

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

In the matter of an application for a mandate
in the nature of Writs of Mandamus under and
in terms of the provisions of Article 140 of the
Constitution.

Mrs. Nawalage Thilaka Kanthie Cooray
No. 96/6, Nathuduwa
Kelaniya.
L.J.K. Hettiarachchi

PETITIONERS

C.A. Application No.518/2009

Vs

1. National Insurance Trust Fund Board
No, 70, D.R. Wijewardena Mawatha
Colombo 10.
2. Sri Lanka Insurance Corporation Limited
"Rakshana Mandiraya"
No. 21, Vauxhall Street
Colombo 12.
3. Mr. R.A.D. Piyatilake
The Secretary
Ministry of Industrial Development
Colombo 03.
4. Mr. D. Dissanayake
Secretary
Ministry of Public Administration and Home
Affairs
Independence Square
Colombo 07.

5. Hon. Attorney General
Attorney General's Department
Colombo 12.

RESPONDENTS

BEFORE

: Deepali Wijesundera J.

L.U. Jayasuriya J.

COUNSEL

: Javed Mansoor for the Petitioner

Sagara Kariyawasam for the 2nd
Respondent.

Chaya Sri Nammuni SC for all

The respondents except the 2nd
Respondent.

ARGUED ON

: 06th June, 2016

DECIDED ON

: 31st March, 2017

Deepali Wijesundera J.

The petitioner has filed this application praying for a writ of mandamus to direct the 1st or 2nd respondents to give effect to the documents marked as **P4, P4A, P3, P11 and P12.**

An insurance scheme titled Agrahara was introduced under the patronage of the 2nd respondent in 1997 (**P3**) for all state officers employed by the government who were holding pensionable posts. This scheme offered three types of insurance covers medical, personal accident and loan protection schemes. The issue in the instant case is the loan protection scheme. The petitioner's deceased husband had obtained a housing loan under this scheme in 1998 to the value of Rs. 3,31,800/= while he was employed at the Registrar General's Department. The scheme was operated and managed by the 2nd respondent at that time. The petitioner's husband has died in 2006 while working at the Ministry of Industrial Development.

In 2006 the said Agrahara loan scheme was transferred to the 1st respondent board that was to be incorporated and a new insurance scheme was introduced in place of PA 5/9 (**P3**) namely P12/2006 Public Administration Circular (**P12**) and the 1st respondent board was established by *Act no. 28 of 2006 entitled National Insurance Trust Fund*.

After the death of the petitioner's husband the petitioner had called the 1st respondent by **P7** to comply with the circular marked **P3** and settle the outstanding balance of the loan. The 1st respondent has sought to rely on a purported opinion expressed by an officer in the Attorney General's

Department by **P13** who based his opinion on sec. XXIV of the Establishment Code but this opinion has failed to consider the effect of certain clauses in **P12**.

The petitioner's counsel has stated that the Ombudsman by his letter marked as **P11** recommended that the loan should be settled in terms of the circular marked **P3**. The petitioner argued that the petitioner's rights under circular **P3** were not varied, withdrawn, revoked or overridden by the circular **P12**.

The petitioner further stated that the 3rd respondent requested the 1st respondent to take steps to settle the balance loan payment and release the title deeds to the heirs which the 1st respondent failed to comply with. By **P7** the 2nd respondent has written to the 1st respondent stating that the 1st respondent was responsible under the Agrahara Insurance Scheme to make the balance payment. The argument of the petitioner is that the 1st and 2nd respondents were under a duty to abide by the terms of circular **P3** in relation to the insurance cover taken by the petitioner's husband and that circular **P12** could not take away the rights given to the deceased by **P3**.

The argument of the respondents was that the obligations pleaded by the petitioner are in the nature of a contract and not a statutory obligation that is amenable to a writ of mandamus. Citing the judgments in **Weligama Multipurpose Corporative Society vs Chandradasa Daluwatte 1984 1 SLR 195** and **Perera vs Municipal Council of Colombo (1947) 48 NLR 66** the respondents stated that a writ of Mandamus should not be issued in the instant case since the liability pointed out by the petitioner arises out of a contract. The respondents also stated that the petitioner does not claim a statutory duty owed to her by the 1st respondent. The judgments cited by the respondents are not relevant to the instant case. The loan was obtained by a circular issued for pensionable public servants, this does not form a contract between the parties.

Section 11 of circular no. 12/2005 reads thus;

“පැවති අනුභාර රක්ෂණ ක්‍රමය යටතේ රාජ්‍ය නිලධාරීන් ණය රක්ෂණ සැලැකුම් ඇපයට තබා ලබාගෙන ඇති ණය මුදල් ප්‍රමාණයන් ද මෙම දායක රක්ෂණ ක්‍රමයෙහි නව විධිවිධාන යටතේ ඒ අයුරින් ම ක්‍රියාත්මක වේ.”

It is very clearly stated in this *circular no. 12/2005 in section 11* that the loans obtained under the previous circular will also be incorporated in the new scheme.

The petitioner's late husband had obtained the housing loan under the insurance scheme in **P3** with the expectation that the insurance scheme will cover him when he obtained the loan under the previous scheme. He had legitimate expectations that he will be covered by the said scheme. The 1st Insurance scheme was converted into a new scheme by **P12**. Section 11 of P12 clearly states that the new scheme will incorporate the loans obtained by the previous scheme. By letter marked **P16** the secretary to the Ministry of Public Administration and Home Affairs has stated that the said loan should be settled by the 1st respondent. The provisions of the Establishment code which are misinterpreted by the officer of the Attorney General's Department is also referred to in this letter. The 1st respondent is legally bound and obliged to settle the outstanding loan as premised and undertaken by the 1st respondent in terms of *sec. 11 of circular no. 12 of 2005*.

For the afore stated reasons I decide to grant the relief prayed for in pray 11 of the petition. The petitioner's application for writ is allowed.

JUDGE OF THE COURT OF APPEAL

L.U. Jayasuriya J.

I agree.

JUDGE OF THE COURT OF APPEAL