

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

**Inland Revenue (Special Provisions) (Amendment) Bill**

A Bill to amend the **Inland Revenue (Special Provisions) Act, No. 10 of 2003.**

In the matter of an application under Article 121(1) of the  
Constitution.

Supreme Court of Sri Lanka  
Special Determination No: 20/2003  
&  
Special Determination No: 21/2003.

**PRESENT** :                   Ameer Ismail                   Judge of the Supreme Court  
                                  P. Edussuriya                 Judge of the Supreme Court  
                                  T.B. Weerasuriya             Judge of the Supreme Court

SC (SD) No: 20/2003           Nihal Sri Ameresequera       - Petitioner  
SC (SD) No: 21/2003         Sunil Handunetti             - Petitioner

**Counsel:**

P.A. Ratnayake, Additional Solicitor General with Udithe Egalahewa SC, M.R. Ameen SC, and Rajiv Goonetilleke SC for the Attorney General.

K. Kanag-Isvaran P.C. with Dr. Lakshman Marasinghe, M.A. Sumanthiran Ms. Vindya Weerasekera, Viran Corea and Shivaan Kanag-Isvaran for the petitioner in SC (SD) 20/2003.

Parakrama Agalawatte for the petitioner in SC (SD) 21/2003.

The Court assembled for hearing on 07<sup>th</sup> August 2003.

The petitioners presented their respective petitions on 29<sup>th</sup> and 31<sup>st</sup> July 2003. The Additional Solicitor General and Counsel for the petitioners assisted Court when both applications were taken up together for consideration and thereafter, they tendered meticulously prepared written submissions.

The Bill entitled the “**Inland Revenue (Special Provisions) (Amendment)**” was published as a Supplement in Part II of the Gazette of July 11, 2003 and was placed on the Order Paper of Parliament on 25<sup>th</sup> July 2003.

The petitioners invoked the jurisdiction of this court in terms of Article 121(1) of the Constitution to determine whether Clauses 2 and 3 of the said Bill are inconsistent with Article 3, 4 and 12(1) of the Constitution.

It would be useful to refer firstly to the **Inland Revenue (Special Provisions) Act, No. 7 of 2002**, which was certified on 5<sup>th</sup> June 2002, in order to understand the legal effect of the provisions of Clauses 2 and 3 of the Bill. It was an Act to enable persons who had not furnished a return of income or a full return of income for any of the years of assessment commencing prior to April 1, 2002, to make a declaration to the Commissioner-General in respect of undeclared profits and to indemnify such persons against liability to pay certain taxes and against investigations, prosecutions or penalties in respect thereof. The object of the enactment was to secure future compliance by such persons with tax laws and it provided for matters connected therewith and incidental thereto.

The **Inland Revenue (Special Provisions) Act, No. 7 of 2002** was repealed by the **Inland Revenue (Special Provisions) Act, No. 10 of 2003**, which was certified on 17<sup>th</sup> March 2003.

Section 2 of **Act No. 10 of 2003** similarly enabled persons who had not furnished a return of income and assets prior to March 31, 2002, to make a declaration in respect thereof. It also made provision for the grant of certain concessions to such declarants and non-declarants and to indemnify such persons against liability to pay certain taxes and against liability from investigations, prosecutions and penalties under specified statutes. It also provided for a person who had already made a declaration to make a further declaration under Section 2 to ascertain the correctness of his position and to extend immunities to such person.

Section 2 of the Act also provided that such a declaration of the sources of income or assets as at April 1, 2002, should be made to the Commissioner-General on or before June 30, 2003.

Section 11 of the **Act, No. 10 of 2003** provided that any declaration made in terms of section 2 of the **Inland Revenue (Special Provisions) Act, No. 7 of 2002** prior to its repeal, shall notwithstanding such repeal be deemed to be a declaration made in terms of Section 2 of the present Act and shall be so considered for the purpose of granting any immunity or exemption from liability.

Section 11 further provided that any such person whose declaration was deemed to be accepted in terms of this section may, if he so desired, notify the Commissioner-General requesting any alteration, amendment, or variation of such declaration in order to bring it into conformity with its provisions.

The petitioner in the present application, SC (SD) 20/2003, had previously, on 21<sup>st</sup> April 2003, invoked the jurisdiction of this Court in SC (SD) Application No: 11/2003, seeking to challenge the provisions of Act No. 10 of 2003 as being inconsistent with the provisions of the Constitution. However, while the present application was pending, a preliminary objection taken to that application was upheld and the application was dismissed. The finding of the Court was that the petitioner could not circumvent the preclusive clause in Article 80(3) of the Constitution by seeking to challenge the validity of the provisions of the bill which preceded the relevant Act of Parliament. – SC Minutes of 4/8/2003.

Clause 2 of the present impugned Bill amends **Section 2 of the Inland Revenue (Special Provisions) Act, No. 10 of 2003**, hereinafter referred to as the “principal enactment”. Its legal effect is to extend the period within which the declaration referred to therein has to be made to the Commissioner-General from **June 30, 2003 to August 15, 2003**. It similarly extends the period up to August 15, 2003 for a declarant to verify the correctness of any previous declaration made by him and thereby become entitled to the benefit of the immunity to be granted.

Clause 3 amends Section 11 of the principal enactment, the legal effect of which is to enable persons who had made a declaration in terms of the repealed **Inland Revenue (Special Provisions) Act, No. 7 of 2002**, which is now deemed to be a declaration made in terms of section 2 of this Act, to make any amendment, alteration, or variation of any such declaration at any time prior to August 15, 2003.

Counsel for the petitioners submitted that Parliament cannot by merely extending the time period re-enact, in effect, indirectly the provisions of **Act, No. 10 of 2003**, which lapsed on 30<sup>th</sup> June 2003 and that such an exercise, being inconsistent with Article 3 read with Article 4 of the Constitution requires the approval of the people at a referendum.

It was also submitted that the **Inland Revenue (Special Provisions) Act, No. 10 of 2003** is an "expired" Act or "dead" law and that clauses 2 and 3 of the said Bill seek to give life to the said Act for the period from 1<sup>st</sup> July 2003 to 15<sup>th</sup> August 2003 and that it would thus constitute a fresh enactment incorporating by reference the provisions of **Act, No. 10 of 2003**.

The petitioner in SC (SD) 20/2003 presented his petition dated 29<sup>th</sup> July 2003 while his previous application SC (SD) 11/2003, challenging the constitutional validity of the provisions of **Act No. 10 of 2003** as being inconsistent with the Constitution, was pending and before it was decided. Consequently, the petitioner in his petition referred to the said Act as the "purported" Act and by incorporating the words of the proposed amendment in the present Bill extending the time up to August 15, 2003, he produced what was termed as a composite "Bill" which appeared to be the Bill in respect of which he was seeking a determination. However, learned President's Counsel for the petitioner explicitly stated at the hearing that he was not seeking a determination as to the Constitutional validity of the provisions of Act, No. 10 of 2003 but that he was seeking to impugn only the present Bill which is to amend the principal enactment.

Learned Additional Solicitor General replied that Act No. 10 of 2003 was not a temporary statute which had lapsed or had become "dead" law, drawing a distinction between the characteristics of a perpetual statute and a temporary statute. A perpetual statute is not perpetual in the sense that it cannot be repealed but that it is perpetual in that it is not abrogated by effluxion of time. A temporary statute can if at all become "dead" law upon the expiry of the time stipulated in the statute. An example of such a temporary statute is the Rehabilitation of Public Enterprises Act, No. 29 of 1996, which expressly provided in section 9 that, "The provisions of this Act shall be operative for a period of six months from the date of its commencement".

However, Act No. 10 of 2003 does not contain a provision that limits its validity. The time period up to 30/6/2003 specified in the Act does not relate to the time period up to which the Act would be in force, but to the period up to which the relevant declaration could be made in terms of Section 2 of the Act. It was also submitted that merely because some of the purposes of a statute may be temporary, it does not make the statute itself temporary.

A perusal of some of the other sections clearly reveals that the Act was not meant to be of a temporary nature. Section 10 of the Act No. 10 of 2003 is of general application, restricting the time period for taking steps for recovery of taxes for a period of five years after the tax was regarded as being in default. It is applicable not only to taxes that were due at the time the Act was passed but also to tax liabilities that would arise in the future, indicating clearly that the statute would be effective even beyond 30<sup>th</sup> June 2003. It is therefore incorrect to label it as a temporary statute or an "expired" Act. Similarly section 9 of the Act provides for the

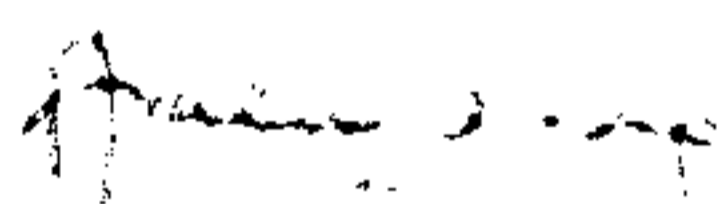
consequence of failure to come within the provisions of this Act, which is yet another indication that the Act was not restricted to be operative for a specified time period.

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.

We accordingly determine that the provisions of the Bill are consistent with the Constitution.

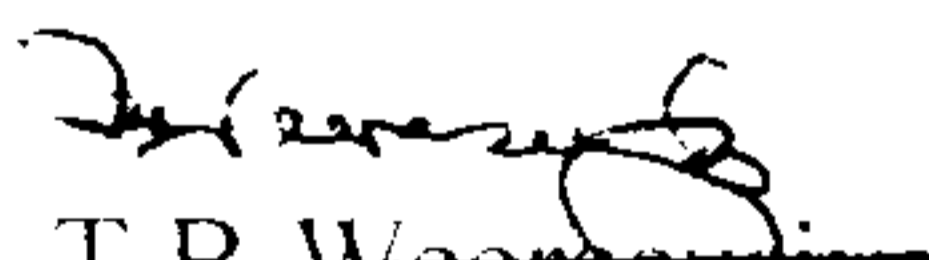
  
Ameer Ismail

*Judge of the Supreme Court*



P. Edussuriya

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