

**IN THE SUPREME COURT
OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an Application in terms of Rule 63 (2) (iii) of the Supreme Court Rules 1978, to be heard at the proceedings on the matter of the Reference made by the President of the Democratic Socialist Republic of Sri Lanka under and in terms of Article 129 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka, vis-à-vis, Inland Revenue (Special Provisions) Act No. 10 of 2003 and Inland Revenue (Special Provisions) (Amendment) Act No. 31 of 2003

SC Reference No. 1 / 2004

Nihal Sri Ameresekere
167/4, Sri Vipulasena Mawatha
Colombo 10.

Intervenant-Petitioner

TO: HIS LORDSHIP THE CHIEF JUSTICE AND THEIR LORDSHIPS AND LADYSHIPS THE OTHER JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

On this 11th day of March 2004

The Petition of the **Intervenant-Petitioner** above-named states as follows:

1. The Intervenant-Petitioner (hereinafter referred to as the "**Petitioner**") is,
 - a. a citizen of the Democratic Socialist Republic of Sri Lanka
 - b. a Fellow Member of the Institute Chartered Accountants, Sri Lanka and the Chartered Institute of Management Accountants, UK, and
 - c. practising as a Consultant, having functioned as a Senior Consultant on World Bank and USAID funded economic infrastructure re-structuring projects of the Government of Sri Lanka, and as an Advisor to the Ministry of Finance.

A true photocopy of the National Identity Card of the Petitioner marked "XI" is annexed hereto and pleaded as part and parcel hereof.

2. The Petitioner being a person interested in the questions involved to be heard at these proceedings is respectfully making this Application under and in terms of Rule 63 (2) (iii) of the Supreme Court Rules 1978.

3. The Petitioner made an Application SC/SD No. 11/2003 on 18.4.2003 under and in terms of Article 121 (1) of the Constitution invoking the jurisdiction of Your Lordships' Court for a determination on the constitutionality of the Inland Revenue (Special Provisions) Bill, and a 3-Member Bench of Your Lordships' Court, commending the Petitioner, however declined to exercise jurisdiction, upholding the preliminary objections of the Hon. Attorney General that the Application of the Petitioner had not been made within one week of the Bill being placed on the Order Paper of Parliament, eventhough it was an impossibility for the Petitioner to have done so, due to the non-availability of the Bill timeously at the Government Publications Bureau

True copies of the Petition dated 18.4.2003, Affidavit and the Documents marked therewith, in the aforesaid Application, compendiously marked "X2" are annexed hereto and pleaded as part and parcel hereof

True copies of the Motion, Affidavit dated 29.4.2003, together with the Documents marked therewith, in the aforesaid Application, compendiously marked "X2(a)" are annexed hereto and pleaded as part and parcel hereof

True copies of the Motion, Affidavit dated 23.6.2003, together with the Documents marked therewith, in the aforesaid Application, compendiously marked "X2(b)" are annexed hereto and pleaded as part and parcel hereof

4. The Petitioner also made an Application SC/SD No. 20/2003 on 29.7.2003 under and in terms of Article 121 (1) of the Constitution invoking the jurisdiction of Your Lordships' Court for a determination on the constitutionality of the Inland Revenue (Special Provisions) (Amendment) Bill presented to Parliament on 25.7.2003, and a 3-Member Bench of Your Lordships' Court, upholding the objections of the Hon. Attorney General held and determined as quoted hereinbelow, without having examined and determined upon the constitutionality of the provisions of the principal Act, some of which had lapsed on 30.6.2003, and which were being enacted into law to be applicable after 1.7.2003 to a new group of persons, distinct and different from the first group of persons:

"We are therefore of the view that the principal enactment, Act No. 10 of 2003, is alive and can be amended.

Clauses 2 and 3 of the Bill seek to amend Sections 2 and 11 of the principal enactment, in a limited way, by extending the period of the validity of its provisions up to August 15, 2003. It is evident that the proposed Bill is an amendment which does not attract the principles relating to referential incorporation. The effect of an amendment on the principal enactment is that it is read as if the words of the amendment had been written into it from the beginning.

We have considered the provisions of the Bill and we are of the opinion that neither the Bill nor any of its provisions is inconsistent with any of the provisions of the Constitution" (reference being to the Amendment Bill)

True copies of the Petition dated 29.7.2003 and Affidavit (without the Documents marked therewith) in the aforesaid Application, compendiously marked "X3" are annexed hereto and pleaded as part and parcel hereof

5. The Petitioner with the permission of Your Lordships' Court intervened at the hearing on 26.8.2003 into the Applications SC/SD Nos. 22/2003 and 23/2003, and a 5-Member Bench of Your Lordships' Court upon hearing, *inter-alia*, determined unanimously, ***that the amendment/s proposed to an existing Act, where the provisions of the principal enactment were being extended to a new group of persons / new transactions, cannot be viewed in isolation, and that such amendment/s certainly cannot derive the stamp of constitutionality from an act that is in force; and that Your Lordships' Court will, inter-alia, strike down harsh, oppressive and unconscionable law; and that the law certainly cannot strengthen the strong and weaken, the weak.***

True copies of the aforesaid Determinations Nos. 22/2003 and 23/2003 marked "X4" and "X5", respectively, are annexed hereto and pleaded as part and parcel hereof

6. a) Since the matter was of utmost national and public importance, the Petitioner made Application on 12.9.2003 seeking to set aside the Determination made by a 3-Member Bench of Your Lordships' Court in SC/SD No. 20/2003 and to have the said Application to be re-examined by a Fuller Bench of Your Lordships' Court, for the reasons set out in the Petition in the said Application.

True copies of the aforesaid Petition dated 12.9.2003, Affidavit and the Documents marked therewith, compendiously marked "X6", are annexed hereto and pleaded as part and parcel hereof

- b) Upon the aforesaid Determinations SC/SD Nos. 22/2003 and 23/2003 being announced and tabled by the Hon. Speaker of Parliament on 23.9.2003, relying on the said Determinations, the Petitioner filed Motion dated 25.9.2003 in the aforesaid Application dated 12.9.2003 for a hearing by a Fuller Bench of Your Lordships' Court.

A true copy of the said Motion dated 25.9.2003 without the attachments therewith, marked "X6(a)" is annexed hereto and pleaded as part and parcel hereof

7. The Petitioner also made an Application on 29.9.2003 to the Court of Appeal for Writs in the nature of *Certiorari*, *Prohibition* and *Mandamus* on the applicability of the provisions of the Inland Revenue (Special Provisions) Act No. 10 of 2003 and of the Inland Revenue (Special Provisions) (Amendment) Act No. 33 of 2003, and the said Application is pending in the Court of Appeal.

True copies of the Petition dated 29.9.2003 and Affidavit (without the Documents marked therewith) in the aforesaid Application, compendiously marked "X7" are annexed hereto and pleaded as part and parcel hereof

8. The Petitioner reiterates the averments contained in his aforesaid Petitions and the contents of the aforesaid Motions, and respectfully submits that the same would be relevant and material to be considered by Your Lordships' Court at the hearing into the matter of a Reference made by the President of the Democratic Socialist Republic of Sri Lanka, and the questions involved therein, *vis-à-vis*, Inland Revenue (Special Provisions) Act No. 10 of 2003 and Inland Revenue (Special Provisions) (Amendment) Act No. 31 of 2003.
9. In the foregoing premises, the Petitioner has the necessary interest to intervene in the proceedings on the matter of the aforesaid Reference to be heard before Your Lordships' Court; the Petitioner acting in the national and public interest.
10. The Affidavit of the Petitioner is annexed hereto in support of the averments contained herein.

WHEREFORE the Intervenant-Petitioner respectfully prays that Your Lordships' Court be pleased to:

- a) grant permission for the Intervenant-Petitioner in terms of Rule 63 (2) (iii) of the Supreme Court Rules 1978, to be heard at the proceedings into the matter of the Reference by the President of the Democratic Socialist Republic of Sri Lanka, *vis-à-vis*, Inland Revenue (Special Provisions) Act No. 10 of 2003 and Inland Revenue (Special Provisions) (Amendment) Act No. 31 of 2003.



INTERVENIENT-PETITIONER

TRUE COPY

