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

In the matter of an Application in terms of Article 105(3) if the Constitution of the Democratic Socialist Republic of Sri Lanka for punishment for Contempt of Court.

A.A.P. Dilrukshi Dias
Wickramasinghe, 377/2,
Thalawathugoda Road, Hokandara South.

Petitioner

Case No. : CA/COC/0008/21

Vs

1. Jagath Balapatabendi,
   Chairman,
2. Indrani Sugathadasa, Member,
3. V. Sivagnanasothi, Member,
4. C.R.C. Ruberu, Member,
5. A.L.M. Saleem, Member,
6. Leelasena Liyanagama, Member,
7. Dian Gomes, Member,
8. Dilith Jayaweera, Member,
9. W.H. Piyadasa, Member,

All of Public Service Commission,
No. 1200/9, Rajamalwatta Rd,
Battaramulla.

10. M.A.B. Daya Senarath,
Secretary,
11. Secretary to Ministry of
Justice, Ministry of Justice,
Colombo.
12. Sanjaya Rajaratnam Esqr,
Hon. Attorney General, 14/11,
Audurn Side, Dehiwala.

Respondents

Before: Hon. D.N. Samarakoon, J.

Hon. Mohammed Laffar, J.

Counsel : Mr. M.A. Sumenthiron, PC., with D. Mascronghe for the Petitioner.

Mr. Udith Egalahewa, PC., with Mr. N.K. Ashokbharen and Mr. M. M. Egalahewa instructed by Mr. H. Chandrakumar De Silva for the 2nd, 4th, 5th 7th and 10th Respondents.

Mr. Faizer Musthapa PC., with Mr. S. Jayawardena, Mr. C. Jayarathne, Mr. H. Farise, N. Wijeratne and Dananjaya Perera instructed by Sanjeewa Kaluarachchi for the 1st and 8th Respondents.

Mr. Nerin Putle, ASG., PC., with Mr. M. Fernando, SC., for the 11th and 12th Respondents.

Argued on: 02.12.2021

Written submissions tendered on: 18.01.2022 by 2nd, 4th, 5th 7th, 10th Respondents.

18.01.2022 by 1st & 8th Respondents.

18.01.2022 by 11th & 12th Respondents.

18.01.2022 by the Petitioner.

Decided on: 04.04.2022

D.N. Samarakoon, J.

Order

When this matter instituted under Article 105(3) of the Constitution was to be supported by the petitioner, the respondents were represented and they took several preliminary objections.

(1) The preliminary objection of 2nd,4th,5th,7th and 10th respondents:

The preliminary objection of 2nd, 4th, 5th ,7th and 10th respondents are based on section 105 itself of the Constitution. Section 105 of the constitution is as reproduced below.

> 105. (1) "Subject to the provisions of the Constitution, the institutions for the administration of justice which protect, vindicate and enforce the rights of the People shall be-
>
> (a) The Supreme Court of the Republic of Sri Lanka,
> (b) The Court of Appeal of the Republic of Sri Lanka,
> (c) The High Court of the Republic of Sri Lanka and such other Courts of First Instance, tribunals **or such institutions as Parliament may from time to time ordain and establish**.

(2) All courts, tribunals and institutions created and established by **existing** written law for the administration of justice and for the adjudication and settlement of industrial and other disputes, other than the Supreme Court, shall be deemed to be courts, tribunals and institutions created and established by Parliament. Parliament may replace or abolish, or amend the powers, duties, jurisdiction and procedure of, such courts, tribunals and institutions.

(3) The Supreme Court of the Republic of Sri Lanka and the Court of Appeal of the Republic of Sri Lanka shall each be a superior court of record and shall have all the powers of such court including the power to punish for contempt of itself, whether committed in the court itself or elsewhere, with imprisonment or fine or both as the court may deem fit. The power of the Court of Appeal shall include the power to punish for contempt of any other court, tribunal or institution referred to in paragraph (1) (c) of this Article, whether committed in the presence of such court or elsewhere.

Provided that the preceding provisions of this Article shall not prejudice or affect the rights now or hereafter vested by any law in such other court, tribunal or institution to punish for contempt of itself."

The paragraph 10 et seq., of the written submissions of these respondents are as reproduced below,

"Does AAT fall within the scope of Article 105(3) of the Constitution?

10. Paragraph (2) of Article 105 of the Constitution provides that,

All courts, tribunals and institutions created and established by existing ***written law*** *for the administration of justice and for the*

adjudication and settlement of industrial and other disputes, other than the Supreme Court, shall be deemed to be courts, tribunals and institutions created and established by Parliament. Parliament may replace or abolish, or amend the powers, duties, jurisdiction and procedure of, such courts, tribunals and institutions. (emphasis added in the written submissions of these defendants)

11. Article 170 of the Constitution, provides that:

In the Constitution –

[....]

"written law" means any law and subordinate legislation and includes statutes made by a Provincial Council, Orders, Proclamations, Rules, By laws and Regulations made or issued by any body or person having power or authority under any law to make or issue the same.

12. The Constitution is not a law made or issued by any body or person having power or authority under any law to make or issue the same.

13. Thus it is discernible that the term "written law" as defined by in the Constitution does not include the Constitution.

14. AAT is a creature of the Constitution. It is established by Article 59 of the Constitution.

15. Thereby, ex facie, it is manifestly evident that the AAT is not a tribunal/body established by written law".

Hence the argument of these respondents is based on Article 105(2), which ***according to the said respondents*** refer to "written law". As per Article 170 of the Constitution "written law" does not include the Constitution. Administrative Appeals Tribunal is established under Article 59(1) of the Constitution. Therefore it is not a tribunal or body established by "written law"

in respect of which, according to the said respondents, the Court of Appeal has the jurisdiction of the contempt of court under Article 105(3) of the Constitution.

But, the relevant portion of Article 105(3), to reproduce it again, is as below,

> "The power of the Court of Appeal shall include the power to punish for contempt of any other court, tribunal or institution referred to in **paragraph (1) (c) of this Article**, whether committed in the presence of such court or elsewhere".

Therefore, it refers to paragraph (1)(c) of the said Article.

Paragraph (1)(c), to reproduce again, refers to,

> "The High Court of the Republic of Sri Lanka and such other Courts of First Instance, tribunals **or such institutions as Parliament may from time to time ordain and establish**".

When the relevant paragraph for contempt of court jurisdiction is Article 105 (1)(c), why did the said respondents in paragraph 10 of their written submission referred to Article 105(2), a different Article?

That is because the said respondents were attracted to the term (as they read) "written law" in the said sub Article. That is to argue that the Constitution does not come within the meaning of "written law" and therefore the Administrative Appeals Tribunal established by the Constitution cannot come within the purview of the jurisdiction of the Court of Appeal on contempt of court.

But as it was already said what is relevant for the jurisdiction of contempt of court is Article 105(1)(c) but not Article 105(2). When the relevant Article was 105(1)(c), the said respondents purposefully referred to Article 105(2) to use the term "written law" in their argument.

(1)(a) **The purpose of Article 105(2) is something else**:

Furthermore, before considering the pertinent question whether Administrative Appeals Tribunal is included in Article 105(1)(c), it is relevant to note whether Article 105(2) refers to "written law" or "existing written law".

It says,

> "All courts, tribunals and institutions created and established by ***existing written law*** for the administration of justice and for the adjudication and settlement of industrial and other disputes, ***other than the Supreme Court***, shall be ***deemed*** to be courts, tribunals and institutions created and ***established by Parliament***. Parliament may replace or abolish, or amend the powers, duties, jurisdiction and procedure of, such courts, tribunals and institutions". (emphasis added in this order)

The term "**existing written law**" has a meaning different to "**written law**" in Article 170 of the Constitution.

The meaning of "written law" has already been referred to. The term "existing written law" means,

> " "existing law" and "existing written law" mean any law and written law, respectively, in force immediately before the commencement of the Constitution which under the Constitution continue in force".

Hence Article 105(2) refer to courts, tribunals and institutions ***which were in existence before the commencement of the Constitution*** and which continue in force under the Constitution. This Article has been inserted not to describe the courts, tribunals and institutions established under the Constitution (which is done by Article 105(1)) but to safeguard the existence of courts, tribunals and institutions that have been functioning prior to the commencement of the Constitution. This is further shown by the express exclusion of the "Supreme Court". That is because the existing Supreme Court

ceased to exist under the Constitution and a new Supreme Court was established.

Article 169(2) provides,

> "169. Unless Parliament otherwise provides –
>
> (2) the Supreme Court established by the Administration of Justice Law, No. 44 of 1973, shall, on the commencement of the Constitution, cease to exist and accordingly the provisions of that Law relating to the establishment of the said Supreme Court, shall be deemed to have been repealed. Unless otherwise provided in the Constitution, every reference in any written law to the Supreme Court shall be deemed to be a reference to the Court of Appeal".

Article 118 established a new Supreme Court.

In **Vinayagam Ganeshanatham v. Vivienne Goonewardene [1984] 1 Sri L. R. 319** the learned Chief Justice (who wrote the leading judgment in the majority) said,

> " "He submits that this caption read with prayer (a) to the petition invokes a jurisdiction in revision which this Court does not have. One has to look at the legislation which created this Court to find an answer to this dispute. That legislation is to be found in the second Republican Constitution of 1978. **The Supreme Court which existed up to the time of the first Republican Constitution of 1972 and which continued to exist under that Constitution ceased to exist when the 1978 Constitution became operative.** (Vide Article 105 (2) of the Constitution). **Its place was taken by the Court of Appeal** (Vide Article 169 (2) of the 1978 Constitution). A new Supreme Court has been constituted which is the highest and final Superior Court of Record. (Article 118 of the Constitution)."

Therefore, the intention of Article 105(2) is to continue in existence the other courts, tribunals and institutions, other than the Supreme Court, established under "existing written law". It has nothing to do with defining or naming courts, tribunals and institutions which are subject to the jurisdiction of contempt of court of the Court of Appeal.

As already shown the term used in Article 105(2) is not "written law" but "existing written law" which has a different meaning. Hence the argument of the said respondents that the Administrative Appeals Tribunal which is established by the Constitution cannot come within the purview of that jurisdiction, on the basis that it is established by the Constitution fails.

(1)(b) **The material provision is Article 105(1)(c)**:

What is material for the said jurisdiction is hence Article 105(1)(c), which is expressly referred to in Article 105(3) which describes the said jurisdiction. That is,

> ""The High Court of the Republic of Sri Lanka and such other Courts of First Instance, tribunals **or such institutions as Parliament may from time to time ordain and establish**".

Article 59(1) says,

> "There shall be an Administrative Appeals Tribunal appointed by the Judicial Service Commission".

Hence, it is a "tribunal" which is referred to in Article 105(1)(c) in respect of which the Court of Appeal exercises its jurisdiction of contempt of court under Article 105(3).

It also appears, as will be morefully discussed towards the end of this order, that Article 105(1)(c) covers courts, tribunals and institutions that exercise the judicial power. In this regard, the portion of Article 4 (c) of the Constitution reproduced below is important. It says,

"(c)the judicial power of the People shall be exercised by Parliament through **courts, tribunals and institutions created and established, or recognized, by the Constitution**,...."

The Administrative Appeals Tribunal is such a "tribunal", "created and established" by the Constitution.

As already said, the provisions of Article 105(1)(c) referring to courts, tribunals and institutions that exercise judicial power will be morefully discussed under the part of this order that deals with the preliminary objections of the 11th and 12th respondents, where Article 4(c) will be compared with the corresponding Article of the 1972 Republican Constitution.

If the provisions in Article 105(1)(c) are not properly considered, it appears, that even the "High Court of the Province" will not come within the purview of the jurisdiction of contempt of court of the Court of Appeal. The reason is Article 105(1)(c) only refers to "the High Court of the Republic of Sri Lanka", which is a different court. The High Court of the Province was not in existence at the commencement of the Constitution. The High Court of the Province was established by Article 154P under the 13th Amendment to the Constitution. It may be noted that the word used immediately after the word "tribunals" in Article 105(1)(c) is "or". The phrase that is after the term "or" is "**such institutions as Parliament may *from time to time* ordain and establish".** The High Court of the Province is such an institution which the Parliament in passing the 13th Amendment to the Constitution (as it is said from time to time) ordained and established.

The term after the word "tribunals" being "or", there is a breaking up of the provision, where the phrase "**such institutions as Parliament may *from time to time* ordain and establish",** will not apply to the word "tribunals". This also shows that a "tribunal" in existence at the commencement of the Constitution, such as the Administrative Appeals Tribunal, is coming within the meaning of

Article 105(1)(c) and hence coming under the purview of the contempt of court jurisdiction referred to in Article 105(3).

(1)(c) **Not interpretation but application**:

A question might arise whether the afore discussed amounted to an interpretation of the Constitution for which this court has no power.

The paragraphs 31 et seq., of the said written submission of the said respondents is under the sub heading "The power to interpret the Constitution". The said paragraphs states as below,

> *"31. The counsel for the petitioner was heard during the oral submissions inviting Your Lordships Court to loosely interpret the Article 105(3) to encompass AAT within its scope.*
>
> *32. It is most respectfully submitted that whilst such a loose interpretation of Article 105(3) is not proper….,in any event, the power to interpret the Constitution is with the Supreme Court.*
>
> *….*
>
> *35.* ***However, it is most respectfully submitted that the instant matter before Your Lordships Court is not a matter of interpretation, but a matter of application****".*

Then the said respondents have cited the dictum of Tambiah J., in **Kumaranatunge vs. Jayakody and another (1984) 2 SLR 45** where it was said,

> "There is a clear distinction between " application" and "interpretation" of a provision of a Statute.
>
> "Interpretation may be defined as the process of reducing the Statute applicable to a single sensible meaning - the making of a choice from several possible meanings. Application, on the other

hand, is the process of determining whether the facts of the case come within the meaning so chosen..... **The meaning of a statute is not doubtful merely because its application in a particular case is doubtful.** Even though the statute is so plain and explicit as to be susceptible of only one sensible meaning, and even though the meaning is ascertained as a matter of interpretation, it often remains in doubt whether the facts are within or without the penumbra of a single meaning. To determine this question, then, is what is meant by application." (Bindra on Interpretation of Statutes, 6th Edn. at P-4)

Although the said respondents have not cited, Tambiah J., immediately after the aforementioned passage also said,

> "'Interpretation is the act of making intelligible what was before not understood, ambiguous, or not obvious. It is the method by which the meaning of the language is ascertained." (Bindra, at p.3)
>
> "The mere reliance on a constitutional provision by a party need not necessarily involve the question of interpretation of the Constitution." (per Samarakoon, C.J. in Billimoria v. Minister of Lands (1). (at page 58)

Hence it is submitted, that what this court did was not "interpretation" but "application".

This court having considered the case **Shell Co. of Australia Ltd., vs. Federal Commissioner of Taxation (1930) UKPCHCA 1**, on the question that "*The authorities are clear to show that there are tribunals with many of the trappings of a Court which, nevertheless, are not Courts in the strict sense of exercising judicial power*", is of the view that the dictum in that judgment is not applicable due to express provisions in the Constitution.

(2) <u>The preliminary objection of 1st and 8th respondents:</u>

The 1st and 8th respondents while taking the preliminary objection under Article 105, have mainly advanced a contention that Article 61A of the constitution denudes jurisdiction of this court to hear an determine this application.

They cite Article 59 by which the constitution establishes the Administrative Appeals Tribunal,

> "The Administrative Appeals Tribunal shall have the power to alter, vary or rescind any order or decision made by the commission".

These respondents contend that hence the Administrative Appeals Tribunal cannot pronounce an order or a decision of its own and it remains an order of the Public Service Commission. Article 61A grants the orders and decisions of the Public Service Commissions immunity from legal proceedings.

> 61 A. "[Subject to the provisions of Article 59 and of Article 126], no court or tribunal shall have power or jurisdiction to ***inquire into, or pronounce upon or in any manner call in question*** any order or decision made by the Commission, a Committee or any public officer, in pursuance of any power or duty conferred or imposed on such Commission, or delegated to a Committee or public officer, under this Chapter or under any other law."

<u>In order to succeed in this argument two conditions must be true</u>, one is that the Administrative Appeals Tribunal cannot have made an order or decision of its own and such an order or decision must remain an order or decision of the Public Service Commission and two this court considering such an order or decision in contempt proceedings should be an inquiring into or pronouncing upon or in any manner calling in question of such an order or decision.

It must be noted that these respondents maintain that considering such an order or decision in contempt proceedings amounts to inquiring into,

pronouncing upon or in any manner questioning such order or decision indirectly.

The first question to be determined is whether the decision of the Administrative Appeals Tribunal is not an independent order but only an alteration, variation or rescind of the decision of the Public Service Commission. The judgment in case No. **CA Writ 73/2016[1] decided on 20.02.2019** cited for the petitioner is relevant with regard to this question, however, not the portion which the petitioner has reproduced in her written submission, but a different portion, which is,

> "Article 61A of the Constitution provides immunity from legal proceedings of the decisions of the Public Service Commission and not those of the Administrative Appeals Tribunal. As held by the Supreme Court in Ratnayake v. Administrative Appeals Tribunal [2013] 1 Sri LR 331, Article 61A of the Constitution has no application to the decisions of the Administrative Appeals Tribunal and there is no corresponding provision in the Constitution which ousts the jurisdiction of the Court of Appeal conferred by Article 140 of the Constitution in regard to the decisions of the Administrative Appeals Tribunal".

In **RATNAYAKE VS. ADMINISTRATIVE APPEALS TRIBUNAL AND OTHERS, 2012** Saleem Marsoof J., said,

> "**Learned State Counsel has contended strenuously** that since AAT has been constituted as contemplated by Article 59 (1) of the Constitution**, the Constitutional ouster of jurisdiction contained in Article 61A of the Constitution will apply to AAT as well**. **He has further submitted that one cannot do indirectly what he cannot do directly**, **and that a challenge to any order or decision of AAT would amount to indirectly putting in question an order or decision of**

[1] Wickramasinghe Arachchilage Waruna Sameera vs. Justice S.I. Imam, Chairman, Administrative Appeals Tribunal and others.

PSC. Learned Counsel for the Petitioner has submitted equally strenuously that what was sought to be challenged in the Court of Appeal was a decision of AAT on an appeal from PSC and therefore a decision of AAT can by no stretch of imagination be construed to be a direct or indirect challenge of a decision of the PSC. He submitted that since the vires of AAT has been challenged by the Petitioner both in his application to the Court of Appeal as well as to this Court, and as the preclusive clause contained in Section 8 (2) of the Administrative Appeals Tribunal Act does not amount to a constitutional ouster of jurisdiction[2], the Court of Appeal was possessed of jurisdiction to hear and determine the application of the Petitioner, and this Court is not bereft of jurisdiction to consider this application for special leave to appeal.

This Court is mindful of the facts and circumstances of this case as set out in the application seeking special leave to appeal. The Petitioner was served with a charge sheet on or about 15th April 2003, and after a disciplinary inquiry, was found guilty of all charges. Accordingly, the Public Service Commission (PSC) by its order dated 12th January 2007, proceeded to dismiss the Petitioner from service. Being aggrieved by the said order of the PSC, the Petitioner appealed against the said decision to AAT, which affirmed the PSC decision to terminate the services of the Petitioner, and accordingly dismissed the Petitioner's appeal on 17th March 2009. However, in view of AAT not being properly constituted at the time it made this purported order, the parties agreed in the Court of Appeal in a previous application filed by the Petitioner in that court, to refer the matter back to AAT for its determination. Thereafter, AAT after re-hearing the Petitioner's appeal, by its order dated 22nd February 2011 (P8) found no basis to interfere with the decision of the PSC dated 12th January 2007, and accordingly dismissed the Petitioner's appeal. It is

[2] This question is discussed at page 17 of this order.

against this order of AAT that the Petitioner invoked the jurisdiction of the Court of Appeal under Article 140 of the Constitution. We have carefully examined the submission of learned Counsel for the Petitioner as well as the learned State Counsel, and we are of the view that in all the circumstances of this case, the Court of Appeal did possess jurisdiction to hear and determine the application filed before it. **AAT is not a body exercising any power delegated to it by PSC, and is an appellate tribunal constituted in terms of Article 59 (1) of the Constitution having the power, where appropriate, to alter, vary or rescind any order or decision of the PSC**…." (page 334,335,336)

Hence it is clear that the Administrative Appeals Tribunal makes an independent decision and its decision is not merely the decision of the Public Service Commission, altered, varied or rescinded.

It must also be noted that in as much as the preliminary objection of the earlier set of respondents referred to Article 105(2) instead of Article 105(1)(c), to use the term "….written law"[3] the 01st and 08th respondents have sought to argue that the order of the Administrative Appeals Tribunal is the order of the Public Service Commission[4] to use Article 61A in the contention.

Thus the second part of the argument of 01st and 08th respondents, whether this court in contempt proceedings will "***inquire into, or pronounce upon or in any manner call in question",*** the order of the Administrative Appeals Tribunal will not arise, because it is not the same as the order of the Public Service Commission.

However, even the answer to the second part of the argument will be "no", because in contempt proceedings this court **will not be inquiring into, pronouncing upon or in any manner calling in question, the decision of**

[3] (whereas also the actual term used was "existing written law")
[4] (whereas it is not)

the Administrative Appeals Tribunal because this court will not be "enforcing" the said decision in these proceedings but "just take it as it is". It may be noted that the petitioner in paragraph 11 of her written submission has said, "that she is only seeking to enforce the order of the AAT through the weapon that all courts have for contempt of court". But if this court finds the respondents or any one or several of them guilty of contempt of court, it will have the power only to punish him or them.

In any event, this question will not arise since it has been decided that the order of the Administrative Appeals Tribunal is different from the order of the Public Service Commission and hence the prohibition in Article 61A will not apply to the former.

Although the said respondents have not taken an objection[5], provisions similar to Article 61A (in respect of a decision of the Public Service Commission) are found in section 08(2) of the Administrative Appeals Tribunal Act No. 04 of 2002. It says,

"

> (2) A decision made by the Tribunal shall be final and conclusive and shall not be called in question in any suit or proceedings in a court of law".

The answer, even if this objection is taken, is that in contempt proceedings, this court will take the decision of the Administrative Appeals Tribunal, "as it is" and will not be calling it in question.

(3) <u>The preliminary objection of 11th and 12th respondents:</u>

The 11th and 12th respondents while taking the preliminary objection based on article 105 and article 61A also contend that article 59 (3) of the Constitution enables the parliament to confer powers on the Administrative Appeals Tribunal by law, but parliament has not conferred powers on the

[5] Refer to footnote 02 earlier.

Administrative Appeals Tribunal to punish for contempt of itself by the Administrative Appeals Tribunal Act No. 04 of 2002 and whereas section 55 of the Judicature Act in respect of District courts, Small Claim Courts or Magistrates courts provides to punish for contempt of itself, section 21 (4) of the Human Rights Commission of Sri Lanka Act and section 20 (4) of the Commission to Investigate Allegation of Bribery or Corruption Act No. 19 of 1994 enables the said Commissions to transmit incidents of contempt against itself to the Supreme Court and whereas section 24 (2) of Office on Missing Persons Act, section 20 (2) of the Office for Reparations Act, section 46 (2) of the Consumer Affairs Authority Act, section 12 (2) of the Commission of Inquiry Act and section 40 A (3) of the Industrial Disputes Act enables the said entities to transmit an incident of contempt against itself to the Court of Appeal, in respect of an incident of contempt of the Administrative Appeals Tribunal the Court of Appeal or the Supreme Court has no power to take cognizance and punish.

In respect of the preliminary objection that Administrative Appeals Tribunal Act No. 4 of 2002 has not provided for the Administrative Appeals Tribunal to transmit an incident of contempt to the Court of Appeal or to the Supreme Court but whereas the other Commissions, Offices, Authorities and Tribunals are given such powers, the petitioner has said that the Commission to investigate Allegation and Bribery Corruptions, the Office of Missing Persons, the Office of Reparations, the Human Rights Council, the Commissions of Inquiry and the Consumer Affairs Authority, the said Commissions and offices are not referred to under Article 105 of the constitution and therefore specific provisions of law should have been made for the said bodies. It is also contended by the petitioner that such Commissions and Offices are appointed by the Executive and thus do not fall within the umbrella of judiciary or within the purview of the Judicial Service Commission as opposed to the Administrative Appeals Tribunal. It is also argued that the Administrative

Appeals Tribunal shall be appointed by the Judicial Service Commission and is therefore fundamentally different to other Commissions, Offices etc. referred to in the said preliminary objection.

Although the petitioner has not said, there is a difference in section 55 of the Judicature Act, out of the Commissions, Offices or Authorities mentioned for these respondents. Section 55 reads,

"

> (1) Every District Court, Family Court, Magistrate's Court and Primary Court shall, for the purpose of maintaining its proper authority and efficiency, have a special jurisdiction to take cognizance of, and to punish with the penalties in that behalf as hereinafter provided, every offence of contempt of court **committed in the presence of the court itself** and all offences which are committed in the course of any act or proceeding in the said courts respectively, and which are declared by any law for the time being in force to be punishable as contempts of court".

Therefore the power granted by section 55 is limited to incidents of contempt committed in the presence of the District Court, Family Court, Magistrate's Court or Primary Court and with regard to other acts of contempt of court the Court of Appeal is having jurisdiction under Article 105(3) of the Constitution.

It appears that the aforesaid argument of the petitioner is acceptable. **The intention of Article 105(1)(c) appears to be to refer to bodies that exercise judicial power.**

The relevance of the body coming under Article 105(1)(c) exercising "judicial power" is accepted by the **2nd, 4th, 5th, 7th and 10th respondents** too by their citing the case **Shell Co of Australia Ltd. Vs. Federal Commissioner of Taxation (1930) UKPCHCA 1**, to advance the proposition, "The authorities are clear to show that there are tribunals with many of the trappings of a Court

which, nevertheless, are not Courts in the strict sense of exercising ***judicial power***".

In this regard it is also pertinent to note that the 11th and 12th respondents have referred to in written submissions to **In Re the Thirteenth Amendment to the Constitution and the Provincial Council Bill (1987) 2 SLR 312** and **In Re Nineteenth Amendment to the Constitution (2002) 3 SLR 85.** The idea of referring to those decisions appear to be to argue that the Constitution is supreme and the Parliament is a creature of the Constitution.

For example, these respondents refer to the minority opinion in (1987) 2 SLR 312 determination in which Wanasundara J., said,

> "In Kesavanada's Case the Supreme Court sought to explain and illustrate what they thought were the amendments or features that would constitute the basic structure of the Constitution Sikri, C.J, referred to :
>
> (1) the supremacy of the Constitution;....
>
> On comparison one cannot but regard the section enumerated in Article 83(a) and (b) of our Constitution as also entrenching the basic features of our Constitution. They include, if not all the matters enumerated in the India decision, at least nearly all of them". (page 336)

The said respondents argue that the minority opinion in the said case was accepted by the [07 Judge bench of the Supreme Court] in **(2002) 3 SLR 85**.

It is also said that "The Supreme Court also recognized the Parliament as a creature of the Constitution".

But in the second determination the Supreme Court has never expressly said so. What it said was reproduced in the written submission as,

"Mr. R. K. W. Goonesekera who made submissions on this ground of challenge, submitted that provisos (a) and (b) to Article 75 contain specific limitations on the legislative power of Parliament.…

The submission in our view raises a very important question of Constitutional Law and of the legislative power of Parliament. In terms of the Preamble, the Constitution has been adopted and enacted as the Supreme Law of the Democratic Socialist Republic of Sri Lanka. All State authority flows from the Constitution, which establishes the organs of government; declares their powers and duties; proclaims the sovereignty of the People, which is inalienable; declares and specifies the fundamental rights and the franchise that form part of the sovereignty of the People. It necessarily follows that the Constitution should apply equally in all situations that come within the purview of its provisions. It is in this context that a strict bar has been put in place in Article 75 on the suspension of the operation of the Constitution or any part thereof. We have to give effect to this provision according to the solemn declaration made in terms of the Fourth Schedule to the Constitution, to "uphold and defend the Constitution". (page 110,111)

…. Accordingly, we hold that clause 6 of the Bill has the effect of suspending the operation of a part of the Constitution and cannot be validly enacted by Parliament". (page 114)

It appears to this court that the said two determinations do not have much of a relevance to the question in the present case, except to say in a roundabout manner that all state authority flows from the Constitution.

In the second determination, the Supreme Court decided, among other things, that the Clauses of the Bill are inconsistent with Articles 03 and 04 of the Constitution.

This brings one to the provision in Article 04 regarding the judicial power. Article 05 of the Republican Constitution of 1972 said,

> "5. The National State Assembly is the supreme instrument of State power of the Republic. The National State Assembly exercises-
>
> ....
>
> (c) the judicial power of the People **through courts and other institutions created by law** except in the case of matters relating to its powers and privileges, wherein the judicial power of the People may be exercised directly by the National State Assembly according to law.

Article 04 of the present Constitution provides,

> "4. The Sovereignty of the People shall be exercised and enjoyed in the following manner –
>
> ....
>
> (c)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, wherein the judicial power of the People may be exercised directly by Parliament according to law;

Hence in the Republican Constitution of 1972, the judicial power was exercised **through courts and other institutions created by law.** The present Constitution in addition, but mainly, refer to "**courts, tribunals and institutions created and established, or recognized, by the Constitution**". The words "created and established, or recognized by the Constitution", was not there in the Republican Constitution of 1972. In the present Constitution, the term "**or created and established by law**" comes thereafter. Here too, as in Article 105(1)(c), the conjunction being "or" shows that the first part of that

provision operates independent of the second part. Hence the 11th and 12th respondents cannot take the advantage (as it is believed) by highlighting the term "by law"[6] in the second part to connect it to the argument that was considered in the initial part of this order under Article 105(2).

It appears that those "***created and established***, ..." by the Constitution would include bodies such as the Supreme Court, Court of Appeal and the High Court of Sri Lanka and also High Court of the Province, after its inclusion by the Thirteenth Amendment to the Constitution and the Administrative Appeals Tribunal. Those "***recognized***" by the Constitution are bodies that come under Article 105(2), which were established under "existing written law". This also shows that the Administrative Appeals Tribunal is a tribunal created and established by the Constitution, which exercises judicial power. The appointment of its members by the Judicial Service Commission unlike other bodies referred to by these respondents (which hence do not come within the purview of Article 105) confirms that.

Finally it is also submitted in paragraph 43 of the written submissions of 11th and 12th respondents that the Public Service Commission was required to take a decision on whether to allow the petitioner to assume duties in the post of Solicitor General with immediate effect pursuant to the order of the Administrative Appeals Tribunal dated 22.07.2021. This is based on section 08 of the Administrative Appeals Tribunal Act No. 04 of 2002 which reads,

> "(1) The decision of the Tribunal shall be under the hand of the Chairman and shall be communicated in writing to the Public Service Commission or to the National Police Commission, as the case may be, to the public officer or the police officer who preferred the appeal and to any other public officer or police officer who was notified by the Tribunal under paragraph (d) of section 6. The decision of the Tribunal shall, be the decision of the majority".

[6] In paragraph 17 of the written submission.

The allegation of the petitioner in this application is that the respondents, including the Public Service Commission, did not act as per the decision of the Administrative Appeals Tribunal. Hence whether the Public Service Commission failed to take such action or a decision is not a matter to be decided at this stage.

In the circumstances, due to reasons given in this order, the preliminary objections raised by the respondents are overruled.

Judge of the Court of Appeal.

Justice M.T. Mohammed Laffar.

I agree.

Judge of the Court of Appeal.