

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 Writs of certiorari, mandamus and prohibition in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Arapola Mudiyansele Nialakshi
Arapola
No.9/6, Vidyala Mawatha,
Bandarawatta,
Gampaha.

C.A.WRIT NO.128/2023

Petitioner

Vs

1. State Mortgage and Investment Bank
No. 269, Galle Road,
Colombo 3.
2. The Chairman
State Mortgage and Investment Bank
No. 269,
Galle Road,
Colombo 03.
3. I.T. Asuramanna
General Manager/Chief Executive
Officer
State Mortgage and Investment Bank
No. 269,
Galle Road,
Colombo 03.
4. P.B.R Dalpathadu
Disciplinary Inquiry Officer
No. 10/111, Simphonia Watte
Kadawatha.

5. Jagath Hiripitiyage
Covering Up Officer
Ceylon Bank Employee Society,
Ceylon Bank Branch,
12th Floor, Headquarters Building,
Colombo 01.
6. E.M.K. Mohottala
Disciplinary Inquiring Officer,
No. 35/5, Samagi Mawatha,
Thalahena,
Malabe.
7. Dr. Udayasri Kariyawasam
Former Chairman of the State Mortgage
and Investment Bank
No. 36/6, Parakum Mawatha,
Nawala Para,
Nugegoda.

Respondents

Before : **Hon. N. Bandula Karunarathna, J.(P/CA)**

: **Hon. M. Ahsan R. Marikar, J.**

Counsel : Sandamal Rajapaksha with Kassala
Kamer for the Petitioner

Kuvera de Zoysa, P.C with Samuditha
Kumarasinghe instructed by Kethakee
Siriwardana for the 1st, 3rd, 4th and 7th
Respondents.

Written Submission : Filed on 01.09.2023 on behalf of 1st, 3rd, 4th and
7th Respondents.

Argued on : 03.08.2023

Decided on : 13.09.2023

Introduction

- 1) The Petitioner had filed this application and sought reliefs prayed for in the petition dated 2nd March 2023. The instant application pertinent to the aforesaid petition is to consider issuance of notice and interim reliefs prayed for in the prayers **e)**, **f)** and **g)**.
- 2) The said interim reliefs prayed for are as follows,
 - e)** Grant and issue an interim order staying and/or suspending the effect of the impugned disciplinary order dated 14/12/2022 signed by the 3rd Respondent marked as P-26 until final determination of this application;
 - f)** Grant and issue an interim order staying and/or suspending the effect of the charge sheet dated 20/11/2017 marked as P-10;
 - g)** Grant and issue an interim order directing the 1st to 6th Respondents or one of them to produce the final reports of both the disciplinary inquiries conducted against the Petitioner before your Lordships' Court.

Facts of the case

- 3) The Petitioner was an employee of the 1st Respondent Bank and had commenced her service as a Banking Assistant from 15th March 2006 and had been promoted as an Assistant Manager Grade VI with effect from 18/8/2014 and was assigned to the Credit Branch of Colpetty of the 1st Respondent Bank.
- 4) During the Petitioner's tenure at the aforesaid bank, she had granted 2 loans as a total amount of Rs. 68,340,000.00. The said loans had been granted after carefully scrutinizing the relevant documents submitted to the bank.
- 5) For the said loan facilities granted by the Petitioner accusations had been made against the Petitioner that the Petitioner had acted irresponsible with regard to granting those 2 loan facilities.

- 6) On that, the 3rd Respondent had given directions to conduct a preliminary inquiry in the manner on which the said loan facilities had been granted.
- 7) Subsequently, based on the preliminary inquiry findings a charge sheet had been served on the Petitioner on 20th November 2017 consisting of 12 charges and the Petitioner had been summoned to participate in the disciplinary inquiry.
- 8) After the conclusion of the inquiry, the final report on the findings was not made available to the Petitioner.
- 9) The Petitioner was reliably informed that she was not guilty.
- 10) Subsequently, the said report had been submitted to the meeting of the Board of Directors. The 3rd Respondent in terms of Section 16(3) and Section 16(4) of the Disciplinary Rules of the State Mortgage and Investment Bank had disagreed with the findings of the 1st disciplinary inquiry.
- 11) Thereafter, the 4th Respondent had been appointed to commence the 2nd disciplinary inquiry on or about 9/11/2022 and concluded around 28/11/2022. In the said 2nd disciplinary inquiry report, the Petitioner was found guilty of 12 charges and was ordered to pay Rs. 2,120,364/- in equal installments within 2 years and ordered to deduct the salary increment and the other benefits received by the Petitioner. Further, the Petitioner was demoted to Staff Officer - Grade V.
- 12) The Petitioner had made an appeal against the said order to the Chairman of the 1st Respondent Bank. However, the Petitioner has not received any relief against the said appeal.
- 13) On the said grounds the Petitioner has contended by the said order that injustice had been caused to the Petitioner and it is illegal, *ultra virus*, unlawful and arbitrary as there is no alternative remedy against the said order and the Petitioner had invoked the Writ Jurisdiction of this Court.
- 14) The 1st, 3rd, 4th, and 7th Respondents have filed limited objections against the reliefs sought by the Petitioner.

- 15) The said Respondents have contended as per the findings of the first interim report it had been revealed that the applicants who had requested loan facilities had submitted forged documents and identified two bank officers who are involved in it.
- 16) Subsequently, the 2nd report had identified 15 accused officers including the Petitioner who had direct connections with the borrowers.
- 17) On the said grounds, after a board meeting was held on 30th August 2017, the Directors had decided to transfer the accused officers including the Petitioner from the said departments and recommended the findings of the 2nd report.
- 18) Later on, on the filing of the 2nd report the Petitioner was issued a charge sheet. After the conclusion of the inquiry, disciplinary action had been taken against the Petitioner.
- 19) As per the rules of the disciplinary inquiry of the 1st Respondent Bank a copy of the final report had not been served to the Petitioner for which the Petitioner had made allegations against the 1st Respondent.
- 20) Further, the Petitioner had conceded that the Petitioner had made an appeal to the Appellate Authority of the 1st Respondent on the 9th of January 2023 in terms of Section 18 of the Disciplinary Rules. Furthermore, the Petitioner had lodged a complaint at the Human Rights Commission against the injustice that had taken place to the Petitioner.
- 21) Therefore, the Petitioner had misrepresented facts that the Petitioner did not have any alternative remedy available except in invoking the jurisdiction of this Court.
- 22) Thus, the Respondents had moved to dismiss the application made by the Petitioner *in limini*.

Disputed facts

- 23) Considering the facts pertinent to the application made by the Petitioner and on perusal of the documents, written submissions and the facts argued by the counsels for the Petitioner and the Respondents on 3rd August 2023, I am of the view that to issue the notices to the

Respondents and to grant the interim reliefs, the following questions should be addressed first without going into the merit of the case.

- I. Was the Petitioner employed under the 1st Respondent and granted loan facilities during her tenure to A & D Data Solution and Master Packaging Pvt Limited?
- II. Has the 1st Respondent held inquiries against the Petitioner for granting the aforesaid loans to A & D Data Solution and Master Packaging Pvt Limited?
- III. Has the 1st Respondent issued a charge sheet against the Petitioner and subsequently found that the Petitioner was guilty of all charges?
- IV. If so, can the Petitioner maintain this application?

I. Was the Petitioner employed under the 1st Respondent and granted loan facilities during her tenure to A & D Data Solution and Master Packaging Pvt Limited?

- 24) Both parties have admitted that the Petitioner was an employee of the 1st Respondent Bank. The facts related to paragraph 11 to 13 in the petition dated 2nd March 2023 is not denied by the Respondents in their limited objection dated 4th April 2023.
- 25) Thus, prior to the disciplinary inquiry commenced against the Petitioner, the Petitioner had worked at the 1st Respondent's Colpetty Branch in the capacity of a Manager.
- 26) The Petitioner in paragraph 14 of the said petition had admitted that the Petitioner had granted two loan facilities to the companies namely Master Packaging Pvt Limited and A & D Data Solution Pvt Limited for a total sum of Rs. 68,340,000,00.
- 27) Further, the Petitioner had contended that the said facilities had been granted after carefully scrutinizing the relevant documents which were submitted to the 1st Respondent Bank.

28) In the said circumstances, it is an admitted fact that the Petitioner was an employee of the 1st Respondent Bank and the disputed loan facilities had been granted by the Petitioner to Master Packaging Pvt Limited and A & D Data Solution Pvt Limited.

II. Has the 1st Respondent held inquiries against the Petitioner for granting the aforesaid loans to A & D Data Solution and Master Packaging Pvt Limited?

29) As I have related, the aforesaid loan facilities were granted to Master Packaging Pvt Limited and A & D Data Solution Pvt Limited and later the 1st Respondent Bank had disclosed that the said companies had failed to repay the loan facilities. Upon investigation it was found that the said companies had tendered fraudulent documents and manipulated to obtain the loan facilities from the 1st Respondent Bank with the assistance of certain staff members of the 1st Respondent Bank.

30) On that, the preliminary inquiries had been held and two interim reports had been tendered to the Board of Directors of the 1st Respondent bank. The said reports are marked and produced as P-7 and P-8 and in the limited objections, X-1 and X-2.

31) In the P-2, second interim report the name of the Petitioner had been disclosed and that she too had been involved in the granting of the fraudulent loan facility to Master Packaging Pvt Limited and A & D Data Solution Pvt Limited.

32) In the said circumstances, the 1st Respondent had investigated the fraudulent loan facilities granted under the Provisions of 16.3 and 16.4 of the State Mortgage and Investment Bank Disciplinary Rules.

III. Has the 1st Respondent issued a charge sheet against the Petitioner and subsequently found that the Petitioner was guilty of all charges?

- 33) In the aforesaid circumstances, the 1st Respondent had issued a charge sheet containing 12 charges against the Petitioner and after holding the inquiry the Petitioner was found guilty of all the charges.
- 34) In the instant action, the grievance of the Petitioner is that the Respondents had acted illegally, *ultra virus*, unlawfully and arbitrarily, violating the legitimate expectation of the Petitioner of a fair inquiry.
- 35) For the said purpose, the Petitioner had submitted P-13 consolidated report on evidence and in that the Petitioner had specified that the Petitioner is not guilty of all charges.
- 36) However, in the disciplinary inquiry held against the Petitioner the final report on the findings was not made available to the Petitioner.
- 37) The Respondents argued that as per the Disciplinary Rules of X-11 the Petitioner is not entitled for the said report.
- 38) Further, the Petitioner had requested that sufficient time be given to prepare for the inquiry which was not granted by the Inquiring Officer. The said fact is supported by P-19 document.
- 39) Furthermore, the Petitioner had sent a letter to the 3rd Respondent on the 29th December 2022, requesting the reports of both disciplinary inquiries which were turned down by the Respondents.
- 40) The counsel who appeared for the 1st, 3rd, 4th and 7th Respondents strongly stated that the Petitioner has misrepresented the facts pertinent to the Disciplinary Rules marked and produced as X11. In the same submissions the counsel brought Sections 16.3 and 16.4 of the Disciplinary Rules to the notice of Court that under those provisions the 3rd Respondent had not provided reasons in the 1st interim report and to hold a fresh inquiry which is a misrepresentation of facts.
- 41) Furthermore, the final report of the disciplinary inquiry was not made available to the Petitioner. The Petitioner has vehemently stated that the Petitioner requested for the report under Section 14 and 15 of the Disciplinary Rules, which is a fact that is completely wrong as per the Disciplinary Rules the Petitioner is not entitled to the final report.

- 42) On perusal of the documents and considering the submissions after the first inquiry report, on the application made by the 3rd Respondent the second inquiry had commenced. In the said inquiries the complaint made by the Petitioner is, a fair hearing was not given and the inquiring officer had acted arbitrarily. Thus, I am of the view there is sufficient grounds to consider the application made by the Petitioner. At this stage I do not see that the Petitioner has misrepresented or suppressed any facts to this court.
- 43) The counsel for the Respondents emphasized that the Petitioner had granted loans to non-existing companies which is a fraudulent act. However, the counsel who appeared for the Petitioner had replied by vehemently denying the said position that the Petitioner had fraudulently granted the said loan facility. Therefore, this Court has to go over the final report findings at the stage of argument whether this application can be maintained or not.
- 44) Beside these facts, after the Petitioner was found guilty of 12 charges, the Petitioner had made the final remedy of appealing to the Chairman of the 1st Respondent Bank under the Rule Number 18 of the Disciplinary Rules of State Mortgage Investment Bank.
- 45) The said appeal was sent to the Chairman by letter marked as P-26a, however, the Petitioner had emphasized that after making the appeal the Petitioner has not received the findings of the final report of the disciplinary inquiry held and/or reply to the appeal made to the Chairman of the 1st Respondent Bank.
- 46) In the said circumstances, finding the Petitioner guilty of all charges is arbitrary and illegal. It is a fact to be considered.

IV. If so, can the Petitioner maintain this application?

- 47) In the instant application, when the matter was taken up, the counsel for the Petitioner argued that the Petitioner was not given a fair hearing and

- made guilty of all charges without considering the merits of the Petitioner's case.
- 48) However, the counsel who appeared for the Respondents argued that the Petitioner had alternative remedies for the purported disciplinary inquiry findings. On that, the Petitioner had made an appeal under Section 18 to the Chairman of the 1st Respondent Bank and made an application to the Human Rights Commission.
- 49) On the aforesaid circumstances, this action cannot be maintained by the Petitioner.
- 50) However, on perusal of the documents and in considering the arguments raised by the Petitioner, the Petitioner had continuously requested time to prepare for the inquiry that had been overlooked by the Inquiring Officers.
- 51) Although the Respondents argued that the findings of the 2nd disciplinary report is not entitled by the Petitioner, the Petitioner should know on what grounds that she was convicted for the said charges to make her appeal.
- 52) Besides these facts, the Petitioner had made an appeal to the Chairman of the 1st Respondent on 9th of January 2023, for which the Petitioner had not received any reply until this action was instituted and/or the counsel for the Respondent had not given any proper reply for that.
- 53) Though the counsel for the Respondent submitted that the Petitioner had sought reliefs from the Human Rights Commission, the relief sought by the Petitioner to invoke the Writ Jurisdiction and the reliefs sought by the Human Rights Commission cannot be considered at the same time period.
- 54) Moreover in ***Hapuarachchi and Others Vs Commissioner of Elections and Another***¹ Dr. Shirani Bandaranayake, J. held that;

¹ [2009] 1 Sri LR.1.

‘To deprive a person of knowing the reasons for a decision which affects him would not only be arbitrary, but also a violation of his right to equal protection of the law.’

‘On a consideration of our case law and in the light of the attitude taken by Courts in other countries, it is quite clear that giving reasons for an administrative decision is an important feature in today’s context, which cannot be lightly disregarded. Moreover in a situation, where giving reasons have been ignored, such a body would run the risk of having acted arbitrarily, in coming to their conclusion.’

- 55) It was further elaborated in the case **Minister of National Revenue V. Wrights Canadian Ropes Ltd²**,

That ‘their Lordships find nothing in the language of the Act or in the general law which would compel the Minister to state his reasons for taking action . . . But this does not mean that the Minister by keeping silent can defeat the tax payer’s appeal. . . The Court is . . . always entitled to examine the facts which are shown by evidence to have been before the Minister when he made his determination. If those facts are . . . insufficient in law to support it, the determination cannot stand...’

- 56) In the said circumstances, I am of the view that there are matters to be considered in the instant application whether the legitimate expectation, rights and/or had the 1st Respondent acted illegally when deciding the findings of the 2nd inquiry report. However, I do not see any reason at this stage to issue any interim orders against the Respondents.

² [1947-15] ITR (Sup) 104.

CONCLUSION

- 57) In view of the aforesaid analysis and in considering the documents, written submissions and the arguments raised by both parties in the instant application there is a *prima facie* case against the Respondents and there are important matters to be considered.
- 58) On that we issue only notices to the Respondents.

Judge of the Court of Appeal

N. Bandula Karunarathna, J. (P/CA)

I agree

President of the Court of Appeal