

LEADER PUBLICATIONS (PVT) LTD.

v.

**ARIYA RUBASINGHE, DIRECTOR OF INFORMATION AND
COMPETENT AUTHORITY AND OTHERS**

SUPREME COURT
AMERASINGHE, J.
DHEERARATNE, J. AND
ISMAIL, J.
SC (FR) No. 362/2000
19th JUNE, 2000.

Fundamental rights - Prohibition of the printing and publication of a newspaper - Taking possession of the printing press - Regulation 14 of Emergency Regulations - Articles 12(1), 14(1)(a) and 14(1)(g) of the Constitution - Validity of the appointment of Competent Authority - Regulation 2 of Emergency Regulations.

The petitioner is a Company incorporated with the object of carrying on business as a publisher, printer and proprietor of newspapers.

On 3rd May, 2000 the Secretary to the President announced that in terms of Regulation 2 of the Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 2000 read with Regulation 14(1) of that Regulation, the President had appointed the 1st respondent (Ariya Rubasinghe) to be the Competent Authority "for the aforesaid regulation."

On 22nd May, 2000 the 1st respondent purporting to act in terms of Regulation 14(2) b(i) by an order in writing prohibited the petitioner from printing, publishing and distributing its newspaper "Sunday Leader" or any newspaper for a period of six months from the date of the order. Further by an order purporting to be under regulation 14(2)(b)(ii) he directed the Inspector General of Police to take possession of the petitioner's printing press and its premises. The petitioner complained that the said orders were violative of his rights under Articles 12(1), 14(1)(a) and 14(1)(g) of the Constitution. At the hearing of the application, the validity of the 1st respondent's appointment as Competent Authority was taken up as a preliminary matter.

Regulation 14(2) in terms of which the 1st respondent was appointed as Competent Authority provides inter alia :

“Competent Authority” in relation to any emergency regulation means, unless otherwise provided, for in such regulation, any person appointed, by name, or by office, by the President to be a Competent Authority for the purpose of such regulation.”

Held :

1. Section 6 of the Public Security Ordinance requires the authorities or persons empowered to make orders and rules to be empowered by emergency regulations. There must be a substantive enactment in that regard. The words in the definition are merely descriptive and had no substantive effect of empowering the authority or person for the purposes of regulation 14.

Per Amerasinghe, J.

“Benion (Op. Cit. p. 436) says “It is a drafting error (less frequent now than formerly) to incorporate a substantive enactment in a definition. A definition is not expected to have operative effect as an independent enactment. If it is worded in that way, the Courts will tend to construe it restrictively and confine it to the proper function of a definition.”

2. Article 35 of the Constitution does not bar the challenge to the appointment of the Competent Authority.

Per Amerasinghe, J.

“This is not a proceeding against the President in respect of anything done or omitted to be done by the President. What is in issue, is the validity of Mr. Rubasinghe’s orders.”

3. The 1st respondent was not entitled to make the order he did, for he was not empowered by the regulation to do so within the meaning of section 6 of the Public Security Ordinance. There is no regulation stating who the “Competent Authority” is for the purposes of regulation 14.
4. The 1st respondent had no power or authority to act under regulation 14 : and the document dated 22nd May, 2000 addressed to the Leader Publications (Pvt) Ltd. by the 1st respondent, is a nullity and of no force or avail in law.

cases referred to :

1. *Pargan Singh v. Secretary of State for the Home Department* (1992) 1 W. L. R. 1052 at 1056.
2. *Blackpool Corporation v. Locker* (1948) 1 K. B. 349.
3. *Wakefield Board of Health v. West Riding & Grimsby Railway Co.* (1865) L R 1 QB 84 at 86.

APPLICATION for relief for infringement of fundamental rights.

Romesh de Silva, P. C. with Palitha Kumarasinghe and Hiran de Alwis instructed by G. G. Arulpragasam for petitioner.

K. C. Kamalasinghe, P. C., A. G. with Saleem Marsoof, P. C. A. S. G., Uditha Egalahewa, S. C. and Harsha Fernando, S. C., for 1st, 5th, 6th and 7th respondents.

Wijeyadasa Rajapaksha with Kapila Liyanage for 2nd respondent.

P. A. D. Samarasekera, P. C. with Keerthi Sri Gunawardene for 4th respondent.

Cur. adv. vult.

June 30, 2000

AMERASINGHE, J.

The petitioner is a company. It was incorporated with the object of carrying on business as a publisher, printer and proprietor of newspapers. In 1994, the petitioner commenced publication of *The Sunday Leader*. In 1999, the petitioner commenced publication of the *Irida Peramuna*.

The President of the Republic, acting under the powers vested in the President by the Public Security Ordinance No. 25 of 1947 (as amended), made the Emergency (Miscellaneous Provisions and Powers) Regulations No. 1 of 2000. (See Gazette Extraordinary 1130/8 of May 03, 2000). Regulation 14 of the said regulations provided for the "control

of publication." Regulation No. 1 of 2000 was amended by the President on 10th May 2000. (See Gazette Extraordinary 1131/20 of May 10, 2000) by the substitution of a new regulation 14.

Regulation 14 (1), among other things, provides that a "Competent Authority" may take such measures or give such directions as he may consider necessary for preventing or restricting the publication of matters which would or might be prejudicial to the interests of national security or the preservation of public order. The "Competent Authority" could direct the submission of material intended to be published, to be submitted to him. Regulation 14 (2) (a) states as follows: Every person who contravenes the provisions of any direction given under paragraph (1) of this regulation shall be guilty of an offence; and where any person is convicted of such an offence by reason of his having published a newspaper . . . , the President may by order direct that during such period as may be specified in that order, that person shall not publish any newspaper in Sri Lanka . . ." Regulation 14 (2) (b) states as follows: "Without prejudice to the provisions of sub-paragraph (a), where there is a contravention of the provisions of any direction given under paragraph (1) of this regulation and such contravention is in respect of any publication in any newspaper . . . , the Competent Authority may, after issuing one or more warnings as he may consider reasonable, order -

- (i) that no person shall print, publish or distribute or in any way be concerned in the printing, publication or distribution of such newspaper . . . for such period as may be specified in the order; or
- (ii) that the printing press, computer or equipment used for the publication of such newspaper . . . , for such period as is specified in the order, not be used for any purposes whatsoever or for any purpose as is specified in the order, and such order may authorize any person specified therein

to take such steps (including the taking possession of any printing press, computer or equipment with respect to which the order is made or of any premises in which it is contained or of any part of such printing press, computer or equipment or premises) as appear to the person so authorize[d] to be necessary for seeking compliance with the order."

On 03 May 2000, the Secretary to the President made the following notification under the caption "The Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 2000 Appointment of Competent Authority under Regulation 14 (1); "It is hereby notified that in terms of Regulation 2 of the Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 2000, read with Regulation 14 (1) of that regulation, the President has appointed Mr. Ariya Rubasinghe, Director of Information, to be the Competent Authority for the aforesaid regulation." (See Gazette Extraordinary 1130/23 of May 06, 2000).

On 08 May 2000, Mr. Ariya Rubasinghe, signing the document as "Director of Information and Competent Authority", sent the Editor of The Sunday Leader a copy of Gazette Extraordinary 1130 of 03 May 2000 and issued the following "directive": "I being the Competent Authority appointed under section 14 (1) of the said regulation hereby require you to strictly adhere to the provisions of section 14 of the said regulation and to obtain my prior approval for any such publication or transmission (sic)." On May 09, 2000, the Editor replied as follows: "I write with reference to your letter . . . dated 08 May 2000 informing me that you have been appointed a Competent Authority under section 14(1) of the regulations cited above. You have however not intimated when your appointment was gazetted. I write to inform you that The Sunday Leader will adhere to the provisions of section 14 and 14 (1) as requested by you."

On 09 May 2000 Mr. Rubasinghe wrote to the Editor of The Sunday Leader alleging that regulation 14 (1) had been

violated. He stated, "I, being the Competent Authority appointed under, this regulation, do hereby inform you that any such future violation of this regulation will compel me to take appropriate action against you and your newspaper." Another warning was issued on 19 May 2000. On 22 May 2000, Mr. Rubasinghe, wrote to the petitioner as follows:

"Acting under the powers vested with the Competent Authority under the regulation 14 (2) (b) . . . I Ariya Rubasinghe the Competent Authority do hereby inform you that the news article appearing in The Sunday Leader . . . of 21st May 2000 . . . "War in fantasy land - Palaly is not under attack" is a publication made in contravention of the directives given under the regulation 14 (1) particularly with reference to the matters relating to the operations of security forces and that the said article has been published without submitting the same to me for prior approval as required by my directives dated 8th May 2000 and further that [the] said news item is prejudicial to the interest of national security and the preservation of public order.

Therefore acting under the powers vested with me by regulation 14 (2) (b) (i) I, hereby order that from 22nd May 2000 to 21st November 2000 for the period of six months you are prohibited from printing, publishing and distributing . . . the said The Sunday Leader newspaper or any newspaper.

Further acting under the powers vested with me by regulation 14 (2) (b) (ii), I, hereby order that from 22nd May 2000 to 21st November 2000 for the period of six months, the printing press located at Leader Publications (Pvt.) Ltd., No. 24, Katukurunduwatte Road, Ratmalana, shall not be used for any printing purpose whatsoever and for the purpose of carrying out this order the Inspector General of Police, Sri Lanka is hereby authorized by me to take such steps for securing compliance with the order including the taking of the possession of the said printing press and its premises . . ."

On 31 May 2000, the petitioner filed an application in this Court alleging the violation of its fundamental rights guaranteed by the Constitution. An amended application was filed on 05 June 2000. Leave to proceed was granted for the alleged infringement of Articles 12 (1), 14 (1) (a) and 14 (1) (g) of the Constitution. The application for interim relief was refused and the matter was listed for hearing on 19 June 2000.

After learned counsel for the petitioner had outlined his case, he commenced his submissions on the validity of the order made by the 1st respondent. When learned counsel for the petitioner referred to the order of the 1st respondent, purporting to act under the provisions of regulation 14 (2) (b), we enquired whether the 1st respondent had the power to make the decisions he did, since it did not appear from the Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 2000 that he had been appointed under the provisions of the said Emergency Regulation to be a 'Competent Authority' for the purposes of regulation 14.

Although the Attorney General did make certain oral submissions, he said he was taken by surprise and requested time to consider the matter and make written submissions. We were at a loss to understand why the respondents, including the Attorney General, were in such a state of unpreparedness on that matter, for, as we have seen, when the Editor of *The Sunday Leader* was sent a copy of the Gazette notification by Mr. Rubasinghe who had claimed to be the Competent Authority for the purposes of regulation 14, the Editor had raised the matter of his appointment. Again, in the appeal of the Managing Director of the petitioner to the Chairman of the Advisory Committee on 24 May 2000, it was stated that "Mr. Rubasinghe has *purported* to act in terms of his *purported* powers *purportedly* vested in him by regulation 14 . . .". The Advisory Committee was requested to "set aside the *purported* order . . .", *inter alia*, on the ground that it was "*ultra vires* the purported powers of Mr. Rubasinghe." (The emphasis is mine). In paragraph 41 of its petition, the petitioner states that it is

“unaware whether the 1st respondent has been appointed as a Competent Authority . . .”. With regard to the reliefs sought in the petition, the petitioner, *inter alia*, prays as follows: “(e) declare that the 1st respondent has no power or authority to act as a Competent Authority under Regulation 14 . . .; (f) declare that the order contained in the letter dated 22nd May 2000 made by the [1st] respondent, prohibiting the printing, publication and distributing of the petitioner’s newspapers and prohibiting the petitioner from using its printing press is null and void and/or bad in law.” The question of jurisdiction, in the sense of the 1st respondent’s power to decide and make orders on matters referred to in regulation 14, was in issue, despite his confident assertion that he had been the duly appointed ‘Competent Authority’ for the purposes for which regulation 14 was made. It was certainly not, as the Attorney General said and learned Counsel for the second respondent suggested, a question “raised by the court for consideration”: we merely drew attention to the matter and clarified the issue to be decided. We stated that if the issue of the competence of the 1st respondent was decided against him, the matter before us would be at an end. On the other hand, if we held in favour of the respondents’ submissions on the question of competence, the matter would be resumed for argument.

We wanted assistance from counsel to enable us to decide the matter. In response to our question. How much time do you want?, the Attorney General requested a day’s time to make written submissions. This was granted to him *as well as to all other counsel*. The Attorney General and learned counsel for the 2nd respondent filed written submissions. We took time for consideration of the submissions of counsel.

THE ATTORNEY GENERAL’S SUBMISSIONS

The Attorney General’s oral and written submissions will be considered together. The Attorney General submitted that although the 1st respondent had not in fact been appointed a ‘Competent Authority’ by the regulations, he had nevertheless been duly appointed. Regulation 2 (1), states as follows:

“ ‘Competent Authority’ in relation to any Emergency Regulation means, unless otherwise provided for in such regulation, any person appointed, by name, or by office, by the President to be a Competent Authority for the purpose of such regulation.” Regulation 5 (1) provides for the appointment of any person as a Competent Authority for the purposes of any emergency regulation. This is an “enabling provision” and cannot be “diluted” by the rest of the provisions of that regulation. Therefore, the appointment has been validly made for the purposes of regulation 14. Even in the absence of specific reference in regulation 5 for the appointment of the Competent Authority by the President, yet the said appointment by necessary implication would be valid as the words “Competent Authority” contemplated in regulation 5 “would attract the interpretation in regulation 2 (1).” Regulation 2 (1) makes it clear that the “Competent Authority” is the person appointed by name or office by the President. Whilst regulation 5 enables the appointment of a Competent Authority, the mode of appointment is set down in regulation 2,” although this may be “inelegant drafting.” In the Gazette notification published on May 06, 2000, it was stated that the 1st respondent had been appointed a ‘Competent Authority’ for the purposes of regulation 14 (1). In any event, in terms of section 6 of the Public Security Ordinance, the only person who could have appointed the Competent Authority is the President. “Where the Emergency Regulation makes no reference to the appointment of a particular authority, the only person who could make such appointment is the President and such appointment when made derives its validity through section 6.” Furthermore, Article 4 of the Constitution provides that the executive power of the President, including the defence of Sri Lanka, shall be exercised by the President of the Republic. Executive power “necessarily includes the power of appointment.” The Competent Authority contemplated by regulation 14 “is not an institution or body requiring to be formally constituted. This regulation by itself enables such person to be appointed in order to exercise powers and functions specified therein.” Regulation 14 is “self contained to

enable such Competent Authority to act without any reference being made to such person either in regulation 2 or regulation 5 provided he is appointed by the President." Therefore, "even assuming but not conceding that there is no empowering provision in the Regulation in relation to a Competent Authority, the appointment of a Competent Authority for the purposes of Regulation 14 (1) is valid and in accordance with the said Regulation." "Having regard to the nature and scope of the Emergency Regulations and the circumstances in which they were made, as set out in paragraph 19 of the affidavit of the 1st respondent, such regulations must be interpreted so as to give proper and effectual effect to the purpose for which they were made . . . Even when there is an omission, a Regulation must be interpreted to give effect to the purpose for which it was made."

MY VIEWS ON THE ATTORNEY GENERAL'S SUBMISSIONS

The Attorney General correctly submitted that the executive power of the people, including the defence of Sri Lanka, is, by Article 4 (b) of the Constitution, vested in the President. I agree that the executive power extends to the power of making appointments. However, it does not follow that the President may do as she or he may will, for appointments must be made in conformity with the provisions of the law. The executive power of the President includes the defence of Sri Lanka. But emergency powers derive from Parliament by delegation. The executive has no *pouvoir réglementaire*, as it has in France. Under the Constitution, the legislative power of the people is exercised by Parliament. The President has no primary legislative power. However, the law making power is delegated by Parliament to the President in respect of the making of such emergency regulations as appear to her or him to be necessary or expedient in the interests of public security and the preservation of public order and the suppression of mutiny, riot or civil commotion, or for the maintenance of supplies and services essential to the life of the community. (Section 5 Public Security Act No. 25 of 1947 as

amended). Article 155 (1) of the Constitution states the Public Security Ordinance shall be deemed to be a law enacted by Parliament. Ordinarily, delegated powers should be exercised by the authority upon whom it is conferred, and by no one else. *Delegatus non potest delegare*, unless a contrary intention is expressed. Section 6 of the Public Security Ordinance permits delegation by the President. Section 6 states as follows: "Emergency regulations may provide for empowering such authorities or persons as may be specified in the regulations to make orders and rules for any of the purposes for which such regulations are authorized by this Ordinance to be made, and may contain such incidental and supplementary provisions as appear to the President to be necessary or expedient for the purposes of the regulations." The section confers a power which if exercised is coupled with a duty. Parliament has intended to leave to the judgment of the President the question whether or not to exercise the power to empower authorities or persons at all; but where the President decides to exercise the power, the President must make emergency regulations empowering such authorities or persons as may be specified in the regulations to make orders and rules for any of the purposes for which such regulations are authorized by the Public Security Ordinance to be made. There is a duty to exercise such delegated power even though it has been conferred in discretionary terms. In *Pargan Singh v. Secretary of State for the Home Department*⁽¹⁾, where the Immigration Act 1971 s. 18 (1) says that the Secretary of State 'may by regulations provide' for notice to be given of an appealable decision, the House of Lords held that the true legal meaning of this enactment was that such regulations *must* be made. See also Francis Bennion, *Statutory Interpretation*, 3rd ed. 1997, p. 182.

In the matter before this Court, the President did make emergency regulations empowering certain authorities or persons specified in such regulations to make orders for the various purposes of the regulations made. Thus with regard to requisitioning and acquisition of property, regulation 8

states that "a Competent Authority" has the power to do certain things. Regulation 8 (10) states that for the purpose of regulation 8 "Competent Authority" includes six specified classes of persons. Additionally, regulations 8 (7) and (8) confer powers with regard to the requisitioning of immovable property on the Secretary to the Ministry of Defence. Regulation 9 confers powers with regard to the requisitioning of vehicles on a "Competent Authority". Regulation 9 (5) specifies who "Competent Authority" means for the purposes of regulation 9. Regulation 10 A provides for the appointment by the President of a Commissioner-General of Essential Services for the purposes of the regulation . . . Regulation 10 B provides for the appointment by the President of a Commissioner of Civil Security for the purposes of the regulations. With regard to the prevention of the entry of persons into restricted places, regulation 11 confers powers on a "Competent Authority". Regulation 11 (3) specifies who "Competent Authority" means for the purposes of regulation 11. With regard to the prohibition of meetings and processions (regulation 12) and the imposition of curfew (regulation 13) the President is designated as the relevant authority. With regard to the supervision, search and detention of persons, regulations 16 and 17 confer powers on the Secretary to the Ministry of Defence. With regard to the power of search, seizure arrest and detention, regulation 18 (1) confers powers on certain specified persons. Regulation 20 B provides for the appointment of a Commissioner-General of Rehabilitation by the President of the purposes of that regulation. These provisions recognize the fact that when Parliament in section 6 of the Public Security Ordinance enabled the President to empower authorities or persons to do certain things authorized by the Ordinance, such empowerment was conditional: the authorities or persons empowered to make orders and rules for any of the purposes for which any regulation was made must be specified in emergency regulations. If Parliament has found it necessary in order to meet the severe conditions of a time to authorize by indirect means the taking of the extraordinary

measures set out in regulation 14 at the command of a selected authority or person, plain justice at least requires that the public should know not only what precisely is the authority conferred, so that it may be ensured that the exercise is not in excess of the power Parliament has conferred, but also that the authority or person designated to take such measures should be identified and duly empowered in accordance with a prescribed mode of appointment. Publicity is essential. See the observations in *Blackpool Corporation v. Locker*⁽²⁾

In the same delegated legislation in which the regulations mentioned above relating to the appointment of various authorities and persons to make orders, namely, the Emergency (Miscellaneous Provision and Powers) Regulation No. 1 of 2000 as amended, regulation 14 deals with "Control of Publications". There are several authorities or persons empowered to exercise the powers conferred by regulation 14. It is stated in regulation 14 (2) (a) that where there has been a conviction of a person for an offence of having published a newspaper in contravention of regulation 14 (1), the President may by order direct that during such period as may be specified in that order that person shall not publish any newspaper in Sri Lanka. In terms of regulation 14 (6), the President may direct that an order made under regulation 14 be suspended or revoked by the President. Regulation 14 (1) refers to a "Competent Authority" who may also make decisions and take various actions with regard to the "control of publications," including the authorization of any person specified in the order of the Competent Authority to take such steps as appear to the persons so authorized to be necessary for compliance with the order. As we have seen, in the matter before us, the person authorized was the Inspector-General of Police. I am not considering or commenting upon the acts or omissions of Mr. Rubasinghe. I do note, however, that whereas the President has confined action on the part of the President to cases where there has been conviction for an offence, regulation 14 (2) (b) enables the "Competent Authority . . . after issuing one or more warnings as he may consider reasonable . . ." to take the

measures set out in regulation 14 which, as we have seen, far exceed those measures the President may take under regulation 14 (2) (a).

We are not at this stage concerned with the question of 'warnings' issued by the 1st respondent and their validity or significance. Nor are we concerned with the 1st respondent's interpretation of a cartoon or articles referred to in paragraph 19 of the 1st respondent's affidavit as suggested by the Attorney General to be indicative of the purpose for which the regulations were made, namely to deal with a "serious crisis" confronting the country. What is in issue is not the existence of circumstances warranting the bringing into operation Part II of the Public Security Ordinance. The question is whether the 1st respondent was by law entitled to make the orders he made, even granting that there was a "serious crisis."

I am of the view that the 1st respondent was not entitled to make the orders he did, for he was not empowered by the regulations to do so within the meaning of section 6 of the Public Security Ordinance. There is *no regulation* stating who the "Competent Authority" is for the purposes of regulation 14.

Regulation 14 may be "self contained". But, who is the authority or persons as specified in the *regulations* to make orders under regulation 14? No one. The delegation of power by the President to a Competent Authority was effected by regulation 14. But the means chosen for the appointment, as far as the Competent Authority for the purposes of regulation 14 was concerned, namely by a notification published in the Gazette was not an effective exercise of the delegated power conferred by Parliament by section 6 of the Public Security Ordinance. Regulation 5 is no doubt, as the Attorney General said, an "enabling provision"; but what it enables is the appointment of competent authorities for the whole or any part of Sri Lanka and for the appointment of several competent authorities for the purposes of any regulation or for any specified area or place. Reliance was placed upon section 2 (1)

of the regulations which defines "Competent Authority". The Gazette notification making the purported appointment too refers to regulation 2 (1). Section 6 of the Public Security Ordinance requires the authorities or persons empowered to, to make orders and rules to be empowered by emergency regulations. There must be a substantive enactment in that regard. The words in the definition are merely descriptive and had no substantive effect of empowering any authority or person for the purposes of regulation 14. See *Wakefield Board of Health v. West Riding & Grimsby Railway Co.*,⁽³⁾.

Bennion (op.cit.P. 436) says: "It is a drafting error (less frequent now than formerly) to incorporate a substantive enactment in a definition. A definition is not expected to have operative effect as an independent enactment. If it is worded in that way, the Courts will tend to construe it restrictively and confine it to the proper function of a definition."

If the definition of "Competent Authority" in regulation 2 (1) was drafted with the intention of having a substantive effect it must be regarded as a drafting error and construed restrictively and confined to its limited function of a definition. Parliament has reposed trust and confidence in the President and since the President is authorized to make binding, general law through emergency regulations, all conditions imposed by Parliament, including those set out in section 6 of the Public Security Ordinance where Parliament has, in an exceptional instance, included a power of sub-delegation to authorities and persons selected by the President, must be strictly observed, especially since the rights and freedoms of citizens under the ordinary laws may be disregarded. Indeed, the very purpose of emergency regulations is to suspend the operation of the laws of the land for the sake of achieving the purposes specified by Parliament in the Public Security Ordinance.

Moreover, the failure to identify the Competent Authority for the purpose of regulation 14 falls outside the usual, operative, delegated - legislative scheme of Parliament: As we

have seen, the "Competent Authority" and other person or authority for the purpose of each regulation in the Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 2000 have been identified except in the one case of the "Competent Authority" for the purposes of regulation 14. It might also be pointed out that in several Emergency (Restriction on Publication and Transmission of Sensitive Military Information) Regulations, (e. g. regulation 2 of No. 1 of 1995; regulation 4 of No. 1 of 1996; regulation 4 of No. 1 of 1998), it is stated as follows: "The President may for the purpose of these regulations, appoint by name or office, any person or body of persons to be the "Competent Authority". Those regulations gave the "Competent Authority" certain powers with regard to the control of publication, just as regulation 14 of the Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 2000 seeks to do.

THE SUBMISSIONS OF LEARNED COUNSEL FOR THE SECOND RESPONDENT

Regulation 2 states that any person can be appointed by name or office as a Competent Authority. The President may in terms of Article 155 (2) of the Constitution make regulations overriding or suspending the operation of the provisions of law except the provisions of the Constitution. The President has derived authority to appoint a Competent Authority by virtue of Article 155 of the Constitution and sections 5 and 6 of the Public Security Ordinance. When the President makes regulations the President need not mention in such regulations that the President is empowering herself with authority to appoint competent authorities. If the proposition put forward is accepted, "then one can argue that even in the absence of provisions in the Constitution and the Public Security Ordinance still the President can appoint competent authorities if there is enabling provision in the regulation." It is not "logical to argue that the President is empowered to make regulations empowering herself to appoint competent authorities in the absence of the said (sic) provisions of law. In view of the

applicability of the said provisions of law there is no necessity whatsoever for the President to include an enabling provision to appoint the competent authorities." The power to appoint competent authorities is vested in the President and the President has made the appointment. There is no irregularity in the procedure followed. In any event, the appointment cannot be challenged in view of the immunity of the President in terms of Article 35 of the Constitution. Under no circumstances can the Court question the validity and/or legality of the appointment of competent authorities. In fact the petitioner has not in the petition challenged the appointment of the competent authorities. Neither the President nor the Attorney General under and in terms of Article 35 (3) of the Constitution have been made parties to this application and therefore it is incorrect to consider the validity of such appointment without hearing the necessary parties.

MY VIEWS ON THE SUBMISSIONS OF COUNSEL FOR THE SECOND RESPONDENT

The President's power to appoint competent authorities is not derived from regulation 2. Nor is it derived from Article 155 of the Constitution. It is derived from section 6 of the Public Security Ordinance. Article 155 of the Constitution states that the Public Security Ordinance "shall be deemed to be a law enacted by Parliament." As I have explained, if and when the President decides to appoint authorities or persons to exercise certain functions, the President must, as required by Parliament in section 6 of the Public Security Ordinance, as a condition of its delegation of legislative authority to the President, empower persons who are to exercise sub-delegated powers relating to the making of orders and rules, in emergency regulations.

The President cannot, as learned counsel for the second respondent supposed, appoint competent authorities except in strict accordance with the provisions of section 6 of the Public Security Ordinance. It is not a question of "logic", as learned counsel submitted; it is a question of law; and the law

is stated in section 6 of the Public Security Ordinance. The making of emergency regulations cannot have the effect of overriding, amending or suspending the operation of the Public Security Ordinance, under Article 155 (2) of the Constitution, for it is through that law that Parliament delegates the power of making emergency regulations to the President. It is a duteous thing that the President stricly observes the conditions of the powers of legislation delegated by parliament. The submissions based on the immunity of the President from suit and the need to hear "necessary parties" does not require much consideration. This is not a proceeding against the President in respect of anything done or omitted to be done by the President. What is in issue, is the validity of Mr. Rubasinghe's orders. It is a matter where Paliament has delegated some of its Constitutional powers to the President and the issue is whether the power of Parliament delegated to the President has been exercised in accordance with the intention of Parliament as stated in section 6 of the Public Security Ordinance. The Constitution, as well as sections 2 (3), (4) (5) and (6) of the Public Security Ordinance, make it clear in Article 155 that the President's powers with regard to public security are derived from Parliament and are subject to Parliament's control and scrutiny. The Courts shall endeavour to ensure that the will of Parliament, as expressed in the Public Security Ordinance, will be duly carried out. As for the submission that, the petitioner had not challenged the validity of the Competent Authority's appointment, attention is drawn to paragraph 41 of the petition and prayers (e) and (f) of the petition, as well as correspondence, refered to above.

ORDER

For the reasons set out in my judgment, I declare that the first respondent had no power or authority to act under regulation 14. I further declare that the document dated the 22nd of May, 2000 (P26) addressed to Leader Publications (Pvt.) Ltd. by the first respondent, is a nullity and of no force or avail in law.

Acting under and in terms of Article 126 (4) of the Constitution, I

(1) Direct the 5th respondent, the Inspector-General of Police, to restore forthwith to the petitioner possession of any printing press, computer equipment or premises of which possession may have been taken pursuant to any order or purported order issued by the first respondent to the 5th respondent;

(2) make order that the State shall pay the petitioner a sum of Rs. 100,000 as costs within 8 weeks from the date of this order.

DHEERARATNE, J. - I agree.

ISMAL, J. - I agree.

Relief granted by declaration that the 1st respondent's appointment as Competent Authority is a nullity.