

S.C. (S.D) Nos. 13-22/05

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

‘NATIONAL AUTHORITY ON TOBACCO AND ALCOHOL’ Bill

S.C. (S.D) No. 13/2005	Petitioner	The Lion Brewery Ceylon Ltd., Colombo 01
	Interventient Petitioners	Life Mathdravya Nivarana Vyaparaya, Kandy Sri Lanka Amadyapa Samitha Sammelanaya, Colombo 05 Alcohol & Drug Information Centre, Colombo 05. I.O.G.T. Regional Council for South East Asia, Colombo 05 Sri Lanka Temperance Association, Colombo 11 Rev.Kingsley Perera, Sri Lanka Baptist Sangamaya, Colombo 08 Rt. Rev.Kumara Illangasinghe, Bishop of Kurunegala, Rt. Rev. Duleep de Chickera, Bishop of Colombo Rev.W.P.Ebenezer Joseph, President, Methodist Church of Sri Lanka, Rev. Charles N.Jansz, President, Dutch Reformed Church in Sri Lanka Lawyers for Human Rights & Development, Colombo 08
S.C. (S.D) No. 14/2005	Petitioner	The Ceylon Brewery Ltd., Colombo 01
S.C. (S.D) No. 15/2005	Petitioner	Ceylon Tobacco Co. Ltd., Colombo 15
S.C. (S.D) No. 16/2005	Petitioner	Ceylon Tobacco Co. Ltd., Distributors' Association, Colombo 02
	Interventient Petitioner	Swarna Hansa Foundation, Battaramulla
S.C. (S.D) No. 17/2005	Petitioner	I.D. Lanka Ltd., Kotalawela, Kaduwela
S.C. (S.D) No. 18/2005	Petitioner	Kudagoda Bopearachchige Priyantha Saman Kumara, New Saman Hotel & Bakery, Malabe
S.C. (S.D) No. 19/2005	Petitioner	R.A.S. Wijesekera, Wilegoda, Kalutara North
S.C. (S.D) No. 20/2005	Petitioner	Distilleries Co. of Sri Lanka Ltd., Colombo 10
	Interventient Petitioners	Green Movement of Sri Lanka Ltd, Colombo 10
S.C. (S.D) No. 21/2005	Petitioner	Orient Lanka Ltd., Colombo 01
S.C. (S.D) No. 22/2005	Petitioner	Cargills (Ceylon) Ltd., Colombo 01
	Interventient Petitioner	J.R.De Cruz, Dehiwela

S.C. (S.D) Nos. 13 to 22/05 Respondents

1. Hon. Attorney General
2. Ven. (Dr) Omalpe Sobhitha Thero, Isipathanaramaya, Colombo 05

BEFORE : S.N. SILVA.C.J.
Ms. S. TILAKAWARDANE.J
N. E. DISSANAYAKE.J

COUNSEL : K.N.Choksy, P.C. with Maithri Wickremasinghe,
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K.N. Choksy, P.C. with Maithri Wickremasinghe,
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K.N. Choksy, P.C. with Kissan Wijetunga, V.K.Choksy,
Shanaka Amarasinghe and Ms. Sunethra Gunaratne for petitioners

instructed by Julius & Creasy in 15/05
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Shanaka Amarasinghe for Petitioner instructed by
Julius & Creasy in 16/05
S.L. Gunasekera with Maithri Wickremasinghe,
and Shanaka Amarasinghe for Petitioner instructed
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Shanaka Amarasinghe for Petitioner instructed
by Julius & Creasy in 18/05
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Petitioner in 19/05
Sanjeewa Jayawardane for Petitioners in 20/05 &
21/05 instructed by Sudath Perera Associates
Sanjeewa Jayawardane for Petitioners in 22/05
instructed by Dissanayake Amaratunga Associates

Manohara de Silva with Govinda jayasinghe,
Bandara Thalagune, W.D. Weeraratne, K.H.C.
Kahandawela and Auska Perusinghe for 2nd Respondent and
intervenient Petitioner in 13-15/05
Kalyananda Tiranagama with M.J.A. Hassen, H. Ratnayake,
Niluni Manthrinayake and C. Bandara
for intervenient Petitioner in 13-15/05 & 17/05
Chandana Prematilleke with Lilan Weerasooriya
for intervenient Petitioners in 13/05 & 15/05
P.A.D. Samarasekera; P.C., with S. Nanayakkara for
intervenient Petitioners in 13/05 & 15/05.
Kanishka Witharana with Medha N. Gamage for
intervenient Petitioner.
Ms. Ruwana Rajapakse with Upul Deshapriya for
intervenient Petitioner in 20/05.
Mohan Peiris, P.C., for intervenient Petitioner in 22/05.
M.A. Sumanthiran with Vijula Arulanathan and
Viran Corea instructed by Moahan Balendra for
intervenient Petitioners:-

- (1) Rev. Kingsley Perera, Head of Sri Lanka Baptist Sangamaya
- (2) Rt. Rev. K. Illangasinghe, Bishop of Kurunegala, Church of Ceylon
- (3) Rt. Rev. Duleep de Chickera, Bishop of Colombo, Church of Ceylon
- (4) Re. W.P. Ebenezer Joseph, President, Methodist Church
- (5) Rev. Charles Jansz, President, Dutch Reformed Church of Sri Lanka.

Shavindra Fernando, D.S.G., with Nerin Pulle, S.S.C., for the A.G

Court assembled for hearing at 10.30 a.m. on 10th January 2006
Written Submissions tendered by Counsel on 16th January 2006

A Bill bearing the above title has been presented as a Private Member's Bill by Ven (Dr) Omalpe Sobitha Thero, Member of Parliament and it has been published in the Government Gazette as required and placed on the Order Paper of Parliament. Fourteen Petitions have been presented to this Court challenging the constitutionality of the Bill in its entirety and of several of specific provisions, in terms of Article 121(2) of the Constitution. On the basis of this challenge ten petitions have been filed to intervene in support of the Bill

Broadly, the challenge to the Bill and its provisions come from leading manufacturers and producers of tobacco and alcohol products and those engaged in the wholesale and retail distribution and sale of these products. Whereas, the intervenients represent various organizations engaged in activities to curb the use and consumption of tobacco and alcohol products. The Hon. Member of Parliament who presented the Bill and who is cited as the 2nd Respondent has also filed papers in support of the Bill. A significant feature is that the Bill presented by a Member of the Buddhist Clergy is supported in its content by several Bishops and Heads of Christian Churches. Counsel representing them submitted that there should be further provisions included in the Bill prohibiting smoking in public places, which would be adverted to later.

The Bill contains provisions to set up a National Authority on Tobacco and Alcohol, for purposes inter alia-

- i) to advise the Government on the implementation of the National Policy on tobacco and alcohol;
- ii) to recommend the measures to minimize harm arising from the consumption of tobacco and alcohol products;
- iii) to make necessary recommendations to minimize illicit drug use and to monitor progress of investigations and criminal proceedings relating to alcohol, tobacco and illicit drug trade;

The Bill also creates new offences, particularly with regard to the sale of tobacco and alcohol products and the promotion of such sale by means of advertising and sponsorship of sports and cultural events.

The particular challenge to the Bill as a whole is on the basis that it amounts to an infringement of the fundamental rights of the Petitioners guaranteed by Articles 10, 12(1) and 14(1) (g) of the Constitution.

It is their case that the production and sale of tobacco and alcohol, directly affected by the Bill, are lawful trades carried on by the Petitioners unlike the illicit trade in alcohol and drugs. That, since the lawful trade of the petitioners is sought to be restricted in the manner set out in the Bill, it is discriminatory and denies them the equal protection of the law as guaranteed by Article 12(1) of the Constitution. It is contended that the Bill would in effect be a boon to the illicit trade.

It is submitted that since the petitioners' trade is lawful, any legislative measures to control advertising and promotion of such trade would affect the freedom of thought and conscience as guaranteed by Article 10 of the Constitution and the freedom of expression

including publication guaranteed by Article 10 of the Constitution and the freedom of expression including publication guaranteed by Article 14(1)(a); That, the Bill is a restriction of their freedom to engage in a lawful trade, business or enterprise, guaranteed by Article 14(1) (g) of the Constitution.

The submission of the 2nd Respondent and of the Intervent Petitioners in this regard is that the illicit trade that may be there in particular in alcohol and drugs is not comparable with the permitted trade of alcohol products as envisaged in the Bill. That, there is no question of any regulation or control on an illicit trade which is per se outside the pale of law and punishable as provided in several penal statutes. On the other hand, the measures that may be taken in terms of the Bill to promote good health by the avoidance of alcohol and tobacco consumption and use, would deter persons from use of all substances having addictive and harmful effects, whatever be their source. Finally, it was submitted that restrictions imposed are warranted in terms of Article 15(7), which permit restrictions of the fundamental rights guaranteed by Articles 12 and 14 inter alia for the protection of public health. This submission is based on the premise that the consumption of alcohol and tobacco products is per se harmful to health.

As regards the challenge to the Bill in its entirety, we have considered the two lines of submissions stated above. The parties have tendered extensive material from national and international research, studies and publications. The limited time available does not permit the Court to set down separately the content of these material and we would restrict to a general statement of what is revealed.

The publication, particularly of the World Bank that have been produced by the Intervent Petitioners reveals certain findings that have been made as regards the health consequences of smoking and states in particular that "tobacco contains nicotine, which substance is recognized to be addictive by international medical organizations. Tobacco dependence is listed in the International Classification of Diseases".

The publication proceeds to set out the manner in which nicotine addiction can be established quickly in young adolescents who have recently taken up smoking and states that tobacco will kill 4 million people in the next 12 months and is anticipated at present level to kill 10 million people by the year 2030. It is expected that 7 million of these deaths will be in "low income and middle income countries where cigarettes were once rare. As educated and prosperous people abandon smoking, the practice is becoming increasingly concentrated among the poor in most societies."

The intervent Petitioners have also produced the Statement issued by the Fifty-eighth World Health Assembly at its plenary meeting on 25.5.2005, which relates to the public health problems caused by harmful use of alcohol. The preamble of this statement sets out that according to the World Health Report 2002, 4% of the burden of disease and 3.2% of all deaths globally are attributed to alcohol which is the foremost risk to health in low-mortality developing countries and the third in the developed countries. The Assembly has requested the member states "to develop, implement and evaluate effective strategies and programmes for reducing the negative health and social consequences of harmful use of alcohol."

The Petitioners who are from the alcohol and tobacco industries and trade do not dispute the findings disclosed in these publications that emanate from specialized Agencies of the United Nations; their contention is that the health risk of the illicit trade is far worse and the restrictions sought be placed on the lawful trade would aggravate the health risk resulting from the illicit trade. This argument fails to account for the basic premise that the harmful impact of alcohol, tobacco and for that matter drugs, whether the source of supply of such substance is lawful or illicit, is a common pattern of use, addiction and dependence. Undoubtedly, the health risk of illicit use is worse. But, the behavioural tendency of use, addiction and dependence being the same, the lawful trade and the illicit trade would have the effect aggravating such behavioural tendency. The user would have recourse to the licensed sources as well as illicit sources when the behavioural trend is set in motion. Hence, from the point of public health, there is a harmful interlink. The likely pattern is that addiction will start from the licensed source and get aggravated in the fold of the illicit trade. On the contrary the trade that is carried out on the basis of a licence or authority of the law, which is found to be harmful to public health, should necessarily be subject to restraint in order to minimize the harmful consequences to public health. In this connection we cite the observations made by Supreme Court of India in the case of Vincent vs Union of India 1987 All India Reporter - S.C.I.-page 990 at page 995 which reads as follows:

"..... maintenance and improvement of public health to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged. Attending to public health, in our opinion, therefore, is of high priority - perhaps the one at the top.

Therefore the Bill taken as a whole considering its objects would constitute a permitted restriction in terms of Article 15(7) of the Constitution and is not inconsistent with 14(1) (g) of the Constitution which guarantees the freedom to engage in a lawful trade.

The alleged inconsistency with Article 12(1) of the Constitution on the basis of unequal protection of the law in relation to the 'illicit trade' is misconceived. An illicit trade and a trade that is permitted by law cannot be classified together for the purpose of legislation. In this instance what is permitted by law is classified separately in a law intended to minimize harm to public health. It is indeed the bounden duty of the State to take such measures in the face of proven risk to public health. The classification is therefore not inconsistent with Article 12(1) of the Constitution.

We are also of the view that there is no basis whatsoever to allege that the provisions of the Bill are inconsistent with the freedom of thought guaranteed by Article 10 of the Constitution. The Bill is intended to safeguard public health and would to that extent promote the freedom of thought. The harmful effects of the consumption of alcohol and tobacco as indicated in the publications of the World Bank and the World Health Organization referred to above, directly impair the functioning of the human brain. Any measures to prevent the impairment of brain cells resulting from the use of alcohol and tobacco products as indicated in the medical research would promote the freedom of thought. Therefore we reject in its entirety the submission that the provisions of the Bill are inconsistent with Article 10 of the Constitution.

From this point it is necessary to proceed to consider the challenge made by the Petitioners in respect of the particular provisions of the Bill. The main thrust of the Petitioners was in relation to Clause 29 of the Bill which makes it an offence to sell any tobacco or alcohol product within a radius of 100 meters of any premises, frequented mainly by children or young adults.

Clause 29(2) defines the term "children" to mean persons who are under 18 years of age and "young adults" to mean persons between 18 and 25 years. The phrase "premises frequented by young adults or children" is defined to include schools, tutorials, playgrounds and Higher-Education Institutions. The contention of the Petitioners is that the wide ambit of this offence would make it impossible to sell any tobacco or alcohol product within the city of Colombo or any other town in Sri Lanka, considering that there are so many schools, tutorials, playgrounds, and so on. The Petitioners produced detailed evidence in relation to Colombo.

It is also contended that the provision is lacking in rationality since the total ban on sale within the area cannot be reasonably related to the object that is sought to be achieved, namely, the prevention of sale to children and young adults. The wide ambit of the provision would prevent the sale to all persons including adults and in effect amount to a total prohibition which is not intended by the Bill. On this basis it is contended that the provisions of this Clause are inconsistent with Article 12(1) and 14(1) (g) of the Constitution.

The object of the Bill is not to impose a total prohibition on the sale of tobacco and alcohol products. As contended by the Petitioners, the long title of the Bill states specifically that it intended to make provision to "deter persons especially children from taking up to smoking and alcohol consumption by reducing their access to tobacco and alcohol products."

If the objective in relation to children and young persons is to be achieved the prevention and sale should be in relation to such persons and not in relation to the entirety of the public. The prohibition in clause 29 would in effect result in a prevention of sale to all in Colombo and other cities. Therefore we are inclined to agree with the Petitioners that clause 29 as presently formulated is not rationally related to the objective that is sought to be achieved and is therefore inconsistent with Article 12(1) of the Constitution.

Since the provision would in effect prevents a sale of these products, which is now permitted by law in the city of Colombo and other populated areas, we are of the view that it is also inconsistent with Article 14(1)(g) of the Constitution.

At the hearing before Court the Petitioners and the intervenient Petitioners agreed that the clause be replaced with a suitable provision to prohibit the sale of tobacco and alcohol products to young persons. The submission of the Petitioners was that the prohibition should apply to those below 18 years since persons above the age of 18 are entitled to exercise of the franchise. We have to note that the consumption and use of alcohol and tobacco on the one hand and the exercise of franchise on the other are not comparable instances. The exercise of franchise is not by any means harmful to health. On the other hand the consumption of tobacco and alcohol are per se harmful to health. Therefore a person should make an informed decision having considered the harmful consequences before taking to the consumption and use of tobacco and

alcohol. An informed choice is opposed to what we would call an "impressionable choice". In the circumstances we are of the view that it would not be inconsistent with any provision of the Constitution to impose a total ban on the sale of tobacco and alcohol products as defined in the Bill to persons below the age of 21 years. A suitable amendment should be made in this regard to substitute clause 29 of the Bill with a provision to prohibit the sale of tobacco and alcohol products to persons below the age of 21 years.

The next main contention of the Petitioners is with regard to clause 33 of the Bill which contains a prohibition of alcohol and tobacco advertisements. The Petitioners contended that the prohibition would be inconsistent with Article 14(1)(a) and 14(1)(g) of the Constitution. We have to consider the prohibition on advertising on the basis of the findings stated above that the consumption and use of tobacco and alcohol is per se harmful to public health.

The contention of the Petitioners is two fold -

- i. that advertisement would give an opportunity to any person consuming these products to make a choice of what is more suitable to his liking and thereby promote a better choice;
- ii. that advertisements would also carry a warning of risk factors, thereby promote the public to make an informed choice whether they should use a particular product or not;

The two fold contention in our view cannot overcome the basic premise that the consumption or use of tobacco and alcohol are harmful to health. Whether it is in the guise of promoting a choice or making an informed decision of what should be purchased, since the end result is going to be harmful to public health the restriction in our view would in any event be permissible in terms of Article 15(7) of the Constitution.

Further, on the question whether a prohibition on the advertisement of any article, could per se constitute a restriction on the freedom of speech and expression, it is relevant to cite the findings of the Supreme Court of India in the case of *Hamdard Dawakhana vs Union of India* AIR 1960 S.C page 544. In this case it was held that a total prohibition on advertisement imposed by the Drug and Magic Remedies (Objectionable Advertisement) Act was not inconsistent with the corresponding Article 19 (1)(a) of the Indian Constitution. It was held that if the prohibition merely deprives a trader from commending his wares it would not fall within the freedom of speech as guaranteed by the Constitution. The Supreme Court of India adopted a useful observation made by Justice Mc.Kenna in *John. W.Rast vs Van Deman & Lawis Co., 1915 60 U.S.Lawyers Ed.679 at 690* where it was stated as follows:

"Advertising is merely identification, and description appraising of quality and place. It has no other object than to draw attention to the article to be sold and the acquisition of the article to be sold constitutes the only inducement to its purchase."

It was further held that advertising does not come within the objective of the freedom of speech which is intended to safeguard the natural right of an organized freedom loving society to impart and acquire information about a matter of common interest. We are inclined to accept this statement as to the ambit of the freedom of speech and expression and hold that advertising does not come within its scope.

For these reasons we are of the view that the prohibition in Clause 33 on advertisement is not inconsistent with any provision of the Constitution.

We would now deal with other clauses on which specific submissions have been made by the Petitioners. They are -

Clause 3 -As to the membership of the Authority

It was contended that this provision is inconsistent with Article 12(1) of the Constitution, since there is no representative from the Alcohol and Tobacco trade or Industry in the Authority. It was contended that this absence of representation in the Authority denies to persons in the "trade" the equal protection of the law guaranteed by Article 12(1) of the Constitution.

We are of the view that questions of policy far outweigh questions of legality in determining the constitution of the Authority and no trade or group could claim a right to secure membership. Furthermore, in this instance the object of the Bill is to limit tobacco and alcohol related harm being per se contrary to the interests of the trade which is to promote its consumption and use.

The strenuous objections raised by the trade against the enactment of the Bill itself in its entirety demonstrate the hostile attitude of the trade to the Bill. They are certainly not inclined to promote the objectives of the Bill. Therefore they cannot demand by means of Article 12(1) of the Constitution, a right to be represented in the Authority. Accordingly we see no merit in this ground of objection.

Clause 2 It is submitted that the Secretary of the Ministry of Finance should also be an ex-officio member of the Authority, since the State levies revenue on the alcohol and tobacco trade by means of duties and fees. In regard to this matter as well we are of the view that representation in the Authority, especially in relation to officials, is a matter of policy. The object of the Bill does not relate to revenue measures in respect of alcohol and tobacco trade. Therefore we are of the view that the absence of the Secretary of Ministry of Finance from the membership of the Authority is not a matter that could be raised as an inconsistency with Article 12(1) of the Constitution.

Clause 3 In terms of Clause 5(2) the President may remove an appointed member of the Authority for reasons to be assigned. It was submitted that since Article 35(1) gives the President immunity from suit and it would not be possible to seek redress from any decision of the President to remove a Member from the Authority.

We are of the view that the immunity granted to the President cannot be the basis to prevent discretionary power being vested in him by law. The President being Head of State and Head of Government would undoubtedly act for good reason in the exercise of any discretion vested in him. In this instance the President is required to assign reasons for the removal of an appointed member.

We are of the view that this is a sufficient safeguard against the arbitrary exercise of power by the President. Therefore we do not see any merit in this ground of objections.

Clause 16 of the Bill empowers the Minister on the advice of the Authority to issue general or special directions to any Government Department or Statutory Institution requiring any such Department or Institution to carry out such acts as are specified in such direction relating to the use of tobacco and alcohol products. It was submitted that existing law such as the Excise Ordinance, contain comprehensive and stringent provisions to control the liquor industry. Therefore it was submitted that the directions the Minister is empowered to issue in terms of clause 16 may be in conflict with the special legislation now in force covering these subjects. Although this does not raise any specific issue of constitutionality, there should not be room for conflict in the application of different laws. Therefore we are of the view that it was appropriate to amend clause 16 by providing that any direction to be issued should not be inconsistent with applicable law.

Clause 18(2)(a) provides for sums to be made available to the Authority from the Consolidated Fund to be paid into the Fund of the Authority. It was submitted that this provision is inconsistent with Article 152 of the Constitution which requires that a Bill or a motion affecting public revenue could only be presented by a Minister with the approval of the Cabinet of Ministers. The basis of the submission is that since this is a Private Member's Bill, clause 18(2)(a) would be inconsistent with the specific requirements of Article 152.

We are of the view that the provisions of clause 18(2)(a) do not provide for any specific amount to be paid out of the Consolidated Fund but it is mere enabling provision. It is not a charge on the Consolidated Fund. If a specific amount is to be paid from the Consolidated Fund, such amount would have to be authorized by Parliament upon a motion as set out in Article 152. In the circumstances there is no inconsistency with Article 152 of the Constitution.

Clause 31 It was submitted that this clause, which prohibits the manufacture and sale of any tobacco product which does not generate smoke may prevent the sale of articles such as "Nicotine patches" that are intended to assist people in giving up smoking altogether. This submission presupposes a beneficial use of tobacco products of which the Court has not been furnished with sufficient material. The material produced before Court is all consistent in the opinion that tobacco products are harmful to public health. In any event we are of the view that if there be any tobacco product the use of which is to eliminate tobacco related harm, by a process of interpretation, the prohibition in Section 31 would not apply to such article since its sale would promote the objective of the Act as stated in the long title.

Clause 33(2)(f) is an exception to the prohibition on advertisements and it was submitted that in place of clause (f), a clause should be introduced which specifically permit the publication of material beneficial to the public. In these circumstances we are of the view that there is merit in the submission to which all Counsel agreed that in place of clause 33(2)(f) the following clause be included-

"to publish, transmit, or broadcast any scientific, educational, social, medical, technical or other material or information beneficial to the public pertaining to Alcohol Products or Tobacco Products."

Clause 34 It was submitted that the use of the name only of any manufacturer of tobacco or alcohol product be permitted to be used in connection with the sponsorship of any of the events as specified in paragraph (a) (b). It was further contended that the reference to cultural and social activities in sub-paragraph (a) be deleted and International Sporting events be excluded from this prohibition.

We are of the view that the prohibition is intended to achieve the objective of the Bill. The purpose is to prevent any form of sponsorship of educational, cultural, social or sporting events as provided in sub-paragraph (a) since these events have the objective of enhancing health and the quality of life of people. These objectives cannot be reconciled with the harmful effects of tobacco and alcohol products.

In the circumstances we are of the view that the provisions of Clause 34 promote the objective of the Bill and are not inconsistent with the Constitution.

Clause 37 It was submitted that this clause be amended to provide for tests to be done only as formulated by the Government Analyst. We are of the view that there is merit in this submission and that if no qualification is made the prescribed tests may require heavy expenditure to be incurred as submitted by the Petitioners. In these circumstances we are of the view that provisions in Article 37 should be amended by specifying that the tests be prescribed in consultation with the Government Analysts.

Clause 42 It was submitted that the definition of the alcohol products contained in clause 42 of the Bill may include some pharmaceutical products and ayurvedic drugs which are said to contain as much as 4% alcohol. The Petitioners have no interests in the trades in respect of which the submissions have been made. Those in the pharmaceutical and ayurvedic drug industry have not submitted any petition to this Court on this matter. The alcohol content to be specified is a matter of policy and the Court has not been provided with any material to demonstrate that the definition is per se unreasonable or arbitrary so as to be inconsistent with Article 12(1) of the Constitution.

Clause 38 It was submitted that the provisions in this Clause for the suspension of a driving licence where a person is accused or suspected of committing an offence under Section 151(1), 151(1)(a) or 152 of the Motor Traffic Act, would be inconsistent with the presumption of innocence contained in Article 13(5) of the Constitution. The basis of the submission is that such suspension would in effect be a punishment imposed in advance. We are not inclined to agree with the submission that the suspension of the licenses is per se a finding of guilt as contemplated in Article 13(5) of the Constitution. A person is authorized to drive a motor vehicle in terms of the Motor Traffic Act on the basis of a licence or authority granted under law. The sections of the Motor Traffic Act included in the clause relate to driving under the influence of liquor and the suspension of the licence is intended to protect the public from a misuse or abuse of authority granted under the law.

In the circumstances considering the grave danger posed to the public by a person driving under the influence of liquor, we are of the view that provision for immediate action to be taken by the suspension of the driving licence of such a person would not be inconsistent with Article 13(5) of the Constitution. However, this matter should be left in the discretion of Court and clause 38 should be suitably amended to substitute the word "shall" in line 20 with the word "may".

A submission was made by counsel representing the Bishops and the Heads of Several Christian Churches in Sri Lanka that in view of the harmful effects of smoking in public places which constitute a serious health hazard to those who do not smoke, a provision should be included in the Bill for the prohibition of smoking in public places that are enclosed. The evidence that has been adduced support this submission of the harmful effects of what is described as "passive smoking".

The long title of the Bill states that it is intended for the elimination of tobacco and alcohol related harm. In the circumstances we are inclined to agree with the submission that

suitable provisions should be included in the Bill for the prohibition of smoking in enclosed public places. Such a prohibition would not be inconsistent with any provision of the Constitution. A suitable amendment for this purpose may be made in Parliament.

For the reasons stated above we make a determination in terms of Article 123(1) of the Constitution as follows:

- i) that the bill taken as a whole is not inconsistent with the Constitution on of the other grounds that have been urged by the Petitioners;
- ii) that clause 29 is inconsistent with Articles 12(1) and 14(1)(g) of the Constitution. The objective of this clause could be achieved by substituting this clause with a suitable provision that prohibits the sale of tobacco and alcohol products to persons below the age of 21 years;
- iii) that clause 16 be amended to provide that any direction that may be issued should be subject to the provisions of any law that is specifically applicable;
- iv) that clause 33(2)(f) be substituted with a provision worded in the manner stated above;
- v) that clause 37 be amended to provide for the tests that may be prescribed to be formulated in consultation with the Government Analyst;
- vi) that clause 38 be amended by substituting the word "shall" appearing in line 20 with the word "may";
- vii) that on the basis of the submission made on behalf of the Bishops and Heads of Christian Churches, a suitable provision may be included to prohibit smoking in enclosed public places;

In conclusion we wish to place on record our appreciation for the valuable assistance rendered by the Deputy Solicitor General and the learned Counsel who made submissions on behalf of the Petitioners and Intervenient Petitioners.

Sarath N Silva
Chief Justice

Shirani Thilakawardena
Judge of the Supreme Court

N.E.Dissanayake
Judge of the Supreme Court