

MOONESINGHE AND OTHERS

v.

ATTORNEY-GENERAL

SUPREME COURT.

SHARVANANDA, C.J., WANASUNDERA, J., COLIN-THOMÉ, J., RANASINGHE, J.
AND TAMBIAH, J.

S. C. APPLICATION No. 6/86 (Spl.)

S.C. APPLICATION No. 174/86.

JANUARY 19 AND 20, 1987.

Constitutional jurisdiction of Supreme Court—Reference by H. E. the President of urgent Bill to the Supreme Court—Article 122(1)(b) and (c) and Article 123 of the Constitution—Copy of Reference delivered at the same time at the Speaker's official residence when Speaker was out of the island—Validity of determination of Supreme Court.

There was a sufficient compliance with the Constitutional stipulation of Article 122(1)(b) of the Constitution of 1978 that when His Excellency the President makes a written reference to the Chief Justice requiring the special determination of the Supreme Court as to whether a Bill or any provision thereof is inconsistent with the Constitution, a copy of such reference should at the same time be delivered to the Speaker, when the copy of the Reference was delivered at the same time at the Speaker's official residence although the Speaker was out of the island at the time.

APPLICATIONS for re-hearing on Constitutionality of Bill.

Nimal Senanayake, P.C. with Sanath Jayatileke, Miss S. M. Senaratne, Saliya Mathew, N. Siripala de Silva, Mrs. A. B. Dissanayake, Miss Lalitha Senaratne and Miss Shiranthi de Saram for 1st, 2nd and 3rd petitioners in Application No. 6/86.

Prins Gunasekera with Senaka Weeraratne, K. Abeypala and Mrs. M. Abeyawickrema for the petitioners in Application No. 174/86.

M. S. Aziz, D.S.G. with Ananda Kasturiarachchi, S.C. instructed by V. P. Tillekeratne, State Attorney for respondents in Application No. 6/86 and instructed by U. R. Wijetunga, State Attorney for the respondents in Application No. 174/86.

Cur. adv. vult.

February 6, 1987.

SHARVANANDA, C.J.

His Excellency the President, in terms of Article 122(1)(b) of the Constitution referred on 7.10.1986, the Special Presidential Commissions of Inquiry (Amendment) Bill for the special determination of the Supreme Court, as to whether the Bill or any provision thereof was inconsistent with the Constitution.

A Bench of the Supreme Court accordingly assembled on 10th October 1986 to examine the provisions of the Bill and after considering the submissions placed before them by the Deputy Solicitor General and K. M. P. Rajaratne, Attorney-at-Law and Morris Rajapakse, Attorney-at-Law, determined that the Bill was not inconsistent with any provisions of the Constitution and communicated the determination of the Supreme Court to the President and Speaker on that date itself.

The petitioners in both these applications complain that a copy of the aforesaid Reference made by the President to the Supreme Court was not at the same time delivered to the Speaker as required by the mandatory provisions of Article 122(1)(b) and hence the determination is invalid in law on the ground that there was no proper reference. Article 122(1)(b) provides as follows:

“122(1). In the case of a Bill which is, in the view of the Cabinet of Ministers, urgent in the national interest, and bears an endorsement to that effect under the hand of the Secretary to the Cabinet—

(a)

(b) the President shall by a written reference addressed to the Chief Justice, require the special determination of the Supreme Court as to whether the Bill or any provision thereof is inconsistent with the Constitution. A copy of such reference shall at the same time be delivered to the Speaker;

(c) the Supreme Court shall make its determination within twenty-four hours (or such longer period not exceeding three days as the President may specify) of the assembling of the court, and shall communicate its determination only to the President and the Speaker;”.

The gravamen of Petitioner’s complaint is that the copy of the Reference was in fact delivered to the Hon. Speaker only after the proceedings of the Supreme Court had commenced and concluded.

The petitioners in Application No. 6/86 allege that the Supreme Court had acted *per incuriam* being unaware that a condition precedent for the constitution and assembling of a Bench under Article 122(1)(c) had not been complied with. They state that, in consequence of the non-compliance with the said requirement the rights of Members of Parliament in relation to the legislative process of a Bill, which such requirement was intended to protect have been defeated. They pray for the constitution of a new Bench of the

Supreme Court to make the determination under Article 122(1)(c), when they would be able to urge that the Bill was in conflict with the Constitution.

The petitioners in application No. 174/86 averred in their petition that the Secretary to the Cabinet and/or Secretary to the President –

“severally or acting in concert have failed and neglected to follow the procedure laid down in Article 122(2) and acted unconstitutionally, illegally, mala fide, in not forwarding a copy of the said Reference to the Speaker of Parliament, as required by Article 122(2) of the Constitution, which action constituted a violation of the fundamental rights of the petitioners, vouched by Article 12 and 14 of the Constitution”.

They state that the special determination obtained without a copy of the Reference having been delivered to the Speaker as required by Article 122(2)(b) was unconstitutional and of no avail in law.

It would appear from the Hansard of 10.10.86 (P1) that the Deputy Speaker had at about 12.15 p.m. that day in reply to a question from a Member of Parliament said that he had not received a copy of the aforesaid Bill as yet. It would further appear from the document filed by the Petitioners that the copy of the Reference which was made to the Supreme Court by the President for the special determination of that court under Article 122(1)(b) was received by the Secretary-General of Parliament only at 3.55 p.m. on 10th October, 1986.

According to the affidavit of H. K. Fernando, clerk attached to the Presidential Secretariat, he had on 7.10.86 despatched the letter signed by the President addressed to the Acting Chief Justice with a copy to the Hon. Speaker, under sealed covers, marked “By hand—Urgent” to the Acting Chief Justice and Hon. Speaker, respectively; that the outer cover of the letter addressed to the Hon. Acting Chief Justice was addressed to the Registrar, Supreme Court, while the copy of the Hon. Speaker was addressed to “Hon. Speaker—Parliament”; that the two packets were handed over to the despatch clerk with a request that it be despatched immediately. According to the affidavit of Ginihaluge Sarath, cycle orderly attached to the Presidential Secretariat, he had on 7.10.86 handed over the letter addressed to the Hon. Speaker at 3.10 p.m. to an employee of “Mumtaz Mahal”, the official residence of the Hon. Speaker, and obtained the signature on the delivery book at the time of delivery; this employee was the person who ordinarily received communications

from the Presidential Secretariat and to whom he, in the past, handed over similar letters. He further stated that there had been earlier occasions when he had taken letters addressed to the Hon. Speaker direct to Parliament, but had on some such occasions been re-directed to the Speaker's residence, whenever the Speaker was not in Parliament. "Thereafter it became the practice adopted by him to take such letters first to the Hon. Speaker's residence and if such letters are not accepted to take the letters to Parliament."

From the above affidavits one has to conclude that a copy of the Reference made by President under Article 122(1)(b) was in fact delivered at the Speaker's official residence on 7.10.86 at the same time the President made the Reference to the Acting Chief Justice and that the said copy was re-delivered in Parliament on 10th October, 1986 at 3.55 p.m.

In the context of the undisputed fact that the Hon. Speaker was on 7.10.1986 out of the country on State business, the question arises whether the requirement mandated by Article 122(1)(b) of the Constitution that a copy of the Reference "shall at the same time be delivered to the Speaker" was complied with, when such a copy addressed to the Hon. Speaker was in fact delivered at the official residence of the Speaker on 7.10.86.

According to the Hansard of the 23.10.1986, Hon. the Speaker had at the outset of the proceedings of that day made the following pronouncement:

"Since the matter as to when the copy of this Bill was delivered to the Speaker has been raised in the House, I wish to inform the House that the copy of the Bill concerned had been received at my official residence on 7th October, 1986 and had been sent to my office in Parliament on 10.10.1986, after the matter was raised in the House".

To a point of order raised by the 1st petitioner in Application No.6/86 as Member of Parliament—"it is a known fact that you were not here in this country. Therefore to send a copy to your House is utterly irrelevant, because when you are away there is a Deputy Speaker who acts in your place, with all the powers that you exercise". The Hon. Speaker made the following ruling—

"In regard to the point of order, I rule that in this particular instance I am satisfied that all the necessary legal requirements have been adhered to for the consideration of this Bill ("Special Presidential Commissions of Inquiry (Amendment) Bill")."

The Parliament has accepted the above ruling of the Speaker. The Speaker is the best person to testify as to whether a copy of the Reference made in connection with the Bill had at the same time been delivered to him as required by the terms of Article 122(1)(b) of the Constitution. Implicit in his ruling is the determination that the requirement of law had been satisfied. In view of this ruling there is no basis for the contention of the petitioners that there was a breach of the mandatory provisions of Article 122(1)(b).

The petitioners in Application No. 174/86 urged that the provisions of the Bill infringe the fundamental rights of the petitioners. This contention involves the re-agitation of the question "whether the Bill or any provision thereof is inconsistent with the Constitution". By its determination, dated 10.10.86, this court had held that the Bill was not inconsistent with any provisions of the Constitution. We cannot sit in appeal over that determination. That determination is final and its correctness cannot be questioned.

On the 29th October, 1986, the Speaker in terms of Article 79 of the Constitution certified "This Bill—Special Presidential Commissions of Inquiry (Amendment) Bill, has been duly passed by Parliament." The Bill has thus passed into law as Act No. 38 of 1986—Special Presidential Commissions of Inquiry (Amendment) Act.

Article 80(1) of the Constitution provides—

"Subject to the provisions of paragraph (2) of this Article, a Bill passed by Parliament shall become law when the certificate of the Speaker is endorsed thereon."

Article 80(3) of the Constitution provides—

"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."

Counsel for the petitioners in Application No. 174/86 doubted the apparent dimension of Article 80(3) as to whether it covered cases where it could be demonstrated that a mandatory step preliminary to a Bill becoming law had been omitted. He contended that when a condition precedent or an essential step in procedure prescribed by the Constitution had not in fact been complied with, Article 80(3) would not be a bar to a court "inquiring into the validity of such law or

Act". He submitted that the conclusiveness secured by Article 80(3) is attracted only when the preliminary requirements mandated by the provisions of the Constitution have been complied with. He questioned the validity of an amendment introduced to a Bill, subsequent to a determination of the Supreme Court under Articles 121 and 122 of the Constitution with reference thereto and which cannot be identified as the amendment referred to in Article 123(2) of the Constitution. According to him the certificate of the Speaker does not impart validity to legislative process which has missed a vital step. The force of the argument of counsel is apparent. This contention of counsel raises vital constitutional issues which require very full consideration in an appropriate case which calls for a determination of the said issues as a necessary step to the decision of the case. As in the present case the omission postulated by Counsel as the basis for his legal submission is not present. It is not necessary to make any pronouncement on the correctness of his contention. In a proper case the scope and sweep of Article 80(3) will have to be gone into.

Counsel for the petitioners also urged that the purpose of the copy of the Reference under Article 122(2) being delivered to the Speaker, is for the Members of Parliament to be made aware of the Reference to enable them to arrange to be heard by the Supreme Court in proceedings in court preceding its determination. On the other hand, the Deputy Solicitor-General submitted that the purpose was to alert the Hon. Speaker that "no proceedings shall be had in Parliament in relation to such Bill until the determination of the Supreme Court had been made, or the expiry of a period of three weeks from the date of such Reference" as directed by Article 122(2) read with Article 121(2) of the Constitution. Again in view of our holding that there has been no breach of the provisions of Article 122(1)(b) of the Constitution, it is not necessary for us to decide this constitutional question.

Both petitions are accordingly dismissed without costs.

WANASUNDERA, J.—I agree.

COLIN-THOMÉ, J.—I agree.

RANASINGHE, J.—I agree.

TAMBIAH, J.—I agree.

Applications refused.