

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

*In the matter of an Application for Writs in the nature  
of Certiorari, Prohibition and Mandamus in terms of  
Article 140 of the Constitution of the Democratic  
Socialist Republic of Sri Lanka*

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

**PETITIONER**

**Case No. 1661/2003**

**Vs.**

1. Kandiah Susilar  
Commissioner General of Inland Revenue  
Sir Chittampalam A Gardiner Mawatha,  
Colombo 2.
2. S.A.C.S.W. Jayatilleke  
Director General of Customs  
Customs House, Bristol Street,  
Colombo 1.
3. Parakrama Ekanayake Bandara  
Director General of Excise  
28, Staples Street,  
Colombo 2.
4. Ranjan Samaraweera  
Controller of Imports & Exports  
75 1/3, 1<sup>st</sup> Floor, Hemas Building  
York Street,  
Colombo 1.
5. H.A.G. Hettiarachchi  
Controller of Exchange,  
Central Bank of Sri Lanka  
5<sup>th</sup> Tower, Level 7, Janadhipathi Mawatha,  
Colombo 1.
6. A.S. Jayawardena  
Governor, Central Bank of Sri Lanka  
Chairman, Monetary Board of Sri Lanka  
1<sup>st</sup> Tower, Level 15,  
30, Janadhipathi Mawatha,  
Colombo 1.
7. Ananda Coomaraswamy  
Chairman, Commission to Investigate Allegations  
of Bribery or Corruption  
36, Malalasekera Mawatha,  
Colombo 7.
8. Charitha Ratwatte  
Secretary, Ministry of Finance  
& Secretary to the Treasury  
Secretariat,  
Colombo 1.
9. Kairshasp Nariman Choksy  
Minister of Finance  
Secretariat,  
Colombo 1.

10. Hon. Joseph Michael Perera  
Speaker of Parliament of Sri Lanka  
Parliament of Sri Lanka  
Sri Jayawardenepura  
Kotte.
11. W.J.S. Karunaratne  
Secretary to Her Excellency the President  
Presidential Secretariat  
Colombo 1.
12. K.C. Kamalabayson, P.C.  
Hon. Attorney General  
Attorneys General's Department,  
Colombo 12.

**RESPONDENTS**

**TO: HIS LORDSHIP THE HONOURABLE PRESIDENT AND THEIR LORDSHIPS THE OTHER HONOURABLE JUDGES OF THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

I, **CHITRA ATHURUGIRIYA**, the Additional Secretary to Her Excellency the President, and at present the Acting Secretary to Her Excellency the President, Presidential Secretariat, Colombo 1, being a Buddhist do hereby solemnly, sincerely and truly affirm and declare as follows:

1. a) I am the affirmant above-named and the Additional Secretary to Her Excellency the President, and I am at present the Acting Secretary to Her Excellency the President; the Secretary to the President, having gone abroad,
  - b) I have been duly authorised and empowered to act for and on behalf and in the name of the Secretary to Her Excellency the President, to do execute and perform all the duties and functions of the Secretary to Her Excellency the President, during his absence from Sri Lanka.
  - c) Accordingly I, as the Acting Secretary to Her Excellency the President, do hereby affirm and declare to the facts herein contained of my personal knowledge from documents available and as advised.
2. a) The relevant Respondents above-named having been vague and evasive to queries raised by Her Excellency the President on the matter of revenue losses to the State as a consequence of this "Amnesty", such revenue losses to the State is believed to be around Rs. 200 Billion, whereas in comparison therewith, as per the Budget for the year 2004, the total tax revenue has been reckoned at Rs. 251 Billion and State Borrowings reckoned at Rs. 350 Billion, for the year 2004.
  - b) Furthermore, there ought not be any escape from the law to contract killers, drug peddlers, smugglers, arms dealers, fraudsters, bootleggers, etc., and to those who have committed penal offences, including offences, such as money laundering, financing of terrorists and terrorist activities, by such persons taking cover under this "Amnesty", thereby transgressing the rule of law and international treaties and obligations.
3. Hence this Application being of grave and utmost national and public importance, ought be expeditiously proceeded with and determined upon, inasmuch as this Application had been filed by the Petitioner as far back as 29.9.2003.
4. a) In the meanwhile, the 1<sup>st</sup> Respondent ought be restrained from giving acknowledgements in writing to any declarants, who had made declarations in terms of the Inland Revenue (Special Provisions) Act No. 10 of 2003 after 30.6.2003, and furthermore the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents ought be restrained from granting any amnesty, remission or pardon, whatsoever in any manner howsoever, to declarants, who had made declarations in terms of the Inland Revenue (Special Provisions) Act No. 10 of 2003, until the final determination by Your Lordships' Court of this Application, in terms of the Interim Orders prayed for in prayers g) and h) of the Petition of the Petitioner dated 29.9.2003.

- b) **Not to so restrain as aforesaid the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents would only render nugatory any final determination by Your Lordships' Court to grant the reliefs prayed for in prayers b), c), d) e) and f) of the Petition of the Petitioner dated 29.9.2003.**
5. I admit the averments contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 21 and is unaware of averments in paragraph 20 of the Petition of the Petitioner dated 29.9.2003.
6. a) I confirm and reiterate the contents of paragraph 13 of the Petition of the Petitioner dated 29.9.2003.
- b) I more particularly reiterate, that any pardon, any respite or substitution of a less severe form of punishment or the remission of the whole or any part of any punishment or of any penalty or forfeiture due to the State, **could solely and only be granted by Her Excellency the President, under and in terms of Article 34 of the Constitution.**
- c) **Such constitutional right vested in Her Excellency the President cannot be usurped and/or circumvented by an Act of Parliament without amending the Constitution.**
- d) Article 84 (3) of the Constitution cited at paragraph 14 of the Petition of the Petitioner dated 29.9.2003 is reiterated in this regard, in that, **"a Bill enacted into law shall not, and shall not be deemed to, amend, repeal or replace the Constitution or any provision thereof, and shall not be so interpreted or construed, ....."**
- e) I further reiterate the necessity to issue the Writs referred to in paragraphs 19(a), 19(b), 19(c) and 19(d) of the Petition of the Petitioner dated 29.9.2003.
- f) Furthermore, I also reiterate the contents of paragraphs 16, 17, 18 of the Petition and the necessity to issue the Writ referred to paragraph 19 (e) of the Petition of the Petitioner dated 29.9.2003.
7. I state that the Petition of the Petitioner dated 29.9.2003 reveals the **implications of the interpretation of the Constitution in this Application**, and as such Your Lordships' Court ought consider, as to whether not this Application should be referred to be considered and determined upon by Their Lordships of the Supreme Court, in which is vested the exclusive jurisdiction for the interpretation of the Constitution, **in terms of Article 125 (1) of the Constitution.**

The foregoing Affidavit having been read and understood by the Affirmant within-named, affirmed to and signed at Colombo on this 15<sup>th</sup> day of December 2003



TRUE COPY

*D. L. & F. De Saram*  
ATTORNEYS - AT - LAW

BEFORE ME

*M. P. D. Harischandra*  
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