IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application under and in terms of Article 121 (1) of the Constitution read with Article 120 and Rule 63(1) of the Supreme Court Rules of 1978, against the Bill titled "**IMMIGRATION**".

Dinidu Virantha Kumara de Alwis,
Molawatta Road,
Ihala Mahawewa,
Mahawewa.

Petitioner

SC/SD/169/2026

Vs.

Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent

Before: **Hon. Justice A. L. Shiran Gooneratne**
Hon. Justice Mahinda Samayawardhena
Hon. Justice M. Sampath K. B. Wijeratne

Counsel: Pulasthi Hewamanna with Linuri Munasinghe for the **Petitioner**.

Manohara Jayasinghe, Deputy Solicitor General with Navodi de Zoysa, State Counsel and Vinusha Fernandez, **Counsel for the State.**

Date: 9th of November 2026

Introduction

The Bill titled "Immigration" was published in the Gazette on 25.09.2026 and placed on the Order Paper of Parliament on 07.10.2026 in terms of Article 78(1) of the Constitution. The Petitioner invoked the jurisdiction of this Court under Article 121(1) of the Constitution on 20.10.2026, challenging the constitutionality of several clauses of the Bill. The matter was heard and concluded on 26.10.2026. Both parties filed written submissions on 29.10.2026.

A Bill on the same subject had previously been placed on the Order Paper of Parliament in 2024, and its constitutionality was considered by this Court in SC/SD/82/2024 upon a petition filed by the present Petitioner. Learned Deputy Solicitor General raised a preliminary objection to the maintainability of the present petition on that ground. We are unable to uphold this objection. The earlier Bill did not become law before the dissolution of Parliament. The jurisdiction conferred by Article 121 of the Constitution relates to a Bill placed on the Order Paper of Parliament as part of a particular legislative process. Where that process terminates without the Bill being enacted, the placing of a fresh Bill on the Order Paper of Parliament gives rise to a fresh opportunity to invoke the jurisdiction of this Court, subject to the time limit prescribed by Article 121(1) of the Constitution. A previous determination concerning a Bill which was not enacted does not, by itself, preclude a constitutional challenge to a subsequently introduced Bill.

Although the Petitioner challenged specific clauses in his petition, learned counsel for the Petitioner raised additional objections during oral argument and in his written submissions. The Court permitted him to advance those objections. Learned counsel clarified that his principal concern was the protection of the constitutional rights of Sri Lankan citizens rather than those of non-citizens.

For convenience, we shall consider the objections under four heads: (i) the right of citizens to return to Sri Lanka; (ii) ministerial powers, detention and criminal liability, including the power to make regulations; (iii) immigration zones at

approved ports; and (iv) identifying information, data sharing and automated decision-making.

The Right of Citizens to Return to Sri Lanka

The Petitioner challenges clauses 43(3), 54(1), 67(3), 72(3), 73(3), 74(2), 80(c) and 80(k) as being inconsistent with Articles 12(1) and 14(1)(i) of the Constitution. Clause 42(1) recognises the right of a Sri Lankan citizen to enter Sri Lanka without a visa, while clause 42(2) places the burden of proving citizenship upon the person claiming to be a citizen. Clause 43(1) requires a citizen to produce a Sri Lankan travel document at the port of entry as evidence of citizenship. Where such a document cannot be produced, clause 43(2) requires the Controller General to conduct an investigation to ascertain the person's citizenship status.

Clause 43(3) provides:

"If the Controller General is satisfied with the person's citizenship status in Sri Lanka after an investigation conducted under subsection (2), the Controller General may permit the person to enter Sri Lanka, by issuing a temporary travel document as the Controller General thinks fit."

Article 14(1)(i) of the Constitution guarantees to every citizen the freedom to return to Sri Lanka. Clauses 42 and 43 must be read together. While clause 42 recognises the right of a citizen to enter Sri Lanka, clause 43 provides a mechanism for establishing citizenship where a travel document cannot be produced. However, the words "may permit" in clause 43(3) appear to confer upon the Controller General a discretion to refuse entry even after being satisfied that the person concerned is a Sri Lankan citizen. Once citizenship has been established, the exercise of the constitutional right to return to Sri Lanka cannot be left to the discretion of an executive officer. Accordingly, we determine that clause 43(3), in its present form, is inconsistent with Articles 12(1) and 14(1)(i) of the Constitution.

In paragraphs 104 and 105 of his post-hearing written submissions, learned Deputy Solicitor General undertook to replace clause 43(3) with the following provision:

"(3) If the Controller General is satisfied with the person's citizenship status in Sri Lanka after an investigation conducted under subsection (2), the Controller General shall permit the person to enter Sri Lanka."

He further undertook to introduce a new clause 43(4) as follows:

"(4) Such permission may be given by issuing a temporary travel document as the Controller General thinks fit."

These amendments make it clear that, once citizenship has been established, the Controller General is under a mandatory duty to permit the person concerned to enter Sri Lanka, while retaining discretion regarding the issue of a temporary travel document. If these amendments are effected, the inconsistency with the Constitution will cease.

The remaining clauses challenged under this head must be read subject to clauses 42 and 43, as proposed to be amended. None of those provisions can be construed as authorising the refusal of entry into Sri Lanka to a person whose Sri Lankan citizenship has been established.

Ministerial Powers, Detention, Offences and Regulations

The Petitioner also challenges clauses 45(1), 47(4), 65(4), 79, 80(h), 96(1)(f), 134, 142, 144, 146(2) and 169, relying on Articles 3, 4, 12(1), 13 and 76 of the Constitution. Clauses 45 and 65 will be considered separately under the heading "Immigration areas or zones at approved ports".

As already stated, learned counsel for the Petitioner made it clear at the hearing that his principal concern was the protection of the rights of citizens rather than those of non-citizens. Several of the impugned provisions relate primarily to the entry, stay, removal or detention of non-citizens. In this connection, it is relevant that Article 13(7) of the Constitution expressly recognises an exception in respect of arrest or detention pursuant to removal or deportation orders made under immigration legislation. The constitutional implications of other forms of detention may require separate consideration, which is unnecessary for the determination of

the grounds advanced in the present application. In particular, clause 79 is expressly made subject to clauses 42 and 43, which recognise the right of citizens to enter Sri Lanka, while clause 94 excludes citizens from the application of Part VI, which includes clause 96(1)(f). These provisions cannot be construed as authorising the denial of a citizen's constitutional freedom to return to Sri Lanka once citizenship has been established. We therefore find no inconsistency on the grounds advanced, except in relation to clause 169, which requires separate consideration.

Clause 169(1) empowers the Minister to make regulations in respect of matters required or authorised to be prescribed under the Act and matters necessary for carrying out its provisions or "giving effect to the principles of this Act". Subsection (2) specifies particular matters in respect of which regulations may be made, including identifying information, temporary travel documents and facilities for the detention of non-citizens. Under subsection (3), regulations published in the Gazette shall be brought before Parliament for approval "as soon as convenient". Any disapproval operates prospectively, without prejudice to anything previously done under such regulations.

Learned counsel for the Petitioner submits that the reference to the undefined "principles" of the Act does not adequately circumscribe the Minister's regulation-making power. He further submits that the expression "as soon as convenient" prescribes no definite time limit for parliamentary scrutiny, unlike the forty-day period prescribed for certain Orders elsewhere in the Bill. This concern assumes particular significance in view of clause 134, under which contravention of a regulation or Order may attract criminal liability where no other penalty is specified.

The power to make subordinate legislation shall remain confined to the purposes and provisions of the parent Act. The words "giving effect to the principles of this Act", without further qualification, create uncertainty as to the scope of the Minister's regulation-making power. Further, although clause 169(3) requires parliamentary approval, it prescribes no definite period within which regulations shall be submitted to Parliament, unlike clauses 45(4) and 56(2), which prescribe a period of forty days for submitting the relevant Orders to Parliament for approval.

This is particularly significant because regulations may operate before receiving parliamentary approval and their contravention may attract criminal liability under clause 134. In these circumstances, the scope and exercise of the delegated power, as well as the parliamentary supervision thereof, are insufficiently circumscribed. We accordingly determine that clause 169, in its present form, is inconsistent with Article 12(1) of the Constitution, having regard also to the limitations on the delegation of legislative power under Article 76.

The inconsistency in clause 169(1) may be removed by deleting the words "or giving effect to the principles of this Act", thereby confining the regulation-making power to matters required or authorised to be prescribed and matters necessary for carrying out the provisions of the Act.

The inconsistency in clause 169(3) may be removed by substituting the words "as soon as practicable and in any event not later than forty days after its publication in the Gazette" for the words "as soon as convenient after its publication in the Gazette". Clause 169(3) would then read:

"(3) Every such regulation shall, as soon as practicable and in any event not later than forty days after its publication in the Gazette, be brought before Parliament for approval. Any such regulation that is not so approved shall be deemed to be rescinded as from the date of disapproval, without prejudice to anything previously done thereunder."

If these amendments are effected, the inconsistencies identified above will cease. Subject to these amendments, we find no inconsistency on the grounds considered. In their absence, clause 169 will require the special majority prescribed by Article 84(2) of the Constitution.

Immigration Areas or Zones at Approved Ports

The Petitioner has challenged clauses 45 and 65, which principally relate to the designation of approved ports on private land and the responsibility for providing and maintaining immigration facilities. The Bill does not clearly distinguish between a port designated to meet a governmental requirement and a privately

operated commercial port. The resulting uncertainty in the exercise of statutory powers renders these clauses, in their present form, inconsistent with Article 12(1) of the Constitution.

Learned Deputy Solicitor General explained that where a private party operates an approved port for profit, the owner or occupier may properly be required to provide and maintain the necessary immigration facilities. However, where a port is designated to meet a specific governmental requirement and is not privately operated for profit, the Government should bear such costs. Accordingly, in paragraph 110 of his written submissions, he undertook to add the words "subject to the law relating to land acquisition, where applicable" at the end of clause 45(1).

In paragraph 111 of his written submissions, he further undertook to introduce a provision allocating the costs of providing and maintaining immigration facilities. The proposed provision reads:

"The cost of providing and maintaining the immigration facilities and resources provided for in paragraph (b) of subsection (1) shall be borne by the owner or occupier of such approved port: Provided that where the approved port is declared by the Minister for a specific requirement of the Government, and is not operated by a private party for profit, the Government shall bear the cost of providing and maintaining the said immigration facilities and resources."

Since the Bill already contains a clause 65(4), which creates an offence and prescribes a penalty, the proposed provision shall be inserted with appropriate numbering and any necessary consequential renumbering.

If clause 45(1) is amended and the proposed provision concerning the costs of immigration facilities is inserted as set out above, the inconsistencies with Article 12(1) of the Constitution will cease.

Identifying information, data sharing and automated decision-making

The Petitioner challenges clauses 80(e), 81(1)(b), 172(1)(o), 173, 174 and 175 as being inconsistent with Articles 12(1), 13(1), 13(2) and 14(1)(i) of the Constitution. Similar

concerns were considered in the previous Special Determination, and safeguards have since been incorporated into the present Bill. Having considered these provisions in their statutory context, we find no inconsistency on the grounds advanced, subject to the clarification concerning clause 174 set out below.

Clause 174 authorises the Controller General to share identifying or other information with local or international law enforcement agencies, subject to an agreement governing the use, method of sharing and protection of such information, and compliance with the law relating to personal data protection in Sri Lanka. Learned counsel for the Petitioner expressed concern that the reference to "written law" might create uncertainty regarding the applicable data protection safeguards. In paragraph 116 of his written submissions, learned Deputy Solicitor General undertook to delete the word "written". Accordingly, the concluding words of clause 174 would read "in accordance with such law relating to personal data protection in Sri Lanka". We record this undertaking. The proposed deletion shall not dispense with compliance with the applicable legislation relating to personal data protection.

Summary

For the foregoing reasons, we determine as follows:

(1) Clause 43(3), in its present form, is inconsistent with Articles 12(1) and 14(1)(i) of the Constitution. These inconsistencies will cease if clause 43(3) is replaced and a new clause 43(4) is inserted in the terms set out above.

(2) Clause 169, in its present form, is inconsistent with Article 12(1) of the Constitution, having regard also to Article 76. This inconsistency will cease if clauses 169(1) and 169(3) are amended in the manner specified above.

(3) Clauses 45 and 65, in their present form, are inconsistent with Article 12(1) of the Constitution. These inconsistencies will cease if clause 45(1) is amended and the proposed provision concerning the costs of immigration facilities is inserted with appropriate numbering, as set out above.

(4) We find no other inconsistency with the Constitution on the grounds considered. We also record the undertaking to amend clause 174 by deleting the word "written".

Where the amendments necessary to remove the identified inconsistencies are not effected, the relevant provisions will require the special majority prescribed by Article 84(2) of the Constitution.

We place on record our appreciation of the assistance rendered by Mr Manohara Jayasinghe, learned Deputy Solicitor General, appearing for the Attorney-General, and Mr Pulasthi Hewamanna, learned counsel for the Petitioner.

A. L. Shiran Gooneratne, J.
Judge of the Supreme Court

Mahinda Samayawardhena, J.
Judge of the Supreme Court

Sampath K. B. Wijeratne, J.
Judge of the Supreme Court