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

In the matter of an application in terms of Article 121 read with Article 120, Article 78 and Article 154(G)(2) of the Constitution to determine whether the Bill titled "The Twenty First Amendment to the Constitution (Private Member's Bill)" or any part thereof is inconsistent with the Constitution.

Centre for Policy Alternatives (Guarantee) Limited,
24/2, 28th Lane, Off Flower Road,
Colombo 07.

Petitioner

S.C. (S.D.) No:

- VS -

The Attorney General,
Attorney General's Department,
Colombo 12.

Respondent

On this 24th day of June 2013

**TO: THE CHIEF JUSTICE AND THEIR LORDSHIPS THE OTHER JUDGES OF
THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA**

The ***Petition*** of the Petitioner above named appearing by Lilanthi de Silva its Registered Attorney-at-Law states as follows:

1. The Petitioner is a body incorporated under the laws of Sri Lanka (and duly re-registered in terms of the Companies Act No.7 of 2007) and is made up of members, more than three-fourths of whom are citizens of Sri Lanka and is entitled to make this application in terms of Article 121(1) of the Constitution.

2. The primary objects of the Petitioner are *inter alia* to make inputs into public policy-making and implementation process in constitutional, legislative and administrative spheres to ensure responsible and good governance, and to propose to the government and parliament and all other policy-making bodies and institutions, constructive policy alternatives aimed at strengthening and safeguarding democracy, pluralism, the rule of law, human rights and social justice.

True copies of the Certificate of Incorporation and Memorandum and Articles of Association of the Petitioner are annexed hereto marked 'P1' and 'P2' respectively and pleaded as part and parcel hereof.

3. The Attorney General is made a Respondent under and in terms of the requirements of Article 134(1) of the Constitution.

4. The Bill titled "*The Twenty First Amendment to the Constitution (Private member's Bill)*" (hereinafter referred to as "the Bill") was published in the Gazette of the Democratic Socialist Republic of Sri Lanka Part II of 31st May 2013 issued on 3rd June 2013 and placed on the Order Paper of Parliament on 18th June 2013.

True copies of the said Bill (in Sinhala, Tamil and English) are annexed hereto marked 'P3a', 'P3b', 'P3c' and pleaded as part and parcel hereof.

5. The long title of the said Bill describes it as "*An Act to Amend the Constitution of the Democratic Socialist Republic of Sri Lanka*".

6. Clause 2 of the Bill states that:

The Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as the "Constitution") is hereby amended by the repeal of:-

(a) Article 154A to 154T which constitute Chapter XVIIIA

(b) Article 155(3A)

(c) Ninth Schedule

7. The Petitioner states that the cumulative effect of the above provisions is to repeal *in toto* the provisions of chapter XVIIA introduced by the Thirteenth Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka.

NON-COMPLIANCE WITH THE MANDATORY PROCEDURE SET OUT IN ARTICLE 154G(2) OF THE CONSTITUTION

8. The Petitioner seeks a determination from Your Lordships' Court that the aforesaid Bill shall not become law due to *inter alia* the failure to comply with the procedure laid down in Article 154G (2) of the Constitution, among other reasons relating to inconsistency with the Constitution as set out hereinafter and / or which may be urged by Counsel at the hearing.
9. The Petitioner state that the present Bill cannot be enacted into law due to non-compliance with Article 154G (2) of the Constitution.
10. Article 154G(2) states that:

"no Bill for the amendment or repeal of the provisions of this Chapter or the Ninth Schedule shall become law unless such Bill has been referred by the President after its publication in the Gazette and before it is placed to the Order paper of Parliament, to every Provincial Council for the expression of its views thereon, within such period as may be specified in the reference..."
11. The Petitioner states that the Bill seeks to amend the Constitution by *inter alia* repealing all provisions of chapter XVIIA of the Constitution, and also specifically repealing the Ninth Schedule of the Constitution.

12. As such in terms of Article 154G(2) of the Constitution the Bill must be referred to every Provincial Council for the expressions of its view in terms of Article 154G(2) PRIOR to it being capable of being lawfully placed on the Order Paper of Parliament.
13. The Petitioner states that on several previous occasions Your Lordships' Court has determined that in the case of Bills which had not been placed on the Order Paper of Parliament in compliance with the Provisions of Article 154G(3) of the Constitution, the Bills "shall not become law."
14. Moreover Your Lordship's Court has determined that the procedure set out in Article 154G(3) "has to be regarded as mandatory". (Water Services Reform Bill – SC (SD) No. 24/2003 and No. 25/2003, Local Authorities (Special Provisions) Bill - SC (SD) No. 6/2008 and No. 7/2008, Town and Country Planning (Amendment) Bill – SC (SD) No.3/2011), Divineguma Bill – SC (SD) No. 1/2012 and No. 2/2012 and No.3/2012.
15. Both Article 154G(2) and Article 154G(3) are couched in the same mandatory and prohibitive language, as such the Petitioner states that principles recognised in the above mentioned Special Determinations of Your Lordship's Court are applicable *mutatis mutandis* to the circumstances of the impugned Bill.
16. Moreover Article 154G(3) deals with situations where Parliament attempts to alter powers vested in the Provincial Councils by the Constitution, by enacting ordinary legislation.
17. Article 154G(2) is far more serious in nature as it deals with situations where Parliament seeks to alter the constitutional provisions which grant certain powers to Provincial Councils, and could also include a situation such as the present, where Provincial Councils are sought to be abolished in their entirety.

- 18.** The Petitioner therefore states that the requirements of Article 154G(2) should be given effect to and / or enforced more strictly and in a more exacting manner than the manner in which the requirements of Article 154G(3) have been given effect to and / or enforced by Your Lordship's Court.
- 19.** The Petitioner further states that there is no evidence before Parliament that the Bill has in fact been referred to any Provincial Councils "*for the expression of their views*" before it was placed on the Order Paper of Parliament.
- 20.** The Petitioner states that its officers are reliably informed that:
- (i) the impugned Bill has not been duly referred to the Provincial Councils for the obtaining of their views, and / or
 - (ii) the views of the Provincial Councils in respect of the relevant Bill have not been obtained and / or tabled in Parliament
- as envisaged and required by the Constitution.
- 21.** The Petitioner respectfully states that unless evidence is presented before Your Lordships' Court, that the Bill has been duly referred to the Provincial Councils for the obtaining of their views and / or that the views of all Provincial Councils were obtained (before the expiration of the period specified in the reference, and) before the Bill was placed on the Order Paper of Parliament, Your Lordships must proceed to dispose of the matter on the basis that the procedure laid down in Article 154G(2) was not adhered to, and to accordingly determine that the impugned Bill must be determined to have not been validly placed on the Order Paper of Parliament AND that the said Bill cannot be so placed on the Order Paper of Parliament unless and until the views of all Provincial Councils on such Bill are first obtained, pursuant to a due reference to all such Provincial Councils.

22. It has thus become necessary for the Petitioner to invoke the jurisdiction of Your Lordships' Court, and to seek a Determination that:
- (a) the Bill titled "*The Twenty First Amendment to the Constitution (Private Member's Bill)*" has not been validly placed on the Order Paper of Parliament and cannot be enacted into law;

 - (b) the Bill titled "*The Twenty First Amendment to the Constitution (Private Member's Bill)*" can only be placed on the Order Paper of Parliament AFTER *such Bill has been referred by the President, after its publication in the Gazette and before it is placed on the Order Paper of Parliament, to every Provincial Council for the expression of its views thereon, within such period as may be specified in the reference, and shall not become law unless there is due compliance with Article 154G(2) of the Constitution, including the requirement that such Bill is duly referred to every Provincial Council in terms of Article 154G(2) of the Constitution;*
23. The Petitioner has not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.
24. The Petitioner respectfully reserves the right to furnish such further facts and documents in support of the matters set out herein at the Hearing should the Petitioner become possessed of any such material.
25. An affidavit of Shelton Wanasinghe a Director of the Petitioner Company is appended hereto in support of the averments contained herein.

WHEREFORE the Petitioner respectfully prays that Your Lordships' Court be pleased to:

- (a) Determine that the Bill titled “*The Twenty First Amendment to the Constitution (Private Member’s Bill)*” has not been validly placed on the Order Paper of Parliament and cannot be enacted into law;
- (b) Determine that the Bill titled “*The Twenty First Amendment to the Constitution (Private Member’s Bill)*” can only be placed on the Order Paper of Parliament AFTER such Bill has been referred by the President, after its publication in the Gazette and before it is placed on the Order Paper of Parliament, to every Provincial Council for the expression of its views thereon, within such period as may be specified in the reference, and shall not become law unless there is due compliance with Article 154G(2) of the Constitution, including the requirement that such Bill is duly referred to every Provincial Council in terms of Article 154G(2) of the Constitution;
- (c) Grant such further and other relief as to Your Lordships’ Court shall seem meet.

Registered Attorney-at-Law for the Petitioner

Settled by:

Luwie Ganeshathasan Esqr

Suren Fernando Esqr

Viran Corea Esqr

Attorneys-at-Law