an advert published in the Autolanka.com of three such vehicles out of which two imported on the tax free permits issued to 21st and 25th Respondents marked X18, and the another such vehicle imported on the permit issued to 91st Respondent and displayed at the **Car Sale Center at Dehiwala marked X19** are attached hereto)*

Lawlessness encourages those who hold office in the Executive to deceive citizenry

20. The Petitioner states that the extent of the deception of the citizenry has now reached unimaginable proportions. They simply come out with hollow explanations even at press conferences insulting the intelligence of the people.

- a. The 83rd Respondent, who is holding the office of the Minister of Finance, answering the BBC correspondent at a media conference held in Colombo on **20th October 2016** declared that there is no truth in the allegations that MPs sell their tax free permits, an extract of which is reproduced below.

පාර්ලිමේන්තු මන්ත්‍රීවරුන්ට නිමිච් නිබේන තීරුබදු රහිත වාහන බලපත්‍ර විකුණා ඇති බවට පළවන වාර්තා අසත්‍යයක් විය හැකි බව මුදල් අමාත්‍ය රචි කරුණානායක පවසයි

"... මම නිතරින් ඒක බොරුවක් විකුණපු එක්කතෙකුගෙන් අහන්න

මන්ත්‍රීවරුන්ට වාහන බලපත් සපයා තිබෙන්නේ එම වාහන පාවිච්චි කිරීමට විනා අලෙවි කිරීමට නොවෙයි

මන්ත්‍රීවරයකුට බරකරන්නයෙන් යන්නද කියන්නේ

විනිසුරුවරයෙකුට වාහනයක් දුන්නට ප්‍රශ්නයක් නැහැ

නමුත් මන්ත්‍රීවරයෙකුට දුන්න ගමන් ලොකු ආන්දෝලනයක් ඇති වෙනවා...”

- b. And on 21nd November 2016, the 6th Respondent, the State Minister of Finance, strongly **defended the right of Members of Parliament to ‘raise funds’ through the sale of their duty free vehicle permits.** And he claimed that Members of Parliament had ‘enjoyed that privilege’ since them time of Chandrika Kumaratunga’s presidency.

The Petitioner states that the statement made by the 6th Respondent completely contradicts with the government’s declared stand on combatting of corruption and protecting of public property referred in paragraph 7 and 9 above.

- c. And on 01st November 2016, 91st Respondent, the General Secretary to the United National Party (UNP) and Minister of Public Enterprise Development, **making a special announcement said that the new government of ‘good governance’ will not provide facilities for thieves and corrupt persons to escape law as was done during Mahinda Rajapakse administration.** The Petitioner states this statement expressing the policy of the UNP in combating corruption by the 91st Respondent, who himself has sold his permit for unjust enrichment, vividly demonstrates the level of deception of the citizens of this country by those who hold office in the Legislature and the Executive with no respect and regard to the rule of law.

(True copies of the statements referred to above published by the BBC (20-10-2016), The Island (22-11-2016 and Ceylon Today (2016-11-01) marked in order referred to above as X20, X21 and X22 are attached hereto)

88th Respondent insulting the Judiciary under the cover of parliamentary privilege

21. The Petitioner states that the judiciary is being unduly pressurised by those who hold office in the Legislature and the Executive, by restricting the number of people of eminence and integrity in the Constitutional Council from 7 to 3 and increasing the number of MPs (some of whom rejected by the people but appointed through the National List) from 3 to 7 thereby

retaining the veto power over the judicial appointments denying the people of their right to an independent judiciary that would not tolerate anti-social polices such as the one complained in this Petition.

22. The Petitioner states that recently the **88th** Respondent, referring to a judgment popularly known as the Singarasa case, [(**Singarasa vs. Attorney General** (2006) pronounced by the Supreme Court (SC/SPL/LA/182/99) and decided on December 15, 2006], launched a calculated attack on the independence of the Judiciary, hiding himself under the cover of Parliamentary (Powers and Privileges) Act, with no regard and respect to the Independence of Judiciary. The Petitioner states that the **88th** Respondent's unbecoming conduct patently violates the pledge made to the people by all the elected representatives to respect the immutable republican principles, which include the FREEDOM, JUSTICE and the **INDEPENDENCE OF THE JUDICIARY** at the enactment of the Supreme Law, the Constitution on 21st of July 1977.

23. The Petitioner states that the **88th** Respondent then, in one of the most brazen acts by a prime minister in this country, made a request to the Speaker to overrule the Singarasa judgment, and some of the extracts (folio 189 -194 of the) taken from the Hansard dated 07th July 2016 are as follows.

'... The judicial power of the people is not exercised by the Supreme Court, but by Parliament through the Courts and directly by Parliament...'

'...The powers of Parliament cannot be taken away by the Supreme Court as and when they like it...'

'...It is a judicial coup against Parliament and the sovereignty of the people...'

'...In my view, it is nothing but an attempt by the judiciary to usurp the powers of both Legislature and the Executive...'

'...The Court does not even have to exercise the judicial power of the people. The Parliament has it and the Court does it on its behalf...'

'...the Supreme Court does not have the power to violate the basic tenets of the Constitution; which the Supreme Court has been unfortunately doing in the last decade. ...'

'...I would ask the Hon. Speaker, after necessary consultation, to give his Ruling on this matter raised by the Hon. Member and the Statement made by me...'

(A true copy of the relevant part of the Parliamentary Hansard dated 07th July 1916 marked X23 is attached hereto)

24. The Petitioner states that this undemocratic and unprecedented insult on the part of the **88th** Respondent representing the Executive and the Legislature, claiming supremacy over the judiciary, has caused a serious damage to the independence of the Judiciary conferred with the administration of justice and the public duty conferred in the Judiciary to protect, vindicate and enforce the people's sovereign rights enshrined in the Constitution against any person holding any public office. This apologetic plight of the judiciary in reality has effectively resulted in, the people losing their trust and confidence placed in it.

Responsibility vested in the Attorney General to protect people's Constitutional rights

25. The Petitioner therefore states there exists a huge undeniable duty cast in the office of the Attorney General who holds the public office to be exercised in good faith and upon lawful and relevant grounds of public interest [**De Silva v Athukorale ((1993) 1 SLR 283)**] to discharge the duty vested in the office appropriately enforcing the law against all dishonest elements holding public office in the Legislature and the Executive and only to act for the people of Sri Lanka.

26. The Petitioner states that as per Victor Perera J. in **Land Reforms Commission v Grand Central Ltd** [1981] 2 SLR 147], *'the Attorney General holds a unique position endowed with wide powers, onerous duties and special rights in regard to matters involving the exercise of the Sovereignty of the people under the three limbs – the Executive power, the Legislative power and the Judicial power of the people. The significance of this fact is that, in the Republic of Sri Lanka, Sovereignty is in the people in terms of Article 3 of the Constitution and the Attorney General represents and acts for the people of the Republic'*.

People depend on the Judiciary as a last resort

27. The Petitioner states that those who hold office in the Legislature and the Executive have themselves 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, whereas their conduct concerning the matters involved in this case clearly demonstrates patent violation of their Constitutional obligations to the people.

28. The Petitioner states further that the corruption in the Executive and the Legislature complained herein 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.
29. The Petitioner states that the implied actions complained herein clearly undermine the sovereignty in the people and betray the trust and confidence placed in the MPs 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.
30. The Petitioner reiterates therefore that in this background only hope for the people is the Judiciary that is vested with the constitutional mandate to protect, vindicate and enforce the rights of the people [Article 105 of the Constitution]. Therefore, the Petitioner states that there is an obligatory National Duty vest in the Judiciary to take cognizance of this state sponsored financial fraud and to deal with fraudster elements 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.
31. The Petitioner states that where all these constitutional pledges have become inoperative and meaningless 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 [Section 3 (g) of the Fiscal Management (Responsibility) Act No 3 of 2003] and whereas the fiscal strategy of the government has been designed to facilitate the self-serving interest of dishonest MPs and the Cabinet of Ministers, to defraud the government revenue causing a tremendous hardship to the electorate, there is a huge responsibility vested in the Judiciary to ensure that those holding offices in the Legislature and the Executive respect and honor their Constitutional oath and to be bound by the Constitution and the law.
32. Therefore, the Petitioner states that the failure on the part of the CIABOC, the 1st Respondent, to act as required by law, amounts to violation of the trust and confidence

placed in the CIABOC by the people of Sri Lanka, whose executive power is being exercised by the 2nd, 3rd and 4th Respondents on trust. Therefore, the Petitioner states that the failure on the part of the 1st Respondent and or the members of the Commission (2nd, 3rd and 4th Respondents) 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 persons holding office in the Executive and the Lawmakers who have abused the privilege of tax-free permits for unjust enrichment.

33. 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.

34. The Petitioner, also reserves the right to amend the Petition and the right to add any other persons or body of persons, that the Petitioner may deem necessary or where Your Lordships' Court deem necessary, for the proper adjudication of this matter.

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

36. 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 **X1** to **X23** be deemed to be part and parcel hereof.

WHEREFORE, the Petitioner prays that the Supreme Court would;

- a) issue **Notice** on the Respondents;
- b) nominate a Special Bench consisting of five or more judges considering the grave National Importance of this matter in term of Article 132 (3), (iii) of the Constitution for the hearing and determination of this matter
- c) issue a Writ in the nature of a Writ of **Mandamus** compelling the 1st Respondent

and/or Members of the CIABOC (2nd, 3rd and 4th Respondents) to initiate a credible and independent investigation/inquiry into the plausible complaint made by the Petitioner, under Section 4 of the CIABOC Act No 19 of 1994 against the abuse of the tax-free permit scheme for improper purpose of unjust enrichment by those who hold public office as MPs and members of the Cabinet of Ministers in the Government of the Republic of Sri Lanka, with a direction issued to CIABOC to institute legal proceedings under Section 3 of the said Act, against the suspects who have committed the offence of Corruption for the purpose of recovery of the government revenue defrauded by them and to impose sanctions as required by Section 70 of the Bribery Act.

d) grant cost and

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

N. Kodituwakku


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Petitioner and Public Interests Litigation Activist in Person