

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

Pioneer Insurance Brokers (Pvt.) Ltd.,  
9-4/1, Station Road,  
Colombo 4.

**PETITIONER**

C.A. No. 05/2014 (Writ)

Vs.

1. Insurance Board of Sri Lanka  
Level 11 East Tower  
World Trade Center  
Echelon Square,  
Colombo 1.
2. Director General  
Insurance Board of Sri Lanka  
Level 11, East Tower,  
World Trade Center  
Echelon Square,  
Colombo 1.

**RESPONDENTS**

**BEFORE:** Anil Gooneratne J. &  
Malinie Gunaratne J.

**COUNSEL:** Ikram Mohomed P.C., with T. Wijayagunawardena  
and S. Weeraratne for the Petitioner

A.H.M.D. Nawaz D.S.G., for Respondents

**ARGUED ON:** 17.01.2014

**DECIDED ON:** 12.03.2014

**GOONERATNE J.**

The Petitioner, Pioneer Insurance Brokers (Pvt.) Ltd have sought a Writ of Certiorari and Mandamus. Certiorari is sought to quash letters dated 31.12.2013 marked P25 & P26, addressed by 2<sup>nd</sup> Respondent to petitioner. Mandamus is sought to order the 1<sup>st</sup> & 2<sup>nd</sup> Respondent to renew the Certificate of Registration of the Petitioner Company in terms of Act No. 43 of 2000 as amended. This Court having issued formal notice on the Respondents, on the application of learned President's Counsel fixed this matter for inquiry into interim relief as prayed for in sub para (d) of the prayer to the petition. Learned Deputy Solicitor General appeared for the Respondents on the date of inquiry and objected to the issuance of interim relief as above and also based his submissions as per the limited objections filed of record on behalf of the Respondents dated 30.01.2014.

Interim relief is more particularly focused on the suspension of operation of letter P26. The said letter P26 dated 31.12.2013 (same date as P25) gives a direction to refrain from acting or holding the company out as an insurance broker as from 01.01.2014. P26 further state that renewal of an insurance policy to be considered as a new contract or new policy. It is also stated that failure to comply as in P26 would constitute an offence under Section 92 of the Regulating of Insurance Industry Act No. 43 of 2000. At this point it is also relevant to note the contents of P25. It is a show cause letter which appears to proceed from an onsite inspection carried out by the 1<sup>st</sup> Respondent on 18.9.2013 and 4 matters are highlighted as its observation, and identified as, pertaining to unlawful acceptance of brokerage commission, unlawful acceptance of payments from 3<sup>rd</sup> party administration services, misleading information and violation of the relevant statute to make brokerage commission payments to a named person.

The learned President's Counsel made submissions supporting the several averments in the petition and emphasized the fact that the Respondents by the issuance of letters P25 & P26 had acted mala fide/maliciously and unreasonably, merely to prevent the Petitioner conducting their business affairs. He also referred to and emphasized that letter P14 issued by MBSL Insurance Company Ltd. to Petitioner indicates that Respondents have given

directions to suspend brokerage commission with immediate effect, by letter of 07.11.2013. This according to learned President's Counsel is another item of evidence to establish mala fides and unreasonable conduct on the part of the Respondents. This position is further supported by letter marked P16a & P16b. Letter P16b is somewhat an explanation to P16a. Although the Insurance Company was not in favour of the direction given by the Respondents as in P17a to P17e (which is an attempt in a way to explain) company withheld payment of commission and the Petitioner had to file action in the District Court of Colombo in case No. DSP/233/2013. Order obtained from the District Court P19, is an enjoining order. In the course of submission, learned President's Counsel, urged the matters in paras 21 to 25 of the petition and stated to court that there was no formal inquiry into the alleged irregularities of the business of the Petitioner Company and emphasized that the Petitioner Company has an legitimate expectation to obtain the certificate of Registration and or for the licence to be renewed. This court also note the contents of para 31 of the petition.

However before I proceed to examine the material placed before court by learned Deputy Solicitor General, it is relevant to consider the dicta expressed as regard the issuance of stay orders/interim orders as prayed for by the petitioner company. In the cases reported, I would make special reference to

Billimoria Vs. Minister of Lands & Mahaweli Development judgment of Samarakoon C.J. 78/79 (1) SLR 10, 15 & Mahindasoma Vs. Maithripala Senanayake 1996 (1) SLR 364, 306; 1993(2) SLR 41; 45; & Duwearatchi & Others Vs. Vincent Perera & Others 1984(2) SLR 94/95.

I do note the following gathered from the above cases.

“Interim order by their very nature must depend a great deal on a Judge’s opinion as to the necessity for interim action.” Sometimes, “very little argument and persuasion is necessary for a stay order” , while at other times the opposite is true. Much depends on the Judge and the impression he has formed on the relative strength of the case for the petitioner as opposed to the case put forward by, or (if the respondent has not yet filed his objections) the case that could possibly be put forward by, the respondent. There are cases where if the petitioner fails to obtain a “stay order” pending the proceeding in the Court of Appeal, hardly any purpose will be served by the final judgment to be delivered in it later in the petitioner’s favour. Where “a substantial question of law” arises for decision, “the question of granting interim relief has to be considered”, and “the Court will be guided inter alia by the following principles:- (a) will the final order be rendered nugatory if the Petitioner is successful? (b) where does the balance of convenience lie? (c) will irreparable an irremediable mischief or injury be caused to either party?

Respondents take up the position as in the limited objections that upon a complaint received in relation to an insurance scheme for Sri Lankan overseas migrant workers with the Sri Lanka Foreign Employment Agency, wherein certain irregularities had taken place at MBSL Insurance Company Ltd., and as such investigations, had to be initiated. Such investigations revealed the

complicity of the Petitioner company in irregularities involving a large sum of public money paid out by MBSL Insurance Company in regard to insurance scheme for Sri Lanka overseas migrant workers. The Respondents inter alia urge the following.

- (a) Irregular payments are made from the insurance premiums paid by migrant workers.
- (b) Audit report revealed (1) - (4) of letter P25 pertaining to insurance scheme for Sri Lanka migrant workers (para 5 of Respondent's objections)
- (c) Major share holders of MBSL Insurance Company Ltd., namely Merchant Bank PLC lodged a complaint with the Criminal Investigations Department on or about December 2013 regarding fraud relating to insurance schemes as above.
- (d) Show cause letter of 31.12.2013 (R1 – P25) and letters R2 & R3, issued to Petitioner Company by Respondent. Thus gives an opportunity to the Petitioner Company to prove its bona fides – Further opportunity given on 06.12.2013.
- (e) Explanation called after an onsite inspection carried out by Respondents at petitioner's office on 18.9.2012
- (f) R4 letter issued to MBSL Insurance Company on 30.12.2012 which refer to removal from office of two persons named therein.
- (g) Show cause letter replied by Petitioner Company by letter R5.
- (h) Renewal of Registration could not have been granted due to short-coming in Petitioner's application vide R6.

- (i) Petitioner Company replied R6 by letter R7. However it is not acceptable for the Respondent.
- (j) Similar letter as P26 issued to other brokers on 31.12.2013 vide R8, R9, R10, R11, R12 & R13.

There is some emphasis by the Respondents as in paras 18 – 22 of the limited objections wherein it is explained with reference to legal provisions to resist the issuance of interim relief. It is explained that letter P26 was issued to convey the legal position, of Section 79 of Act No. 43 of 2000, and P26 is not a letter prohibiting the operations of the Petitioner. In this regard Section 34 of the above Act is also mentioned.

Section 34 reads thus:

No insurer shall accept any insurance business except from –

- (a) any person who has an insurable interest in the subject matter of insurance;
- (b) another insurer in respect of reinsurance;
- (c) an insurance agent; or
- (d) an insurance broker registered under this Act.

Section 79 reads thus:

No person shall act or hold itself out as an insurance broker unless such person is a holder of a certificate of registration as a broker granted by the Board and is a member of an Association of Insurance Brokers approved by the Board.

Stay orders or interim order are made in the interest of justice as an interim measure. No court should judge stays orders in the same way of, an in a strict sense as a final order. What would be the balance of convenience to the parties concerned. Having considered a view expressed in C.M Row's Law of Injunction 5<sup>th</sup> Ed at 201... balance of convenience means is the comparative mischief or inconvenience to the parties. In this instance this court need to consider the role of the Petitioner as well as that of Respondent. There is no doubt of an ongoing investigation which has not reached its finality. Explanations have been called from the Petitioners time and again and the authorities concerned having given the Petitioners enough and more opportunities to clear their name and explain their position has taken the step to issue letters P25 & P26. The issue in question which ultimately need to be resolved is much more wider and serious in its nature since, at the other very end stands the general public inclusive of migrant workers who depend on an proper insurance scheme. No doubt this court and any other court in the island need to keep an open mind since the case has not reached finality. I will not at this point of time address my mind fully to the question whether documents P26 & P 25 are amenable to the writ jurisdiction of court. Nor can we detach the concept that the Insurance Board of Sri Lanka is the primary regulatory body for insurance vested with a



variety of functions and to safe guard the business of Insurance for the benefit of the public at large. Further I cannot at this stage conclude that the Respondents were acting in a bias manner or acted mala fide merely because letters were dispatched periodically or at the yearend (2013).

Having examined the available material I am unable to state precisely whether the inconvenience leans or is titled towards the Petitioner alone. As Such an issuance of a stay order, if allowed would in the context of the case, inconvenience the Respondents more than usual since behind the scene the public at large may be effected and awaiting relief in view of the outcome of an ongoing investigation. Nor can I conclude that the non-issuance of the interim order would render the Petitioner's application nugatory in the event the Petitioner is successful finally. Pleadings in this application are not closed. Proper objections of Respondent and counter affidavit of Petitioner are yet to be filed. Petitioner is not precluded from providing a reasonable explanations and get exonerated from whatever allegations leveled against the Petitioner, according to law. It is certainly not the end of the road to the Petitioner Company. It can certainly get into proper business if ready and willing to work according to accepted norms and comply with the law. I would also extend the above views of mine as to the question of causing irreparable and irremediable mischief or injury

to Petitioner. None of which could be identified as far as the Petitioner is concerned. As discussed, all 3 principles referred to in the famous cases of Billimoria Vs. Minister of Lands and the case of Duweeratchy Vs. Vincent Perera does not favour the Petitioner at all.

Therefore Petitioner's application for an interim order as per sub para 'd' of the prayer to the petition is rejected and refused.

Application for interim relief refused.

JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunaratne J.

I agree.

JUDGE OF THE COURT OF APPEAL