

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

In the matter of an Appeal against the Judgement
of the Commercial High Court of the Western
Province (Holden in Colombo)

Acland Insurance Services Limited,
No. 65/5, Ward Place,
Colombo 07.

SC CHC Appeal No. 44/2012

H.C. (Civil) No 152/2003 (1)

D.C. Colombo Case No. 5788/Spl

(Transferred to Commercial High Court)

Plaintiff

Vs.

1. Dr. P.B. Jayasundara,
Secretary to the Ministry of Finance
and Planning and the Secretary
to the Treasury,
The Secretariat, Colombo 01.
2. National Insurance Corporation Limited,
No.01, Muttiah Road,
Colombo 02.
3. Public Enterprises Reform Commission,
No. 11-01, West Tower,
World Trade Centre,
Echelon Square,
Colombo 01.
4. The Hon. Attorney General,
Attorney General's Department,
Colombo 12.
5. Jayampathi Charitha Ratwatte,
Former Secretary,
Ministry of Finance,
The Secretariat,
Colombo 01.

Defendants

AND NOW BETWEEN

1. Dr. P.B. Jayasundara,
Secretary to the Ministry of Finance
and Planning and the Secretary
to the Treasury,
The Secretariat, Colombo 01.
- 1A. Dr. Ranepura Hewage
Samantha Samarathunga,
Secretary to the Ministry of Finance
and Planning and the Secretary
to the Treasury, The Secretariat,
Colombo 01.
- 1B. K.M.Mahinda Siriwardana,
Secretary to the Ministry of Finance
and Planning and the Secretary
to the Treasury, The Secretariat,
Colombo 01.
2. Public Enterprises Reform Commission,
No. 11-01, West Tower,
World Trade Centre,
Echelon Square,
Colombo 01.
3. The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Defendant- Appellants

Vs.

1. Acland Insurance Services Limited,
No. 65/5, Ward Place,
Colombo 07.

Plaintiff-Respondent

2. National Insurance Corporation Limited,
No.01, Muttiah Road,
Colombo 02.

2A.Janashakthi Insurance Company Limited,
No.24, Staples Street,
Colombo 02.

3. Jayampathi Charitha Ratwatte,
Former Secretary,
Ministry of Finance,
The Secretariat,
Colombo 01.

Defendant-Respondents

Before: **Murdu N.B. Fernando, PC. CJ.,**
 K.K. Wickremasinghe, J and
 K.Priyantha Fernando, J.

Counsel: Susantha Balapatabendi PC ASG with Milinda Pathirana SDSG for the Defendant-Appellants

 Harsha Soza PC with N. Kandeepan for Plaintiff-Respondent

 Heshan Mamuhewa for the 2A Defendant-Respondent

Argued on: 09.03.2023, 27.10.2023, 20.02.2024 and 19.06.2024

Decided on: 07.07.2025

Murdu N.B. Fernando, PC. CJ.,

This is an Appeal against the Judgement of the Commercial High Court of the Western Province, Holden in Colombo (“the High Court”) dated the 09th of March, 2012.

Introduction

01. The Plaintiff- Respondent Acland Insurance Services Limited, (“the Plaintiff”/ “Acland Insurance”) instituted an action in the District Court of Colombo in November 2000 against four Defendants.
02. This case was thereafter transferred to the Commercial High Court. The 1st, 3rd and 4th Defendants, the Secretary to the Treasury, Public Enterprises Reform Commission (PERC) and the Hon. Attorney General respectively, were represented by the Attorney General’s Department. The said parties are the Appellants before this Court and for ease of reference, I will refer to the said parties represented by the State as the “Appellants”/ “Secretary to the Treasury”/ “1st Defendant”).

03. The 2nd Defendant was National Insurance Corporation Limited (“NIC Limited”). The docket bears out that in the year 2001, after filing of this action, Janashakthi Insurance Company Ltd., had taken over the functions of the 2nd Defendant, National Insurance Corporation Limited.
04. The Plaintiff by the instant action sought *inter-alia*,
- (a) a declaration that the Plaintiff Acland Insurance is entitled to 6% of the share capital of the 2nd Defendant, NIC Limited;
 - (b) a declaration that the 1st Defendant, Secretary to the Treasury and the State are holding 6% of the share capital of the NIC Limited in trust for the benefit of the Plaintiff Acland Insurance;
 - (c) an Order directing the Secretary to the Treasury and/or the State, to transfer 6% of the share capital of the NIC Limited to the Plaintiff;
 - (d) in the alternative to (c), pay to the Plaintiff Acland Insurance, the value of 6% of the share capital of the NIC Limited as at the date of the plaint, together with legal interest thereon until payment in full.
05. In the Answer, the Secretary to the Treasury took up the position that the Plaintiff Acland Insurance, is not entitled to the share capital of NIC Limited and that when the Government owned National Insurance Corporation (“NIC”) was converted to a Government owned limited liability company, namely, NIC Limited, National Insurance Corporation was a fully Government owned entity, and the Plaintiff had no right whatsoever to the share capital of NIC Limited.
06. The Secretary to the Treasury also pleaded that during the material time, Acland Insurance and its predecessor in business, Acland Finance and Insurance Ltd., (AFIL) was a Government owned entity and all shares of the Government owned Acland Finance and Insurance Ltd, was held by the State; and that at no point of time, did the State accept or acknowledge that the 1st, 3rd and 4th Defendants, (the Appellants) had any duty to transfer 6% shares of the share capital of NIC Limited, to the Plaintiff, Acland Insurance as pleaded by the Plaintiff. It was also pleaded that the Secretary to the Treasury had no obligation whatsoever to pay compensation to the Plaintiff as prayed for in the plaint.
07. Consequent to filing of pleadings the parties went into trial. Admissions were recorded and issues were framed. Evidence was led and documents marked. Thereafter the learned High Court Judge pronounced judgement in favour of the Plaintiff, declaring that the Secretary to the Treasury was under a duty to pay compensation for the shares held by him in favour of the Plaintiff Acland Insurance, in National Insurance Corporation Limited.
08. Being aggrieved by the said judgement, the Appellants, came before this Court in the instant Appeal, upon a number of legal and factual contentions and questions of law.

Factual Matrix

01. From ancient times, the insurance business in this nation was being carried out by a number of entities. Acland Finance and Insurance Limited (AFIL), a private company was one such entity.
02. History records, that in the late 1950s, the insurance business was nationalized. In 1961, the Insurance Corporation of Ceylon was established and the Government too, entered the business of insurance and monopolized it. Private entities could only carry on the business of insurance as agents of the Insurance Corporation.
03. In 1971, the **Business Undertakings (Acquisition) Act No. 35 of 1971** was enacted and many business undertakings were taken over by the Government in terms of the provisions of the said Act. The said businesses were commonly referred to as GOBUs, Government Owned Business Undertakings.
04. On 19-01-1976, Acland Finance and Insurance Limited (AFIL) referred to above, was also acquired by the Government under the said Act No. 35 of 1971. Consequent to such acquisition, AFIL functioned as the GOBU of Acland Finance and Insurance Limited and conducted its insurance business as a Government owned business enterprise.
05. In 1979, **Insurance (Special Provisions) Act bearing No. 22 of 1979** was enacted, which paved the way for opening up of new business ventures to conduct the business of insurance. By an Order published in the *Gazette*, under the said Act No. 22 of 1979 the National Insurance Corporation (NIC) was established which was fully owned by the State.
06. On 01-07-1981, GOBU of Acland Finance and Insurance Limited (the fully Government owned enterprise) purchased 10,000 shares of the Government owned share capital of the National Insurance Corporation, a corporation fully owned by the State. At this point of time, both Acland Finance and Insurance Limited (AFIL) and the National Insurance Corporation (NIC) were owned by the State. It is emphasized that at that point of time, the Plaintiff Acland Insurance, had not taken control of GOBU of Acland Finance and Insurance Limited and had no stakes whatsoever in GOBU of Acland Finance and Insurance Limited.
07. In the year 1987, the **Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act No. 23 of 1987** (“**Conversion Act**”) was enacted. This Act paved the way for conversion of Public Corporations and GOBUs into, Limited Liability Companies under Section 2 of the said Act.

Two of such companies established under the Conversion Act bearing No. 23 of 1987 were,

- the Plaintiff Company, Acland Insurance Services Limited, established on 18-10-1989, by *Gazette* notification bearing No. 583 dated 03-11-1989 (**P2**); and

- the 2nd Defendant, National Insurance Corporation Limited on 03-02-1993, by *Gazette* notification bearing No. 754/4 dated 16-02-1993 (**P7**)

08. Thereafter on 29-04-1993, Secretary to the Treasury on behalf of the State, for consideration paid by P & I Insurance Brokers Private Limited, transferred to P & I Insurance Brokers Private Limited 1,350,000 shares in Acland Insurance Services Limited, standing in the name of Secretary to the Treasury, in the books of Acland Insurance Services Limited by a Share Transfer Agreement (**P1/D1**).

09. Thus, the docket bears out that when the National Insurance Corporation Limited was established on 03-02-1993, the privatization of Acland Insurance Services Limited, had not taken place. Such privatization took place upon execution of a MOU on 08-04-1993. Consequent to same, the Secretary to the Treasury transferred the shares which were in his name, to P & I Insurance Brokers Private Limited on 29-04-1993 which too was after the formation of NIC Limited, the 2nd Defendant company.

The Plaintiff's Case

In brief, the case of the Plaintiff is that Acland Insurance Services Limited, the Plaintiff, a private company, is entitled to the 10,000 shares purchased at the par value of Rs.10/= by GOBU of Acland Finance and Insurance Limited in National Insurance Corporation on 01-07-1981, when both GOBU of Acland Finance and Insurance Limited (AFIL) and National Insurance Corporation (NIC) were fully owned by the Government.

The Plaintiff further pleaded that since both Acland Finance and Insurance Limited and National Insurance Corporation were Government owned, the Secretary to the Treasury, held the said shares 'in trust' for the Plaintiff and therefore should pay the Plaintiff the value of such shares, amounting to a sum of Rs. 43,580,109.54 with legal interest thereon from the date of the plaint *viz.*, November 2000.

The gravamen of the Plaintiff's case is, upon privatization of GOBU of Acland Finance and Insurance Limited, and in terms of Section 3 of the Conversion Act No. 23 of 1987, all assets, liabilities and obligations of Acland Finance and Insurance Limited vested absolutely in the Plaintiff and that the Plaintiff Acland Insurance is entitled to the said 10,000 shares, in the hands of the Secretary to the Treasury. Therefore, the Secretary to the Treasury who was holding such shares in trust and/or on behalf of the Plaintiff, should transfer the said shares or in the alternative pay the Plaintiff the value of such shares.

The Defendants' Case

The 1st Defendant *i.e.*, the Secretary to the Treasury, whilst admitting the share purchase which took place on 01-07-1981, took up the position, that the said share transfer was between two State entities and it was specifically to raise money to float and establish the National Insurance Corporation, for which other State entities also contributed.

The 1st Defendant, took up the position, that this status of the National Insurance Corporation being a fully Government owned corporation was maintained for more than a decade, until on 03-

02-1993, the Government owned National Insurance Corporation was converted to a public company, in terms of the Conversion Act No. 23 of 1987.

Further, it was the position of the State, that the company so formed was the 2nd Defendant, National Insurance Corporation Limited and in terms of the Conversion Act No. 23 of 1987 there is no provision whatsoever for the Government to pay compensation to a Government owned corporation.

Accordingly, it was the contention of the State, by reason of the vesting of the functions of the National Insurance Corporation in the 2nd Defendant National Insurance Corporation Limited (NIC Limited), the National Insurance Corporation (NIC) and/or any other shareholder of the National Insurance Corporation will not have a legal right to any sum of money, as compensation, under the Conversion Act No. 23 of 1987.

Furthermore, the State took up the position that on 03-02-1993, when National Insurance Corporation was converted to a public company, namely the 2nd Defendant National Insurance Corporation Limited, by virtue of the provisions of the Conversion Act No. 23 of 1987, Acland Finance and Insurance Limited was still a Government owned company. The said AFIL (Acland Finance and Insurance Limited) was privatized only in April 1993 (MOU being signed on 08-04-1993) when P & I Insurance Brokers Private Limited paid as a consideration, 'a full and final settlement' in a sum of Rs 13,837,500.00 and took control of the Plaintiff Acland Insurance Services Limited.

The 1st Defendant also contended that at the time of execution of the MOU dated 08-04-1993, the P & I Insurance Brokers Private Limited was very well aware of the publication of the *Gazette* notification which established the National Insurance Corporation Limited. Moreover, it was contended, that the sequence of events indicates that the investment made by GOBU of Acland Finance and Insurance Limited (AFIL) was not available to the buyer P & I Insurance Brokers Private Limited, when the MOU was signed on 08-04-1993. Being aware of the same, the aforesaid share transaction took place on 29-04-1993 between the Secretary to the Treasury and P & I Insurance Brokers Private Limited.

Further it was contended that having purchased the shares of Acland Insurance Services Limited upon payment of Rs. 13.8 Million as a 'full and final settlement', that the Plaintiff in the instant case filed the plaint in November 2000, claiming an exorbitant sum of Rs 43,580,109.54 as compensation from the State together with interest thereon.

In any event, the 1st Defendant contended that the claim of the Plaintiff, the prayer in the plaint and the relief claimed in the instant application are not in accordance with the provisions of the Civil Procedure Code. The 1st Defendant also contended that the application is in any event prescribed.

It was also submitted since the Plaintiff and the substituted 2nd Defendant, Janashakthi Insurance Company Limited are being owned and managed by some or the same Directors and shareholders, the Plaintiff cannot maintain this action, in view of the legal maxim *confusio* and/or merger.

The impugned Judgement

The docket bears out that the trial in the instant case has gone on for almost a decade, consequent to recording of 14 admissions and 40 issues.

Whilst two Directors and an officer from Registrar of Companies had given evidence on behalf of the Plaintiff and marked 31 documents, a Director and a former Director of the Department of Public Enterprises had given evidence on behalf of the State and marked 16 documents.

The impugned judgement consists of 32 pages. Pages one to twenty refer to the pleadings, admissions and the forty issues and the answers given to such issues by the learned judge of the High Court. Pages twenty to thirty summarize the evidence of the aforesaid witnesses.

This leaves only three pages for the learned judge to examine and analyse the evidence led, and the relevant laws in the light of the complex legal ramifications revolved around the forty issues.

In my view, the judgement is devoid of critical analysis and examination of the complex provisions of the law. The acquisitions, the mergers, the responsibilities of the shareholders, and the Directors, the obligations of the State, especially in matters relating to Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies have not been considered, examined or dealt with in this judgement.

Similarly, the issues pertaining to legal consequences, for example issue bearing number 36, the provisions pertaining to maintainability of the action in terms of the Civil Procedure Code has not been answered by the learned judge. The issue bearing number 37 pertaining to prescription has been answered in the negative, without any examination or consideration of the facts and/or the law whatsoever. Also no reasons have been given in the judgement for answering the said issue pertaining to prescription in the negative.

The facts related earlier in this judgement envisage, that the Plaintiff and the 2nd Defendant, were established as public companies way back in 1989 and 1993. The Plaintiff was thereafter privatized in April 1993. However, the Plaintiff resorted to legal action, by filing this plaint only in November 2000 *i.e.*, seven years after privatization and in my view, the issue pertaining to prescription, in the said light is material and should have been considered in detail, which the learned judge has failed to do, and such failure amounts to a fatality.

Similarly, the answer to issue bearing number 38, in relation to Sections 23 and 24 of the Interpretation Ordinance is a mere 'not applicable', without an iota of reasoning and/or evaluation in the impugned judgement.

Another significant factor that is seen when perusing the plaint is, that the Plaintiff appears to base its cause of action on a purported discussion said to have been initiated by the Director General of the Department of Public Enterprises in 1996. Whilst the said discussion has been prompted by the alleged representations made by a shareholder of National Insurance Corporation, *viz.*, Ceylon Shipping Corporation, the 1st Defendant has specifically taken up the position in its answer, that the actions and/or acknowledgements made by the Director General of Department of Public Enterprises, cannot and do not bind the affairs of the State. This issue too has not been examined nor considered by the learned High Court Judge.

It is ironic that none of these legal objections have been analysed and/or examined and/or considered, let alone been referred to in the judgement. This is especially so, in the background that the 1st Defendant has emphatically stated that the State has no obligation whatsoever to pay compensation for shares said to be held by the Plaintiff in the National Insurance Corporation, prior to it being converted to a public company namely, the 2nd Defendant National Insurance Corporation Limited [NIC Limited].

It is emphasized at this juncture, that the 10,000 share purchase took place on 01-07-1981, prior to the privatization of Acland Insurance Services Limited and the National Insurance Corporation Limited [the Plaintiff and the 2nd Defendant before this court], whilst the shares of both the predecessor entities, GOBU of AFIL and NIC were fully owned and held by the Government.

None of these matters have been analysed and/or considered in the impugned judgement, and I am of the view that the impugned judgement, does not fall within the parameters of a ‘judgement’, as envisaged in Section 187 of the Civil Procedure Code.

Section 187 of the Civil Procedure Code reads as follows;

“The judgement shall contain a concise statement of the case, the point for determination, the decision thereon, and the reasons for decisions [...];”

In the instant case, it is apparent that although the learned High Court Judge has referred to a concise statement of facts and the points of contention, she has not given reasons for the decision and has thus, not complied with the provisions of the Civil Procedure Code.

Section 187 of the Civil Procedure Code has been analysed by this Court in many instances.

In the case of **Mrs. Sirimavo Bandaranaike Vs. Times of Ceylon Ltd [1995] 1 SLR 22** it was held as follows;

“Even in an ex-parte trial, the judge must act according to law and ensure that relief claimed is due in fact and in law, and must dismiss the Plaintiff’s claim if he is not entitled to it.”

In **Cisilin Nona Vs. Gunasena Jayawardana case, SC/Appeal/190/2012 - S.C.M. 05-05-2016**, this Court upheld the position taken by the State in the case of **Sirimavo Bandaranaike** referred to earlier, that adherence to provisions in Section 187 is mandatory and went onto state, if *“no proper evaluation of evidence had been made... such a judgement cannot be allowed to stand before the eyes of the law.”*

Similarly, in the case of **Dona Lucihamy Vs. Ciciliyanahamy 59 NLR 214** it was observed;

“...the evidence germane to each issue has not been reviewed or discussed. No reasons precede or follow the answers which are mostly “yes” or “no” or “does not arise”. Such a record has not disposed of the matters which the court had to decide. Bare answers to issues or points of contest whatever be the name given to them are insufficient

unless all matters which arise for decision under each head are examined...”

In **Warnakula Vs. Ramani Jayawardena [1990] 1 SLR 206**, the Court of Appeal, having analysed the requirements of Section 187 of the Civil Procedure Code held as follows:

“Bare answers to issues without reasons are not in compliance with the requirements of s. 187 of the Civil Procedure Code. The evidence germane to each issue must be reviewed or examined. The judge must evaluate and consider the totality of the evidence. Giving a short summary of the evidence of the parties and witnesses and stating that he prefers to accept the evidence of one party without giving reasons are insufficient.”

Furthermore, in the case of **Sobanahamy Vs. Somadasa [2005] 3 SLR 201**, the Court of Appeal held;

“I conclude that the impugned judgement is not in conformity with the provisions of the above section [Section 187] and failure of the trial judge to examine the evidence and to answer the issues of the Plaintiff has definitely prejudiced the substantial rights of the parties.”

This Court in **Godallawattage Somawathie Vs. Hewahakuruge Evgin, SC/Appeal/ 162/2012 - S.C.M. 29-06-2017** held;

“I regret to note that the learned District Judge has blatantly ignored the provisions contained in Section 187 of the Civil Procedure Code. The paramount duty of the trial judge as required in law is to answer all the issues accepted by court. Section 187 of the Code stipulates the requisites of a judgement...”

*“For the foregoing reasons, I hold that the impugned judgement of the [...] contravenes the provisions contained in Section 187 of the Civil Procedure Code. **The failure of the trial judge to examine and evaluate evidence in order to arrive at a correct conclusion answering the issues raised at the trial has caused prejudice to the substantial rights of the parties.**” (emphasis added)*

In view of the above jurisprudence, it is amply clear that the learned High Court Judge failed to examine and evaluate the evidence before court and has not complied with the provisions of Section 187 of the Civil Procedure Code in delivering the impugned judgement. Such action has caused prejudice to the Defendants, and I see merit in the submissions of the Appellants that the impugned judgement should be set aside.

Conversion Act No. 23 of 1987

The aforesaid Act made provision for Conversion of Public Corporations and Government Owned Business undertakings into Public Companies.

The predecessors of the two relevant parties to this action, namely, Acland Finance and Insurance Limited (predecessor of the Plaintiff) was a Government Owned Business Undertaking and the National Insurance Corporation (predecessor of the 2nd Defendant) was a public corporation.

Consequent to the enactment of the above legislation, namely Act No. 23 of 1987, both the said entities, namely Acland Finance and Insurance Limited and National Insurance Corporation were converted to public companies, *i.e.*, Acland Insurance Services Limited (the Plaintiff) and National Insurance Corporation Limited (the 2nd Defendant).

The legal provisions relating to such conversion are given in **Section 2** of the Conversion Act.

The said Section reads as follows:

- 2 (1) *Where the Cabinet of Ministers considers it necessary that a company should be incorporated for the purpose of taking over the functions of any public corporation or part thereof or taking over and carrying on any business undertaking acquired by, or vested in, the Government under the Business Undertaking (Acquisition) Act, No. 35 of 1971 [...] forward a Memorandum and Articles of Association to the Registrar of Companies, together with a direction to such Registrar to register such public corporation or business undertaking, or any part thereof, as a public company under the Companies Act No. 17 of 1982.*
- (2) *Notwithstanding any other provisions of the Companies Act, No. 17 of 1982, on receipt of a direction under subsection (1), the Registrar of Companies shall*
 - (i) *issue a Certificate of Incorporation under Section 15(1) of the Companies Act [...] in the name referred to in the direction under subsection (1); and*
 - (ii) *publish an Order in the Gazette declaring that a public company is incorporated in the name specified in the Order to take over the functions of the public corporation [...].*
- (3) *Upon publication of the Order referred to in subsection (2) in the Gazette, the Registrar of Companies shall allot all the shares into which the share capital of the company is divided to the Secretary to the Treasury, (in his official capacity) for and on behalf of the State.*

By virtue of **Section 3 (2)** of the Conversion Act, all property (movable and immovable) and all liabilities of the company were vested with the newly formed public companies. Thus, there were no assets nor liabilities left with the predecessor entity. The residue was thus, zero in the hands of the predecessor entity.

Furthermore, this Act makes no provision for payment of compensation, unlike the Insurance (Special Provisions) Act bearing No. 22 of 1979 which makes provision for payment of compensation in the event, liquidation of a company has taken place.

Applying the aforesaid legal provisions to the instant case, it can be seen that upon the conversion there were no assets or liabilities or any obligations whatsoever, left with the

predecessors of Acland Insurance (the Plaintiff) and / or NIC Limited (the 2nd Defendant), the predecessors being the Acland Finance and Insurance Limited and National Insurance Corporation.

Similarly, the Secretary to the Treasury and / or the State too did not have any assets, liabilities or obligations left with them, at the time of the conversion, thus having a nil balance.

All assets, liabilities or obligations passed on to the newly formed entities, the public companies. However, in the newly formed entities all the shares were freshly allotted to the Secretary to the Treasury for and on behalf of the State. The Secretary to the Treasury, was to hold those shares until the public companies were privatized.

Both these entities, Acland Insurance and NIC Limited were privatized by sale of all shares. Incidentally, both these entities were purchased by P & I Insurance Brokers Private Limited but at different points of time, viz., in the years 1993 and 2001. The consideration paid for said transactions were termed 'full and final settlements'. Both these entities are now limited liability companies and are carrying on the insurance business, the Plaintiff in its own name, Acland Insurance Services Limited and the 2nd Defendant, presently under the name, style and business of Janashakthi Insurance Company Ltd, the 2A Defendant-Respondent.

The evidence led at the trial reveals, that the aforesaid position has been accepted as correct by the two witnesses, Chandra Schaffter and Prakash Schaffter who gave evidence on behalf of the Plaintiff. The witnesses for the State, the Director General of the Department of Public Enterprises and the former Director General Mr. Arumugam explained the procedure of transfer of shares in great detail. The said witnesses have categorically stated at the time of conversion, the new owners had the right to look into the books of accounts and balance sheets, to ascertain the contributed capital which stood at 100% and which was converted into the equity share capital.

Moreover, the witnesses for the Plaintiff, admitted that they were well aware of the process of conversion in 1993 and even enjoyed the dividend for a few years but only challenged such procedure, when the shares of the National Insurance Corporation Limited (NIC Limited) were put-up for sale in the year 2001 which were ultimately bought over by a company where the said witnesses themselves were the directors and shareholders.

From the above, it is evident that the Plaintiff did not challenge the statement of accounts at any point of time. The Plaintiff accepted, that the initial capital invested and / or contributed by the State to the National Insurance Corporation, was thereafter converted to equity capital *i.e.*, when the National Insurance Corporation Limited (NIC Limited) was established. Hence, nothing was left for the State, leaving only a zero balance.

In order to recapitulate, I wish to state that the initial investment for the establishment of National Insurance Corporation was by the State and by three State owned entities, namely Ceylon Shipping Corporation, Sri Lanka Export Credit Corporation and Acland Insurance Services Limited. All the three entities, being fully state owned were under the purview of the Ministry of Trade. The National Insurance Corporation too, came under the Ministry of Trade. The initial investment contributed by the State and the three State entities in 1981 was thereafter converted into the equity capital, when National Insurance Corporation was established in February 1993.

Hence, it was strenuously contended by the Appellants, that by operation of the Conversion Act and the establishment of the National Insurance Corporation Limited by virtue of the Companies Act No. 17 of 1982, whatever the investments the State and its entities had, were converted to equity shares. When privatization of the said company *i.e.*, NIC Limited took place, the full contingent of shares *viz.*, 100% were put up for sale, which was purchased by P & I Insurance Brokers Private Limited. It is noted that the words used in the said transaction was ‘full and final settlement’. The Appellant therefore argued, that the Appellant has no liability whatsoever to pay the Plaintiff, since a full and final settlement was arrived at when NIC Limited was privatized and the ownership was transferred to P & I Insurance Brokers Private Limited.

It is further noted that when the plaint was filed in the year 2000, many reliefs were claimed including declarations, enjoining orders, interim injunctions and permanent injunctions for sale of 6% shares at privatization. Thereafter the privatization took place and the ownership changed as stated earlier in the judgement. Thus, the Plaintiff restricted its claim to prayer (f) only *i.e.*, payment for shares said to be 6% value of the share capital of NIC Limited.

Contradicting the said submission of the Appellants, the Plaintiff strenuously argued that the Appellant is vacillating and has failed to produce material and documents to prove that a payment was made by the State for the shares held by the Acland Finance and Insurance Limited in National Insurance Corporation.

The Plaintiff’s contention is that the 10,000 shares issued to the Government Owned Business Undertaking (GOBU) of Acland Finance and Insurance Limited, by the [Government owned] National Insurance Corporation should *ipso facto* be transferred to the Plaintiff, Acland Insurance Services Limited.

The claim in the instant case is based upon this assumption. The Plaintiff further contends that the [Government owned] National Insurance Corporation was converted to a Public Company, National Insurance Corporation Limited, without any notice or approval or the concurrence of the Plaintiff. Further the Plaintiff avers even after the conversion, no communication, compensation nor settlement was made to the Plaintiff by the Secretary to the Treasury and / or the State.

The Plaintiff therefore contends, that the Secretary to the Treasury, has wrongfully and unlawfully failed and neglected to transfer the 10,000 shares to the Plaintiff and therefore a cause of action has arisen for the Plaintiff to sue the State.

I have considered the oral submissions of the learned President’s Counsel for the Plaintiff-Respondent before this Court as well as the written submissions and the oral and written submissions made on behalf of the Secretary to the Treasury.

Upon consideration of the events that had unfolded and the Legislation passed, it is quite evident, that in terms of the provisions of Section 3 of the Conversion Act, the assets and liabilities that were transferred to the 2nd Defendant NIC Limited were only what the [Government owned] National Insurance Corporation (NIC) was entitled to hold. As discussed earlier, it was the policy of the Government to convert, NIC to NIC Limited. NIC as clearly seen from the facts narrated earlier in this judgement was established with State funds, and State funds in three State entities of which Acland Insurance Services Ltd, a fully Government owned entity was one. Whilst the Government

contributed Rs. 1,000,000.00 as initial capital to NIC, Ceylon Shipping Corporation contributed Rs. 500,000.00, Acland Insurance Services Limited contributed Rs. 100,000.00 and Sri Lanka Export Credit Insurance Corporation contributed Rs. 50,000.00 totalling a sum of Rs. 650,000.00 which was the Government equity contribution for establishment of the National Insurance Corporation.

Though such contribution of the Government or State was shown as shares initially, it became embedded in the share capital and lost its individuality, since all entities contributing were Government owned and/or State entities and the monies injected were State Funds. Thus, the entire share capital or the investment was of the State. On 03-02-1993, NIC Limited was born as a new entity, a public company of which all shares were held by the Secretary to the Treasury in terms of the relevant law and *Gazette* notification. Such shares were in the hands of the Secretary to the Treasury as a new and fresh allotment.

On 08-04-1993 with the signing of the MOU and on 29-04-1993 with the execution of the Share Transfer Agreement (**P1/D1**) all shares held by the Secretary to the Treasury *viz.*, 1,350,000 were transferred to the P & I Insurance Brokers Private Limited, as a 'full and final settlement' for valuable consideration, amounting to a sum of Rs. 13,837,500.00

In such circumstances, I see no merit in the submissions of the Plaintiff, that the Secretary to the Treasury is still holding 6% share capital of NIC Limited 'in trust' for the Plaintiff and the Secretary to the Treasury has a 'duty to pay' a sum of Rs. 43,580,109.54 and interest thereon, to the Plaintiff as determined by the learned High Court Judge.

In my view, such finding is erroneous, perverse and had been made disregarding and paying scant regard to the provisions of law discussed in detail earlier in this judgement.

Thus, I see merit in the submissions of the Appellants that the impugned judgement cannot stand and should be set aside.

The Role of the Director General of Public Enterprises

The plaint refers to a discussion that took place at the Department of Public Enterprises in the year 1996. The letter annexed therein, titled 'shares issued by NIC' indicates a query has been made by Ceylon Shipping Corporation pertaining to the value of a share and the Director General of the Public Enterprises has convened a meeting with NIC and Ceylon Shipping Corporation and the other two State entities *i.e.*, Acland Insurance Services Ltd., and Sri Lanka Export Credit Insurance Corporation that contributed State funds to establish NIC, to look into the query raised by Ceylon Shipping Corporation pertaining to a matter concluded in the year 1993.

The submissions of the learned President's Counsel for the Respondent was that at the said meeting on 20-05-1996 a decision was made to call for the Chief Valuer's valuation of shares. Since no progress was being made the plaint indicates, the Plaintiff intervened, corresponded, moved in the matter and finally demanded compensation for the 'shares alleged to be of the Plaintiff's'. Responding to the said Letter of Demand, by a letter dated 24-08-2000 (**P26**), the 3rd Defendant [the PERC- now repealed] declined the Plaintiff's claim upon the basis that there was no agreement or undertaking to make payment, pursuant to the discussion that took place initially in 1996.

It appears by this time only the Plaintiff was demanding compensation whereas, the Ceylon Shipping Corporation who raised the initial complaint did not pursue its query.

Based upon the aforesaid correspondence the Plaintiff alleges that the Defendants are estopped from denying the rights of the Plaintiff, which the Plaintiff says were acknowledged and accepted by the predecessor of the 1st Defendant, the Secretary to the Treasury.

Contrary, the position taken by the Appellants is that there was no acknowledgement of liability and in any event the claim of the Plaintiff is prescribed.

Having perused the evidence led and the documents produced, especially the correspondence between the Plaintiff and the State authorities, I am not inclined to accept that there was a specific undertaking or understanding, that the State had a duty to compensate the Plaintiff. A query was made. Though belated, it was looked into. But no final decision was arrived at. In my view, that cannot be considered as a 'duty to pay' as was held by the learned High Court Judge.

As stated earlier, the initial contribution for establishment of the NIC was made by the entities coming within the purview of the then Ministry of Trade in July 1981. NIC a fully Government owned corporation, was converted to a Public Company in February 1993. It was privatized in April 1993 as 'NIC Limited' and was purchased by P & I Insurance Brokers Private Limited. It is a matter of interest that the main Directors of the Plaintiff Acland Insurance, the 2nd Defendant National Insurance Corporation Limited, P & I Insurance Brokers Private Limited and Janashakthi Insurance Company Limited (2A Respondent) are one and the same.

No evidence has been led of the Plaintiff making any claim on the 10,000 shares during the said period and / or at least consequent to the Government owned NIC been converted to a public company. No evidence had also been led of any claim being made by the Plaintiff from April 1993 until the Director General of Public Enterprises convened a meeting for May 1996, based on a query raised by a third party.

Thus, being silent or sleeping over its rights for over seven years [even conceding that the Plaintiff has such a right] I am not inclined to accept the Plaintiff's proposition 'that there is no merit in the Appellants' argument that the Plaintiff's claim is prescribed.'

Moreover, I am not inclined to accept the Plaintiff's contention that in the aforesaid, the Appellants are estopped from denying liability.

On the evidence led and the submissions made it is quite evident, that there is a delay in the Plaintiff agitating its alleged cause. Whether such delay would amount to prescription at the time the action was filed is a matter that the learned High Court Judge should have gone into, especially in view of the issue bearing number 37 being raised by the 1st Defendant at the trial. In my view, such lapse, taints the judgement and there is substance in the Appellants' contention that the High Court judgement should be set aside.

In any event, the Appellant submits that calling parties for a meeting and moving to value shares itself, will not amount to an undertaking or agreement to make a payment.

The Appellants rely on the evidence of the witness E. Arumugam, the then Director of the Department of Public Enterprises, who convened the meeting referred to and discussed earlier, wherein he states that the meeting was a preliminary step at the point of studying the issue raised. Thereafter, his recommendation should be tendered to the Director General of Department of Public Enterprises, then the Deputy Secretary to the Treasury and through him to the Secretary to the Treasury. In the event a decision is made favorable to the Plaintiff, ultimately by the Secretary to the Treasury, then such decision should be placed before the Cabinet of Ministers by the Minister of Finance. Thus, the Appellants submit the final decision should be taken by the Cabinet of Ministers and that a mere public officer cannot give an undertaking to make a payment.

In any event, the Appellants submits that the Department of Public Enterprises has not given any undertaking to the Plaintiff with regard to payment of compensation. Moreover calling for a Chief Valuer's report regarding value of shares does not and cannot bind the State authorities from arriving at its respective decisions.

Further, the Appellants rely on the dicta of this Court, in the case of **Vasudeva Nanayakkara Vs. Choksy and others [2008] 1 SLR 134** to justify its stand.

The said observation as a head note (at page 136) is as follows:

“No public officer unless he possesses some special power cannot hold on behalf of the State that he or some other public officer has the right to enter into a contract in respect of the property of the State when in fact no such right exists.”

Further the Appellants, relying on the provisions of Section 2 of the Conversions Act wherein it is stated, that **‘the share capital of the company is divided to the Secretary to the Treasury, (in his official capacity) for and on behalf of the State’**, argue that an officer of the State cannot take any decision in respect of shares, except with the authorization of the Cabinet of Ministers.

Since the Plaintiff has failed to establish that there was an authorization of the Cabinet of Ministers for payment of compensation or transfer of shares to the Plaintiff, the learned ASG for the Appellants contended, that the Plaintiff at the trial court has failed to prove its case. The contention of the Appellants was that the relief claimed for in the plaint, cannot be granted to the Plaintiff whatsoever in such circumstances and thus, the plaint should be dismissed with costs.

I have considered the submissions of the learned President's Counsel for the Plaintiff Acland Insurance Ltd, and am of the view that a mere discussion that took place, cannot be considered as ‘the State is duty bound to make good’ the sum demanded by the Plaintiff as stated in the impugned judgement.

In the said context, I am inclined to accept the submissions of the Appellants, that the learned High Court Judge misdirected and misapplied herself, in coming to the conclusion that the ‘State owes a duty to reimburse the Plaintiff’. For the said reason too, I see merit in the submissions of the

Appellants, that the plaint should be dismissed and the Appeal filed before this Court should be allowed.

Conclusion

For reasons adumbrated in this judgement, I allow the Appeal and set aside the Judgement of the Commercial High Court Holden in Colombo dated 09th March, 2012.

Further, I make Order, dismissing the plaint filed by Acland Insurance Limited dated 28th November, 2000 in the trial court with costs.

Appeal is allowed subject to costs of both courts payable by the Plaintiff-Respondent to the State forthwith.

Appeal is allowed.

Chief Justice

K.K. Wickremasinghe, J
I agree

Judge of the Supreme Court

K. Priyantha Fernando, J.
I agree

Judge of the Supreme Court