

BY HAND

19th May 2003

URGENT / IMPORTANT

Mr. W.J.S. Karunaratne,
Actg. Secretary to Her Excellency the President,
Presidential Secretariat,
Colombo 1.

Dear Sir,

"Inland Revenue (Special Provisions) Bill" presented to Parliament on 31.1.2003

I write with reference to the aforesaid Bill, I am advised, purportedly passed by Parliament *ultra-vires* / *inconsistent* with the Constitution.

The Supreme Court having entertained my Bill Challenge Application under Articles 121 & 78 of the Constitution, numbered 11/2003, has fixed for hearing into the matter of the aforesaid Bill on 29th May 2003. In addition, I have also filed a Fundamental Rights Application under Articles 17 & 126 of the Constitution, numbered 194/2003.

I draw your kind attention to Article 77 of the Constitution quoted below:

- "77 (1) **It shall be the duty of the Attorney-General to examine every Bill for any contravention of the requirements of paragraphs (1) and (2) of Article 82 and for any provision which cannot be validly passed except by the special majority prescribed by the Constitution; and the Attorney-General or any officer assisting the Attorney-General in the performance of his duties under this Article shall be afforded all facilities necessary for the performance of such duties.**
- (2) **If the Attorney-General is of the opinion that a Bill contravenes any of the requirements of paragraphs (1) and (2) of Article 82 or that any provision in a Bill cannot be validly passed except by the special majority prescribed by the Constitution, he shall communicate such opinion to the President:**

Provided that in the case of an amendment proposed to a Bill in Parliament, the Attorney-General shall communicate his opinion to the Speaker at the stage when the Bill is ready to be put to Parliament for its acceptance."

[Emphasis added]

I am advised, that among other things, the aforesaid Bill creates a special class of people in violation of the Article 12 (1) of the Constitution, *i.e. the fundamental right to equality*, and the said Bill therefore, is inconsistent with Article 3, read with Article 4, of the Constitution, which stipulates that sovereignty, which includes fundamental rights, is in the People and is inalienable.

Such same matter was specifically unanimously determined upon by a 7-Member Bench of the Supreme Court in October 2002, determining that the proposed 18th Amendment to the Constitution, created a special class of the people in violation of Article 12 (1) of the Constitution and is therefore inconsistent with Article 3 read with Article 4 of the Constitution and for this reason, that the proposed 18th Amendment to the Constitution required approval by the people at a referendum, in addition to a 2/3rd majority vote in Parliament.

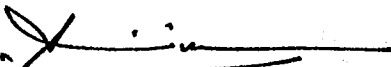
Similarly, also in October 2002, in relation to the 19th Amendment to the Constitution, a 7-Member Bench of the Supreme Court unanimously, *inter-alia*, determined that provisions inconsistent with Article 3 read together with Article 4 of the Constitution have to be passed by special 2/3rd majority of Parliament and approved by the people at a referendum.

You would note that Inland Revenue (Special Provisions) Bill had been crafted and drafted immediately on the heels of the aforesaid determinations by the Supreme Court, in complete disregard thereof. Attorneys-at-Law being officers of the Supreme Court ought to have respected and conformed with the aforesaid Supreme Court determinations, and they, in addition, having sworn or affirmed *to uphold and defend the Constitution* are bound by such oath or affirmation and obviously could not breach the same.

Inasmuch as the Hon. Attorney General had recently proffered an unsolicited opinion to Her Excellency the President on the subject matter, *vis-à-vis*, the Development Lotteries Board, *I wish to ascertain as to whether, the Hon Attorney General had given his opinion on the aforesaid Inland Revenue (Special Provisions) Bill under and in terms of the aforesaid Article 77 of the Constitution, where it is mandated duty on the part of the Hon. Attorney General to have communicated his opinion to Her Excellency the President, as stipulated therein.*

Your prompt response would be greatly appreciated.

Yours faithfully,



Nihal Sri Ameresekere

cc: Her Excellency the President Chandrika Bandaranaike Kumaratunga