

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

In the matter of application for Mandates in
the nature of writ of Certiorari and mandamus
under and in terms of Article 140 of the
Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No.
CA WRIT 513/2011

1. Horadugoda Gamage Chandra
Kithsiri, 92/9, Ananda
Ranatunga
Mawatha, Diulpotha, Ingiriya.
2. Wijekonora Mudiyansele
Damith Bandara Seneviratne,
Meegasthanna Watta,
Ranawana,
Kalugastota.
3. Harischandra Dharmakeerthi
Alwis Weerasinghe, No.50,
Palagama, Polgasovita.
4. Dharmaraja Susila
Aluthgedara,
No.254, Mathale Road,
Alawathugoda.
5. Pramoad Priyadarshana
Weeraprameeshwara, No.12,
Halangoda, Mathale.

Petitioners

Vs.

1. Sri Lanka Transport Board,
No.200, Kirula Road,
Colombo 05.
And 22 others.

Respondents

BEFORE : **S. SRISKANDARAJAH, J (P/CA)**

COUNSEL : Asthike Devendra,
for the Petitioner
Daya Guruge,
for the 1st, 2nd and 4th Respondents,

Chaya Sri Nammuni

For the 22nd to 25th Respondents

Argued on : 04.03.2013

Written Submission on : 01.04.2013 (Petitioner)
16.05.2013 (Respondent)

Decided on : 17. 07.2013

S.Sriskandarajah,J

The Petitioners are employees of the Sri Lanka Transport Board and Members of the Approved Provident Fund of the Sri Lanka Transport Board. The Petitioners submitted that there are approximately 2,800 employees who are members of the said Approved Provident Fund of the Sri Lanka Transport Board; the Approved Provident Fund is governed by the provisions of the Provident Fund Rules and Regulations of the Sri Lanka Transport Board. It is submitted that the Approved Provident Fund provides rules and regulations in the Sri Lanka Transport Board which derives legal force from the provisions of the Motor Transport Act No.48 of 1987, Transport Board Law Act No.19 of 1978 and Sri Lanka Transport Board Act No.27 of 2005. The Petitioners in this application are challenging the decision to obtain money from the Approved Provident Fund. It is the submission of the Petitioners that Clause 5 of the Rules and Regulations of the Approved Provident Fund provides as follows:-

- 1) The monies of the fund shall, from time to time, be invested in the name of the employer as custodian trustee;

- (a) In or upon any form of investment authorized by law for the investment of trust monies;
 - (b) By way of any form of interest bearing deposit in a commercial bank and/or institution recognized by the government.
- 2) No part of the Fund shall be invested directly or indirectly in the business of or loaned to the employer or any or any subsidiary or holding company or any or to any other business in which an employer has any interest.

The Petitioner submitted that Rs.633m was released from the said fund by way of a Cabinet Memorandum submitted by the 21st Respondent the Hon. Minister of Transport. This money was obtained to satisfy the Fund which was given by the Treasury to the Approved Provident Fund in order to pay the gratuity of the employees who have ceased from membership in the Approved Provident Fund, and part of the money was released for the purpose of developing the Sri Lanka Transport Board. The Petitioner submitted that it is not challenging the withdrawal of the said sum in this application, but the Petitioner has submitted that after the said Rs.653m has been withdrawn from the fund, all monies remaining in the Fund are monies which belong to and held in trust and for the remaining members of the Approved Provident Fund. The Petitioner submitted that on 2 occasions funds were released to pay the Cost of Living Allowance of the employees of the Sri Lanka Transport Board and, on one occasion, Rs.2,400,000/- was released by the 2nd Respondent in order to pay the gratuity for the year 2009 and in order to buy buses for the Sri Lanka Transport Board. The Petitioner submitted that the Sri Lanka Transport Board cannot make the said request as such payments are for the business of the Sri Lanka Transport Board. According to Clause 5 of the Rules and Regulations of the Provident Fund, the Committee of Management is prohibited to invest monies of the Fund in the business of the employer. Therefore, the Petitioner submitted, the release of money from the Approved Provident Fund for the benefit of the employer are illegal and, as the Petitioners were affected by the said decision, are seeking to challenge those decisions in this application.

It is the position of the Respondents that the Ministry of Transport has submitted a Memorandum dated 10/06/2002 to the Cabinet of Ministers seeking approval to obtain funds from the Provident Fund of the Sri Lanka Transport Board to pay gratuity to the retired employees of the Board. The Cabinet, after obtaining a report from the Committee comprising the Secretary/Ministry of Transport, the Commissioner of Labour, and the Representative from the General Treasury and Central Bank of Sri Lanka, arrived at a finding that the gratuity payable to retired employees as at 31/03/2009 was approximately Rs.910m and, at that time, the General Treasury had provided a sum of Rs.1,500,000/- to the Sri Lanka Transport Board for the payment of gratuity and, therefore, it was decided that the said sum should be recovered from the Provident Fund which had a balance of Rs.154,967,407/- as at 31/12/2008, and this sum has developed to Rs.587,735,768/- and thereafter this sum has increased to Rs.663,584,741/- by 30/06/2010 and, after the Cabinet approval for the release of the Fund, the Chief Monitor of the 1st Respondent Board requested the transfer by the Management Board of the Sri Lanka Transport Board Provident Fund to utilize a sum of Rs.500m to pay gratuity and after a sum of Rs.1,900m to purchase 500 buses out of the funds already released as per the Cabinet approval. The Petitioners submitted that the Board of Management of the Sri Lanka Transport Board Provident Fund has no authority to take decisions to release funds from the Sri Lanka Central Transport Board Provident Fund in view of the prohibition embodied in Clause 5(2) of the said Provident Fund Rules and Regulations. The said rules state: "No part of the fund shall be invested directly or indirectly in the business of or loan to the employer or in or any subsidiary or holding company or any or to any other business in which the employer has had any interest."

The Respondent submitted that the said Rules and Regulations are formulated under the Transport Board Law No.19 of 1978 and as it is now repealed by Sri Lanka Transport Board Act No. 27 of 2005, no Rules or Regulations are formulated under Sri Lanka Transport Board Act No.27 of 2005. There is no evidence to state that the Rules and Regulations framed under the Transport Board Law No.19 of 1978 is adopted under the Sri Lanka Transport Board Act No.27 of 2005 and, therefore, that the said approved provident fund is now not covered by the Provident Fund Rules and Regulations of the Sri Lanka Transport Board. Under the Sri Lanka Transport Board Act No.27 of 2005, the Minister of Transport is empowered to make general or

specific direction in relation to the functioning of the 1st Respondent Board and, in the given circumstances, the Minister of Transport has sought approval from the Cabinet of Ministers to release funds from the Approved Provident Fund. The Cabinet appointed a Committee comprising of the Secretary/Ministry of Transport, the Commissioner of Labour, Members of the Central Bank of Sri Lanka, and the Secretary to the Treasury to submit a report on releasing funds for the benefit of the 1st Respondent from the Approved Provident Fund. After considering the said Committee Report, the Cabinet has approved the release of the said funds to the benefit of the 1st Respondent Board. As the Rules and Regulations formulated under the Transport Board Law No.19 of 1978 is no more in operation, the restriction imposed on releasing the fund for the benefit of the 1st Respondent is not in operation and, in these circumstances the Cabinet has made a decision to release funds from the Approved Provident Fund, after due consideration, to the benefit of the 1st Respondent. As the Cabinet decision is a policy decision, this Court has no jurisdiction to issue a certiorari to quash the Cabinet decision to release the said fund for the appropriate purposes and therefore this Court dismisses this application without costs.

President of the Court of Appeal