

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

In the matter of an application under and
in terms of Articles 17 and 126 of the
Constitution of the Republic.

Dr. Nalin de Silva
109/1,
Railway Avenue,
Maharagama.

S.C. FR Application No.308/2015

Petitioner

1. Ranil Wickremasinghe,
Prime Minister of Sri Lanka,
Prime Minister's Office
No.58, Sir Earnest De Silva
Mawatha,
Colombo 07,
Sri Lanka.
2. DEW Gunasekera,
Former Minister of Rehabilitation
and Prison Reforms.
Communist Party of Sri Lanka,
Headquarters, 91, Dr. N.M.Perera
Mawatha,
3. Dhammika Dassanayake
Secretary General of Parliament
Parliament of Sri Lanka
Sri Jayewardenepura Kotte,
Sri Lanka.

4. P.B.Abeykoon
Secretary to the President,
Presidential Secretariat
Galle Face
Colombo 01.
5. Sujeeva Senasinghe
Former Member of Parliament
Deputy Minister of Justice,
Ministry of Justice – Sri Lanka
Superior Courts Complex
Colombo 12.
6. Arjuna Mahendran, Governor
Central Bank of Sri Lanka
P.O.Box 590, Janadhipathi Mawatha
Colombo 01.
7. Perpetual Treasuries Ltd.,
10, Alfred House Gardens,
Colombo3.
8. Chamal Rajapaksa,
(former) Speaker, Parliament of Sri
Lanka,
c/o Secretary General of Parliament
of Sri Lanka
Sri Jayewardenepura Kotte,
Sri Lanka.
9. The Attorney General, Attorney-
General's Department, Colombo 12.

BEFORE: WANASUNDERA, P.C. J.
ALUWIHARE, P.C. J.
SISIRA J. DE. ABREW, J.

COUNSEL: Rajpal Abeynayake for the Petitioner.

K.Kanag-Iswaran, PC with Suren Fernando instructed by
G.G.Arulpragasam for the 1st Respondent.

Farnas Cassim with Janaka Basuriya instructed by Lanka Dharmasiri
for the 5th Respondent.

Dr. Harsha Cabral, PC with Buddika Illangatillake and Sasheen
Arsakularatne instructed by Julius and Creasy for the 6th Respondent.

S.A.Parthalingam, PC with Niranjana Arulpragasam for the 7th
Respondent.

Milinda Gunatillake, DSG with Dr. Avanti Perera, SSC for the 3rd, 4th
and 9th Respondents.

ARGUED ON: 05.08.2015 and 02.02.2016

DECIDED ON: 22.02.2017

WRITTEN SUBMISSIONS ON: 10.08.2015 (By the 6th Respondent)
11.08.2015 (By the 1st Respondent)
11.08.2015 (By the 7th Respondent)
11.08.2015 (By the 4th and 9th
Respondents)
13.08.2015 (By the Petitioner)

ALUWIHARE, PC. J

When this matter was taken up for support, the learned President's Counsel for the 1st Respondent raised the following Preliminary objections as to the maintainability of this application.

- (a) The Petitioner does not disclose a violation of any right guaranteed under article 14(A) of the Constitution.
- (b) The Petitioner does not disclose a violation of any right guaranteed under Article 12(1) of the Constitution
- (c) The relief sought should not be granted in view of the provisions of the Parliament (Powers and Privileges) Act.

Background to the instant application:

The Petitioner had averred, that the Central Bank of Sri Lanka (hereinafter referred to as the CBSL) held an auction for Treasury Bonds on the 27th February, 2015 and the Petitioner had come to know through the media that irregularities had taken place with regard to the issuance of the Treasury Bonds at the auction referred to and alleges that these irregularities had resulted in a considerable loss to the Government of Sri Lanka. Petitioner had stated that a Consultative Committee (COPE) consisting of five members of Parliament headed by Mr. D.E.W. Gunasekera probed into the said issue of Treasury Bonds.

The gravamen of the Petitioner appears to be the non-release of the interim report of the said Committee, referred to above.

Among other reliefs, the Petitioner had sought a directive by way of interim relief from this court, on the Chairman of COPE or the former Speaker of the Parliament or the Secretary General of Parliament to release the COPE interim

report and had also sought a declaration, that the fundamental rights of the, Petitioner, guaranteed under Article 12(1) and 14(A) had been infringed.

I shall now consider the Preliminary objections raised in the sequence, they are enumerated.

It was the contention of the learned President's Counsel for the 1st Respondent that the Petitioner had not disclosed a violation under article 14A of the Constitution. The learned President's Counsel contended that under Article 14A, a citizen's right, to access information is restricted in that, such access must be provided for by law and it is further restricted to those institutions specified in the same Article.

For ease of reference, Article 14A of the Constitution is reproduced below:

- (1) *Every citizen shall have the right of access to any information **as provided for by law**, being information that is required for the exercise or protection of a citizen's right **held by**:*
 - (a) *the State, a Ministry or any Government Department or any statutory body established or created by or under any law;*
 - (b) *any Ministry of a Minister of the Board of Ministers of a Province or any Department or any statutory body established or created by a statute of a Provincial Council;*
 - (c) *any local authority; and*
 - (d) *any other person, who is in possession of such information relating to any institution referred to in sub-paragraphs (a) (b) or (c) of this paragraph.*
- (2) *No restrictions shall be placed on the right declared and recognised by this Article, **other than such restrictions prescribed by law** as are necessary in a*

democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals and of the reputation or the rights of others, privacy, prevention of contempt of court, protection of parliamentary privilege, for preventing the disclosure of information communicated in confidence, or for maintaining the authority and impartiality of the judiciary.

(3) *In this Article, “citizen” includes a body whether incorporated or unincorporated, if not less than three-fourths of the members of such body are citizens.”* (emphasis added)

When one considers the information to which the Petitioner is seeking access, the COPE report is not held by any of the entities referred to in the Article and it has to be concluded that any information held by the Parliament falls outside the pale of Article 14A of the Constitution.

On the other hand the Petitioner had neither relied on nor referred to, any provision of the law in terms of which, such information becomes accessible.

The learned Deputy Solicitor General whilst concurring with the submissions made on behalf of the 1st Respondent, submitted that in terms of Article 14A, there has to be an enabling law under which the access to information is provided for. He further contended that, other than the reference to the case law referred to in paragraph 17 of the Petition and which is also referred to in the document marked and produced as P10, the Petitioner has not referred to any positive law under which, the Petitioner becomes entitled to the information sought.

The counsel for the Petitioner argued that the courts in Sri Lanka had recognized by implication that there is a right to information and referred to the case of *Environmental Foundation v. UDA 2009 1SLR 123*.

It was held in the said case that *“Although the right to information is not specifically guaranteed under the Constitution as a fundamental right, the freedom of speech and expression including publication guaranteed under Article 14(1)(a), to be meaningful and effective should carry within its scope an implicit right of a person to secure relevant information from a public authority in respect of a matter that should be in the public domain*”

With the enactment of Article 14A, however explicit constitutional guarantee is now bestowed on the citizen. The said constitutional guarantee which were hitherto implicit now operates as an explicit right within the parameters of Article 14A. I see no conflict between the *ratio decidendi* in the case referred to above and the new Article 14A which was introduced by the 19th Amendment to the Constitution.

What is significant to note is that, what the Supreme Court recognised, in the case referred to , is the right of a person to secure information from a public authority in respect of a matter that is within public domain.

Article 14A has now specified the public authorities from which information can be secured. In the present application the Petition seeks to secure information from the Parliament, more specifically Parliamentary Committee on Public Enterprises (COPE).

Article 14A has left out the Parliament from the list of specified institutions, understandably so in view of Article 4C of the Constitution. Article 4(C) specifically ousts the exercise of judicial power, in regards to matters relating to the privileges, immunities and powers of Parliament.

Furthermore nowhere in the body of the Petition, had the Petitioner averred to an infringement of Article 12(1) of the Constitution, although the Petitioner had prayed for a declaration of an infringement of Article 12(1)

For the reasons stated above, I uphold the objections (a) and (b) that have been raised on behalf of the 1st Respondent.

The final objection raised on behalf of the 1st Respondent was, that the relief sought by the Petitioner cannot be granted in view of the provisions of the Parliament (Powers and Privileges) Act (hereinafter also referred to as the “Act”).

From the averments contained in paragraph 34 of the Petition, it appears that, the information he is seeking access to; the COPE interim report, is yet to be reported to the Parliament nor has it been placed before the Parliament. In this context, it would be relevant to consider the provisions of the Act, in deciding as to whether the Petitioner would be entitled to the impugned information.

Section 17 of the Act stipulates that:

No member or officer of Parliament and no shorthand Writer employed to take minutes of evidence before the House or any committee shall give evidence elsewhere in respect of the contents of such evidence or of the contents of any manuscript or document laid before Parliament or any committee or in respect of any proceedings or examination had at the Bar or before any committee of Parliament without the special leave of Parliament first had and obtained.

Section 22 of the Act states that :

- (1) Each of the acts and omissions specified in the Schedule to this Act is hereby declared to be a breach of the privileges of parliament.*
- (2) Every breach of the privileges of parliament which is specified in the Schedule to this Act (whether in part A or Part B thereof) shall be an offence under this Part punishable by the Supreme Court under the Provisions hereinafter contained in that behalf.*

(3) *Every breach of the privileges of Parliament which is specified in Part B of the Schedule to this Act and which is committed in respect of, or in relation to, Parliament shall be an offence under this part punishable by Parliament under the provisions contained in that behalf.*

Under Part B of the Act, the publication of any proceedings in committee of Parliament, before they are reported to Parliament, is an offence punishable by Parliament or the Supreme Court.

Thus any disclosure or publication of the interim report of the Committee on Public Enterprises (COPE) of the Parliament would be violative of the aforesaid provision, as the Committee had not placed the report before the Parliament.

The learned Deputy Solicitor General on behalf of the 3rd, 4th and the 9th Respondents, whilst concurring with the submissions of the learned President's Counsel for the 1st Respondent, contended that the Petitioner had not complied with Rule 44(1)(a) of the Supreme Court Rules and the application ought to be dismissed *in limine* for that reason.

It was the position of the learned Deputy Solicitor General that to successfully invoke the fundamental rights jurisdiction of this court, one must necessarily satisfy court that the alleged fundamental right exist and that the right has been violated or there is an imminent infringement of that right, by an executive or administrative act. The learned Deputy Solicitor General submitted that acts of COPE do not fall within the purview of executive or administrative acts as it is a body which is part of the legislature and therefore vested with legislative functions.

Standing Order 126(1) (of the Parliament) lays down that:

“Committee on Public Enterprises: (1) There shall be a Committee to be designated the Committee on Public Enterprises consisting of twelve members nominated by the Committee of Selection” and in terms of Standing Order 126(3), a duty is cast on COPE to report to the Parliament.

As such, the acts of the COPE are legislative acts and functions performed by the COPE do not fall into the category of executive or administrative action.

In countering the above position, it was submitted by the learned counsel for the Petitioner that what the Petitioner had alleged is, that by suppressing the impugned information it is the Prime Minister as part of the executive who is responsible for the alleged violation under Article 14A.

As referred to earlier, Petitioner’s position is that the COPE had not presented its interim report with regard to the issue of Treasury Bonds to the Parliament, and as such one cannot hold the 1st Respondent responsible for the non-release of the interim report of the COPE.

Thus I hold that the Petitioner had failed to satisfy this court that any breach of the fundamental rights of the petitioner had resulted due to executive or administrative action.

Accordingly, I uphold the preliminary objection raised on behalf of the 9th Respondent as well.

For the reasons set out above I dismiss the application of the petitioner *in limine*

JUDGE OF THE SUPREME COURT

JUSTICE EVA WANASUNDERA P.C

I agree

JUDGE OF THE SUPREME COURT

JUSTICE SISIRA J. DE ABREW

I agree

JUDGE OF THE SUPREME COURT