

CJ's Husband's Appointment To State Bank Grounds For Perceived Judicial Bias – New Public Interest Litigation Petition Says

By [Dharisha Bastians](#) -

As the tensions between the Government of President [Mahinda Rajapaksa](#) and the judiciary headed by Chief Justice [Shirani Bandaranayake](#) continue to grow, Public Interest Litigator [Nihal Sri Ameresekere](#) on Thursday made an application to the Supreme Court to re-view and re-examine its own determination on the Government's expropriation act, passed into law in November 2011. The Sri Lankan Constitution does not provide for judicial review of legislation, but the petitioner says the Supreme Court has the power to alter its own rulings if it is found to be 'demonstrably wrong'.

The controversial case seeks to have the Supreme Court review its own determination on a law allowing the state to acquire private enterprises and property and declare it null and void because it contravenes the constitution and because judicial bias and disqualification was perceived in the SC ruling on the bill. The explosive instances of perceived judicial bias as highlighted in Ameresekera's application are likely to ruffle feathers both on Hulftsdorp Hill and Temple Trees.

The Underperforming and Underutilized Assets Act, commonly referred to as the expropriation act since it vests power in the state to acquire private enterprises and assets it deems loss-making, was submitted for Supreme Court determination as an Urgent Bill on 20 October 2011.

In his petition to the court, Ameresekere argues that the Supreme Court determination is constitutionally null and void and without force in law, because it is made in contravention of Article 123 (3) of the Constitution, pertaining to urgent bills. According to the petitioner, the Article 123(3) is an inbuilt safeguard and check against the hasty procedures adopted to enact Urgent Bills. The Article cited states: "If the Supreme Court entertains a doubt it shall be deemed to have been determined that the Bill or such provision of the Bill is inconsistent



Shirani1

Chief Justice Dr. Shirani
Bandaranayake and Pradeep
Kariyawasam

with the Constitution.” The petitioner illustrates several instances in the SC special determination issued on 24 October 2011, where doubt is entertained by the three judge bench providing the ruling, namely Chief Justice Shirani Bandaranayake, Justice Chandra Ekanayake and Justice P.A. Rathnayake.

Ameresekere’s application states that upon the entertainment of a doubt by the Supreme Court, Article 123(3) of the Constitution deems the ‘Urgent Bill’ or any provision thereof to have been determined to be inconsistent with the Constitution, and thereby debars the Supreme Court from determining otherwise, and if so made, “such Determination, as in this instance, is constitutionally ab-initio null and void and of no force or avail in law i.e. a nullity.”

Citing the five Judge bench ruling on the Jeyaraj Fernandopulle Vs. Premachandra De Silva and Others case in Supreme Court, Ameresekere argues that the Supreme Court has inherent powers to correct decisions made *per incuriam* or ‘through lack of care’. “A decision will be regarded as given *per incuriam* if it was in ignorance of some inconsistent statute or binding decision... an order made on wrong facts given to the prejudice of a party will be set aside by way of remedying the injustice caused,” the ruling cited in the application states.

The most explosive section of the Application by Ameresekere is the section regarding perceived judicial bias, in which the petitioner illustrates several circumstances that created the perception of bias on the part of the judiciary. Each of the three judges who provided the ruling on the expropriation bill have been dealt with separately.

With reference to the appointment of the [Chief Justice’s husband](#) as the chairman of a state bank, despite his having no expertise in the field, Ameresekere details the sequence of events relating to former NSB Chairman’s resignation following a controversial share transaction and finally the statement from JSC Secretary [Manjula Tillekaratne](#) alleging interference with the independence of the judiciary on September 18, 2012. Referring to several of these ‘conflicts of interest’ the petitioner states: “Circumstances and relationships could or may have subsequently changed, but what is of relevance are the circumstances and relationships which subsisted prior to and at the relevant time the impugned Special Determination of 24.10.2011 (on the expropriation bill) was made.” The petitioner also refers to the appointment of Justice Chandra Ekanayake’s husband, a former High Court judge as parliamentary ombudsman by President Mahinda Rajapaksa after opting for early retirement after questions arose about his rulings in a high profile drug case. Ameresekere also states in the section regarding perceived judicial bias that President Rajapaksa himself was “keenly interested in the urgent bill” in question as per a speech given by the Head of State in parliament.

The following is the section regarding perceived judicial bias and disqualification cited in Ameresekere’s petition to the Supreme Court.

Perceived Judicial Bias and Disqualification’

Your Ladyship Chief Justice Shirani Bandaranayake

a) i) Pradeep Kariyawasam, husband of Your Ladyship Chief Justice Shirani Bandaranayake, was nominated in or about July 2009 by President Mahinda Rajapaksa, *as the Minister of Finance*, to be Chairman of Sri Lanka Insurance Corporation Ltd., (SLICL) upon SLICL being vested in the Government, consequent to the Judgment delivered on 4.6.2009 in SC (FR) Application No. 158/2007, wherein it had been stipulated thus:

“Since it is necessary in the interest of the public to ensure proper and efficient management of SLICL, this Court directs the Secretary to the Treasury, in consultation with the Minister of Finance, to submit to this Court for its approval the appropriate number of names of persons who have recognized academic/professional qualifications and more than 10 years experience in anyone or more of the fields of business management, accountancy, law, commerce, economics, and insurance to be appointed to the Board of Directors of SLICL.”

ii) Thereafter in or about May 2010, Pradeep Kariyawasam was nominated by President Mahinda Rajapaksa, *as the Minister of Finance*, to be Chairman of National Savings Bank.

iii) The above *high profile political appointments, as Chairman*, with lucrative perquisites, *to specialised* major financial institutions, were notwithstanding he having had no known expertise and/or experience to head such insurance or banking sector institutions.

iv) The foregoing, among other relevant matters, were set out by the Petitioner in a Written Submission tendered in Open Court in the course of making Oral Submissions in the Supreme Court on 9.2.2012 in Petitioner’s SC (FR) Application No. 534/2011, and filed marked “H1” with a further Application made therein on 8.5.2012 in relation to the *impugned* Special Determination of 24.10.2011, as morefully set out hereinafter.

A true copy of the said Written Submission dated 9.2.2012 is annexed marked “L”, pleaded as part and parcel hereof

iii) In or about May 2012, a controversy broke out in the public domain, with *media* exposures and public agitations, *vis-à-vis*, the purchase by the National Savings Bank (NSB) of 13% Shareholding of The Finance Co. PLC (TFC) at a price of SL Rs. 50/- per Share, when the market price was around SL Rs. 30/- per Share i.e. 67% above the market price, *which could also mislead other unsuspecting investors*. The total consideration paid by NSB was reported to be around SL Rs. 394 Mn.

iv) TFC was being rehabilitated by Central Bank of Sri Lanka, and reportedly had accumulated losses of around SL Rs. 9,500 Mn., with losses being incurred during the relevant current quarters. The purchase of TFC Shares by NSB had mainly been from certain Directors of TFC, *who would have been privy to such inside information*.

- v) NSB too had incurred a drop of profit around 75% during the relevant period, whilst its deposits were public monies, guaranteed by the Government, committing further public funds, and allegedly such purchase had been *ultra-vires* the provisions of the NSB Act.
- vi) Given the controversy, the aforesaid NSB / TFC Share transaction was reversed. Pradeep Kariyawasam resigned as Chairman NSB, after the resignation of a Working Director, who alleged having opposed the said Share transaction.
- vii) The Securities & Exchange Commission of Sri Lanka (SEC) headed by Chairman Tilak Karunaratne had commenced investigations into a number of transactions in the Colombo Stock Exchange, including the above purchase of TFC Shares by NSB. As reported in the *media* there were criticism by some quarters on such investigations by the SEC.
- viii) In such background, President Mahinda Rajapaksa, *presumably as Minister of Finance*, had a Meeting with Members of the SEC, a *quasi-judicial* independent autonomous body, Members of the Stock Exchange, other Stakeholders and Investors. Powers of the Minister of Finance are stipulated in the SEC Act No. 36 of 1987, as amended.
- ix) In the context of the foregoing, Petitioner addressed Letter dated 10.8.2012 to Lalith Weeratunga, Secretary to President Mahinda Rajapaksa, and the Petitioner received a brief reply by E-mail dated 23.8.2012, *fully appreciating* the Petitioner's actions.
- True copies of Letter dated 10.8.2012 addressed to the Secretary to the President, and his e-mail reply dated 23.8.2012 are annexed respectively marked "M1" & "M2", pleaded as part and parcel hereof*
- x) Consequent to the aforesaid Meeting, SEC Chairman, Tilak Karunaratne resigned, asserting as reported in the *media*, that he had been requested by President Mahinda Rajapaksa, *as Minister of Finance*, to step down as SEC Chairman. With the appointment of a new Chairman of SEC there was speculation on the *bona-fides* of the said on-going investigations.
- xiii) **Circumstances and relationships could or may have subsequently changed, but what is of *relevance* are the circumstances and relationships which *subsisted* prior to and at the relevant time the *impugned* Special Determination of 24.10.2011 was made.**

Further matters of relevance

- xiv) Subsequently, it was reported in the *media* that an investigation into the aforesaid NSB / TFC Share deals had been commenced, *as a priority*, by the Commission to Investigate Allegations of Bribery or Corruption (CIABOC), *which comes under the purview of President Mahinda Rajapaksa*. However the unjust profit enrichment attempted by the Directors of TFC, the Petitioner verily believes nominated by the Governor Central Bank of Sri Lanka, Ajith Nivard

Cabraal, may not fall under the purview of the CIABOC.

xv) Prior to the aforesaid investigation by the CIABOC, investigations had commenced much earlier in 2009 into the privatisation of Lanka Marine Services Ltd., (LMSL) to John Keells Holdings Ltd., and Sri Lanka Insurance Corporation Ltd., to Distilleries Consortium, as had been reportedly referred to the CIABOC by the Parliament of Sri Lanka, consequent to a COPE Report, and also in the instance of LMSL, as directed in 2008 by the Supreme Court in SC (FR) No. 209/2007. The Petitioner's statements were recorded by the CIABOC in the said two investigations, *both involving, among others, P.B. Jayasundera, Secretary, Ministry of Finance & Treasury. The outcome of the said investigations is to date unknown.*

xvi) In SC (FR) Nos. 535 & 536/2008 the Supreme Court in December 2008 directed the CIABOC to investigate the allegedly illegal Oil Hedging Deals perpetrated by the Ceylon Petroleum Corporation, which deals had been initiated by the Governor Central Bank of Sri Lanka, Ajith Nivard Cabraal, and endorsed by the Secretary, Ministry of Finance & Treasury, P.B. Jayasundera. *The outcome of the said investigation too is to date unknown; whereas the aforesaid investigation into the NSB / TFC transaction has been reported to being pursued, as a priority.*

xvii) CIABOC Chairman is a former Supreme Court Judge, D.J. De S. Balapatabendi, who was a Member of the 7 Judge Supreme Court Bench, presided by Chief Justice J.A.N. de Silva, which on a 6 to 1 majority Decision made on 27.9.2009, with Your Ladyship Chief Justice Shirani Bandaranayake and Justice D.J. De S. Balapatabendi *also agreeing*, who declared that President Mahinda Rajapaksa, *also the Minister of Finance*, was free to *re-appoint* P.B. Jayasundera to the post of Secretary, Ministry of Finance & Treasury, on an Application made by him in SC (FR) No. 209/2007, *at the behest of President Mahinda Rajapaksa.*

xviii) By the aforesaid majority decision such *relief* was granted under prayer (c) '*for the grant of such other and further relief as the Court shall seem fit and meet*', whilst the Supreme Court refused the reliefs under the main prayer (a) to vacate an order of the Supreme Court dated **8.10.2008** of the inclusion of a statement in an Affidavit by P.B. Jayasundera not to hold any public office, and main prayer (b) for P.B. Jayasundera to be relieved from such undertaking tendered to the Supreme Court by Affidavit dated **16.10.2008**.

xix) At the aforesaid hearing, the Petitioner who had tendered extensive Statements of Objections and Written Submissions was given merely 10 minutes to make oral submissions by Chief Justice J.A.N. de Silva, whilst the 7 Judge Bench *exclusively* sat the entire day to hear the said Application of P.B. Jayasundera, seeking to be re-appointed as aforesaid. *This was after Justice D.J. De S. Balapatabendi having intimated that it was not necessary to hear the Petitioner.*

xx) A certified copy of the *dissenting* Judgment by Her Ladyship Justice Shiranee Tilakawardene was issued on 13.10.2009 ("**N1**") with the *font* size of the text changed and enlarged, to have excluded and suppressed two material pages thereof, which, *inter-*

alia, analytically set out that the powers of the President *were not unfettered* and the limitations to making the aforesaid *re-appointment*.

xxi) A 7 Judge Bench of the Supreme Court in its unanimous Special Determination made in October 2002, which included Your Ladyship Chief Justice Shirani Bandaranayake and the former Chief Justice J.A.N. de Silva, *inter-alia*, determined thus, as referred to at paragraph 4 (a) hereinbefore.

“The Constitution does not attribute any unfettered discretion or authority to any organ or body established under the Constitution”

xxii) Upon the Petitioner discovering the *dissenting* Judgment of Her Ladyship Justice Shiranee Tilakawardene had been tampered with, to exclude sections therefrom, the Petitioner promptly addressed Letter dated 14.10.2009 to the Registrar of the Supreme Court (“N3”), and the Petitioner was then afforded another certified copy of the said entire *dissenting Judgment* (“N2”) in its original font size.

Attention is very respectfully drawn to page 15 of the certified copy issued on 13.10.2009 of the said Judgment (“N1”), which ends with a completed paragraph with a larger size different font, whilst the next page 16 commences with a continuation of an incomplete paragraph in the original smaller size font with the signature of Her Ladyship Justice Shiranee Tilakawardene thereon.

True copies of the certified copies of aforesaid two Judgments and the said Letter dated 14.10.2009 are annexed respectively marked “N1”, “N2” & “N3”, pleaded as part and parcel hereof

xxiii) The foregoing 6 to 1 majority Judgment by the Supreme Court, presided by Chief Justice J.A.N. de Silva, was *regardless of the severe castigations made against P.B. Jayasundera* in the Supreme Court Judgment previously delivered on 21.7.2008 in the same SC (FR) No. 209/2007 *annulling* as wrongful, unlawful, illegal and fraudulent, the privatisation of Lanka Marine Services Ltd., to John Keells Holdings Ltd., in the face of which, P.B. Jayasundera *resigned* from public office, tendering an Affidavit to the Supreme Court undertaking not to hold any public office in the future. Justice D.J. De S. Balapatabendi was also a Member of the 3 Judge Supreme Court Bench, which delivered such Judgment on 21.7.2008 *annulling* the said privatisation, and *making the said severe castigations against P.B. Jayasundera*.

xxiv) Justice D.J. De S. Balapatabendi’s son, H.I. Balapatabendi, who was a State Counsel of the Attorney General’s Department, was reported to have been appointed, as Second Secretary, Sri Lanka Embassy in Hague, Netherlands, by the Government of President Mahinda Rajapaksa. Chief Justice, J.A.N. De Silva’s daughter reportedly pursuing higher studies in Netherlands, had married the said son of Justice D.J. de S. Balapatabendi. Chief Justice J.A.N. de Silva after retirement, was appointed as an Advisor to President Mahinda Rajapaksa.

xxv) - On or about 18.9.2012, the Secretary, Judicial Service Commission (JSC), which is chaired by Your Ladyship the Chief Justice Shirani Bandaranayake, issued a Statement to the *media* referring to *interference* with the JSC, which as subsequently reported in the *media* pertained to a Meeting with the JSC requested by President Mahinda Rajapaksa, who was reported to have stated that there were allegations against the said Secretary, who however issued a counter statement on or about 29.9.2012 denying such allegations, and expressing apprehensions that there was a danger to the security of the judiciary, beginning from the person holding the highest position in the judicial system.

- Such issue subsequently culminated in a controversy in the public domain, with an incident of an assault of the Secretary, and the stoppage of work by the Judges of Court, with condemnations from several quarters, *vis-à-vis*, the intrusion into the independence of and/or intimidating the judiciary.

- At the very same time, Minister of Economic Development, Basil Rajapaksa, *brother of President Mahinda Rajapaksa*, and who presented the 'Divineguma Bill' to the Parliament, together with some other Ministers of the Government, were reportedly shown demonstrating against the Special Determination Your Ladyship's Court made in August 2012 in SC (SD) No. 1/2012 on the said 'Divineguma Bill'.

- The Petitioner is advised that the foregoing tantamount to punishable offences under Articles 115 and 116 of the Constitution.

True copies of some of the media reports, including down loaded from the internet, on matters referred to above are annexed compendiously marked "O-1", pleaded as part and parcel hereof

Her Ladyship Justice Chandra Ekanayake

b) i) High Court Judge, Tissa Ekanayake, husband of Her Ladyship Justice Chandra Ekanayake, was reported in the *media* in or about May 2004, with allegations levelled against him of having released on bail suspects involved in drug trafficking, including granting bail to a leading alleged drug offender from Ward Place taken into custody with 25 kgs of heroin. The Petitioner is advised that bail for such alleged offences is granted only in *exceptional circumstances*.

ii) In the face of such allegations, High Court Judge, Tissa Ekanayake, as reported in the *media* had been asked by the Judicial Service Commission to keep away from performing duties, as a High Court Judge, and that consequently he sought permission to go on premature retirement from 31.5.2004 at the age of 55, although he could have continued in service, as a High Court Judge, until the age of 61, and he had been permitted to so retire.

iii) There had been no report of any inquiry having been held into the foregoing allegations, and the *absolving* of him of such allegations, in the face of which, High Court Judge, Tissa Ekanayake

had prematurely retired, as aforesaid.

iv) Nevertheless, subsequently in or about July 2010, whilst Her Ladyship Chandra Ekanayake was the Supreme Court Judge, the same Tissa Ekanayake, who in the face of the foregoing allegation had prematurely retired as a High Court Judge as aforesaid, without any inquiry thereinto to have absolved him thereof, was appointed to hold the *prestigious high profile public office*, as the Parliamentary Commissioner for Administration (*Ombudsman*) by President Mahinda Rajapaksa, who is also *the Minister of Finance*.

True copies of State media reports down loaded from the internet are annexed compendiously marked "O-2", pleaded as part and parcel hereof

His Lordship Justice P.A. Ratnayake

c) i) His Lordship Justice P.A. Ratnayake was a Member of the Bench of the Supreme Court, who sat on **8.10.2008**, regarding consequential matters arising from and incidental to the Supreme Court Judgment delivered on 21.7.2008 in SC (FR) Application No. 209/2007, whereby the privatisation of Lanka Marine Services Ltd., to John Keells Holding Ltd., was *annulled* as wrongful, unlawful, illegal and fraudulent, *with severe castigations made against P.B. Jayasundera, Secretary, Ministry of Finance & Treasury*.

ii) The record of the proceedings in the Supreme Court on the said **8.10.2008** had been as follows (*Emphasis added*):

"8.10.2008

Before - S.N. Silva, C.J.

Ms Thilakawardene, J

P.A. Ratnayake J

M.A. Sumanthiran for the Petitioner

Faisz Musthapha, PC with Shantha Jayawardane for the 8th Respondent

Nihal Fernando, PC for the 1st Respondent

V.J.W. Wijayatilaka, PC, ASG with Viraj Dayaratne, SSC for 15th, 16th, 17th, 25th, 26th, 28th, 29th, 30th and 31st Respondents

Addl. Solicitor General representing the Attorney General submits that pursuant to the order made by Court, 28th Respondent (*the IGP*) through the CID has commenced

investigations regarding this matter and recorded certain statements. He further submits that the 30th Respondent (*i.e. Commission to Investigate Allegations of Bribery or Corruption*) has also commenced investigations in the matter. As regards the 25th Respondent (*SEC*) his instructions are that investigations are in progress. Counsel for the Petitioner submits that certain representations have been made by the Petitioner to the 25th Respondent. These representations are also to be taken into account in the conduct of investigations by the 25th Respondent.

Mr. Faisz Musthapha, PC appears for the 8th Respondent (*i.e. P.B. Jayasundera*) submits that within four days of the judgment, the 8th Respondent tendered his resignation from the post of Secretary Ministry of Finance. He however submits that the 8th Respondent continued to function in that post to discharge official duties since the resignation was not accepted until much later. He further submits that the 8th Respondent resigned from the Chairmanship of Sri Lanka Airlines on 19.9.2008. This was accepted on 30.9.2008. He further submits that the 8th Respondent does not hold any office in any Government Establishment nor any Establishment in which the government has any interest.

Counsel for the Petitioner submits that according to his instructions, the 8th Respondent has interest in a company incorporated in which the Government has interest. He refers to two such companies. Mr. Musthapha submits that he only holds a single share in this Companies and that he would sever links with these Companies. **He further submits that the 8th Respondent tenders an unreserved apology to Court for having continued functioning after the judgment of the Court.**

Hence, the 8th Respondent is given time to file appropriate Affidavit in which he may consider including the said expression of regret and a firm statement that he would not hold any office in any governmental institution either directly or indirectly or purport to exercise in any manner executive or administrative functions. Further Affidavit to be filed as early as possible. Mention for a final order on the matter on 20.10.2008.

The 25th, 28th and 30th Respondents to notify Court of action taken within two months. Mention for this purpose on 15.12.2008.

Accordingly Registrar to list this matter to be mentioned first on 20.10.2008 and later on 15.12.2008. “

iii) **When investigations are conducted on allegations against a public officer, generally the administrative procedure was to keep such public officer away from his place of work, to ensure the safety of the requisite documents and to enable investigations to be**

conducted independently free of any inhibitions, moreso when it concerns a senior public officer, in this instance, the Chief Accounting Officer of the State.

iv) The Petitioner was noticed by the Commission to Investigate Allegations of Bribery or Corruption, and the Petitioner's statements were recorded over a period of 8 days regarding the aforesaid *annulled* privatisation transaction of Lanka Marine Services Ltd., to John Keells Holdings Ltd., and another *annulled* privatisation transaction of Sri Lanka Insurance Corporation Ltd., to Distilleries Consortium *referred to hereinbefore*, both the said transactions having been handled by the said P.B. Jayasundera, as Chairman, Public Enterprise Reforms Commission at the relevant time.

v) ***However, intriguingly nothing forthcame from the foregoing investigations, which only wasted the valuable professional time of the Petitioner.***

vi) His Lordship Justice P.A. Ratnayake was consequently also a Member of the Bench of the Supreme Court, who sat on **20.10.2008**. The record of the proceedings in the Supreme Court on the said **20.10.2008** had been as follows (*Emphasis added*):

"20.10.2008

Before - S.N. Silva, C.J.

Shiranee Thilakawardene, J

P.A. Ratnayake J

M.A. Sumanthiran with Viran Corea and Suren Fernando for the Petitioner

Faisz Musthapha, PC with Shantha Jayawardane for the 8th Respondent

V.J.W. Wijayatilaka, PC, ASG with Viraj Dayaratne, SSC for 15th, 16th, 17th, 25th, 26th, 29th, 30th and 31st Respondents

Counsel for the 8th Respondent (i.e. P.B. Jayasundera) submits that the 8th Respondent has pursuant to the proceedings had in Court on 8.10.2008 filed an Affidavit dated 16.10.2008, together with annexures A to E.

Mr. Sumanthiran for the Petitioner submits that the annexures are only letters sent by respective parties and that the 8th Respondent has not included a copy of any letter said to have been written by him.

Subject to that, he submits that the Affidavit is insufficient compliance with the undertaking given by the 8th Respondent.

Mention on 15.12.2008 as previously directed.”

vii) Furthermore, His Lordship Justice P.A. Ratnayake was a Member of the Bench of the Supreme Court, together with His Lordship Chief Justice Sarath N. Silva and His Lordship Justice N.G. Amaratunga, who heard the Petitioner’s challenge to the Appropriation Bill 2008, in SC (SD) No. 3/2008 on 24.10.2008, the Special Determination in which, *inter-alia*, contained the following *severe castigations -viz: (Emphasis added)*

“It is relevant to notice that here, that as submitted by Mr. Amarasekera, **in terms of clause 2(1)(b) proceeds of loans could only be used to meet the expenditure of Rs. 980 Billion included in clause 2(1). Accordingly debt service payments that not included in clause 2(1) cannot be met from the proceeds of loans.** These facts have been kept away from the public domain by the statutory device in clause 2(1) of excluding expenditure under any other law. **The staggering debt service payments of Rs. 722 Billion for the financial year 2009 reflect an accumulation of public debt over the past years that has resulted from irresponsible and reckless handling of public finance by the Treasury** and a failure on the part of Parliament to exercise full control of public finance as mandated by Article 148 of the Constitution. Hence we agree with the submission of the Petitioners that the enactment of the Clause 2 in the present form without the disclosure of the **additional expenditure of Rs. 738 Billion** would amount to an inconsistency with Article 148 of the Constitution.”

“Treasury officials have made 108 transfers in terms of clause 6(1) of the 2007 Appropriation Act. A sum of Rs. 7,558,078,445/- has been transferred from the Recurrent Account and a sum of Rs. 13,422,507,041/- has been transferred from the Capital Account under the Head “Department of National Budget”, that is nearly Rs. 21 Billion have been transferred by Treasury officials during the period from the “Development Activities Program” to other activities under a large number of Heads. **The transfers reveal that many of them have been for foreign travel, purchase of vehicles and for other miscellaneous items of expenditure far removed from “Development Activities.....”**

“ According to the same Report titled “Fiscal Management Report 2009” which as stated above will be tabled in Parliament only on 06.11.2008, during the period 16.10.2007 to 31.12.2007, 127 such transfers have been made totaling a Recurrent expenditure of Rs. 34,422,384,169/- and a capital expenditure of Rs. 33,262,585,762/-. **Thus during the period of 21 ½ months transfers have been made up to approximately Rs. 69 Billion.** An examination of the subjects in respects of which and **the amounts of such transfers reveal that the then Secretary to the Treasury has been operating a “Budget” of his own.** ”

viii) His Lordship Justice P.A. Ratnayake, together with Your Ladyship Chief Justice Shirani Bandaranayake, was also subsequently a Member of the 7 Judge Bench of the Supreme Court, who sat on 24.9.2009 to hear the Application made by P.B. Jayasundera, on the premise of a

Letter dated 25th May 2009 sent by Lalith Weeratunga, Secretary to the President Mahinda Rajapaksa, *intimating that President Mahinda Rajapaksa required P.B. Jayasundera to resume Office, as the Secretary Ministry of Finance & Treasury.*

ix) By a majority Decision of 6 to 1, with His Lordship Justice P.A. Ratnayake also **agreeing**, whilst Her Ladyship Justice Shiranee Tilakawardane, who was also a Member of the aforesaid Benches of Supreme Court on **8.10.2008** and **20.10.2008 dissenting**, it was declared on 27.9.2009 that President Mahinda Rajapaksa, as the appointing authority, was free to consider *re-appointing* P.B. Jayasundera, as the Secretary, Ministry of Finance & Treasury, *notwithstanding the aforesaid undertaking he had given by Affidavit to the Supreme Court*, in the face of the severe castigations made against him in the said Supreme Court Judgment delivered on 21.7.2008 in SC (FR) No. 209/2007.

x) As set out in **Schedule “Z”** to this Petition, pleaded as a part and parcel hereof, the ‘extracts’ from the *dissenting* Judgment dated 13.10.2009 in the aforesaid matter by Her Ladyship Justice Shiranee Tilakawardane, records that the *Supreme Court Rules had been ignored*, in accommodating the Application of P.B. Jayasundera, *made at the behest* of President Mahinda Rajapaksa, **whereas the Petitioner was expressly directed by the Supreme Court Bench, presided by Your Ladyship Chief Justice Shirani Bandaranayake, on 19.11.2009 in Petitioner’s SC (FR) Application No. 481/2009 that the Petitioner should get the approval of the Supreme Court to amend the Petition in terms of the Supreme Court Rules, and the said matter, among other, was fixed for support on 11.2.2010.**

A true copy of a certified copy of the Proceedings in the Supreme Court on 19.11.2009 in SC (FR) No. 481/2009 is annexed marked “P”, pleaded as part and parcel hereof

Inland Revenue (Special Provisions) (Amendment) Act No. 31 of 2003

xi) Cited below are ‘sub-paragraphs’ of paragraph 15 hereinafter contained

“15. b) subsequently in **August 2003**, the Petitioner also *failed* in his endeavour in SC (SD) No. 20/2003 in his challenge to the corresponding Bill, **preceding** the Inland Revenue (Special Provisions) (Amendment) Act No 31 of 2003, made within the stipulated narrow time limit of 7 day period, with a 3 Judge Bench of the Supreme Court having made a **perversely erroneous** Special Determination No. 20/2003, resulting in the said Bill being certified into law on 22.10.2003.”

“c) His Lordship Justice P.A. Ratnayake, then Addl. Solicitor General, representing the Hon. Attorney General **opposed the Petitioner’s stance in August 2003.**”

“f) subsequently in **August 2004**, another **3 Judge Bench of the Supreme Court**, whilst **re-iterating** the aforesaid Pronouncements made in March 2004 by the 5 Judge Bench of the Supreme Court, made a Special Determination in SC (SD) No. 26 of 2004 on the Bill titled – ‘Inland

Revenue (Regulation of Amnesty) Bill’, **to repeal** the obnoxious provisions of the aforesaid

- Inland Revenue (Special Provisions) Act No 10 of 2003, and
- Inland Revenue (Special Provisions) (Amendment) Act No 31 of 2003

thereby **rescinding** and/or **vacating** the Special Determination No. 20 of 2003, **which had been made one year previously in August 2003** on the very same Bill in respect of the Statute – Inland Revenue (Special Provisions) (Amendment) Act No 31 of 2003, by **another 3 Judge Bench of the Supreme Court.**”

“g) His Lordship Justice P.A. Ratnayake, then Addl. Solicitor General, representing the Hon. Attorney General, **who had as aforesaid opposed the Petitioner’s stance previously in August 2003**, having subsequently realised his such erroneous stance, **took a diametrically different position in August 2004 and supported the Petitioner’s stance** at the hearing in SC (SD) No. 26 of 2004.”

13.2 President Mahinda Rajapaksa, as the Minister of Finance, was a keenly interested party in this matter of the ‘Urgent Bill’ in respect of which the impugned Special Determination of 24.10.2011 was made

a) i) President Mahinda Rajapaksa, *as the Minister of Finance*, was a party **keenly interested** in the aforesaid ‘**Urgent Bill**’, as had been borne out by his Speech made to Parliament on 21.12.2011 during the Budget Debate – *vide Hansard Columns 3223 and 3224 of 21.12.2011.*

True copies of the Cover Page and Columns 3223 and 3224 of the Hansard dated 21.12.2012 are annexed compendiously marked “Q”, pleaded as part and parcel hereof

ii) In the foregoing context, the Petitioner addressed Letter dated 22.6.2012 to President Mahinda Rajapaksa, *as the Minister of Finance*, pointing out the **incorrectness** of the aforesaid statements made to Parliament.

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