

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

A Bill titled "Provincial of the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka (Incorporation)."

In the matter of a petition under Article 121 of the Constitution

**S.C. Special Determination  
No. 19/2003**

**Present** : Shirani A. Bandaranayake – Judge of the Supreme Court  
H.S. Yapa – Judge of the Supreme Court  
Nihal Jayasinghe – Judge of the Supreme Court

Anula Irangani Fernando,  
No. 41 A, Kassapa Road  
Colombo 05

**Petitioner**

**Counsel** : Manohara R. de Silva with G.W.C. Bandara Thalagune and  
W.D. Weeraratne for the Petitioner.

P.A. Ratnayake, Additional Solicitor-General with  
S. Balapatabendi, State Counsel, for the Attorney-General.

Court assembled at 10.00 a.m. on 25.07.2003

A Bill titled "Provincial of the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka (Incorporation)" has been presented to Parliament as a Private Member's Bill. This Bill was placed in the Order paper of Parliament on 09<sup>th</sup> July 2003 and the petitioner has challenged its constitutionality by papers presented to this Court on 14<sup>th</sup> July 2003. The petitioner has thereby invoked the jurisdiction of this Court in terms of Article 121(1) of the Constitution. Hon. Attorney General has been given due notice of the petition.

This Bill seeks to incorporate an organization called the 'Provincial of the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka' for the purpose of carrying out the objects that have been set out in the Bill. The general objects of the organization sought to be incorporated are set out in clause 3 of the Bill. The objections raised by the petitioner relate to the constitutionality of clause 3 and clause 5 of the Bill. The petitioner contended that clause 3 should be read with the Preamble to the Bill and clause 5 should be read with clause 3 of Bill.

The Preamble to the Bill and clause 3 of the Bill are in the following terms.

Preamble

“WHEREAS the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen in Sri Lanka have established themselves as a Congregation for the propagation of Religion by establishing and maintaining catholic schools and other schools assisted or maintained by the State and engaged in educational and vocational training in several parts of Sri Lanka and in establishing and maintaining orphanages and homes for children and for the aged:

AND WHEREAS it has become necessary for the aforesaid purposes to be more effectively prosecuted, pursued and attained to have the incorporation of the Provincial of the Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka:

AND WHEREAS it has become expedient to have the said Provincial of the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka duly incorporated:”

Clause 3

“3. (1) The general objects for which the Corporation is constituted are hereby declared to be –

- (a) to spread knowledge of Catholic religion;
- (b) to impart religious, educational and vocational training to youth;
- (c) to teach in Pre-Schools, Schools, Colleges and Educational Institutions;
- (d) to serve in Nursing Homes, Medical Clinics, Hospitals, Refugee Camps and like institutions;
- (e) to establish and maintain Creches, Day Care Centres, Homes for the elders, Orphanages, Nursing Homes and Mobile Clinics and care for the infants, aged, orphans, destitutes and the sick;

(f) to bring about society based on love and respect for one and all; and

(g) to undertake and carry out all such works and services that will promote the aforesaid objects of the Corporation.”

The contention of the petitioner is that the preamble read with clause 3 of the Bill make provision not only to propagate the catholic religion, but to allure persons of other religions by providing material and other benefits which include medical facilities, education to children and also providing care for the infants, aged, orphans, destitutes and the sick and thereby converting them to the faith that is sought to be spread. This is carried out, according to the petitioner, by taking advantage of the young age, inexperience and or the physical and mental disability of such persons. The petitioner contended that the Bill therefore provides facilities to the organization to convert children of other religions attending state and private schools, the sick undergoing treatment in hospitals and other medical institutions, orphans and destitutes in refugee camps and other institutions, elders in homes for the elders and members of the public through conducting mobile clinic, by providing them with material and other benefits and taking advantage of their young age and other infirmities.

The petitioner further contended that, Clause 5 of the Bill, which gives the authority to the organization to receive and hold property both movable and immovable acquired by virtue of purchase, gift, grant, testamentary disposition or otherwise, shall be held possessed and enjoyed by the Corporation for the purposes set out in this Bill.

In support of his contention the petitioner relied on clause 3, which refers to the general objects of the Corporation. Clause 3 referred to earlier, includes 7 sub-clauses. Clause 3, read with the preamble to the Bill, clearly set out that the intention of the corporation is to ‘propagate the religion.’ This propagation is carried out through the establishment and maintenance of catholic schools and other schools that are maintained or assisted by the State. Furthermore, it was submitted that sub-clauses (c), (d) and (e) of clause 3 would give a statutory right to the corporation to provide assistance to persons, which would be economic or financial in nature, and would be quite distinct from the observance and practice of a religion, which is a fundamental right guaranteed by Article 14(1)(e) of the Constitution.

It was further submitted that when a statutory right is given to impart religious, educational and vocational training to youth, to teach in Pre schools, Schools, Colleges and Educational institutions, to serve in Nursing Homes, Medical Clinics, Hospitals and Refugee Camps with the object of propagating the Religion, that would necessarily result in alluring or converting of persons of other religions to the faith that is sought to be spread.

Furthermore it was submitted that by establishing and maintaining Creches, Day Care Centres, Homes for the elders, Orphanages, Nursing Homes and Mobile Clinics and care for the infants, aged, orphans, destitutes and the sick, the corporation is reaching the people who are in distress and or in need and thereby taking advantage of their inexperience, trust, low intellect and naivety. It was therefore argued that freedom of thought, conscience and religion of other persons guaranteed by Article 10 would be infringed.

Petitioner also made the submission that the object enumerated in clause 3 would even violate Article 9 of the Constitution.

Learned Additional Solicitor General, representing the Hon. Attorney General, has supported the grounds that have been urged by the petitioner.

Petitioner referred to the Bills of similar nature that were considered by this Court In re Christian Sahanaye Doratuwa Prayer Centre (Incorporation) Bill (SC Determination No. 2/2001 and In re New Wine Harvest Ministries (Incorporation) Bill (SC Determination No. 2/2003).

The petitioner relied on several Articles of Human Rights Covenants and the decisions of the European Court which has recognized the unfettered freedom of a person to adopt a religion of his or her choice.

Article 10 of our Constitution reads as follows:

*"Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice."*

Article 10 could be regarded as an absolute right as there are no restrictions in terms of Article 15 of the Constitution. Therefore every person has a constitutional guarantee that he has the freedom to adopt a religion or belief of his choice.

According to the petitioner it would appear that the main object of the Bill is to propagate a religion while taking advantage of the vulnerability of certain persons. The Supreme Court in India has considered the question of freedom of religion and conversion of persons into one's own religion in *Rev. Stainislaus v. State of Madhya Pradesh and Others* (AIR 1977 SC pg. 908) which was cited with approval in SC Determination No. 2/2001. In this case one of the questions raised for consideration of the Supreme Court was that whether the two Acts in question were violative of Article 25(1) of the Constitution.

Article 25(1) of the Indian Constitution reads as follows:

*"Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion."*

The Indian Constitution spells out the word 'propagate' in Article 25(1). Article 10 and 14(1)(e) of our Constitution do not refer to the word 'propagate' and therefore, it could be said that the provisions in our Constitution are more restrictive than that of Article 25(1) of the Indian Constitution. Ray, CJ, referring to the word 'propagate' in Article 25(1) was of the view that,

*"... for what the Article grants is not the right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets. It has to be remembered that Article 25(1) guarantees 'freedom of conscience' to every citizen and not merely to the followers of one particular*

*religion, and that in turn, postulates that there is no fundamental right to convert another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the 'freedom of conscience' guaranteed to all the citizens of the country alike."*

In such circumstances, as pointed out in SC Determination No. 2 of 2001, the reasoning of Ray CJ, would apply more forcefully with regard to Articles 10 and 14(1)(e) of our Constitution.

During the course of the submissions, our attention was also drawn to several International Conventions in which and freedom for a person to adopt a religion of his or her choice has been recognized. For instance Article 18 of the Universal Declaration of Human Rights states that,

*"Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."*

Article 18(2) of the International Covenant on Civil and Political Rights which refers to a situation in which there could be subjection to coercion states that,

*"No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice."*

The decision of the European Court in *Larissis v. Greece* is a case in point with regard to the circumstances given in clause 3 of the Bill which seeks to 'spread knowledge of catholic religion.' An examination of clause 3(c), (d) and (e) indicate strong relationships that of teacher – student, nurse/doctor – patient, curator – refugee and that of guardian – minor. In the Larissis's case, three officers of the Greek Air Force, who were followers of the Pentecostal church were convicted for proselytising three Airmen of a lesser rank. With regard to the proselytising of the Airmen by officers of superior rank, the European Court was of the view that,

*"The Commission found that the interference could be justified as ensuring that the three airmens' religious beliefs were respected, in view in particular of the special character of the relationship between a superior and a subordinate in the armed forces, which rendered the subordinate more susceptible to influence in a variety of matters including religious beliefs."*

In a situation where toddlers, children, invalids, aged and refugees are concerned, they would be in a similar or a worse position as that of an airman under a superior officer in an air force, and the reasoning of the European Court to the susceptibility of subordinate officers to superiors should apply with greater force. Where there are special relationships that exist, preaching would create a situation where there could be infringement of freedom of thought of the person, who is under authority as there could be compulsion to that effect.

Executing pressure on people by offering material or social advantage in order to convert into their religion was discussed in the European Court decision in *Kokkinakis v. Greece*. This decision deals with a situation similar to the instances referred to in the Preamble and clause 3 of the Bill.

In that case a Jehova's Witness was convicted for proselytism, when an attempt was made to convert a wife a Cantor in the Orthodox Church by visiting her house to teach their religion. Considering the activities of offering material or social advantage, the Court was of the view that,

*"First of all, distinction has to be made between bearing Christian witness and improper proselytism. The former corresponds to true evangelism, which a report drawn up in 1956, under the auspices of the World Council of Churches describes as an essential mission and a responsibility of every Christian and every church. The latter represents a corruption or deformation of it. It may, according to the same report, take the form of activities offering material or social advantages with a view to gaining new members for a Church or exerting improper pressure on people in distress or in need; it may even entail the use of violence or brainwashing; more generally, it is not compatible with respect for the freedom of thought, conscience and religion of others."*

The provisions in the Bill, viz., the Preamble, clause 3 and also clause 5, which deal with the powers of the organization that includes *inter alia* to be able to receive and hold property both movables and immovables and or to dispose such property, create a situation which combines the observance and practice of a religion or belief with activities which would provide material and other benefits to the inexperienced, defenceless and vulnerable people to propagate a religion. The kind of activities projected in the Bill would necessarily result in imposing unnecessary and improper pressures on people, who are distressed and in need, with their free exercise of thought, conscience and religion with the freedom to have or to adopt a religion or belief of his choice as provided in Article 10 of the Constitution. What Article 10 postulates is to adopt a religion or belief of his or her choice and the execution of improper inducement would not be compatible with such a provision.

For the aforementioned reasons we hold that the provisions in clauses 3 and 4 of the Bill are inconsistent with Article 10 of the Constitution.

The petitioner submitted that the objects enumerated in clause 3 also violates Article 9 of the Constitution.

Article 9 of the Constitution reads as follows:

*"The Republic of Sri Lanka shall give the Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 10 and 14(1)(e)."*

The petitioner submitted that the effect of Article 9 is to 'protect and foster' the *Buddha Sasana* whilst assuring to all religions the rights mentioned in Articles 10 and 14(1)(e) of the Constitution. Therefore the petitioner contended that a person of other religions could exercise the said right as long

as it does not affect the *Buddha Sasana*. It was also submitted that when an institution is established to propagate Christianity by providing material and other benefits and thereby converting such recipients to the said religion, that would affect the very existence of Buddhism.

As referred to earlier, the Constitution does not recognise a fundamental right to propagate a religion. The expression 'propagate' has a number of meanings, but according to the shorter Oxford Dictionary it means 'to spread from person to person, or from place to place to disseminate, diffuse (a statement, belief, practise, etc).' In the Supreme Court Determination No. 2/2001 it was stated that,

*"In Sri Lanka the Constitution does not guarantee a fundamental right to 'propagate' religion as in Article 25(1) of the Indian Constitution. What is guaranteed here to every citizen is the fundamental right by Article 14(1)(e) to manifest, worship, observe, practice that citizen's religion or teaching."*

In such circumstances, although it is permissible under our Constitution for a person to manifest his or her religion, spreading another religion would not be permissible as the Constitution would not guarantee a fundamental right to propagate religion. Even in situations where propagation is treated as a fundamental right enshrined in a Constitution, the entitlement has not extended to convert another person to one's own religion as that would impinge on the 'freedom of conscience. (*Rev. Stainislaus v. State of Madhya Pradesh*). Similarly when there is no fundamental right to propagate, if efforts are taken to convert another person to one's own religion, such conduct could hinder the very existence of the *Buddha Sasana*. What is guaranteed under the Constitution is the manifestation, observance and practice of one's own religion and the propagation and spreading Christianity as postulated in terms of clause 3 would not be permissible as it would impair the very existence of Buddhism or the *Buddha Sasana*.

Clause 3(1)(a) and (b) in the Bill referred to earlier, states that the corporation is constituted and declared to be, to spread knowledge of catholic religion and to impart religious, educational and vocational training to youth.

Those sub clauses speak not merely of spreading a religion, but spreading knowledge of a religion.

In these circumstances we are inclined to agree with the submissions made by the petitioner that clause 3 of the Bill, as presently constituted, would be inconsistent with Article 9 of the Constitution.

The petitioner also referred to clause 4 of the Bill which is in the following terms:

*"The Provincial of the Teaching Sister of the Holy Cross of the Third Order of Saint Francis in Menzigen of Sri Lanka shall be appointed according to the Constitutions and Statutes governing the said Congregation of the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzigen of Sri Lanka which shall be in conformity with the laws and usages of the Roman Catholic Church."*

The 'Constitutions' and the 'statutes' which govern the appointments of the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzigen of Sri Lanka referred to in this clause are

not before Parliament. Learned Additional Solicitor General submitted that there is a possibility of the Constitutions and the statutes to be changed in conformity with the law, and usages of the catholic church. In such circumstance that would amount to an abdication of legislative power by the Parliament which would violate Article 76(1) of the Constitution.

Clause 3 referred to above is the principal provision of the Bill. Since the material contained in this provision is inconsistent with Articles 9 and 10 of the Constitution we make a determination in terms of Article 123(2) of the Constitution that the Bill comes within the purview of Article 83(a) and therefore it is required to be passed by the special majority as provided for in Article 84(2) of the Constitution and approved by the People at a Referendum.

We shall place on record our appreciation of the assistance given by the learned Additional Solicitor General and the learned Counsel for the petitioner who made submissions in this matter.

**Shirani A. Bandaranayake,**  
**Judge of the Supreme Court**

**H.S. Yapa**  
**Judge of the Supreme Court**

**Nihal Jayasinghe**  
**Judge of the Supreme Court**