

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 "Poisons, Opium and Dangerous Drugs (Amendment) Act" or any part thereof is inconsistent with the Constitution of the Democratic Socialist Republic of Sri Lanka.

S.C. S.D. NO. 53/2022

Petitioner:	Ambika Satkunanathan, No. 27 Rudra Mawatha, Colombo 06.
Counsel:	Pulasthi Hewamanna with Harini Jayawardhana, Fadhila Fairoze and Githmi Wjenarayana instructed by Lilanthi de Silva.
Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
Counsel:	Priyantha Nawana PC SASG with Sudharshana de Silva DSG and Dr. Avanti Perera DSG.

Before: P. Padman Surasena J
Yasantha Kodagoda PC J
Achala Wengappuli J

The Bench assembled for hearing the petition on 21st September 2022.

The Bill titled "Poisons, Opium and Dangerous Drugs (Amendment)" (Hereinafter sometimes referred to as the Bill) was published in the Gazette on 23rd August 2022 and was placed on the Order Paper of Parliament on 9th September 2022.

The Petitioner has filed the petition dated 16th September 2022 invoking the jurisdiction vested in this Court by virtue of Article 120 read with Article 121(1) of the Constitution, in respect of the aforementioned Bill. The Petitioner has prayed for a determination from this Court under Article 123 of the Constitution.

At the commencement of the hearing, the learned Senior Additional Solicitor General who appeared for the Hon. Attorney General raised a preliminary objection stating that the petition should be rejected *in limine* for the non-compliance of the mandatory procedure stipulated in Article 121 (1) of the Constitution as the Petitioner has failed to deliver a copy of the petition to the Hon. Speaker at the same time the Petitioner had filed the petition in this Court.

Let us first set down here, the sequence of events leading up to the hearing of the instant matter. The Bill titled "Poisons, Opium and Dangerous Drugs (Amendment)" has been placed in the Order Paper of the Parliament on 9th September 2022. The Petitioner has filed the instant petition in the registry of the Supreme Court on 16th September 2022. The Petitioner has not averred in her Petition that a copy of the petition was delivered to the Hon. Speaker at the same time she filed this petition in the Supreme Court. She also does not say in her petition that she has handed over a copy of the petition to the postal authority to be sent to the Speaker. (What the Petitioner has stated in paragraph 7 of the petition is that she had taken steps to furnish a copy of the petition to Hon. Speaker.) Although the Petitioner in the motion filed along with the Petition, has stated "*...notice of this petition has been served on the Hon. Speaker of the Parliament and to the Hon. Attorney General and the registered postal article is annexed*" the said motion does not bear any date. Thus, the court is unable to ascertain either from the petition or from the motion, the date on which the petitioner has "served" a copy of the petition on the Speaker as claimed by her.

Article 121 (1) of the constitution upon which the Petitioner has filed the instant petition reads as follows,

*"The jurisdiction of the Supreme Court to ordinarily determine any such question as aforesaid may be invoked by the President by a written reference addressed to the Chief Justice, or by any citizen by a petition in writing addressed to the Supreme Court. Such reference shall be made, or such petition **shall be filed, within one week of the Bill being placed on the Order Paper of the Parliament and a copy thereof shall at the same time be delivered to the Speaker.** In this paragraph "citizen" includes a body, whether incorporated or unincorporated, if not less than three-fourths of the members of such body are citizens."* (Emphasis Added)

Accordingly, while the aforementioned provision permits the President or any Citizen to invoke the jurisdiction of this Court to determine any question as to whether any Bill or any provision thereof is inconsistent with the Constitution, it also stipulates two requirements to be complied with. Firstly, the reference by the President or the petition by any citizen must be filed within one week of the Bill being placed on the Order Paper of the Parliament, and secondly, a copy of such reference or petition must at the same time be delivered to the Speaker of the Parliament. Repeated presence of the words "shall" in the second sentence in Article 121 (1) has made the compliance of both the stipulated requirements mandatory. The presence of the word "and" therein is an indication that both limbs in the sentence must be read together and the mandatory nature has been made applicable not only to the first requirement but also to the second requirement as well. Thus, we have no doubt that the compliance of both the stipulated requirements in Article 121 (1) are mandatory and both the requirements must be complied within the time limit specified therein. Moreover, this Court in its determination pertaining to **Sri Lanka Telecommunications Bill**,¹ echoed a similar sentiment when it considered the submission of the counsel for the petitioner of that petition who sought to argue that the compliance of the requirements in Article 121 (1) are directory and not mandatory. We would quote below, an extract from the relevant paragraph from the said determination.

"This purpose of the Article cannot be achieved unless the provisions designed to secure such result are regarded as mandatory. The Article also provides for the suspension of the ordinary legislative powers of Parliament for a period of 3 weeks when a Bill is referred to the Supreme Court for its adjudication - Article 121(2). The aims of the Article will be defeated unless its scope is wide enough to prevent Parliament from debating or proceeding with the Bill whilst the Supreme Court is

¹ SC Special Determination Nos. 5/91, 6/91, 7/91.

engaged in deliberating its constitutionality. This provision which requires Parliament to be informed that the Bill is before the Supreme Court - Article 121(1) must be regarded as mandatory."

Indeed, in the instant case, the Petitioner did not dispute the fact that the compliance of both the said requirements in Article 121 (1) are mandatory. Moreover, in addition to the aforementioned determination of **Sri Lanka Telecommunications Bill**,² this Court in many other instances also, had held that the compliance of the requirements stipulated in Article 121(1) are mandatory. Thus, this Court would be able to exercise its jurisdiction in the instant case, only if the aforementioned requirements have been complied with.

Given that the Bill was placed on the Order Paper on 9th September 2022, the Petitioner was legally obliged to fulfil the aforementioned requirements within one week; the period of a week in this regard has been decided by this Court to be a period of 7 days.³ Accordingly, the Petitioner should have fulfilled the same on or before the 16th of September 2022. It was the contention of the learned Senior Additional Solicitor General that while the Petitioner has complied with the first requirement by filing the petition in the registry of the Supreme Court on 16th September 2022, the Petitioner had failed to comply with the second requirement. The Petitioner has handed over a copy of the petition to the postal authority (addressed to the Hon. Speaker) on 16th September 2022. The Secretary General of Parliament has subsequently confirmed to Hon. Attorney General that the aforesaid copy of the petition posted by the Petitioner, was received in the office of Hon. Speaker on 21st September 2022.⁴ The said receipt is outside the time limit stipulated in Article 121 (1) of the Constitution. To avoid any ambiguity, let us also state here that there was no dispute that the Petitioner had posted a copy of the petition to Hon. Speaker only once and that was the posting done on 16th September 2022.

Further, during the hearing, the learned counsel for the Petitioner informed us that the instructing Attorney of the Petitioner had also hand delivered another copy of the petition to the residence of the Speaker on 17th September 2022. That is the copy which has been

² SC Special Determination Nos. 5/91, 6/91, 7/91.

³ SC Special Determination Nos. 5/91, 6/91, 7/91, SC Special Determination No.11/2022.

⁴ Vide R 2B the letter dated 22nd September 2022 by the Secretary - General of the Parliament addressed to Hon. Attorney General.

received in the office of the Speaker on 20th September 2022.⁵ There is no doubt that the handing over of that copy to the residence of the Speaker has been done after the lapse of the permitted time limit and therefore suffice it to say that it has no effect in law. In any case, the Petitioner has not relied on that delivery; she has not averred any such delivery either in the petition or in the motion. It was the learned counsel for the Petitioner who merely made that statement from the Bar Table.

As pointed out by the learned Senior Additional Solicitor General, in the determination of **Sri Lanka Telecommunications Bill**⁶ the petitioners of that case had posted the copy of the petition to Hon. Speaker on the 8th Day. This Court in that determination, has held as follows:

"The Petitioners have failed to comply with the mandatory provisions of Article 121(1) of the Constitution in that they have failed to deliver to the Speaker a copy of the petition presented to the Supreme Court within 1 week of the Bill being placed in the Order Paper of Parliament. This being so this court has no jurisdiction to proceed further with the petitions before it as the jurisdiction of the Court has not been duly invoked....."

We also observe that this Court in its determination on **Homeopathy Bill**⁷ had upheld the preliminary objection of the Attorney General that the petitioner had failed not only to file the petition in the Supreme Court but also failed to deliver a copy to the Speaker within a period of one week as stipulated in Article 121 (1) of the Constitution. This Court in that determination too, held that the petitioners in that determination had failed to duly invoke the jurisdiction of this Court for that reason.

Responding to the preliminary objection raised by the learned Senior Additional Solicitor, the learned counsel for the Petitioner took up the position that the petitioner has in fact fulfilled the aforementioned requirement of delivering a copy of the petition to Hon. Speaker within one week from the Bill being placed in the Order Paper by handing over such copy to the postal authority on 16th September 2022 (which was the 7th day). In this regard, the learned counsel for the Petitioner relied on the determination of **Divineguma Bill**⁸ where the Court has observed as follows.

⁵ Vide R 2A the letter dated 20th September 2022 by the Secretary - General of the Parliament addressed to Hon. Attorney General.

⁶ SC Special Determination Nos. 5/91, 6/91, 7/91.

⁷ SC Special Determination No. 27/2016.

⁸ SC Special Determination No. 01/2012.

"The petition in SC SD 02/2012 was filed on 17.08.2012 and had sent the same to Hon. Speaker on the same day by Registered Post. The meaning of the word "delivery" could be defined as mailed or dispatched. The Oxford English Dictionary (2nd Edition (Volume IV), Page 362) defines the word delivery as the action of handing over or conveying into the hands of another, especially the action of a carrier in delivering letters or goods entrusted to him for a conveyance to a person at a distance. Such could be easily carried out by way of posting and in the present matter the documents had been sent by Registered Post on the same day it was filed in the Supreme Court."

Accordingly, it was the submission of the learned counsel for the Petitioner that the Petitioner has complied with the second requirement under Article 121 (1) by handing over the parcel containing a copy of the petition to the postal authority on 16th September 2022.

Thus, the main question before this Court at this stage, is to determine whether the Petitioner by handing over the parcel containing a copy of the petition addressed to the Speaker to the postal authority on 16th September 2022 has satisfied the mandatory requirement under Article 121 (1) that such petition shall be delivered to the Speaker at the same time it was filed in the Supreme Court.

In deciding the above question, we have to interpret the word "delivered", appearing in Article 121 (1). Thus, it is prudent at this stage, to consider in this regard, the interpretations provided to the terms "delivery"/"delivered" in the English language.

The Oxford English Dictionary defines the word "delivered" as "Set free, disburdened of offspring, handed over, surrendered, formally uttered or stated, etc.",⁹ while Oxford Advanced Learner's Dictionary defines the word "deliver" as "TAKE GOODS/LETTERS 1. to take goods, letters, etc. to the person or people they have been sent to:¹⁰

According to the above definitions the term "deliver"/"delivery" in the context of the circumstances of the instant case, must mean the handing over of the copy of the petition to the Speaker.

Let us now turn to the definitions provided by legal dictionaries. The Oxford Dictionary of Law defines the term "delivery" as "the transfer of possession of property from one person to

⁹ The Oxford English Dictionary Vol. IV, 2nd Edition [1989] at page 423.

¹⁰ Oxford Advanced Learner's Dictionary 10th Edition [2020] at page 409.

another..."¹¹ while the Merriam - Webster's Dictionary of Law defines "deliver" as "to transfer possession of (property) to another: put into the possession or exclusive control of another (a deed must be delivered to be effective)." ¹² The said definitions are also supported by Mozley & Whiteley's Law Dictionary which defines the term "delivery" as "The transferring of possession from one person to another. It may be actual, as when, in fact, goods change hands, or constructive, e g, where a buyer is already in possession of goods before sale, and afterwards pays for them."¹³ Thus, we note that the meaning of the words "deliver"/"delivery" according to the above legal dictionaries is not mere transfer of property but transfer of the possession of property which means that it is the physical possession (as opposed to property) which should be transferred.

Further, the Black's Law Dictionary defines the term "delivery" as "1. the formal act of voluntarily transferring something; esp., the act of bringing goods, letters etc to a particular person or place. 2. The thing or things so brought and transferred."¹⁴ This definition also shows that the delivery of a letter to a particular person is completed only when it is received by the intended recipient.

Indeed, some of the above definitions have been cited with approval by this Court in several previous determinations which had dealt with similar issues. Those include even the determination on **Divineguma Bill**¹⁵ relied on by the Petitioner which has referred to the Oxford English Dictionary and quoted that the term "delivery is the action of handing over or conveying into the hands of another, especially the action of a carrier in delivering letters or goods entrusted to him for a conveyance to a person at a distance."¹⁶

It would also be relevant at this stage of our endeavour of interpreting the term "delivery", to refer to the Sinhala version of Article 121 (1) of the Constitution. Let me now reproduce the Sinhala version of Article 121 (1) of the Constitution.

"ඉහත කී පරිදි වූ චරිත යම් ප්‍රශ්නයක් පිළිබඳව සාමාන්‍යයෙන් තීරණය කිරීමට ශ්‍රේෂ්ඨාධිකරණයට ඇති අධිකරණ බලය අග්‍ර විනිශ්චයකාරවරයා අමතා ජනාධිපතිවරයා විසින් යවනු ලබන ලිඛිත යොමු කිරීමක් මගින් නැතහොත් ශ්‍රේෂ්ඨාධිකරණය අමතා කවර වූ හෝ

¹¹ Oxford Dictionary of Law 5th Edition [2002] at page 143.

¹² Merriam - Webster's Dictionary of law [2016] at page 131.

¹³ Mozley & Whiteley's Law Dictionary 12th Edition [2008] at page 105.

¹⁴ Black's Law Dictionary 11th Edition [2019] at page 541.

¹⁵ SC Special Determination No. 01/2012.

¹⁶ The Oxford English Dictionary Vol. IV 2nd Edition [1989] Page 424.

පුරවැසියකු විසින් යවනු ලබන ලිඛිත පෙත්සමක් මගින් ක්‍රියාත්මක කරවා ගත හැක්කේය. ඒ යොමු කිරීම හෝ පෙත්සම ඉදිරිපත්කිරීම පනත් කෙටුම්පත පාර්ලිමේන්තුවේ න්‍යාය පත්‍රයට ඇතුළත් කළ තැන් පටන් සතියක් ඇතුළත කළ යුතු වන්නේය. නවද, ඒ යොමු කිරීමේ නැතහොත් පෙත්සමේ පිටපතක් ඒ අවස්ථාවේදීම කතානායක වරයාට භාර දිය යුත්තේය. මේ අනුවාවස්ථාවෙහි "පුරවැසියා" යන්නට සාමාජික සංඛ්‍යාවෙන් හතරෙන් තුනකට නොඅඩු සංඛ්‍යාවක් පුරවැසියන් වන්නාවූ සංස්ථාගත කළ හෝ සංස්ථාගත නොකළ මණ්ඩලයක් ඇතුළත් වේ."

(Emphasis Added)

The phrase "*shall be delivered to the Speaker*", in Article 121 (1) has been replaced with the wording "කතානායක වරයාට භාර දිය යුත්තේය" in its Sinhala version. Let us look at some of the English - Sinhala as well as Sinhala - English Dictionaries widely used in this country in order to examine as to what is meant by the phrase "භාර දිය යුත්තේය".

Charles Carter in his work The Sinhalese - English Dictionary defines the phrase "භාර දෙනවා" as,

"To deliver over, commit to, consign, intrust"¹⁷

In defining the phrase "භාර දෙනවා", Charles Carter has used the phrase "*to deliver over*" also as one of its English equivalents. As what has been defined in this dictionary is a Sinhala phrase i.e. "භාර දෙනවා", it would be prudent to look at the meaning given to the aforesaid English equivalent i.e. "*to deliver over*" in an English - Sinhala dictionary.

The phrase "Deliver" has been defined in the Malalasekere English - Sinhala Dictionary as follows:

"බෙදනවා; (ලියුම්, පාර්සල් ආදිය) බාර දෙනවා; නිදහස්කර ගන්නවා; බේරා ගන්නවා; ගලවනවා; මුදවනවා; ප්‍රසූත කරනවා; ප්‍රසූතියෙහි ආධාර කරනවා; කපාවක් පවත්වනවා; දේශනා කරනවා; අත්හැර දානවා; පහරක් දෙනවා"¹⁸

According to the above dictionary, the definition of the term "deliver" relevant to the instant case before us is "බෙදනවා; (ලියුම්, පාර්සල් ආදිය) බාර දෙනවා".

¹⁷ The Sinhalese - English Dictionary by Charles Carter [1965] at page 462.

¹⁸ The Malalasekere English - Sinhala Dictionary 4th Edition [2004] at page 287.

As has been mentioned above, one has to be mindful that the term “හර දෙනවා” has been defined in Charles Carter’s *Sinhalese - English Dictionary* as “to deliver over”. Let us look at how the same author has defined the word “deliver”. In his *English - Sinhalese Dictionary*, Charles Carter defines the term “deliver” in the following manner.

*“rescue ගළවනවා; set free නිදහස් කරනවා මුද්දනවා; commit to හර දෙනවා; surrender පාවා දෙනවා; deliver a child ප්‍රසූත කරනවා; deliver a blow පහරක් දෙනවා ; deliver an address කථාවක් කරනවා”*¹⁹

The use of the words “surrender” and “හර දෙනවා” in the above definition also indicates that the term “delivery” means the action of actual handing over of the relevant item into the hands of another.

The *Gunaseena Great Sinhala Dictionary* defines the phrase “හර දෙනවා” as follows:

*“1. හර දෙනවා, ගෙන ගොස් දෙනවා. 2. වගකීම පවරනවා, රැකවරණය යටතට පත් කරනවා.”*²⁰

Thus, according to this dictionary, the phrase “හර දෙනවා” has the same meaning as “ගෙන ගොස් දෙනවා”. This further strengthens the aforesaid definition given to the word “deliver” or “හර දෙනවා”, in the other dictionaries as described above.

Thus, we can see that according to the local dictionaries, also the meaning of the phrase “හර දෙනවා” in Sinhala is the actual handing over of the item intended to be delivered to the intended recipient. Therefore, we hold that it is only when the recipient has received an item (which was intended to be delivered to that person) that one can say that it has been delivered to that person. This is what we understand as the general meaning of the word “delivered”, appearing in Article 121 (1) of the Constitution.

In the determination on **Land Development (Amendment) Bill**²¹ which dealt with a similar issue, this Court had to decide on the interpretation of the word “delivered” in Article 121 (1) of the Constitution. Having considered multiple interpretations of the term “delivered” this Court has held as follows:

*“Thus, it is evident from these multiple meanings, the applicable one in relation to the word “delivered” that appears in Article 121(1) is **the act of handing over or surrender of a letter to a particular person or address.**”* (Emphasis Added)

¹⁹ The English - Sinhalese Dictionary by Charles Carter Revised Edition [1965] at page 107.

²⁰ The Gunaseena Great Sinhala Dictionary compiled by Dr. Harischandra Wijayatunga [2014] at page 1235.

²¹ SC Special Determination No.11/2022.

Moreover, when we consider the Standing Orders of Parliament in the light of the provision in Article 78, we find that the above interpretation given by this Court to the term “delivered” in Article 121 (1) in the determination on **Land Development (Amendment) Bill**²² is consonant with the intention of Parliament. The analysis below would show the reason as to why the legislature deliberately imposed in Article 121 (1), the second mandatory requirement of the delivery of the petition to the Hon. Speaker at the same time it is filed in the Supreme Court.

According to Article 78 (2) of the Constitution, *“the passing of a Bill or a resolution by Parliament shall be in accordance with the Constitution and the Standing Orders of Parliament.”* This is besides the requirement as per Article 78(1) of the Constitution that *“every Bill shall be published in the Gazette at least seven days before it is placed on the Order Paper of Parliament.”* Accordingly, both Article 78(1) of the Constitution and Standing Orders of Parliament²³ (in particular Standing Orders 50, 55, 57, 67 and 71) would shed light on the intention of Parliament; those provisions would show the reason as to why the legislature has imposed the second mandatory requirement of the delivery of the petition to the Speaker at the same time it is filed in the Supreme Court in Article 121(1).

The purpose of Article 78(1) of the Constitution is to give notice to public regarding the impending enactment process of the Bill. This would enable the public to study, prepare and take preliminary preparatory steps during that time, to challenge such Bill in court if they so wish, once it is presented to the Parliament.

According to Standing Order 50 (1), when a bill is presented to Parliament *the “Bill shall be read by the Secretary-General and the Bill shall then be deemed to have been read the first time and to have been ordered to be printed and shall stand for Second Reading on a date not earlier than a week from the date on which it was presented.”*

The said reading by the Secretary-General is commonly known as the “first-reading” of the Bill. As stipulated in Standing Order 50 (1), the Second Reading of the bill shall only take place after the lapse of a week. This is also reiterated in Standing Order 55 (1) which states *“A Bill*

²² SC Special Determination No.11/2022.

²³ Standing Orders of the Parliament of the Democratic Socialist Republic of Sri Lanka approved and adopted by Parliament on 07 March 2018, and to be effective from 15 April 2018.

shall be set down for Second Reading on a day not earlier than a week from the day on which it was presented."

It is during this period (after the Bill is placed in the Order Paper) that any Citizen would get the opportunity to invoke the jurisdiction of this Court to challenge the constitutionality of the Bill. Article 121 (1) of the Constitution is very clear on that.

It would be relevant to recall that Article 78 (2) of the Constitution mandates that the passing of a Bill shall be done in accordance with the Constitution and the Standing Orders of Parliament.

The procedure to be followed in a situation where any citizen has invoked the jurisdiction of Supreme Court under Article 121 (1) of the Constitution, is stipulated in Standing Order 55 (2) as follows,

"When the jurisdiction of the Supreme Court to determine whether any Bill or any provision thereof is inconsistent with the Constitution has been invoked under Article 121 of the Constitution and a copy of the reference or petition has been delivered to the Speaker -

(a) such reference or filing of a petition shall be conveyed to Parliament by the Speaker on the first day of a meeting of Parliament after such reference is made or such petition is filed;

(b) no proceedings in relation to such Bill shall be had until the determination of the Supreme Court in respect thereof has been made and communicated to the Speaker or until the expiration of a period of three weeks from the date of such reference or filing of such petition, whichever occurs first;

(c) upon receipt of the determination of the Supreme Court it shall be announced to Parliament by the Speaker and no debate shall be permitted on such announcement."

Accordingly, it is only when a copy of the reference or petition has been delivered to the Speaker that he is able to convey to the Parliament that the jurisdiction of the Supreme Court has been invoked by a citizen. The said conveyance is aimed at halting the further proceedings of the Bill under scrutiny by the Supreme Court; that is to stop it being proceeded with the Second Reading until a determination is given by this Court as per Standing Order 55 (2) (b).

Thus, from the above scheme, we can clearly see that the Parliament has carefully formulated its Standing Orders to fall in line with the provisions in the Constitution in particular, Article 78 and 121. This is also why there is a mention in Article 78 (2) that a Bill shall be passed in accordance with not only the Constitutional provisions but also with Standing Orders of Parliament.

If this court is to uphold the interpretation given by the Petitioner to the term "*delivered*" appearing in Article 121 (1) as being sufficient to hand over the copy of the petition to the carrier, the question arises as to what the Speaker should do during the time gap which in such a scenario comes into being. i.e., the time period taken by the carrier to deliver the copy of the petition to the Speaker. Further, it is clear that such an interpretation would cause mischief particularly in a scenario where the Petitioner hands over the copy of the Petition to the carrier on the 7th day but not received by the Speaker and where the Parliament has placed the Bill on the Order Paper for its Second Reading on a day which falls immediately after the one week reckoned from the date on which it was presented for the first reading as permitted by Standing Order 50 (1).

Indeed, the learned counsel for the Petitioner himself brought to the attention of this Court during the hearing, that the Parliament had placed the Bill under challenge in the instant case, on the Order Paper for its Second Reading on 20th September 2022 but was not taken up on that day. He had also filed the motion dated 18th September 2022 attaching a copy of the Order Paper of Parliament for that date marked **X1**. However, he did not confirm as to what happened in Parliament thereafter.

Another probable scenario which could be of concern is when the copy of the petition is misplaced after it has been handed over to the carrier. In such a scenario, if this court is to accept the interpretation given by the Petitioner, the Speaker would certainly not have any notice of the proceedings being commenced in the Supreme Court and therefore would proceed with the procedure stipulated in the Standing Order of Parliament as he should. In such a scenario what happens if Parliament passes the Bill with simple majority and the Supreme Court determines that the Bill must be passed by a special majority and also approved by people at a referendum?

Thus, parallel proceedings, one in Parliament and the other in Supreme Court taking place simultaneously would undoubtedly create a serious friction between two organs of the State.

Needless to say, that such situations would lead to a creation of unhealthy relationship between the relevant two organs of the state, the legislature and the judiciary which are the custodians of the sovereignty of people of this country.²⁴ That in turn would erode the confidence the public has reposed in these institutions. This is the exact mischief the legislature has intended to suppress and that is why the legislature has made it mandatory to have a copy of the petition delivered to the Speaker at the same time of the filing of the petition in Supreme Court.

This Court underscored the same view in the determination on **Sri Lanka Telecommunications Bill**²⁵ as follows:

"It is our view that all the provisions in this Article as to the manner in which the jurisdiction of the Court could be invoked are mandatory. To take the view that the requirement that a copy of the petition be delivered to the Hon. Speaker at the same time the petition is filed by a citizen is merely directory could in our opinion lead to mischief and even a possible confrontation between the Parliament and the Court which needless to say must be avoided. That could be the possible result of a non-compliance with the scheme of the provision. The plain language of the provisions of s. 121 leave no room for an interpretation in accordance with that sought to be given by Counsel for the petitioners."

Standing Order 55 (2) (a) states that *"such reference or filing of a petition shall be conveyed to Parliament by the Speaker **on the first day of a meeting of Parliament after such reference is made or such petition is filed**"*. Accordingly, it is evident that the Speaker is expected to convey the filing of the petition on the first day the Parliament meets after the filing of the Petition. We note that the Speaker will be unable to discharge his obligation to Parliament under the said Standing Order, in a scenario where the Speaker is not in receipt of a copy of the petition at the same time such petition is filed in the Supreme Court. This is particularly so when the petition is filed in the Supreme Court on the last day of the time period of one week granted by Article 121 (1) because in the absence of any notice, the Parliament is entitled to proceed with its next set of proceedings immediately after the said one week, on the basis that no petition has been filed in the Supreme Court challenging the constitutionality of the Bill. That is the reason why the legislature in its wisdom has insisted in Article 121 (1) that a copy of the petition must be delivered to the Speaker at the same time it is filed in the Supreme Court. Thus, we are unable to accept the interpretation put

²⁴ As per Article 4(a) and 4(c) of the Constitution.

²⁵ SC Special Determination Nos. 5/91, 6/91, 7/91.

forward by the Petitioner to the term "*delivered*" appearing in Article 121 (1), as being sufficient to hand over the copy of the petition to the postal authority and that would then amount to delivery.

In the instant case, we observe from the date stamp placed by the Supreme Court registry on the motion filed in the docket, the Registered Attorney for the Petitioner had filed the said petition at 2.10 pm on 16th September 2022. As this was the last day of the permitted period (7th day), the Registered Attorney for the Petitioner could have very well taken steps to have the copy of the Petition hand delivered to the Hon. Speaker on 16th September 2022 itself rather than handing it over to the postal authority to be sent via registered post.

Before concluding, we would like to quote below, the following paragraph from the determination on **Land Development (Amendment) Bill**.²⁶

"In these circumstances, we are of the view that the mandatory requirement imposed by Article 121(1) that a citizen must deliver a copy of his petition to the Speaker at the same time of filing it in this Court should be taken to read as the petitioner must ensure that the said copy is in fact delivered to the Hon. Speaker within the said period of one week and at the same time as the filing of the petition in this Court. The Petitioner's claim of the copy had been 'dispatched' is not sufficient compliance of the requirement of delivery. Therefore, for the reasons contained in the preceding paragraphs, this Court is not inclined to accord with the view taken in Divineguma Bill (supra) that "... what matters is the filing and the posting the petitions to be simultaneous and carried out within the stipulated period of 7 days"

Similarly, for the foregoing reasons, in the instant determination, we too decide not to be in accord with the conclusion in *Divineguma Bill* as this Court has already started turning away from such a conclusion. We hold that, the Petitioner by handing over of the parcel containing a copy of the petition addressed to the Hon. Speaker to the postal authority on 16th September 2022 has not satisfied the mandatory requirement under Article 121 (1) that such petition shall be delivered to the Hon. Speaker at the same time it was filed in the Supreme Court.

²⁶ SC Special Determination No.11/2022.

We hold that the Petitioner has failed to comply with the mandatory provisions of Article 121 (1) of the Constitution and thereby failed to duly invoke the jurisdiction of this Court to make a determination in the instant matter under Article 123 of the Constitution.

We uphold the preliminary objection raised by the learned Senior Additional Solicitor General and proceed to reject the petition.

P. PADMAN SURASENA J
JUDGE OF THE SUPREME COURT

YASANTHA KODAGODA PC J
JUDGE OF THE SUPREME COURT

ACHALA WENGAPPULI J
JUDGE OF THE SUPREME COURT