

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an Application under Article 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Vasudeva Nanayakkara,
Attorney-at-Law,
Advisor of His Excellency the
President Secretary, The Democratic
Left Front 49 1/1, Vinayalankara
Mawatha, Colombo – 10.

Petitioner

Vs.

SC/FR No. 209/2007

1. K.N. Choksy P.C. M.P.
Former Minister of Finance,
23/3, Sir Emst De Silva
Mawatha, Colombo 7.
And 30 others.

Respondents

32. Sri Lanka Shipping Company
Limited, 46/5, Nawam
Mawatha, P.O.Box 1125,
Robert Senanayake Building,
Colombo 02.



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24.09.2009

Before J.A.N. de Silva, CJ.
Bandaranayake, J.
Shiranee Tilakawardane, J.,
S. Marsoof, J.
Balapatabendi, J.
K. Sripavan, J.
P.A. Ratnayake, J.

M.A. Sumanthiran with Viran Corea for Petitioner.

Faiz Mustapha Pc with Anura Meddegoda and Lakdini Perera for 8th
Respondent -Petitioner.

Mohan Pieris for Attorney General with J. Wijetilleke ASG, Sanjaya
Rajaratnam DSG and Nerin Pulle SSC as amicus.

Nihal Sri Amarasekera for 22nd Respondent appearing in person.

Mr. Sumanthiran submits to Court that the Petitioner 8th Respondent
in this case seeks to vacate the order dated 08.10.2008. In that context, this
application should be heard by the same Bench or as far as possible the same
Bench, that made the earlier order. Only if that Bench is of that opinion,



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can H/L the Chief Justice constitute a fuller Bench for clarification or for continuation.

However, this Court holds that in terms of Article 132(1)(iii) where H/L the Chief Justice is of the opinion that the matter raised is of general and public importance, he may constitute a Bench of 05 or more Judges to hear the matter.

Accordingly, Court over-rules the preliminary objection and permits Mr. Mustapha to make his submissions.

Court having considered the submissions of Counsel and Mr. Nihal Sri Amarasekera who appeared in person, refuses the reliefs sought in paragraphs (a) and (b) of the prayer to the amended petition dated 31.7.2009. However, the Court is inclined to grant other relief under paragraph (c) of



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the prayer to the said amended Petition. Accordingly, by majority decision (Hon. Tilakawardena, J. dissenting) the Court decides that His Excellency the President, being the appointing authority in terms of Article 52 of the Constitution, would be free to consider appointing the 8th Respondent-Petitioner to the post of Secretary to the Ministry of Finance, notwithstanding the undertaking given to Court by the said 8th Respondent – Petitioner.

Reasons for the decisions would be given in due course.


DG.

I do hereby certify that the foregoing is a true copy of the journal entry dated 24.9.2009 is filed of record in SC. Application No.209/2007.

Typed By: 

Comp. with 




M. I. JAREENA BEHAM
JUDICIAL REGISTRAR II
SUPREME COURT

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29/9/09