

DECISIONS
OF
THE SUPREME COURT
ON
PARLIAMENTARY BILLS

1989

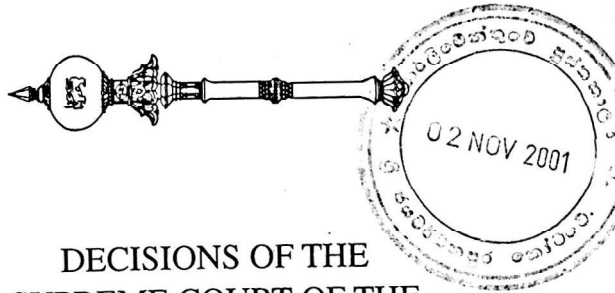
VOLUME V

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DECISIONS OF THE
SUPREME COURT OF THE
REPUBLIC OF SRI LANKA
UNDER ARTICLES 120, 121 AND 122 OF THE
CONSTITUTION OF THE
DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA FOR THE YEAR 1989

VOLUME V
(THE SECOND PARLIAMENT)

Published by the Bills Office of the Parliament Secretariat
September 2001

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PREFACE

It is over ten years since the Parliament Secretariat published the decisions of the Supreme Court on Bills. The value of this publication became evident when numerous requests were made, among others, by the legal profession, academics, Government Departments and students, to continue publishing these decisions. In response to these requests the Parliament Secretariat took steps to compile the present volume, which contains sixteen decisions delivered by the Supreme Court in 1989.

The value of a publication of this kind can only be retained if the effort is a continuing one. It is a contribution to the growing body of Constitutional Law in this country. We hope, therefore, to continue publishing these judgements in future.

We acknowledge warmly the contributions made by the officers in the Parliamentary Bills Office in collecting the material, preparing indexes and proof reading. Our thanks are also due to the Government Printer for his co-operation in the technical arrangements. Lastly, we thank Hon. Speaker for giving us the encouragement to resume and continue this vital task.

DHAMMIKA KITULGODA
Secretary-General of Parliament

Parliament of Sri Lanka,
Sri Jayewardenepura Kotte.
03rd September 2001.

CEYLON COLD STORES (POSSESSION AND CONTROL)

A

BILL

to provide for the continuation of the possession and control by the Government, of the undertaking carried on by Ceylon Cold Stores for a further period of one year.

THE CEYLON COLD STORES (POSSESSION AND CONTROL) BILL

In the matter of a Reference under Article 122 (1) (b) of the Constitution.

S. C. Special Determination No. 8 of 1989.
P/Parliament/46.

Present :

Bandaranayake, J.,
Fernando, J., and,
Kulatunga, J.

Counsel :

Shibly Aziz, P. C., Additional Solicitor-General with K. C. Kamalabayson, Deputy Solicitor-General for the Attorney-General.

Eric Amarasinghe, P. C., with S. L. Gunasekera and Harsha Amarasekera for Ceylon Cold Stores Ltd.

R. K. W. Goonesekera for the Hong Kong & Shanghai Bank.

Samarapala Liyanage for the Development Finance Corporation of Ceylon.

The Court Assembled for the hearing at 11.25 a. m. on the 6th April, 1989.

A Bill titled "An Act to provide for the continuation of the possession and control, by the Government of the undertaking carried on by Ceylon Cold Stores for a further period of one year" was referred to this Court by His Excellency the President in terms of Article 122 (1) (b) for a special determination of this Court whether the Bill or any provisions thereof is inconsistent with the Constitution. The Bill contains a certificate to the effect that in the view of the Cabinet of Ministers the Bill is urgent in the national interest.

Mr. Shibly Aziz, P. C., Additional Solicitor-General assisted this Court in the hearing of this matter.

The possession and control of the business undertaking carried on by Ceylon Cold Stores Ltd. was taken over by the Government by regulation made under s. 5 of the Public Security Ordinance on 9.12.88 and thereafter on 10.01.89 for a further period of three months. The proclamation of Emergency was revoked on 11.01.89 but the Government continued to be in possession of the aforesaid undertaking. We are not called upon in these proceedings to determine the legality of the Government's possession of the undertaking during this period.

The Bill refers to the reasons for requisitioning of the undertaking as being,

- (1) the disruption of the services provided by the undertaking
- (2) industrial unrest.
- (3) the persistent denial by the Company of the entitlement and legitimate claims of its employees.

The Bill seeks to provide for the continuation of the possession and control by the Government of the said undertaking for a further period of one (1) year for the purpose of ensuring the maintenance of the services provided by such undertaking which are stated to be integral to the national economy and essential to the life of the community and for the purpose of the due recognition and respect of the rights of the employees.

It is common ground that during the latter half of 1988 there had been various disputes between the Company and its employees including a strike by the employees. Three references have been made under the Industrial Disputes Act for the settlement of such disputes by arbitration, which are yet pending. We are not called upon in these proceedings to express any opinion as to the rights and wrongs of these disputes.

Clause (7) of the Bill authorises the Government, a Public Corporation, or any prescribed authority to purchase any share in the Company at such price as may be determined by the Competent Authority, so however that the price so determined is higher than the market value of such share at the time of sale. This provision has been challenged as being in violation of Article 12 (1) in that it authorises the compulsory purchase of shares in this company but not of other Companies similarly situated, and authorises the purchase from some shareholders, while not compelling other shareholders to sell. This Clause appears to authorise purchases even from unwilling sellers although the learned Additional Solicitor-General submitted that this was not the intention of the State. By means of such purchases the State may become the major shareholder of the Company at the expiry of one year when the undertaking will be handed back to the Company as indicated by the learned Additional Solicitor-General. If the State becomes the major shareholder the Company would in effect be nationalised and this is not the intention of this Bill as ascertainable from the preamble. The learned Additional Solicitor-General also submitted that this was not the intention of the State which was merely seeking to confer a benefit on shareholders willing to sell their shares. This provision is also inconsistent with s.28 of the Securities Council Act No. 36 of 1987. In these circumstances we are of the opinion and we determine that Clause (7) of the Bill is in violation of Article 12 (1) in that it denies the shareholders of the Company the right to equality before the law and the right to the equal protection of the law, and may only be passed by the special majority required under the provisions of paragraph (2) of Article 84.

Clause (5) of the Bill provides that the Competent Authority may use or deal with the property of the Company for such purposes as he thinks expedient for the maintenance of the services provided by the aforesaid undertaking and for the purposes of securing the due recognition and respect of the rights of the employees. It was contended by learned Counsel for the Hong Kong & Shanghai Bank that this provision was discriminatory in that the Competent Authority could thus act in disregard of the rights of the Bank as a creditor and a mortgagee of the Company's property. Learned Additional Solicitor-General submitted that Clause (5) did not have the effect of wiping out mortgages and other encumbrances: he submitted that any disposition of property by the Competent Authority would be subject to all existing legal rights and encumbrances. We are of the opinion that Clause (5) does not have the effect of wiping out the existing legal rights and encumbrances, and hence no question of inconsistency with Article 12 (1) arises.

Learned President's Counsel for the Company submitted that the Bill was in violation of Article 14(1)(g) in that it affected the Company's freedom to engage in a lawful business or enterprise. Since the rights recognised by Article 14 are confined to citizens of Sri Lanka he contended that the Bill interfered with the rights of shareholders and hence, there was a

violation of Article 14(1) (g). In *Fernando V. Liyanage* - (Volume 2, Fundamental Rights Decisions, p. 409) it was held that a Company not being a citizen cannot complain of infringement of the fundamental right specified in Article 14 and that its shareholders too cannot complain of the violation of any of their fundamental rights since they have not suffered any distinct and separate injury. In view of this decision we are of the opinion that this contention cannot succeed although we feel that the correctness of that decision ought to be reconsidered. The provisions of Article 14 (1) (g) read in conjunction with Article 14 (1) (c) may well entitle a shareholder of a Company to complain of the infringement of Article 14 (1) (g) caused by interference with the Company's business or enterprise.

It is contended that the Bill is in violation of Article 12 (1) in that the Company belongs to a class of persons engaged in similar undertakings but has been singled out, not on any rational or intelligible basis but on certain improper grounds. Reference was made to the fact that many employees of the Company joined the Ceylon Workers Congress whose President was and is the Hon. S. Thondaman, a Minister of the Cabinet of Ministers. It was submitted that the action taken in December 1988 and January 1989 was for the purpose of benefitting the Ceylon Workers Congress. However, we are not called upon to determine whether those circumstances vitiated the requisition under the Emergency Regulation. Insofar as the Bill before us is concerned, its objective is to ensure the maintenance of the services provided by the undertaking and to protect the rights of the employees. The material before us does not establish that the purpose of the Bill is to confer some special benefit on the Ceylon Workers Congress or its members. Learned Additional Solicitor-General contends that the matters referred to in the preamble justify the company being treated as being in a class by itself; the Company is a long established Company engaged in the manufacture and sale of food, beverages and milk products; and its services are undoubtedly of some importance to the national economy and to the community although not "essential" in the sense of being indispensable; the disruption of the services provided by the Company as a result of industrial unrest would justify some measure of Government intervention, for the purpose of meeting the just requirements of the general welfare of a democratic society. Such intervention must be reasonably related to the objects sought to be achieved. The learned Additional Solicitor-General submitted that it was not the intention of the State to nationalise the undertaking or take control for an unlimited period but merely to rehabilitate the Company, discharge its liabilities and restore possession and control of the undertaking to the Company. This period of one year appears to us to be quite sufficient for the rehabilitation of the Company.

It was further submitted that after the requisition the proceedings under the Industrial Disputes Act have been laid by. It appears to us that neither the requisition nor the enactment of this Bill constitute a bar to the continuation of those proceedings. The rights of the parties to those proceedings must be determined under the ordinary law and it is not for the Competent Authority by the exercise of his powers under the Bill to attempt to resolve those disputes. To avoid any doubt express provision should be made in this Bill to the effect that nothing contained therein shall affect the rights of the parties in any proceedings pending under the Industrial Disputes Act and that such proceedings may be continued notwithstanding the provisions of this Act. Learned Additional Solicitor-General conceded in reply to the Court that the words "the persistent denial by the Company owning such undertaking of the entitlement and legitimate claims of the employees of that undertaking" may well tend to gravely prejudice the fair adjudication of the pending matters under the Industrial Disputes Act and agreed that the words be omitted.

Had the Bill sought to authorise the continuation of the possession and control of the undertaking for a longer period we would have entertained a doubt as to the constitutionality of the Bill but with the amendments suggested we are satisfied that neither the Bill nor any of its provisions (other than Clause 7) is inconsistent with the Constitution. We determine that –

(1) Clause (7) of the Bill is inconsistent with Article 12 (1), and

(2) that the other provisions of the Bill with the suggested amendments are not inconsistent with the Constitution.

G. R. T. D. Bandaranayake.
Judge of the Supreme Court.

M. D. H. Fernando.
Judge of the Supreme Court.

K. M. M. B. Kulatunga.
Judge of the Supreme Court.

First Reading :

08.04.1989 (Hansard Vol. 56 ,No. 9, Col. 1160)

Sponsor :

Minister of Textiles and Rural Industrial Development

Decision of the Supreme Court conveyed to Parliament :

08.04.1989 (Hansard Vol. 56, No. 9 ,Cols. 1149 - 1152)

Second Reading :

08.04.1989 (Hansard Vol. 56, No. 9, Col. 1301)

Committee Stage and Third Reading :

08.04.1989 (Hansard Vol. 56, No. 9 ,Cols. 1301 - 1320)

Hon. Speaker's Certificate :

10.04.1989

Title : Ceylon Cold Stores (Possession and Control) Act, No. 1 of 1989.

APPROPRIATION

A

BILL

to provide for the service of the financial year, 1989, to authorize the raising of loans in or outside Sri Lanka for the purpose of such service, to make financial provision in respect of certain activities of the Government during that financial year, to enable the payment, by way of advances out of the Consolidated Fund or any other fund or moneys of, or at the disposal of, the Government, of moneys required during that financial year for expenditure on such activities, to provide for the refund of such moneys to the Consolidated Fund, and to make provision for matters connected with, or incidental to, the aforesaid matters.

THE APPROPRIATION BILL

In the matter of a Reference under Article 122(1)(b) of the Constitution

Supreme Court, Special Determination No. 1/89
(P/Parl/41)

Present :

H. A. G. de Silva, J.,
Fernando, J., and
Amerasinghe, J.

Counsel :

Shibly Aziz, PC., DSG with Nalin Ladduwahetty, SC., for the Attorney-General.

The Court assembled for the hearing at 10.00 a.m. on 8th March 1989.

A Bill titled "the Appropriation Bill" (an Act to provide for the service of the financial year, 1989, to authorize the raising of loans in or outside Sri Lanka for the purpose of such service, to make financial provision in respect of certain activities of the Government during that financial year, to enable the payment, by way of advances out of the Consolidated Fund or any other fund or moneys of, or at the disposal of, the Government, of moneys required during that financial year for expenditure on such activities, to provide for the refund of such moneys to the Consolidated Fund, and to make provision for matters connected with, or incidental to, the aforesaid matters) was referred to this Court by His Excellency the President, in terms of Article 122(1)(b) of the Constitution, for the special determination of this Court whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate whereby the Cabinet of Ministers has certified that the Bill is urgent in the national interest.

The learned Deputy Solicitor-General appeared before us and assisted us in the consideration of the Bill.

The legal effect of the provisions of the Bill is fully stated in the long title of the Bill. Mr. Aziz, the Deputy Solicitor-General who appeared on behalf of the Attorney-General submitted that the provisions of this Bill do not violate any of the Articles of the Constitution.

We have examined the provisions of the Bill which appears to be within the scope of Article 150(2) of the Constitution and hence we are of the opinion that they do not violate any of the provisions of the Constitution.

It is our determination that the provisions of the Bill are not inconsistent with any of the provisions of the Constitution.

H. A. G. de Silva,
Judge of the Supreme Court.

M. D. H. Fernando,
Judge of the Supreme Court.

A. R. B. Amerasinghe,
Judge of the Supreme Court.

First Reading :

15.03.1989 (Hansard Vol. 55 No. 2 Col. 131)

Sponsor :

Prime Minister and Minister of Finance

Decision of the Supreme Court conveyed to Parliament :

15.03.1989 (Hansard Vol. 55 No. 2 Cols. 129-130)

Second Reading :

16.03.1989-17.03.1989; 20.03.1989; 22.03.1989-23.03.1989;
27.03.1989-29.03.1989 (Hansard Vol. 55 Nos. 3-10 Cols. 149-550; 559-684; 717-819;
839-949; 965-1099; 1119-1247; 1263-1392; 1403-1543)

Committee Stage and Third Reading :

30.03.1989-31.03.1989; 01.04.1989; 03.04.1989-08.04.1989;
10.04.1989-11.04.1989 (Hansard Vol. 56 Nos. 1-11 Cols. 1549-1672; 136-252;
269-412; 427-558; 570-702; 720-837; 847-991; 1005-1136; 1163-1300; 1334-1465;
1487-1630A)

Hon. Speaker's Certificate :

10.05.1989

Title : Appropriation Act, No. 2 of 1989.

UNIVERSITIES (AMENDMENT)

A

BILL

to amend the Universities Act No. 16 of 1978.

THE UNIVERSITIES (AMENDMENT) BILL

In the matter of a Reference under Article 122(1)(b) of the Constitution

Supreme Court, Special Determination No. 2/89
(P/Parl/29)

Present :

H. A. G. de Silva, J.,
Fernando, J., and
Kulatunga, J.

Counsel :

S. W. B. Wadugodapitiya, Solicitor General, with Miss M. N. B. Fernando,
S. C., for the Attorney General.

The Court assembled for the hearing at 10.10 a.m. on 16th March 1989.

A Bill titled "An Act to amend the Universities Act No. 16 of 1978" ("The Universities Amendment Act No. of 1989") was referred to this Court by His Excellency the President, in terms of Article 122(1)(b) of the Constitution, for the special determination of this Court whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate whereby the Cabinet of Ministers has certified that the Bill is urgent in the national interest.

The learned Solicitor General appeared before us and assisted us in the consideration of the Bill.

Clause 70F(1) of the Bill empowers the Minister, in the public interest, to vest in the Government any undertaking carried on by a Degree Awarding Institute. The learned Solicitor General stated that an amendment would be made in Clause 70F(3) by adding the words -

"within sixty days of the publication of the vesting order in the Gazette, and if Parliament is not in session, within fifty days of the commencement of the session next ensuing,"

after the words "before Parliament". He also stated that the words "from the date specified in such Order" would be substituted for the words "from the date of such Order" in Clauses 70F(2), 70H and 70M.

Clause 70G(1) provides for the appointment of a Competent Authority. The Competent Authority would be a public officer within the meaning of the Constitution, and would have to be appointed in terms of Chapter IX of the Constitution. The provision for appointment of the Competent Authority by the Minister is inconsistent with Chapter IX of the Constitution. The learned Solicitor General agreed that the words "there shall be appointed" should be substituted for the words "the Minister shall appoint" in Clause 70G(1).

The learned Solicitor General stated that in Clause 70J(1) the word "appeal" was inappropriate and should be amended by substituting the words "apply to the Minister for the revocation of such Order" for the word "appeal to the Minister against such Order". Consequentially, the word "appeal" in Clause 70J(2) should be deleted, and the words "such application" substituted; and the words "appealed against" deleted. In Clause 70J(3) the words "such application" should be substituted for the words "the appeal".

The learned Solicitor General informed us that in Clause 70K(2) the words "the manner of assessment" would be substituted for the words "the assessment".

Clause 70M is intended to vest in the Competent Authority the powers of the Degree Awarding Institute whose undertaking is vested in the Government. Part IXA of the Principal enactment provides for Institutes which are entities distinct from the State; those provisions cannot be directly applied in their entirety to vested undertakings. If Part IXA is made applicable to a vested undertaking, the provisions for appointment of the Specified Authority (whose appointment is contemplated in Clause 70B) and officers and servants (Clause 70D(vi)) have to be in conformity with the provisions of Chapter IX of the Constitution. The learned Solicitor General agreed that Clause 70M requires amendment, in order to bring its provisions into conformity with the Constitution, as follows :

- (a) by adding the words "Subject to the provisions of the Constitution" at the commencement of that Clause; and
- (b) by adding the words "The provisions of Part IXA shall apply to and undertaking vested in the Government mutatis mutandis and subject to the provisions of the Constitution" at the end of that Clause.

We have examined the provisions of the Bill, and we are of the opinion that upon the suggested amendments being effected, the Bill and its provisions will cease to be inconsistent with the Constitution. We accordingly determine that upon such amendments being effected the provisions of the Bill will not be inconsistent with the Constitution.

H. A. G. de Silva,
Judge of the Supreme Court.

M. D. H. Fernando,
Judge of the Supreme Court.

K. M. M. B. Kulathunga
Judge of the Supreme Court.

First Reading :

15.04.1989 (Hansard Vol. 56 No. 6 Col. 718)

Sponsor :

Minister of Higher Education, Science and Technology

Decision of the Supreme Court conveyed to Parliament :

22.03.1989 (Hansard Vol. 55 No. 6 Cols. 835-837)

Second Reading :

27.04.1989 (Hansard Vol. 57 Nos. 3 Cols. 328-416)

Committee Stage and Third Reading :

27.04.1989 (Hansard Vol. 57 No. 3 Cols. 416-429)

Hon. Speaker's Certificate :

05.05.1989

Title : Universities (Amendment) Act, No. 3 of 1989.

JANASAVIYA

A

BILL

to make provision for the administration of relief under the Janasaviya Programme with a view to maximizing the utilization of human resources, promoting social stability and alleviating poverty ; and for matters connected therewith or incidental thereto.

THE JANASAVIYA BILL

In the matter of a Reference under Article 122(1) (b) of the Constitution

S. C. Special Determination No. 7/89
(P/Parl/44)

Present :

Bandarnayake, J.,
Fernando, J., and
Kulatunga, J.

Counsel :

S. W. B. Wadugodapitiya, P.C., Solicitor-General with K. C. Kamalabayson, Deputy
Solicitor-General for the Attorney-General.

The Court assembled for the hearing at 10.00 a.m. on 7th April 1989.

A Bill titled "An Act to make provision for the administration of relief under the Janasaviya Programme with a view to maximizing the utilization of human resources, promoting social stability and alleviating poverty ; and for matters connected therewith or incidental thereto" ("the Janasaviya Act No. of 1989") was referred to this Court by His Excellency the President, in terms of Article 122(1) (b) of the Constitution, for the special determination of this Court whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate to the effect that in the view of the Cabinet of Ministers the Bill is urgent in the national interest.

Mr. S. W. B. Wadugodapitiya, P.C., Solicitor-General assisted this Court in the hearing of this matter.

The Bill is intended to provide for the administration the Janasaviya Programme ; donations to a Fund established under section 25 of the Finance Act, No. 38 of 1971, are declared to be donations to a Fund established by the Government for the purposes of the application of the Inland Revenue Act, No. 28 of 1979 ; provision is made for the appointment of a Commissioner, Deputy Commissioners and Assistant Commissioners, and clerical and minor staff ; the making of declarations of assets and liabilities for the purpose of ascertaining eligibility for the grant of relief ; and the making of regulations by the Minister. None of these provisions involve any question of inconsistency with the Constitution.

Clause 10 of the Bill imposes a duty on every person who has made a declaration of assets and liabilities and is in receipt of relief, to notify the Commissioner of *any Change* in the particulars furnished by him in such declaration with respect to such assets and liabilities, within two months of such change. Clause 15(2) makes the omission, without reasonable cause, to certify the Commissioner of *any Change* within such period, an offence punishable with fine and/or imprisonment. Although no question of constitutionality is involved, the obligation to notify "any change" appears to be unduly onerous, and may well be qualified : e. g. *any material change*.

The conditions for eligibility for the grant of relief to any individual or family may be prescribed by the Minister by regulation (clause 16(1)(b)). "Any individual or family" in this context would not permit regulations to be made in respect of particular individuals or particular families; regulations may be made prescribing *general* conditions of eligibility for

individuals, and *general* conditions of eligibility for families. After a person is granted relief under and in terms of such regulations, the Commissioner is obliged (clause 9) to discontinue the grant of relief to such person and to require the refund of relief already paid, if the Commissioner is satisfied, firstly, that any statement made in any declaration under section 7 (no reference is made to section 10) is false or incorrect, and secondly, that such person is not entitled to the grant of relief under the regulations. This is not a matter of policy, but involves the decision of questions of fact and, possibly, of law. From this decision, an appeal lies to an Appeals Board (Clause 12) consisting of ten public officers *appointed by the Minister*.

We are of the opinion that the Commissioner, when acting under clause 9 exercises judicial power, and that the Appeals Board also exercises judicial power and is a tribunal or institution established for the adjudication of certain disputes and perhaps also for the administration of Justice. However, the definition of "Judicial Officer" in Article 170 excludes a public officer whose principal duty or duties is or are not the performance of functions of a judicial nature and thus does not preclude the performance of some judicial functions by a public officer.

The learned Solicitor-General agreed that Clause (9) confers a judicial power on the Commissioner, Clause (3) makes no provision as to the appointing authority. If the Commissioner is a public officer, whose principal duties are not the performance of functions of a judicial nature, he would not be a "Judicial Officer" within the meaning of Article 170 of the Constitution : he would not require to be appointed by the Judicial Service Commission, even though Clause (9) confers some functions of a judicial nature. If his principal duties are the performances of functions of a judicial nature, he would have to be appointed by the Judicial Service Commission in terms of Article 114. However, no question of inconsistency presently arisen because the Bill does not provide for the mode of appointment.

The learned Solicitor-General also conceded that the Appeals Board in determining appeals under Clause (12) and (13) of the Bill, exercises judicial power. The Board has no other functions. It is therefore with the definition of "Judicial Officer" in Article 170 of the Constitution, being a "tribunal or institution established for the administration of justice, or for the adjudication of any labour or *other dispute*", and accordingly any such presiding officer or member must be appointed by the Judicial Service Commission under and in terms of Article 114.

We are therefore of the opinion, and determine, that Clause 12(1) of the Bill is inconsistent with Articles 114 and 170 of the Constitution and may only be passed by the special majority required by Article 84 (2); but would cease to be inconsistent upon the deletion of the provision for appointment by the Minister.

We are of the opinion, and determine, that the other provisions of the Bill are not inconsistent with the Constitution.

C. R. T. D. Bandaranayake
Judge of the Supreme Court.

M. D. H. Fernando
Judge of the Supreme Court.

K. M. M. B. Kulatunga
Judge of the Supreme Court.

First Reading:

11.04.1989 (Hansard Vol. 56 No. 11 Col. 1486)

Sponsor:

Minister of Agriculture, Food and Co-operatives

Decision of the Supreme Court Conveyed to Parliament:

10.04.1989 (Hansard Vol. 56 No. 10 Cols. 1321 – 1323)

Second Reading:

26.04.1989 (Hansard Vol. 57 No. 2 Cols. 176 - 265)

Committee Stage and Third Reading :

26.04.1989 (Hansard Vol. 57 No. 2 Cols. 265 - 278)

Hon. Speaker's Certificate :

10.05.1989

Title : Janasaviya Act, No. 4 of 1989.

TAX AMNESTY

A

BILL

to enable the deposit in Special Accounts in the National Savings Bank of moneys representing accumulated profits and income in respect of which a person has not furnished a return of income or which have not been disclosed in a return furnished by such person under the law relating to the Imposing of Income Tax ; to Impose and Levy a Tax on the moneys deposited in such special accounts ; to enable the withdrawal of the moneys deposited in such special accounts for specified purposes ; to indemnify persons who deposit moneys in such special accounts against liability to pay certain taxes in respect of the profits and income represented by such moneys and against prosecutions for offences in relation to such profits and income ; and for matters connected therewith or incidental thereto.

THE TAX AMNESTY BILL

In the matter of a Reference under Article 122 (1) (b) of the Constitution

S. C. Special Determination No. 3/89
(P/Parl/2)

Present:

Bandaranayake, J.,
Fernando, J., and
Kulatunga, J.

Counsel :

S. W. B. Wadugodapitiya, P. C., Solicitor-General with S. Marsoof, Deputy
Solicitor-General for the Attorney-General.

The Court assembled for the hearing at 10.00 a. m. on 8th April 1989.

A Bill titled "An Act to enable the deposit on special accounts in the National Savings Bank of moneys representing accumulated profits and income in respect of which a person has not furnished a return of income or which have not been disclosed in a return furnished by such person under the law relating to the imposition of income tax ; to impose and levy a tax on the moneys deposited in such special accounts; to enable the withdrawal of the moneys deposited in such special accounts for specified purposes; to indemnify persons who deposit moneys in such special accounts against liability to pay certain taxes in respect of the profits and income represented by such moneys and against prosecutions for offences in relation to such profits and income ; and for matters connected therewith or incidental thereto " (" the Tax Amnesty Act No. of 1989") was referred to this Court by His Excellency the President, in terms of Article 122 (1) (b) of the constitution, for the special determination of this Court whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate to the effect that in the view of the Cabinet of Ministers the Bill is urgent in the national interest.

Mr. S. W. B. Wadugodapitiya, P. C., Solicitor-General assisted this Court in the hearing of this matter.

The purpose of the Bill is to afford a tax amnesty to persons liable to income tax or surcharge on income tax, for years of assessment ending on or before 31.3.88, who have not furnished returns of income or have not disclosed certain profits or income in the returns furnished by them. Such persons are required to deposit the moneys representing such accumulated profits or income in special accounts in the National Savings Bank, to make prescribed declarations, and to pay a tax of an amount equal to twenty percent of the moneys deposited. The Bill provides that such moneys may not be withdrawn until after 30.6.91, except for certain specified purposes. Persons who make such deposits, and pay the aforesaid tax, are thereupon indemnified from various taxes, penalties and prosecutions.

In regard to the class of persons liable to pay income tax and surcharge on income tax for the years of assessment ending on or before 31.3.88, the Bill seeks to make special provision for certain persons who have failed to comply with their statutory obligations, including a different (and probably lower) rate of tax and relief from the penalties and prosecutions for default. *Prima facie*, the Bill appears to discriminate in favour of tax evaders and against the honest tax-payer, and we have to consider whether the Bill is inconsistent with Article 12 (1) for that reason.

In the *Bearer Bonds Case (R. K. Garg v Union of India, A.I.R. 1981 S.C. 2138)*, the Supreme Court of India, by a majority, held that a statute which exempted certain Bearer Bonds from various taxes was not violative of the equality provisions, although such Bonds would probably have been purchased only by those evading tax utilising "black" money. Although this decision has been criticised (see *Seervai*, Constitutional Law of India, 3rd edition, pp. 313-330), the Bill now under consideration does not extend to those evading tax, benefits of the same nature and extent as in the Indian statute considered in that case. This Bill corresponds, rather, to the Voluntary Disclosure schemes referred to by *Seervai* (page 319), under which a person getting the benefit of the scheme is required to make a declaration, to disclose his identity, and to pay a part of the amount disclosed as tax; the disclosure would render the person concerned subject to taxation; in the future, and the immunities and tax benefits granted were thus limited to the past years only.

Seervai observes :

" that scheme had an intelligible principle, namely to get the tax dodger to confess voluntarily his wrong doing; to exempt him from penal consequences; to require him to make a substantial payment of the undisclosed income and/or wealth as tax, and then bring the balance into his accounts."

Thus, even if there is some doubt as to the correctness of the majority decision in the *Bearer Bonds case*, the Bill under consideration is significantly different : it confers certain advantages on the tax evader, in respect of past years, based on a rational and intelligible basis of differentiation; and with the objective of bringing a distinct category of persons, namely those resorting to tax evasion, into the fiscal net, in the future. There is no inconsistency with Article 12 (1).

We have examined the provisions of the Bill, and we are of the opinion that neither the Bill nor any provision thereof is inconsistent with the constitution. We accordingly determine that the provisions of the Bill are consistent with the Constitution.

G. R. T. D. Bandaranayake
Judge of the Supreme Court.

M. D. H. Fernando
Judge of the Supreme Court.

K. M. M. B. Kulatunga
Judge of the Supreme Court.

First Reading:

10.04.1989 (Hansard Vol. 56 No. 10 Col. 1332)

Sponsor:

Prime Minister and Minister of Finance

Decision of the Supreme Court Conveyed to Parliament:

08.04.1989 (Hansard Vol. 56 No. 9 Cols. 1153-1156)

Second Reading:

11.04.1989 (Hansard Vol. 56 No. 11 Col. 1629A)

Committee Stage and Third Reading :

11.04.1989 (Hansard Vol. 56 No. 11 Cols. 1629A-1630A)

Hon. Speaker's Certificate :

11.05.1989

Title : Tax Amnesty Act, No. 5 of 1989.

TURNOVER TAX (AMENDMENT)

A

BILL

to amend the Turnover Tax Act, No. 69 of 1981

THE TURNOVER TAX (AMENDMENT) BILL

In the matter of a Reference under Article 122 (1) (b) of the Constitution

S.C. Special Determination No 5/89
(P/Parl/43)

Present :

Bandaranayake, J.
Fernando, J., and
Kulutunga, J.

Counsel :

S. W. B. Wadugodapitiya, P. C., Solicitor - General with K. M. P. R. Karunaratne, Senior State Counsel for the Attorney-General.

The Court assembled for the hearing at 10.00 a.m. on 6th April 1989.

A Bill titled "An Act to amend the Turnover Tax Act, No. 69 of 1981 ("the Turnover Tax (Amendment) Act, No. of 1989") was referred to this Court by His Excellency the President, in terms of Article 122(1)(b) of the Constitution, for the special determination of this Court whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate to the effect that in the view of the Cabinet of Ministers the Bill is urgent in the national interest.

Mr. S. W. B. Wadugodapitiya, P.C., Solicitor-General assisted this Court in the hearing of this matter.

The Bill provides that where an importer or manufacturer sells, in the course of his business as an importer or manufacturer, any article (other than an excepted article), he shall deduct a tax (the "withholding turnover tax") calculated at one percentum of the amount received or receivable in respect of such sale, where such amount forms part of his turnover as such importer or manufacturer. Upon making such deduction, a voucher is required to be issued to the buyer, setting out the relevant particulars of the transaction. In effect, the turnover tax payable by such importer or manufacturer is increased by one percentum.

Clause 3 of the Bill seeks to introduce a new provision (Section 50A(3)) which is not clearly drafted. It appears intended to cover the case where the buyer re-sells such article. In which event his turnover would include the amount received or receivable in respect of such re-sale; such buyer thereupon becomes entitled to credit (subject to specified exceptions) in respect of the amount of withholding turnover tax already deducted, as set out in the voucher issued to him. The proposed Section 50A(3) should more accurately provide –

"Where the turnover of any person liable to turnover tax includes a sum received or receivable upon the sale (etc) of an article in respect of which withholding turnover tax has been deducted"

Thus the effect of the Bill is to levy an increased tax on importers and manufacturers, and to give credit by way of set-off to buyers who re-sell such articles. However, buyers who do not re-sell such articles will not be entitled to any such credit or set-off. These are two distinct

categories of buyers, and in the former case turnover tax is being levied a second time on the same article ; hence the fact that the first category of buyers is entitled to credit, while the latter is not, does not constitute unequal treatment contrary to Article 12(1).

We have examined the provisions of the Bill, and we are of the opinion that neither the Bill nor any provision thereof is inconsistent with the Constitution. We accordingly determine that the provisions of the Bill are consistent with the Constitution.

G. R. I. D. Bandaranayake,
Judge of The Supreme Court.

M. D. H. Fernando,
Judge of The Supreme Court.

K. M. M. B. Kulatunga,
Judge of The Supreme Court.

First Reading :

10.04.1989 (Hansard Vol. 56 No. 10 Col. 1333)

Sponsor :

Prime Minister and Minister of Finance

Decision of the Supreme Court conveyed to Parliament :

08.04.1989 (Hansard Vol. 56 No. 9 Cols. 1153 – 1156)

Second Reading :

11.04.1989 (Hansard Vol. 56 No. 11 Col. 1634A)

Committee Stage and Third Reading :

11.04.1989 (Hansard Vol. 56 No. 11 Cols. 1634A – 1635A)

Hon. Speaker's Certificate :

11.05.1989

Title : Turnover Tax Act, No. 6 of 1989.

SURCHARGE ON INCOME TAX

A

BILL

to impose a surcharge on every person chargeable with income tax for the year of assessment commencing respectively on April 1, 1989, and on April 1, 1990, by reference to the income tax payable by such person for each such year of assessment ; and to provide for matters connected therewith or incidental thereto.

THE SURCHARGE ON INCOME TAX BILL

In the matter of a Reference under Article 122(1)(b) of the Constitution

S.C. Special Determination No 4/89
(P/Parl/42)

Present :

Bandaranayake, J.,
Fernando, J., and
Kulutunga, J.

Counsel :

S. W. B. Wadugodapitiya, P. C., Solicitor - General with P. A. Ratnayake, Senior State Counsel for the Attorney-General.

The Court assembled for the hearing at 10.00 a.m. on 6th April 1989.

A Bill titled "An Act to impose a surcharge on every person chargeable with income tax for the years of assessment commencing respectively on April 1, 1989, and on April 1, 1990, by reference to the income tax payable by such person for each such year of assessment ; and to provide for matters connected therewith or incidental thereto" ("the surcharge on Income Tax Act, No. of 1989") was referred to this Court by His Excellency the President, in terms of Article 122(1)(b) of the Constitution, for the special determination of this Court whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate to the effect that in the view the Cabinet of Ministers the Bill is urgent in the national interest.

Mr. S. W. B. Wadugodapitiya, P.C., Solicitor-General assisted this Court in the hearing of this matter.

The purpose of the Bill is to impose on every person chargeable with income tax a surcharge on the income tax payable by him for the two years of assessment commencing on 1.4.89 and 1.4.90. The Bill provides for the amount of such surcharge, as well as the manner and dates of payment and deduction thereof, and assessments, default in payment, and recovery, of the surcharge. No question of discrimination or unequal treatment arises as a uniform rate of fifteen per centum is prescribed.

However, Clause 2 of the Bill provides that the surcharge shall be paid "notwithstanding anything contained in any other written law or in any convention, grant or *agreement*". Article 157 of the Constitution provides that certain Treaties or Agreements, when approved by Parliament in the manner prescribed therein, shall have the force of law in Sri Lanka and "otherwise than in the interests of national security no written law shall be enacted or made in contravention of the provisions of such Treaty or Agreement." Insofar as Clause 2 of the Bill purports to impose the surcharge notwithstanding the provisions of an Agreement duly approved by Parliament under and in terms of Article 157, the provisions of Clause 2 are inconsistent with Article 157. The provisions of Clause 2 (in its present form) of the Bill may only be passed by the special majority required under the provisions of Article 84(2) namely, two-thirds of the whole number of Members of Parliament. However, if Clause 2 is amended by the omission of the word "agreement" or if suitable provision is made to the effect that the "agreements" referred to therein do not include Treaties and Agreements duly

approved by Parliament under and in terms of Article 157, that Clause would cease to be inconsistent with the Constitution and the special majority prescribed by Article 84(2) would not be required.

We have examined the provisions of the Bill, and we are of the opinion, and determine, that Clause 2 of the Bill is inconsistent with Article 157 of the Constitution to the extent set out above; if that clause is amended as aforesaid, neither the Bill nor any of its provisions would be inconsistent with the Constitution.

G. R. T. D. Bandaranayake,
Judge of The Supreme Court

M. D. H. Fernando,
Judge of The Supreme Court

K. M. M. B. Kulatunga,
Judge of The Supreme Court

First Reading :

10.04.1989 (Hansard Vol. 56 No. 10 Col. 1332)

Sponsor :

Prime Minister and Minister of Finance

Decision of the Supreme Court conveyed to Parliament :

08.04.1989 (Hansard Vol. 56 No. 9 Cols. 1156 – 1159)

Second Reading :

11.04.1989 (Hansard Vol. 56 No. 11 Col. 1631A)

Committee Stage and Third Reading :

11.04.1989 (Hansard Vol. 56 No. 11 Cols. 1631A – 1632A)

Hon. Speaker's Certificate :

11.05.1989

Title : Surcharge on Income Tax Act, No. 7 of 1989.

SURCHARGE ON WEALTH TAX

A

BILL

to impose a surcharge on every person liable to pay Wealth Tax for the years of assessment commencing respectively on April 1, 1989, and on April 1, 1990, by reference to the Wealth Tax payable by such person for each of such years of assessment; and to provide for matters connected therewith or incidental thereto.

THE SURCHARGE ON WEALTH TAX BILL

In the matter of a Reference under Article 122 (1) (b) of the Constitution.

S. C. Special Determination No. 6/89
(P/Parliament/ 45)

Present :

Bandaranayake, J.,
Fernando, J., and
Kulutunga, J.

Counsel :

S. W. B. Wadugodapitiya, P. C., Solicitor - General with A. F. T. Fernando, state Counsel for the Attorney- General.

The Court assembled for the hearing at 10.00 a.m. on 6th April 1989.

A Bill titled "An Act to impose a surcharge on every person liable to pay Wealth Tax for the years of assessment commencing respectively on April 1, 1989, and on April 1, 1990, by reference to the wealth tax payable by such person for each of such years of assessment and to provide for matters connected therewith or incidental thereto ("the Surcharge on Wealth Tax Act, No. of 1989") was referred to this Court by His Excellency the President in terms to Article 122 (1) (b) of the Constitution, for the special determination of this Court whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate to the effect that in the view of the Cabinet of Ministers the Bill is urgent in the national interest.

Mr. S. W. B. Wadugodapitiya, P. C., Solicitor - General assisted this Court in the hearing of this matter.

The purpose of the Bill is to impose on every person chargeable with pay wealth tax a surcharge on the wealth tax payable by him for the two years of assessment commencing on 1.4.89 and 1.4.90. The Bill provides for the amount of such surcharge, as well as the manner and dates of payment thereof, and assessments, default in payment, and recovery, of the surcharge. No question of discrimination or unequal treatment arises as a uniform rate of fifteen percentum is prescribed.

However, clause 2 of the Bill provides that the surcharge shall be paid "notwithstanding anything contained in any written law or in any convention, grant or agreement". Article 157 of the Constitution provides that certain Treaties or Agreements, when approved by Parliament in the manner prescribed therein, shall have the force of law in Sri Lanka and "otherwise than in the interests of national security no written law shall be enacted or made in contravention of the provisions of such Treaty or Agreement." Insofar as clause 2 of the Bill purports to import the surcharge notwithstanding the provisions of an Agreement duly approved by Parliament under and in terms of Article 157, the provisions of clause 2 are inconsistent with Article 157. The provisions of clause 2 (in its present form) of the Bill may only be passed by the special majority required under the provisions of Article 84 (2), namely, two-thirds of the whole number of Members of Parliament. However, if clause 2 is amended by the omission of the

word "agreement" or if suitable provision is made to the effect that the "agreements" referred to therein do not include Treaties and Agreements duly approved by Parliament under and in terms of Article 157, that clause would cease to be inconsistent with the Constitution and the special majority prescribed by Article 84 (2) would not be required.

We have examined the provisions of the Bill, and we are of the opinion, and determine, that clause 2 of the Bill is inconsistent with Article 157 of the Constitution to the extent set out above: if that clause is amended as aforesaid, neither the Bill nor any of its provisions would be inconsistent with the Constitution.

G. R. T. D. Bandaranayake.
Judge of the Supreme Court.

M. D. H. Fernando.
Judge of the Supreme Court.

K. M. M. B. Kulatunga.
Judge of the Supreme Court.

First Reading :

10.04.1989 (Hansard Vol. 56 No. 10 Col. 1333)

Sponsor :

Prime Minister and Minister of Finance

Decision of the Supreme Court conveyed to Parliament :

08.04.1989 (Hansard Vol. 56 No. 9 Cols. 1156 - 1159)

Second Reading :

11.04.1989 (Hansard Vol. 56 No. 11 Col. 1632A)

Committee Stage and Third Reading :

11.04.1989 (Hansard Vol. 56 No. 11 Cols. 1632A - 1633A)

Hon. Speaker's Certificate :

11.05.1989

Title : Surcharge on Wealth Tax Act, No. 8 of 1989.

REGISTRATION OF THE ELECTORS (AMENDMENT)

A

BILL

to amend the Registration of Electors Act, No. 44 of 1980

THE REGISTRATION OF ELECTORS (AMENDMENT) BILL

In the matter of a Reference under Article 122 (1) (b) of the Constitution.

S. C. Special Determination No. 9/89
(P/Parl/46)

Present :

Bandaranayake, J.,
Fernando, J., and,
Kulutunga, J.

Counsel :

E. R. L. Jayatilake, Deputy Solicitor - General with S. Marsoof, Deputy Solicitor - General, for the Attorney - General.

The Court assembled for the hearing at 10.00 a.m. on 7th April 1989.

A Bill titled "An Act to amend the Registration of Electors Act, No. 44 of 1980" ("The Registration of Electors (Amendment) Act, No. of 1989") was referred to this Court by His Excellency the President, in terms of Article 122 (1) (b) of the Constitution, for the special determination of this Court whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate to the effect that in the view of the Cabinet of Ministers the Bill is urgent in the national interest.

Mr. E. R. L. Jayatilake, Deputy Solicitor - General assisted this Court in the hearing of this matter.

Under the Indo-Ceylon Agreement (Implementation Act, No. 14 of 1967, the Grant of Citizenship to Stateless Persons Act, No 5 of 1986, and the Grant of Citizenship to Stateless Persons (Special Provisions) Act, No. 39 of 1988, certain persons became entitled to the grant of the status of a citizen of Sri Lanka. The Bill now under consideration is intended to amend the Registration of Electors Act, No. 44 of 1980, by making certain special provisions regarding the entry of the names of such persons in the relevant electoral registers.

Under section 12 (1) of the principal enactment, on or before the first day of June in each year, the Commissioner of Elections shall cause the revision of the register for each electoral district to be commenced; the first day of June is the qualifying date on which a person should have attained the age of eighteen years to qualify for the purpose of registration as an elector, and on which a person should be resident in any electoral district in order to have his name entered in the register of that electoral district in order to have his name entered in the register of that electoral district. A list ("list B") containing the names of persons, not already on the register, is made available for inspection; section 14 enables persons who claim to be qualified to have their names entered in such electoral register, and whose names have been omitted from such register and from "list B", to make claims for the inclusion of their names in the register; section 14 (3) prescribes the period within which such claims must be made.

The Bill provides that any person who has been granted the status of a citizen of Sri Lanka after the expiration of the period for making such claims, may apply before the eighth day of May of the succeeding year to have his name entered in the register. The effect of these provisions is that a person who was not qualified - as he was not a citizen of Sri Lanka - on the first day of June of the year in which the revision commenced, to have his name entered on the register, and who was not so qualified during the period when claims could be made

under section 14, is nevertheless given the right to have his name included in such register if he was granted that status after the expiration of that period, but before the eighth day of May of the succeeding year.

Prima facie these provisions appear to give preferential treatment to persons who acquire citizenship under the aforementioned statutes: persons who acquire citizenship under other enactments are not afforded the same privilege. However, reference to those statutes reveal that the Bill is intended to apply to a class of persons to whom the Government of Sri Lanka had agreed to grant citizenship, and that such grant of citizenship had been unduly delayed due to unforeseen circumstances. Had citizenship been granted earlier, the names of such persons would have been entered on the relevant electoral registers much earlier. There is thus no preferential treatment or discrimination in favour of such persons, and no question of inconsistency with Article 12 arises.

It would appear that the proposed section 17A is not intended to override the provisions section 4 of the principal enactment; that a person is entitled to be registered in the register for the electoral district in which he is resident. However, the proposed section 17A merely refers to "the register", and does not expressly refer to the place of residence. This Commission would appear to entitle persons covered by the proposed section 17A to be registered in any electoral district of their choice and would then be in violation of Article 12 (1), as other citizens do not have the same right. We are of the opinion, and determine, that the proposed section 17A (1) is inconsistent with Article 12(1) of the Constitution to that extent, but would cease to be inconsistent if amended by providing that the persons concerned are entitled to have their names entered in the register of the electoral district in which they were resident on the first day of June of the year in which the revision of the register commenced.

We are of the opinion, and determine, that the other provisions of the Bill are not inconsistent with the Constitution.

G. R. T. D. Bandaranayake.
Judge of the Supreme Court.

M. D. H. Fernando.
Judge of the Supreme Court.

K. M. M. B. Kulatunga.
Judge of the Supreme Court.

First Reading :

11.04.1989 (Hansard Vol. 56 No. 11 Col. 1485)

Sponsor :

Prime Minister and Minister of Finance

Decision of the Supreme Court conveyed to Parliament :

10.04.1989 (Hansard Vol. 56 No. 9 Cols. 1323 - 1325)

Second Reading :

25.04.1989 (Hansard Vol. 57 No. 1 Cols. 16 - 144)

Committee Stage and Third Reading :

25.04.1989 (Hansard Vol. 57 No. 1 Cols. 143 - 161)

Hon. Speaker's Certificate :

11.05.1989

Title : Registration of Electors (Amendment) Act, No. 10 of 1989.

INLAND REVENUE (AMENDMENT)

A

B I L L

to amend the Inland Revenue Act, No. 28 of 1979

THE INLAND REVENUE (AMENDMENT) BILL

In the matter of a Reference under Article 122 (1) (b) of the Constitution.

S. C. Special Determination No. 10/89
(P / Parl / 20)

Present :

Bandaranayake, J.,
Fernando, J., and
Kulatunga, J.

Counsel :

J.A.N. de Silva, Deputy Solicitor-General with P.A. Ratnayake, Senior State Counsel for the Attorney-General.

The Court assembled for the hearing at 10.00 a.m. on 7th April 1989.

A Bill titled "An Act to amend the Inland Revenue Act No. 28 of 1979 ("The Inland Revenue (Amendment) Act No. of 1989")" was referred to this Court by His Excellency the President, in terms of Article 122 (1) (b) of the Constitution, for the special determination of this Court whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate to the effect that in the view of the Cabinet of Ministers the Bill is urgent in the national interest.

Mr. J. A. N. de Silva, Deputy Solicitor-General, assisted this Court at the hearing of this matter.

The Bill seeks to make various amendments to the principal enactment: extending the category of exemptions from tax, amending the nature and extent of exemptions from tax, amending the provisions in regard to the deduction of expenses and the ascertainment of taxable income, providing for taxation and withholding tax in respect of Treasury Bills, amending the provisions in regard to the determination of appeals, the payment of rewards, and the rate of taxation. We have examined these provisions, none of which raise any question of inconsistency with the Constitution.

We determine that neither the Bill nor any of its provisions is inconsistent with the Constitution.

G. R. T. D. Bandaranayake,
Judge of the Supreme Court.

M. D. H. Fernando,
Judge of the Supreme Court.

K. M. M. B. Kulatunga,
Judge of the Supreme Court.

First Reading :

10.04.1989 (Hansard Vol. 56 No. 10 Col. 1333)

Sponsor :

Prime Minister and Minister of Finance

Decision of the Supreme Court conveyed to Parliament :

10.04.1989 (Hansard Vol. 56 No. 10 Cols. 1325 – 1327)

Second Reading :

11.04.1989 (Hansard Vol. 56 No. 11 Col. 1635A)

Committee Stage and Third Reading :

11.04.1989 (Hansard Vol. 56 No. 11 Cols. 1636A – 1637A)

Hon. Speaker's Certificate :

15.05.1989

Title : Inland Revenue (Amendment) Act, No. 11 of 1989.

PROVINCIAL COUNCILS (CONSEQUENTIAL PROVISIONS)

A

BILL

**to make interim provision for the interpretation of written law on
matters set out in List I and III of the Ninth Schedule to the
Constitution.**

THE PROVINCIAL COUNCILS (CONSEQUENTIAL PROVISIONS) BILL

In the matter of a Reference under Article 122 (1) (b) of the Constitution.

S. D. No. 11 / 89.

Present :

E. A. D. Atukorale – Judge of the Supreme Court.

G. P. S. de Silva – Judge of the Supreme Court.

M. Jameel – Judge of the Supreme Court.

Counsel :

M. S. Aziz, P. C., Additional Solicitor-General with Rohan Jayatilake, Deputy Solicitor-General for the Attorney-General.

R. K. W. Goonasekera with Daya Guruge for J. R. P. Suriyapperuma, Secretary, Sri Lanka Freedom Party.

P. A. D. Samerasekera, P. C., with Lalanath de Silva for Dinesh Gunawardena, M. P.

Gamini Iriyagolle with Shantha Senadheera for the Sinhala Lawyers' Association.

Lalanath de Silva with Ravi Algama, Sumudu Vithanage for Environmental Foundation and the Wildlife Protection Society of Ceylon.

Court Assembled for the Hearing : At 10.05 a.m. on 24th April, 1989.

A Bill titled "An Act to make interim provision for the interpretation of written law on matters set out in List I and III of the Ninth Schedule to the Constitution" was referred to the Chief Justice by His Excellency the President in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for the special determination of the Supreme Court as to whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill bears an endorsement under the hand of the Secretary to the Cabinet of Ministers to the effect that the Cabinet of Ministers has certified that in its view the Bill is urgent in the national interest.

Mr. Aziz, the learned Additional Solicitor-General as well as Messrs R. K. W. Goonasekera, P. A. D. Samerasekera, P. C., Gamini Iriyagolla and Lalanath de Silva assisted us in the consideration of the Bill.

The two principal submissions made to us on behalf of the parties who applied to be heard in terms of Rule 63 (2) (iii) of the Supreme Court Rule, 1978 were briefly as follows :-

Firstly, it was submitted that there has been no change in the vesting of the executive power even after the enactment of the 13th amendment to the Constitution, but that this Bill unconstitutionally seeks to derogate from the executive power vested in the President and that accordingly this is a Bill which is inconsistent specifically with Article 4 (b) of the Constitution. The learned Additional Solicitor-General relied on Article 154 (C) of the Constitution. It was then contended that this Article has no application to laws enacted prior

to 14th November 1987 (date of certification of the 13th amendment) but only to those laws enacted thereafter. The learned Additional Solicitor-General referred us to the case of *Ram Jawaya Kapur vs. Punjab* (1955, 2 S.C.R 225) in which Mukherjee J. observed:—

“..... the language of Article 162 clearly indicates that the powers of the State Executive do extend to matters upon which the State Legislature is competent and are not confined to matters over which legislation has been passed already.”

On a consideration of these submissions we are inclined to agree with the submissions of the learned Additional Solicitor-General on this point.

Secondly, it was submitted that the provisions of the Bill are inconsistent with sub-Articles (8) and (9) of Article 154 G. In regard to these sub-articles we are of the view that no question of any inconsistency with these sub-articles could arise for our consideration since, admittedly, no statute has been made by any Provincial Council.

In conclusion we would also refer to an important submission made by the Additional Solicitor-General, namely, Article 154 Q which enacts:

"154 Q Parliament shall by law provides for

- (a)
- (b)
- (c)
- (d) any other matter necessary for the purpose of giving effect to the principles or provisions of this Chapter, and for any matters connected with or incidental to the provisions of this Chapter."

The underlying principle here involved is the meaningful and effective devolution of the executive power. The Bill under consideration is in our view in accord with the above constitutional provision.

Accordingly, we determine that neither the Bill nor any of the provisions is inconsistent with the Constitution.

E. A. D. Atukorale,
Judge of the Supreme Court.

G. P. S. de Silva,
Judge of the Supreme Court.

M. Jameel,
Judge of the Supreme Court.

First Reading :

27.04.1989 (Hansard Vol. 57 No. 3 Col. 327)

Sponsor :

Prime Minister and Minister of Finance

Decision of the Supreme Court conveyed to Parliament :

26.04.1989 (Hansard Vol. 57 No. 2 Cols. 163 – 165)

Second Reading :

10.05.1989 – 12.05.1989

25.05.1989 – 26.05.1989

(Hansard Vol. 57 Nos. 5 – 9 Cols. 542 – 614; 678 – 747;
817 – 851; 899 – 1013; 1102 – 1302)

Committee Stage and Third Reading :

26.05.1989 (Hansard Vol. 57 No. 9 Cols. 1301 – 1305)

Hon. Speaker's Certificate :

30.05.1989

Title : Provincial Councils (Consequential Provisions) Act, No. 12 of 1989.

EXCISE (SPECIAL PROVISIONS)

A

BILL

to provide for the levy and charge of excise duty on articles produced or manufactured in or imported into, Sri Lanka and for matters connected therewith or incidental thereto.

THE EXCISE (SPECIAL PROVISIONS) BILL

In the matter of a Reference under Article 122(1)(b) of the Constitution.

S.D. No. 13/89

Present :

H. A. G. DE SILVA, Judge of the Supreme Court
G. R. T. D. BANDARANAYAKE, Judge of the Supreme Court
R. N. M. DHEERARATNE, Judge of the Supreme Court

Counsel :

M. S. Aziz, PC., Additional Solicitor-General with K. C. Kamalabayson, Deputy Solicitor-General and K. Sripavan, Senior State Counsel, for the Attorney-General.

Court Assembled for the Hearing : At 10.00 a.m. on 25th August, 1989.

A Bill titled "An Act to provide for the Levy and charge of excise duty on articles produced or manufactured in, or imported into, Sri Lanka and for matters connected therewith or incidental thereto" was referred to the Chief Justice by His Excellency the President in terms of Article 122(1)(b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for a special determination by the Supreme Court as to whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill bears an endorsement under the hand of the Secretary to the Cabinet of Ministers to the effect that the Cabinet of Ministers has certified that in its view the Bill is urgent in the national interest.

The learned Additional Solicitor-General appeared before us and assisted us in the consideration of the Bill.

The Bill seeks to introduce a new method of revenue collection and seeks to provide a cohesive plan of taxation. It does not repeal the Excise Ordinance, or the Customs Ordinance, or part XII of the Finance Act, No. 11 of 1963 pertaining to Business Turnover Taxes. The Bill is limited to the collection of revenue.

Part I of the Bill deals with administration. It creates the post of Director General of Excise which office is distinct from the Excise Commissioner under the Excise Ordinance.

Part II of the Bill deals with the determination of rates of excise duty. Section 3(2) empowers the Minister to impose excise duty at determined rates. The Minister's discretion however is limited to categories or classes or articles by description and hence does not offend the equality provisions of the Constitution. Sub-section 4 of that part provides that orders so made by the Minister will secure the approval of Parliament.

Part III of the Bill relates to the recovery of tax. Although it is not a constitutional matter, it is observed that no period within which a person aggrieved by the decision of the Director General may appeal to the Court of Appeal has been specified.

Part IV deals with the registration of persons for the purpose of the Act. Section 16 permits the Director General to suspend the registration of a person if that person falls within any of the categories enumerated in Section 16(1) thereof. Although this is not a Constitutional matter, the learned Additional Solicitor General informed the Court that it would be advisable to stipulate a maximum period wherein the Director General may so suspend such a person.

We have also considered the effect of the provisions of this Act in view of the 13th Amendment to the Constitution and we find that the proposed taxation falls within List II contained in the 9th Schedule to the said 13th Amendment, which are matters reserved for the Government of Sri Lanka.

On a careful examination of the several clauses in the Bill including those referred to above, we are of the view that the provisions of the Bill are not inconsistent with the Constitution. Accordingly this Court determines that the Bill or any provision thereof is not inconsistent with the Constitution.

H. A. G. De Silva,
Judge of the Supreme Court.

G. R. T. D. Bandaranayake,
Judge of the Supreme Court.

R. N. M. Dheeraratne,
Judge of the Supreme Court.

First Reading :

05.09.1989 (Hansard Vol. 58 No. 13 Col. 1713)

Sponsor :

Prime Minister and Minister of Finance

Decision of the Supreme Court conveyed to Parliament :

05.09.1989 (Hansard Vol. 58 No. 13 Cols. 1695 – 1696)

Second Reading :

07.09.1989 (Hansard Vol. 58 No. 15 Cols. 1878 – 1929)

08.09.1989 (Hansard Vol. 58 No. 16 Cols. 1963 – 2037)

Committee Stage and Third Reading :

08.09.1989 (Hansard Vol. 58 No. 16 Cols. 2037 – 2063)

Hon. Speaker's Certificate :

12.10.1989

Title : Excise (Special Provisions) Act, No. 13 of 1989.

JUDICATURE (AMENDMENT)

A

BILL

to amend the Judicature Act, No. 2 of 1978.

THE JUDICATURE (AMENDMENT) BILL

In the matter of an application under Article 121(1) of the Constitution.

S. C. No. 3/89 (Special)

Petitioner:

Amarasiri Panditharatne of No. 127, Poorwarama Road, Kirullapone, Colombo 5.

Before :

Atukorale J.,
H. A. G. de Silva, J. and
Bandaranayake, J.

Counsel :

R. K. W. Goonesekera with Jayampathy Wickramaratne, M. S. M. Subaid, Hemasiri Witanachchi, Manohara R. De Silva and Prasantha de Silva for the Petitioner

S. W. B. Wadugodapitiya P.C., Solicitor-General, with K. C. Kamalabayson, Deputy Solicitor-General and D. M. Karunaratne, State Counsel, for the Attorney-General.

Argued on : 23.5.1989

Decided on : 31.5.1989.

This petition filed in the Registry of the Supreme Court on 15.5.1989 relates to the Bill titled "Judicature (Amendment) – A Bill to amend the Judicature Act, No. 2 of 1978." The petitioner, who is a citizen of Sri Lanka, has by his petition invoked the jurisdiction of this court in terms of Article 121 (1) of the Constitution to have the following question determined, namely, whether S. 5B(1) of the Bill is inconsistent with Articles 114, 4 (c) and 3 of the Constitution. Learned counsel for the Petitioner and the learned Solicitor-General assisted us at the hearing.

S. 5B of the Bill reads as follows :

Appointment of the master

- 5B. (1) There shall be appointed to every such court as may be specified by the Minister by Order published in the Gazette, in consultation with the Chief Justice, an officer to be called the Master.
- (2) The Master shall sit separately and exercise all the powers or jurisdiction vested in him by subsection (3).
- (3) The Master shall attend to and deal with all pre-trial matters as arise in the course of a civil proceeding instituted in the court to which he is appointed, including the framing of issues and the recording of admissions :

Provided that it shall be competent for the trial judge to record such admission and frame such issues whether by way of amendment of existing issues or otherwise as may be considered to be appropriate during the conduct of the trial before him.

- (4) The Master may, with the concurrence of the judge of the court, submit for determination by such judge any matter which may otherwise have been properly dealt with by him.
- (5) The Judge of any court may refer to the Master any matter of a procedural nature arising in the course of an action instituted in that court after the stage referred to in subsection (3).
- (6) The Master shall have the power to do all such acts connected with or incidental or ancillary to, the exercise of the powers and jurisdiction vested in him by subsection (3), including the maintenance of the Journals of the Court.

The Petitioner has in his petition averred that S. 5B (1) of the Bill seeks to appoint an officer to be called the Master; that the powers and jurisdictions vested in a Master by S. 5B(3) of the Bill are of a judicial nature: that the Master being an officer who is conferred with the right to exercise judicial powers and functions is a judicial officer; that Article 114 (1) of the Constitution mandates that the appointment and dismissal of judicial officers shall be made by the Judicial Service Commission that as such the Master should be appointed by none other than the Judicial Service Commission and that, therefore, S. 5B (1) of the Bill empowering the Minister to appoint the Master is inconsistent with Article 114 of the Constitution. The petitioner avers further that the appointment of the Master by the Minister is itself an exercise of judicial power by the executive and is, therefore, inconsistent with Article 4 (c) which ordains that the judicial power of the People be exercised only by Parliament through courts tribunals and institutions created and established by the Constitution or by law or recognised by the Constitution except in respect of certain matters relating to the privileges, immunities and powers of Parliament and of its Members and that, Consequentially, S. 5B (1) of the Bill in so far as it empowers the Minister to appoint the Master is also inconsistent with Article 3. Upon this basis the petitioner seeks a determination from this Court to the effect that the Bill cannot be passed except by the special majority prescribed by the Constitution and unless it is approved by the People at a referendum.

It is not in dispute that the powers sought to be vested in the Master by S. 5B (3) of the Bill are judicial powers. The subsection empowers the Master to exercise judicial powers. It cannot be seriously denied that it is the primary, if not exclusive, duty of the Master to perform judicial functions. The Master is thus a judicial officer. The petition is founded on the assertion that S. 5B(1) of the Bill confers on the Minister the right to appoint the Master. If this assertion be factually correct there can be no doubt that the subsection is violative of the aforementioned Articles. But in our view it does not purport to confer any such right in the Minister. All that it stipulates is that there shall be appointed an officer to be called the Master to every such court as may be specified by the Minister in consultation with the Chief Justice. The Minister is authorised to specify in consultation with the Chief Justice, the court to which the Master shall be appointed. The subsection does not, however, empower the Minister to

appoint the Master as claimed in the petition. The clear and unequivocal language used in the sub section can admit of no other construction. In the circumstances we hold and determine that neither the Bill nor any of its provisions is inconsistent with the Constitution.

E. A. D. Athukorale
Judge of the Supreme Court.

H. A. G. de Silva
Judge of the Supreme Court.

G. R. T. D. Bandaranayake
Judge of the Supreme Court.

First Reading:

09.05.1989 (Hansard Vol. 57 No. 4 Col. 459)

Sponsor:

Minister of Justice and Parliamentary Affairs

Decision of the Supreme Court Conveyed to Parliament:

06.06.1989 (Hansard Vol. 57 No. 10 Cols. 1326 – 1328)

Second Reading:

03.10.1989 (Hansard Vol. 59 No. 5 Cols. 613 - 641)

04.10.1989 (Hansard Vol. 59 No. 6 Cols. 705 - 781)

Committee Stage and Third Reading :

01.10.1989 (Hansard Vol. 59 No. 6 Cols. 781-798)

Hon. Speaker's Certificate :

09.11.1989

Title : Judicature Act, No. 16 of 1989.

APPROPRIATION

A

BILL

to provide for the service of the financial year, 1990 to authorize the raising of loans in or outside Sri Lanka for the purpose of such service, to make financial provision in respect of certain activities of the Government during that financial year, to enable the payment by way of advances out of the Consolidated Fund or any other fund or moneys of, or at the disposal of, the government, of moneys required during that financial year for expenditure on such activities, to provide for the refund of such moneys to the Consolidated Fund, and to make provision for matters connected with, or incidental to, the aforesaid matters.

THE APPROPRIATION BILL

In the matter of a petition under Article 121(1) of the Constitution filed by L. O. H. Wanigasekera, of 134/1, Bandarawela Road, Badulla.

S. C. No. 5/89 (Special)

Present :

Fernando, J.,
Dheeraratne, J., and
Ramanathan, J.

Counsel :

(Petitioner in person)
S. W. B. Wadugodapitiya, P.C., Solicitor-General, with Asoka de Silva, Deputy Solicitor-General, for the Attorney-General.

The Court assembled for the hearing at 10.00 a.m on 14th November 1989.

The Petitioner, L. O. H. Wanigasekera, of 134/1, Bandarawela Road, Badulla, by his petition dated 7th November 1989 has invoked the jurisdiction of the Supreme Court under Article 121(1) of the constitution in respect of a Bill titled "An Act to provide for the service of the financial year, 1990, to authorize the raising of loans in or outside Sri Lanka for the purpose of such service, to make financial provision in respect of certain activities of the Government during that financial year, to enable the payment by way of advances out of the Consolidated Fund or any other fund or moneys of, or at the disposal of the Government, of moneys required during that financial year for expenditure on such activities, to provide for the refund of such moneys to the Consolidated Fund, and to make provision for matters connected with or incidental to, the aforesaid matters" ("The Appropriation Act, No. 1989"). It was the Petitioner's contention that the Appropriation Bill -

"is inconsistent with Article 148 of the Constitution, read with Articles 3, 4 (a) and (d), 12, 36(4), 108(2), and 153(2) of the Constitution, as its long title or any paragraph therein does not state the American Dollar and the Indian Rupee equivalent of the Sri Lankan Rupee, thereby making no provision for the monetary malfunctioning of the Sri Lankan Rupee which appears to be on an unchecked runaway course, making the budgetary provision for 1990 meaningless in terms of real expenditure and wages of state officers and employees who are entitled to be equally treated in the financial processes of the state with other categories of citizens whose earnings in American Dollars or Indian Rupees are in a favourable position to citizens who are paid by the state in Sri Lankan Rupees. The failure to mention the American Dollar equivalent of the Sri Lankan Rupee and failing to maintain the Sri Lankan Rupee on par with the Indian Rupee and allowing unauthorised fluctuations in the Sri Lankan Rupee against the said currencies tantamount to Parliament abandoning its full control of public finance in terms of Article 148 of the Constitution and consequently jeopardizing the Constitutional provisions of Articles 3, 4(a) and (d), 12, 36(4), 108(2), and 153(2)".

The Petitioner, appearing in person, made oral submissions in support of the contentions in his petition.

Mr. S. W. B. Wadugodapitiya, P. C. Solicitor-General, assisted the Court in this matter.

The Petitioner referred us to the arrangements made in Portuguese, Dutch and British times for the collection of revenue, which are not relevant to the matters for our determination. He then submitted that in 1872 the British made the Rupee the unit of currency, and that until 1966 the Sri Lanka Rupee enjoyed parity with the Indian Rupee, the relationship between the Sterling pound and these two currencies also being fixed. In 1966 the Indian Rupee was devalued, but not the Sri Lanka Rupee; in 1968 the latter was devalued making it almost on par with the former. He then referred to the different exchange rate mechanisms which existed between 1968 and 1977, when the Sri Lanka Rupee was permitted to "float" against other currencies; he submitted that two different systems operated to determine the value of the Sri Lanka Rupee as against strong currencies, and as against weak currencies.

The Petitioner stated that he had no complaint about the manner in which the value of the Sri Lanka Rupee was fixed in relation to other currencies, by the relevant authorities under the Monetary Law Act: these fluctuations he described as variations caused by market operations. He complained, however, of the "discretionary variations" and devaluation effected by the Minister of Finance. He submitted that the bill makes no provision for Parliamentary control of these discretionary variations, and that accordingly the Bill was inconsistent with Article 148 of the Constitution which provides –

"Parliament shall have full control over public finance. No tax, rate or any other levy shall be imposed..... except by or under the authority of a law passed by Parliament or of any existing law."

It was his contention that the bill should specify the American Dollar and the Indian Rupee equivalents of the Sri Lankan Rupee, and should further enact that such parities shall remain fixed for the financial year 1990. However, this cannot be reconciled with his concession as to the legality and the propriety of the periodical determinations of these parities by the bodies authorised to do so under the Monetary Law Act; if such determinations are lawful, then, while Parliament may choose to freeze such parities for one year, there can be no compulsion on Parliament to do so. When asked what amendment to the Bill would make it cease to be inconsistent, he submitted that this Court was not in a position to specify the parities, but that the Minister should specify the parities when the Bill was being passed, and that Parliamentary approval was necessary, thus satisfying Article 148. He conceded, however, that Parliament could fix such parities by a provision to the effect that the value of the Sri Lanka Rupee against the American Dollar and the Indian Rupee shall be as determined from time to time under the Monetary Law Act or other applicable law.

We are of the opinion that there is no obligation that the Bill should set out the expenditure of the Government, and the authorised limit of loans, local or foreign, in any currency other than the Sri Lankan Rupee, or that it should state the equivalent values in any other currency, nor need Parliament fix such values for any particular period. Whether such a course would be desirable or prudent does not concern us; there is no constitutional requirement, and there is thus no inconsistency with the constitution in this respect.

The Appropriation Bill seeks to authorise the expenditure of the Government (which is estimated at a specified amount) to be met from payments out of the Consolidated Fund, or any other funds or moneys of the Government, and from the proceeds of loans raised, whether in or outside Sri Lanka, (the aggregate limit of such loans being specified). It is thus

a law contemplated by Article 150(2), and is perfectly consistent with Parliamentary control of public finance as contemplated by Article 148. Such a law cannot be said to be inconsistent with Article 148 on the ground that it does not provide for various other matters. Even if it be assumed that changes in the value of the Sri Lanka Rupee should receive Parliamentary approval, it does not follow that a law which seeks to authorise a sum to be withdrawn from the Consolidated Fund for some public purpose must state its equivalent in some foreign currency, and freeze such rate for a period. It is also difficult to see why the American Dollar and the Indian Rupee should be selected for this purpose. Parliamentary control of finance remains unimpaired by the Bill, for nothing can be drawn, or raised by way of loans, except as authorised by Parliament.

The Petitioner was forced to concede that his real grievance was the "discretionary devaluations" effected by the Executive, a mischief which exists, according to his submission, quite independent of this Bill. If such devaluations are illegal, there may well be remedies therefor, but the fact that the Bill does not remedy that mischief does not make it inconsistent with the Constitution.

The Petitioner sought to rely on Articles 3, 4(a) and 4(d), to reinforce his submission that the Bill was inconsistent with Article 148, but was unable to show in what manner the Sovereignty of the people was affected by the failure to refer to and freeze the value of the Sri Lanka Rupee in this Bill, nor was he able to refer to any fundamental right relevant to that question. Relying on Article 12 he submitted that citizens paid in American Dollars would be at some advantage over those paid in Sri Lanka Rupees, if the Sri Lanka Rupee were to depreciate, but that would be a consequence of such depreciation, and not of this Bill; Article 12 does not confer a fundamental right that the value of the Sri Lanka Rupee would be maintained. He finally referred to Articles 36(4), 108(2) and 153(2), and submitted that, in the event of such depreciation, there would be a reduction in salaries. We see no merit in this contention; an appreciation in the value of the Sri Lanka Rupee would not permit Parliament to adjust salaries downwards: any such adjustment would be an unconstitutional reduction of salaries.

It was also contended that the Bill did not mention the grants and gifts received by the Government. Having regard to the purpose of the Appropriation Bill, revenue and receipts of the Government need not be stated therein; Parliamentary control over such matters is to be exercised by other means. Even in regard to such grants and gifts, expenditure would be subject to Parliamentary authorisation in terms of Article 150.

We determine that neither the Bill nor any of its provisions are inconsistent with the provisions of the Constitution.

M. D. H. Fernando,
Judge of the Supreme Court.

R. N. M. Dheeraratne,
Judge of the Supreme Court.

P. Ramanathan,
Judge of the Supreme Court.

First Reading :

07.11.1989 (Hansard Vol. 59 No. 13 Col. 1645)

Sponsor :

Prime Minister and Minister of Finance

Decision of the Supreme Court conveyed to Parliament :

15.11.1989 (Hansard Vol. 60 No. 1 Cols. 1 - 4)

Second Reading :

15.11.1989 - 17.11.1989

20.11.1989 - 24.11.1989

(Hansard Vol. 60 Nos. 1 - 3; 4 - 8 Cols. 5 - 69; 101 - 243; 345-473;

502 - 614; 666 - 775; 830 - 948; 984 - 1094; 1137 - 1324)

Committee Stage and Third Reading :

27.11.1989 - 30.11.1989; 01.12.1989; 04.12.1989 - 08.12.1989;

11.12.1989; 13.12.1989 - 15.12.1989; 18.12.1989 - 22.12.1989

(Hansard Vol. 61 No. 1 - 10; 12 - 20 Cols. 26 - 173; 193 - 308; 351 - 482;

506 - 642; 686 - 832; 878 - 1016; 1037 - 1152; 1187 - 1297; 1313 - 1424;

1478 - 1600; 1807 - 1934; 1960 - 2098; 2118 - 2247; 2291 - 2432;

2523 - 2636; 2696 - 2821; 2865 - 2996; 3080 - 3200; 3245 - 3293; 3298 - 3377)

Hon. Speaker's Certificate :

30.12.1989

Title : Appropriation Act, No. 18 of 1989.

POLICE COMMISSIONS

A

BILL

to provide for the establishment of a National Police Commission, a Provincial Police Commission for each province ; and for matters connected therewith or incidental thereto.

THE POLICE COMMISSIONS BILL

In the matter of a Reference under Article 122(1)(b) of the Constitution.

S.C. Special Determination No. 14/89
(PPA/Parl/52)

Present :

Bandaranayake, J.,
Fernando, J., and
Kulatunga, J.

Counsel :

Shibly Aziz, P.C., Additional Solicitor - General, with Mrs. M. K. B. A. Jayasinghe Tillekeratne for the Attorney-General.

The Court assembled for the hearing at 10.00 a.m. on 20th October 1989.

A Bill titled "An Act to provide for the establishment of a National Police Commission ; a Provincial Police Commission for each Province ; and for matters connected therewith or incidental thereto" ("The Police Commissions Act, No. of 1989") was referred to this Court by His Excellency the President, in terms of Article 122(1)(b) of the Constitution, for the special determination of this Court whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate to the effect that in the view of the Cabinet of Ministers the Bill is urgent in the national interest.

Mr. Shibly Aziz, P.C., Additional Solicitor-General assisted this Court in this matter.

The Bill is intended to provide for the establishment of a National Police Commission, and a Provincial Police Commission for each province ; for the powers and functions of those Commissions ; and for the demarcation of responsibility in regard to the prevention, detection, and investigation of offences, and the institution of prosecutions in respect of such offences, as between the National Division of the Sri Lanka Police Force and the Provincial Divisions.

Clause 2 of the Bill provides that the National Police Commission will consist of the Inspector General of police, who shall act as Chairman of Commission, one person nominated by the Public Service Commission in consultation with the President, and one person nominated by the Chief Justice. Article 55 of the Constitution provides that the appointment, transfer, dismissal and disciplinary control of public officers is vested in the Cabinet of Ministers, and for the Cabinet of Ministers to delegate such powers to the Public Service Commission. Article 56 provides that the Public Service Commission shall consist of not less than five persons appointed by the President. Although clause 2 is inconsistent with Articles 55 and 56, this clause has to be considered in the context of the 13th Amendment to the Constitution, and Appendix I to List I of the Ninth Schedule added by that Amendment. In specifying the matters with respect to which a Provincial Council may make "statutes", item 1 of List I referred to "public order and the exercise of police powers, to the extent set out in Appendix I". Appendix I provides (in paragraph 3) for the recruitment, promotion, transfer and disciplinary control of police officers in the National Division to be by a National Police Commission consisting of the Inspector General of Police, a person nominated by the Public Service Commission in consultation with the President, and a nominee of the Chief

Justice. Thus clause 2 is not inconsistent with the Constitution, but gives effect to the amendments made by the 13th Amendment ; Article 154Q(d) requires Parliament, by law, to provide for matters necessary for giving effect to the principles or provisions of Chapter XVIII.

Clause 8 of the Bill provides for a Provincial Police Commission for every province. This gives effect to paragraph 4 of Appendix I, and is thus not inconsistent with the Constitution; however, paragraph 4 does not expressly provide for such Commissions to be established at different dates in respect of different provinces.

The learned Additional Solicitor- General has drawn our attention to paragraph 13 of Appendix I, which indicates that it was contemplated that all Provincial Divisions might not be established simultaneously, on account of the circumstances prevailing in different provinces. He submitted that for the same reasons, the Provincial Police Commissions are not required to be established simultaneously. He agreed however, that clause 8 of the bill must be interpreted as being subject to paragraph 13 of Appendix I, and that all the Provincial Police Commissions must be established within the period of one year referred to in paragraph 13.

Clause 3 vests "the appointment, transfer, dismissal and disciplinary control of police officers of the National Division of the Sri Lanka Police Force" in the National Police Commission; and clause 9 vests "the appointment, transfer, dismissal and disciplinary control of officers of the Provincial Division of a province of the ranks of Assistant Superintendents of Police, Chief Inspectors, Inspectors, Sub-Inspectors, Sergeants and Police Constables" in the Provincial Police Commission of that province.

These provisions do not precisely re-state the corresponding provisions of Appendix I. Thus while clause 3 purports to vest powers in respect of all officers of the National Division in the National Police Commission, it is clear from paragraph 4.1 of that Appendix that certain powers of promotion, and of transfer and disciplinary control, of such officers, while seconded to a Provincial Division, are vested in the Provincial Police Commission, and not in the National Police Commission: cf. paragraph 3.2, which indicates that the powers of the National Commission are "subject to paragraph 4.1". Paragraph 3 of the Appendix authorise the National Police Commission to effect promotions of police officers in the Provincial Divisions to the National Division: but this is not adequately reflected in clauses 3 and 9 of the Bill. Paragraph 3.2.1 of the Appendix makes specific provisions in regard to the Inspector General of Police, and this too is not adequately reflected in clause 3. Clause 9 refers to Assistant Superintendents of Police, whereas paragraph 2.2 refers to Provincial Assistant Superintendents of Police. Clauses 3 and 9 are thus inconsistent with paragraphs 2, 3, and 4 of Appendix I, and may only be passed by the special majority required under the provisions of Article 84 (2) of the Constitution. The learned Additional Solicitor General agreed that these clauses are inconsistent.

Clauses 3 and 9 would cease to be inconsistent with the Constitution if prefaced by the words –

"Subject to the provisions of Appendix I to List I of the Ninth Schedule to the Constitution,"

Clause 9 should be further amended by the addition.

-
- (a) of the word "Provincial" before the words "Assistant Superintendent of Police"; and
- (b) of the words "and officers of the National Division seconded to the Provincial Division." after the words "of a province".

In the time available to us, we have not been able to specify in greater detail the amendments which would make clauses 3 and 9 (and other clauses referred to below) of the Bill cease to be inconsistent – as indeed we would have, if a period of three days been granted, in terms of Article 122(1) (c) of the Constitution, for the determination of this matter.

Clauses 4, 6, 7 and 10 provide for the delegation of powers by the National and Provincial Police Commissions. As already pointed out, paragraphs 3.2 and 4.1 make it clear that the National Police Commission does not have power in respect of promotions, transfers and disciplinary control of certain officers of the National Division, and that this power is vested in the Provincial Police Commission. However, clause 4 of the Bill assumes that powers of transfer, dismissal and disciplinary control "of officers of the National Division seconded to a Provincial Division" are vested in the National Police Commission, and purports to authorise the delegation thereof to the Provincial Police Commission. This assumption underlies clauses 6 and 7 as well. Accordingly, clauses 4, 6 and 7 of the Bill are inconsistent with paragraphs 3 and 4 of Appendix I, and may only be passed by the special majority required under the provisions of Article 84 (2) of the Constitution. Ideally, they should be amended to conform precisely to the corresponding provisions of Appendix I. However, these clauses would cease to be inconsistent with the Constitution upon the deletion of the words "and of officers of the National Division seconded to a Provincial Division of a province, to the Provincial Police Commission of that province" in clause 4; the deletion of the words "or by a Provincial Police Commission, to whom the National Police Commission has delegated its powers under section 4" in clause 6; the deletion of the words "or by a Provincial Police Commission, to whom it has delegated any of its powers under section 4" in clause 7; by the addition of a proviso to clause 6 –

"provided that any officer of the National Division seconded to any Provincial Division against whom disciplinary action has been taken by a Provincial Police Commission shall also have the right of appeal to the National Police Commission, whose decision on appeal shall be final. Upon any such appeal the National Police Commission shall have the power to vary or rescind the order of the provincial Police Commission."

Clause 10 (1) purports to empower the National Police Commission to make a delegation by the Provincial Police Commission "subject to such conditions as may be prescribed by the National Police Commission." This provision appears to be much wider than the imposition of general and uniform conditions. We entertain a doubt whether that provision is inconsistent with paragraph 5 of Appendix I. Under paragraph 5 the powers to be delegated may be prescribed, and the persons to be whom powers may be delegated may be prescribed: there is no power to prescribe conditions. The learned Additional Solicitor-General submitted that in view of items "National Policy on all Subjects and Functions" and "All Subjects and Functions not specified in List I or List III", in List II, Parliament is entitled to impose this restriction. This does not suffice to eliminate the doubt that exists in this instance: for it would appear that, originally, the Constitution in paragraph 5 of Appendix I did not impose any fetters on the right of the National Police Commission and the Provincial Police Commission to delegate. Accordingly, clause 10(1) is inconsistent with paragraph 5 of Appendix I, and

may only be passed with the special majority required under the provisions of Article 84(2) of the Constitution. It will cease to be inconsistent upon the deletion of the clause "subject to such conditions as may be prescribed by the National Police Commission"

Clause 5 of the Bill empowers the National Police Commission to provide for and determine various matters connected with the exercise of its powers and the functioning of the Sri Lanka Police Force. Clause 5(a) is referable to paragraph 9.1 of Appendix I; clause 5(c) is referable to paragraph 5 of Appendix I; clause 5(f) and (g) are referable to paragraph 8. There is implicit in Appendix I the requirement of a certain measure of uniformity in regard to the several Provincial Divisions. Clause 5(b), although somewhat wider than paragraph 3.4 of the Appendix, gives effect to this requirement. These provisions are thus within the ambit of Article 154Q(d), and are not inconsistent with the Constitution.

However, clauses 5(d) and (e) provide for the National Police Commission, to determine (a) the cadres of all ranks of the National Division, and (b) all matters relating to the training of officers of all Division, although paragraph 7 of the Appendix requires that the cadres be fixed by the Government of Sri Lanka, and paragraph 9.2 makes the Government responsible for all training. (Paragraph 7 requires that the cadres of the Provincial Divisions be fixed by the respective Provincial Administrations, with the approval of the **President**; similarly, in regard to training, paragraph 9.2 provides that the **President** may provide alternative training for members of any Provincial Division.) It is not possible to treat the Commission as the Government for the purpose of paragraphs 7 and 8.2, and it seems to us that the intention of Appendix I is that these matters should remain within the purview of the Government. Clauses 5(d) and (e) are thus inconsistent with paragraphs 7 and 9.2 of Appendix I, and may only be passed by the special majority required under the provisions of Article 84(2) of the Constitution. Such provisions would cease to be inconsistent if enacted as follows –

"The cadres of police officers of all ranks of the National Division shall be fixed by the Government of Sri Lanka, in consultation with the National Police Commission."

"The Government of Sri Lanka shall be responsible for the training of all recruits to and of members of the National and Provincial Divisions of the Sri Lanka Police Office, in consultation with the National Police Commission. The President may, where he considers it necessary, provide for alternative training for members of any Provincial Division."

Clause 13 purports to require the National Division to assist a Provincial Division upon the request of the Chief Minister. Similarly clause 15 purports to empower one Provincial Division to exercise its powers in another province, upon a resolution of the Provincial Council of such other province. Both these provisions make no reference to the approval of the Inspector General of Police, as the Head of the Sri Lanka Police. An examination of paragraphs 12.1, 12.2, 12.3 and 12.4 indicates that it was not contemplated in Appendix I that Divisions of the Police Force should be empowered or required to act without the knowledge, consent or approval of the Inspector General of Police. Paragraph 12.4(a) only empowers units of the National Division to respond to a Chief Minister's request: however, clause 13 of the Bill purports to compel the National Division to accede to such a request. Clause 13 is thus inconsistent with paragraph 12 of Appendix I, and may only be passed by the special majority required under the provisions of Article 84(2) of the Constitution; it would cease to be inconsistent if amendments are made which bring it into conformity with Appendix I, particularly by emphasising the power and discretion of the Inspector General of Police.

The learned Additional Solicitor-General however points out that clause 15 is referable to item (h) of List II (Defence and National Security).

The learned Additional Solicitor-General indicated that Clause 17 could be amended by adding the word "administrative" before the word "directions", and by substituting the words "public officer" for "person", and by adding the word "written" before the word "law".

Clause 17 as so amended will not be inconsistent with the Constitution.

We determine that clauses 3, 4, 5, 6, 7, 9, 10, 13 and 17 of the Bill are inconsistent with the provisions of the Constitution as indicated above, but will cease to be inconsistent upon being amended as indicated.

G. R. T. D. Bandaranayake,
Judge of the Supreme Court.

M. D. H. Fernando,
Judge of the Supreme Court.

K. M. M. B. Kulatunga,
Judge of the Supreme Court.

First Reading :

07.11.1989 (Hansard Vol. 59 No. 13 Col. 1646)

Sponsor :

Minister of Foreign Affairs and Minister of State for Defence

Decision of the Supreme Court conveyed to Parliament :

07.11.1989 (Hansard Vol. 59 No. 13 Cols. 1619-1623)

Second Reading :

25.11.1989 (Hansard Vol. 60 No. 9 Cols. 1347-1447)

15.12.1989 (Hansard Vol. 61 No. 15 Cols. 2432-2458)

Committee Stage and Third Reading :

15.12.1989 (Hansard Vol. 61 No. 15 Cols. 2459-2464)

18.12.1989 (Hansard Vol. 61 No. 16 Cols. 2492-2523)

Hon. Speaker's Certificate :

23.01.1990

Title : Police Commission Act, No. 1 of 1990.

ARCHAEOLOGICAL SITES OF NATIONAL IMPORTANCE

A

BILL

to declare certain archaeological activities sites and remains, antiquities ancient and historical monuments and records as being of national importance.

THE ARCHAEOLOGICAL SITES OF NATIONAL IMPORTANCE BILL

In the matter of a Reference under Article 122 (1) (b) of the Constitution.

S. D. No. 12/89

Present :

G. P. S. de Silva, Judge of the Supreme Court.
K. M. M. B. Kulatunga, Judge of the Supreme Court.
R. N. M. Dheeraratne, Judge of the Supreme Court.

Counsel :

S. Marsoof, Senior State Counsel with D. M. Karunaratne, State Counsel for the Attorney - General.

Court Assembled for the Hearing: At 10.05 a.m. on 07th June, 1989.

A Bill titled "An Act to declare certain archaeological activities sites and remains, antiquities, ancient and historical monuments and records as being of national importance" (The Archaeological sites of the National Importance Act, No. of 1989) was referred to this Court by His Excellency the President, in terms of Article 122 (1) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka for the special determination of this Court whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill contains a certificate to the effect that in the view of the Cabinet of Ministers the Bill is urgent in the national interest.

Mr. Marsoof, Senior state Counsel, with D. M. Karunaratne, State Counsel, assisted this Court in the hearing of this matter.

Clause 2 (1) of the Bill provides that the archaeological activities, sites and remains described in the First Schedule to the Act are hereby declared for the purpose of the Ninth Schedule to the Constitution, to be of national importance. Under sub-clause 2 of clause 2 the Minister may, by Order published in the Gazette, declare any other archaeological activities, sites and remains not described in the First Schedule to the Act, or any antiquities to be of national importance. Sub-clause 3 of clause 2 provides for Parliamentary control of Orders made under sub-clause 2.

Clause 3 makes similar provisions in respect of ancient and historical monuments described in the second Schedule to the Act and any other ancient and historical monument not described in the Second Schedule or any ancient and historical record.

Article 154 (G) (7) of the Constitution read with List II of the Ninth Schedule thereto enables the enactment of the proposed legislation. Upon the enactment of this Bill a Provincial Council shall have no power to make statutes in respect of archaeological activities sites and remains, antiquities, ancient and historical monuments and records declared to be of national importance under its provisions.

We have examined the provisions of the Bill, and we are of the opinion that neither the Bill nor any provision thereof is inconsistent with the Constitution.

G. P. S. de Silva.
Judge of the Supreme Court.

K. M. M. B. Kulatunga.
Judge of the Supreme Court

R. N. M. Dheeraratne.
Judge of the Supreme Court

First Reading :
21.06.1989 (Hansard Vol. 57 No. 15 Col. 1804)

Sponsor :
Minister of Education, Cultural Affairs and Information.

Decision of the Supreme Court conveyed to Parliament :
09.06.1989 (Hansard Vol. 57 No. 13 Cols. 1597 - 1598)

Second Reading :
25.08.1989 (Hansard Vol. 58 No. 12 Cols. 1669 - 1670)

Standing Committee Reference :
25.08.1989 (Hansard Vol. 58 No. 12 Col. 1670)

Nomination to the Standing Committee :
05.09.1989 (Hansard Vol. 58 No. 13 Col. 1697)

Report of the Standing Committee :
21.02.1990 (Hansard Vol. 62 No. 14 Col. 2344)

Consideration and Third Reading :
13.03.1990 (Hansard Vol. 63 No. 5 Cols. 705 - 725)

Hon. Speaker's Certificate :
20.04.1990

Title : Archaeological Sites of National Importance Act, No. 16 of 1990.

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