

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

In the matter of a Rule in terms of Article 105(3) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 20 of the Commission to Investigate Allegations of Bribery or Corruption Act No. 19 of 1994 for committing contempt against or in disrespect of the authority of the Commission to Investigate Allegations of Bribery or Corruption..

Mrs. Dilrukshi Dias Wickramasinghe, P.C.,
Director General,
36, Malalasekara Mawatha,
Colombo 07.

Complainant

SC Contempt No.04/2016

Vs.

Hon. Lakshman Namal Rajapaksha, M.P.
"Carlton", Tangalle.

Respondent

BEFORE

: K. Sripavan, C.J.
P. Dep, P.C., J.
B.P. Aluwihare, P.C. , J.

COUNSEL

Mrs. Dilrukshi Dias Wickramasinghe P.C. with Mrs. Ranjani Seneviratne, Deputy Director General and Mrs. Disna Gurusinghe for the Complainant.

Gamini Marapana, P.C. with Jayantha Weerasinghe, P.C., Ali Sabry P.C., Shavindra Fernando, P.C., W. Dayaratne, P.C., Navin Marapana, Wijesiri Ambawatta, Kaushalya Molligoda, Sampath Mendis, Premachandra Epa, Isuru Somadasa, Sampath Mendis, Premanath Dolawatta instructed by Athula de Silva for the Respondent.

ARGUED ON

: 25.07.2016 and 03.08.2016

**WRITTEN SUBMISSIONS
FILED ON**

: 29.08.2016

DECIDED ON

: **15.09.2016**

K. SRIPAVAN, C.J.,

When this matter was taken up on 03.08.2016, the learned President's Counsel for the Respondent took up a Preliminary Objection that it is imperative when proceedings of Contempt in terms of Section 20(4) and 20(5) of Act No. 19 of 1994 are initiated, such proceedings should commence by Petition and Affidavit together with the documents and a Certificate setting out the determination of the Commission.

Section 20 of Act No. 19 of 1994 deals with punishment for Contempt. It is significant that the offence of contempt committed against or in disrespect of the authority of the "Commission" shall be punishable by the Supreme Court as though it were an offence committed against or in disrespect of the Supreme Court. Under Section 20(3)(c) , if any person refuses or fails without cause, **which in the opinion of the Commission is reasonable** to comply with the requirements of a notice or written order issued or made to him by the Commission, shall be guilty of an offence of Contempt against, or in disrespect of the authority of the "Commission". Thus, the opinion has to be formed by the "Commission" and not by Court. (emphasis added)

In terms of Section 20(4) once the "Commission" determines that an offence of Contempt has been committed under Section 20(3), a certificate setting out such determination shall be signed by the "Chairman" of the Commission.

Section 20(5) further provides that the Supreme Court may think fit, take cognizance of the certificate signed and transmitted to Court under Sub-section (4). The expression "take cognizance" means judicial application of the mind of the Court to the facts mentioned in the Certificate with a view to take further action. Therefore, when the Court takes cognizance of the Certificate, such Certificate shall be of evidence of the facts stated and contained in the Certificate, unless the contrary is proved.

Article 105(3) of the Constitution declares that the Supreme Court of the Republic of Sri Lanka shall be a superior Court of record and shall have all the powers of such Court including the power to punish for Contempt itself- **whether committed in the Court itself or elsewhere.** (emphasis added)

Indeed, Samarakoon, C.J. in the case of *Regent International Hotels Ltd. Vs. Cyril Gardinar & Others* (1978-79-80) 1 S.L.R. 278 at 286 construing Article 105(3) of the Constitution held as follows:-

*“The Supreme Court being the highest and final superior Court of record in the Republic and the Court of Appeal being a superior Court of Record with appellate jurisdiction have all the powers of punishing for Contempt, wherever committed in the island **in facie curiae or ex-facie curiae**”.*

In *Kandoluwe Sumangala Vs. Mapitigama Dharmarakitta et al.* 11 N.R.R. 195, Wood Renton J. went on to state that the law of Contempt exists not for the glorification of the Bench, but rather, it exists solely for the protection of the public.

In the matter of *Armand de Souza*, Editor of Ceylon Morning Leader 18 N.L.R. 33, the defendant, an editor, published an article suggesting that the Police Magistrate of Nuwara Eliya was unduly influenced by the suggestions of the Police and that he could not be relied upon to justice in cases involving European Planters. A **Rule** was issued at the instance of the Supreme Court, (without Petition and Affidavit) to show cause why he should not be committed for Contempt of the authority of the Police Court of Nuwara Eliya. Wood Renton C.J. held that the language used by the defendant was contemptuous and was an instance of Contempt of Court committed **ex facie curiae** and accordingly the defendant was sentenced to one month's simple imprisonment.

In the case of *Attorney-General Vs. M. De Mel Laxapathy* (1936) 1 Ceylon Law Journal Reports p. 111 – The respondent a Proctor of the Supreme Court, presided over a public meeting, held in pursuance of a notice which referred to the non-summary proceedings pending before the Police Court and during which meeting the charges against the accused in the non-summary proceedings pending before the Police Court discussed. It was held by the Supreme Court that, though the Respondent had no intention of prejudicing the fair trial of the case, he was guilty of Contempt of the Supreme Court as the holding of the meeting tended to interfere with the due administration of justice. It must be noted that Contempt

proceedings were initiated by way of a **Rule** on an application made by the Attorney General. This was an instance of contempt committed **ex facie curiae**.

The case of *Attorney General Vs. Vaikurthavasan* 53 N.L.R. 558 is also relevant to be mentioned. The Respondent in this case who was the Editor, Printer and Publisher of an English Weekly Newspaper called "Peoples' Voice" published an article containing matters calculated to prejudice the fair trial of a case pending before a Magistrate's Court and a **Rule Nisi** was issued at the instance of the Attorney General. The Respondent unreservedly admitted the commission of a Contempt by him and having tendered his apologies submitted himself to the mercy of Court. The **Rule** was made absolute and a fine was imposed upon the Respondent.

It could thus be seen that the power of the Court to act **suo moto** is drawn from the cases cited above. The object of the discipline enforced by the Court in the case of Contempt is not to vindicate the dignity of the Court or the Judge but more intended for the protection of the public and to uphold and maintain the reputation of the Court as regards its authority, fairness and impartiality. The confidence in the Courts of Justice which the public possess must in no way tarnished, diminished or wiped out by contumacious behaviour of any person. Athukorale, J. in *Nanayakkara Vs. Liyanage Cyril* (1984) 2 S.L.R. 193, upon certain facts being brought to the notice of Court by the Attorney General issued a **Rule** on the respondent to show cause why he should not be punished for the offence of Contempt of the Magistrate's Court of Kandy.

In Fernando Vs. Attorney General (2003) 2 S.L.R. 852, the Petitioner appearing in person misbehaved and disturbed the proceedings. The Court held the conduct of the Petitioner constituted Contempt for which he was liable to be summarily judged and punished without even a formal charge, (**infacie curiae**) Quoting Lord Denning, S.N. Silva C.J. made the following observations:-

"To maintain law and order the Judges have and must have the power at once to deal with those who offend against it. It is a great power – a power instantly to imprison a person without trial – but is a necessary power."

The cases cited above amply demonstrate the manner in which the Court dealt with the contemners. Before any action is taken, the Respondent must be issued with a **Rule** to show cause against the proposed action and his explanation must be sought. It is a sine qua non of the right of fair hearing. Fairness is a rule to ensure the wide power in the Court is not abused but properly exercised. Whatever procedure that is adopted, it must be fair and an opportunity be given to the Respondent to defend the case against him. In *Nally Bharat Engineering Co. Ltd. Vs. State of Bihar* (1990) 2 S.C.C. 48 at 55 the Supreme Court observed that the terms “fairness of procedure”, “fair play in action”, “duty to act fairly” are used as alternatives to “natural justice”. Fairness is thus a prime test for proper administration of judicial power. It has no set form or procedure. It depends upon the facts of each case and no hard and fast rule can be laid down.

I would like to quote the following passage from “ARLIDGE, EADY & SMITH ON CONTEMPT”(3rd Edition – page 64) :-

*“Although the jurisdiction to punish for Contempt is frequently referred to as “summary”, the term has to be approached with some caution. Each of the categories of Contempt described in the previous paragraph is made the subject of **different procedure.***

..... the description “summary” is appropriate only in the sense that the trial is by judge alone, and that some of the safeguards that would attend the hearing of a criminal prosecution are absent.”

However, there are other instances where contempt matters are referred to the Supreme Court/Court of Appeal by Tribunals, Commissions etc., which has no power to deal with contempt matters either **in facie curiae** or **ex facie curiae** as the jurisdiction is vested with the Supreme Court/Court of Appeal by law.

Article 118 of the Constitution deals with the general jurisdiction of the Supreme Court and Article 118(g) confer jurisdiction on the Supreme Court ‘in respect of other matters which Parliament may by law vest or ordain’. Commission to Investigate Allegations of Bribery and

Corruption Act No.19 of 1994 could be considered as one of such Acts of Parliament which confer jurisdiction in respect of contempt matters. These Acts provide for the manner of communication or reference to the Supreme Court. As an example under Section 40A(3) of the Industrial Disputes Act every complaint of contempt committed against or disrespect of the authority of any arbitrator or Industrial Court or Labour Tribunal shall be communicated to the President of the Court of Appeal by a letter signed by the Arbitrator, President of the Labour Tribunal or by the Industrial Court. Likewise, there are similar provisions in the other statutes dealing with Tribunals, Commissions etc. Therefore, special acts could provide for the manner of reference or communication to the Supreme Court or Court of Appeal.

According to Section 20(4) of Act No. 19 of 1994, proceedings could be initiated by way of a certificate setting out the determination of the Commission. Under Section 20(5), the Supreme Court can take cognizance of this certificate. If the Court takes cognizance of the certificate, it tantamounts to initiation/instituting of the proceedings. Therefore, the Commission has properly invoked the jurisdiction of the Supreme Court. Further, the deeming provisions contained in Section 20(5) (a) and (b) give validity to this certificate. **Therefore, there is no necessity to file a Petition and an Affidavit.**

The complainant is directed to frame the charges against the Respondent. The Charges shall be in writing and shall state precisely and concisely all material particulars constituting the offences charged. It should also contain a list of documents/Statements, a list of Witnesses in support of the Complainants' case. The Charges, list of documents and Witnesses would be served on the Respondent through the Registrar of this Court, once it is received from the Complainant. The Court shall record the plea of the Respondent and decide what further proceedings would be taken against the Respondent.

CHIEF JUSTICE.

P. DEP, P.C., J.

I agree.

JUDGE OF THE SUPREME COURT

B.P. ALUWIHARE, P.C., J.

I agree.

JUDGE OF THE SUPREME COURT

