

SUBARIS v PERERA

(2011) SLR 224

B Georges for the petitioners
R Govinden for the respondents

Ruling delivered on 5 July 2011

Before Karunakaran, Renaud, Gaswaga JJ

KARUNAKARAN J: At all material times, the fifth petitioner - Ailee Development Corporation Limited (ADCL) - was a locally registered company engaged in the business of hoteliers in Seychelles. The first four petitioners herein were shareholders of ADCL holding 84% shares in aggregate, whereas the Government of Seychelles was also a shareholder, but a minority one, holding only 8% of the shares in ADCL.

On 4 February 2008, the Government of Seychelles applied to the Supreme Court of Seychelles - in Civil Side 27 of 2008 – seeking an order for the winding up of ADCL. The order was sought on the ground that it was just and equitable to wind up ADCL since the substratum of its business operation had allegedly been lost having regard to all the circumstances of the case. However, ADCL vehemently resisted the application. It vigorously challenged the ground on which the winding up order was sought by the Government.

The Court began enquiry into the matter. The application was heard. All proceedings were conducted inter partes in the Supreme Court presided over by the first respondent, Judge Andrew Ranjan Perera, who was then, the Acting Chief Justice of Seychelles. Having heard the case on the merits, the trial Judge in his ruling dated 23 June 2008 found that it was just and equitable to make an order for the winding-up of ADCL. The judge, therefore, granted the application in favour of the Government and made a winding-up order accordingly. The Judge also made a consequential order in favour of the Government, wherein he authorized the sale of the immovable assets of ADCL - in liquidation - for a sum payable in Seychelles Rupees. Being aggrieved by the said ruling, the petitioners appealed against it to the Seychelles Court of Appeal.

Since the matter was pending before the appellate court for final determination, the petitioners filed several motions before the trial Court seeking interim relief against the winding-up order. The interim relief was sought with a view to maintain the status quo in relation to winding-up, so that the petitioners would not be deprived of the fruits of the final judgment if given in their favour by the Court of Appeal. In fact, on 3 September 2008, the petitioners applied to the trial judge for a stay of the winding-up proceedings, pending appeal. The petitioners claimed therein that unless the winding-up proceedings were stayed, the appeal pending in the appellate court, would not serve any purpose. However, on 10 September 2008, the judge ruled against the petitioners and declined to grant a stay having no regard to the fact that

the petitioners might be deprived of the fruits of the final judgment if given in their favour by the Court of Appeal.

According to the petitioners, the trial judge showed a propensity to support the Government throughout the hearing, in his acts or omissions inter alia:

- (i) The Judge appointed the Provisional liquidator at the instance of an ex parte application made by the Government disregarding the procedures and the law guiding such applications.
- (ii) The Judge failed to correct the error in making the ex parte appointment in this respect in the first place when given the opportunity to do so.
- (iii) The Judge ignored the points and failed to address the issues raised by the petitioners in their submissions to set aside the ex parte appointment.
- (iv) The Judge intervened from the Bench in support of the Government on occasion and assisted the Government with its case.
- (v) The judge showed clear bias for the Government and against the petitioners; and
- (vi) The judge failed to afford the petitioners time to prepare their final submissions.

In the circumstances, the petitioners allege that the manner in which the trial Judge conducted the entire hearing of the winding-up petition and subsequent application for a stay, the constitutional right of the petitioners/ADCL to a fair trial was contravened by the acts and/or omissions of the trial judge both in a number of specific instances as mentioned supra and generally.

Therefore, the petitioners have now come before this Court for constitutional redress invoking article 46(1) of the Constitution, which reads -

A person who claims that a provision of this Charter has been or is likely to be contravened in relation to the person by any law, act or omission may, subject to this article, apply to the Constitutional Court for redress.

The petitioners have indeed, instituted the instant proceedings against the trial judge, alleging that his acts and/or omissions in conducting the impugned hearing of the winding-up matter contravened the petitioners' right to a fair hearing guaranteed under article 19 of the Constitution vide paragraph 7 of the petition. Indeed, article 19(7) reads as;

Any court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority the case shall be given a *fair hearing within a reasonable time*. (emphasis mine)

Therefore, the petitioners jointly pray this Court for a declaration that the petitioners did not obtain a fair hearing in the proceedings heard by the first respondent judge Andrew Ranjan Perera and hence for a writ of certiorari to quash the said proceedings and all orders made therein and thereunder.

On the other side, the first respondent, Mr Andrew Ranjan Perera, duly represented by the Attorney-General Mr Govinden, has raised a preliminary objection to the instant petition grounded on a point of law. According to Mr Govinden, the petition against the first respondent in this matter is not maintainable in law and liable to be dismissed *in limine*. The contention of the Attorney-General in this respect runs in essence as follows:

Undisputedly, the first respondent is a Judge of the Supreme Court of Seychelles. He performed all the alleged acts of commission or omission in his capacity and in pursuance of his functions as Judge of the Supreme Court; as such his acts of commission or omission are evidently judicial acts that are subject to immunity granted by the Constitution of Seychelles. Article 119(3) reads as;

Subject to this Constitution, Justice of Appeal, Judges and Masters of the Supreme Court shall not be liable to any proceedings or suit for anything done or omitted to be done by them in the performance of their functions.

Hence, according to Mr Govinden, the first respondent is legally immune and can not be liable to any proceedings or suit including the instant proceedings instituted by the petitioner for constitutional redress. In support of his contention, Mr. Govinden also cited the recent case of *Frank Elizabeth v The President of the Court of Appeal - Constitutional Case No 2 of 2009* - wherein the Constitutional Court held that a judicial officer cannot be sued for any acts or omissions done during the course of discharging his judicial duties. By virtue of article 119(3) of the Constitution, judges in this country enjoy total immunity from suit in respect of acts done during the course of their judicial functions. The instant action is not a private suit brought against Mr Perera in his private capacity. Besides, as per pleadings it is not the case of the petitioner that the trial judge acted *ultra vires* by being malicious or acted on ill-will in deciding the case against the petitioners. He is simply sued herein, for the decisions he took as a judge during the performance of his duties and functions as judge.

Moreover, according to Mr Govinden, the phrase namely, "Subject to this Constitution" used in article 119 above does not restrict the immunity granted in favour of the judicial officers but rather it restricts the right conferred on a person by article 46(1) of the Constitution to sue the alleged contravener for constitutional redress. This phrase simply implies that right to redress is subject to the limitation imposed by article 119 (3). In other words, a person who claims that a provision of this Charter has been or is likely to be contravened has the right under the Constitution to apply for redress by instituting proceedings against the contravener in the Constitutional Court, but that right is limited, when the alleged contravener is a judicial officer, by virtue of article 119 of the Constitution. In the circumstances, Mr Govinden submitted that the instant proceedings against the trial Judge Andrew Ranjan Perera is not tenable in law and liable to be dismissed. And, hence, he urged the Court to dismiss the petition *in limine*.

On the other side Mr B Georges, counsel for the petitioners submitted in essence that:

- (i) Firstly, the case law on the point of "Judicial Immunity" as set by the Constitutional Court in *Frank Elizabeth v The President of the Court of Appeal -*

Constitutional Case No: 2 of 2009, relied upon by the Attorney-General in support of his case, does not bind this Court as the Constitutional Court is not the highest Court. It is a court of equal jurisdiction. A differently constituted Constitutional Court may give a different decision on the same point as it is not bound by the previous decision of the Court of equal jurisdiction. And then, it is a matter for lawyers and academics to interpret which of these two decisions might be correct. Furthermore, Mr Georges argued thus:

It is not because this Court has ruled in a similar matter two days ago that this Court constituted by your Lordships must rule in the same way. There is a lot to be said for Courts being consistent but consistency is not the only reason people come to Court, because as has been often said, Courts can be consistently wrong.

Having thus argued counsel expressed his opinion that the Constitutional Court erred in the case of *Frank Elizabeth* as it mistook the procedural law to supersede the substantive law having no regard to the cardinal nature of the constitutional right. Therefore, Mr Georges invited this Court not to bind itself to the previous decision of this Court on the point of “judicial immunity” and determine the point on its own with open mind.

- (ii) Secondly, Mr Georges submitted that there are only two articles in our Constitution which do not permit any derogation. They are article 16, which guarantees the right to dignity and article 19, which guarantees the right to a fair hearing. According to him, both are completely absolute rights. In the absence of any expressed derogation in those articles, the judicial immunity under article 119(3) cannot restrict or take away the right of a person to come before this Court for constitutional redress invoking article 46(1) of the Constitution, when there is a contravention. Hence, the petitioners in this matter have an unfettered right to have constitutional redress from this Court notwithstanding the judicial immunity granted in favour of judicial officer.
- (iii) Thirdly, on the issue of malicious decisions by judges, Mr Georges submitted that if a judge is malicious that may give rise to a petition that there was no fair trial but the reverse need not follow. Because, there could be unfair trials without malice on the part of the Judge. It is not necessary for the petitioner to allege malice against the trial judge in the instant case. The allegation that the petitioner was denied his right to a fair hearing is sufficient to give rise to a cause of action in favour of the petitioner to institute the proceedings against the trial judge in this matter.
- (iv) Fourthly, it is the contention of Mr Georges that the right to a fair hearing enshrined in article 19(7) is not subject to any derogation at any time. It is absolute. This right guaranteed to the individuals is more sacrosanct, more precious and more important than the right granted for the judges not to be sued in the name of “judicial immunity”. According to Mr Georges, the right to immunity of the judicial officer is inferior to the right to a fair hearing of an individual. The rhetoric argument advanced by Mr Georges in this respect is worth quoting:

The right to justice is a fundamental right (appears) in the first part of the Constitution (under article 19 and so on). The right for judges not to be sued is an inferior right as it appears in article 119, ie at the back of the

Constitution... article 119(3) has the words at the beginning "Subject to this Constitution".

So it is not absolute. Article 119(3), the immunity of judges is subject to the Constitution. It has to be, because nobody, and with all due respect, not your Lordships, not the President of Court of Appeal, not anybody in this land is higher than the Constitution. Hence, the immunity of judges cannot take away the petitioners' right to have constitutional redress for the contravention of their fundamental right to have a fair hearing.

For these reasons, Mr Georges urged the Court to dismiss the preliminary objections raised by the respondents in this matter.

I diligently considered the arguments advanced by both counsel in support of their respective cases. I meticulously perused the relevant provisions of law and the Constitution relating to "judicial immunity" and its limitations, which indeed, is the bone of contention in this matter.

To my mind, there are three fundamental questions that arise for determination. They are –

- (i) Is the "judicial immunity" enshrined in our Constitution absolute or qualified?
- (ii) If qualified, what are its limitations as envisaged under article 119(3) of the Constitution? And
- (iii) Is the first respondent Mr Andrew Ranjan Perera as Judge of the Supreme Court immune from the instant proceedings by operation of article 119(3)?

I will now proceed to find answers to these questions as they appear above.

To answer to the first question - whether judicial immunity is absolute or qualified – I believe, one need not jump into the ocean of legal arguments on constitutional law and interpretations. From a simple exercise of plain reading of article 119(3) it is evident that the framers of the Constitution have diligently chosen to incorporate, at the beginning of the article, a clinching phrase to wit: "Subject to the Constitution". The use of this phrase clearly shows that the immunity granted to judges is restricted in nature and ambit. In passing, it is pertinent to mention here that the phrase used in this respect, is nothing but the antithesis of the "notwithstanding clause", or "override clause", which we normally and almost daily come across in statutes and other legal documents. These clauses are generally incorporated to show the unrestrictive or absolute nature of the matter in the context it refers to. Be that as it may, the literal meaning of the restrictive phrase is unambiguous and unequivocal.

It can simply be said that the immunity granted under article 119(3) is qualified or limited by the phrase "Subject to the Constitution". Besides, in order to invoke immunity under this article, the act in question should first of all, satisfy a condition precedent in that, it should be a "judicial act". This condition precedent is an inherent limitation set in the article itself, that is, it protects only "judicial acts" namely, anything done or omitted to be done by a judge in the performance of his/her judicial functions, not other unlawful acts or "malicious" or "criminal" acts committed outside his/her judicial function and capacity or anything sinister done in the guise of his

judicial function and capacity. It is therefore wrong to assume that the nature and ambit of judicial immunity granted to judges under our Constitution is absolute and has placed them above law. In this respect, I accept the arguments of Mr Georges that nobody in this land is higher than the Constitution.

As I see it, judicial immunity is a conditional privilege. It is not a licence for judges to do anything in the name of law and infringe the rights of others. Strictly speaking, immunity is accorded not to the individual but to the judicial office he or she holds, in order to ensure a free, independent, proper and effective functioning of that office, which is of greater importance in a democratic framework, than giving a legal protection to the individual, who holds that office. It simply serves as a shield, not as a sword in the hands of the judges to wield and injure the rights of his fellow citizens, as Mr Georges is attempting to portray through his eloquent argument. It is conferred on the judges, not because they are above law as misperceived by some, but because they are the protectors and regulators of freedom to ensure law prevails above all. Those protectors ought to be protected in first place, to preserve the “rule of law” in a democracy. However hungry an individual is, for freedom, he should never attempt to swallow the tongue that protects and regulates his feed for freedom. To every subject in this land, no matter how powerful, I would use Thomas Fuller’s words over three hundred years ago “Be you never so high, the law is above you” vide Lord Denning *MR Gouriet v Union of Post Office Workers* [1977] 1 QB 729. After all, judges are the agents who perform the judicial functions on behalf and for the benefit of the public, the principal. Hence, whatever the legal protection or immunity given to the judges, is eventually meant for the benefit of the public, not for the protection of malicious or corrupt or erring agents. The legitimacy of our courts rests solely on the public confidence that judges have the freedom to act independently, without fear of the consequences emanating from any quarter, be it a legal threat from the powerhouse of law or the like from the corridor of other powers visible and invisible.

The immunity provides the buffer needed for a judge to act. Judges are humans. They are not infallible. This reminds me of the great remark, which I think, was originally made by an American judge, speaking of the US Supreme Court to the effect that “We are final not because we are infallible. We are infallible because we are final”. Judges do make honest mistakes during the course of trial and at times in the performance of other judicial functions. The law is complex, and judges cannot call a recess of court to research every motion before making a decision. If a judge could be sued for damages, another judge might have to rule that the defendant judge was liable for injuries due to an erroneous decision or procedural flaw. Having judges judge one another could completely erode the integrity of the courts and undermine public confidence. It is pertinent to note that the doctrine of judicial immunity originated in early 17th century England in the jurisprudence of Sir Edward Coke. In two decisions, *Floyd & Barker* (1607) 77 ER 1305 and *the Case of the Marshalsea* (1612) 77 ER 1027 Lord Coke sitting in the Star Chamber, laid the foundation for the doctrine of judicial immunity, giving reasons which are, I believe, still relevant today.

Indeed, Lord Coke's reasoning for judicial immunity was presented on four public policy grounds:

1. Finality of judgment;
2. Maintenance of judicial independence;
3. Freedom from continual calumniations; and
4. Respect and confidence in the judiciary.

Hence, in my view, although “judicial immunity” appears to place the judges above law in this respect, such appearance is an inevitable evil. With due respect to Mr Georges, one has to live with it, until such time as the present system of democracy is replaced by a better system, an ideal one in future, that may perhaps, do away with the doctrine of judicial immunity and meet the changing needs of time and society. In any event, the immunity is conferred on a judge on an implied condition that he/she should perform his/her judicial functions without self-interest, fear or favour to anyone and in accordance with law and the Constitution. As he/she adjudicates upon the liberty and property of others, he ought to perform his duties with the highest degree of integrity, impartiality, ability and above all, with accountability not only to the public, but also to his own conscience. Judge not lest you be judged. For, with what judgment you judge, you shall be judged; and with what measure you mete, it shall be measured to you again (Mathew Chapter 7; Verses 1 & 2. If and when a judge acts, conducts or behaves in breach of the said implied condition, he/she will lose “immunity”, and may be impeached for “misbehaviour”. I will revert back to this point on misbehaviour later in this judgment.

In view of all the above, I agree with the contention of Mr Georges in that, the judicial immunity conferred on the Judges of the Supreme Court under article 119(3) of our Constitution is not absolute, but, a qualified one and thus, I find answer to the first question.

I will now, turn to the second question as to the “limitations” on the “judicial immunity”. It is evident that article 119(3) contemplates only “constitutional limitations” as it has specifically used the phrase “Subject to the Constitution”. This implies that Judges of the Supreme Court shall not be liable to any proceedings or suit except those proceedings which the Constitution itself has provided for and sanctioned against the judges, presumably found in some other provisions of the Constitution. In other words, article 119(3) guarantees as a rule (hereinafter called the “immunity rule”) that Judges shall not be liable to any proceedings or suit for anything done or omitted to be done by them in the performance of their functions. The exceptions to the rule are the “proceedings” that may be sanctioned by other provisions of the Constitution that could take away the immunity from judges and render them liable to those proceedings.

With this approach in mind, I meticulously went through the entire provisions of the Constitution looking for those constitutional exceptions. In that exercise, I could identify only one article in the whole Constitution that takes away judicial immunity and sanctions enquiry proceedings against erring judges before a special tribunal, the President and members of which ought to be appointed by the Constitutional Appointment Authority. That is, article 134, which reads:

- (1) A Justice of Appeal or Judge may be removed from office only –

- (a) for inability to perform the functions of the office, whether arising from infirmity of body or mind or from any other cause, or for misbehaviour; and
- (b) in accordance with clauses (2) and (3).

(2) Where the Constitutional Appointments Authority considers that the question of removing a Justice of Appeal or Judge from office under clause (1) ought to be investigated –

- (a) the Authority shall appoint a tribunal consisting of a President and at least two other members, all selected from among persons who hold or have held office as a Judge of a court having unlimited original jurisdiction, or a court having jurisdiction in appeals from such a court or from among persons who are eminent jurists of proven integrity; and
- (b) the tribunal shall inquire into the matter, report on the facts thereof to the Authority and recommend to the President whether or not the Justice of Appeal or Judge ought to be removed from office.

(3) Where, under clause (2), the tribunal recommends that a Justice of Appeal or Judge ought to be removed from office; the President shall remove the Justice of Appeal or Judge from office.

(4) Where under this Article the question of removing a Justice of Appeal or Judge has been referred to a tribunal, the President may suspend the Justice of Appeal or Judge from performing the functions of a Justice of Appeal or Judge, but the suspension -

- (a) may, on the advice of the Constitutional Appointments Authority, be revoked at any time by the President;
- (b) shall cease to have effect if the tribunal recommends to the President that the Justice of Appeal or Judge ought not to be removed from office.

On a careful reading of the above article, it is evident that judges lose their immunity, as and when they misbehave and shall be liable to the said enquiry proceedings. Now, one might ask whether the term “misbehaviour” used by the framers of the Constitution is sufficient to cover the entire misdeeds one can foresee that a judge may commit in the performance of his/her judicial functions. In my view, “misbehaviour” is an inclusive term commanding a broad sense that covers all improper or wicked or immoral and unlawful acts and conduct that could possibly be committed by a judge in the performance of his/her functions as judge or otherwise outside. This term also includes all “malicious” or “criminal” acts and other misdeeds committed outside his/her judicial function and capacity or committed in the guise of judicial function and capacity. All criminal acts are in a sense, acts of misbehaviour that carry a legal sanction; but, not all acts of misbehaviour are criminal acts. In all those scenarios, the judges shall lose the immunity, be held liable to those proceedings before the special tribunal and face the legal and other consequences. Now, a number of questions might arise as to whether an individual, who is affected by the alleged act of this nature, has the right to initiate proceedings against the erring judge before the tribunal by lodging a complaint with CAA; whether, he has a right to compel the CAA to act on his complaint and so on. Forgive me, I have no answers to all those questions now and here, since they all fall outside the ambit of this judgment. In any event, I have simply stirred these constitutional points, which

wiser heads in time may settle. Coming back to answering the second question, I find that the proceedings before the special tribunal discussed above are the only “constitutional limitations” envisaged under article 119(3) of the Constitution.

Finally, I will now turn to the third and the last question as to the immunity pleaded by the first respondent Mr Andrew Ranjan Perera in this matter. Undisputedly, Mr Perera was a Judge of the Supreme Court at the time the alleged acts of commission or omission were committed. There is no doubt that Mr Perera was acting in his judicial capacity throughout the proceedings and made those impugned decisions in the performance of his functions as judge of the Supreme Court. Hence, it goes without saying that all those alleged acts were and are in the eye of law, “judicial acts”. Thus, it satisfies the condition precedent set in the article itself to invoke immunity under this article.

Having said that, I note, the petitioners have applied to this court (Constitutional Court) instituting the present proceedings for constitutional redress in terms of article 46 of the Constitution. Obviously, article 46 does not contain any “Notwithstanding clause”, or “override clause” to supersede article 119 (3) thereby to deprive the judges of their constitutional protection guaranteed therein. In any event, article 46, as I see it, has nothing to do with article 119(3) of the Constitution. In fact, the former confers on a person a constitutional right to come before the Constitutional Court for redress, which is a positive right, in the nature of a sword, if I may say so, whereas the latter grants protection to a class of people from being held liable to proceedings or suit, which is a negative right, a shield. Therefore, both articles are, in my view of different genre and have nothing in common to establish any nexus. Mr Georges’ attempt to establish a nexus in this respect seems to be, highly farfetched. In the circumstances, I find that article 46 does not form part of or provide for any “constitutional exception” to the “immunity rule” enshrined in article 119(3) of the Constitution. Hence, in my judgment, the 1st respondent Mr Andrew Ranjan Perera as Judge of the Supreme Court is immune from the instant proceedings by operation of article 119(3) of the Constitution.

Before I conclude, I wish to make the following observations on some of the incidental issues raised by Mr Georges during the course of his submission.

(i) Stare decisis

On principle, it seems to me that, while this court should regard itself as normally bound by a previous decision of the Constitutional Court, on the point of “judicial immunity” in *Frank Elizabeth* cited by the Attorney-General in support of his case, nevertheless this Court is at liberty to depart from it, if it is convinced that the previous decision was wrong or given per incuriam. I do not think that an earlier decision of the Constitutional Court (including this Court) should be allowed to stand, when justice seems to require otherwise. However, in the instant case, we do not find any valid reason to depart from the previous decision of the Constitutional Court in *Frank Elizabeth* that has set a precedent on the point of judicial immunity.

(ii) Fundamental rights vis-à-vis constitutional rights

Although all the rights contained in the Constitution are “constitutional rights” in the loose and popular sense, there is a remarkable distinction between “fundamental human rights” and the “constitutional rights” in a legal sense. In fact, the rights enshrined in the Charter ranging from article 15 to 39 under Part 1 of Chapter III are “fundamental human rights”, whereas the rights contained in the other provisions of the Constitution are “constitutional rights”. The enforcement of fundamental rights is secured to a person by article 46, which provides for constitutional redress especially when his/her “fundamental rights” are contravened. On the other hand, in respect the “constitutional rights”, the enforcement of which is secured by article 130(1), which provides for constitutional redress especially when “constitutional rights” are contravened, that is, any provision of the Constitution, other than a provision of Chapter III that contains the Charter rights. Therefore, with due respect to the views of Mr Georges, the right granted by article 46 enabling a person to seek redress before this court, does not fall in the category of “fundamental human rights” enshrined in the Charter. The right to a remedy is simply a “constitutional right” as it has been accorded status as such in our Constitution. This is in contrast with the higher status of fundamental right accorded to this particular right in other democratic constitutions of the world. For instance, in the Constitution of India, the right to move the Supreme Court for constitutional redress, itself is among the fundamental rights guaranteed by the Constitution-see article 32 of the Constitution of India. Even in the United States of America, the right to a meaningful remedy is a fundamental right protected by the due process clause of the Fourteenth Amendment to the Constitution of the USA. Stated, simply: *Ubi jus, ibi remedium* - Where there's a right, there must be a remedy. It is my humble view, that while reviewing and updating the Constitution of Seychelles, one may consider the aspect of elevating the status of the right to constitutional redress to that of the Charter right advancing with the rest of the developed democratic constitutions of the world.

Having said that, I note the argument of Mr Georges to the effect that since the right contained in article 46 is a fundamental right (a superior right), it should be allowed to supersede the Constitutional right to immunity (an inferior right). That does not appeal to me in the least. In my considered view, in the same bundle of “constitutional rights” there cannot be a superior and an inferior right in the eye of law.

(iii) Caesar’s wife

Much has been said by the petitioner in this matter against the trial Judge, the first respondent, alleging that he always showed a propensity to support the Government throughout the hearing of the winding-up petition, presumably raising misgivings on his role in the conduct of the entire case. I am not here to judge the judge or to examine the accuracy and correctness of those allegations. In any event, this Court has no jurisdiction to entertain those matters either. However, as obiter, I should state that Caesar’s wife must be beyond suspicion. As Justice Michael Kirby, Judge of the High Court of Australia once mentioned -

In a pluralist society judges are the essential equalizers. They serve no majority nor any minority either. Their duty is the law and to justice. They do not bend the knee to governments, to particular religions, to the military, to money, to tabloid media or the screaming mob. In upholding law and justice,

judges have a vital function in a pluralist society to make sure that diversity is respected and the rights of all protected.

Having thus observed and for the reasons stated hereinbefore, I uphold the contention of the Attorney-General that the instant petition against the first respondent, Mr Andrew Ranjan Perera J is not maintainable in law. The petition is therefore dismissed accordingly.