

BY COURIER

25th April 2003

Hon. Tilak Marapana, President's Counsel,
Minister of Defence,
15/5, Baladaksha Mawatha,
Colombo 3.

Dear Hon. Minister,

"Inland Revenue (Special Provisions) Bill"

Immunity from Exchange Control Investigations on movement of Foreign Funds, including Terrorist Funds

I have filed 2 Petitions in the Supreme Court, one, *under Articles 17 & 126 of the Constitution*, and the other, *under Articles 121 & 78 of the Constitution*, on the matter of the *unconstitutionally and illegality* of the purported passing of the aforesaid Bill, *in blatant violation of the oaths / affirmations taken under the Constitution*, as morefully set out in the Petitions, *copies attached*.

I have acted in the national and public interest, more particularly in the interest of the poverty-stricken helpless masses in our country, and also in the interest of the enforcement of the rule of law, including ensuring the adherence to norms of social justice, moral and ethical standards.

As a former Hon. Attorney General, I am sure, you would understand the serious issues and implications, which are detrimental to social justice, moral and ethical standards, in addition to the issues of unconstitutionality and illegality, dealt with in the Petitions.

I am addressing this Letter to you, as the Minister of Defence of our country, particularly in the context of the international war against the scourge of *terrorism*. I draw your attention to the following paragraph of my said Petitions in relation to an amnesty *surreptitiously, deviously and manipulatively* endeavoured to be granted, *in the guise and ruse of an Income Tax amnesty, covering also foreign exchange fraud and violations, even in the future, which could involve the funding of terrorism / terrorist activities and the movement of terrorist funds, which are globally banned*.

" The Petitioner states that,

- a) Sub-section 3 of Section 3 was not contained in the Bill ("A3"), but had been contained in the Statement of Amendments to be moved at the Committee Stage of the Bill, as disclosed in the aforesaid two page fax ("A2") containing such Amendments.
- b) the aforesaid Sub-section 3 of Section 3, not contained in the Bill ("A3") reads thus:

"3. Any transaction taking place on or after March 31, 2002, in connection with any asset declared for the purposes of the Exchange Control Act (Chapter 423) under Section 2 of this Act, shall be afforded the same Immunity referred to in Sub-section 1, as if such transaction has taken place on or before March 31, 2002"
- c) the Petitioner verily believes, that the Hon. Attorney General, had not communicated his Opinion to the Speaker on the aforesaid proposed Amendments, as stipulated under Article 77(2) of the Constitution, and nor had the Speaker received the same.
- d) the aforesaid Sub-section 3, included as aforesaid, significantly affords immunity to any Exchange Control violation and/or fraud perpetrated even today and/or even at a future date, since such transaction would be deemed to have taken place before 31.3.2002.
- e) in other words it gives a carte blanc open ended licence to perpetrate Exchange Control violations and/or frauds, which could and would involve, inter-alia, transactions pertaining to narcotics / drugs peddling, human trafficking, terrorism and/or terrorists and/or terrorist organizations, etc.

- f) the aforesaid Sub-section 3 is not contained in the Bill ("A3") and therefore would not have been placed on the Order Paper of Parliament in terms of Article 78 of the Constitution.
- g) the aforesaid material omission would render that the "entirety of the Bill ("A3") was not placed on the Order Paper of Parliament, as mandated by Article 78 of the Constitution .
- h) in addition to the grounds stated hereinbefore, in the given facts and circumstances as aforesaid, the Petitioner is advised that he is entitled to invoke the jurisdiction of Your Lordships' Court to seek a determination on the Bill ("A3") in terms of Articles 121 and 78 of the Constitution..

Section 3 (1) of the said Bill stipulates that persons making a declaration under Section 2, shall enjoy **full immunity, inter-alia, from any investigation or prosecution** for any offence under any law specified in the Schedule to the said Bill, **which includes the Exchange Control Act.** Section 3 (2) of the said Bill stipulates that the relevant authority charged with the administration of the said Act shall ensure that **full immunity** is granted to such persons.

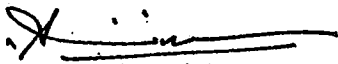
Section 6 of the said Bill mandates **strict secrecy** to be maintained and that no Commission of Inquiry or any Court of Law (except the Bribery Commission), **could call upon the disclosure of identity of persons and/or monies declared as aforesaid.**

The aforesaid provisions are blatantly violative of Resolution 1373 of the Security Council of the United Nations, pertaining to funds financing terrorism / terrorist activities and funds of terrorist organisations, et al, which said United Nations' Security Council Resolution is binding on our country, and to give effect to the said Resolution, Regulations had been enacted shortly thereafter under the United Nations Act; which said Regulations would have to be enforced by the relevant Authority, in this instance, the Monetary Board of Sri Lanka, responsible for enforcing the Exchange Control Act.

In addition to such blatant breach of the United Nations' Security Council Resolution, this would also be of serious and grave concern, particularly at this crucial and sensitive juncture in our country, which has been subjected to the brutality of terrorism, with the horrendous killings of national leaders and innocent civilians, in addition to the destruction to valuable economic infrastructure, stifling the progress and development of the nation, eroding the quality of life of the people. The aforesaid provisions would be a threat to our national security and sovereignty, more so particularly at this crucial and decisive juncture.

I implore you to take immediate actions in this regard.

Yours sincerely,



Nihal Sri Ameresekere

cc: Her Excellency Chandrika Bandaranaike Kumaratunga, President of Sri Lanka,
and the Commander-in-Chief of the Armed Forces

Lt. Gen. L.P. Balagalle, Commander of the Sri Lanka Army
Vice Admiral D.W.K. Sandagiri, Commander of the Sri Lanka Navy
Air Marshal G.D. Perera, Commander of the Sri Lanka Air Force

Hon. John Amaratunga, Minister of Interior
Mr. T.E. Anandarajah, Inspector General of Police

Mr. A.S. Jayawardena, Governor, Central Bank of Sri Lanka /
Chairman, Monetary Board of Sri Lanka

Hon. Tyrone Fernando, Minister of Foreign Affairs

Mr. Miguel Bermeo, United Nations Representative in Sri Lanka
Mr. Kofi Annan, Secretary General, United Nations