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PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA

REFERENDUM (AMENDMENT)
ACT, No. 17 OF 1988

[Certified on 24th May, 1988]

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Referendum (Amendment) Act, No. 17 of 1988

[Certified on 24th May, 1988]

L. D.—O. 21/88.

AN ACT TO AMEND THE REFERENDUM ACT, NO. 7 OF 1981

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :—

1. This Act may be cited as the Referendum (Amendment) Act, No. 17 of 1988..

Short title.

2. Section 9 of the Referendum Act, No. 7 of 1981 (hereinafter referred to as the "principal enactment") is hereby amended in paragraph (a) of subsection (2) of that section by the substitution for the words "Department of Police, Sri Lanka Government Railway," of the words "Department of Police, Department of Prisons, Sri Lanka Government Railway".

Amendment
of section
9 of Act
No. 7 of 1981.

3. Section 17 of the principal enactment is hereby amended as follows :—

Amendment
of section
17 of the
principal
enactment.

(1) in subsection (1) of that section, by the substitution for the words "names and addresses of the persons appointed", of the words "names, the numbers of the national or other identity card issued by a government department or public corporation, and addresses of the persons appointed"; and

(2) in subsection (3) of that section by the substitution for the words "the name and address of the new polling observer", of the words "the name, the number of the national or other identity card issued by a government department or public corporation, and address of the new polling observer".

4. Section 33 of the principal enactment is hereby amended as follows :—

Amendment
of section
33 of the
principal
enactment.

(1) by the repeal of subsection (2) of that section, and the substitution therefor of the following subsection :—

"(2) Notice in writing stating the names, the numbers of the national or other identity card issued by a government department or public corporation, of the persons appointed under subsection (1) shall be given by the referendum agent or the person referred to in subsection (2) of

section 17 to the counting officer before the counting of votes commences. The counting officer may refuse to admit to the counting centre any counting observer whose name, the number of the national or other identity card issued by a government department or public corporation, and address have not been so given.”; and

(2) by the addition at the end of that section of the following new subsection:—

“ (3) The counting observers appointed under subsection (1) shall, before attending at the counting of votes report to the Referendum Returning Officer, who shall grant to each one of such observers authority to seek admission to a particular counting centre.”.

Amendment
of section
43 of the
principal
enactment.

5. Section 43 of the principal enactment is hereby amended by the insertion immediately after paragraph (b) of that section, of the following new paragraph:—

“ (bb) wilfully displays a marked ballot paper inside a polling station; or ”.

Addition of
new Part
in the
principal
enactment.

6. The following new Part is hereby added immediately after section 61, and shall have effect as Part V of the principal enactment:—

“PART V

REFERENDUM PETITIONS

Avoidance
of
Referendum
on
Referendum
petition.

61c. A Referendum petition may be whole Republic, shall be declared to be void on a Referendum petition on any of the following grounds which may be proved to the satisfaction of the Supreme Court, namely—

(a) that by reason of general bribery, general treating or general intimidation or other misconduct or other circumstances whether similar to those enumerated before or not a section of electors was prevented from voting at such Referendum and thereby materially affected the result of the Referendum;

- (b) non-compliance with the provisions of this Act relating to a Referendum, if it appears that the Referendum was not conducted in accordance with the principles laid down in such provisions and that such non-compliance materially affected the result of the Referendum.

(2) The result of a Referendum in respect of any electoral district shall be declared to be void on a Referendum petition on the ground that a corrupt or illegal practice was committed in connection with a Referendum by the person alleged in such petition to have committed such corrupt or illegal practice, or by any other person with his knowledge or consent and which is proved to the satisfaction of the Supreme Court.

Supreme Court to hear and determine Referendum petitions.

61a. The hearing and determination of a proceeding relating to a Referendum petition shall be by at least five judges of the Supreme Court of whom, unless he otherwise directs, the Chief Justice shall be one.

Who may present petition.

61c. A Referendum petition may be presented to the Supreme Court by a secretary of a recognized political party or by any elector.

Relief which may be claimed.

61d. All or any of the following reliefs to which the petitioner may be entitled, may be claimed in a Referendum petition namely—

- (a) a declaration that the Referendum in respect of the whole Republic is void ; or
- (b) a declaratioon that the Referendum in respect of any electoral district is void.

Contents of the petition.

61e. A Referendum petition—

- (a) shall state the right of the petitioner to petition under section 61c of this Act ;

- (b) shall state the holding and result of the Referendum ;
- (c) shall contain a concise statement of the material facts on which the petitioner relies ;
- (d) shall set forth full particulars of any corrupt or illegal practice that the petitioner alleges, as full a statement as possible of the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of such practice, and shall also be accompanied by an affidavit in support of the allegation of such corrupt or illegal practice and the date and place of the commission of such practice ;
- (e) shall conclude with a prayer as, for instance, that the Referendum in respect of any electoral district should be declared void, and shall be signed by all the petitioners :

Provided however, that nothing in the preceding provisions of this section shall be deemed or construed to require evidence to be stated in the petition.

Special provisions relation to the procedure before the Supreme Court.

61f. (1) The Supreme Court may, upon such terms as to costs or otherwise as the Court may deem fit, allow the particulars of any corrupt or illegal practice specified in a Referendum petition to be amended or amplified in such manner as may in the opinion of the Court, be necessary for ensuring a fair or effective trial of the petition so, however, that the Court shall not allow such amendment or amplification if it will result in the introduction of particulars of any corrupt or illegal practice not previously alleged in the petition.

(2) Every Referendum petition shall be tried as expeditiously as possible and every endeavour shall be made to conclude the trial of such petition within a period of six months after the date of the presentation of such petition. The Supreme Court shall make order deciding such petition without undue delay after the date of the conclusion of the trial of such petition.

Determina-
tion of
Supreme
Court.

61G. At the conclusion of the trial of a Referendum petition the Supreme Court shall determine whether the Referendum in respect of the whole Republic or the Referendum in respect of any electoral district, as the case may, be was void, and shall certify such determination in writing.

Such certificate shall be dealt with as hereinafter provided.

Report of
Supreme
Court
as to
corrupt or
illegal
practice.

61H. At the conclusion of the trial of a Referendum petition the Supreme Court shall also make a report setting out the names and descriptions of all persons, if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice:

Provided, however, that before any person, not being a party to a Referendum petition is reported by the Supreme Court under this section, the Court shall give such person an opportunity of being heard and of giving and calling evidence to show why he should not be so reported.

Such report shall be dealt with as hereinafter provided.

Certificate
and report
to be
forwarded
to the
President.

61J. The Supreme Court shall transmit to the President the certificate of the Supreme Court issued under section 61G together with the report made under section 61H. The President shall thereupon transmit to the Commissioner such certificate together with such report.

Effect of
certificate.

61K. Upon the transmission to the Commissioner of the certificate of the determination of the Supreme Court as required by section 61J, the determination, shall take effect, and accordingly—

- (a) the Referendum in respect of the whole Republic shall be confirmed ;
or
- (b) the Referendum in respect of the whole Republic shall be declared void ; or
- (c) where the determination or the decision is to the effect that the Referendum in respect of any electoral district is to be declared void, the Commissioner shall, within one month of the receipt of such certificate, by notice published in the *Gazette*, require the holding of a Referendum in respect of that electoral district.

Effect of
report.

61L. (1) (a) The Commissioner shall, upon receipt of the report of the Supreme Court transmitted to him under section 61J, forthwith cause a copy of the report to be published in the *Gazette*.

(b) Where the report referred to in paragraph (a) is to the effect that a corrupt or illegal practice has been committed by any person, that person shall be subject to the same incapacities as if at the date of the said report he had been convicted of that practice.

(2) It shall be the duty of every registering officer forthwith to peruse every such report which is published in the *Gazette* under subsection (1), and forthwith to delete from the register of electors the name of every person appearing from the report to be incapable of voting at a Referendum.

Time of
presenta-
tion.

61M. (1) Every Referendum petition shall be presented within twenty-one days of the date of publication of the result of the Referendum in the Gazette :

Provided that a Referendum petition questioning the Referendum upon the ground of a corrupt or illegal practice and specifically alleging a payment of money or other act to have been made or done since the date aforesaid by the person who is alleged to have committed such corrupt or illegal practice or by any other person with his knowledge may, so far as respects such corrupt or illegal practice, be presented at anytime within twenty-eight days after the date of such payment or act.

(2) A referendum petition presented in due time may, for the purpose of questioning the validity of such Referendum upon an allegation of a corrupt or illegal practice, be amended with the leave of a Judge of the Supreme Court within the time within which a Referendum petition questioning the validity of a Referendum upon that ground may be presented.

Prohibition
of
disclosure
of vote.

61N. No elector who has voted at a Referendum shall, in any proceeding to question the validity of such Referendum, be required to state how he voted at such Referendum.

Votes
to be
struck
off at a
scrutiny.

61P. (1) On a scrutiny at the trial of a Referendum petition the following votes only shall be struck off, namely :—

(a) the vote of any person whose name was not on the register of electors assigned to the polling station at which the vote was recorded ;

- (b) the vote of any person whose vote was procured by bribery, treating, or undue influence ;
- (c) the vote of any person who committed or procured the commission of personation at the Referendum ;
- (d) the vote of any person, who, by reason of the operation of paragraphs (e), (f), (g), (h), (i) and (j) of Article 89 of the Constitution, was incapable of voting at the Referendum ;
- (e) the vote of any person who, not being entitled to vote in person at the Referendum by reason of subsection (1) of section 9, voted in person at the Referendum.

(2) The vote of a registered elector shall not, except in the case specified in paragraph (d) of subsection (1), be struck off at a scrutiny by reason only of the voter not having been or not being qualified to have his name entered on the register of electors.

(3) On a scrutiny, any tendered vote proved to be a valid vote shall, on the application of any party to the petition, be added to the poll.

Procedure
and
practice
on
Referendum
petitions.

61R. On a Referendum petition the referendum petitions under this Act, shall be in accordance with Rules made by the Supreme Court under Article 136 of the Constitution.

Rejection
of
ballot
paper by
counting
officer
to be
final.

61Q. The procedure and practice on Rejection of a counting officer whether or not a ballot paper shall be rejected under section 35 shall not be questioned.”.

7. Section 71 of the principal enactment is hereby amended as follows :—

Amendment
of section
71 of the
principal
enactment.

(1) in subsection (1) of that section, by the substitution for the words “leave, without loss of pay,” of the words “leave in writing, without loss of pay”;

(2) by the insertion immediately after subsection (1) of that section, of the following new subsection :—

“(1A) Every employer shall prepare a statement setting out—

(a) the names of the persons applying for leave under subsection (1); and

(b) the names of the persons granted leave under that subsection and the periods for which such persons have been granted such leave,

and shall cause such statement to be conspicuously exhibited at the place of employment.”; and

(3) in subsection (2) of that section by the substitution for the words “subsection (1) shall be guilty”, of the words “subsection (1) or subsection (1A) shall be guilty”.

8. Section 74 of the principal enactment is hereby amended as follows :—

Amendment
of section
74 of the
principal
enactment.

(1) in subsection (1) of that section, by the substitution for the words “the seventh day before the day of the poll”, of the words “the tenth day before the day of the poll”; and

(2) by the insertion immediately after subsection (1) of that section, of the following subsection :—

“(1A) No such postal communication as is referred to in subsection (1) shall be accepted for delivery by the Postmaster-General or any person acting under his authority, after the tenth day before the day of poll or be delivered by him to an elector, after the fifth day before the date of poll.”.

Amendment
of section
75 of the
principal
enactment.

9. Section 75 of the principal enactment is hereby amended as follows:—

- (1) by the repeal of subsection (2) of that section, and the substitution of the following subsection therefor:—

“ (2) The broadcasting time that each recognized political party shall be permitted to use during the period referred to in subsection (1) shall be determined in the following manner:—

- (a) every recognized political party shall, within one week of the publication of the Proclamation under section 2, inform the Commissioner whether it is for, or against, the proposal to be put to the People at the Referendum ;
- (b) a recognized political party which fails to inform the Commissioner, within one week of the publication of the Proclamation under section 2, whether it is for, or against, the proposal to be put to the People at the Referendum shall be deemed not to be for, or against, such proposal (and is in this section referred to as a “neutral party”) ;
- (c) after receipt of the information under paragraph (a), the Commissioner shall determine whether a majority of the recognized political parties are for, or against, the proposal to be put to the People at the Referendum, and shall multiply the number of recognized political parties of which such majority consists, by fifteen. The number resulting from such multiplication is hereinafter referred to as “the total allocation”;
- (d) all the parties which have informed the Commissioner that that they are for the proposal to be put to the People at the Referendum, shall be permitted to use, in the aggregate—

- (i) in the case of radio broadcasting, a total period of minutes not exceeding the total allocation ; and

- (ii) in the case of television broadcasting a total period of minutes not exceeding the total allocation.

Each such party shall be permitted to use in the case of radio or television broadcasting, a period of minutes not exceeding the number resulting from the division of the total allocation by the number of parties who have informed the Commissioner, under paragraph (a), that they are for the proposal to be put to the people at the Referendum ;

- (e) All the parties who have informed the Commissioner that they are against the proposal to be put to the People at the Referendum, shall be permitted to use, in the aggregate—

- (i) in the case of radio broadcasting, a total period of minutes not exceeding the total allocation ; and
- (ii) in the case of a television broadcasting, a total period of minutes not exceeding the total allocation.

Each such party shall be permitted to use, in the case of radio or television broadcasting, a period not exceeding the number of minutes resulting from the division of the total allocation by the number of parties who have informed the Commissioner, under paragraph (a), that they are against the proposal to be put to the People at the Referendum ;

- (f) a neutral party shall be permitted to use—

- (i) in the case of radio broadcasting, a total period not exceeding fifteen minutes ;
- (ii) in the case of television broadcasting, a total period not exceeding fifteen minutes ;

- (g) the Commissioner shall inform each recognized political party the broadcasting time it is permitted to use, in accordance with the preceding provisions of this section ;

(h) where all the recognized political parties which are for, or against, the proposal to be put to the People at the Referendum decide to use the total period of minutes which such parties are permitted to use in the aggregate, in proportions which differ from the proportions determined in accordance with the preceding provisions of this section, such parties shall inform the Commissioner, within two weeks of the Proclamation under section 2, the proportions in which they propose to use such total period of minutes and the Commissioner shall allow them to use such total period of minutes in the proportions." ; and

(2) by the addition at the end of that section, of the following subsections :—

" (5) The Commissioner may permit every recognized political party to use, in addition to the period it is permitted to use under subsection (2), broadcasting facilities on radio and television for such periods as may be determined by the Commissioner having regard to the principles set out in subsection (2).

(6) The Chairman of the Sri Lanka Broadcasting Corporation and the Chairman of the Sri Lanka Rupavahini Corporation shall ensure that, except as provided in the preceding provisions of this section, no material is broadcast over the radio or television, during the period commencing on the date of the Proclamation under section 2 and ending on the date of publication of the result, which supports or opposes, or tends to support or oppose, the the proposal to be put to the People at the Referendum. In implementing this provision, the Chairman of the Sri Lanka Broadcasting Corporation and the Chairman of the Sri Lanka Rupavahini Corporation shall act in consultation with the Commissioner."

Insertion
of new
sections
76A and
76B in the
enactment.

10. The following new sections are hereby inserted immediately after section 76, and shall have effect as sections 76A and 76B of the principal enactment :—

" Police
to assist
Commissioner.

76A. Every police officer shall ensure the orderly conduct of a Referendum held under this Act, and shall comply with any direction given to him in that regard, by the commissioner.

Procedure
for casting
vote where
there's a
reasonable
fear of an
inability to
cast vote at
a given
polling
station.

76B. (1) Notwithstanding the provisions of any other law, any registered elector who reasonably fears that due to conditions prevailing in the area within which his polling station is situate, that he is unable to cast his vote at such polling station, may make an application to the Commissioner of Elections within one week of the notice of nomination, requesting that he may be allowed to cast his vote at another polling station determined by the Commissioner, in his absolute discretion.

(2) The Commissioner shall within a week of receipt of an application, inform such elector whether such application is accepted or rejected. The decision of the Commissioner shall be final and conclusive and shall not be questioned in any Court of law.

(3) Where such vote is cast, such vote shall be counted along with the votes of the electoral district where such elector is registered."

Amendment
of the
First
Schedule
to the
principal
enactment.

11. The First Schedule to the principal enactment is hereby amended in Form A of that Schedule as follows :—

- (1) by the substitution for the words "The serial number, the polling division and the polling district", of the words "The serial number, the name of the street or village, the polling division and the polling district"; and
- (2) by the substitution for the words "as an officer or servant in the Department of Police/Sri Lanka Railway/", of the words "as an officer or servant in the Department of Police/Department of Prisons/Sri Lanka Railway/".

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