

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

*In the matter of an Application for Special Leave to Appeal in
terms of Article 128 of the Constitution of the Democratic
Socialist Republic of Sri Lanka*

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

SC (Spl) LA No. 50/2004
CA No. 1661/2003

PETITIONER

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, 1st Floor, Hemas Building
York Street,
Colombo 1.
5. H.A.G. Hettiarachchi
Controller of Exchange,
Central Bank of Sri Lanka
5th Tower, Level 7, Janadhipathi Mawatha,
Colombo 1.
6. A.S. Jayawardena
Governor, Central Bank of Sri Lanka
Chairman, Monetary Board of Sri Lanka
1st 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

AND NOW

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

PETITIONER-PETITIONER

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Hon. Attorney General
Attorneys General's Department,
Colombo 12.

RESPONDENTS-RESPONDENTS

TO: THEIR LORDSHIPS THE HONOURABLE CHIEF JUSTICE AND THE OTHER HONOURABLE JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.

On this 24th day of February 2004

The **Petition** of the Petitioner-Petitioner above-named appearing by Razmara Abdeen practising under the name, style and firm of ABDEEN ASSOCIATES, and his Assistants Bushra Muheesa Hashim, Manjula Pasquel, Chamari Tharanga Athukorale and Horagoda Gamage Nadeeja Pragathi, his Registered Attorneys-at-Law, states as follows:

1. The Petitioner-Petitioner abovenamed (hereinafter referred to as the **“Petitioner”**) on 29.9.2003 filed the Application No. 1661/2003 in the Court of Appeal seeking 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, also seeking certain Interim Orders, making the abovementioned Respondents-Respondents (hereinafter referred to as the **“Respondents”**) as Respondents in the said Application.

True copies of the Motion, Petition, Affidavit and the Documents annexed thereto, marked “SCI”, “SCI(a)”, “SCI(b)” and “SCI(c)”, respectively, are annexed hereto pleaded as part and parcel hereof

2. The chronology of events thereafter in the Court of Appeal is set out hereinbelow:
 - i) On 30.9.2003 the Application had been minuted to the Hon. President, Court of Appeal by the Registrar, Court of Appeal, and the same was listed for Support on 8.10.2003 in Court No. 110.
 - ii) When the Application came up for Support on 8.10.2003 before Their Lordships Edirisuriya J and Sripavan J, the briefs and the docket having not been sent, the matter was re-fixed for 13.10.2003 and the Registrar directed to forward the briefs and the docket.
 - iii) Subsequently, on the same day, i.e. 8.10.2003, a Minute had been made in the record to list the Application for hearing before Their Lordships, Udulagama J and Sripavan J.
 - iv) When the Application was mentioned on 13.10.2003 in Court No. 303 before His Lordship Udulagama J, (His Lordship Sripavan J being on leave) the matter was fixed to be mentioned on 23.10.2003 at 1.00 p.m.
 - v) Since the Application had been fixed for Support previously, the Petitioner filed Motion on 16.10.2003 moving to have the Application listed for Support on 23.10.2003.
 - vi) When the Application was to be mentioned on 23.10.2003 at 1.00 p.m. in Court No. 303, His Lordship Sripavan J not being present, he having not been previously informed, His Lordship Udulagama J (in Chambers) directed to list the Application for Support on 27.10.2003 in Court No. 303 at 1.00 p.m. and the Registrar was directed to inform His Lordship Sripavan J.
 - vii) When the Application came up on 27.10.2003 for Support before Their Lordships Udulagama J and Sripavan J, having heard Counsel for the Petitioner, Their Lordships being of the view that initially Notice should be issued on the Hon. Attorney General, issued Notice on the Hon. Attorney General returnable on 10.11.2003 at 1.00 p.m.

Counsel for the Petitioner reserved the right to move for the Interim Orders, if necessary.

viii) The Attorneys-at-Law for the Petitioner having tendered on 27.10.2003 Notice to be served on the Hon. Attorney General, the 12th Respondent, Notice in terms of Rule 3 (4) of the Court of Appeal (Appellate Procedure) Rules 1990, was issued on 29.10.2003 on the Hon. Attorney General by the Registrar of the Court of Appeal, returnable on 10.11.2003;

- a) requiring the Hon. Attorney General to lodge his Statement of Objection on or before 10.11.2003 complying with provisions of sub-rules 5 and 6
- b) informing the Hon. Attorney General that the Petitioner is required to file his Counter-Affidavit, if any, within 4 weeks of the date of receipt of the Statement of Objections, and that
- c) thereafter, the Application will be taken up for hearing on a date fixed by Court

A True copy of the Notice marked "SC2" is annexed hereto pleaded as part and parcel hereof

ix) a) On 10.11.2003, when this matter came up before Their Lordships Udulagama J and Sripavan J, Addl. Solicitor General, P.A. Ratnayake P.C. appeared for the Hon. Attorney General and the Petitioner's Senior Counsel, M. Sumanthiran, Attorney-at-Law, having informed Their Lordships on the previous day, was not present, since it was a Notice Returnable date, and only Petitioner's Junior Counsel were present.

b) In fact on the previous day, Their Lordships intimated to the Petitioner's Senior Counsel that the presence of Junior Counsel would suffice, since it would be a Notice Returnable date and that the Hon. Attorney General would appear and obtain a date to file the Statement of Objections.

c) On 10.11.2003, the Addl Solicitor General on being requested to make submissions, intimated to Their Lordships that he had not studied the matter, since he had received Notice, and that he had come to obtain a date for Objections.

d) Thereupon, Their Lordships intimating that the Hon. Attorney General had been invited to be heard on the matter of Support of this Application prior to issue of Notice, fixed the matter for Support again on 24.11.2003 at 1.00 p.m.

e) Though Petitioner's Junior Counsel present in Court did not make such Application, a Minute had been made – "Mr. Sumanthiran, Senior Counsel for Petitioner is said to be in Court No. 401 (Supreme Court) and moves to Support this Case on 24.11.2003".

x) a) On 24.11.2003, when the Application came up before Their Lordships Udulagama J and Sripavan J, the Addl. Solicitor General P.A. Ratnayake P.C. confirmed to Their Lordships that the Inland Revenue (Special Provisions) (Amendment) Act No. 31 of 2003 had been certified by the Hon. Speaker on 22.10.2003.

b) Having heard both Counsel, the Addl. Solicitor General was to submit copies of authorities, after which Counsel for the Petitioner was to reply. The Addl. Solicitor General resisted the argument that the Inland Revenue (Special Provisions) (Amendment) Act No. 31 of 2003 had no retrospective effect.

c) The matter was fixed to be mentioned on 17.12.2003 at 1.00 p.m.

- xi) On 10.12.2003 Attorney-at-Law for the Hon. Attorney General filed Motion informing that the Addl. Solicitor General P.A. Ratnayake P.C. was in a personal difficulty and to take this matter off the Support Role of 17.12.2003 and to mention the same on that date to re-fix for Support.
- xii) Accordingly, when the Application came up on 17.12.2003 before His Lordship Udulagama J, it was fixed to be mentioned on 12.1.2004 at 1.00 p.m. and the Registrar directed to inform His Lordship Sripavan J.
3. In the meanwhile on 15.12.2003, the 11th Respondent, Secretary to Her Excellency the President tendered a Statement of Objections;
- a) *inter-alia*, stating that the constitutional right to grant pardon / remission vested in Her Excellency the President in terms of Article 34 of the Constitution, cannot be usurped and/or circumvented, without amending the Constitution; and that the Petition in this Case reveals the implication of the interpretation of the Constitution, and such, to consider as to whether not this Application ought be referred, in terms of Article 125 (1) of the Constitution, to be considered and determined upon by Their Lordships of the Supreme Court, and
- b) *praying* that the Petitioner's Application be fixed for hearing, fixing dates for filing of Statement of Objections, by the Hon. Attorney General, 12th Respondent, and the matter be expeditiously determined upon, in view of the grave and utmost national and public importance, and
- c) *further praying*, that the reliefs, including the Interim Orders prayed for in the Petition of the Petitioner be granted, or in the alternative, in terms of Article 125 (1) of the Constitution to refer the Application to be heard and determined upon by Their Lordships of the Supreme Court

True copies of the Motion, Statement of Objections and Affidavit marked "SC3" "SC3(a)" and "SC3(b)", respectively, are annexed hereto pleaded as part and parcel hereof

4. On 18.12.2003, the Petitioner setting out the aforesaid chronology of events, tendered Motion moving that the Hon. Attorney General files his Statement of Objections, as had been noticed as aforesaid on 29.10.2003 before the next date i.e. 12.1.2004, so that this matter could be taken up for hearing.

A true copy of the Motion marked "SC4" is annexed hereto pleaded as part and parcel hereof

5. a) When this matter came on 12.1.2004, having heard Counsel, Their Lordships Udulagama J and Imam J issued Notice on the 1st Respondent, Commissioner General of Inland Revenue and refused to issue Notice on the 2nd to 11th Respondents.
- b) The Addl. Solicitor General, P.A. Ratnayake P.C. took notice on behalf of the 12th Respondent, Hon. Attorney General.
- c) Notice was Returnable on 26.1.2004.
- d) Thereafter, the Registrar, Court of Appeal, issued Notice on the 1st Respondent returnable on 26.1.2004

6. On 22.1.2004, the Attorneys-at-Law for the 11th Respondent, Secretary to Her Excellency the President, filed Motion, *inter-alia*, pointing out;
- a) that previously Their Lordships Court on 29.10.2003 had issued Notice on the Hon. Attorney General in terms of Rule 3 (4) of the Court of Appeal (Appellate Procedure) Rules 1990, requiring the Hon. Attorney General to lodge his Statement of Objections on or before 10.11.2003 in compliance with Sub Rules 5 and 6, which requirement the Hon. Attorney General had not complied with, and that consequently, on 15.12.2003 in terms of Rule 7 of the Court of Appeal (Appellate Procedure) Rules 1990, the 11th Respondent had filed the aforesaid Statement of Objections (“**SC3(a)**”), and
 - b) furthermore that on 12.1.2004, Their Lordships Court had issued Notice also on the 1st Respondent returnable on 26.1.2004, and had also erroneously refused to issue Notice on the other Respondents, inasmuch as the 11th Respondent had already tendered a Statement of Objections in terms of Rule 7 of the Court of Appeal (Appellate Procedure) Rules 1990, and therefore the aforesaid Statement of Objections was being re-tendered in terms of the said Motion.

A true copy of the Motion marked “SC5” is annexed hereto pleaded as part and parcel hereof

7. a) When the Application came up on 26.1.2004, State Counsel R. Ameen appearing for the 1st Respondent, Commissioner General of Inland Revenue and the 12th Respondent, Hon. Attorney General, moved for time to file Objections, and accordingly, Objections were re-fixed for 11.3.2004.
- b) On 26.1.2004, Counsel for the 11th Respondent, Secretary to Her Excellency the President, moved to support the aforesaid Application and the Court of Appeal has minuted thus - “Counsel for the 11th Respondent moves to support this matter. However, as the direction of this Court on last occasion, this Court issued notice on 1st respondent to clarify this matter Counsel for the 11th Respondent advised to make Application after submissions of the 1st respondent”

True copies of certified copies of the Journal entries from 29.9.2003 to 26.1.2004 including the aforesaid Orders dated 12.1.2004 and 26.1.2004, compendiously marked “SC6” are annexed hereto pleaded as part and parcel hereof

8. Being aggrieved with the aforesaid Orders dated 12.1.2004 and 26.1.2004 of the Court of Appeal, the Petitioner seeks Special Leave to Appeal from Your Lordships’ Court on the following, amongst other grounds, that may be urged by Counsel at the hearing.
- a) The Court of Appeal had gravely misdirected itself in making the aforesaid Orders, without recognizing that the Court of Appeal in fact had issued Notice on 27.10.2003 on the 12th Respondent, Hon. Attorney General, and thereafter had issued Notice on 12.1.2004 on the 1st Respondent, Commissioner General of Inland Revenue.
 - b) The Court of Appeal had gravely erred in refusing to issue Notice on the 2nd to 11th Respondents, regardless of the fact that the 11th Respondent had already tendered on 15.12.2003 a Statement of Objections in terms of the Rule 7 of the Court of Appeal (Appellate Procedure) Rules 1990, supporting the Application of the Petitioner

- c) In the context of the reliefs prayed for, Notice ought to have been issued on the other Respondents, including the 7th Respondent, particularly in the context of prayer (f) of the Petition, which the Court of Appeal had failed to take cognizance of in refusing notice
 - d) The Court of Appeal had failed to take cognizance that the Statement of Objections of the 11th Respondent had been tendered on 15.12.2003 in terms of Rule 7 of the Court of Appeal (Appellate Procedure) Rules 1990, and also that the same had been re-tendered on 22.1.2004
9. The Petitioner states that the above involves question of general and public importance, involving substantial questions of law fit to be reviewed by Your Lordships' Court; and that this matter is of grave and utmost national and public importance.
10. The Petitioner has not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.
11. The Affidavit of the Petitioner in support of the averments contained herein is annexed

WHEREFORE the Petitioner respectfully prays that Your Lordships' Court be pleased to;

- a) issue Notice on the Respondents
- b) grant Special Leave to Appeal against the Court of Appeal Orders dated 12.1.2004 and 26.1.2004 to the extent that the Court of Appeal had refused to issue Notice on the 2nd to 11th Respondents
- c) set aside the Court of Appeal Orders dated 12.1.2004 and 26.1.2004 to the extent that the Court of Appeal had refused to issue Notice on the 2nd to 11th Respondents
- d) issue Notice on the 2nd to 10th Respondents
- e) admit the Statement of Objections dated 15.12.2003 already tendered by the 11th Respondent and re-tendered on 22.1.2004
- f) grant costs; and
- g) such other and further reliefs as Your Lordships' Court shall seem meet

Asdean Associates
Attorneys-at-Law for the Petitioner-Petitioner

Settled by:

Viran Corea Esqr.,
Vindhya Weerasekera Esqr.,
M.A. Sumanthiran Esqr.,
Attorneys-at-Law