WICKRAMANAYAKA
v.
THE STATE

SUPREME COURT
SAMARAKOON, C. J., THAMOTHERAM, J., ISMAIL, J.,
SHARVANANDA, J., AND WANASUNDERA, J.
S.C. APPEAL NO. 58/79
24 SEPTEMBER 1979.

Fundamental Rights — Infringement of Articles 14(1) (g), (h) (a) read with Articles 14(1) (d) and 11 of the Constitution by clauses in Essential Public Service Bill.

Certificate of Cabinet under Article 84 of the Constitution — Whether such certificate is conclusive of the question whether Bill conflicts with provisions of the Constitution — Duty of Court to examine Bill for constitutionality where certificate has been given.

The petitioner challenged the validity of clauses 2(1) and (2) of a Bill entitled the Essential Public Service Bill on the ground that it contravened Article 14(1) (g) of the Constitution which grants every citizen the freedom to engage by himself, or in association with others, in any lawful occupation, profession, trade, business or enterprise. He argued that clause 2(2) had the effect of compelling persons who were employed in any Government Department, Public Corporation, Local Authority or Co-operative Society engaged in providing the services specified in the Order made under clause 2(1), to remain in that employment during the subsistence of that Order and of working on compulsion under pain of criminal prosecution, whether or not they have reasonable cause for not doing so.

Clause 4(2) of the Bill provided for the mandatory forfeiture of property and removal of the offender if a registered practitioner from the register of practitioners. It was contended that this clause infringes Article 11.

Held :

(1) Article 14(1) (g) must be read in the light of the restrictions that are permitted by the Constitution. The exercise and operation of the fundamental right can be limited by law enacted in terms of either Article 15(5) or Article 15(7). Such legislation is permitted in the interests of national economy, national security, public order, and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirement of the general welfare of a democratic society. Article 28 which states that the exercise and enjoyment of the rights and freedoms are inseparable from the performance of duties and obligations, and accordingly it is the duty of every person to work conscientiously in his chosen occupation is also relevant.

The services specified in the schedule are of a vital nature and necessary for the maintenance of the life of the community and it is the bounden duty of the State to ensure that such services are provided without any organised disruption. The Bill will be placed on the statute book but it will be invoked and applied only in an emergency situation. The President is empowered, in consultation with the appropriate Minister, to declare one or more of the public services specified in the Schedule as an essential service or services when the two conditions in clause 2 of the Bill are satisfied. The President must be of the opinion that any such service is likely to be impeded or interrupted and that the service is essential to the life of

the community. Any abuse of this discretion could be challenged in the Courts. In these circumstances the restrictions placed by the Bill on the fundamental right contained in Article 14(1)(g) are reasonable.

Semble (i) There will be no violation of Article 14(1)(g) even if it is interpreted in an extended sense as containing the negative right not to be employed and to choose another employment at any time.

(ii) Limitations on the right to strike which is essentially a political and economic concept in essential industries does not infringe the freedom of association if there are satisfactory alternate arrangements for the redress of grievances.

(2) The submission that clause 2(2)(a) which provides for compulsory service at the existing places of work and prohibits non-attendance, violates the freedom of movement and of choosing one's residence guaranteed by Article 14(1)(h) is without substance. In any event, such restriction could have been imposed under Article 15.

(3) Re. Article 14(1)(a) read with Article 14(1)(d) the contention that provision in Clause 2(2)(c) which provides that any person who, by any speech or writing, incites or encourages any person employed in a public department or corporation to refrain from attending his place of work or incites or encourages such person to depart from his place of work, shall be guilty of an offence, has an impact on the freedom of speech, does not contravene the Constitution as the restrictions imposed do not exceed those permitted under Article 15(5) and 15(7). The right of association does not carry with it a fundamental right that the union so formed should be entitled to achieve every objective for which it was formed.

(4) Article 11 is one of the entrenched Articles mentioned in Article 83 and is directed against torture and cruel, inhuman or degrading treatment or punishment. The offender is liable on conviction to imprisonment ranging from a minimum of two years to a maximum of five years or to a fine ranging from two thousand rupees to a maximum of five thousand rupees or to both imprisonment and fine. To these punishments there is superadded two more punishments, namely the mandatory forfeiture of all movable and immovable property of the offender and in the event the offender is a registered practitioner under any law for practising his profession or vocation, the mandatory removal of his name from such register.

The piling of punishment on punishment indiscriminately, as in this case, whether they be old forms of punishment or new, amounts to excessive punishment and savours of cruelty. Physical force is unnecessary for it to amount to inhuman treatment and punishment. Hence Clause 4(2) of the Bill is inconsistent with Article 11 of the Constitution.

Clause 4(2) should not be mandatory. It should be left to the Court to be imposed at its discretion in fit cases depending on the culpability of the offender.

Cases referred to :—

(1) *Leavie Collymore v. A.G.* (1970) 38 F.J.R. 79

(2) *Radhey v. P. M. G. Nagpur* AIR 1965 (S.C.) 311

(3) *All India Bank Employees' Association v. National Industrial Tribunal* AIR 1962 (S.C.) 171

(4) *Raghubar Dayal v. Union of India* AIR 1962 (S.C.) 263

(5) *Gosh v. Joseph* AIR 1963 (S.C.) 812

(6) *Trop v. Dulles* 356 U.S. 86

(7) *Robinson v. California* 370 U.S. 660

APPLICATION under Article 121 of the Constitution.

H. L. de Silva with *V. W. Kularatne* and *Gomin Dayasiri* for petitioner.

S. Pasupathy A.G. with *V. C. Goonetilleke S.G., G. P. S. de Silva, Addl. S.G., and S. Ratnapala S.C.* for the State.

Cur. adv. vult

October 02, 1979

SAMARAKOON, C.J. read the following Determination and reasons of the Supreme Court:

This is a petition to the Supreme Court under Article 121 of the Constitution invoking our jurisdiction in respect of a Bill entitled the Essential Public Services Bill. It has been filed by Mr. Ratnasiri Wickramanayaka, General Secretary of the Sri Lanka Freedom Party, and he has petitioned this Court on his own behalf as well as on behalf of his party which he claims is one of the largest in the country. The Bill has been placed on the Order Paper of Parliament and the Cabinet of Ministers have certified that the Bill is intended to be passed by the Special Majority required by Article 84 of the Constitution.

The Petitioner has alleged that certain provisions of the Bill contravene Articles 14(1) (g), 14(1) h), 14(1) (a) read with 14(1) (d) and Article 11 of the Constitution which guarantee certain fundamental rights. He has contended that a Bill "which is inconsistent with the exercise and enjoyment of the Fundamental Rights of the People requires not merely its passage by a two-thirds majority, but also its approval by the People at a Referendum". The petitioner has relied on Article 83 in support of his argument and has submitted that Article 83, when it refers to Articles 3 and 11, has the effect of entrenching all those fundamental rights which are declared and recognized by the Constitution.

Counsel for the petitioner sought to establish his case, namely, the violation of fundamental rights, by claiming an irrebuttable presumption based on the Cabinet certificate and thereby sought to avoid any serious discussion of Article 15 of the Constitution in its

relation to the facts of this case. He submitted that, once the certificate is given by the Cabinet, the only question for this Court to decide is whether the Bill requires approval by the People at a Referendum and the Court, without further examination, must proceed on the basis that the Bill contravened the provisions relating to fundamental rights. It was in fact his view that the certificate would imply that the Bill was inconsistent with the provisions relating to fundamental rights and that this interpretation by the Cabinet would be binding on us.

On the other hand, the learned Attorney-General submitted that there is nothing in the constitutional provisions to indicate that such a certificate should be given only in the case of an inconsistency and, even if it was so, there is nothing in the certificate to indicate what the particular inconsistency is, that is, whether it relates to a matter of fundamental rights or to some other provision of the Constitution. He also pointed out that the certificate merely states that the Bill is intended to be passed by the Special Majority required by Article 84 and nothing more.

We have considered these submissions and find that the matter has to be approached somewhat differently. When the provisions of Chapter XII of the Constitution and other relevant provisions are considered, it would appear that the Constitution has drawn a distinction between the amendment and repeal of the Constitution on the one hand, and Bills which are merely inconsistent with the Constitution on the other. Article 84 indicates that Bills inconsistent with the Constitution stand in a class by themselves. They would not affect the integrity and the continued operation of the Constitution in its totality, except that the particular piece of legislation would be a deviation from the constitutional provisions and that too to the extent to which it is inconsistent. Such legislation is also not required to comply with the provisions of Article 82(1) and (2). Although such legislation has to be passed by the Special Majority of two-thirds of the whole number of members, this fact however is not adequate to confer on such laws the dignity or force of a constitutional amendment, for they can be repealed by a bare majority like any other ordinary legislation.

Since such legislation would be inconsistent with the constitutional provisions and can be enacted in respect of any matter or matters and any person or class of persons, it will be noted that they can make serious inroads into the guarantees and safeguards secured by the Constitution.

The present Constitution, therefore, unlike the previous Republican Constitution of 1972, has placed some limitation on the exercise of the power. These restrictions are contained in Article 83, which deals with both amendments to the Constitution and also with Bills that are merely inconsistent with the Constitution. We find a number of Articles entrenched in Article 83, and the Constitution requires that a Bill relating to any of them must not only be passed by a two-thirds majority, but must also be approved by the People at a Referendum. The Cabinet certificate may imply that in its view there are provisions in the Bill inconsistent with the Constitution, but that fact does not absolve this Court from its duty and function if the Bill is inconsistent with any of the Articles of the Constitution, especially the Articles mentioned in Article 83, namely, Articles 1, 2, 3, 6, 7, 8, 9, 10, 11, 30(2), 62(2) and 83. To put it in another way, the Cabinet certificate merely indicates the intention of the Government to pass this Bill with the two-thirds majority. But the certificate is not conclusive on the question whether the proposed legislation conflicts with any of the provisions of the Constitution. The Cabinet certificate, far from asserting or implying this, actually negatives it. We are therefore of the view that it is our duty to examine the provisions of the Bill in relation to the Constitution and see whether, in fact, the Bill is inconsistent with any one or more of the specified Articles.

The only two Articles mentioned in Article 83 on which the petitioner relies are Articles 3 and 11. Let us, in the first instance, deal with the petitioner's argument based on Article 3. The petitioner has submitted that the entrenched Article 3 attracts Article 4, and Article 4 brings in, *inter alia,* the entirety of the fundamental rights enshrined in the Constitution. It is a well-known principle of constitutional law that a Court should not decide a constitutional issue unless it is directly relevant to the case before it. We are of the view that this case, when properly approached, makes it irrelevant for us to give a ruling on some of the matters referred to by counsel for the petitioner.

Adopting his argument that the entrenched Article 3 attracts Article 4, we find that Article 4 itself provides for the abridgement and restriction of the fundamental rights. This would take us to the provisions of Article 15, which sets out the manner and extent in respect of restrictions that can be placed on the fundamental rights. Article 4(d) is worded as follows :—

> "(d) the fundamental rights which are by the Constitution declared and recognized shall be respected, secured and advanced by all the organs of government, and shall not be abridged, restricted or denied, save in the manner and to the extent hereinafter provided ;".

Probably, having regard to his legal submissions, the petitioner thought it was unnecessary to delve into the factual aspects of this matter in any great depth. We are however inclined to deal with these matters at some length, not only because of their importance but also because we feel that the issues before us would be a matter of concern to the public and in particular to the large number of persons who may be directly affected by this legislation.

The petitioner has submitted that Clause 2(2) of the Bill has the effect of compelling persons who were employed in any Government Department, Public Corporation, Local Authority, or Co-operative Society engaged in providing the services specified in the order made under section 2(1), to remain in that employment during the subsistence of that order and of working on compulsion under pain of criminal prosecution, whether or not they have reasonable cause for not doing so. The petitioner argues that this provision violates Article 14(1) (g) of the Constitution, which grants every citizen the freedom to engage in any lawful occupation, profession, trade, business or enterprise, and that this freedom includes the freedom not to be employed and the freedom to choose another employment at any time.

Article 14(1) (g) grants every citizen the freedom to engage by himself, or in association with others, in any lawful occupation, profession, trade, business or enterprise.

The Bill provides for the declaration of specified services provided by certain (but not all) Government Departments, Public Corporations, Local Authorities, and Co-operative Societies as Essential Public Services, and makes provision, including sanctions and punishments, to ensure that those services are carried out unimpeded and uninterrupted. These services are specified in the Schedule. Undoubtedly all the services specified in the Schedule are essential for maintaining the life of the community, and a breakdown in these services would cause a serious disruption and breakdown of organised society. Nearly all these items have heretofore been rightly regarded as services essential to maintain the life of the community. Other countries have also similar legislation.

Article 14(1) (g) must be read in the light of the restrictions that are permitted by the Constitution. The exercise and operation of the fundamental right can be limited by law enacted in terms of either Article 15(5) or Article 15(7). Such legislation is permitted in the interest of national economy, national security, public order,

and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirement of the general welfare of a democratic society. In this context, Article 28 is also relevant. It states that the exercise and enjoyment of the rights and freedoms is inseparable from the performance of duties and obligations, and accordingly it is the duty of every person to work conscientiously in his chosen occupation. Could it be said that the objects of the Bill do not come within one or more of the matters specified above? These services specified in the Schedule are of a vital nature and necessary for the maintenance of the life of the community ; and it is the bounden duty of the State to ensure that such services are provided without any organized disruption.

Once enacted, the laws would be placed on the statute book, but a perusal of the Bill shows that it would be invoked and applied only in an "emergency" situation. The President is empowered, in consultation with the appropriate Minister, to declare one or more of the public services specified in the Schedule as an essential service or services when the two conditions in Clause 2 of the Bill are satisfied. The President must be of opinion that any such service is likely to be impeded or interrupted and that the service is essential to the life of the community. The learned Attorney-General submitted that any abuse of this discretion could be challenged in the Courts. In these circumstances we are of the view that the restrictions placed by this Bill on the fundamental right contained in Article 14(1)(g) are reasonable.

We are of opinion that this conclusion would be valid even if we are to interpret Article 14(1) (g) in the extended sense, as containing the negative right contended for by counsel. But reliance however on this negative right may lead to some other problems which the petitioner has in no way sought to resolve. The Bill speaks of the persons employed in the Scheduled Services impeding or interrupting such services. These words are sufficient to include a variety of trade union action by employees, and will naturally include a strike. The petitioner has not referred us to any authority to show that, in the situation contemplated by the Bill, there is such a determination of the contract of service of the employees concerned as would enable the workman to be regarded as a person free of all his contractual obligations and is in the identical position of a person who is absolutely free to choose his employment or not to continue in employment untrammelled by any legal obligations.

In this connection certain other provisions of the Bill may also be noted. Every order of the President invoking this law is operative only for a period of one month without prejudice to the earlier revocation of the making of a further order. The order is also limited, in the first instance, to only 14 days and has to be placed before Parliament forthwith, and if Parliament stands adjourned, Parliament must meet within 10 days to have it approved, on which occasion a debate on its necessity should be possible.

The above provisions are reminiscent of certain provisions of the Public Security Ordinance, which can be invoked in the interest of public order. The scope of the Public Security Ordinance can be seen by a perusal of a set of past regulations which had been made from time to time by successive governments, in periods of emergency, even those promulgated from 1972 onward when the 1972 Constitution was in operation. Under these regulations, provision had been made for declaring any service to be a public utility or to be essential to the public safety or to the life of the community, and this can include any department of Government or branch. All such services would be designated as " Essential Services". An order in terms of these regulations may be made generally for the whole Island or for any area or place specified in the order.

As in the present case, there was provision making the failure or refusal of an employee to attend to his work, once a service is declared to be an essential service, an offence. Further, by reason of such failure, or refusal, the employee is deemed to have forthwith terminated or vacated employment. It may be noted that these provisions applied notwithstanding that the failure or refusal was in furtherance of a strike.

Persons impeding, obstructing and delaying the carrying on of such service, or inciting others to do so, were made guilty of an offence. The penalty imposed for a violation of this regulation was the forfeiture of all property, movable and immovable, of the offender, in addition to his liability to imprisonment. All transfers of property after the date on which the regulations were brought into force were made null and void.

The regulations also make provision for preventing disaffection among those engaged in the performance of essential services and for preventing incitement of any section, class, or group of

persons to create discontent, disaffection, hatred, hostility, or the use of violence. Power was also given to proscribe any organisation when there is a danger of action by such organisation or by its members. Picketing was also prohibited.

There was even a controversial provision bordering on industrial conscription that empowered the Prime Minister, by order under his hand, to require any person to do any work or render any personal service in aid of or in connection with the maintenance of the public safety, or the maintenance of essential services.

Part III of the Public Security Ordinance introduced in 1959 also contains somewhat similar provision for a situation falling short of a declaration of a state of emergency, where the Prime Minister is empowered to act in a somewhat similar manner in such a situation. But these provisions contain a significant feature which appears to nullify much of its effectiveness, namely, an exemption from liability from those provisions where the cessation of work is in consequence of a strike by a registered trade union, solely in pursuance of an industrial dispute. (Section 17(2) - Part III).

The clauses of the present Bill also approximate to the provisions in Part III of the Public Security Ordinance and are intended to deal with a similar kind of situation. The presence of the exemption referred to in Part III and its absence here can be of no avail to the petitioner in respect of the constitutional matters before us. It is a matter of some significance that the petitioner has not read into the fundamental rights enshrined in the Constitution a fundamental right to strike. The right to strike is essentially a political and economic concept, but has been conceded in some countries as a legal right. At the most, it may be claimed as a mere common law right without being raised to the level of a fundamental right, *Leavie Collymore v. A.G.,* (1) where the Privy Council held that "it is inaccurate to contend that the abridgement of the right to free collective bargaining and the freedom to strike leaves the assurance of its freedom of association empty of worthwhile content". Vide also *Radhey v. P.M.G., Nagpur,* (2); *All India Bank Employees' Association v. National Industrial Tribunal,* (3).

In fact, even under ordinary provisions of the Industrial Disputes Act, certain limitations have been placed on the right to strike or the continuation of a strike. Those provisions appear to apply to some of the categories of persons coming within the ambit of this Bill. *Vide* sections 32 and 40 — Industrial Disputes Act. It may also

be mentioned that, even the I.L.O. seems to incline to the view that limitations placed on the right to strike in essential industries do not infringe the freedom of association if there are satisfactory alternate arrangements for the redress of grievances.

Some of the employees covered by the Bill will undoubtedly come within the ambit of the Industrial Disputes Act, which contains the statutory framework for the settlement of disputes between employer and employee. However, public officers in the service of the Government have been excluded from the provisions of the Industrial Disputes Act. Many of them enjoy trade union rights. Although there is no statutory machinery for settlement of their grievances, it is well known that such disputes are the subject of discussion and negotiation in terms of informal procedures, which usually reach up to the highest government levels. Although this aspect of the matter has no controlling influence on our decision, we take the liberty of observing that it may be desirable that such informal procedures be institutionalised, and formal procedures for the settlement of such grievances, on a basis as favourable as the legal provisions that are now applicable to non-public servants, (modified, of course, to meet the exigencies of the public service) be made available to them, so that this category of employees will have no cause whatsoever for complaint.

The other provision relied on by the petitioner is Article 14(1) (h). It is his submission that Clause 2(2) (a), which provides for 'compulsory service' at the existing places of work and prohibits non-attendance, violates the freedom of movement and of choosing one's residence guaranteed by Article 14(1) (h). In view of the conclusion we have arrived at in respect of Article 14(1) (g), this submission is without substance. In any event, such restrictions could have been imposed under Article 15.

A third provision relied on by the petitioner is Article 14(1) (a) read with Article 14(1) (d). The petitioner has contended that Clause 2(2) (c) provides that any person who, by any speech or writing, incites or encourages any person employed in a public department or corporation to refrain from attending his place of work, or incites or encourages such person to depart from his place of work, shall be guilty of an offence. The petitioner has argued that the impact of this prohibition against freedom of expression has a close inter-relation with another fundamental right, namely, the freedom to form and join a trade union which has as its very object and purpose the protection of their rights

and privileges as workers. This freedom is effectively negatived, he has submitted, if the end or object of the formation of a trade union is frustrated by prohibiting any discussions which may encourage any person engaged in such public service to refrain from attending at his place of work or to depart therefrom.

This argument is presented undoubtedly on the assumption that Clause 2(2) of the Bill, which seeks to ensure unimpeded and uninterrupted service in respect of the service provided by the categories of persons employed in the services set out in the Schedule, contravenes the Constitution and is therefore unlawful. We have already held that this ground is untenable. This is sufficient to dispose of this matter. But we would like to add that the restriction complained of, is speech or writing, inciting, inducing or encouraging the commission of the offence set out in Clause 2(2) (b). *Vide* Article 15(2), and *Radhey v. P. M. G., Nagpur (supra).* This restriction appears to us to have a real, proximate and direct connection to the relevant grounds in Article 15(5) and 15(7) under which the restrictions have been made. Further, it is clear that the right of association does not carry with it a fundamental right, that the union so formed should be entitled to achieve every objective for which it was formed. *Raghubar Dayal v. Union of India,* (4) ; *Gosh v. Joseph,* (5).

We therefore hold that the relevant clauses of the Bill fall within the ambit of the permitted restriction contained in Article 15(5) and 15(7). In view of these findings that the restrictions imposed by the Bill are lawful and fall within the ambit of Article 15(5) and 15(7), it is unnecessary, as stated earlier, for us to consider the question as to how many of the fundamental rights in Article 14 and to what extent they can be regarded as being entrenched for the purposes of Article 83. That situation would have arisen only if we found that the restrictions now imposed were in excess of those permitted under Article 15(5) and 15(7).

We now turn to the argument that the Bill contravenes Article 11 of the Constitution. Article 11 is admittedly one of the entrenched Articles mentioned in Article 83. It is directed against torture and cruel, inhuman or degrading treatment or punishment.

Clause 4 of the Bill provides for punishment for the offences created by the Bill. An offender would be liable, on conviction, to imprisonment ranging from a minimum of two years to a maximum of five years, or to a fine ranging from two thousand rupees to a maximum of five thousand rupees, or to both imprisonment and fine. To these punishments there is superadded two more punishments, namely, the mandatory forfeiture of all movable and immovable property of the offender and, in the event

the offender is a registered practitioner under any law for practising his profession or vocation, the mandatory removal of his name from such register. This piling up of punishment on punishment makes these penal provisions one of extreme severity. We also think that there is justification for the petitioner's complaint that Clause 4 is a blanket provision covering all offenders, irrespective of the kind of offence they are involved in, or their degree of blameworthiness.

The question is whether these provisions contravene Article 11. The learned Attorney-General, relying on Article 16(2), has submitted that all these punishments are forms of punishment recognised by existing written law, and their imposition on the order of a competent court takes them out of the operation of Article 11. In our view, the piling of punishment on punishment indiscriminately, as in this case, whether they be old forms of punishment or new, must pass the test of Article 11, if they are to be valid. In our view, this is not a case of the mere excessiveness of the punishment, but one of inhuman treatment and punishment. The learned Attorney-General stated that these terms suggested some wrongful and wicked application of physical force on the prisoners. We are unable to agree.

This guarantee against cruel, inhuman and degrading treatment and punishment could be traced to the English Bill of Rights, 1688. At the early stages, this guarantee presented problems which were certainly concerned solely with the degree of severity with which a particular offence was punishable, or with the element of cruelty present. Since then, courts and tribunals have taken the view that the expression contained in the guarantee "is not fastened to the obsolete, but may acquire meaning as public opinion becomes enlightened by a human justice". In *Trop v. Dulles,* (6) the U.S. Supreme Court, in interpreting the corresponding guarantee contained in the Eighth Amendment, had occasion to say "the Article must draw its meaning from the evolving standards of decency that marks the progress of a maturing nation".

In this case, the U.S. Supreme Court held that a statutory provision for forfeiture of citizenship, on conviction by a Court Martial for desertion in time of war, could not be validly applied to a citizen by birth, whose Court Martial conviction was based solely on one day's absence without leave from his base. The Court said that the sole purpose of forfeiting citizenship was to punish for desertion, and punishment of such magnitude was "cruel and unusual" within the bar of the Eighth Amendment. In *Robinson v. California,* (7) the U.S. Supreme Court, in interpreting the Eighth Amendment again, said —

> "The question presented in the earlier cases concerned the degree of severity with which a particular offence was punished or the element of cruelty present. A punishment out of all proportion to the offence may bring it within the bar against cruel and unusual punishment."

We are of the opinion that the compulsory forfeiture of property and the erasure of the offender's name from his professional register, in addition to compulsory imprisonment of fine, constitute excessive punishment and savours of cruelty. In our view, Clause 4(2) of the Bill contravenes Article 11 of the Constitution. It is not our view that the mandatory confiscation of property or the removal from the register of a profession is inherently bad, or that all these punishments cannot be applied together in a serious and fit case. Our objection is to their mandatory nature and to their indiscriminate application *ad terrorem,* irrespective of the nature of the offence or the culpability of the offender.

For the reasons given above, we determine that Clause 4(2) of the Bill is inconsistent with Article 11 of the Constitution. We also state that the Bill, in its present form, is therefore required to be passed by the Special Majority required under the provisions of paragraph (2) of Article 34 and approved by the People at a Referendum by virtue of the provisions of Article 83. We are also of the opinion that if Clause 4(2) of the Bill can be amended on the lines suggested below, the Bill will not be inconsistent with Article 11 of the Constitution.

We suggest that the punishment set out in Clause 4(2) should not be mandatory, but that they should be left to the Court to be imposed at its descretion in fit cases. They can be justified in certain eventualities, where the culpability of the offender for certain grave consequences can be established. We have in mind particularly instances where an act or omission of the offender endangers human life, exposes persons to serious bodily injury, or exposes valuable property to damage or destruction, or causes other injury, damage or mischief of such a magnitude as to warrant the imposition of these additional punishments.

N. D. M. SAMARAKOON

V. T. THAMOTHERAM

I. M. ISMAIL

S. SHARVANANDA

R. S. WANASUNDERA

I agree