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

“INLAND REVENUE (REGULATION OF AMNESTY) “BILL

S.C.(S.D) No. 26/2004

BEFORE : Sarath N. Silva Chief Justice
 C. N. Jayasinghe Judge of the Supreme Court
 N.K. Udalagama Judge of the Supreme Court

COUNSEL : Mr. P.A.Ratnayake, P.C., Addl.Solicitor General with Mr. R.
 Ameen for the Attorney-General.

Court assembled for hearing on 23rd August 2004 at 10.15 a.m

A Bill bearing the above title has been referred to this Court in terms of Article 122(1)(b) of the Constitution for a special determination as to whether the Bill or any provision thereof is inconsistent with the Constitution. The Bill bears an endorsement in terms of Article 122(1) of the Constitution made by the Secretary to the Cabinet of Ministers that in the view of the Cabinet of Ministers the Bill is urgent in the national interest.

The Attorney-General was issued notice as required by Article 134(1) of the Constitution and Mr. P.A.Ratnayake, Addl. Solicitor General, assisted Court in considering the constitutionality of the Bill and its provisions.

Clause 2(1) of the Bill repeals the Inland Revenue (Special Provisions) Act No.10 of 2003. Additional Solicitor General submitted that the Act No.10 of 2003 has been amended by Act No. 31 of 2003 by the extension of the period of time that was provided for in the previous Act to submit declarations. He submitted that the repeal of Act No.10 of 2003 in effect amounts to a repeal of Act

No. 31 of 2003. We are inclined to agree with the submission of the Additional Solicitor General but wish to note that it would be clearer if the repeal specifically covers Act No.31 of 2003, as well.

Additional Solicitor General submitted that in terms of Article 75 of the Constitution the Parliament has a plenary power to make law including laws having retrospective effect and to repeal any law. Since Acts No.10 of 2003 and No.31 of 2003 were passed as ordinary law, that is without the special majority provided for in Article 84(2), we are of the opinion that the repeal of the said Acts would not be inconsistent with any provision of the Constitution.

Clause 2(2) of the Bill makes further provisions to the effect that "Act No. 10 of 2003, shall except in so far as the same is necessary for the implementation of the provisions of Section 3 of this Act, be deemed to have never been in operation as if the same had not been enacted". It is to be noted that these words go beyond a repeal of Act No.10 of 2003 and have the effect of wiping out that law from the statute book altogether.

We heard the submissions of Addl. Solicitor General regarding the effect of clause 2(2). Although we are inclined to agree with his submission, as noted above, that Parliament has the power to repeal any law, there is no provision in the Constitution which empowers the Parliament to deem that a law has never been in operation and had not been enacted. The enactment of the Inland Revenue (Special Provisions) Act No.10 of 2003 and the subsequent amendment has been an exercise of the legislative power of the People.

In terms of Article 80(1) of the Constitution those Bills became law upon their being passed by Parliament, when the certificate of the Speaker was endorsed thereon. Therefore it would be inconsistent with Article 80(1) to include a deeming provision in the present Bill that these laws have never been in operation as if they had not been enacted.

Addl. Solicitor General conceded that clause 2(2) cannot be enacted in the present form. But submitted that the purpose of the clause 2(2) is to make express provision with regard to the past operation of Act No.10 of 2003 as amended. He submitted that the said Act provided for amnesty and immunity from the operation of existing law and that the purpose of the present amendment is to revive the liability that had accrued under relevant law and thereby to restore the status quo ante.

The effect of law being repealed is stated in Section 6(3) of the Interpretation Ordinance. This provision reads as follows :

(3) Whenever any written law repeals either in whole or part a former written law, such repeal shall not, in the absence of any express provision to that effect, affect or be deemed to have affected -

- a) the past operation of or anything duly done or suffered under the repealed written law;*
- b) any offence committed, any right, liberty, or penalty acquired or incurred under the repealed written law;*
- c) any action, proceeding, or thing pending or incompletd when the repealing written law comes into operation, but every such action, proceeding, or thing may be carried on and completed as if there had been no such repeal."*

It is to be noted that Section 6(3) lays down a basic rule of interpretation of statutes and contains within its fold the power to make express provision affecting the past operation or anything duly done or any right acquired, under the law that is to be repealed. The effect of Section 6(3) is that in the absence of any express provision, the repeal by itself, does not affect the past operation or any right acquired under the law that is being repealed. However, by an express provision ^{the} that past operation of the law that is being repealed could be denuded of any effect so that any right acquired thereunder would be of no force or avail.

Additional Solicitor General submitted that what is sought to be done by the present amendment is to restore the status quo ante so that any liability operative prior to the grant of the amnesty or immunity under Act No. 10 of 2003 is fully revived.

We are of the opinion that in terms of Article 75 of the Constitution read with Section 6(3) of the Interpretation Ordinance, it is within the legislative competence of Parliament to make provision for the revival of any liability, duty or obligation that was operative under the relevant laws, and thereby remove the legal effect of any concession, indemnity or immunity granted under Act No. 10 of 2003 as amended, provided that the revival of such liability, duty or obligation would in itself not be inconsistent with the Constitution. It is relevant in this connection to cite certain passages from an opinion expressed by a bench of 5 Judges of this Court in the exercise of its consultative jurisdiction in terms of Article 129 of the Constitution. The Court expressed the following opinion with regard to the constitutionality of the grant of concessions, indemnities and amnesties under Act No.10 of 2003 as amended:

“The immunity granted in terms of the Inland Revenue (Special Provisions) Act, No.10 of 2003 is not restricted to persons who have not made declarations or had evaded paying tax under the Inland Revenue Act. Sections 2 and 3 of the said Act refers to the declaration that has to be made to the Commissioner General and the immunity granted to such persons, respectively under any law which is specified in the schedule to the Act. Sections 2 and 3 of the Act states that :

“Section 2 –

Any person whether in Sri Lanka or abroad, who though required under any law for the time being in force, which is specified in the schedule hereto.....”

“Section 3 –

Any person making a declaration in terms of Section 2, shall enjoy full immunity from liability to pay tax under any law specified in the schedule hereto.....”

The schedule to the Act includes the following Acts which could be considered as been pivotal to the country's revenue, public finance and fiscal control. They are

- (a) *The Customs Ordinance;*
- (b) *The Excise Ordinance;*
- (c) *The Turnover Tax Act;*
- (d) *The National Security Levy Act*
- (e) *The Goods and Services Tax Act;*
- (f) *The Stamp Duty Act;*
- (g) *The Finance Act;*
- (h) *The Save the Nation Contribution Act;*
- (i) *The Exchange Control Act;*
- (j) *The Import and Export Control Act*

Thus it is obvious that the immunity granted by the Inland Revenue (Special Provisions) Act, No. 10 of 2003, although contained in a law that bears that title and includes time periods particularly applicable to Inland Revenue, is not restricted to Inland Revenue alone, but brings in a number of other important areas such as Customs, Excise and even the Goods and Services Tax, that have been in force at the time the said Act was enacted. Some of the laws such as Customs, it was submitted, attracts several other subject areas and therefore would include, matters such as Revenue Protection Act and the Air Navigation (Customs Regulations). Additionally, this has also included Value Added Tax, Exchange Control Act, Import and Export Control Act, Immigrants and Emigrants Ordinance, Board of Investment Act and the like.

The effect of the aforesaid provisions is the creation of two segments of tax payers and persons within the country. One being the law abiding honest person who has diligently complied with laws relating to revenue, public finance and fiscal control and submitted the requisite declarations and returns and paid what is due. The other would be the person who has been evading tax for several years and who has not complied with the salutary requirements of laws relating to revenue, public finance and fiscal control and who would now benefit through the immunity granted by the Inland Revenue (Special Provisions) Act No.10 of 2003. Section 3 referred to above, grants 'full immunity from liability to pay tax under any law specified in the schedule hereto' and the immunity would be enjoyed from liability from any investigation or prosecution for

any offence under any law specified in the schedule to the Act. Thus the Act has made clear provisions to create two categories and through such classification has favoured one category by allowing them to enjoy full immunity not only from liability to pay tax, but also from any investigation or prosecution. There again the immunity is not limited to the Inland Revenue Act, but extends as referred to earlier, to a number of other subject areas."

"It is our opinion, based upon the preceding analysis that, the provisions contained in the Inland Revenue (Special Provisions) Act, No.10 of 2003, as amended, are inconsistent with Article 12(1) of the Constitution which guarantees to every person equal protection of the law; in that it grants; immunities and indemnities to persons who have contravened the laws that have been referred to and thereby defrauded public revenue causing extensive loss to the State"

Thus it is seen that the revival of the status quo ante in effect removes an inconsistency with the Constitution brought about by Act No. 10 of 2003, as amended.

The Addl. Solicitor General submitted that clause 2(2) would be replaced by a provision on the following lines :

"Subject to the provisions of Section 3 of this Act, any person who was liable to any tax, levy, penalty (including any penalty in respect of any offence), forfeiture or fine in terms of any of the laws specified in the schedule to the Inland Revenue (Special Provision) Act No.10 of 2003, immediately prior to the enactment of the Inland Revenue (Special Provision) Act No.10 of 2003 as amended by Act No.31 of 2003 will continue to be liable to such tax, levy, penalty (including any penalty in respect of any offence), forfeiture or fine notwithstanding any thing done or any right or liberty acquired in terms of the Inland Revenue (Special Provision) Act No.10 of 2003 as amended by Act No. 31 of 2003."

If an amendment is made to clause 2(2) in the manner that has been suggested we are of the opinion that the inconsistency with the Constitution would cease.

Clause 3 of the Bill grants an amnesty only where hitherto undeclared assets or income or additional or new assets or sources of income are disclosed in a declaration made in terms of Act No.10 of 2003, as amended.

The disclosure of undisclosed assets and the like would in our view be a valid basis for the grant of an amnesty which would not be inconsistent with the equal protection of law guaranteed by Article 12(1) of the Constitution.

Proviso to clause 4(2) empowers the Minister to appoint any person or persons from within the Authority administering any law referred to in the schedule to Act No. 10 of 2003, in order to expedite the collection or recovery of taxes, levies or penalties. Such persons would be Public Officers in terms of the Constitution. We are of the view that the power that is sought to be vested in the Minister to appoint any Public Officer to discharge a particular function would be inconsistent with the provisions of Chapter IX of the Constitution relevant to the Public Service, as included in the 17th Amendment.

Prior to the 17th Amendment to the Constitution, the Public Service came within the overall control of Cabinet of Ministers in terms of Article 55 of the Constitution. The 17th Amendment brought about radical departure from this state and the authority of the Cabinet of Ministers is restricted to Heads of Departments.

Therefore we are of the opinion that the contents of the proviso to clause 4(2) of the Bill would be inconsistent with Article 55 of the Constitution, as amended by the 17th Amendment to the Constitution.

Clause 6 of the Bill empowers the Minister to issue general or special directions for the proper administration and implementation of the provisions of the Act and where necessary to issue guidelines to ensure the same. This clause too would attract the same objection referred to above.

The Addl. Solicitor General submitted that similar provisions are not contained in the Inland Revenue Act or any of the Revenue Statutes that are in operation. Furthermore the clause seeks to vest in the Minister a discretionary power without adequate guidelines. It is therefore in our opinion inconsistent with Article 12(1) of the Constitution and the provisions of Chapter IX of the Constitution, as amended by the 17th Amendment.

For the reasons stated above we make a determination as follows :

- a) that clause 2(2) is inconsistent with Article 80(1) of the Constitution;
- b) the proviso to clause 4(2) is inconsistent with Article 55 of the Constitution as amended by the 17th Amendment;
- c) clause 6 is inconsistent with Article 55 of the Constitution, as amended by the 17th Amendment and Article 12(1) of the Constitution.

We make a further determination in terms of Article 123 of the Constitution that the inconsistencies stated above would cease if clause 2(2) is replaced by a provision on the following lines::

"Subject to the provisions of Section 3 of this Act, any person who was liable to any tax, levy, penalty (including any penalty in respect of any offence), forfeiture or fine in terms of any of the laws specified in the schedule to the Inland Revenue (Special Provision) Act No.10 of 2003, immediately prior to the enactment of the Inland Revenue (Special Provision) Act No.10 of 2003 as

amended by Act No.31 of 2003 will continue to be liable to such tax, levy, penalty (including any penalty in respect of any offence), forfeiture or fine notwithstanding any thing done or any right or liberty acquired in terms of the Inland Revenue (Special Provision) Act No.10 of 2003 as amended by Act No. 31 of 2003."

And, the proviso to clause 4(2) and clause 6 are deleted from the Bill.

Sgd.

Sarath N. Silva
Chief Justice

Sgd.

C.N. Jayasinghe
Judge of the Supreme Court

Sgd.

N.K. Udalagama
Judge of the Supreme Court