



BY COURIER

11th December 2012

URGENT / IMPORTANT

Palitha Fernando Esqr., P.C.
Hon. Attorney General
Attorney General's Department
Hultsdorf
Colombo 12.

Dear Hon. Attorney General,

Application dated 18.10.2012 made in SC (SD) No. 2/2011

As you are aware, I made an Application under Article 132 of the Constitution, for a *review* and *re-examination* of the Special Determination made in SC (SD) No. 2/2011, with Notice to the Hon. Speaker of Parliament and to you.

As you are also aware, the Hon. Speaker, in *concurrence* with the Leaders of all political parties represented in Parliament, had previously on 9.10.2012 issued a Ruling, *inter-alia*, that a Special Determination could be *re-visited* and *bona-fide* errors rectified.

I, myself, together with one member of my Office, went to the Supreme Court Registry on 20th November 2012, and personally verified from the original Case Record, the *correctness* of the following Minutes made in regard to my aforesaid Application.

"Hon. K. Sripavan, J

AAL for the Petitioner files Motion dated 18.10.2012 with :

1. Petition and Schedules "X", "Y" & "Z"
2. Documents
3. Affidavit
4. Special Affidavit in support of the facts contained in "X"

AAL further moves Your Lordship's Court be pleased that this Application be taken for Hearing on 16th, 19th & 20th November 2012, for a review and re-examination of Determination made on 24.10.2011. Submitted for Your Lordship's directions please.

DRSC
19.10.2012

Hon. Chief Justice

The Petitioner by Motion dated 18.10.2012 seeks to review and re-examine the Special Determination dated 24.10.2011. In terms of paragraph 9(h) of the Petition, Hon. Speaker has certified the Bill on 11.11.2011. Upon certification being endorsed, the Bill becomes law and in terms of Article 80(3), the validity of such Act shall not be called in question thereafter upon any ground whatsoever.

This Article (Art 80 (3)) must be interpreted according to its true purpose and intent as disclosed by the phraseology in its natural signification.

If a party perceives "judicial bias & disqualification" against a member of the Bench, such party should have raised objections at the time the Bill was taken up for hearing. If no Objection is taken at the former stage, that party cannot thereafter complain of the matter disclose, as giving rise to a real danger of bias. Any **frivolous** objection taken **after a long period of time without a firm foundation** would not only impede the due administration of justice, but also undermines the work of Court. (*Emphasis added*)

In view of the foregoing, I do not see any legal basis to entertain the Motion dated 18.10.2012. The Motion may be rejected in limine.

Sgd. Sripavan, J
22.10.2012

Hon. Amaratunga, J, Hon. Ratnayake, PC, J, Hon. Ekanayake, J.

I agree with the Observations of Hon. Sripavan, J. The Bill in question was considered by this Court on 24.10.2011 and the certificate by the Hon. Speaker had taken place on 11.11.2011. In terms of Article 80(3) of the Constitution the validity of such an Act shall not be questioned on any ground whatsoever.

No Objection was raised on any one of the three Judges who heard the matter on 24.10.2011. For the aforementioned reasons the Motion dated 18.10.2012 should be rejected in limine.

Pls. consider the said Motion and tender your observations/concurrence.

Sgd. Chief Justice
23.10.2012

Hon. The Chief Justice

I agree with the observation of Your Ladyship and Hon. Sripavan J, set out above. Since there is no legal basis to entertain the Motion dated 18.10.2012, it should be rejected in limine. The Registrar of the Supreme Court should be directed not to entertain any further Motions/ Applications / Petitions in respect of this matter.

Sgd. Amaratunga, J
24.10.2012.

Hon. The Chief Justice

I agree with the observations and recommendations of Your Ladyship, Hon. Amaratunga J, and Hon. Sripavan, J.

Sgd. P.A. Ratnayake, J
25.10.2012

Hon. The Chief Justice

I agree with the observations and directions embodied in Your Ladyship's Order 23/10/2012, Hon. Justice Amaratunga's Order dated 24/10/2012, Hon. Justice Sripavan's Order dated 22/10/2012 and Hon. Justice P.A. Rathnayake's Order dated 25/10/2012.

Sgd. Ekanayake, J
7.11.2012 "

Though my said Application was for a *review* and *re-examination* made under Article 132 of the Constitution, and accordingly required the opinion of the Chief Justice as mandated in Article 132 of the Constitution, nevertheless my said Application had been opined upon by Justice K. Sripavan.

As you are aware, in my said Application made on 18.10.2012, I had adduced good, sufficient and valid grounds of '*perceived judicial bias and disqualification*' on the part of the Chief Justice, and also on the part of Justices P.A. Rathnayake and Chandra Ekanayake. Without having heard me, Justice K. Sripavan sitting in his Chambers, had on his own, opined on 22.10.2012, that my said grounds were '*frivolous*'.

However, shortly thereafter such very same grounds opined as aforesaid as '*frivolous*', had become good, sufficient and valid grounds for Charges to be framed against the Chief Justice in the impeachment Motion entertained by the Hon. Speaker on 1.11.2012 and placed on the Order Paper of Parliament on 6.11.2012. The Parliamentary Select Committee, appointed by the Hon. Speaker in terms of Article 107 of the Constitution, read with Standing Orders of Parliament made thereunder, had reported to Parliament on 8.12.2012, that the Chief Justice had been found guilty of 3 of the 5 Charges, with the balance Charges not being inquired into. I verily believe that you assisted the Parliamentary Select Committee with its deliberations.

Such prejudicial pre-judgment of my said averments as '*frivolous*' made by Justice K. Sripavan, had been thereafter concurred upon by the Chief Justice, Justices N.G. Amaratunga, P.A. Rathnayake and Chandra Ekanayake, as evidenced by the aforesaid record of the Supreme Court Minutes. Hence all 5 Justices had prejudicially pre-judged the said issue of '*perceived judicial bias and disqualification*' on the part of the Chief Justice; with the Chief Justice and Justices P.A. Rathnayake and Chandra Ekanayake additionally having acted, *as Judges in their own cause*.

Having been *privy* to the foregoing, I am compelled in the public interest, to bring the foregoing facts to your kind attention, in the context of the matter of interpretation of Article 107(3) of the Constitution being due to come up before the Supreme Court for hearing on 13 / 14.12.2012, on referrals made to the Supreme Court under Article 125 of the Constitution by the Court of Appeal, of the several Writ Applications; and under Article 134 of the Constitution you being noticed to be heard as *amicus-curiae*.

The aforesaid interpretation of the Constitution had been sought, as primarily arising out of the aforesaid impeachment Motion against the Chief Justice, upon which the Parliamentary Select Committee as you are aware, has already reported to Parliament.

Since the aforesaid 5 Justices had already prejudicially pre-judged the issue of '*perceived judicial bias and disqualification*' on the part of the Chief Justice, with utmost respect, I pose the issue for you to consider, as to whether or not, the aforementioned 5 Justices are *disqualified* from hearing the matter of interpretation of Article 107(3) of the Constitution, arising from the said impeachment Motion against the Chief Justice, involving '*perceived judicial bias and disqualification*' on her part, on which the said 5 Justices had already expressed opinion prejudicially pre-judging the matter.

Furthermore, I very respectfully draw your kind attention to Article 129 of the Constitution dealing with the interpretation of a Statute, and Article 132 of the Constitution dealing with hearing of a matter of general and public importance, which the aforesaid matter undoubtedly is. Both Articles 129 and 132 of the Constitution mandate that such matter shall be heard by a Bench *comprising 5 or more Judges of the Supreme Court*, giving rise to the question, as to whether a 3 Judge Bench of the Supreme Court could interpret the Constitution regarding a matter of general and public importance ?

The interpretation of the Constitution in October 2002 was by a 7 Judge Bench of the Supreme Court, whilst the interpretation of the Constitution in August 2005, *vis-à-vis*, the term of Office of the President of the Republic was by a 5 Judge Bench of the Supreme Court.

Incidentally, you would note from the aforesaid Minutes, that Justice K. Sripavan sitting *solely* by himself in Chambers, had interpreted Article 80(3) of the Constitution, and had not addressed his mind to Article 123(3) of the Constitution, which governs 'Urgent Bills', which was the *core issue* of my said Application.

Yours truly,



Nihal Sri Ameresekere

cc: Hon. Speaker of Parliament