

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

In the matter of an application for
mandates in the nature of writs of
Certiorari in terms of Article 140 of
the constitution of the Democratic
Socialist Republic of Sri Lanka.

Abeydeera Patabandige Ayomi,

No. 222, Biyagama Road,

Pattiya, Kelaniya.

CA/ Writ/ Application

-Petitioner-

No. 777/2009

VS.

1. Samurdhi Authority of Sri Lanka
2. B. T. B. Thilakasiri
Director- General
3. D. P. R. Senadhipathi
4. Amarananda Weerasinghe

5. Sarath Wijeyaweera

6. J. W. Rathnayake

7. U. D. C. Jayalal

All of Samurdhi Authority of Sri Lanka, 4th Floor, Sethsiripaya, Baththaramulla.

8. A. Illangaratne

No. 69, Elolupitiya, Veyangoda.

-Respondents-

BEFORE

: SATHYA HETTIGE, P. C., J. President Court of Appeal

D. S. C. LECAMWASAM, J.

COUNSEL

: K. G. Jinasena for the Petitioner

Maithree Amarasinghe Jayatilleke S.C for 1st- 7th Respondents

ARGUED ON

: 09/ 11/ 2010

WRITTEN SUBMISSIONS ON : 16/ 12/ 2010- Petitioner

11/ 02/ 2011- Respondents

DECIDED ON : 05/05/2011

D. S. C. Lecamwasam J.

The petitioner by her petition dated 12th November 2009 prayed for writs in the nature of Certiorari to quash the decisions contained in P8, P11 and P16 and to quash the statement of charges issued by the 2nd respondent as per P9 and P12.

The facts of the case briefly are that the petitioner, being a graduate of the University of Sri Jayawardanepura was appointed as a Samurdhi Manager in August 1996. Subsequently in November 1998 the petitioner was appointed as the Manager of Makola Samurdhi Bank.

According to the petitioner she was able to run the Makola Samurdhi Bank to the satisfaction of the first respondent, The Samurdhi Authority, so much so that Makola Samurdhi bank was placed as the best Samurdhi Bank in the year 2000. Though she was able to secure the first place due to her untiring efforts, , instigated by the petitions sent by some of the employees who were disgruntled with her work, an audit inquiry was held and the 2nd respondent by P8 dated 31st July

2006 placed the petitioner under interdiction with immediate effect and without pay. Thereafter a charge sheet (P9) was issued and an inquiry was held. Eventually by letter (P16) dated 07th August 2009 her services have been terminated. The present Application is for writs of Certiorari to quash the above decisions/ steps taken by the 2nd respondent.

Petitioner in her petition dealt exhaustively on the subject of the illegality of the actions taken by the 2nd respondent. In paragraph 17 of the petition, she has stated that no preliminary inquiry has been conducted prior to the issuance of letter of interdiction and the charge sheet (P8 and P9) and she has further stated that the Director- General had no authority to issue P8 and P9 and such ought to have emanated from the Board of Directors of the first respondent, Samurdhi Authority. As the Director- General had no legal capacity to issue P8, P9, P11, P12 and P16, the position of the petitioner is that the above documents do not have any avail or force of law.

Her main contention is that since the Board of Directors has not delegated the disciplinary powers to the Director- General, by issuing the above mentioned P8, P9, P11, P12 and P16 the second respondent, Director- General has acted in excess of his powers and hence the same actions are ultra- vires. In addition to the preliminary objections the

petitioner had further taken up the position that an internal auditor has no authority to record statements from the employees.

I find that the petitioner has heavily relied on the preliminary objections raised by her before this court as well as at the inquiry. These objections are technical in nature. Nevertheless if I hold in favour of the petitioner in relation to the “technical objections” she would succeed in this application. Yet apart from the above mentioned objections the petitioner has not comprehensively addressed the facts of the issue. Out of the 30 paragraphs of the petition the petitioner has merely alluded to the allegations against her in a solitary paragraph, i.e. paragraph 24. Though the petitioner has a grievance against the respondents for not taking heed of her answer (i.e.P10) before appointing an officer to inquire, appointment of inquirer, P11 is dated 14th August 2007 which is subsequent to the P10 answer dated 06th May 2007. Therefore it is apparent that the respondents would have considered P10 before P11 was issued. On the other hand P10 answer contains only a bare denial of two short sentences. Therefore any reflection on such answer would have been of no avail, at least not sufficient enough to have affected the decision of the respondents.

I would now wish to deal with the preliminary objections of the petitioner. Her main argument is that the second respondent did not have the legal authority to issue P8, P9, P11, P12 and P16.

Section 14(2) of Samurdhi Authority of Sri Lanka Act No. 30 of 1995 states

‘The Director-General shall subject to the general direction of the Authority on matters of policy be charged with the direction of the business of the Authority and the discharge of its functions by the Authority.’

Section 14 (3) states

‘The Authority shall have the power to appoint such number of officers, agents and servants as it considers necessary for the efficient discharge of its functions and the performance of its duties under this Act, and to exercise disciplinary control over and dismiss any officer, agent or servant so appointed.’

Section 14 (4) states

‘The Authority may delegate to the Director-General or any officer appointed under subsection (3) any of its powers, and the person to

whom such powers are delegated may exercise such powers subject to the direction of the Authority.'

Thus these sections read together illustrate the fact that the Director-General has the overall power to guide the business and functions of the authority but on policy matters is however subject to the general direction of the authority. Hence it is seen that in dealing with business and functions, the Director- General enjoys more freedom, and when it comes to policy matters of course he is bound by the direction of the authority.

Under Section 14 (4) the authority can delegate any of its powers to the Director- General or to any officer. Therefore it becomes imperative to scrutinize whether the Director- General has been delegated with the power to exercise disciplinary control over employees of Samurdhi Authority. The document R4 filed with the objections of the respondents sheds light in this regard. R4 is the report/ minutes of the meeting of the board of directors held on 01st March 1996. According to the last two lines of paragraph 2 of the said report the board of directors had delegated its powers under section 14 (3), which section deals inter alia with the power "...to exercise disciplinary control over and dismiss any officer...". Therefore it is abundantly clear that the Board of Directors had delegated its powers of disciplinary control and

dismissal to the Director- General of the authority. As that power had been given to the Director- General and not to any particular individual, any person designated to the position of Director- General is empowered to utilize that power.

The petitioner has taken up the position that the power of delegation had not been made in favour of the person who held the position at the time of issuance of P8, P9, P11, P12 and P16. Hence the second respondent had no authority to issue same. I do not agree with the above contention of the petitioner. My view is that once the power is delegated to the Director- General, that power can be used by any person who holds that position whether he is X, Y or Z unless and until the said power is withdrawn by the Board of Directors. Therefore it is crystal clear that the powers of disciplinary control and dismissal have been delegated to the Director- General and hence he had the legal authority to issue P8, P9, P11, P12 and P16.

The audit inquiry conducted by an internal auditor was only a fact finding investigation. On the conclusion of the audit inquiry as there was a Prima Facie case, a charge sheet was issued and a disciplinary inquiry was held. The petitioner was given the opportunity to appear and defend. This court is in the dark as to what occurred at the inquiry

as inquiry proceedings were not tendered for our perusal except documents P14 and P15 which only contain proceedings of two days .

Certiorari is a discretionary remedy. It should not be granted where the party that seeks it lacks the *uberimae fides* and fails to disclose material facts. In this application the petitioner has contended herself with disclosing to this court only scanty extracts of the proceedings. However the petitioner does not level any allegations against the inquirer or the inquiry. Therefore I can safely presume that she would have had a fair opportunity to defend herself. The fact that she was defended by an experienced counsel augments that position. As pointed out by the respondents in their written submissions, I am convinced that the respondents have carefully followed the provisions of the establishments code, not only in issuing P8, P9, P11, P12 and P16 but also by directing the internal auditor to embark on a fact finding investigation. Such a course and subsequent issuance of a charge sheet is permissible under sections 29 and 30 of the Establishments code.

Therefore on an overall consideration of facts before me I find that the respondents have acted within the parameters of law and have not committed any illegality in issuing P8, P9, P11, P12 and P16. The second respondent had the full authority to issue the same. Hence I find that

there is no merit in the instant application and the application must fail.
Application is dismissed without costs.

In view of the preceding reasons, objections regarding alternative remedy and contractual relationship do not warrant any further scrutiny of this court.

Judge of the Court of Appeal

SATHYA HETTIGE, P. C., J./ PCA

I agree

President Court of Appeal