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ஜனாதிபதி செயலகம் THE PRESIDENT'S OFFICE

President's House
Janadhipathy Mawatha
Colombo 01

12 March 2004

Mr. K. Kanang-Isvaran
President's Counsel
104, Isipathana Mawatha
Colombo 05

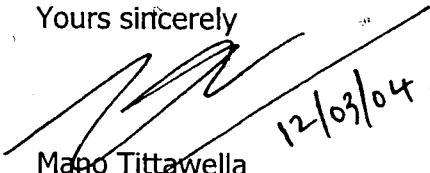
Dear Mr. Kanag-Isvaran,

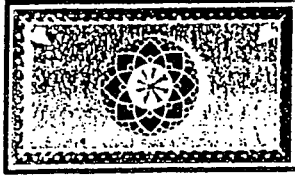
Reference by the President under Article 129(1) of the Constitution on the matter of the Inland Revenue (Special Provisions) Act 10 of 2003 and its Amendment.

Her Excellency the President thanks you for settling the above Reference to the Hon. Chief Justice, a signed copy of which is attached.

Her Excellency had directed me to request you to kindly appear at the Supreme Court Hearing into the above matter and to represent her, together with Junior Counsel of your choice.

Thanking you,
Yours sincerely


12/03/04.
Mano Tittawella
Senior Advisor &
Senior Director General of the President's Office



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இலங்கை சனாதிபதி
President of Sri Lanka

8 March 2004

Hon. Sarath N. Silva
Chief Justice
Chief Justice's Chambers
Superior Courts Complex
Colombo 12

Your Lordship,

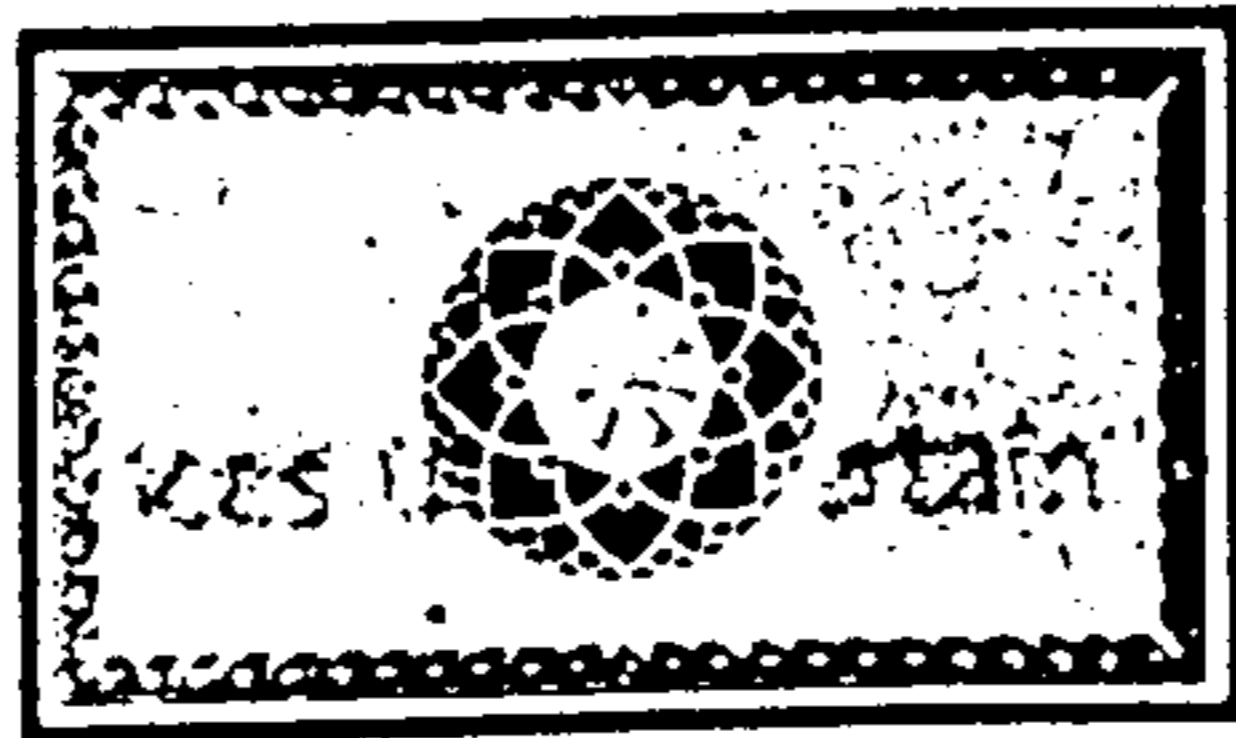
I am sending herewith a Reference under Article 129(1) of the Constitution with reference to the Inland Revenue (Special Provisions) Act No.10, 2003 as amended by Act No. 31 of 2003.

I shall be grateful if you would kindly place this before the Supreme Court for their decision.

Yours faithfully


Chandrika Bandaranaike Kumaratunga





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இலங்கை சனாதிபதி
President of Sri Lanka

**Reference under Article 129 (1) of the Constitution
of the Democratic Socialist Republic of Sri Lanka 1978**

WHEREAS in terms of Article 34 of the Constitution of the Democratic Socialist Republic of Sri Lanka 1978 (hereinafter referred to as "the Constitution") the President of the Republic is vested with the power of 'grant of pardon' in terms thereof: quote -

- "(a) grant a pardon, either free or subject to lawful conditions;
- (b) grant any respite, either indefinite or for such period as the President may think fit, of the execution of any sentence passed on such offender;
- (c) substitute a less severe form of punishment for any punishment imposed on such offender; or
- (d) remit the whole or any part of any punishment imposed or of any penalty or forfeiture otherwise due to the Republic on account of such offence."

AND WHEREAS the Inland Revenue (Special Provisions) Act No. 10 2003, as amended by Act No. 31 of 2003, (hereinafter referred to as "the Act"), more particularly Sections 3, 4, 8 and 10 thereof, read together with the definitions of the words "Authority", "investigation", "offence", "tax" and "tax in dispute" given in Section 13 thereof, and read in the context of the several Statutes scheduled to the said Act, purport to empower the Commissioner General of Inland Revenue and/or the Exchange Controller and/or the Controller of Imports & Exports and/or the Commissioner General of Excise and/or the Director General of Customs and/or the Minister of Finance, to grant full immunity from any investigation or prosecution and/or to withdraw any pending investigation and/or prosecution at whatever stage, notwithstanding anything to the contrary in any other law .

... .. /



AND WHEREAS I am advised, that offences under certain of the Statutes scheduled to the said Act are scheduled non-bailable offences under the Criminal Procedure Code, punishable under the Penal Code, and whist, *inter-alia*, Sections 3 and 4 of the said Act purport to grant immunity from any investigation or prosecution for such offences under the said Statutes and/or empower the withdrawal of any pending investigation or prosecution in respect of such offences, notwithstanding anything to the contrary in any other law

AND WHEREAS the Republic, as a member of the United Nations, being bound by the United Nations Security Council Resolution 1373 of 28.9.2001, to deal with terrorism, the Minister of Foreign Affairs gazetted Regulations on 16.10.2001 under the United Nations Act No. 45 of 1968, *inter-alia*, to freeze and forfeit property, funds, or financial assets of persons directly or indirectly connected with terrorist organisations or terrorist acts, etc. and whist, *inter-alia*, Sections 3 and 4 of the said Act purport to grant full immunity for such property, funds, or the financial assets of persons directly or indirectly connected with terrorist organisations or terrorist acts and empower the withdrawal of any pending investigation or prosecution in respect of such offences, notwithstanding anything to the contrary in any other law

AND WHEREAS the Republic is also bound by international law and treaty obligations to deal, *inter-alia*, with drug peddling, arms dealing, counterfeiting, money laundering, etc., and Article 27 of the Constitution lays down directive principles of State policy and fundamental duties stipulating that the State shall endeavour to foster respect for international law and treaty obligations in dealings among nations, and whist, *inter-alia*, Sections 3 and 4 of the said Act purport to grant full immunity for such offences and empower the withdrawal of any pending investigation or prosecution in respect of such offences, notwithstanding anything to the contrary in any other law

AND WHEREAS by the application of the provisions of the said Act, undue and unconscionable financial bonanzas and privileges have been / are being conferred upon a privileged few unjustly enriching them by writing-off cognisable statutory dues to the State and thereby causing cognisable losses to the Republic; and also creating a special class of people above the Rule of Law by granting immunity and/or pardon to such special class of people and thereby eroding the Rule of Law: knowingly conferring benefit on oneself or another and causing loss to the Republic is a offence of corruption punishable under the Bribery Act



... .. /

AND WHEREAS the Directive Principles of State Policy and Fundamental Duties enshrined in Article 27 of the Constitution stipulate that such Directive Principles of State Policy and Fundamental Duties shall guide Parliament, the President of the Republic and the Cabinet of Ministers in the enactment of laws and the governance of the Republic; including, the equitable distribution among all citizens of the material resources of the community and the social product, so as best to subserve the common good; the establishment of a just social order in which the means of production, distribution and exchange are not concentrated and centralised in the hands of a privileged few, but are dispersed among, and owned by, all the people of the Republic; raising the moral standards of the people; and further stipulating that the State shall eliminate economic and social privilege and disparity; and that State shall ensure that the operation of the economic system does not result in the concentration of wealth and the means of production to the common detriment

AND WHEREAS upon being apprised of the gravity of the foregoing, I, as the President of the Republic and the Head of the Cabinet of Ministers, submitted a Note to Cabinet in June 2003, setting out some of the foregoing, requiring that the said Act be repealed, (the Bill thereof having been approved in my absence by the Cabinet of Ministers); and regardless of my said requirement, the Cabinet of Ministers subsequently extended the date for the making of declarations under the said Act from 30.6.2003 to 31.8.2003 by the amending Act No. 31 of 2003

AND WHEREAS all Members of Cabinet, Members of Parliament and other public officers, upon assumption of such public office, have solemnly declared and affirmed or sworn, that each of them shall uphold and defend the Constitution of the Republic under and in terms of the applicable Articles in the Constitution.

AND WHEREAS the question has arisen, as to whether the foregoing in fact and in law tantamounts to an infringement and/or usurpation of and/or encroachment on and/or alienation of the powers vested in the President of the Republic under the Constitution

AND WHEREAS furthermore in the light of the foregoing, doubts have been expressed with regard to the constitutional consistency and/or validity of the provisions of the said Act



... .. /

AND WHEREAS in the context of the foregoing it appears to me that questions of law herein set out have arisen or are likely to arise and are of such nature and of such public importance, that it is expedient to obtain the opinion of the Supreme Court of Sri Lanka thereon

NOW THEREFORE in the exercise of the powers conferred upon me under and in terms of Article 129 (1) of the Constitution, I, Chandrika Bandaranaike Kumaratunga, President of the Democratic Socialist Republic of Sri Lanka do hereby refer the following questions to the Supreme Court of Sri Lanka for consideration and report thereon within ten (10) days from the date hereof,

As to whether, one or more of the provisions of the said Act,

- a) has or have infringed and/or usurped and/or encroached on and/or alienated the powers vested in me, in terms of the Constitution, as the President of the Republic ?;
- b) is or are inconsistent with and/or violative of and/or prohibited / debarred by the Constitution ?
- c) is or are inconsistent with the Rule of Law and/or has or have alienated the judicial power of the people ?
- d) has or have grossly violated the directive principles of State policy and fundamental duties ?
- e) has or have been violative of international law and/or treaty obligations ?
- f) tantamounts or tantamount to the commission of the offence of corruption under and in terms of the Bribery Act ?
- g) tantamounts or tantamount to the misappropriation of public funds, which have been reposed in trust by the people ?

On this 08th Day of March 2004


Chandrika Bandaranaike Kumaratunga
President of the Democratic Socialist Republic of Sri Lanka



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இலங்கை சனநாயக சோசலிசக் குடியரசு
Democratic Socialist Republic of Sri Lanka