

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

*In the matter of an Application under and in  
terms of Article 126 read with Article 17 of  
the Constitution of the Democratic Socialist  
Republic of Sri Lanka.*

Mathiparanan Abraham Sumanthiran  
3/1, Daya Road,  
Colombo 00600

**PETITIONER**

Supreme Court Fundamental  
Rights Application No. 37/2024

**Vs.**

1. Honourable Mahinda Yapa  
Abeywardana  
Speaker of Parliament,  
Parliament of Sri Lanka,  
Sri Jayawardenapura Kotte
  
2. Honourable Attorney General,  
Attorney General's Department,  
Colombo 01200

**RESPONDENTS**

Before : Priyantha Jayawardena PC, J  
A.L. Shiran Gooneratne, J  
Achala Wengappuli, J

Counsel : Suren Fernando with Khyati Wickramanyake for the petitioner

Sanjaya Rajaratnam PC, Attorney General with Viraj Dayaratne PC, ASG,  
Nirmalan Wigneswaran DSG and Medhaka Fernando SC for the  
Respondents

Argued on : 20<sup>th</sup> February, 2024

Decided on : 29<sup>th</sup> February, 2024

### **Petition**

The petitioner filed the instant application, alleging that there was non-compliance with the determination made by the Supreme Court in legislating the ‘Online Safety Bill’. Further, in the prayer to the petition, the petitioner prayed, *inter alia*;

- “(b) Issue an **interim order** suspending the operation of the purported document published as “Online Safety Act No. 9 of 2024” (marked P9(a)-(c)), and / or such other appropriate order;
- (c) **Declare** that the fundamental rights guaranteed by Articles 12(1) and 14 of the Constitution to the Petitioner and the citizens of Sri Lanka, have been infringed by the purported certification by the 1<sup>st</sup> Respondent of the 'Online Safety Act No. 9 of 2024" P9(a)-(e)), and that such conduct entails further imminent infringement of such rights, and amounts to a continuing violation of the said fundamental rights, and/or such other appropriate order;
- (d) **Declare** that the fundamental rights guaranteed by Articles 12(1) and 14 of the Constitution to the Petitioner and the citizens of Sri Lanka, have been infringed by the 2<sup>nd</sup> Respondent, by failing to advise the 1<sup>st</sup> Respondent and/or Parliament that the purported Committee Stage Amendments did not make the Online Safety Bill compliant with the Determination of Your Lordships' Court and/or that the said Bill would still require a 2/3 Special Majority vote in order to be enacted into law;
- (e) **Declare** that the purported certification of the 1<sup>st</sup> Respondent of the purported 'Online Safety Act' (P9(a)-(c)), is a nullity in law, and of no force and/or effect in law, and/ or such other appropriate order;

(f) **Declare** that the purported document published as "Online Safety Act No. 9 of 2024" (P9(a)-(c)) is *ultra vires* the Constitution and of no force and / or effect in law, and/or such other appropriate order;”

The petitioner stated that on the 18<sup>th</sup> of September, 2023 a Bill titled ‘Online Safety Bill’ was published in the Gazette. Further, since the provisions in the said Bill were inconsistent with the Constitution, the jurisdiction of this court was invoked in terms of Article 120 read with Article 121 of the Constitution by the petitioner and several others to determine whether any of the Clauses in the said Bill were inconsistent with the Constitution.

The petitioner stated that when the Bill was taken up for hearing in court on the 18<sup>th</sup> of October 2023, the learned Additional Solicitor General, who appeared in court on notice issued by court, proposed several amendments to the Bill and informed court that the said amendments would be moved at the Committee Stage in Parliament. After the hearing in court, the determination of the court was forwarded to the 1<sup>st</sup> respondent and the President of the Republic. Thereafter, the 1<sup>st</sup> respondent read out the determination in Parliament on the 7<sup>th</sup> of November, 2023.

Further, this court determined that several Clauses of the Bill were inconsistent with the Constitution, and thus, such Clauses should be passed in Parliament by a Special Majority. However, the court further determined that if the proposed amendments referred to in the determination were incorporated into the Bill, then the inconsistencies in the Bill would cease, and the Bill could be passed with a simple majority vote of Members of Parliament.

Moreover, on the 23<sup>rd</sup> of January 2024, the debate relating to the ‘Online Safety Bill’ commenced in Parliament. Furthermore, during the Committee Stage in Parliament, several Members of Parliament, including the petitioner, brought to the notice of the 1<sup>st</sup> respondent that there were several inconsistencies between the determination and the Committee Stage amendments proposed in Parliament. Further, the petitioner identified the said discrepancies and offered to list them out to Parliament or give them to the relevant Minister.

Thereafter, during the course of the Parliamentary proceedings, the petitioner was asked to speak to the Additional Solicitor General, who was present in the Public Officers’ Box and was accompanied by the Assistant Secretary General of Parliament. There, the petitioner raised the issue of non-compliance with the determination made by this court but was informed that all of the amendments required by the Supreme Court would be incorporated into the Act. However, at the third reading, despite requests for a division, the 1<sup>st</sup> respondent proceeded to declare that the

Bill was passed without taking a vote thereon. The petitioner further stated that the Bill was not passed by a special majority vote in Parliament, either at the second reading or at the third reading.

The petitioner further stated that, in the absence of complying with the amendments suggested in the determination of the Supreme Court, the Bill was required to be passed by a special majority in Parliament. Hence, the speaker shall certify the Bill only if it has been passed by a special majority in Parliament.

The petitioner stated that in terms of Gazette Extraordinary No. 2368/25 dated 26<sup>th</sup> of January 2024, published by the President in terms of Article 70 of the Constitution, Parliament was prorogued with effect from midnight on the 26<sup>th</sup> of January, 2024, and was to commence its next session on the 7<sup>th</sup> of February, 2024. However, the 1<sup>st</sup> respondent purportedly certified the ‘Online Safety Bill’ on the 1<sup>st</sup> of February, 2024.

Thus, the purported certification is invalid in law as the purported certification took place while Parliament remained prorogued. Hence, the ‘Online Safety Bill’ has not become law. Further, the ‘Online Safety Bill’ cannot be considered as passed into law in terms of the Constitution, particularly in view of Article 123 read with Articles 79 and 80.

The petitioner stated that by purporting to endorse the certificate on the ‘Online Safety Bill’ under Article 79 of the Constitution, the 1<sup>st</sup> respondent has acted in violation of the Constitution and violated the Fundamental Rights of the petitioner and the citizens of Sri Lanka. In the circumstances, the petitioner stated that his Fundamental Rights and the Fundamental Rights of the citizens of Sri Lanka guaranteed under Article 12(1) have been violated by the actions of the 1<sup>st</sup> respondent.

Further, the purported act of the 1<sup>st</sup> respondent in endorsing the certificate of the said Bill amounts to executive and/or administrative action within the meaning of Article 17 read with Article 126 of the Constitution. In any event, the purported actions of the 1<sup>st</sup> respondent are *ultra vires* the Constitution and a nullity in law. Hence, the purported actions of the 1<sup>st</sup> respondent is not protected by any form of privilege or immunity.

## **Preliminary Objections raised by the respondents**

When this application was supported in court, the Attorney General who appeared for the respondents raised the following preliminary objections;

- (i) The matters urged in the petition do not fall within the ambit of ‘executive and administrative action’ referred to in Article 126 of the Constitution. In this regard, he drew the attention of court to averments in the petition and the prayer (b) to the petition. Hence, as the allegations levelled in the petition do not fall within the ‘executive and administrative action’, the instant application should be dismissed in *limine*. In support of his contention, he submitted that the powers of the legislature are set out in Chapter 11 of the Constitution and the allegation levelled in the petition falls outside the scope of ‘executive and administrative’ action.
- (ii) Further, he drew the attention of court to the averments in the affidavit filed along with the petition and submitted that the matters referred to in the said averments had taken place in the chamber of Parliament. Therefore, such matters fall within Parliamentary privileges and thus, the courts have no jurisdiction to look into the matters referred to in the petition.
- (iii) Moreover, the 1<sup>st</sup> respondent has certified the ‘Online Safety Bill’ under Article 79 of the Constitution. Hence, the court cannot consider the legality of the Act in view of Article 80(3) of the Constitution. In this regard, he cited the judgment delivered in ***Gamage v Perera (2006) 3 SLR 354 at 359***.
- (iv) Matters averred in the petition refers to the legislative process and therefore, Article 124 of the Constitution has ousted the jurisdiction of courts in considering the procedure that the ‘Online Safety Bill’ was enacted into law.
- (v) In terms of section 3 of the Parliament (Powers and Privileges) Act the courts have no jurisdiction to consider the allegations stated in the petition as the said section has taken away the jurisdiction of courts with regard to matters relating to parliamentary affairs.

## **Do the events referred to in the petition constitute an executive or administrative action referred to in Article 126 of the Constitution?**

The learned counsel for the petitioner contended that the 1<sup>st</sup> respondent purportedly issued the certificate on the ‘Online Safety Bill’ in terms of Article 79 of the Constitution. Thus, the 1<sup>st</sup>

respondent has acted in violation of and outside the provisions of the Constitution and violated the Fundamental Rights of the petitioner and the citizens of Sri Lanka. In this regard, it was submitted that, as the 1<sup>st</sup> respondent has acted outside the powers conferred on him by the Constitution, his actions do not fall within the 'business of Parliament'. Hence, the instant application can be maintained under Article 126 of the Constitution.

However, the Attorney General submitted that the matters referred to in the petition do not fall within Article 126 of the Constitution, and such matters refer to the legislative process. Thus, it needs to be considered whether the events referred to in the petition comes within the purview of the legislative process or amounts to an executive or administrative action referred to in Article 126 of the Constitution.

### **Legislative Process**

The Constitution and the Standing Orders of Parliament provide for the presentation of two types of Bills in Parliament. Namely, Private Member's Bills and Government Bills. (Only Government Bills are discussed in this Order). A Government Bill is initiated by the line Ministry, and the Minister in charge of the subject will present a Cabinet Memorandum to the Cabinet of Ministers setting out the policy and the justification to enact the legislation and seeking the approval of the Cabinet of Ministers to draft the Bill. If the Cabinet of Ministers approves it, the line ministry will forward the said Cabinet Memorandum and the decision of the Cabinet of Ministers to the Legal Draftsman's Department to draft legislation.

After the Legal Draftsman prepares a draft Bill it will be sent to the Attorney General to examine the constitutionality of the Bill in terms of Article 77 of the Constitution. If the draft Bill is in conformity with the Constitution, a certificate is issued by the Attorney General in terms of Article 77(1) of the Constitution stating that the Bill is in conformity with the Constitution. Thereafter, the draft Bill will be forwarded to the Cabinet of Ministers by the Minister in charge of the subject, along with the certificate issued by the Attorney General, seeking the approval of the Cabinet of Ministers to publish the Bill in the Government Gazette and to table it in Parliament. After the approval of the Cabinet of Ministers is obtained, the Bill is tabled in Parliament and published in the Government Gazette. Once the Bill is read in Parliament, it will be deemed to have been read for the first time.

Once the Bill is placed in the Order Paper of Parliament, any citizen may challenge the constitutionality of a Bill in terms of Article 120 read with Article 121 of the Constitution, by filing a petition in the Supreme Court within fourteen days. If a Bill is challenged, the Supreme Court will determine, in terms of Article 123 of the Constitution, whether the Clauses in the Bill are inconsistent with the provisions of the Constitution.

Once the constitutional jurisdiction of the Supreme Court is invoked, no proceedings shall take place in Parliament in relation to such Bill until the determination of the Supreme Court has been made or until the expiration of three weeks from the date of filing such petition. Once the determination of the Supreme Court in respect of the Bill is delivered to the President and the Speaker, the Speaker shall read out the determination in Parliament. Thereafter, the second reading of the Bill will commence in Parliament. On the Second Reading of a Bill, a debate will take place in Parliament covering the general merits and principles of the Bill.

When a Bill has been read for the second time, upon a motion made by a Minister of the Cabinet of Ministers or a Deputy Minister, the Bill shall be referred to the Committee of the Whole Parliament or may be referred to a Select Committee or a Legislative Standing Committee or an appropriate Sectoral Oversight Committee for its views. Where the Bill has been referred to a Committee other than a Committee of the whole Parliament, no further proceedings should be taken until that Committee has reported to Parliament.

Thereafter, the third reading of the Bill takes place when a motion is made that the Bill be read for the third time and passed by a vote in Parliament. If a Sectoral Oversight Committee or the Legislative Standing Committee or a Select Committee has suggested amendments to the Bill, it will be read for the third time and passed after Parliament has considered the amendments proposed by the Committee.

After the Bill is passed by Parliament it will become law once the Speaker endorses the certificate specified in Article 79 of the Constitution.

Further, Article 80(1) of the Constitution states;

*“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.”*

Accordingly, the legislative process ends when the Speaker endorses the certificate. Hence, endorsing the certificate is not executive or administrative action.

### **Applicability of the Parliament (Powers and Privileges) Act**

The Attorney General further submitted that the events referred to in the petition were events that took place within the course of parliamentary proceedings. Thus, the aforementioned events fall within the ambit of section 3 of the Parliament (Powers and Privileges) Act, and therefore, the courts have no jurisdiction to impeach or question the said events.

Section 3 of the Parliament (Powers and Privileges) Act states;

*“There shall be freedom of speech, debate and **proceedings in Parliament** and such freedom of speech, debate or **proceedings shall not be liable to be impeached or questioned in any court or place out of Parliament.**”*

[emphasis added]

As stated above, the legislative process commences with the line Ministry forwarding a Memorandum to the Cabinet, seeking approval from the Cabinet to enact legislation on the matter referred to in the Memorandum. After the aforementioned procedure is completed, the Bill will be tabled in Parliament. Up to that stage of the Bill, all the necessary steps to enact legislation will take place outside Parliament.

Tabling of the Bill in Parliament is part of the business or proceedings of Parliament. However, Articles 120 to 124 of the Constitution have conferred power on the Supreme Court to consider the constitutionality of the Bill if the jurisdiction of the Supreme Court is invoked in terms of Article 120 read with Article 121 of the Constitution, notwithstanding the fact that the Bill is tabled in Parliament. Articles 120, 121, 122, 123 and 124 of the Constitution are an exception to the separation of powers enshrined in the Constitution and the Parliament (Powers and Privileges) Act.

Further, once a determination is made by the Supreme Court under Article 122, it will be communicated to the President and the Speaker in terms of Article 121(3) of the Constitution.

Thereafter, the determination of the Supreme Court will be announced in Parliament by the Speaker. From that point onwards, the Parliament will take steps to pass the Bill in terms of the



Constitution and Standing Orders of Parliament until the Bill becomes law. Further, all such steps would be taken according to the legislative process of Parliament.

A careful consideration of the averments in the petition demonstrates that the events referred to in the petition fall under the legislative process of Parliament.

Further, Article 124 of the Constitution states;

*“Save as otherwise provided in Articles 120, 121 and 122, no court or tribunal created and established for the administration of justice, or other institution, person or body of persons shall in relation to any Bill, have power or jurisdiction to inquire into, or pronounce upon, the constitutionality of such Bill or its due compliance with the legislative process, on any ground whatsoever.”*

[emphasis added]

Moreover, the phrase *‘its due compliance with the legislative process’* in Article 124 shows that the Supreme Court is vested with the jurisdiction to determine whether the legislative process has been duly complied with in respect of a Bill, subject to Articles 120, 121 and 122 of the Constitution.

However, once a Bill becomes law, in terms of Article 124 of the Constitution, no court or tribunal, etc. have the power or jurisdiction to consider the constitutionality of a Bill or its due compliance with the legislative process, on any ground whatsoever. The phrase *‘on any ground whatsoever’* has been used by the legislation to give a wide meaning to said Article. Thus, this court has no power or jurisdiction to inquire into or pronounce upon the legislative process that has taken place in enacting the said Bill into law or the constitutionality of the Bill.

A similar view was expressed by a full bench of the Supreme Court in ***Wijewickrema v. Attorney General (1982) 2 SLR 775*** where it was held;

*“On the alleged ground that 144 members of Parliament had signed and delivered undated letters resigning their office to His Excellency the President, the plaintiff contends that “the said 144 members of Parliament were incapable of voting according to the law and the Constitution for the Fourth Amendment to the Constitution on the 4<sup>th</sup> November, 1982, and that notwithstanding the purported certification of the Speaker of the Parliament that the Fourth Amendment to the*

*Constitution has been duly passed by a two-thirds majority of Parliament, the Fourth Amendment to the Constitution is not a Bill that has been duly passed by the Parliament at all and cannot therefore be submitted to the People at a Referendum.*

...

...

*The fundamental question involved in this action is whether Article 124 of the Constitution bars the jurisdiction of any Court to decide the constitutional issue raised by plaintiff.*

*In our view the plaintiff's action involves basically the question whether the Fourth Amendment to the Constitution has been validly voted upon as a Bill for the amendment of the Constitution. Our unanimous decision in this basic question is that the Court is barred by the provisions of Article 124 of the Constitution which provides:*

*“Save as otherwise provided in Article 120, 121 and 122 no Court .....shall in relation to any Bill, have power or jurisdiction to inquire into, or pronounce upon, the constitutionality of such Bill or its due compliance with the legislative process, on any ground whatsoever.”*

*from inquiring into or pronouncing upon the validity of the Bill for the amendment of the Constitution, referred to in the plaint.”*

### **Applicability of Article 80(3) of the Constitution**

Further Article 80(3) of the Constitution states;

*“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]

It was submitted by the learned counsel for the petitioner that the provisions stipulated under Article 80(3) would not be a bar to reviewing the constitutionality of a Bill passed purportedly by Parliament if due legislative process stipulated in the Constitution has not been complied with. Hence, it was submitted that the certificate of the Speaker does not provide validity to the legislative process, which has missed a vital step in legislating the Act.

Article 80(1) of the Constitution states that a Bill passed by Parliament becomes law upon the Certificate of the Speaker “being endorsed thereon”. Further, in terms of Article 80(3) of the Constitution, no court or institution administering justice may “*inquire into, pronounce upon or in any manner call in question, the validity of an Act on any ground whatsoever*”. Moreover, the phrase “*on any ground whatsoever*” in the said Article has ousted the jurisdiction of courts, tribunals, etc. in considering the validity of a law after the Speaker endorses the certificate under Article 79 of the Constitution, even if an Act is passed in Parliament without adhering to the due legislative process as stipulated in the Constitution.

A similar view was held in ***Gamage v Perera (2006) 3 SLR 354 at 359*** where it was held;

*“Article 80(3) of the Constitution refers to a Bill becoming law and reads as follows:*

*“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”.*

*The aforesaid Article thus had clearly stated that in terms of that Article, the constitutional validity of any provision of an Act of Parliament cannot be called in question after the certificate of the President or the Speaker is given. Reference was made to the provisions in Article 80(3) of the Constitution and its applicability by Sharvananda, J. in re the Thirteenth Amendment to the Constitution and had expressed his Lordship’s views in the following terms:*

*Such a law cannot be challenged on any ground whatsoever even if it conflicts with the provisions of the Constitution, even if it is not competent for Parliament to enact it by a simple majority or two third majority.”*

In the circumstances, Article 80(3) of the Constitution has taken away the power and the jurisdiction of this court in inquiring into, pronouncing upon the matters referred to in the petition filed in the instant application, including the legality of the endorsement made by the 1<sup>st</sup> respondent in the certificate issued to the ‘Online Safety Bill’.

### **Applicability of Article 70 of the Constitution**

The counsel for the petitioner submitted that the 1<sup>st</sup> respondent has endorsed the certificate under Article 79 of the Constitution when Parliament remained prorogued. Hence, the 1<sup>st</sup> respondent is not entitled in law to make the endorsement in the certificate of the Bill. Thus, the Bill has not become law in terms of Article 80(1) of the Constitution.

Article 70 (3) and (4) of the Constitution reads as follows;

*“(3) A Proclamation proroguing Parliament shall fix a date for the next session, not being more than two months after the date of the Proclamation:*

*Provided that at any time while Parliament stands prorogued the President may by Proclamation –*

- (i) summon Parliament for an earlier date, not being less than three days from the date of such Proclamation; or*
- (ii) subject to the provisions of this Article, dissolve Parliament.*

*(4) All matters which, having been duly brought before Parliament, have not been disposed of at the time of the prorogation of Parliament, may be proceeded with during the next session.”*

Article 70(4) of the Constitution refers to matters pending before Parliament at the time of the prorogation of Parliament. As stated above, the certificate issued by the 1<sup>st</sup> respondent under Article 79 of the Constitution is the last step in the legislative process. Hence, in terms of Article 124 of the Constitution, this court has no power or jurisdiction to consider whether the certificate issued by the 1<sup>st</sup> respondent in respect of the Bill is contrary to Article 70 of the Constitution, and thereby the ‘Online Safety Bill’ has not become law.

## **Mistakes or omissions in enacting legislation**

If any mistakes or omissions takes place in the legislative process in enacting laws the remedy is to amend the relevant law. Such an amendment can be effected either by an amendment proposed by the Government or by way of an amendment brought before Parliament as a Private Members Bill.

Erskine May *Parliamentary Practice* (24<sup>th</sup> Edition) at page 183 states;

*“... A law might be unjust or contrary to sound principles of government; but Parliament was not controlled in its discretion, and when it erred, its errors could be corrected only by itself ...”*

Hence, if the suggestions made in the determination with regard to the ‘Online Safety Bill’ have not been incorporated into the Bill before it was passed into law, either the Government or a Member of Parliament can take steps to move an amendment in Parliament to rectify such errors or omissions in enacting the legislation. Furthermore, in view of the aforementioned ouster clauses in the Constitution, the legislative process is not justifiable.

The learned counsel for the petitioner cited *Jackson and others v Her Majesty’s Attorney General* [2005] UKHL 56 in support of his contention. However, the said case has no application to the instant application as ouster clauses in respect of the legislative process and post review of laws have been enshrined in our Constitution.

## **Conclusion**

A careful consideration of the provisions of the Constitution shows that the legislature has intentionally ousted the jurisdiction of courts, tribunals, etc., not only reviewing the legislation passed by Parliament but also the legislative process in enacting legislation ‘on any ground whatsoever’. In this regard, the legislature has included two separate Articles in the Constitution to oust the jurisdiction of courts, tribunals, etc. Thus, it shows the importance placed by the drafters of the Constitution in preventing courts, tribunals, etc. from interfering not only with the legislative process but also the laws passed by Parliament. Thus, Articles 80(3) and 124 of the Constitution have prevented the post legislative scrutiny of Acts passed by Parliament ‘on any ground whatsoever’.

Moreover, the phrase ‘on any ground whatsoever’ prevents this court exercising power or jurisdiction in considering the matters referred to in the instant petition as they refer to the legislative process.

In the circumstances, the preliminary objections raised by the Attorney General are upheld. Therefore, leave to proceed is refused and the application is dismissed without costs.

**Priyantha Jayawardena PC, J**

**Judge of the Supreme Court**

**A.L. Shiran Gooneratne, J**

**Judge of the Supreme Court**

**Achala Wengappuli, J**

**Judge of the Supreme Court**