

PARLIAMENT OF CEYLON

4th Session 1968-69



Crown (Liability In Delict)

Act, No. 22 of 1969

Date of Assent : June 25, 1969

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Crown (Liability In Delict) Act, No. 22 of 1969

U. D.—O. 3/54.

AN ACT TO AMEND THE LAW RELATING TO THE CIVIL LIABILITIES AND RIGHTS OF THE CROWN, AND FOR PURPOSES CONNECTED THEREWITH OR INCIDENTAL THERETO.

[Date of Assent: June 25, 1969]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Crown (Liability In Delict) Act, No. 22 of 1969, and shall come into operation on such date as the Minister may appoint by Order published in the *Gazette*.

Short title
and date of
operation.

PART I

SUBSTANTIVE LAW

2. (1) Subject to the provisions of this Act, the Crown shall be subject to all those liabilities in delict to which, if it were a private person of full age and capacity, it would be subject in respect of delicts committed by its officers or agents:

Liability of
the Crown in
delict.

Provided that no proceedings shall lie against the Crown by virtue of the preceding provisions of this sub-section in respect of any act or omission of an officer or agent of the Crown, unless the act or omission would apart from the provisions of this Act have given rise to a cause of action in delict against that officer or agent or his estate.

(2) Where the Crown is bound by a statutory duty which is binding also upon persons other than the Crown and its officers, then, subject to the provisions of this Act, the Crown shall, in respect of a failure to comply with that duty, be subject to all those liabilities in delict (if any) to which it would be subject if it were a private person of full age and capacity.

(3) Where any functions are conferred or imposed upon an officer of the Crown as such by or under any written law, and that officer commits a delict while performing or purporting to perform those functions, the liabilities of the Crown in respect

of the delict shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Crown.

(4) Any written law which negatives or limits the amount of the liability of any officer of the Crown in respect of any delict committed by that officer shall, in case of proceedings against the Crown under this section in respect of a delict committed by that officer, apply in relation to the Crown as it would have applied in relation to that officer if the proceedings against the Crown had been proceedings against that officer.

(5) No proceedings shall lie against the Crown by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial or quasi-judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process, or any responsibilities vested in him in his capacity as a member or delegate of the Public Service Commission or the Judicial Service Commission.

Provisions as
to industrial
property.

3. (1) Where after the coming into operation of this Act any officer or agent of the Crown infringes a patent, or infringes a registered trade mark, or infringes any copyright (including any copyright in a design subsisting under the Patents Ordinance or the Designs Ordinance) and the infringement is committed with the authority of the Crown, then, subject to the provisions of this Act, civil proceedings in respect of the infringement shall lie against the Crown.

(2) Nothing in the preceding sub-section or in any other provisions of this Act shall affect the rights of the Minister under section 30 of the Patents Ordinance.

(3) Save as expressly provided by this section, no proceedings shall lie against the Crown by virtue of this Act in respect of the infringement of a registered trade mark, or in respect of the infringement of any such copyright as is mentioned in sub-section (1) of this section.

4. (1) Where the Crown is subject to any liability by virtue of this Part of this Act, the law relating to indemnity and contribution shall be enforceable by or against the Crown in respect of the liability to which it is so subject as if the Crown were a private person of full age and capacity.

Application of law as to indemnity contribution, joint and several wrongdoers and contributory negligence.

(2) Without prejudice to the effect of the preceding sub-section, the Law Reform (Contributory Negligence and Joint Wrongoers) Act shall bind the Crown.

5. (1) Subject to the provisions of the Post Office Ordinance, the Ceylon Post Office Savings Bank Ordinance and the Telecommunications Ordinance, no proceedings in delict shall lie against the Crown for anything done or omitted to be done in relation to a postal article by any person while employed as an officer or agent of the Crown, or for anything done or omitted to be done in relation to the Ceylon Post Office Savings Bank or to a telephonic message of the Crown whilst so employed, nor shall any officer of the Crown be subject, except at the suit of the Crown, to any civil liability for any of the matters aforesaid.

Liability in connection with postal articles.

(2) In this section, the terms "postal article" and "message" shall have the same meanings as in the Post Office Ordinance and the Telecommunications Ordinance, respectively.

6. (1) Nothing done or omitted to be done by a member of the armed forces of the Crown while on duty as such shall subject either him or the Crown to liability in delict for causing the death of another person or causing personal injury to another person, in so far as the death or personal injury is due to anything suffered by that other person while he is a member of the armed forces of the Crown, if—

Provisions relating to armed forces.

(a) at the time when that thing is suffered by that other person, he is either on duty as a member of the armed forces of the Crown or is, though not on duty as such, on any land, premises, ship, aircraft or vehicle for the time being used for the purposes of the armed forces of the Crown; and

(b) the Minister of Defence and External Affairs certifies that his suffering that thing has been or will be treated as attributable to service for the purposes of entitlement to an award from the Crown:

Provided, however, that this sub-section shall not exempt a member of the said forces from liability in delict in any case in which the court is satisfied that the act or omission was not connected with the execution of his duties as a member of those forces.

(2) No proceedings in delict shall lie against the Crown for death or personal injury due to anything suffered by a member of the armed forces of the Crown, if—

- (a) that thing is suffered by him in consequence of the nature or condition of any such land, premises, ship, aircraft or vehicle as aforesaid; or in consequence of the nature or condition of any equipment or supplies used for the purposes of those forces; and
- (b) the Minister of Defence and External Affairs certifies as mentioned in the preceding sub-section.

(3) No act or omission of an officer of the Crown shall subject him to liability in delict for death or personal injury in so far as the death, or personal injury is due to anything suffered by a member of the armed forces of the Crown being a thing as to which the conditions aforesaid are satisfied.

(4) The Minister of Defence and External Affairs, if satisfied that it is the fact—

- (a) that a person was or was not on any particular occasion on duty as a member of the armed forces of the Crown; or
- (b) that at any particular time any land, premises, ship, aircraft, vehicle, equipment or supplies was, or was not, or were or were not, used for the purposes of the said forces,

may issue a certificate certifying that to be the fact; and any such certificate shall, for the purposes of this section, be conclusive as to the fact which it certifies.

Saving in respect of acts done under prerogative and other powers.

7. (1) Nothing in this Part of this Act shall extinguish or abridge any powers or authorities which, if this Act had not been passed, would have been exercisable by virtue of the prerogative of the Crown, or any powers or authorities conferred on the Crown or any of its officers by any written law, and, in

particular, nothing in this Part of this Act shall extinguish or abridge any powers or authorities exercisable by the Crown or any of its officers, whether in time of peace or war, for the purposes of the defence of Ceylon, or of the exercise of emergency powers, or of training, or maintaining the efficiency of, any of the armed forces of the Crown.

(2) Where in any proceedings under this Act it is material to determine whether anything was properly done or omitted to be done in the exercise of the prerogative of the Crown, the Minister of Defence and External Affairs may, if satisfied that the act or omission was necessary for any such purpose as is mentioned in the last preceding sub-section, issue a certificate to the effect that the act or omission was necessary for that purpose; and the certificate shall, in those proceedings, be conclusive as to the matter so certified.

PART II

MISCELLANEOUS AND SUPPLEMENTAL

8. (1) Nothing in this Act shall authorize proceedings *in rem* in respect of any claim against the Crown, or the arrest, detention or sale of any of Her Majesty's ships or aircraft, or of any cargo or other property belonging to the Crown, or give to any person any lien on any such ship, aircraft, cargo or other property.

Exclusion of proceedings *in rem* against the Crown.

(2) Where proceedings *in rem* have been instituted in any court against any such ship, aircraft, cargo or other property, the court may, if satisfied, either on an application by the plaintiff for an order under this sub-section or an application by the Crown to set aside the proceedings, that the proceedings were so instituted by the plaintiff in the reasonable belief that the ship, aircraft, cargo or other property did not belong to the Crown, order that the proceedings shall be treated as if they were *in personam* duly instituted against the Crown or duly instituted against any other person whom the court regards as the proper person to be sued in the circumstances, and that the proceedings shall continue accordingly.

Any such order may be made upon such terms, if any, as the court thinks just; and where the court makes any such order it may make such consequential orders as the court thinks expedient.

Application to
the Crown of
certain provi-
sions of
written law.

9. (1) Subject to the provisions of sub-section (2), this Act shall not prejudice the right of the Crown to take advantage of the provisions of any written law although not named therein; and it is hereby declared that in any civil proceedings against the Crown the provisions of any written law which could, if the proceedings were between subjects, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to any express provision to the contrary, be so relied upon by the Crown.

(2) No court shall refuse to entertain any action brought by virtue of this Act on the ground that the provisions of section 461 of the Civil Procedure Code have not been complied with.

(3) Where the provisions of section 461 of the Civil Procedure Code have not been complied with in respect of an action brought by virtue of this Act, the court shall direct the plaintiff to comply with such directions as the court may deem necessary to make good the omission and shall refuse to entertain the action if the plaintiff fails to comply with such directions.

Pending
proceedings.

10. Save as otherwise expressly provided, the provisions of this Act shall not affect proceedings by or against the Crown which have been instituted before the coming into operation of this Act.

Savings.

11. (1) Nothing in this Act shall apply to proceedings by or against, or authorize proceedings in delict to be brought against, Her Majesty in Her private capacity.

(2) Except as otherwise expressly provided, nothing in this Act shall—

(a) authorize proceedings to be taken against the Crown in respect of any alleged liability of the Crown arising otherwise than in respect of Her Majesty's Government in Ceylon, or affect proceedings against the Crown in respect of any such alleged liability as aforesaid; or

(b) affect proceedings by the Crown otherwise than in respect of Her Majesty's Government in Ceylon; or

- (c) affect any rules of evidence or any presumption relating to the extent to which the Crown is bound by any written law; or
- (d) affect any right of the Crown to control or otherwise intervene in proceedings affecting its rights, property or profits.

(3) A certificate of the Minister of Defence and External Affairs—

- (a) to the effect that any alleged liability of the Crown arises otherwise than in respect of Her Majesty's Government in Ceylon; or
- (b) to the effect that any proceedings by the Crown are proceedings otherwise than in right of Her Majesty's Government in Ceylon,

shall, for the purposes of this Act, be conclusive as to the matter so certified.

12. (1) The Minister may make regulations under this Act for such purpose or purposes as may be necessary to give full force and effect to the principles and provisions of this Act.

Regulations.

(2) In particular, but without prejudice to the generality of the powers conferred by sub-section (1), the Minister may make regulations for or in respect of all or any of the following matters:—

- (a) the determination or adjustment of any question or matter relating to the Crown, or to proceedings by or against the Crown, or matters connected therewith or incidental thereto for the determination or adjustment of which no provision, or adequate or effective provision, is made by this Act;
- (b) the removal or adjustment of any conflict or inconsistency between the provisions of this Act and any other written law;
- (c) the removal or adjustment of any difficulties which may arise in first giving effect to the provisions of this Act in relation to the Crown, or to proceedings by or against the Crown;
- (d) all matters connected with or incidental to the matters aforesaid.

(3) Any regulation made under this Act may be of general application, or may be limited in its application to any specified purpose or purposes.

(4) No regulation made by the Minister under this Act shall have effect until it is approved by the Senate and the House of Representatives, nor until notification of such approval is published in the *Gazette*.

(5) Every regulation made by the Minister under this Act shall, upon the publication in the *Gazette* of a notification of the approval of that regulation as provided in sub-section (4), be deemed to be as valid and effectual as though it were herein enacted.

Interpretation.

13. In this Act, unless the context otherwise requires—

“ agent ”, in relation to the Crown, does not include an independent contractor employed by the Crown;

“ armed forces of the Crown ” means the Ceylon Army, the Royal Ceylon Navy and the Royal Ceylon Air Force;

“ officer ”, in relation to the Crown, means any person who holds a paid office as a servant of the Crown in respect of the Government of the Island, and includes a Minister of the Crown;

“ proceedings against the Crown ” includes a claim by way of set-off or counter-claim raised in proceedings by the Crown;

“ statutory duty ” means any duty imposed by or under any written law. 6