

DR. SHIRANI A. BANDARANAYAKE
129, WIJERAMA MAWATHA
COLOMBO 7

20th November 2012

Secretary General of Parliament,
Parliament,
Sri Jayawardenapura – Kotte

I regret that I was not provided with more time.

The letter dated 14/11/2012 was delivered to my official residence at approximately 7 pm on 14/11/2012 asking me to respond to the 14 alleged charges by the 22/11/2012, which is approximately one week's time.

By letter dated 15/11/2012 sent by M/s Neelakandan & Neelakandan on my behalf, and by my letters dated 16/11/2012 and 17/11/2012, I requested further time to respond to the 14 alleged charges.

The said request of mine for further time has not been permitted.

In the limited time available, I respond as hereinafter. I request that the details asked for be furnished, and request further time to respond more fully.

I deny the purported charges. I am totally innocent of the purported charges which are baseless, groundless and frivolous.

I have at all times been independent, and have refused to bow to pressure.

In the circumstances, I request that an inquiry be held by lawfully appointed body consisting of eminent and independent persons not politically affiliated.

I am convinced that I will be exonerated at such an inquiry.

I state that the select committee has no jurisdiction to hear and determine the impeachment motion for the following inter alia reasons :-

- (1) The select committee has no jurisdiction to exercise judicial powers which in this instance it purports to do.
- (2) Without prejudice to (1) above the purported inquiry violates the Rule of Law, which is the basis of governance and the gravamen/foundation upon which the sovereign people have decided that they be governed and their judicial power exercised.

The aforesaid matters would be dealt with briefly hereinafter and more fully if necessary.

SOVEREIGNTY IS IN THE PEOPLE

1. The people are the sovereign in the Democratic Socialist Republic of Sri Lanka.
2. The sovereignty of people is recognized by the constitution.
3. The sovereignty of the people is not granted / conferred / given by the constitution - it is merely recognized by the constitution.

The sovereign people, that is, the sovereign in the land, have determined the manner in which their sovereignty is to be exercised.

No one at all can interfere with such determination of the sovereign.

It should be pointed out that in Sri Lanka the sovereign are the people and not the president, parliament or judiciary. In this context, it is noted that parliament is not the sovereign of this country.

Article 4(c) of the constitution states as follows:-

*"**the judicial power** of the People **shall be exercised** by parliaments **through** courts, tribunals and institutions created and established, or recognized, by the Constitution, or created and established by law, except in regard to matters relating to the privileges, immunities and powers of Parliament and of its Members, wherein the judicial power of the People may be exercised directly by Parliament according to law;" [emphasis is mine]*

In the circumstances Parliament or a Select Committee of parliament cannot exercise the judicial power save and except in the exception set out in article 4(c) which is in regard to matters privileges, immunities and power of people and its members, which exception is not relevant to these proceedings.

The Select Committee purports to exercise judicial power in this instance.

Article 107(2) states that a judge can be removed only for proven misbehavior or incapacity. In this case the allegations are of misbehavior.

The decision or determination whether or not a person is guilty of misbehavior is clearly an exercise of judicial power.

In the circumstance it is **only** a court that can determine whether or not a judge is guilty of proven misbehavior.

Parliament or its Select Committee cannot determine whether a judge is guilty of proved misbehavior since such determination or decision is the exercise of judicial power.

Parliament cannot by the enactment of standing orders confer to itself judicial power and/ or usurp judicial power, which the sovereign (the people of Sri Lanka) have vested in the courts (parliament through courts).

Thus it is submitted that the select committee has no jurisdiction to hold this purported inquiry.

RULE OF LAW

Sri Lanka is governed by the Rule of Law.

The gravamen/ foundation/ basis of the legal system of Sri Lanka is the Rule of Law.

The sovereign people have determined that all judicial power be exercised based on the principle of Rule of Law.

It is on that premise that Justice in the celebrated case of *R v Sussex Justices ex parte McCarthy* 1924- 1KB-256, 1923 All E R 233 laid down the maxim that "*Not only must Justice be done; it must also be seen to be done.*"

The Rule of Law mandates that every person gets a fair and impartial hearing.

This maxim has been recognized by all civilized legal systems throughout the world and has been recognized and adopted without exception by the courts in Sri Lanka.

I state that the aforesaid principles are violated in inter alia the following circumstances:-

- (a) all members who signed the resolution come under purview of government whip
- (b) the majority of select committee are members coming under the government whip

- (c) the government whip at present is Hon. Dinesh Gunewardene who is a member of cabinet
- (d) 07 members of the select committee, who constitute its majority, are either cabinet ministers or deputy ministers
- (e) His Excellency the President is the head of government and the members who signed the impeachment motion and the majority of members of select committee are members under the government whip
1. The following facts are relevant.
 - (i) The Select Committee was appointed on 14th November at approximately 10 a.m.
 - (ii) The Select Committee met at approximately 4 p.m. on 14th November.
 - (iii) The document said to contain a charge sheet was hand delivered at Chief Justice's Official Residence at approximately 7 p.m.
 - (iv) Only approximately 1 week was given to reply the document which contained 14 purported charges.
 2. I answer hereafter without prejudice to the aforesaid.
 3. I further state that: -
 - (i) The document dated 14/11/2012 contains no charges in Law.
 - (ii) The purported charges even if proved do not constitute proved misbehavior within the meaning of Article 107(2) of the Constitution and therefore cannot result in the impeachment of me in my capacity as Chief Justice of the Republic.
 - (iii) The purported charges do not constitute charges within the meaning of the Law.
 - (iv) The purported Standing Orders have no legal validity in Law.
 4. I further state that these purported charges have been made *mala fide* and the process followed up to now is evidence of such *mala fide*.
 5. I provide my observations hereafter without prejudice to the aforesaid.
 6. I object to the following members of the Select Committee for the following reasons.
 - 1) **Hon Dr. Rajitha Senaratne**
 - a) Mrs. Sujatha Senaratne [wife of Hon. Senaratne] instituted a Fundamental Rights case concerning the appointment of the Director National Hospital and her right to make an application to that post, which was argued before a Bench presided over by me over several days. Leave to proceed was refused which resulted in the dismissal of the case. The dismissal was approximately 7 Months ago. Thus, Mrs. Senaratne lost an opportunity to be considered for the post .
 - b) As per newspaper reports [uncontradicted] the Hon. Senaratne is a cogent supporter of the motion.
 - 2) **Hon. Wimal Weerawansa**
 - a) An appeal to the Supreme Court filed by Hon. Wimal Weerawansa was dismissed on or about 03/04/2010 months ago by a bench of Supreme Court, presided by me.

- b) Case No. SC Sp LA 59A/2006 [appeal filed by Hon. Weerawansa against Hon. Ravi Karunanayake] is pending in the Supreme Court and has come up before a Bench of which myself was a member.
- c) Hon. Weerawansa has publicly announced that he intended instituting proceedings in the Supreme Court for the repeal of the 13th Amendment to the Constitution and is not filing it at present in view of the pending impeachment motion. It is alleged that I was in favour of the 13th Amendment.
7. I make my observations hereafter without prejudice to the aforesaid.
8. The purported Charges cannot be fully answered without the following details;
- (i) What are the annual declarations of assets and liabilities referred to in Charge 3?
 - (ii) What are the details of the 34 Million [approximately] in foreign currency deposited in the branch of the N D.B Bank as referred to in Charge 3?
 - (iii) What are the details of the more than twenty Bank accounts referred to in Charge 4, and what are the Banks?
 - (iv) What are annual declaration of accounts and liabilities referred to In Charge 4?
 - (v) What is the 'contradiction' referred to in Charge 9?
 - (vi) What is the article published by me in Ground views in Charge 10?
 - (vii) In which issue of Ground views is the Article published?
 - (viii) What are the details of the harassment referred to in Charge 11?

PURPORTED CHARGE 1

Note: English translation of the purported charges, were obtained from the Parliament's website at www.parliament.lk

"1. Whereas by purchasing, in the names of two individuals, i.e. Renuka Niranjali Bandaranayake and Kapila Ranjan Karunaratne using special power of attorney license bearing No. 823 of Public Notary KB. Aroshi Perera that was given by Renuka Nirnsjali Bandersneyake and Kapila Ranjan Karunaratne residing at No. 127, Ejina Street, Mount Hawthorn, Western Australia, 6016, Australia, the house bearing No. 2C/F2/P4 and assessment No. 153/1-2/4 nom the housing scheme located at No. 153, Elvitigala Mawaths, Colombo 08 belonging to the company that was known as Ceylinco Housing and Property Company and City Housing and Real Estate Company Limited and Ceylinco Condominium Limited and is currently known as Trillium Residencies which is referred in the list of property in the case of fundamental rights application No. 262/2009, having removed another bench of the Supreme Court which was hearing the fundamental rights application cases bearing Nos. 262/2009, 191/2009 and 317/2009 filed respectively in the Supreme Court against Ceylinco Sri Ram Capital Management, Golden Key Credit Card Company and Finance and Guarantee Company Limited belonging to the Ceylinco Group of Companies and taking up further hearing of the aforesaid cases under her court and serving as the presiding judge of the benches hearing the said cases"

1. The crux of the charge is that I wrongfully took over the hearing of a case so that I could purchase using a power of attorney a housing unit in the Trillium Residencies in the name of my sister and my brother in law.
2. The allegation is totally baseless and groundless.
3. I had a special power of attorney from my sister and my brother in law because my sister and brother in law were the purchasers.

4. The housing unit was not purchased by me in the name of my sister and my brother in law. It was in fact and in truth purchased by my sister and my brother in law.
5. The total purchase consideration was remitted by my sister and my brother in law as more fully set out hereinafter [vide paragraphs under charge 3 below].

Thus it is clear that my sister and my brother in law provided the total consideration. I did not provide a cent of the purchase consideration.

Thus, the premises was in fact bought by my sister and my brother in law and not purchased in the names of my sister and my brother in law.

My sister or brother in law received no benefit whatever by the case being called or heard before me.

I may mention that myself and my sister are the only children of my family and I have been looking after my sister's interest in Sri Lanka for the last 22 years whilst my sister was living in Australia; I held their general power of attorney from about 1990 when they left Sri Lanka.

Relevant dates

The proceedings of 6.5.2010:-

The Supreme court (consisting of Hon. Justice Thilakawardene, Hon. Justice Sripavan and Hon. Justice Imam) made inter alia the following order on 6.5.2010:-

" ... The properties to be disposed would be:-

(1) pioneer tower (head office building)

(2) trillium residencies (sale of housing units)

(3) celestial residencies ... "

In the circumstances there was no restriction for the sale of any of the housing units of Trillium from 6.5.2010.

In the circumstances from 6.5.2010 the housing units in Trillium residencies were in effect not a property in the list of properties in case 262-2009 that could not be alienated.

I became Chief Justice on or about 18.5.2011, which is one year after the above order of the Supreme Court.

In the circumstances I did not in any way participate in the order in which housing units in trillium residencies was permitted to be sold.

Cases bearing numbers 262-09, 191-09 and 317 -09 referred to in the charge were meant to be taken up together. On 23.8.2011 a motion was filed asking that the matter be heard by a bench of 5 judges. This motion was submitted to me, and I made order that the motion be supported before the bench which sat on 29.6.2011, which was Hon. Justice Thilakawardene, Justice Ekanayake and Dep P. C J.

In the circumstances it is incorrect to allege that I wrongfully took over the case.

It may be relevant to note that after 6.5.2010 case No.262/2010 was taken up before the former Chief Justice Hon. Justice Asoka de Silva. The former Chief Justice Hon, Justice Asoka de Silva himself purchased a housing unit at trillium residencies demonstrating that there was no impediment to purchase such a housing unit.

In summary then,

- (1) the sale /purchase of housing units of Trillium Residences was permitted by order of the SC dated 6.5.2010 (Supreme Court bench consisting of Hon. Justice Thilakawardene, Hon. Justice Sripavan and Hon. Justice Imam);
- (2) there was no restriction in the sale of housing units of Trillium Residences after 6.5.2010
- (3) I became Chief Justice on or about 18.5.2011;
- (4) the case was mentioned before myself for the first time on 13.10.2011;
- (5) there was nothing wrong in the manner in which the case came before me;
- (6) the properties were purchased by my sister and brother in law and not by me; and
- (7) my sister and brother in law did not receive any benefit whatsoever by myself hearing the case.

PURPORTED CHARGE 3

"3. Whereas, by not declaring in the annual declaration of assets and liabilities that should be submitted by a judicial officer, the details of approximately Rs. 34 million in foreign currency deposited at the branch of NDB Bank located at Dharmapala Mawatha, Colombo 07 in accounts 106450013024, 101000046737, 100002001360 and 100001014772 during the period from 18 April 2011 to 27 March 2012."

The Charge is groundless and baseless.

In summary my position is as follows:-

There was no deposit of Rs. 34 million in foreign currency as alleged in the charge.

My sister remitted from Australia the equivalent of Rs.29,688,225.38 for the purchase of a housing unit at Trillium Residences.

Out of such sum, a sum of Rs.27, 987,200/- was remitted to the vendor by cheques in connection with the purchase of the housing unit at Trillium Residences.

The above sum of Rs.29,688,225.38 was not an asset that belonged to me.

The balance Rs. 800,000/= was retained by me to be used as per my sister's instructions to be utilized for other purposes including the annual almsgiving in memory of our parents.

In any event, in my declaration of assets and liabilities, I declared a sum of Rs.1 0,061 ,819/31 as "holding on behalf of my sister to pay for the apartment" [this was the only sum held by myself for and on behalf of my sister as at 31.3.2012 and it had been declared].

In the circumstances,

- (a) I did not receive a sum of Rs.34 million as alleged in the charge;
- (b) the only sums received from abroad aggregated to the equivalent of Rs.29,688,225.38 which I received from my sister for the purchase of their apartment.
- (c) of this sum, a sum of Rs.27, 987,200/- was remitted to the vendor to purchase the apartment;
- (d) a sum of Rs 1,000,000/= was credited to my sister's account; the balance was retained as per my sister's instructions for expenses.

(e) I had declared the full sum held by me on account of my sister as at 31.3.2012 in my declaration of assets and liabilities [that is a sum of Rs.10,061,819.31].

In the circumstances the purported charge that I did not declare Rs.34 million in my declaration is groundless, baseless, frivolous and malicious.

PURPORTED CHARGE 2

“2. Whereas, in making the payment for the purchase of the above property, by paying a sum of Rs. 19,362,500 in cash, the manner in which such sum of money was earned had not been disclosed, to the companies of City Housing and Real Estate Company Limited and Trillium Residencies prior to the purchase of the said property.”

The Charge is groundless and baseless.

This sum (Rs.19,362,500/-) is included in the aforesaid sum of Rs.29 ,688,225.38 remitted to me by my sister for the purchase of their housing unit referred to above.

The sum of Rs.19,362,500/- was part of the purchase consideration of the housing unit referred to above.

This sum of Rs.19,362,500/- is also included in the sum remitted to the vendor for the purchase of housing unit.

This sum of Rs.19,362,500/- never belonged to me.

PURPORTED CHARGE 4

“4. Whereas, by not declaring; in the annual declaration of assets and liabilities that should be submitted by a judicial officer the details of more than twenty bank accounts maintained in various banks including nine accounts bearing numbers 106450013024, 101000046737, 100002001360, 100001014772, 100002001967, 100101001275, 100110000338.”

The Charge is groundless and baseless.

In summary my position is as follows:-

1. I have dealt exclusively with NDB Bank from 2010
2. Account number 100101001275 was closed on or about 9.10.2008.
3. I have been informed that the NDB as per its banking practice changed the account numbers by allocating new account numbers to its constituents.
4. In pursuance of that practice, Account numbers 100001014772, 100110000338, 100121001797, 100124000238, 100002001360 and 100002001967 had been changed and new account numbers had been allocated before 31.3.2012.
5. Consequently of the 9 account numbers mentioned in purported charge No.4 only 2 account numbers were in existence as at 31.3.2012 and those 2 account numbers have been declared.
6. All other operative accounts in NDB Bank having assets have been declared.
7. I have no operational accounts in any other bank.
8. I have not been provided with details of the other alleged over 20 accounts and/ or other banks in which these accounts are said to be.

PURPORTED CHARGES 6, 11, 12, 13 & 14

“6. Whereas, despite the provisions made by Article 111H of the Constitution that the Secretary of the judicial Service Commission shall be appointed from among the senior judicial officers of the courts of first instance, the Hon. (Dr.) (Mrs.) Upatissa Atspettu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bendarenayake acting as the Chairperson of the judicial Service Commission by virtue of being the Chief justice, has violated Article 111H of the Constitution by disregarding the seniority of judicial officers in executing her duties as the Chairperson of the judicial Service Commission through the appointment of Mr. Manjula Thilakeratne who is not a senior judicial officer of the courts of first instance, while there were such eligible officers.”

“11. Whereas, in the case, President's Counsel Edward Francis William Silva and three others versus Shirani Bandaranayake (1992 New Law Reports of Sri Lanka 92) that challenged the suitability of the appointment of the Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahmilage Shirani Anshumala Bandaranayake who holds the office of the Chief justice and thereby holds the office of the ex-officio Chairperson of the judicial Service Commission in terms of the Constitution, Attorney-at-Law L. CM. Swarnadhipathi, the brother of the Magistrate Kuruppuge Beets Anne Warnasuriya Swarnadhipathi filed a petition against the appointment of the said Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Relebemilge Shirani Anshumala Bandaranayake owing to which the Hon. (Dr.) (Mrs.) Upetissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake has harassed the said Magistrate Kuruppuge Beeta Anne Warnasuriya Swarnadhipathi;”

“12. Whereas, the Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake who holds the office of the Chief justice and thereby holds the office of the ex-officio Chairperson of the judicial Service Commission in terms of Article 111D (2) of the Constitution has, by acting ultra vires the powers vested in her by the Article 111H of the Constitution ordered the Magistrate (Mrs.) Rangani Gamage's right to obtain legal protection for lodging a complaint in police against the harassment meted out to her by Mr. Manjula Thilakeratne, the Secretary of the Judicial Service Commission.”

“13. Whereas, the said Hon. (Dr.) (Mrs.) Upatissa Atspattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake being the Chief Justice and thereby being the Chairperson of the judicial Service Commission, in terms of Article 11W (2) of the Constitution, has abused her powers by ordering the Magistrate (Mrs.) Rangani Gamage to obtain permission of the judicial Service Commission prior to seeking police protection thereby preventing her from exercising her legal right to obtain legal protection.”

“14. Whereas, the Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake by performing her duties as the Chairperson of the judicial Service Commission has referred a letter through the Secretary of the judicial Service Commission to the Magistrate (Mrs.) Rangani Gamage, calling for explanation from her as to why a disciplinary inquiry should not be conducted against her for seeking protection from the Inspector General of Police by exercising her legal right.”

These Charges are groundless and baseless.

1. These purported charges deal with decisions taken by the Judicial Services Commission.
2. The Judicial Service Commission consists of the Chief Justice (the Chairperson) and two other judges of the Supreme Court as Commissioners.
3. All decisions are taken by the Judicial Service Commission.
4. All decisions of the Judicial Service Commission (after I became Chief Justice) had been unanimous.
5. In the circumstances no decision has been taken by myself alone.
6. The charges therefore deal with the decisions of the Judicial Service Commission and not of my decisions.

7. In the circumstances the purported charges cannot amount to misbehavior on my part in terms of Article 107 of the Constitution.

PURPORTED CHARGE 5

“5. Whereas, Mr. Pradeep Gamini Suraj Kariyawasam, the lawful husband of the said Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake is a suspect in relation to legal action initiated at the Magistrate's Court of Colombo in connection with the offences regarding acts of bribery and/or corruption under the Commission to Investigate into Allegations of Bribery or Corruption Act, No 19 of 1994.

Whereas, the post of Chairperson of the Judicial Service Commission which is vested with powers to transfer, disciplinary control and removal of the Magistrate of the said court which is due to hear the aforesaid bribery or corruption case is held by the said Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake as per Article 111D (2) of the Constitution;

Whereas, the powers to examine the judicial records, registers and other documents maintained by the aforesaid court are vested with the said Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage

Shirani Anshumala Bandaranayake under Article 111I/ (3) by virtue of being the Chairperson of the Judicial Service Commission;

Whereas, the Hon. (Dr.) (Mrs.) Upatiss Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake becomes unsuitable to continue in the office of the Chief Justice due to the legal action relevant to the allegations of bribery and corruption levelled against Mr. Pradeep Gamini Suraj Kadyawasam, the lawful husband of the said Hon. (Dr.) (Mrs.) Upetissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake in the aforesaid manner, and as a result of her continuance in the office, of the Chief Justice, administration of Justice is hindered and the fundamentals of administration of Justice are thereby violated and whereas not only administration of Justice but visible administration of Justice should take place;”

1. It is ex facie not a charge in law.
2. There is not even an allegation that I have done any wrong.
3. There is not even an allegation that I have in any way or manner interfered in the proceedings in which plaint has been filed in the Magistrates against my husband.
4. I state that it is the practice amongst members of the JSC that a member declines to participate in the proceedings of the JSC if there is a conflict of interest.
5. If this sort of charge can be maintained, any Judge, any member of the JSC can be removed by merely instituting proceedings against such Judge's spouse, or children, or relative, or close friend.
6. This purported charge is baseless, frivolous and malicious.
7. In the total circumstances, I deny totally the purported charges and deny totally that I acted wrongfully and/or improperly.

PURPORTED CHARGE 6

“6. Whereas, despite the provisions made by Article 111H of the Constitution that the Secretary of the Judicial Service Commission shall be appointed from among the senior judicial officers of the . courts of first instance, the Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake acting as the Chairperson of the Judicial Service Commission by virtue of being the Chief Justice, has violated Article 111H of the Constitution by disregarding the seniority of judicial officers in executing her

duties as the Chairperson of the Judicial Service Commission through the appointment of Mr. Manjula Thilakaratne who is not a senior judicial officer of the courts of first instance, while there were such eligible officers.”

The Charge is groundless and baseless.

1. The following appointments as Secretary Judicial Services Commission [JSC] have been made in the past:-

Name	Date	Seniority	Remarks
Mr. M.P. De Silva	4.12.2009	19	Appointed by the Judicial Commission chaired by J.A.N. de Silva, CJ
Mr. R.A.P.W. de Silva (brother of the then Chief Justice J.A.N. Asoka de Silva)	15.07.2010	25	Appointed by the Judicial Commission chaired by J.A.N. de Silva, CJ

Mr. Manjula Thilakaratne

2. The officers of the JSC are

- (i) Secretary to the JSC
- (ii) Deputy Secretary to JSC
- (iii) Assistant Secretaries to JSC

3. 16/3/2010 - Mr. Thilakaratne was appointed as Senior Assistant Secretary by the Judicial Service Commission chaired by the then Chief Justice. Hon. J.A.N. de Silva.

4. 22/7/2010 - Mr. Thilakaratne was appointed as Deputy Secretary JSC by the JSC chaired by the then Chief Justice. Hon. J.A.N. de Silva.

5. 29/3/2012 - Mr. Thilakaratne was appointed as Acting Secretary JSC by the JSC chaired by our client.

6. 10/5/2012 - Mr. Thilakaratne was appointed Secretary JSC by the JSC chaired by myself.

7. As at 10/5/2012

- (i) The JSC recommended 11 District Judges/Magistrates to be appointed as High Court Judges.
- (ii) 3 District Judges/Magistrates were on long overseas leave.
- (iii) 3 judges have been appointed as High Court commissioners and were functioning in the Eastern Province since they were conversant in the Tamil Language

8. In the circumstances the aforesaid 17 judges could not be considered as secretary JSC.

9. In addition, 3 judges have not been promoted as per the decision of the Judicial Service Commission chaired by the then Chief Justice. Hon. J.A.N. de Silva.

10. Thus in effect as per the judges available for appointment as Secretary, Mr. Thilakaratne was 6th in the order of seniority.

11. Unlike any of the aforesaid judges Mr. Thilakaratne had functioned as an officer of the Judicial Service Commission from 16/3/2010 and was familiar with the working of the JSC and consequently he was the most suitable candidate.
12. However, even if no Judge was excluded, Mr. Thilakaratne was 26th in the order of seniority. Whereas : -
 - (i) when Justice Asoka de Silva's brother was appointed Secretary JSC, he was 25th in order of seniority; and
 - (ii) the previous appointee was 19th in order of seniority.

PURPORTED CHARGE 11

“11. Whereas, in the case, President's Counsel Edward Francis William Silva and three others versus Shirani Bandaranayake (1992 New Law Reports of Sri Lanka 92) that challenged the suitability of the appointment of the Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake who holds the office of the Chief Justice and thereby holds the office of the ex-officio Chairperson of the Judicial Service Commission in terms of the Constitution, Attorney-at-Law L.C.M. Swarnadhipathi, the brother of the Magistrate Kuruppuge Beeta Anne Warnasullja Swamadhipathi filed a petition against the appointment of the said Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake owing to which the Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake has harassed the said Magistrate Kuruppuge Beets Anne Wamasuriya Swarnadhipathi;”

This Charge is groundless and baseless.

1. I deny that I ever harassed Ms. Swarnadipathy.
2. The purported charge is groundless and baseless.
3. The details of the harassment are not set out in the charge, and thus I cannot answer any further.

PURPORTED CHARGES 12, 13 & 14

“12. Whereas, the Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake who holds the office of the Chief Justice and thereby holds the office of the ex-officio Chairperson of the Judicial Service Commission in terms of Article 111D (2) of the Constitution has, by acting ultra vires the powers vested in her by the Article 111H of the Constitution ordered the Magistrate (Mrs.) Rangani Gamage's right to obtain legal protection for lodging a complaint in police against the harassment meted out to her by Mr. Manjula Thilakaratne, the Secretary of the Judicial Service Commission.”

“13. Whereas, the said Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake being the Chief Justice and thereby being the Chairperson of the Judicial Service Commission, in terms of Article 11W (2) of the Constitution, has abused her powers by ordering the Magistrate (Mrs.) Rangani Gamage to obtain permission of the Judicial Service Commission prior to seeking police protection thereby preventing her from exercising her legal right to obtain legal protection.”

“14. Whereas the Hon. (Dr.) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake by performing her duties as the Chairperson of the Judicial Service Commission has referred a letter through the Secretary of the Judicial Service Commission to the Magistrate (Mrs.) Rangani Gamage, calling for explanation from her as to why a disciplinary inquiry should not be conducted against her for seeking protection from the Inspector General of Police by exercising her legal right;”

1. The purported charges relate to the JSC calling for explanation from Magistrate Ms. Gamage.
2. The facts are as follows.

- (i) The Inspector General of Police issued a circular setting out the police personnel provided to different categories of Judicial officers.
- (ii) The JSC issued circular no. 348 which was to the effect that requests concerning official matters should be directed to the JSC.
- (iii) Ms. Gamage in her capacity as Magistrate wrote directly to the Inspector General of Police, asking for police protection which she claimed she needed in view of her duties as a Magistrate.
- (iv) The JSC asked for an explanation from Ms Gamage as to why the JSC circular No. 348 was not followed.
- (v) Ms. Gamage replied stating that she did not intend to violate the JSC's circular, but asked for forgiveness for any misunderstanding.
- (vi) The matter was closed by the JSC.

PURPORTED CHARGES 7 & 8

“7. Whereas, with respect to the Supreme Court special ruling Nos. 2/2012 and 3/2012 the said Hon. (Dr) (Mrs.) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake has disregarded and /or violated Article 121 (1) of the Constitution by making a special ruling of the Supreme Court to the effect that the provisions set out in the Constitution are met by the handing over of a copy of the petition filed at the court to the Secretary General of Parliament despite the fact that it has been mentioned that a copy of a petition filed under Article 121 (1) of the Constitution shall at the same time be delivered to the Speaker of Parliament;”

“8. Whereas, Article 121(1) of the Constitution has been violated by the said Hon. (Dr) (MIS) Upatissa Atapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake despite the fact that it had been decided that the mandatory procedure set out in the said Article of the Constitution must be followed in accordance of the interpretation given by the Supreme Court in the special decisions of the Supreme Court bearing Nos. 5/91J 6/91J 7/91 and 13/91;”

The Charges are groundless and baseless.

In any event, this is a decision of the Supreme Court consisting of 3 judges.

Further, a determination in respect of a bill is that of the 3 judges who heard it.

In contradistinction a judgment in other cases the judgment is that of the judge who wrote it and the other judges may (or may not) agree or may write a separate judgment.

A decision of the Supreme Court cannot be considered proven misbehaviour within the meaning of Article 107.

A judge cannot be impeached on account of a difference of opinion regarding a judgment and any attempt to do so would impinge on the independence of the judiciary.

1. The above purported charges relate to judgments of the Supreme Court, and it is neither appropriate nor correct to comment on.
2. The Select Committee itself should not go into such matters.

PURPORTED CHARGE 9

“9. Whereas, irrespective of the absolute ruling stated by the Supreme Court in the fundamental rights violation case, President's Counsel Edward Francis William Silva and three others versus Shirani Bandaranayake (1992 New Law Reports of Sri Lanka 92) challenging the appointment of the Hon. (Dr.) (Mrs.) Upatissa Atapattu

Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake, when she was appointed as a Supreme Court judge, she has acted in contradiction to the said ruling subsequent to being appointed to the office of the Supreme Court judge.”

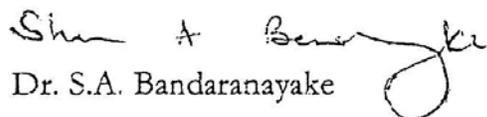
This purported charge is groundless and baseless.

1. No particulars have been given as to how I acted in contradiction to the ruling in the case of *Edward Francis William Silva v Shirani Bandaranayake*.
2. Thus this purported charge cannot be answered.
3. Without such details, this purported charge has to be dismissed *in limine* and cannot be considered a charge in law.

PURPORTED CHARGE 10

“10. Whereas, the Supreme Court special rulings petition No. 02/2012 filed by the institution called Centre for Policy Alternatives to which the Media Publication Section 'Groundview' that had published an article of the Hon. (Dr.) (Mrs.) UpatissaAtapattu Bandaranayake Wasala Mudiyanse Ralahamilage Shirani Anshumala Bandaranayake, while she was a lecturer of the Law Faculty of the University of Colombo prior to becoming a Supreme Court judge, has been heard and a ruling given.”

1. This purported charge is baseless, groundless and false.
2. I have been reliably informed that Groundviews, a media publication of the Centre for Policy Alternatives [CPA], came into existence in or about 2005-2006, long after I ceased to be a lecturer of the Law Faculty.
3. Thus the purported charge is ex facie wrong.
4. Moreover, Groundview has not published an article written by me.
5. Petition SCFR 2/2012 was not filed by the CPA.
6. It may be of interest to note that the bench presided by myself did not accept the submissions of the CPA in respect of the 18th Amendment.


Dr. S.A. Bandaranayake