

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

“MONETRY LAW (AMENDMENT) ACT” &
INLAND REVENUE (SPECIAL PROVISIONS) BILL

In the matter of a petition under Article 121
of the Constitution.

S.C(SD) No. 08/2003,
09/2003, 10/2003 &
11/2003

Centre for Policy Alternative (Guarantees) .,
Ltd., (Petitioner in S.C(SD)) 8/2003)

Rohan Edirisinghe
(Petitioner in S.C(SD) 9/2003)
Elmo Paul Wijesinghe
Stella Jothimoni Wijesinghe
(Petitioners in S.C(SD) 10/2003)
Nihal Sri Amerasekera
(Petitioner in S.C(SD) 11/2003)

BEFORE: Sarath N Silva Chief Justice
Hector S. Yapa Judge of the Supreme Court
Nihal Jayasinghe Judge of the Supreme Court

COUNSEL: M.A.Sumanthiran with Viran Corea and Ms. Sharmila
Anthony for the Petitioners
(S.C(SD) 08/03, 09/03 and 10/03)

S. Marsoof, P.C., Additional Solicitor General with
U.Egalaheva, S.S.C and Arjuna Obeysekera , S.C for the
Attorney-General (in S.C(SD) 08/03,09/03 and 10/03)

K.Kanag-Iswaran,P.C. with M.A.Sumanthiran, Viran
Corea, Ms. Vindya Weerasekera and Shivaan Kanag-
Iswaran for the Petitioner.
(in S.C(SD) 11/2003)

K.C.Kamalasabayson, P.C., A.G., with Saleem Marsoof,
P.C., Additional Solicitor General with U.Egalaheva,
S.S.C., for the Attorney-General (in S.C(SD) 11/2003)

ARGUED ON: 29.5.2003

DECIDED ON: 04.08.2003



Sarath N. Silva, C.J.

These petitions are being considered together in view of certain preliminary objections that have been raised by the Additional Solicitor General, that applies in relation to all these petitions.

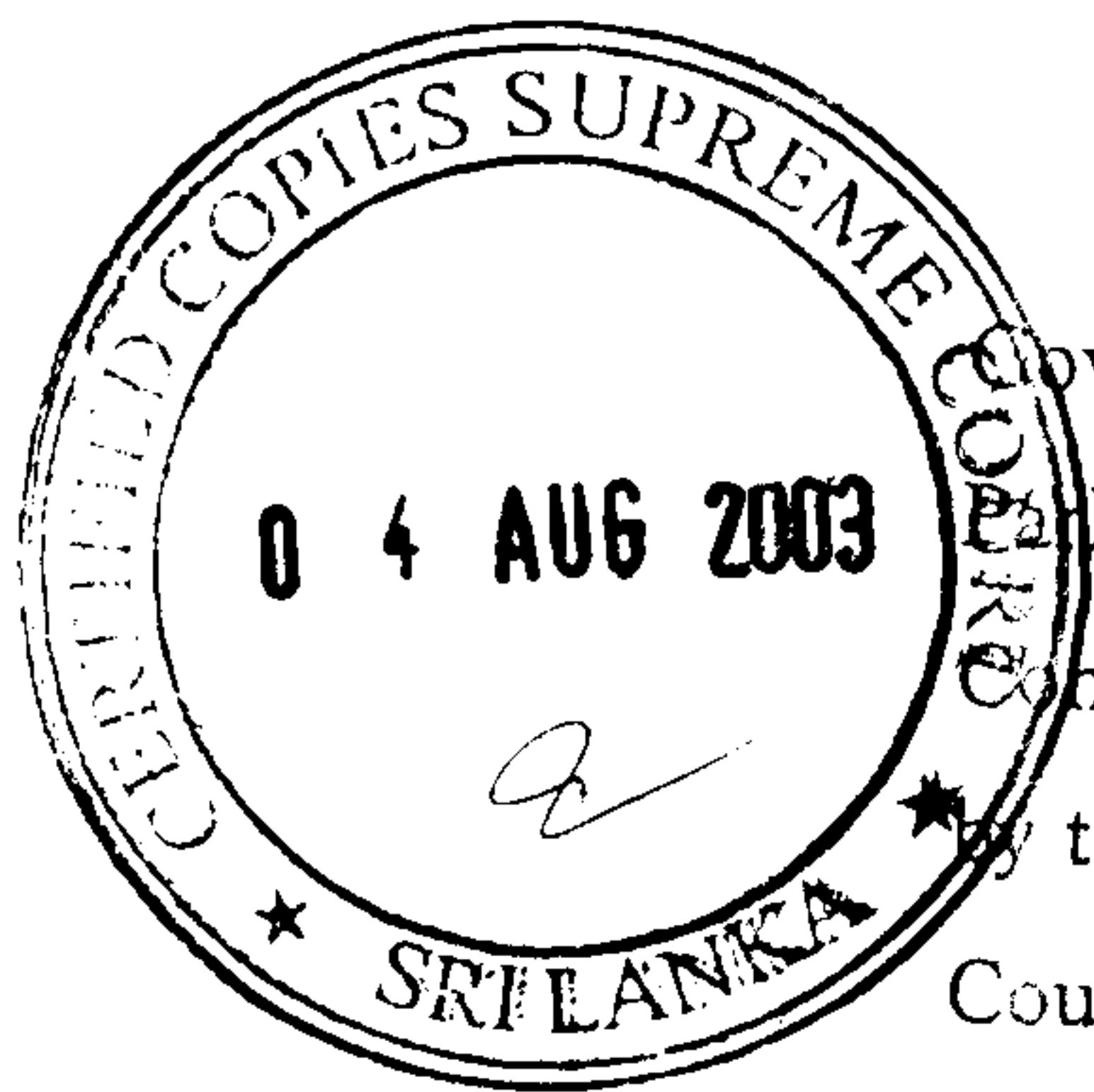
The petitions bearing Nos. S.C(SD) 8/2003, 09/2003 and 10/2003 relate to the Monetary Law (Amendment) Bill and S.C(SD) 11/2003 relates to Inland Revenue (Special Provisions) Bill.

The Monetary Law (Amendment) Bill was published in the Government Gazette of 27.09.2002, and was placed in the Order Paper of Parliament. The Bill together with certain amendments moved at Committee Stage were passed by Parliament on 11.12.2002 and certified by the Speaker on 17.12.2002. These petitions have been presented to this Court on 1.4.2003.

The Inland Revenue (Special Provisions) Bill was published in the Government Gazette on 20.1.2003 and was placed in the Order Paper of Parliament. The Bill was passed by Parliament and certified by the Speaker on 17.03.2003.

The petition has been presented to this Court on 21.04.2003.

The petitions in respect of the Monetary Law (Amendment) Act No. 32 of 2002 has been presented to this Court on the basis that the clause to which objection is raised on the ground of constitutionality, namely clause 10, was introduced at the Committee Stage of the proceedings in Parliament. It is contended that the amendment which directly affects the persons who have deposited monies in the Pramuka Bank had been denied an opportunity of challenging the constitutionality



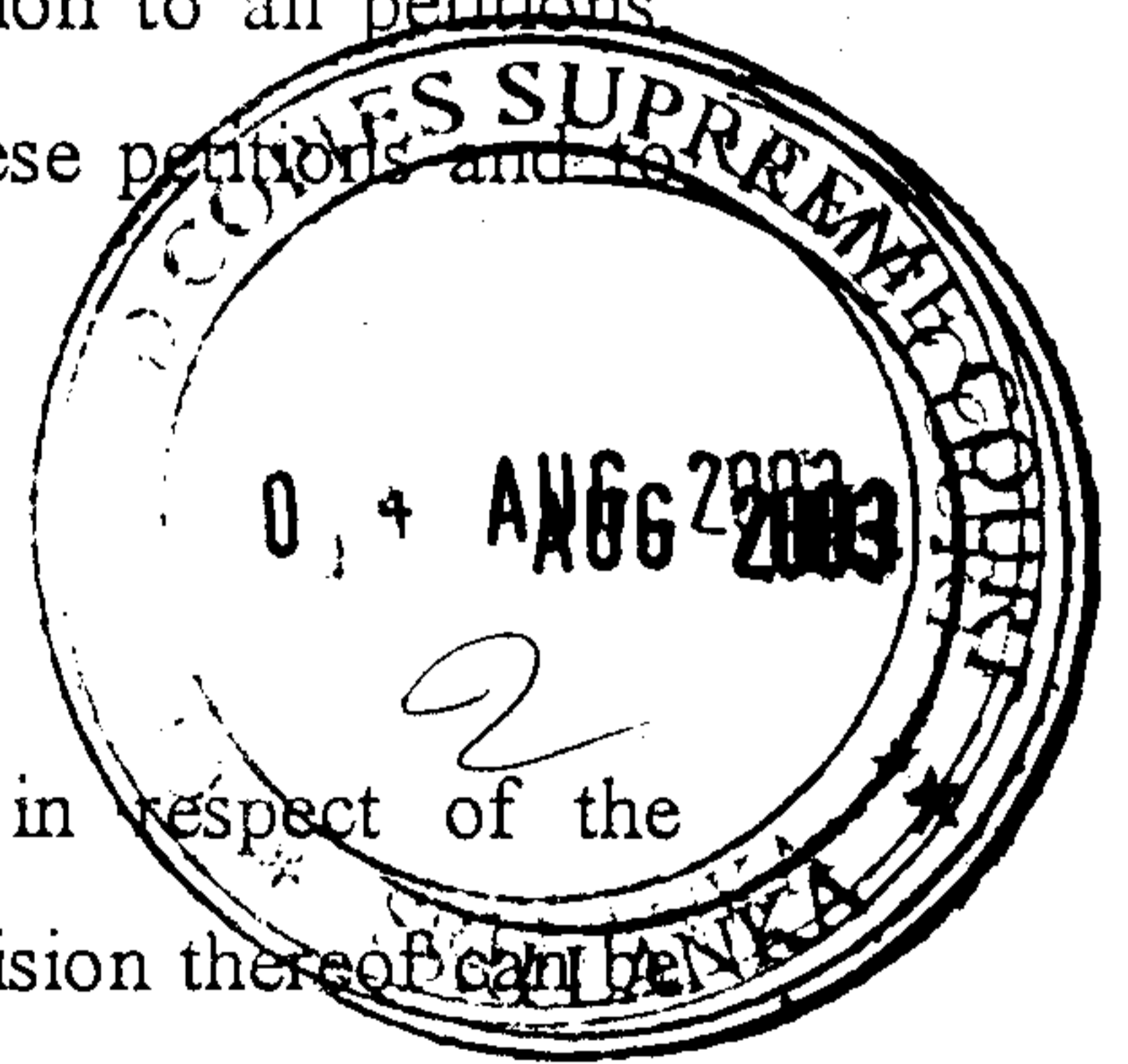
of the amendment, in view of the fact that the provision was included at the Committee Stage.

The petition in respect of Inland Revenue (Special Provisions) Bill has been presented on the basis that the Bill was not available in the print and that the petitioner was thereby deprived of an opportunity of challenging its constitutionality before this Court. The Petitioner states that he is acting in the public interest, in view of the far reaching impact the provisions of the Bill have on the economy of the country and the unequal treatment contained therein, which favours persons who have failed to make declarations in terms of Inland Revenue Act and other revenue laws and give such persons an undue advantage over persons who have duly complied with revenue provisions and paid what was due, in compliance with the applicable law. It is contended that the Bill seeks to benefit those who have defrauded revenue and defaulted in complying with the mandatory provisions of law and give them an unequal advantage over persons who have duly complied with the law.

The preliminary objections raised, being common to all petitions relate to the jurisdiction of this Court to entertain these petitions and to grant relief as prayed for by the Petitioners.

These objections are as follows :

- i) That, the jurisdiction of this Court in respect of the constitutionality of any Bill or any provision thereof can be invoked only as provided for in Article 121 of the Constitution. In view of the provisions of Article 124 of the Constitution, no Court or tribunal shall have jurisdiction to inquire into or pronounce upon the constitutionality of a Bill or its due compliance with the legislative process, except as provided for in Articles 120, 121 and 122 of the



Constitution. That, the Petitions that have been presented and the proceedings envisaged thereon do not come within the ambit of any of these provisions.

- ii) That, since the petitions have been presented long after the period provided for in Article 121(1) and long after the Bills have been enacted into law and certified by the Speaker, the jurisdiction of this Court cannot be invoked, to question the constitutionality of the Bills or their due compliance with the legislative process.
- iii) That, in view of the provisions of Article 80(3) where a Bill becomes law upon the certificate of the Speaker being endorsed thereon, no Court or Tribunal shall inquire into or pronounce upon or in any manner call in question the validity of such Act on any ground whatsoever. In view of this bar which removes the jurisdiction of the court to question the validity of the respective Acts that have been certified by the Speaker, the Court cannot exercise jurisdiction in respect of the Bill on the basis of which the Acts of Parliament have been certified.



The objections raised by the Additional Solicitor General broadly relate to the jurisdiction of this Court to entertain the petitions that have been filed and to grant the relief that is sought. In these applications the relief that is sought is a declaration from this Court that certain provisions of the Bills in question are inconsistent with the Constitution and that there has been no proper compliance of the legislative process in the said Bills being passed by Parliament and thereby becoming law.

Article 120 of the Constitution vests in the Supreme Court the sole and exclusive jurisdiction to determine any question, as to whether any Bill or any provision thereof is inconsistent with the Constitution. The proviso to this Article set out the substantive limitations of the jurisdiction of this Court with regard to

the determinations that can be made in specified situations which are not relevant to the matter in issue.

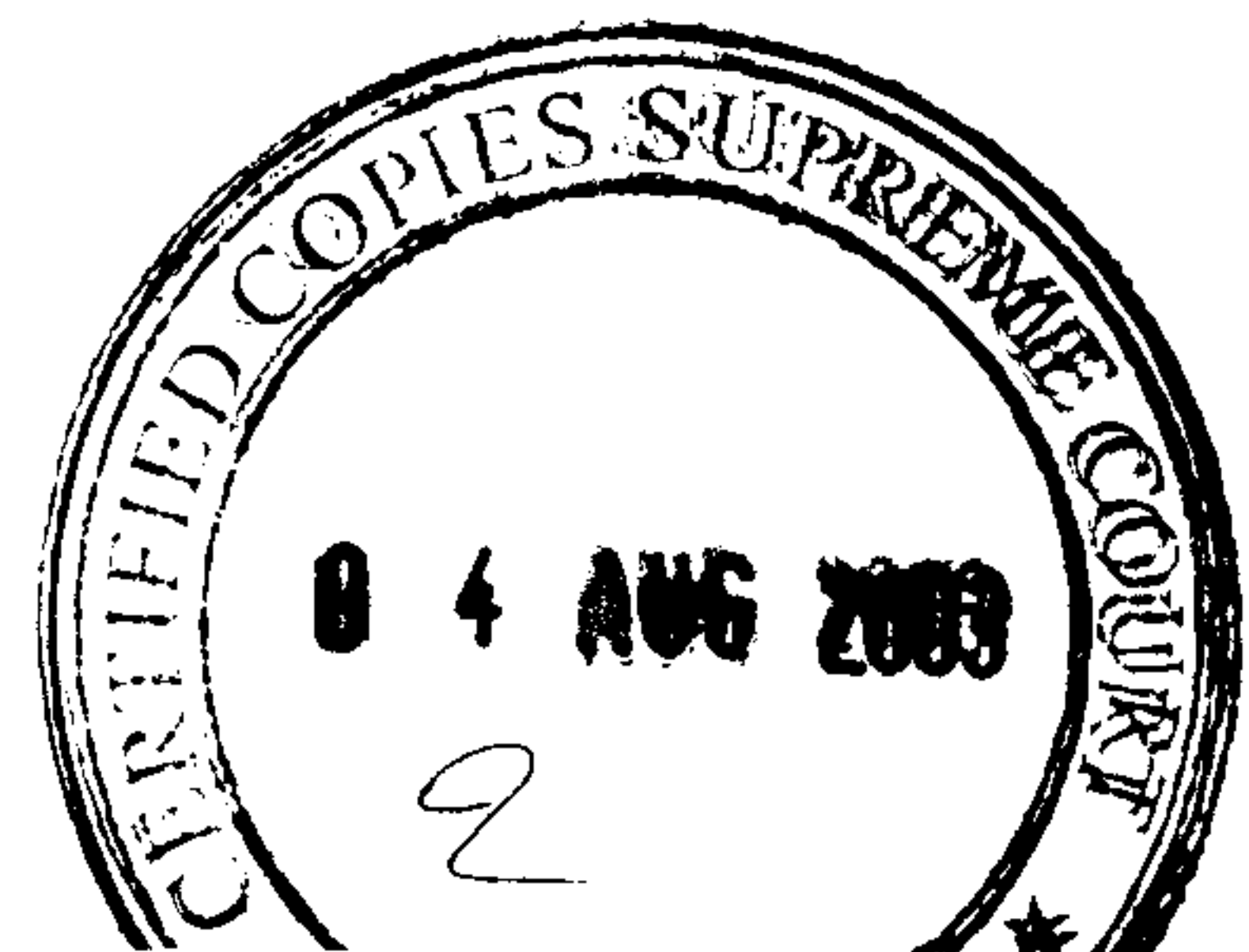
Article 121 specifies the persons who could invoke such jurisdiction and the time within which that should be done. It is stated that this jurisdiction may be invoked by the President or by any citizen including any incorporated or unincorporated body of which not less than $\frac{3}{4}$ of the members are citizens. Where the jurisdiction is invoked by the President it has to be done by means of a written reference addressed to the Chief Justice. Where the jurisdiction is invoked by a citizen or any body as defined above, it has to be done by a petition in writing addressed to the Supreme Court. The time limit within which such petition should be filed or reference made is specifically laid down as being "within one week of the Bill being placed on the Order Paper of Parliament." It is also a requirement that at the same time a copy of the petition or reference be delivered to the Speaker.

Article 122 deals with the Bills that have been considered by the Cabinet of Ministers to be urgent and in the national interest. The special procedure that would apply and the time within which a determination should be made by this Court are contained in this Article.

I have set out above the contents of Articles 120, 121 and 122 with regard to the constitutional jurisdiction of this Court and the manner in which such jurisdiction should be invoked, in view of the provisions of Article 124 which is relied on by the Addl. Solicitor General, as the basis of his objections.

Article 124 reads as follows :

"Save as otherwise provided in Articles 120,121 and 122, no Court or tribunal created and established for the administration of justice, or other institution, person or body of persons shall in relation to any Bill, have power or jurisdiction to inquire into, or pronounce upon the, constitutionality of such Bill or its due compliance with the legislative process, on any ground whatsoever."



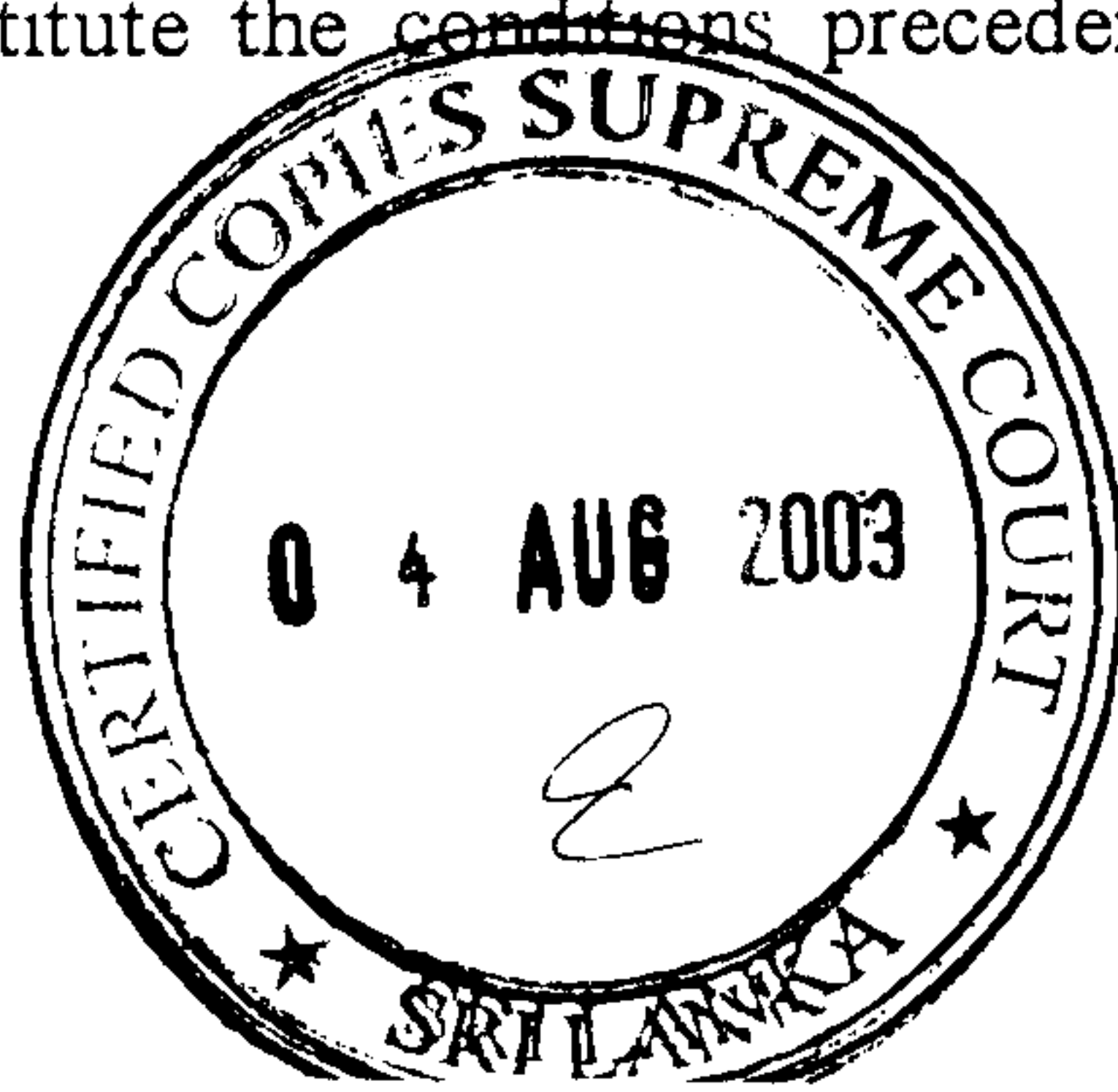
It is seen from this provision that the jurisdiction of this Court to determine the question as to whether any Bill or any provision thereof is inconsistent with the Constitution is strictly limited to what is provided for in Articles 120, 121 and 122. In the case of *Wijewardena vs Attorney General*, 1982 2 SLR page 775, a Bench of 7 Judges of this Court considered the restriction of the jurisdiction as contained in Article 124 of the Constitution. In that case, a person filed an action in the District Court seeking a declaration that an amendment to the Constitution has not been validly passed by Parliament. The matter was referred by the District Court to this Court, in terms of Article 125(1) of the Constitution since it involved the interpretation of the provisions of the Constitution.

In the judgment of this Court, which was unanimous, the Court gave effect to the restriction or ouster of jurisdiction as contained in Article 124 of the Constitution and made order dismissing the action of the Plaintiff.

The Article restricts the jurisdiction of this Court in regard to the following :

- i) to inquire into or pronounce upon the constitutionality of a Bill;
- ii) to inquire into or pronounce upon the due compliance with the legislative process on any ground whatsoever in respect of a Bill.

In regard to both matters, jurisdiction is limited to what is expressly provided for in Articles 120, 121 and 122. Therefore, I am of the view that the provisions of these Articles are not merely procedural in nature but form the conditions upon which the constitutional jurisdiction of this Court could be exercised in respect of the validity of any Bill or the due compliance with the legislative process. They constitute the conditions precedent to the exercise of such jurisdiction by this Court.



The time limit within which the jurisdiction of this Court may be invoked in terms of Article 121(1) does not stand alone. In effect, it is linked to Article 121(2) which states that where jurisdiction has been so invoked "no proceedings shall be had in Parliament in relation to such Bill until the determination of the Supreme Court has been made, or the expiration of a period of three weeks from the date of such reference or petition, whichever occurs first." Thus the fact of invoking the jurisdiction of this Court in the manner and within the time as provided in Article 121(1) sets in motion the provisions of sub-Article (2) which has the effect of stopping the proceedings in relation to such Bill for a maximum period of three weeks from the date of the reference or of the Petition. The time periods in the two provisions operate in tandem, one following the other. When a reference is made or a petition is filed within the time and in the manner provided, that fact alone has the effect of stopping the proceedings in relation to such Bill in Parliament. A fortiori where no reference has been made or no such petition is filed within the time and in the manner provided, the Parliament is free to proceed with the Bill on the assumption that there is no challenge to its constitutionality. This scheme contained in Article 121 supports the view expressed by me that due compliance with the requirements of sub-Article (1) is a condition precedent to the exercise of the jurisdiction of this Court to make a determination as to the constitutionality of a Bill or any provision thereof.

The Petitioners contend that they could not invoke the jurisdiction of this Court within the time specified in Article 121 due to reasons beyond their control and seek the benefit of the maxim "lex non cogit ad impossibilia". Impossibility of performance is no ground to dispense with the due compliance with requirements that operate as conditions precedent to the exercise of jurisdiction. The situations in which this maxim can and cannot apply are made abundantly clear from the following passages from Maxwell on the Interpretation of Statutes - 12th Edition -



“Enactments which impose duties upon conditions are, when these are not construed as conditions precedent to the exercise of a jurisdiction, subject to the maxim, *lex non cogit ad impossibilia*. They are understood as dispensing with the performance of what is prescribed when performance of it is impossible”. (page 327)

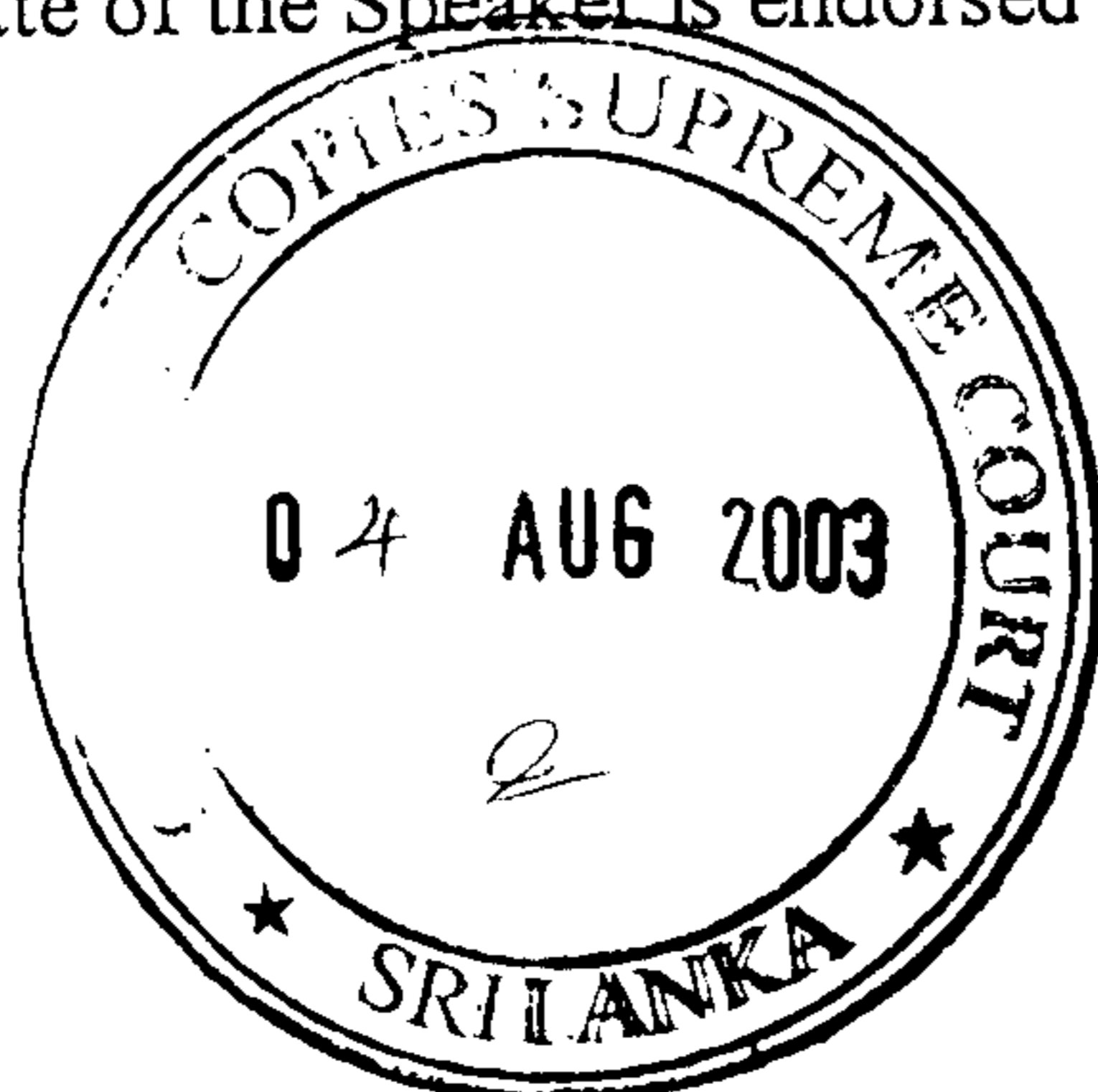
“Where the act or thing required by the statute is a condition precedent to the jurisdiction of a tribunal, compliance cannot be dispensed with and, if it be impossible, the jurisdiction fails. It would not be competent to a court to dispense with what the legislature has made the indispensable foundation of its jurisdiction.” (Page 328)

Article 124 as clearly stated in its provisions postulates that requirements of Article 121(1) form a condition precedent to the exercise of the jurisdiction of the Court to examine the constitutionality of a Bill or any provision thereof. Therefore due compliance of these requirements cannot be dispensed with on the application of the maxim relied on by the Petitioner.

The Petitioners contend that there has been no proper compliance with the legislative process in respect of the said Bills. In terms of the Constitution the legislative power of the People is vested in Parliament subject to certain limitations contained in the Constitution itself. The legislative process commences with the publication of a Bill in the gazette at least seven days before it is placed on the Order Paper of Parliament as provided for in Article 78(1).

Article 78(2) provides for the passing of a Bill by Parliament in accordance with the Constitution and the Standing Orders of Parliament.

Article 80(1) provides that a Bill passed by Parliament shall become law when the certificate of the Speaker is endorsed thereon.



The preclusive clause in Article 124 removes the jurisdiction of this Court to inquire into or pronounce upon the due compliance with any aspect of this legislative process "on any ground whatsoever" unless the jurisdiction is invoked in terms of Article 121, in the manner provided in that Article, as reasoned out above. Therefore the contention of the Petitioners of a non-compliance with the legislative process cannot be inquired into by Court at this stage..

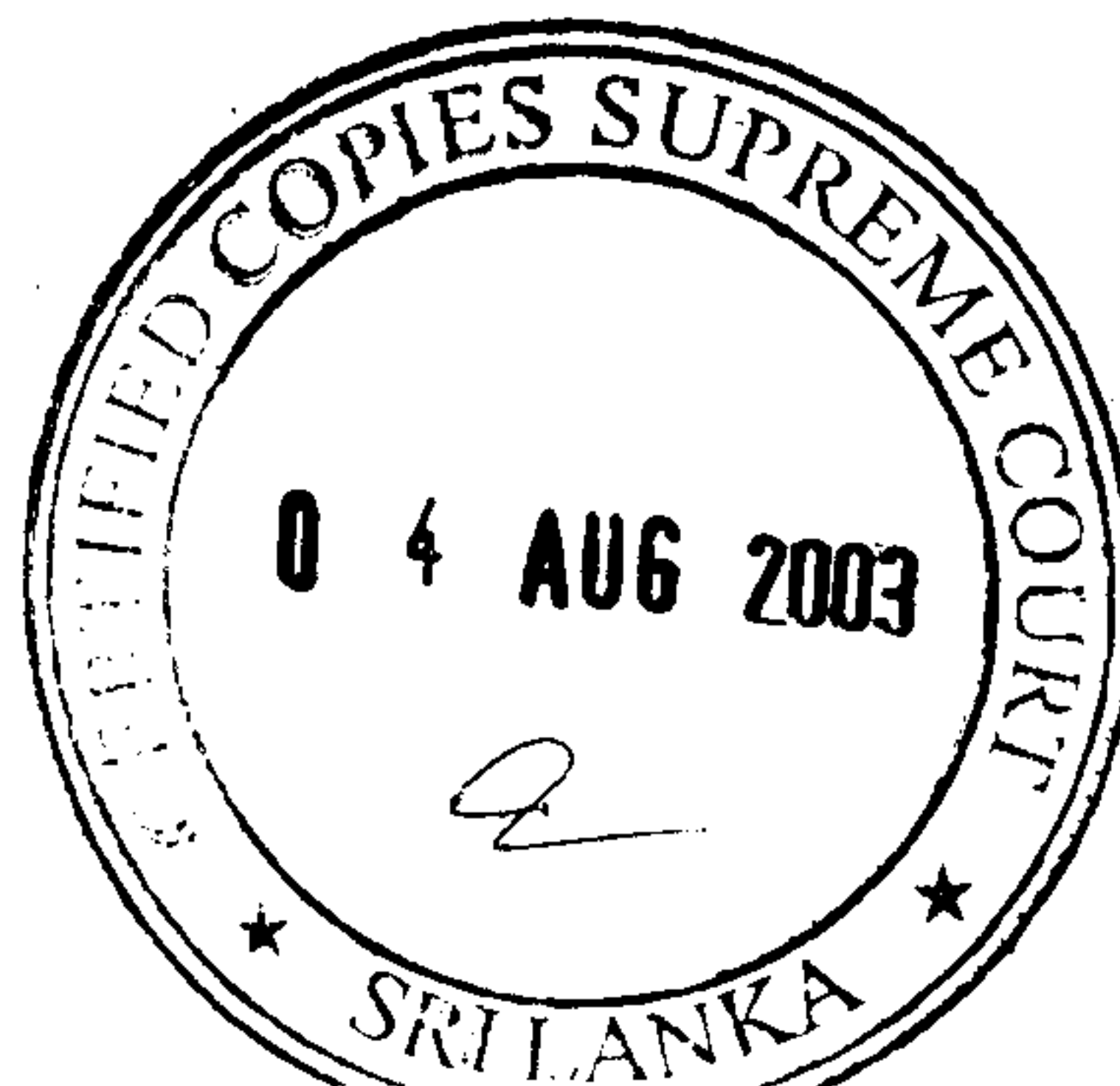
I have now to deal with the objection raised by the Additional Solicitor General on the basis of Article 80(3) which reads as follows :

"Where a Bill becomes law upon the certificate of the President or the Speaker, as the case may be, being endorsed thereon, no court or tribunal shall inquire into, pronounce upon or in any manner call in question, the validity of such Act on any ground whatsoever."

Here, once again, there is a preclusive clause operating on all courts and tribunals that prevent any inquiry or pronouncement upon the validity of any Act of Parliament on any ground whatsoever where the certificate of the President or Speaker as the case may be, is endorsed thereon.

As noted, above both Bills that are subject to challenge in the petitions have become Law upon the certificate of the Speaker being endorsed thereon.

The Petitioners challenge the constitutionality of certain provisions of the Bills that have been referred to. It is to be noted that upon the Bills being passed by Parliament they cease to exist in the form of Bills. Article 80(1) specifically provides that a Bill passed by Parliament becomes law when the certificate of the Speaker is endorsed thereon. Therefore at the time these petitions were presented the respective Bills have ceased to exist and they have been transformed into law, by becoming Acts of Parliament.



Article 80(3) removes the jurisdiction of any Court to pronounce upon or in any manner call in question the validity of an Act of Parliament.

The Petitioners are admittedly bound by this preclusive clause and cannot invoke the jurisdiction of this Court in respect of the validity of the Acts of Parliament. They are seeking to indirectly to achieve this result by challenging the Bills which preceded the respective Acts of Parliament. In the case of *Bandaranayake vs Weeraratne* – 1981 1 SLR page 10, this Court considered the effect of a similar ouster of jurisdiction contained in Article 81(3) in respect of a resolution imposing civic disability.

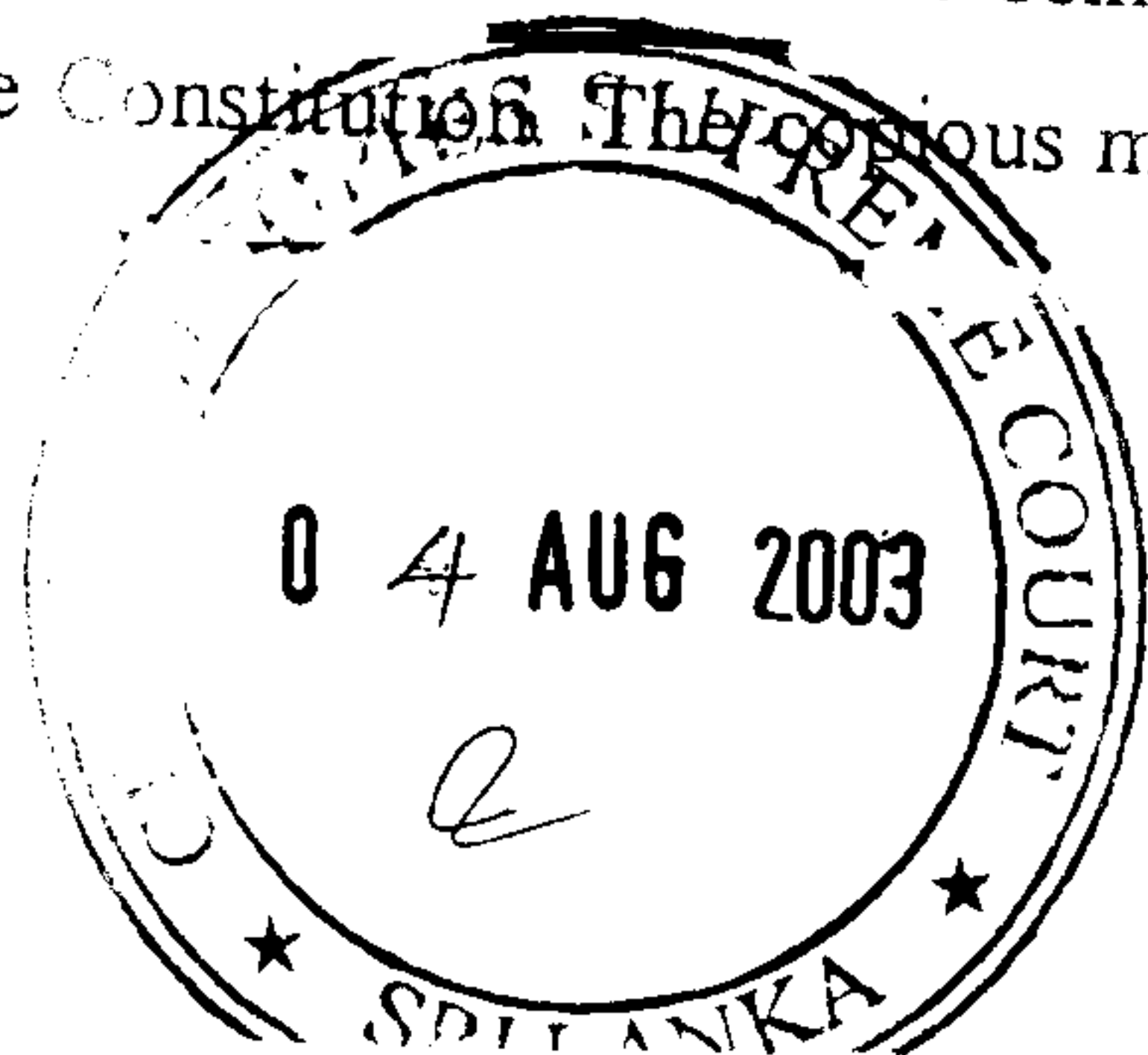
The Petitioners there sought to challenge the findings made by a Special Presidential Commission of Inquiry, on the basis of which the resolution was passed by Parliament imposing civic disability.

Samarawickrema J made the following observation at page 16 –

“There is a general rule in the construction of Statutes that what a court or a person is prohibited from doing directly, it may not be done indirectly or in a circuitous manner.”

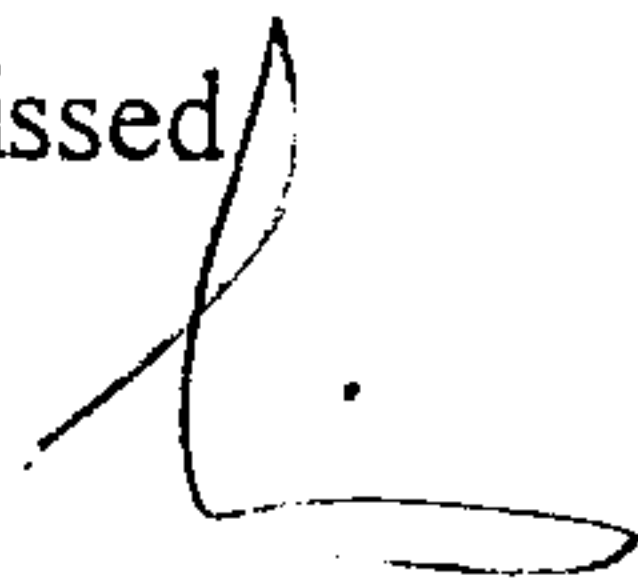
Therefore the Petitioners cannot circumvent the preclusive clause as contained in Article 80(3) in respect of the Acts of Parliament by seeking to challenge the validity of the provisions of the Bill which preceded these Acts of Parliament.

I have adverted to the conduct of the Petitioners solely from the perspective of examining the jurisdiction of this Court. The observations that have been made should never be construed as being adverse to the Petitioners, who have acted in the public interest, in a strenuous and well prepared endeavour to remedy what they perceive as being wrongful and inconsistent with the provisions of the Constitution. The copious material meticulously presented in relation to the



Inland Revenue (Special Provisions) Bill and the sequence of events graphically laid out in relation to the Monetary Law (Amendment) Bill to demonstrate how an amendment came in as it were by a side wind to meet exactly with the Pramukha Bank situation that had arisen, should appropriately have formed part of the proceedings of Parliament being the organ of government duly entrusted with the legislative power of the People. The Constitution being the supreme law has defined a role to each organ of government. The constitutional jurisdiction of this Court has to be exercised within the time and in the manner as mandated by the express provisions of the Constitution dealt with above. According to which, we have to necessarily uphold the objections raised by the Additional Solicitor General and decline to exercise jurisdiction in respect of the matters presented in the petitions.

The Petitions are accordingly dismissed



Chief Justice

Yapa J.,

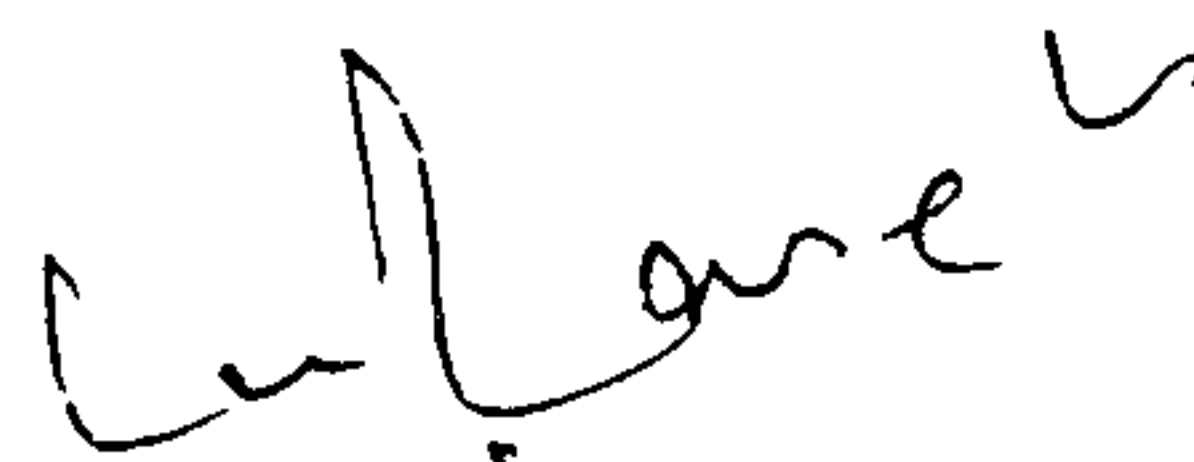
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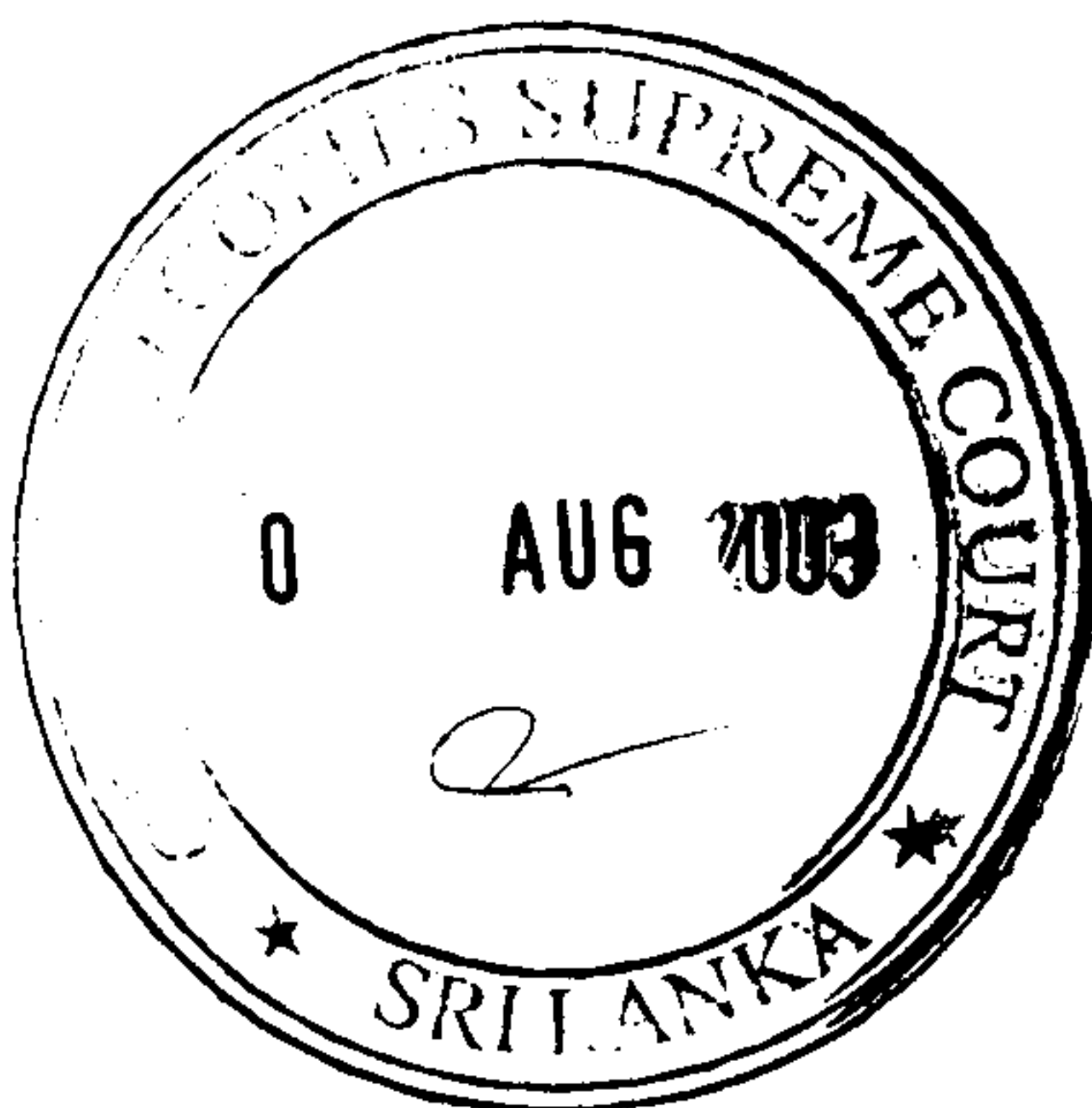
Judge of the Supreme Court

Jayasinghe, J.,

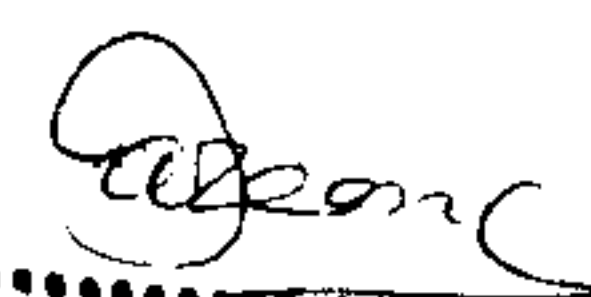
I agree.



Judge of the Supreme Court.



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