

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

Abid Sherwani,  
No. 27 1/3,  
Alfred Place,  
Colombo 3.  
Petitioner

**CASE NO: CA/WRIT/652/2011**

Vs.

1. The Monetary Board of the Central Bank  
of Sri Lanka.
2. Mrs. T.M.G.Y.P. Fernando,  
Director,  
Bank Supervision,  
Central Bank of Sri Lanka.  
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Faisz Musthpha, P.C., with Faisza Markar for the  
Petitioner.

Vikum De Abrew, Senior D.S.G., for the Respondents.

Decided on: 25.07.2019

Mahinda Samayawardhena, J.

The petitioner filed this application seeking a writ of certiorari to quash P12 whereby the 1<sup>st</sup> respondent Monetary Board of the Central Bank of Sri Lanka has, in terms of section 42(8) of the Banking Act, No.30 of 1988, as amended, directed the Habib Bank Limited to remove the petitioner from the post of Country Manager of Sri Lanka of the said Bank.

This is as a result of large sums of moneys in US Dollars being illegally remitted out of Sri Lanka by two non-existing bogus companies through Habib Bank Sri Lanka on the pretext of payments for imports on forged documents.

The learned President's Counsel for the petitioner submits that the said decision of the Monetary Board is *ultra vires*.

Section 42(8) of the Banking Act reads as follows:

*Where the Director of Bank Supervision, having regard to the matters specified in subsections (1), (2) and (3) is satisfied at any time that a person appointed, elected or nominated as the case may be as a director of a licensed commercial bank is not a fit and proper person or that he is otherwise ineligible for appointment, election or nomination as the case may be or that the election, appointment or nomination as the case may be of a person as a director of a licensed commercial bank contravenes the provisions of subsection (3) or subsection (7) the Director shall submit a report to the Monetary Board. The Board may, if it is satisfied on consideration of the report and such other matters which in its opinion merit inquiry, that the*

*person is not a fit and proper person or the election, appointment or nomination as the case may be of the person contravenes the provisions of subsection (3) or subsection (7)-*

*(a) direct the bank in writing to remove such person from the office of director within such period as may be specified in such direction, giving the reasons for such direction; and*

*(b) notify in writing the person whose removal is required under such direction, of such direction, a copy of which shall be annexed to such notification,*

*and the bank shall within the period specified in the direction remove such person from the office of the director and notify such person in writing of his removal from the office of director, and shall take such steps as are necessary to inform the shareholders of the bank and the Registrar of Companies of such removal. The removal of a director in accordance with the directions given under paragraph (a) shall take effect from the date of receipt by the director of the notification of removal given by the bank, notwithstanding the provisions of any other law or the Articles of Association of the bank.*

The first argument of the learned President's Counsel for the petitioner is that it is an essential prerequisite for a decision by the Monetary Board to first have a Report from the 2<sup>nd</sup> respondent-Director of Bank Supervision of the Central Bank that the person concerned is unfit to hold that position, but in this instance, there was no such Report. The learned President's Counsel argues that the Report on the Spot Examination marked P5 is the material used by the Director of Bank Supervision to commence

investigation against the petitioner, and it is not a Report of the Director of Bank Supervision, which was submitted to the Monetary Board.

This argument is unacceptable *inter alia* in view of P6 tendered by the petitioner himself wherein the 2<sup>nd</sup> respondent-Director of Bank Supervision has informed the petitioner that Spot Examination was carried out by the Bank Supervision Department. Together with P6, the Director of Bank Supervision has sent a copy of the Report of the Spot Examination to the petitioner, and also informed the petitioner by P6 that the said Report was submitted to the Monetary Board.

Then it is clear that the Director of Bank Supervision has submitted a Report, which is P5, to the Monetary Board.

It is relevant to note that before compiling the Report P5, as seen from R3, the petitioner has been given a hearing. In R3, the petitioner has thanked the Deputy Governor of the Central Bank “*for the patient hearing and your appreciation of our submissions.*”

The next submission of the learned President’s Counsel for the petitioner is that the Director of Bank Supervision has failed to satisfy herself the matters mandated by section 42(8) of the Banking Act. I have quoted section 42(8) above.

Section 42(2)(b) reads as follows:

*In determining whether a person would, for the purposes of subsection (1) be considered to be a fit and proper person, the following matters shall be taken into consideration—(b) that there is no finding of any regulatory or supervisory authority,*

*professional association, any Commission of Inquiry, tribunal or other body established by law in Sri Lanka or abroad, to the effect that such person has committed or has been connected with the commission of, any act which involves fraud, deceit, dishonesty or any other improper conduct.*

According to section 28 of the Monetary Law Act, No. 37 of 1974, as amended, the Director of Bank Supervision Department of the Central Bank is statutorily authorized to supervise all Banking institutions in Sri Lanka. That section reads as follows:

*28(1) For the purposes of the continuous supervision and periodical examination of all banking institutions in Sri Lanka, the Central Bank shall establish and maintain a department of bank supervision.*

*(2) The head of the department established under subsection (1) shall be called the Director of Bank Supervision.*

Hence the 2<sup>nd</sup> respondent, the Director of Bank Supervision conveniently falls into the category of “*Supervisory Authority established by law*” for the purpose of section 42(2)(b) of the Banking Act.

The Director of Bank Supervision by P5 arrived at several findings against the petitioner. One such finding reads as follows:

*The Country Manager and Compliance Officer of HBL are directly responsible for the above-mentioned willful breaches of regulatory requirements and lapses in internal control mechanism in an attempt to cover up the fraudulent foreign currency remittances of PSS and BMD.*

In terms of section 42(2)(b), the petitioner to be considered as unfit to hold that position, there need not necessarily to be a finding that he has committed an act which involves fraud, deceit, dishonesty or any other improper conduct. A finding that he has been connected with the commission of any such act is adequate.

Hence the second argument that the 2<sup>nd</sup> respondent-Director of Bank Supervision failed to perform her statutory duty fails.

The third argument of the learned President's Counsel for the petitioner is that the 1<sup>st</sup> respondent-Monetary Board has acted in abdication of its statutory duty.

The learned President's Counsel states that, under section 42(8), there shall be a "report" submitted by the Director of Bank Supervision and "such other matters which in its opinion merit inquiry" before making the decision by the Monetary Board. According to the learned President's Counsel this has not happened.

I have already stated that the Director of Bank Supervision has submitted the Report P5 to the Monetary Board. Board Paper submitted with annexures compendiously marked as R4 fortifies this position.

Thereafter, as seen from R5, the Monetary Board *inter alia* has decided to issue a show cause letter to the Habib Bank as to why the Central Bank shall not determine that the petitioner is not a fit and proper person to hold the office of the Country Manager of Habib Bank in Sri Lanka.

As seen from R7 and P6 this has been communicated both to the Habib Bank and the petitioner.

Habib Bank has, by R8 and P11, sent adverse reports against the petitioner.

In R8, the Regional General Manager of South Asia of the Habib Bank has *inter alia* stated as follows:

*His (the petitioner's) performance for year ended 2010 was rated "unsatisfactory". His contract with HBL expires on July 31, 2011. We do not intend to renew the contract any further. We have already requested CBSL approval for appointment of an officiating Country Manager Mr. Muhammad Asaf Sheikh. Mr. Abid Sherwani will hand over his charge as Country Manager to Mr. Muhammad Asaf Sheikh as soon as we receive CBSL approval.*

In Habib Bank Investigation Report marked P11 *inter alia* it has been noted that the petitioner has approved the transfers (TRF) beyond his mandate, and has recommended immediate change of the petitioner as the Country Manager.

By R6 it is clear that by 5<sup>th</sup> July 2011 the Habib Bank has removed the petitioner as the Country Manager and a new (Acting) Country Manager has been appointed.

The petitioner in the meantime has sent P10 to the Director of the Bank Supervision in reply to P6.

Having taken everything into consideration, the Board Paper marked R9 together with annexures has been presented to the

Monetary Board and the Monetary Board has by R10 dated 07.07.2011 (or 15.07.2011) decided to direct the Habib Bank to remove the petitioner from the post of Country Manager.

However, as seen from R6, by that time, the petitioner had been removed from that post and a new acting appointment had already been made by the Habib Bank. Further, as seen from R8, the Habib Bank has already decided not to renew the petitioner's contract which was to expire on 31<sup>st</sup> July 2011.

For the aforesaid reasons, I cannot accept the argument of the learned President's Counsel that the Monetary Board abdicated their statutory duty when they took the decision as reflected in P12.

The last submission of the learned President's Counsel for the petitioner is that the impugned decision was taken in violation of the rules of natural justice in that the petitioner was not given a full hearing. I am not impressed by that submission. There was a Spot Examination carried out by the Bank Supervision Division as seen from P6. Thereafter, as seen from R3, the petitioner was given a "patient hearing" by a Deputy Governor of the Central Bank. Thereafter with a copy of the Spot Examination Report marked P6, the petitioner has been asked to show cause why he should not be removed from the post. The petitioner has presented his explanation by P10. In the meantime, independent investigations have been carried out by the Habib Bank<sup>1</sup> regarding this "massive exchange racket".<sup>2</sup> The adverse findings contained in those Reports and Letters marked R8 and P11 against the

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<sup>1</sup> Vide annexures 4 and 5 attached to R9.

<sup>2</sup> This term has been used by Director of Customs in R11.



petitioner are unchallenged and uncontroverted. The Habib Bank has not been made a party to this application. In terms of section 42(8) of the Banking Act, the Monetary Board can take “such other matters” into consideration when deciding whether a person shall be removed from office.

The learned Senior D.S.G., has taken up several preliminary objections to the maintainability of this application such as necessary parties, in particular, the members of the Monetary Board have not been made parties<sup>3</sup>; and the petitioner has not pursued the appeal procedure provided by law if he was dissatisfied with the findings of the Director of the Bank Supervision of the Central Bank and the Monetary Board of the Central Bank.

In view of my above findings on merits, I do not think that it is necessary for me to dwell on them.

Application of the petitioner is dismissed with costs.

Judge of the Court of Appeal

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<sup>3</sup> Relying on *Wijeratne (Commissioner of Motor Traffic) v. Ven. Dr. Paragoda Wimalawansa Thero* [2011] 2 Sri LR 258 at 267.