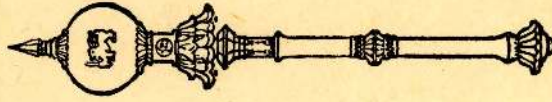


22 වන කාණ්ඩය  
5 වන කලාපය  
II වන කොටස

Select Committee  
to visit the Courts  
of Judges

අභ්‍යන්තර වාර්තා  
1983 මාර්තු 8  
Month.



# පාර්ලිමේන්තු විවාද

(හැන්සාඩ්)

## නීල වාර්තාව

(අශෝකිත පිටපත)

### අන්තර්ගත ප්‍රධාන කරුණු

දුමකොළ බදු පනත: ආඥාව

පිරිවැටුම් බදු පනත: නියෝග

රේගු යෝජනාව: ආනයන තීරු ගාස්තු

කේ. සී. ඊ. ද අල් විස් මහතා විසින් ඉදිරිපත් කරන ලද කරුණු සම්බන්ධයෙන් පරීක්ෂා කර බැලීම සඳහා විශේෂ කාරක සභාවක්

මුදල් (සංශෝධන) පනත් කෙටුම්පත:

දෙවන වර සහ තුන්වන වර කියවා සම්මත කරන ලදී.

මානකාල මුස්ලිම් අනන්දරු නිවාසය (සංස්ථාගත කිරීමේ) පනත් කෙටුම්පත:

දෙවන වර කියවා "ඒ" ස්ථාවර කාරක සභාවට පවරන ලදී.

වාර්ෂික වාර්තා:

කුඩා තේ වතු සංවර්ධන අධිකාරිය  
රාජ්‍ය සංවර්ධන හා නිර්මාණ නීතිගත සංස්ථාව  
වි අලෙවි මණ්ඩලය  
ඉඩම් ප්‍රතිසංස්කරණ තොරතුරු සභාව  
කාමිකර්ම රක්ෂණ මණ්ඩලය  
ශ්‍රී ලංකා වයර් සංස්ථාව  
නුරාගී උළු කමිහල  
සීමාසහිත හේ ඉන්ඩස්ට්‍රිස් ආයතනය

වෙරළ සංරක්ෂණ නියෝග

පවුලිස්ටය

ප්‍රශ්නවලට ලිඛිත පිළිතුරු

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දින 2881  
1977

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විවෘත අංශ 22  
සංග්‍රහ අංශ 2  
සංවිකල්ප අංශ II



# දැනට ලැබුණු විවරණ

(විකල්ප)

## වෙනම වැඩ

(සාමාජිකයන්)

### ලියවිලි සහිත විවරණ

සාමාජිකයන්

විකල්ප විවරණයක් ලෙස මෙහි  
විකල්පයක් ලෙස මෙහි  
විකල්පයක් ලෙස මෙහි  
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විකල්පයක් ලෙස මෙහි  
විකල්පයක් ලෙස මෙහි  
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## பாராளுமன்ற விவாதங்கள்

(ஹன்சாட்)

அதிகார அறிக்கை

(பிழை திருத்தப்படாதது)

பிரதான உள்ளடக்கம்

புகையிலை வரிச் சட்டம்: கட்டளை

மொத்த விற்பனை வரிச் சட்டம்: கட்டளை

சங்கக் கட்டளைச்சட்டம்: இறக்குமதித் தீர்வை

திரு. கே. எஸ். ஈ. த அல்விஸ் செய்த முறையீடுகளை விசாரணை செய்தற்கான தெரிசூழ

நிதி (திருத்தம்) சட்டமூலம்:

இரண்டாம் மூன்றாம் மதிப்புக்களிடம்பெற்று நிறைவேற்றப் பட்டது

மாகோலை முஸ்லிம் அறாதை இல்லம் (கட்டிணைத்தல்) சட்டமூலம்: இரண்டாம் மதிப்பிடம்பெற்று நிலைக்குழு 'ஏ' க்குச் சாட்டப் பட்டது

ஆண்டறிக்கைகள்:

தேயிலைச் சிறுபற்று நிலங்கள் அடிவிருத்தி அதிகாரசபை அரச அடிவிருத்தி நிருமாணக் கூட்டுத்தாபனம் நெற் சந்தைப்படுத்தும் சபை காணிச் சீர்திருத்த ஆணைக்குழு கமத்தொழிற் காப்புறுதிச்சபை இலங்கை டயர் கூட்டுத்தாபனம் நூரூணி ஓட்டுத் தொழிற்சாலை ஷோ இண்டஸ்ரீஸ் லிமிடெட்

கரையோரம் பேணல் ஒழுங்குவிதி

அதுபந்தம்

வினாக்களுக்கு எழுத்துமூல விடைகள்

## PARLIAMENTARY DEBATES

(HANSARD)

OFFICIAL REPORT

(Uncorrected)

### PRINCIPAL CONTENTS

TOBACCO TAX ACT: ORDER  
TURNOVER TAX ACT: ORDERS  
CUSTOMS RESOLUTION: IMPORT DUTIES  
SELECT COMMITTEE TO INQUIRE INTO THE REPRESENTATIONS MADE BY MR. K. C. E. DE ALWIS

FINANCE (AMENDMENT) BILL:  
Read a Second, and the Third time, and passed

MAKOLA MUSLIM ORPHANAGE (INCORPORATION) BILL:

Read a Second time, and allocated to Standing Committee "A"

ANNUAL REPORTS:

Tea Small Holdings Development Authority  
State Development and Construction Corporation  
Paddy Marketing Board  
Land Reform Commission  
Agricultural Insurance Board  
Sri Lanka Tyre Corporation  
Noorani Tile Works  
Shaw Industries Ltd.

COAST CONSERVATION REGULATIONS

APPENDIX

WRITTEN ANSWERS TO QUESTIONS



**பார்லிமென்டு**

**பாராளுமன்றம்**

**PARLIAMENT**

[1983 மார்ச் 8 வன துணைவாடி திரு வர்க்காவே I வன துணைவாடி 582 வன துணைவாடி சபை ஒன்றிடு வடி கடுவது]

[1983 மார்ச் 8, செவ்வாய்க்கிழமை அதிக்கார அறிக்கை பகுதி I, பத்தி 582 இவருந்து நிகழ்ச்சித் தொடர்]

[Continuation of Proceedings from Col. 582 of Part I of OFFICIAL REPORT for Tuesday, 8th March 1983.]

**ஈர். சே. சீ. டு மெல் மனா (மூடல் னா தும சமீகடன ஈமீகதும)**

(திரு. ஆர். ஜே. ஜி. த மெல்—நிதி, அமைப்புத்திட்ட அமைச்சர்)

(Mr. R. J. G. de Mel—Minister of Finance and Planning)

With your permission, Sir, and with the consent of the Hon. Leader of the Opposition, I now wish to move items 3 to 7, all related to the Budget.

**கியேர்வா கலாநாயகதும**

(பிரகிச் சபாநாயகர் அவர்கள்)

(Mr. Deputy Speaker)

We will take them one by one.

**டூகடூகல ல்டு சவன: ஈர்டு**

புகையிலை வரிச் சட்டம்: கட்டளை

**TOBACCO TAX ACT: ORDER**

**ஈர். சே. சீ. டு மெல் மனா**

(திரு. ஆர். ஜே. ஜி. த மெல்)

(Mr. R. J. G. de Mel)

I move,

"That the Order made by the Minister of Finance and Planning under sub-section (2) of Section 2 of the Tobacco Tax Act (Chapter 245) as amended by Act No. 10 of 1959, Act No. 9 of 1965 and Act No. 40 of 1973, published in *Gazette Extraordinary*, No. 232/12 of February 18, 1983, which was presented on 8th March 1983, be approved."

சூன்ய விசேச ல்டீன், சனா சமீகன விச.

வினா விடுக்கப்பட்டு ஏற்றுக்கொள்ளப்பட்டது.

Question put, and agreed to.

**கிரவூடு ல்டு சவன: தியேர்**

மொத்த விற்பனை வரவு வரிச் சட்டம்: கட்டளைகள்

**TURNOVER TAX ACT: ORDERS**

**ஈர். சே. சீ. டு மெல் மனா**

(திரு. ஆர். ஜே. ஜி. த மெல்)

(Mr. R. J. G. de Mel)

I move,

"That the Order made by the Minister of Finance and Planning under Section 4 of the Turnover Tax Act, No. 69 of 1981, and

published in the *Gazette Extraordinary* No. 232/12 of 18.02.1983, which was presented on 8th March 1983, be approved."

சூன்ய விசேச ல்டீன், சனா சமீகன விச.

வினா விடுக்கப்பட்டு ஏற்றுக்கொள்ளப்பட்டது.

Question put, and agreed to.

**ஈர். சே. சீ. டு மெல் மனா**

(திரு. ஆர். ஜே. ஜி. த மெல்)

(Mr. R. J. G. de Mel)

I move,

"That the Order made by the Minister of Finance and Planning under Section 7 of the Turnover Tax Act, No. 69 of 1981, and published in the *Gazette Extraordinary* No. 232/12 of 18.02.1983, which was presented on 8th March 1983, be approved."

சூன்ய விசேச ல்டீன், சனா சமீகன விச.

வினா விடுக்கப்பட்டு ஏற்றுக்கொள்ளப்பட்டது.

Question put, and agreed to.

**ஈர். சே. சீ. டு மெல் மனா**

(திரு. ஆர். ஜே. ஜி. த மெல்)

(Mr. R. J. G. de Mel)

I move,

"That the Order made by the Minister of Finance and Planning under Section 7 of the Turnover Tax Act, No. 69 of 1981, and published in the *Gazette Extraordinary* No. 232/6 of 16.02.1983, and set out in the Schedule hereto be approved.

**SCHEDULE**

**TURNOVER TAX ACT, NO. 69 OF 1981**

**Order under Section 7**

By virtue of the powers vested in me under Section 7 of the Turnover Tax Act No. 69 of 1981, I, Ronald Joseph Godfrey de Mel, Minister of Finance and Planning, do by this Order, with effect from midnight 16/17 February, 1983—

- (1) fix the rate of 15 per centum in respect of the turnover of any business in Sri Lanka engaged in the import of sugar, more fully described by Customs Co-operative Council Nomenclature Nos. 17.01 and 17.02
- (2) rescind the Order made by me in *Gazette Extraordinary* No. 166/16 of 12th November, 1981, in Part IA of the Schedule thereof in respect of sugar (imported), Customs Co-operative Council Nomenclature No. 17.01.

**RONNIE DE MEL,**

Minister of Finance and Planning.

16th February, 1983."

சூன்ய விசேச ல்டீன், சனா சமீகன விச.

வினா விடுக்கப்பட்டு ஏற்றுக்கொள்ளப்பட்டது.

Question put, and agreed to.

**රේඛු සෝචනාව: ආනයන තීරු ගාස්තු**

සங்கත් தீர்மானம் : இறக்குமதித் தீர்வைகள்

**CUSTOMS RESOLUTION : IMPORT DUTIES**

ආර්. ජේ. ජී. ද මෙල් මහතා

(திரு. ஆர். ஜே. ஜி. த மெல்)

(Mr. R. J. G. de Mel)

I move,

"That this Parliament resolves under Section 10 of the Customs Ordinance (Chapter 235), that, with effect from the date on which this Resolution is notified in the Gazette :

Import duties under the Customs Ordinance (Chapter 235) shall be levied and paid on the article specified in column 2 of the Schedule hereto at the general rates set out in the corresponding entries in column 4 of that Schedule, or where preferential rates are leviable and payable under the provisions of Schedule 'A' to the Customs Ordinance (Chapter 235) at the preferential rates set out in the corresponding entries in column 3 of that Schedule.

**SCHEDULE**

Tariff Heading No.	Description	RATE OF DUTY		S.I.T.C. (Revised)	Units of Quantity	Remarks
		Preferential	General			
1	2	3	4	5	6	7
17.01	Beet sugar and cane sugar, in solid form—					
	A. Raw Sugars :					
	(i) Jaggery and Sakkara		Rs. 6.00 per kg.	061.1	kg.	-
	(ii) Other		Rs. 3.50 per kg.	061.2	kg.	-
	B. Other		Rs. 3.50 per kg.	061.9	kg.	-

ප්‍රශ්නය විමසන දේන්, සහ සම්මත විය.

විනු විමසීමට ඉදිරිපත් කරනු ලැබූ ප්‍රශ්නයට පිළිතුරු දුන් බවට තීරණය විය.

Question put, and agreed to.

**කේ. ඩී. ඊ. ද අල්විස් මහතා විසින් ඉදිරිපත් කරන ලද කරුණු සම්බන්ධයෙන් පරීක්ෂා කර බැලීම සඳහා විශේෂ කාරක සභාවක්**

திரு. கே. டி. ஈ. த அல்விஸ் செய்த முறையீடுகள் பற்றி விசாரணை செய்வதற்கான தெரிவு

**SELECT COMMITTEE TO INQUIRE INTO REPRESENTATIONS MADE BY MR. K. C. E. DE ALWIS**

මාමිණි දිසානායක මහතා (ඉඩම් හා ඉඩම් සංවර්ධන දෙපාර්තමේන්තුව සහ මහලැලි සංවර්ධනය සිලබ්ද දෙපාර්තමේන්තුව) (திரு. காமணி திஸாநாயக்க—காணி, காணி அபிவிருத்தி அமைச்சரும் மகாவலி அபிவிருத்தி அமைச்சரும்)

(Mr. Gaminji Dissanayake—Minister of Lands & Land Development and Minister of Mahaweli Development)

Mr. Deputy Speaker, with your permission I move the Motion Standing in the name of the Hon. Minister of Justice, namely :

"That, whereas Mr. K. C. E. de Alwis, former Judge of the Court of Appeal and a member of the Special Presidential Commission, has made representations to His Excellency the President of the Democratic Socialist Republic of Sri Lanka, regarding the conduct of the proceedings relating to the Application No. S.C. Reference 1 of 1982 and other matters relating thereto, this Parliament is of opinion that a Select Committee of Parliament be appointed to inquire into an report to Parliament on -

(a) whether there was a conspiracy between Messrs Felix R. D. Bandaranaike, A. H. M. Fowzie, A. H. M. Mohideen and/or any other person to deceive and/or induce Mr. K. C.

E. de Alwis, to enter into a transaction with A. H. M. Fowzie or in any other manner involving the said A. H. M. Fowzie, with the view to discrediting the Special Presidential Commission which in its Third Interim Report had recommended the imposition of civic disability on Mrs. Sirimavo R. D. Bandaranaike, and the said Felix R. D. Bandaranaike.

(b) whether there were any circumstances which rendered it improper for Justice D. Wimalaratna and/or Justice Percy Colin Thome to have agreed to hear and determine the application (S.C. Ref. No. 1 of 1982) filed by Mr. Felix R. D. Bandaranaike and whether the decision of either of them was influenced by any improper considerations.

(c) whether any pleadings filed by or on behalf of the petitioner, the said Felix R. D. Bandaranaike in the said proceedings were prepared in the Chambers of Justice Percy Colin Thome, one of the Judges who heard the said application and if so, the circumstances in which it came to be so prepared.

(d) whether the failure of the Judges to afford an opportunity to the Attorney-General to address on behalf of the State was justified, particularly having regard to -

(i) the fact that the Attorney-General made an application to be heard in the said proceedings ;

(ii) the Order made by Court on 20th September, 1982, on the said application by the Attorney-General refusing to hear him and stating that the Attorney-General would be heard if it became necessary in the course of the proceedings ; and

(iii) the fact that the decision of the majority of the Judges of the Court materially affected the operation of the Warrant issued by His Excellency the President.

(e) circumstances in which -

(i) the judgement was delivered on 18th October, 1982, two days before the date of the Presidential Election ; and

(ii) the judgement was delivered by a bench consisting of one of the respondents to the Application.

(f) whether there was any other impropriety in the conduct of or in relation to the said proceedings.

2. That the Committee and its Chairman shall be nominated by Mr. Speaker.

3. That the Committee shall -

(a) have the power to fix its quorum ;

(b) have the power to summon any person to appear before it, to require any person to produce any document or record, to procure and receive all such evidence, written or oral, as the Committee may think it necessary for the fullest consideration of the matters referred to above.

(c) have the power to report from time to time and to sit notwithstanding any adjournment of Parliament."

Mr. Deputy Speaker, at the very outset I wish to state on behalf of the Government that I do not propose to mention in this House, in introducing this Motion, any of the personal references and facts contained in affidavits or statements which have been produced in court or which have been presented to His Excellency the President by Mr. K. C. E. de Alwis by way of a narration of the facts, which according to him resulted in the findings against him. However, if hon. Members of the opposition do raise such matters, I think the Government is fully prepared to answer all those matters during the proceedings in this debate and by way of reply. But, as I discussed with the Hon. Prime Minister, I think it is the practice when Motions of this nature are brought before the House that members refrain from mentioning or enumerating facts which properly will be the subject-matter of an investigation by the Select Committee. I think that is a principle to which we should try to adhere, because to do otherwise would be to render this debate itself something in the nature of an inquiry or debate of the many matters which should go before the proper forum of the contemplated inquiry.

I wish to say also that this is the first time in the history of our country when a judge of the Supreme Court has been brought to task as it were and found fault with, censured by his brother judges. (*Interruption*). Yes, the Court of appeal. If you consider the manner in which this particular matter came before the Supreme Court you will realize, as the Chief Justice has mentioned in his judgment, that it was because under the law the Court of Appeal, to which the original petition was first made by the petitioner, found it incapable to inquire into the conduct of one of its own judges. Therefore the matter was referred under Section 18A(1) of Act No. 4 of 1978 to the Supreme Court of Sri Lanka.

I wish to refer to some of the fundamental principles which prompted the Government to come before the House and move this motion for the appointment of a Select Committee. As I said earlier, it is our belief that no complaint by any citizen of this country, however

lowly placed or however high, should have no forum in which there is an adjudication or an inquiry. I do not think any hon. Member of Parliament would say that his Excellency the President should reject or disregard or ignore merely because the matters raised by the Commissioner, the first respondent to the petition, Mr. K. C. de Alwis, refer to two judges of the Supreme Court. If that argument is accepted, the hon. Members of the House should realise that the first respondent in this case, a judge of the Court of Appeal, a member of the judiciary who had retired and a functioning Member of a Presidential Commission, has no other remedy whatsoever. He has no appeal. He has no rights of revision. He has no right to have his matter referred to a fuller bench of judges. In that context I think it was morally imperative on the part of the Government to have this matter inquired into and it is my view, as it is the view of the Government, that members in the Opposition need not come to any pre-conceived or premature judgment of bias, or impartiality, because, as I would explain later on, it is only Parliament and Parliament alone that can go into this matter.

From the remarks which were made earlier when the Hon. Minister of Parliamentary Affairs sought to suspend Standing Orders, I think hon. Members of the Opposition tried to venture into an area in relation to which there are specific powers in the Constitution regarding the removal of judges. I think the Hon. Minister of trade and Shipping quite correctly tried to focus the attention of the hon. Members of the Opposition to say that we have not come anywhere near that territory.

This Motion does not ask the Select Committee to recommend any punishment nor does it ask the members of the Select Committee to deprive any person of his civic rights. It does not ask hon. Members of this House to mention any punishment or impose any penal provision. I think, therefore, that the Government is entitled to expect the fullest co-operation from hon. Members of Parliament from all parties in going into this matter impartially and correctly.

Section 107 of the Constitution deals with the independence of the judiciary and also with the appointment and removal of Judges of the Supreme Court and the Court of Appeal. It deals with the procedure and says :

"No resolution for the presentation of such an address shall be entertained by the Speaker or placed on the Order Paper of Parliament, unless notice of such Resolution is signed by not less than one-third of the total Members of Parliament and sets out full particulars of the alleged misbehaviour or incapacity".

It should be pointed out that the Resolution which I read does not seek to remove any Judge. I would

[සමිච්චි දිසානායක මහතා]

therefore urge hon. Member of the Opposition not to canvass that question, not to take upon themselves the responsibility to infer because there is no inference of that nature in this Motion. This House is not being asked to consider the dismissal of a judge, but there are matters in relation to which there is public interest and in regard to which some finding has to be arrived at.

Therefore the Government will not be entering into a debate with hon. Members of the Opposition as to whether this matter warrants some sort of action to be taken against these Judges, or how it should be taken and by whom. No! But I want the Members of the Opposition to appreciate that under this Constitution, as under all other constitutions in this country from Independence up to date, Parliament had the power, upon a particular procedure being adopted, to even remove Judges of the Supreme Court, but we should be happy that we have not had occasion to do so in the past.

The powers of Parliament are contained in the Parliament (Powers and Privileges) Act. There is also the provision of Article 67 of our present Constitution which reads as follows :

"The privileges, immunities and powers of Parliament and of its members may be determined and regulated by Parliament by law, and until so determined and regulated, the provisions of the Parliament (Powers and Privileges) Act, shall *mutatis mutandis*, apply".

Therefore Article 67 has been given constitutional status. it has been incorporated in the Constitution and what is now sought to be done is in conformity with the practices that obtain not only in the Parliament of Sri Lanka but in all Parliaments i the British Commonwealth.

In England the conduct of high officials is inquired into either by a Royal Commission or by a Select Committee of Parliament.

There have been occasions when I looked at Erskine May, not too widely but with some measure of fulness. There has never been a question as to whether Parliament can inquire into the conduct of any public servant, and, as I said earlier, unless an inquiry of this nature is done, the first respondent against whom there has been a judgment has no remedy whatsoever in law. I think hon. Members of Parliament should remember that there is no appeal, no revision and no reference to a fuller bench.

Now, Sir, I said earlier that I would not be dealing with matters mentioned in affidavits. But I should like to table them so that hon. Members could have

the benefit of reading those documents as part and parcel of these proceedings—the three judgments, the judgment of his Lordship, the Chief Justice, the judgment of Justice Wimalaratne and the judgment of Justice Colin Thome in Supreme Court Reference 1 of 1982, in the matter of a reference to the Supreme Court in terms of Article 140 of the Constitution read with Section 18A of the Special Presidential Commissions of Inquiry (Special Provisions) Act No. 4 of 1978, in which Mr. Felix R. D. Bandarnaike of No. 1, Mahanuga Gardens, Colombo 3, is the petitioner, and the first respondent is Mr. K. C. E. de Alwis, the second respondent is Mr. S. Sharavananda and the third respondent is Mr. J. G. T. Weeraratne. I like to table in the House these three judgments.\* The judgments which are with me are heavily underlined and with comments made. I will take upon myself to table clean copies so that hon. Members of the Opposition and Government Members will have the benefit of reading the judgment and not my comments. Then, Sir, I will also be tabling the petition filed by Mr. Felix R. D. Bandaranaike of No. 1, Mahanuga Gardens, Colombo 3.\* If the typewriter has not vanished you will have the benefit of seeing it. I would like you to sit on the Select Committee so that you will be able to type on the typewriter. Then, Sir, I think the petition and the judgments will form part of the proceedings.

I wish just to place before the House certain peculiar characteristics about ths matter without making any comments on those matters. They form the subject matter of the Motion.

Sir, one of the very important matters, in my view and in the view of the Government, is that the Attorney-General was not heard in this case. I say this in all seriousness because this was a matter in relation to which something similar to a Royal Commission in England, namely, a Presidential Commission, was in operation. The petition filed by the petitioner was to ask the Suprme Court to order that the first respondent cease to function as a commissioner. A writ of *quo warranto* was asked. The judgment of the Chief Justice and the other two judges proceeded on certain principles of which I need not try to make any analysis now. All I wish to say is that the decision of the learned Chief Justice is fundamentally different, both in relation to law and to facts, from the decisions of the other two judges. Whatever the judgement in this matter it would have had an impact of the functioning of the Special Presidential Commission, and the Attorney-General

මා මෙම කටයුතු අවසානයේ පළ කර ඇති පිරිසිදුකළ පිටපත් බලන්න. පිටපත් සකස් කිරීමේදී තරාපත්වීම් ඇති වුවහොත් ඒවායේ විස්තරය පාර්ලිමේන්තුවේ පිටපත් කළ පිටපත් බලන්න. See Appendix at end of proceedings.



sought to intervene in the proceedings by way of filing a special motion. The motion is before me. I will table the motion also. This is what the motion of the Attorney-General says :

“ Whereas the Attorney-General has been served with copies of notices and documents which have from time to time been filed in the above proceedings and whereas it appears from the materials filed so far that it would be in the interest of justice that the Attorney-General appears on behalf of the State at the hearing of the above application. As such I move that Your Lordship's Court be pleased to grant the Attorney-General such hearings as may appear to Your Lordship's Court to be necessary ”.

Then, Sir, the Supreme Court made an order, an interim order, on this matter and it stated – I am not quoting from the judgment – that the Attorney-General will be asked to come into the proceedings if his presence was deemed to be necessary. But finally what happened ? The Supreme Court announced its judgement – I have been a practitioner in the Supreme Court as most of my Colleagues – without mentioning in the list that this judgement was going to be delivered. In other words, it delivered this judgement with one of the respondents sitting on the same bench – Justice Sharvananda was seated on the same bench which delivered the judgement. – (Interruption)

பி. சிவசுப்பிரமணியம்  
(திரு. எம். சிவசுப்பிரமணியம்)  
(Mr. M. Sivasithamparam)

A bench which heard a case, and a judgement being delivered by another bench with somebody else – has it not happened before ?

சு. சிவசுப்பிரமணியம்  
(திரு. காமினி திஸாநாயக்க)  
(Mr. Gamini Dissanayake)

You had better reserve your –

பி. சிவசுப்பிரமணியம்  
(திரு. எம். சிவசுப்பிரமணியம்)  
(Mr. M. Sivasithamparam)

I will reserve, but I am asking you whether you know it.

சு. சிவசுப்பிரமணியம்  
(திரு. காமினி திஸாநாயக்க)  
(Mr. Gamini Dissanayake)

Do you understand what you are talking ?

பி. சிவசுப்பிரமணியம்  
(திரு. எம். சிவசுப்பிரமணியம்)  
(Mr. M. Sivasithamparam)

I understand. I hope you understand what you are talking about !

சு. சிவசுப்பிரமணியம்  
(திரு. காமினி திஸாநாயக்க)  
(Mr. Gamini Dissanayake)

Yes, I understand. Do not try to draw a red herring. I will answer you.

சு. சிவசுப்பிரமணியம்  
(சபாநாயகர் அவர்கள்)  
(Mr. Speaker)

Order, please !

சு. சிவசுப்பிரமணியம்  
(திரு. காமினி திஸாநாயக்க)  
(Mr. Gamini Dissanayake)

You had better get up and speak if you want to make a point.

பி. சிவசுப்பிரமணியம்  
(திரு. எம். சிவசுப்பிரமணியம்)  
(Mr. M. Sivasithamparam)

Of course, I am going to speak. Do not think I am going to run away.

சு. சிவசுப்பிரமணியம்  
(திரு. காமினி திஸாநாயக்க)  
(Mr. Gamini Dissanayake)

I know that. Normally your legal talents are spared for “ tigers ” !

பி. சிவசுப்பிரமணியம்  
(திரு. எம். சிவசுப்பிரமணியம்)  
(Mr. M. Sivasithamparam)

That is all right. They will never come to you. So do not worry about that.

சு. சிவசுப்பிரமணியம்  
(திரு. காமினி திஸாநாயக்க)  
(Mr. Gamini Dissanayake)

They dare not come to me. Seriously, I want to ask the hon. Member for Nallur whether there has been a case where a judge has been a respondent to a particular matter and that judge was sitting on the bench when a matter pertaining to his own conduct –

பி. சிவசுப்பிரமணியம்  
(திரு. எம். சிவசுப்பிரமணியம்)  
(Mr. M. Sivasithamparam)

Not his conduct.

சு. சிவசுப்பிரமணியம்  
(திரு. காமினி திஸாநாயக்க)  
(Mr. Gamini Dissanayake)

Mr. Sharvananda's.

பி. சிவசுப்பிரமணியம்  
(திரு. எம். சிவசுப்பிரமணியம்)  
(Mr. M. Sivasithamparam)

No, there was nothing impugned about his conduct.

சுரீலங்கைத் தீர்ப்பு  
(திரு. காமினி திஸாநாயக்க)  
(Mr. Gamini Dissanayake)

The hon. Member for Nallur is trying to argue on matters here as if he is appearing in the Magistrate's Court defending a "tiger". I wish to tell him—

உ. சிவசிதம்பரம்  
(திரு. எம். சிவசிதம்பரம்)  
(Mr. M. Sivasithamparam)

Sir, he does not know the simple thing that a "tiger" is never charged in a Magistrate's Court. He must learn that first.

சுரீலங்கைத் தீர்ப்பு  
(திரு. காமினி திஸாநாயக்க)  
(Mr. Gamini Dissanayake)

I will tell you. Sir, the tragedy about this matter, if my learned Friend wants to know, is this. The implication of the two judgments of Justice Wimalaratne and Justice Colin Thome is that the affidavit of Justice Sharvananda, who was seated on the Bench when this judgment was delivered, has been disbelieved. What have you got to say to that?

உ. சிவசிதம்பரம்  
(திரு. எம். சிவசிதம்பரம்)  
(Mr. M. Sivasithamparam)

I thought you were not discussing the judgments. If you want to discuss the judgment we will discuss it.

சுரீலங்கைத் தீர்ப்பு  
(திரு. காமினி திஸாநாயக்க)  
(Mr. Gamini Dissanayake)

Because you asked me I am telling you—

உ. சிவசிதம்பரம்  
(திரு. எம். சிவசிதம்பரம்)  
(Mr. M. Sivasithamparam)

You want to have it both ways. Either discuss the judgments or do not discuss the judgments.

சுரீலங்கைத் தீர்ப்பு  
(திரு. காமினி திஸாநாயக்க)  
(Mr. Gamini Dissanayake)

These are not matters mentioned in the judgment.

What I am mentioning now by way of an answer to the hon. Member for Nallur is in relation to the fact that the application of the Attorney-General has not been granted.

உ. சிவசிதம்பரம்  
(திரு. எம். சிவசிதம்பரம்)  
(Mr. M. Sivasithamparam)

That is a different matter.

சுரீலங்கைத் தீர்ப்பு  
(திரு. காமினி திஸாநாயக்க)  
(Mr. Gamini Dissanayake)

I hope you are satisfied.

உ. சிவசிதம்பரம்  
(திரு. எம். சிவசிதம்பரம்)  
(Mr. M. Sivasithamparam)

You have not said anything. Satisfied!

சுரீலங்கைத் தீர்ப்பு  
(திரு. காமினி திஸாநாயக்க)  
(Mr. Gamini Dissanayake)

Then, Sir, the Attorney-General was not heard. If the Attorney-General or counsel on behalf of the Attorney-General, such as the Deputy Solicitor-General had been conducting the proceedings in the Special Presidential Commission, he would have had a lot of things to say, one of which would have been that there was absolutely no material to proceed against the person who has been referred to in the proceedings, Mr. Fowzie. But that matter was not dealt with in that way. Then, Sir, the other circumstance in relation to the pronouncement of this judgment is, as I said earlier, the fact that this judgment was not listed to be announced, and I have it on authority that Justice Sharvananda was told a few minutes before he came on the bench that this judgment was to be pronounced.

Another interesting thing about this judgment is that costs were awarded even against Justice Sharvananda. He is seated on the bench and is a respondent, and cost are awarded against a brother judge. Then, in the presence of the whole court he leans over and he reminds the Judges who are pronouncing the judgment: "No remedy was asked against me. I have been joined as a party, but there has been no remedy sought against me." The judges then deleted the award of costs against that respondent, who was on the bench.

What do you say to that?

உ. சிவசிதம்பரம்  
(திரு. எம். சிவசிதம்பரம்)  
(Mr. M. Sivasithamparam)

I am prepared to discuss the judgment. Either discuss the judgment or do not discuss it. If you want to discuss the judgment, let us discuss it fully. Do not have it both ways.

சுரீலங்கைத் தீர்ப்பு  
(திரு. காமினி திஸாநாயக்க)  
(Mr. Gamini Dissanayake)

In many matters, especially in the case of shooting, we do not have it both ways. We are at the receiving end.

புதி. சிவசிதம்பரம்

(திரு. எம். சிவசிதம்பரம்)

(Mr. M. Sivasithamparam)

We are also at the receiving end sometimes.

சாமினி டிசனாயக்க

(திரு. காமினி டிசனாயக்க)

(Mr. Gamini Dissanayake)

Therefore, Sir, we are not asking the House to come to a finding in relation to punishment or to prescribe certain methods of dealing with people. As the Motion says quite clearly, there are matters which need some answer, some clarification, because, as all three judgments have said, the proceedings have received the highest publicity, the widest publicity. I have got here a number of press reports where these matters have been reported even abroad, where they said that the Government has come to a standstill because of these judgments. There is an article in the Overseas News— I think it is "The Times" VICTORY FOR JAYEWARDENE IN SRI LANKA POLL"— Reported by K. K. Sharma and Mervyn de Silva in Colombo. Then it says :

"Mrs. Bandaranaike now faces a bleak future. However, she is expected to challenge the findings of the Special Presidential Commission which found her guilty of abuse of power and which led to the loss of her civic rights. Her appeal will be based on the fact that one of the three judges comprising the Commission was earlier this week found guilty by the Supreme Court of corrupt practice."

In the context of this reference to a corrupt practice, I wish to say that the judgment of the Chief Justice, which is the most comprehensive judgment of the three, dealing with many matters—equity principles, proceedings—held specifically that there is no corrupt practice.

Then, Sir, there is another foreign report which refers to :

"Conviction of judge mars Sri Lanka polls Yesterday's ruling—the result of a writ petition by Mr. Felix Bandaranaike—is a blow to the clean image of Mr. J. R. Jayewardene, the President, is seeking re-election. It will strengthen Mrs. Bandaranaike's claim that she is a victim of a witch-hunt and a political vandetta by the ruling party."

These are both reports from the international press giving the widest coverage to political interpretation. In fact, if you read the prelude to these remarks which I have quoted, the whole analysis is of the political situation in Sri Lanka culminating in the fact that this judgment has given a blow to the Government and embarrassed the President.

If one considers, the fact that the Attorney-General was not allowed to participate in the proceedings, although he filed a motion seeking to come into the proceedings on this motion, and one way or the other, particularly, it prevented or stopped temporarily or

permanently the proceedings of the Presidential Commission it would have been a matter of public importance. That right was not allowed, and I have seen, we have all seen, so many cases of importance where the Attorney-General is allowed, either on his own motion or by the invitation of court, to come into the proceedings in a matter of public importance.

Therefore, Sir, my position is that when one considers the fact that Parliament, and Parliament alone, has under Article 7 even the right to dismiss judges,— of course subject to a particular procedure, subject to certain considerations—there is absolutely nothing improper; there is nothing wrong, in Parliament taking cognizance of this matter, because of the very peculiar circumstances under which this particular matter has been related to the exercise of executive power—the manner of the delivery of the judgment. But most fundamentally, and I wish to stress, most fundamentally, the fact that His Excellency the President is in possession of a petition, an affidavit and a letter by a member of the Presidential Commission, a former judge of the Court of Appeal, that he has been denied justice, that he has been dealt with unfairly, that he has been given a wrong deal.

He stakes his case at a higher level than that and I do not wish to mention now the views of the commissioner himself, otherwise, we would be creating a situation where every citizen in this country has a right of complaint, has a right to canvass his case, but this commissioner who was performing a public duty has no redress at all in law. In other words, he has to accept, rightly or wrongly, what two other judges have said about him, their censure, and say that the law in this country does not provide for any one to scrutinize this terrible censure that has been made on him. Will this House accept that? I do not know about the Opposition, but certainly we in the Government would not, and I urge hon. members of the Opposition to desist from coming to the conclusion that this is a witch-hunt.

Of course the Hon. Member for Nallur, with his usual capacity to argue and felicity of words, will say that this is the end of democracy. Democracy does not depend on the entrenched privileges of one or two people. It depends on the right of every citizen in this country to see that his grievance is looked into. Otherwise there will be a situation in this country where no person will accept public responsibility. Therefore, Sir, I would invite hon. Members of the Opposition to participate in the proceedings of this elect Committee.

Then, Sir, the immediate result of this judgment was a public inquisitiveness. What has happened? Why did two judges write this about a commissioner?

[சாதினி டிஸ்காஸ்க் மஹா]

Who is this judge? Who are these judges? What are the facts? The public does not know. As the judges themselves have stated quite correctly, the public is entitled to certain information. From where will that information come? Are we going to have this shrouded in mystery? The Bar Association says "Do not inquire". Do we say, "No inquiry"? Why was that judgment delivered two days before the Presidential Election without it being listed? Why was the Attorney-General not given a hearing? Why was Justice Sharvananda who was seated on that bench asked to pay costs? Why was it that that had to be corrected on the bench itself? These are matters I think in relation to which there has to be disquiet. His Excellency the President himself had been asked questions about this. We, the members of the Cabinet, had been asked questions about this. I think it is correct and proper that the task of finding the answers or attempting to do so should be undertaken by this House. We feel we are competent to do so, and we will do so. And I do not wish hon. Members of the Opposition to disqualify themselves by thinking that they are incapable of doing so.

Also, Sir, as I stated, very serious matters pertaining to the conduct of judges have been raised by a judge himself, and I think it is better, for purposes of secrecy, that this matter go before a Select Committee, because the proceedings of Select Committees cannot be published unless authorized by the Select Committee itself. The whole purpose of the Motion is to ask the Hon. Speaker to appoint its members. This has been done before. There had been secrecy. We have been displaying in the past, both in this Parliament and in other Parliaments, that hon. Members are perfectly capable of going into matters with the highest degree of rectitude and with regard for the highest standards.

I wish hon. Members of the Opposition to realize that this concept of the independence of the judiciary should be viewed in the context of the existence of Article 107 of the Constitution where the judges themselves can be dismissed by Parliament. It is not a holy cow. There has to be a good balance between the executive functions, the judicial functions and the legislative functions, and I think our Constitution bears ample testimony to that. If you see the very nature of the phrasing of Article 4 of the Constitution—

"The judicial power of the People shall be exercised by the Parliament through courts, tribunals and institutions created and established, or recognised, by the Constitution, or created and established by law, except in regard to matters relating to, the privileges, immunities and powers of Parliament and of its Members, wherein the judicial power of the People may be exercised directly by Parliament according to law."

So, Sir, I do not wish to take more time. There is an allegation that there has been a conspiracy against a judge. There are matters which I can mention. For example, in relation to the first matter, whether there was a conspiracy between X, Y & Z to induce Mr. K. C. E. de Alwis, I wish to say, to dispel the thinking or suspicion of hon. Members of the Opposition, that according to all the judgments Justice K. C. E. de Alwis came to know that Mr. Fowzie was the purchaser of this property only after an agreement had been made with the brokers. In other words, it is a general basis of the Judgment that the first respondent did not know to whom he was selling the house. These are the facts which are relevant.

Therefore, Sir I think there must be a remedial measure for any aspect of public importance. The Bar Association has said. "Do not appoint another Presidential Commission". We could have found judges to go into this matter, but there are matters which are broader, much broader than a purely judicial finding. We are not asking this House to impose punishment on anybody. We are mentioning certain important matters that occurred before and during the delivery of this judgment. I am not bringing all those matters into this argument of mine. Hon. Members will not be asked to expel judges or to censure judges.

This Committee is to find out—(Interruption). Yes, a fact-finding Committee—quite right, in relation to a very important document which is now in the hands of the President, and I think every man in this country, leave alone Justice K. C. E. de Alwis, has a right to get an inquiry for a legitimate grievance. He is a man who has had a distinguished judicial career, much more distinguished than your Pathirana—(Interruption) much more distinguished than some of the people who were giving judgments dictated over the telephone—(Interruption) please, you are carrying a baby that is too difficult for you to carry.

අනුර බණ්ඩාරනායක මහතා

(திரு. அனூர் பண்டாரநாயக்க)

(Mr. Anura Bandaranaike)

Like what you are doing at the moment. You are carrying somebody else's baby.

சாதினி டிஸ்காஸ்க் மஹா

(திரு. காமினி திஸாநாயக்க)

(Mr. Gamini Dissanayake)

Therefore, Sir, I would urge hon. Members of the Opposition and the entire Parliament to give the fullest co-operation for the Parliament to inquire into this matter, so that there would be a fuller idea of what had happened, because no place is sacred whether it is the Parliament or the Presidency or the

Supreme Court. There are provisions under the Constitution to impeach the President. There are motions of no confidence that can be brought against Ministers and the Prime Minister. There is nothing sacred, and we do what we seek to do in the fullest confidence that we can maintain the highest traditions in the public service and in the judiciary, if it is necessary for our country.

Mr. Deputy Speaker, I think we are debating a Motion on which we should maintain the highest levels of debating and conduct on our part. Therefore, Sir, we should avoid unnecessary heat and unnecessary emotion when we are debating a Motion of this type.

At the very outset, I would like to say that neither I nor any Member of my party holds a brief for anyone concerned with this Motion. Though I had the pleasure of knowing the two judges who have been mentioned by name, Mr. Justice Wimalaratne and Mr. Justice Percy Colin Thome, for well over a quarter of a century, I do not hold a brief for them, nor do we have any grievance against Mr. K. C. E. de Alwis whose petition is the basis for this Motion. We are only concerned with the principle of appointing a Select Committee of Parliament to go into the conduct of judges of the Supreme Court.

The Hon. Minister of Lands & Land Development and Minister of Mahaweli Development made a very interesting speech. When the hon. Member for Nallur asked a simple question "Has this not happened in other cases?", I was surprised when the Hon. Minister said that one bench wrote the judgment and one of the judges of that bench delivered it when he was sitting with some other judges.

**வாழ்நீர் தீயனாயகை மொழி**

(திரு. காமினி திஸாநாயக்க)

(Mr. Gamini Dissanayake)

I asked him whether in any one of those matters that he was referring to the particular judge has been a respondent himself.

**சி. சிவசிதம்பரம் மொழி**

(திரு. எம். சிவசிதம்பரம்)

(Mr. M. Sivasithamparam)

That is not what I asked you.

**பி. அமிர்தலிங்கம் மொழி**

(திரு. ஏ. அமிர்தலிங்கம்)

(Mr. A. Amirthalingam)

I do not know why the Hon. Minister should have flared up and brought in "tigers" and "lions" into the whole argument. I think that was absolutely unnecessary. He is a young Minister—

**வாழ்நீர் தீயனாயகை மொழி**

(திரு. காமினி திஸாநாயக்க)

(Mr. Gamini Dissanayake)

I will tell you why. In some of the arguments that the Hon. Member for Nallur adduces he displays a streak of arrogance which does not justify the strength of his arguments.

**பி. அமிர்தலிங்கம் மொழி**

(திரு. ஏ. அமிர்தலிங்கம்)

(Mr. A. Amirthalingam)

There is no arrogance. I think you misjudged his voice. He is the most humble of persons. I think the Hon. Minister could have avoided that. The moment any member of the TULF says anything, should somebody jump up and make a reference to tigers? Is that the way we are going to debate in this House?

**சிவசிதம்பரம் மொழி**

(பிரதீச் சபாநாயகர் அவர்கள்)

(Mr. Deputy Speaker)

Let us come back to the Debate.

**பி. அமிர்தலிங்கம் மொழி**

(திரு. ஏ. அமிர்தலிங்கம்)

(Mr. A. Amirthalingam)

Why should the Hon. Minister draw a red herring—

**வாழ்நீர் தீயனாயகை மொழி**

(திரு. காமினி திஸாநாயக்க)

(Mr. Gamini Dissanayake)

If you want me to debate that, I will do that.

**பி. அமிர்தலிங்கம் மொழி**

(திரு. ஏ. அமிர்தலிங்கம்)

(Mr. A. Amirthalingam)

Consider the argument and reply to the argument and do not bring in unnecessary and extraneous matters. It may be that some of your back-benchers may applaud you when you say that, but you, as a responsible Minister, I am sure, will not indulge in cheap arguments of that type.

**வாழ்நீர் தீயனாயகை மொழி**

(திரு. காமினி திஸாநாயக்க)

(Mr. Gamini Dissanayake)

Mr. Deputy Speaker, I object to the Leader of the Opposition saying that I have adduced a cheap argument. The pedlar of cheap merchandise is the man who is seated next to him.

**பி. அமிர்தலிங்கம் மொழி**

(திரு. ஏ. அமிர்தலிங்கம்)

(Mr. A. Amirthalingam)

No. No. I think the hon. Member will reply to that.

**நியோජ்ஜ கப்தாநயகர்**

(பிரதீச் சபாநயகர் அவர்கள்)

(Mr. Deputy Speaker)

We will come to the Motion.

**பீ. அமீர்தலிங்**

(திரு. ஏ. அமிர்தலிங்கம்)

(Mr. A. Amirthalingam)

The whole speech of the hon. Mover of this Motion dealt with the conduct of judges. Though he prefaced his remark by saying that he did not want to deal with their conduct, he did not want to deal with the judgment, the whole speech dealt with their conduct, how a judge leaned over and said something and then the man who read the judgment deleted something—various things. All these and the Motion itself deal with the conduct of judges.

Proceedings in this House are regulated by our Standing Orders. As you know, Mr. Deputy Speaker, Standing Order 78 specifically and categorically lays down that the conduct of a judge cannot be discussed except on a substantive Motion. A substantive Motion is one which leads to a definite decision or finding, as the hon. Member for Chavakachcheri said earlier, in the afternoon, reading the definition of a substantive motion as it appears in Erskine May. This is not a Motion which leads to a definite finding. This is only a Motion for the setting up of a body to investigate.

Now, Sir, I think there has been a complete misreading and misunderstanding of the provisions of the Constitution with regard for this matter. The Hon. Minister of Trade and Shipping earlier in the afternoon, and the Hon. Minister of Lands and Land Development also, referred to Article 4 (c) of the Constitution which reads—

“the judicial power of the People shall be exercised by Parliament through courts, tribunals and institutions created and established, or recognized, by the Constitution, or created and established by law, except in regard to matters relating to the privileges, immunities and powers of Parliament and of its Members, . . . . .”

This Article is only meant to drive home and to establish the position that it is only in matters relating to the privileges, immunities and powers of Parliament and of its Members that the Parliament seeks to exercise its judicial powers directly.

**லலித் அதுலத்முடலி**

(திரு. லலித் அதுலத்முடலி)

(Mr. Lalith Athulathmudali)

Parliament may.

**பீ. அமீர்தலிங்**

(திரு. ஏ. அமிர்தலிங்கம்)

(Mr. A. Amirthalingam)

No; even there Parliament is enabled to exercise its judicial powers directly, that is, Parliament itself

sits in judgment. But in all other matters Parliament in the exercise of the judicial power of the people has to act through courts, tribunals and institutions. The Hon. Minister of Trade and Shipping, who is an eminent lawyer and I think in addition an academic in law, sought to say that Parliament has supervisory powers over the courts. I think that is a complete misreading of this Article. In regard to all matters other than those relating to the privileges, immunities and powers of Parliament, Parliament shall act only through courts, tribunals and institutions created and established or recognized by the Constitution. The Constitution itself has created, established and recognized certain courts, tribunals and institutions. Parliament has the power to pass legislation, to pass laws, setting up other courts, tribunals and institutions to exercise the judicial power of the people. So, Sir, it is a complete misreading to say that this Article gives any power to Parliament to directly exercise judicial powers except in relation to the privileges, immunities and powers of Parliament and its Members. That power, as you know, Mr. Deputy Speaker—

**நியோஜ்ஜ கப்தாநயகர்**

(பிரதீச் சபாநயகர் அவர்கள்)

(Mr. Deputy Speaker)

Order, please! Mr. Speaker will now take the Chair.

ஏதற்கு நியோஜ்ஜ கப்தாநயகர், இரூபநகரன் குடுன் இசைன், கப்தாநயகர் இரூபநகரன் பீக.

அதன் பிறகு, பிரதீச் சபாநயகர் அவர்கள் அக்கிராசனத் தினின்று அகலவே, சபாநயகர் அவர்கள் [அலுணாஜ் எம். ஏ பாபிர் மாகார்] தலைமை வகித்தார்கள்.

Whereupon MR. DEPUTY SPEAKER left the Chair, and MR. SPEAKER took the Chair.

**பீ. அமீர்தலிங்**

(திரு. ஏ. அமிர்தலிங்கம்)

(Mr. A. Amirthalingam)

Mr. Speaker, that power of Parliament relating to the privileges, immunities and powers of Parliament and of its members we have exercised not once but many times, and even, I think, imposed fines, I think, in the case of somebody who committed a breach of Privilege in respect of the hon. Member for Kaduwela, we even imposed a punishment on that gentleman. But in all other matters Parliament in the exercise of the judicial power of the people has to act through courts, tribunals and institutions.

Then we come to the provision dealing with the independence of the judiciary—Article 107 of the Constitution. It deals with the independence of the judiciary and lays down certain safeguards to prevent the executive or the legislature acting in an arbitrary way in regard to the judiciary. Article 107 (2) says :

“Every such judge shall hold office during good behaviour, and shall not be removed except by an order of the President made after an address of Parliament supported by a majority of the total

number of Members of Parliament including those not present has been presented to the President for such removal on the ground of proved misbehaviour or incapacity."

Proved misbehaviour or incapacity. So, every judge is assured of the safeguard that he shall not be removed from office during good behaviour. He can be removed on the ground of proved misbehaviour or incapacity on a petition presented to the President having been passed by Parliament by a majority of the 168 members of whom this Parliament is composed. That is what the sub-section says.

Then there is a proviso to that relating to the appearance of a motion of that nature on the Order Paper :

" Provided that no resolution for the presentation of such an address shall be entertained by the Speaker or placed on the Order Paper of Parliament, unless notice of such resolution is signed by not less than one-third of the total number of Members of Parliament and sets out full particulars of the alleged misbehaviour or incapacity."

We are not in that stage and therefore I do not have to deal with that part of it. But for the exercise of the power that Parliament has to impeach a judge, Article 107 (3) lays down the procedure and the machinery.

" Parliament shall by law or by Standing Orders provide for all matters relating to the presentation of such an address, including the procedure for the passing of such resolution, the investigation and proof of the alleged misbehaviour or incapacity and the right of such judge to appear and to be heard in person or by representative."

Immediately this Constitution was passed in 1978, what the Government should have done was to have presented to Parliament a law or an amendment to the Standing Orders providing for the procedure for the passing of such resolution, procedure for the investigation and proof of the alleged misbehaviour or incapacity, and laying down the right of such judge to appear and to be heard in person or by representative.

So far, during the last 5 years, the Government has failed to present a law or an amendment to the Standing Orders providing for this. Having failed to comply with the provisions of the Constitution, the procedure and provisions specifically laid down by the Constitution for the Parliament to exercise its powers of impeaching a judge, this is a short-cut motion that is being introduced. Article 107 (3) deals not merely with the presentation of an address – the address will come at a later stage – but it also deals with the procedure for the passing of such resolution. That also will come at a much later stage, but it also deals with the investigation and the proof of the alleged misbehaviour. I would submit, Mr. Speaker, that this Motion to set up a Select Committee is a violation of Article 107 (3) of the Constitution.

Under Article 107 (3) the procedure for investigation and proof of the alleged misbehaviour or incapacity has to be by law or by Standing Orders. It is not by this procedure of setting up a Select Committee of the House. I am sure the Hon. Minister of Trade and Shipping who is a legal pundit will understand this submission of ours, because that is specifically laid down in this Constitution. Otherwise, the Constitution may very well have said that the procedure for investigation and proof of the misbehaviour shall be by appointing a Select Committee to go into the matter. That is not what the Constitution says. You are violating your own Constitution, I say to this Government. I do not think there can be any doubt about it. On a correct reading of Article 107 (3), the investigation and proof of the alleged misbehaviour or incapacity and the right of such judge to appear and to be heard in person or by representative has to be provided for by Parliament by law or by Standing Orders. This is not being provided for by law or by Standing Orders. Therefore, this Resolution is a violation of Article 107 (3) of the Constitution and therefore, Sir, I do not think we are acting correctly in violating the very Constitution which this Government introduced and which governs the affairs of this House as well as the entire Government. Therefore, our opposition to this motion is based on this principle.

I think the Government will be well advised to withdraw this Motion and to introduce a Bill to provide the procedure for investigation and the proof of the misbehaviour or misconduct of judges or introduce an amendment to the Standing Orders. We will have to have a new chapter in the Standing Orders on this matter and then act in accordance with the law or those Standing Orders. Then, of course, there can be no grievance. But here, Sir, merely because his Excellency the President sought to set up a Presidential Commission and the Bar Council or somebody objected to it, you find that the short cut to it is for you to set up a Select Committee. Maybe in the law you intend bringing you can provide for the setting up of a Select Committee but I am sure the Hon. Minister of Lands and Land Development who is himself a lawyer will agree that this Motion is not a law nor is it an amendment to the Standing Orders and therefore is not in keeping with Article 107 (3) of the Constitution. This, Sir, is with regard to the legal basis of this Motion.

சுமதி தீர்மானம் செய்து  
(திரு. காமணி திஸ்ஸநாயக்க)  
(Mr. Gamini Dissanayake)

Our position is that this does not come under Article 107 of the Constitution.

பி. அமிர்தலிங்கம் பேசுகிறார்

(திரு. ஏ. அமிர்தலிங்கம்)

(Mr. A. Amirthalingam)

Good! The Hon. Minister says that this does not come under Article 107 of the Constitution. Then, the only way in which the conduct of a judge can be inquired into by Parliament is by way of a substantive motion. This is not a substantive motion. There is no power given to a Select Committee of Parliament to investigate the conduct of a Judge of the Supreme Court. The power of Parliament over Judges of the Supreme Court is only given under Article 107 of the Constitution and if the Government is not acting under Article 107, then it is acting *ultra vires* the powers of this very House. This House has no power to investigate the conduct of a Judge of the Supreme Court except under Article 107 of the Constitution.

Now that the Hon. Minister of Lands and Land Development – the mover of this Motion – has made it clear that they are not acting under Article 107, I invite him to point out the Article under which this House is given the power to investigate the conduct of a Judge of the Supreme Court. After all, these three branches, the Legislature, the Executive and the Judiciary, are given certain defined areas of operation. There are, of course, occasions when the Supreme Court may call some of us before it and deal with us. The Supreme Court has that power but we, as Members of Parliament, are also given power under Article 1.7 of the Constitution to deal with Judges of the Supreme Court for any misconduct, misbehaviour or incapacity but there is no power given to Parliament under our Constitution to interfere with the working of the Supreme Court.

The Hon. Minister of Lands and Land Development based his whole argument on a very good principle. He said that Mr. K. C. E. de Alwis had certain grievances but there was no provision for appeal. After all, three Judges of the Supreme Court had gone into his conduct and come to a finding; two Judges had decided one way and the Chief Justice another way. The Hon. Minister argued whether Mr. K. C. E. de Alwis should not have a forum where he could call into question the finding of these two Judges. I agree entirely with him but what is sauce for the goose must be sauce for the gander also. Did we not, only last week, introduce a Motion to expel the former 1st MP for Pottuvil on the finding of the Presidential Commission, a finding from which there is no appeal, which has no chance of being reviewed? Did we not plead before this Government that it was unfair and iniquitous to deny a man a right of appeal? No doubt Mr. K. C. E. de Alwis was a Judge of the Court of Appeal but even when a person who held the highest position in this country, the former Prime Minister, was deprived of her civic rights on a

finding of three Commissioners, one of whom was Mr. K. C. E. de Alwis, did we not plead with this government that the Presidential Commission provides for no appeal? In fact, it was only last week that I put forward this same argument on the Jalaldeen matter and said that the whole question of inquiry before the Presidential Commission from which there is no appeal, would have to be reviewed. I entirely agree with the lofty principle propounded by the Hon. Minister of Lands and Land Development but the same principle should apply to those persons who are found guilty by the Presidential Commission. That does not apply to them! To whom can Mrs. Bandaranaike go? To whom can Mr. Felix Dias Bandaranaike go? To whom can poor Jalaldeen go? He can only try to make a joke of it and walk out, bow to the inevitable. So that when you appoint a Presidential Commission from which there is no appeal and this same gentleman who had sat on a Presidential Commission and gave a finding from which there was no appeal makes a complaint against the findings of three judges of the Supreme Court, you propound the noble theory, the noble principle that there must be an appeal, there must be a forum where he can ventilate his grievance. I agree, I do not disagree with you, but you will see the falsity of the position when you apply it to the other case, the case of those who have been found guilty by the Presidential Commission.

To my mind it does not appear that there is no appeal in this matter. I have got this matter looked into by some of the legal pundits on our side and I am told that a situation like this had arisen in California once and what they did was, sent the matter before a full bench of the entire Supreme Court. The judges themselves inquired into the conduct of their fellow judges. There was no interference. I think the Governor of California or somebody in authority referred the matter to a full bench of the Supreme Court and they inquired into it. There was no interference by the legislature or the executive with the functioning of the judges. So that, Sir, even on the principle that the Hon. Minister laid down, I think that does not hold good.

Then the Hon. Minister said that the Attorney-General was not heard, that it is very wrong, but then in saying that, by implication they are calling into question not only the conduct of Mr. Justice Wimalaratne and Mr. Justice Percy Colin Thome, but even the conduct of the Chief Justice because he was also one of the judges. I think he was the Chairman of the panel which did not give a hearing to the Attorney-General, so that, by implication, though you do not say so, this investigation will have to be into the conduct of the Chief Justice also in not calling upon the Attorney-General to come and argue the matter



before them. This is not a motion against just two judges but this is a motion against the Chief Justice and two judges. Do you not see Hon. Minister, that you are bringing the whole Supreme Court down in the eyes of the people? Why cannot you leave this matter to be investigated by the Supreme Court itself? After all, there are enough estimable gentlemen in the Supreme Court. Leaving out the judges who are directly involved, a full bench of the other Judges of the Supreme Court can go into this matter. But I think we are exceeding the bounds of the powers of the Parliament in seeking to interfere with the judges, in seeking to interfere with the Supreme Court, and creating a dangerous precedent, Mr. Speaker. This will now become a precedent hereafter and in the hands of more unscrupulous Governments, it may be that a number of Select Committees can be set up and any number of judges brought into disgrace, unless they bow down to the almighty power of the executive, and even the judiciary will become a subservient limb of Government.

So the whole principle involved in this is the independence of the judiciary, and it is from that point of view that we are opposing this. As I said Sir, I do not wish to speak at length, but I even now appeal to the Government. Follow the Constitution, your own Constitution. Unless you respect your Constitution you cannot expect anybody else to respect the Constitution, and unless you maintain the independence of the judiciary you cannot expect anybody else to respect the judiciary. If respect for the judiciary falls, I think the entire administration of justice collapses, and I do not think anyone can be happy at that prospect. Therefore, I oppose this Motion with all the vehemence I can command.

I thank you.

உ.தி. சிவசிதம்பரம் தொழிலாளர்

(திரு. எம். சிவசிதம்பரம்—நல்லூர்)

(Mr. M. Sivasithamparam—Nallur)

Sir, I would like to tell the Hon. Minister of Lands and Land Development and Minister of Mahaweli Development that abuse is no substitute for argument. I can abuse you in the same manner that you abuse others, but that will not be arguing. As for "tigers" may I tell him, Sir, that today I am in the respectable company of his good friend, Mr. Satyendra, in defending "tigers".—(Interruption) He is the secretary of his trade union, his legal adviser, his very good friend. Well! I am in very good company as far as that is concerned.

உ.தி. சிவசிதம்பரம் தொழிலாளர்

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

We shall not get "tigers" into this House?

உ.தி. சிவசிதம்பரம் தொழிலாளர்

(திரு. எம். சிவசிதம்பரம்)

(Mr. M. Sivasithamparam)

Mr. Speaker, unfortunately you were not here. Sir. This is relevant to that.

உ.தி. சிவசிதம்பரம் தொழிலாளர்

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

Leave "tigers" alone!

உ.தி. சிவசிதம்பரம் தொழிலாளர்

(திரு. எம். சிவசிதம்பரம்)

(Mr. M. Sivasithamparam)

The "tiger" talk was started by them not by me.

Mr. Speaker, we have in the Constitution one entire chapter on the independence of the judiciary—finely-worded phrases, finely-worded clauses, enshrining the independence of the judiciary in the Constitution. How do you ensure the independence of the judiciary? Is it merely by writing it here and keeping it on the table, or is it in the day to day observance by us and the executive of the independence of the judiciary?

That is why, Mr. Speaker, we are opposed to this appointment of a Select Committee. Are you going to summon the Chief Justice and these two judges before the Select Committee? Are you going to question them? Are you going to ask them questions and say, "Did you have this typewriter; did you get this typed in your chambers; did you get this done, did you get the other thing done?"

That is why, Mr. Speaker, not today, not yesterday, years ago, both in the British Parliament and in our Parliament we had the Standing Order that the conduct of a judge shall not be discussed except on the basis of a substantive motion. That is why we had it not only here but in England also. The Hon. Minister of Lands and Land Development and Minister of Mahaweli Development said that according to May, Parliament has got a right to discuss the conduct of even the highest officer. May I ask him whether in the history of the British Parliament the conduct of a judge has been discussed, or any Select Committee has been appointed to go into the conduct of a judge?

Mr. Speaker, that is why we say that when you say that you want the independence of the judiciary enshrined, you must respect them. Mr. K. C. E. de Alwis is a retired judge we all respect him. But what was he in this case—he was a mere party in this case. He was nothing more. Are you creating a precedent that any party who is dissatisfied with the decision of the Supreme Court can go to the President, and

[විමසනු ලබන ප්‍රශ්න]

through the President come to the Parliament have a Select Committee appointed and have the opinion of the judges reviewed?—(Interruption). Is that what you are trying to create—that any man dissatisfied with the decision of the court can go to the President, the President can have a Motion in this House, and a debate can take place in this House before a Select Committee is appointed the conduct of the judges debated and the whole matter reviewed?

Sir, the Hon. Minister of Lands & Land Development and Minister of Mahaweli Development said that Mr. de Alwis had no remedy. As the hon. Leader of the Opposition said, what is the remedy that any one of these Presidential Commissions had? Never mind the Presidential Commissions. What is the remedy that a man who has been convicted of murder has whose appeal has been dismissed by the Court of Criminal Appeal? What further remedy has he got? The Supreme Court has decided. What further remedy has he got?

Quite apart from that, why did not Mr. de Alwis not object to their hearing those representations? Mr. Navaratnarajah I believe was his Counsel. Why did not Mr. Navaratnarajah bring it to the notice of the judges before the inquiry started and say, "I object to your hearing this case because of this, this and the other?" Why did not he do that? Surely, Sir, his counsel had every right to get up and say, "You have no business to hear this case." We have done that. The Hon. Minister of Lands knows that we have got up before magistrates and judges and said, "You cannot hear this case because either you know the party or you have some bias against the party". And how many judges had honourably withdrawn and said, "Yes, I will not hear this case." If the judges, in spite of such matter being raised, continue to hear cases, then he had the remedy of going to the Supreme Court and asking for a writ. Therefore, the argument that this gentleman had no remedy is untenable. He had his remedy. But having not used the remedy hoping that the verdict would be in his favour, it is not fair now for him to go to the President and say, "Have the conduct of these two judges reviewed".

Mr. Speaker, is this the first case where the Attorney-General has been refused audience? Have there not been cases where the Supreme Court has held that the Attorney-General should not go into court and take part in certain proceedings before a certain stage has been reached?

In the famous case where the former IGP was charged with the murder of Dodampe Mudalali, the Attorney-General went and represented the police,

and the Court of Appeal of the Supreme Court held that the Attorney-General should not have gone in at that stage and participated in those proceedings because he was the man who has finally to decide whether there was a case or not against Mr. Seneviratne. The Supreme Court has on more than one occasion stated that the Attorney-General need not be heard. In this instance also, as the Hon. Leader of the Opposition said including the Chief Justice, they decided that they shall hear him, if necessary. But surely one does not imagine that they wanted some additional argument apart from the argument of Mr. Navaratnarajah for which they needed the services of the Attorney-General? The court might well have thought that the case for Mr. de Alwis had been fully argued and therefore there was no need to hear the Attorney-General.

The Hon. Minister also made a point that the judgment was delivered two days before the Presidential Election. Even that is something new was not the Talgodapitiya Commission Report the interim report, revealed before the General Election of 1965? Was not Mr. Monnekulama and the others in Kurunegala prevented from contesting the July 1960 election because of that interim report?

Well, these things happened in the past. But why think that because this had happened that there was something sinister in what has happened? The Hon. Minister of Lands & Land Development and Minister of Mahaweli Development said that Mr. K. C. E. de Alwis had a distinguished career. Quite good. All of us agree that he had a distinguished career. We have appeared before him. Therefore we know it. In fact, I can tell you one thing more than what he has—that when his relation was in trouble he came to me to ask me to appear for him. That is the position.—(Interruption). Mr. de Alwis had a distinguished career. Nobody says no. So did Mr. Wimalaratne. So did Mr. Percy Colin Thome. Even these two gentlemen had very distinguished careers in the Judicial Service. Therefore there is no argument.

Mr. Speaker, as the hon. Leader of the Opposition said, we oppose this Motion on the principle that it is against the Constitution. We oppose this Motion because we think that it erodes into the respect the people should have for the judiciary and it goes against the long-established tradition that we should not discuss the conduct of the judiciary except on the basis of a substantive Motion which can say what offence they have committed what is their misconduct, and what is their misbehaviour. All these can be said and these matters can be discussed. therefore, I do appeal to the Government, if you are serious about ensuring the independence of the judiciary, please do not start a precedent which can be dangerously used by others.

**புரன் இன்னைப்பெறும் மொழி**

(திரு. சரத் முத்தெட்டுவெகமா)

(Mr. Sarath Muttetuwegama)

Mr. Speaker, I would like to preface my remarks on this Motion by saying that I do not wish to comment in any way upon the three judges who are involved in this matter. As many of the speakers before me have said, all three of them are distinguished judges—one a retired distinguished judge and the other two still serving on the Supreme Court Bench. They have had a long and unsullied career in the judiciary and in the Government sector before they joined the judiciary. I do not think it is proper at this stage to go into whether A, B or C or any one or all of them, have done anything improper. I think that is the whole objective of this Select Committee. If we look at the Motion that has been brought before us for approval in this House, you will see that it is broken up into a number of charges. A number of charges have been framed. The rationale of the Select Committee flows from two arguments. One is that Mr. K. C. E. de Alwis must have a remedy, which according to the Minister of Lands, even a simple citizen of this country has. The second is a curious argument, that the Bar Council has by a resolution objected to the appointment of a Presidential Commission, and therefore the Government is paying heed to the Bar Council resolution in not appointing a Presidential Commission but a Select Committee.

**காமினி டிசனாயக்க மொழி**

(திரு. காமினி டிசனாயக்க)

(Mr. Gamini Dissanayake)

I must correct my Friend. That was not part of my argument.

**புரன் இன்னைப்பெறும் மொழி**

(திரு. சரத் முத்தெட்டுவெகமா)

(Mr. Sarath Muttetuwegama)

That was implied. I will show you how it is implied.

Now, Sir, first of all, that Mr. K. C. E. de Alwis should have a remedy, I do not think anybody disagrees. If there has been something utterly improper, then Mr. K. C. E. de Alwis must have a remedy. If, for example, he discovers after the event that some utterly improper thing has been done in this case, then he properly should have a remedy. What should have been the remedy? I will say that it certainly should not have been this.

Secondly, the Bar Council resolution. The Bar Council has moved a number of resolution. The Government has ignored most of them. For example, recently the Bar Council moved a resolution in respect of the Stamp Act. Up to now the Government has done nothing about it. Suddenly, one entirely

isolated resolution of the Bar Council is taken—that also, in peculiar circumstances while the election of the President of the Bar Council was going on. One of the Presidential candidates moves a resolution in the Bar Council, and on that resolution the Government says that they are dropping the Presidential Commission idea and appointing a Select Committee.

What in fact is a Select Committee of this House? How far can we expect a Select Committee of this House to do justice in this event? Who will form the Select Committee? And what have been the practices and functions of these Select Committees?

First of all, Sir, look at the position today. You have a parliament consisting of 168 Members, 143 of whom were originally UNP Members; and 17 of them have resigned. The rest, about 25 are Members of the Opposition. Now, out of 143 Members of the UNP some of whom are to be appointed to the Select Committee, all of them—I have said this on more than one occasion—have handed over signed resignations from their constituencies, from their Seats in this House. When they are sitting on this Select Committee they will have to bear in mind the fact that their signed resignations are with the President and they must decide these cases or act in this Select Committee in a way that the President will approve. I am not saying anything about anybody at the moment. What the President will approve, I do not know.

**லலித் அதுலத்முதலி மொழி (வேலே டி நல்லி  
நெய்யு அழைத்து)**

(திரு. லலித் அதுலத்முதலி—வர்த்தக, கப்பல் சேவை அமைச்சர்)

(Mr. Lalith Athulathmudali—Minister of Trade and Shipping)

I am rising to a point of order.

**புரன் இன்னைப்பெறும் மொழி**

(திரு. சரத் முத்தெட்டுவெகமா)

(Mr. Sarath Muttetuwegama)

What is the point of Order?

**லலித் அதுலத்முதலி மொழி**

(திரு. லலித் அதுலத்முதலி)

(Mr. Lalith Athulathmudali)

If an hon. Member is imputing motives regarding the conduct of a Member of parliament, if he wants to do it, he must specify the hon. Members and he must bring a substantive Motion. Otherwise, he must proceed on the assumption that all Members of this House will act honourably. If he cannot act in that way—

**புரன் இன்னைப்பெறும் மொழி**

(திரு. சரத் முத்தெட்டுவெகமா)

(Mr. Sarath Muttetuwegama)

Hon. Members of the House will act honourably if their resignation is not at the back of their minds.

**கிழவியாசனத்திலே**

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

I would advise the hon. member to avoid discussing the conduct of Members.

**சுரன் இன்னைப்பெய்தலே மொழி**

(திரு. சரத் முத்தெட்டுவெகம)

(Mr. Sarath Muttetuwegama)

So the Select Committee will be appointed out of these hon. Members. I believe the Cabinet has already decided who should be on the Select Committee.—(Interruption)—I think everybody knows that. I think Dr. Nissanka Wijeyeratne, the Hon. Minister of Justice, is to chair the Select Committee; the Hon. Minister of lands and land Development and Minister of Mahaweli Development is to serve on the Select Committee; the Hon. K. W. Devanayagam is to serve on the Select Committee.—(Interruption)—I am telling you if you do not know yet. Mr. Harindra Corea is to serve on the Select Committee.

**அனூர் பண்டாரநாயக்க மொழி** (துவர்த்தியை-மேய்க்கெடுக்க  
சேலி)

(திரு. அனூர் பண்டாரநாயக்க — துவர்த்தியை-மேய்க்கெடுக்க  
இரண்டாம் அங்கத்தவர்)

(Mr. Anura Bandaranaike—Second Nuwara Eliya-Maskeliya)

Oh, my God, not he! What about the Hon. Minister of Education?

**சுரன் இன்னைப்பெய்தலே மொழி**

(திரு. சரத் முத்தெட்டுவெகம)

(Mr. Sarath Muttetuwegama)

I think the Hon. Minister of Education is also there.

**அனூர் பண்டாரநாயக்க மொழி**

(திரு. அனூர் பண்டாரநாயக்க)

(Mr. Anura Bandaranaike)

That is the missing link!

**சுரன் இன்னைப்பெய்தலே மொழி**

(திரு. சரத் முத்தெட்டுவெகம)

(Mr. Sarath Muttetuwegama)

They are people who are going to serve on the Select Committee. Now, I want to ask the hon. Minister of Lands and Land Development and Minister of Mahaweli Development—we have had the benefit of listening to him—can the hon. Minister serve on this Select Committee? From the speech that he made today, if you listened to it carefully or read it later on, you will find that he has almost come to a certain conclusion about certain matters. It is clear from his speech. In the circumstances, can he serve on the Select Committee? I think it is better that he does not. For example, when I asked him whether the typewriter is going to be produced, what

did the Hon. Minister say? He said that if the typewriter had not been removed already it might be brought. Now, in the context of the resolution, if he thinks that there was a typewriter in the chamber of Mr. Justice Colin Thome on which these draft pleadings were typed, and if he is of the opinion that the typewriter could have been removed by now to prevent it from providing evidence at the inquiry, can he sit on the Select Committee? Would it be fair?

**காமினி திவாநாயக்க மொழி**

(திரு. காமினி திவாநாயக்க)

(Mr. Gamini Dissanayake)

How can a typewriter be brought if it is removed? I did not remove it.

**சுரன் இன்னைப்பெய்தலே மொழி**

(திரு. சரத் முத்தெட்டுவெகம)

(Mr. Sarath Muttetuwegama)

You are the one who said it.

**காமினி திவாநாயக்க மொழி**

(திரு. காமினி திவாநாயக்க)

(Mr. Gamini Dissanayake)

You are the one who asked the question and I gave an answer.

**சுரன் இன்னைப்பெய்தலே மொழி**

(திரு. சரத் முத்தெட்டுவெகம)

(Mr. Sarath Muttetuwegama)

I asked the question. I did not give the answer. He gave the answer. Surely, if I asked the question, has he to give that answer?

**காமினி திவாநாயக்க மொழி**

(திரு. காமினி திவாநாயக்க)

(Mr. Gamini Dissanayake)

I can give any answer that is relevant to the question that you asked.

**லலித் அதுலத்முதலி மொழி**

(திரு. லலித் அதுலத்முதலி)

(Mr. Lalith Athulathmudali)

On the argument of the hon. Member for Kalawana, if what he says is right, he also cannot sit on the Select Committee.

**சுரன் இன்னைப்பெய்தலே மொழி**

(திரு. சரத் முத்தெட்டுவெகம)

(Mr. Sarath Muttetuwegama)

I certainly have no intention of sitting on the Select Committee. I will tell you why. I have no intention whatsoever of sitting on the Select Committee. What I am saying is that they cannot.—(Interruption.)

First of all, let us examine the Resolution. This is not a Resolution to have an inquiry against Justice Wimalaratne and Justice Colin Thome. It is a

Resolution that casts serious aspersions on His Lordship the Chief Justice. You cannot isolate him merely by saying that his judgement differs from the other two. Now, look at paragraph (e) of the Resolution. It is to inquire into the circumstances in which the judgment was delivered on 18th October 1982, two days before the date of the Presidential Election.

Now Sir, what does that imply? That implies that the three judges, led by his Lordship the Chief Justice, engaged in a conspiracy to deliver a judgement two days before the Presidential Election, with a view to influencing that election, which in your opinion is detrimental to the Government. That is the sum and substance of that allegation. You cannot get away from that. Therefore, this is an inquiry against the Chief Justice as well. It is not a matter, Sir, where you can say the Chief Justice is above board, that his judgment is substantially different, that it is the other two judges we are inquiring about. That is not the impression you get when you read this Motion.

Then you find another allegation here—to find out why the Attorney-General was not given an audience. He was not given an audience by whom? Not by Justice Wimalaratne alone, not by Justice Percy Colin Thome alone, but by a bench of three judges of which the chairman was no less a person than the Chief Justice. If the Attorney-General had been kept out maliciously, deliberately, with a view to distort the proper argument in this case, the Chief Justice is as much a party to that process as the other two judges.

So this is a very, very serious situation. We are dealing with the chief court in our land, the Supreme Court. We have put on trial three Judges, one of whom is the Chief Justice. I ask you, Mr. Speaker, can the three of them sit and function as judges from tomorrow? Can they, as self-respecting judges, continue to sit on that bench and function from tomorrow when they know that this House has passed a Resolution attributing certain improprieties to them and that there is an oncoming investigation into their conduct?

The Chief Justice, Sir, is the person who constitutes the benches for all the hearings of the Supreme Court. If there to be a five-judge bench, he nominates the five judges. If it is a three judge bench, he nominates the three judges. You are placing him in an utterly invidious position. You come here to this House and pass a Resolution with allegations which are very serious. The papers carry this. The radio carries this. The papers, Sir. I want to say, carried this news before it appeared in the Order Paper of this House. The entire Resolution appeared in one of the papers before it appeared in the Order Paper of this House.

Be that as it may,—it is beside the point now—let us say the Resolution is passed. What is the position of those three judges? Can they function tomorrow? Can the Chief Justice constitute a bench tomorrow and nominate judges? What are you, in effect, doing to the Supreme Court? You are crippling the right of its existence. You are frightening the judges by saying “Well, you have deprived the Presidential Commission of one of its judges. We will deprive you of three of your judges, including the Chief Justice.”

I do not want to go into the history of some of the correspondence that was reported in the papers. But in the context of a number of things that happened, the Chief Justice will find it very difficult to sit tomorrow on the bench. One of these allegations is that the Attorney-General was refused an audience, presumably to act as *amicus curiae* in the case. I remember Sir, in that very case of Dodampe Mudalali which the hon. Member for Nallur referred to and which came up in the Supreme Court—I think the Chief Justice was Mr. Victor Tennekoon at the time—the Chief Justice stated that an *amicus* in those circumstances is merely a Latin word for a Greek friend, and he stated that there is no need at all for an *amicus* when parties are represented.

Anyway, sir, let us get through the rest of this matter. Is the appointing of a Select Committee the proper procedure? I have here a book called “The House of Commons in the Twentieth Century.” A number of aspects of the House of Commons have been gone into, and particularly the functions and the uses of a Select Committee have been gone into. The writer, Sir, is a person called Walkland. He says that Select Committees have ceased to be of much service.—(Interruption) Not Falkland but Walkland—walking as some of the people are walking about here.

**අනුර බණ්ඩාරනායක මහතා**  
(திரு. அனூர பண்டாரநாயக்க)  
(Mr. Anura Bandaranaike)

That is Johnny Walker who is constantly walking about.

**ලලித் அதுலத்முதலி மஹா**  
(திரு. லலித் அத்துலத்முதலி)  
(Mr. Lalith Athulathmudali)

What are his qualifications?

**සරත් මුත්තේවෙගම මහතා**  
(திரு. சரத் முத்தேவெகம)  
(Mr. Sarath Muttetuwegama)

I am only obliged to give the name of the book and the name of the author. I am not obliged to give the qualifications.

**ஔுர் லனீவர்தாயக ம஑தா**

(திரூ. அனூர பண்டாரநாயக்க)

(Mr. Anura Bandaranaike)

Must be a contemporary of yours also—the Minister of Trade and Shipping.

**லீலீன் ஔுலுதமுடலி ம஑தா**

(திரூ. லலித் அத்தலுத்முதலி)

(Mr. Lalith Athulathmudali)

Cannot be.

**஑ர்ன் இன்னெடுடுலேல ம஑தா**

(திரூ. ஑ரத் முத்தெட்டுலெகம)

(Mr. Sarath Muttetuwegama)

He is a Professor in Politics in the University of Sheffield. I hope it is good enough for the Hon. Minister of Trade. Talking about Select Committees, he says : “ They are groups of Members entrusted to inquire and report as laymen on what they discover and what they think about it ”.

**கலாயக஑ுடு**

(஑பாநாயகர் அவர்கள்)

(Mr. Speaker)

What is that book ? Before you quote, I like you to tell me the name of the book.

**஑ர்ன் இன்னெடுடுலேல ம஑தா**

(திரூ. ஑ரத் முத்தெட்டுலெகம)

(Mr. Sarath Muttetuwegama)

“House of Commons in the Twentieth Century.”

**ஔுர் லனீவர்தாயக ம஑தா**

(திரூ. அனூர பண்டாரநாயக்க)

(Mr. Anura Bandaranaike)

An old title.

**கலாயக஑ுடு**

(஑பாநாயகர் அவர்கள்)

(Mr. Speaker)

I am not worried about the age of the book.—(Interruption.)

**ஔுர் லனீவர்தாயக ம஑தா**

(திரூ. அனூர பண்டாரநாயக்க)

(Mr. Anura Bandaranaike)

It is a good book, Sir, I have read it twice. You ought to read it, Sir.

**஑ர்ன் இன்னெடுடுலேல ம஑தா**

(திரூ. ஑ரத் முத்தெட்டுலெகம)

(Mr. Sarath Muttetuwegama)

May I be allowed to read it once ?

**கலாயக஑ுடு**

(஑பாநாயகர் அவர்கள்)

(Mr. Speaker)

Ask your Friend to allow you to read it.

**஑ர்ன் இன்னெடுடுலேல ம஑தா**

(திரூ. ஑ரத் முத்தெட்டுலெகம)

(Mr. Sarath Muttetuwegama)

Talking about Select Committees he says :

“They are groups of Members entrusted to inquire and report as laymen on what they discover and what they think about it. Today it is primarily the complex pattern of state activity to which the House directs the attention of those appointed to advise it in this way. This has certain consequences for what select committees of scrutiny can actually do and for the manner in which they operate. The activities of the state are manifold and continuing and impose their own imperatives on Members of Parliament who scrutinize them. As laymen devoting but a part of their time to such tasks they sail between the Seylla of superficial and sometimes emotive criticism and the Charybdis of judicious appraisal which rarely excites political attention.”

That is actually so, because if you take a Select Committee, what happens in practice in this House ? You will appoint five or six Members. Some of them may be Ministers, and they will be busy with their Ministerial functions. The others are Members, and they are busy with their functions as Members. You are giving to them one of the most important areas which have to be inquired into in recent times and asking them to go and launch themselves into an inquiry and give a report which is going to have extremely far-reaching consequences.

There could also be in the process some very critical situation developing. For example, if the judges refuse to come before this Select Committee, then what happens ? have you paid heed to all this when you did this ? That is why I say that a Select Committee is probably the least advisable method which you could have thought of to investigate this matter.

The second thing is, could there have been some other way ? Unfortunately, as the hon. Leader of the Opposition pointed out, the necessary regulations or laws under Section 107 of the Constitution have not been brought. That is often the fate of this Government. When Sepala Ekanayake hijacked a plane, we had to sit here one night till all the regulations were suddenly passed. Conventions had to be rectified here after the hijacking of the plane. Laws have not been promulgated, the regulations have not been passed, and we are now caught napping. You have a situation on your hands for which you do not have the laws.

Now what is the position in India, for example ? In India, Sir, they have an Act, and an inquiry like this would be held under that Act. That is an Act passed

in 1968 called the Judges' Inquiry Act, and a motion has to be signed by no less than 100 members asking for an inquiry, and then the Speaker constitutes the committee under the Judges' Inquiry Act. It consists of three people. The three people are: first, a representative of the Chief Justice and the other judges of the Supreme Court; the second member is a representative of the Chief Justice of the High Court of India; and the third member is a representative of eminent jurists. Those are the three people who in India are empowered to inquire into a situation like the present one.

Then, Sir, they have to constitute definite charges. First of all, they must ask the person who is facing those charges for his comments.

Look at the position today. Mr. Justice de Alwis has made a complaint; two judges have been named; we have come with the Select Committee proposal to this House. I want to know and I would be grateful if somebody would tell me, whether His Excellency the President had asked those two judges what they have got to say before the Select Committee proposal is brought. Surely, basic justice demands that before you rush with a Select Committee proposal, before you give it the widest publicity you can, that the person instituting those proceedings should ask the respondent to that complaint, "Have you got anything to say about this?" Because that might have been the end of the matter. I do not know even the allegation, except what is in this Motion. But I want to know, was it done? Was a question addressed to those two judges. "What have you got to say?" Apparently not.

In India, Sir, after the conclusion of the committee's work, it submits a report to the Speaker, upon which he acts. In Sri Lanka, under Article 107, you can bring a motion to remove a judge. On what ground? On proved misconduct or incapacity. When you use the word "proved" there is an immediate legal connotation. There is a definite meaning to that word. It must be judicially proved—not by a Select Committee of five members.

Look at the consequences of what we are undertaking today. As a result of this Select Committee. We might very well come with a resolution to this House asking for the removal of the two judges. Can one honestly say that the report of the Select Committee is adequate to cover that phrase "proved misconduct?"

**மனீத்ரிவரையேகி**

(அங்கத்தவர் ஒருவர்)  
(A Member)

They will be qualified people.

**சுனந்த் டசனாயக்க மஹா**

(திரு. ஆனந்த தஸநாயக்க)

(Mr. Ananda Dassanayake)

They will be better judges no doubt!

**சரத் மூத்தெட்டுவெகம**

(திரு. சரத் முத்தெட்டுவெகம)

(Mr. Sarath Muttetuwegama)

Now, Sir, I want to ask, in the absence of the law under Article 107, when Mr. Justice de Alwis made this complaint could not there have been another procedure adopted? I would like to suggest another procedure. But, first of all, I want to protest about one thing.

About six to eight weeks ago one of the Sunday newspapers carried this story. I tried to look for it but I could not find it. I believe it was the "Sun" which carried a report saying "Presidential Commission to be appointed to prove into the two judges". I was outstation when I read that. That is the first time I knew that there was such a thing going on. Lots of other people would have read it. I want to say, whoever leaked that to the press did the first great disservice to the cause of justice in this country.

In my view, the President has the power, without appointing a Royal Commission or Presidential Commission, to have called, say, a retired Chief Justice—we have one or two amongst us—and told him, without publishing in the papers, "look, I have got a complaint like this; could you look into this matter and furnish me with a report?" could not that have been done?

Should it have had the glare of this publicity in the newspapers before anything happened? In example, there were the contenders in the Bar Council election who fell one over the other to move a resolution. That is exactly what happened. I do not want to go into their activities, but actually what happened was that there was a hotly-contested election at the Bar Council, two candidates contesting the post of president. One had gone to see His Excellency the President, not the Bar Council President, about the stamp Act. The other introduced a resolution about this motion. The latter won. The Stamp Act lost.

**அனூர் பண்டாரநாயக்க**

(திரு. அனூர் பண்டாரநாயக்க)

(Mr. Anura Bandaranaike)

He was stamed out!

**சரத் மூத்தெட்டுவெகம**

(திரு. சரத் முத்தெட்டுவெகம)

(Mr. Sarath Muttetuwegama)

That is the point.

[ஈர்ன் இன்னைபெலெமெ மென்]

What I say is, that could have easily been done without all this heart-burning, without these debates in this House, without all this publicity. His Excellency the President could have armed himself with an object view of this situation upon which he could have acted. First of all, as the Leader of the Opposition says, the whole thing is a case where the cart has got before the horse. The laws should have been framed. Even like in Sepala Ekanayake's case, it would have been better to frame the laws and act on those laws. But if you could not do that you could have acted on the other alternative of asking a senior retired Supreme Court Chief Justice to look into the matter.

Then, Sir, I want to put this instance in the perspective of some other events that have happened. The newspapers have given a lot of publicity to the fact that a judgment was delivered recently by the Supreme Court holding that the action of a Superintendent of Police, one Mr. Udugampola, in seizing the copies of a newspaper called the "Pavidi Handa" was a violation of fundamental rights of that priest. The Supreme Court ordered Mr. Udugampola to pay Rs. 10,000 as compensation to that priest. People were very happy that the Supreme Court—whether the decision was right or wrong—had acted independently, that they had acted in defence of fundamental rights. It is the experience of all of us that a lot of people commented on that. What did the Government do? Some weeks ago—of last week—the Cabinet not only decided to pay Mr. Udugampola's Rs. 10,000 but decided to give him a promotion. They gave the Supreme Court a slap on its face and said: "You want to give judgments in defence of our fundamental rights. This is what we think of your judgment. We are giving the man, whom you described as a person who violated those fundamental rights, a promotion for his effort and paying him Rs. 10,000 as compensation for that."

Now, Sir, in view of that, what can we, who are first of all citizens of this country, as Members of an Opposition to your strong Government people who will tread on the corns of the Government in one way or the other in due course, what can we expect from the Government and from the courts that it is threatening in this kind of way? Can we expect people who are human beings, wherever they are placed, to act according to their conscience, to act according to their dictates, to act according to the way that they think is right? They do not know what is going to happen to them. If somebody sends a petition, bang might come another Select committee on other judges. There might be several Select Committees sitting into the activities of judges of the Supreme Court, of the Court of Appeal, of the High Court, right down to the Primary Court.

It is useless saying, "We are a democracy, we are respecters of the separation of powers, we are for the independence of the judiciary, we are for independence judges." Mr. D. N. Pritt had once said in one of his books—he wrote a trilogy, a sort of autobiographical trilogy—that independence of judges is like chastity among women. It is sometimes very desirable but very often difficult to find. So can you expect them to be independent, if judges say, if we give a judgement against a police officer that fellow is going to get a promotion? If a judge wants to help a police officer now he must give a judgment against him saying that he has violated human rights. He will get a promotion!

மன் திரெசென்

(அங்கத்தவர் ஒருவர்)

(A Member)

Why should judges want to help police officers?

ஈர்ன் இன்னைபெலெமெ மென்

(திரு. சரத் முத்தெட்டுவெகம)

(Mr. Sarath Muttetuwegama)

Why should they do one thing and we do the other, Sir? Those are imponderable questions. Why should people do this, that or the other? But the fact is that these things do happen.—(Interruption) Oh! In Russia? This Udugampola was in Russia? Is it that the "Pavidi Handa" was at Siberia?

மன் திரெசென்

(அங்கத்தவர் ஒருவர்)

(A Member)

Somewhere there.

ஈர்ன் இன்னைபெலெமெ மென்

(திரு. சரத் முத்தெட்டுவெகம)

(Mr. Sarath Muttetuwegama)

It was in Gampaha, Sir, that the "Pavidi Handa" was seized, and Udugampola is a superintendent of police not in Russia but in Sri Lanka, in the Democratic Socialist Republic of Sri Lanka—in the *Dharmista* Democratic Socialist Republic. Sir, I do not think that this desire for independence of the judges is something that is strange to the United National Party.

I would like to end my speech by quoting a speech made by His Excellency the President when he was a Member of this House, and by virtue of being a Member of this House was a Member of the Constituent Assembly that drafted the 1972 Constitution. Very interesting, Sir, What the President had to say then.

மன் திரெசென்

(அங்கத்தவர் ஒருவர்)

(A Member)

Quote correctly.



සරත් මුත්තේවෙගම මහතා

(திரு. சரத் முத்தேட்டுவேகம்)

(Mr. Sarath Muttetuwegama)

What do you mean? I do not quote incorrectly. This is from a report which you also can read.—(Interruption) The hon. Member for Chilaw sat silently so long, and it was such a pleasure—his silence was such a pleasure—and then he comes and butts in with some irrelevant, idiotic comment.

Constituent Assembly of Sri Lanka, Official Report 1970–1972, columns 2837–2840.

I have been told to quote in the proper context, and because it is very, very relevant I will quote at length from the speech of his Excellency the President.

He was talking about three ways in which the independence of the judiciary could be assured. First, he said it was assured by the manner of appointment. Then he talked of a second method by which that independence of the judges could be assured.

“Then with regard to removal, again he has gone very far to see that Parliament does not unnecessarily use its powers or unnecessarily harass judges because elaborate procedure has been laid down whereby a judge, if he does not conform to convention and precedents and standards, should be removed. I think it is very rarely such an event will happen that parliament is called upon to decide that a judge should not hold his office. It has never happened as far as I know in this country, and very rarely in other countries too. I only know that to my knowledge there was an attack on a judge in this House on one or two occasions, but as far as I know no resolution was actually moved and discussed”

Then he talks of a third method.

“The third matter is freedom from criticism in the Assembly and protection of a judge whilst sitting in his judicial seat. That too I think need not be in the Constitution, but let it be by legislation. Already legislation exists. By Standing Orders we can secure these ideal objects.”

He ends his speech thus :

“We have those situations arising today, and they will arise in the future too. All governments and all members of governments may not be as liberal as the Hon. Minister and some of his Colleagues are, or as legal-minded. We may find a different type of people being thrown up in the hustings who do not care or have no respect for these ideas.”

I was wondering whether he was talking of the next election.

“But if you have a limb of the Constitution manned by men who are independent, who do not fear the consequences when they give their decisions, then at least democracy can be saved and salvaged. We know that ultimately, whatever rules and words you may put into a Constitution, the working of it lies with the men and women who work it. You may have all the precautions to make the judiciary independent, but unless the men who man the judiciary are men of courage and men of wisdom, the judiciary will never be independent. We have had such men in the past. We have such men in the present. Now the object of all of us is to see that in the future too, in the written Constitution, we create the conditions for such

men to live, thrive and prosper. If they feel that they will be subject to pressures from governmental forces or from those elected to Parliament, they will not be able to perform their duty.”

I do not think, Sir, that anybody has said what should be said against this Resolution so eloquently as His Excellency the President did in that 1972 speech of his.

Thank you.

தி. சி. வி. என். நவரத்னம் (சாவகச்சேரி)

(திரு. வி. என். நவரத்னம்—சாவகச்சேரி)

(Mr. V. N. Navaratnam—Chavakachcheri)

Mr. Speaker, my comments on this resolution are intended only for your ears. I do not want to waste my time or energy trying to change the views of hon. Members of the Government.

Mr. Speaker, hon Members who spoke before me have spoken about the independence of the judiciary the need to maintain the trust the people have in the judiciary. I as a citizen and also as a practising lawyer share with my Colleagues the desire to maintain the independence of the judiciary, to see that judges, particularly judges of the Supreme Court, are not brought into disrepute. But, more than the judiciary, I am interested in the institution of Parliament and its reputation and dignity both in this country as well as abroad.

We had occasion in 1965 and 1970 to witness how members of the Legislature in their arrogance abused their powers, bringing disrepute to various important institutions in this country. They have now gone and some of them have even been deprived of their civic rights but this institution, the Parliament, remains. The respect and esteem which the people of this country have for this institution should be preserved and you, and you alone, Mr. Speaker—not even this House—have the right and obligation to preserve the reputation of this institution. We are governed by the Standing Orders and nobody—not even the whole House—unless they first amend the Standing Orders, can contravene any provision of the Standing Order. You and you alone have the obligation and the power to maintain the Standing Orders and not permit anybody, however high or however powerful, to violate any of the Standing Orders.

In the afternoon I referred to Standing Order 78 and I wish to refer to it again. It says :

“The conduct of . . . . . the Judges or other person engaged in the administration of justice shall not be raised, except upon a substantive motion ;”

Now, what is Resolution before the House? Is it a substantive motion? Authorities on Parliamentary procedure have laid down what a substantive motion



Not only have we dispensed with the Minister of Justice but we are at the moment in the process of dispensing with justice altogether!

Now, Sir, the question is whether the Resolution which is before the House is a substantive motion. Erskine May—I do not think I have to mention his qualifications—at page 296 of the 17th edition, defines a substantive motion thus :

“ A substantive motion is a self-contained proposal submitted for the approval of the House and drafted in such a way as to be capable of expressing a decision of the House.”

If, Mr. Speaker, you are satisfied that the Resolution which is before the House is not a substantive motion, you will not permit any further discussion on this matter. This type of Standing Orders is not peculiar only to our Legislature; you have similar provisions, you have similar Standing Orders, in the House of commons, in the Lokh Sabha and in several other Parliaments.

I am now reading from “ Practice and Procedure of Parliament ” by M. N. Kaul and S. L. Shakdhar and therein a substantive motion is thus defined :

“ A substantive motion is a self-contained independent proposal submitted for the approval of the House and drafted in such a way as to be capable of expressing a decision of the House.”

Then they go on to refer to certain species of substantive motions.—(Interruption). There is a lot of purpose. I am confident that at the end of my speech—no, Sir, it is being raised for the first time. Mr. Speaker, your earlier ruling was that at the proper stage, when the matter is before the House, I could raise it again. Earlier you said, Mr. Speaker, that my objection was not relevant to the Resolution brought by the Hon. Minister of Parliamentary Affairs and Sports, because at that time his Resolution was only to suspend Standing Order 23—(Interruption)—No, this matter was never raised before you, Mr. Speaker.

**கட்சியினர்**

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

But I have already allowed them to carry on.

**பி. பி. வை. வை. வை.**

(திரு. வி. என். நவரத்தினம்)

(Mr. V. N. Navaratnam)

All these days we were speaking to one another. For the first time we are addressing you and asking for a ruling from you.

**கட்சியினர்**

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

Are you now rising to a point of Order?

**பி. பி. வை. வை. வை.**

(திரு. வி. என். நவரத்தினம்)

(Mr. V. N. Navaratnam)

Not a point of Order, Sir. I am speaking on the Resolution and also bringing to your notice, Mr. Speaker, that you as the guardian of the Standing Orders of this House—

**கட்சியினர்**

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

Thank you.

**பி. பி. வை. வை. வை.**

(திரு. வி. என். நவரத்தினம்)

(Mr. V. N. Navaratnam)

—as the guardian of the dignity of this House, as the guardian of the reputation of this House, should see that we are not made cat's-paws by people outside. We are told that somebody wanted to appoint a Presidential Commission

**கட்சியினர்**

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

There, again, I do not want you to impute motives. We are not concerned about anybody outside. We are concerned about ourselves.

**பி. பி. வை. வை. வை.**

(திரு. வி. என். நவரத்தினம்)

(Mr. V. N. Navaratnam)

We are now speaking for people outside : the Judges of the Supreme Court!

**கட்சியினர்**

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

But you are making some other reference in your allegation.

**பி. பி. வை. வை. வை.**

(திரு. வி. என். நவரத்தினம்)

(Mr. V. N. Navaratnam)

I am also referring to the history of the Resolution. It is not I who said it for the first time. The Hon. Minister of Mahaweli Development spoke about somebody wanting to appoint a Presidential Commission and the Bar Council objecting to it and now we are made to do this dirty job. Why should anybody compel this House and get us to degrade ourselves? That is the only thing I want to bring to your attention, Mr. Speaker.

This is not a substantive motion. I am now speaking from Kaul and Shakdhar again. he is referring to the Constitution of India. The Constitution lays down specific procedure for impeachment of the President



personal problems of the persons who are involved in this Resolution. As for me, Sir, I never had the pleasure of even meeting or speaking to Justice Wimalaratne or Justice Colin Thome. I never had the privilege or pleasure of appearing before Mr. de Alwis. They are unimportant to us. What is important to us, Sir, is the dignity of this House. Please save it.

**கலாநாயகர் அவர்கள்**

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

If you had raised this point at the very beginning of the Resolution, I would have thought of it and given my Ruling.

**பி. ஏன். கலாநாயகர் அவர்கள்**

(திரு. வி. என். நவரத்தினம்)

(Mr. V. N. Navaratnam)

You can still think about it, Sir. There is lot of time.

**கலாநாயகர் அவர்கள்**

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

Now you are only participating in it and you are not raising a point of Order.

**பி. ஏன். கலாநாயகர் அவர்கள்**

(திரு. வி. என். நவரத்தினம்)

(Mr. V. N. Navaratnam)

What the world is watching, Sir, is the final result. Let all the front pages of the world publish tomorrow that in the Legislature of Sri Lanka the Speaker had saved the reputation of this Assembly.

**கலாநாயகர் அவர்கள்**

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

The only thing is, you missed your bus.

**ஈழர் அனூர் பண்டாரநாயக்க — நுவரெலியா-மஸ்கெலியா**  
(தேவநாயகர்)

(திரு. அனூர் பண்டாரநாயக்க — நுவரெலியா-மஸ்கெலியா  
இரண்டாம் அங்கத்தவர்)

(Mr. Anura Bandaranaike—Second Nuwara Eliya-Maskeliya)

Mr. Speaker, today this House is called upon to debate perhaps one of the most absurd and most ridiculous Motions that has been placed on any Order Paper of any Parliament in the history of the world. Sir, the case for the Government was presented very eloquently by my Friend the Hon. Minister of Lands and Land Development and Minister of Mahaweli Development, who, after a long silence, decided to end it by carrying somebody else's baby today. This Motion stood in the name of the Hon. Minister of Justice, who had suddenly decided in his wisdom to

visit the holy places of India and not present this Motion. I think he is a very wise man. He left this holy task in the hands of the Hon. Minister of Lands and Land Development, who, to my surprise, presented the Motion at the very outset with calmness and dignity befitting a man who might one day be the President of this country, who aspires to be the President of the country, but lost his cool when he was interrupted by the hon. Member for Nallur (Mr. M. Sivasithamparam) and started talking about "tigers" and everything else.

Leaving that aside, let us see what the Hon. Minister said because we have to take his arguments as being the principal arguments of the Government as we have not had the privilege of listening to any other speaker from the Front Benches of the Government. What did he say? His main argument was that the former Judge, Mr. K. C. E. de Alwis, felt that he had been wronged and that two of his colleagues in the Supreme Court, Justice Wimalaratne and Justice Colin Thome, had been biased against him. Mr. de Alwis had therefore appealed to His Excellency the President to remedy this wrong. The Hon. Minister argued that there must be a remedy for this kind of situation when a judge felt that he had been wronged. That was the crux of his argument.

Now, let us see what really lies behind that argument. What is the remedy,—I would like to ask the Hon. Minister,—the people have against a judgment of this House? What is the remedy anybody has against a judgment of the Supreme Court because the Supreme Court, as its name implies, is supreme. When the Supreme Court makes a judgment, that judgment is final. What is the remedy Mrs. Sirimavo Bandaranaike had against the finding of the Special Presidential Commission? There was none. What is the Hon. Minister trying to say? Which that the former Judge of the Court of Appeal, Mr. K. C. E. de Alwis should be singled out for special preferential treatment which nobody else in this country has had the privilege of having a Select Committee of this House to go into the judgment of two Judges of the Supreme Court? Is he trying to say that there should be a final court which decides on matters and that there must, in fact, be a supreme court to go into actions of the Supreme Court? Is he trying to say that there should be a last court which judges matters?

I do not know who is going to sit on the Select Committee. The hon. Member for Kalawana (Mr. Sarath Muttetuwegama) mentioned a lot of names as those who would probably sit on the Committee but I do not know whether they will in fact sit on the Committee. Let us assume that the Select Committee

[ஐந்து நினைவொலியைக் கேளு]

makes a finding against these two judges. Mr. Justice Wimalaratne and Mr. Justice Colin Thome, and in fact even against the Chief Justice. Will you then permit any of these judges to write to His Excellency the President and complain that the Select Committee was biased? Will you permit the Hon. Chief Justice, if a finding is made against him by the Select Committee, to write to the President and say that the Select Committee were biased? Would you permit that? In the governance of any country which knows its limits and boundaries, are you not going to have some limit, some control over its proceedings? This is the basic thing. If you concede that judges of the Supreme Court can appeal against the Members of the Select Committee, I will withdraw my argument, but none of you will have either the permission or courage to admit that.

What did the Hon. Minister say next? His next argument was that the Select Committee was not going to impose any punishment on these three judges. This is what the Hon. Minister of Mahaweli Development had to say.

His next argument was who will be on this Select Committee which is not going to impose any punishment on these three judges. This Select Committee will not impose punishment—that is what he said, and he said that there is no need therefore to get worried about its appointment. There will be no punishment meted out. Then I would like to ask the Hon. Minister of Mahaweli Development, why in heaven's name are you having this Select Committee? If you find that you are not going to remove the judges on a finding of the Committee you do not have the power to mete out punishment, why are you having this Select Committee? Is it to frighten the judges, as the hon. Member for Kalawana very correctly put it? Is it to tell the judges to tow the line, "if you don't tow the line out you go, you will have to go before a Select Committee". Is this the honest view of the Minister of Mahaweli Development who in his own time was a practitioner of no mean repute? He has practised in the Supreme Court in all sorts of courts. He has exhibited his knowledge of the law.

He is a very good lawyer. He should have stuck to his law instead of entering into politics.

கலாயினியை

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

Order, please. The Deputy Chairman of Committees will now take the Chair.

ஐந்து நினைவொலியைக் கேளு  
கலாயினியை [கலாயினியைக் கேளு] இரண்டாம்  
பி.

அதன் பிறகு, சபாநாயகரின் அவர்கள் அக்கிரமத்தின்மீது  
அகலவே, குழுப்பிரதித் தலைவர் அவர்கள் [திரு. எடமன் சமரவிக்  
ரம] தலைமை வகித்தார்கள்.

Whereupon MR. SPEAKER left the Chair, and MR. DEPUTY  
CHAIRMAN OF COMMITTEES (MR. EDMUND  
SAMARAWICKREMA) took the Chair.

ஐந்து நினைவொலியைக் கேளு

(திரு. அனூர பண்டாரநாயக்க)

(Mr. Anura Bandaranaike)

Sir, I would like to thank the Hon. Minister of Mahaweli Development for having extended that argument, because that is precisely what I say. If this Select Committee is not empowered, to mete out punishment against these judges, then you are having it, more than for finding facts, to serve notice on the Supreme Court of this country that if you step out of line, all of you Judges are going before a Select Committee of the Parliament. It is a bullying tactic. And that Sir, is the only purpose for which you are appointing this Select Committee.

Now, Sir, the United National party in its seven years in the Opposition between 1970 and 1977, during the election campaign of 1977 and subsequent to that, has constantly maintained that they stand firmly committed to the independence of the judiciary. This is one of the principle arguments extended by the United National Party. I am glad, Sir, that the hon. Member for Kalawana had fished out an old Hansard a very interesting Hansard, a Hansard that reveals perhaps more than what we can all say in this House, what his Excellency the President himself has so eloquently, stated about the independence of the judiciary. I wish that speech was made by us. That is enough of condemnation, of damnation of what you are going to do today by presenting this motion to this House. I also fished out a more recent quotation from his Excellency the President. I let my Friend, the member for Kalawana to read out from the proceedings of the last House. But this is recent as February 15 of 1983. This is a speech his Excellency the President made at the Conference held at the BMICH of Commonwealth Law Ministers. There he stated, Sir,

"Since 1833 the judiciary had followed the British pattern. The judges had rights and independence till 1972 when certain erosions of judiciary independence took place. In 1978, however, all rights and privileges of judges were once again restored and the pillars of judicial independence retained".

I will, Sir, in the course of my speech try to demonstrate how wrong His Excellency's Statement is. Now, Sir, the first thing that strikes anyone who sees this motion is that Mr. K. C. E. de Alwis who was a lawyer himself, was a District Court judge and

had the distinction of having a double promotion bypassing the High Court into the court of appeal—I will come to that later—should have known that there is an accepted procedure in this country, that is that if any litigant felt that a judge was biased, has the absolute right to object to any particular judge hearing a case. Mr. K. C. E. de Alwis has the absolute right to object to any particular judge hearing the case. At any point did Mr. K. C. E. de Alwis object to Justice Wimalaratne? At no time either before his case was heard or during the hearing of his case did Mr. K. C. E. de Alwis object to any of these two judges on the grounds of bias.

Then what does he proceed to do thereafter? He proceeds Sir, in his wisdom to protest to H. E. the president that these two judges were biased, that, in fact, he has not had a fair trial; the inference is that. What kind of tomfoolery, is this, Sir? Even you will appreciate, Sir, that it is the height of absurdity that the judge who had every right to object to anybody hearing his case on any valid grounds, subsequent to the findings when the findings were not in his favour should write to the President asking for an inquiry. If this is not tomfoolery I do not know what is. Take, for example, the criminal Kuttimani found guilty of a number of murders. If he writes to H. E. the President tomorrow morning, complaining that the judge who heard his case Mr. C. L. T. Moonemalle was biased, are you going to have a Select Committee inquiring into Kuttimani's complaint? Are you going to have a Select Committee of Parliament in the event of any other citizen complaining against a judge subsequent to his findings that the judge was biased? No, Sir, those people are not privileged as Mr. K. C. E. de Alwis.

The next thing that one must logically go to from that argument is, then why is Mr. K. C. E. de Alwis subjected to this very special treatment by the government? On the day that we have presented one of the most controversial budgets this country has ever presented—we have always adjourned after presentation of a budget generally—we have decided to burn the midnight oil in order to accommodate the wish of a gentleman by the name of Mr. K. C. E. De Alwis. Why, Sir, is Mr. K. C. E. de Alwis treated specially? Is it because he has rendered yeoman service to the judicial service? Is it that he has rendered yeoman service to any government? Is it because he was a party to dis-franchising your chief political opponent?

Sir, it is only relevant at this point of time to see what a distinguished gentleman Mr. K. C. E. de Alwis is. He is the only man, Sir, in the history of this country who has had a double promotion from the

District Court of Sri Lanka bypassing the High Court completely, taking his seat in the Court of Appeal. Now, Sir, I say this with some amusement because in September 1978, when the Courts were reconstituted there were 13 judges who were sacked. Eight of them were Supreme Court judges—they were Messrs. T. W. Rajaratnam, C. V. Udalagama, T. A. de S. Wijesundera, Jaya Pathirana, Malcom Perera, S. W. Walpita, W. D. Gunasekera and the late Noel Tittawella. These are eight Supreme Court judges that you removed for no known reason at all, all men of distinction who have served the legal profession with honour and distinction. They were removed for no reason at all, and you state that in the 1978 constitution you have restored the independence of the judiciary. (*Interruption.*)—I shall Sir at this very solemn moment ignore some of the remarks that are made by inane members of the House. Sir, what happened to the others? From the High Court you removed Messrs. C. N. Gunawardena, T. J. Rajaratnam, Bertram Seneratne, A. A. de Silva and J. R. Perera. Unprecedented, for no known reason you removed them. And you went one better. With the 1978 reconstitution of the Courts you demoted five Supreme Court Judges—never in the history of the country had Supreme Court Judges been demoted before—Justices Wimalaratne, Percy Colin Thome, Vythialingam, B. S. C. Ratwatte and R. Wanasundera. And is this the way in which you maintained and safeguarded the independence of the judiciary?

Now, Sir, let me come to Mr. K. C. E. de Alwis who did this double leap. He, I mentioned earlier, was the only person who had the super distinction of going straight from the District Court to the Court of Appeal. He bypassed Mr. L. H. de Alwis of the High Court, and also Messrs. K. D. O. S. N. Seneviratne, H. A. C. de Silva, Justin S. Abeywardena, C. L. T. Moonamalle, Siva Selliah. B. E. de Silva, G. R. T. D. Bandaranaike, D. G. Jayalath, Tudor de Alwis, A. W. Gunaratne, M. Jameel, P. Ramanathan and R. Kulawansa. He bypassed all 14 Judges of the High Court and got a double promotion into the Court of Appeal. Therefore, Sir, in the light of all this it is not surprising in fact, that Mr. K. C. E. de Alwis has received such generous treatment by this Government. So I can well understand why we are called upon to burn the midnight oil today on behalf of Mr. K. C. E. de Alwis because he has always been a thoroughly distinguished gentleman who did double hops and double somersaults into the Court of Appeal.

Now Sir, let us look at Section 107 of the Constitution that my Friend, the Hon. Minister of

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Lands and Land Development and Minister of Mahaweli Development (Mr. Gamini Dissanayake) referred to. Section 107 (3) states :

“Parliament shall by law or by Standing Orders provide for all matters relating to the presentation of such an address”.

—that is about the removal of a Judge, and so on—

“ including the procedure for the passing of such Resolution, the investigation and proof of the alleged misbehaviour or incapacity and the right of such Judge to appear and to be heard in person or by representative ”.

In fact, this clearly says “Parliament shall by law or by Standing Orders”. You have not brought your new law. You have not amended the Standing Orders and you are in fact, bypassing Section 107 (3) of the Constitution by presenting this Motion. I think this matter was dealt with very ably by the Members of the TULF and therefore, I shall not talk about it. (Interruption.)—So then if this Select Committee finds these three Judges guilty—

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(තිரு. காமினி திஸாநாயக்க)

(Mr. Gamini Dissanayake)

That is a total confusion.

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(තිரு. அனூர பண்டாரநாயக்க)

(Mr. Anura Bandaranaike)

No, there is no confusion. I am only asking the Hon. Minister, if this Select Committee finds these three Judges—

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(තිரு. காமினி திஸாநாயக்க)

(Mr. Gamini Dissanayake)

The repetition of an argument does not make it truthful.

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(තිரு. அனூர பண்டாரநாயக்க)

(Mr. Anura Bandaranaike)

I am not repeating an argument. Do not go off the rail! If the Select Committee finds these three Judges guilty, what course of action will you follow next? Are you going to say they are good boys and keep them there?

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(තිரு. காமினி திஸாநாயக்க)

(Mr. Gamini Dissanayake)

That is a matter for the House.

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(තිரு. அனூர பண்டாரநாயக்க)

(Mr. Anura Bandaranaike)

You will bring a Resolution to this House and remove them.

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(திரு. காமினி திஸாநாயக்க)

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That is a matter for the House.

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(திரு. அனூர பண்டாரநாயக்க)

(Mr. Anura Bandaranaike)

Yes, precisely. That is what I am telling you. That is what I exactly said at the beginning of my speech. I quoted you. Are you sure that you are having this Select Committee not to punish them, but to bully them? You are having it to bully them? It has to be one of the two.

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(திரு. காமினி திஸாநாயக்க)

(Mr. Gamini Dissanayake)

That is not a good conclusion. I do not think you are correct.

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(திரு. அனூர பண்டாரநாயக்க)

(Mr. Anura Bandaranaike)

The Hon. Minister cannot have the cake and eat it, Sir. I am glad that the hon. Member for Kalawana very correctly referred to a news leak in the “Sun”, some weeks ago. It was when he first learnt that such a Motion was in fact contemplated. The “Sun” revealed the story that Mr. K. C. E. de Alwis had written to the President and there may be the possibility of a Select Committee. I think the Hon. Prime Minister gave us a very long discourse once in this House about how Cabinet leaks get to the “Sun” newspaper. He was quite right. He made one of his stunning speeches in this House where he condemned a number of Cabinet colleagues without mentioning their names for revealing Cabinet secrets. I do not know whether this was also one of those possible leaks. Whatever it is, from that day onwards as the hon. Member for Kalawana rightly said, how do you expect the Supreme Court, its Chief Justice and two of its most distinguished Members to function?

From the day the news story leaked out it burst into a controversy. It was in fact the main argument of a battle fought at the Bar Council elections between two strong supporters of the United National Party—Mr. Herman J. C. Perera and Mr. Daya Perera. One Perera beat the other Perera to the post on this point. Is it fair, even before the Order Paper came out, for a newspaper to carry this story and thereby embarrass the judges? I am not blaming the “Sun”. Any newspaper waits to pick up something from somewhere to put into the press and make news. From that day onwards it was virtually impossible for these two judges to function.



Now, Sir, I am glad that my Friend the Hon. Minister of Mahaweli Development tabled the judgment in this House. I am thankful to him for doing that, because there are some very revealing sections in the judgment which I think are relevant to the Motion we are debating today. The Hon. Minister quoted the judgment of the Chief Justice, Mr. Neville Samarakoon. He referred to parts of the judgment. The three judges who heard this case did not give three different judgments; they gave three separate judgments. What did the Chief Justice say? I quote from page 15 of his judgment :

“Right-minded people would not be unjustified if they look askance at other decisions of the 1st Respondent. It might undermine that faith in the Commission itself which is necessary to command respect for its recommendations. This must be avoided, whatever the cost.”

He continues at page 17 :

“What intrinsic worth any recommendation already made, or that will be made in the future, will have is not a matter for this Court. That must be judged by those who seek to impose punishments on the basis of such recommendations.”

He held that Mr. K. C. E. de Alwis should not hear the matter pertaining to Mr. Fowzie.

**ගමිණී දිසානායක මහතා**

(திரு. காமினி திஸாநாயக்க)

(Mr. Gamini Dissanayake)

He has also said :

“I cannot see anything dishonest in his conduct throughout the transactions. I therefore hold that the allegations of misconduct (grave or otherwise), misbehaviour, and corruption, are unfounded and I reject them. He has not compromised his position as a Judge of the Court of Appeal.”

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(திரு. அனூர பண்டாரநாயக்க)

(Mr. Anura Bandaranaike)

I never said he did not say that. What I want to go on record is what he has said about the principle in regard to a person who has been found to have done this.

Then we have Justice Wimalaratne's judgment. The last passage reads thus :

“As emphasized by the Chief Justice, loss of public confidence in the Commission must be avoided, whatever the cost. I am of the view that that objective cannot be achieved by merely prohibiting the 1st respondent from participating in any inquiry against Fowzie, because the Commissioners themselves tell us that they have decided not to proceed against Fowzie. It seems to me, therefore, that one way by which this objective could be achieved is by the exercise of the judicial powers vested in us by Article 140 of the Constitution, and declaring that by his misconduct the 1st respondent has become unable to act as a Member of the Commission in terms of section 3(1) of the Special Presidential Commissions of Inquiry Law. I would make the declaration accordingly, and grant the Petitioner prayer (a) of the petition.”

What does Justice Percy Colin Thome say? He says at the end of his judgment :

“All these transactions were carried on while the section 16 notice against Fowzie was still in force and as there were allegations of serious offences committed by him. I hold that the 1st respondent was guilty of misconduct unbecoming of a judicial officer.

I allow the application of the Petitioner to issue a Writ of Quo Warranto to the 1st respondent under the proviso to Article 140 of the Constitution, read with section 18A of Act No. 7 of 1978, and declare that the 1st respondent has become unable to act, and that he is disentitled to hold the office and function as a Member of the Special Presidential Commission of Inquiry.”

These, Sir, are the three conclusions that the three judges have come to. There is very little difference in the findings of Justice Wimalaratne and Justice Colin Thome, and as the Hon. Minister of Mahaweli Development pointed out, even the Chief Justice said that he has not been found guilty of corrupt practice. But from the quotations I read, I think it is clear to anybody who bothers to read between the lines, because much more is read between the lines than what is in the lines.

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(திரு. காமினி திஸாநாயக்க)

(Mr. Gamini Dissanayake)

There is also something much more fundamental. The Hon. Chief Justice's judgment only went to the extent of issuing a prohibition in relation to an inquiry against Mr. Fowzie. That was all.

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(திரு. அனூர பண்டாரநாயக்க)

(Mr. Anura Bandaranaike)

Correct. I know that. But, Sir, I would beg the Hon. Minister to pay some heed to what I quoted. I think the Hon. Minister should listen to this argument and not be disturbed by his Colleagues who are walking around this House.

“Right-minded people would not be unjustified if they look askance at other decisions of the 1st respondent.”

What does that mean? That any person with a right mind—I do not know how one defines the right mind in this climate—would look askance at other decisions of the 1st respondent and it might undermine the faith of the commission itself, which is necessary to command respect for its recommendations. He went on to say :

“What intrinsic worth any recommendation already made, or that will be made in the future will have is not a matter for this Court. That must be judged by those who seek to impose punishments on the basis of such recommendations.”

**ලක්ෂ්මන් ජයකොඩි මහතා**

(திரு. லக்ஷ்மன் ஜயக்கொடி)

(Mr. Lakshman Jayakody)

A serious matter,

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(*ශ්‍රී ලංකා අනුර පබ්ලිකර්*)

(Mr. Anura Bandaranaike)

Yes, a very serious matter. I think the Chief Justice has stated very much more in fact by not saying it rather than by saying it. I think the Hon. Minister of Trade knows that jargon more than any one of us in this House. He is very silently watching us. I hope I have the pleasure of listening to him today after his long absence and silence. We missed his speech last time, when he could have lifted that Debate from out of the morass in which it fell. Perhaps he is the only one in this House who could have done that. I am sorry he was not here.

Having dealt with that, I must say the Hon. Minister of Mahaweli Development made another very interesting and very coherent remark. He referred to two affidavits filed by Mr. Sharvananda and Mr. Weeraratne. He in fact gave us an interesting story of how a judgment was delivered and one of the respondents, Mr. Sharvananda was asked to pay costs and that portion was struck off while he was on the bench. I do not know about all that, but he referred to this affidavit. What did the judges say in the judgment? That the two judges, Mr. Sharvananda and Mr. Weeraratne, had sworn two separate affidavits saying that they decided to drop the charges against Mr. Fowzie in January 1980 as Mr. B. A. Jayasinghe, who was supposed to have been the chief witness against Mr. Fowzie, had died. Now, this is what the two learned judges swore in their affidavits. What did all three judges find on that, including the Chief Justice? All three of them virtually held that the affidavits were false. Mr. B. A. Jayasinghe died in September 1978. Mr. Fowzie was served with notice by the Special Presidential Commission in November 1978, precisely 1 1/2 months after Mr. B. A. Jayasinghe died. Sir, I have not marked that. I will do so after I finish my speech. They have not minuted anywhere that the charges against Mr. Fowzie were dropped. The judges have not made that minute anywhere. Mr. Fowzie was not informed that the charges against him have been dropped, which should have been the first thing they should have done. If Mr. Fowzie's charges have been dropped, he should have been informed of the fact that the charges have been dropped. They never did that.

The third point is that they presented two interim reports to His Excellency the President subsequent to this. In none of the reports has it been mentioned that the charges against Fowzie were dropped. Sir, if an ordinary citizen swears a false affidavit he would be imprisoned for seven years or fined or both, because swearing an affidavit is as serious as giving evidence under oath in court. What action have you taken

against those two judges? You have taken no action against those two judges who swore false affidavits. You are inquiring into the conduct of two judges who held that they have given false affidavits, but you are making no inquiry whatsoever into the false affidavits sworn by Mr. Justice Sharvananda and Mr. Justice Weeraratne. This is the anomalous situation in which we find ourselves.

The Hon. Minister of Mahaweli Development asked us to support this Motion. I am asking him in all seriousness, in all sincerity, does he really expect any Member of this House, be it on this side or that side, to truly ask his own conscience and to vote for this Motion, when you have this anomaly this unprecedented situation of a true mockery of the independence of the judiciary? Surely, the Hon. Minister does not want us to do that?

Now, Sir, finally, may I deal with two other matters. I have brought this cutting from the "Ceylon Daily News" of 7th March 1983. As rightly pointed out by my Friend, the hon. Member for Kalawana, a newspaper controlled by the Government had got notice of this Motion long before we Members of this House saw it in the Order Paper.

What does the House say? It carries this headline: "Select Committee probe of Mr. K. C. E. de Alwis' representations. FDB's pleadings prepared in Judge's chambers?". That is the headline. Then it says:

"Were any of the pleadings filed by or on behalf of Mr. Felix Dias Bandaranaike in the K. C. E. de Alwis case prepared in Justice Percy Colin Thome's chambers? If so, in what circumstances?"

This is the lead story, the second lead story, in the "Daily News." This has cast serious aspersions not on Mr. Felix Dias Bandaranaike but on Mr. Percy Colin Thome who is functioning as a judge of the Supreme Court. How do you expect that gentleman to sit on the bench after he had been humiliated in the press by highlighting only one of the charges? There are a number of matters the Select Committee will inquire into. They have singled out one charge. Honestly, I cannot understand how they did it. I mean, it will be extremely embarrassing where the newspapers single out one of the charges—the most damaging at that; not the most innocuous but the most damaging of the charges—in which not only Mr. Felix Dias Bandaranaike's integrity is questioned—I am not bothered about that—but in which a Supreme Court judge's integrity has been questioned in a most damaging manner in the newspaper article. This is something we Members of this House, whatever our political persuasions may be, must all jointly condemn if we really want to preserve the independence of the judiciary in this country.

Now, Sir, I want to come to my final argument in my speech, which is the Motion itself. Take, for example, paragraph (a) of the Motion. It says :

" Whether there was a conspiracy between Messrs Felix R. D. Bandaranaike, A. H. M. Fowzie, A. H. M. Mohideen and/or any other person to deceive and/or induce Mr. K. C. E. de Alwis, to enter into a transaction with A. H. M. Fowzie or in any other manner involving the said A. H. M. Fowzie, with the view to discrediting the Special Presidential Commission "

There are two matters that arise from this, two important matters. The first is that I am reliably informed that Mr. K. C. E. de Alwis in his answer to the petition before the Supreme Court never at any stage imputed any motive for a conspiracy between Mr. Felix Dias Bandaranaike, Mr. Fowzie and Mr. Mohideen, never said that there was a conspiracy.

Mr. Navaratnarajah, Q. C., appeared for him. He is a very able lawyer who has appeared for me and against me on a number of matters. He fought this petition, and at no point did he say that there was a conspiracy. Subsequent to the findings, which were not in his favour, Mr. K. C. E. de Alwis shouts that there is a conspiracy.

Can anybody, any litigant, can Kuttimani—say that there was a conspiracy against him and he was sentenced to death? Any common criminal in this country, any murderer, any thief,—anybody found guilty, can turn round and shout "conspiracy" thereafter. Are you going to appoint Select Committees, and are we going to stay here till midnight debating the matter? No, Sir, you will not do that.

Then Mr. K. C. E. de Alwis's complaint goes on to impute that there was an attempt to deceive him. Is Mr. K. C. E. de Alwis a baby? Is he an ignoramus? Is he a fool who can be deceived? He is a judge of the Court of Appeal and supposed to be a learned man. I presume he can hear with both his ears. I hear reports to the contrary, Sir. But is he a baby to be deceived? Is he such a childlike person that he can be deceived by people like Mr. Fowzie? If he can be deceived, and if he concede that he was deceived, he was unfit to be a judge from the day he was made a judge. If any of you concede that Mr. K. C. E. de Alwis had been in fact deceived, that man was unfit to be a judge even for one second—totally unfit to be a judge even for one second, Sir. He admits that himself if he says he was deceived. And we are told today to believe that a man of Mr. K. C. E. de Alwis' eminence, his hearing powers, his brilliant brain power, was duped and deceived by a man like Mr. Fowzie. No, Sir. He signed a deed. Was he forced to sign at the point of a gun? Was he blackmailed into signing it? No, Sir, this kind of tomfoolery must come to an end at some point or other.

The other point I wish to draw your attention to is this. Paragraph (c) states :

" Whether any pleadings filed by or on behalf of the petitioner, the said Felix R. D. Bandaranaike in the said proceedings were prepared in the Chambers of Justice Percy Colin Thome, one of the Judges who heard the said application, and if so, the circumstances in which it came to be so prepared. "

This, Sir, if it is true, it is a serious matter. I am not saying whether it was true or not because I was not there, and I do not venture in this House to speak on matters that I do not know of. I wish some of the others followed that principle too. However, if this allegation is not true, if this allegation is in fact false, you have done a grave injustice, an unerasable injustice, to a judge of the Supreme Court—Mr. Percy Colin Thome, who has had a very distinguished legal career, who holds the highest esteem of, I think, most of the lawyers in this country. And Mr. Justice Wimalaratne is one of the most honourable men we have had in this country. You were insinuating that the petitioner went to the chambers of Mr. Justice Percy Colin Thome and conspired with him to file a petition against a fellow judge. If it is true, it is a very serious matter. But if it is not, by placing such matters on the Order Paper, by giving it publicity in the press, by leaking it to the press beforehand, as I quoted to you earlier from the "Ceylon Daily News", you have done irreparable damage not only to Mr. Justice Percy Colin Thome but to every judge in this country hereafter who holds a contrary view other than the view held by the Government. You have permanently impaired and damaged the men of the judiciary. This is my view on section (c).

Take the other section (e) where you have seriously questioned the conduct of the Chief Justice. I must say this at the very outset. Mr. Neville Samarakoon's appointment was made by His Excellency the President. We of the Opposition had serious misgivings at that time because he had appeared in a number of matters for Mr. J. R. Jayewardene. Mr. Neville Samarakoon was his personal lawyer who had appeared in a number of matters on his behalf. So we had serious misgivings. But, Sir, I must say, in fairness to Mr. Justice Samarakoon, that he has proved to be one of the most honourable Judges that this country ever had. His independence, his integrity and his honour must never be questioned by this House, because, if it is questioned in frivolity, if it is questioned with sole purpose and motive of slinging mud, then we are all guilty of something which we will never be able to wash our hands of.

Mr. Neville Samarakoon has behaved as any Supreme Court Chief Justice should behave. He has done his duties with absolute fairness. There is

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absolutely nothing to complain against him. We had serious misgivings about this person because of his affiliation—but none now.

Sir, take section (e) of the Resolution. What does it say?

“the judgement was delivered on 18th October, 1982, two days before the date of the Presidential Election.”

Look at the absurdity of it! You are saying that Mr. Neville Samarakoon delivered a judgement to favour a particular candidate. Are you trying to say that? Are you insinuating that the Chief Justice of this country deliberately timed this judgement to favour one candidate against another?—(Interruption.) But surely he knew the judgement was going to be delivered on that day. He may be a party. The judgement may not have been read out by him. But surely the Chief Justice knew that the judgement was going to be read on this day. Are you saying that he was unaware of it? Of course, he was aware of it. He must have been aware because he was a party to this judgement.

Look at the absurdity of section (e). I will point out some more absurdities in this. Judgements are delivered when judgements are ready. And I have heard from lawyers who have appeared before Mr. Neville Samarakoon that he always makes it a point to deliver the judgement within one month of the conclusion of the hearing. In 95 per cent of the cases he has delivered judgements in one month.

The hearing of this matter ended. I believe, on the 24th of September. So delivering the judgement on the 18th of October is nothing unusual. He has not done something which he has not done before. It is within the normal time span within which he normally delivers a judgement—within a month.

In fact His Excellency the President in his address at the ASEAN Law Conference quite correctly pointed out that judgements are delayed in the third world. One of the main problems we have in our courts is delayed judgements. We must do something to expedite judgements. It is quite correct.

So when he gives a judgement within three weeks, you are saying he did it to favour some candidate. Are you so ridiculous, absurd, to cast aspersions on the conduct of the Chief Justice by saying that he did this to favour Mr. Kobbekaduwa? Surely, if he did not give the judgement! Let us look at the other side of the argument. Say, Mr. Justice Samarakoon and the two other Judges had written the judgement and completed it, and they did not deliver it. Hypothetically assume that they had written the

judgement and they did not deliver the judgement because the Presidential Election was coming. Then could not have somebody else got up in this House or somewhere else and said that they deliberately delayed the judgement because they wanted to favour the candidature of Mr. J. R. Jayewardene? The same argument turns round the other way. If there was a delay in the delivery of the judgement, then what would somebody else have said: “Oh, you delayed the judgement in order to favour one candidate against the other.” It is the other side of the argument. So are you trying to cast aspersions on the Chief Justice whom you appointed?

I am very glad that the Chief justice has made one of the most brilliant speeches, I think, of his life when he told the Law Ministers' Conference that laws do not make a judiciary independent. It is one of the most stirring speeches any Chief Justice has made.

Now Sir, this attack on the Chief Justice is very unfortunate. It reminds me of the famous story of the Archbishop of Canterbury Thomas A. Becket. The famous dispute that ensued between Becket and his King Henry II reminds me of this very peculiar situation that prevails regarding the Chief Justice of the Supreme Court. These are matters which we should consider not only as Members of the Opposition but as people who want to maintain the integrity of the Supreme Court, and who do not want mud slung at Supreme Court Judges, mud slung at the Chief Justice, whose conduct up to date has been unquestionable, in this manner by this Motion.

Now, Sir, I would like to wind up my speech by once again reiterating the position of the Sri Lanka Freedom Party vis-a-vis this Motion. We are against their Motion. We shall canvass against this not only in this House, but even in the country. We shall canvass against it at the forthcoming by-elections. We shall canvass against it internationally to expose this terrific onslaught that you have initiated against the independence of the judiciary. I am sure, Sir, every right-minded member of this House, mostly from your side, will be convinced in their own heart of hearts that what you are doing is in fact driving the last nail in the coffin of the independence of the judiciary.

I know, Sir, in the course of some of the speeches which are going to be made after I finish, an argument will be made as usual, as always: “Oh what did the SLFP do?” and you are going to come out with a vast array of things to prove that we have interfered with the independence of the judiciary. May I say with all seriousness that if we have interfered with the judiciary—I am not saying we have—it was wrong. You canvassed against it and you

are doing something a thousand times worse than what the SLFP or any other government in this country has ever done before or will ever do in the future. Therefore, I shall conclude my remarks by saying that we shall vote against it, that we shall canvass against this horrendous motion that this House has ever contemplated. Thank you.

**லீத் அதுலத்முடலி மனா (வேலூ டி காவிரி கட்டுதல் அமைச்சர்)**

(திரு. லலித் அத்துலத்முதலி—வர்ச்சக, கப்பற்சுறை அமைச்சர்)

(Mr. Lalith Athulathmudali—Minister of Trade & Shipping)

Mr. Speaker, when I came to this House today I did not intend to speak on this Motion. It was normally a Motion to set up a Select Committee to go without much debate. The way that this Motion has been debated I think needs some clarification. I want to ask the hon. Members of the Opposition who talk so much about law, whether Standing Order 78 prevents any Member from bringing a motion to go into the conduct of judges? Standing order 78 stands by itself. It is given a constitutional status by Article 74, Sub-section 2 of the Constitution. If you do not dispute that, then this is a Motion by a Member of this House stating that the conduct of some judges has to be gone into. Standing order 78 only says that you can go into the conduct of the President, the Acting President, Members of Parliament, Judges or other persons engaged in the administration of justice, and you shall not do it in passing but you shall bring a substantive motion. So, there can be no harm whatsoever in proposing this Motion; perfectly no harm. It is a use of Standing order 78. Please do not confuse that with Article 107 of the Constitution. That is of an entirely different order. In the first place, Standing Order 78 can be made use of by one Member of the House. Article 107 cannot be made use of by one Member of the House. If you look carefully, Article 107, proviso to Sub-section 2 says,

“Provided that no resolution for the presentation of such an address shall be entertained by the Speaker or placed on the Order paper of Parliament, unless notice of such resolution is signed by not less than one-third of the total number of Members of Parliament.....”

That means over 50 Members have to sign an address. That is what Article 107 is about. Are you seriously trying to say that Article 107 has prevented any member of this House from bringing a substantive Motion about a judge? Surely, you do not contend that? If it is so, this Resolution is lawful and in accordance with the Constitution. So, clearly, any Member of the House can bring this Motion.

The second line of defence was by the great Inter-parliamentary union experts. The hon. member for Chavakachcheri gave a new meaning to the words

substantive motion. A substantive Motion is a self-contained proposal submitted for the approval of the House and drafted in such a way as to be capable of expressing a decision of the House. Surely, this is a self-contained Motion. It asks the House to appoint a Select Committee. Is not that a decision of the House. I cannot understand the theory that there are non-substantive Motions.

**பி. அமிர்தலிங்கம் மனா**

(திரு. ஏ. அமிர்தலிங்கம்)

(Mr. A. Amirthalingam)

The decision is with regard to the conduct of a judge.

**லீத் அதுலத்முடலி மனா**

(திரு. லலித் அத்துலத்முதலி)

(Mr. Lalith Athulathmudali)

The decision is with regard to the conduct of a judge. It is a conduct that needs to be inquired into by a Select Committee. What is a Select Committee? Why is a Select Committee appointed. A Select Committee is appointed simply because it is inconvenient for the whole House to sit. That is the fundamental thing about a Select Committee. We can have a Select Committee of everybody except that it will not be select. You select Members and call it a Select Committee because you ask the Members to please go into this matter and report back to the House. It is not a Committee of the whole House but a Select Committee of the House. You bring a Motion. We pay respect to everybody. This is not a matter which can be debated in public by everybody. Therefore we ask a decision of the House to appoint a Select Committee to go into these matters and tell us what they find. That is a substantive Motion. Are there non-substantive Motions? I cannot understand. This decision of the House is to appoint a Select Committee to report back to the House. Thereafter the House can decide what it wants to do.

I do not want to go into the merits of all these matters, because I have had the Privilege to appear before Justice K. C. E. de Alwis, Justice Wimalaratne and Justice Percy Colin Thome, and I have always received the highest respect from them; and I do not think it is proper for me at this stage to comment on the alleged conduct of Mr. K. C. E. de Alwis, the alleged conduct of Mr. Justice Wimalaratne or the alleged conduct of Mr. Justice Colin Thome. I would rather await a Select Committee report as to whether these allegations are true or false. May be there is no substance in them; may be there is some mistake; may be there is some misunderstanding, may be there is, on the other hand, some perfidious corruption, some conspiracy. I do not know the facts. I cannot go into those facts.

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The hon. Member for Kalawana was trying to make out that it was a kind of plan of the Government, as he put it to tell the judges, "You took one of our commissioners, we are going to take two of your judges". Surely, if we wanted to do that it would have been much simpler, like what we did in Sepala Ekanayake's case, to bring a Bill setting out the rules of removing a judge, and we can move an address and remove those two judges forthwith. Surely, if that is what we wanted to do, it is a simple thing for us. Why do you always judge us with this kind of ill-motives? Maybe it is the judicial framework on which your socio-economic thinking is based, where the judges are supposed to play a different role, and if they do not, they get their heads cut off! I am afraid that is not what we are doing. We have not made up our minds about anything on this. This is not part of a plan to throw out the judges. If that was so, we would do it directly. We do not hide these things. But we think this is a serious allegation. I mean, can anybody say that these are not serious allegations?

The hon. Second Member for Nuwara Eliya-Maskeliya (Mr. Anura Bandaranaike) said: "Well, anybody can make this allegation. Kuttimani can make this allegation." But surely there is a difference here? A member of one of the highest courts in the Island makes this serious allegation against two members of the Supreme Court. Once that allegation is made in writing, what is it that we can do? Can we ignore it? I am glad to say, nobody in this House said, "Ignore it".

The hon. Member for Kalawana (Mr. Sarath Muttetuwegama) said: Well, what you really should have done is to have called some retired judge and said, 'You know, we have got this piece of paper. You mooch around a bit, ask a few questions—you know all these people—and provide us with a confidential report'. "What if the judge produced a report? Should we have acted on that, which would not have followed any judicial standards? He may not have heard everybody. And what if the moocher was told: "Go to hell. You are retired, I have nothing to do with you." This kind of informal patting on the back, this kind of gossipy inquiry, could it be the proper answer to a serious allegation like this? We could not have coped with an informal inquiry.

Then what is the other inquiry we could have had? We could have had a Special Presidential Commission of Inquiry. Seriously, the Government gave thought to that. Unfortunately, the Bar Council, expressing its collective wisdom, said, "Do not do that." They said: "It is a very serious matter. One judge of the Supreme Court should not be asked to sit on other judges of the Supreme Court." And we thought: Yes there is some substance in that

argument. It would be so difficult for one judge of the Supreme court to decide between Mr. de Alwis and Mr. Wimalaratne. Maybe the Bar Council was right." Now we are scolded for complying with the Bar Council's request! I mean, this is heads you win, tails we lose.

I will tell you. The Select Committee procedure has one point superior to the Special Presidential Commission or a Commission of Inquiry under the Commissions of Inquiry Act. The Commission of Inquiry Act procedure and the Special Presidential Commission procedure generally take place in the open. It is very, very rarely that they exercise the power to act in camera. So, do you want to see Mr. K. C. E. de Alwis washing the dirty linen of Mr. Wimalaratne, and Mr. Wimalaratne having pot shots at Mr. K. C. E. de Alwis, in public for everybody to report in the press? Would that do a lot for the dignity of the Supreme Court?—(Interruption). What happened to you was decided by the voters of Kotmale, and I think you should honour that.

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(திரு. ஆனந்த தலநாயக்க—கொத்தமலை)

(Mr. Ananda Dassanayake—Kotmale)

What about Ratmalana? You won by only 110 votes.

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(திரு. லலித் அத்துலத்முதலி)

(Mr. Lalith Athulathmudali)

Yes. I will win again, but you lost by 6,000. Next time it will be 20,000. But why do you not make some relevant remarks occasionally?

Then, Sir, what is the advantage of a Select Committee? All the Members of this House know that a Select Committee always acts taking evidence in camera. There is no press publicity for that inquiry. The hon. Member for Kalawana (Mr. Sarath Muttetuwegama) was arguing for an informal private inquiry without publicity. Of all the options available to us, the Select Committee is the nearest to an in-camera informal inquiry but still following some known procedures fair to everybody. But we must not get the idea that every time we touch the judges it is something wrong. Judges are also human beings, but they hold exalted office, and so long as there are no allegations against them we should hesitate to move against them. But when there are serious allegations, the very exalted nature of their office demands an inquiry. If we ignored Mr. K. C. E. de Alwis' complaint, then we would have been failing in our duty. Then you would have come and said: "Big allegations are being made against the judges; you are keeping quiet." That is a responsibility we have to discharge. We wanted to do it some way. You say

“Do not.” Then we say: “Maybe there is something in that.” It may be embarrassing for one judge of the Supreme Court to sit on another. A Select Committee will go into the matter. They will hear evidence on both sides. There will be questioning.

I do not know who the Select Committee Members are going to be, but the hon. Member for Kalawana has said that I am not going to be in it. He seems to know more about the Select Committee than I do. I do not want to say anything more on that, Sir.—(Interruption). Why do you not leave Dr. Jalaldeen in peace? He left you with good humour. I must say on the Floor of this house, I came back and read Dr. Jalaldeen's speech. Despite what happened in the findings of the commission, his speech will go down in history as one of the finest speeches made on the Floor of this House and a great approbation of Parliamentary dignity.

**ஊதன் ட டசனாயக்க மஹா**

(திரு. ஆனந்த தஸநாயக்க)

(Mr. Ananda Dassanayake)

It was prepared by somebody else.

**லலித் அதுலத்முதலி மஹா**

(திரு. லலித் அத்துலத்முதலி)

(Mr. Lalith Athulathmudali)

Certainly, from the excellence of the text, it could not have been prepared by the Member for kotmale. That is what I want to say.

The hon. Second Member for Nuwara Eliya-Maskeliya said, “We will campaign against it. We will do everything against it. That option he is entitled to but take part in this; make your contribution, listen to the evidence and come to some finding. This is a great fracas that has taken place between the high members of the judiciary. Unfortunately, Parliament has been dragged into it. Parliament is the only institution which is entitled to ultimately look into the misbehaviour of judges. Judges are not above that. If judges misbehave, Parliament has to play a role, and this is the role we are cast with. So, whatever your views, Whatever your super-sensitivity to the question, look into it, and let us help the Supreme Court and its members to settle this fracas into which we have unfortunately been dragged. And the sooner we end this the better. So your co-operation is greatly solicited. You can campaign internationally, but participate inside Parliament.

**ஊர். சம்பந்தன் மஹா (திரிணாமலே)**

(திரு. ஆர். சம்பந்தன்—திருகோணமலை)

(Mr. R. Sampanthan—Trincomalee)

As a matter of fact I was waiting for some Member of the Government to speak, and having heard the Hon. Trade and shipping and the very limited speech

he made to the numerous arguments adduced against the motion, one can only come to the conclusion that it was a paucity of good reasons in favour of the Motion that was the cause of the very serious limitations in his speech.

The Hon. minister started with standing Order 78. Standing Order 78 states :

“The conduct of the President, or acting President, Members of parliament, Judges or other persons engaged in the administration of justice shall not be raised except upon a substantive motion ;”

The hon. Member for Chavakachcheri, when he discussed this substantive Motion, put forward a point of view and supported his point of view with authority that a substantive Motion implies that the House which considers the substantive Motion is in a position to make a determination upon the substantive matters that arise in that Motion. The hon. Minister of Trade tried to imply that this was a substantive Motion because the house has been called upon to consider the question of appointing a Select Committee, and the House could make a decision whether a Select Committee should be appointed or not. But if one examines the Motion, what are the substantive matters that are raised in the Motion and what are the questions that have been raised in the Motion.

The first question that is being raised in the Motion is whether there was a conspiracy between Messrs Felix R. Dias Bandaranaike, A. H. M. Fowzie, A. H. M. Mohideen and any other party to induce Mr. K. C. E. de Alwis to enter into a transaction.

What is the second matter raised ?

“Whether there were any circumstances which rendered it improper for justice D. Wimalaratne and/or Justice Percy Colin-Thome to have agreed to hear and determine the application (S. C. Ref No. 1 of 1982) filed by Mr. Felix R. D. Bandaranaike and whether the decision of either of them was influenced by any improper considerations”.

The third matter raised is :

“Whether any pleadings filed; by or on behalf of the petitioner the said Felix R. D. Bandaranaike in the said proceedings were prepared in the Chambers of Justice Percy Colin-Thome, one of the Judges who heard the said application and if so, the circumstances in which it came to be so prepared”.

The fourth matter which is raised reads :

“Whether the failure of the judges to afford an opportunity to the Attorney-General to address on behalf of the State was justified. . . .”

The question before this House is; is the House going to come to a determination, to a decision at the end of the day, on these questions which have been

[ஈ. பம்பன் தன் மொழி]

raised in on the Motion? That is the question, and the answer is certainly, "No." The appointment of a Select Committee is purely a procedural matter. This House, after consideration of the substantive questions that have been raised on the Motion, is not going to determine or come to a decision on these questions. That is the crux of the matter. Therefore it cannot be urged by any person, however cleverly he may try to adduce arguments in the House, that we are debating a substantive Motion. There can be no question about that. This House is not debating a substantive Motion because at the end of today's proceedings the House is not going to make a determination on the substantive questions raised on this Motion. There is no question about that.

The Hon. Minister of Trade and Shipping tried to make out that Article 107 of the Constitution was totally irrelevant and that the Government was not concerned with Article 107 and that they had not come to the stage of considering whether any action should be taken under Article 107 (2) and (3).

**நியோகக் காரகக் கமிட்டி**

(சுமூ உப தலைவர் அவர்கள்)

(Mr. Deputy Chairman of Committees)

Order, please! The Deputy Speaker will now take the Chair.

உறுதியில் நியோகக் காரகக் கமிட்டி இரண்டாவது உறுதி உடனே நியோகக் கமிட்டியை [கமிட்டி வேலைகள் மொழி] இரண்டாவது உடனே.

அதன் பிறகு, பிரதிக் குழுத் தலைவர் அவர்கள் அக்கிராசனத்தி னின்றும் அகலவே, பிரதிக் சபாநாயகர் அவர்கள் [திரு. நோமன் வைத்யரத்ன] தலைமை வகித்தார்கள்.

Whereupon MR. DEPUTY CHAIRMAN OF COMMITTEES left the Chair and MR. DEPUTY SPEAKER (MR. NORMAN WAIDYARATNA) took the Chair.

**ஈ. பம்பன் தன் மொழி**

(திரு. ஆர். சம்பந்தன்)

(Mr. R. Sampanthan)

When one examines Article 107 and the Articles subsequent to that, the title of that Chapter reads "Independence of the Judiciary". In the various Articles under the Chapter they deal with the independence of the judiciary, the tenure of office of judges, how they can be removed, how their salaries are determined, how they are paid, how acting appointments are made by the Judicial Service Commission, their source of funds, and so on, and so forth. The Chapter also sets out how the independence of the judiciary can be interfered with by the legislature and the circumstances under which it can be interfered with. It is the contention of the Opposition that if the independence of the judiciary is to be interfered with by legislature in any particular case, it has to be strictly in terms of the procedure laid down in this Chapter and in no other way. Our contention is that if a Judge of the Supreme Court is guilty of misconduct or guilty of conduct unbecoming of a judge of the Supreme Court, this Chapter lays down the procedure in terms of which the legislature can deal with such judge.

Apart from interfering with the independence of the judiciary in terms of the procedure laid down in this Chapter, there is no other way and no other procedure other than this by which this House is entitled under any circumstances, to interfere with the independence of the judiciary. That is why we say that Article 107 of the Constitution is relevant. It is our contention that Article 107 and the Articles subsequent to that lay down the only procedure available to this House in a given situation, in given circumstances, to determine the question of whether a judge is fit to continue to be a judge or not fit to continue. That is the limitation imposed upon the powers of this House in regard to interference with the independence of the judiciary. It is our contention that this House is not entitled to bring under its review the performance of a judicial function by members of the judiciary in any other way, unless the House comes to the position where the House decides that a judge is not fit to continue to be a judge. That is the position, Sir, that the Opposition takes and that is why we say that Article 107 and the Articles that deal with the independence of the judiciary are very relevant to the present Motion before the House.

The Hon. Minister of Trade, Sir, is trying to make out that serious allegations have been made by Mr. de Alwis and that therefore it is necessary for the Government to bring this Motion before the House. The Hon. Minister fails to analyse the Motion and satisfy this House that in fact serious allegations have been made. Sir take the Motion itself. We shall examine the Motion and see whether it contains serious matters which call for investigation.

The more important question to my mind is the overall irreparable damage that can be caused to the institution of the judiciary, that can be caused to the prestige and the position of the judiciary, to its character, and the contempt of the court if you are going to set in motion a trend by means of this Motion whereby this House is going to review the exercise of judicial discretion. That will become a dangerous and disastrous trend, a trend that will be totally irreversible.

The Supreme Court, the highest court in this land, is called upon to perform very important functions. The Supreme Court is entitled to declare the Presidential Election void, the Supreme Court is entitled to declare the election of a Member of this House void. The Supreme Court is entitled to go into the question of whether a proposed Bill is in violation of the Constitution or not. The Supreme Court is empowered to decide whether a particular Bill has got to be approved by the people at a Referendum. The Supreme Court is empowered to decide whether in a given case there has been a violation of fundamental rights.

Let us look at these different functions that the Supreme Court has got to perform, and if we are going to say that this House should have the power, by means of a Select Committee or in any other way, to review and sit in judgment over a decision that the



Supreme Court makes in regard to these fundamental questions, what sort of a trend are we sitting in motion? Are we sitting in motion a trend that is going to be of any good to democracy, any good to the independence of the judiciary? Are we not rocking the very foundation of the independence of the judiciary? I hear the hon. Member for Haputale, who was once in the Legal Draftsman's Department, making some funny noises from behind me. I think it is the wrong place, Mr. Deputy Speaker; I will leave him alone.

This is the question, Sir, I want to pose to the House. I want to ask hon. Members of the Government, by trying to arrogate to ourselves the power to review the exercise of judicial discretion, are we conducting ourselves in a manner befitting the dignity and the responsible nature of the functions of this House, as the hon. Member for Chavakachcheri (Mr. V. N. Navaratnam) quite relevantly posed? Are we conducting ourselves in a manner that befits a House that is interested in the maintenance of the independence and the integrity of the judiciary, as the hon. Member for Kalawana (Mr. Sarath Muttetuwegama) posed, reading out extensively from the speech made by His Excellency the President at the time of the Constituent Assembly in the 1970s? These are the questions before us.

We would appeal to you. This is a very serious matter. If you set in motion this trend, this trend would become irreversible. There is no question about it that every Government of this country—may be your Government, may be successive Governments—are going to adopt this precedent to review judicial decisions, may not be in regard to a matter which concerns differences among the judges, but may be with regard to matters when a Supreme Court has pronounced upon the legality of a Presidential Election, may be in regard to matters where a Supreme Court has pronounced in regard to the legality of an elected Member of Parliament, in regard to questions of the interpretation of the Constitution, in regard to fundamental rights, in regard to everything that you cherish in this Constitution. You will be reducing the Constitution itself to a piece of mockery. That is the appeal we make to you. That is why we tell you, please do not proceed with this Motion.

The Hon. Minister of Trade and Shipping talked about a serious allegation. I do not know Mr. K. C. E. de Alwis. He is a very honourable person, judging by what had been said on his behalf by many hon. Members of this House. I accept that *in toto*. We do not wish to cast aspersions on him. He has been a member of the judiciary. We have learnt over the years, as practitioners of the law, to hold the membes

of our judiciary in high esteem. We like you to continue to hold him in high esteem. The greatest pleasure a lawyer derives when he practises in the court is, not the money he makes but the satisfaction that he gets by appearing before a court which he knows is independent, by appearing before a court which he knows he can respect and which he holds in high esteem. That is the greatest satisfaction a lawyer derives when he practises before a court.

But what does Justice K. C. E. de Alwis say in this Motion? In paragraph (a) he talks about a conspiracy to deceive him, to induce him to enter into a transaction. The hon. Second Member for Nuwara Eliya-Maskeliya (Mr. Anura Bandaranaike) has dealt with that aspect of the matter more than adequately. I do not wish to say anything more about it.

What does the Motion say secondly? Whether there were circumstances which rendered it improper for Justice Wimalaratne and Justice Percy Colin Thome to have agreed to hear and determine the application.

Now, Mr. Deputy Speaker, if there were circumstances which made it improper for Justice Wimalaratne and Justice Percy Colin Thome to have agreed to hear and determine the application which were known to them, one can well imagine that those circumstances must have been known even better to Mr. K. C. E. de Alwis. If there were certain circumstances known to Mr. Wimalaratne and Mr. Percy Colin Thome which rendered it unfit for them to hear this application, one must necessarily infer that those circumstances were even better known to Justice K. C. E. de Alwis. Was he a man ignorant of the law? Was he a man uneducated in the law? Was he a man not conscious of his rights, not aware of his rights? Here was a petitioner trying to obtain a writ to prevent him from sitting on the commission. Did not that very application show him that the judges who sat in that court in regard to his matter were biassed against him? He had the same relief. What can be said of a man who goes before a court, who submits himself to the jurisdiction of the court, who is represented by counsel, whose case is put forward as fully and effectively as possible, and who, merely because the court comes to a finding against him, sends a petition to His Excellency the President and invokes the powers of this House to salvage himself? I dare say, Mr. Deputy Speaker, that such an allegation, to my mind does not appear to be a serious allegation worthy of consideration by the Members of this House.

What is the third matter he referred to? Whether the pleadings filed on behalf of the petitioner were prepared in the chambers of Justice Percy Colin Thome.

[ආදි. සම්පත් දන් මහතා]

The fourth matter is whether the failure of the judges to afford an opportunity to the Attorney-General to address on behalf of the State was justified. The Attorney-General was not a party to the application. He was not the petitioner, not a respondent—he was an intervenient. As far as the warrant issued by His Excellency the President was concerned, that was not challenged. There was nothing inherently wrong with the warrant. The warrant was not challenged before the court. The allegation before the court was that a judge by virtue of his conduct had incapacitated himself from hearing the application. The judge was represented; the respondent in the case was represented. As long as there was nothing inherently wrong with the warrant issued by His Excellency the President and as long as there was no averment in the petition of the petitioner challenging the warrant issued by the President, the Supreme Court was quite justified, in my view, in taking the view that there was no need for the Attorney-General to be heard. Who are we, I ask, Sir, to sit in review over the judgement of the Supreme Court to sit in review over the exercise of the discretion of the Supreme Court that the Attorney-General will not be heard? I would respectfully ask whether any Member of the House is so presumptuous as to think that he is fit to sit in judgment in a Select Committee to come to a decision that the Supreme Court, in exercising its discretion that the Attorney-General cannot be heard, was wrong. I dare say that is not the manner in which we would like to treat the judges in our courts.

“Then we have judgement being delivered two days prior to the Presidential Election”, That matter has been dealt with.

The next matter is, judgement being delivered by a bench of which one of the respondents to the application, Mr. Sharvananda, was a member. Surely he never wrote the judgement? As the hon. Member for Nallur pointed out, it is not uncommon for judges who do not hear the application to be on the bench that delivers the judgment. The Hon. Minister of Lands tried to make out that costs had been awarded against Justice Sharvananda and that, on his bending over and whispering to his fellow brother judge that sentence was scored off. Costs in a matter are incidental. We know that judges award costs on the bench and quite frequently judges are prone to make errors in regard to costs and sometimes counsel corrects them and tells them that a particular party has not asked for relief against another party, therefore an order for costs against that party would not be necessary. You, Mr. Deputy Speaker, as an experienced practitioner, are aware of this. Can we come to the conclusion, merely because Justice

Sharvananda happened to sit on the Supreme Court Bench on the day when the judgment of the court was in fact delivered by a member of that court, and merely because there was some error made in regard to costs which justice Sharvananda pointed out, that there was something radically wrong in the judgment of the court?

What is the next section? The next section is the most dangerous section in my view, section (f) which says:

“whether there was any other impropriety in the conduct of or in relation to the said proceedings.”

It is a blanket proviso enabling justice de Alwis or anybody else at any time before a Select Committee comes to a finding to conjure something in his mind, to come out with an allegation which has not been specified thus far, and to state that there was some further impropriety, some further illegality which has not been envisaged thus far. We state, Sir, that this is taking it too far.

We state that we are not prepared to be a party to the Supreme Court of this country being brought into public ridicule in this way. I want to tell these hon. Members who are grunting behind me, if they have any self-respect, if they respect themselves, if they respect this House, if they have any respect for the Supreme Court, if they want to have in this country a Supreme Court, of which we can be proud, which we can hold in esteem, if they want to protect the independence and integrity of the Supreme Court, if they want to preserve democracy in this country, kindly abandon this Motion. This Motion is a slur on this House, a slur on the judiciary, and I assure you that if you proceed with this Motion you will be doing irreparable damage to the judiciary which you will never be able to repair.

I thank you.

ලක්ෂ්මන් ජයකොඩි මහතා (අත්තනගල්ල)

(திரு. லக்ஷ்மன் ஜயக்கொடி—அத்தனகல்ல)

(Mr. Lakshman Jayakody—Attanagalla)

I do not wish to take long, but the Hon. Minister of Lands and Land Development and Minister of Mahaweli Development, introducing this Resolution or Motion, or what ever you may call it, gave one connotation to it, and then there was the Hon. Minister of Trade and Shipping who gave a slightly different twist to what it is. Thirdly, Sir, to our mind, this Resolution or this substantive Motion has gone beyond the powers of this House.

The Hon. Minister of Lands and Land Development said that this is a fact-finding mission or a fact-finding operation. The Hon. Minister of

Trade and Shipping said that this is a substantive Motion and he quoted the Standing Orders and said that it is quite in accord with the Standing Orders and that it is a fact-finding Motion.

But when one reads this Motion, it goes far beyond that. The terms of reference are given.

To my mind, if the Resolution just said this, "that whereas Mr. K. C. E. de Alwis, former Judge of the Court of appeal and a member of the special Presidential Commission has made representations to His Excellency the President of the Democratic Socialist Republic of Sri Lanka, regarding the conduct of the proceedings relating to the Application No. S. C. Reference 1 of 1982 and other matters relating thereto, this parliament is of opinion that a Select Committee be appointed to inquire into and report to this Parliament," without going into detailed terms of reference as to what it should go into, and from there it continued to paragraph 2 which says that the Committee and its Chairman shall be nominated by Mr. Speaker, that would have been quite enough. What I felt was that we in this House have overstepped the mark. We have gone beyond what we should do. We have laid down the terms of reference, we have given the charges, we have made the allegations, and that is what has created all this rumpus, to my mind. Therefore, Sir, I would earnestly urge the Government to look into this matter once again.

This has taken a long way, a long course of action, before it came to this House. Mr. K. C. E. de Alwis has made an application to the President; the president has made certain inquiries and thought it fit that he should get Cabinet sanction. It has gone to the Cabinet and it got Cabinet approval. From there it has come to this House through the Hon. Minister of Justice, and he wants a Select Committee appointed. Therefore, one has to look into the aspect of what these allegations are.

If it is a substantive Motion, as the Hon. Minister of Trade said, you should delete all the sections or allegations (a), (b), (c), (d), (e) and (f). It may be argued that none of us here are competent enough to look into this, and I think we should not look into it; I think it should go to the Supreme Court. But if all those sections are deleted and if Mr. K. C. E. de Alwis is asked to go before this Committee and make his submissions and if the Committee is to report to Parliament, then I think there is something that can be done on a better format, instead of that, the allegations are set out.

Now what are the allegations? There is a charge of conspiracy, where three gentlemen, Mr. Fowzie, Mr. Bandaranaike and Mr. Mohideen, have conspired to deceive or induce Mr. K. C. E. de Alwis to enter into a

transaction. But as far as we know, when this case proceeded in the Supreme Court, I recollect very well, Mr. Fowzie objected through his lawyer I think it was Mr. Choksy—who came and stated that Mr. Fowzie did not wish to participate and wished to withdraw. Therefore, I cannot see anything substantial there. Mr. Fowzie did not participate in that. He refused to participate. Therefore, I do not know how that could be made a charge or allegation.

Secondly, Sir, (b) are you going to believe that Mr. Felix Dias Bandarnaike walked into the chambers of Mr. Colin Thome and connived with him? Do you think that that is possible in the Hulftsdorp chambers? I do not know. This is supposed to have happened in Hulftsdorp in the chambers of Mr. Colin Thome. Are you going to believe that the people of this country or anyone who has ounce of brains would think that Mr. Felix Dias Bandarnaike cannot hold his own and should to Justice Colin Thome? This is how a layman would think, this is a layman's point of view. All this time we heard brilliant lawyers speaking, but I as a layman cannot believe that Mr. Felix Dias Bandarnaike should go to Mr. Colin Thome or to anyone at all. I am trying to ask him because I think he is a very arrogant man. He would not go to Mr. Colin Thome or to anyone, and this is where I cannot accept it.

Thirdly, we come to the situation where the Attorney-General is called upon to address.

Sir, what I earnestly believe is that if this Motion for the appointment of a Select Committee had been shortened, if all the allegations had been taken out, something would have come out of it. But now it has been just a waste of time. And a serious situation will arise in the jurisdiction of this country where the Secretary-General will have to call not only the judges but also the Chief Justice to give evidence if the Committee deems fit.

Sir, another shortcoming that I see is that the Constitution does not lay down certain procedures on this matter. The Standing Orders should lay down certain procedures. I am very happy that the hon. Member for Kalawana (Mr. Sarath Muttetuwegama) has done some homework as to how the constitutions of other countries are working. Likewise, I do not think we have done it. But this may be the first time we have to face a situation of this nature. So I believe it is high time, as there is nothing in the Standing Orders, to take some steps to see that proper procedures are laid down when it comes to cases of this nature.

I would also like to add another point, Sir, and that is, the Bar Association opposed this matter being inquired into by the Special Presidential Commission.

[உண்மையில் சர்க்காருக்கு எதிராக]

That is what they opposed. I think there was another letter written to His Excellency the President on the 3rd of March, 1983, just before His Excellency left the country to India, by Mr. Herman J. C. Perera asking his Excellency to stop even the appointment of the Select Committee of Members of Parliament. Mr. Herman J. C. Perera has said in his letter that " Even a Select Committee of Parliament is a slap on the face of the judiciary of his country, and would subject the said two judges to a certain amount of indignation and humiliation and this would eventually effect the independent judgement that they are expected to pronounce on questions of public and private importance that they are called upon to decide, and this would ultimately result in a miscarriage of justice and the limpid waters of justice that so far have not been contaminated through the history of the independence of the judiciary of this country would become contaminated and might result in a divergence of the dispensing of the due and orderly administration of justice in our courts."

His solution is to go to the Supreme Court.—(Interruption.) Well, I do not know whether he has said it in his letter, but I suppose that is what they wanted. What does the Bar Association say?—(Interruption.) Then why should we listen to Mr. Herman J. C. Perera? Why do we not take them to the Supreme Court? Why do we not decide to take them to the Supreme Court? Why should we listen to Herman J. C. Perera? Why do we not decide to go to the Supreme Court? Let us agree to go to the Supreme Court. (Interruption.) That is exactly our point of view. We know that there is opposition that comes from the Bar Association. First there was opposition to the Presidential Commission. Then it comes in when a Select committee is appointed. If that is so, give it to the Supreme Court to decide. Or, do we call upon ourselves to do that! Therefore, there is some merit in what these gentlemen say.

**உண்மையில் சர்க்காருக்கு எதிராக**

(திரு. லலித் அத்தலத்தமுதலி)  
(Mr. Lalith Athulathmudali)  
But there is no solution.

**உண்மையில் சர்க்காருக்கு எதிராக**

(திரு. லக்ஷ்மன் ஜயக்கொடி)  
(Mr. Lakshman Jayakody)

This is the solution. The only solution is, send it up to the Supreme Court and the Supreme Court will decide. Why should we take it upon ourselves?

**உண்மையில் சர்க்காருக்கு எதிராக**

(திரு. லலித் அத்தலத்தமுதலி)  
(Mr. Lalith Athulathmudali)  
The Supreme Court has no legal power to decide.

**உண்மையில் சர்க்காருக்கு எதிராக**

(திரு. லக்ஷ்மன் ஜயக்கொடி)  
(Mr. Lakshman Jayakody)

You say that the Supreme Court has no legal power but, I suppose anyone can go to Supreme Court at any time. I have seen people going to the Supreme Court saying that some people have done 'hooniyam'. I have seen some people going to the Supreme Court saying that they have been charmed or for something like that. I have heard people going to the Supreme Court on that account. However, I think it is hightime that we made a decision on this matter as today the "SUN" paper gives out this news item: "LAWYERS CALL FOR SPECIAL MEETING"

It says:

\* The Bar Association of Sri Lanka expresses dismay at the alleged decision of the Cabinet of Ministers reported in the Ceylon Daily News of March 3, 1983, to the effect that a Select Committee is to be appointed to inquire into the complaint against two judges of the Supreme Court in respect of the performance of their judicial functions in a particular case and calls on—

(i) All governmental authorities to refute the news item:

(ii) All government authorities, political parties, public and private organisations and all citizens to take prompt and adequate steps to arrest the erosion of confidence in the judicial system consequent on the news item:

(iii) To refrain from doing any act which may further impair public confidence in the independence, impartiality and integrity of the judiciary:

In as much as the reported decision has

(i) Already caused consternation in the public mind and the legal profession as to the intentions of the Executive to be inferred from the news report:

(ii) Attributed to a resolution of the Bar Association the substitution in place of a Special Presidential Commission of a Select Committee

(iii) Created the impression that the Cabinet is oblivious to the provisions of the Constitution of the Democratic Republic of Sri Lanka relating to the judges of the Supreme Court and to the vital necessity for judges to be free from all forms of coercion and influence and most importantly to the traditional respect and maintenance of the dignity and independence of the regular courts of law."

**உண்மையில் சர்க்காருக்கு எதிராக**

(திரு. லலித் அத்தலத்தமுதலி)  
(Mr. Lalith Athulathmudali)

We agree with all that, but tell us what to do about it?

**உண்மையில் சர்க்காருக்கு எதிராக**

(திரு. லக்ஷ்மன் ஜயக்கொடி)  
(Mr. Lakshman Jayakody)

Go to the Supreme Court.

**உண்மையில் சர்க்காருக்கு எதிராக**

(திரு. லலித் அத்தலத்தமுதலி)  
(Mr. Lalith Athulathmudali)

What do you tell us to do about it? (Interruption). And to allow all these allegations to remain in the air?

**ලේස්මන් ජයකොඩි මහතා**

(*திரு. லக்ஷ்மன் ஜயக்கொடி*)

(Mr Lakshman Jayakody)

There is no allegation made. What we say is very clear. We have debated enough and the only thing left to be done is to see that whatever allegations there are against Judges of this country are sent before the Supreme Court. That is the stand of the Sri Lanka Freedom Party as the hon. Second Member for Nuwara Eliya-Maskeliya mentioned, and we will vote against this Resolution as it is.

අ. සා. 11.8

**රනිල් වික්‍රමසිංහ මහතා (සෞචන කටයුතු හා රැකියා ඇමතිතුමා සහ අධ්‍යාපන ඇමතිතුමා)**

(*திரு. ரணில் விக்கிரமசிங்ஹ—இளைஞர் அலுவலர்கள், தொழில் வாய்ப்பு அமைச்சரும் கல்வி அமைச்சரும்*)

(Mr. Ranil Wickremasinghe—Minister of Youth Affairs & Employment & Minister of Education)

Mr. Deputy Speaker, I do not want to take too long a time of this House. There is a feeling that we lawyers are having a fieldday while all others have to sit and listen.—(*Interruption*) I thought I will speak a few words before the waters of Kotmale rush over me and all the other Members of this House!

I would like to say at the outset that I do not want to go into the details that are contained in this Motion ; nor do I wish to make any reference to the three Judges who are referred to here, two of whom, Justice de Alwis and Justice Wimalaratne are known to me. I think the Hon. Minister of Lands and Land Development as well as the Hon. Minister of Trade and Shipping have explained the reasons why the Government has moved this Motion for the appointment of Select Committee. In fact, if the proper procedure had been followed there should have been no debate on this matter at all. It would have been put to the House, passed and a Select Committee appointed and after its report had been presented to the House it could have been discussed by the House.

The background to the Motion is the judgement which was given by the Supreme Court in Application No. SC Reference 1 of 1982. Thereafter, a petition by Justice K. C. E. de Alwis was forwarded to His Excellency the President, containing certain allegations against two members of the Bench which constituted the Court. Similarly, the circumstances in which the judgement was delivered also raised a controversy. The Motion seeks to appoint a Select Committee to go into these matters and to report to the House. I myself do not know whether the facts contained in the petition of Justice de Alwis or the other matters which have been raised are true or not. It is only a committee which goes into it can determine the validity.

We are at one time told to ask these Judges to inquire into it and another time we are told that this

House cannot inquire into it. I think that at first the Government thinking was to appoint a Special Presidential Commission to go into this matter. But there was a reluctance. I think even amongst certain judges who thought that by taking part in the proceedings they would be disrupting the smooth working of the courts, that they would have to make an adverse comment against one of their members when they come to some finding. There was the opinion that judges should not be asked to inquire into a judge's conduct. In fact, it looks as if the only people to look into their own conduct happen to be the Members of this House. The Bar Association itself passed a resolution saying that the judges should not be asked to inquire into the conduct of judges. They did not say, "Do not have an inquiry". Taking these into consideration we thought this House should appoint a Select Committee, which I think is within our powers. After all, judicial power is vested in this House and exercised through the courts. Similarly, the powers of supervision of the Judges of the Appellate Courts are vested in this House. I think the Hon. Minister of Trade and Shipping dealt with all these arguments.

Again, subsequently, I found arguments being adduced that this House has not the power to appoint a Select Committee, that we are bound by Standing Order 78 and we can act only strictly in terms of this Standing Order 78. Well, if that is so—that is the argument that has been made out by the Opposition—that means the conduct of the judges shall not be raised except upon a substantive motion and that, therefore, this Select Committee cannot be appointed to go into it—not merely into the conduct of judges, but even the conduct of the President. Sometimes I find members of the House referring to the conduct of His Excellency the President or the Acting President. Even the conduct of Members of Parliament cannot be referred in this House. I shall read the Standing Order. Even the conduct of the Members of Parliament cannot be referred to in this House except through a substantive motion—(*Interruption.*)—Yes, I am reading Standing Order 78—

"The conduct of the President or acting President, Members of Parliament, Judges or other persons engaged in the administration of justice shall not be raised except upon a substantive motion ;"

I am only reading Standing Order 78 which means hereafter in this House when we refer to the conduct of a Member, we are entitled to object to it. We can even discuss the conduct of a Member only through a substantive motion. Then I would like to ask the hon. Members of this House, why did the Hon. Leader of the Opposition and Mrs. Sirima R. D. Bandaranaike as Member of Parliament, seek to appoint a Select Committee to go into the conduct of the Minister of Industries and Scientific Affairs ? If we go by

[*சுனிர் வினாக்கள்*]  
 Standing Order 78 the appointment of that Select Committee is not valid. There was another Select Committee which was appointed to go into the conduct of the Second Member for Beruwala (Mr. R. G. Samaranayake). Throughout the history of this House we have been appointing Select Committees to go into the conduct of various Members of this House. If we are to accept the argument that we can act strictly in terms only of Standing Order 78, then none of these things are valid and the Opposition itself is guilty of violating it. I do not say they are guilty, because this House has the right and the power to appoint a Select Committee. Standing Order 78 deals with one situation ; it is a different situation. If we are to accept the argument, then they should never have moved a resolution for the appointment at a Select Committee in regard to the Minister of Industries and Scientific Affairs or the Second Member for Beruwala. I mean, it is history. If the House has that right, it also has the right to decide in the case of judges. Show me the provision with which they dealt with—

**பி. அமிர்தலிங்கம்**

(*திரு. ஏ. அமிர்தலிங்கம்*)

Mr. A. Amirthalingam)

Article 107 of the Constitution, and Section 78 of the Standing Orders.

**சுனிர் வினாக்கள்**

(*திரு. ரணில் விக்ரமசிங்கம்*)

(Mr. Ranil Wickremasinghe)

Article 107 and Standing Order 78 are not the only sections which deal with it. That is my argument. Just as much as you cannot find in the Constitution any special section which says we can go into dealings or the conduct of the Members of the House, there is nothing which says that we can appoint a Select Committee. All I am saying is that the House has the power both in regard to members of the House as well as Judges, and we are not restricted merely by Standing Order 78 or Article 107 of the Constitution. All we seek today is to meet a situation which has arisen as a result of one of the judges of the Supreme Court making allegations against two other judges. Whether that judge is correct or the other two judges are not at fault or all three are at fault or no one is at fault, we do not know.

But, when this petition was presented, what steps could we take? We either had to appoint a Select Committee or had to go before the Special Presidential Commission. I do not think the Supreme Court has the power to go into it. These are the two options that were available to the Government and we have today moved for the appointment of a Select Committee. I have just finished with one of the arguments and I think all these sections here.

**வி. லி. நாபர்நாதி**

(*திரு. வி. என். நவரத்தினம்*)

(Mr. V. N. Navaratnam)

Because of the imperative provisions of Article 107 (3) we are in this difficulty.

**சுனிர் வினாக்கள்**

(*திரு. ரணில் விக்ரமசிங்கம்*)

(Mr. Ranil Wickremasinghe)

What is there to implement in Article 107 (3) ?

**வி. லி. நாபர்நாதி**

(*திரு. வி. என். நவரத்தினம்*)

(Mr. V. N. Navaratnam)

Read it, read it ; you have not read it before.

**சுனிர் வினாக்கள்**

(*திரு. ரணில் விக்ரமசிங்கம்*)

(Mr. Ranil Wickremasinghe)

I want to know what exactly is there in Article 107 (3). (*Interruption*) That is not necessary at the moment.

**நியோபக வகாநாயகர்**

(*பிரதீப சபாநாயகர் அவர்கள்*)

(Mr. Deputy Speaker)

Order, please! Hon. Speaker will now take the Chair.

உறுப்பினர் நியோபக வகாநாயகர் இலாபகவகாநாயகர் இலாபகவகாநாயகர் [உறுப்பினர் அவர்கள்] இலாபகவகாநாயகர் [உறுப்பினர் அவர்கள்] இலாபகவகாநாயகர் [உறுப்பினர் அவர்கள்]

அதன் பிறகு பிரதீப சபாநாயகர் அவர்கள் அக்கிராசனத்தினின்று அகலவே, சபாநாயகர் அவர்கள் [அல் ஹாஜ் எம். அப்துல் பாகீர் மாகார்] தலைமை வகித்தார்கள்.

Whereupon MR. DEPUTY SPEAKER left the Chair, and MR. SPEAKER (AL. HAJ M. ABDUL, BAKEER MARKAR) took the Chair.

டி. லா. 11.19

**சுனிர் வினாக்கள்**

(*திரு. ரணில் விக்ரமசிங்கம்*)

(Mr. Ranil Wickremasinghe)

Article 107 (3) does not apply—because there is no address here for the removal of any of the judges—until such time as there is an inquiry upon address made to Parliament saying so and so is guilty of it. When an address is made to Parliament making specific allegation against certain judges—in this case we do not know ; the Opposition has made allegations against various judges—it will be in order under Standing Order 78. But that arises only when an address to Parliament is presented.

They have been basing their arguments on Standing Order 78, and when I point out to them that they themselves have been asking for the appointment of Select Committees, they keep on moving from section to section. If the Opposition does not mind and the rest of the House does not mind, I will go through every Article of the Constitution and every Standing Order.

But if you say that this House is restricted by Standing Order 78 and we cannot have any Select Committee, then we cannot have it in respect of judges, and we cannot have it in respect of Members of Parliament either. If you can have it in respect of Members of Parliament you can have it in respect of judges. That is all I wish to say about those arguments.

The judiciary is not going to disappear because this Select Committee is appointed. There is no threat to the independence of the judiciary here. I was surprised when some Members of the Opposition said, the Government is trying to destroy the judiciary. Some others have said that the Hon. Minister of Lands and Land Development and Minister of Mahaweli Development will not be entitled to sit in this Committee because he spoke on this Motion. By convention the mover of a Motion is a Member of the Committee. I would like to give examples where this has happened. When the hon. Leader of the Opposition and Mrs. Sirimavo Bandaranaike, M.P., moved a Motion to appoint a Select Committee in regard to the Minister of Industries and Scientific Affairs, the Leader of the Opposition served on that Committee. The Minister of Industries could have said, We have exchanged words, we have made allegations against each other, he should not be on the Committee. It was not so. As the person who had moved the Resolution he was entitled to be there.

Then, Mr. Speaker, there was a time when the Third Member for Colombo Central at that time, Mr. Pieter Keuneman, moved a Resolution against Mr. V. A. Sugathadasa, then Minister of Nationalized Services, for the appointment of a Select Committee, making certain allegations, and Mr. Keuneman served as a Member of that Committee. If you want to know of an instance where a matter had been prejudged, remember the time when His Excellency the President as Leader of the Opposition moved a Resolution to appoint a Select Committee to investigate the "Janawegaya". There were many Members who took part in that debate. That Motion was defeated on the grounds adduced by the Prime Minister saying that some of the documents were not genuine. Then the Members who voted to defeat that Motion appointed a Select Committee thereafter. The then Minister of Lands Mr. Kobbekaduwa moved another Motion to appoint a Select Committee to go into the allegation that false documents were presented to the House by the Leader of the Opposition, by His Excellency the President who was Leader of the Opposition at that time, and Mr. Kobbekaduwa became the Chairman of that Committee. In fact, all that could have been done if a Select Committee was appointed to go into the "Janawegaya"; they could have looked into it and decided whether the documents were genuine or not. Instead, a group of persons who had decided, without

any inquiry, that the documents were not genuine, thereafter moved another Motion to do away with the person who had moved the first Motion. Why did not the Member for Kalawana protest at that time? This is unfair. He was silent.

There was another instance when, without any Motion at all, Mr. Pieter Keuneman took up the conduct of the Magistrate of Kegalle, Mr. Jeyakkody. That is reported in House of Representatives HANSARD, Volume 32, Column 683 in 1958. He later on became a Member of this house, but at that time he was a judge. Without any Motion Mr. Keuneman moved a cut. I am only referring to the conduct of some of the Members of this House or leaders of some of the parties which are today opposing it. He moved a cut on the salary of this magistrate. There was no Motion moved, and the then Prime Minister, Mr. Bandaranaike, brought this matter up in the House subsequently and the Speaker gave a Ruling regretting that Mr. Keuneman had raised this matter in the House and said it was wrong of him to have done it. Today they are talking of the judiciary, of how they are going to protect it. When they were in the Government they did not do it, when they were in the Opposition they did not do it. I think they find it very embarrassing when they are reminded of this.

பீ. அமிர்தலிங்கம் மொழி

(திரு. ஏ. அமிர்தலிங்கம்)

(Mr. A. Amirthalingam)

We were on detention at that time, when this matter was raised.

ரணில் விக்கிரமசிங்கம் மொழி

(திரு. ரணில் விக்கிரமசிங்கம்)

(Mr. Ranil Wickremasinghe)

I am not referring to you.

பீ. அமிர்தலிங்கம் மொழி

(திரு. ஏ. அமிர்தலிங்கம்)

(Mr. A. Amirthalingam)

I remember that.

ரணில் விக்கிரமசிங்கம் மொழி

(திரு. ரணில் விக்கிரமசிங்கம்)

(Mr. Ranil Wickremasinghe)

Was there not a time in 1968, when Mrs. Sirimavo R. D. Bandaranaike, Dr. N. M. Perera, Dr. S. A. Wickremesinghe, Mr. Maithripala Senanayake, Dr. Colvin R. De Silva, Mr. P. G. B. Keuneman, Mr. M. P. de Zoysa, Mr. Leslie Goonawardene, Mr. Percy Wickremesinghe, Mr. F. R. Dias Bandaranaike, Mr. T. B. Illangaratne, Mr. T. B. Subasinghe, Mr. Neil de Alwis and Mr. Prins Gunasekera wanted a Select Committee appointed to go into the conduct of the Bribery Commissioner. Here also it comes under Standing Order 78.

[රජීල් වික්‍රමසිංහ මහතා]

I mean, all of a sudden we are told, we are going to do away with the independence of the judiciary. That is not the case. This is not an attack on the judiciary. It is a dispute that has arisen within the judiciary. I would like to remind Members of the House, Mr. Speaker, what steps we have taken in regard to the judiciary. For the first time it was only in the 1978 Constitution that the appointment, removal and other matters dealing with the judiciary were put into the Constitution itself. Earlier, most of these matters were dealt through the Courts Ordinance and subsequently the Administration of Justice Law, a law which could have been repealed with a simple majority of this House. But now most of those provisions have been brought into the Constitution. To protect the people who are administering justice there are many steps that have to be taken. I mean, to people who are independent the necessary facilities must be made available and the protection must be given to them legally. This House is not telling either Justice de Alwis or Justice Wimalaratne or Justice Colin Thome to write a judgment in this manner, or to say, do it this way. Neither are we seeking to set aside a judgment given by them—an Order. This House has the power, but we are not seeking to do that. What we have is a dispute between the judges and we have suggested a Select Committee as the presidium, as the body to go into and to determine the facts therein. That is all that we seek to do.

In fact, as a result of the 1978 Constitution the position of the judges has been strengthened. They, the Opposition forgot this. When they moved that all the Judicial powers should be vested with the judiciary, they, in fact, moved a Motion that any judge could be removed on an address made to the Assembly. And what did the then Minister for Constitutional Affairs say? I think the hon. Member for Kalawana may know it.

“Sir, I think those who are so concerned about the independence of the judiciary are far too often concerned with not with the independence of the judiciary at all, but the continuance of the judicial system exactly as it is, namely, the preservation of the independent power of the Judicial Service Commission, which is a body which is not answerable to anybody—a very dangerous situation”.

Shall we abolish the JSC then, going on what you have said? What else has he said?

“We will in whatever way we choose to appoint judges, make mistakes because you are estimating the capacity of human being to be judges. Now, you see we will make some mistakes. The question is what is the principle on which we should go in order to make a fewer number of mistakes? And, I believe, that is just like the principle of letting in the maximum sunlight in order to kill the possibility of germs: maximum of sunlight is let into the maximum of public opinion. That our sovereign people must come into the direct context so that there will be answerability to the people

through their proper institutions in respect of the appointment of judges chosen, is not the question here. The question is removal of judges.”

I do not want to quote this at length. But I like to remind Members of the Opposition of the stand they have taken. We do not seek to do away with the independence of the judiciary. Judges are not affected by this. This is only a dispute that has arisen between two judges of the Supreme Court and a former judge of the Court of Appeal who was a member of the Special Presidential Commission. We have suggested the appointment of a Select Committee to go into the facts. No one in this House is telling Mr. Justice Wimalaratne or Mr. Justice Colin Thome, “Determine the cases before you in this manner”. If this is something we are angry about, we could have come before the House and asked for the removal of the judges. We do not know what is correct, what are the facts regarding the controversy about this judgment. We do not know the facts. We will have to inquire into this. Otherwise we have many other ways of dealing with the matter. We could have had an address moved in this House for the removal of the judges.

Of course, there have been ways and means in which the judiciary have been dealt with earlier. Some of them have that at the back of their minds when they refer to the judiciary and they think that we will act in the same manner to do away with the independence of the judiciary. Let me assure you that is the last thing we have in mind.

There was a time when judges were summoned to Queen’s House when there was a dispute and three judges, Justice T. S. Fernando who was the President of the Court of Appeal, Justice Deheragoda and one other judge were summoned to President’s House to try and resolve a dispute between the judges. And who was the person who was going to resolve this dispute? The Minister of Justice. Do you want us to do the same?

One member suggested; “Why do you not bring these people to President’s House? Why does the President not ask them what their problems are?” I mean, these are their old habits. I do not think it is proper for the President to be asking the judges. If an allegation is made by one judge against another, then we must have a forum to inquire into it. If by any chance the President had summoned any of these two judges, the Opposition would have cried out and said he is seeking to interfere with the judiciary.

In the time of the last Government, the judges were brought in the dead of the night. They tried to pressurize the judges, and Justice Deheragoda resigned as a result of it. This is the independence that



you have safeguarded so much ! This is not what we have sought to do. We have not summoned anyone to the President's House, neither Justice de Alwis, nor Justice Wimalaratne, nor Justice Colin Thome. There was a time when judges, after taking oaths before the President, had to walk in procession to the Prime Minister, pay their respects to the Prime Minister, and then go and administer the law. I think there was a time when the hon. Member for Medawachchiya sat on the bench when there was a ceremonial sitting of the Supreme Court.

We have not tried to do any of these things. We have not asked the Supreme Court judges to walk anywhere. In fact we have given them cars, so they need not walk.—(Interruption.)—Yes. Neither have we asked the Prime Minister nor any other Minister to go and sit on the bench at a ceremonial sitting. We do not seek to do all that. That is interference with the judiciary. This is trying to resolve a dispute within the judiciary.

There were times when appointments and promotions of judges and even their transfers were dealt with by the Cabinet. If you made some order against the Government in power you would have been moved out. We do not seek to do this. All matters pertaining to the minor judiciary are handled by the JSC and the other judiciary by the Chief Justice himself.

Then there was a case in which the Hon. Minister of Lands was prosecuted, and we found that the Minister of Justice had brought up the inquiry book and made certain entries and the documents had been altered and the case was launched at the instance of a judge of the Supreme Court at that time, Justice Pathirana—he was better known as “injustice Pathirana”. The judge had rung up the Minister, complained to the Minister, the Minister had got the police down, found that the words that the judge had stated were not in the police book, got the policeman to add these words, repeated by the Minister, into the book, and the Member of the House was charged.

Is that the way ? Do you want us to do the same thing ? when Justice de Alwis sends a letter, do you want us to get someone else down, to alter documents, to type out documents ? That is the way in which you acted.

Did the hon. Member for Kalawana (Mr. Sarath Muttetuwegama) or the hon. Member of Attanagalla (Mr. Lakshman Jayakody) or the member for Divulapitiya as he then was, get up and protest ? This is how they inquired into complaints made by judges. They speak on the phone and documents are altered.

When the hon. Deputy Minister of Highways was brought before court and detained—again on false charges—there were attempts to frame him. He was removed at 10.30 in the night and thereafter the

Minister of Justice.—(Interruption.)—The Hon. Deputy Minister reminds me that he was at a Chinese Cafe in Kurunegala and he was dragged out on the orders of the then Minister of Justice. Judges, State Counsel and others were sent to Kurunegala—just like you would send fire brigade trucks when a fire breaks out—to get the Deputy Minister convicted on a charge of murder just before the elections.

I remember another instance when I had to appear in court. That was in connection with a petition presented by a shareholder of the Associated Newspapers of Ceylon. I appeared as one of the lawyers, and one of the petitioners objected to Justice Pathirana sitting on the Bench because he had been a former Member of Parliament who had advocated the take-over of the Associated Newspapers of Ceylon in 1964. Mr. Pathirana—and this is why he was called “Injustice Pathirana”—blackguarded the petitioner and said that he would lock him up. This reminds me of an old Sinhala saying “වැටන් නියරන් ගෙයම් කනවා නම් අපි කාටද නියරන් ? ”

This was their justice ! If you do not know, I will tell you about it because I was there. I was flabbergasted. You can ask Mr. Nadesan, who was one of the lawyers there. He is now advising you. Mr. Pathirana blackguarded the petitioner. Did not the petitioner have a right to point out that that judge should not have sat on that court ? Mr. Pathirana blackguarded him and said that he would lock him up for contempt of court. This was the peculiar way in which justice was administered and the independence of the judiciary protected ! Justice Pathirana was so famous for his impartiality that when an umpiring decision was contested during the Sri Lanka-Pakistan cricket match, there were frequent shouts of “Pathirana ! Pathirana ! Pathirana ! ” and the hon. Second Member for Nuwara Eliya-Maskeliya Mr. Anura Bandaranaike say that he was a distinguished legal personality ! If he had been there for a few more years, he would have extinguished the whole judiciary ! What is Rajaratnam doing ? The man who carried Felix Bandaranaike's bags became a Judge and is now back to carrying Felix Bandaranaike's bags. Do you also want to know about Andy Silva, right-hand man of Nihal Jayawickrema ?

Then, there was a District Judge by the name of Kulatilleke before whom a case involving Mrs. Bandaranaike's brother came up. He acquitted her brother. People are generally rewarded in the other world but in Mr. Kulatilleke's case, he was rewarded in this world by being made the Minister of Cultural Affairs.

මන් ඉවරයෙක්

(அங்கத்தவர் ஒருவர்)

(A Member)

What happened to his daughter ?

රනිල් වික්‍රමසිංහ මහතා

(திரு. ரணில் விக்ரமசிங்ஹ)

(Mr. Ranil Wickremasinghe)

She got married. What else? When the hon. Member for Ratnapura (Mr. G. V. PUNCHINILAME) asked Mrs. Bandaranaike who was then a Member of Parliament, "What about Kulatilleke?", she just sat down. I remember that incident in this House. Who were these people who were appointed as Judges at that time? Rajaratnams and Pathiranas. It would have been far better if they appointed the Secretary of the Nittambuwa branch of the SLFP. These were the people who were administering justice!

During the period of the 1977 elections, it was openly talked of about Justice Pathirana. Judge Jeffreys of England was a saint compared to Justice Pathirana of Sri Lanka. Some members of the Bar Association protested at that time, but others were silent. I also remember a gentleman who made a very eloquent speech praising Felix Dias Bandaranaike when he brought in the Administration of Justice Law and also had a special dinner for him at the Bandaranaike Centre. I do not want to go into all that in detail, but I thought I should remind the opposition that what we seek to do is not like any of the instances I mentioned earlier. I think the real reason was seen in the speech of the Second Member for Nuwara Eliya-Maskeliya. He wants to make a political issue of it. We could have been the first people to have gone to the country and said, "Look, a judgment was given; Mr. K. C. E. de Silva and Justice Wimalaratne are fighting; none of these people should be Judges". We could have made political capital of it. They want to take it to the country, they want to take it abroad. They can take it anywhere they want. As far as the Government is concerned, we do not seek to make a political issue out of this. There are people looking for issues, people who have been defeated at the elections, people who have not got a majority in their own electorates. They are looking for issues to hang on to. If they want, they can do it.

In fact, we regret the fact that members of the judiciary had to make allegations against each other, but we, I think, have to inquire into it. If we do not inquire into it, we will have to ask Justice de Alwis to resign immediately as a member of the Special Presidential Commission. He has sent a petition which was rejected, and therefore he should resign. I really do not know whether what is said is true or not. With regard to some of the other matters that are mentioned here, there may have been valid reasons for the delivery of the judgment two days before the Presidential Election or there may not be any reasons for it. There may be some reason for not hearing the Attorney-General or there may not be any reason for

it. I think it is best to have a Select Committee to go into this matter, and the Select Committee can report to this House. I think this is the proper procedure.

I am sorry if in any way I disappointed some for the Members of the Opposition and took them away from their day-dreaming that they were going to safeguard the independence of the judiciary. Handing the judiciary over to them would be like handing the fowls to the fox. There will be very little left. Or, to quote D. N. Pritt, it would be like handing a virgin over to a rapist.

I do not want to take any more time of the House on this Motion. This Motion seeks only to inquire into a certain situation that has arisen. I commend this Motion to the House.

ජබර්. ඒ. කැදර් මහතා (මැද කොළඹ දෙවන)

(ஜனாப் ஜாபிர் ஏ. காதர்—கொழும்பு மத்தி இரண்டாம் அங்கத்தவர்)

(Mr. Jabir A. Cader—Second Colombo Central)

Mr. Speaker, I wish to say a few words regarding this Motion. The Government has brought this Motion for the appointment of a Select Committee to inquire into certain matters arising from a judgment and concerning three judges.

Further, Sir, with regard to what I heard from the legal luminaries of this House, battling away to tell us what is right and what is wrong and why we should vote for the Motion, I agree with the speeches of Hon. Minister of Trade and the Hon. Minister of Mahaweli Development. The Hon. Minister of Education has told us that according to Standing Order 73 (2) any member, any individual member, can bring a Motion to appoint a Select Committee, but the Opposition was trying to point out that under Article 107 there must be a request signed by one-third of the number of Members and then only can the Speaker entertain such a Motion. We have heard both sides, and my opinion is that the Hon. Minister of Trade and Shipping has clearly pointed out that this Motion can be moved by an individual Member under the section he has quoted.

Further, Sir, in this matter already dirty linen has been washed and now they are trying to argue that if this Motion is passed and a Select Committee appointed some more dirty linen will be washed.

Now is the time, I should say, that there must be a Select Committee. A Select Committee must be appointed today, so that the judges can be vindicated after the Select Committee has given its findings. Therefore, Sir, it is imperative that this Select Committee be appointed so that the Government as well as the judges will have a fair hearing, and the public will also realize that there has been a Select Committee appointed. The whole matter could be heard in camera. That is the most important point. If it

is heard in camera it need not appear in the papers. What hon. Members have said here today will be the laughing stock of the whole country.

We have had a number of Select Committees appointed in the past and I do not see any reason why, when it comes to a vital question like one concerning judges, a matter on which there has been a controversy, there should not be a Select Committee appointed and a decision taken. In doing that, the Government and hon. Members would be doing a great service in view of the fact that the judiciary is very important and is one of the highest authorities. When it suits them Members of the Opposition say Parliament is supreme. When it suits them they say the Supreme Court is supreme. What is the meaning of this ? Whatever they say we must do ! When they say it is Parliament that is supreme, the judges must listen to us and a Select Committee can be appointed, but when it comes to a question of the Supreme Court they say the Supreme Court is supreme.

Sir, I wish to say that we have a very honourable and very democratic President with us who has discussed this matter in the Cabinet, and the Cabinet has decided to have this Select Committee. Hence I do not see why they have to discuss this matter at length when it is so simple to understand that under this Section one can bring a Motion to form a Select Committee.

There were bickerings among my good Friends in the Opposition. They are all legal luminaries. My only qualification in the law is that my father was a very eminent lawyer. The late Mr. D. S. Senanayake, who had passed the 7th standard but who had commonsense, did great service. He stood up to the legal luminaries in this very Parliament. He was very successful in administering this country and achieving great heights. Therefore, people must not think that although we are not lawyers we have no brains. The people who use their commonsense are the people who are genuine in their words and in their deeds. - (Interruption) Therefore, Sir, I must say that there are several people here who are not legal luminaries but who contribute a great deal when they express their views.

**කථානායකතුමා**

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

Your short speech is taking a long time.

**ජබර් ඒ. කාදර් මහතා**

(ஜாபர் ஏ. காதர்)

(Mr. Jabir A. Cader)

I thank you very much, Sir, for giving me a little of your precious time. We hope that this Debate will end soon so that we could all go home.

අ. හා. 11.48

**මොත්‍රිපාල සේනානායක මහතා (මැදවවිටිය)**

(திரு. மைத்திரிபால சேனநாயக்க—மதவாச்சி)

(Mr. Maithripala Senanayake—Medawachchiya)

ගරු කථානායකතුමනි, මේ යෝජනාව අද දවල් ඉදිරිපත් කළ අවස්ථාවේදී විරුද්ධ පක්ෂයේ නායකතුමා ජිනී ප්‍රශ්නයක් මතු කළා. ඒ ජිනී ප්‍රශ්නයට සහාය දීම් වශයෙන් දවල් මා කියා සිටියේ මේ ගරු සභාවේ ස්ථාවර නියෝග අනුව, විශේෂයෙන්ම 78 වැනි ස්ථාවර නියෝගය අනුව විශේෂ යෝජනාවකින් හැර අධිකරණ විනිශ්චයකාරවරුන්ට විරුද්ධව මොනම විධියේ යෝජනාවක්වත් මේ ගරු සභාවට ඉදිරිපත් කරන්න බැරි බවයි. ඒ සම්බන්ධව මම විශේෂයෙන් දවල් වැඩවේ කියූ කාරණාව නැවත වරක් කියන්නට අදහස් කරනවා.

1978 ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 4(ඇ) වගන්තියේ පැහැදිලිව මෙසේ සඳහන් කර තිබෙනවා :

“ නීතිය අනුව පාර්ලිමේන්තුව විසින් ම ක්‍රියාත්මක කළ හැකි පාර්ලිමේන්තුවේ සහ එහි මන්ත්‍රීවරුන්ගේ වරප්‍රසාද, පරිහාර හා බලපෑම සම්බන්ධයෙන් විනා ජනතාවගේ අධිකරණ බලය, ආණ්ඩුක්‍රම ව්‍යවස්ථාවෙන් ඇති කොට පිහිටුවන ලද හෝ ආණ්ඩුක්‍රම ව්‍යවස්ථාවෙන් පිළිගන්නා ලද නැතහොත් වෙනත් යම් නීතියකින් ඇති කොට පිහිටුවන ලද අධිකරණ, විනිශ්චය අධිකාර සහ ආයතන ගෙන් පාර්ලිමේන්තුව විසින් ක්‍රියාත්මක කළ යුත්තේය. ”

ඒ අවස්ථාවේදී වෙළඳ හා නාවුක කටයුතු පිළිබඳ ගරු ඇමතිතුමා තර්කයක් වශයෙන් ඉදිරිපත් කළේ පාර්ලිමේන්තුව මගින් මේ කටයුත්ත ක්‍රියාත්මක කළ හැකි බවයි. නමුත් මම මේ අවස්ථාවේදී එක් කාරණයක් මතක් කර දෙන්නට සතුටු වෙනවා. 1978 දී අපි මේ ව්‍යවස්ථාව සම්මත කර ගන්නට පසුව, එදා මේ පාර්ලිමේන්තුවේ ගරු මන්ත්‍රීවරුන්ට අපහාසයක් කළාය කියා “ ඔබසව්‍රී ” පත්‍රයේ කර්තෘ මහත්මයා මේ ගරු සභාවට කැඳවා අපි එදා තීන්දුවක් දුන් බව මේ ගරු සභාවටත් ඔබතුමාටත් මතක ඇති. ඒ කියන්නේ, එවැනි සිද්ධිය කින් හැරෙන්නට වෙන විධියකින් මේ අධිකරණ බලය මේ ගරු සභාවට පාවිච්චි කරන්නට බැරි බවයි. එයයි, අපි මේ අවස්ථාවේදී කියා පාන්නේ. මේ ගරු සභාවට අධිකරණ බලය පාවිච්චි කිරීමට තිබෙන එකම මාර්ගය නම් “ යම් නීතියකින් ඇති කොට පිහිටුවන ලද අධිකරණ, විනිශ්චය අධිකාර සහ ආයතන ” පමණක්ය කියන එක මා මූලින් සඳහන් කළ වගන්තිය අනුව පැහැදිලි වෙනවාට කිසිම ඥානයක් නැහැ. ඒ හැරත් 107 වැනි වගන්තියේ 3 වැනි හා 4 වැනි උප වගන්තියටත්, විශේෂයෙන්ම මේ කාරණාව සම්බන්ධව මීට ප්‍රථම කතා කළ ගරු මන්ත්‍රීවරුන් කරුණු පහදා දී තිබෙනවා. එමනිසා ඇත්තවශයෙන්ම මගේ ස්ථාවරය වශයෙන් මා ප්‍රකාශ කරන්නේ, අපි මේ නීතිය ඉදිරිපත් කළ අවස්ථාවේදී එයට විරුද්ධ වූණා වගේම මේ යෝජනාවට ඡන්දය විමසන අවස්ථාවේදීත් අපගේ විරුද්ධත්වය ප්‍රකාශ කරන බවයි.

එමනිසා මම දීර්ඝ වශයෙන් යමක් කියන්නට බලාපොරොත්තු වෙන්නේ නැහැ. මේ යෝජනාව මේ විධියට සම්මත කර ගැනීමෙන් අධිකරණයේ තිබෙන නිදහසට විශේෂ බාධාවක් ඇති කරන්නට රජය පියවර ගෙන තිබෙනවාය කියන එක කණගාටුවෙන් වුවත් මේ



**එච්. බී. අබේරත්න මහතා**

(*திரு. எச். பி. அபேரத்ன*)

(Mr. H. B. Abeyratne)

You have insulted this House and the Members.

**ආනන්ද දසනායක මහතා**

(*திரு. ஆனந்த தஸநாயக்க*)

(Mr. Ananda Dassanayake)

නැහැ, නැහැ, ස්ථාවර නියෝගය කියන්න. කපානායක තුමනි, ස්ථාවර නියෝගය මොකක්ද කියලා අහන්න.

**එච්. බී. අබේරත්න මහතා**

(*திரு. எச். பி. அபேரத்ன*)

(Mr. H. B. Abeyratne)

මෙතුමා මෙතෙක් වෙලා—

**කපානායකතුමා**

(*சபாநாயகர் அவர்கள்*)

(Mr. Speaker)

මට ඉඩ දෙන්න. මම අහන්නම් ඒක. [බාබා කීරීමක්]

I am there to judge, not you. Yes, carry on.

**එච්. බී. අබේරත්න මහතා**

(*திரு. எச். பி. அபேரத்ன*)

(Mr. H. B. Abeyratne)

මෙතෙක් වෙලා මෙතන ඉංග්‍රීසියෙන් කළ කපා බොහොම දක්ෂ විධියට සිංහලට පරිවර්තනය කරන්න මෙතුමා උත්සාහ කරනවා. මට පේන හැටියට නම් මෙතුමාගේ දුනුම මදි නිසා වෙන්ක පුළුවනි, ඒ ඉංග්‍රීසි කපා සිංහලට පරිවර්තනය කරන්නට ගිහිල්ලා මේ ගරු සභාවටත් අපහාස කළේ. [බාබා කීරීමක්]

**ආනන්ද දසනායක මහතා**

(*திரு. ஆனந்த தஸநாயக்க*)

(Mr. Ananda Dassanayake)

මා කළේ පරිවර්තනයක් නොවෙයි. නමුත් නාන්සේ වරදවා තේරුම් ගන්නවා. මේ ප්‍රශ්නයට තිබෙන උත්තරය සිලෙක්ට් කොමිටි එක පමණද කියන එකයි, මම අහන්නේ, සිලෙක්ට් කොමිටි එකකින් බැරි කමක් තිබෙනවා නම්, ඒ “සිලෙක්ට් කොමිටි” එකෙන් අධිකරණයට අත ගැසීම වරදක් හැටියට පෙනෙනවා නම්, මේ ගරු සභාවේ ගෞරවය නියා ගන්න, ඊට වැඩි යමක් මේ ගරු සභාවට කරන්න බැරිදී? මේ ඉස්සෙල්ලා යම් යම් ප්‍රශ්න ගැන මේ ගරු සභාවේදී මීට වඩා වෙනස් පිය වරවල් ගත් බව අපි දන්නවා. ඒ පියවරවල් සමහර විට හරි වෙන්නට පුළුවනි; වැරදි වෙන්නට පුළුවනි. අපි කියන්නේ නැහැ සමහර පියවරවල් හරිය කියලා.

කලාවානේ ප්‍රශ්නය මතු වුණා. හිටපු පිලිපීය මන්ත්‍රී තුමාටත් දිනල එන මන්ත්‍රීතුමාටත් දෙදෙනාටම ආයත දෙකක් නියෝජනය කියලා එදා ගත් පියවර මොකක්ද? මෙතැනට වෙනමම යෝජනාවක් ගෙනැවිත් ඒ යෝජනාව විවාදයකට භාජනය කරලා මෙතැනදී ඒ යෝජනාව සම්මත කරගෙන ඒකෙන් වෙනසක් කරන්නට—උපක්‍රමයක් මාර්ගයෙන් වෙනසක් කරන්නට—ආණ්ඩුව ගත් පියවර අපි දන්නවා. ඒ, හිටපු මන්ත්‍රීවරයකු සහ දිනල එන මන්ත්‍රීවරයකු ගැන ගත් පියවර. මේ, කේ.

සී. ඊ. ද අල් විස් මහත්මයා අභියාචනාධිකරණයේ හිටපු විනිශ්චයකාරවරයෙක්. ඔහුගේ ප්‍රශ්නය විසඳන්නට ඇයි මේ තරම් හදිසි? අපිට කල්පනා කර බලන්නට පුළුවනි, අධිකරණයට අපහාසයක් නොවන විධියේ යම් කිසි වැඩ පිළිවෙළක් ගැන. මොකක්ද? ගන්නවා නම් ගන්නට තිබෙන්නේ එක්කෝ “ජුඩීෂල් ස්ඊවිස් කොමිෂන්” එකට නැත්නම් අධිකරණ සේවා කොමිෂන් සභාවට—

**ගාමිණී දිසානායක මහතා**

(*திரு. காமணி திஸாநாயக்க*)

(Mr. Gamini Dissanayake)

කොත්මලේ මන්ත්‍රීතුමා වැඩිදුර අදහස් ප්‍රකාශ කරන්නට පෙර මම කියන්නට කැමතියි ව්‍යවස්ථානුකූලව අධිකරණ සේවා කොමිෂන් සභාවට මේ සම්බන්ධව කටයුතු කරන්නට බැරි බව.

**ආනන්ද දසනායක මහතා**

(*திரு. ஆனந்த தஸநாயக்க*)

(Mr. Ananda Dassanayake)

මම ඒකට තමයි එන්නේ. අධිකරණ සේවා කොමිෂන් සභාවට බැරි නම් අපට අධිකරණ සේවා කොමිෂන් සභාවේ බලතල සකස් කරන්නට පුළුවනි, පාර්ලිමේන්තුව මගින්. ඒකට ඕනෑ කරන “ප්‍රොවිසන්ස්” නැත්නම් නීති සම්පාදනය කරන්නට—ඒකේ අඩුපාඩු සම්පූර්ණ කරන්නට—අපට බැරි නම් පාර්ලිමේන්තුවේ බලයක් නැත කියලයි මම හිතන්නේ. එහෙම නම් පාර්ලිමේන්තුවට “සුප්‍රීම්” නැත්නම් දැයස්ම නත්තවයක් නැහැ. පාර්ලිමේන්තුවෙන් අධිකරණමය කටයුතුවලට අත ගසන්නේ නැතිව ඒ ඕනෑ කරන බලතල අධිකරණ සේවා කොමිෂන් සභාවට හෝ වෙනත් කොමිෂන් සභාවකට පවරා මේ ප්‍රශ්නය විසඳන්නට අපට බැරි ඇයි? අධිකරණ සේවා කොමිෂන් සභාවේ බලතල වැඩි කරලා—ඒක ගත්තමත් කරලා—අපි ඒ අයට මේ ප්‍රශ්නය විසඳන්නට කියනවා නම් ඇත්ත වශයෙන්ම පාර්ලිමේන්තුව අධිකරණය බලා කළාය කියලා හෝ අධිකරණය විකෘති කරන්නට ගියාය කියලා හෝ අධිකරණයේ බලතල හීන කරන්නට ගියාය කියලා හෝ වෝදනාවක් පැන නැගෙන්නේ නැහැ. ඇයි එහෙම ක්‍රියා කරන්නට බැරි? ඇයි මේ තරම් හදිසියේ? අදට පාර්ලිමේන්තුවේදී මෙම විවාදය කරලා නිත්යවත් ගන්නට හේතුව මොකක්ද? අවධානයට මොකක්ද? රටේ මහජන මතය මොකක්ද? මේ ප්‍රශ්නය ගැන මහජන මතයක් නැහැ. මේක මහජන මතයක් ඇති වූ ප්‍රශ්නයක් නොවෙයි. මේක එක පුළු ප්‍රශ්නයක්. මම කියන්නේ ආණ්ඩුවත් බේරීලා අධිකරණයත් බේරගෙන අධිකරණයේ ගෞරවයත් ආරක්ෂා කරගෙන අධිකරණයේ තිබෙන වැදගත් කමත් ආරක්ෂා කරගෙන අප හැම දෙනාටමත් බේරෙන්නට පුළුවනි එකම ක්‍රමය ගැනයි. මේ විධියට යෝජනා ගෙනැවිත් දින දමලා මේක විභාග කරන්නට යනවාට වඩා තරකද නියම විධියට ආණ්ඩුක්‍රම ව්‍යවස්ථාවට සංශෝධනයක් ගෙනැවිත් අර අධිකරණ සේවා කොමිෂන් සභාවට බලතල පවරලා ඒ අයට මේක විභාග කරන්නට පැවරීම? මෙතෙක් ආණ්ඩුක්‍රම ව්‍යවස්ථාවට සංශෝධන ගෙනාවා නම් ඉතාම පුළු දේවලටන සංශෝධන ගෙනාවා නම් ඇයි මේකට සංශෝධනයක් ගෙනෙන්නට බැරි? ඒකට ඕනෑ තරම් කාලය තිබෙනවා. මේක හදිසි ප්‍රශ්නයක් නොවෙයි. මේක රටේ

[ආනන්ද දසනායක මහතා]

දැවෙන ප්‍රශ්නයක් නොවෙයි. ඇයි කැබිනට් මණ්ඩලයට හෝ අණ්ඩුවට මෙවැනි ප්‍රශ්නයකට විසඳුමක් සොයන්නට බැරි? මේ ප්‍රශ්නයට නියම විසඳුම සොයන්නා කියන එක මගේ එකම ඉල්ලීම.

එහෙම නැතිව, මම මේක විවේචනය කරනවා, නොවෙයි. නමුත් මේකේ නිබන්ධන නම් යම්කිසි වරදක්, ඒක සෙවිය යුතුයි. අපි සොයන්නට ඕනෑ සත්‍යය. සත්‍යය සොයන ක්‍රමය ගැනයි මම කියන්නේ. මේ ප්‍රශ්නය විසඳන්නට මේ ක්‍රමය හැර වෙනත් ක්‍රමයක් සොයන්නට—නියම ක්‍රමය සොයන්නට—අපට පුළුවන් වෙන්නට ඕනෑ. අධිකරණ සේවා, කොමිෂන් සභාවට බලතල පැවරීමට අණ්ඩුවක් ව්‍යවස්ථාවට යම්කිසි විධියක සංශෝධනයක් කරන්නට පුළුවනි. ඒ විධියට අධිකරණ සේවා කොමිෂන් සභාවේ බලතල ශක්තිමත් කර විනිශ්චයකාරවරුන් තුන් දෙනෙකුගෙන් හෝ පස් දෙනෙකුගෙන් හෝ සමන්විත අධිකරණ බලය ඇති පූර්ණ බලැති අධිකරණ සේවා, කොමිෂන් සභාවකට මේ ප්‍රශ්නය විසඳීම පවරනවා නම් මේ ප්‍රශ්නය සම්පූර්ණයෙන්ම විසඳෙනවා.

එම යෝජනාව ඉදිරිපත් කරන අතරම තවත් එකක් කිවයුතුව තිබෙනවා. අපට තිබෙනවා, 78 වන ස්ථාවර නියෝගය. ස්ථාවර නියෝග 78 යම්කිසි පරහක් තිබෙනවා, නම්, අපට මෙතන වාද කරන්නත් ඕනෑ නම්, එම ස්ථාවර නියෝගයෙන් අප වළක්වන ක්‍රම තිබෙනවා නම්, එහෙම නම් ඒක වෙනස් කරන්න ඕනෑ. නැතිනම් 78 වන ස්ථාවර නියෝගය හරියට ක්‍රියාත්මක කරන්න ඕනෑ, ඒකේ තිබෙන තත්වය, ඒකේ තිබෙන වටිනාකම බිඳින්නේ නැතුව, ඒ දෙකෙන් එකක් කරන්න ඕනෑ.

මම අහන්නේ මෙයයි. ස්ථාවර නියෝගවලින් තමයි මෙම පාර්ලිමේන්තුව පාලනය වෙන්නේ. ස්ථාවර නියෝග නැතුව පාර්ලිමේන්තුව පාලනය කරන්න බැහැ. ගරු කථානායකතුමාට ඇති සියළුම බලතල ලැබෙන්නේ මේ ස්ථාවර නියෝගවලිනුයි. එනිසා තමයි ස්ථාවර නියෝගවලට අප ගරු කරන්නේ. එම කිසි 78 වන ස්ථාවර නියෝගයෙන් ලැබෙන බලය අප වළක්වනවා නම්, අධිකරණ බලයට ඇඟිලි ගහන්න එපාය කියලයි තිබෙන්නේ—අධිකරණයට ඇඟිලි ගහනවා නම් ඇඟිලි ගහන ක්‍රමයකුත් තිබෙනවා—එහෙම නැතිනම් යම්කිසි විධියකට අධිකරණයට විරුද්ධව යනවා නම්, නඩුකාරයන්ගේ ක්‍රියා කලාපයට විරුද්ධව යනවා නම්, ඒ සඳහා අනුගමනය කළ යුතු ක්‍රමයක් තිබෙනවා. ඒක කරන්න තිබෙන්නේ, ඒකට ඕනෑ කරන විශේෂ යෝජනාවක් ගෙනැවිල්ල ඒ යෝජනාව සම්මත කර ගැනීමෙනුයි.

මෙතැන ඒක නොවෙයි කර තිබෙන්නේ. මේ ඉදිරිපත් කර ඇති යෝජනාවේ ඒ ගැන කිසිම දෙයක් ස්ථාවර වශයෙන් කියන්නේ නැහැ. සැක පිට පමණයි, සැකයක් පමණයි පෙන්වන්නේ. මම හිතන හැටියට, සැකයක් උඩ, පාර්ලිමේන්තුවට ගෙනෙන යෝජනාවක් පිළිබඳව පාර්ලිමේන්තුව තුළ වාද කරන්න පුළුවන් කමක් නැහැ, නඩුකාරවරුන්ට විරුද්ධව. ශ්‍රේෂ්ඨාධිකරණයේ නඩුකාරවරුන්ට විරුද්ධව හෝ වෙනත් නඩුකාරවරුන්ට විරුද්ධව හෝ යම්කිසි කෙනෙකු කරන්න

වෝදනාවක් අනුව, සැකයක් පිට මෙතන මේ විධියේ යෝජනාවක් ගෙනෙන්න බැහැ. එහෙම නම්, කිසියම් වෝදනාවක් තිබෙනවා නම්, ඒ වෝදනාව පිළිබඳව විභාග වෙන්න ඕනෑ එතන. එසේ වෝදනාව විභාග කරල, ඒ විභාගයෙන් පස්සේ වරදක් කළ බව ඔප්පු වෙනවා නම්, එම වරදට අදාළ අය සම්බන්ධයෙන් ක්‍රියා කරන්න කිසියම් යෝජනාවක් පාර්ලිමේන්තුවට ඉදිරිපත් කරන්න පුළුවනි, මෙන් මේ විධියේ වරදක් ඒ අය කර තිබෙනවාය කියා. අන්න ඒ විධියට නීති සකස් කරන්න; නීතියේ අඩුපාඩුකම් තිබෙනවා, නම් ඒවා සකස් කරන්න.

මේ පාර්ලිමේන්තුව විහිළු මඩුවකට ලක් කරන්න එපා. ආණ්ඩුව ගෙන යාමේදී හෝ පාලනය කිරීමේදී හෝ නීතිමය වශයෙන් යම් යම් අඩුපාඩුකම් පෙනෙනවා නම් ඒ අඩුපාඩුකම් සපුරාලන්න ක්‍රියා කරන්න. එසේ කියන ගමන් මම කියනවා, දැන් මේ කරන්න යන ණියා වෙන් අධිකරණයට අවමානයක් වන බව. ඇත්ත වශයෙන්ම මේකෙන් අධිකරණය හෙළා දැකීමකුයි කරන්නේ. කොලින් තෝමේ කියන මේ නඩුකාරතුමා උසාවියේ දැනුත් නඩු අහනවා, නැතිනම් 'බෙන්ඩ්' එකේ ඉන්නවා; විනිශ්චයකාරවරයකු වශයෙන් වැඩ කරනවා. ඒ වාගේම විමලරත්න ශ්‍රේෂ්ඨාධිකරණයේ නඩුකාරතුමා; අද එතන නඩු අහනවා. ඒ අය දැනට ඒ ඒ අධිකරණවල නඩු අහනවා නම්, එසේ නඩු අහද්දී, ඒ අයගේ තත්වය මොකක්ද කියා මම අහනවා. මේ වාර්තා පත්‍රයට අද යනවාත් එක්කම, මේ සම්බන්ධයෙන් විවේචන වෙනවාත් එක්කම, එතුමන්ලාගේ හිත්වල ඇති වන විප්ලවය—මානසික විප්ලවය—මොකක්ද? නඩු සම්බන්ධයෙන් උසාවිවලට යන අය මේ වාර්තා දැකල, මේ විවේචන කියවල මොන විධියට හිතයිද? මේ නඩුකාරයා සාධාරණව කටයුතු කරයිද? මේ නඩුකාරයා වරදකට අසු වී ඉන්න සැකකරුවෙක් නේද? ඔහොම හිතා වි නේද? ගරු කථානායකතුමනි, යම් යම් නඩු සම්බන්ධයෙන් උසාවිවලට යන පැමිණිලි කරුවන්, විත්තිකරුවන්, සැකකරුවන්, සාක්ෂිකරුවන් එම උසාවිවල ඉන්න හැම දෙනාම වාගේ අය දිහා බලන්නේ වපර ඇසෙන් නේද? නරක පුද්ගලයන් හැටියට නේද? ඒකයි වරද. ඒ නඩුකාරතුමන්ලාට කරන්නේ අපහාසයක්, නින්දාවක්, ඒ අය සම්විචලයට ලක් කිරීමක්. ඒ කිසි හානියක් කරන්නේ නැතුව නීතියේ සුළු වෙනසක් කර මේ කටයුත්ත කරන්න පුළුවන් නම්, අන්න ඒකට ඉඩ සලසා ගන්නා හැටියට මම ඉල්ලා සිටිනවා.

**කථානායකතුමා**

(*சபாநாயகர் அவர்கள்*)  
(Mr. Speaker)

Order, please ! I recognize the Hon. Minister.

**සිරිල් මැතිව මහතා (කර්මාන්ත හා විද්‍යා කටයුතු ඇමතිතුමා)**

(*திரு. சிறில் மதிவ்—கைத்தொழில், விஞ்ஞான அலுவல்கள் அமைச்சர்*)

(Mr. Cyril Mathew—Minister of Industries & Scientific Affairs)

Mr. Speaker, the Members of the Opposition, particularly the Members of the TULF and the hon. Member for Kalawana tried to make out that Supreme

Court Judges were beings who had come down from heaven. What we have noticed in the course of the years is that most judges are liable to make mistakes; they are liable to the weaknesses of the flesh and the mind as they are human beings.

**மன்துலகையேன்**

(அங்கத்தவர் ஒருவர்)

(A Member)

Female or male ?

**கிரிஸ் மெதேவ்**

(திரு. சிறில் மத்திவ்)

(Mr. Cyril Mathew)

Sometimes both, like people from Jaffna. Sir, we know of the famous case from Kegalla. It is in the HANSARD of 18th August 1958, Volume 32, Column 683. I will read only the relevant parts.

“The Hon. Minister of Justice is aware... that the Kegalla Lawyers' Association, have made representations both to the Hon. Minister and to the Judicial Service Commission against the conduct of the Kegalla Magistrate, alleging partisanship and special favour which he shows towards a certain lawyer”-

The lady lawyer.

—“and towards clients represented by this lawyer.”

This was the Jeyakody of Kegalla. He had a particular liking for this particular lady lawyer, for certain particular portions below the navel, and he was giving judgements in favour of her clients. Now, that was also one kind of a judge, but they were trying to make out that judges are superhuman beings who never made mistakes, who must be respected. We daresay they must be respected, but if they do make certain mistakes then someone has to judge them.

**ஈ. சம்பந்தன்**

(திரு. ஆர். சம்பந்தன்)

(Mr. R. Sampanthan)

Not you.

**கிரிஸ் மெதேவ்**

(திரு. சிறில் மத்திவ்)

(Mr. Cyril Mathew)

Why not you, then ?

**ஈ. சம்பந்தன்**

(திரு. ஆர். சம்பந்தன்)

(Mr. R. Sampanthan)

Another judge, not you.

**கிரிஸ் மெதேவ்**

(திரு. சிறில் மத்திவ்)

(Mr. Cyril Mathew)

Why should there be another judge ? Sir there have been instances earlier. During the administration of the UNP Government of the late Mr. Dudley

Senanayake, the Opposition tabled a Motion for the appointment of a Select Committee to inquire into the conduct of Panditha Gunawardena, Bribery Commissioner, in the matter of a complaint against R. T. de Silva. Now, we are also asking for a Select Committee. This is a substantive Motion to look into the conduct of certain Judges. Mr. K. C. E. de Alwis is a Judge of the Appeal Court. He has made very serious allegations against two other Judges.

**ஈ. சம்பந்தன்**

(திரு. ஆர். சம்பந்தன்)

(Mr. R. Sampanthan)

Too late !

**கிரிஸ் மெதேவ்**

(திரு. சிறில் மத்திவ்)

(Mr. Cyril Mathew)

Whatever it is—maybe he got the information later—when he got the information only he made a complaint. Probably at that time he did not know this

**சபாநாயகர்**

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

Order, please ! Please permit the Hon. Minister to carry on. Yes, carry on.

**கிரிஸ் மெதேவ்**

(திரு. சிறில் மத்திவ்)

(Mr. Cyril Mathew)

When he got this information, he made a complaint, and he made the complaint to His Excellency, the President. What do they want us to do ? Not to look into it ? Why cannot we appoint a Select Committee on a substantive motion ? And that is the Motion before the House. You draw out Esrkin May, you quote Esrkin May—

**சி. சிவசிதம்பரம்**

(திரு. எம். சிவசிதம்பரம்)

(Mr. M. Sivasithamparam)

On a substantive motion.

**கிரிஸ் மெதேவ்**

(திரு. சிறில் மத்திவ்)

(Mr. Cyril Mathew)

It is a substantive motion. That is what we say. You were quoting Esrkin May and saying that “A substantive motion is a self-contained proposal submitted for the approval of the House and drafted in such a way as to be capable of expressing a decision”. Why do you say this is not a motion that can express a decision ? We want a decision of the House to appoint this Select Committee to inquire into this matter just as it was done in 1968.

[பிரேக் ஆஃப் கைச]

Then, Sir, their main contention is that the Supreme Court Judges must be treated like superhuman beings. Here, one of them is making a very serious complaint against two brother judges, and the Constitution of this country says that the sovereignty of the people shall be exercised in the following manner. We consider that the people are sovereign.—*(Interruption.)*—You have not read it before.

**உ.சி. சிவசிதம்பரம்**

(திரு. எம். சிவசிதம்பரம்)

(Mr. M. Sivasithamparam)

You read it carefully.

**சிரில் மெதேவ்**

(திரு. சிரில் மெதேவ்)

(Mr. Cyril Mathew)

We have read it carefully. You are trying to twist the words to suit your purpose. Sir, we consider the people as sovereign. They have elected us and it is the legislature, the executive, that appoints the judges. Then, the Executive and the Legislature have the right, the power and the authority to dismiss judges. There are certain procedures laid down. We want a Select Committee appointed to look into these complaints made by one of the Court of Appeal Judges against two Supreme Court Judges.

**மேம்பெரியவர்**

(அங்கத்தவர் ஒருவர்)

(A Member)

What about Manohara ?

**சிரில் மெதேவ்**

(திரு. சிரில் மெதேவ்)

(Mr. Cyril Mathew)

He resigned when he was asked to.—*(Interruption.)*

**கலாநாயகர்**

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

Hon. Member for Jaffna, if you want a chance to speak I will give you. Please do not disturb.

**சிரில் மெதேவ்**

(திரு. சிரில் மெதேவ்)

(Mr. Cyril Mathew)

How were these judges treated during the SLFP and the LSSP period ? As mentioned by the Hon. Minister of Education, they were treated—and called—like puppies, by Felix Dias. He just called them and they came. The Chief Justice was made to stand outside his door for over 15 to 30 minutes before he was admitted into his office. What did the Hon. Member for Kalawana do ? Did you protest at that point ? Did you dare to protest ? You are now trying to carry these judges on your head. Ministers were sent to the

opening of Sessions and to sit with Judges on the Bench. The hon. Member was also made to sit on the Bench. As the Acting Minister of Foreign Affairs says, Mr. Illangaratne was sent to Gampaha to sit on the Bench. That is how you treated your judges at that time. You now say—

**மேம்பெரியவர்**

(அங்கத்தவர் ஒருவர்)

(A Member)

How about Manohara ?

**கலாநாயகர்**

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

Order, please !

**சிரில் மெதேவ்**

(திரு. சிரில் மெதேவ்)

(Mr. Cyril Mathew)

Why cannot we decide whether they made a mistake or not ?

Article 4 of the Constitution begins thus :

“The Sovereignty of the people shall be exercised and enjoyed in the following manner :—”

and (e) says :

“the judicial power of the people shall be exercised by Parliament through courts . . .”.

In 1968 a Select Committee was appointed to inquire into the conduct of Mr. Pandita Gunewardene, Bribery Commissioner. We are also appointing a Select Committee to look into the complaint made by one judge against another.—*(Interruption.)*

**கலாநாயகர்**

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

The hon. Member for Trincomalee made a very impressive speech because there was no disturbance by anybody. Will he allow the others to speak, please ?

**மேம்பெரியவர்**

(அங்கத்தவர் ஒருவர்)

(A Member)

He said you are lulling him to sleep.

**சிரில் மெதேவ்**

(திரு. சிரில் மெதேவ்)

(Mr. Cyril Mathew)

During that period the Government appointed people like Pathirana and the Hon. Minister of Education said what Pathirana did on the bench. He black-guarded a petitioner. Is that the conduct of a judge ? These are the people whom you want to carry on your heads and say that they are gods. Manohara was given orders by Felix Dias Bandaranaike over the phone. These were the people who sat on the bench.



**ஜெனரல் மெம்பர்**

(அங்கத்தவர் ஒருவர்)

(A Member)

Jaya Pathirana.

**டிரிபிள் மெம்பர்**

(திரு. சிறில் மத்திவ்)

(Mr. Cyril Mathew)

Jaya Pathirana is the man they appointed. The hon. Member for Kalawana Mr. Sarath Muttetuwegama was one of the members of the Government when that was done.—(Interruptions.) That is what they do in the Soviet Union. All their judges are political appointments. If they do not carry out the commands of the party, out they go to the the grave, not anywhere else. The Chief Justice is a good friend of mine. I have not met him for a very long time. He is also liable to make mistakes, and he has made mistakes. He wrote a letter to the President saying that his salary was less than the salary of the Governor of the Central Bank. It was absolutely wrong. These are the people you say are infallible and cannot make mistakes and that they must be treated in a special way. You want to worship them. But you do not realize that they have clay feet. I am talking about the Chief Justice. I know him. I am not saying anything else. He has made a mistake. He is a human being just like anyone else. He can crack a good joke.

**கலாநாயகர்**

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

Be more cautious, please. Do not speak about the conduct of the Chief Justice of the Supreme Court. Let that also apply to the news papers. I do not want you to refer to it in this House. In referring to the news papers, do not comment on the conduct of the Supreme Court judges.

**டிரிபிள் மெம்பர்**

(திரு. சிறில் மத்திவ்)

(Mr. Cyril Mathew)

What I am saying is that he is like any other human being. He is liable to make mistakes. Regarding his salary he made that mistake. He was pulled up by the President and was told that was not what he got.

**கலாநாயகர்**

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

I think you are doing a wrong thing. You are not putting it in the correct form. I think somehow or other you are making yourself liable talking against the Supreme Court judges.

**டிரிபிள் மெம்பர்**

(திரு. சிறில் மத்திவ்)

(Mr. Cyril Mathew)

I always accept your Ruling. But what I said is quite correct. I read the judgment of the Chief Justice and I also read something that he had stated, which was published in the news papers, in the "Sunday Observer" of 20th February. This is what he has stated at a Law Minister's conference. I am trying to show them Sir that he is also a human being. He can crack a vulgar joke. He can make mistakes. So I am just reading—

**கலாநாயகர்**

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

If you are reading from a speech he delivered I will allow you to do that.

**டிரிபிள் மெம்பர்**

(திரு. சிறில் மத்திவ்)

(Mr. Cyril Mathew)

This is what was reported in the news papers.

"The Chief Justice Neville Samarakoon last week took the foreign and local delegates by surprise when he related a story about a prostitute to drive home a point that a controversy has arisen on 'the right of the State to interfere with personal rights'".

This is like one of the judgments, Sir. I am reading this.

**கலாநாயகர்**

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

It is not a judgment but a speech he made.

(Interruption).

**எம். சிவசிதம்பரம்**

(திரு. எம். சிவசிதம்பரம்)

(Mr. M. Sivasithamparam)

In fairness to the Chief Justice, Sir, that paper says that at a meeting of the delegates he cracked a joke.—(Interruption). Is the hon. Minister taking responsibility—

**டிரிபிள் மெம்பர்**

(திரு. சிறில் மத்திவ்)

(Mr. Cyril Mathew)

I am not giving way. You sit down. Who are you? What are you talking of? I am not giving way to you. You sit down where you are. I have got a right here. I am on my feet. I am not giving way.

**கலாநாயகர்**

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

Order, please!

பிரிஸ் டிபி டிபி

(திரு. சிநிஸ் மத்திஸ்)  
(Mr. Cyril Mathew)

I am not giving way.

கலாநாயகர்

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

I am just watching to see how Members of Parliament behave. I am extremely sorry.

(Interruption). Whoever it may be. Hon. Minister, you are now talking about the speech that Mr. Neville Samarakoon made, are you ?

பிரிஸ் டிபி டிபி

(திரு. சிநிஸ் மத்திஸ்)

(Mr. Cyril Mathew)

I am.

கலாநாயகர்

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

First, be clear in your mind. Are you quoting from the speech that Mr. Justice Neville Samarakoon made ?

பிரிஸ் டிபி டிபி

(திரு. சிநிஸ் மத்திஸ்)

(Mr. Cyril Mathew)

Yes, Sir. I am reading this news item from the "SUNDAY OBSERVER" of 20th February 1983 :

"CHIEF JUSTICE RELATES A STORY. The Chief Justice, Mr. Neville Samarakoon, last week took foreign and local delegates by surprise when he related a story about a prostitute to drive home a point that a controversy had risen on the right of the State to interfere with personal rights.

He said this controversy was akin to the age-old claim made by women of easy virtue that the law and the police had no right to interfere into their business.

The Chief Justice said: 'What they do with their bodies is nobody's business, they say. This was very forcefully stated in one of our Magistrate's Courts by a woman charged with prostitution. She was found guilty and sentenced to a term of imprisonment.

At that moment the woman removed her covering garments and pointing to her nether region, said to the Magistrate, 'All these years I thought that this belonged to me. Now I am told that it belongs to the government. So you can have it.' Needless to say she was given a further term of imprisonment.

'But', added the Chief Justice, 'the woman had a point which would interest the protagonists of human rights. She claimed that she alone had the right to decide what she should do with the God given assets. Society denies that right and the State had made it a crime. Abortion has also been made a crime. It is the influence of the canon law'.

'Women who resort to abortion are sinners, not criminals. They are not fugitives from justice. They are fugitives from puritanism. They are to be pitied'.

The Chief Justice is supposed to have narrated it at the Conference of International Law Ministers.—(Interruption.) The Hon. Minister of Transport says he was there and he heard it, and the people were protesting about it.

சி. சிவசிவசாமி

(திரு. எம். சிவசிவசாமி)

(Mr. M. Sivasathamparam)

The Chief Justice was fortunate to listen to the woman. I was unfortunate enough to listen to the Hon. Minister's speech and not to the Chief Justice.

பிரிஸ் டிபி டிபி

(திரு. சிநிஸ் மத்திஸ்)

(Mr. Cyril Mathew)

I merely read this to show that these people are not gods, that they are not superhuman beings. They are all human like us. They are liable to make mistakes. They have made mistakes. They crack dirty jokes. Like anyone of us they are also human beings. So, what is it that they are trying to say ?

When one of them makes a complaint against another why cannot this House appoint a Select Committee to look into that ? It has been done before in 1968. The Opposition moved that a Select Committee be appointed. Now, we are also moving that this matter be looked into, and, as the Hon. Minister of Trade and Shipping said, this is not going to be publicized. The evidence led before the Select Committee will not be published unless the Select Committee decides to do so. The press will not be allowed in, unlike in the commission. This will not be in the newspapers unless the Select Committee decides. The Select Committee will go into the facts and see whether these allegations are true. These are very serious allegations, as mentioned by the hon. Second Member for Nuwara Eliya Maskeliya (Mr. Anura Bandaranaike). These have to be looked into. Surely, they cannot be ignored ? They must be looked into by Members of this Parliament. We can appoint them, we can dismiss them. We have the right to appoint them and the right to dismiss them. Why do we not have the right to inquire into complaints as between them ?—(Interruption).

அங்கத்தவர் ஒருவர்

(அங்கத்தவர் ஒருவர்)

(A Member)

The President appoints them.

பிரிஸ் டிபி டிபி

(திரு. சிநிஸ் மத்திஸ்)

(Mr. Cyril Mathew)

Of course.

**பி. லன். நவரத்னம்**

(திரு. வி. என். நவரத்தினம்)

(Mr. V. N. Navaratnam)

You are not the President ; you are a legislator.

**பி. சைல்ட்**

(திரு. சி.நில் மத்திவ்)

(Mr. Cyril Mathew)

His Excellency the President is also one of us.

**பி. லன். நவரத்னம்**

(திரு. வி. என். நவரத்தினம்)

(Mr. V. N. Navaratnam)

No, he is not. He is the Chief Executive—(Interruption).

**பி. சைல்ட்**

(திரு. சி.நில் மத்திவ்)

(Mr. Cyril Mathew)

God has saved you, do not worry. God has looked after you and we will also look after you, do not worry. But if you do not tow the line you might also be shot like one of your Members who was shot at. Do not put your hand into—(Interruption).

**கலாநாயகர்**

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

Order, please! When you ask for it you get it. If you keep silent you will not get it.

**அ. சிவசுப்பிரமணியன்**

(அங்கத்தவர் ஒருவர்)

(A Member)

I will not get it :

**கலாநாயகர்**

(சபாநாயகர் அவர்கள்)

(Mr. Speaker)

Whatever that may be, when you go on making comments he has to retort. Yes, carry on.

**பி. சைல்ட்**

(திரு. சி.நில் மத்திவ்)

(Mr. Cyril Mathew)

I am always ready to take anything ; we can give and take, both. Do not worry, we have been doing it for a long time in this House.

Sir, I will not waste any more of your time. But the main theme of my argument is that these Supreme Court judges, any judge of a court, is a human being. They are liable to make mistakes, they make mistakes. Therefore, we who can appoint them and we who can sack them, are also those who can judge them, particularly in these matters, when one of them makes very serious allegations. This is a very secret inquiry. It

will be held in camera. The public will not know about it unless the Committee decides. I cannot see any better environment to look into this complaint, and if I am not mistaken the Member of Nuwara Eliya Maskeliya said that he will even serve on the Committee—(Interruption).

**அ. சிவசுப்பிரமணியன்**

(அங்கத்தவர் ஒருவர்)

(A Member)

He is not here.

**பி. சைல்ட்**

(திரு. சி.நில் மத்திவ்)

(Mr. Cyril Mathew)

We will see how the other Members of his party vote—(Interruption). He said so ; he was ready to serve on the Committee or vote with us now . He said that. I think I heard him say so. Therefore if the hon. Member for Nuwara Eliya-Maskeliya has accepted it, I do not know why the other members of the Sri Lanka Freedom party cannot. The hon. Member for Medawachchiya (Mr. Maithripala Senanayake) is in a different party, but I do not know whether on this matter he is going to get together. At one time you were with it.

Sir, I would strongly commend this Resolution to the Members of the Sri Lanka Freedom Party, to both sides of the SLFP. They can also serve on this Select Committee and they can give their own decision.

Another point that was raised by a Member of the TULF was that those who make the charge should not sit on this. But the Leader of the Opposition made certain charges against me. In fact, I am informed that he had threatened to move a Motion of No Confidence on the Speaker if you did not appoint a Select Committee.

**அ. அமிர்தலிங்கம்**

(திரு. ஏ. அமிர்தலிங்கம்)

(Mr. A. Amirthalingam)

I think the Hon. Minister must withdraw that. I never threatened to do any such thing. I think you are aware of what happened. I think the Government agreed to appoint the Select Committee.

**பி. சைல்ட்**

(திரு. சி.நில் மத்திவ்)

(Mr. Cyril Mathew)

No, the Government agreed later.

**அ. அமிர்தலிங்கம்**

(திரு. ஏ. அமிர்தலிங்கம்)

(Mr. A. Amirthalingam)

When did I make this statement ? You must not come out with hearsay.

மீசெல் மெதிவ் மெது  
(திரு. சிறில் மத்திவ்)  
(Mr. Cyril Mathew)

That is what I heard. If you say you did not, I will accept it. I heard it. I am only trying to make a point. You made the allegation and you sat in judgment over it.

I thank you, Sir, very much for your indulgence. I am feeling very hungry and very cold myself, so I shall stop.

புல்தம விமென டீ.  
கலகலெல் டுதுவ "பண" னெந்நிவ பச வல கலகலெதுவ  
மென் புகல கலக டீ.

வினா விடுக்கப்பெற்றது

குரல்களின்படி "ஆம்" மேலொங்கிற்று என சபாநாயகர் அவர்கள் அறிவித்தார்கள்.

Question put.

MR. SPEAKER, having collected the Voices, declared that the AYES had it.

னெந்நிவெனெ  
(அங்கத்தவர் ஒருவர்)  
(A Member)

Divide !

பார்லிமென்டு 43 வன பிலவர திசெவெ டிவெனெ—பவ்வெ 92;  
விடெவெ 16 ; டுதுவெனெ—வெவெவெவெ.

பாராளுமன்றம், 43 ஆம் நிலைக் கட்டளையின் கீழ் பிரிந்தது : சார்பாக 92 ; எதிராக 16.

The Parliament divided (under Standing Order No. 43) : Ayes 92 ; Noes 16.

ஃ. ப்ரெமடாச மெது  
(திரு. ஆர். பிரேமதாச)  
(Mr. R. Premadasa)

Shall we take up item 8 ?

கலகலெதுவ  
(சபாநாயகர் அவர்கள்)  
(Mr. Speaker)

Yes.

ஃ. அமிர்தலிங்கம் மெது  
(திரு. ஏ. அமிர்தலிங்கம்)  
(Mr. A. Amirthalingam)

Let this matter come up separately please.

ஃ. ப்ரெமடாச மெது  
(திரு. ஆர். பிரேமதாச)  
(Mr. R. Premadasa)

All right.

ஃ. அமிர்தலிங்கம் மெது  
(திரு. ஏ. அமிர்தலிங்கம்)  
(Mr. A. Amirthalingam)

Thank you.

கலகலெதுவ  
(சபாநாயகர் அவர்கள்)  
(Mr. Speaker)

Item No. 9.

ஃ. ப்ரெமடாச மெது  
(திரு. ஆர். பிரேமதாச)  
(Mr. R. Premadasa)

Immediately after the Budget speech, with special permission of the House, the Hon. Minister of Finance got his items passed. Shall we take this up ?

லக்ஷ்மென் பசலெகெடி மெது  
(திரு. லக்ஷ்மென் ஜயகெகெடி)  
(Mr. Lakshman Jayakody)

Yes.

இடெல் (டெவெவெ) பவந் கெடுவெ பவ

நிதி (திருத்தம்) சட்டமூலம்

FINANCE (AMENDMENT) BILL

டெவென வர கிவெவெ கிவெவெ கிவெவெ டீ.  
இரண்டாம் மதிப்பிற்கான கட்டளை வாசிக்கப்பட்டது.  
Order for Second Reading read.

ஃ. ப்ரெமடாச மெது  
(திரு. ஆர். பிரேமதாச)  
(Mr. R. Premadasa)

On behalf of the Minister of Finance and Planning, I move,

" That the Bill be now read a Second time."

புல்தம விமென டீநெ டகலகலெவெ வி.  
பவந் கெடுவெவெ டீவ டுதுவெவெ டெவென வர கிவெவெ டீ.  
வினா விடுக்கப்பட்டு, ஏற்றுக்கொள்ளப்பட்டது.

அதன்படி, சட்டமூலம் இரண்டாம் முறையாக மதிப்பிடப்பெற்றது.

Question put, and agreed to.

Bill accordingly read a Second time.

மெது பவெவெ டெவெவெ டகலகலெவெ வி :  
" பவந் கெடுவெவெ ப்ரெமடாச பார்லிமென்டு கவரக டகலகலெவெ  
பவெவெ டுதுவெ."—[ஃ. ப்ரெமடாச மெது]

தீர்மானிக்கப்பட்டது :  
" சட்டமூலம் முழுப் பாராளுமன்றக் குழுவுக்குச் சாட்டப்படு  
மாக." [திரு. ஆர். பிரேமதாச.]

Resolved :  
" That the Bill be referred to a Committee of the Whole Parliament."—[Mr. R. Premadasa.]

கவரகலகலெவெவெ டகலகலெவெ டீ.

[கலகலெதுவ இலகலெவெ வி.]

குழுவில் ஆராயப்பட்டது.  
[சபாநாயகர் அவர்கள் தலைமை வகித்தார்கள்.]

Considered in Committee.  
[MR. SPEAKER in the Chair.]



**பி டீமெரீ மன்மிலெய்: பார்மிக பார்வை**

நெல் சந்தைப்படுத்தும் சபை: ஆண்டறிக்கை

**PADDY MARKETING BOARD: ANNUAL REPORT**

ஸமெரி பீயசூரிய மெனா (காமினாபீமிக ஸம்பீமெய ஸ பரீமேகக் பிமீநிடி டீமெரினு)

(திரு. காமனி ஜயசூரிய—விவசாய அபிவிருத்தி, ஆராய்ச்சி அமைச்சர்)

(Mr. Gamani Jayasuriya—Minister of Agricultural Development & Research)

I move,

“That in terms of Section 31 (3) of the Paddy Marketing Board Act, No. 14 of 1971, the Annual Report of the Paddy Marketing Board including the observations of the Auditor-General for the year 1979, which was presented on 10th February 1983 be approved.”

புன்மல விமென டீமீ, ஸஸ ஸமீமெ வி.

வினா விடுக்கப்பட்டு ஏற்றுக்கொள்ளப்பட்டது.

Question put, and agreed to.

**ஓடிம பூரிஸம்ஸீகரன கௌமீஸன் ஸஸாவ: பார்மிக பார்வை**

இலங்கை காணிச் சீர்திருத்த ஆணைக்குழு: ஆண்டறிக்கை

**LAND REFORM COMMISSION: ANNUAL REPORT**

ஸமெரி பீயசூரிய மெனா

(திரு. காமனி ஜயசூரிய)

(Mr. Gamani Jayasuriya)

I move,

“That in terms of Section 14 (3) of the Finance Act No. 38 of 1971, the Annual Report and Statement of Accounts of the Land Reform Commission including the observations of the Auditor General for the year 1980 which was presented on 10th February 1983 be approved.”

புன்மல ஸஸமீமெ கரன டீ.

வினா எடுத்தியம்பப்பெற்றது.

Question proposed.

வி. லன். நவரத்நாமி மெனா

(திரு. வி. என். நவரத்நினம்)

(Mr. V. N. Navaratnam)

There is a very important matter, Sir. (Interruption) I am confident the Minister will settle on that date.

லக்ஷ்மன் பீயகோடி மெனா

(திரு. லக்ஷ்மன் ஜயக்கொடி)

(Mr. Lakshman Jayakody)

I have a problem with regard to Land Reform, specially when it comes to a case of this particular year, I want to bring to his notice. Sir, that there are certain blocks of land and we do not know what has

happened. We do not know who the Minister is on the particular land reform because there are so many dealing with land reform.

ஸமெரி பீயசூரிய மெனா

(திரு. காமனி ஜயசூரிய)

(Mr. Gamani Jayasuriya)

When you say it is a Land Reform matter. If you will let me know, we will look into it and try and do something about it.

புன்மல விமென டீமீ, ஸஸ ஸமீமெ வி.

வினா விடுக்கப்பட்டு ஏற்றுக்கொள்ளப்பட்டது.

Question put, and agreed to.

**காமினரீம ரகீஸன் மன்மிலெய்: பார்மிக பார்வை**

கமத்தொழிற் காப்புறுதிச் சபை: ஆண்டறிக்கை

**AGRICULTURAL INSURANCE BOARD: ANNUAL REPORT**

ஸமெரி பீயசூரிய மெனா

(திரு. காமனி ஜயசூரிய)

(Mr. Gamani Jayasuriya)

I move,

“That in terms of Section 30 (2) of the State Industrial Corporations Act, No. 49 of 1957 the Annual Report and Accounts of the Agricultural Insurance Board including the observations of the Auditor-General for the year 1980 which was presented on 24th February 1983 be approved.”

புன்மல விமென டீமீ, ஸஸ ஸமீமெ வி.

வினா விடுக்கப்பட்டு ஏற்றுக்கொள்ளப்பட்டது.

Question put, and agreed to.

**சூரி லெகா டீயர் ஸம்ஸீலாவ: பார்மிக பார்வை**

இலங்கை டயர் கூட்டுத்தாபனம்: ஆண்டறிக்கை

**SRI LANKA TYRE CORPORATION: ANNUAL REPORT**

சிரில் மூனிவி மெனா (கர்மாதன ஸ விடியா கிபெயு டீமெரினு)

(திரு. சிறில் மத்திவ்—கைத்தொழில், விஞ்ஞான அலுவலகர் அமைச்சர்)

(Mr. Cyril Mathew—Minister of Industries & Scientific Affairs)

I move,

“That in terms of Section 14 (3) of the Finance Act, No. 38 of 1971, the Annual Report and Statement of Accounts of Sri Lanka Tyre Corporation being report incorporating the Auditor-General’s observations for the year ended 31st December 1980 which was presented on 24th February, 1983 be approved.”

புன்மல விமென டீமீ, ஸஸ ஸமீமெ வி.

வினா விடுக்கப்பட்டு ஏற்றுக்கொள்ளப்பட்டது.

Question put, and agreed to.

**රජයට පවරා ගත් නුරානි උළු කම්හල :  
වාර්ෂික වාර්තාව**

**அரசாங்கத்துக்குச் சொந்தமான நூரானி ஓட்டுத் தொழிற்  
சாலை : ஆண்டறிக்கை**

**GOVERNMENT OWNED BUSINESS  
UNDERTAKING OF NOORANI TILE WORKS :  
ANNUAL REPORT**

**සිරිල් මැතිව මහතා**  
(திரு. சிறில் மத்திவ்)  
(Mr. Cyril Mathew)

I move,  
\* That in terms of Section 14 (3) of the Finance Act, No. 38 of 1971, the Annual Report and Statement of Accounts of the Government Owned Business Undertaking of Noorani Tile Works being report incorporating the Auditor-General's observations for the year ended 31st December 1980 which was presented on 24.02.1983 be approved. "

ප්‍රශ්නය විමසන ලදීන්, සහා සම්මත විය.  
வினா விடுக்கப்பட்டு ஏற்றுக்கொள்ளப்பட்டது.  
Question put, and agreed to.

**රජයට පවරා ගන්නා ලද සීමාසහිත ෂෝ  
ඉන්ඩස්ට්‍රිස් ආයතනය : වාර්ෂික වාර්තාව**

**அரசாங்கத்தால் பொறுப்பேற்கப்பட்ட ஷோ இண்டஸ்ட்ரீஸ்  
லிமிட்டெட் : ஆண்டறிக்கை**

**GOVERNMENT OWNED BUSINESS  
UNDERTAKING OF SHAW INDUSTRIES  
LIMITED : ANNUAL REPORT (1979)**

**සිරිල් මැතිව මහතා**  
(திரு. சிறில் மத்திவ்)  
(Mr. Cyril Mathew)

I move,  
\* That in terms of Section 14 (3) of the Finance Act, No. 38 of 1971, the Annual Report and Statement of Accounts of the Government Owned Business Undertaking of Shaw Industries Ltd. being report incorporating the Auditor-General's observations for the year ended 31st December 1979 which was presented on 24.02.1983 be approved. "

ප්‍රශ්නය විමසන ලදීන්, සහා සම්මත විය.  
வினா விடுக்கப்பட்டு ஏற்றுக்கொள்ளப்பட்டது.  
Question put, and agreed to.

**වෙරළ සංරක්ෂණ නියෝග**

**கரையோரம் பேணல் ஒழுங்குவிதிகள்**

**COAST CONSERVATION REGULATIONS**

**பேස්ටெர் பேரேர், மதுரை (பிவர் அமைதித்து)**  
(திரு. பெஸ்தர் பெரேர்—கடற்றொழில் அமைச்சர்)  
(Mr. Festus Perera—Minister of Fisheries)

මම ම යෝජනාව මම ඉදිරිපත් කරනවා  
"1981 අංක 57 දරන වෙරළ සංරක්ෂණ පනතේ 13 වන 14 වන 16 වන සහ 18 වන වගන්ති සමග කියවිය යුතු ඒ පනතේ 32 (3) වගන්තිය යටතේ පිවර කරුණු පිළිබඳ ඇමතිතුමා විසින් සාදන ලදුව, 1983. 02. 24 දින ඉදිරිපත් කරන ලද වෙරළ සංරක්ෂණ නියෝග අනුමත කළ යුතුය."

ගරු කථානායකතුමා, වෙරළ සංරක්ෂණ නීති යටතේ රෙගුලාසි පනවන්න සිද්ධ වී තිබෙන්නේ මුහුදු වෙරළ දිගේ කරන යම් යම් කාර්යයන් ගැන පාලනයක් ඇති කර ගැනීමටයි. කරන්නට යන කාර්යයන් පිළිබඳව අපට දැනුම් දීමක් කිරීමෙන් පසු ඒ ගැන සෝදිසි කර එය අපි පිළිගන්නවා නම් සුදුසු පරිදි කටයුතු කරනවා. [බාධාකිරීම්] මව්. ඒ ක්‍රමය සම්බන්ධව තමයි අද යෝජනාව ඉදිරිපත් කර තිබෙන්නේ.

ප්‍රශ්නය විමසන ලදීන්, සහා සම්මත විය.  
வினா விடுக்கப்பட்டு ஏற்றுக்கொள்ளப்பட்டது.  
Question put, and agreed to.

**කල් නැතිම  
ஒத்திவைப்பு  
ADJOURNMENT**

එකල්පි වේලාව 1983 මාර්තු 8 වන අඟහරුවාදා අ. ම. 8 පසුකර තිබුණත් කථානායකතුමා විසින් ප්‍රශ්නය නොවිමසා පාර්ලිමේන්තුව කල් තබන දේ.

පාර්ලිමේන්තුව 2 වන අනුකූලව 1983 මාර්තු 9 වන බදාදා පූ. ම. 12.45 ට 1983 මාර්තු 8 වන දින සහා සම්මතිය අනුව, 1983 මාර්තු 10 වන බ්‍රහස්පතින්දා පූ. ම. 10 වන තෙක් කල් ගියේය.

අப்பොසුතු 1983 මාර් 8, රෙච්චාමයකිසුමය පි. ප. 8 ක්‍රම පිත්තිවිට්ටමයාල සපානායකර් අවර්කන් විනාඩිනි පාපාලු මහර්තත ඉත්තිවෙත්තාර්කන්.

இதன்படி, 1983 மார் 9 மு. ப. 12.45 க்கு, பாராளுமன்றம் அதனது 1983 மார் 8 ஆந் தேதிய தீர்மானத்திற்கிணங்க, 1983 மார் 10, வியாழக் கிழமை மு. ப. 10 மணிவரை ஒத்திவைக்கப்பட்டது.

And it being past 8 p.m., on Tuesday 8th March, 1983 MR. SPEAKER adjourned Parliament without Question put.

Adjourned accordingly at 12.45 A.M. on 9th March, 1983 until 10 A.M. on Thursday 10th March 1983, pursuant to the Resolution of the Parliament of 8th March, 1983.

**පරිශීෂ්ටය  
அதுபற்றம்  
Appendix**

**Affidavits tabled by the Minister of Lands and Land Development and Minister of Mahaweli Development**

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

**Felix R. Dias Bandaranaike  
Petitioner**

**Vs.**

- 1. Hon. K. C. E. de Alwis
- 2. Hon. S. Sharvananda
- 3. Hon. J. G. T. Weeraratne

**Respondents**

I, J. G. T. Weeraratne, being a Christian, solemnly, sincerely and truly swear as follows :-

I, S. Sharvananda, not being a Christian, solemnly, sincerely and truly declare and affirm as follows :-

- 1. We are the 3rd and the 2nd respondents abovenamed, respectively.

2. We are the Chairman and a Commissioner, respectively, of the Special Presidential Commission of Inquiry established under Section 2 of Law No. 7 of 1978 as amended by Act No. 4 of 1978.
3. We state that after the Section 16 notice issued on A. H. M. Fowzy was revoked a Section 16 notice or any other notice was not issued on him for a second time.
4. By an inadvertent error it has been stated in the Second Interim Report made by us and the 1st respondent to His Excellency, the President, that a notice was served on the said Mr. Fowzy "again".
5. In January 1980 we decided that we could not frame any allegation against Mr. A. H. M. Fowzy for the reasons given in our letter of 4.6.82 sent to His Excellency, the President.
6. We have read the affidavit dated 27th August 1982 of Mr. K. C. E. de Alwis, the 1st respondent and aver to the correctness of the averments contained in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10 (a), 11, 12, 19, 22, 23 and 24 of the said affidavit, and associate ourselves with the statements contained therein.

J. G. T. Weeraratne  
S. Sharvananda

The foregoing having been read by the deponents severally placed their signatures before me at Colombo on this 27th day of August, 1982.

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

IN THE MATTER OF AN  
APPLICATION FOR A WRIT OF  
QUO WARRANTO AND  
PROHIBITION UNDER ART. 140  
OF THE CONSTITUTION OF THE  
DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA READ  
WITH SECTION 18A OF THE  
SPECIAL PRESIDENTIAL  
COMMISSIONS (SPECIAL  
PROVISIONS) ACT No. 4 OF 1978

Felix R. D. Bandaranaike of No. 1,  
Mahanuge Gardens, Colombo 3.

Petitioner

Vs.

1. The Hon. K. C. E. de Alwis,
2. The Hon. S. Sharvananda,
3. The Hon. J. G. T. Weeraratne,  
Office of the Special Presidential  
Commission of Inquiry, 225,  
Buddhaloka Mawatha, Colombo 7.

Respondents

To His Honour the President and the other Honourable Judges of  
the Court of Appeal :

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

IN THE MATTER OF AN  
APPLICATION FOR AN ORDER IN  
THE NATURE OF A WRIT OF QUO  
WARRANTO AND PROHIBITION  
UNDER THE PROVISIO TO ART. 140  
OF THE CONSTITUTION OF THE  
DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA READ  
WITH SECTION 18A OF THE

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

Supreme Court  
Reference No. 1 of  
1982.

Felix R. D. Bandaranaike of No. 1,  
Mahanuge Gardens, Colombo 3.

Petitioner

Vs.

1. The Hon. K. C. E. de Alwis,
2. The Hon. S. Sharvananda,
3. The Hon. J. G. T. Weeraratne,  
Office of the Special Presidential  
Commission of Inquiry, 225,  
Buddhaloka Mawatha, Colombo 7

Respondents

I, Kalugala Charles Edward de Alwis being a Buddhist do hereby solemnly, sincerely and truly affirm and declare as follows :

1. I am the 1st Respondent abovenamed.

2. The 2nd, 3rd respondents and I were appointed by warrant under the Public Seal of the Republic of Sri Lanka under and in terms of Section 2 of the Special Presidential Commission of Inquiry Law No. 7 of 1978 as Commissioners to inquire into and report to His Excellency the President the matters set out in the said warrant. A copy of the said warrant appended hereto marked 1R1. The said warrant was subsequently amended to include a period of time subsequent to July, 1977. We had therefore to report to His Excellency and to His Excellency alone our findings on the allegations which were inquired into by us.

3. Pursuant to the said warrant the Commission commenced its sittings on or about the 1st day of August 1978 and proceeded to hear and record evidence for the purpose of determining the persons whose conduct should be the subject of inquiry.

4. Prior to the 9th of November 1978, notices under Section 16 of Law No. 7 of 1978, were issued to several persons including the petitioner and one A. H. M. Fowzie. I append hereto copies of the notices issued on the petitioner and the said Mr. Fowzie marked 1R2 and 1R3 respectively. These notices were accompanied by a copy of the evidence led at the preliminary investigations concerning the person served with the said notice and they were called upon to file a statement.

5. On the 9th of November 1978, the Court of Appeal on an application made by Mrs. Sirimavo Bandaranaike, numbered C. A. Application No. 1 of 1978, issued a Writ of Prohibition, prohibiting us from proceeding to inquire into the acts and omissions of Mrs. Sirimavo Bandaranaike and also held that the warrant issued to the Commissioners under Section 2 aforesaid was *ultra vires* Law No. 7 of 1978.

6. By reason of this decision the Section 16 notices issued were revoked by a communication addressed to each of such several persons under the hand of the Chairman of the Commission, the 3rd Respondent. I append hereto copies of the communications addressed to the petitioner and Mr. A. H. M. Fowzie marked 1R4 and 1R5 respectively.

7. In our Second Interim Report we have adverted to this, at page 2 thereof, thus,

"On the order of the Court of Appeal being made known to us, we revoked the notices issued on the said persons. Notwithstanding this, Messrs. Kobbekaduwa and Jayawickrema filed statements in response to the notice."



8. After the passage of the Special Presidential Commissions of Inquiry (Special Provisions) Act No. 4 of 1978, which was certified on the 22nd of November 1978, the Commission met and notices under Section 16 aforesaid were again issued.

9. In our Second Interim Report we have reported :-

" Again notices under Section 16 of the Special Presidential Commission of Inquiry law No. 7 of 1978, were served on Messrs. Jaya Pathirana, I. F. B. Wickramanayake, A. H. M. Fowzie, H. S. R. Kobbekaduwa, C. Manohara, Nihal Jayawickrema, G. B. Wickremanayake, and Felix R. Dias Bandaranaike ".

10. (a) I state with regret, that the passage quoted in paragraph 9 hereof, contained an incorrect statement due to inadvertence. So far as Messrs. A. H. M. Fowzie and G. B. Wickramanayake were concerned no section 16 notices were again served requiring them to file statements. The only section 16 notices served on Mr. Fowzie and Mr. Wickramanayake are appended hereto as 1R3 (already marked) and 1R6 respectively ; no other notice was served on them after the 22nd of November 1978, on which date the Act No. 4 of 1978 was certified.

(b) I annex marked 1R7 an affidavit of Hon J. G. T. Weeraratne and Hon. S. Sharvananda, Chairman and Commissioner of the Special Presidential Commission of Inquiry the 3rd and 2nd respondents respectively.

11. The Statement of the petitioner in exhibit X6 appended to the petition that :

" Once Parliament declared the Court of Appeal Judgement "null and void" the Commissioners once again issued a Section 16 notice to Mr. Fowzie, and this second notice is still in force " is not true.

12. The inquiry into the petitioner's conduct was taken up on the 22nd of November 1979 and was concluded on the 30th of December 1979. The better part of 1979 was devoted to the inquiry into the conduct of Mr. Nihal Jayawickrama.

13. (a) Thereafter the 2nd, 3rd respondents and I considered the question as to whose conduct should be the next subject of inquiry. Since the evidence against the petitioner revealed a close relationship with Mr. A. H. M. Fowzie too, the 2nd, 3rd respondents and I considered the evidence available against the said Mr. A. H. M. Fowzie and unanimously decided that we could not frame any allegations and proceed to inquiry against the said Mr. A. H. M. Fowzie as the principal witness who had testified to matters relating to him at the preliminary investigations, namely, B. A. Jayasinghe Municipal Commissioner of Colombo had died after his testimony in chief and as we had adopted proof beyond reasonable doubt as the standard of proof of any allegation in the inquiries before us. We, therefore, decided in January 1980 not to take any further steps against Mr. A. H. M. Fowzie. The fact that the G. P. A. Silva Commission had already dealt with Mr. A. H. M. Fowzie in relation to the administration of the Colombo Municipal Council also weighed with us in arriving at the said decisions.

(b) The commission has had hundreds of complaints against various persons including politicians, Ministers, Members of Parliament, Ex-ministers and Ex-members of Parliament ; some of the complaints have been investigated and it has been found that no allegations could be framed against some of them for insufficiency of evidence and thus no inquiries were held. We had decided to mention in our final report to His Excellency the President the names of the persons against whom, although complaints were made, no inquiries were held due to insufficiency of evidence.

(c) Thus Mr. A. H. M. Fowzie ceased to be a person whose conduct was a subject of inquiry before us.

14. On or about the 2nd May 1982 my brother-in law, Dr. Hilton Mirando, a physician practising in Kurunegala then, told me that there was a rumour circulating in Kurunegala that the petitioner was going to send a petition against me to His Excellency the President informing him that I had sold my house to Mr. A. H. M. Fowzie and that the exact consideration was a secret.

15. The deed of transfer in favour of Izathul Nazeema Fowzie, to wit : No. 230 was executed by me as attorney of my son, K. C. de Alwis who was then in the United Kingdom on the 11th, May 1982. Present at the execution of the deed were only the Notary Mrs. Pushparani Kuruppu Nanayakkara, her husband Lakshman de Alwis an Attorney-at-law, Mr. Fowzie and I.

16. On the next day, 12th may 1982, the petitioner saw the Secretary, Ministry of justice in the latter's office and by his letter of the 13th, may 1982 purported to send a note to the said Secretary on the matter mentioned to him on the 12th may by the petitioner as set out in exhibit X4 annexed to the petition.

17. A few days prior to the 27th of may, 1982, Mr. W. M. P. B. Menikdiwela, Secretary to His Excellency the President telephoned me and said that His Excellency wished to see me on the 27th of may at 10.00 a.m. He did not tell me the reason nor did I ask him ; but I thought that His Excellency required me to see him in connection with the petition sent by petitioner. I took a copy of the deed of transfer no. 230 dated the 11th of May, 1982, when I went to meet His Excellency the President on the 27th of May. His Excellency told me that the petitioner had made representations against me and that was why he wished to see me. I cannot now recall whether His Excellency said that the representations were made to him or to the Minister of justice. I told His Excellency that I had heard that the petitioner was going to send a petition relating to my house sale transaction with Mr. A. H. M. Fowzie and that I had brought a copy of the deed of transfer with me to show His Excellency. His Excellency looked at the deed and told me that he would send me the complaint made by the petitioner and asked me to send my observations thereon to the Ministry of Justice. I requested His Excellency the President to permit me to send my observations directly to His Excellency. His Excellency agreed.

18. (a) On the 2nd June 1982, I received a letter dated 28th May 1982, from his Excellency the President enclosing a letter dated 13th May 1982, sent by the petitioner to the Secretary, Ministry of Justice and a copy of a letter sent by the Minister of Justice to his Excellency the President. I append hereto the said letters marked 1R8, 1R9 (exhibit X4 of the petition) and 1R10.

(b) The letter from the petitioner referred to in 1R10 is presumably the exhibit X5 annexed to the petitioner's petition. My wife and I were present at the dinner held in connection with the wedding of Izathul Nazeema Fowzie, the transferee in the Deed No. 230 dated 11th May 1982.

19. On receipt of His Excellency's letter aforesaid I informed the 2nd and 3rd respondents of the contents thereof, and on the 4th June 1982, the 2nd and 3rd Respondents addressed a letter to His Excellency the President a copy which is appended hereto marked 1R11. The 2nd, and 3rd Respondents in that letter stated as follows :

" We wish to state that we had decided long ago, about January 1980, that there was no purpose in holding an inquiry against Mr. Fowzie in view of the demise of Mr. B. A. Jayasinghe, Commissioner of the Colombo Municipality who was the main witness who deposed to matters against Mr. Fowzie. Without Mr. Jayasinghe's supporting evidence no case could be established against him. " The fact that the G. P. A. Silva Commission had already dealt with Mr. Fowzie also weighed with us in arriving at the said decision ".

20. On the 7th of June, 1982, I forwarded to His Excellency the President for his consideration my observations. In that letter I stated that,

"In or about January 1980 we (the Commissioners) unanimously considered that there was no sufficient evidence to hold an inquiry against Mr. Fowzie since the principal witness against him Mr. B. A. Jayasinghe, the former Commissioner of the Colombo Municipality died and his evidence which was recorded could not be availed of, as he had not been subject to cross examination. In arriving at the decision not to have an inquiry against him we also took into account the fact that Mr. Fowzie had already been dealt with by the G. P. A. Silva Commission. From that day he ceased to be a person whose conduct would have been inquired into".

A copy of the said letter is appended hereto marked '1R12'.

21. About three weeks later the petitioner sent to his Excellency the President the letter dated 28th June 1982, a copy of which marked X6 has been filed with the petition. In this letter the petitioner refers to the contents of the letters marked 1R11 and 1R12. His Excellency the President did not forward the letter dated 28th June, 1982 to me for my observations. The petitioner has filed his petition in these proceedings on 9th July 1982 and the same has received wide publicity.

22. In the letter dated 28th June 1982, the petitioner has imputed that it could not be true that the 2nd and 3rd respondents and I had unanimously taken a decision not to proceed with the inquiry against Mr. Fowzie. The petitioner further imputes that at no time even after January, 1980 could such a decision have been taken by the 2nd and 3rd respondents and I. The grounds in support of this imputation are contained in paragraphs 3, 4, 5 and 6 of the exhibit X6 filed with the petition.

23. With reference to the exhibit marked 'X6', I state that :

- (i) At no time prior to 30th December 1979 had we occasion to consider the totality of the evidence that was available against Mr. A. H. M. Fowzie.
- (ii) The inquiry against the petitioner was concluded by 30th December 1979 and thereafter the 2nd and 3rd Respondents and I considered whose conduct should be the next subject of inquiry and as set out merely in paragraph 13(a) hereof we unanimously came to the view that there was not sufficient evidence against Mr. A. H. M. Fowzie which would have justified an investigation into his conduct.
- (iii) the complaint made by Mr. B. A. Jayasinghe against the petitioner was,

"He looked at me and said in future you should carry out orders given by me and not by the Mayor or the Councillors. If you fail to carry out my instructions I will cut your neck and send you home without a pension".

Mr. B. A. Jayasinghe thereafter died in or about September 1978, Mr. M. C. L. Mendis's evidence was that he was present at the time the aforesaid threat was held out by the petitioner to Mr. B. A. Jayasinghe. As the evidence of Mr. M. C. L. Mendis did not impress the 2nd and 3rd Respondents and me, no allegations were framed against the Petitioner in respect of this matter. I append hereto marked 1R13 the Annexure 'A' containing the allegations served on the petitioner with the second section 16 notice and a copy of the second section 16 notice served on the petitioner marked 1R14.

(iv) It might be mentioned here that the Commission adopted a new procedure, when Section 16 notices were again sent by appending thereto an "Annexure 'A'" setting out the allegations which persons to whom notices were sent were called upon to meet at the inquiry to be held in future. This was in addition to the copy of the evidence recorded at preliminary investigations which had been previously sent.

(v) The matter relating to the statement of Mr. Kenneth Seneviratne is dealt with in the Third Interim Report, filed with the petition marked X2, at pages 64 at seq under the caption "Allegation 10".

(vi) a second section 16 notice was issued on Mr. Jaya Pathirana together with an annexure containing the allegations. I append hereto marked 1R15 and 1R16 a copy of the said notice and the said annexure. Mr. E. P. de Silva's evidence had relevance only to one of the allegations. The inquiry can proceed on the other allegations.

24. The passport of Mr. A. H. M. Fowzie was impounded on 8th August, 1978 prior to the enactment of Special Presidential Commission of Inquiry (Special Provisions) Act No. 4 of 1978. The order made on the 8th of August, 1978 impounding the passport and restricting the travel of Mr. A. H. M. Fowzie under Section 7(d) and (e) of the Special Presidential Commission of Inquiry Law No. 7 of 1978 was revoked on 1st of October, 1979 when an application was made by Mr. A. H. M. Fowzie in that behalf. Revocation of the earlier orders made under Section 7(2) (d) and 7(2) (e) of the said Law impounding the passport and restricting the travel of persons were dealt with as and when applications were made for such revocation by persons affected by such orders.

25. I specifically deny the averments in paragraph 8 of the petition and state that they are not true.

26. The houses bearing Assessment number 4, Anula Road (previously No. 542/2, Havelock Road) and number 542/1, Havelock Road, Colombo 6 were constructed and certificates of conformity were obtained in June 1981. The said two houses which are semi-detached with a common garage belonged to my son K. C. de Alwis. I append hereto photostat copies of the certificates of conformity in respect of the said houses marked 1R17 and 1R18 respectively.

27. Several public advertisements were placed by me, as my son's Attorney, for the sale or rent of the said two houses from about April 1981. I append hereto receipts issued or payments in respect of such advertisements, marked 1R19 (a) to 1R19 (1) and copies of two advertisements as appearing in the Ceylon Daily News dated 25th of April 1981, and 26th September 1981, marked 1R20 and 1R21 respectively. I have not been able to obtain copies of the other issues of the relevant newspapers.

28. Several brokers had come to know that the said houses were for sale or for rent but the offers made, by them were unsatisfactory. Eventually, one evening in early December 1981, when I happened to visit No. 4, Anula Road, one Ebert Peiris, a broker came there with two others. one of them, Mr. A. H. M. Mohideen spoke to me standing in the garage of the said premises and offered to purchase premises No. 4, Anula Road, the smaller of the two premises for Rs. 575,000/- and to take on rent the other premises No. 542/1, Havelock Road, for Rs. 6,500/- per month and offered to deposit Rs. 39,000/- being six months advance of rent. Since the offers were below the figures I quoted there was no agreement at the time and when they were going off Mr. Mohideen wrote his name and telephone number on a piece of paper which he took out from his diary and requested me to contact him on the telephone if I were to consider his offers.

29. On the 6th December 1981 the said Ebert Peiris inquired from me on the telephone at my residence 21 Deal Place A, Colombo 3 whether I was agreeable to accept the offers. I told him I was prepared to accept the offers. He said he would come with the buyer in the evening. That evening the said Peiris and A. H. M. Mohideen met me at 4, Anula Road and paid me a sum of Rs. 10,000/- as an advance on the sale. The said Mohideen also told me that the purchase would be as a dowry for his niece whose name was not then disclosed to me.

30. On the next day, 7th December 1981 I went to the National Savings Bank and paid this amount against the interest on the loans obtained from the bank to build the houses. I found that I had to pay a further sum of Rs. 6004/56 against the loan instalments. I then telephoned A. H. M. Mohideen and requested him to pay me a further sum of Rs. 10,000/- and asked him to come with the money to No. 4, Anula Road that evening. He came and paid me the money.

Before going to Anula Road that evening to meet A. H. M. Mohideen, I typed a document purporting to be a sale agreement in duplicate expecting the payment of the Rs. 10,000/- and went to Anula Road. When he paid me the Rs. 10,000/- I handed to him the original and I kept with me the duplicate signed by both of us. I append hereto a photostat copy of the said agreement marked 1R22.

It was agreed that a tenancy agreement in respect in respect of No. 542/1, Havelock Road would be signed only when the deposit of Rs. 39,000/- was made.

On 8th December 1981, I paid to the National Savings Bank a further sum of Rs. 6004/-56 against the lead instalments. I append hereto the several receipts of payments made on 7th and 8th December 1981, to wit : Rs. 10,000/- and Rs. 6004/56, photo copies of same are appended to hereto marked 1R23, 1R23(a), 1R24 and 1R24(a).

31. On or about the 16th December 1981 A. H. M. Mohideen paid me the sum of Rs. 39,000/- at 4, Anula Road and I told him that I would prepare the tenancy agreement and have it ready. Later that night he called me on the telephone at my residence and told me that the tenancy agreement should be in the name of his sister-in-law one Mrs. Sakeena Boo Fowzie who was to be the tenant, I prepared the document accordingly and signed the same, and having signed the same handed the tenancy agreement and the keys of premises No. 542/1, Havelock Road over to A. H. M. Mohideen. Then I came to know on inquiry that Mrs. Sakeena Boo Fowzie was the wife of A. H. M. Fowzie and the niece referred to above was his daughter. About this time having seen him at the said premises I came to know that the person who had come on the very first day with A. H. M. Mohideen, was A. H. M. Fowzie.

32. On the 1st of January 1982 a notarially attested agreement to sell was entered into in respect of premises numbered 4, Anula Road, with one Izzathul Nazeema Fowzie, the "nominee" of Mohideen, a daughter of A. H. M. Fowzie on a further sum of Rs. 305,000/- having been paid. The payment was utilised partly in discharge of the loans and part payment of broakerage, I append hereto photo copies of two receipts for Rs. 50,466.53 and Rs.200,155.81 marked 1R25 and 1R26 for payment of loans. I append a copy of the said agreement marked 1R27. The attesting witnesses to the said agreement were A. H. M. Mohideen and A. H. M. Fowzie. The said Tenancy Agreement with Mrs. Fowzie marked 1R27(a) is appended hereto.

33. The keys of the above premises were handed over to the said Mohideen on the 2nd January 1982, at his request as he stated that his brother A. H. M. Fowzie wished to start making certain ornamental improvements to the said premises.

34. Under and in terms of the agreement aforesaid, though the balance purchase price had to be paid on or before the 15th of February 1982 and the purchase completed by that date at the request of A. H. M. Fowzie, the father of the purchaser, time was given for payment by instalments.

35. The balance purchase price of Rs. 250,000 was paid as follows :-

- (i) on 11.3.82. - Rs. 50,000
- (ii) on 1.4.82. - Rs. 100,000
- (iii) on 15.4.82. - Rs. 100,000

36. On the 11th of May 1982, the said property, to wit : 4, Anula Road, Colombo 6 was transferred to the purchaser by Deed No. 230 of the same date, attested by Pushparani Kuruppu Nanayakkara Notary Public. The said deed has been filed with the petition marked X3.

37. On the 18th of May 1982 the broker the said Ebert Peiris was paid the balance money due to him less the Rs. 3,300 being interest consequent on non-completion of the purchase as originally agreed. I annex the receipt for payment of brokerage marked 1R28.

38. I deny all and singular the several averments in the petition and affidavit of the petitioner and in the exhibits appended thereto which are contrary to and or inconsistent with the averments herein contained.

39. I further state that I have been appointed by His Excellency the President by warrant dated 29th March 1978 under the Public Seal of the Republic of Sri Lanka as more specifically set out in paragraph 2 of this affidavit. At all times relevant to this application I have possessed the qualification required of a member of a Special Presidential Commission of Inquiry as set out in Section 2 of Law No. 7 of 1978 having been the District Judge of Colombo on the said date and thereafter been appointed a Judge of the Court of Appeal in terms of Article 107 of the Constitution. I was therefore fully authorised to and had the full right and authority to hold the office of a member of the Special Presidential Commission of Inquiry established by His Excellency the President by the warrant 1R1.

40. I am advised and state that the averments contained in the petitioner's petition and particularly in paragraphs 8, 13, 14 and 15 are wholly irrelevant to an application for writs of Quo Warranto and/or Prohibition and have been averred by the Petitioner out of malice, ill-will and with ulterior purpose against me because of the findings contained in the Third Interim Report of the Commission, annexed to the petition marked X2, in consequence of which the petitioner was deprived of his Civic Rights. the petitioner is an Attorney-at-law and would have known fully well that a writ of Quo Warranto would only lie against purported holder of a public office who has without any lawful right or title thereto has usurped such office.

41. I am advised and state that by reason of the provisions of Article 169 (15) of the Constitution read with Article 81 my position and status as a member of the Special Presidential Commission cannot be challenged in these proceedings.

42. I am advised and further state that the Application for Writs of Quo Warranto and/or Prohibition does not lie and cannot be maintained by the Petitioner inasmuch as inter alia :

- (a) application for several reliefs sought for in the petition are misconceived and cannot in law be availed of by the Petitioner or granted by this Court,
- (b) the Petitioner has no right or interest which entitled him to seek both or either of the reliefs prayed for,

- (c) there has in fact and in law been no usurpation of office by me, though falsely averred by the petitioner,
- (d) the Petitioner in filling this application has been acting with malice and ill-will against me and for an ulterior purpose or object,
- (e) whilst denying the malicious charges made against me as regards, inter alia, integrity, corruption and misconduct on my part, such matters in any event cannot be taken cognisance of by this court, inasmuch as they are matters which come within the purview of the constitutional and statutory powers of His Excellency the President in terms of Sections 2 and 5 of Law No. 7 of 1978 read together with Articles 16 and 33 (d) of the Constitution and the Royal Executive Powers and Seals Act (Cap. 387) of the Legislative Enactments of Ceylon as amended, and Section 14 (f) of the Interpretation Ordinance (Chapter 2) of the Legislative Enactments of Ceylon,
- (f) Any review of the exercise of the powers of His Excellency the President or grant of the relief prayed for by the Petitioner by this Court would be an assumption by this court of the powers constitutionally vested in His Excellency the President both by the constitution and by written Law,
- (g) by reason of Section 18 A (2) of Act No. 4 of 1978 this Court has no power or authority to make order prohibiting or to make any order which would have the effect of prohibiting the holding of any proceedings by the Special Presidential Commission, and
- (h) by reason of Section 2 (5) of Law No. 7 of 1978 the warrant issued by His Excellency the President cannot be called in question or quashed directly and/or indirectly by any writ or order issuing by this Court.

I therefore pray that the petitioner's application be dismissed with costs.

Signed and affirmed to at Colombo on this 27th, Twenty Seventh day of August 1982.

Before me,

S. A. SOMARATNE,  
Justice of the Peace,  
Colombo 7.

**Judgments tabled by the Minister of Lands and Land Development and Minister of Mahaweli Development**

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

In the matter of a reference to the Supreme Court in terms of Article 140 of the Constitution read with Section 18 A of the Special Presidential Commission (Special Provisions) Act No. 4 of 1978.

Felix R. D. Bandaranaike of No. 1, Mahanuge Gardens, Colombo 3.

Petitioner

S. C. Reference  
No. 1 of 1982.

Vs.

1. The Hon. K. C. E. de Alwis
2. The Hon. S. Sharvananda
3. The Hon. J. G. T. Weeraratne of the Office of the Special Presidential Commission of Inquiry, 225, Bauddhaloka Mawatha, Colombo 7.

Respondents

**BEFORE :** Samarakoon, Q.C., C.J.,  
Wimalaratne, J., and  
Colin Thome, J.

**COUNSEL :** Felix R. D. Bandaranaike,  
Petitioner in Person.

P. Navaratnarajah, Q.C. with  
Dr. M. L. S. Jayasekera,  
K. Kanag Iswaram, K. Sivanathan and  
A. A. M. Illiyas instructed by  
Messrs. Sirinivan, Amaratunga and  
Pararajasingham for 1st Respondent.

**ARGUED ON :** 23rd and 24th September, 1982.

**DECIDED ON :**

*Samarakoon, C. J.*

The petition in this case was filed in the Court of Appeal against the three Respondents who comprise the Special Presidential Commission of Inquiry. They were appointed by the President of the Republic by Warrant under his hand in terms of Section 2 of the Special Presidential Commissions of Inquiry Law No. 7 of 1948. The 1st Respondent is a Judge of the Court of Appeal and the 2nd and 3rd Respondents are Judges of the Supreme Court. The Petitioner applied for a Writ of *Quo Warranto* and Writ of Prohibition against the 1st Respondent. No relief was claimed against the other two. As the 1st Respondent is a Judge of the Court of Appeal the petition was transferred to the Supreme Court in accordance with the requirements of Section 18A (1) of the Law as amended by Act No. 4 of 1978. That is how this Court became seized of this matter.

By Warrant dated 29.03.1978 (1R1) the Commissioners were directed to inquire into and obtain information in respect of the period commencing May 28th 1970 and ending July 23rd 1977 relating to the various matters therein set out. The Warrant required the Commissioners to render a report to the President at the end of one year but this period has been extended from time to time. The last extension validates it up to 28th September, 1982. The Commission commenced sittings in August 1978. On the 9th November 1978 the Court of Appeal by its decision in Court of Appeal Application No. 1 of 1978 held that the said Warrant issued to the Commissioners was *ultra vires* the Law and issued a Writ of Prohibition against the Commissioners prohibiting them from inquiring into the conduct of the Appellant in that case. The legislature then passed amending Act No. 4 of 1978 with retrospective effect from the date of the operation of Law No. 7 of 1978. The amendment to Section 2 provided that a Warrant issued under Section 1 may relate to any period whatsoever including any period before the date of commencement of the Law, thereby nullifying the decision of the Court of Appeal.

Prior to the 9th November, 1978, notices under the provisions of Section 16 of the Law were issued to a number of persons, one of them being Mr. A. H. M. Fowzie a businessman, politician and one time Mayor of Colombo. He received a notice dated November 1, 1978 (1R3). The Petitioner was another who was noticed in terms of Section 16. He received notice dated 6th November, 1978 (1R2). Each person was informed that he was a person -

- (a) Whose conduct should be the subject of inquiry ; and/or
- (b) who is implicated or concerned in the matters under inquiry, by the Commission.

It will be convenient at this stage to revert to the allegations in the petition. The Petitioner alleges that on the 10th December 1979 the Respondents made a second Interim Report to the President which

has been published as Sessional Paper VI of 1979 (a copy of it has been produced marked X1). The Report states that notices issued before the said decision of the Court of Appeal were revoked and thereafter (presumably after the amending Act was passed) notice under Section 16 were again issued. The names of several recipients are mentioned, one of them being the said Fowzie. His passport was impounded on the 8th August, 1978, thereby preventing him from leaving the country. The Petitioner states that this passport was released on 1st October, 1979. The Petitioner then states that while the said Fowzie was subject to the said notice and thereby subject to the jurisdiction of the Commissioners the first Respondent knowingly engaged in financial dealings with him. This financial dealing comprises of a land transaction upon Deed No. 230 dated 11th May, 1982, attested by Pushpa Nanayakkara, N. P. by which the 1st Respondent as Attorney of his son sold and transferred the land and premises bearing assessment No. 4, Anula Road, Colombo 6, described in the schedule thereto, to Fowzie's daughter for a sum of Rs. 575,000.00 It is alleged that the consideration was paid by Fowzie. It appears that commencing 1st January 1982 Mrs. Sakeena Beebe Fowzie, wife of the said Fowzie, took on rent premises No. 542/1, Havelock Road, Colombo 6, at a rental of Rs. 6,500 per mensem, this transaction was also with the 1st Respondent as Attorney of the landlord. These transactions are admitted. The details of the transactions are not relevant at this stage and will be considered later together with the allegations of wrongful conduct. It is alleged that the money paid on both transactions was money of Fowzie. This allegation too is not controverted.

The 1st Respondent contests the allegation that at the time of these transactions Fowzie was subject to a notice issued under Section 16. He states that the notice 1R3 had been revoked by a notice dated 20.11.1978 (1R5) and that the statement in Report X1 that notices had been re-issued on all persons mentioned at page 2 thereof was incorrect. He states that in fact such notices were not again issued on Messrs Fowzie and Wickremanayake mentioned therein. The 2nd and 3rd Respondents who have filed affidavits support him on this point. Two of the notices that are stated to have been again issued have been marked as exhibits. One is to the Petitioner. It is dated 7th May, 1979, (1R14) and the other is to Mr. Jaya Pathirana dated 5th January 1979 (1R15). The counter affidavit of the Petitioner does not contradict this statement and I accept the statement that no notice was again issued on Fowzie. But the question that arises for decision at this stage is whether the notice 1R3 was, in fact and in law, revoked by 1R5 as contended by the Respondents. 1R5 reads thus -

" 20th November, 1978.

Mr. A. H. M. Fowzie,  
81/22, Silversmith Lane,  
Colombo 12.

*Notice under Section 16 of the Special Presidential Commissions of Inquiry Law No. 7 of 1978.*

Until a further communication is sent to you, you are not required to take any steps in respect of the Notice dated 1.11.78.

Sgd. J. G. T. Weeraratne,  
CHAIRMAN."

Revocation in its ordinary sense means a cancellation. Something that was done is undone. The legal effect of such act is that something that was, is now no more. 1R5 does not cancel or recall the notice 1R3. That notice remained valid and effective despite 1R5. The Commissioners' opinion and their decision in terms of Section 16 remain unaltered and operative. Only the filing of the statement required of Fowzie has been postponed *sine die*, i.e., until

such time as the Commissioners decide that it should be filed. In the result the date of inquiry stands adjourned *sine die*. Such statement will become necessary, and the inquiry, will be held, when the occasion arises and the Commissioners stipulate dates for them. Until then the notice 1R3 remains in abeyance. Its legal validity and its operative effect are in no way undone by 1R5. I cannot therefore see the semblance of a revocation in 1R5. Further it appears to me that the legal validity of 1R3 cannot be questioned because the amending Act No. 4 of 1978 by retrospectively ensuring the legal validity of the Warrant from the 29th day of March 1978 automatically validated all acts done and steps taken on the faith of it. The notice 1R3 therefore remained valid in law from the date of its issue. The Commissioners must have been aware of the impending legislation. I find that the notice 1R5 is dated 20-11-1978. The amending legislation was certified on 22-11-1978. This accounts for the notice 1R3 being kept in abeyance by 1R5.

The dates earlier given to the Petitioner by notice 1R4 were postponed *sine die* by letter 1R5 as in the case of Fowzie. After the 2nd November 1978 a fresh notice under Section 16 has been served on the Petitioner (1R14 dated 7-5-79). It refers to the copies of evidence already sent with notice 1R2. It forwards a further set of evidence given by 4 witnesses and stipulates fresh dates for filing of his statement and for inquiry. The inquiry against the Petitioner commenced on 22-11-1979 and was concluded on 30-12-79. The 1st Respondent states that thereafter for evidence against Fowzie was again considered especially in the light of facts revealed at the inquiry against the Petitioner and it was unanimously decided that no allegations could be framed against him. Therefore in January 1980 the Commissioners decided not to take any further steps against Fowzie. The other Respondents confirm this decision in January 1980. Thus states the 1st Respondent in his affidavit -

" Mr. A. H. M. Fowzie ceased to be a person whose conduct was a subject of inquiry before us." (Vide para 13 (c) of the 1st Respondent's affidavit).

The Petitioner challenges the veracity of this statement and gives reasons as to why it should not be accepted by this Court. I will deal with them later. The best evidence of the decision of this particular dispute would be the file or record of the Commission containing a record of such decision and the consequential directions that must have been given to the Secretary and to his Staff. Such evidence was not forthcoming although we mentioned to Counsel that we would like to peruse them. On the other hand this may not have been a firm decision because the 1st Respondent in his affidavit has disclosed the fact that the Commission also decided to mention only in the final report the names of those against whom no inquiry was held due to insufficiency of evidence. However I do not need to rule on this particular dispute as it is not necessary for this judgment of mine. Furthermore this concerns the conduct of the Commission which might be questioned later. What is most important is that even after this alleged decision of January 1980 the notice to Fowzie 1R3 was not revoked in fact or in law. It remains operative up to date and the decision recorded therein remains valid in law. It is in this background that the transaction of sale and of letting and hiring must be considered.

At the outset I must state that both transactions were open transactions. There was no secrecy about them. One of the allegations was that the sale on Deed X3 was done contrary to the Exchange Control Laws and Regulations in that it lacked the necessary permission from the Controller of Exchange. This was denied by Counsel for the 1st Respondent who stated that such permission was in fact obtained. There was no proof of either the allegation of the Petitioner or the assertion of the Counsel for the 1st Respondent. It therefore remains merely as an allegation and it is not relevant for the decision of this case. The properties belonged to the 1st Respondent's son, Chanaka, whose power of attorney was held by the 1st Respondent. Chanaka was a Marine Engineer

employed in various ships and was therefore compelled to roam the seas. At the material time he was in South Shields, England where he was living for the purposes of his contract of service. The 1st Respondent therefore handled these transactions on behalf of his son. House No. 4 Anula Road (sold on X3) and house No. 542/1, Havelock Road (rented on 1R27 (a)) are stated to be two semi detached houses with a common garage. They were constructed in 1981 and completed in June 1981. A Certificate of Conformity was issued for each by the Colombo Municipal Council on the 16th June 1981. (1R17 and 1R18). In anticipation of their completion several public advertisements for their sale or lease were inserted in Newspapers in April 1981. Two of them, in the Ceylon Daily News of 25th April, 1981, and 26th September 1981, were produced marked 1R20 and 1R21. These advertisements were paid for by the 1st Respondent and the relevant receipts have been produced (1R19a-c). Several brokers made offers. Early in December 1981 a broker, Ebert Pieris, by name, along with one A. H. M. Mohideen and another, met the 1st Respondent at the premises and made offers to purchase one and hire the other. The 1st Respondent took time to consider these offers. On the 6th December the 1st Respondent decided to accept the offers and so informed broker Pieris. In the evening of that day Mohideen paid him an advance of Rs. 10,000/-. On the next day he called for another 10,000/- necessary for payment to the National Savings Bank and that was paid that very evening by Mohideen. On that occasion an agreement (1R2) was signed by both 1st Respondent and Mohideen. It mentioned the sum of Rs. 20,000 already received as earnest money for the sale of the said House No. 4 for a sum of Rs. 575,000/- to Mohideen or his nominee to be named thereafter). Mohideen said that it was for his niece. On the 16th December Mohideen paid a sum of Rs. 39,000/- as rent on the letting of premises no. 542/1, Havelock Road, and later that day requested the 1st Respondent to grant the tenancy to his sister in law Mrs. Sakeena Beebe Fowzie. On the 17th December, 1981, the 1st Respondent prepared a tenancy agreement in the name of Mrs. Fowzie, signed it, and handed the same together with the keys of the premises to Mohideen. It was then, that the 1st Respondent came to know on inquiry that Sakeena Beebe was the wife, and that the niece of Mohideen was the daughter, of A. H. M. Fowzie. He adds "About this time having seen him at the premises I came to know that the person who had come on the very first day with A. H. M. Mohideen was A. H. M. Fowzie." A sale agreement No. 213 dated 1st January, 1982 (1R27) attested by Pushpa Nanayakkara, N. P. was executed on the same day and the keys of premises No. 4, Anula Road, were handed over on the same day to Mohideen as he stated that his brother Fowzie, wished to start making certain alterations. The agreement (1R27 (a)) acknowledges the receipt of a sum of Rs. 320,000/-. The balance purchase price of Rs. 250,000/- was paid in three instalments—the third being on 15-04-82. On the 11th May 1982 the Deed X3 was executed. The Broker was paid monies due to him on 18th May 1982. (1R28). The reverse of this Document shows that out of the total sum of Rs. 14,375/- a deduction of Rs. 3,300/- was made on account of nonpayment of interest by the buyer. On the 11th May the Petitioner appears to have met the Secretary, Ministry of Justice personally and represented matters to him. He had been requested to make his representations in writing. He then wrote letter dated 12th May (X4) to the Secretary, Ministry of Justice setting out the facts as known to him. In it he refers to "the transaction still being incomplete". He does not appear to have been aware of the full facts. He alleged also that the financial dealings of the 1st Respondent referred to constitute "a vitiation of his integrity" amounting to "corruption". He followed this up with another letter dated 23rd May 1982 (X5) in which he states that he had attended the wedding of Fowzie's son at a hotel in Colombo on 21st May and that the 1st Respondent himself was present as a guest at that wedding. The Minister of Justice appears to have communicated to the President the above correspondence and had informed the petitioner that he had done so. The Petitioner then addressed th

President by letter dated 28th June 1982 setting out in detail the facts as known to him and also his allegations. He filed the petition in this case on the 9th July 1982. This is the background upon which our decision has to be made.

The Petitioner's allegations are of a two fold nature. The first is that the 1st Respondent "knowingly engaged in financial dealings with the said Fowzie" and by so doing he has—

- (a) committed an act of grave misconduct,
- (b) vitiated his integrity and thereby shown himself to be corrupt, and guilty of corruption,
- (c) compromised his position as a Judge of the Court of Appeal by his misbehaviour."

This is not a "financial dealing", simpliciter. Money has been paid for valuable consideration. It is a sale of land and a letting of premises. It is alleged that the 1st Respondent entered into this transaction with the knowledge that he was dealing with Fowzie, a person whose conduct was the subject of inquiry by the Commission. There is no evidence that the 1st Respondent was aware at the time he entered into negotiations with broker Peiris and Mohideen of the fact that Fowzie was concerned in this transaction. The transactions were clinched between these two persons and the 1st Respondent. It was only after the 17th December 1981 that the 1st Respondent became aware of the role of Fowzie in these transactions. By that time tenancy agreement (1R27 (a)) had been signed and the keys of the house handed over to Mohideen. By that time also the informal sale agreement (1R22) had been executed and earnest money received. He could not have resiled from the tenancy agreement. He could have resiled from the sale agreement and faced the consequences but this alone would not have helped to clear him of wrongful conduct if any there was. He completed the transaction as openly and as lawfully as any vendor would have done. I cannot see anything dishonest in his conduct throughout the transactions. I therefore hold that the allegations of misconduct (grave or otherwise), misbehaviour, and corruption, are unfounded and reject them. He has not compromised his position as a Judge of the Court of Appeal.

There is however another aspect of the matter to be considered. At the time of these transactions Fowzie was one of those whose conduct had been the subject of inquiry by the Commission. The public was aware of this fact. The proceedings of this Commission were of public importance and its proceedings received wide publicity in the country through Newspapers. Some of the popular ones gave full coverage to its proceedings. It is common knowledge that they were keenly read and followed by the reading public. Persons whose conduct was in question were public men such as Fowzie and other politicians. The public at large was aware that notices had been served on them in terms of section 16. Those who read Sessional Paper VI would have taken it for granted that such notice had been issued on Fowzie. Neither they, nor the public, would have known that this was a mistake. The public could not have known, and indeed would be ignorant of, the decision of the Commission made in January 1980 not to proceed against Fowzie. That would be known only to the Respondent and perhaps to a few exclusive members of its Staff. It has not been communicated to the President, to Fowzie or to the Staff. In the public eye Fowzie was, and continues to be, a person whose conduct is, in the opinion of the Commission, a matter for inquiry and therefore still subject to its jurisdiction. It is now stated that there is an insufficiency of evidence against Fowzie and therefore an investigation would not be justified and this fact will be incorporated in a final report to the President. A final report has not yet been sent to the President. The position may well change before it is sent. Should such a situation arise the 1st Respondent cannot take part in any decision concerning Fowzie. In any event he cannot now join the other

Commissioners in making a report to the President affecting Fowzie. We must bear in mind the cardinal fact that these Commissioners are bound to act judicially not because they are in fact Judges of Superior Courts but because their decisions involve consequences that affects the rights of the citizen. In this instance one of the most precious of them all is involved civic rights. The oft quoted statement of May C. J. in the Irish Case of *Regina vs. Dublin Corporation* (1978) (2 L.R. Ir. 371 at 376) was repeated by Lord Atkinson and adopted by the House of Lords in the case of *Everett v. Griffiths* (1921) (1 A.C. 631 at 683) as no better definition of a judicial act could be found or given. It is as follows :-

"It is established that the writ of certiorari does not lie to remove an order merely ministerial; ..... but it lies to remove and adjudicate upon a validity of acts judicial. In this connection the term 'judicial' does not necessarily mean acts of a judge or of a legal tribunal sitting for the determination of matters of law, but for the purpose of this question a judicial act seems to be an act done by competent authority, upon consideration of facts and circumstances, imposing liability and affecting the rights of others. And if there be a body empowered by law to inquire into facts, make estimates to impose a rate on a district, it would seem to me that the acts of such a body involving such consequences would be judicial acts."

Being judicial acts of Commissioners they are subject to control by the Superior Court. High standards are expected of them, so much so, that appearances sometimes become "more important than reality". Lord Hewart's felicitous dictum gave expression to this aspect of the matter. He said :

"..... a long line of cases shows that it is not merely of some importance, but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done". *Rex vs. Sussex Justices, McCarthy, Ex parte* (1924) (1 K.B. 256 at 259).

Lord Denning M. R. in *Metropolitan Properties Co. (F.G.C.) Ltd vs. Lannon* (1969) (1 Q.B. 577 at 599) referred to the operation of this principle thus :

"It brings home this point : in considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the chairman of the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless if right-minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit. And if he does sit, his decision cannot stand." "There must be circumstance from which a reasonable man would think it likely or probable that the justice, or chairman, as the case may be, would, or did, favour one side unfairly at the expense of the other. The court will not inquire whether he did, in fact, favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence : and confidence is destroyed when right-minded people go anking : 'The Judge was biased.'"

That was a case in which it was held that the Chairman of the rent assessment committee had an interest which was of a disqualifying character. It was conceded that there was no actual bias or want of good faith on the part of Mr. Lannon the Chairman. Yet there was a real likelihood of bias. The decision of the Committee was therefore quashed and the inquiry remitted to another Committee. In deciding the question of bias Lord Denning suggested the following Test :-

"Test it quite simply : if Mr. John Lannon were to have asked any of his friends : 'I have been asked to preside in a case about the rents charged by the Freshwater Group of Companies at

Oakwood Court. But I am already assisting my father in his case against them, about the rent of his flat in Regency Lodge, where I am living with him. Do you think I can properly sit ?' The answer of any of his good friends would surely have been : 'No, you should not sit. You are already acting, or as good as acting, against them. you should not, at the same time, sit in judgment on them.'"

A similar question can be asked of the 1st Respondent. Can he properly continue to sit in judgement over Fowzie ? Can he take part in making the final report to the President ? The answer is clearly 'No'. There is both a real likelihood and a reasonable suspicion that his judgement was warped by favouritism though, I repeat, there is no proof of that. I would therefore issue a writ of prohibition forbidding the 1st Respondent from taking any further part in the investigation of the conduct of Fowzie and also from prohibiting him from joining the other Commissioner's in a final or other Report to the President which incorporates a decision regarding Fowzie.

The Petitioner however will not be satisfied with such an order. He has prayed for a writ of prohibition restraining and preventing the 1st Respondent from continuing as a member of the Commission. This Writ of Prohibition is used to prevent the exercise of jurisdiction over a particular matter of dispute. It cannot be used to remove a person from office and I have found no instance of such user in the past. I cannot therefore accede to this part of the petition. I however desire to state that that confidence in which justice is rooted has been destroyed as far as the investigation of Fowzie is concerned. Right-minded people would not be unjustified if they look askance at other decisions of the 1st Respondent. It might undermine that faith in the Commission itself which is necessary to command respect for its recommendations. This must be avoided, whatever the cost.

Two other matters need decision. "It was contended that the Petitioner has no right or interest to maintain this application and to seek the reliefs claimed. This is a matter of public importance and it is in the public interest to ensure that machinery set up Government in the interest of good order should function properly. Accordingly the Court can award this remedy to any member of the public. ("Administration Law" by Wade Edn. 4 page 541 and 542)

Lastly it was contended that this Court "by reason of the provisions of Section 18A (< OF Act No. 4 of 1978 has no power or authority to make order prohibiting, or to make any order which would have the effect of prohibiting, the holding of any proceedings by the Special Presidential Commission" Section 18 A (2) reads thus -

"18A (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."

This Court is exercising a jurisdiction conferred by Article 140 of the Constitution by reason of the transfer of this application to this Court from the Court of Appeal (vide section 18A (1) of Act No. 4 of 1978). That jurisdiction is being exercised in accordance with the provisions of the first proviso to section 18 A (2). This order does not purport to or have the effect of staying, suspending or prohibiting the holding of any proceedings before or by the Commission or the making of any order, finding, report, determination, ruling or recommendations by the Commission. Nor is the validity of the Warrant in any way nullified. The Commission can continue its work unhindered. (Vide section 2 (1) (2) and (3) of Law No. 7 of 1978). Nor is this Court being asked to make any decision contravening the provisions of section 18 A (2) (b). It is merely prohibiting one of the Commissioners from acting in circumstances. What intrinsic worth any recommendation already made, or that will be made, in the future will have is not a matter for this Court. That must be judged by those who seek to impose punishments on the basis of such recommendations.

I have given careful consideration to the question of costs. The Petitioner has acted as a public man in the interests of the public. He has partially succeeded. This is one of those applications in which monetary matters should find no place. I therefore do not make any order for costs. A Writ of Prohibition will issue in the terms indicated above.

Neville Samarakoon  
Chief Justice.

*In the Supreme Court of the Democratic Socialist Republic of  
Sri Lanka*

In the matter of an Application for an order in the nature of a Writ of Quo Warranto and Prohibition under the proviso to Art : 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 18A of the Special Presidential Commission (Special Provisions) Act No : 4 of 1978.

S.C. Appln : No : 1/82

C.A. Appln : No : 891/82

Felix R. D. Bandaranaike of No. 1, Mahanuga Gardens,  
Colombo 3 - Petitioner

Vs.

1. The Hon. K. C. E. de Alwis,
  2. The Hon : S. Sharvananda,
  3. The Hon : J. G. T. Weeraratne,
- Office of the Special Presidential Commission of  
Inquiry, 225, Bauddhaloka Mawatha, Colombo 7.

-Respondents

**WIMALARATNE J** : - I have had the benefit of reading the judgment prepared by the Chief Justice. I am in agreement with his findings that -

- (a) even after the alleged decision of the Special Presidential Commission in January 1980 not to proceed with the case against Fowzie, the notice 1R3 issued to Fowzie was not revoked in fact or in law, and it remains operative up to date ;
- (b) the public could not have known, and indeed would be ignorant of, the decision of the Commission made in January 1980 not to proceed against Fowzie ;

(c) Fowzie was, and continues to be, a person whose conduct is, in the opinion of the Commission, a matter for inquiry, and therefore *still subject to its jurisdiction* ;

(d) the confidence in which justice is rooted is destroyed as far as the investigation of Fowzie is concerned (subject to what I have to say about investigations against other persons) ;

(e) right minded people would not be unjustified if they look askance at *other decisions of the 1st respondent* ; and that it might undermine that faith in the Commission itself, which is necessary to command respect for its recommendations ;

(f) this (loss of faith) must be avoided, *whatever the cost*.

(g) this Court is possessed of jurisdiction to award the remedies prayed for by the petitioner to any member of the public ; and

(h) this Court has the jurisdiction to issue the prerogative writs against the Special Presidential Commission or any member thereof, by virtue of the First Amendment to the Constitution, read with section 18A(1) of amending Act, No. 4 of 1978.

For these, among other reasons, the Chief Justice is of the view that the issue of a Writ of Prohibition forbidding the 1st respondent from taking any further part in the investigation of the conduct of Fowzie, or from joining the other Commissioners in a final or other report to the President which incorporates a decision regarding Fowzie is justified on the ground of bias. In the result, there will be no impediment to the 1st respondent taking part in other investigations against other persons, and in joining the other Commissioners in a report to the President, as long as it does not incorporate a decision on Fowzie.

I may say straightaway that the Commission has already made an affidavit stating that they do not propose proceedings against Fowzie. Under these circumstances the issue of a writ of Prohibition for the limited purpose as contemplated by the Chief Justice does not, in my view, serve the ends of justice. How then, can those right minded people who, in the words of the Chief Justice, " would not be unjustified if they look askance at other decisions of the 1st respondent " be satisfied ? How can the undermining of the confidence in the recommendations of the commission be avoided at all costs, which is the very laudable objective to be achieved ? The dictum of Lord Denning that " Justice must be rooted in confidence " must not be a mere empty catchword. Bias is not the only ground of disqualification ; misconduct is a more serious ground. No amount of canons of judicial conduct mouthed at judicial seminars, no amount of prescriptions on judicial ethics written in law journals will serve any purpose unless we insist that these self same commandments are complied with. Those performing judicial and semi-judicial functions should be made aware that we give a meaning to the words " justice must be rooted in confidence " ; and justice can never be rooted in confidence if they who administer justice engage in dealings, financial dealings or land transactions, with those who are litigants before them.

The main argument of the Petitioner has been that the 1st respondent is disqualified, not on the ground of bias, but on the ground of misconduct ; that as a result of a financial transaction between the 1st Respondent and Fowzie, whilst the latter was yet a person whose conduct was the subject of investigation by the Commission of which the 1st Respondent is a member, the 1st respondent " became unable to act " in terms of section 3 (1) of the Special Presidential Commissions of Inquiry Act. In such situations the President, as the authority vested with the power to appoint, has the power to remove a member who has so become unable to act, and to appoint in his place a new member. If no new member is appointed section 3 (2) empowers the remaining members of the Commission to continue with the inquiry. Apart from removal by the President, the Petitioner contends that there is a judicial power vested in this Court to declare that a member has become unable to



act. He submits that the words, "unable to act" should not be limited to physical or mental disability such as prolonged illness or absence. He invites us to give the phrase a wider interpretation so as to include within its compass the case of a member who, by his misconduct, renders himself unable to act. In such a case removal by the President of the member concerned is one remedy. A judicial declaration that that member has become unable to act is another.

I am of the view that our judicial power extends to the making of such a declaration. As an illustration let us take the extreme hypothetical case of a member, either of the Special Presidential Commission or of a Commission of Inquiry, against whom a prima facie case of bribery has been established. Such a member who refuses to resign may be removed by the President. Quite apart from such removal by the Executive, the Judicial Power of the State is virile enough to declare that such member has become unable to act. The jurisdiction to make such declaration is vested in this Court by Article 140 of the Constitution, read with amending Act No. 4 of 1978. The jurisdiction to issue the Writ of Quo Warranto is at the present time the jurisdiction to make a declaration, for Quo Warranto has, in England, been replaced by declaration and injunction, by virtue of section 9 of the Administration of Justice (Special Provisions) Act of 1938 - *Wade - Administrative Law (4th Ed) 497*.

Do the circumstances justify the making of such a declaration in this case? Evidence was led before the Commission in about September 1978. That evidence received wide publicity in the media. The 'Ceylon Daily News' of 2.9.78, for example, carried the following headline "Fowzie obtained concessions for people in whom he had an interest". Det Mayor Fowzie's alleged intermeddling in certain customs detections and inquiries, as deposed to by an Assistant Collector of Customs, W. H. Jayawardena, as well as acts of abuse of power deposed to by B. A. Jayasinghe, Municipal Commissioner, and Tyrell Gunatilleke S.P. CID were widely reported in the press. Any right minded person would have formed the view that the conduct of Fowzie deserved investigation by the Commission. The Commission also formed the opinion that Fowzie should face an inquiry. That is why the Commission issued charges and sent Fowzie a copy of the evidence relating to him along with the notice IR3 dated 1.11.78. If then, charges of a serious nature were pending against Fowzie, any right minded person would expect no member of the Commission to have any dealings whatsoever with Fowzie even after the inquiry was over, and not at least till a report was sent to the President. The act of a member in entering into a land transaction with a person whose conduct remains the subject of inquiry amounts, in my view, to misconduct.

But the Commissioners in their affidavits aver that they decided in January 1980 not to proceed further against Fowzie because of (a) the death of B. A. Jayasinghe, who they say would have been the main witness against Fowzie, and (b) the findings of the G. P. A. Silva Commission set up to inquire into abuse of power in local authorities, and the consequential civic disability imposed upon Fowzie by Parliament. It is not for us to question the soundness of the above reasons given by the Commission for its change of opinion, but we note that both these events, namely, the death of B. A. Jayasinghe (on 22.9.78) and the imposition of civic disability on Fowzie (on 14.8.78) had already occurred when the Commission first decided to frame charges against Fowzie on 1.11.78. What is important is that in the eyes of the public Fowzie, like Pathirana, Manohara and Wickremanayake continued to be a person whose conduct yet remained to be investigated by the Commission. No amount of private, uncommunicated decisions arrived at by the Commission would suffice to erase the impression the public would have had that a prima facie case of an abuse or misuse of power had been established against Fowzie. A member of the Commission who

enters into a transaction, which involves the sale of a house and a lease of another house to the daughter and wife of Fowzie, and in respect of which consideration was paid by Fowzie himself cannot expect to command that degree of public confidence which is a sine qua non for the proper functioning of the Commission.

A few words about the transaction itself. The 1st Respondent avers that the first two instalments of Rs. 10,000/- each as advance purchase price for one of the houses was paid on 6.12.81 by one A. H. M. Mohideen, and that the deposit of Rs. 39,000/- as six months rent for the other house was also paid by Mohideen on 16.12.81. It was only on 16.12.81, according to the 1st respondent, that he came to know that the purchaser of the one house was to be the daughter of A. H. M. Fowzie and that the tenant of the other house was to be the wife of Fowzie. By that time he says it was too late to resile from either transaction, because he had entered into an informal agreement for the sale of one house to Mohideen or his nominee for a sum of Rs. 575,000/- and had handed over the keys of the other house to Mohideen. The deed of transfer No. 230 was executed six months later, on 11.5.82. According to the attestation clause however, the two instalments of Rs. 10,000/- each were paid before 1.1.82 by A. H. M. Fowzie. There is also the fact that no reference has been made in the deed of transfer to a previous informal agreement. As the 1st respondent says he had a copy of the informal agreement with him, and as the payments were all cash payments, one would have expected the date of payment of the Rs. 20,000/- to have been mentioned; instead there is a vague statement that that amount was paid prior to 1.1.82, which could even be interpreted as being a date in 1980. There is therefore, no satisfactory proof that the 1st respondent was not aware about the interest that Fowzie had in these transactions until 16.12.82. Even if such knowledge dawned on him on that date, it was open to him to have paid back the Rs. 20,000/- and resiled from the agreement to sell on the ground that the virtual purchaser was a litigant before him.

As emphasised by the Chief justice, loss of public confidence in the Commission must be avoided, whatever the cost. I am of the view that that objective cannot be achieved by merely prohibiting the 1st respondent from participating in any inquiry against Fowzie, because the commissioners themselves tell us that they have decided not to proceed against Fowzie. It seems to me, therefore, that one way by which this objective could be achieved is by the exercise of the judicial powers vested in us by Article 140 of the Constitution, and declaring that by his misconduct the 1st respondent has become unable to act as a member of the Commission in terms of section 3(1) of the Special Presidential Commissions of Inquiry Law. I would make the declaration accordingly, and grant the Petitioner prayer (a) of the petition.

I have given careful consideration to the relief prayed for in para (b). A writ of prohibition restraining the 1st respondent from participating in any further proceedings of the commission would virtually amount to a removal of the 1st respondent. Such power of removal is an executive power, vested exclusively in the President. I would, therefore, not grant the relief prayed for in para (b).

On the question of costs, every citizen has a "Standing 4 to invite the Court to prevent some abuse of power, and is doing so he may claim to be regarded not as a meddlesome busy-body, but as a public benefactor - *Wade 544*.

As the Petitioner has succeeded in obtaining part of the relief prayed for, I would allow him half the costs of this inquiry payable by the 1st respondent.

D. Wimalaratne,  
Judge of the Supreme Court.

## SUPREME COURT REFERENCE No. 1 OF 1982

COLIN-THOME, J.

I have had the advantage of reading the judgments of the learned Chief Justice and Wimalaratne, J.

The legislature passed the amending Act No. 4 of 1978 with retrospective effect from the date of the operation of Law No. 7 of 1978. The amendment to section 2 provided that a Warrant issued under section 1 may relate to any period whatsoever including any period before the date of commencement of this Law. In other words, the amending Law No. 4 of 1978 by retrospectively ensuring the legal validity of the Warrant from the 29th of March, 1978, automatically validated all acts and steps taken earlier under it. Therefore, the section 16 notice, 1R3, dated 1st November, 1978, served on A. H. M. Fowzie, remained valid in law and in fact from the date of its issue, and has never been subsequently revoked upto date. By no stretch of imagination as it revoked by the letter to Fowzie, 1R5, which merely informed him of the postponement of the inquiry against him, as another inquiry had been given priority. The respondents were well aware of this. I agree with the learned Chief Justice that the legal validity of the notice 1R3 and its operative effect are in no way undone by 1R5, and this notice 1R3, therefore, remains valid in law from the date of its issue.

In this context the financial transactions between the 1st respondent and Fowzie took place while the section 16 notice 1R3 remained valid.

The 1st respondent has stated in paragraph 13 of his affidavit that the Commissioners had decided—"In January 1980 not to take any further steps against Mr. A. H. M. Fowzie" for the reasons that the principal witness B. A. Jayasinghe who had testified against Fowzie had died and that the G. P. A. de Silva Commission had already dealt with Fowzie in relation to the administration of the Colombo Municipal Council. These reasons were supported by the joint affidavit of the 2nd and 3rd respondents and the letter of the Commissioners to the President dated 4th June, 1982.

An unsatisfactory feature of these averments was that it was not disclosed to the President or to this Court in the affidavit of the respondents that serious allegations had been made against Fowzie by W. H. D. Jayawardene, Assistant Collector by Customs, that on two occasions Fowzie had intererred with the investigations conducted by Customs Officers into alleged smuggling offences and that Fowzie had actually abetted the offence of smuggling in one case by causing disappearance of two large suitcases from the Customs premises. The death of B. A. Jayasinghe, and the G. P. A. de Silva Commission in relation to the administration of the Colombo Municipal Council had nothing to do with those grave allegations against Fowzie.

It is also significant that the notice 1R3 served on Fowzie was dated 1st November, 1978, and it informed him that his "conduct should be the subject of inquiry; and/or (that he) was implicated or concerned in the matters under inquiry, by the Commission". B. A. Jayasinghe died on the 22nd of September, 1978, before the despatch of this notice to Fowzie.

The 1st respondent has stated in paragraph 28 of his affidavit that early in December, 1981, when he visited No. 4, Anula Road, Ebert Peiris, a broker, came with A. H. M. Mohideen, and a third man who remained in solemn silence without being identified. Mohideen offered to purchase the smaller of the two premises at No. 4, Anula Road, for Rs. 575,000/- and to take on rent premises No. 542/1, Havelock Road, for Rs 6,500/- per month. He also offered to deposit Rs. 39,000/- being 6 months advance of rent. There was no agreement at the start, but on 6th December, 1981, when Ebert Peiris contacted him again he was agreeable to accept the offer. That afternoon Peiris and Mohideen paid him an advance of Rs. 10,000 as an advance on the sale. Mohideen told them that

the purchase could be as a dowry for his niece, whose name was not disclosed to the 1st respondent. The next day he telephoned Mohideen and requested a further Rs. 10,000. Mohideen gave him the money as agreed, at No. 4, Anula Road.

On the 16th of December, 1981, Mohideen brought him a further sum of Rs. 39,000. Later that night Mohideen telephoned him at his residence and stated that the Tenancy Agreement would be in the name of his sister-in-law Mrs. Shakeena Bee Fowzie. He prepared a document accordingly and having signed it handed the Agreement and the keys of the premises No. 542/1, Havelock Road to Mohideen. Then he came to know on enquiry that Mrs. Fowzie was the wife of A. H. M. Fowzie and the niece referred to earlier was his daughter. It was only at about this time that he came to know that the third man who accompanied Peiris and A. H. M. Mohideen on the 6th of December was none other than A. H. M. Fowzie.

Even after he came to know that it was A. H. M. Fowzie he proceeded with the transaction and accepted from Fowzie four further instalments amounting to over 5 1/2 lakhs of rupees. All six instalments were paid to the 1st respondent in cash. They were not paid in the presence of a Notary.

Although the 1st respondent has averred in his affidavit that the 1st two instalments were paid by Mohideen, the attestation Clause of Deed No. 230, executed on 11th May, 1982, discloses that all six instalments were paid by Fowzie.

All these transactions were carried on while the section 16 notice against Fowzie was still in force and as there were allegations of serious offences committed by him, I hold that the 1st respondent was guilty of misconduct unbecoming of a judicial officer.

I allow the application of the Petitioner to issue a Writ of Quo Warranto to the 1st respondent under the proviso to Article 140 of the Constitution, read with section 18A of Act No. 7 of 1978, and declare that the 1st respondent has become unable to act, and that he is disentitled to hold the office and function as a Member of the Special Presidential Commission of Inquiry.

I agree with the order made by Wimalaratne, J., in connection with the Petitioner's prayer under (a) and (b) and (c).

J. COLIN-THOME,  
Judge of the Supreme Court.

*Petitions tabled by the Minister of Lands and Land Development and Minister of Mahaweli Development*

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

IN THE MATTER OF AN  
APPLICATION FOR A WRIT OF  
QUO WARRANTO AND  
PROHIBITION UNDER ART. 140  
OF THE CONSTITUTION OF THE  
DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA READ  
WITH SECTION 18A OF THE  
SPECIAL PRESIDENTIAL  
COMMISSION (SPECIAL  
PROVISIONS) ACT No. 4 OF 1978

Felix R. D. Bandaranaike of No. 1,  
Mahanuge Gardens, Colombo 3.

Petitioner

Vs.

1. The Hon. K. C. E. de Alwis,
2. The Hon. S. Sharvananda,

3. The Hon. J. G. T. Weeraratne,  
Office of the Special Presidential  
Commission of Inquiry, 225,  
Buddhaloka Mawatha, Colombo 7.

**Respondents**

To His Honour the President and the other Judges of the Court of Appeal :

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

**IN THE MATTER OF AN  
APPLICATION FOR AN ORDER IN  
THE NATURE OF A WRIT OF QUO  
WARRANTO AND PROHIBITION  
UNDER THE PROVISO TO ART. 140  
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DEMOCRATIC SOCIALIST  
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Office of the Special Presidential  
Commission of Inquiry, 225,  
Buddhaloka Mawatha, Colombo 7.

**Respondents**

To Hon. President of the Court of Appeal, and the other Judges of the Court of Appeal :-

To The Hon. Chief Justice and the other Judges of the Supreme Court :-

I move to file herewith in person my petition verified by my affidavit, together with the Exhibits annexed thereto marked "X-1" to "X-6", seeking Writs of Quo Warranto and Prohibition against the 1st Respondent as a Member of the Special Presidential Commission of Inquiry.

By reason of the 1st Respondent being a member of the Special Presidential Commission of Inquiry, and a Judge of the Court of Appeal, I move that this application stand transferred from the Court of Appeal to the Supreme Court in terms of section 18 A of Act No. 4 1978.

I also move for the reasons stated in the application, that the Supreme Court be pleased to grant the Writs of Quo Warranto and prohibition applied for, under the proviso to Art. 140 of the Constitution.

At colombo. This 9th day of July, 1982.

**Petitioner.**

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

**IN THE MATTER OF AN  
APPLICATION FOR A WRIT OF  
QUO WARRANTO AND  
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To His Honour the President and the other Judges of the Court of Appeal :

**IN THE SUPREME COURT OF THE  
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**Petitioner**

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1. The Hon. K. C. E. de Alwis,
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3. The Hon. J. G. T. Weeraratne,  
Office of the Special Presidential  
Commission of Inquiry, 225,  
Buddhaloka Mawatha, Colombo 7.

**Respondents**

To His Honour the Chief Justice,  
and Other Judges of the Supreme Court :-

This 9th day of July, 1982.

The petition of the petitioner abovenamed appearing in person, states as follows :-

1. The 1st Respondent who is a Judge of the Court of Appeal, and the 2nd and 3rd respondents who are Judges of the Supreme Court, were appointed by a Warrant under section 2 of the Special Presidential Commissions of Inquiry Law No. 7 of 1978 as amended later by Act No. 4 of 1978, as Commissioners to inquire into the matters set out in the said Warrant, which included alleged acts of corruption, abuse of power, and misconduct by "public officers" as defined in section 22 of the said Law, during the period of the former Government, from June 1970 to July 1977. The said Warrant was subsequently amended to enable the Respondents also to inquire into similar alleged acts done during subsequent periods, while the present Government was in office.

2. The Respondents were required originally by the terms of the said Warrant to render their report of the Commission at the end of a period of one year, but the time for the rendering of the report was enlarged from time to time, and accordingly, the said Warrant continues to be in force, and the Respondents are functioning and continuing to function in the office of Commissioners under Law No. 7 of 1978 as amended by Act No. 4 of 1978.

3. On or about the 10th of December 1979, the Respondents made a Second Interim Report to the President of Sri Lanka, which was published as Sessional Paper VI of 1979. A copy of the said Report is annexed hereto, as Exhibit "X-1".

4. In the Exhibit "X-1" the Respondents reported to the President of Sri Lanka, inter alia, that :-

(a) a notice had been issued by them under section 16 of the said Law, to Mr. A. H. M. Fowzie, ex mayor of Colombo Municipality, informing him that he was a person whose conduct should be the subject of inquiry, and requiring him to file a statement if he challenged any allegations contained in the evidence led at the preliminary inquiry.

(b) the Passport of the said Mr. A. H. M. Fowzie had been impounded, and his travel restricted by them for the period 8th August, 1978 to 1st October, 1979.

3. The Respondents had thus exercised jurisdiction in their office as Commissioners under Law No. 7 of 1978 as amended by Act No. 4 of 1978 over the said Mr. A. H. M. Fowzie. The notice under section 16 of the said Law, which the Respondents in their office as Commissioners under said Law, had issued to the said Mr. A. M. H. Fowzie continued in force unrevoked by them.

6. Nor have the Respondents taken any steps to discontinue the inquiry against the said Mr. A. H. M. Fowzie, by so informing him, or by so informing the public at any sittings of the Commission, or by informing the President in any subsequent Report. The next Interim Report, which was the Third Interim Report to the President dated 29th August 1980, was submitted by the Respondents without any indication in it, that the proceedings or inquiries concerning the said Mr. M. A. H. Fowzie had been discontinued by them. The said report was published as Sessional Paper VI of 1980, and a copy of it is annexed as Exhibit "X-2".

7. While the said Mr. A. H. M. Fowzie continued to be subject to the section 16 notice served on him by the Respondents, and the jurisdiction of the office of Commissioners under the said Law No.

7 or 1978 exercised over him by the Respondents, the 1st Respondent abovenamed, knowingly engaged in financial dealings with the said Mr. A. H. M. Fowzie.

8. By so doing, the 1st Respondent has :-

(a) committed an act of grave misconduct.

(b) vitiated his integrity, and thereby shown himself to be corrupt, and guilty of corruption, and thereby

(c) compromised his position as a Judge of the Court of Appeal, by his misbehaviour, and

(d) become "unable to act" as a Member of the Special Presidential Commission of Inquiry, under section 3(1) of the said Law No. 7 of 1978.

9. The petitioner annexed hereto a certified copy of Deed No. 230 dated 11th May 1982 attested by Pushpa Nanayakkara, Notary Public, as Exhibit "X-3". Exhibit "X-3" shows :-

(a) that the 1st Respondent had prior to January 1982 been negotiating the sale of the two housing units which he had built on premises No. 4, Anula Road, Colombo 6, to the said Mr. A. H. M. Fowzie.

(b) that the 1st Respondent had received payments of Rs. 10,000/-, Rs. 10,000/-, Rs. 305,000/-, Rs. 50,000/-, Rs. 100,000/- and Rs. 100,000/- on six separate occasions over a period exceeding six months, from the said Mr. A. H. M. Fowzie.

(c) that the 1st Respondent executed the said deed as Attorney for his son, who is abroad, in favour of the daughter of the said Mr. A. H. M. Fowzie, with the said Mr. A. H. M. Fowzie attesting the signature of the 1st Respondent as an attesting witness.

10. The Petitioner states that the 1st Respondent after January 1980 had built two housing units of approximately 2,000 square feet each, on sub-divided portions of land in extent about six perches each, at No. 4, Anula Road, Colombo 6, and it is one of these two housing units which was sold and transferred by the 1st Respondent to the said Mr. A. H. M. Fowzie's daughter upon the said deed No. 230, for a consideration of Rs. 575,000/- paid to the 1st Respondent by the said Mr. A. H. M. Fowzie.

11. The Petitioner further states that the said Mr. A. H. M. Fowzie was placed in possession of both the said housing units by the 1st Respondent on or about 19th January 1982, long prior to the execution of the said Deed No. 230. The exact nature of the financial dealing between the 1st Respondent and the said Mr. A. H. M. Fowzie upon which the other housing unit changed hands is not known, for no deed has been registered therefor. It is reasonable to infer that the 1st Respondent would not have parted with the possession of such other housing unit and about six perches of land, unless he considered the financial dealing between himself and the said Mr. A. H. M. Fowzie satisfactory.

12. The Petitioner brought the matters in this petition to the notice of the Government by two letters addressed by him to the Secretary, Ministry of Justice dated 13th May 1982 and 23rd May 1982, before the Exhibit "X-3" came into hands, and thereafter by a letter dated 28th June 1982 addressed by the Petitioner to the President, which are annexed hereto, as Exhibits "X-4", "X-5" and "X-6" respectively. (i.e. copies)

13. The 1st Respondent is due to retire from the office of Judge of the Court of Appeal in or about August 1982, but in terms of section 2(3) of the said Law No. 7 of 1978, the 1st Respondent,

notwithstanding his retirement will continue in office as a Commissioner under the Warrant dated 29th March 1978, issued to the three Respondents unless immediate steps are taken in legal proceedings to challenge the usurpation of office as a Commissioner under the said Law No. 7 of 1978 by the 1st Respondent, after he, by his own acts of vitiating of integrity, corruption and misconduct, has rendered himself incapable of and of being "unable to act" as a member of the Special Presidential Commission of Inquiry under section 3 (1) of the said Law.

14. The public interest demands that there should not be a whisper of scandal or corruption touching a Judge who holds high office, and that there should be no room for any doubt or suspicion in the minds of the public regarding the propriety of any financial dealing by any holder of high judicial office. Under the Constitution, when allegations even against those holding the highest office in the land, merit inquiry, it is the Supreme Court that is charged with the responsibility of making such inquiry.

15. By reason of the foregoing averments, the Petitioner states that there are ample grounds for seeking the issue of a Writ of Quo Warranto against the 1st Respondent declaring that he has "become unable to act" and is disentitled to hold the office of, and to function as a Member of the Special Presidential Commission of Inquiry; and for a Writ of Prohibition restraining and preventing the 1st Respondent from continuing to exercise, or to function in the said office, under the proviso to Art. 140 of the Constitution read with section 18 of the Special Presidential Commissions of Inquiry (Special Provisions) Act No. 4 of 1978.

16. The Petitioner states that he is a person who has sufficient interest, to make this application.

17. The Petitioner states that he seeks no relief for himself personally by this application. Nor does the Petitioner seek any relief against the 2nd and 3rd Respondents who have been made parties to this application only for the purpose of giving them notice of this application.

18. The Petitioner has not made any application to this Court for the reliefs sought in this application or upon the same materials in any other proceedings, by way of writ, revision, appeal or otherwise.

WHEREFORE the Petitioner prays :-

(a) that the Supreme Court be pleased to issue a Writ of Quo Warranto to the 1st Respondent under the proviso to Art. 140 of the Constitution read with section 18A of Act No. 4 of 1978, declaring that the 1st Respondent has become unable to act, and is disentitled to hold the office of, and to function as a Member of the Special Presidential Commission of Inquiry.

(b) that the Supreme Court be pleased to issue a Writ of Prohibition restraining and preventing the Respondent from continuing to exercise, or to function in the said office, under the aforesaid legal provisions, and

(c) for costs and such other and further relief as to the Supreme Court shall seem fit.

FILIX R. D. BANDARANAIKE,  
Petitioner.

*Documents annexed to the Petition*

Affidavit of Petitioner, verifying contents of the petition.

Exhibit "X-1" - Sessional Paper VI of 1979.

Exhibit "X-2" - Sessional Paper VI of 1980.

Exhibit "X-3" - Certified copy of Deed No. 230 dated 11th May, 1982 attested by Pushpa Nanayakkara, Notary Public.

Exhibit "X-4" - Letter dated 13th May 1982 from the Petitioner to the Secretary, Minister of Justice. (copy).

Exhibit "X-5" - Letter dated 23rd May 1982 from the Petitioner to the Secretary, Minister of Justice. (copy).

Exhibit "X-6" - Letter dated 28th June 1982 from the Petitioner to the President of Sri Lanka. (copy).

FELIX R. D. BANDARANAIKE,  
Petitioner.





**ජී. ඩී. ඩී. ද සිල්වා මහතා, විශ්‍රාමික හිඟ මුදල්**

திரு. ஜி. டி. வி. த சில்வா : ஓய்வூதிய நிதியை

MR. G. D. V. DE SILVA, PENSIONER : ARREARS

89/83

**ආචාර්ය ඩබ්ලිව්. දහනායක මහතා**  
(கலாநிதி டப்ளியூ. தஹநாயக்க—காலி)  
(Dr. W. Dahanayake)

යෞවන කටයුතු හා රැකිරීමේ ආමතීතූමා සහ අධ්‍යාපන ආමතීතූමාගෙන් ඇසූ ප්‍රශ්නය : (අ) අදාල කාරණය සම්බන්ධයෙන් ප්‍රාදේශීය අධ්‍යාපන අධ්‍යක්ෂවරයාට ලිපි කිසිවක් ලැබී නැතැයි සඳහන් කර 81. 09. 09 වෙනි දින අංක 385/81 ප්‍රශ්නයට දෙන ලද පිළිතුර සම්බන්ධයෙන් අක්මිමන "සිල්වන් කොටේජ්" හි ජී. ඩී. ඩී. ද සිල්වා මහතා ලියාපදිංචි තැපෑලෙන් පහත සඳහන් ලිපි එවා ඇති බව, එතුමා දන්නවාද? (i) 79. 07. 13 දින අංක 6368 යටතේ අක්මිමන තැපෑල් කාර්යාලයෙන්, (ii) 80. 08. 20 දින අංක 282 යටතේ අක්මිමන තැපෑල් කාර්යාලයෙන්, (iii) 1980 සැප්තැම්බර් මස අංක 1180 යටතේ අක්මිමන තැපෑල් කාර්යාලයෙන්, (iv) 1980. 10. 08 දින අංක 6296 යටතේ අක්මිමන තැපෑල් කාර්යාලයෙන්. මෙම සියළුම ලිපි ගාල්ලේ ප්‍රාදේශීය අධ්‍යාපන අධ්‍යක්ෂවරයාටත්, තවත් ලිපි පහක් කොළඹ අධ්‍යාපන අමාත්‍යාංශයේ ලේකම්වරයාටත් එවා ඇත. (ආ) ජී. ඩී. ඩී. ද සිල්වා මහතා ඉදිරිපත් කර ඇති කරුණු වලට පිළිතුරක් ලබා දීමට එතුමා කියා කරන්නවාද? (ඉ) නොඑසේ නම්, ඒ මන්ද?

இளைஞர் அலுவல்கள், தொழில்வாய்ப்பு அமைச்சரும் கல்வி அமைச்சருமானவரைக் கேட்ட வினா: (அ) 9.9.1981 ஆந் தேதிய 385/81 ஆம் இலக்க வினாவுக்கு அளித்த விடையில் பிரதேசக் கல்விப் பணிப்பாளர் சம்பந்தப்பட்ட விடயம் பற்றிய கடிதம் எதையும் பெற்றுக்கொண்டதாகத் தெரியவில்லை, என்று கூறப்பட்டதெனினும் அக்மீமன, சில்வா கொட்டேயைச் சேர்ந்த திரு. ஜி. டி. வி. த சில்வா பின்வரும் பதிவுக் கடிதங்களான— (i) அக்மீமன தபாற் கந்தோரிலிருந்து 13.07.79 ஆந் தேதிய 6368 ஆம் இலக்கக் கடிதம்; (ii) அக்மீமன தபாற் கந்தோரிலிருந்து 20.8.1980 ஆந் தேதிய 282 ஆம் இலக்கக் கடிதம்; (iii) அக்மீமன தபாற் கந்தோரிலிருந்து 1980 செப்ரெம்பர் மாதத்திய 1180 ஆம் இலக்கக் கடிதம்; (iv) அக்மீமன தபாற் கந்தோரிலிருந்து 08.10.80 ஆந் தேதிய 6296 ஆம் இலக்கக் கடிதம். என்பவற்றை காலி பிரதேசக் கல்விப் பணிப்பாளருக்கு அனுப்பியுள்ளதாடன் கொழும்பு கல்வி அமைச்சர் செயலாளருக்கு ஐந்து பதிவுத் தபால்களையும் அனுப்பியுள்ளாரென்பதை அவர் அறிவாரா? (ஆ) திரு. ஜி. டி. வி. த சில்வா எழுதிய கடிதங்கட்குப் பதில் வழங்கப்படுவதை அவர் கவனிப்பாரா? (இ) இன்றேல் ஏன்?

asked the Minister of Youth Affairs and Employment and Minister of Education : (a) With reference to the answer to question No. 385/81 of 09.09.81, which states that the Regional Director of Education, does not appear to have received any letter on the matter, is he aware that Mr. G. D. V. de Silva of Sylvan Cottage,

Akmeemana, has sent the following registered letters : (i) No. 6368 of 13.07.79 from the Akmeemana Post Office ; (ii) No. 282 of 20.08.80 from the Akmeemana Post Office ; (iii) No. 1180 of September, 1980, from the Akmeemana Post Office ; and (iv) No. 6296 of 08.10.1980 from the Akmeemana Post Office, all to the Regional Director of Education, Galle ; also five registered letters to the Secretary, Education Ministry, Colombo ? (b) Will he see that Mr. G. D. V. de Silva is given a reply to his representations ? (c) If not, why ?

**රනිල් වික්‍රමසිංහ මහතා, (යෞවන කටයුතු හා රැකිරීමේ ආමතීතූමා සහ අධ්‍යාපන ආමතීතූමා)**  
(திரு. ரனில் விக்கிரமசிங்ஹ—இளைஞர் அலுவல்கள், தொழில் வாய்ப்பு அமைச்சரும் கல்வி அமைச்சரும்)  
(Mr. Ranil Wickremasinghe—Minister of Youth Affairs & Employment and Minister of Education)

(අ) මෙහි සඳහන් අංක 282 යටතේ අක්මිමන තැපෑල් කාර්යාලයෙන් එවා ඇති ලිපිය හැර අනෙක් ලිපි ලැබී ඇති බවක් නොපෙනෙන බව ගාල්ල ප්‍රාදේශීය අධ්‍යාපන අධ්‍යක්ෂවරයා වර්තා කර ඇත. (ආ) සිල්වා මහතාට හිමි නිවැරදි සියල්ලම ගෙවා ඇති බවත්, ඊට අමතරව ගෙවීමට හිඟ වැටුපක් නොමැති බවත්, අර්ථ සාධක අර මදලට දායක මුදල් අයකරගෙන නැති නිසා අර්ථ සාධක අරමුදල් අපසු ගෙවීමේ ප්‍රශ්නයක මතු නොවන බවත්, ඊට පසුව සිලවා මහතා විසින් එවන ලද ලිපියකට පිළිතුරු වශයෙන් ඔහුට දන්නා යථා ඇති බව ගාල්ල ප්‍රාදේශීය අධ්‍යාපන අධ්‍යක්ෂවරයා වාර්තා කර ඇත. (ඉ) උන නොනැහී.

(அ) அக்மீமன தபாற் கந்தோரிலிருந்து அனுப்பப்பட்ட 282 ஆம் இலக்கக் கடிதத்தைத் தவிர ஏனைய கடிதங்கள் பெற்றுக்கொள்ளப்பட்டதாகத் தெரியவில்லையென கல்விப் பிரதேசக் கல்விப் பணிப்பாளர் அறிவித்துள்ளார். (ஆ) திரு. சில்வாவினால் அடுத்து அனுப்பப்பட்ட கடிதத்தின் பதிலில் அவருக்குச் செல்ல வேண்டிய சகல சம்பள நிலுவைகளும் கொடுக்கப்பட்டதாகவும் மேலும் அவருக்குச் செல்ல வேண்டிய சம்பள நிலுவைகள் இல்லை எனவும் அத்தகைய அறவிடு கள் செய்யப்படவில்லையாதலால் சேமலாப நிதி அறவிடு களின் மீளளிப்பு விடயம் எழுவில்லை எனவும் அவர் அறிவிக்கப்பட்டுள்ளார் என காலிப் பிரதேசக் கல்விப் பணிப்பாளர் மேலும் அறிவித்துள்ளார். (இ) எழுவில்லை.

(a) The Regional Director of Education, Galle, has reported that the letters, except the one posted under No. 282 from Akmeemana Post Office, do not appear to have been received. (b) The Regional Director of Education, Galle, has further reported that in reply to a letter sent by Mr. Silva, he had been informed that all arrears of salary are due to him, have been paid, and that no further arrears of salary are due to him, and that the refund of Provident Fund recoveries does not arise as no such recoveries have been made. (c) Does not arise.









