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

In the matter of an application for mandates in the nature of writ of *Certiorari* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CASE NO: CA/WRIT/392/18**

Padmini Karunanayake
No. 95, Isipathana Mawatha,
Colombo 5.

**PETITIONER**

**VS.**

1. The Finance Company PLC
   No. 55, R.A. De Mel Mawatha
   (Lauries Place),
   Colombo 4.

2. The Central Bank of Sri Lanka
   P.O. Box 590,
   Colombo 1.

3. The Monetary Board of the
   Central Bank of Sri Lanka
   Central Bank of Sri Lanka,
   P.O. Box 590,
   Colombo 1.

**RESPONDENTS**

Before: **M. T. MOHAMMED LAFFAR, J. and**
**S. U. B. KARALLIYADDE, J.**

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

Asthika Devendra with Sudharsha de Silva for the 1st Respondent.

Milinda Gunathilake, A.S.G., with R. Perera, S.C., for the 2nd and 3rd Respondents.

Written Submissions on:

11.01.2022 and 19.06.2020 (by the Petitioner).

14.12.2021 and 18.06.2020 (by the 1st Respondent).

17.12.2021 and 22.05.2020 (by the 3rd Respondent).

Decided on: 26.01.2022

**ORDER PERTAINING TO THE PRELIMINARY OBJECTIONS AS TO THE MAINTAINABILITY OF THE APPLICATION**

**MOHAMMED LAFFAR, J.**

The Petitioner to the present application, Padmini Karunanayake, by her petition dated 12.12.2018 stated, *inter alia,* that,

(1) The Petitioner joined the 1st Respondent – The Finance Company PLC in January 1970 as a Manager and retired from service in 2009 as Joint Deputy Managing Director/CEO.

(2) The 1st Respondent Company is a finance company incorporated in 1940 and duly registered under and in terms of Companies Act, No. 7 of 2007. The 1st Respondent Company also registered under the Finance Companies Act, No. 42 of

2011 (hereinafter referred to as the "Finance Business Act"), the Finance Leasing Act No. 56 of 2000 and it is a Public Quoted Company listed in the Colombo Stock Exchange.

(3) The Petitioner was appointed as the Deputy Chairperson of the Ceylinco Homes Groups in addition to the post she held at the 1st Respondent Company.

(4) Following her retirement from the 1st Respondent Company, she had received a gratuity payment of Rs. 35,100,000/- from the Trustees Employees Gratuity Trust Fund. A net gratuity of Rs. 29,835,000/- was paid after taxes by way of cheque bearing number 881016. The Petitioner further stated that she continued to remain in the Board of Directors of the 1st Respondent as Joint Deputy Managing Director/CEO.

(5) In or about January-Feberuary 2009, the 1st Respondent faced a liquidity crisis due to the 'Golden Key Credit Card Limited issue'. The then Directors made a request to the 2nd Respondent to obtain a facility of Rs. 8 billion against the receivable of the 1st Respondent Company to meet the payments relating to deposits that had matured and the interests accrued on the said deposits with the 1st Respondent Company. In pursuance thereof the Directors including the Petitioner were requested to place their gratuity as fixed deposits with the 1st Respondent Company.

(6) As the Petitioner did not receive any of the interests due on aforesaid fixed deposits upon their maturity even though renewal notices were served on her after the said maturity period, she requested the said sum from the 1st Respondent and the matter had been referred to the 2nd Respondent.

(7) The Petitioner's husband namely Nihal Karunanatake had received a letter dated 29.12.2016 (marked P14) from the 2nd Respondent stating, *inter alia,* that Nihal Karunanayake's deposits have been withheld by the 1st Respondent in terms of the direction imposed on 11.11.2014 by the 2nd Respondent. The said purported direction was to *hold payments for liabilities (including deposits) to directors, key management personals and their relatives until finalization of purported Forensic Audit to be conducted by M/s KPMG Ford Rhodes Thornton & Co.* (vide P15). However, later, Mr. Nihal Karunanayake had received his deposit of Rs. 2,200,000/- held by the 1st Respondent.

(8) The said direction dated 11.11.2014 issued by the Monetary Board contained in P15 purportedly in terms of Section 10 of the Monetary Law Act, No. 37 of 1974 (hereinafter referred to as the "Monetary Law Act") is illegal, null and void, no force or avail in law (vide para. 25 of the petition dated 12.12.2018).

In these circumstances, the Petitioner primarily sought, *inter alia*, the following reliefs:

(b) a mandate in the nature of a writ of *Certiorari* quashing the purported direction issued by the 2nd Respondent contained in P15.

(c) an order directing the 2nd Respondent to produce the report relating to the purported Forensic Audit conducted by M/s KPMG Ford Rhodes Thornton & Co. if any.

However, it is borne out from the case record that, when this matter was mentioned in Court on 19.06.2019 it was submitted on behalf of the 3rd Respondent that a preliminary objection will be taken up regarding the 2nd Respondent being added as a party. Thereupon the learned President's Counsel for the Petitioner took notice of the said

intended objection and informed Court that appropriate steps if any would be taken.

Subsequently, when this matter was mentioned in Court on 02.08.2019 advance notice of the preliminary objection was given again regarding the intended preliminary objection. Learned President's Counsel for the Petitioner moved to amend prayer (b) of the petition and filed a motion on the same date amending prayer (b) deleting the reference to the 2nd Respondent. Accordingly, amended prayer (b) of the petition reads as follows:

> *(b) to issue a mandate in the nature of a writ of Certiorari quashing the purported direction contained in P15.*

Thereafter, when this matter was taken up for hearing on 17.11.2021, the Respondents have raised several preliminary objections, including the maintainability of this application before this Court i.e., jurisdictional objection.

The preliminary objections raised are as follows:

a. This Court does not possess jurisdiction to hear and determine this matter in terms of section 58 (2) of the Finance Business Act.
b. The 2nd Respondent – Central Bank of Sri Lanka (sometimes referred to as the "CBSL") is not a legal or natural person, and this action cannot be maintained against the said Respondent.
c. The Petitioner is failed to specify a legal right to the relief sought.
d. The Petitioner is guilty of laches.
e. The matter is misconceived in law and cannot be maintained in terms of the provisions of the Finance Business Act.

Let me consider the first (a) preliminary objection on *jurisdiction.*

It is undisputed that the 1st Respondent Company is a company registered under the Finance Business Act. The Petitioner quite specifically pleaded the same in her petition [vide para 3(i) of the petition].

The Finance Business Act repealed the Finance Companies Act, No. 78 of 1988 (vide section 71 of the Finance Business Act). Section 58 of the Finance Business Act is vital in respect of jurisdiction. The section provides as follows:

> ***58. (1) No person aggrieved by any determination or decision made, direction issued, requirement imposed or purported to have been made, issued, or imposed under section 5 or section 12 or subsection (2) of section 25 or paragraph (b) of subsection (5) or sub section (6) of section 31 or section 34 or section 36 or section 37 or section 42 or section 51 or who apprehends that he would be affected by any act or any step taken, or proposed to be taken or purporting to be taken under any such section shall be entitled to a permanent or interim injunction, an enjoining order, a stay order or any other order having the effect of staying, restraining, or impeding the Board from giving effect to such order.***
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> ***(2) (a) The jurisdiction conferred on the Court of Appeal by Article 140 of the Constitution shall in relation to any determination, decision, direction, or requirement or purported determination, decision ,direction, or requirement under sections referred to in subsection (1), be exercised by the Supreme Court and not by the Court of Appeal.***

*(b) Every application invoking the jurisdiction referred to in paragraph (a) shall be made within one month of the date of commission of the act in respect of which or in relation to which, such application is made and the Supreme Court shall hear and finally dispose of such application within two months of the filing of such application.*

*(3) Nothing contained in subsection (1) shall affect the powers which the Supreme Court may otherwise lawfully exercise in respect of any application made under Article 126 of the Constitution or in the exercise of the jurisdiction referred to in subsection (2).*

*(4) The Supreme Court shall before making any order whether interim or final against the Board, in the exercise of the jurisdiction conferred on it by this section, afford the Board an opportunity of being heard.*

In the matrix, it was contended by the learned Counsel for the 1st Respondent and the learned Additional Solicitor General for the 2nd and 3rd Respondents that the decision contained in P15 is made by the 3rd Respondent Monetary Board for the purpose of *holding payments for liabilities (including deposits) to directors, key management personals and their relatives* falls under section 12 (1) (j) of the Finance Business Act which reads as follows:

*12. (1) Notwithstanding the provisions of any other law, the Board may give directions to finance companies or to any group or category of finance companies regarding the manner in which any aspect of the business and corporate affairs of such finance companies are to be conducted and, in particular –*

*.....*

*(j) conditions which should be applicable to withdrawal by depositors of deposits before maturity*

*(Emphasis added).*

It is also pertinent to note that section 74 of the Finance Business Act provides that "Board" means the Monetary Board of the Central Bank of Sri Lanka established under the Monetary Law Act. Therefore, it was the contention of the Respondents that the impugned decision at P15 is a decision made in terms of section 12 (j) of the Finance Business Act and that therefore it falls within the ambit of section 58 of the said Act, which has specifically ousted the jurisdiction of this Court to hear and determine this matter.

However, at the hearing, the learned President's Counsel for the Petitioner sought to contend that the impugned decision is not a decision that falls within the ambit of section 58 (2) as it is not a decision of the 3rd Respondent – Monetary Board, but that of the 2nd Respondent – CBSL.

It was contended by the learned Additional Solicitor General that the Petitioner in her petition categorically stated and admitted that the impugned decision P15 is made by the 3rd Respondent Monetary Board (vide para 25 of the petition and para 29 of the written submissions dated 19.06.2020). Therefore, the learned Additional Solicitor General submitted that the conduct, action and submissions of the Petitioner prior to the hearing is completely contradictory to the position that was sought to be established at the hearing.

The learned Additional Solicitor General, referring to sections 5, 8 and 9 of the Monetary Law Act, No. 58 of 1949 submitted that *though an institution known as the Central Bank is statutorily established,*

*the legislature has carefully, specifically and categorically refrained from affording legal personality to the said institution and has afforded legal personality on behalf of the same, to the Monetary Board.*

Section 5 of the Monetary Law Act, No. 58 of 1949 (as amended by Act No. 32 of 2002) provides for the establishment and objectives of the CBSL, reads as follows:

> *5. An institution, which shall be called and known as the Central Bank of Sri Lanka (hereinafter referred to as "the Central Bank") is hereby established as the authority responsible for the administration, supervision and regulation of the monetary, financial and payments system of Sri Lanka, and without prejudice to the other provisions of this Act, the Central Bank is hereby charged with the duty of securing, so far as possible by action authorised by this Act, the following objectives, namely –*
>
> *(a) economic and price stability; and*
> *(b) financial system stability,*
>
> *with a view to encouraging and promoting the development of the productive resources of Sri Lanka.*

Section 8 provides for the constitution of the Monetary Board:

> *8. (1) The Monetary Board of the Central Bank shall, in addition to determining the policies or measures authorised to be adopted or taken under this Act, be vested with the powers, duties and functions of the Central Bank under this Act, and be generally responsible for the management, operations and administration of the Bank:*

*Provided, however, where the Monetary Board considers it appropriate, it may delegate to the Governor, or to any officer of the Central Bank or to a Committee of such officers, any power, duty or function conferred or imposed on, or assigned to, the Board by Section 10(a), (b), (bb), (d) and section 27.*

*(1A) Where any power, duty or function is delegated by the Monetary Board under subsection (1), the person or the group of persons to whom such power, duty or function is delegated shall exercise perform or discharge such power, duty or function, in accordance with such general or special directions or guidelines as may be issued by the Monetary Board.*

Also, section 9 of the Act states that Monetary Board may function as corporate body:

*9. (1) The Monetary Board of the Central Bank shall in that name be a body corporate with perpetual succession and a common seal and may sue or be sued in its corporate name.*

*(2) The Monetary Board shall have the power, in the name of the Central Bank, to hold property, both movable and immovable, and to sell and dispose of the same, to enter into contracts and otherwise to do and perform all such acts or things as may be necessary for the purpose of carrying out the principles and provisions of this Act.*

> *(3) The Monetary Board may, in the name of the Central Bank, acquire and hold such assets and incur such liabilities as result directly from operations authorized by this Act or as are essential for the proper conduct of such operations.*

Therefore, it was contended by the learned Additional Solicitor General that *the above legal inert link between the Central Bank and the Monetary Board also makes it clear as to why the directive at P15 was issued on a letter head of the Central Bank. As such, the contention of the Petitioner that the directive at P15 is not a directive of the 3rd Respondent, but that of an agent of the 2nd Respondent is legally untenable.* Accordingly, it was the position of the learned Additional Solicitor General that the impugned decision is a decision of the Monetary Board of Sri Lanka.

However, it is interesting to note that, in their written submission dated 05.01.2020, the learned President's Counsel for the Petitioner submitted that the impugned direction contained in P15 is issued by the 3rd Respondent, Monetary Board –

> *The Petitioner was naturally misled by the documents emanating which were all styled 'Central Bank of Sri Lanka'. Moreover, the Monetary Law Act itself confusing… Hence, both on the facts as referred to above and upon a perusal of the Monetary Law it was unclear to the Petitioner as to whether the decision to issue the direction had been made by the Central Bank or the Monetary Board. In any event, this issue has been resolved….*
>
> …….
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> *Hence, the amended prayer is in accordance with the averment contained in paragraph 25 of the petition which*

*states that the impugned direction had been issued by the 3rd Respondent.*

*[Vide paragraph 9(b) at page 5 of the written submission dated 11.01.2022].*

So, now, the key issue to be determined in this application is as to whether the decision contained in P15 is made by the 3rd Respondent Monetary Board for the purpose of *holding payments for liabilities (including deposits) to directors, key management personals and their relatives* falls under section 12 (1) (j) of the Finance Business Act.

The CBSL is the apex institution in the financial sector in Sri Lanka. It was established in 1950 under the Monetary Law Act, as a semi-autonomous body and is governed by a five-member Monetary Board.

The Governor of the CBSL functions as its Chief Executive Officer while the senior management consists of the Senior Deputy Governor, Deputy Governors, Assistant Governors and Heads of Departments in addition to the Governor (vide sections 25-33). For the smooth functioning of the CBSL, the departments of the Bank are grouped into four key business areas, namely Economic and Price Stability Cluster, Financial System Stability Cluster, Agency Functions and Corporate Services Cluster and Legal and Enforcement Cluster. The departments are headed by a Director (or equivalent), reporting to the Governor or a Deputy Governor through an Assistant Governor. The Internal Audit Department and Risk Management Department reports directly to the Governor and the Monetary Board while the Governor's Secretariat Department reports directly to the Governor. Thereby, CBSL's organizational structure consists of three main organs namely Monetary Board, Principal officers i.e., Governors and the Departments.

The Monetary Board of the Central Bank consists of five members namely the Governor, the Secretary to the Ministry of Finance (ex-officio), and three non - executive members. The Governor is the Chairman of the Monetary Board and also functions as the Chief Executive Officer of the Central Bank. The Governor and the non-executive Board members are appointed by the President, on the recommendation of the Minister of Finance [vide section 8(2)].

In terms of the Monetary Law Act, as the governing body, the Monetary Board is responsible for making all policy decisions related to the management, operation and administration of the Central Bank. In addition to determining the policies or measures authorised to be adopted or taken under this Act, the Monetary Board of the Central Bank has vested with the powers, duties and functions of the Central Bank under the Monetary Law Act and be generally responsible for the management, operations and administration of the Bank. However, where the Monetary Board considers it appropriate, it may delegate to the Governor, or to any officer of the Central Bank or to a committee of such officers, any power, duty or function conferred or imposed on, or assigned to the Board by section 10 (a), (b), (bb), (d) and section 27 (vide section 8(1)).

Therefore, it is correct to state that, in terms of the Monetary Law Act, even though the CBSL is the responsible body for the administration, supervision and regulation of the monetary, financial and payments system of Sri Lanka, the CBSL is primarily supervise by the Monetary Board as the governing body. Where the Monetary Board considers it appropriate, it may delegate to the Governor, or to any officer of the Central Bank or to a committee of such officers, any power, duty or function conferred or imposed on, or assigned to the Board in terms of the law.

In the case in hand, it could be seen that, the impugned decision P15 is signed by the Additional Director of the Department of Supervision of Non-Bank Financial Institutions. There is no express indication as to the effect that the impugned decision is made by the Monetary Board. However, according to section 8(1) of the Monetary Law Act, it could be presumed that the above decision is made by the relevant Additional Director of the Department of Supervision of Non-Bank Financial Institutions *on the direction of the Monetary Board.*

As correctly pointed out by the learned Additional Solicitor General for the 2nd and 3rd Respondents that according to section 12 of the Monetary Law Act, the Board may give directions to finance companies or to any group or category of finance companies regarding the manner in which *any aspect of the business and corporate affairs of such finance companies are to be conducted.* Apparently, in the instant case too, the 3rd Respondent gave directions to the 1st Respondent finance company *to hold payments for liabilities (including deposits) to its directors, key management personals and their relatives* which is quite specifically falls within the ambit of section 12 (1) (j).

To my mind, there is no ambiguous or defies in section 12 of the Monetary Law Act.

In *Duport Steels Ltd. v Sire [1980] 1 AER 527 at page 541*, Lord Diplock precisely stated that,

> "*Where the meaning of the statutory words is plain and unambiguous it is not then for the judges to invent fancied ambiguities as an excuse for failing to give effect to it's plain meaning because they consider the consequences for doing so would be inexpedient, or even unjust or immoral.*"

*Maxwell* in his work - *Interpretation of Statutes* ($12^{th}$ edition) at page 36, states,

> *'A construction which would leave without effect any part of the language of a statute will normally be rejected.'*

In *Jugalkishore Saraf v. Raw Cotton Company Limited [1955] 1 SCR 1369* (Supreme Court of India), it was held that,

> *"The cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation."*

Though there are various authorities on the said subject, I do not wish to burden the foregoing judgment by reproducing those. In my considered view, if the words used in section 12 of the Monetary Law Act are construed in plain and literal term, they do not lead to an absurdity and as such, the rule of plain and literal interpretation will have to be followed

Therefore, if the impugned decision P15 falls within the ambit of section 12(1) (j) of the Monetary Law Act, the same will automatically falls within the ambit of section 58(1) of the Finance Business Act which ousts the writ jurisdiction of this Court and grants specific jurisdiction to the Supreme Court to hear and determine all such matters coming under the scope and ambit of that section.

Accordingly, in my view, the preliminary objection on *jurisdiction*, raised by the learned Additional Solicitor General, is entitled to succeed.

Let me add one thing. As correctly pointed out by the learned Additional Solicitor General for the 2nd and 3rd Respondents that the 2nd Respondent – the CBSL is neither a legal or natural person and therefore an application for a writ cannot be maintain against the same. It is observed that this same objection was raised by the learned Additional Solicitor General in the initial stage of this proceeding. Only thereafter, learned President Counsel for the Petitioner moved to amend prayer (b) of the petition and filed a motion on the same date amending prayer (b) deleting the reference to the 2nd Respondent. Accordingly, in my view, the Petitioner was well recognized the fact that the 2nd Respondent is neither a legal nor natural person and therefore an application for a writ cannot be maintain against the same.

Notwithstanding of the above observation, as I uphold the preliminary objection on *jurisdiction* raised by the learned Additional Solicitor General, this instant application should be dismissed *in limine.* No need rises to consider the other preliminary objections.

Accordingly, the application of the Petitioner is dismissed *in limine* without costs.

*Application dismissed in limine.*

**JUDGE OF THE COURT OF APPEAL**

**S. U. B. KARALLIYADDE, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**