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

A Bill titled - "An Act to provide for the vesting in the Government identified Underperforming Enterprises and Underutilized Assets"

In the matter of an Application under Article 122(1) of the Constitution

SC Special Determination No. 02/2011

AND NOW

In the matter of an Application seeking the exercise of the inherent powers of the Supreme Court, to have the Special Determination made by a 3 Judge Bench on 24.10.2011 on the above titled Bill, under and in terms of Article 122, read with Article 123(3), of the Constitution, to be re-viewed and re-examined, as to whether the said Special Determination

- ***has been made per-incuriam, without jurisdiction, ultra-vires the deeming provision in Article 123(3) of the Constitution,***
- ***was / is constitutionally ab-initio null and void and of no force and avail in law, and***
- ***has been made under circumstances of 'perceived judicial bias and disqualification'***

and if it be so, to declare the Special Determination of 24.10.2011 to be ab-initio a nullity

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

PETITIONER

Vs.

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

2. Hon. Chamal Rajapaksa, M.P.
   Speaker of Parliament of Sri Lanka
   Parliament of Sri Lanka
   Sri Jayawardenepura
   Kotte.

RESPONDENTS

TO: HER LADYSHIP THE CHIEF JUSTICE AND THEIR LORDSHIPS & LADYSHIPS THE OTHER HONOURABLE JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

On this 18th day of October 2012

The **Petition** of the **Petitioner** above-named, appearing in person, states as follows:

1. a) At the very outset the Petitioner most respectfully states that this Application by the Petitioner is being made,

- in the public interest, and by no means, whatsoever or howsoever, with any disrespect whatsoever to the Judiciary, Court or any of the Justices, seeking to have the issues set out in this Petition, duly and properly adjudicated upon safeguarding the independence of the Judiciary, and the exercise of the judicial power of the people, which has been interpreted by the Supreme Court to be an integral component of the sovereignty of the people and is *inalienable,* and

- also in the interest of the Petitioner and others to prevent the judiciary being misled and the process of Court being abused to facilitate a functionary of the Government to defraud and/or cheat the Petitioner and/or any other citizen.

The Petitioner cites the following '*extract*' from a Statement issued in October 2012 (*vide Daily FT 11.10.2012– part of **"O-1")*** by Jayantha Dhanapala, former Under-Secretary General, United Nations, and Prof. Savitri Goonesekere, Senior Professor of Law, University of Colombo, on '*Judicial Independence'*, on behalf of a *Forum* comprising eminent persons, referred to as the '***Friday Forum'***:

> **"The Judicial power of the people has to be exercised both independent of the political authorities and also without partiality. Otherwise we, as citizens, are left without equal protection of the law, particularly against violations of our democratic freedoms and rights by political authorities. We need to do all we can to safeguard Judicial authority and independence."**

SPECIAL DETERMINATION ON AN 'URGENT BILL' SUBMITTED UNDER ARTICLE 122 OF THE CONSTITUTION *IS GOVERNED BY ARTICLE 123(3) OF THE CONSTITUTION*

b) i) A Special Determination was made on 24.10.2011 in SC (SD) No. 2/2011 by the Supreme Court Bench comprising;

Your Ladyship Chief Justice Shirani Bandaranayake
His Lordship Justice P.A. Ratnayake
Her Ladyship Justice Chandra Ekanayake

on an '**Urgent Bill'** titled:

"An Act to provide for the vesting in the Government identified Underperforming Enterprises and Underutilized Assets"

referred by the President to Your Ladyship the Chief Justice in terms of Article 122 of the Constitution.

*A true copy of the Special Determination dated 24.10.2011 is annexed marked **"A"**, pleaded as part and parcel hereof*

ii) In terms of Article 122(1)(b) of the Constitution, a copy of the aforesaid Reference by the President is mandatorily required to be delivered at the same time to the Hon. Speaker of Parliament.

c) It is materially and vitally significant to note that, a Special Determination on an **'Urgent Bill'** under Article 122 of the Constitution **is essentially governed** by Article 123(3) of the Constitution *viz:*

> "123.(3) In the case of a Bill endorsed as provided in Article 122, **if the Supreme Court entertains a doubt whether the Bill or any provision thereof is inconsistent with the Constitution, it shall be deemed to have been determined that the Bill or such provision of the Bill is inconsistent with the Constitution,** and the Supreme Court shall comply with the provisions of paragraphs (1) and (2) of this Article."

d) Hence, had the Supreme Court **entertained a doubt**, on this instant **'Urgent Bill'**, then on the very **entertainment of such doubt** constitutionally it is **deemed** to have been determined that the instant '**Urgent Bill'** or any provision thereof was *ipso facto* **inconsistent with the Constitution**.

e) 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

- the Supreme Court stands **debarred** and/or **estopped** from determining otherwise, and
- the Supreme Court **had no jurisdiction** to make any Determination *ultra-vires* the **deeming** provision of Article 123(3) of the Constitution, 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**.

f) It is pertinent to cite the following from the preachings of Lord Buddha in 'Kalama Sutta', *vis-a-vis*, '**doubt**' (*Emphasis added*)

> "It is fitting for you to be perplexed, O Kalamas, it is fitting for you to be in **doubt. Doubt** has arisen in you about a perplexing matter. Come, Kalamas. **Do not go by oral tradition, by lineage of teaching, by hearsay, by a collection of scriptures, by logical reasoning, by inferential reasoning, by reflection of reasons, by the acceptance of a view after pondering it, by the seeming competence of a speaker, or because you think.**" – *Anguttara Nikaya; Selected & translated from the Pali by Nyanaponika Thera & Bhikkhu Bodhi*

g) The instant case indeed stands out to be a phenomenal *catastrophic* situation, **thereby warranting and necessitating an extraordinary *precedent setting* remedy**, which not only will rectify the instant patent constitutional violation, but also estop such legislation, *under the guise* of an '**Urgent Bill',** from ever being attempted to be enacted in the future, alienating the *sovereignty* of the people, which is *inalienable*.

SUPREME COURT STANDS BOUNDEN TO UPHOLD AND DEFEND THE CONSTITUTION

2. The Petitioner respectfully states that;

   a) for a normal Bill, there is, at least, a *very limited time period of 7 days* in terms of Article 121 of the Constitution for a citizen to invoke the jurisdiction of the Supreme Court to challenge such a Bill, in that, it is mandated under Article 78 of the Constitution that such a Bill be published in the *Gazette* at least 7 days before it is placed on the Order Paper of Parliament.

   b) however, in view of the fact that in the case of an '**Urgent Bill'** in terms of Article 122(1)(a) of the Constitution, **the aforesaid Article 78 has no application**, thereby denying the citizens access to such an **'Urgent Bill',** it is of ***utmost paramount importance*** that in determining upon an **'Urgent Bill',** the constitutionally mandatorily **deeming** provision of Article 123(3) of the Constitution ***ought necessarily be taken cognisance of and strictly adhered to by the Supreme Court.***

   c) the Supreme Court, in *exercising the judicial power of the People* being exclusively vested with the sacred task, duty and obligation of interpreting and ensuring the upholding and defending of the Constitution, stands firmly bounden to strictly adhere to and comply with the constitutionally mandatorily **deeming** provision in Article 123(3) of the Constitution in making a Special Determination on an **"Urgent Bill'**; and is **debarred** and/or **estopped** from acting *ultra-vires* thereof, has **no jurisdiction to do otherwise**.

   d) the Supreme Court in the Special Determination No. 1/2012 made in August 2012, *inter-alia*, asserted: (*Emphasis added*)

> **"It is to be borne in mind that the Constitution is the basic and fundamental law of the land, which reigns supreme and all other documents are subject to provisions contained in the Constitution**. It is also relevant to note that in terms of Article 120 of the Constitution, the Supreme Court has the sole and exclusive jurisdiction to determine any question as to whether any Bill or any provision thereof is inconsistent with the Constitution."

   e) thus a paramount duty, obligation and responsibility is cast upon the Supreme Court to safeguard the *sacrosanct supremacy* and uphold and defend the constitutional provisions, and therefore should the Supreme Court **entertain any doubt**, in determining upon an **'Urgent Bill',** then and in such event, the Supreme Court stands bounden to strictly adhere to the dicta in Article 123(3) of the Constitution, whereby *ipso facto* such '**Urgent Bill'** or any provision or the **'Urgent Bill'** shall be **deemed to have been determined to be inconsistent with the Constitution**; with the Supreme Court being **constitutionally debarred** and/or estopped and **having no jurisdiction to do otherwise**.

SPECIAL DETERMINATION OF 24.10.2011 MADE *PER-INCURIAM ULTRA-VIRES* THE CONSTITUTIONALLY MANDATORILY DEEMING PROVISION IN ARTICLE 123(3) OF THE CONSTITUTION, IS CONSTITUTIONALLY *AB-INITIO NULL AND VOID AND OF NO FORCE OR AVAIL IN LAW AND IS A NULLITY*

3. a) It is respectfully submitted that the making of a Special Determination on an **'Urgent Bill'** *ultra-vires* the mandatorily **deeming** provision of Article 123(3) of the Constitution is ***constitutionally debarred,*** and/or **estopped** and that had a Special Determination on an '**Urgent Bill'** been so made *ultra-vires* the constitutionally mandatorily **deeming** provision in Article 123(3) of the Constitution, then such Special Determination made *ultra-vires* the said mandatorily **deeming** provision in Article123(3) of the Constitution is **without jurisdiction** and therefore the Special Determination of 24.10.2011 ought be declared to be constitutionally ***ab-initio* null and void and of no force or avail in law i.e. a nullity.**

b) In Jeyeraj Fernandopulle Vs. Premachandra De Silva & Others in SC Applications Nos. 66 & 67/1995, a 5 Judge Bench of the Supreme Court, *inter-alia*, held thus: – (*Emphasis added*)

> - **"The Supreme Court has inherent powers to correct decisions made *per-incuriam*. A decision will be regarded as given *per-incuriam* if it was in ignorance of some inconsistent statute or binding decision – wherefore some part of the decision or some step in the reasoning on which it is based is found on that account to be demonstrably wrong."**
>
> - "**An order made on wrong facts given to the prejudice of a party will be set aside by way of remedying the injustice caused**."

c) **Without prejudice to the foregoing**, the Petitioner respectfully states that in this instance, not only had the Special Determination of 24.10.2011 been made *per-incuriam ultra-vires* the mandatorily **deeming** provision in Article 123(3) of the Constitution, and **without jurisdiction**, but also under circumstances of ***'perceived judicial bias and disqualification'***, thereby *warranting* the same to be *rescinded* and/or *vacated*, as per the Judgment in Appeal in the House of Lords *re* – Pinochet cited hereinbelow.

SUPREME COURT IS *ENTRUSTED WITH THE TASK* OF KEEPING ORGANS OF THE STATE WITHIN THE LIMITS OF THE LAW

4. a) A 7 Judge Bench of the Supreme Court comprising;

His Lordship, Chief Justice Sarath N. Silva
His Lordship Justice S.W.B. Wadugodapitiya
Your Ladyship Shrani A. Bandaranayake
His Lordship Justice A. Ismail
His Lordship Justice P. Edussuriya
His Lordship Justice H.S. Yapa
His Lordship Justice J.A.N. De Silva

in the Special Determinations made in October 2002 on the aborted 18th and 19th Amendments to the Constitution, in *interpreting* the Constitution, *inter-alia*, determined as follows: (*Emphasis added)*

> i) "If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the Rule of Law and under the Constitution, **it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law** and thereby making the Rule of Law meaningful and effective" *(Cited from Indian Judgment)*
>
> ii) **"The Constitution does not attribute any unfettered discretion or authority to any organ or body established under the Constitution**"
>
> iii) **"We have to give effect to this provision according to the solemn declaration made in terms of the Fourth Schedule to the Constitution to "uphold and defend the Constitution**" "

b) The supremacy and autonomous independence of the judiciary, and that its power **cannot be subordinated** to that of any other organ of Government, including that of the Sovereign acting under the Order in Council, and the *dicta* that the task of the judiciary to keep every organ of the State within the limits of the law, flows from 1937 - *in re – Mark Antony Lyster Bracegirdle, wherein Abrahams C.J*. held as follows: (*Emphasis added*)

"In Rex. v. Superintendent of Chiswick Police Station, ex parte Sacksteder, [4 (1918) 1 K. B. 578, at p. 589.] Scrutton L.J. said.

> "I approach the consideration of this case with the anxious care which His Majesty's Judges have always given, and I hope will always give, to questions where it is alleged that the liberty of the subject according to the law of England has been interfered with .... **This jurisdiction of His Majesty's Judges was of old the only refuge of the subject against the unlawful acts of the Sovereign. It is now frequently the only refuge of the subject against the unlawful acts of the Executive, the higher officials,** or more frequently the subordinate officials. I hope it will always remain the duty of His Majesty's Judges to protect those people."

There can be no doubt that in British territory there is the fundamental principle of law enshrined in Magna Carta that **no person can be deprived of his liberty except by judicial process.** The following passage from The Government of the British Empire by Professor Berriedale Keith, is illuminating and instructive. In Chapter VII. of Part I., he discusses "The Rule of Law and the Rights of the Subject " p. 234. He says: -

> "**Throughout the Empire the system of Government is distinguished by the predominance of the rule of law. The most obvious side of this conception is afforded by the principles that no man can be made to suffer in person or property save through the action of the ordinary Courts after a public trial by established legal rules, and that there is a definite body of well-known legal principles, excluding arbitrary executive action**. The value of the principles was made obvious enough during the war when vast powers were necessarily conferred on the executive by statute, under which rights of individual liberty were severely curtailed both in the United Kingdom and in the overseas territories. Persons both British and alien were deprived legally but more or less arbitrarily of liberty on grounds of suspicion of enemy connections or inclinations, and the movements of aliens were severely-restricted and supervised ; the courts of the Empire recognized the validity of such powers under war conditions, but it is clear that a complete change would be effected in the security of personal rights if executive officers in time of peace were permitted the discretion they exercised during the war, and which in foreign countries they often exercise even in time of peace."

It was said in the very ancient case of Lincoln College's Case [2 (1595) 76 E. R. 764.]" that " **the office of a good compositor of an Act of Parliament is to make construction on all the parts together and not of one part only by itself** "

c) It is pertinent to cite that in SC Appeals Nos. 33 & 34/1992 in a Petitioner's Case, the Supreme Court Bench presided by His Lordship Chief Justice G.P.S. De Silva, and Their Lordships Justices A.R.B. Amarasinghe and K.M.M.B. Kulatunga demonstrated the Supreme Court's ***autonomous independence,*** *inter-alia*, *succinctly* holding that – ***"in the given circumstances, the Government cannot be indifferent".***

INTERPRETATION OF THE CONSTITUTION BY THE 7 JUDGE BENCH OF THE SUPREME COURT IN OCTOBER 2002

5. In the Special Determinations on the aborted 18th and 19th Amendments to the Constitution made in October 2002, in *interpreting* the Constitution, the aforesaid 7 Judge Bench of the Supreme Court, *inter-alia*, also determined as follows: (*Emphasis added)*

a) "Therefore the statement in Article 3 that sovereignty is in the People and is "inalienable", being an essential element which pertains to the sovereignty of the People should necessarily be read into each of the sub paragraphs in Article 4. The relevant sub paragraphs would then read as follows:

(i) the legislative power of the People *is inalienable* and shall be exercised by Parliament;

(ii) the executive power of the People *is inalienable* and shall be exercised by the President; and

(iii) **the judicial power of the People *is inalienable* and shall be exercised by Parliament through Courts**".

b) "It necessarily follows that the balance that had been struck between the three organs of government in relation to the **power that is attributed to each such organ, has to be preserved if the Constitution itself is to be sustained**"

c) "These powers of government continue to be reposed in the People and they are separated and attributed to the three organs of government; the Executive, the Legislature and **the Judiciary, being the custodians who exercise such powers in trust for the People.**"

d) **"The transfer of a power which attributed by the Constitution to one organ of government to another; or the relinquishment or removal of such power, would be an alienation of sovereignty inconsistent with Article 3, read with Article 4 of the Constitution**"

e) "**The powers attributed to the respective organs of government include powers that operate as checks in relation to other organs that have been put in place to maintain and sustain the balance of power that has been struck in the Constitution, which power should be exercised only in trust for the People**."

f) **"The power that constitutes a check, attributed to one organ of government in relation to another, has to be seen at all times and exercised, where necessary, in trust for the People**. This is not a novel concept. The basic premise of Public Law is that power is held in trust. From the perspective of Administrative Law in England, the '**trust"** that is implicit in the conferment of power has been stated as follows:

> **"Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely – that is to say, it can validly be used only in the right and proper way with Parliament when conferring it is presumed to have intended" – (Administrative Law 8th Ed. 2000 – H.W.R. Wade and C.F. Forsyth p, 356)"**

g) **"It had been firmly stated in several judgments of this Court that the 'rule of law' is the basis of our Constitution**".

h) "A.V. Dicey in Law of the Constitution" postulates that 'rule of law' which forms a fundamental principle of the Constitution has three meanings one of which is described as follows:-

> "**It means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness or prerogative, or even of wide discretionary authority on the part of the government. Englishmen are ruled by the law, and by the law alone …. "**

SUPREME COURT JURISDICTION TO *REVIEW* AND/OR *RE-EXAMINE* A SPECIAL DETERMINATION NOT *OUSTED*, MORESO THE SUPREME COURT HAVING ACTED WITHOUT JURISDITION

6. Article 80(3) of the Constitution, which *ousts* the jurisdiction of the Supreme Court to inquire into, pronounce upon or call in question the validity of an Act, when a Bill become law, does not however *oust* the jurisdiction of the Supreme Court, to *review* and *rectify* a *per-inuriam* Special Determination, in this instance made *ultra-vires* the constitutionally mandatorily **deeming** provision of Article 123(3) of the Constitution, **and without any jurisdiction to have done so**; and also under circumstances of ***'perceived judicial bias and disqualification'*** *– viz*:

> "80(3) Where a Bill becomes law upon the certificate of the President or the Speaker, as the case may be, being endorsed thereon, **no court or tribunal shall inquire into, pronounce upon or in any manner calling question, the validity of such Act on any ground whatsoever" (***Emphasis added***)**

APPLICATION OF PETITIONER FOR A *REVIEW* AND *RE-EXAMINATION* OF SPECIAL DETERMINATION

7. Upon the said Special Determination of 24.10.2011 ("**A"**) having been made known public by presentation to Parliament on 8.11.2011, the Petitioner filed an Application on 17.11.2011 for a *re-view* and *re-examination* of the said Special Determination **under and in terms of Article 122, read with Article 123 of the Constitution,** as a matter of general and public importance in terms of Article 118, read with Article 132 of the Constitution:

   a) on his own behalf , more particularly as a major Stakeholder of Hotel Developers (Lanka) PLC, (**HDL**), as morefully set out in **Schedule "X"** to this Petition, together with the Petitioner's separate Affidavit in support of the facts contained therein, pleaded as a part and parcel hereof, **with HDL having been dealt with in the Special Determination of 24.10.2011**, and

   b) on behalf of the general public, in the national and public interest, *to uphold and defend the Constitution*, a fundamental duty of every person enshrined in Article 28(a) of the Constitution.

> *A true copy of the Petition dated 17.11.2011 is annexed marked **"B"**, pleaded as part and parcel hereof*

THE PETITIONER'S APPLICATION FOR A *REVIEW* AND *RE-EXAMINATION* MADE ON 17.11.2011 FRUSTRATED BY *PER-INCURIAM MINUTE*

8. a) On the Petitioner's Application filed on 17.11.2011 in SC (SD) No. 2/2011, Your Ladyship the Chief Justice on 22.11.2011 made the following Minute, with His Lordship Justice P.A. Ratnayake and Her Ladyship Justice Chandra Ekanayake, agreeing, *viz:*

> ***"The Determination by this Court was with regard to the Bill and any party that had wanted to intervene should have done so at the time, it was taken before the Supreme Court."***

   b) The Petitioner respectfully points out that the aforesaid Minute was ***per-incuriam*** in that, **by no means was there any possibility,** whatsoever, for any party to have so intervened on **24.10.2011**.

   c) An **'Urgent Bill'**, under Article 122(1) of the Constitution, is **not gazetted** in terms of Article 78(1) of the Constitution, and thus the aforesaid '**Urgent Bill'** was not gazetted under Article 78(1) of the Constitution, before it was placed on the Order Paper of Parliament.

d) The aforesaid **'Urgent Bill'** was referred by His Excellency the President, *who is also the Minister of Finance,* to Your Ladyship the Chief Justice, in terms of Article 122(1)(b) of the Constitution, as per Letter dated **Thursday, 20.10.2011**, and such reference minuted by Your Ladyship the Chief Justice on **Friday, 21.10.2011** to the Registrar of the Supreme Court to be listed on **Monday, 24.10.2011**, with notice issued on the Hon. Attorney General, with the ***intervening weekend*** in between.

True copies of the certified copies of the

- *Letter of His Excellency the President dated 20.10.2011 marked **"C1"***
- *Cabinet Memorandum dated 19.10.2011, marked **"C2",** and*
- *The Bill with an endorsement dated 20.10.2011 under Article 122 of the Constitution, marked **"C3"***

are annexed pleaded as part and parcel hereof

e) The Hearing into the said '**Urgent Bill'** was not in the List of Cases published in the *media* on Monday, 24.10.2011.

*True copies of the Reports in the Daily News and Daily Mirror of Monday 24.11.2011 are annexed respectively marked **"D1"** and **"D2"** pleaded as part and parcel hereof*

f) At the Hearing on 24.10.2011, Your Ladyships' Court **had been assisted only by a Deputy Solicitor General,** representing the Hon. Attorney General, as *amicus curiae*.

g) Hence, it was an absolute **impossibility** for the Petitioner or any other party to have intervened to have been heard by Your Ladyship's Court on **Monday, 24.10.2011**, when Your Ladyship's Court made the *impugned* Special Determination *per-incuriam ultra-vires* the constitutionally mandatorily **deeming** provision stipulated in Article 123(3) of the Constitution, **which governed** the Special Determination of such "**Urgent Bill' ("C3")**, and **without any jurisdiction** to have so determined.

h) Thus and thereby, the Petitioner and the citizens of the country were '*shut out'* and *denied* their constitutional rights by such procedure.

i) The Petitioner respectfully states that in such circumstances, the Special Determination of 24.10.2011 had been made *per-incuriam ultra-vires* the constitutionally mandatorily **deeming** provision in Article 123(3) of the Constitution**, without jurisdiction to have done so**, and therefore the Special Determination of 24.10.2011 is **constitutionally *ab-initio* null and void and of no force or avail in law i.e. a nullity**.

j) The fact that several parties had been interested to have intervened was well and truly demonstrated and proven by **23 Petitioners** having subsequently filed several Fundamental Rights Applications putting in issue the provisions of the said **'Urgent Bill'**, and which said Applications had been dismissed by a 5 Judge Bench of Your Ladyships' Court on **15.11.2011**.

k) The Petitioner verily believes that such Fundamental Rights Applications had been filed, without the Petitioners thereof having been aware that the said '**Urgent Bill'** had become law on **11.11.2011,** with the certification of the Hon. Speaker thereon, which fact had been announced to the Parliament by the Hon. Speaker only on **22.11.2011**.

***HASTY* PASSAGE OF THE 'URGENT BILL' IN PARLIAMENT**

9. a) Hon. Speaker, Chamal Rajapaksa, a brother of President Mahinda Rajapaksa, tabled in Parliament the Special Determination in SC (SD) No. 2/2011 made *per-incuriam ultra-vires* the constitutionally mandatorily **deeming** provision in Article 123(3) of the Constitution, and **made without jurisdiction**, ***for the very first time*** only on **8.11.2011** - *vide Hansard Columns 764 to 772 of 8.11.2011.*

b) Hon. Speaker tabled in Parliament the aforesaid Bill ***also for the very first time*** only on **8.11.2011**, with *the Bill itself bearing the date* **8.11.2011** - *vide Hansard Column 844 of 8.11.2011.*

True copies of

- *Cover Page, Principal Contents and Columns 764 to 772 of Hansard dated 8.11.2011 marked* ***"E1"***
- *Column 844 of Hansard dated 8.11.2011 marked* ***"E2"***
- *Cover Page of the aforesaid Bill dated 8.11.2011 marked* ***"E3",*** *and*
- *Cover Page, Principal Contents and Columns 1010 to 1095 of Hansard dated 9.11.2011 marked* ***"E4"***

are annexed pleaded as part and parcel hereof

c) The Petitioner *as he rightfully and lawfully might* filed on 8.11.2011 through his Company, Consultants 21 Ltd., Petition, ***which had been under formulation*** **since the Letter dated 10.5.2011 of the Secretary to the Treasury ("F") giving 2 years' time for HDL to repay its loans to the Government,** comprising a Capital of **SL Rs. 4,435.9 Mn**., and compound Interest at an average of 13% p.a., of **SL Rs. 7,663.1 Mn**., i.e. a total Claim of **SL Rs. 12,099 Mn**., whereby the Petitioner through his Company, Consultants 21 Ltd., **invoked** the jurisdiction of the High Court (Civil) Western Province, Colombo, in Application No. 52/2011/CO under and in terms of Part X of the Companies Act No. 7 of 2007 to *re-structure* HDL, **dealt with in the said impugned Special Determination of 24.10.2011**.

A true copy of the Letter dated 10.5.2011 of Secretary to the Treasury addressed to HDL is annexed marked ***"F"****, pleaded as part and parcel hereof*

d) Nevertheless, whilst the aforesaid **two year period commencing on 10.5.2011** ***had been pending,*** in breach thereof, shortly thereafter, HDL had been perversely and unilaterally *surreptitiously* included, as the only Underperforming Enterprise, in Schedule I titled '**Underperforming Enterprises',** to the Bill in respect of which on 24.10.2011 Special Determination had been made ***per-incuriam ultra-vires*** the constitutionally mandatorily **deeming** provision of Article 123(3) of the Constitution**,** and **without jurisdiction,** which said Special Determination of 24.10.2011 is therefore **constitutionally *ab-initio* null and void and of no force or avail in law i.e. a nullity.**

e) **The Petitioner gave prompt notice of his foregoing High Court (Civil) Western Province, Colombo, Application No. 52/2011/CO to the Hon. Speaker of Parliament, Chamal Rajapaksa, a brother of President Mahinda Rajapaksa.**

A true copy of the Letter dated 8.11.2011 faxed to the Hon. Speaker is annexed marked ***"G"****, pleaded as part and parcel hereof*

f) The Hon. Speaker of Parliament had also been put on notice by a Member of Parliament, M.A. Sumanthiran, Attorney-at-Law, that ***judicial power was being exercised*** to adjudicate upon a Winding-up Application filed 5 years ago by the Petitioner to wind-up HDL, also asserting *inter-alia*, that this Bill, as an '**Urgent Bill'**, had been *hurriedly* and *secretly* dealt with – *vide* Hansard Columns 1055 and 1056 of 9.11.2011 - *viz:* (*Emphasis added)*

> "There was a Ruling given by the Hon. Speaker with regard to the rule of *sub judice,* citing a previous Ruling by one of his predecessors, the Hon. M.H. Mohamed, in which he says it is possible for somebody, merely to stall the debate in this House, to file a plaint the previous day. That is true. **There has been a plaint filed, even in this case, yesterday. But, I am not talking about what was filed yesterday; I am talking about what was filed five years ago. What is pertinent to the matter under discussion is that what was filed five years ago is a matter of winding up of a company on the basis that the company has failed. So, if the task of judicial determination has been given to the Judiciary and if we respect the rule, if we respect the separation of powers in our Constitution, then this House ought not to take this up and pronounce upon a matter that is entirely within the competence of the Court**.
>
> Sir, I would also urge you to look at the definitions of underutilized assets and an underperforming enterprise. These have been designed, these have been tailored to suit what later appears in the Schedule. That is why I said this is an *ad hominem* legislation. In previous instances, **Sir, you will be aware that even the Privy Council has ruled out as bad, any legislation that was recognized to be *ad hominem* and *ad hoc*. This is a classic example of what an *ad homiem* legislation is because it even spells out by name, the enterprises that are said to have underutilized the assets and the enterprises that are underperforming. It is outside the competence of the Legislature to pass laws like this.** Now, one might cite the Determination given by the Supreme Court hurriedly when the matter was referred as an urgent Bill. I do not want to talk about the decision to refer it as an urgent Bill. The less said of that, the better. I do not think anybody can argue and justify this matter being referred as an urgent Bill. The only argument that can be put forward is that it is a matter for the Cabinet. Yes, we know it is a matter for the Cabinet **but the Cabinet has abused that power in referring this matter as an urgent Bill to the Supreme Court**. When one reads this Determination, one is sad for the Supreme Court; for what the Supreme Court has been reduced to, **as how they have pronounced upon this Bill without any material whatsoever placed before them**. **How can the Supreme Court like this Legislature, rule on whether a particular enterprise is underperforming or not without examining the accounts of that enterprise, without examining other material ?** In one hearing, at which only the Attorney-General appears and is said to have assisted it, the Court has come to a ruling that 37 enterprises have, in fact, underutilized assets and one of them is an underperforming enterprise. It is a sad indictment on the highest court of the land. I am saddened by the fact that **I am also an officer of that Court and have been prevented from assisting it in the determination of this because it was an urgent Bill and hurriedly and secretively taken up for hearing.** "

*A true copy of Hansard Columns 1055 and 1056 of 9.11.2011 is annexed marked **"H"**, pleaded as part and parcel hereof*

g) Nevertheless, ***relying*** on the aforesaid *per-incuriam* Special Determination made by Your Ladyships' Court on 24.10.2011 *ultra-vires* the constitutionally mandatorily **deeming** provision in Article 123(3) of the Constitution in SC (SD) No. 2/2011, and **without jurisdiction**, and which therefore stood and stands **constitutionally *ab-initio* null and void and of no force or**

avail in law, i.e. a nullity, the Bill with 15 Committee Stage Amendments, was passed by Parliament on the very next day **9.11.2011** - *vide Hansard Columns 1010 to 1095 of 9.11.2011.*

h) Hon. Speaker, *with 15 Committee Stage Amendments* had certified the Bill into law *just two days thereafter* on **11.11.2011**.

i) Hon. Speaker's, aforesaid Certification was announced thereafter to the Parliament only on **22.11.2011** - *vide Hansard Column 203 of 22.11.2011*.

True copies of

- *Cover Page, Principal Contents and Column 203 of Hansard dated 22.11.2011 marked **"I-1",** and*
- *Cover Page of Act No. 43/2011 as having been certified on 11.11.2011 marked **"I-2"***

are annexed pleaded as part and parcel hereof

j) The Petitioner had assisted in formulating and processing the enactment of Bills into law, interacting with the Departments of Hon. Attorney General, Legal Draftsman and Government Printer, and states that the foregoing indeed had been an *expeditious* process.

***WHY THE SPECIAL DETERMINATION OF 24.10.2011 IS PER-INCURIAM ULTRA-VIRES* THE *MANDATORILY* DEEMING PROVISION IN ARTICLE 123(3) OF THE CONSTITUTION AND HAD BEEN MADE WITHOUT JURISDICTION AND IS CONSTITUTIONALLY *AB-INITIO* NULL AND VOID AND OF NO FORCE OR AVAIL IN LAW, i.e. A NULLITY.**

10. The Petitioner respectfully states that;

a) Even though Article 122 of the Constitution *enables* the enactment into law '**Urgent Bills'** in a *hasty* procedure, ***at the very same time***, the Constitution itself has an '**inbuilt safeguard and check**' on such *hasty* procedure for an '**Urgent Bill'** stipulated in Article 123(3) of the Constitution, whereby it is constitutionally mandated that **no doubt, whatsoever, can be entertained by the Supreme Court on an 'Urgent Bill',** and if so entertained, Article 123(3) of the Constitution mandates that such '**Urgent Bill**' or any provisions thereof **shall *ipso facto* be deemed to have been determined to be inconsistent with the Constitution.**

b) A Special Determination on an '**Urgent Bill'** under Article 122 of the Constitution is therefore essentially and imperatively **governed** by Article 123(3) of the Constitution *viz:*

> "123.(3) In the case of a Bill endorsed as provided in Article 122, **if the Supreme Court entertains a doubt whether the Bill or any provision thereof is inconsistent with the Constitution, it shall be deemed to have been determined that the Bill or such provision of the Bill is inconsistent with the Constitution,** and the Supreme Court shall comply with the provisions of paragraphs (1) and (2) of this Article."

c) Hence, had any **doubt/s been entertained by the Supreme Court** on the aforesaid '**Urgent Bill'** or any provisions thereof, then as **constitutionally mandated under the deeming provision in Article 123(3) of the Constitution,** *ipso facto* **upon the very entertainment of such doubt/s,** the said '**Urgent Bill'** and/or any **provisions** stands determined, ***as having been determined as inconsistent with the Constitution***.

d) The Supreme Court stood constitutionally debarred and/or estopped, and **had no jurisdiction** and hence the Special Determination of 24.10.2011 **constitutionally stands *ab-initio* null and void and of no force or avail in law, i.e. a nullity.**

e) The aforesaid Special Determination of 24.10.2011 well and truly glaringly **reveals** that **several doubts and/or questions had in fact been entertained by the Supreme Court**, as per '*excerpts*' from the said Special Determination of 24.10.2011 given below *with Page and Line references:* (*Emphasis added*)

1. Page 3 Line 2 and 3 - "However it had been identified that there are Underutilised Assets and Underperforming Enterprises" – *There was no evidential proof and data before the Supreme Court for them to have been so identified – thus would this not give rise to an inherent doubt* ?

2. Page 4 Lines 1 and 2 - "It is clearly seen that the said Bill deals with Under-utilised Assets as well as Underperforming Enterprises" – *This is a mere statement without any evidential proof thereof - thus would this not give rise to an inherent doubt* ?

3. Page 5 Lines 2 and 3 - "A **question arose** as to whether such classification would make the said provisions inconsistent with Article 12(1) of the Constitution" - ***a clear instance of a doubt having been entertained***

4. Page 7 Line 10 - "It is evident that there is a clear rational nexus" - *There was no evidential proof and data for such inference – thus would this not give rise to an inherent doubt* ?

5. Page 7 Lines 16 & 17 - "**Even if there had been any inconsistency**, the restriction placed in by the Provisions of the Bill would be permitted in terms of Article 15(7) ….. " - ***a clear instance of a doubt having been entertained***

6. Page 8 Lines 8 & 9 - "contains provisions in meeting the just requirements of the general welfare of a democratic society, **the restriction, if any envisaged** " - *There was no evidential proof and data for such justification, and furthermore **a clear instance of a doubt having been entertained,** with the word **'restriction, if any'*** ?

7. Page 8 Line 21 - "**Question that arises therefrom is**" – *entertainment that there was a question i.e. a doubt, as given in the Citation*

8. Page 9 Line 12 - "referred to the **test** which drew attention" – *inherent in such dicta that there was a **test,** by implication **a doubt had been entertained** which had to be subject to a **test***

9. Page 10 Line 16 - "**It is apparent**" – *This demonstrates that there had been no **certainty** but a mere **appearance,** which by implication is an admission of the entertainment of an inherent uncertainty / doubt*

10. Page 11 Line 6 - "**It is apparent**" – *This demonstrates that there had been no **certainty** but a mere **appearance,** which by implication is an admission of the entertainment of an inherent uncertainty / doubt*

11. Page 13 Lines 22 & 23- "It is also to be noted that the vesting would take place for a *public purpose*" – *There is no specification of the '**public purpose' without any uncertainty**, and by implication would this not give rise to an uncertainty / doubt , whereas Article 157 of the Constitution stipulates only '**national security'** and not '**public purpose'**?*

f) The Petitioner respectfully states that in the face of the foregoing **doubts** which had been entertained by the Supreme Court, the aforesaid **'Urgent Bill'** and/or the provisions thereof *ipso facto* was **deemed** to have been determined and stood and stands to be ***inconsistent with the Constitution*** in terms of the mandatorily **deeming** provision of Article 123(3) of the Constitution**,** with the Supreme Court having been **debarred** and/or **estopped** from having determining otherwise, **without having any jurisdiction** to have done so.

g) *Nevertheless, notwithstanding such* ***estoppel,*** the Supreme Court assisted by a Deputy Solicitor General had **instead** proceeded to ***answer such doubts and/or questions***, **which had been entertained by the Supreme Court**, **without any jurisdiction to have done so** in terms of Article 123(3) of the Constitution*;* whilst the **very entertainment of a doubt** renders the very provisions of the '**Urgent Bill'** or the entirety of the '**Urgent Bill'** upon which such **doubts** had been entertained, *ipso facto,* **to have been determined to be inconsistent with the Constitution, as per the constitutionally mandatorily deeming provision in Article 123(3) of the Constitution.**

h) The Petitioner respectfully states that, thus and thereby, the foregoing Special Determination of 24.10.2011 *patently* had been made ***per-incuriam ultra-vires*** **the specific constitutionally mandatorily deeming provision of Article 123(3) the Constitution,** and **without jurisdiction and the same therefore stood and stands constitutionally *ab-initio* null and void and of no force or avail in law i.e. a nullity**.

SPECIAL DETERMINATION OF 24.10.2011 REVEALS *PER-INCURIAM CONCLUSIONS ULTRA-VIRES* THE MANDATORILY DEEMING PROVISION IN ARTICLE 123(3) OF THE CONSTITUTION, AND MADE WITHOUT JURISDICTION

11. The Petitioner very respectfully points out the following '*Conclusions*' and/or '*Dicta'* made *per-incuriam* in the Special Determination of 24.10.2011, in answering **several doubts and/or questions which had been entertained by the Supreme Court**, ***without the jurisdiction therefor*** and the Petitioner asserts that thus and thereby in terms of Article 123(3) of the Constitution, the said '**Urgent Bill'** *ipso- facto* was deemed **to have been determined to be inconsistent with the Constitution**, rendering the **Special Determination of 24.10.2011 made without jurisdiction to be constitutionally *ab-initio* null and void and of no force or avail in law i.e. a nullity**.

11.1 ***Ad hominem*** **Legislation**

a) *Arbitrary* and *unilaterally* targeted selection of **specifically named parties,** without any transparent *survey* for identification, *thereby leaving out other similar parties / persons,* and *denying natural justice* to those named, *sans* any *criteria* of transparent *evaluation* to establish *intelligible differentia,* and the *differential treatment* of *private negotiation vis-à-vis* Sri Lankan Airlines and Shell Gas, and vesting in the State of Sri Lanka Insurance and Lanka Marine Services after *inter-partes* Supreme Court *adjudications* thereon, *in conformity with natural justice,* tantamount to *ad hominem* selection which is prohibited – ***also raising the doubt of a proper evaluation and/or survey on such arbitrarily targeted selection***.

b) In addition, the arbitrarily and unilaterally targeted parties have been denied natural justice and access to the judiciary in terms of Article 105 of the Constitution.

11.2 **Hotel Developers (Lanka) PLC** (**HDL)**

a) The Special Determination admittedly reveals that **a question i.e a doubt indeed had been entertained by the Supreme Court** - *viz*:

> "An Underperforming Enterprises on the other hand would mean a legal entity such as a company, institution or body established by or under any written law for the time being in force, **in which the Government own shares** and where the Government has paid contingent liabilities of such Enterprise and is engaged in protracted litigation regarding such Enterprise, which is prejudicial to the national economy and the public interest."
>
> "The above description shows that for the purpose of this Bill, Assets and Enterprises had been classified and **a question arose**, as to whether such classification would make the said provisions inconsistent with Article 12(1) of the Constitution." (*Emphasis added*)

b) The only Underperforming Enterprise ***solely*** and ***exclusively*** stipulated in the **'Urgent Bill'** in Schedule I thereto titled '***Underperforming Enterprises*'** **has been Hotel Developers (Lanka) PLC** (**HDL)** *and* ***none other***.

c) The Petitioner verily believes that the foregoing had been done with *ulterior motives and for extraneous purposes* by Chairman HDL, Thirukumur Nadesan, a *kinsman* of President Mahinda Rajapaksa, *also the Minister of Finance*.

d) There had been no facts or data, whatsoever, which had been placed before the Supreme Court, for the Supreme Court to have made the aforesaid Determination. The relevant facts are set out in **Schedule "X"** hereto, and the Addl. Solicitor General, as *amicus curiae,* had **suppressed** such pertinent facts at the hearing before the Supreme Court on 24.10.2011.

e) The statement that the Government owned Shares **does not disclose**, as to *in what manner and how the Government owned such Shares;* and was also *without disclosure of the quantity of such Shares*; and the material fact that the Shares registered in the name of the Government *was under Agreement to be transferred back to the Main Promoter of HDL*, which material fact had also been **suppressed**.

f) The Petitioner respectfully states that, having entertained such **question i.e. a doubt** as aforesaid, the Supreme Court in its Special Determination had gone on to answer such question at great length, and after having so answered has stated that – "*there cannot be a violation of the provisions contained in Article 12(1) of the Constitution*", **notwithstanding there being no provision in Article 123(3) of the Constitution to have so answered such doubt**; in fact the Supreme Court had so acted **without jurisdiction**.

g) The Special Determination had further **admittedly revealed** that a question i.e a **doubt** indeed had been entertained, *vis-à-vis* the ***inconsistency*** with the Constitution - *viz*:

> "Learned Deputy Solicitor General submitted that the classification specified in the Bill is permissible in terms of Article 12(1) of the Constitution. He further contended that **even if there had been inconsistency** the restriction placed in by the Provisions of the Bill would be permitted in terms of Article 15(7) of the Constitution."

h) The Supreme Court goes on to answer such **doubt**, which had arisen, as to the **inconsistency** of the said **'Urgent Bill'** by analysing Article 15(7) of the Constitution, and the Special Determination of 24.10.2011 has further gone on to record as follows:

"Since the present Bill contains provisions in meeting the 'just requirements of the general welfare of a democratic society', the restrictions, if any, envisaged by the Bill could easily come within the provisions of the said Article 15(7) of the Constitution. **However there is no necessity to go into the applicability of Article 15(7) as there is no inconsistency with Atrticle 12(1) of the Constitution**". (*Emphasis added*)

i) Such conclusion in the Special Determination has been **after having entertained questions and doubts** as aforesaid, and **having answered the same**, **without any provision to have answered such questions or doubts in terms of Article 123(3) of the Constitution, which governed such an Urgent Bill,** and which mandatorily deemed such **'Urgent Bill'** to have been determined to be inconsistent with the Constitution; whereby the Supreme Court was **debarred** and/or **estopped** from having so concluded and/or determined, and had acted **without jurisdiction**.

j) The Learned Deputy Solicitor General is further quoted thus, *vis-à-vis*, the alleged litigations **without having made any specific disclosure** of what those litigations were: (*Emphasis added)*

"Learned Deputy Solicitor General stated that Underperforming Enterprises encompass situation where the Government is engaged in protracted litigation. **It was submitted that having such litigation does not mean that judicial power would be exercised through the Bill, or there would be interference in the exercise of judicial power**."

k) Thereafter, Learned Deputy Solicitor General had gone on to make submissions citing authorities, based upon which he submitting **it is apparent**, which by implication is only an **appearance,** *without certainty* and **doubt** in finally stating thus: (*Emphasis added*)

"On the basis of the aforesaid **it is apparent** that the present Bill contains **no provisions which would provide for the exercise of judicial power or the interference with the exercise of the judicial power in relation to Underperforming Enterprises**."

l) i) The aforesaid submission made to the Supreme Court by the Deputy Solicitor General was an *absolute falsehood* ***in his quest to obtain*** the Special Determination of 24.10.2011, **on such false premise**, *ultra-vires* Article 123(3) of the Constitution, and **without jurisdiction.**

ii) In that, thereafter, the **Hon. Attorney General *citing* the Statute** i.e. Act No. 43 of 2011, *which was enacted* on the basis of the impugned Special Determination of 24.10.2011 made *per-incuriam ultra-vires* the constitutionally mandatorily deeming provision in Article 123(3) of the Constitution, and **without jurisdiction**, filed two Motions on **15.3.2012**, through the State Attorney in Petitioner's D.C. Colombo Case No. 217/CO ***moving to have the said Case dismissed***.

iii) In the said litigation *judicial power was being exercised* to wind-up HDL, **including the issue of recovery of large extents of public monies around SL Rs. 8,000 Mn., from the Government Nominee Directors of HDL**, who included its Chairman, Thirukumur Nadesan, a *kinsman* of President Mahinda Rajapaksa, *also the Minister of Finance*, arising from their deliberate violation of Sections 219 and 375 of the Companies Act No. 7 of 2007.

iv) By the aforesaid subsequent two Motions dated 15.3.2012 the Hon. Attorney General moved to have the said D.C. Colombo Case No. 217/CO ***dismissed thereby interfering to prevent the exercise of judicial power by recourse to the said Act No. 43 of 2011,*** **giving the lie** to the foregoing submission made by the Deputy Solicitor General to the Supreme Court *in his quest to obtain* the impugn Special Determination of 24.10.2011 referred to at (k) above – *viz:*

> **"no provisions which would provide for the exercise of judicial power or the interference with the exercise of the judicial power in relation to Underperforming Enterprises**."

True copies of the said two Motions dated 15.3.2012 filed by the State Attorney are annexed hereto respectively marked ***"J1"*** *and* ***"J2",*** *pleaded as part and parcel hereof*

m) It is respectfully reiterated that

i) in terms of Article 123(3) of the Constitution, should the Supreme Court **entertain any doubt** on an '**Urgent Bill'**, then the '**Urgent Bill'** is deemed to have been determined as inconsistent with the Constitution. The Supreme Court had no jurisdiction to determine otherwise thereby rendering the Special Determination of 24.10.2011 to be **constitutionally *ab-initio* null and void and of no force or avail in law i.e. a nullity**.

ii) a paramount duty, obligation and responsibility is cast upon the Supreme Court to safeguard the sacrosanct and supremacy of the constitutional provisions, and therefore should the Supreme Court **entertain any doubts**, Article 123(3) of the Constitution, mandates **that the very entertainment of any doubt** itself renders the relevant provision or the **'Urgent Bill'** *ipso facto* to be **deemed** to have been deemed to be inconsistent with the Constitution. **The Supreme Court stands debarred from overwriting the Constitution**.

iii) the making of the Special Determination of 24.10.2011 on an **'Urgent Bill'** *per-incuriam ultra-vires* **the constitutionally mandatorily deeming provision of the Constitution** was **without jurisdiction** and hence, the Special Determination of 24.10.2011 stood and stands **constitutionally *ab-initio* null and void and of no force or avail in law i.e. a nullity** and ought be so declared.

iv) **without prejudice to the foregoing**, in this instance not only had the Special Determination of 24.10.2011 been made *per-incuriam ultra-vires* the Constitution, **without any jurisdiction**, but also in circumstances of '***perceived judicial bias and disqualification***', thereby warranting the said Special Determination of 24.10.2011 to be *rescinded* and/or *vacated*, as per the Judgment in Appeal in the House of Lords *re* – Pinochet cited hereinbelow.

Petitioner defrauded and cheated

n) i) The Supreme Court delivered Judgment on 2.12.1992 in Petitioner's SC (Appeals) Nos. 33 & 34/1992 (*DC Colombo Case No. 3155/Spl.*), upholding the Petitioner's action filed for and on behalf of HDL and its interest, **as a serious *prima-facie* case of fraud**, ***with every prospect of being successfully proven***, and upheld the interim injunctions, which had been issued ***to prevent the devious syphoning of a large scale of foreign exchange from the country,*** *inter-alia*, observing that - ***'in the given circumstances, the Government could not be indifferent'***, with the Government through the Attorney General ***having opposed*** the Petitioner's such action.

ii) Consequently, at the **behest** of Mitsui & Co. Ltd., and Taisei Corporation, the Government required that Settlement Agreements be entered into in June 1995 to settle and withdraw the Petitioner's said legal action, and another connected legal action.

iii) On the Petitioner's *insistence and demand,* Mitsui & Co. Ltd., and Taisei Corporation were ***compelled*** to **write-off in June 1995 Jap Yen. 17,586 Mn., then equivalent to US $ 207 Mn., i.e. then SL Rs. 10,200 Mn.**, on their purported Claims on the Government Guarantees, which had been issued to them, and *re-schedule* the balance agreed debt over a further period of 15 years (*originally fully payable by 1999*), with a one year grace period, at a reduced rate of interest of 5.25% p.a., (*originally 6% p.a.).*

iv) Such achievement by the ***sole sustained efforts*** of the Petitioner ***immensely* benefitted HDL and the Government, *as the Guarantor***. Hence, the Settlement Agreements executed, as finalized by the Hon. Attorney General, and approved by the Cabinet of Ministers, provided for the Petitioner to be entitled **to nominate 3 Directors to the Board of Directors of HDL** and for **compensation for professional efforts and time to be paid to the Petitioner / his Company, Consultants 21 Ltd.,** ***as evaluated by an independent merchant banking or financial institution* for the immense benefit gained by the Government, *as the Guarantor*.** – *vide* **Annexure "X1"** to **Schedule "X"**

v) The Settlement Agreements executed as had been finalized by the Hon. Attorney General, and approved by the Cabinet of Ministers, were subsequently **wrongfully** and **unlawfully**, ***capriciously suspended*** by then Minister of Justice, G.L. Peiris to *save his skin*, he, having been a party **personally *adversely* affected** by a Condition in the said Agreements, **thereby causing grave and irreparable loss and damage to HDL and the Government**, resulting in the Petitioner having to incur time, efforts and costs in defending the interests of HDL and the Government in several *vexatious* litigations.

vi) Consequently, Mitsui & Co. Ltd., and Taisei Corporation, having ***exerted pressures*** *through the Japanese Government on the Government of Sri Lanka* and in the face of the **difficulties** confronted by the Government in attending the Sri Lanka Aid Group Meeting in **November 1996**, the Petitioner was persuaded, among others, *primarily by P.B. Jayasundera, then Deputy Secretary Treasury*, to give effect to the said Settlement Agreements, without the ***prior*** fulfillment of the '*Conditions Precedent'*, on the ***express solemn promise and undertaking***, that said '*Conditions Precedent'*, **shall and will be honoured and fulfilled**, as '*Conditions Subsequent'*.

vii) Accordingly, an ***Addendum*** prepared by the Hon. Attorney General to the said Settlement Agreements, ***excluding the aforesaid Condition, which adversely affected the Minister of Justice, G.L. Peiris*** was signed by the Government, with the Petitioner, Mitsui & Co. Ltd., and Taisei Corporation in **September / October 1996**. The Petitioner on the basis of the said Settlement Agreements and the said ***Addendum***, ***relying on the foregoing solemn promise and undertakings***, withdrew his legal action in 23.10.1996 and the other connected legal action. – *vide* **Annexure "X1**" to **Schedule "X"**

viii) This facilitated Mitsui & Co. Ltd., and Taisei Corporation to obtain **from the funds accumulated in HDL, as a consequence of the interim injunctions, which had been obtained by the Petitioner**, a lump-sum payment in October 1996 of Jap. Yen. 2,138,082,192, and in November 1996 the first Installment of Jap. Yen 971,969,460 i.e. a total of Jap. Yen 3,110,051,652, then **US $ 27.5 Mn.**, and the balance 14 Installments over the years 1997 to 2010. *P.B. Jayasundera, Deputy Secretary Treasury, among others*, consequently attended the said Sri Lanka Aid-Group Meeting in November 1996.

ix) **Had the Petitioner not agreed to the aforesaid *urgings* and *pleadings* by the Government, then HDL *with accumulated funds in October 1996 of over US $ 27.5 Mn.*, would have been in a totally different profitability and liquidity position today**. Thus the Government stood and stands responsible and accountable for whatever financial plight HDL was plunged into as a consequence.

x) In compliance with one of the Conditions Precedent in the said Settlement Agreements, the Merchant Bank of Sri Lanka was engaged in March 2006 by P.B. Jayasundera, Then Secretary. Ministry of Finance & Treasury, to evaluate the compensation payable for the professional time and efforts of the Petitioner / his Company, Consultants 21 Ltd., for obtaining such immense benefit to the Government, as the Guarantor, with the Supreme Court having endorsed the same, and the Cabinet of Ministers, having also approved the same.

Viz*: SC Appeals Nos. 99-103/1999 Minutes** : ***Annexure "X2"** to **Schedule "X"

> **"The next interests is of Mr. Nihal Sri Ameresekere, who arranged for the restructuring of the loan with a write-off of a certain percentage of the loan at the time the payments were re-scheduled ….. in the circumstances, Mr. Nihal Sri Ameresekere could compute the value of his professional input and submit to the Treasury a reasonable claim." – SC Minutes 10.10.2005**
>
> **"…. the Government to resolve the rest of the disputes with Cornel & Co. and Mr. Ameresekere, so that when the Agreement is concluded there would be no outstanding issues that would stand in the way of it being implemented …. as regards Mr. Ameresekere, the matter has already been resolved on the basis that his services would be quantified on an independent assessment" – SC Minutes 24.4.2006. (***Emphasis added)***

xi) **However, questionably such payment to the Petitioner / his Company, Consultants 21 Ltd., remains unpaid to date, notwithstanding the Merchant Bank of Sri Lanka having made its recommendations to Secretary, Ministry of Finance & Treasury, P.B. Jayasundera, as far back as July 2006**.

xii) Thirukumar Nadesan, a *kinsman* of President Mahinda Rajapaksa, *also Minister of Finance*, who was appointed Chairman HDL, and *who held out to the Petitioner that he was acting for and on behalf of the Government*, visited and communicated with the Petitioner on several occasions to be apprised of the facts pertaining to HDL, **solemnly promising and undertaking** to have the said compensation payment due to the Petitioner / his Company, Consultants 21 Ltd., as had been recommended by the Merchant Bank of Sri Lanka Ltd., to be paid to the Petitioner / his Company, Consultants 21 Ltd., having confirmed that P.B. Jayasundera, Secretary, Ministry of Finance & Treasury had agreed to do so.

xiii) Consequently, the said Thirukumar Nadesan, Chairman of HDL, caused a Director of HDL, K.V.N. Jayawardene, Attorney-at-Law, to communicate with the Petitioner's Senior Counsel, intimating that the Petitioner should make a Claim of his legitimate dues to the Compensation Tribunal, constituted under Act No. 43 of 2011, *which Tribunal, however, was not vested with authority to deal with the Petitioner's rights and entitlements under the aforesaid Agreements entered into with the Government, Mitsui & Co. Ltd., Taisei Corporation and HDL*.

xiv) In such circumstances, Petitioner's Attorneys-at-Law addressed Letter dated 9.7.2012 to the said K.V.N. Jayawardene, Attorney-at-Law, Director HDL, with copy to the said Thirukumar Nadesan, Chairman, HDL and P.B. Jayasundera, Secretary, Ministry of Finance & Treasury, to which a Reply dated 23.8.2012 on behalf of the said K.V.N. Jayawardene was received from Murugesu & Neelakandan, Attorneys-at-Law, and was responded to by the Petitioner's Attorneys-at-Laws' Letter dated 19.9.2012.

True copies of the Petitioner's Attorneys-at-Law's Letters dated 9.7.2012 addressed to K.V.N. Jayawardene, Attorney-at-Law, Director HDL and K.V.N. Jayawardene's Attorney-at-Laws' reply dated 23.8.2012 and Petitioner's Attorneys-at-Laws' Letter dated 19.9.2012 are annexed hereto, respectively, marked ***"K1"*** *,* ***"K2"*** *and* ***"K3"*** *pleaded as part and parcel hereof*

o) **The foregoing material facts had been <u>suppressed</u> from the Supreme Court by the Deputy Solicitor General in obtaining, <u>without the Supreme Court having jurisdiction</u>, the *per-incuriam ultra-vires* Special Determination of 24.10.2011, <u>which is constitutionally *ab-initio* null and void and no force or avail in law i.e. a nullity</u> on the basis of wrong facts given to the Supreme Court, thereby causing <u>prejudice</u> and injustice to the Petitioner, warranting an Order to be made by the Supreme Court, <u>*remedying such injustice caused to the Petitioner*</u>.**

11.3 **Violation of United Nations Universal Declaration of Human Rights**

Article 17(1) of the United Nations Universal Declaration of Human Rights, which entered into force in 1948, and to which Sri Lanka is a party, stipulates as follows:

"Article 17 (1)

(1) Everyone has the right to own property alone as well as in association with others
(2) <u>No one shall be arbitrarily deprived of his property</u> "

The aforesaid Article 17(1) had not been taken cognizance of and dealt with in the Special Determination of 24.10.2011, **<u>made without jurisdiction</u>**, in the light that the United Nations Universal Declaration of **Human Rights had been violated**.

11.4 **Directive Principles of State Policy**

The cogent question arises, as to whether the Directive Principles of State Policy can be *selectively* applied by **<u>selecting</u>** <u>only two Sub-Articles of Articles 27 of the Constitution</u>, without **taking the <u>*entirety*</u> of Article 27** of the Constitution into cognisance, and **<u>thereby violating other Directive Principles in the other Sub-Articles of Article 27 of the Constitution</u>**, which had not been taken into reckoning in the impugn Special Determination of 24.10.2011, ***<u>thus raising a an inherent doubt thereon</u>***.

11.5 **'National Security' and Not 'Public Purpose'**

i) Article 157 of the Constitution ***<u>prohibits</u>*** the enactment of any law, where international treaties or agreements have the force of law, except in the interest of ***<u>national security</u>***.

ii) Nevertheless, the impugn Special Determination of 24.10.2011 has on the contrary, having inherently entertained a question i.e. a **<u>doubt</u>** had stated that the same could be done for ***<u>public purpose</u>*** in contravention of Article 157 of the Constitution, ***<u>whilst the Supreme Court is bound to uphold and defend the Constitution,</u>*** **<u>and stands debarred from overwriting the Constitution</u>**.

DISCRIMINATION *VITIATES* ASSERTION OF *'INTELLIGIBLE DIFFERENTIA'*

12.1 a) Such *ad hominem* targeted **selection by individual names of parties** had been made *capriciously*, devoid of any transparent process, *with ulterior motives for extraneous purposes*, including alleged *political victimisation*, *sans* any '*intelligible differentia'*, particularly when other like parties falling into such *purported* categories, *had questionably not been so dealt with.*

b) If at all, what ought have been done was to have conducted a transparent comprehensive survey and an evaluation process, with given criteria to categorise, on the basis of '*intelligible differentia'*. **Admittedly, this had not been done**.

c) In the absence of such process of a transparent evaluation and categorisation, similar parties would have been left out. **The Petitioner alone can reveal some of such other parties left out,** and a transparent public survey would reveal all. **This clearly is an instance of discrimination and an *ad hominem* targeted selection**.

d) Such ***ad hominem* targeted selection** had deprived the affected parties of the opportunity to have been heard, thereby denying them natural justice, as demonstrated by the facts disclosed by the Petitioner in respect of HDL, **targeted as the only so-called 'Underperforming Enterprise'**

e) The foregoing alone warranted the impugned **'Urgent Bill'** to have been determined to be inconsistent with the Constitution, **in terms of the mandatorily deeming provision in Article 123(3) of the Constitution**, but nevertheless the Supreme Court had proceeded to make the Special Determination of 24.10.2011, **without jurisdiction**.

THE SUBJECT OF LAND

12.2 a) Other than HDL, the impugned Special Determination of 24.10.2011 had mainly determined upon 77 Lands of 37 Enterprises, respectively situated in 7 Provinces.

b) i) As recorded in the Special Determination of 24.10.2011, the Deputy Solicitor General, as an *amicus curiae* in an endeavour to clear ***doubts*, which had been entertained by the Supreme Court** *vis-à-vis* the subject of Land, **had made submissions in answer thereto**, which the Supreme Court had accepted, acting in respect to such **doubts** entertained, *ultra-vires* the **constitutionally mandatorily deeming provision in Article 123(3) of the Constitution and without any jurisdiction to have done so, thereby rendering the Special Determination of 24.10.2011 to be constitutionally *ab-initio* null and void and of no force or avail in law i.e. a nullity**

ii) The Petitioner respectfully states that**, there are no provisions in the Constitution for the Supreme Court to have entertained and acted upon such answers given as submissions to the doubts**, *which had been entertained by the Supreme Court*, ***with the Supreme Court having no jurisdiction to have done so*** *vis-à-vis*, an "**Urgent Bill**" - *viz:* Quoted from the Special Determination - (*Emphasis added*)

> 'Learned Deputy Solicitor General submitted that the Bill deals with National Policy, which is a matter within the **Reserved List** introduced by the 13th Amendment to the Constitution.
>
> The 13 Amendment to the Constitution, which made provision for the establishment of Provincial Councils that were empowered to make Statutes applicable to the Province, had clearly stipulated that such **Councils would have no power to make Statutes on any matter set out in the Reserved List**.

Accordingly the legislative power with regard to the **National Policy** on **all subjects and functions are vested with the Central Government**.

Since the present Bill deals with National Policy, **which is a matter within the Reserved List**, **the Parliament has the authority and, is competent to legislate.**

On a consideration of the totality of the aforementioned, **it is apparent** that no provision of the Bill is inconsistent with any provisions of the Constitution.'

c) It is respectfully reiterated that

i) in terms of Article 123(3) of the Constitution, should the Supreme Court **entertain any doubt** on an '**Urgent Bill'**, then the '**Urgent Bill'** is deemed to have been determined as inconsistent with the Constitution. The Supreme Court had no jurisdiction to determine otherwise thereby rendering the Special Determination of 24.10.2011 to be **constitutionally *ab-initio* null and void and of no force or avail in law i.e. a nullity**.

ii) a paramount duty, obligation and responsibility is cast upon the Supreme Court to safeguard the sacrosanct and supremacy of the constitutional provisions, and therefore should the Supreme Court **entertain any doubts**, Article 123(3) of the Constitution, mandates **that the very entertainment of any doubt** itself renders the relevant provision or the **'Urgent Bill'** *ipso facto* to be **deemed** to have been deemed to be inconsistent with the Constitution. **The Supreme Court stands debarred from overwriting the Constitution**.

iii) the making of the Special Determination of 24.10.2011 on an **'Urgent Bill'** *per-incuriam ultra-vires* **the constitutionally mandatorily deeming provision of the Constitution** was **without jurisdiction** and hence, the Special Determination of 24.10.2011 stood and stands **constitutionally *ab-initio* null and void and of no force or avail in law i.e. a nullity** and ought be so declared.

iv) **without prejudice to the foregoing**, in this instance not only had the Special Determination of 24.10.2011 been made *per-incuriam ultra-vires* the Constitution, **without any jurisdiction**, but also in circumstances of '***perceived judicial bias and disqualification***', thereby warranting the said Special Determination of 24.10.2011 to be *rescinded* and/or *vacated*, as per the Judgment in Appeal in the House of Lords *re* – Pinochet cited hereinbelow.

d) i) National Policy referred to in **List II (Reserved List)** of the **Ninth Schedule** to the Constitution, governed by **Article 154(G)(7)** of the Constitution defines the Subjects and Functions, which come under the purview of National Policy. **Nowhere in the List II (Reserved List) has the subject of Land been universally included**, as morefully set out in **Schedule "Y"** hereto, as a part and parcel hereof.

ii) Subject of Land is stipulated in **List 1** (**Provincial Council List**) of the **Ninth Schedule** to the Constitution as item 18 therein, to the extent set out in Appendix II to **List 1**, which sets out morefully how Land is to be dealt with and that State Land may be disposed of in accordance with Article 33 (d) of the Constitution and written law governing the matter, and that the subject of Land shall be a Provincial Council Subject, subject to special provisions contained in Appendix II where the Government is required to consult the Provincial Councils.

iii) **Article 154(G)(3)** of the Constitution mandates that no Bill in respect of any matter set out in **List I** (**Provincial Council List**), **which includes Land** shall become law, unless such Bill has been referred by the President, after its publication in the Gazette, **and before it is placed on the Order Paper of Parliament**, to every Provincial Council for the expression of views thereon, within such period as may be specified in such reference.

iv) **List III** (**Concurrent List**) of the **Ninth Schedule** to the Constitution governed by **Article 154(G)(5)(a)** of the Constitution, stipulates that Parliament may make laws with respect to any matter set out in **List III (Concurrent List**) **after such consultations** with **all Provincial Councils**, as Parliament may consider appropriate in the circumstances of each case.

v) Likewise, **Article 154(G)(5)(b)** of the Constitution gives such **reciprocal** power to the Provincial Councils to make Statutes with respect to any matter in **List III (Concurrent List)** after consultation with Parliament, as it may consider appropriate in the circumstances of each case.

vi) **List III (Concurrent List) does not universally stipulate the subject of Land**, which had been dealt with in **List 1 (Provincial Council List)** and is only governed by **Article 154(G)(3),** as morefully set out in **Schedule "Y",** hereto as a part and parcel hereof.

SUPREME COURT SPECIAL DETERMINATIONS AND JUDGMENTS *VIS-A-VIS* THE SUBJECT OF LAND

12.3 a) In SC (SD) 1/2012 which was a Special Determination on a **normal Bill**, with submissions having been made on behalf of several Petitioners and Intervenient Respondents, the Supreme Court Bench comprising:

Your Ladyship Chief Justice Shirani Bandaranayake
His Lordship Justice Priyasath Dep, P.C.
Her Ladyship Justice Eva Wanasundera, P.C.

in August 2012, *inter-alia*, determined as follows:

> "By this process, in terms of Article 154(G), certain restrictions have been placed with regard to enacting laws by the centre over the subjects which are specifically devolved to the Provincial Councils. When there are such restrictions, **those cannot be overcome by a mere reference of national policy.** Such actions would only negate the whole purpose of the introduction of Provincial Councils in order to devolve power" (*Emphasis added)*

b) Shortly after the impugned Special Determination having been made **without any jurisdiction** on 24.10.2011 on the '**Urgent Bill'** in SC (SD) No. 2/2011, ***per-incuriam ultra-vires*** the constitutionally mandatorily **deeming** provision in Article 123(3) of the Constitution**,** which **governed** such '**Urgent Bill'**, in the very next month on **21.11.2011** in SC (SD) 3/2011, which was a Special Determination on a **normal Bill**, with submissions having been made on behalf of Petitioners and an Intervenient Petitioner, the Supreme Court Bench comprising:

Your Ladyship Chief Justice Shirani Bandaranayake
Her Ladyship Justice Chardra Ekanayake
His Lordship Justice K. Sripavan

determined as follows *vis-à-vis* the **subject of Land** *viz*: (*Emphasis added*)

"The Bill under review, as stated earlier, deals with integrated planning in relation to the economic, social, historic, environmental, physical and religious aspects of land in Sri Lanka which come within the purview of the **subject of land that is referred to in Item 18 of the Provincial Council List which includes rights in or over land, land tenure, transfer and alienation of land, land use, and land improvement**.

It is therefore evident that the subject matter referred to in the Bill deals with an item that comes within the purview of Provincial Councils.

Article 154 (G) (3) provides for the making of statutes on any subject, which come within the ambit of the Provincial Councils and reads thus:

> '**No Bill in respect of any matter set out in the Provincial Council List shall become law unless such Bill has been referred by the President, after its publication in the *Gazette* and before it is placed on the Order Paper of Parliament, to every Provincial Council for the expression of its views thereon, within such period as may be specified in the reference …..'**

After such reference in terms of Article 154 (G) (3), where every Provincial Council agree to the passing of the Bill, it may be passed by a simple majority in Parliament and in terms of Article 154 (G) (3) (b), where one or two Provincial Councils do not agree to the passing of the Bill, the said Bill has to be passed by the special majority required by Article 82 of the Constitution.

There was no submissions made by the learned Deputy Solicitor General to the effect that the Bill under reference has been referred by His Excellency the President to the Provincial Councils, as stipulated in Article 154 (G) (3) of the Constitution.

Since such procedure has not been complied with, we make a Determination in terms of Article 120 read with Article 123 of the Constitution that the Bill in question is in respect of a matter set out in the Provincial Council List and shall not become law unless it has been referred by His Excellency the president to every Provincial Council as required by Article 154 (G) (3) of the Constitution.

As the Bill has been placed in the Order Paper of Parliament without compliance with provisions of Article 154 (G) (3) of the Constitution no Determination would be made at this stage on the other grounds of challenge, which were referred to earlier. "

c) The foregoing constitutional provisions in relation to the **subject of Land** had also been adjudicated upon as follows by the Supreme Court in Judgment in **SC (FR) Application No. 209/2007** b**y** Supreme Court Bench presided by His Lordship Chief Justice Sarath N. Silva and comprising Their Lordships Justices R.A.N.G. Amaratunga and D.J. De S Balapatabendi –*viz*: (*Emphasis added)*

"The 13th Amendment to the Constitution certified on 14.11.1987 provided for the establishment of Provincial Councils. Article 154 G(1) introduced by the Amendment vests legislative power in respect of the matters set out in List 1 of the Ninth Schedule (the Provincial Council List) in Provincial Councils. Article 154C vests the executive power within a Province extending to the matters in List 1 in the Governor to be exercised in terms of Article 154F(1) on the advice of the Board of Ministers. In terms of Article 154(F)(6) the Board of Ministers is

collectively responsible and answerable to the Provincial Council. Thus it is seen that the 13th Amendment provides for the exercise of legislative and executive power within a Province in respect of matters in the Provincial Council List on a system akin to the "Westminster" model of Government. Item 18 of the Provincial Council List which relates to the subject of land reads as follows:

> "*Land – Land, that is to say, rights in or over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement, to the extent set out in Appendix II:*

Appendix II referred to in item 18 reads as follows:

> "*Land and Land Settlement"*
>
> *"State land shall continue to vest in the Republic and may be disposed of in accordance with Article 33(d) and written law governing the matter. Subject as aforesaid, land shall be a Provincial Council subject, subject to the following:-*
>
> *1. State Land –*
>
> *1.1 State land required for the purposes of the Government in a Province, in respect of a reserved or concurrent subject may be utilized by the Government in accordance with the laws governing the matter. The Government shall consult the relevant Provincial Council with regard to the utilization of such land in respect of such subject;*
>
> *1.2 Government shall make available to every Provincial Council State land within the province required by such Council for a Provincial Council subject. The Provincial Council shall administer, control and utilize such State land in accordance with the laws and statues governing the matter.*
>
> *1.3* ***Alienation or disposition of the State land within a Province to any citizen or to any organization shall be by the President, on the advice of the relevant Provincial Council, in accordance with the laws governing the matter.****"*

It is seen that the power reposed in the President in terms of Article 33(d) of the Constitution read with Section 2 of the State Lands Ordinance to make grants and dispositions of State Lands is circumscribed by the provisions of "Appendix II" cited above.

"Appendix II" in my view establishes an interactive legal regime in respect of State Land within a Province. Whilst the ultimate power of alienation and of making a dispositions remains with the President, the exercise of the power would be subject to the conditions in Appendix II being satisfied.

A pre-condition laid down in paragraph 1.3 is that an alienation or disposition of State land within a Province shall be done in terms of the applicable law only on the advice of the Provincial Council. The advice would be of the Board of Ministers communicated through the Governor. The Board of Ministers being responsible in this regard to the Provincial Council."

d) The following *extracts* from an Article published in *Ceylon Today* of 11.2.2012 by Austin Fernando, *former* Secretary, Ministry of Defence, *which stood and stands uncontradicted are cited*: (*Emphasis added*)

> "The government also should be mindful of its difficulties due to this demand having constitutional validity, backed by recorded judicial decisions from the superior courts, some decided by the very same luminaries who will one day sit on judgment on the issue. I quote for example : Combined judgment of 10 December 2003 by the present Chief Justice Shirani A. Bandaranayake *et al* in cases S.D. 26/2003, S.D. 27/2003, S.D. 28/2003, S.D. 29/2003, S.D. 30/2003, S.D. 31/2003, S.D. 33/2003, S.D. 34/2003, S.D. 35/2003 and S.D. 36/2003; the SC (FR) 209/2007 judgment by Sarath N. Silva, CJ *et al* ; Court of Appeal (CA) Judgment (Case No. 50/2009) of June 23rd 2011; Supreme Court Appeals judgment of Case Nos. 41 and 42/96; Provincial High Court of North Central Province judgment in Case NCP/HCCA/Writ/46/2008. **Even late as mid-January 2012, when the land power sharing debate was ongoing, Chief Justice Shirani Bandaranayake *et al* (*i.e.* S.C. Reference No. 04/2011 – NCP/HCCA/ARP Writ No. 04/2008) submitted that State land "disposition could be carried out in accordance with Article 33(d) read with 1:3 Appendix II" which could be justly interpreted as reiteration and endorsing that State land is a subject devolved to the provinces, as she declared nine years back in the judgment of S.D. 26/2003 and nine other cases quoted earlier.**"

WITHOUT PREJUDICE TO THE FOREGOING

'*PERCEIVED JUDICIAL BIAS AND DISQUALIFICATION*' ALSO *WARRANTS* THE *RESCINDING* AND/OR *VACATING* OF THE SPECIAL DETERMINATION OF 24.10.2011

13. It is very respectfully submitted that **in addition** to the Special Determination on the **'Urgent Bill'** referred on 20.10.2011 by the President, *also the Minister of Finance*, to Your Ladyship the Chief Justice, under Article 122 of the Constitution, made on 24.10.2011 by the following Bench of the Supreme Court;

> Your Ladyship Chief Justice Shirani Bandaranayake
> His Lordship Justice P.A. Ratnayake
> Her Ladyship Justice Chandra Ekanayake

being per incuriam ultra-vires the **constitutionally mandatorily deeming provision in Article 123(3) of the Constitution,** governing such **"Urgent Bill",** and therefore had been made **without jurisdiction,** the said Special Determination of 24.10.2011 *warrants* to be *rescinded* and/or *vacated* also in circumstances of '***perceived judicial bias and disqualification***', as morefully set out hereinbelow:

13.1 '***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*

v) 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.

vi) 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*.

vii) 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.

viii) 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.

ix) 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.

x) 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.

xi) 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*

xii) 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.AN. de Silva, was *regardless of the severe castigations made against P.B, Jayasundera* in the Supreme Court Judgement 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 past 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 form 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.

*True copy of Letter dated 22.6.2012 is annexed marked **"R",** pleaded as part and parcel hereof*

iii) In his aforesaid Statement to Parliament made on 21.12.2011, President Mahinda Rajapaksa, *as the Minister of Finance*, asserted that HDL owes the Government **SL Rs. 12,099 Mn**., (i.e. Capital of **SL Rs. 4,435,9 Mn**., + Interest at an average of 13% p.a., of **SL Rs. 7,663.1 Mn**.) as at **May 2011**. This together with the value placed on the 7 Acres of Land *say* at about Rs. 10 Mn. per perch, then the total contribution made by the Government to HDL would be around **SK Rs. 23,299 Mn**.

iv) In contrast thereto the ***write-off*** **single-handedly** obtained by the Petitioner in June 1995 on Claims made by the Japanese Consortium on the Government Guarantees given for the construction of the Colombo Hilton Hotel of HDL had then amounted SL Rs. 10,200 Mn., and at the same average rate of interest of 13% p.a. charged by the Government from HDL, **the Petitioner's comparative contribution to HDL and the Government, as the Guarantor**, therefore would amount to a value of around **SL Rs. 81,450 Mn**., as at **June 2012**.

v) **Therefore, the Petitioner well, truly and undeniably stood and stands to be a far greater Stakeholder of HDL, than the Government**, as morefully set out in **Schedule "X"** to this Petition, as a part and parcel hereof

vi) **In such circumstances, by no means whatsoever can the Government derive unjust enrichment and stand to benefit and gain, at the expense of and to the loss and detriment of the Petitioner, thereby cheating and defrauding the Petitioner / his Company, Consultants 21 Ltd., on a project on which the Petitioner, himself, had been one of the promoters, and had consequently steadfastly acted in the face of obstructions by the Government, itself,** and also act **in breach** of the Agreements by the Government with the Petitioner, **as morefully set out in Schedule "X"** hereto.

vii) Likewise, the Major Promoter of HDL / Colombo Hilton Hotel, C.L. Perera / Cornel & Co. Ltd., too *cannot and ought also not be* **cheated and defrauded** to his / its loss and detriment, ***by the unjust enrichment, benefit and gain of the Government*** for the *exploitation* by the said Chairman of HDL, Thirukumur Nadesan, a *kinsman* of President Mahinda Rajapaksa, *also Minister of Finance*, Thirukumur Nadesan having had no personal stake, whatsoever, in HDL (*vide* - ***Schedule "X"*** *hereto*).

viii) In the given circumstances, the Petitioner caused his Attorneys-at-Law to address Letter dated 18.6.2012 to the Secretary to the Treasury, P.B. Jayasundera, with copy thereof to President Mahinda Rajapaksa, *as the Minister of Finance*.

True copy of Letter dated 18.6.2012 sent to, Secretary to the Treasury, P.B. Jayasundera, with copy thereof to President Mahinda Rajapaksa, as the Minister of Finance, by Petitioner's Attorneys-at-Law is annexed marked ***"S",*** *pleaded as part and parcel hereof*

ix) The contents of the aforesaid Letters dated 18.6.2012 **("S")** and 22.6.2012 **("R")** of the Petitioner have not been disputed and/or refuted by the Secretary to the Treasury and/or by the Minister of Finance, **whereby the facts stated therein stand undisputedly admitted**.

x) Article 151 of the Constitution *contemplates* that the Minister of Finance and the President of the Republic to be ***two different persons***, in conformity with the basic *rubrics* of financial management and control – *vide Article 151 of the Constitution*: (*Emphasis added*)

> " 151. (1) Notwithstanding any of the provisions of Article 149, Parliament may by law create a Contingencies Fund for the purpose of providing for urgent and unforeseen expenditure. Special provisions as to Bills affecting public revenue. Auditor-General.
>
> (2) **The Minister in charge of the subject of Finance, if satisfied**-
>
> (a) that there is need for any such expenditure, and

(b) that no provision for such expenditure exists, may, **with the consent of the President,** authorize provision to be made therefor by an advance from the Contingencies Fund.

(3) As soon as possible after every such advance, a Supplementary Estimate shall be presented to Parliament for the purpose of replacing the amount so advanced."

b) It is very respectfully submitted that in the foregoing facts and circumstances, President Mahinda Rajapaksa, **as the Minister of Finance**, had been a party ***keenly interested*** in the said "**Urgent Bill**".

13.3 **Authorities on '*perceived judicial bias and disqualification*' warranting the Special Determination of 24.10.2011 to be *rescinded* and/or *vacated***

a) In the foregoing facts and circumstances, the Petitioner cites the following '*extracts*' from the Judgments of Their Lords of Appeal in the House of Lords in *re* – Pinochet, where a Judgment by a 5 Member Committee of House of Lords **was set aside** under circumstances of '***perceived judicial bias and disqualification'*** by **another** 5 Member Committee of the House of Lords sitting in Appeal.

b) Such '***perceived judicial bias and disqualification'*** had been under circumstances of one of the Lord's wife of the first 5 Member Committee, namely Lord Hoffmann's wife had been employed in an administrative capacity by Amnesty International, who had intervened to support the *extradition* of Pinochet to Chile, and Lord Hoffmann also had been connected in a honorary capacity to some charitable work associated with Amnesty International.

c) The Petitioner very respectfully pleads that in this instance, *more graver circumstances having been prevalent*, **warrants the *rescinding* and/or *vacating* of the Special Determination of 24.10.2011 made *per-incuriam ultra-vires*** the constitutionally mandatorily **deeming** provision in Article 123(3) of the Constitution and **made without jurisdiction.**

'***Dicta***' from the Judgments of Their Lords of Appeal in the House of Lords in *re* – Pinochet – *viz:*

LORD BROWNE-WILKINSON

"The matter proceeded to your Lordships' House with great speed …… Lord Hoffmann agreed with their speeches but did not give separate reasons".

"…… there was a real danger or reasonable apprehension or suspicion that Lord Hoffmann might have been biased ….. it is alleged that there is an appearance of bias not actual bias".

"The fundamental principle is that a man may not be a judge in his own cause ……. or has a financial or proprietary interest in its outcome is sufficient to cause his automatic disqualification".

"….. may give rise to a suspicion that he is not impartial, for example because of his friendship with a party ….. the judge will not normally be himself benefiting, but providing a benefit for another by failing to be impartial".

"…. he is disqualified without any investigation into whether there was a likelihood or suspicion of bias".

"….. that absolute prohibition was then extended to cases where, although not nominally a party, the judge had an interest in the outcome".

"….. anything other than a financial or proprietary interest in the outcome is sufficient automatically to disqualify a man from sitting as judge in the cause".

"….. therefore a judge is automatically disqualified if he stands to make a financial gain as a consequence of his own decision of the case. ….. the rationale disqualifying a judge applies just as much if the judge's decision will lead to the promotion of a cause in which the judge is involved together with one of the parties"

"….. whether the events in question give rise to a reasonable apprehension or suspicion on the part of a fair-minded and informed member of the public that the judge was not impartial".

LORD GOFF OF CHIEVELEY

"Your Lordships are concerned with a case in which a judge is closely connected with a party to the proceedings".

"It follows that in this context the relevant interest need not be a financial interest. … A judge may have to disqualify himself by reason of his association with a body that institutes or defends the suit"

LORD NOLAN

"…..the appearance of the matter is just as important as the reality. "

LORD HOPE OF CRAIGHEAD

"Lord Wensleydale stated that, as he was a shareholder in the appellant company, he proposed to retire and take no part in the judgment. The Lord Chancellor said that he regretted that this step seemed to be necessary. Although counsel stated that he had no objection, it was thought better that any difficulty that might arise should be avoided and Lord Wensleydale retired."

"The importance of preserving the administration of justice from anything which can even by remote imagination infer a bias or interest in the Judge upon whom falls the solemn duty of interpreting the law is so grave that any small inconvenience experienced in its preservation may be cheerfully endured."

"It is no answer for the judge to say that he is in fact impartial and that he will abide by his judicial oath. …. He must be seen to be impartial."

"If he has a bias which renders him otherwise than an impartial judge he is disqualified from performing that duty. Nay, more (so jealous is the policy of our law of the purity of the administration of justice), if there are circumstances so affecting a person acting in a judicial capacity as to be calculated to create in the mind of a reasonable man a suspicion of that person's impartiality, those circumstances are themselves sufficient to disqualify although in fact no bias exists."

LORD HUTTON

- # ***"…… or his association with a person or body involved in the proceedings could shake public confidence in the administration of justice".***

- # ***" ….. and now covers cases in which the judge has such an interest in the parties or the matters in dispute as to make it difficult for him to approach the trial with the impartiality and detachment which the judicial function requires".***

- # ***"…… The third category is disqualification by association ……. where the apprehension of prejudgment or other bias results from some direct or indirect relationship, experience or contact with a person or persons interested in, or otherwise involved in, the proceedings."***

- # ***"…. there is an overriding public interest that there should be confidence in the integrity of the administration of justice ….. it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done."***

- # ***"The nature of the interest is such that public confidence in the administration of justice requires that the decision should not stand."***

A true copy of the said Judgment is annexed marked ***"T"*** *pleaded as part and parcel hereof*

d) In terms of the *dicta* of the Judgments of Their Lords of Appeal in the House of Lords cited above, the **facts and circumstances referred to hereinbefore** of ***'perceived judicial bias and disqualification'***, alone warrants the Special Determination of 24.10.2011 to be ***rescinded*** **and/or** ***vacated.***

e) Furthermore, the said Special Determination of 24.10.2011 had been made ***ultra-vires the constitutionally mandatorily deeming provision*** **in Article 123(3) of the Constitution**, which governed such Special Determination of 24.10.2011 and ***made without any jurisdiction since*** *the Supreme Court having entertained doubts as* ***revealed*** *in the Special Determination of 24.10.2011,* the **'Urgent Bill'** constitutionally had been **deemed** to have been determined to be inconsistent with the Constitution.

13.4. '**Role' of the Hon. Attorney General**

In terms of Article 134 of the Constitution the Hon. Attorney General is required to be noticed and heard as *amicus curiae* in proceedings, among other, under Article 122 of the Constitution as was done in this instance of an **'Urgent Bill'**.

The 'role' of the Hon. Attorney General had been set out in the Bar Association Law Journal Volume 1 Part IV – 1984, on the Attorney General's Centenary, *inter-alia*, as follows: (*Emphasis added)*

> "In civil proceedings also, the Attorney General's function is to assist the Court to reach the correct decision and **not to endeavour to somehow obtain a judgment in favour of the State**. When appropriate, it is his duty to promote conciliation of disputes between government department and citizens if that would meet the ends of justice.

> In advising the government, he has to form his opinion after considering the legal principles as well as the practical effect of his advice. **This does not mean that his advice should besides being correct be somehow favourable to the government**. Thus where any question in respect of which his advice is sought has arisen out of political, controversy or has political overtones, **his opinion should be objective and fair to the parties affected**. No doubt he must have due regard to the desire of any government to realise its legitimate aspirations and the political problems ministers have to contend with. **However, it is his duty to advise the government to act within the law in implementing its policies**."

In the Special Determination made on 24.10.2008 on the Petitioner's challenge to the Appropriation Bill 2008 in SC (SD) Application No. 3/2008 referred to hereinbefore at paragraph 13.1 c), the Supreme Court determined that the non-inclusion of debt re-payment as expenditure, and thereby the non-inclusion thereof as borrowings, would be inconsistent with Article 148 of the Constitution, and that the Appropriation Bill be amended, to include borrowings and the re-payment of borrowings, as a separate Schedule to the Appropriation Bill, which has been thereafter adhered to.

In such context, Hon. Ravi Karunanayake, M.P. had by Letter dated 17.11.2008 requested Deputy Solicitor General, Janak de Silva, *then Senior State Counsel*, to <u>confirm in writing</u> an oral Opinion given by him, *which apparently he had not been able to do*.

The Hon. Attorney General was represented by Deputy Solicitor General, Janak de Silva, who had made *erroneous* and *misleading* submissions as aforesaid before the Supreme Court to obtain the *impugned* Special Determination of 24.10.2011 *per-incuriam ultra-vires* Article 123(3) of the Constitution, and **<u>without the Supreme Court having any jurisdiction</u>** to have made such Special Determination. *The Attorney General's Department comes under the purview of President Mahinda Rajapaksa.*

> *A true copy of the said Letter dated 17.11.2008 addressed by Hon. Ravi Karunanayake, M.P. to Deputy Solicitor General, Janak de Silva, Senior State Counsel, and Hon. Ravi Karunanayake M.P.'s Letter dated 10.10.2012 intimating of the foregoing are annexed compendiously marked **"U"**, pleaded as part and parcel hereof*

<u>PETITIONER'S FUNDAMENTAL RIGHTS APPLICATION NO. 534/2011</u>

14. a) The Petitioner on **<u>14.11.2011</u>** filed Fundamental Rights Application No. 534/2011, ***<u>having been unaware</u>*** that the aforesaid '**<u>Urgent Bill'</u>** had become law on **<u>11.11.2011</u>**, which fact had been made known even to the Parliament by the Hon. Speaker **<u>only on 22.11.2011</u>**, as aforesaid.

b) Around 23 Petitioners, also **<u>having been so unaware,</u>** had filed several Fundamental Rights Applications, putting in issue the *inconsistency* with the Constitution of the provisions of the said **'<u>Urgent Bill'</u>**.

c) The aforesaid Fundamental Rights Applications had been dismissed on **<u>15.11.2011</u>** by the following 5 Judge Bench of the Supreme Court, the Petitioner verily believes in view of the *<u>ouster</u>*, upon a Bill becoming law, in terms of Article 80(3) of the Constitution;

His Lordship Justice N.G. Amaratunga,
His Lordship Justice I. Imam,
His Lordship Justice R.K.S. Sureshchandra,
His Lordship Justice Sathya Hettige
His Lordship Justice Dep, P.C.

d) It was ***subsequently*** on **25.11.2011** that the Petitioner's Fundamental Rights Application No. 534/2011 filed on 14.11.2011 was taken up before the following 3 Judge Bench of the Supreme Court, who were Members of the aforesaid 5 Judge Bench of the Supreme Court;

His Lordship Justice N.G. Amaratunga,
His Lordship Justice R.K.S. Sureshchandra,
His Lordship Justice Sathya Hettige

e) When the Petitioner's Fundamental Rights Application No. 534/2011 was so taken up **subsequently** on **25.11.2011**, the Petitioner ***conceded*** in the Supreme Court that in terms of Article 80(3) of the Constitution, the jurisdiction of the Supreme Court was *ousted*, *vis-à-vis*, adjudicating upon the constitutionality of any provision of such Bill, *which by then had become law*, **which fact the Petitioner had come to know only on 22.11.2011, the date on which the Hon. Speaker had announced such fact to Parliament**.

f) The Petitioner however at the same time on **25.11.2011** respectfully pointed out specifically that such ***ouster*** did not **encompass** the ***inherent jurisdiction*** of the Supreme Court **to *review* and/or re-examine and/or *rectify* and/or *rescind and/or vacate* a Special Determination** made *per-incuriam*, in this instance ***ultra-vires*** the **constitutionally mandatorily deeming provision in Article 123(3) of the Constitution**, which **governed** a Special Determination on an '**Urgent Bill',** *without the Supreme Court having jurisdiction* to have made such Special Determination. - *viz Article 80(3) :*

> "80(3) Where a Bill becomes law upon the certificate of the President or the Speaker, as the case may be, being endorsed thereon, **no court or tribunal shall inquire into, pronounce upon or in any manner call in question, the validity of such Act on any ground whatsoever**" (*Emphasis added*)

g) Furthermore, the Petitioner *reiterated* and *stressed* the fact that Article 80(3) of the Constitution ***only ousted*** *solely* and *exclusively* the jurisdiction of the Supreme Court to inquire into and/or pronounce upon or in any manner call in question the validity of an Act upon a Bill becoming law, upon the certification by the Hon. Speaker, **but that Article 80(3) did not in any manner, whatsoever or howsoever, *oust* the jurisdiction of the Supreme Court to *review* and/or *re-examine*, as was being sought by the Petitioner in this instance, its own Special Determination of 24.10.2011 made *per-incuriam ulra-vires* the constitutionally mandatorily deeming provisions in Article 123(3) of the Constitution, governing an 'Urgent Bill', and the Supreme Court having no jurisdiction** – *viz: Article 123(3)*:

> "123.(3) In the case of a Bill endorsed as provided in Article 122, **if the Supreme Court entertains a doubt whether the Bill or any provision thereof is inconsistent with the Constitution, it shall be deemed to have been determined that the Bill or such provision of the Bill is inconsistent with the Constitution,** and the Supreme Court shall comply with the provisions of paragraphs (1) and (2) of this Article." (*Emphasis added*)

h) Consequently on **25.11.2011**, the Petitioner, in the foregoing circumstances, sought Leave of the Supreme Court to **amend** his Petition and the Supreme Court having permitted such amendment of the Petition, directed that notice thereof be given to the Respondents, through the Registrar of the Supreme Court before **16.12.2011**.

i) In compliance therewith, the Petitioner tendered copies of the Amended Petition on **16.12.2011** to the Registry of the Supreme Court, with Notices thereof to be issued on the Respondents.

j) Thereafter by Motion dated **18.1.2012**, the Petitioner made an Application to Your Ladyship the Chief Justice under Article 132 of the Constitution ***with specific reference to Article 123(3) of the Constitution and to the* Petitioner's Amended Petition dated 16.12.2011 *seeking a review and re-examination* of the Special Determination of 24.10.2011** by a Fuller Bench of the Supreme Court.

k) Nevertheless, Your Ladyship the Chief Justice on 24.1.2012 had directed that the Petitioner's aforesaid **Amended Petition** dated 16.12.2011, be **Supported** on 9.2.2012 before **the same aforesaid 3 Judge Bench of the Supreme Court,** who had heard the Petitioner's original Petition dated 14.11.2011, previously as aforesaid**.**

l) Accordingly, when the matter came up on **9.2.2012** specifically listed for '**Support for Leave to Proceed'** before the same Bench of the Supreme Court comprising;

His Lordship Justice N.G. Amaratunga,
His Lordship Justice R.K.S. Sureshchandra,
His Lordship Justice Sathya Hettige

the Petitioner made *extensive submissions orally* for about 1 hour, and also simultaneously tendered Written Submissions, *analytically setting out in support*, the circumstances which ***warranted*** a ***review*** and ***re-examination*** of the Special Determination of 24.10.2011 made **per incuriam *ultra-vires the constitutionally mandatorily deeming provision of Article 123(3) of the Constitution***, which governed a Special Determination of an '**Urgent Bill'**.

m) The Petitioner also further *cited* instances of **doubts having been entertained by the Supreme Court** whereby the **constitutionally mandatorily deeming provisions in Article 123(3) of the Constitution *ipso facto*** had **deemed** the '**Urgent Bill' to have been determined to be inconsistent with the Constitution**, and *the Supreme Court **had no jurisdiction** to determine otherwise*.

n) Also on **9.2.2012**, the Petitioner tendering a **further Written Submissions**, raised an **additional** issue of ***'perceived judicial bias* and *disqualification'*,** and cited the aforesaid Judgment of Their Lords of Appeal of the House of Lords *re* – Pinochet, where a Judgment by a 5 Member Committee of the House of Lords **had been set aside** on grounds of ***'perceived judicial bias and disqualification'*** by **another** 5 Member Committee of the House of Lords sitting in Appeal, and the Petitioner urged that therefore, **the circumstances prevalent in this instant case being far more graver,** warranted the Special Determination of 24.10.2011 to be ***rescinded*** and/or ***vacated*** *– viz: - from the Judgment of Their Lords of Appeal of the House of Lords re – Pinochet:* (*Emphasis added*)

"**Jurisdiction**

As I have said, **the respondents to the petition do not dispute that your Lordships have jurisdiction in appropriate cases to rescind or vary an earlier order of this House. In my judgment, that concession was rightly made both in principle and on authority**.

In principle it must be that your Lordships, **as the ultimate court of appeal, have power to correct any injustice caused by an earlier order of this House. There is no relevant statutory limitation on the jurisdiction of the House in this regard and therefore its inherent jurisdiction remains unfettered.**

However, it should be made clear that the House will not reopen any appeal **save in circumstances where, through no fault of a party, he or she has been subjected to an unfair procedure**. Where an order has been made by the House in a particular case **there can be no question of that decision being varied or rescinded by a later order made in the same case just because it is thought that the first order is wrong**. "

o) Thereupon the aforesaid 3 Judge Bench of the Supreme Court Bench informed the Petitioner that a ***review* or *re-examination*** of a previous Judgment or Special Determination in Sri Lanka has to be by the same Bench, who had delivered such Judgment or Special Determination, and not by a another Bench, ***unlike the instance of the House of Lords in UK, which the Petitioner cited.***

p) Responding thereto, the Petitioner respectfully drew the attention of the Bench of the Supreme Court:

i) to the Petitioner's aforesaid Motion dated **18.1.2012**, whereby the Petitioner had *specifically* made an Application to Your Ladyship the Chief Justice ***under Article 132 of the Constitution*, seeking a *review and re-examination*** of the Special Determination of 24.10.2011, specifically under and in terms of **Article 123(3)** of the Constitution, **as per the Petitioner's aforesaid Amended Petition dated 16.12.2011** by a Fuller Bench of the Supreme Court, and

ii) to the following Minute made on **24.1.2012** by Your Ladyship the Chief Justice, in response to the Minute made on **20.1.2012** by the Registrar of the Supreme Court, *directing* that the Petitioner's said Application be Supported on 9.2.2012 before the same 3 Judge Bench of the Supreme Court, who had heard the Petitioner's Application previously on **25.11.2011** – *viz*:

"20.1.2012

The Hon. CJ

The Petitioner in this case files Motion dated 18.1.2012 and having into consideration the facts maintained in the Motion, very respectfully moves your Lordship's Court. We place to direct that this matter be heard before a Bench, comprising 5 or more judges on a date convenient to Your Lordship's Court.
Fixed for support on 26.1.2012. Suggested for Your Lordship's directions please."

"24.1.2012

DR/SC

When this matter was taken up on 25.11.2011, the Petitioner who had appeared in person had moved for time to file Amended Papers. This had been allowed.

Accordingly, for this matter for Support before this same Bench Hon. Amaratunga, J, Hon. Suresh Chandra, J, Hettitge, PC, J on 9.02.2012.

This matter to be taken out of the List of Cases for Support on 26.01.2012

Please take steps to inform all parties that this matter is for Support on 9.02.2012"

q) Whilst *acknowledging* the aforesaid Minute made by Your Ladyship the Chief Justice, to the Petitioner's *utter surprise*, the 3 Judge Bench of the Supreme Court after such lengthy oral submissions made by the Petitioner, *intimated* to the Petitioner, that Their Lordships had been asked ***only to hear the Petitioner, and not for the grant of Leave;*** whereas the Petitioner's Application was listed specifically '***For Leave to Proceed*'**, as was borne out by the List of Cases fixed for 9.2.2012 given by the Supreme Court Registry.

r) Consequently, the 3 Judge Bench of the Supreme Court delivered Judgment, *inter-alia*, observing that – '***this Bench has no power to accept this Petition or deal with it'***, and accordingly dismissing *in-limine* the Petitioner's Fundamental Rights Application No. 534/2011, citing the Judgments made on **15.11.2011** in the aforesaid **other** Fundamental Rights Applications.

s) The Petitioner very respectfully states that, the Petitioner's Application had, in fact, been ***entertained*** and not **dismissed *in limine*** by the same Bench of the Supreme Court on **25.11.2011**, **after** the aforesaid Judgments had been *previously* delivered on **15.11.2011** dismissing the other Fundamental Rights Applications, as referred to hereinbefore.

t) Consequently, the Petitioner **on 8.5.2012** filed an Application in his Fundamental Rights SC (FR) Application No. 534/2011 seeking a ***review and re-examination***, which had been refused in the Chambers by His Lordship, the presiding Justice N.G. Amaratunga minuting – '*The Application has been dismissed on 9.2.2012. Motion / Applications cannot be entertained in respect of a dismissed Application'*

True copies of the Petitioner's Petitions dated 14.11.2011, 16.12.2011 and 8.5.2012, without copies of the annexed documents thereto, and the Supreme Court proceedings of 25.11.2011, Petitioner's Motion dated 18.1.2012 and Supreme Court proceedings of 9.2.2012, are annexed respectively marked ***"V1", "V2", "V3", "V4", "V5"*** *and* ***"V6"****, pleaded as part and parcel hereof*

u) The Petitioner undertakes to tender copies of any or all of the aforesaid annexed documents, should Your Ladyships' Court so direct, and the Petitioner respectfully reserves the right to tender any further documents, as shall or may be necessary, for the due and proper adjudication of this matter of utmost general and public importance **of upholding and defending the Constitution**, *which is* ***supreme*** *and* ***sacrosanct,*** *which is a Fundamental Duty in terms of Article 28(a) of the Constitution.*

PRECEDENT OF THE SUPREME COURT HAVING *GRAVELY ERRED* IN MAKING A SPECIAL DETERMINATION, AND LATER *RESCINDING* AND/OR *VACATING* THE SAME AND PRONOUNCING *OTHERWISE*

15. The Petitioner states that:

a) in April 2003 the Petitioner *failed* in his endeavour in SC (SD) No. 11/2003 to challenge the Inland Revenue (Special Provisions) Act No 10 of 2003, certified into law on 17.3.2003, with his Application having been held to have been made outside the narrow time limit of 7 days in terms of Article 121 of the Constitution, even though it was *demonstrated* that it was an **impossibility** to have done so.

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**.

d) *thereafter* in March 2004, the Petitioner *succeeded* in persuading President Chandrika Bandaranaike Kumaratunga to refer, in terms of Article 129 of the Constitution, the aforesaid two Statutes, namely,

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

for an Opinion of the Supreme Court.

e) consequently, a 5 Judge Bench of the Supreme Court comprising;

His Lordship Chief Justice Sarath N. Silva
Your Ladyship Shirani Bandaranayake
His Lordship Justice H.S. Yapa
His Lordship Justice J.A.N. De Silva
His Lordship Justice Nihal Jayasinghe

after a public hearing thereinto in March 2004 in SC Reference No. 1/2004, whereat the Petitioner, himself, appeared in person and made submissions, *inter-alia*, pronounced that the provisions of the aforesaid two Statutes were;-

- **'inimical to the rule of law'**
- **'violative of the Universal Declaration of Human Rights and International Covenant on Civil & Political Rights',** and that
- **'they had defrauded public revenue, *causing extensive loss to the State'***

thereby in effect rescinding and v*acating* the aforesaid Special Determination in SC (SD) No. 20 of 2003, whereby what had been determined to be consistent with the Constitution, was **7 Months thereafter pronounced to be inconsistent with the Constitution**, ***and to be even perverse as aforesaid***.

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.

h) the foregoing is a **lucidly** clear and **glaring** instance, and a **precedent** of a Special Determination made by a 3 Judge Bench of the Supreme Court having been ***rescinded*** and/or ***vacated one year thereafter*** by **another** 3 Judge Bench of the Supreme Court.

i) accordingly in October 2004, the Legislature enacted Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004, retrospectively ***repealing*** the *obnoxious* provisions of the aforesaid two Statutes, namely

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

i.e *a period of **1½ years after**, Inland Revenue (Special Provisions) Act No 10 of 2003 had become law, and*

***1 year after** Inland Revenue (Special Provisions) (Amendment) Act No 31 of 2003 had become law.*

j) the Petitioner respectfully states that the foregoing clearly demonstrates that the Supreme Court can ***err*** and had in fact ***erred***, and further amply demonstrates that the Supreme Court, ***is vested with inherent jurisdiction to rescind*** and/or ***vacate***, and **had** in fact ***rescinded*** and/or ***vacated***, a *per-incuriam* and *perverse* Special Determination, which had been previously made, whereas in this instance, more significantly, it is a Special Determination on an '**Urgent Bill',** not only made ***per-incuriam ultra-vires*** the constitutionally mandatorily **deeming** provision in Article 123(3) of the Constitution, but also **made without jurisdiction**, and furthermore under circumstances of '***perceived judicial bias and disqualification'***

k) the Petitioner respectfully states that thus the Supreme Court stands vested with ***unfettered*** **inherent jurisdiction** to ***review*** and/or ***re-examine*** and ***rescind*** and/or ***vacate*** and/or ***declare*** otherwise its own Special Determination made ***per-incuriam ultra-vires*** the constitutionally mandatory **deeming** provision in Article 123(3) of the Constitution and **without jurisdiction** and/or made under circumstances of '***perceived judicial bias and disqualification'***

VITAL ISSUES **RAISED BY THE PETITIONER *NEVER ADJUDICATED UPON*, THEREFORE WARRANT ADJUDICATION**

16. a) **Vital issues** *averred* as aforesaid pertaining to the Special Determination of 24.10.2011 made ***per-incuriam ultra-vires*** the constitutionally mandatorily **deeming** provision in Article 123(3) of the Constitution, and made with the Supreme Court **having had no jurisdiction to have so determined**, ***have never been adjudicated upon***.

b) i) Particularly given the fact that for a **normal Bill**, there is very limited time period of 7 days in terms of Article 121 of the Constitution for a citizen to invoke the jurisdiction of the Supreme Court to challenge such a Bill, it is of *paramount importance* that in the case of an '**Urgent Bill'**, that the constitutionally mandatorily **deeming** provision of Article 123(3) of the Constitution is **strictly adhered to** *by the Supreme Court, with the Supreme Court **constitutionally having no jurisdiction to determine otherwise.***

ii) Article 123(3) of the Constitution is **the only safeguard** provided by the Constitution, to ensure that Legislation is enacted to be consistent with the Constitution, whereby **debarring** and/or **estopping** the Supreme Court, upon the entertainment of any **doubt** *vis-à-vis* an '**Urgent Bill'** or any provision thereof, from determining otherwise, other than as mandated by the Constitution to be deemed to have been determined to be inconsistent with the Constitution. **The Supreme Court is prohibited from overwriting the Constitution**.

iii) The Supreme Court Special Determination of 24.10.2011 discloses that **doubts had been entertained by the Supreme Court,** whereby in terms of the constitutionally mandatorily **deeming** provision under Article 123(3) of the Constitution governing the Special Determination on the said "**Urgent Bill",** *upon the very entertainment of any such doubt,* ***ipso facto,*** **such Bill was deemed to have been determined to be inconsistent with the Constitution,** and thereby **the Supreme Court had no jurisdiction to have determined otherwise**; the Supreme Court stood **debarred** and/or **estopped** from determining otherwise.

iv) Thus and thereby the **Special Determination of 24.10.2011** constitutionally **stood and stands *ab-initio* null and void and of no force or avail in law,** *and warrants to be so declared.*

c) The Supreme Court which is bound to ensure that other organisations and individuals conform to and uphold and defend the Constitution, carries the highest *onus* to conform to and uphold and defend the Constitution by itself, in the first instance – *viz: Special Determinations in October 2002 by a 7 Judge Bench of the Supreme Court referred to hereinbefore*. *(Emphasis added)*

- **"If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the Rule of Law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the Rule of Law meaningful and effective"_ *(Cited from Indian Judgment)***
- **"We have to give effect to this provision according to the solemn declaration made in terms of the Fourth Schedule to the Constitution to "uphold and defend the Constitution"**

d) i) It is very respectfully submitted that the foregoing facts and circumstances reveal that President Mahinda Rajapaksa, *as Minister of Finance*, had been a party ***keenly interested*** in the said "**Urgent Bill**".

ii) President Mahinda Rajapaksa, also *the Minister of Finance,* has publicly pronounced that he –'*stands for the independence and dignity of the judiciary'*, stating that he – '*strongly upheld the principle that* ***justice must not only be done, but be seen to be done'*** (*Emphasis added*) – (*vide Daily News of 28.9.2012 – part of* ***"O-1"***).

iii) As lucidly borne out by the *dicta* in the Judgments in Appeal in the House of Lords *re* – Pinochet cited hereinbefore, in the circumstances set out in paragraph 13 hereinabove, the Special Determination of 24.10.2011 made by Your Ladyship Chief Justice Shirani Bandaranayake, His Lordship Justice P.A. Ratnayake and Her Ladyship Justice Chandra Ekanayake, *warrants* to be *rescinded* and *vacated* in circumstances of '*perceived judicial bias and disqualification'* .

iv) By no means does the Petitioner allege that there was bias in making the *per-incuriam* Special Determination of 24.10.2011 *ultra-vires* Article 123(3) of the Constitution, and **without jurisdiction** to have so determined, **relying** on the submissions made by the Deputy Solicitor General, as *amicus curiae*. Nevertheless, the Petitioner re-iterates the *dicta* re '***perception***' from Judgments in Appeal in the House of Lords *re* - Pinochet cited hereinbefore.

e) i) The Petitioner cites the following '*extracts*' from a Statement issued in October 2012 (*vide Daily FT 11.10.2012– part of* ***"O-1")*** by Jayantha Dhanapala, former Under-Secretary General, United Nations, and Prof. Savitri Goonesekere, Senior Professor of Law, University of Colombo on '*Judicial Independence'*, on behalf of a *Forum*, comprising eminent persons, referred to as the '***Friday Forum',*** as an example of evidence of such '***perception***'

> "The Judicial power of the people has to be exercised both independent of the political authorities and also without partiality. Otherwise we, as citizens, are left without equal protection of the law, particularly against violations of our democratic freedoms and rights by political authorities. We need to do all we can to safeguard Judicial authority and independence."
>
> "Similarly, attempts at compromising Judicial integrity through political appointments and other benefits granted to immediate family members of Judges should have been strongly resisted through public debate and demands for accountability on the part of both the political authorities and the recipients."
>
> "When a retired Chief Justice was appointed as a presidential advisor and other retired justices were given diplomatic appointments, such moves too should have been forthrightly resisted as such political appointments clearly compromise the integrity of the Judiciary. "

ii) As a further example Petitioner cites the following *dicta* on page 26 of the Report titled "2010 Human Rights Report; Sri Lanka" dated 8.4.2011 issued by the US State Department;

> "In 2008 the Supreme Court found then Treasury Secretary P.B. Jayasundera guilty of a violation of procedure in the awarding of a large contract for the expansion of the Port of Colombo. The Court barred him from holding the Treasury position. In June 2009, after President Rajapaksa named a new Supreme Court Chief Justice, the Supreme Court allowed Jayasundera to proceed with a fundamental rights case protesting the original decision. The Supreme Court then overturned the previous decision and allowed Jayasundera to be reinstated as Secretary of the Treasury."

f) The given facts and circumstances, well and truly constitute good, sufficient, sound and valid grounds, to substantiate and establish that the Special Determination of 24.10.2011 has been made

i) ***per-incuriam ultra-vires*** *the* constitutionally mandatorily ***deeming*** provision in Article 123(3) of the Constitution **governing** the Special Determinations on '**Urgent Bills'**, and had been made **without jurisdiction,** and

ii) also under circumstances of ***'perceived judicial bias and disqualification',*** *warranting the said Special Determination of 24.10.2011 to be* ***rescinded*** *and/or* ***vacated***

thereby justifying, meriting and warranting a *review* and *re-examination* of the said Special Determination of 24.10.2011, and the same to be declared **constitutionally *ab-initio* null and void and of no force of avail in law i.e. a nullity.**

g) i) The Petitioner most respectfully **reiterates** the authorities and *precedents* cited hereinbefore, particularly in SC Applications Nos. 66 & 67 of 1995 in Jeyeraj Fernandopulle Vs. Premachandra De Silva & Others by a 5 Judge Bench of the Supreme Court, *viz: –* (*Emphasis added*)

- **"The Supreme Court has inherent powers to correct decisions made *per-incuriam*. A decision will be regarded as given *per-incuriam* if it was in ignorance of some inconsistent statute or binding decision – wherefore some part of the decision or some step in the reasoning on which it is based is found on that account to be demonstrably wrong."**

- "**An order made on wrong facts given to the prejudice of a party will be set aside by way of remedying the injustice caused**."

ii) Thus the Supreme Court stands vested with **inherent powers** to correct decisions, Judgments or Determinations made ***per-incuriam ultra-vires*** the Constitution, and made **without jurisdiction** and to make Orders **remedying *any injustice caused to a party upon wrong facts having been adduced to the prejudice of such party***.

h) In the premises, an *undeniable* constitutional right and entitlement has accrued to the Petitioner to invoke the **inherent jurisdiction** of the Supreme Court on this matter of **utmost general and public importance of upholding and defending the Constitution** to seek a ***review*** *and/or* ***re-examination*** of the Special Determination of 24.10.2011 by a Fuller Bench of Your Ladyship's Court, and **to adjudicate upon the foregoing vital matters put in issue.**

i) The Petitioner most respectfully states that upon such a ***review*** and ***re-examination*** of the said Special Determination of 24.10.2011, should the Supreme Court find that it had *gravely erred* in making such Special Determination *per-incuriam ultra-vires* the constitutionally mandatorily ***deeming*** provision in Article 123(3) of the Constitution, and made **without jurisdiction,** and/or under circumstances of '***perceived judicial bias and disqualification'***, then the Supreme Court

i) stands bound to uphold the *sacrosanct supremacy* of the Constitution, and declare as constitutionally *ab-initio* null and void the said Special Determination of 24.10.2011, and to be of no force or avail in law i.e. **nullity**, and determine strictly adhering to the constitutionally mandatorily ***deeming*** provision in Article 123(3) of the Constitution, and

ii) should therefore declare as constitutionally *ab-initio* null and void the said Special Determination of 24.10.2011, and to be of no force or avail in law, i.e. **a nullity**, and determine strictly adhering to the constitutionally mandatorily ***deeming*** provision in Article 123(3) of the Constitution, and

iii) **leave it to the Legislature to act and uphold the Constitution, in compliance with the affirmations made and oaths taken by the Members thereof, to uphold and defend the Constitution,** inasmuch as the Hon. Speaker of Parliament had issued a Ruling on 9.10.2012 affirming the strict adherence to the Constitution, as mandated in protecting the sovereignty of the people, which is *inalienable*, as referred to hereinafter.

j) i) On 9.10.2012 the Hon. Speaker of Parliament, Chamal Rajapaksa, a brother of President Mahinda Rajapaksa, issued a Ruling in Parliament in relation to the Special Determination of the Supreme Court on the 'Divineguma Bill', **reiterating** the supremacy of strictly adhering to the very letter of the Constitution, *vis-à-vis*, the matter of notice to be given to the Hon. Speaker, who he ruled cannot be replaced by the Secretary General of Parliament, in terms of Article 121 of the Constitution.

ii) The Hon. Speaker in the aforesaid Ruling had – '*requested the Supreme Court* ***to give earnest consideration on a re-visit to make a vested right of a citizen comprehensively effective as intended in the Constitution'***, and that – '***it is necessary, as well, to rectify a bona-fide error made by the Supreme Court'***. (*Emphasis added*)

k) The Petitioner respectfully states that the instant matter put in issue by the Petitioner of non-adherence to the constitutionally mandated **deeming** provision in Article 123(3) of the Constitution governing a Special Determination on an '**Urgent Bill'**, with Special Determination of 24.10.2011 having been made *per-incuriam ultra-vires* the said constitutionally mandatorily **deeming** provision, and made **without jurisdiction,** and also under circumstances of '*perceived judicial bias and disqualification'*, is of a far greater gravity, **alienating the sovereignty of the people**, than the aforesaid matter ruled upon by the Hon. Speaker.

A true copy of the said Ruling made on 9.10.2012 by the Hon. Speaker downloaded from the Parliament website is annexed marked ***"W"****, pleaded as part and parcel hereof*

l) The Constitution being the basic and fundamental law of the land which reigns supreme, and under the Constitution **it being the task of the judiciary of keeping every organ of the State within the limits of the law**, a paramount duty, obligation and responsibility is cast upon the Supreme Court to safeguard the *sacrosanct supremacy* of the constitutional mandates.

m) The Supreme Court is **exercising the *judicial power of the people,*** which has been determined by the Supreme Court to be an integral component of the ***inalienable*** sovereignty of the people.

n) It is ***reiterated*** that the instant case indeed stands out to be a phenomenal *catastrophic* situation, **thereby warranting and necessitating an extraordinary *precedent setting remedy***, which not only will rectify the instant patent constitutional violation, but also estop such legislation, *under the guise* of an '**Urgent Bill',** from ever being attempted to be enacted in the future, alienating the *sovereignty* of the people, which is *inalienable*.

o) There have been no *laches* on the part of the Petitioner in tendering this Application after 14.5.2012, when the Petitioner's Application dated 8.5.2012 for a *re-view* and *re-examination* in SC (FR) Application No. 534/2011 was refused to be entertained in the circumstances set out in paragraph 14 above, since some of the salient circumstances of '*perceived judicial bias and disqualification'* averred at paragraph 13 above came to the knowledge of the Petitioner only very recently.

p) In any event, the Petitioner is advised that there is no *time bar* to rectify a *per-incuriam* Order, Judgment or Special Determination made by the Supreme Court, and in this instance a Special Determination made *per-incuriam ultra-vires* the constitutionally mandatorily **deeming** provision in Article 123(3) of the Constitution and made **without jurisdiction**, which governs the Special Determination on an '**Urgent Bill'** , with the Constitution reigning supreme (*vide - SC (SD) No. 1/2012, SC (Ref.) No. 1/2004, SC SD No. 26/2004*).

17. The Affidavit of the Petitioner is annexed hereto in support of the averments contained herein

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

a) constitute a Fuller Bench of the Supreme Court under and in terms of Article 132 of the Constitution to;

i) exercise the inherent powers of the Supreme Court to *review* and *re-examine* the Special Determination of 24.10.2011 **("A"),** as to whether or not the said Special Determination ("**A")** had been made in strict adherence to the provisions in Article 123(3) of the Constitution, as a matter of general and public importance of strictly adhering to and upholding and defending the

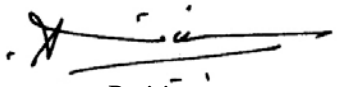
Constitution, which is supreme and sacrosanct, *vis-à-vis,* the foregoing vital issues raised by the Petitioner in this Petition, and

ii) upon such a *review and re-examination* should the Supreme Court find that it had *gravely erred* in making such Special Determination **("A")** *per-incuriam ultra-vires* the constitutionally mandatorily ***deeming*** provision in Article 123(3) of the Constitution, and therefore had been made **without jurisdiction** and/or also under circumstances of '*perceived judicial bias and disqualification'*, then in such event, to declare the said Special Determination of 24.10.2011 **("A"),** to be constitutionally *ab-initio* null and void and of nor force or avail in law, and determine as constitutionally deemed **as mandated** under Article 123(3) of the Constitution.

b) communicate to the Hon. Speaker of Parliament, the aforesaid declaration and the constitutionally deemed Special Determination **as mandated** under Article 123(3) of the Constitution that the impugned '**Urgent Bill'** had been **constitutionally deemed to have been determined** to be inconsistent with the Constitution, leaving it to the Legislature to act and uphold the Constitution in compliance with the affirmations made and oaths taken by the Members thereof, to uphold and defend the Constitution, inasmuch as the Hon. Speaker of Parliament issued a Ruling on 9.10.2012 **("W")** affirming the strict adherence to the Constitution as mandated, in protecting the sovereignty of the people, which is *inalienable*.

c) make order remedying the injustice caused by the impugned Special Determination of 24.10.2011**("A")** made *per-incuriam ultra-vires* the *constitutionally mandatorily* ***deeming*** *provision* in Article 123(3) of the Constitution, which had been made on incomplete and wrong facts given by the Deputy Solicitor General on behalf of the Hon. Attorney General to the **prejudice** of the Petitioner / his Company, Consultants 21 Ltd., and the Main Promoter of HDL / Colombo Hilton Hotel, C.L. Perera / Cornel & Co. Ltd., and any other such party.

d) grant such other and further relief, as to Your Ladyships' Court shall seem meet



Petitioner

SCHEDULE "X"

PETITIONER IS A GREATER STAKEHOLDER THAN THE GOVERNMENT IN HOTEL DEVELOPERS (LANKA) PLC (HDL)

1. The Petitioner filed Application on 17.11.2011 in SC (SD) No. 2/2011, not only in the public interest to uphold and defend the Constitution as a Fundamental Duty under Article 28(a) of the Constitution, but also ***as a materially affected party***, being a *major Stakeholder* of Hotel Developers (Lanka) PLC (**HDL)**, as morefully set out hereinbelow, the only Enterprise itemised under Schedule I (though titled 'Underperforming **Enterprises**') to the said '**Urgent Bill'**,

2. The Petitioner so acted as aforesaid as a consequence of the Special Determination of 24.10.2011 *in respect of the said* ***'Urgent Bill'*** *made* ***per-incuriam ultra-vires*** Article 123(3) of the Constitution, *on* ***erroneous*** *and* ***misleading*** *submissions made by the Deputy Solicitor General to the Supreme Court,* ***suppressing*** *vitally relevant and material facts,* ***to the prejudice of the Petitioner***.

3. Based upon such ***erroneous*** and ***misleading*** submissions made by the Deputy Solicitor General, the said Special Determination made on 24.10.2011 by the Supreme Court was ***per incuriam ultra-vires*** the constitutionally mandatorily **deeming** provision in Article 123(3) of the Constitution and **without jurisdiction.**

4. The Supreme Court delivered Judgment on 2.12.1992 in Petitioner's SC (Appeals) Nos. 33 & 34/1992 (*DC Colombo Case No. 3155/Spl*.), upholding the Petitioner's action filed for and on behalf of HDL and its interest, **as a serious *prima-facie* case of fraud**, ***with every prospect of being successfully proven***, and upheld the interim injunctions, which had been issued ***to prevent the devious syphoning of a large scale of foreign exchange from the country,*** *inter-alia*, observing that - ***'in the given circumstances, the Government could not be indifferent'***, with the Government through the Attorney General ***having opposed*** the Petitioner's action.

5. Consequently, at the **behest** of Mitsui & Co. Ltd., and Taisei Corporation, the Government ***insistently*** required that Settlement Agreements be entered into in June 1995 to settle and withdraw the Petitioner's said legal action and another connected legal action.

6. For such a Settlement, on the Petitioner's *demand* and *insistence*, Mitsui & Co. Ltd., and Taisei Corporation were ***compelled*** to **write-off in June 1995 Jap Yen. 17,586 Mn., then equivalent to US $ 207 Mn., i.e. then SL Rs. 10,200 Mn.**, on their purported Claims on the Government Guarantees, which had been issued to them, and to *re-schedule* the balance agreed debt over a further period of 15 years (*originally fully payable by 1999*), with a one year grace period, at a reduced rate of interest of 5.25% p.a., (*originally 6% p.a.).*

7. Such achievement by the *sole sustained efforts* of the Petitioner ***immensely*** **benefitted HDL and the Government, *as the Guarantor***. Hence, the Settlement Agreements executed as finalized by the Hon. Attorney General, and approved by the Cabinet of Ministers, provided for the Petitioner to be entitled **to nominate 3 Directors to the Board of Directors of HDL,** and for **compensation for professional efforts and time to be paid to the Petitioner / his Company, *as evaluated by an independent merchant banking or financial institution* for the immense benefit gained by the Government**, ***as the Guarantor*** *– vide* **"X1"**

8. The Settlement Agreements executed, as had been finalized by the Hon. Attorney General, and approved by the Cabinet of Ministers, were subsequently **wrongfully** and **unlawfully**, ***capriciously suspended*** by then Minister of Justice, G.L. Peiris to *save his skin*, he, having been a party **personally *adversely* affected** by a Condition in the said Settlement Agreements, **thereby causing grave and irreparable loss and damage to HDL and the Government**, resulting in the Petitioner having to incur time, efforts and costs in defending the interests of HDL and the Government in several *vexatious* litigations.

9. Consequently, Mitsui & Co. Ltd., and Taisei Corporation, having ***exerted pressures*** *through the Japanese Government on the Government of Sri Lanka* and in the face of the **difficulties *confronted*** by the Government in attending the Sri Lanka Aid Group Meeting in **November 1996**, the Petitioner was **persuaded,** *among others, by P.B. Jayasundera, then Deputy Secretary Treasury,* to give effect to the said Settlement Agreements, without the ***prior*** fulfillment of the '*Conditions Precedent'*, on the ***express solemn promise and undertaking***, that said '*Conditions Precedent'*, **shall and will be honoured and fulfilled** as '*Conditions Subsequent'*.

10. Accordingly, an ***Addendum*** prepared by the Hon. Attorney General to the said Settlement Agreements, ***excluding the aforesaid Condition, which adversely affected the Minister of Justice,* G.L. Peiris** was signed by the Government, with the Petitioner, Mitsui & Co. Ltd., and Taisei Corporation in **September / October 1996**. The Petitioner on the basis of the said Settlement Agreements and the said ***Addendum***, ***relying on the foregoing solemn promise and undertakings***, withdrew his legal action on 23.10.1996 and the other connected legal action.

    *True copies of the Settlement Agreements dated 28.6.1995 and the said Addendum dated September / October 1996 are annexed compendiously marked **"X1"**, pleaded as part and parcel hereof*

11. This facilitated Mitsui & Co. Ltd., and Taisei Corporation to obtain **from the funds accumulated in HDL, as a consequence of the interim injunctions, which had been obtained by the Petitioner** in October 1996 a lump-sum payment of Jap. Yen. 2,138,082,192, and in November 1996 the first Installment of Jap. Yen 971,969,460 i.e. a total of Jap. Yen 3,110,051,652, then **US $ 27.5 Mn.**, and the balance 14 Installments over the years 1997 to 2010. ***P.B. Jayasundera, Deputy Secretary Treasury, among others,* consequently attended the said Sri Lanka Aid-Group Meeting in November 1996**.

12. **Had the Petitioner not agreed to the aforesaid *urgings* and *pleadings* by the Government, then HDL *with accumulated funds in October 1996 of over US $ 27.5 Mn.*, would have been in a totally different profitability and liquidity position today**. Thus the Government stood and stands responsible and accountable for whatever financial plight HDL was plunged into as a consequence

13. For such predicament of loss, damage and detriment caused to HDL and the Government, then Justice Minister, G.L. Peiris, *now Minister of External Affairs*, ought take the absolute blame and be solely held accountable and responsible.

14. In the foregoing circumstances, the Petitioner has filed two legal actions, D.C. Colombo Cases Nos. 19849/MR and 21819/MR, which are pending before the Supreme Court on the issues of then **Justice Minister, G.L. Peiris being unwilling and evading to answer Interrogatories and give discovery of documents.**

15. Subsequently, upon the Cabinet Memorandum dated 5.10.2005, the Cabinet of Ministers on 13.10.2005 had approved the Proposal of a Cabinet Appointed Negotiating Committee (CANC), that HDL be **re-structured**, and if the re-structuring of HDL was not given effect to, then that HDL be **wound-up**. The said Cabinet Memorandum **had taken into cognisance the aforesaid rights and entitlements of the Petitioner.**

16. **The Supreme Court in SC (Appeals) Nos. 99-103 /1999 endorsed the aforesaid re-structuring of HDL**, ***including the aforesaid rights and entitlements of the Petitioner***.

Viz*: SC Appeals Nos. 99-103/1999 Minutes**: ***Annexure "X2" *to* ***Schedule "X"***

> **"The next interests is of Mr. Nihal Sri Ameresekere, who arranged for the restructuring of the loan with a write-off of a certain percentage of the loan at the time the payments were re-scheduled ….. in the circumstances, Mr. Nihal Sri Ameresekere could compute the value of his professional input and submit to the Treasury a reasonable claim." – SC Minutes 10.10.2005**
>
> **"…. the Government to resolve the rest of the disputes with Cornel & Co. and Mr. Ameresekere, so that when the Agreement is concluded there would be no outstanding issues that would stand in the way of it being implemented …. as regards Mr. Ameresekere, the matter has already been resolved on the basis that his services would be quantified on an independent assessment" – SC Minutes 24.4.2006.**

True copies of said Supreme Court Minutes are annexed compendiously marked ***"X2"****, pleaded as part and parcel hereof*

17. However, the re-structuring of HDL having not materialized, the Petitioner on 17.11.2006 filed District Court of Colombo Case No. 217/CO to wind-up HDL, which was and is yet pending, **having been opposed by the Government *on the sole pretext of re-structuring* HDL** as aforesaid.

18. As per Cabinet Memorandum dated 21.1.2007, approved on 24.1.2007, Cabinet approval sought and obtained had been to oppose the winding-up of HDL, and to **indicate to Court**, as an option the **re-structuring of HDL as aforesaid, *which however did not happen,*** for which lapse Secretary, Ministry of Finance & Treasury, P.B. Jayasundera and Hon. Attorney General stood and stand responsible.

A true copy of Letter dated 16.9.2010 of the State Attorney addressed to all parties ***convening a Meeting for a discussion in regard to the foregoing was subsequently postponed and never reconvened thereafter,*** *is annexed marked* ***"X3"****, pleaded as part and parcel hereof*

19. In the meanwhile, under such circumstances, ***precipitated by then Minister of Justice G.L. Peiris and the Government, itself, as aforesaid***, the Government had to advance to HDL **SL Rs. 4,435,986,893 Mn.**, over the years 1997 to 2010, claiming together with compound interest thereon, at varying rates, giving a simple average interest of 13% p.a., amounting to **SL Rs. 7662.7 Mn**., thereby making a total Claim of **SL Rs. 12,099 Mn**., as at **10.5.2011,** exceeding the Capital of **SL Rs. 4,435,986,893 Mn**., **in contravention of Section 5 of the Civil Law Ordinance**.

20. The value of the 7 Acres of Land provided by the Government to HDL, *say* at SL Rs. 10 Mn., per perch would amount to **SL Rs. 11,200 Mn**. Therefore in total the Government's contribution to HDL would be around **SL Rs. 23,299 Mn**., as at **May 2011**, **even if the excess interest is *conceded***.

21. **The Treasury by Letter dated 10.5.2011 addressed to HDL had requested HDL to re-pay in two years' time, i.e. by 10.5.2013 the aforesaid Claims by the Government amounting to SL Rs. 12,098.6 Mn.** – *vide* **("F")**

22. The Petitioner *as he rightfully and lawfully might* filed on 8.11.2011 through his Company, Consultants 21 Ltd., Petition, ***which had been under formulation*** **since the Letter dated 10.5.2011 of the Secretary to the Treasury ("F") giving 2 years' time for HDL to repay its loans to the Government,** comprising a Capital of **SL Rs. 4,435.9 Mn**., and compound Interest at an average of 13% p.a., of **SL Rs. 7,663.1 Mn**., i.e. a total Claim of **SL Rs. 12,099 Mn**., whereby the Petitioner through his Company, Consultants 21 Ltd., **invoked** the jurisdiction of the High Court (Civil) Western Province, Colombo, in Application No. 52/2011/CO under and in terms of Part X of the Companies Act No. 7 of 2007 to *re-structure* HDL, **dealt with in the said impugned Special Determination of 24.10.2011**.

23. Nevertheless, whilst the aforesaid **two year period commencing on 10.5.2011** *had been still pending*, in **breach thereof**, shortly thereafter, HDL had been *perversely*, *unilaterally* and *surreptitiously* included, the Petitioner verily believes by the Chairman of HDL, Thirukumur Nadesan, a *kinsman* of President Mahinda Rajapaksa, *who is also the Minister of Finance*, as the only Underperforming Enterprise, in Schedule I to the Bill, in respect of which Special Determination of 24.10.2011 had been made ***per-incuriam ultra-vires*** the constitutionally mandatorily **deeming** provision of Article 123(3) of the Constitution**,** and **without jurisdiction.**

24. In a Statement to Parliament made on 21.12.2011 , President Mahinda Rajapaksa, *as the Minister of Finance*, asserted that HDL owes the Government **SL Rs. 12,099 Mn**., as at **May 2011**. This together with the value placed on the 7 Acres of Land *say* at about Rs. 10 Mn. per perch, then the total contribution made by the Government to HDL would be around **SL Rs. 23,299 Mn**.

25. In contrast thereto, the ***write-off*** **single-handedly** obtained by the Petitioner in June 1995 on Claims made by the Japanese Consortium on the Government Guarantees given for the construction of the Colombo Hilton Hotel of HDL had then amounted **SL Rs. 10,200 Mn.,** and at the same average rate of interest of 13% p.a. charged by the Government from HDL, **the Petitioner's comparative contribution to HDL and the Government, as the Guarantor,** therefore would amount to a value of around **SL Rs. 81,450 Mn**., as at **June 2012**.

26. Therefore, the Petitioner well and truly and undeniably stood and stands to be a greater Stakeholder of HDL than the Government. **In such circumstances, the Government by no means whatsoever can derive unjust enrichment and stand to benefit and gain, at the expense of the Petitioner and to the loss and detriment of the Petitioner, thereby cheating and defrauding the Petitioner / his Company, Consultants 21 Ltd., on a project on which the Petitioner, himself, had been one of the promoters and had consequently acted as aforesaid, *in the face of obstructions by the Government, itself*;** and also **in breach** of the **written agreements** entered into by the Government with the Petitioner.

27. Likewise, the Major Promoter of HDL / Colombo Hilton Hotel, C.L. Perera / Cornel & Co. Ltd., too cannot and ought not be **cheated and defrauded** to his / its loss and detriment, ***by the unjust enrichment, benefit and gain of the Government*** for the *exploitation* by the said Chairman of HDL, Thirukumur Nadesan, a *kinsman* of President Mahinda Rajapaksa, *also Minister of Finance*, Thirukumur Nadesan having had no personal stake, whatsoever, in HDL – *vide Paragraph 67 of the Petitioner's Amended Petition dated 16.12.2011 in SC (FR) Application No. 534/2011*

> "67. a) The foregoing reveals that HDL, had been recklessly mismanaged by the Government Directors, who controlled HDL, and were nominated by the Minister of Finance, 1st Respondent.

b) They have been paying themselves emoluments, allowances and enjoying other perquisites, whilst HDL has been *languishing* in losses and has been in dire financial straits.

c) Just prior to the aforesaid Bill tabled in Parliament on 8.11.2011, the draft Board Minutes of HDL of 6.9.2011 and 24.10.2011 have **recorded approval for payment of Rs. 400,000/- per month** and **the purchase of a BMW SUV reckoned to cost over Rs. 25 Mn., for the Chairman of HDL**, a kinsman of the 1st, 2nd and 9th Respondents.

*True copies of the said HDL draft Board Minutes of HDL are annexed together marked **"X37", pleaded as part and parcel hereof "***

28. Consequent to the foregoing averments pertaining to Chairman HDL, Thirukumar Nadasen made by the Petitioner in his Amended Petition dated 16.12.2011 in SC (FR) Application No. 534/2011, the Petitioner on 22.6.2012 was reliably informed through an *emissary* of Secretary, Ministry of Defence, Gotabhaya Rajapaksa, that the said Thirukumar Nadasen had given him some papers, as had been allegedly given to him by the Leader of the Opposition, Ranil Wickremesinghe, asserting that the Petitioner was circulating the said papers overseas to bring discredit and disrepute to the country; thereby to maliciously cause mischief and harm to the Petitioner.

29. The Petitioner having had the opportunity of immediately confronting the Leader of the Opposition, Ranil Wickremesinghe, with the aforesaid allegation, he vehemently having denied the same, the Petitioner on the very next day forwarded E-mail dated 23.6.2012 to the Defence Secretary, Gotabhaya Rajapaksa, requiring an investigation to be conducted into the foregoing false, baseless and malicious allegation, as per the contents of the said E-mail dated 23.6.2012, contents of which are self-explanatory.

30. Consequently, Secretary, Ministry of Defence, Gotabhaya Rajapaksa through the same *emissary* having requested the Petitioner not to press the matter, in deference thereto, the Petitioner sent the Defence Secretary, Gotabhaya Rajapaksa the E-mail dated 18.9.2012.

*True copies of the said E-mails dated 23.6.2012 and 18.9.2012 are annexed respectively marked **"X4(a)"** and **"X4(b)"**, pleaded as part and parcel hereof*

31. The Petitioner as evidenced by the aforesaid Minutes in the Supreme Court **("X2")** had consistently stood for the *just and equitable* compensation to be settled to the Main Promoter of HDL / Colombo Hilton Hotel, C.L. Perera / Cornel & Co. Ltd., **which had also been recommended by the CANC and approved by the Cabinet of Ministers and endorsed by the Supreme Court as aforesaid**. In the given circumstances, the Petitioner and the said C.L. Perera on 15.6.2012 entered into an Agreement.

*A True copy of the said Agreement dated 15.6.2012 is annexed marked **"X5"**, pleaded as part and parcel hereof*

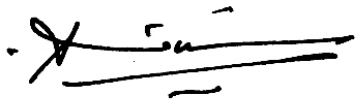
32. Special Determination of 24.10.2011 had been made **without jurisdiction** ***per-incuriam ultra-vires*** the constitutionally mandatorily **deeming** provision of Article 123(3) of the Constitution on alleged grounds of *protracted* litigation concerning HDL, with the Deputy Solicitor General **knowingly having suppressed** the real facts pertaining to HDL, resulting in the exercise of judicial power being permitted by the Supreme Court to be **alienated** and **usurped** by the legislature, thereby **alienating** the *sovereignty* of the people, ***which is inalienable***.

33. The matter of the **blatant contraventions** of the mandatory statutory provisions of the Companies Act No. 7 of 2007 by the Government Nominated Directors of HDL, including the said HDL Chairman, Thirukumur Nadesan, who managed and controlled HDL, including the **consequent personal liabilities on their part to pay HDL the excess of its liabilities over assets around Rs. 8,000 Mn.,** particularly in terms of Sections 219 and 375 of the Companies Act No. 7 of 2007, **had been suppressed** from the Supreme Court by the Deputy Solicitor General, thereby misleading the Supreme Court to make **without jurisdiction** the Special Determination on 24.10.2011, ***per-incuriam ultra-vires*** the constitutionally mandatorily **deeming** provision of Article 123(3) of the Constitution to the **prejudice** and **detriment** of the Petitioner, and the said Main Promoter of HDL / Colombo Hilton Hotel and **HDL, itself**

34. As per the definition of a Director specified in Section 529 of the Companies Act No. 7 of 2007, a Director of HDL would have included the Secretary, Ministry of Finance & Treasury P.B. Jayasundera, according to whose directions and/or instructions HDL had acted or had been caused to act.
35. The facts stated in the Letter dated 18.6.2012 **("S")** addressed to P.B. Jayasundera, Secretary, Ministry of Finance & Treasury, with copies thereof to President Mahinda Rajapaksa, *as Minister of Finance,* and Letter dated 22.6.2012 **("R")** addressed to President Mahinda Rajapaksa, *as Minister of Finance*, having not been disputed and/or refuted by both of them, **the facts stated in the said Letters stand undisputedly admitted**.

Note: The foregoing facts are morefully set out at paragraphs 27 to 69 of the Amended Petition dated 16.12.2011 in Petitioner's SC (FR) Application No. 534/2011, marked **"V2"** with the Petition

36. The Affidavit of the Petitioner in support of the foregoing facts is annexed hereto.



Petitioner

18.10.2012

SCHEDULE "Y"

STATE LANDS TO THE EXTENT SPECIFIED IN ITEM 18 OF LIST I (PROVINCIAL COUNCIL LIST) HAVE BEEN SPECIFICALLY EXCLUDED IN LIST II (RESERVED LIST) COMING WITHIN THE PURVIEW OF NATIONAL POLICY

The List II (Reserved List) lists the subject and functions coming within the purview of National Policy, as follows: (*Emphasis added*)

Defence and National Security
Foreign Affairs
Posts & Telecommunications, Broadcasting; Television
Justice in so far as its relates to the judiciary and the courts' structure
Finance in relation to national revenue, monetary policy and external resources; customs,
Foreign Trade; Inter-Province Trade and Commerce
Ports and Habours
Aviation and Airports
National Transport
Rivers & Waterways; Shipping & Navigation; Maritime zones, including Historical Waters, Territorial Waters; Exclusive Economic Zone and Continental Shelf and Internal Waters; **State Lands and Foreshore, Except to the Extent Specified in Item 18 of List I** (i.e. **Provincial Council List**)

The Subheadings given under the foregoing essentially refers to Piracies, Shipping, Maritime, Light Houses, Rivers, Fisheries and Property of the Government and revenue therefrom, but as regards property situated in the Province, subject to statutes made by the Province, saving so far as Parliament by law otherwise provides.

Mineral and Mines
Immigration and Emigration and Citizenship,
Elections, Including Presidential, Parliamentary, Provincial Councils and Local Authorities
Census and Statistics
Professional Occupation and Training
National Archives

All Subjects and Functions not specified in List 1 or List III stipulating items included under the foregoing.

The foregoing demonstrates what Subjects come under List II (**Reserved List**), which are all Subjects and Functions **not specified in List 1** (**Provincial Council List**) or List III (**Concurrent List**).

Hence since Land is a subject itemized under List I (Provincial Council List) it does not come under List II (Reserved List), as more specifically reiterated in the aforesaid List II by the words therein – "**Except to the Extent Specified in Item 18 of List I** "

Petitioner
18. 10. 2012

SCHEDULE "Z"

'*EXTRACTS*' FROM THE *DISSENTING* JUDGMENT BY HER LADYSHIP JUSTICE SHIRANEE TILAKAWARDANE IN SC (FR) APPLICATION No. 209/2007

Given Letter are 'extracts' from the Judgment delivered on 13th October 2009 by Her Ladyship Justice Shiranee Tilakawardane in SC (FR) No. 209/2007 ***(Emphasis added)***

"Pursuant to a Petition filed by the 8th Respondent Petitioner (*i.e. P.B. Jayasundera*) on 7th July 2009, and twice amended by him on 11th July 2009 and 31st July 2009 (the "Petition"), this Application was listed before a Bench of 7 Judges of the Supreme Court. At the conclusion of proceedings, the Court's order, as dictated by the Chief Justice on behalf of the Bench, was stated to be;

> *Relief granted with Tilakawardane, J., dissenting*.

This Order was apparently subsequently amended in Chambers of the Chief Justice, with the concurrence of the other Judges, to read as follows;

> *Court, having considered the submissions of Counsel and Mr. Nihal Sri Amerasekera who appeared in person, refuses the reliefs sought in paragraph (a) and (b) of the prayer to the amended Petition dated 31st July 2009. However the Court is inclined to grant other relief under paragraph (c) of the prayer to the amended Petition. Accordingly by a majority decision [Hon. Tilakawardane, J. dissenting], the Court decides that His Excellency,* ***the President, being the appointing authority in terms of Article 52 of the Constitution would be free to consider appointing the 8th Respondent Petitioner (i.e. P.B. Jayasundera), to the Post of Secretary to the Ministry of Finance, notwithstanding the undertaking given to Court by the 8th Respondent Petitioner (i.e. P.B. Jayasundera),***

Having subsequently called for and perused this amended Order, I take the opportunity to reiterate my complete and full opposition to the granting of any relief whatsoever sought by the Petitioner *(i.e. P.B. Jayasundera),* in his amended Petition and my *dissent* with my esteemed colleagues in their decision to do so.

The Judgment delivered on 21st July 2008 in this case (the "Original Judgment") dealt with, in large part, the complicity of the Petitioner, as Chairman of the Public Enterprise Reform Commission, in an improper scheme to effect the sale of Shares of Lanka Marine Services Ltd., (the "LMSL") to John Keells Holdings Ltd., without, among other things:

1. prior authorization of the Cabinet of Ministers.

2. the appointment and approval of a Cabinet Approved Tender Board (the "CATB") as mandated by a circular published by the Petitioner himself to ensure transparency, fairness and honesty in the procurement process, and instead allowed the Petitioner unfettered discretion as the final authority on all matters.

3. a valuation of LMSL's shares by the Chief Valuer, and instead, one issued by a private bank resulting in such a deep undervaluation of the stock such that the profits of LMSL in 4 years, alone, would be more than double the share price being offered.

In recognition of the above, and other unauthorized action and behaviour, the Court concluded that the Petitioner, **"from the very commencement of the process, acted outside the authority, of the applicable law being the Public Enterprise Reform Commission Act No. 1 of 1996 and the functions mandated to be done by the Commission as contained in the decision of the Cabinet of Ministers. He has not only acted contrary to the law but purported to arrogate to himself the authority of the Executive Government. His action is not only illegal and in excess of lawful authority but also biased."** It needs to be mentioned that the extent and magnitude of the findings against the Petitioner as set out in the Original Judgment are so strong that ***even the most forgiving employer would balk at his re-employment at such a record of moral turpitude.***

It is my considered opinion that this Application reveals fatal errors of law which would militate against any relief being granted to the Petitioner.

Setting aside the obvious question raised by the facts that the Petition before us was filed a full year after the Court's allegedly "invalid inducement" of the Petitioner's Affidavit – a long time to suffer what the Majority contends is a patently invalid restriction – **the Petitioner, amended the Petition on 21st July 2009 *without obtaining* permission from Court to do so. More specifically, the supporting Affidavit made in connection with the amendment lacks a signature of a Justice of the Peace/Commissioner, such omission rendering invalid and false the *jurat* contained therein. The amended Petition dated 21st July 2009, thus remained unsupported by a valid Affidavit, and, consequently, the said Affidavit should have been rejected *in limine*.**

When this matter was taken up on 3rd August 2009, a fresh set of papers were filed, consisting of a second amended Petition dated 31st July 2009 and a purported Affidavit dated 31st July 2009, *once again* without having obtained permission of Court. On the same day he sought permission to file an Affidavit within 10 days, which was "of a confidential nature" '

Petitioner

16.10.2012

SC Special Determination No. 2/2011

Hon. K. Sripavan, J

AAL for the Petitioner files Motion dated 18.10.2012 with :

1. Petition and Schedules "X", "Y" & "Z"
2. Documents
3. Affidavit
4. Special Affidavit in support of the facts contained in "X"

AAL further moves Your Lordship's Court be pleased that this Application be taken for Hearing on 16th, 19th & 20th November 2012, for a review and re-examination of Determination made on 24.10.2011. Submitted for Your Lordship's directions please.

DRSC
19.10.2012

Hon. Chief Justice

The Petitioner by Motion dated 18.10.2012 seeks to review and re-examine the Special Determination dated 24.10.2011. In terms of paragraph 9(h) of the Petition, Hon. Speaker has certified the Bill on 11.11.2011. Upon certification being endorsed, the Bill becomes law and in terms of Article 80(3), the validity of such Act shall not be called in question thereafter upon any ground whatsoever.

This Article (Art 80 (3)) must be interpreted according to its true purpose and intent as disclosed by the phraseology in its natural signification.

If a party perceives "judicial bias & disqualification" against a member of the Bench, such party should have raised objections at the time the Bill was taken up for hearing. If no Objection is taken at the former stage, that party cannot thereafter complain of the matter disclose, as giving rise to a real danger of bias. Any **frivolous** objection taken **after a long period of time without a firm foundation** would not only impede the due administration of justice, but also undermines the work of Court. (*Emphasis added*)

In view of the foregoing, I do not see any legal basis to entertain the Motion dated 18.10.2012. The Motion may be rejected in limine.

Sgd. Sripavan, J
22.10.2012

Hon. Amaratunga, J, Hon. Ratnayake, PC, J, Hon. Ekanayake, J.

I agree with the Observations of Hon. Sripavan, J. The Bill in question was considered by this Court on 24.10.2011 and the certificate by the Hon. Speaker had taken place on 11.11.2011. In terms of Article 80(3) of the Constitution the validly of such an Act shall not be questioned on any ground whatsoever.

No Objection was raised on any one of the three Judges who heard the matter on 24.10.2011.

For the aforementioned reasons the Motion dated 18.10.2012 should be rejected in limine.

Pls. consider the said Motion and tender your observations/concurrence.

Sgd. Chief Justice
23.10.2012

Hon. The Chief Justice

I agree with the observation of Your Ladyship and Hon. Sripavan J, set out above. Since there is no legal basis to entertain the Motion dated 18.10.2012, it should be rejected in limine. The Registrar of the Supreme Court should be directed not to entertain any further Motions/ Applications / Petitions in respect of this matter.

Sgd. Amaratunga, J
24.10.2012.

Hon. The Chief Justice

I agree with the observations and recommendations of Your Ladyship, Hon. Amaratunga J, and Hon. Sripavan, J.

Sgd. P.A. Ratnayake, J
25.10.2012

Hon. The Chief Justice

I agree with the observations and directions embodied in Your Ladyship's Order 23/10/2012, Hon. Justice Amaratunga's Order dated 24/10/2012, Hon. Justice Sripavan's Order dated 22/10/2012 and Hon. Justice P.A. Ratnayake's Order dated 25/10/2012.

Sgd. Ekanayake, J
7.11.2012