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

Lankem Ceylon PLC.
No. 98, Sri Sangaraja Mawatha,
Colombo 10.

PETITIONER

C.A. No. 245/2011 (Writ)

Vs.

1. Consumer Affairs Authority
1st and 2nd Floors
CWE Secretariat Building
No. 27, Vauxhall Street,
Colombo 2.

2. Director General
Consumer Affairs Authority
1st and 2nd Floors
CWE Secretariat Building
No. 27, Vaux Street,
Colombo 2

3. Rumy Marzook
Chairman

4. Milton Amarasinghe
Full-time Member

5. Major-General P. Chandrawansha
Full-time Member

6. Varuni Alawwa
Member.

All of the Consumer Affairs Authority
1st and 2nd Floors
CWE Secretariat Building
No. 27, Vauxhall Street, Colombo 2.

7. L.C.C. de Silva
No. 71/1, Poorvarama Road,
Colombo 8.

RESPONDNETS

BEFORE: Anil Gooneratne J.
H.N.J. Perera J &
P.W.D.C. Jayathilake J.

COUNSEL: Nilshantha Sirimanne for the Petitioner
Instructed by Amarasuriya Associates

Janak De Silva D.S.G. for 1st – 6th Respondents

ARGUED ON: 07.06.2013, 26.07.2013 & 13.03.2014

DECIDED ON: 30.10.2014

GOONERATNE J.

Lankem Ceylon PLC is the Petitioner in this Writ Application. Petitioner Company has sought writs of certiorari, prohibition and mandamus. Writs of certiorari is sought to quash orders produced and marked as P16(a), P16(b) dated 07.02.2011 issued by the 1st and or 3rd to 6th Respondents pertaining to a complaint made by the 7th Respondent, Mr. L.C.C. de Silva. A Writ of Prohibition is sought to restrain 1st to 6th Respondents from conducting any inquiry as regards the complaint of the 7th Respondent, and to prevent any prosecution in the Magistrate's Court against the Petitioner Company, in pursuance of orders P16(a) & P 16(b). Mandamus is sought to conduct a full and fair inquiry as regards the complaint of the 7th Respondent.

When this matter came up before the then President of the Court of Appeal on 15.03.2011, court issued formal notice and also issued a stay order as per sub paras 'g' and 'h' of the prayer to the petition. The stay order issued as above had been periodically extended. In fact this application was argued before the then President of this court comprising of two members of the

Bench and Judgment was reserved. However on 12.03.2013 as per journal entry of the said date, it is recorded that since there was a difference of opinion between the two judges who heard the application, a Divisional Bench was constituted to hear and conclude this application and since then the stay order issued as above had been extended periodically.

The facts that led to filing of this Writ Application are as follows. The 7th Respondent obtained the services of the Petitioner Company to treat a concrete Terrazo floor area of about 3000 square feet to his house, which was undergoing renovation as described by the Petitioner Company. The Petitioner Company provided the termite control services on 07.10.2008 at a cost of Rs. 44,495/-. By document marked P3 Petitioner Company, provided an express warranty to the 7th Respondent. The warranty was to the effect that within a period of 5 years, if termite attacks recur in areas treated by the Petitioner Company, it would free of charge re treat the area completely. On or about 11.06.2010 the 7th Respondent informed the company that he noticed termite attacks in certain areas of the floor. Representatives of the Petitioner Company had promptly inspected the floor area, and as stated by the Petitioner the 7th Respondent informed them that the floor area on which he

had allegedly installed wooden floor boards had been attacked. Petitioner also contends that no such floor boards were available for the Petitioner's inspection at such time, and the 7th Respondent had caused all the floor boards to be removed, prior to such inspection. The area as inspected by the representatives of the Petitioner Company noticed an area of about 600 square feet which was subject to termite attack. The area is in extent of 1/5th of the previously treated area. As such said area of 600 square feet was re-treated, and duly complied with the warranty. ((P3) vide P7 & P8a) Petitioner also offered to treat the new wooden floor boards that the 7th Respondent thereafter was seeking to install on the floor area and which offer was also accepted by the 7th Respondent. As such Petitioners new wooden floor boards were also treated free of charge (P7 & P8b) Even after above the 7th Respondent by P6 (17.06.2010) complained that after re-treatment live termites were observed and claimed a sum of Rs. 360,000/-.

Notwithstanding above a notice (P9) dated 13.09.2010 was received, by which the 7th Respondent lodged a written complaint with the 1st Respondent on or about 27.08.2010 in respect of the said termite control services provided by the Petitioner. Inquiry into the above complaint was

conducted by 4th to 6th Respondents, on 18.11.2010 (P10) and 08.12.2010 (P14) with the participation of the 7th Respondent and the representatives of the Petitioner Company. It is also pleaded that prior to above a preliminary discussion was held earlier. (P11) It is also pleaded that the Petitioner moved to have the complaint of the 7th Respondent dismissed and raised the following preliminary objections at the inquiry.

(a) Petitioner not furnished with a copy of the complaint of 7th Respondent.

(b) Complaint of 7th Respondent is time barred under Section 13(2) of the Consumer Authority Act.

(c) 1st Respondent has no authority or jurisdiction to inquire into the 7th Respondent's complaint under the said Section 13(1). Termite control services provided by the Petitioner does not fall within 13 (1) (a) or (b) of the said Act.

As regards Section 13(1) (a) the requirements, of Section 12 of the Act must be satisfied Section 13(1) (b) applies only to the manufacture of sale of goods and not to the provisions of services.

Petitioner contend that at no stage was the written complaint of the 7th Respondent at least read or shown to the Petitioners representatives. As regards the time bar the 1st Respondent Authority referred to the case of *David Peiris Motor Company Vs. Consumer Affairs Authority CA 635/2007* and state that warranty given to goods/products the time bar in 13(2) does not apply. Petitioner reject this argument based on CA 635/2007 and state that the said case apply to manufacture of goods and not provision of services. Case 635/2007 does not apply to the facts and circumstances of the case in hand. However as argued by the Petitioner the 1st Respondent continued with the inquiry without ruling on the above preliminary issue, in spite of the objections of the Petitioner Company. It is also said that Petitioners representatives informed the 1st Respondent Authority that if the inquiry proceeds without a determination of the preliminary objections, Petitioner would not participate at the inquiry. In this connection I would refer to the following paragraphs of the Petition.

> Consequently, the 1st Respondent's representatives clearly informed the Petitioner at the said purported inquiry that they would not be making a final order in respect of the 7th Respondent's complaint and instead would inform the Petitioner of the 1st Respondent's future course of action.

As such, the Petitioner's representatives were made to believe that the 1st Respondent would first make its determination in respect of the said preliminary objections and communicate the same to the Petitioner prior to inquiring any further into 7th Respondent's said complaint.

By letter of 14.2.2011 marked P16(a) by which the decision of the 1st Respondent was communicated the order in this regard is contained in document marked P16(b). The documents annexed to the order are submitted marked P17 and the petitioner state that for the first time they received the Petitioner's complaint marked P17(a). Petitioner also highlight certain inaccuracies and statements contained in the order P16(b). Petitioner maintains that at no time did the Petitioner withdraw the objections that the complainant's (7th Respondent) written complaint was not made available. Further Petitioner never submitted written statements and as such statement to that effect is false. Petitioner Company urge that order made by the 1st Respondent is illegal, ultra vires unlawful, erroneous, arbitrary, irrational, unreasonable, unfair, misconceived, in violation of the principles of natural justice and the legitimate expectations entered by the petitioner and or disproportionate for the several grounds stated in para 49(a) to (l) of the petition.

The 7th Respondent has not filed objections in this Writ Application. Except at the very initial stage of these proceedings, an Attorney-at-Law appeared for the 7th Respondent on a particular day but thereafter was absent and unrepresented. However the points gather from the pleading filed on behalf of 1st to 6th Respondents, inter alia disclose the following

(1) By R1 & R2, state that the order against the petitioner is a collective decision of the members of the 1st Respondent Authority and the Board has approved such decision.
(2) Inquiry conducted according to law
(3) Quotation P3 admitted.
(4) Paper advertisement and R4 clearly provides that the period of warrant is 10 years.
(5) Petitioner treated an area of 600 square feet according to the 7th Respondent and officers of the Petitioner Company were informed that imported timber flooring will be used.
(6) Petitioner never denied that the floor area treated on the first occasion was infected by termites nor did the Petitioner take up the position that the floor boards referred to by the 7th Respondent was infected.
(7) Petitioner treated the area which was affected without any additional costs to the 7th Respondent.

(8) P6 admitted.

(9) P4 indicates all parties signed the contents of discussion held on 30.09.2010, which was held to explore the possibility of settling/resolving the issue. On that date 7th Respondent briefed the contents of the complaint.

(10) Petitioners representatives never requested for the formal complaint of the 7th Respondent at the inquiry held on 18.11.2010. However at the request of the inquiry panel the 7th Respondent explained the content of the complaint. By P9 contents of the complaint informed to Petitioner.

Apart from above in the objections of the Respondent further details are provided as follows:

(a) The Petitioners raised three (3) preliminary objections at the inquiry held on 08.12.2010. The panel explained the position relating to the first two objections and the Petitioner accepted that they are unable to maintain the said 1st two objections. In respect of the 3rd objection, the panel informed that a ruling will be given;

(b) It is denied that the Petitioner was "totally unaware" of the actual contents of the written complaint of the 7th Respondent. At the request of the Inquiry Panel, the 7th Respondent explained the contents of his complaint at the commencement of the formal inquiry on 18.11.2010. In any event the contents of the complaint were informed to the Petitioner by P9.

(c) On the 2nd preliminary objection, the inquiry panel brought to the attention of the Petitioners' representatives the unreported judgment of the Court of Appeal in David Peiris Motor Company Ltd. vs. Consumer Affairs Authority and 8 others (C.A

(Writ) 635/2007; C.A Minutes of 03.08.2009). This gives a wide interpretation to the time limit. The inquiry panel informed the Petitioner's representatives that the Authority will be relying on this decision and that it will be considering the "goods" used to provide the services. This has been explained in the order as well;

(d) The inquiry panel took the position that this service is not a service within the meaning of the Act but this service involves the use of a particular good/chemical. Therefore, the Authority has taken up the position that if the chemical used in the service does not conform to the implied guarantee or warranty given by the Petitioner, the 7th Respondent has the right to complain to the Authority.

In this Writ Application one of the main grounds urged on behalf of the Petitioner Company is that the 1st Respondent Authority has no power/authority or jurisdiction to make or pronounce the orders marked and produced P16(1) and P16(b). It is interesting to ascertain at the very outset as to whether the Consumer Affairs Authority could inquire into a dispute of this nature. Let us look at the available statutory provisions. Section 12 refer to determining standards and specifications relating to goods and services.

Section 12 reads thus:

(1) The Authority may for the purpose of protecting the consumer and ensuring the quality of goods sold or services provided, by Notification published in the Gazette, from time to time, determine such standards and specifications relating to the production, manufacture, supply storage, transportations and sale of any goods, and to the supply of any services.

(2) The Authority may by Notification published in the Gazette adopt such standards and specifications prescribed by the Sri Lanka Standards Institution established by the Sri Lanka Standards Institution Act. No. 6 of 1984, relating to the production, manufacture, supply storage, transportation and sale of any goods, and to the supply of any services, as standards and specifications, to be determined under subsection (1).

The power and authority to inquire into a complaint is dealt in Section 13 of the Act.

Section 13 reads thus:

(1) the Authority may inquire into complaints regarding –

(a) the production, manufacture, supply storage, transportation or sale of any goods, and to the supply of any services, which does not conform to the standards and specifications determined under section 12; and

(b) the manufacture or sale of any goods which does not conform to warranty or guarantee given by implication or otherwise, by the manufacturer or trader.

(2) A complaint under subsection (1) which relates to the sale of any goods or to the provision of any service shall be made to the Authority in writing within three months of the sale of such goods or the provisions of such service, as the case may be.

(3) At any inquiry held into a complaint under subsection (1), the Authority shall give the manufacturer or trader against whom such complaint is made an opportunity of being heard either in person or by an agent nominated in that behalf.

(4) where after an inquiry into a complaint, the Authority is of opinion that a manufacture or sale of any goods or the provision of any services has been made which does not conform to the standards or specifications determined or deemed to be determined by the Authority, or that a manufacture or sale has been made of any goods not conforming to any warranty or guarantee given by implication or otherwise by the manufacturer or trader, it shall order the manufacturer or trader to pay compensation to the aggrieved party or to replace such goods or to refund the amount paid for such goods or the provision of such service, as the case may be.

(5) An order under subsection (4) shall be made in writing and be communicated to such manufacturer or trader by registered post.

(6) where any manufacturer or trader fails or refuses to comply with an order made under subsection (4) of this section, such manufacturer or trader shall be guilty of an offence under this Act and the sum of money due on the order as compensation or refund may on application being made in that behalf by the Authority to the Magistrate's Court having jurisdiction over the place of business or residence of such manufacturer or trader as the case may be, be recovered in like manner as a fine imposed by such court, notwithstanding that such sum may exceed the amount of a fine which that court may in the exercise of its ordinary jurisdiction impose.

The Petitioner no doubt argues that the 1st Respondent has no power/authority to hear and determine a complaint made by the 7th Respondent. Then again the Petitioner maintains that unless standards and specifications referred to in Section 12 had been adopted or determined (by a

Gazette) the 1st Respondent cannot inquire into any complaint. In fact no gazette or prescribed standard (as in Act No. 6 of 1984) have been placed before this court by either party. Further the Petitioner puts much emphasis on the services provided to 7th Respondent. I have read with much interest the written submissions of both parties. Both parties by their written submissions fortify each others' position as argued by both learned counsel.

One has to consider the quotations at P3 to arrive at a decision to ascertain the nature of the transaction, which ultimately result in the arrangement and agreement between parties.

P3 quotation is described as quotation for termite control service. The beginning of P3 refer to treatment. Under the treatment gives details of what would be done. e.g drill the floor, treat the floor/skirting etc. Then the type of chemical to be used. Biflex, chlorpyrifes and fipronil – description of difference of each chemical but finally the Petitioner Company recommends Biflex as a chemical to be used to control termite. The other important aspect in P3 is the warranty period of 5 years. It is evident that trained or skill persons in the trade need to introduce the chemical Biflex. Some difficulty would arise to decide between the sale of goods and services. The product as well as the

service need to go hand in hand. Both need to be combined to reach finality, to the satisfaction of any client. But there is emphasis that 'our services with Biflex will cover you with 5 years free of maintenance period". It is for the product of Biflex that the warranty had been extended. Total cost of Biflex is Rs. 33495/- , about 3/4th of value of contact. Therefore I agree with the argument of learned Deputy Solicitor General that it is the substance of the contract that would be the deciding factor. The real substance of the contract is the ultimate result.

The Sale of Goods: Atiyah, Adams & Macqueen 11th Ed. Pg. 27..

"It is thus clear that the distinction between goods and services will often remain of some importance in the law, and it will still occasionally be necessary to distinguish between a contract of sale of goods and a contract for the supply of services. The test for deciding, whether a contract falls into one category or the other is to ask what is 'the substance' of the contract. If the substance of the contract is the skill and labour of the supplier, then the contract is one for services, whereas if the real substance of the contract is the ultimate result – the goods to be provided – then the contract is one of sale of goods."

Robinson v. Graves (1935) 1 KB 579 at 587

...."The substance of the contract was, goods to be sold and delivered by the one party to the other." I treat that judgment as indicating that in the view of Blackburn J. one has to look to the substance of the contract.

It is a travesty of justice both to the consumer and the trader to be denied the protection afforded to them by the Act No. 9 of 2003, if the complaints of consumers and traders are shut out or kept out. The provision contained in Section 13 of the Act is wide and capable to entertain complaint of a kind made by the 7th Respondent. I do agree with the learned Deputy Solicitor General that the application of the 7th Respondent is one falling within the provisions of Section 13(1)(b) of the Act.

This is a statute as described in the preamble to protect the consumer and the trader. The objects of the authority are contained in Section 7 of the Act. I would advert to the following sub-sections of Section 7 which makes specific reference to the consumer, and the law gives due consideration to a requests by a consumers as well to protect.

The object of the Authority shall be –

7 (a) to protect consumers against the marketing of goods or the provision of services which are hazardous to life and property of consumers;

7 (b) to protect consumers against unfair trade practices and guarantee that consumers interest shall be given due consideration;

7 (d) to seek redress against unfair trade practices, restrictive trade practices or any other forms of exploitation of consumers by traders.

I would draw support to arrive at a conclusion having perused the following Rules of interpretation of Statutes.

"Statutes have to be construed in a manner so as to promote the purpose and object of the Act, and not too literally so as to defeat the purpose or render the provision otiose" (Bindra, Interpretation of Statutes; 8th ed., page 527).

"In "social welfare legislation literal construction is not commended, but the Court must look to the object and purpose of legislation"..." (Bindra, Interpretation of Statutes; 8th ed., page 542).

"Socio-economic legislation, with the object of securing social welfare, is not meant to be interpreted narrowly so as to defeat its object" (Bindra, Interpretation of Statutes; 8th ed., page 541)

"It is well settled that that in construing the provisions of welfare legislation, courts should adopt what is sometimes described as a beneficent rule of construction, and should construe liberally." (Bindra, Interpretation of Statutes; 8th ed., pages 540).

I also need to comment on the time limit referred to in Section 13(2) of the Act. The three months referred to therein is more or less is directory and not mandatory. Depending on the nature of goods/services it may take more than three months, to detect some form of defect in the goods purchased or the services obtained. In the case in hand the pesticide described

as Biflex should act as a resistant to termites. As such the trader/manufacturer has thought it fit to provide a warranty for five years. All this must have been contemplated after testing the chemical and giving some time for possible reactions. Otherwise the warranty period may be a shorter period i.e one year. As such the deciding factor would be the guarantee period which could vary from product to product. As such a complaint within the guarantee period would suffice and this count cannot rule in favour of the Petitioner Company, on this aspect.

In view of all above we hold that the 1st Respondent has the Authority to entertain a complaint of this nature, and accordingly has jurisdiction to hear and determine this dispute. Definition in Section 75 of 'service' is not exhaustive. That is why one has to look at the substance and the material supplied i.e Biflex is not merely incidental to the transaction, but depended and part and parcel of the contract of sale of goods.

This court having perused all the material placed before court, both oral and documentary is satisfied for the reasons stated above that the 1st Respondent Authority has jurisdiction/Power to inquire into a dispute of this nature in the manner facts were presented before this court. Although such

powers are vested with the 1st Respondent Authority, the next important issue is to ascertain whether there is a breach of the rules of natural justice, in the manner pleaded and the way the purported inquiry was conducted by the 1st Respondent Authority. In fact learned counsel for the Petitioner vehemently argued on this aspect in favour of his client and referred to certain items and points which surface from the inquiry proceedings itself.

One of the initial and basic point raised by learned counsel for the Petitioner was that the failure of the authorities concerned namely the 1st Respondent Authority to provide the Petitioner Company with the written complaint of the 7th Respondent, and whatever annextures to the said complaint. This court observes that the Respondents in para 23(e) of the statement of objections specifically aver that a copy of the complaint was given to the Petitioner for the first time with the impugned order marked P16(b). However Respondent maintain that the representatives of the Petitioner Company, requested for a copy of the complaint at the formal inquiry which began on 18.11.2011. Further the Respondent aver that at the commencement of the inquiry at the request of the inquiry panel, 7th Respondent explained the contents of his complaint (vide P9).

Let me consider letter P9. It is a letter requesting the Petitioner Company to be present at an inquiry into a complaint made by the 7th Respondent. It no doubt gives the bare details of the complaint which states that whole floor boards have been attacked by termites, and had to be replaced. If one compares the formal complaint P17(a) of the 7th Respondent what is stated in P9 is hardly sufficient for the purpose. Magnitude of the problem would also and may require expert views? The ends of justice cannot be met on mere assertions, bare details, and utterances made during the progress of the inquiry.

The authorities cited on behalf of the Respondent are useful, but such views cannot be projected in a haphazard manner merely to explain the basis of natural justice, in cases involving scientific/chemical and technical aspects. The opportunity to place evidence cannot be denied.

The obligation which the law casts on it is that it should not act on any information which it may receive unless it is put to the party against whom it is to be used and give him a fair opportunity to explain or refute it Chulasubadra de Silva Vs. University of Colombo and others (1986) 2 SLR288 at 300.

It is evident that the written complaint of the 7th Respondent was not made available to the Petitioner Company at any time prior to the 1st Respondent's impugned order. On the inquiry date (8.12.2010 – P14) at the very outset of the said proceeding, it is stated a copy of the complaint was not made available to the Petitioner. The proceedings at P14 reveal that the inquiry panel had recorded the other preliminary objections raised by the Petitioner Company. The penultimate para of P14 indicates that the inquiry panel would not arrive at a final decision. Therefore all the facts would be considered and would inform the parties of the future course of action or steps of the authority. It is recorded as "මේ අනුව අද දින පරීක්ෂණය මගින් අවසාන තීරණයකට නොඑලබේ. ඒ අනුව සියලු කරුණු සලකා බලා ඉදිරි කටයුතු අධිකාරිය විසින් තීරණය කරනු ලබන බව දෙපාර්ශවයට දැනුම් දෙනු ලැබිණ.

What was the future course of action of the 1st Respondent Authority? 1st Respondent clearly indicates as above that it would clearly notify the parties of its future course of action. A responsible authority had represented to the parties concerned and also kept them to guess about the future course of action. The merits of the complaint had not been fully

inquired by the 1st Respondent. It has been left open for the parties to place further material, according to the undertaking given by the authority. The Consumer Affairs Authority has thereby failed to provide a fair and a reasonable opportunity to the Petitioner Company to present its case, properly and bring its case to the very end. Instead the authority thought it fit to conclude proceeding and decided to make a final determination. This court observes that the merits of the dispute had not been fully considered and no opportunity given to either party to place more material.

In a case of this magnitude and nature it would have been desirable to get the views of an independent expert. Finality to the problem had not been reached. The abrupt termination of proceedings no doubt result in a grave injustice to the parties, more particularly to the Petitioner. There is no indication of the inquiry panel reserving its order or ascertaining from either party whether they intend to lead evidence or place more information/material before the panel. Nor do the panel indicate to parties that proceedings are terminated. As such an opportunity was lost to the Petitioner Company to reach the end of the dispute. Perusal of the entire proceedings indicates that proceedings of 18.11.2010 (P11) was only a

discussion and only one date of inquiry was held on 18.12.2010 (P14), which ended abruptly without a firm indication as to what would be the text step, by merely stating that parties would be notified? Was it left to the parties to surmise? I would draw more details and refer to the following authorities to demonstrate instances of clear breach of natural justice, and such authorities support the facts of the case in hand in all respects.

1. In this regard, the Judgment of the Hon. Supreme Court in *Izadeen v. Director-General of Civil Aviation* (1996) 2 SLR 348 (at pg. 354), is most relevant, wherein it was held by His Lordship G.P.S. De Silva., as follows:

> ".... for the Respondent strenuously contended before us that there was no need whatsoever for a formal inquiry. The "inquiry team" had probed all aspects that need to be considered and had questioned the Respondent and the student pilot on all relevant matters. With these submissions, I find myself unable to agree. The inquiry conducted by the "inquiry team" was at best an inquiry of a preliminary nature. In my view, the Respondent cannot possibly rely on the statement of the Petitioner and his student pilot recorded on 1st May 1993 as constituting compliance with the rules of natural justice. There is no material on record to show that the Petitioner was informed at that stage of the precise nature of the allegations against him. He had no opportunity whatever of calling evidence in support of his position. As far as the Petitioner was concerned, the inquiry concluded in a matter of a few hours on the 1st of May itself. It was not even the finding of the Court of Appeal that a formal inquiry was unnecessary in the facts and circumstances of this case".
>
> Kulatunga J. (agreeing with G.P.S. De Silva C.J) also held as follows (at pages 355 and 356) in the aforesaid case:

"I do not agree with the submission of learned counsel for the Respondent that there was no need whatever for a formal inquiry. None of the decisions cited in support of that submission has application to this case, in Ridge v. Baldwin Lord Hudson summed up thus:

> "No one, I think disputes that three features of natural justice stand out – (1) the right to be heard by an unbiased tribunal, (2) the right to have notice of the charges of misconduct, (3) the right to be heard in answer to those charges."

I do not think I shall go far wrong if I regard ..... these three features as constituting in all ordinary circumstances an irreducible minimum of the requirements of natural justice."

2. The Hon. Supreme Court held as follows in Jayatillake and Another Vs. Kaleel and Others (1994) 1 SLR 319 (at pg. 394):

> "..... There are certain procedural safeguards which are recognized for ensuring fair hearings e.g. the accused should be supplied with a fair statement of the charges (Stevenson v. United Road Transport Union, he should be informed of the exact nature of the charge (Labouchere v. Earl of Wharneliffe), he should be given an opportunity of defending or palliating his conduct (Fisher v. Keane). The opportunity should be fair, adequate and sufficient. Thus the right to be heard will be illusory unless there is time and opportunity for the case to be met – Paul Jackson 'Natural Justice' p. 63. An Oral hearing is another valuable safeguard which ought to be provided unless it may be dispensed with having regard to the subject matter, the rights involved and the nature of the inquiry."

3. In *Pure Beverages Company Executive Officers Association V. Commissioner of Labour* (2001) 2 SLR 258 (at pg. 267) it was held by Your Lordships' Court that:

> "It is well to remember that principles of natural justice not only demand that the affected party or parties should be herd but that they should be given a reasonable opportunity to present their case."

In all the facts and circumstances of this case it is the view of this court that the 1st Respondent Authority is guilty of a serious breach of natural justice. Opportunity has to be fair, adequate and sufficient. It had been denied to the Petitioner Company. A problem of such a magnitude should be carefully considered and even based on independent expert's views. It may have solved the case to a very great extent, though the Tribunal may not be bound by such views. Petitioner was never informed that a decision on the merits of the case of the 7th Respondent would be pronounced after 08.12.2010. As such the Petitioner lost a full and fair opportunity to meet the merits of the 7th Respondent's claim. If the chemical used was the direct cause of termite attack or such chemical does not control the spread of termites, are matters to have been inquired and to provide an opportunity to the Petitioner Company to bring and place material/evidence. The inquiring Tribunal is under duty to get to the root cause. In the absence of proper proof being elicited and to deprive the Petitioner to do so is a grave error. The decision of the 1st Respondent is

highly irresponsible, irrational, arbitrary, unreasonable and illegal. Therefore we direct that a Writ of Certiorari be issued as per sub para (b)_ of the prayer to the Petition and a Writ of Prohibition as per sub para (d) of the prayer. This application is allowed without costs as above.

Application allowed.

JUDGE OF THE COURT OF APPEAL

H.N.J. Perera J.

I agree.

JUDGE OF THE COURT OF APPEAL

P.W.D.C. Jayathilake J.

JUDGE OF THE COURT OF APPEAL