

RODRIGO
v
IMALKA
SUB-INSPECTOR OF POLICE, KIRULAPONE AND OTHERS

SUPREME COURT
SARATH N. SILVA, C.J.
SHIRANEE TILAKAWARDANE, J.
BALAPATABENDI, J.
SC FR 297/2007
NOVEMBER 28, 2007

Constitution – Articles 12, 12 (1), 13 (1), 13 (2), 14(1) (h), 15 (7) ,126 (4) – Penal Code – section 454, section 459 – Criminal Procedure Code – section 32 (1) – Searched and checked at check points – legality ? Reasonable ground of suspicion essential to warrant a search – Restriction and freedom of movement – Directions issued under Article 126 (1) – Public Security Ordinance – section 12 – Placing of Boards by Police on Roads – Legality?

The petitioner complains that he was stopped at a 'check point' and asked for his driving licence. The petitioner had handed over his temporary driving licence issued by the Commissioner of Motor Traffic. The respondents had informed the petitioner that it is a forgery and a bribe was sought. As the bribe was not paid, he was detained at the Fraud Bureau and was produced before the Magistrate on a B-report on the basis that the petitioner was in possession of a forged temporary driving licence and had thereby committed an offence under section 459 – section 454 of the Penal Code. He was remanded by the Magistrate and later when it came to light that the document was a genuine document, the Magistrate discharged the petitioner.

The petitioner complained of violation of Articles 14 (1)(h), 12 (1), 13 (1) and 13 (2) of the Constitution.

Considering the continuing pattern of infringement affecting the freedom of movement and the guarantee of the equal protection of the law by measures purportedly taken in the interest of national security and the prevention of public order, the Counsel for the petitioner submitted that it is just and equitable to make directions in terms of Article 126 (4).

Held :

- (1) Section 32(2) of the Code of Criminal Procedure Act permits the arrest of a person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having being so concerned. The Emergency Regulations (Miscellaneous Provisions And Powers) has a wide power in Regulation 20 (1).
- (2) The members of the armed forces called out by the President in terms of section 12 – Public Security Ordinance have the fullest power to maintain public order and to taken action against those who are waging war and committing related offences, but when action is directed against persons who are not thus engaged in war and committing related offences, every precaution and safeguard has to be taken to minimize the resultant hardships.

Per Sarath N. Silva C.J:

"A reasonable ground of suspicion is essential to warrant a search. There is no provision of law which permits arbitrary action in stopping and searching persons who travel on our public roads in the exercise of the fundamental right to the freedom of movement. It is paramount that any restriction of the fundamental rights guaranteed by the Constitution should only be as 'prescribed by law'. The Police and members of the armed forces have to bear in mind firstly that they don the uniform and bear weapons only as permitted by law, to uphold the law and to respect, secure and advance the fundamental rights declared by the Constitution".

Per Sarath N. Silva C.J:

"Superior officers who do not take precautions to prevent any infringement by their subordinates who are detailed for duty would themselves be liable for the infringement of the freedom of movement and the freedom from arbitrary arrest guaranteed by Article 14(1)(h) and 13(1).

Per Sarath N. Silva C.J:

"The facts presented above clearly reveal a clear instance of the abuse of power, rampant dishonesty and corruption and also misuse of the process of law that takes place at 'check points' that have sprouted up. I may at this stage state that the erection of virtually permanent barriers on public road done at the 'check points' is not authorized by any law".

Directions issued under Article 126(4) –

1. The prevalent executive action in operating permanent 'check points' with unlawful obstructions of public roads and the stoppage of all traffic resulting in serious congestion to be discontinued since such action amounts to an infringement of the fundamental right to the freedom of movement guaranteed by Article 14(1)(h) and deny to the people the equal protection of the law guaranteed by Article 12 (1). The public roads are vested in the Local Authorities to ensure that they are maintained for people to exercise their freedom of movement.

2. In terms of Section 166 (1)(a) of the Motor Traffic Act any prohibition or restriction of halting or parking of motor vehicles on a highway or part of a highway in any area has to be by order of the relevant authority. It appears that the prohibitions complained of have been purportedly made by the Senior Superintendent of Police (Traffic) (SSP Traffic) and not by the Local Authority – Colombo Municipal Council – Hence the permanent boards that are now seen in most streets purportedly by order of the SSP (Traffic) are patently illegal and deny the people the equal protection of law guaranteed by Article 12 (p). Such illegal signs should be removed forthwith.
3. At times traffic is brought to a halt on principal roads at peak hours causing severe congestion which in itself is a security threat (V.I.P. movement). Such measures deny to the people the equal protection of law. The obstruction of traffic on public roads and the consequential restriction of the freedom of movement would be an infringement of the fundamental rights guaranteed by Article 14 (1)(h).

The rights are directed to ensure that no such obstructions as alleged take place. If security measures have to be taken to safeguard any person who is specially threatened such measures should be taken with minimum inconvenience caused to the citizens who are exercising the freedom of movement. Such measures should in any event be avoided at peak hours since they cause serious congestions that would itself pose a threat to security.

APPLICATION under Article 126 of the Constitution.

Cases referred to:-

1. *Sarjun v Kamaldeen* PC 39573 Police Station Habarana SCFR 559-03 – SCM 31. 7. 2007
2. *Liyanage v. Gampaha Urban Council* 1991 1 Sri LR 8

W. Dayaratne for petitioner.

Manohara de Silva PC for 1st and 2nd respondents

K. Parinda Ranasinghe SC with *L. Munasinghe* SC for 3 – 7 respondents.

Cur.adv.vult.

December 3, 2007

SARATH N. SILVA, C.J.

The petitioner has been granted leave to proceed on the alleged infringement of several fundamental rights the ambit of which would be adverted to in the course of this judgment.

Counsel for the petitioner submitted that although the application has been filed specifically on the infringement of the petitioner's

fundamental rights, the case is being presented more from the perspective of the public interest in protecting, securing and advancing the fundamental rights of the people. That, the alleged infringements are typical of the travails, hardship and harassments the people, peacefully engaged in their lawful pursuits and who travel on our public roads in the exercise of the fundamental right to the freedom of movement guaranteed by Article 14 (1)(h) of the Constitution are subjected to, thereby denying to such person the equal protection of the law guaranteed by Article 12(1) and the freedom from arbitrary arrest and detention guaranteed by Articles 13(1) and 13(2).

Considering the submissions based on the public interest, the Court permitted the motion of the petitioner to add the Secretary, Ministry of Defence as a party respondent. When the matter came up for hearing on the specially fixed day, 17. 10. 2007, further time was sought by the 4th respondent being the Officer in Charge of the Kirulapona Police Station to file objections. Since no objections had been filed by the Inspector General of Police and the Secretary, Ministry of Defence and considering the general ambit of the application, the Court granted further time for objections to be filed. Thereafter, objections have been filed by the Inspector General of Police, but no objections have been filed by the Secretary, Ministry of Defence.

On the basis of all the material that has been adduced in Court, it is common ground that the petitioner had not committed any offence or done or omitted to do anything so as to be illegal or contrary to law, in respect of the incidents which resulted in his arrest and detention, including a period in remand custody.

The facts are briefly as follows.

On 28.07.2007 at about 12.00 noon the petitioner was stopped whilst driving his vehicle along the main road from Kirulapona towards Colombo. The place where he was stopped is described as the "Polhengoda Police Check Points". This is one of the many "Check Points" that have sprouted up on our high roads and bridges in different parts of the country, where the roads are barricaded with sand filled barrels and other crude implements, and often with an over-hanging shelter for the officers who serve at these points and illuminated with electrical bulb with a supply drawn from some temporary connection. These points are seen at times as temporary Police Stations at which entries are being recorded. The facts presented in this case reveal the activity that goes on in these temporary "Stations" located on roadsides and on bridges and would be adverted to, hereafter.

As noted above the petitioner was not stopped in connection with the commission of any offence. When his vehicle was brought to a halt, the 1st respondent, being the officer-in-charge of the "Check Point" asked for his driving licence. The petitioner handed over his temporary Driving licence issued by the Commissioner of Motor Traffic since the original driving licence had been lost and the issuance of a duplicate was being processed by the Department of Motor Traffic. The petitioner was informed that his temporary driving licence is a forgery and a bribe was sought to refrain from prosecuting him. The petitioner replied that he did not have any money with him. At that point the officer opened the 'cubby hole' of the petitioner's vehicle and seeing a bottle of perfume, demanded that the bottle be given to him. When the petitioner refused to give the bottle of perfume the officer threatened that the temporary driving licence would be torn and destroyed and that he would be prosecuted. The petitioner protested his innocence and produced even the receipt issued by the Commissioner of Motor Traffic in respect of the application for the duplicate licence. At that stage the officer abused him and asked him to leave the place immediately whilst retaining the temporary driving licence.

The petitioner being in peril of driving without the temporary licence went to the Kirulapona Police Station which is nearby and informed the 2nd respondent, being the Officer in Charge of the Traffic Branch, of the incident. The 2nd respondent requested him to go back to the 'Check Point'. When he returned to the check point and informed the 1st respondent and the others present that he met the 2nd respondent, these officers became furious and abused him in filthy words. They got in to the petitioner's vehicle and came to Kirulapona Police Station. The 1st respondent who came with the petitioner handed over the temporary driving licence of the petitioner to the 2nd respondent and the petitioner gave the receipt issued by the Commissioner of Motor Traffic in respect of his application for the duplicate licence. Thereafter the 2nd respondent perused the documents P1 and P2 stated that the temporary driving licence is a forgery and took petitioner into his custody. Subsequently a statement was recorded from the petitioner and at about 4.30 p.m. he was handed over to the Fraud Bureau at Wellawatte, with the intervention of the 4th respondent being the Officer-in-Charge of the Police Station. The petitioner was detained overnight at the Fraud Bureau and was produced before the Magistrate on a "B Report" bearing No. B 5084/2 by an order of the 3rd respondent being the Officer-in-Charge of the Fraud Bureau. It was reported to Court that the petitioner was in possession of a forged temporary driving

licence and had thereby committed offences under section 459 and 454 of the Penal Code. The petitioner was remanded by the Magistrate on this Report.

It appears that the Magistrate requested the Police to check on the authenticity of the temporary driving licence. That was done by the 3rd respondent who filed further report on 1.8.2007 which revealed that the Deputy Commissioner of Motor Traffic Mr. Weerakoon reported that what was produced by the petitioner (P1) was a genuine document and the Magistrate discharged the petitioner from the proceedings.

The 1st respondent has filed an affidavit in which the arrest of the petitioner is admitted. She has stated that the petitioner "was subjected to a routine inspection" and that she entertained a suspicion as regards the genuineness of the temporary driving licence because of the demeanour of the petitioner. She has further stated that the petitioner confessed that he obtained a temporary driving licence by offering a bribe of Rs. 500/- to an officer in the Motor Traffic Department.

The 1st respondent has denied that she sought a gratification from the petitioner and or that she demanded the bottle of perfume.

The 2nd respondent denied the allegation against him and has stated that the "Check Point" did not come under his supervision. He has specifically stated that on 28.7.2007 he set out from the Kirulapona Police Station at 9.15 a.m. on patrol duty and returned to the Police Station at about 8.20 p.m.

The 4th respondent being the Officer-in-Charge of the Kirulapona Police Station has filed an affidavit and stated that after the petitioner was produced in the Police Station he made an attempt to contact the Commissioner of Motor Traffic at Werahera by phone in order to verify the authenticity of the temporary driving licence produced by the petitioner and since "a reply was not forthcoming immediately", the petitioner was handed over to the Fraud Bureau for further investigation.

The 3rd respondent being the Officer in Charge of the Fraud Bureau at Wellawatte has stated that the petitioner was brought to his Police Station at about 5.45 p.m. by an officer of the Kirulapona Police. He has stated that he requested Police Sergeant Edirisinghe to investigate the matter and "accordingly the said officer recorded a detailed statement from the said accused in respect of the charge levelled against him." He has further stated that the recording of the statement continued till 8 p.m. and for this reason the petitioner was detained overnight and produced before the Magistrate at 10 a.m. on the next day.

I have now to consider the conflict of testimony with regard to the circumstances in which the petitioner was arrested, kept in custody and later remanded. As noted above the respondents conceded that the petitioner committed no offence whatsoever whilst travelling on the road and at the stage he was stopped.

The temporary driving licence, marked P1 is manifestly a genuine document with contains even the photograph of the licence holder. It is in a machine numbered official form to be used in terms of section 126 (4) of the Motor Traffic Act. There are no alterations or erasures and it bears all the endorsements of the respective officials. It contains the number of the petitioner's driving licence and of his national identity card. The receipt that the petitioner produced marked P2 has also been issued by the Commissioner of Motor Traffic in the official form. It clearly states that the relevant documents have been received at their office for the issuance of a duplicate of the driving licence.

The circumstances urged by the 1st respondent to justify the arrest viz: that the petitioner stammered and appeared to be excited and so on are a figment of her imagination. It is possible that he gave a bribe of Rs. 500/- to the Motor Traffic Department for the duplicate licence. But, does that mean that a further bribe should be given to the Police?

As between the version of the petitioner and the 1st respondent there is no doubt whatsoever that the petitioner's version is acceptable. It is obvious that the 1st respondent retained the temporary driving licence produced by the petitioner and thereafter threatened to destroy it leaving the petitioner helpless in the matter. If that was done the petitioner would have no witness to support him except the other police officers who would never have assisted him in the matter. The 1st respondent continued to retain the temporary driving licence knowing fully well that the petitioner would have to return to collect the document from her. Thus the payment of a bribe was assured. The demand of the bottle of perfume alleged by the petitioner can also be believed in the circumstances that have been presented.

The petitioner did the obvious in the circumstances by going up to the Police Station to report the injustice that had been meted out. The 2nd respondent denied that he was at the Police Station and sought to support his alibi by an extract from the Information Book produced marked 2R2. The entry produced to say the least is preposterous. It merely records that the 2nd respondent left the Station on a motor cycle bearing a particular number at 9.15 a.m. and returned to the Police Station only at 8.15 p.m. in the night. It merely records that the 2nd

respondent travelled along High Level Road, Baseline Road, Poorwarama Road, Wijaya Kumarathunga Mawatha etc. These are names of a few roads in the vicinity virtually within walking distance. He claims to have travelled about 30 k.m. in this area. There is no official record of anything that he has done in the nearly 11 hours period he claims to have been outside the Police Station. He seems to have gone without meals and everything else. The denial is palpably false and entry 2R2 has been fabricated for the purpose of producing it in Court to support his *alibi* that there was no contact with the petitioner.

The method by which these Police Officers all being in the rank of Police Inspectors operated is obvious. When the petitioner complained of the conduct of the 1st respondent being a Sub Inspector of Police at the security "Check Point", the 2nd respondent engineered a situation where the petitioner is brought back to the Police station with the relevant document. Having got the petitioner within their full control, they obviously decided to teach the petitioner a lesson by concocting a charge of using as genuine a forged document and referred the matter to the Fraud Bureau for further harassment.

The 3rd respondent sought to justify the detention of the petitioner overnight on the basis that after he was brought in at 5.45 p.m. a "detailed statement" was recorded till 8 p.m. But, the Information Book extract produced by him marked 3R3 does not contain any statement of the petitioner. It appears that the Fraud Bureau has acted true to its name and has endeavoured to perpetrate a fraud on the Court. 3R3 is a long typewritten document which contains a series of guidelines generally addressed to an investigating officer. Beneath that there is an entry by P.S. 32453 Edirisinghe who according to the 3rd respondent (OIC) recorded a detailed statement till 8 p.m., that he obtained a statement from the Motor Traffic Department. Whereas, nothing in fact was obtained from the Motor Traffic Department. This is once again a part of the vicious scheme of the Police to punish the petitioner. To justify his detention overnight and to produce him before the Magistrate on the next day being a Sunday and a public holiday knowing fully well that the petitioner would be remanded without an inquiry.

It appears that the intervention of the Magistrate resulted in the obvious course of action in getting the document checked from the Commissioner of Motor Traffic, resulting in the petitioner being discharged on 1st of August 2007.

The facts presented above reveal a clear instance of the abuse of power, rampant dishonesty and corruption and also misuse of the

process of law that take place at "Check Points" that have sprouted up. The tragedy is that a multitude of offences have been committed by Police officers whose duty it is to use their "best endeavours" and ability to prevent all crimes, offences and public nuisances (vide Section 56 (a) Police Ordinance). I may at this stage state that the erection of virtually permanent barriers on public roads as done at these "Check Points" is not authorised by any law.

In the month of July this year being the very month the present incident took place, this Court entered a judgment in a similar case where a person who was transporting furniture for his personal use having obtained a permit under the Forest Ordinance, although such permit was not required, was wrongfully arrested, detained and tortured because he refused to give a bribe of Rs. 5000/- that was demanded (*Sarjun v Kamaldeen*)⁽¹⁾.

The observations made at 7 of the Judgment apply with equal force to the facts of this case.

"The facts of the case reflect the hapless plight of an innocent citizen who takes every precaution to comply with the law of the land. The concern of national security resulting from the threats of terrorism has made it necessary to impose safeguards and check points on our public roads. This case typifies the vicious link between abuse of authority, pursuit of graft and the infliction of torture on a citizen who insists on his right not to cave into illegal demands of gratification and abuse of authority. Whilst security concerns have to be addressed such action should be taken with the highest concern and respect for human dignity.

The presence of groups of armed Police and Security personnel who place illegal obstructions is a common sight on our roads. These officers as manifest in the facts of this case do not appreciate that roads constitute public property and that every citizen is entitled to the freedom of movement guaranteed by Article 14 (1)(h) of our Constitution being the Supreme Law of the Republic. Any interruption of the exercise of such freedom by Police/ security personnel would amount to an arrest and has to be justified on the basis of a reasonable suspicion of having committed an offence. A tolerant society wedged between ruthless terrorism and the abuse of authority has lost the taste of freedom. It is only through a respect of human dignity and freedom guaranteed by the Constitution to all segments of our society that peace and normalcy could be restored. Therefore a heavy responsibility lies on all Senior officials who

detailed armed personnel on our roads to take every precaution to ensure that ordinary officers such as the 1st respondent (being only a Reserve Police Constable) do not abuse their authority violate the law or inflict suffering on innocent citizens. Such personnel have to be firmly instructed that they have to act with the highest degree of caution and sensitivity with due respect for human dignity.

A person freely moving on the road in compliance with the law could be stopped and made to alight from the vehicle only on a reasonable suspicion of illegal activity. Such suspicion would have to be justified in Court. Superior Officers who do not take precautions to prevent any infringement by their subordinates who are detailed for duty would themselves be liable for the infringement of the freedom of movement and the freedom from arbitrary arrest guaranteed by Article 14 (1)(h) and 13(1) of the Constitution."

This Court issued a special direction in that case that copies of the judgment be sent to the Secretary, Ministry of Defence and the Inspector General of Police considering the pattern of serious infringements of fundamental rights that take place by the abuse of authority on the part of personnel who check vehicles and people travelling in our public roads in the exercise of their fundamental right to the freedom of movement, particularly because such action is directed at persons who have not committed any offence and against whom there is no reasonable suspicion of having committed any specific offence. Further, in regard to the purported basis of executive action it is noted that Article 15(7) of the Constitution permits restrictions of the fundamental rights adverted to above only if such restrictions are "prescribed by law in the interests of national security."

Section 32 (1) of the Code of Criminal Procedure Act permits the arrest of a person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned. The Emergency (Miscellaneous Provisions and Powers) Regulations has a wider power in regulation 20(1) which reads as follows:-

"Any Public officer, any member of the Sri Lanka Army, the Sri Lanka Navy or the Sri Lanka Air Force, or any other person authorized by the President to act under this regulation may search, detain for purposes of such search, or arrest without warrant, any person who is committing or has committed or whom he has reasonable ground for suspecting to be concerned in, or to be committing, or

to have committed, an offence under any emergency regulation, and may search seize remove and detain any vehicle, vessel, article, substance or thing whatsoever used in, or in connection with the commission of the offence."

Thus a reasonable ground of suspicion is essential to warrant a search. There is no provision of law which permits arbitrary action in stopping and searching persons who travel on our public roads in the exercise of the fundamental right to the freedom of movement. This Court has repeatedly held that the Rule of Law is the basis of our Constitution. Waging war against the State is the severest of offences punishable with death in terms of section 114 of the Penal Code. There are also connected offences in chapter VI of the Penal Code. The members of the Armed Forces called out by the President in terms of section 12 of the Public Security Ordinance have the fullest power to maintain public order and take action against those who are waging war and committing other related offences. **But, when action is directed against persons who are not thus engaged in war and committing related offences, every precaution and safeguard has to be taken to minimize the resultant hardships. It is paramount that any restriction of the fundamental rights guaranteed by the Constitution should only be as 'prescribed by law. The Police and members of the Armed Forces have to bear in mind firmly that they don uniform and bear weapons only as permitted by law; to uphold the law and to respect, secure and advance the fundamental rights declared by the Constitution.**

Although copies of the judgment were sent to the respective officials in the background stated above, as submitted by Counsel for the petitioner, no remedial executive action has been taken. Hence, considering the continuing pattern of infringements affecting the freedom of movement and the guarantee of the equal protection of the law, by measures purportedly taken in the interests of national security and the preservation of public order, Counsel submitted that it is just and equitable to make directions in terms of Article 126(4) of the Constitution in the public interest to secure and advance the fundamental rights of the people.

Counsel submitted that such directions be made in three related aspects affecting the freedom of movement and equal protection of law that result from executive or administrative action purportedly taken in the interest of national security. They are-

- (i) the restriction of the freedom of movement that result at "Check

Points" referred above and the general measures taken at times to stop all traffic and check all vehicles and persons travelling on public roads causing heavy congestion of traffic, inordinate delays, hardships and loss;

- (ii) the total prohibition of parking of vehicles on certain principal roads that deny to the people the equal protection of the law;
- (iii) the intermittent stoppage of all traffic to permit what has been described as "VIP movements" – that deny the people the freedom of movement and the equal protection of the law;

Counsel for respondents had no objections that these aspects being considered by Court for the purpose of making appropriate directions.

(1) "Check Points" and stoppage of all vehicles for checking

Counsel for the petitioner submitted that the establishment of near permanent "Check Points" along public roads and on bridges referred above has been done without any legal basis. These public roads are vested in the local authorities to ensure that they are duly maintained for the people to exercise their freedom of movement.

In the case of *Lyanage v Gampaha Urban Council and others*⁽²⁾, a writ of *certiorari* was issued on a local authority that caused certain obstructions on a public road by converting it to a market place on a particular day. The Court analysed the provisions of the Urban Councils Ordinance (similar provision being contained in the Municipal Councils Ordinance) and concluded that,

"the legislative purpose underlying these provisions is very clear. It is to ensure that a council, being the administrative authority at local level will have the public thoroughfares within its area, free of obstructions, well maintained and improved with the passage of time. So that the people for whose benefit these thoroughfares are meant can use them freely and without impediment...."

An obstruction of a public road which is not for the maintenance or repair is clearly not warranted by any law. The illegal erection of virtually mobile police stations partly obstructing public roads have been done by officials whose duty it is to uphold the law in flagrant violation of the law itself as noted above. Even disregarding the illegality in establishing these "Check Points" I would now examine the further issue whether the action taken at these "Check Points" as

revealed by the material adduced by the respondents can be justified from the perspective of national security and preserving public order.

The 5th respondent being the Inspector General of Police has produced several documents that have been issued in respect of "Check Points". He has produced marked "5R3" a circular issued by his predecessor in office last year, bearing the title "Implementation of Police Check Points Effectively".

The 2nd paragraph of this circular states very categorically that these "Check Points" erected in all Police areas throughout the country have been of 'minimal use'. The IGP has noted this as a personal observation and given as the reason for such a dismal state the fact that there is no proper scheme or plan for the operation of these "Check Points". A Standard Operational Procedure (SOP has been annexed to "5R3"). In the introduction to the SOP, it is repeated once again that the effectiveness of these "Check Points" is very minimal "ඉතා අවම". It further states that there has been very few arrests and even few instances of persons taking illegal items such as weapons and explosives. Ironically, the IGP has stated that in a recent incident terrorist suspects had transported two boats filled with explosives up to Negombo passing ten "Check Points". According to the IGP this has been discovered from a later confession of a suspect who was arrested elsewhere. What should be added as post script to the IGP's virtual tale of woe are the serious incidents of abuse of power, corruption and the harassment of innocent persons referred to above.

The 1st respondent being the Officer in charge of Kirulapona Police Station has produced marked "4R2" a document which specifies the particulars the Officers have to take down at these "Check Points". They are as follows :-

1. The date of inspection.
2. Time of inspection.
3. Number of the vehicle.
4. Make of vehicle.
5. Full name and address of the driver.
6. Driver's National Identity Card number.
7. Driving Licence number.
8. Number of females who travel in the vehicle.
9. Number of males who travel in the vehicle.
10. Any other particulars to be stated.

These particulars cannot possibly serve any purpose from the perspective of national security nor can such information safeguard public order. The result of this futile exercise carried on by the virtually mobile Police Stations referred above is to delay and harass persons lawfully exercising their fundamental right to the freedom of movement. It is manifest that this process has gone on for many years without the Executive bringing its mind to bear on the purpose of maintaining these illegal "Check Points". People over the years have suffered in silence probably under the assumption that some useful information is collected from the perspective of national security. These "Check Points" in their present semi permanent state and lit up in the night can be seen at a distance and their locality is well known. No person who has committed an offence, let alone a terrorist would ever drive up to such a "Check Point" and virtually submit himself to be arrested. That probably is the reason for their minimum use in respect of which the former IGP was lamenting in 5R3.

Counsel submitted that even law abiding persons avoid these "Check Points" by taking a detour along by – roads to avoid being unnecessarily stopped.

In considering the foregoing matters we have been mindful of the serious situation that the Executive is confronted with since on the very day this matter was heard there were two explosions in the City, one causing serious loss of life and injuries. It is to be noted that these explosions have taken place in areas hemmed in on several sides and direction by "Check Points". There has been a profuse presence of armed personnel on the nearby roads. It is clear that such obtrusive presence of armed personnel and "Check Points" have not deterred in any way the terrorists in carrying out the dastardly attacks.

The city of Colombo and the suburbs are now cosmopolitan in every sense. There are a large number of Tamils, Muslims and Sinhalese who live in the City. Many Tamil persons have sought refuge in the City and the suburbs and it is the incumbent duty of the State to ensure that they are afforded security from the threats which probably compelled them to evacuate from their previous places of abode. On the other hand, it is the basic duty of one and all who benefit from the safety and security of the City to ensure that such security is preserved without the intrusion of terrorist activity.

In the circumstances it would be well for the Executive to enlist the support of all residents in the task of preserving national security by establishing Citizens Committees, shop-keepers Committees and so on. Such Committees should have a direct link with the Police and Security Personnel in ensuring that there is a quick, ready and effective response to any threat that is noted.

Such action would have prevented the explosions, loss of life and destruction of property that we have experienced.

A similar observation has also to be made of the action taken by Police and Security Personnel to stop all traffic and to check all vehicles. This action has resulted in serious congestion of traffic. In a situation where innocent civilians are also targeted by terrorist activity such congestions of traffic may unnecessarily endanger many. As noted above even the Emergency regulations do not warrant such arbitrary action.

Considering the matters stated above, we uphold the submissions of the Counsel for the petitioner and make a direction that in terms of Article 126(4) of the Constitution that the prevalent executive action in operating permanent "Check Points" with unlawful obstructions of public roads and the stoppage of all traffic resulting in serious congestion be discontinued since such action amounts to an infringement of the fundamental right to the freedom of movement guaranteed by Article 14(l)(h) of the Constitution and deny to the people the equal protection of the law guaranteed by Article 12(l) of the Constitution. The power to search arrest and detain should be exercised in terms of Regulation 20(l) of the Emergency (Miscellaneous Provisions and Powers) Regulation cited above on the basis of reasonable grounds of suspicion of the commission of an offence or being concerned in the commission of an offence under the Emergency Regulations. Officers assigned such functions should be duly informed of the fundamental right to the freedom of movement guaranteed by Article 14(l)(h) and the guarantee of the equal protection of the law as contained in Article 12(l) of the Constitution. It is to be noted that the S.O.P. (5R3) produced by the I.G.P. makes no reference to these matters.

2. The total prohibition of parking vehicles on certain principal roads that deny to the people the equal protection of the law.

Counsel for the petitioner submitted that the total prohibition on parking of vehicles on certain principal roads within the City is not permitted by any law and that the executive action in this regard denies to the people the equal protection of the law guaranteed by the Article 12(l). We have to note that the Motor Traffic Act is the applicable law. In terms of section 166(l)(a) of the Motor Traffic Act any prohibition or restriction of halting or parking of motor vehicles on a highway or part of a highway in any area has to be by order of the relevant local authority. It appears that the prohibitions complained of have been purportedly made by the Senior Superintendent of Police (traffic) and not by local authority being the Colombo Municipal Council. It is to be noted that in terms of section 164 (l)(a) of the Motor Traffic Act a police officer not below the rank of Superintendent of Police or Assistant Superintendent of Police may affix traffic signs only for the 'temporary regulation of traffic'. Hence permanent boards that are now seen in most streets purportedly by order of the SSP (traffic) are patently illegal and deny to the people the equal protection of law guaranteed by Article 12(l) of the Constitution.

In the circumstances we make a direction in terms of Article 126(4) of the Constitution that such illegal signs be removed forthwith and proper orders be made if necessary, in terms of the provisions of the Motor Traffic Act. In making such an order suitable arrangements should be made to permit the parking of vehicles at least on one side of the road at alternate times depending on the intensity of the movement of traffic.

3. Intermittent stoppage of traffic to permit "VIP Movement"

Counsel submitted that at times traffic is brought to a halt on principal roads at peak hours causing severe congestion which in itself is a security threat. It was further submitted that security personnel engaged in these tasks at times even rudely drive the pedestrians away. It appears that no one knows the persons who make such arrangements or give such orders. We have to note that such measures deny to the people the equal protection of law. It has to be borne in mind that our State is a Democratic Socialist Republic in which all persons are equal. The obstruction of traffic

on public roads and the consequential restriction of the freedom of movement would be an infringement of the fundamental rights of the citizens guaranteed by Article 14(1)(h) of the Constitution.

In the circumstances 5th and 7th respondents are directed to ensure that no such obstructions as alleged take place. If security measures have to be taken to safeguard any person who is specially threatened such measures should be taken with minimum inconvenience to the citizens who are exercising the freedom of movement. Such measures should in any event be avoided at peak hours since they cause serious congestions that would itself pose a threat to security.

The 5th respondent is directed to report to Court on 7-1-2008 of the action taken.

For the reasons stated above the application is allowed and we make a declaration that the petitioner's fundamental rights guaranteed by Article 12(1), 13(1) and 13(2) have been infringed by executive or administrative action.

Considering the nature of infringements we direct the payment of compensation to the petitioner personally in a sum of Rs. 75,000/- each by the 1st, 2nd, 3rd and 4th respondents. The State will pay costs in a sum of Rs. 25,000/-.

The Registrar is directed to forward a copy of the judgment containing the directions made in terms of Article 126 (4) of the Constitution to the 5th, 6th and 7th respondents for necessary action in terms of these directions.

Mention on 7-1-2008.

TILAKAWARDANE, J.- I agree.

BALAPATABENDI, J. - I agree.

Application allowed.

Directions issued.