

14th October 2009

The Registrar
Supreme Court
Superior Courts Complex
Colombo 12.

IMPORTANT

Dear Madam,

SC FR Application No. 209/2007

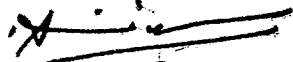
I refer to my Letter dated 13.10.2009 and thank you for affording me certified copies of the 6 Judgments delivered yesterday in the above-mentioned Application.

Whilst perusing the Judgments, I notice that the certified copy of Judgment of Justice Ms. Shiranee Tilakawardane appears to be incomplete, in that, I was present in Court personally, and certain sections she pronounced in Court, which I clearly collect, are not in the certified copy.

Furthermore, I notice that pages 1 to 15 of the 16 page certified copy of the said Judgment are in one 'font', whilst page 16 is in another 'font' commencing with an incomplete paragraph. *A photocopy of the certified copy afforded to me yesterday is attached.*

I shall be very grateful, if you please check this matter with Justice Ms. Shiranee Tilakawardane and afford me a certified copy of her correct and complete Judgment.

Thanking you,



Nihal Sri Amereskere
22nd Respondent

Contents of Pages 14 & 15 (of the Judgment of Justice Shiranee Tilakawardane omitted, as a result of a different 'font') and part going on to 16 as per certified copy issued on 13.10.2009

Undoubtedly, the appointing authority is the President, as Article 52 mandates as much. When any incumbent President exercises these powers he or she is also under the same Constitutional mandate to act in accordance with the Doctrine of Public Trust that is reposed through the Sovereignty of the People (Article 4) and under the Law. No single Article of the Constitution can be given greater prominence than or read in isolation from another. It must be read and interpreted in a manner that accords with the pith and substance and, indeed, the spirit of the entire Constitution. It is, after all, the executive power of the People that is exercised by any incumbent President. (Article 4b) Therefore "unfettered discretion cannot exist where the rule of law reigns." Vide *Premachandra v. Major Montague Jayawickrama and another 1994* (2) S.L.R. pg 90 at 103.

Article 28 of the Constitution which deals with the Fundamental Duties states that the **exercise and enjoyment of rights and freedoms is inseparable from the performance of duties and obligations** (emphasis added) and, accordingly, it is the duty of every person of Sri Lanka:

- (a) to uphold and defend the Constitution and the law;
- (b) to further the national interests and to foster national unity;
- (c) to work conscientiously in his chosen occupation;
- (d) to preserve and protect public property and to combat misuse and waste of public property;
- (e) to respect the rights and freedoms of others;
- (f) to protect nature and conserve its riches.

Therefore the power to appoint should be linked to the abovementioned duties. The provision of an Article empowering a person to make an appointment cannot be considered in isolation, disregarding the basic structure and tenet of the Constitution which is embodied in other Articles.

Therefore his or her acts as President, as a noble and gracious leader, must always be guided by the underlying duty to preserve and protect public property and to combat its waste and misuse. In a monarchy the ruler rules under the "pleasure principle", and could act in a dictatorial manner. But under our Democratic Socialist Republic governed by the Constitution, which guarantees democracy to its people, even an Executive President does not have untrammelled power and all acts of governance, especially those that involve public finance, must be in tune with the spirit of the Constitution which mandates good and responsible governance.

Furthermore “if there is one principle which runs through the entire fabric of the Constitution, it is the principle of Rule of Law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the Rule of Law meaningful and effective.” *Vide In re The Nineteenth Amendment to the Constitution 2002 (3) 85 at 100*. Respect for the Rule of Law requires the observance of minimum standards of openness, fairness, and accountability.” See *Abdul Cader Ayoob V The Inspector General of Police and Others 1997 (1) S.L.R 412 at pg 419*. The entire fabric of the Constitution mandates that the rule of law be the ultimate framework of all acts carried out under the Constitution, including the acts of the executive, the legislature and the judiciary. The Judgment of this Court has found the Petitioner a corrupt officer under the law. Even in its widest sense this would be inimical to his appointment to public office. My opposition to the granting of the relief requested by the Petitioner follows squarely from my allegiance to the Rule of Law, the sole foundation upon which the strength of this Court lies and the principle which mandates that we not arbitrarily dismiss prior rulings of this Court – including the one originally issued in this case – merely for issues of political expediency or convenience.

After all, the Rule of Law is the backbone of good governance. The nurturing of these twin institutions leads ultimately to a stable and healthy nation. The stunting of one necessarily leads to a halt in the growth of the other. The promptings of a kind compassionate heart or sympathetic urgings must necessarily be bridled in dealing with the resources of the State, for it ultimately belongs to the People and must be in the custodianship of honest, disciplined, hardworking and effective public officers.

I accordingly dismiss the amended petition. No Costs.

JUDGE OF THE SUPREME COURT