

Petition

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

In the matter of an application to determine whether the Bill titled: "COLOMBO PORT CITY ECONOMIC COMMISSION" or any part thereof is inconsistent with the Constitution in terms of Article 121 of the Constitution.

Kandhana Archchige Bandula
Charasekera,
No. 119, University Road,
Rathanapitiya,
Boralesgamuwa.

**PETITION
ER**

SC (SD) No:

Vs.

Hon. Attorney General
Attorney General's Department
Colombo 12

RESPONDENT

On this 15th day of April 2021

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

The Petitioner above named appearing by Mr. J. A. N Silva, his Attorney-at-Law states as follows;

1. The Petitioner states that he is a citizen of Sri Lanka.

2. The Petitioner states that he is a Council Member of the Borelesgamuwa Urban Council and was the Managing Director of LRDC and Former Chairman of Lanka Electricity Company (LECO).
3. The Petitioner states that he is making this application to Your Lordships Court as a citizen having sufficient and reasonable public interest with regard to the grievances pertaining to and inconsistencies stated in this application.
4. The Petitioner states that the Honorable Attorney General is the Respondent and named as a Respondent to this application in terms of Article 134(1) of the Constitution.
5. The Petitioner state, the Bill titled 'COLOMBO PORT CITY ECONOMIC COMMISSION' which was published in Part II of March 19, 2021 SUPPLEMENT (Issued on 24.03.2021) (**marked as 'A' with the Petition and pleaded as part and parcel hereof**) contains proposed provisions of the Bill which would,
 - (a) Violates and contravene the Article 1 of the Constitution and paves way to establish an enclave that have no obligation or duty to maintain it as a part of free, sovereign, independent, Democratic Republic of Sri Lanka,
 - (b) Create institutions and propose to perform functions that are in violation of Directive principles of state policy and fundamental duties as enshrined in Chapter VI of the Constitution,
 - (c) Violates the Article 2 of the constitution that the Republic of Sri Lanka which constitute a unitary state,
 - (d) Defeats the notion of pre-eminent level of central governance in the areas of authority of the Colombo Port City, Special economic Zone in relation to the day-to-day administration of the state,
 - (e) Negates the notion enshrined in Article 3 of the Constitution that the Republic of Sri Lanka sovereignty is in the people and is inalienable,

- (f) Violates the constitutional scheme enshrined in the Article 3 of the constitution by undermining the legislative power, which is exercised through the parliament,
- (g) Violates Article 76 of the Constitution whereby creating a subsidiary sovereign body called Colombo Port City Economic Commission,
- (h) Negates the notion of supremacy of the central Parliament as enshrined in the article 2 of the Constitution,
- (i) Grant powers to the Colombo Port City Economic commission by the Bill under the powers vested with the president of sri Lanka to enact regulations that Negates constitutional arrangement on powers of the President to make laws in the form of subordinate laws in an emergency situation as enshrined in the Article 155(1)
- (j) Defeats the legislative competence of Acts of Sri Lanka as whole which is enshrined in Article 170 of the Constitution by making regulations in the areas that the Colombo Port City Economic Commission have legislative authority,
- (k) Surpasses the notion of ‘delegated legislation’ or ‘subordinated legislations’ by empowering to make regulations in the legislative areas specified under schedule III of the proposed Bill,
- (l) Exceed the authority given by the parliament as expressed in the relevant laws by empowering to make regulations in the legislative areas specified under Schedule II of the proposed bill,
- (m) Has not imposed mandatory duty over the commission to consult with the parliament when the commission is making its regulations.
- (n) Has Usurped the power of Sri Lanka Parliament, in the sphere of legislation mentioned in the schedule II and III,

- (o) Grants vast financial powers to the commission undermining the sphere of fiscal sovereignty, which is envisaged even under the chapter XVII of Constitution,
- (p) Undermines Article 148 of the Constitution that empowers the parliament to have full control of the public finance,
- (q) Empowers the commission to establish a fund parallel to the consolidated fund established under the Article 149 of the constitution and undermines the role of consolidated fund envisaged by the Constitution,
- (r) Empowers to establish off-shore Banking institutions outside the preview of monetary Board established under the Finance Act,
- (s) Take away the financial oversight power of the Auditor General which is empowered by the Article 154 amended by the 20th amendment to the Constitution.
- (t) Empowers the commission to raise foreign debt and negotiate foreign grants without the concurrence of the Treasury and thereby the Parliament,
- (u) Empowers the commission to collect taxes, rates and levies through self-imposed regulations which do not get the sanction or concurrence of the Parliament.
- (v) Hampers the provisions of the constitution that enshrined to ensure administration of justice and people's right to seek a judicial review as stated in the Chapter XV of the constitution.
- (w) Establishment of the Port City Commission through the Bill is an unconstitutional alienation of the sovereignty of the people.

- (x) Directly impacts upon the Petitioner's sovereignty in terms of Article 3 read together with Article 4 (a), 4(b) 4(c) and 4(d) in terms of weakening/ making defunct the legislative powers of the Parliament, subordinating the judiciary to the delegated will of the executive and granting immunity to the subjects of the commission's jurisdiction where application of human rights and writ jurisdiction is questionable in its application,
- (y) The provisions of the Bill Weakens the sovereignty of the Petitioner in terms of Article 1, 2 and 3 read together with Article 4(d) in terms of fundamental rights of the people,
- (z) The Provisions of the Bill create a designated area as mentioned in the schedule I to the Bill which is not amenable to exercise peoples' franchise which is the power directly exercisable by the citizens to exercise their sovereignty in the territory.

The provisions of the Bill Violates and contravene the Article 1 of the Constitution and paves way to establish an enclave that have no obligation or duty to hold free, sovereign, independent, Democratic Republic of Sri Lanka:

6. The Petitioner states,

- (a) The Clause 2 and 3 of the proposed bill provisioned to establish a Special Economic Zone to be called the Colombo Port City Special Economic Zone (hereinafter referred to as the "Colombo Port City") in the specific geographical area belongs to the territory of Sri Lanka as set out in the schedule I to the said Bill with special powers vested with a Colombo Port City Commission(hereinafter mentioned as Commission), which is a body corporate with perpetual succession and a common seal that has no bearing on the Public Contracts Act, No. 3 of 1987, to engage with the administration, regulation and control of, all matters connected with businesses and other operations, in and from the Area of Authority of the Colombo Port City,

- (b) The clause 4(1) of the proposed bill empowers the Commission to design a Master Plan as approved by the Commission with the concurrence of the President or in the event that the subject of the Colombo Port City is assigned to a Minister, with the concurrence of such Minister, shall be the basis on which all zoning and other physical development activities within the Area of Authority of the Colombo Port City, shall be implemented,
- (c) The clause 4 (3) of the proposed Bill vested with the commission the responsibility of ensuring the due implementation of the Master Plan and make all necessary Development Control Regulations under clause 71 of the proposed Bill, which shall be made in terms of this Act,
- (d) The clause 3(4) of the proposed Bill empowers the commission to engage in preparing, developing, amending, updating, publishing and enforcing all Community Rules and Development Control Regulations applicable within the Area of Authority of the Colombo Port City,
- (e) The Clause 52 and 53 of the proposed Bill provisioned to grant exceptions or incentives FROM, OR UNDER ENACTMENTS that are stated in schedule II, notwithstanding the provisions contained in any of those acts,
- (f) The clause 73 of the proposed Bill provisioned that the enactments listed in Schedule III to this Act shall have no application within the Area of Authority of the Colombo Port City, since the subjects dealt with in such enactments have been, *mutatis mutandis*, set out in the provisions of this Act,
- (g) The proviso to the clause 3(5) of the proposed Bill provisioned that, anyhow the concurrence of the relevant Regulatory Authority sought, shall be limited to the implementation, within the Area of Authority of the Colombo Port City,

(h) Therefore, the above stated provisions violates and contravene the Article 1 of the Constitution and paves way to establish an enclave that have no obligation or duty to maintain it as a part of free, sovereign, independent, Democratic Republic of Sri Lanka.

The Bill provisioned to crate institutions and proposed to perform functions that are in violation of Directive principles of state policy and fundamental duties as enshrined in Chapter VI of the Constitution.

7. The petitioner states that;

a) As provisioned by the preamble to the Bill and the clause 5 of the proposed Bill provisioned to create of an exclusive economic zone under the name of special economic zone as a new tier of governance, and creating a private legal entity under the name of Colombo Port City Economic Commission with unfettered created and transferred powers as provisioned by the proposed Bill in order to establish international business hub that will attract new investments primarily to facilitate the diversification of the service economy, to promote the inflow of foreign exchange into such Zone. The establishment of this private legal entity as well as implementation of its powers and functions shall be violating fundamental rights and fundamental duties of the citizens as enshrined in Articles 27(2)(a) and Article 28 of the constitution,

b) The petitioner states that the in operationalization of the objective of the proposed bill denies fundamental duties in following manner.

i. Clauses

2,3,14,15,23,26,34,37,38,39,42,44,46,52,53,54,56,62,63,65, 71, and 73 of the proposed bills Fails to uphold and defend the constitution and first principles of the constitution that are entrenched by the constitution,

ii. Clauses 42,52,54,56,59 71 of the proposed bill Fails to uphold and defend the existing laws of the county,

- iii. Clause 26 of the proposed bill Goes against the principle of conscientious to choose once own occupation by the constitution,
- iv. Clause 65(3) of the proposed bill Fails to preserve and protect public property as required by the law of the country,
- v. Therefore, above stated clauses are in violation of Directive principles of state policy and fundamental duties as enshrined in Chapter VI of the Constitution.

The provisions of the Bill Violates the Article 2 of the constitution, which state that the Republic of Sri Lanka is a unitary state.

8. The petitioner states that;

- i. The Clauses 52,53,73 of the proposed Bill has taken away the necessity of having pre-eminent level of central governance in day-to-day administration of the state,
- ii. The clauses 52,53,54, 73 along with clause 71 of the proposed Bill negates the notion of supremacy of the central parliament,
- iii. The clauses 3,26,35, 40, 52,53,73,71, of the proposed bill creating a subsidiary sovereign body called Colombo port City Economic Commission,
- iv. Regulations that would be made under the clause 71 but which are contemplated under the areas specified under schedule III of the Bill, shall Surpass the notion of 'delegated legislation' or 'subordinated legislations' if those regulations would be implemented,

- v. Regulations that would be made under The clause 71 but which are contemplated under the areas specified under Schedule II, shall Exceed the authority given by the parliament as expressed in the relevant laws, if the regulations would be implemented,
- vi. When the Regulations are prescribed under the areas relevant to the acts that mentioned in schedule II and III, no mandatory duty imposed by the Bill over the commission to consult with the parliament when the commission is making its regulations,
- vii. The clause 71 Undermines the Article 148 of the constitution that empowers the parliament to have full control over the public finance when imposing taxes, rates and levies without an authority of law and those should be always approved by the parliament,
- viii. The clauses 14 and 23 of the Bill Empowers the commission to establish a fund parallel to the consolidated fund which is provisioned under the Article 149 of the constitution and undermines the role and functions of consolidated fund established by the constitution.
- ix. The clause 14(2),23(2)(f), 23(2)(g) Empowers the commission to raise foreign debt and negotiate foreign grants without the concurrence of treasury and thereby the parliament,
- x. The Clause 23(3)(b) of the Bill empowers the fund which is established under the Clause 23 of the Bill to paid out the balance of the fund after defraying expenditure incurred by the commission in the exercise, performance and discharge of its powers, duties and functions, to the Project Company without the authority of the parliament and without of a warrant under the hands of the Minister in charge of the subject of finance,
- xi. Therefore, above clauses Violates the Article 2 of the constitution which states that the Republic of Sri Lanka is a unitary state.

The Provisions of the Bill Violates the constitutional scheme enshrined in the Article 3 along with the Article 4(a) of the constitution by undermining the legislative power exercised by the parliament.

9. The petitioner states;

- I. Clause 2 and 3 and thereby clause 71 of the proposed Bill empowers to have territorial and functional legislative power for the administration, regulation and control of, all matters connected with businesses and other operations, in and from the Area of Authority of the Colombo Port City, which is an act of usurpation of the legislative power otherwise constitutionally assigned to the parliament,
- II. By operation of Clause 52,53,73 along with clause 71 of the proposed Bill defeats the legislative competence of Acts of Sri Lanka by operation, which is enshrined in Article 170 of the constitution,
- III. Clause 52 and 53 together with clause 71 of the proposed Bill allows to make regulations by the commission that goes beyond the level of delegated legislation and/or delegated legislations for the functions coming under the areas of schedule II of the proposed Bill,
- IV. Clause 73 together with clause 71 of the proposed Bill allows to make regulations by the commission that goes beyond the level of delegated legislation and/or delegated legislations for the functions coming under the areas of schedule III of the proposed Bill.
- V. Clauses 14, 23, 26, and 41 of the proposed Bill Undermines the Article 148 of the constitution that empowers the parliament to have full control of the public finance,
- VI. Clause 42 of the proposed Bill empowers to establish off-shore Banking institutions outside the preview of monetary Board, The Finance Act, No. 11 of 2002 and The Finance Act, No. 5 of 2005,

- VII. Clause 23 of the proposed Bill Empowers the commission to collect taxes, rates and levies through regulations which are not get the sanction or concurrence of the parliament,
- VIII. Therefore, above clauses Violates the constitutional scheme enshrined in the Article 3 of the constitution by undermining the legislative power exercised by the parliament.

The Provisions of the Bill Violates the constitutional scheme enshrined in the Article 3 along with Article 4(b) of the constitution by undermining the executive powers that are exercised by the President and the cabinet.

10.The petitioner states that;

- I. The territorial and functionality powers of the commission as mentioned in the clauses 2, 3, 44 and 71 of the proposed Bill which derives under the powers of the president of sri Lanka negates existing constitutional arrangement on powers of the president which allows only to make laws in the form of subordinate laws in an emergency situation as enshrined in the Article 155(1),
- II. The clause 15 of the Bill take away the Public financial oversight power of the Auditor General which is provisioned by the Article 154 amended by the 20th amendment to the commission,
- III. By issuing a Land Grant under the Crown Lands Ordinance by the president under the clause 65(3) of the proposed bill violates existing laws related to state land grants,
- IV. The cluse 59 of the proposed Bill create a new entity to collect taxes and rates, undermining legal provisions related to the Local government bodies of Sri Lanka,

- V. Therefore, the above clauses in total Violates the constitutional scheme enshrined in the Article 3 of the constitution by undermining the executive powers that are exercised by the President and the cabinet.

The Provisions of the Bill Violates the constitutional scheme enshrined in the Article 3 reading along with Article 4© of the constitution by undermining the judicial powers and administration of justice.

11. The Petitioner states that;

- I. Clause 62 and 63 of the proposed Bill hampers the provisions of the constitution that enshrined to ensure administration of justice and people's right to seek a judicial review as stated in the Chapter XV of the constitution,
- II. Therefore, above clauses in total Violates the constitutional scheme enshrined in the Article 3 of the constitution by undermining the judicial powers and administration of justice.

12. Thus, and otherwise, the Petitioner respectfully reiterates that,

- I. The provisions of the said Bill are inconsistent with the aforesaid provisions of the Constitution.
- II. and read as a whole places the fundamental democratic, sovereign, independent nature of the Sri Lankan state which respects the principles of unitary state, sovereignty of the people and assuring to all people freedom, equality, justice, fundamental human rights and the citizens' right to recourse for judicial review is in peril.

13. The Petitioners respectfully reserve the right through their Counsel to refer to any other clauses of the said Bill that may become relevant in the course of the hearing of this application.
14. The Petitioner has not previously invoked the jurisdiction of Your Lordships' Court in respect of the said Bill.
15. Affidavit of the Petitioner is appended hereto in support of the averments contained herein.

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

- a) Determine that one or more of the provisions of the said Bill ("**A**") is/are inconsistent with the provisions of the Constitution and require to be passed by the special majority and approved by the people at a Referendum required under the provisions of Article 83 of the Constitution,
- b) Determine that the provisions of the said Bill ("**A**") are inconsistent with the fundamental democratic, sovereign, independent nature of the Sri Lankan state which respects the principles of 'unitary state and inalienable sovereignty in the people and assuring to all people freedom, equality, justice, fundamental human rights and the citizens' right to recourse for judicial review.
- c) Make Order granting costs, and
- d) Make such other Orders that Your Lordships' Court seem meet.

Attorney at Law for the Petitioner