



Consultants 21 Limited

MANAGEMENT • OPERATIONS • FINANCE
FORENSIC ACCOUNTING • LITIGATION SUPPORT • TAXATION
PRIVATISATION • RESTRUCTURING • INFRASTRUCTURE

167/4 Vipulasena Mawatha, Colombo 10, Sri Lanka
Tel: 94-11-2696314, 94-11-2696364, 94-11-4715988
Fax: 94-11-2697134 Kandy Tel/Fax: 94-81-4470442
E-mail: consultants21@gmail.com
Website: www.consultants21.com

BY HAND

5th November 2012

Hon. Ranil Wickremesinghe, M.P.
Leader of the Opposition
115, 5th Lane
Colombo 3.

Dear Sir,

**Application to the Supreme Court for a Review of
Special Determination in SC (SD) 2/2011**

The attached Application was filed by me on 18th October 2012, primarily on the premise that the Supreme Court had acted without the jurisdiction, in view of the deeming provision stipulated in Article 123(3) of the Constitution, specifically pertaining to Urgent Bills, which was the case in this instance. Copies of my said Application, with copies of all documents attached, were delivered on the very same day to the Hon. Speaker and the Hon. Attorney General.

The inbuilt safeguard in the Constitution is that in the case of an Urgent Bill, since citizens are denied the opportunity of being heard, as was the case in this instance, Article 123(3) of the Constitution has the entrenched deeming provision, that should the Supreme Court entertain any doubt on any provision or the Urgent Bill, then Article 123(3) mandates that such provision or the Urgent Bill be determined to be inconsistent with the Constitution.

The Special Determination dated 26th October 2011 reveals that several doubts in fact had been entertained and answered by the Supreme Court. The very moment doubts were entertained, the Supreme Court had no other alternative, but *ipso facto* to have determined the Urgent Bill to be inconsistent with the Constitution. The Supreme Court had no jurisdiction to have determined otherwise, thereby rendering the Special Determination of 26th October 2011 to be a nullity.

You will appreciate the foregoing is a materially important feature of the Constitution, as a safeguard in the enactment of urgent legislation, and is bound to be upheld.

The Hon. Speaker made a Ruling in Parliament on 9th October 2012 *vis-à-vis* the Supreme Court Special Determination on the "Divineguma Bill", after a Party Leaders' Meeting on 19th September 2012 as disclosed in the Ruling. The Hon. Speaker has quite correctly upheld that the Articles of the Constitution be strictly adhered to, *inter-alia*, stating that the Supreme Court is requested to give earnest consideration on a re-visit to make a vested right of a citizen comprehensively effective as intended in the Constitution, and that it was necessary, as well, to rectify a bona-fide error made by the Supreme Court, which is the same stance I have taken in my above Application, which I have moved to be heard on 16th or 19th or 20th November 2012.

In my said Application, citing a House of Lords Judgment, additionally, I have also set out grounds of 'perceived judicial bias'.

Two weeks after my above Application on 1st November 2012, it was reported in the media, that a Motion had been entertained by the Hon. Speaker to commence impeachment proceedings against the Chief Justice.

Whilst by no means do I intend to interfere with the due constitutional procedure to uphold the 'rule of law', my earnest expectation is that in the given circumstances, my above Application on a matter of a far graver nature, than what the Hon. Speaker had ruled on, will not be subject to jeopardy, and that the judiciary will be made to feel free to exercise judicial independence, free of any inhibitions and/or apprehensions.

Yours truly,

Nihal Sri Ameresekere