

WIJEWICKREMA
V.
ATTORNEY-GENERAL

SUPREME COURT
SHARVANANDA, J., WANASUNDERA, J., WIMALARATNE, J.,
RATWATTE, J., VICTOR PERERA, J., COLIN-THOMÉ J., AND SOZA J.
S.C. REFERENCE 7/82 - D.C. COLOMBO 2235/SPL.
DECEMBER 01, 1982.

*Constitution - Article 124 - Constitutionality of Bill to amend Constitution -
Jurisdiction.*

The plaintiff alleged that 144 members of Parliament had signed and delivered undated letters of resignation and thus they were incapable of voting, according to law and the Constitution, for the Fourth Amendment to the Constitution. Therefore the Fourth Amendment is not a Bill that has been duly passed by Parliament and cannot be submitted to the People at a Referendum.

Held -

That in terms of Article 124 the Court has no power or jurisdiction to inquire into or pronounce upon the Constitutionality of such a Bill or its due compliance with the legislative process on any ground whatsoever.

Case referred to:

(1) *Billimoria's Case 1978-79, 2 Sri L.R. Vol. 1, Part 1, 10.*

REFERENCE to the Supreme Court under Article 125 of the Constitution.

Felix R. D. Bandaranaike with *P. Somaratne* for plaintiff.

K. M. M. B. Kulatunga, Solicitor-General, with *S. Ratnapala, Acting Senior State Counsel,* for Attorney-General.

December 1st, 1982.

SHARVANANDA, J. read the following unanimous order of the Court:

On the alleged ground that 144 members of Parliament had signed and delivered undated letters resigning their office to His Excellency the President, the plaintiff contends that "the said 144 members of Parliament were incapable of voting according to the law and the Constitution for the Fourth Amendment to the Constitution on 4th November, 1982, and that notwithstanding the purported certification of the Speaker of the Parliament that the Fourth Amendment to the Constitution has been duly passed by a two-thirds majority of Parliament, the Fourth Amendment to the Constitution is not a Bill that has been duly passed by the Parliament at all and cannot therefore be submitted to the People at a Referendum" – vide paragraph 10 of the plaint.

The plaintiff therefore prays:-

- (a) for a declaration that the Fourth Amendment to the Constitution has not been validly passed by the Parliament as a Bill for the amendment of the Constitution;
- (b) for a declaration that the Fourth Amendment to the Constitution should not be submitted to the People at a Referendum;
- (c) for a reference of the constitutional questions arising in this action to the Supreme Court for determination under Article 125 of the Constitution.

The fundamental question involved in this action is whether Article 124 of the Constitution bars the jurisdiction of any Court to decide the constitutional issue raised by the plaintiff.

In our view the plaintiff's action involves basically the question whether the Fourth Amendment to the Constitution has been validly voted upon as a Bill for the amendment of the Constitution. Our unanimous decision in this basic question is that the Court is barred by the provisions of Article 124 of the Constitution which provides:

"Save as otherwise provided in Articles 120, 121 and 122, no Court shall in relation to any Bill, have power or jurisdiction to inquire into, or pronounce upon, the constitutionality of such Bill or its due compliance with the legislative process, on any ground whatsoever."

from inquiring into or pronouncing upon the validity of the Bill for the amendment of the Constitution, referred to in the plaint.

We are also of the view that the plaintiff cannot therefore maintain this action. Consequently, in the exercise of our power under Article 125(2), we dismiss the plaintiff's action.

Before parting with this matter, we wish to draw the attention of the District Judge to the requirements of Rule 64 of the Supreme Court Rules 1978 and to the observations of this Court in *Billimoria's* case (1) whenever a reference is made under Article 125(1).••

Determination sent to District Court.