
**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 Twentieth Amendment to the Constitution" or any part thereof is inconsistent with the Constitution.

1. Centre for Policy Alternatives (Guarantee) Limited,
No. 6/5, Layards Road
Colombo 00500
2. Dr. Paikiasothy Saravanamuttu
No. 03, Ascot Avenue
Colombo 00500

PETITIONERS

S.C. (S.D.) No: 24/2017

- Vs. -

Honourable Attorney General,
Attorney General's Department,
Colombo 01200.

RESPONDENT

On this 28th day of August 2017

**TO: HIS LORDSHIP THE CHIEF JUSTICE AND OTHER HONOURABLE JUDGES
OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA**

The Petition of the Petitioners RAJ MOAHAN BALENDRA practising in the name style and firm of

SINNADURAI SUNDARALINGAM & BALENDRA

and his Assistants JAYASURIYA ARACHCHIGE JUDITH SONALI PERERA, USHETTIGE NIMASHA SHAMEN PERERA and THARINI SEVINDI SALWATHURA her Registered Attorneys states as follows:

1. The 1st Petitioner above named 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-fourth (3/4th) 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 1st 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 part and parcel hereof.

3. The 2nd Petitioner is a citizen of Sri Lanka and the Executive-Director of the 1st Petitioner above-named.
4. The Hon. Attorney General is made a Respondent under and in terms of the requirements of Article 134(1) of the Constitution.
5. The Bill titled "*The Twentieth Amendment to the Constitution*" (hereinafter referred to as "the Bill") was published as a Supplement to Part II of the Gazette of 28th July 2017. The said Gazette was only issued on 3rd August 2017 and placed on the Order Paper of Parliament on 23rd August 2017.

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

6. The long title of the said Bill describes it as "*An Act to Amend the Constitution of the Democratic Socialist Republic of Sri Lanka*".
7. The Petitioners state that the Bill seeks to amend the Constitution by *inter alia*:
 - (a) *Introducing two new Articles, namely Article 154DD and 154EE to Chapter XVIII of the Constitution;*

and
 - (b) *Amending Article 154(E), which is also part of Chapter XVIII of the Constitution.*
8. The Petitioners state that the aforesaid provisions if enacted, would:
 - (a) Give Parliament the power to determine the date (the specified date) on which all the Provincial Councils shall stand dissolved (Provided that, such date shall not be later than the expiration of the term of the last constituted Provincial Council); [Clause 2 of the Bill]
 - (b) Extend up to the specified date, the term of office of any Provincial Council ending prior to such specified date; [Clause 3 of the Bill]
 - (c) End on the said specified date, the term of office of any Provincial Council which continues beyond such specified date; [Clause 3 of the Bill]
 - (d) In the event any Provincial Council is to be dissolved by the Governor of the said Province in terms of Article 154B(8)(c) or is to be dissolved by any other reason specified in any law, the powers of such Provincial Council will be exercised by the Parliament until the specified date and the provisions of Articles 154L and 154M shall, *mutatis mutandis* apply in relation to the exercise of powers of the Provincial Council. [Clause 4 of the Bill]

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

9. The Petitioners 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.
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 reiterates that the Bill seeks to amend the Constitution by *inter alia*:
 - (a) *Introducing two new Articles, namely Article 154DD and 154 EE to Chapter XVIII of the Constitution;*
and
 - (b) *Amending Article 154 (E), which is also part of Chapter XVIII of the Constitution.*
12. Therefore, 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 and upheld 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 Lordships' 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 Lordships' Court are applicable *mutatis mutandis* to the circumstances of the impugned Bill.
16. Moreover Article 154G(2) is in fact far more serious in nature than Article 154G(3), in as much as it deals with situations where Parliament seeks to alter the constitutional provisions which grant certain powers to Provincial Councils.
17. The Petitioners further state that the process of reference to Provincial Councils as mandated by the said Article 154G(2) recognises and contemplates *inter alia* due enablement of consideration of the views of all Provincial Councils, prior to a decision being taken to place a Bill covered by Article 154G(2) on the Order Paper of Parliament.
18. The Petitioners therefore state 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 Lordships' Court.
19. In a recent determination [SC SD 30-33/ 2016], Your Lordships' Court when considering whether the procedure in Article 152 of the Constitution should be followed prior to a bill "affecting public revenue" being placed on the order paper of Parliament, stated that ;

"However, where the constitution makes specific provision regarding the procedure to be adopted in respect of bills affecting "public revenue" (Article 152) that special provision has to be followed in order to achieve the intention of the legislature, before the bill is introduced to parliament in terms of Article 148. **In other words Article 152 being a special provision is to be strictly interpreted and complied with over any other provision in the constitution applicable generally regarding enactment of laws.**" (emphasis added)
20. The Petitioners respectfully state that Article 154G(2) being a special provision is to be strictly interpreted and complied with prior to a Bill being validly placed on the Order Paper of Parliament.
21. The Petitioners further state that there is no evidence that the strict requirements specified in 154G(2) was adhered to before the Bill was placed on the Order Paper of Parliament.

22. The Petitioners respectfully state that, 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, unless evidence is presented before Your Lordships' Court that:
- (a) The Bill has been duly referred to all Provincial Councils for the obtaining of their views; and
 - (b) That all Provincial Councils have in fact expressed their views before the Bill was placed on the Order Paper of Parliament; and/or
 - (c) The time period specified in any such reference expired before the Bill was placed on the Order Paper of Parliament.
23. The Petitioners further respectfully state that Your Lordships' Court would accordingly determine that the impugned Bill must be determined to have not been validly placed on the Order Paper of Parliament in terms of what is required under and in terms of the Constitution AND that the said Bill cannot be so placed on the Order Paper of Parliament unless and until the procedure laid down in Article 154G(2) has been duly followed.

INFRINGEMENT/DEROGATION FROM ARTICLES 3 AND 10 OF THE CONSTITUTION

24. Without prejudice to the submissions in paragraph 9 to 23 above, the Petitioners further state that the cumulative effect of Clause 2, 3 and 4 of the Bill, derogates from and infringes the provisions of Article 3 of the Constitution.
25. Article 3 of the Constitution provides that:
"In the Republic of Sri Lanka sovereignty **is in the People** and is inalienable. **Sovereignty includes the powers of government, fundamental rights and the franchise.**"(emphasis added)
26. As such Article 3 recognises *inter alia* that:
- (a) The Sovereignty is in the People of the Republic (and not in the Republic itself or any instrument of the Republic); and
 - (b) Franchise is part of the sovereignty of the People.
27. The impugned Bill negatively impacts the franchise of the people:
- (a) Where a Provincial Council's five (05) year term ends prior to "the specified date", by depriving the Citizens residing within that province the opportunity to vote and constitute a Provincial Council until the said specified date;
 - (b) Where a Provincial Council's five (05) year term only ends after "the specified date", by curtailing the mandate given by Citizens residing within that province to such Provincial Council without the consent of a majority of members of such Provincial Council; and
 - (c) By transferring to Parliament [*vide* - Clause 4 of the Bill], the power vested with the members of a Provincial Council to decide when such Provincial Council should stand dissolved [Article 154B(8)(c) and (d)].
28. The amendments effected by the Thirteenth Amendment to the Constitution, including *inter alia* the introduction of Provincial Councils, sought to ensure that the Sovereign People of Sri Lanka could more directly exercise their Sovereignty/Franchise/Rights of Governance, and thus enhanced Democratic Participation and/or Democracy.
29. The institutions having being created and cloaked with "powers of government", the government cannot now abridge and/or denude the sovereign power of citizens to elect individuals to animate the said institution, without first obtaining the consent of the People at a referendum.

30. The provisions of the impugned Clauses 2, 3 and 4 of the Bill are thus and otherwise contrary to, and inconsistent with, Article 3 of the Constitution.
31. It has thus become necessary for the Petitioners to invoke the jurisdiction of Your Lordships' Court, and to respectfully seek a Determination that:
 - (a) The Bill titled "*The Twentieth Amendment to the Constitution*" has not been validly placed as required by the Constitution on the Order Paper of Parliament and cannot be enacted into law in terms of the Constitution;
 - (b) The Bill titled "*The Twentieth Amendment to the Constitution*" 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;*
 - (c) The Bill titled "*The Twentieth Amendment to the Constitution*" shall not become law unless there is due compliance with Article 154G(2) of the Constitution; and
 - (d) The provisions of the impugned Clause 2, Clause 3 and Clause 4 of the Bill titled "*The Twentieth Amendment to the Constitution*" are contrary to, inconsistent with and derogate from Article 3 of the Constitution.
32. The Petitioners further state that the Bill in its present form does not make any due provision for situations where there is an inability to hold elections in one (or more) Provincial Councils, due to natural calamity, unrest or some such cause.
33. The Petitioners state that failure to provide for such scenarios imperils Article 3 read with Article 10 of the Constitution.
34. The Petitioners state that accordingly, the provisions of Clauses 2, 3 and 4 of the Bill titled "*The Twentieth Amendment to the Constitution*" and/or the Bill as a whole effectively create(s) the prospect of derogation and/or denial and/or negation of the ability of the persons of Provinces to exercise choice(s) as their thoughts and conscience may dictate at a Provincial Council election, for a period of time and/or in a manner that constitutes inconsistency with Article 10 of the Constitution.
35. The Petitioners respectfully reserve the right to furnish such further facts and documents in support of the matters set out herein at the hearing should the Petitioners become possessed of any such material.
36. The Petitioners have not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.
37. An affidavit of the 2nd Petitioner is appended hereto in support of the averments contained herein.

WHEREFORE the Petitioners respectfully pray that Your Lordships' Court be pleased to:

- (a) Determine that the Bill titled "*The Twentieth Amendment to the Constitution*" does not stand validly placed on the Order Paper of Parliament in terms of the Constitution and cannot be duly enacted into law in terms thereof;
- (b) Determine that the Bill titled "*The Twentieth Amendment to the Constitution*" can only be placed on the Order Paper of Parliament *after* there is due compliance with the requirements of Article 154G(2) of the Constitution;
- (c) Determine that Clause 2 and/or 3 and/or 4 of the Bill titled "*The Twentieth Amendment to the Constitution*" are thus and otherwise contrary to and/or inconsistent with the provisions of Article 3 of the Constitution;

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- (d) The provisions of Clauses 2, 3 and 4 of the Bill titled “*The Twentieth Amendment to the Constitution*” and/or the said Bill as a whole effectively create(s) the prospect of denial and/or negation of the ability of the persons of Provinces to exercise choice(s) as their thoughts and conscience may dictate at a Provincial Council election, for a period of time and/or in a manner that is inconsistent with Article 10 of the Constitution.
- (e) Grant such further and other relief(s) as to Your Lordships’ Court shall seem meet.

Sgd. Sinnadurai Sundaralingam & Balendra

REGISTERED ATTORNEYS FOR PETITIONERS

DOCUMENTS ANNEXED TO THE PETITION

Document Marked “P1”-“P3C”

Sgd. Sinnadurai Sundaralingam & Balendra

REGISTERED ATTORNEYS FOR THE PETITIONERS