



HON. CHAMAL RAJAPAKSA
Speaker, Parliament of Sri Lanka
RULING GIVEN ON 9TH OCTOBER 2012



The Ruling given by the Hon.Chamal Rajapaksa,
the Speaker of Parliament of Sri Lanka
on 09 October 2012
indicating the position of the Parliament and
clearing any doubt that may have arisen
consequent to the determination of the
Supreme Court on the Bill titled 'Divineguma'.

PREFACE

This statement was made by Hon. Chamal Rajapaksa, Speaker of Parliament sequel to a request made by the Committee on Parliamentary Business which is represented by Party Leaders who were concerned with upholding and safeguarding the supremacy, authority and dignity of the Parliament and its Members consequent upon the determination of the Supreme Court in respect of the Bill titled 'Divineguma'. The determination on the Bill in question purported to confer on the Secretary General of Parliament powers which are clearly vested on the Speaker by the Constitution, which position the Speaker and the Parliament cannot accept as it assails the authority of the Speaker as conferred by the Constitution and affects the dignity and the supremacy of the Parliament. Such interpretation would lead to grave consequences as delivery of a copy of a petition lodged with the Supreme Court in respect of a Bill to the Secretary General will not ensure staying of parliamentary proceedings until the determination of the Supreme Court on the constitutionality of the Bill is communicated to the Parliament. Furthermore, in respect of other matters, if by an analogy of this determination the acceptance of such notice by the Secretary General of Parliament is deemed sufficient for and on behalf of the Speaker it could lead to much confusion and conflict and make those procedures that have far reaching consequences inoperative.

Accordingly, this statement was delivered by the Speaker on 9th day of October 2012, indicating the position of the Parliament on this issue and clearing any doubt that may have arisen consequent to the determination of the Supreme Court on this matter.

2012 සැප්තැම්බර් මස 18 වැනි දින ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 121(1) වැනි ව්‍යවස්ථාව ශ්‍රේෂ්ඨාධිකරණය හමුවේ අභියෝගයට ලක්කරන ලද 'දිවි නැගුම' නමැති පනත් කෙටුම්පත පිළිබඳව ශ්‍රේෂ්ඨාධිකරණයේ තීරණය මා විසින් පාර්ලිමේන්තුවට දැනුම් දුන් අවස්ථාවේදී එම ශ්‍රේෂ්ඨාධිකරණයේ තීන්දුවේ සඳහන් වූ ආකාරයට ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 121(1) වැනි ව්‍යවස්ථාවේ පැහැදිලිව දක්වා ඇති පරිදි පෙත්සම්කරුවකු විසින් අදාළ පෙත්සම අධිකරණය වෙත ගොනුකරන අවස්ථාවේදී කථානායකවරයාට පිටපතක් භාරදිය යුතුව තිබුණද, පාර්ලිමේන්තු නිලධාරියකු වෙත අදාළ පෙත්සම භාරදීමෙන් එම නීතිමය අවශ්‍යතාව සපිරෙන බව සඳහන් කිරීම මගින් ආණ්ඩුක්‍රම ව්‍යවස්ථාවෙන් මා වෙත පැවරී ඇති බලතල සහ ජනතා පරමාධිපත්‍යය හැල්ලුවට ලක්වන බව නිරීක්ෂණය කර ඒ පිළිබඳව පක්ෂ නායකයන් සමග ද සාකච්ඡා කොට සුදුසු පියවර ගැනීමට අපේක්ෂා කරන බව මා විසින් එදින මෙම සභාවට දැනුම් දුන් පරිදි ඒ සම්බන්ධයෙන් ප්‍රකාශයක් කිරීමට කැමැත්තෙමි.

Hon. Members, an occasion has arisen where I am compelled to make a statement that is of importance in discharging my duties, responsibilities, and obligations as Speaker and in safeguarding the rights and privileges conferred on Parliament and its members by the Constitution and in the several statutes and Standing Orders relating to Parliamentary affairs. The trust and confidence you have reposed in me requires me to act as the guardian of the dignity and honour of Parliament against any possible intrusions and threats from any quarter outside this House. These rights and duties are sacred for the due performance of the functions and duties of this august Assembly and more particularly of the varied procedures that have to be observed by the Speaker in giving effect to the Constitution that my predecessors have sheltered and protected.

Those rights and privileges that have been defended and sustained to safeguard the Supremacy of Parliament by my honourable predecessors cannot be relinquished or abandoned by Your Speaker who has to maintain the respect and esteem of this House and to enable me to hand the mantle to my successor – of a title and office which is not to be devalued or debased.

The determination of the Supreme Court of a Bill titled 'Divineguma' contains a disturbing feature where functions attributed to the Speaker by the Constitution have been assigned to the Secretary General of

Parliament. This, in my understanding, is inconsistent with the provisions of Article 121 (1) of the Constitution relating to the office of the Speaker and also amounts to an amendment of the relevant provisions of the Constitution.

At the time the determination was read in Parliament, I became conscious of a predicament that Parliament may be faced with, by the determination of the Supreme Court. Your Speaker felt it was prudent before making a decision, to refer the matter to the attention of the Party Leaders and seek their guidance because of their rich experience in parliamentary affairs. I am grateful to the Party Leaders for maintaining the high traditions and customs of our Parliament and in offering me their fullest assistance.

The Minutes recorded at the Party Leaders Meeting on 19th September 2012 reads as follows, I quote:

“The Hon Speaker informed the Committee that, in terms of the provisions of the Article 121(1) of the Constitution, when a petition is filed against a Bill in the Supreme Court, a copy thereof shall at the same time be delivered to the Speaker.

However, such petition filed against the Bill entitled ‘Divineguma’, was not delivered to the Speaker in the manner prescribed in the said Constitutional provisions. The Hon Speaker invited the members of the Committee to share their views in this regard.

After long deliberations, the Committee was of the view that Parliamentary supremacy and the authority of the Speaker as envisaged in the Constitution should be recognized and given effect to by all other arms of authority.

The Committee requested the Hon Speaker to make a statement to this effect on the floor of the House with a view to safeguarding the supremacy, authority and dignity of Parliament and its Members.”

This strengthened the hand of your Speaker to resolve the issue in a mature, responsible and dignified manner so as not to strain the cordiality that existed over the years among the Executive, Legislature and the Judiciary, on which solid foundation the sovereignty of the People is preserved. The right of the people to enjoy sovereignty is, in effect, granting power to the people, which is an inalienable right under Article 3 of the Constitution and reigns supreme in our Constitution.

The Constitution cannot function effectively if there is any encroachment or abridgement of the rights and privileges of Parliament. The makers of our Constitution have rightfully secured and shielded without any reservation, in their wisdom, the concept of Supremacy of Parliament, which this House must maintain undisturbed and untrammelled. If there are conflicts and confusion within or between the tripod of power, it is the People - the repository of sovereign power as whose representatives we have assembled - that will suffer the consequences. We are obliged to protect the people from such a situation and at the same time, maintain the spirit of goodwill between the Legislature and the Judiciary in the interests of the People and the Constitution.

In the circumstances, fortified by the authority granted to me by the Constitution and the Party Leaders who are Hon. Members, Your Speaker thought it fit to seek advice of learned counsel on the elucidation of questions of law and I embarked on my own explorations and consulted eminent persons knowledgeable in parliamentary practices. It is necessary to mention the invaluable service rendered by your Deputy Speaker doing the spadework in researching the necessary material and assisting in making the ruling, which service this House must acknowledge with gratitude.

As a Parliamentarian of long years, I relied on my own experience and the previous rulings made by my predecessors, and I was especially inspired by the brilliant exposition of parliamentary practices made by Hon. Speaker the late Hon. Anura Bandaranaike - a ruling striking down a judgment where three judges of the Supreme Court attempted to issue a stay order restraining the Speaker from appointing a Select Committee to inquire into the conduct of a former Chief Justice consequent to a

motion of impeachment against him forwarded to the Speaker in terms of the Constitution and the Standing Orders, and courageously upheld the supremacy of Parliament against encroachment by the Supreme Court.

On this occasion, there were three petitions filed in the Supreme Court challenging a Bill titled 'Divineguma'. One of the petitioners addressed a petition to the Supreme Court and delivered a copy to the Secretary General of Parliament on 17 August 2012, whereas the Constitution has declared that it has to be delivered to the Speaker. The Supreme Court in the present determination decided that such a delivery to the Secretary General of Parliament is in order, which is the matter in issue. [There were two other petitions with regard to the same Bill that were correctly delivered to the Speaker, though one was outside the prescribed time period.] In respect of the above matter the determination of the Supreme Court was as follows, I quote:

“Whilst, that process of sending the petition filed in the Supreme Court within the specified period to the Hon Speaker is mandatory, it cannot be said that the documents being sent to the Secretary-General of Parliament within the stipulated time frame is not in compliance with Articles 121 (1) of the Constitution”.

The Supreme Court, therefore, entertained the said petition though delivered to the Secretary General of Parliament.

To understand the impact of this determination, it is necessary to engage in an examination of Articles 121 (1) (2) and (3) of the Constitution which reads, I quote:

“Article 121 (1) - The jurisdiction of the Supreme Court to ordinarily determine any such question as aforesaid may be invoked by the President by a written reference addressed to the Chief Justice or by any citizen by a petition in writing addressed to the Supreme Court. Such reference shall be made or such petition shall be filed, within one week of the Bill being placed on the Order Paper of the Parliament and a copy thereof shall at the same time be delivered

to the Speaker. In this paragraph 'citizen' includes a body, whether incorporated or unincorporated, if not less than three-fourths of the members of such body are citizens."

"Article 121 (2) - Where the jurisdiction of the Supreme Court has been so invoked no proceedings shall be had in Parliament in relation to such Bill until the determination of the Supreme Court has been made or the expiration of a period of three weeks from the date of such reference or petition, whichever occurs first."

"Article 121 (3) - The Supreme Court shall make and communicate its determination to the President and to the Speaker within three weeks of making of the reference or the filing of the petition as the case may be."

In the determination of the Supreme Court, the aforesaid Article has been construed to mean, instead of delivering a copy to the Speaker as envisaged in the Constitution, it would be sufficient to send it to the Secretary General of Parliament thereby substituting the 'Secretary General of Parliament' for the 'Speaker'. If that is permitted to stand either the President on making a reference or a citizen submitting a petition to the Supreme Court on a Bill placed in the order paper of Parliament under Article 121(1) of the Constitution can do so without giving notice to the Speaker by sending a copy of the petition to the Speaker - a mandatory requirement under the Constitution. The Supreme Court has determined that delivering the petition to the Speaker is mandatory, but the delivery is satisfied if the document is instead sent to the Secretary General of Parliament that carries no guarantee of reaching the Speaker at the same time as the petition addressed to the Supreme Court. It takes away the element of certainty guaranteed in the Constitution by delivering it to the designated authority.

An attempt to keep alive a suspect petition leads to a finding that creates a dichotomy which has dire consequences on parliamentary procedure, as Article 121 (2) requires, I quote:

“Where the jurisdiction of the Supreme Court has been invoked no proceedings shall be had in Parliament in relation to such Bill until the determination of the Supreme Court has been made or the expiration of a period of three weeks from the date of such reference or petition, whichever occurs first.”

The staying of Parliamentary proceedings which is contemplated by the provision of the said Article is a matter within the province of the Speaker and a matter on which the Secretary General of Parliament has no authority to act, being devoid of power required to implement Article 121. Furthermore, Article 121 (3) of the Constitution requires the Supreme Court to communicate the determination to the Speaker. It is thereafter, that proceedings recommence on the temporarily suspended Bill or other necessary steps are attended to, as determined by the Supreme Court. It has been the practice for the Speaker to read the determination to the Hon. Members while the House is in session to keep the members apprised as to the steps that need be taken thereupon on the said Bill. These are not matters within the purview of the Secretary General of Parliament. Therefore, the Speaker has a pivotal role in giving effect to Article 121 and the makers of the Constitution with their inherent insights into parliamentary procedures and practices deemed imperative the delivery of a copy of the reference or petition to the Supreme Court. The effect of this is to put the Speaker on notice to take the steps envisaged in Article 121 (2) and (3).

In the year 1991 in a determination made by the Supreme Court in the matter of the Sri Lanka Telecommunications Bill (Justices G.R.T.D. Bandaranayake, K.M.M.B. Kulatunga and S.W.B. Wadugodapitiya SCD 5/91, 6/91 and 7/91- conveyed to Parliament on 23.04.1991) foresaw that Article 121 of the Constitution had elements which “... could in our opinion lead to mischief and even a possible confrontation between the Parliament and Court which needless to say must be avoided. That could be the possible result of a non-compliance with the scheme of the provision.” This determination was indeed considered by the Supreme Court in the present determination but the Supreme Court sadly failed to forestall events that “could be the possible result of a non-compliance

with the scheme of the provisions” that were foreseen by the Supreme Court 21 years previously.

Your Speaker desires to avoid any possible disruption and to adhere to the law laid down by the Supreme Court in following the Constitution in its strict letter to avoid any possible mischance. It enables parliamentary proceedings to be effective and meaningful which is the Speaker’s responsibility and the route intended to be followed in making this ruling. Ultimately, as the Peoples’ Representatives, the Legislature is bound to act in the interest of the People and safeguard especially the interest of the citizen who challenges a Bill in the Supreme Court and to permit him to enjoy the rights provided by the Constitution in making certain that Parliamentary proceedings are halted while the judiciary deliberates.

The Supreme Court discussed extensively Article 121 of the Constitution in the matter of the Sri Lanka Telecommunications Bill, I quote:

“It is our view that all the provisions in this Article as to the manner in which the jurisdiction of the court could be invoked are mandatory.”

A sequence of events of a somewhat similar - but not exact nature - has arisen again that need be sorted out amicably eliminating any possible injustice to citizens. In so doing, I am following the decision of the Sri Lanka Telecommunications Bill, which decided that Article 121 of the Constitution is of a mandatory nature, which has also been followed in the present determination, to arrive at common ground. To quote again from the decision of the Supreme Court in 1991, I quote:

“Once the opinion of the Supreme Court is known, Parliament is more advantageously placed in proceeding with the process of legislation. This purpose of the Article cannot be achieved unless the provisions designed to secure such result are regarded as mandatory. The Article also provides for the suspension of the ordinary legislative powers of Parliament for a period of three weeks when a Bill is referred to the Supreme Court for its adjudication-Article

121 (2). The aims of the Article will be defeated unless its scope is wide enough to prevent Parliament from debating or proceeding with the Bill whilst the Supreme Court is engaged deliberating its constitutionality.”

When the Supreme Court has in both decisions determined that Article 121 is mandatory –it does not mean it is partly mandatory and partly directory – this means the Secretary General of Parliament can be substituted for the Speaker of the Parliament. More so, the Constitution does not provide that the copy of the reference of petition should be sent to “Parliament” but specifically to the “Speaker” to enable the legislative process to fall in line with the provisions of Article 121 (2). If the word “Parliament” was used in Article 121 (1) there is some justification in submitting it to the Secretary General of Parliament. But where it is not, as in the present instance, Parliament has to treat it as an unacceptable modification of the Constitution, which the Parliament cannot accept to its own detriment.

Proceeding from both determinations that hold Article 121 of the Constitution to be mandatory, it is obvious that the delivery at the same time of the reference or petition to the Speaker is a prerequisite to enable the provisions of Article 121 (2) and (3) to be given effect and the proceedings in Parliament on the Bill is suspended and/or reopened. If the Speaker is eliminated from the role assigned to his office in the Constitution and kept unawares, parliamentary procedures will be in peril and jeopardy. The duties of the Secretary General are laid down in the Standing Orders of Parliament in Section 9, but there is no such power by any stretch of interpretation that confers any such authority or power on the Secretary General of Parliament equivalent to that of the Speaker. It is bewildering that powers conferred by the Constitution for good, valid and obvious reasons on the Speaker, as the recipient of the reference or petition to the Supreme Court, should be assigned to the Secretary General of Parliament to regularise a faulty procedure adopted in a petition.

The relevant passage in the present determination of the Supreme Court reads as follows, and I quote:

“The objective and purpose, therefore, is to ensure that parliamentary proceedings in respect of the Bill in question are suspended during the pendency of the inquiry before the Supreme Court. Whilst, that process of sending the petition filed in the Supreme Court within the specified period to the Hon. the Speaker is mandatory, it cannot be said that the documents being sent to the Secretary-General of the Parliament within stipulated time frame is not in compliance with Article 121(1) of the Constitution”.

The Speaker derives his power in Parliament from Article 64(1) of the Constitution. He is elected by the Hon. Members of Parliament. In the order of precedence the Speaker holds a prime position after the President and the Prime Minister, which reflects the stature accorded to Parliament and the Speaker. The Secretary General of Parliament is appointed by the President in terms of Article 65(1) of the Constitution and holds office during a period of good behaviour. Two offices are incomparable in power, authority and status to be equated for the purpose of receiving notice.

Standing Order No. 136 states, I quote:

“Mr. Speaker shall have power to regulate the conduct of business in Parliament in all matters not provided for in these Standing Orders.”

On the other hand, the Secretary General of Parliament has limited powers under Standing Order No. 9 and is no substitute for the Speaker. No Speaker has delegated power vested by the Constitution exclusively with the Speaker to the Secretary General of Parliament. This is not possible in terms of the Constitution.

The Speaker is a creature of Parliament and presides at the sittings of Parliament. A Speaker, according to Erskine May “...is the representative of the House itself in its powers, proceedings and dignity ...On the other hand presides over the debates of the House of Commons and enforces the observance of all rules preserving order in its proceedings [Page 188]...The Speaker has many powers to assist him in his duty to ensure

the orderly conduct of the business of the House; some arise from usage while others have been conferred by Standing Order or Resolution of the House" [page 190][Erskine May on Treatise on the Law, Privileges, Proceedings and Usage of Parliament Edition 22].

The Speaker once appointed ceases to hold office only in the limited circumstances mentioned in Article 64 (2) of the Constitution. There is no provision for the Secretary General of Parliament to accept any notice on behalf of the Speaker in any Article, law, rule or regulation. It is of prime importance that notice of a matter referred to by the President or a petition filed in the Supreme Court by a citizen should be delivered to the Speaker at the same time as filed in the Supreme Court to implement the provisions of Article 121(2) of the Constitution so that the proceedings in parliament are stayed. Therefore, there is much relevance in the words "at the same time" in the Constitution because if the Speaker is not noticed, the proceedings in Parliament will continue and the objectivity the citizen gains by testing the contents in a bill will be lost. For procedural purposes it is imperative that a copy of the reference or petition is delivered to the Speaker at the same time as it is addressed to the Supreme Court, with delay being fatal. I am stressing this matter emphatically as a citizen must not lose the right of taking a Bill to the Supreme Court to test its constitutionality and, if there is no stay of proceedings in Parliament, it is detrimental to his cause and will nullify the purpose of his challenge. It is with this in mind the framers of the Constitution stated delivery to the Speaker must take place at the same time as addressing a petition to the Supreme Court. Proximity in time is of essence for thwarting Parliamentary proceedings. If the copy is delivered to the Secretary General of Parliament, as permitted by the present determination of the Supreme Court, it will place Article 121 under great strain and could lose its objectivity as the holder is devoid of power and authority to implement Article 121 (2) of the Constitution, which act has to be done forthwith. It is unpardonable if the rights conferred on the President, and more so, on the citizen by the Constitution to have the parliamentary proceedings stayed till courts are given sufficient time to make a considered determination made futile. The staying or recommencing parliamentary proceedings are matters within the purview of the Speaker and not the Secretary General of Parliament.

The Supreme Court in their determination in 1991, utilizing their wide experience in constitutional affairs, was mindful of these practical pitfalls and had sanctioned a procedure consistent with the provisions of the Constitution, which I propose to follow in making the ruling which is also supported by long and consistent precedent and practice followed in Parliament. Parliament cannot relinquish a right of necessity conferred on the Speaker by the Constitution of being noticed of challenge to a bill for the efficacy of managing parliamentary procedure of staying proceedings to enable the Supreme Court sufficient time frame to deliberate on a Bill. The paramount interest to be considered by the Legislature is to act in the interest of the People in whom sovereignty is vested in the manner set out in the Constitution in implementing Article 121 of the Constitution. Parliament cannot allow itself to be deprived of its authority, which is a potent source of protection of the peoples' sovereignty.

The matter of receiving notice by the Speaker is an aspect on which the Constitution has placed reliance on the Speaker and must be safeguarded by the Speaker, especially as it relates to matters concerning the impeachment of a President or removal of Judges referred to in Article 107(1) of the Constitution. If by an analogy of this determination, the acceptance of such a notice by the Secretary General of Parliament is deemed sufficient for and on behalf of the Speaker, it could lead to much confusion and conflict and make those procedures that have far reaching consequences inoperative. This House is aware that attempts were made to impeach a President and a Chief Justice. The matter was brought before a Select Committee and a resolution was mooted to bring another Chief Justice before a Select Committee that was restrained by the Supreme Court that led to Hon. Anura Bandaranaike as Speaker to make a ruling that there was no legal obligation to comply with the Supreme Court order. If the present determination is allowed to stand in its present form, by implication the aforesaid procedures of impeachment against a President or Judges referred to in Article 107 (1) could be rendered nugatory by manipulation whereas the Constitution has strict provisions conferring reliance on a Speaker elected by this House to carry out the designated functions. Therefore, substituting the 'Secretary General of Parliament' for the 'Speaker' impacts on parliamentary procedures with regard to powers conferred on the Speaker that stretch beyond the ambit

of Article 121, a right that a Speaker should not surrender. Therefore, such extensions should be quashed at their origin to safeguard the Constitution and the powers conferred on Parliament and the Speaker.

If the Secretary General of Parliament is to be substituted for the Speaker, the Constitution will have to be amended accordingly, which is a matter for the legislature.

I am emphatic in my mind having studied the matter carefully that the Supreme Court in the present determination has erred in reading the unambiguous provisions relating to the Speaker in the Constitution which if allowed to remain in its present form will cause irreparable impairment to procedure and practice of Parliament. It is a lethal deficiency that requires a simple cure. No more.

On the part of legislature it is imperative that cordiality and harmony is maintained in our democratic edifice with the other two pillars in the tripod, namely the Executive and the Judiciary to implement the Constitution effectively in the interest of the People. As your Speaker, my office requires me to act with maturity and responsibility in keeping with the great traditions maintained by my illustrious predecessors in safeguarding the Constitution.

The Speaker received a separate copy of another petitioner's petition on 20th August, 2012. The Bill was placed on the Order Paper on 10th August, 2012. The petition had to be filed in the Supreme Court on or before 17th August, 2012 and delivered at the same time to the Speaker. The said Petition was entertained by the Supreme Court though it went beyond the specified 7 days in reaching the Speaker and 3 days after the filing of papers in the Supreme Court in terms of Article 121(1) of the Constitution which (set out more comprehensively above) states, I quote:

“Such reference shall be made, or such petition shall be filed, within one week of the Bill being placed on the Order Paper of the Parliament and a copy thereof shall at the same time be delivered to the Speaker.”

However, this petition was received by the Speaker 3 days after the 7 days specified in Article 121 and was accepted by Supreme Court holding that 'delivery' is sufficiently satisfied by filing and posting the copy of the petition on the same day as it was filed in the Supreme Court before the specified time period. The Supreme Court held, I quote:

"In the process what matters is filing and posting of the petitions to be simultaneous and carried out within the stipulated period of 7 days."

By this interpretation the said petition was held to be valid. The construction appears to mean "putting into post" to substitute for "shall at the same time be delivered to the Speaker"?

In the determination of the Supreme Court in the Sri Lanka Telecommunications Bill, the relevant Bill had been placed on the Order Paper of Parliament on 5th March, 1991 and the period of one week came to an end on 12th March, 1991. The Petition to the Supreme Court had been submitted within one week on 12th March, 1991, the copy to the Hon. Speaker had been posted only on 13th March, 1991. The Supreme Court in that case held that the jurisdiction of the Supreme Court had not been invoked properly and was held not valid. In the present case a three day delay in receiving the communication by the Speaker was held acceptable as delivered, provided the posting took place on the day of filing the petition in court within the stipulated period. In a condensed form the words "delivered at the same time" is read to mean "posting on the same day".

In the said determination relating to Sri Lanka Telecommunications Bill, the Supreme Court touched a matter of great concern to Parliament when it asserted, and I quote:

"The Article also provides for the suspension of the ordinary legislative powers of Parliament for a period of three weeks when a Bill is referred to the Supreme Court for its adjudication-article 121 (2). The aims of the Article will be defeated unless its scope is

wide enough to prevent Parliament from debating or proceeding with the Bill whilst the Supreme Court is engaged deliberating its constitutionality.”

It is the citizen who will be affected, if the copy of the petition that should be delivered at the same time as addressing the petition to the Supreme Court, as laid down in the Constitution, gets delayed in the post or otherwise, in view of the meaning that has been now given to the word deliver. The proceedings on a bill may not be stayed due to the absence or delay caused by the copy of the petition failing to reach the Speaker in time with the Speaker being unaware without notice of a petition filed in the Supreme Court. Ordinarily a party that files a petition in the Supreme Court by himself or agent would not have a practical difficulty in delivering the same to the Speaker about or around the same time. The Speaker has to ensure the parliamentary proceedings are halted on receipt of notice, which will be difficult in the absence of receiving notice.

It is convenient to state concisely the basis of the view I take.

Article 121 (1) of the Constitution states that where the petition of a citizen is addressed to the Supreme Court, “a copy thereof shall at the same time be delivered to the Speaker.”

There is a compelling rationale underpinning this mandatory provision of law.

On receipt of the copy of the petition in terms of Article 121 (1), the Speaker is called upon by the Constitution to adopt a course of action compulsorily. This is a fundamental and inescapable public duty imposed by the Constitution on the Speaker. This duty, attributed to the Speaker in explicit terms by provisions contained in Article 121 (2), is that “no proceedings shall be had in Parliament in relation to such Bill until the determination of the Supreme Court has been made.”

The Speaker, as a practical matter, is able to comply with this mandatory provision only if the addressing of the petition by a citizen to the Supreme

Court is brought to the notice of the Speaker himself. On the other hand, if this notice is given not to the Speaker but to a third party, knowledge of this may or may not reach the Speaker. This would depend on the act of a third party. If, then, the third party fails to communicate with the Speaker in time, it will be impossible for the Speaker to comply with the mandatory provisions set out in Article 121 (2).

In this event, proceedings in Parliament in relation to the impugned Bill will continue without interruption, and may culminate in the enactment of the Bill as an Act of Parliament. Thereafter the legislation is protected from challenge, and it is for this reason that the sacrosanct rights of the citizen will be seriously eroded.

The right to interpret the Constitution is the province solely of the Supreme Court that must not be disturbed and their learned decisions on interpretation must be treated with great respect. It is the interpretation of the Supreme Court that must stand. However, since this could affect the rights of the citizen, it is my desire to bring to the notice of the Supreme Court, the complications arising from their determination and request citizens desirous of challenging Bills, to be vigilant, in view of that determination, and ensure that the copy of the petition reaches the Speaker without any delay to enable the proceedings on the Bill to be stayed. I should not make any ruling on this matter in following the Constitution, as it is a territory that is the exclusive preserve of the Supreme Court. Nevertheless the Supreme Court is requested to give earnest consideration on a revisit to make a vested right of a citizen comprehensively effective as intended in the Constitution mindful of the procedures of Parliament. The Supreme Court has repeatedly held, a Bill that has been passed by Parliament and once become law, no court shall inquire into it or pronounce upon or in any manner call in to question the validity of such Act on any ground whatsoever. A citizen should not lose the benefits of a remedy available to him as the Supreme Court has expressed cogently in referring to Article 121 (2) "The objective and the purpose therefore is to ensure that parliamentary proceedings in respect of the Bill in question are suspended during the pendency of the inquiry before the Supreme Court".

The Chapters X and XI of the Constitution dealing with the Legislature have been drafted by the framers of our Constitution with care and caution safeguarding the supremacy of Parliament and when it comes to interpreting such provisions, it must be done mindful of the practices and procedures, customs and conventions which are part and parcel of our parliamentary system. Otherwise it would disturb the working of Parliament. More so as the chamber of Peoples' Representatives, we cannot forfeit or forgo any rights conferred to the People by the Constitution. We must be grateful to the makers of the Constitution for safeguarding the concept of the Supremacy of Parliament.

It is necessary, as well, to rectify a bona fide error made by the Supreme Court. There appears to be some confusion relating to the parties in the determination and it is desirable to have the record placed in its proper perspective. In the said determination it is stated, and I quote:

“In the instant applications viz., in 02/2012 as stated earlier, the petition had been delivered to the Hon Speaker only on 20.08.2012 whereas in 03/2012, it had been delivered on 17.08.2012 not to the Hon Speaker, but to the Secretary General of the Parliament.”

The records in Parliament reveal the following:

SD 02/2012 filed by PBDJW Nanayakkara was delivered to the Secretary General of Parliament on 17 August 2012.

SD 03/2012 filed by Centre of Policy Alternatives (Guarantee) Limited and Dr. Paikiasothy Saravanamuttu was delivered to the Speaker on 20th August, 2012.

The determinations concerning SD 02/2012 and 03/2012 were where preliminary objections were raised on the aforesaid matters, which are referred to in the course of this ruling.

There was another petition filed (01/2012) in respect of the said Bill on which the Supreme Court made a determination where the copy was

addressed to the Speaker and was delivered within time.

SD 01/2012 filed by CM Kaluge was delivered to the Speaker on 17th August, 2012.

I make a decision on this 9th day of October 2012, that in terms of Article 121 (1) of the Constitution a copy of a reference made by the President or petition by a Citizen to the Supreme Court shall at the same time be delivered to the Speaker and not to the Secretary General of Parliament. Such a delivery to the Secretary General of Parliament shall not be treated by Parliament as due compliance with the terms of Article 121 (1) of the Constitution.

I direct the Secretary General of Parliament to send a copy of this decision to His Excellency the President and to the Honourable Judges of the Supreme Court. The public will have notice of this decision on its being published in Hansard and in the Parliament web page www.parliament.lk and from the media. In addition, it will be judicially noticed in terms of Section 9 of the Parliament (Powers and Privileges) Act.