

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

*In the matter of an application for orders in
the nature of Writs of Certiorari,
Mandamus and Prohibition under and in
terms of Article 140 of the Constitution.*

CA/WRIT/605/2021

1. Eng. Dr. D. C. R. Abeysekara
No. 49A,
Ward Place
Colombo 07.

Petitioner

Vs.

1. Ceylon Electricity Board
No. 50, Sir Chittampalam A.
Gardiner Mawatha,
Colombo 02.

2. M. M. C. Ferdinando
Chairman,
Ceylon Electricity Board,
No. 50, Sir Chittampalam A.
Gardiner Mawatha,
Colombo 02.

2A. N. S. Illangakoon RWP RSP
Chairman
Ceylon Electricity Board,
No. 50, Sir Chittampalam A.
Gardiner Mawatha,
Colombo 02.

3. N. S. Illangakoon RWP RSP
Vice Chairman,
Ceylon Electricity Board,
No. 50, Sir Chittampalam A.
Gardiner Mawatha,
Colombo 02.

4. M. M. Nayeemudeen
Member

5. S. D. J. Nilukshan
Member
6. B. Wijayarathne
Member
7. Ruban Wickramarachchi
Member
8. General Daya Rathnayake
Member,

The 4th to 8th Respondents,
Members of the Board Ceylon
Electricity Board,
No. 50, Sir Chittampalam A.
Gardiner Mawatha,
Colombo 02.

9. Eng. M. R. Ranatunga
General Manager,
Ceylon Electricity Board,
No. 50, Sir Chittampalam A.
Gardiner Mawatha,
Colombo 02.
10. Eng. A. J. P. K. Perera
Deputy General Manager
(Personnel) ,
Ceylon Electricity Board,
No. 50, Sir Chittampalam A.
Gardiner Mawatha, Colombo 02.
11. Hon. Gamini Lokuge
Minister of Power,
Ministry of Power,
437, Galle Road, Colombo 03.
- 11A. Hon. Kanchana Wajesekara
Minister of Power and Energy,
Ministry of Power and Energy,
437, Galle Road,
Colombo 03.

12. Wasantha Perera
Secretary to the Ministry of Power,
Ministry of Power,
437, Galle Road,
Colombo 03.

12A. M. P. D. U. K. Mapa Pthirana
Secretary to the Ministry of
Power and Energy,
Ministry of Power and Energy,
437, Galle Road,
Colombo 03.

Respondents

Before : Sobhitha Rajakaruna J.
Dhammika Ganepola J.

Counsel : Shantha Jayawardena with Hiranya Damunupola for the Petitioner.

Sanjeeva Jayawardena, PC with Lakmini Warushavithana for the 9th
Respondent.

Vikum de Abrew, PC ASG with Amasara Gajadeera, SC and Medhaka
Fernando, SC for the 1st to 8th and 10th to 12th Respondents.

Argued on : 20.09.2022

Written Submissions : Petitioner - 07.10.2022

1st to 8th and 10th to 12th Respondents - 06.10.2022

Decided on : 20.10.2022

Sobhitha Rajakaruna J.

The Petitioner in this application seeks, inter alia, for an order in the nature of a writ of Certiorari quashing the decision of the 1st to 8th Respondents to extend the term of service of the 9th Respondent ('Eng. Ranatunga') as the General Manager of Ceylon Electricity Board ('CEB') beyond the age of 60 years. Further, the Petitioner seeks for an order in the

nature of a writ of Mandamus directing the 1st to 11th Respondents to appoint the Petitioner as the General Manager of CEB, upon Eng. Ranatunga reaching 60 years.

Eng. Ranatunga is the Petitioner in the application bearing No. CA/Writ/02/2022, a matter taken up for support along with the instant application at its threshold stage. This Court on 12.01.2022 decided to issue formal notice in both the cases on the respective Respondents. This Court, in the same order on 12.01.2022 has directed the Board of Directors of CEB by way of an interim order not to appoint a General Manager ('GM') on permanent basis, upon the retirement of Eng. Ranatunga (which was due on 13.01.2022) until the date of argument of that case. All the parties of this application have agreed to be abide by the said order issued by this Court on 12.01.2022 in the said application bearing No. CA/Writ/02/2022.

However, the CEB as a consequence to the said order, has appointed the Petitioner of this case as the Acting GM by 'P46', as the Court was of the opinion that the aforesaid interim order should not impede the Board of Directors of the CEB in appointing a suitable person to the post of GM, on temporary basis, in terms of the Section 5(1) of the Ceylon Electricity Board Act ('the Act').

As enunciated in the said order dated 12.01.2022, this Court has identified the following questions to be determined in the said case as well as in the instant application;

- i. has the relevant Minister taken a decision to approve the extension of term office of Eng. Ranatunga?
- ii. has the Minister given reasons when he cancelled such decision by document P39?
- iii. has the Minister become functus once he made an order to extend the term of office of Eng. Ranatunga and was the Minister entitled to revoke his own decision?
- iv. when the Minister approved the extension of the term of office and was pending for one whole month; did it create a legitimate expectation in Eng. Ranatunga?
- v. was Eng. Ranatunga given a hearing before the Minister decided to cancel his original decision in 'P25'?

On 06.10.2022 the learned President's Counsel who appears for Eng. Ranatunga in the said application bearing No. CA/Writ/02/2022 submitted that he is not moving for the extension of the interim order issued by this Court in the said case. Further, the learned President's Counsel indicated that Eng. Ranatunga has already reached the age of 60 years

and accordingly, he would not make any claim for him to be appointed as the GM of the CEB. Based on such submissions, the Court on 06.10.2022 has not extended the interim order issued in the said case No. CA/Writ/02/2022.

Having considered the fact that Eng. Ranatunga has reached the age of 60 years and that he would not make any claims in respect to the post of GM, I take the view that it is futile for this Court to examine the aforesaid questions identified by this Court. In the circumstances, what is required to be considered at this juncture in this application is whether there are grounds to issue a writ of Mandamus directing the relevant Respondents to appoint the Petitioner as the GM of CEB.

Eng. Ranatunga was appointed as the GM of CEB with effect from 23.08.2021 ('P13') and was to retire on 12.01.2022 reaching the statutory age of 60 years in terms of Section 5(4) of the Act. By virtue of letter dated 16.11.2021, marked '9R11', the Minister of Power has granted approval to extend the services of Eng. Ranatunga in the post of GM beyond the age of 60 years. Anyhow through letter dated 15.12.2021, marked '9R30'/'11R1'/'P34', the Minister of Power informed the Chairman of CEB (2nd Respondent) that the purported approval granted to Eng. Ranatunga for an extension of services by one year beyond 60 years had been revoked.

Thereafter, Eng. Ranatunga has been served with the retirement letter dated 17.12.2021 in furtherance to the Board Memorandum dated 20.12.2021, marked 'P21'. At the same Board meeting, the Board of Directors having considered the said Board Memorandum 'P21' has taken a decision as per 'P36' to grant approval to appoint the Petitioner as the next GM of CEB with effect from 13.01.2022 subject to the approval of the Minister of Power. Subsequently, the Minister of Power, in terms of Section 5(1) of the CEB Act has approved the appointment of the Petitioner as the GM of CEB with effect from 13.01.2022 by virtue of letter dated 04.01.2022 marked 'P22'.

However, Eng. Ranatunga filed the said application bearing No. CA/Writ/02/2022 challenging the decision reflected in the letter dated 15.12.2021 (same letter is marked 'P34' in the instant application) issued by the Minister of Power to revoke the previous approval extending the services of Eng. Ranatunga as the GM of CEB. As observed earlier, this Court after taking a decision on issuance of formal notice, has issued an interim order as mentioned above. It is observed that the Petitioner's appointment as the GM on

permanent basis has not taken place due to the said interim order of this Court. Similarly, it is important to note that the learned Additional Solicitor General ('ASG') who appears for the 1st to 8th and 10th to 12th Respondents categorically informed Court that the Respondents were not in a position to appoint the Petitioner as the GM upon the 9th Respondent reaching the age of 60 years with effect from 13.01.2022 due to the interim order made by this Court on 12.01.2022.

In the above backdrop, I need to advert to examine whether the Petitioner has fulfilled the legal requirements to be appointed as the GM of the CEB. The provisions of Section 5(1) and Section 5(4) deal with the appointment of the GM of the CEB.

Section 5(1)

'The Board shall, with the approval of the Minister, appoint a competent and experienced person as General Manager of the Board.'

Section 5(4)

'The General Manager shall retire from office on reaching the age of sixty years: Provided, however, that his term of office may be extended thereafter by the Board with the prior approval of the Minister.'

As observed above, the Board of Directors of the CEB has granted approval to appoint the Petitioner as the next GM of CEB with effect from 13.01.2022 subject to the approval of the relevant Minister. The Secretary to the Ministry of Power by his letter dated 04.01.2022, marked 'P22' has informed the Chairman of CEB that the Minister of Power had approved the appointment of the Petitioner as the GM of CEB as per the Section 5(1) of the Act with effect from 13.01.2022. Hence, I take the view that all basic legal requirements in terms of the provisions of the Act have been fulfilled in order to appoint the Petitioner as the GM of CEB with effect from 13.01.2022. However, it is pertinent to note that such appointment has not been made as a result of the said application filed by Eng. Ranatunga and also due to the interim order made by this Court in the said case.

The 1st to 8th and 10th to 12th Respondents ironically pray in the written submissions filed on their behalf that the reliefs prayed for in the Petition of the Petitioner be refused on objections of futility. It is important to note that the 1st to 8th and 10th to 12th Respondents have not given any valid reason to deviate from their earlier decision to appoint the

Petitioner as the GM of CEB with effect from 13.01.2022. Neither the relevant Minister or the Board of Directors of the CEB has taken a decision to revoke their earlier decisions to appoint the Petitioner as the GM with effect from 13.01.2022.

This Court in the above-mentioned order 12.01.2022 in case No. CA/Writ/02/2022 has referred to the submissions made by the learned ASG at the support stage of this application. The relevant portion of the said order is reproduced below;

“The learned ASG making submissions moved that both applications of Eng. Ranatunga and Eng. Abeysekera be dismissed in limine as the CEB has already taken steps to appoint Eng. Abeysekera as the next GM. His contention is that Eng. Ranatunga has signed the ‘Board Memorandum’ dated 20.12.2021 (marked R2) and recommended Eng. Abeysekera to be appointed as the next GM of the CEB. Accordingly, he argues that the conduct of Eng. Ranatunga does not warrant him to get any relief in an application for judicial review. He further points out that Eng. Ranatunga was physically present at the Board meeting on 20.12.2021, without raising any objections, when the Board considered the Board Memorandum marked R2 signed by Eng. Ranatunga himself.”

In view of the circumstances of the instant application as well as of the said application No. CA/Writ/02/2022, it is abundantly clear that Eng. Ranatunga is not claiming for the post of GM at this stage. Furthermore, I take the view that the validity of the decision taken by the Board of Directors and the relevant Minister to appoint the Petitioner as the GM of CEB has not been defeated by any Court of law and thus, the ‘presumption of validity’ comes in to operation.

In view of the judgement of *Hoffman-LA Roche & Co vs. Secretary of State for Trade and Industry (1975) AC 295*, there is a presumption of validity in the favour of a disputed order until set aside by the Court.

Following the above judgement, H.W.R. Wade & C.F. Forsyth (in *‘Administrative Law’, 11th Edition, Oxford at p. 254*) have observed that;

“If an act or order is held to be ultra vires and void it is natural to assume that, being a nullity, it is treated as non-existent by all who would otherwise be concerned. But the judgement of a

court binds only the parties to it, so that here also there are problems of relativity. Once again Lord Diplock has supplied the answer.¹

Although such a decision is directly binding only as between the parties to the proceedings in which it was made, the application of the doctrine of precedent has the consequence of enabling the benefit of it to accrue to all other persons whose legal rights have been interfered with in reliance on the law which the statutory instrument purported to declare.” (Emphasis added).

In light of the above, I take the view that there is no merit in the objections raised on behalf of the 1st to 8th and 10th to 12th Respondents at this stage on futility and after a careful consideration of the overall circumstances of this case, I proceed to reject such objections of those Respondents.

For the reasons set out above, I am of the view that the Petitioner is entitled to be appointed as the GM of the CEB upon the retirement of Eng. Ranatunga, who was the previous GM, reaching the age of 60 years. Thus, I issue a writ of Mandamus directing the 1st to 8th and 10th Respondents to appoint the Petitioner as the General Manager of the Ceylon Electricity Board with effect from 13.01.2022. Based on the fact that the stand taken by the Petitioner in CA/Writ/02/2022 has subsequently changed, I see no reason to take in to consideration the other reliefs sought by the Petitioner in this application.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal

¹ Hoffman-LA Roche & Co vs. Secretary of State for Trade and Industry (1975) AC 295 at p. 365