

CHAPTER 9

SPECIAL PRESIDENTIAL COMMISSIONS OF INQUIRY

Law No. 7 of 1978,

Act No. 4 of 1978.

A LAW TO ENABLE THE ESTABLISHMENT OF SPECIAL PRESIDENTIAL COMMISSIONS OF INQUIRY. TO PROVIDE FOR THE APPOINTMENT OF THE MEMBERS THEREOF. TO PRESCRIBE THEIR POWERS AND PROCEDURE, TO FACILITATE THE PERFORMANCE OF THEIR FUNCTIONS, AND TO MAKE PROVISION FOR MATTERS CONNECTED WITH OR INCIDENTAL TO THE AFORESAID MATTERS.

[10th February, 1978.]

Short title.

1. This Law may be cited as the Special Presidential Commissions of Inquiry Law.

(c) contain the terms of reference of the commission ;

Establishment of Special Presidential Commissions of Inquiry.

2. (I) Whenever it appears to the President to be necessary that an inquiry should be held and information obtained as to-

(d) include a direction whether the inquiry or any part thereof shall or shall not be held in public ; and

- (a) the administration of any public body or local authority;
- (b) the administration of any law or the administration of justice;
- (c) the conduct of any public officer ; or
- (d) any matter in respect of which an inquiry will, in his opinion, be in the public interest or be in the interest of public safety or welfare,

(e) require the rendering of such reports, including interim reports, as to the commission may appear fit.

the President may, by warrant under the Public Seal of the Republic of Sri Lanka, establish a Special Presidential Commission of Inquiry consisting of such member or members, each of whom shall be a Judge of the Supreme Court or of any other court not below a District Court as shall be specified in the warrant, to inquire, into and report upon such administration, conduct or matter.

(3) Where, before the proceedings of any commission are concluded, any member of that commission reaches the age of retirement provided by law for retirement, he shall, notwithstanding such retirement, continue to hold office as a member of that commission, until the conclusion of the proceedings of that commission.

[2. 4 of 1978.]

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

(4) It shall be lawful for the President to state in the warrant the terms of reference of the commission in general terms and it shall be competent for the commission to determine the scope of the inquiry and to select specific matters which, in the opinion of the commission, should be inquired into and reported upon, and accordingly the terms of reference so set out may refer to the matters that should be inquired into and reported upon without limitation or restriction in relation to one or more or all of the matters set out in subsection (1) in the manner set out or substantially in the manner set out in the said subsection. [2, 4 of 1978.]

(2) Every warrant issued under this Law shall-

- (a) set out the name of the member or each of the members of the commission;
- (b) where a commission consists of more than one member, specify the member who is to be the chairman of the commission ,

(5) Where a warrant establishing a commission is issued by the President under the preceding provisions of this section, such warrant shall be final and conclusive and shall not be called in question in any court or tribunal by way of writ or otherwise.

Appointment of new members.

3. (1) Where any member of a commission dies, or resigns, or desires to be discharged from the performance of his duties in respect of the whole or part of an inquiry, or refuses or becomes unable to act, the President may appoint a new member in his place for the whole or any part of such inquiry.

(2) Until such appointment is made, the inquiry may continue before the remaining members of the commission, and if no such appointment is made, the inquiry shall continue and be concluded before the remaining members of the commission.

(3) Where a new member has been appointed under the provisions of subsection (1) it shall not be necessary for any evidence which may have been taken before the commission prior to such appointment to be retaken and the commission shall be entitled to continue its proceedings from the stage at which they were immediately prior to such appointment:

Provided, however, that where a commission consists of only one member, the inquiry shall commence *de novo*.

Enlargement of time.

4. The President may, from time to time, by endorsement under his hand on the warrant issued under this Law, enlarge the time for the rendering of the report of the commission established by such warrant, whether the time for the rendering of such report has expired or not.

Alteration, amendment or revocation of warrant.

5. The President may at any time alter for the purposes of section 3 or section 4, or amend in any manner the terms of reference of, or revoke, any warrant issued under this Law.

Change of President.

6. No warrant issued under this Law shall lapse by reason of, or be otherwise affected by, the death, absence from Sri Lanka, resignation or removal of the President who issued the warrant, or by his otherwise ceasing to hold the office of President.

Powers of Commission and additional powers that may be conferred at the request of the Commission.

7. (1) A commission established under this Law shall have the following powers :-

- (a) to procure and receive all such evidence, written or oral, and to examine all such persons as witnesses, as the commission may think it necessary or desirable to procure or examine;

- (b) to require the evidence (whether written or oral) of any witness to be given on oath or affirmation, such oath or affirmation to be that which could be required of the witness if he were giving evidence in a court of law, and to administer or cause to be administered by an officer authorized in that behalf by the commission an oath or affirmation to every such witness;

- (c) to summon any person to attend any meeting of the commission to give evidence or produce any document or other thing in his possession, and to examine him as a witness or require him to produce any document or other thing in his possession;

- (d) notwithstanding any of the provisions of the Evidence Ordinance, or of any other written law, to admit any evidence, whether written or oral, which might be inadmissible in any court in civil or criminal proceedings;

- (e) subject to any direction contained in the warrant-

- (i) to admit or exclude the public to or from the inquiry or any part thereof;

- (ii) to admit or exclude the press to or from the inquiry or any part thereof; or

- (f) to recommend that any person whose conduct is the subject of inquiry under this Law or who is in any way implicated or concerned in the matter under inquiry, be awarded such sum of money as, in the opinion of the commission, may have been reasonably incurred by such person as costs and expenses in connexion with the inquiry.

In this paragraph, "costs and expenses" includes the costs of representation by an attorney-at-law, and travelling and other expenses incidental to the inquiry or consequential upon the inquiry or consequential upon the attendance of such person at the inquiry.

(2) All or any of the following powers may by an amendment to the warrant be conferred by the President on a commission established under this Law, if the commission so requests :-

[§3,4 of 1978.]

(a) to require by written notice, the manager of any bank or lending institution in Sri Lanka or any officer thereof, to produce, as specified in the notice, any book or document of the bank or lending institution containing entries relating to the account of, or any other document relating to any transaction with any person whose conduct is being inquired into by the commission, or of the spouse or a son or daughter of such person, or of any other person specified by the commission, or to furnish, as so specified in the notice certified copies of such entries ;

[§3,4 of 1978.]

(b) to require by written notice the Commissioner-General of Inland Revenue or the Controller of Exchange, or any officer of the Department of Inland Revenue or the Central Bank, to furnish, as specified in the notice, all information available to such official relating to the affairs of any person, whose conduct is being inquired into by the commission, or of the spouse or a son or daughter of such person, or of any other person specified by the commission and to produce or furnish, as so specified in the notice, any document or a certified copy of any document, relating to such person, spouse, son or daughter, or other person, as the case may be, which is in the possession, or under the control of, such official;

(c) to prohibit by written order, the manager of any bank in Sri Lanka from permitting or allowing the withdrawal of any funds standing to the credit of any account in that bank of any such person specified in the order as the commission considers necessary, except any such reasonable withdrawal of such funds as may, from time to time, be approved in writing by the commission ;

(d) to require by written order the Controller of Immigration and Emigration to impound the passport and other travel documents of any such person as shall be specified in the order, being a person whose evidence or presence may be necessary at any inquiry before the commission, until such time as such order is revoked by the commission by a subsequent written order, if any, issued to such Controller ;

(e) to require by written order any such police officer as shall be specified in that order, whether by name or by office, to take all such steps as may be necessary to prevent the departure from Sri Lanka of any such person as shall be so specified, being a person whose evidence or presence may be necessary at any inquiry before the commission, until such time as such order is revoked by the commission by a subsequent written order, if any, issued to such officer;

(f) to require by written order any such telecommunication authority or officer (within the meaning of the Telecommunications Ordinance) as shall be specified in the order, whether by name or by office, to produce as so specified, any book or document containing entries relating to any message (within the meaning of that Ordinance), including any telex message, which is in the possession or under the control of any such authority or officer as the commission considers necessary, or to furnish, as so specified, certified copies of such entries.

(3) The commission shall have power to call for representations from the public relating to matters within the scope of its terms of reference, whether expressly specified therein or not, and to inquire into and report upon any such representations.

(4) A commission established under this Law may exercise any power conferred on the commission under subsection (1) and any person to whom the commission issues any

direction in the exercise of such power shall carry out such direction notwithstanding anything to the contrary in any other law.

Members of commission to be public servants and inquiries to be "judicial proceedings" under the Penal Code.

8. The members of a commission shall, so long as they are acting as such members, be deemed to be public servants within the meaning of the Penal Code, and every inquiry under this Law shall be deemed to be a Judicial proceeding within the meaning of that Code.

Imposition of civic disabilities.

9. (1) Where a commission finds at the inquiry and reports to the President that any person has been guilty of any act of political victimization, misuse or abuse of power, corruption or any fraudulent act, in relation to any court or tribunal or any public body, or in relation to the administration of any law or the administration of justice, the commission shall recommend whether such person should be made subject to civic disability, and the President shall cause such finding to be published in the Gazette as soon as possible, and direct that such report be published.

(2) Any report, finding, order, determination, ruling or recommendation made by a commission under this Law, shall be final and conclusive, and shall not be called in question in any court or tribunal by way of writ or otherwise.

(3) For the purpose of this section civic disability, shall mean the disqualification of a person-

- (i) from being an elector and from voting at any election of the President of the Republic, or at any election of a member of Parliament or of any local authority;
- (ii) from being nominated as a candidate at any such election ,
- (iii) from being elected or appointed as the President of the Republic or from being elected as a member of Parliament or of any local authority, and from sitting and voting as such member ; and
- (iv) from holding office, and from being employed, as a public officer.

Punishment of contempts. [§ 4.4 of 1978]

10. (1) Every offence of contempt committed against or in disrespect of, the authority of a commission established under

this Law shall be punishable by the Supreme Court established under the Constitution as though it were an offence of contempt committed against, or in disrespect of, the authority of such Court.

(2) An act done or omitted to be done in relation to the commission, whether in the presence of the commission or otherwise, shall constitute an offence of contempt against, or in disrespect of, the authority of that commission, if such act would, if done or omitted to be done in relation to the Supreme Court, have constituted an offence of contempt against, or in disrespect of, the authority of such Court.

(3) (a) Where a commission determines that a person has committed an offence of contempt against, or in disrespect of, its authority, the commission may cause its secretary to transmit to the Supreme Court a certificate setting out such determination; every such certificate shall be signed by the chairman of the commission, or where the commission consists of only one person, by that person.

(b) In any proceedings for the punishment of an offence of contempt which the Supreme Court may think fit to take cognizance of as provided in this section, any document purporting to be a certificate signed and transmitted to the Court under the preceding provisions of this subsection shall-

- (i) be received in evidence, and be deemed to be such a certificate without further proof unless the contrary is proved; and
- (ii) be conclusive evidence that the determination set out in the certificate was made by the commission and of the facts stated in the determination.

(c) In any proceedings taken as provided in this section for the punishment of any alleged offence of contempt against, or in disrespect of, the authority of any commission, no member of the commission shall, except with his own consent, be summoned or examined as a witness.

11. (1) Every summons shall, in any case where a commission consists of one member only, be under the hand of that member, and

Summons.

in any case where a commission consists of more than one member, be under the hand of the chairman of the commission :

Provided that where a person has been appointed under section 19 to act as secretary any such summons may, with the authority of the commission, be issued under the hand of such secretary.

(2) Any summons may be served by delivering it to the person named therein, or if that is not practicable, by leaving it at the last known place of abode of that person.

(3) Every person on whom a summons is served shall attend before the commission at the time and place mentioned therein, and shall give evidence or produce such documents or other things as are required of him and are in his possession or power, according to the tenor of the summons.

(4) If any person fails, in answer to any summons issued under this section, to appear before the commission or to produce any document or article required by any such summons to be produced by him, such person shall be liable to be arrested and upon his arrest be produced forthwith before the commission and the commission may order the remand of that person to the custody of the Fiscal of the highest Court exercising original criminal jurisdiction within the judicial zone of Colombo or any other convenient zone or order his release upon such terms as the commission may determine.

Failure to obey summons to give evidence, &c.

12. (1) If any person upon whom a summons is served under this Law-

- (a) fails without cause, which in the opinion of the commission is reasonable, to appear before the commission at the time and place mentioned in the summons ; or
- (b) refuses to be sworn or affirmed or, having been duly sworn or affirmed, refuses or fails without cause, which in the opinion of the commission is reasonable, to answer any question put to him touching the matters directed to be inquired into by the commission ; or
- (c) refuses or fails without cause, which in the opinion of the commission is reasonable, to produce and show to

the commission any document or other thing which is in his possession or power and which is in the opinion of the commission necessary for arriving at the truth of the matters to be inquired into,

such person shall be guilty of the offence of contempt against, or in disrespect of, the authority of the commission.

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

[§ 5, 4 of 1978.]

(2) Where a commission determines that a person has committed any offence of contempt under subsection (1) against, or in disrespect of, its authority, the commission may cause its secretary to transmit to the Supreme Court, a certificate setting out such determination ; every such certificate shall be signed by the chairman of the commission, or where the commission consists of only one person, by that person.

(3) In any proceedings for the punishment of an offence of contempt which the Supreme Court may think fit to take cognizance of as provided in section 10, any document purporting to be a certificate signed and transmitted to the Court under subsection (2) shall-

- (a) be received in evidence, and be deemed to be such a certificate without further proof unless the contrary is proved, and
- (b) be conclusive evidence that the determination set out in the certificate was made by the commission and of the facts stated in the determination.

(4) In any proceedings taken as provided in section 10 for the punishment of any alleged offence of contempt against, or in disrespect of, the authority of any

commission, no member of the commission shall, except with his own consent, be summoned or examined as a witness.

Privileges of witnesses.

13. Every person who gives evidence before a commission established under this Law shall, in respect of such evidence, be entitled to all the privileges to which a witness giving evidence before a court of law is entitled to in respect of evidence given by him before such court.

Special immunity for witnesses.

14. Where the President in the warrant of establishment of a commission or by subsequent Order declares that this section shall apply in relation to such commission, the following provisions shall have effect, that is to say :-

- (a) subject as hereinafter provided, no person shall, in respect of any evidence, written or oral, given by that person to or before the commission at the inquiry, be liable to any action, prosecution or other proceedings in any civil or criminal court;
- (b) subject as hereinafter provided, no evidence of any statement made or given by any person to or before the commission for the purposes of the commission shall be admissible against that person in any action, prosecution or other proceedings in any civil or criminal court:

Provided, however, that nothing in the preceding paragraphs shall-

- (i) abridge or affect or be deemed or construed to abridge or affect the liability of any person to any prosecution or penalty for any offence under Chapter XI of the Penal Code, read with section 8 of this Law; or
- (ii) prohibit or be deemed or construed to prohibit the publication or disclosure of the name or of the evidence or any part of the evidence of any witness who gives evidence at the inquiry, for the purpose of the prosecution of that witness for any offence under Chapter XI of the Penal Code.

15. The presumptions which, under section 80 of the Evidence Ordinance, are applicable to the documents therein mentioned shall apply to every document produced before any court and purporting to be a record or memorandum of the evidence or any part of the evidence given by a witness examined before a commission established under this Law and purporting to be signed by the members thereof.

Presumption on production of record of evidence given by witnesses.

16. Every person who is specified in a warrant issued under this Law as a person whose conduct is the subject of an inquiry under this Law or as a person who is in any way implicated or concerned in the matter under inquiry and any person who, in the opinion of the commission, is a person whose conduct should be the subject of inquiry or in the opinion of the commission is in any way implicated or concerned in the matter under inquiry shall be so informed by the commission and shall, after he is so informed, be entitled to be represented by one or more attorneys-at-law at such stage of the inquiry as is relevant thereto; and any other person who may consider it desirable that he should be so represented may, by leave of the commission, be represented in the manner aforesaid.

Representation of persons by attorneys-al-law.

17. (1) On the conclusion of any inquiry under this Law, and on the recommendation of the commission, the Minister may by Order under his hand, award to any person whose conduct has been the subject of such inquiry or who has been in any way implicated or concerned in the matter under inquiry or to any bank or lending institution whose manager has complied with a notice issued in connexion with such inquiry by the commission in the exercise of powers conferred on the commission by the President under section 7 (2) (a) such sum of money as the Minister may, in his discretion, specify in the Order as sufficient to meet the costs and expenses which may have been reasonably incurred by such person or bank or lending institution in connexion with the inquiry.

Costs and other expenses.

In this subsection " costs and expenses " includes the costs of representation by an attorney-at-law, and travelling and other expenses incidental to the inquiry or consequential upon the attendance of such person at the inquiry, and, in the case of a bank or lending institution, the clerical,

travelling and other expenses consequential upon the compliance with the aforesaid notice.

(2) All moneys awarded by order of the Minister under subsection (1) shall be a charge upon the Consolidated Fund ; and the payment of all such moneys is hereby authorized.

Protection of members of commission, &c.

[§ 6, 4 of 1978.]

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

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

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

[§ 7, 4 of 1978.]

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

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

(a) staying, suspending or prohibiting the holding of any proceeding before or by any commission established by warrant issued by the President in

the exercise or purported exercise of the powers vested in the President under section 2 (1) or the making of any order, finding, report, determination, ruling or recommendation by any such commission ;

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

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

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

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

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

[§ 7,4 of 1978]

19. (I) The President may appoint any person to act as secretary to a commission and such person shall perform such duties connected with the inquiry as the commission may order subject to the directions, if any, of the President.

Appointment of secretary and interpreters.

(2) A commission may appoint any person to act as interpreter in any matter arising at the inquiry and to translate any book, document, or other writing produced at the inquiry.

Process issued under this issue to be exempt from stamp duty.

20. No stamp duty shall attach to or be payable for any process issued by, or by the authority of, a commission established under this Law.

Service of process.

21. Every process issued by a commission established under this Law shall be served and executed by the Fiscal*, or in such manner as the commission may determine.

Effect of this Law notwithstanding inconsistencies

[§8, 4 of 1978.]

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

- (a) the misuse or abuse of power, interference, fraud, corruption or nepotism,
- (b) any political victimization of any person,
- (c) any irregularity -
 - (i) in the making of any appointment or transfer of any person,
 - (ii) in the granting of any promotion to any person,
 - (iii) in the termination of the services of any person,
- (d) the contravention of any written law,

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

22. In this Law, unless the context otherwise requires :-

" commission " means a Special Presidential Commission of Inquiry established under this Law;

" conduct of any public officer " includes the conduct of a public officer-

- (i) in relation to any court or tribunal or any public body;
- (ii) in relation to the administration of any law, or the administration of justice;
- (iii) in relation to the exercise or purported exercise or discharge of any power, function or authority and whether or not under the guise of such power, function or authority,

[§9,4 of 1971.]

and includes allegations of misuse or abuse of power, corruption, any fraudulent act, nepotism or political victimization by any public officer as are specified by the President in the warrant establishing a commission or as are made to such commission by any person; and notwithstanding that under the Constitution in force during the relevant period no court, tribunal or other institution has or had the power or jurisdiction to inquire into, pronounce upon or in any manner call in question any such conduct and notwithstanding that under the Constitution in force during the relevant period any other body, court, tribunal or institution is or was empowered to inquire into, pronounce upon or in any manner call in question any such conduct, and notwithstanding that under the Constitution in force during the relevant period such person or the body to which such person belonged, was or is responsible or answerable to the legislature established under such Constitution in respect of such conduct;

*A separate Fiscal is now appointed to each Court under section 52 (I) of the Judicature Act.

" law " includes any Law, Act of Parliament, Ordinance and any delegated or subordinate legislation made under any Law, Act of Parliament or Ordinance;

" local authority " includes any Municipal Council, Urban Council, Town Council or Village Council;

[9,4 of 1978.]

" Minister " includes the Prime Minister;

" public body " includes-

(i) any Ministry and any department of Government,

(ii) any public Corporation, Commission, Board or other institutiton,

(iii) any public or local authority,

(iv) any business undertaking, firm, company or other institutiton which was at any time during the period specified in the terms of reference of the commission vested in the Government or owned wholly or mainly by or on behalf of the Government,

(v) any society registered or deemed to be registered under the Co-operative Societies Law or the Janawasa Law, and

(vi) any other body or institution of a like nature;

public officer " includes-

(i) any Minister, Deputy Minister or Member of the National State Assembly.

(ii) any State officer, including the holder of a judicial office or any office created or recognized by the Constitution in force at the relevant period, and [9,4 of 1978.]

(iii) any chairman, director, member, officer or employee, howsoever designated, of any public body, whether or not such person was in receipt of any remuneration, [9,4 of 1978]

and also includes any person who was a public officer at any time during the period specified in the terms of reference of the commission;

report " includes an interim report.