

**ADIAPATHAN**  
**v.**  
**ATTORNEY-GENERAL & ANOTHER**

SUPREME COURT.

SAMERAWICKRAME, J., THAMOTHERAM, J. AND ISMAIL, J.

S.C. APPLICATION NO. 17/79

JUNE 13, 15, 1979.

*Constitution of Sri Lanka (1978), Articles 22 (2) (a) and 126-Cheque in payment of Provident Fund Benefits-Whether part of communication received from department administering fund-Cheque written in Sinhala-Right of petitioner to have it written in Tamil-Whether drawing of cheque in Sinhala denial of petitioner's rights under Article 22 (2) (a) of the Constitution*

The petitioner made this application under Article 126 of the Constitution of Sri Lanka (1978) praying for an order that the cheque in payment of a sum due to him as Employee's Provident Fund Benefits should be written in Tamil. He relied on Article 22 (2) (a) and it was submitted on his behalf that the cheque formed part of the communication sent to him by the Superintendent of the Provident Fund (the 2nd Respondent) in his official capacity. It was also submitted on his behalf that, in any event, this provision entitled him to obtain a cheque written in the Tamil language.

**Held :**

The cheque was not part of the communication made by the Superintendent of the Provident Fund to the petitioner and it was nothing more than an enclosure. The petitioner was accordingly not entitled to relief under Article 126 which provided a remedy only in respect of a denial of fundamental or language rights granted by the Constitution.

*Per* SAMERAWICKRAME, J.

"It appears to us, however, that it is possible that in terms of the ordinary law of the land, the petitioner may be entitled to receive a cheque written in the language in which he wished it to be written. The petitioner is entitled to receive payment and ordinarily payment should be made by way of legal tender in the absence of any legal provision or any express or implied agreement for the payment to be made by cheque. If there is an absence of such provision or agreement applicable in this

case, the petitioner will strictly be entitled to have payment made by legal tender and payment by cheque could only be made to him by agreement. If the petitioner wished the cheque to be written in the Tamil language, then the 2nd respondent will have to send him a cheque written in that language or make payment by way of legal tender. But if such be the case the petitioner would be entitled to a cheque written in the Tamil language by reason of the civil law of the country and not by reason of any provision of the Constitution."

**APPLICATION** under section 126 of the Constitution

*V.S.A. Pullenayagam*, with *S.C.Chandrasanan, G. Kumaringam* and *Mrs. S. Gnanakaran*, for the petitioner.

*K.M.M.B. Kulatunga*, Additional Solicitor-General, with *D. Premaratne*, Senior State Counsel, and *C. Sithamparapillai*, State Counsel, for the respondents.

*Cur adv. vult*

June 19, 1979.

**SAMERAWICKRAME, J.**

The petitioner was entitled to payment of a sum of Rs. 5,585.77 in respect of Employees' Provident Fund benefits due to him and on or about the 6th November, 1978, he received a cheque for that amount written in Sinhala. The petitioner states that he cannot read or understand Sinhala and he returned the cheque and requested the 2nd respondent, who is the Superintendent of the Employees' Provident Fund of the Central Bank, to send him a cheque drawn in Tamil. Thereafter, he sent the 2nd respondent several reminders. In or about March 1979, he received a communication from the 2nd respondent in which it was stated that the procedure to be adopted in regard to payments was being taken up with the appropriate authorities and that once a decision has been reached, action will be taken to make payment to the petitioner in accordance with such decision, but in the meanwhile, if the petitioner wished to have his E.P.F. benefits paid by cheque, it could be paid by cheque written in the official language. He wished to know if the petitioner wished payment to be made immediately in that way. Petitioner states that he informed the 2nd respondent that he is not prepared to accept a cheque written in the official language. On or about the 20th April, 1979, petitioner has filed this application in terms of Article 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka praying for an order directing the 2nd respondent to issue to him a cheque written in Tamil for the amount due to him.

2nd respondent has filed affidavit in which he sets out the steps taken by him in obtaining directions from the appropriate authorities, in respect of the demand made by the petitioner and he states that on the advice of the Attorney-General, he sent the

petitioner a cheque written in Sinhala with a Tamil translation. This has been done, however, after the petitioner had filed the present application in this Court.

There was some discussion whether an envelope containing a communication within the meaning of Article 22 (2) (a) should itself be written in the national language. This question has not been raised in the petition by the petitioner and we, therefore, did not deal with it.

Though the petitioner relied in his petition on Article 22 (2) (a) and (c) and set those provisions out, learned Counsel appearing for the petitioner stated that he was not relying on Article 22 (2) (c) which provides that a person is entitled "where a document is executed by any official for the purpose of being issued to him to obtain such document or translation thereof, in either of the national languages." We do not think that we should express any view in respect of a provision that is not relied upon by Counsel and accordingly we leave the questions whether the drawing of a cheque amounts to the execution of a document within the meaning of 22 (2) (c) and, if so, whether a person is entitled to obtain a cheque itself in the national language of his choice to be decided on an appropriate occasion, when it arises.

Article 22 (2) (a) provides that a person shall be entitled "to receive communication from, and to communicate and transact business with, any official in his official capacity, in either of the national languages." Learned counsel for the petitioner submitted that the cheque formed part of the communication received from the 2nd respondent made by him in his official capacity. He further submitted that in any event the provision that a person shall be entitled to communication and to transact business with any official in either of the official languages entitled the petitioner to obtain a cheque written in the Tamil language. Learned counsel for the respondent referred us to section 22(1) which provides that the official language shall be the language of administration throughout Sri Lanka and he stressed the proviso to that provision which states that the Tamil language shall also be used as the language of administration for certain purposes in the Northern and Eastern provinces. Learned counsel for the respondent submitted that if the cheque was drawn in Colombo, it would ordinarily be drawn in the official language just as if it had been drawn in the Northern and Eastern provinces it may well have been drawn in the Tamil language. He further submitted that in any event the cheque was not part of the communication made by the 2nd respondent and that the latter part of the provision entitling the

petitioner to transact business with the 2nd respondent in either of the national languages did not entitle him to receive a cheque written in the Tamil language.

It appears to us that the cheque is not part of the communication made by the 2nd respondent to the petitioner. An addendum or appendix may be added to a letter or other writing which is to be read as part and parcel of it. The cheque, however, is not of this nature and is nothing more than an enclosure. The latter part of the section entitled a person "to communicate and transact business". It appears to us that these words refer to the negotiations, discussions, offer and acceptances which result in business. In the case of a sale, they have no application to the thing bought. The receipt of a cheque is on a par with the receipt of currency whether by way of coins or notes of foreign currency. We are, therefore, of the view that the provisions in Article 22(2) (a) does not entitle the petitioner to have a cheque written in a particular national language.

The position might have been different had it been shown that the cheque would require to be endorsed in the official language but there is no material before us which shows that that is the position.

It appears to us, however, that it is possible that in terms of the ordinary law of the land, the petitioner may be entitled to receive a cheque written in the language in which he wished it to be written. The petitioner is entitled to receive payment and ordinarily payment should be made by way of legal tender in the absence of any legal provision or any express or implied agreement for payment to be made by cheque. If there is an absence of such provision or agreement applicable in this case, the petitioner will strictly be entitled to have payment made by legal tender and payment by cheque could only be made to him by agreement. If the petitioner wished the cheque to be written in the Tamil Language, then the 2nd respondent will have to send him a cheque written in that language or make payment by way of legal tender. But if such be the case the petitioner would be entitled to a cheque written in the Tamil language by reason of the civil law of the country and not by reason of any provision of the Constitution. Consequently, on the denial of his right, the petitioner cannot make an application for relief under Article 126 of the Constitution which provides a remedy only in respect of a denial of fundamental or language rights granted by the Constitution.

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The petitioner's application, therefore, fails and is dismissed. It appeared to us, however, that though the particular complaint the petitioner made in his application cannot be sustained, there can be no doubt that he had some sense of grievance in regard to the manner in which communication was made to him in regard to the payment of money due to him. In the circumstances, we do not make any order for payment of costs by him.

**THAMOTHERAM, J.** — I agree.

**ISMAIL, J.** — I agree.

*Application dismissed.*