

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Appeal to the Supreme Court
under the Constitution of the Democratic Socialist
Republic of Sri Lanka

SC Appeal 43/2021

(SC SPL LA 219/19), (CA Writ 37/2013)

Asian Finance Ltd,
No. 20, R. A. De Mel Mawatha,
Colombo 03.

Petitioner

SC Appeal 43/2021

SC Appeal 49/2021

Vs,

1. Wasantha Kumara Galagoda,
No. 9/31E, Perera Mawatha,
Divulapitiya, Boralesgamuwa.
2. Liyana Thanthri Gamage Dammika Dharshana,
Assistant Commissioner of Labour,
Colombo East District Labour Office,
Department of Labour, Colombo 05.
3. H. Hiranagama,
Senior Labour Officer,
Colombo East District Labour Office,
Department of Labour, Colombo 05.
4. The Commissioner General of Labour,
Department of Labour, Colombo 05.
5. The Monetary Board of Central Bank of Sri Lanka,
No. 30, Janadhipathi Mawatha,
Colombo 12.
6. Hon. Attorney General,
Attorney General Department,
Colombo 12.

Respondents

And now between

Asian Finance Ltd,
No. 20, R. A. De Mel Mawatha,
Colombo 03.

Petitioner-Petitioner

Vs,

1. Wasantha Kumara Galagoda,
No. 9/31E, Perera Mawatha,
Divulapitiya, Boralesgamuwa.
2. Liyana Thanthri Gamage Dammika Dharshana,
Assistant Commissioner of Labour,
Colombo East District Labour Office,
Department of Labour, Colombo 05.
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Colombo East District Labour Office,
Department of Labour, Colombo 05.
4. The Commissioner General of Labour,
Department of Labour, Colombo 05.
5. The Monetary Board of Central Bank of Sri Lanka,
No. 30, Janadhipathi Mawatha,
Colombo 12.
6. Hon. Attorney General,
Attorney General Department,
Colombo 12.

Respondents- Respondents

SC Appeal 49/2021

(SC SPL LA 220/19), (CA Writ 42/2013)

Asian Finance Ltd,
No. 20, R. A. De Mel Mawatha,
Colombo 03

Petitioner

Vs,

1. W.G.B.M. Ranaweera,
No. 4, Park Terrace, Colombo 04.
2. Liyana Thanthri Gamage Dammika Dharshana,
Assistant Commissioner of Labour,
Colombo East District Labour Office,
Department of Labour, Colombo 05.
3. H.A.M. Nanayakkara,
Senior Labour Officer,
Colombo East District Labour Office,
Department of Labour, Colombo 05.
4. The Commissioner General of Labour,
Department of Labour, Colombo 05.
5. The Monetary Board of Central Bank of Sri Lanka,
No. 30, Janadhipathi Mawatha,
Colombo 12.
6. Hon. Attorney General,
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Respondents

And Now Between

Asian Finance Ltd,
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Petitioner-Petitioner

Vs,

2. W.G.B.M. Ranaweera,
No. 4, Park Terrace, Colombo 04.
2. Liyana Thanthri Gamage Dammika Dharshana,
Assistant Commissioner of Labour,
Colombo East District Labour Office,
Department of Labour, Colombo 05.
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Colombo East District Labour Office,
Department of Labour, Colombo 05.
4. The Commissioner General of Labour,
Department of Labour, Colombo 05.
5. The Monetary Board of Central Bank of Sri Lanka,
No. 30, Janadhipathi Mawatha,
Colombo 12.
6. Hon. Attorney General,
Attorney General Department,
Colombo 12.

Respondents-Respondent

Before: Justice Vijith K. Malalgoda, PC

Counsel: Shanuka Jagodaarachchi with Lahiru Galappatti and Chinthala Rankothge for Petitioner-Appellant.
 K.G. Jinasena for 1st Respondent instructed by D.K.V. Jayanath,
 Hashini Opatha, SC for 2nd, 3rd, 4th and 6th Respondents,
 J.A.A.P Jayasinghe for 5th Respondent.

Argued on: 17.01.2024

Decided on: 09.08.2024

Vijith K. Malalgoda PC J

Petitioner-Petitioner (hereinafter referred to as the Petitioner) in both Applications had invoked the Writ jurisdiction of the Court of Appeal challenging the decisions of the 4th Respondent which were produced marked P-8 (a) and P-8 (b) in both applications.

In addition to the 2nd to 4th Respondents who were the officials from the Labour Department, the Petitioner had made two employees namely W.G.B.M. Ratnaweera as the first Respondent in Application 42/2013 (SC Appeal 43/2021) and W.K. Galagoda as the first Respondent in application 37/2013 (SC Appeal 49/2021). In addition to the above, the Monetary Board of the Central Bank was also made as the fifth Respondent in both Applications.

Court of Appeal by its order dated 10th May 2019 dismissed both Applications, and Petitioner being aggrieved by those orders, invoked the jurisdiction of this Court and sought Special Leave on several grounds of law. On 2nd March 2021, this Court having considered the submission made by the parties in both Applications granted Special Leave on the following questions of law.

1. Did the Petitioner Company, required by law to comply with the letters issued by the Central Bank dated 06.02.2009 and dated 19.08.2010?
2. If the aforementioned question is answered in the affirmative, did the Commissioner of Labour err in law by not holding that the Petitioner Company complied with the said direction as required by law in reducing the salaries of workmen under reference?
3. Is the order made by the Commissioner of Labour marked as P 7 bad in law?
4. Did the Court of Appeal err in law by holding that the Petitioner had suppressed and misrepresented the facts before the Court of Appeal?

5. Does the Monetary Board have the power to issue directions to an institution coming under the supervision of the Central Bank to reduce the salaries of the Board of Directors?

At the hearing before this Court parties agreed to abide by one judgment.

The Petitioner was a body incorporated and registered under the Finance Companies Act No. 78 of 1988 (as amended) to carry on finance business. It was also registered under the Finance Leasing Act No. 56 of 2000 (as amended) to carry out finance leasing business. Ceylinco Finance Limited, a company under the umbrella of Ceylinco Group of Companies, owned 90% of the shares of the Petitioner Company. Subsequent to the failure of the Golden Key Credit Company Ltd another Company under the umbrella of Ceylinco Group of Companies, and the resultant loss of public confidence, the Petitioner Company was confronted with a run –on the deposit. The onsite examination of the Petitioner Company was conducted by the Department of Supervision of Non-Bank Financial Institutions of the Central Bank in 2008, revealed that the Company carries out its business with improper financial practice which is detrimental to the interest of the depositors, creditors and other stake holders.

Consequent to this examination, the 5th Respondent took several regulatory measures to ensure the stability and sound operation in order to win the customer confidence on the Petitioner Company. Being the regulator, the Monetary Board of the Central Bank of Sri Lanka issued several directives which were produced before this Court marked P1 (a) – P1 (n) on many aspects such as imposing structural alteration to the management and imposing ceiling on the salaries of the Executives and the Directors. In the meantime, the 5th Respondent had appointed Lankaputhra Development Bank as the managing agent for the period from 20th March 2009 to 31st December 2010.

By December 2010 a new investor from Malaysia had shown an interest in investing Rs. 500 million with the Petitioner Company and in order to facilitate the above investment, the 5th Respondent issued fresh directives to ease the limits and caps placed by the said Respondent on the Petitioner Company. As submitted by the Petitioner these easing of restrictions were to take place on 31st March 2011.

Prior to easing of these restrictions, but after the issue of the fresh directives, number of former members of the Board of Directors including the 1st Respondents in both applications held a purported meeting where several decisions were taken, including a decision to pay the alleged

outstanding salaries to the said directors. As submitted by the Petitioner, this purported meeting was held without the participation of new investor's representative and contrary to the directives issued by the Monetary Board. Immediately thereafter, on 4th March 2011, a directive was issued by the Monetary Board to cancel all the decisions made at the meeting held on 28th February 2011 and to remove four directors who attended the meeting including the 1st Respondents in both Applications and imposing the restrictions that were lifted by the previous decision.

On 27th January 2011 the Petitioner sent letters to the above Respondents requiring them to show cause why they should not be dismissed from their positions or why appropriate disciplinary action should not be taken against them. The Respondents while denying the charges levelled against them complained to the 4th Respondent against the Petitioner of their failure to pay the arrears of salaries.

The 2nd to 4th Respondents by their orders had directed the Petitioner to pay,

- a) A sum of Rs. 6,234,720/- to the 1st Respondent in Writ Application 137/2013 as arrears of salary for the period February 2009 to May 2009 and November 2009 to January 2011.
- b) A sum of Rs. 537,000/- to the 1st Respondent in Writ Application 42/2013 as arrears of salary for the period of February, and March 2009.

As submitted by the 1st and the 2nd to 4th Respondents, the said orders were made by the 2nd to 4th Respondents acting under section 53 (3) of the Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954 (as amended) which provided as follows;

Section 53 (3) where an employee has not been paid the whole or a part of the remuneration required by this Act to be paid to him by his employer, the Commissioner may, if he thinks fit to do so, by written notice require the Employer to pay such amount or the balance of such amount to the Commissioner within the time specified in the notice so that Commissioner may remit it to such employee. Where the employer when served with such notice pays such amount or such balance directly to such employee's instead of transmitting it to the Commissioner as required by such notice, he shall be deemed not to have paid such amount or such balance to such employee.

In addition to the above, the said Act has provided under Section 19, the authorized deductions and except for the authorized deductions employees are entitled to receive the entire salary which is further fortified by Section 70 (3) of the said Act which reads as follows;

Section 70 (3) Any contract or agreement, whether made before or after the appointed date, whereby any right conferred on any employee by or under this Act is in anyway affected or modified to his detriment or whereby any liability imposed on any employer by or under this Act is in any way removed or reduced, shall be null and void in so far as it purports to affect or modify any such right or to remove or reduce any such liability.

When challenging the decision of the 2nd to the 4th Respondents, the Petitioner had heavily relied on the powers conferred on the 5th Respondent by the Finance Companies Act and it was the position of the Petitioner that the Petitioner would be liable to be prosecuted for any failure from the part of the Petitioner to implement the directives made by the 5th Respondent under the said Act.

As already referred to in this Judgment, the 5th Respondent issued several directives in various aspects of the Petitioner Company and the petitioner was bound to adopt and, complied with the same (P1 (a) – P1 (n)). In issuing such directives, the 5th Respondent imposed ceilings to the salaries of the directors of the Company. In the letter dated 6th February 2009 addressed to the Chairman of the Petitioner Company the 5th Respondent had referred to the above ceiling as follows;

“We further inform that in terms of item 2 (i) (b) of our letter dated 13th January 2009, you are required to limit the current emoluments/ remunerations of every director of your company who receives emoluments/ remunerations exceeding Rs. 200,000/- per month to a maximum of Rs. 200,000/- per month until the liquidity position of your company improves to a satisfactory level.”

As submitted by the Petitioners, the provisions of the Finance Companies Act had provided provisions to challenge the said decision but there is no material before this Court of any challenge to the above decision by the Petitioner. In the absence of any challenge, the Petitioner was bound to comply with the above decision without any failure.

As revealed before us, the Finance Companies Act No. 78 of 1988 had provided wide powers with the 5th Respondent and the preamble to the said Act has provided;

“An Act to provide for the control and supervision of Finance Companies and to provide for matters committed therewith or incidental thereto”

Among the provisions of the said Act, Section 9 provides wide powers with the Monetary Board and the powers vested with the Monetary Board had been explained under sub sections (a) –(r) of the said section.

The said Section was amended by the Finance Companies Amendment Act No. 23 of 1991 by introducing as subsection (rr) the following provisions,

“(rr) the remuneration and other pay to Directors or employees of finance companies by way of salary, allowance, prerequisite and reimbursement of expenses.”

In addition to the above, section 9 (3) of the Finance Companies Act further provided provisions to challenge the decision of the Monetary Board before a Competent Court. However, in the instant case, the Petitioner had not challenged the decision of the Monetary Board and therefore bound to implement the directions.

In this regard, the Petitioner relied on the decision in the case of ***Dawson Silva v. the Monetary Board of the Central Bank of Sri Lanka and Another 1995 (1) Sri LR 344*** where this Court had noted that,

“The Act provides for the control and supervision of finance companies. The main object of the Act appears to be to safeguard the interest of depositors. Thus, Section 4 provides –

A finance company shall all times conduct its business in such a manner so as to safeguard its deposits and shall take all such measure as are reasonably necessary to ensure that deposits and interest on deposits, are payable to depositors in the due date”

Here it was argued that the sole and the unitary purpose of the above Act was to provide for the law which was to govern Finance Companies and to provide a regulatory mechanism to supervise and, when required, to direct Finance Companies by issuing directives/ orders.

Even though the Respondents argued that Section 9 (rr) of the Finance Companies Act (as amended) had not provided any powers with the Monetary Board to reduce the salaries of the employees of the Finance Companies, I cannot agree with the said argument, since Section 9 of the Finance Companies Act had provided several provisions to reduce and control the mismanagement of

Finance Companies in order to secure the rights of depositors who invested monies with such Companies.

Whilst taking up the above position, i.e., the salaries of the Directors of the Petitioner Company were reduced on the directive made by the 5th Respondent and therefore the Petitioner is not liable to pay any arrears of salaries to the 1st Respondent in both the Applications, the Petitioner relied on a judgment of mine delivered in the capacity of President, Court of Appeal in the case of ***Finance and Guarantee Ltd v. Assistant Commissioner of Labour and Others SC Writ 413/2013 SC minute 19.02.2016*** where the Court having observed the following,

"It was brought to the notice of this court of a decision of the Court of Appeal in CA/Writ 315/2011 on similar facts with regard to an order made by the 1st and/or 2nd Respondents regarding an employee of the Petitioner Company. Having gone through the said decision we are of the view that,

- a) The said decision has a persuasive value before us but we are not bound to follow the said decision*
- b) When deciding the said case, the court was not informed of the provisions of the Finance Companies Act and the said decision was taken having considered the provisions of the Shop and Office Employees (Regulation of Employment and Remuneration) Act only*
- c) Even though the provisions of the Finance Companies Act had provided the Board to give directions with regard to the remuneration and other payment to directors or other employees of finance companies, no directives were placed before us with regard to the remuneration of employees of Finance Companies issued by the Board and therefore it is correct to conclude that the applicable law in such a situation is the Provision of the Shop and Office Employees (Regulation of Employment and Remuneration) Act*

and decided, in the event the afore-said directives issued under Section 9 (rr) were placed; any decision taken under Section 53 (3) of the Shop and Office Employees (Regulation of Employment and Remuneration) Act with regard to the salaries of the Director and/or Employee, will have to be taken having considered the directives given under the Finance Companies Act. (emphasis added)

However in the impugned Judgement in CA Writ 37/2013, the Court of Appeal had observed a directive issued by the 5th Respondent on 14th January 2011 which was produced by the 1st Respondent in the said case as 1R2 and the document produced marked P1-K by the Petitioner in both Applications CA Writ 37/2013 and CA Writ 42/2013, a directive issued by the 5th Respondent on 14th January 2011, and had observed similarities of those documents where the 5th Respondent had informed the CEO of the Petitioner Company to resolve any issues relating to Employees/ Directors as per the prevailing labour rules. In addition to the above, in 1R2 whilst referring to the 1st Respondent in CA Writ 37/2013 (W.K. Galagoda) the 5th Respondent had further instructed the Petitioner,

“You may take necessary action to resolve the matter pertaining to Mr. W. Galagoda in conformity with the Directions issued by the Central Bank of Sri Lanka, the relevant employment contract, prevailing company policies relating to Employees/Directors and applicable labour rules”

As observed by this Court the above position taken by the 5th Respondent is in conformity with the decision in the case of ***Finance and Guaranteed Limited vs Assistant Commissioner of Labour and Others*** (*Supra*).

In addition, the Court of Appeal had come to a conclusion that the Petitioner in both cases were guilty of suppression and/or misrepresentation of material facts. In this regard the Court of Appeal was mindful of the decisions in the landmark judgment on this point ***Alponso Appuhamy v. Hettiarachchi*** 77 NLR 131 at 135 along with several other cases including ***Hulangamuwa v. Siriwardena*** (1980) 1 Sri LR 275, ***Collettes Ltd v. Commissioner of Labour*** (1989) 2 Sri LR 6 and ***Blanca Diamonds (pvt) v. Wilfred Ven Els*** (1997) 1 Sri LR 306.

As observed by this Court, the Petitioner was silent on 1R2 in CA 37/2013 as well as failed to comment on the directive issued by the 5th Respondent in P1-K in both Applications even though the said document was filed along with the bundle of documents tendered to Court. The Court of Appeal having considered the observations made by Sirimanne J in ***Atula Ratnayake v. Jayasinghe*** 78 NLR 35 at 39 to the effect; “*The filling of such a documents without my reference to its in the petition, is, as I said earlier, meaningless and only meant to give the petitioner an excuse after having misled the Court into a wrong belief. This type of action must be viewed with strong disapproval and*

one hopes that it would not be followed in future.” had declared that the Petitioner is guilty of suppression and/or misrepresentation of material facts from the Court.

This Court has no reason to interfere with the above findings of the Court of Appeal.

For the reasons adduced in this Judgment, I answer the questions of law raised before this Court as follows;

1. Yes
2. No –when considering the totality of directives issued by the 5th Respondent
3. No
4. No
5. Yes

Both Appeals are dismissed.

Judge of the Supreme Court

Justice Mahinda Samayawardhena,

I agree,

Judge of the Supreme Court

Justice K. Priyantha Fernando,

I agree,

Judge of the Supreme Court