



PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA

SPECIAL PRESIDENTIAL COMMISSIONS
OF INQUIRY (SPECIAL PROVISIONS)
ACT, No. 4 OF 1978

[Certified on 22nd November, 1978]

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Special Presidential Commissions of Inquiry

(Special Provisions) Act, No. 4 of 1978

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L. D.—O. 90/78.

AN ACT TO PROVIDE FOR THE RESOLUTION OF CERTAIN DOUBTS THAT HAVE ARISEN AS TO THE SCOPE OF THE APPLICATION OF THE SPECIAL PRESIDENTIAL COMMISSIONS OF INQUIRY LAW, NO. 7 OF 1978, IN VIEW OF THE JUDGMENT OF THE COURT OF APPEAL IN APPLICATION NO. 1/78, FOR THAT PURPOSE TO DECLARE THE INTENTION OF THE LEGISLATURE UNEQUIVOCALLY, TO AMEND THE AFORESAID LAW, TO VALIDATE PROCEEDINGS BEFORE THE SPECIAL PRESIDENTIAL COMMISSION OF INQUIRY ESTABLISHED UNDER THAT LAW, NOTWITHSTANDING THE JUDGMENT AND WRIT ISSUED IN THAT APPLICATION, AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

WHEREAS under section 2 (1) of the Special Presidential Commissions of Inquiry Law, No. 7 of 1978, a Special Presidential Commission was established by the President by Warrant dated March 29, 1978, and published in Gazette Extraordinary No. 310/9 of March 30, 1978:

Preamble.

AND WHEREAS the Court of Appeal in Application No. 1/78 made to that Court held that the aforesaid Warrant empowering the aforesaid Commission to inquire into matters relating to the period prior to the date of enactment of the aforesaid Law commencing on May 28, 1970, and ending on July 23, 1977, is *ultra vires* the aforesaid Law in that it empowers the Commission to inquire into, report and make recommendations in relation to a period prior to the date of enactment of the aforesaid Law and has issued a Writ of Prohibition against the Commission:

AND WHEREAS it is and was the intention of the legislature to provide for the issue of a Warrant to establish a Special Presidential Commission of Inquiry to inquire into, obtain information and to exercise all such powers as are provided for in the aforesaid Law in relation to any period whether before or after the enactment of the aforesaid Law, and in particular the period commencing May 28, 1970, and ending July 23, 1977:

AND WHEREAS it is and was the intention of the legislature to provide for the issue of a Warrant to establish a Special Presidential Commission of Inquiry to inquire into, obtain information and exercise all such powers in respect of the conduct of any public officer as defined in

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the aforesaid Law including any Prime Minister, Minister, Deputy Minister, Member of the National State Assembly and any holder of a judicial office and any person who held any such office at any time during any period specified in the terms of reference of such Commission whether or not such person was or is answerable to the legislature in respect of such conduct:

BE it therefore declared and enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

Short title.

1. This Act may be cited as the Special Presidential Commissions of Inquiry (Special Provisions) Act, No. 4 1978.

Amendment
of section
2 of Law
No. 7 of
1978.

2. Section 2 of the Special Presidential Commissions of Inquiry Law, No. 7 of 1978, (hereinafter referred to as the "principal enactment") is hereby amended as follows:—

(1) by the insertion, immediately after subsection (1) of that section, of the following new subsection:—

“(1A) A warrant issued under subsection (1) may relate to any period whatsoever including any period before the date of commencement of this Law.”; and

(2) by the substitution, in subsection (4) of that section, for the words “reported upon”, of the following:—

“reported upon, and accordingly the terms of reference so set out may refer to the matters that should be inquired into and reported upon without limitation or restriction in relation to one or more or all of the matters set out in subsection (1) in the manner set out or substantially in the manner set out in the said subsection.”.

Amendment
of section
7 of the
principal
enactment.

3. Section 7 of the principal enactment is hereby amended in paragraph (a) of subsection (2) of that section as follows:—

(1) by the substitution for the words “any bank”, of the words “any bank or lending institution”; and

(2) by the substitution for the words “account of”, of the words “account of, or any other document relating to any transaction with”.

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4. Section 10 of the principal enactment is hereby amended by the substitution for subsection (1) of that section, of the following new subsection:—

Amendment of section 10 of the principal enactment.

“(1) Every offence of contempt committed against, or in disrespect of, the authority of a commission established under this Law shall be punishable by the Supreme Court established under the Constitution as though it were an offence of contempt committed against, or in disrespect of, the authority of such Court.”.

5. Section 12 of the principal enactment is hereby amended in subsection (1) of that section by the addition at the end of that subsection of the following:—

Amendment of section 12 of the principal enactment.

“For the purposes of this section, it shall not be deemed to be a reasonable cause for a person to refuse or fail to answer any question or to produce and show any document or other thing on the ground that the matter being inquired into by the commission is the same or substantially the same matter which, whether directly or indirectly, arises or is likely to arise in any proceedings in any court or on the ground that the answer to such question or the production of such document or other thing might directly or indirectly affect or cause prejudice to him in any other proceedings.”.

6. Section 18 of the principal enactment is hereby repealed and the following new section substituted therefor:—

Replacement of section 18 of the principal enactment.

“Protection of members of commission &c.

18. No civil or criminal proceedings shall be instituted against any member of a commission or, other than for contempt, against any other person in any manner assisting a commission in respect of any act done or omitted to be done by him as such member or such other person.

For the purposes of this section a person assisting a commission shall include any person employed by or executing or carrying out or complying with any order of a commission or any attorney-at-law appearing before a commission or a person who being a person noticed under section 16 is not represented by an attorney-at-law.”.

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Insertion of
new sections
18A and 18B
in the
principal
enactment.

7. The following new sections are hereby inserted immediately after section 18 of the principal enactment and shall have effect as sections 18A and 18B of that enactment :—

“Applications to stand transferred to Supreme Court where at least one member of commission is a Judge of the Supreme Court or Court of Appeal and powers of courts in relation to a commission.

18A. (1) Every application to the Court of Appeal in relation to any commission established or purported to have been established under this Law or any member thereof and every application to such Court to which such commission or a member thereof is a party shall, where such commission at the time it was so established or such application is made consists of at least one Judge who is or was a Judge of the Supreme Court or Court of Appeal or where such member at the time of his appointment as a member of a commission or at the time of the application is or was a Judge of the Supreme Court or of the Court of Appeal, stand transferred to the Supreme Court which shall in respect of such application have and exercise all the powers of the Court of Appeal and the Court of Appeal shall not have or exercise any power or jurisdiction to deal with such application.

(2) No court shall, notwithstanding anything to the contrary, have power or jurisdiction to make any order at any stage whatsoever and in any manner—

(a) staying, suspending or prohibiting the holding of any proceeding before or by any commission established by warrant issued by the President in the exercise or purported exercise of the powers vested in the President under section 2 (1) or the making of any order, finding, report, determination, ruling or recommendation by any such commission ;

(b) setting aside or varying any order, finding, report, determination, ruling or recommendation of any such commission ;

Provided that where by reason of the provisions of subsection (1) any application stands transferred to the Supreme Court, such court may, only upon final determination of such application, make any such order which, in the lawful exercise of its jurisdiction, such court may make :

Provided further, that where an application does not stand transferred by reason of the provisions of subsection (1), the Court of Appeal may, only upon final determination of such application, make any such order which in the lawful exercise of its jurisdiction, such court may make, subject however, that such order shall take effect only upon final determination by the Supreme Court in accordance with and subject to such order which the Supreme Court may make or where no appeal is filed, only upon the expiry of the period within which an appeal may be filed in the Supreme Court.

No stay of proceedings of a commission arising by reason of collateral proceedings.

18B. No court shall grant an order staying the proceedings of any commission on the ground that any matter which is the subject of inquiry before the commission is the same matter or substantially the same matter which, whether directly or indirectly, arises or is likely to arise for consideration or determination in any proceedings before any court."

8. The following new section is hereby inserted immediately after section 21 of the principal enactment and shall have effect as section 21A of that enactment :—

Insertion of new section 21A in the principal enactment.

"Effect of this Law notwithstanding inconsistencies.

21A. The provisions of this Law and any warrant issued under the provisions of this Law shall be so interpreted and given full force and effect in order that any commission shall have full authority, power and jurisdiction to inquire into the conduct of any Prime Minister, Minister or other public officer including—

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(a) the misuse or abuse of power, interference, fraud, corruption or nepotism,

(b) any political victimization of any person,

(c) any irregularity—

(i) in the making of any appointment or transfer of any person,

(ii) in the granting of any promotion to any person,

(iii) in the termination of the services of any person,

(d) the contravention of any written law,

by or on the part of any Prime Minister, Minister or other public officer and the extent to which he is so responsible, notwithstanding that the conferment of the authority, power or jurisdiction on a commission to hold an inquiry into such conduct may be or may have been or may be construed to be or to have been inconsistent with the provisions of section 46 (1) or any other section of the Ceylon (Constitution) Order in Council, 1946, or section 92 or section 106 (5) or any other section of the Constitution of Sri Lanka adopted and enacted on 22nd May, 1972.”

Amendment
of section 22
of the
principal
enactment.

9. Section 22 of the principal enactment is hereby amended as follows:—

(1) in the definition of “conduct of any public officer”, by the substitution for all the words immediately after paragraph (ii) thereof to the end of that definition, of the following:—

“ (iii) in relation to the exercise or purported exercise or discharge of any power, function or authority and whether or not under the guise of such power, function or authority, and includes allegations of misuse or abuse of power, corruption, any fraudulent act, nepotism or political victimization by any public officer as are specified by the President in the warrant

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establishing a commission or as are made to such commission by any person; and notwithstanding that under the Constitution in force during the relevant period no court, tribunal or other institution has or had the power or jurisdiction to inquire into, pronounce upon or in any manner call in question any such conduct and notwithstanding that under the Constitution in force during the relevant period any other body, court, tribunal or institution is or was empowered to inquire into, pronounce upon or in any manner call in question any such conduct, and notwithstanding that under the Constitution in force during the relevant period such person or the body to which such person belonged, was or is responsible or answerable to the legislature established under such Constitution in respect of such conduct;';

- (2) by the insertion, immediately after the definition of "local authority", of the following new definition:—

"Minister" includes the Prime Minister;'; and

- (3) in the definition of "public officer"—

(a) by the substitution in paragraph (ii) thereof, for the word "and", of the following:—

"including the holder of a judicial office or any office created or recognized by the Constitution in force at the relevant period, and"; and

(b) by the substitution in paragraph (iii) thereof, for the words "public body," of the words "public body, whether or not such person was in receipt of any remuneration,".

10. The Special Presidential Commission of Inquiry established by the President by Warrant dated March 29, 1978, and published in Gazette Extraordinary No. 310/9 of March 30, 1978, and as amended shall be entitled to continue to have and to exercise and discharge all its powers, functions and privileges under the principal enactment as amended by this Act and all the provisions of the principal enactment including the provisions relating to the immunities and privileges and those of witnesses and other persons appearing before or assisting such Commission shall apply and any judgment pronounced or decree or writ issued

Judgment
and writ
issued by
the Court
of Appeal to
be invalid.

by any court, which such court would not have had the jurisdiction to pronounce or issue if this Act had been in operation, shall be null and void and accordingly any such judgment, decree or writ issued by any such court including the judgment pronounced and writ issued by the Court of Appeal in Application No. 1/78 are hereby declared to be null and void and of no force or effect whatsoever.

Reference to Supreme Court to be reference to Supreme Court established by the Constitution.

11. Every reference in section 10 (2) and (3), and section 12 of the principal enactment to the Supreme Court established prior to the enactment of the Constitution shall be deemed to be a reference to the Supreme Court established by the Constitution.

Retrospective effect of this Act.

12. The provisions of this Act shall be deemed for all purposes to have come into operation on the date on which the principal enactment came into operation and accordingly—

(a) the Special Presidential Commission of Inquiry established by the President by Warrant dated March 29, 1978, and published in Gazette Extraordinary No. 310/9 of March 30, 1978, as amended shall be deemed for all purposes and at all times to have been and to be valid and effectual, notwithstanding the judgment of the Court of Appeal in Application No. 1/78 against the members of the aforesaid Commission;

(b) all proceedings held or taken by or before the aforesaid Commission, all orders, findings, determinations, rulings and recommendations made and all other acts and things done by the aforesaid Commission prior to the date of commencement of this Act shall be deemed to have been validly taken, made or done in the exercise of the powers conferred on the aforesaid Commission by the principal enactment as amended by this Act, notwithstanding the judgment and Writ of Prohibition aforesaid;

(c) all the powers, immunities and privileges conferred by or under the principal enactment as amended by this Act shall be deemed for all purposes and at all times to have been validly conferred;

- (d) all matters relating to any application or civil or criminal suit or arising in any proceedings whatsoever, whether instituted before or after the coming into force of this Act, shall be determined in accordance with the provisions of the principal enactment as amended by this Act.