

Petition

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

In the matter of an application in terms of Article 121 read with Article 120 of the Constitution to determine whether the Bill titled "Public Financial Management" or any part thereof is inconsistent with the Constitution.

C. (S.D.) No: 77 / 2024

1. **Transparency International Sri Lanka**
No. 366, Nawala Road,
Nawala- Rajagiriya.
2. **Pulasthi Hewamanna**
Chairperson,
Transparency International Sri Lanka (Guarantee) Ltd,
No. 366, Nawala Road, Nawala, Rajagiriya.

PETITIONERS

-v-

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

RESPONDENT

On this 05th day of June 2024

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

The **Petition** of the Petitioners above named appearing by Thushari Jayawardena their registered Attorney-at-Law, states as follows:

THE PETITIONERS

1. The **1st Petitioner** is a body incorporated under the laws of Sri Lanka (and duly re-registered under the Companies Act No. 07 of 2007) and is made up of members, more than three-fourth (3/4) of whom are citizens of Sri Lanka.

THUSHARI
G.D.I. Thushari Jayawardena
Attorney-at-Law & Notary Public

2. The 1st Petitioner is *inter alia* a leading global movement against corruption, where it raises awareness of the damaging effects of corruption and works with partners in government, business and civil society to develop and implement effective measures to tackle corruption.
True copies of the Certificate of Incorporation and Memorandum and Articles of Association of the Petitioner are annexed hereto marked 'P1' and 'P2' respectively and pleaded as part and parcel hereof.
3. The 2nd Petitioner is a citizen of Sri Lanka, the Chairperson of the 1st Petitioner and an Attorney-at-Law of Your Lordships' Court, engaged in active practice since 2008. He has appeared as counsel *inter alia* in numerous cases for the protection and promotion of the public interest, including matters pertaining to elimination of corruption.
4. The Petitioners make this Application in their own right and in the public interest, with the objective of safeguarding the rights and interests of the general public of Sri Lanka and securing due respect, regard for and adherence to the Rule of Law, the Constitution, which is the supreme law of the land, and with a view to protecting the fundamental rights required to be respected, secured and advanced as more fully set out, hereinafter.

THE RESPONDENT

5. The Attorney General is made a Respondent under and in terms of the requirements of Article 134(1) of the Constitution.

BACKGROUND TO THE BILL AND JURISDICTION OF SUPREME COURT INVOKED

6. The Petitioners state that the Bill titled "**Public Financial Management Act**" (hereinafter referred to as "the Bill") was published in the Gazette of the Democratic Socialist Republic of Sri Lanka Part II of 10th May 2024 (Supplement), issued on or about 14th May 2024, and placed on the Order Paper of Parliament on 22nd May 2024.

True copies of the said Bill in English, Sinhala and Tamil (downloaded from the website of the Department of Government Printing www.documents.gov.lk) are annexed hereto marked 'P3(a)', 'P3(b)' and 'P3(c)' and pleaded as part and parcel hereof.

7. The Petitioners state that accordingly, the jurisdiction of Your Lordships' Court is invoked hereby in terms of Article 121(2) of the Constitution as amended, within fourteen (14) days of the Bill being placed on the Order Paper of Parliament on 22nd May 2024. Steps have been taken to give the Speaker due notice of the same, in terms of Article 121(1) of the Constitution.
8. Accordingly, in terms of Article 121(2) of the Constitution, "no proceedings shall be had in Parliament in relation to such Bill" until the expiration of a period of three (03) weeks from the filing of this Petition.
9. In the circumstances, the Constitution by virtue of Article 121(3) has afforded to the Petitioner, the right to have Your Lordships' Court have the benefit of time until the lapse of three (03) weeks of the making of the reference or the filing of the petition, to carefully consider the issues of inconsistency with the Constitution raised on behalf of the Petitioners and to determine and communicate to the President and the Speaker of Parliament. (vide – Article 121 of the Constitution) Such time augurs to the benefit of the Petitioners, the Executive, and the Legislature,

in as much as it enables the fuller consideration of issues raised and arising in the course of hearing of this Petition that enables the Executive and the Legislature to have a better-considered determination of the issues raised. It is respectfully stated that due cognizance of the same is imperative for the better protection of the interest of the Rule of Law and better constitutional consistency of laws passed by Parliament.

10. The Petitioners state accordingly, that in terms of Article 121(3) of the Constitution, the determination in respect of this petition is required to be communicated by Your Lordships' Court to the President and the Speaker of Parliament, on or before 26th June 2024 when the said three (03) weeks granted by the Constitution for doing so elapses.

11. The Petitioners state that the long title of the said Bill describes it as:

“An Act to make provisions to strengthen accountability, oversight, management and control of public funds in the public financial management framework with the view to improving fiscal policy for better macroeconomic management; to clarify institutional responsibilities related to financial management; to strengthen budgetary management, to facilitate public scrutiny of fiscal policy and performance; to repeal the Sections 8 and 14 of part ii of The Finance Act, No. 38 of 1971; to repeal The Fiscal Management (Responsibility) Act, No. 3 of 2003 and to provide for matters connected therewith or incidental thereto.”

INCONSISTENCIES WITH THE CONSTITUTION

12. The Petitioners state that the provisions of **Clause 32** of the Bill are unconstitutional and/or inconsistent with **Article 3** and/or **Article 12** and other provisions of the Constitution except if approved by People at a Referendum in addition to a two-thirds vote of the whole number of the Members of Parliament in favour as mandated by Article 83 and/or Article 84(2) of the Constitution.

PART VI – BUDGET EXECUTION

13. The Petitioners state that by **Clause 32(3)** of the said Bill, it is sought to provide that:

Clause 32(3)

“The Minister of Finance may with the concurrence of the National Procurement Commission prescribe the State-Owned Enterprises which shall be exempted from complying with the procurement guidelines.”

14. The Petitioners state that furthermore, by **Clause 32(4)** of the said Bill, it is sought to provide that:

Clause 32(4)

“The Provincial Councils may follow their own guidelines in respect of the procurement of goods, services, works, consultancy services, and information systems with the approval of the National Procurement Commission.”

15. The Petitioners state that accordingly, Provincial Councils are sought to be enabled to exempt themselves from the Procurement Guidelines.

16. The Petitioners further state that the Minister of Finance is granted a discretion to exempt State-Owned Enterprises (SOEs) from due compliance with the Procurement Guidelines.
17. The Petitioners state that the Procurement Guidelines are issued with the approval of the Cabinet of Ministers in order to enhance the transparency of Government procurement process to minimize delays and to obtain financially the most advantageous and qualitatively the best services and supplies for the nation.

(The Procurement Guidelines (2006) of the Democratic Socialist Republic of Sri Lanka is available at: <https://treasury.gov.lk/web/procurement-guidelines-and-manuals/section/procurement%20guidelines>)

18. The Petitioners state that providing for such exemptions of SOEs and Provincial Councils from the applicability of the Procurement Guidelines impacts and entails serious infringement of the sovereignty of the people.
19. The Petitioners further state that exempting SOEs and Provincial Councils from the applicability of the Procurement Guidelines as sought and permitting the adoption of their own guidelines lead to *inter alia* manifest absurdity and irrationality and thereby constitutes inconsistency with the rights conferred on the People of Sri Lanka in terms of Article 12 of the Constitution.
20. The Petitioners state that the power to be conferred on the Minister of Finance by virtue of clause 32(3) cannot be exercised by the Executive in a manner consistent with Articles 3 and 12(1) of the Constitution.
21. The Petitioners state that the power to be conferred on the Provincial Councils to follow their own guidelines in respect of the procurement of goods, services, works, consultancy services, and information systems cannot be exercised by the Provincial Councils in a manner consistent with Articles 3 and 12(1) of the Constitution.
22. The Petitioners further state that it is most evident that the proposed amendments do not cumulatively have the due effect of strengthening accountability, oversight, and management of public funds in the Public Financial Management framework.
23. The Petitioners further state that the level of corruption and bribery in Sri Lanka is not at a level that renders a relaxation or loosening of the degree of oversight and protection against the risk of occurrence of same. This is evident from both:
 - (a) Matters that Your Lordships' Court has had occasion to arrive at findings and/or judgements in respect of processes adopted and actions taken in respect of State-Owned Enterprises (SOEs) and or their dealings; and
 - (b) Matters that have transpired and that the 1st Petitioner (TISL) is privy to, through its work in keeping with its objectives.
24. The Petitioners state that the Corruption Perceptions Index (CPI) is the most widely used global corruption ranking in the world and that it measures the level of corruption in the public sector

of each country on a scale of 0-100, where 0 indicates 'highly corrupt' and 100 means 'very clean' and that Sri Lanka has dropped two places to be ranked 115 in the latest Corruption Perceptions Index (CPI) for the year 2023 which is the lowest ranking within the past five years in comparison to 93 in 2019, 94 in 2020, 102 in 2021 and 101 in 2022 showing a decline in the ranking. As per the index released by Transparency International, out of 180 countries, Sri Lanka has obtained a score of 34/100 in 2023. Sri Lanka has been ranked 115 alongside Ecuador, Indonesia, Malawi, the Philippines, and Turkey.

25. The Petitioners state that the Report of the Governance Diagnostic Assessment of Sri Lanka, was conducted by the Sri Lankan government with technical assistance from the International Monetary Fund (IMF). The Petitioners further state that the said report identifies multiple avenues through which officials influence public and private actions, often lacking transparency, especially in public procurement and policy implementation.
26. The Petitioners state that the Report of Civil Society Governance Diagnostic on Sri Lanka prepared based on extensive consultations with a range of stakeholders across Sri Lanka and guidance from field experts aimed to identify and prioritize the core elements of the national anti-corruption landscape, both from public opinion and governance perspectives, to address the necessary fiscal and governance outcomes for Sri Lanka to overcome its current crisis. The report links corruption and poor enforcement of the Financial Management (Reporting) Act (FMRA), the current law addressing public finance management.
27. The Petitioners further state that in 2016, the Advocata Institute released the 'State of State-Owned Enterprises' report, which highlighted the significant losses incurred by Sri Lankan state-owned enterprises (SOEs). This report was notable for being one of the few publications to focus on SOE losses. The second report on SOEs goes beyond simply identifying these entities as loss-making; it examines the underlying reasons for persistent losses and how SOEs are exploited for political or individual gain.

Annexed hereto marked respectively as follows, are several documents of the 1st Respondent TISL and/or that the Petitioners are privy to, which bear out the same:

P4(a) - Assessment of Corruptions Perceptions Index by Transparency International Sri Lanka. - <https://www.transparency.org/en/cpi/2023/index/lka>

P4(b) - The Report of Governance Diagnostic Assessment of Sri Lanka. - <https://www.imf.org/en/Publications/CR/Issues/2023/09/29/Sri-Lanka-Technical-Assistance-Report-Governance-Diagnostic-Assessment-539804>

P4(c) - The Report of Civil Society Governance Diagnostic Report on Sri Lanka: An Assessment of the Anti-Corruption Landscape of Sri Lanka. - <https://www.tisrilanka.org/civil-society-governance-diagnostic-report-on-sri-lanka-2023/>

P4(d) - The Report of The State of State-Owned Enterprises Sri Lanka published by Advocata Institute. - <https://www.advocata.org/state-enterprise-srilanka>

The Petitioners are advised to respectfully reserve the right to tender the full documents of the said annexures, the relevant extracts/pages of which have been appended hereto, should it transpire necessary and/or expedient for the fuller determination of the matters to be determined by Your Lordships' Court.

28. The Petitioners respectfully reserve their right to furnish such further facts and documents in support of the matters set out herein at the hearing should such become necessary and/or should the Petitioners become possessed of any such material.
29. In the given circumstances, and for reasons, matters and circumstances to be urged on behalf of the Petitioners by Learned Counsel at the hearing of this petition in Open Court, the Petitioners respectfully urge that the determination sought through this Petition be granted by Your Lordships' Court.
30. The Petitioners have not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.
31. An Affidavit of the 2nd Petitioner is appended hereto in support of the averments contained herein.

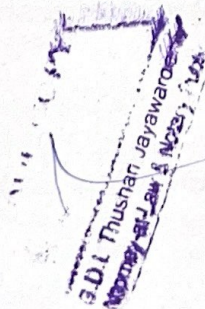
WHEREFORE the Petitioners respectfully pray that Your Lordships' Court be pleased to:

- A. Grant a full hearing to the Petitioners;
- B. Determine that the provisions of **Clause 32** of the Bill and/or any other provision(s) of the Bill are inconsistent with **Article 3** and/or **Article 12** and other provisions of the Constitution and therefore cannot be enacted into law, except if approved by the People at a Referendum in addition to a two-thirds vote of the whole number of the Members of Parliament in favour as required in terms of Article 83 of the Constitution; and
- C. Grant such further and other relief(s) as to Your Lordships' Court shall seem meet.

Settled by:

Ms. Hiruni De Almeida
Mr. Pramod Perera
Attorneys-at-Law

Mr. Viran Corea
President's Counsel



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