

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

In the matter of an Application for a determination of whether the Bill titled: "Inland Revenue (Special Provisions)" or any part thereof is inconsistent with the Constitution in terms of Article 121 read with Article 78 of the Constitution.

Nihal Sri Ameresekere
167/4, Sri Vipulasena Mawatha
Colombo 10.

PETITIONER

SC/SD No. 11/2003

Vs.

K.C. Kamalabayson, P.C.
Hon. Attorney General
Attorneys General's Department,
Colombo 12.

RESPONDENT

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

We tender herewith marked "H", the original of Letter dated 3.4.2003 received by the Petitioner on 8.5.2003 from the Superintendent of the Government Publications Bureau in support of the averments contained in paragraph 12(d) of the Petition dated 18.4.2003 of the Petitioner, that the Government Publications Bureau had received on 11.2.2003 (*i.e. 11 days after presentation to the Parliament*) for sale to the public only a limited number of copies of the Bill ("A3")

And we respectfully Move that Your Lordships' Court be pleased to accept, treat and consider the same as part and parcel of the Petition dated 18.4.2003 of the Petitioner

Copies of this Motion together with annexure "H" having been sent by Registered Post to the Hon. Speaker and the Hon. Attorney General the Registered Postal Articles Receipts are attached hereto

On this 9th day of May 2003

Abdulla Assan

Attorneys-at-Law for Petitioner

**IN THE SUPREME COURT
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WHEREAS the Petitioner states that

- a) the provisions of Bill ("A3") are violative of Resolution 1373 of the Security Council of the United Nations, pertaining to funds financing terrorism / terrorist activities and funds of terrorist organisations, *et al*, which said United Nations' Security Council Resolution 1373 is binding on our country, which said Resolution 1373 contains, *inter-alia*, the following paragraphs quoted:

"1. *Decides* that all States shall:

- a. Prevent and suppress the financing of terrorist acts;
- b. Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;
- c. Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;
- d. Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons; "

"2. *Decides also* that all States shall:

- (c) Deny safe haven to those who finance, plan, support or commit terrorist acts, or provides safe havens;
- (d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens
- (e) Ensure that any person who participate in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;
- (f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings; "

"6. Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and calls upon all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution; "

the Petitioner annexes true copies of the said United Nations Security Council Resolution 1373 dated 28th September 2001, obtained on the internet from the United Nations website marked "E1", and also a copy thereof obtained from the website of the US Department of State marked "E2", together with the Petitioner's Affidavit tendered herewith

- b) to give effect to the said United Nations' Securities Council Resolution 1373, that, as mandated by the said Resolution 1373, Regulations had been made on 11th October 2001 under the United Nations Act No. 45 of 1968, published as per Gazette Extraordinary No. 1206/14 dated 16th October 2001

the Petitioner annexes true copy of the said Gazette Extraordinary No. 1206/14 of 16th October 2001 containing the aforesaid Regulations, marked "F", together with the Petitioner's Affidavit tendered herewith

- c) **to monitor and examine the flow of foreign funds in and out of the country to enforce the foregoing, the Monetary Board of Sri Lanka of which the Governor of the Central Bank is the Chairman, responsible for enforcing the Exchange Control Act, administered by the Controller of Exchange, ought be at liberty to conduct any inquiries and/or investigations, whatsoever, without any bar that is endeavoured to be imposed by the Bill ("A3")**
- d) **accordingly, the provisions of the Bill ("A3") would also pose a threat to national security, the sovereignty of the country and be inimical to the interest of the country.**

AND WHEREAS the Petitioner further states that,

- a) when the Petitioner filed his Affidavit dated 18th April 2003, together with the Petition of even date, he had not had a copy of the relevant Hansard containing the proceedings in Parliament of the Debate on the Bill ("A3").
- b) Petitioner had been able to obtain subsequently a copy of the Hansard Columns 1787 to 1873 of 19.2.2003, containing the proceedings of the Debate on the Bill ("A3"), wherein it reflects,
- i) that the Bill ("A3") had been tabled by the Finance Minister in Parliament.
 - ii) the statements made by the Deputy Minister of Finance, amongst others, at the said Debate are contained in the said Hansard Columns. The Deputy Minister of Finance, had endorsed the Bill ("A3").
 - iii) the subject matters the legislature had given its mind to, **which do not include** the material matters dealt with in the Petitioner's Affidavit dated 18th April 2003 filed in this Application and the matter of the aforesaid United Nations Security Council Resolution 1373.

The Petitioner annexes true copy of the said Hansard Columns 1787 to 1873 of 19th February 2003 marked "G", together with the Petitioner's Affidavit tendered herewith

AND WHEREFORE in the above circumstances, we tender herewith a further Affidavit of the Petitioner, together with copies of the aforesaid United Nations Security Council Resolution 1373 marked "E1" and "E2" and the Gazette Extraordinary No. 1206/14 of 16th October 2001 marked "F" and the said Hansard Columns 1787 to 1873 of 19th February 2003 marked "G" annexed to the Affidavit of the Petitioner and respectfully **MOVE** that Your Lordships' Court be pleased to accept the same and treat and consider the said Affidavit and the said Documents marked "E1", "E2", "F" and "G" as part and parcel of the Petition and Affidavit filed in the above Application.

Copies of this Motion, together with the Affidavit and marked Documents having been sent by Registered Post to the Hon. Speaker and the Hon. Attorney General, the Registered Postal Article Receipts are annexed hereto

On this 29th day of April 2003


Attorneys-at-Law for the Petitioner

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

We respectfully draw the kind attention of Your Lordships' Court to our Motion dated 21st April 2003.

We also respectfully draw the kind attention of Your Lordships' Court to our Motion of even date filed in the Petitioner's Fundamental Rights Application No. 194/2003 under Articles 17 & 126 of the Constitution, suggesting that that Your Lordships' Court be pleased to list the said Application for Support on any one of the following dates;

**8th May 2003,
12th May 2003 and
20th May 2003**

As per our said Motion dated 21st April 2003 in this Application, we respectfully move that Your Lordships' Court be pleased to list this Application for hearing, together with the aforesaid Fundamental Rights Application No. 194/2003

Copies of this Motion having been sent by Registered Post to the Hon. Speaker and the Hon. Attorney General. Registered Postal Articles Receipts are attached hereto

This 28th day of April 2003

Abdulla Associates
Attorneys-at-Law for the Petitioner