

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

Commissioner General of Inland
Revenue,
Sir Chittampalam A. Gardiner
Mawatha, Colombo 2.
Respondent-Appellant

SC/APPEAL/43/2022

CA/TAX/7/2010

Vs.

Convenience Foods (Lanka) PLC.,
(Previously known as Soy Foods
(Private) Limited and as Soy Foods
(F&W Limited), No. 113,
7th Lane, Off Borupana Road,
Kandawala, Ratmalana.
Appellant-Respondent

Before: Hon. Justice Mahinda Samayawardhena
Hon. Justice Arjuna Obeyesekere
Hon. Justice Sampath K.B. Wijeratne

Counsel: Nirmalan Wigneshwaran, D.S.G., for the Respondent-
Appellant.

Dr. Shivaji Felix, P.C., with Nivantha Satharasinghe and
Sajith Nawaratne for the Appellant-Respondent.

Argued on: 21.01.2026

Written submissions:

by the Appellant on 28.01.2026

by the Respondent 12.03.2026

Decided on: 14.09.2026

Samayawardhena, J.

This appeal arises from the judgment of the Court of Appeal dated 27.05.2020. Although extensive written submissions have been filed by the parties raising several matters, the issue requiring determination by this Court is a narrow one. It concerns whether the Court of Appeal was correct in holding that the determination made on behalf of the Commissioner General of Inland Revenue was vitiated by a breach of the rules of natural justice on the ground of apparent bias.

The Respondent claimed an exemption from income tax in respect of the relevant year of assessment. The claim was rejected by the Assessor, Mr. P.G.K. Samarathunge, by letter dated 30.03.1995. A notice of assessment dated 31.03.1995 was thereafter sent to the Respondent. That notice bore the frank of Mr. E.M.M. Medagoda, Deputy Commissioner.

The Respondent appealed against the assessment to the Commissioner General. Mr. Medagoda subsequently acted as the delegate of the Commissioner General in hearing the appeal and, by determination dated 30.06.1998, confirmed the assessment.

At the hearing of the appeal, the Respondent objected to Mr. Medagoda determining the appeal on the ground that the notice of assessment bore his frank. Mr. Medagoda rejected that objection by his preliminary ruling dated 23.04.1998, in which he stated:

Having considered the matter I am of the view that the fact that the assessment in question has been issued under my stamp should not prevent me from hearing the appeal. Since I have no connection whatsoever with the assessment, there is no room whatsoever for occasioning any injustice to the Appellant.

The matter ultimately came before the Court of Appeal by way of a case stated.

The Court of Appeal accepted the Respondent's contention that Mr. Medagoda's subsequent determination of the appeal offended the rules of natural justice. The Court reasoned that the assessment under appeal had been issued under the authority of the Assessor whose frank appeared on the notice of assessment and that, consequently, Mr. Medagoda was sitting as an adjudicator in a matter in which the assessment under appeal had been issued under his own authority.

It is the correctness of that conclusion which falls for determination in this appeal.

The rule *nemo judex in causa sua* constitutes one of the fundamental requirements of natural justice. It is not confined to cases in which actual bias is established. The administration of justice requires not only the absence of actual bias but also the absence of circumstances giving rise to a legally sustainable appearance of bias.

The modern test for apparent bias was stated by Lord Hope in *Porter v. Magill* [2001] UKHL 67; [2002] 2 AC 357. The Court shall first ascertain all the circumstances having a bearing on the allegation of bias and thereafter determine whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the decision-maker was biased.

In *Porter v. Magill*, the auditor had announced his provisional adverse findings at a press conference which attracted widespread publicity. The House of Lords accepted that holding the press conference was an error of judgment. Lord Hope observed that there was room for a casual observer to form the view that the auditor might be biased. That, however, was not the applicable test. He stated at para. 103:

The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.

The auditor had made it clear that his findings were provisional, and his subsequent conduct demonstrated that he remained open to persuasion. Having considered the circumstances as a whole, the House held that a real possibility of bias had not been demonstrated.

The Court of Appeal correctly referred to *Porter v. Magill* and identified this as the governing test. The question before this Court is therefore not whether the correct legal test was adopted in the abstract, but whether the circumstances relied upon were sufficient to satisfy that test.

There is no allegation that Mr. Medagoda had any pecuniary or personal interest in the outcome of the appeal. Nor is there any allegation of actual bias. It is common ground that the assessment was made by Mr. Samarathunge and that Mr. Medagoda did not participate in that process. The case against Mr. Medagoda rests entirely upon apparent bias arising from the fact that the notice of assessment bore his frank and that he subsequently acted as the delegate of the Commissioner General in determining the appeal.

The Court of Appeal was correct in observing that Mr. Medagoda's own conviction that he was not biased could not determine the matter. Apparent bias is determined objectively. However, the objective nature of the test does not render irrelevant the nature and extent of the decision-maker's involvement in the earlier process. That is one of the circumstances which the fair-minded and informed observer must necessarily take into account.

The observer contemplated by *Porter v. Magill* is not merely fair-minded. He is also informed. Such an observer would know that the decision rejecting the claim for exemption had been taken by Mr. Samarathunge and that Mr. Medagoda's connection with the matter, on the material before Court, was the appearance of his frank on the notice by which the assessment was communicated to the Respondent.

The rule against apparent bias is indispensable to maintaining public confidence in administrative as well as judicial decision-making. It must, however, be applied to the actual circumstances of the case. Not every such appearance is sufficient to establish apparent bias. As *Porter v. Magill* demonstrates, the circumstances must be considered as a whole from the standpoint of the fair-minded and informed observer, and there must be an objectively justified apprehension of bias.

In my view, a fair-minded and informed observer, knowing that the claim for exemption had been rejected by Mr. Samarathunge and that there was no evidence that Mr. Medagoda participated in that substantive decision, would not conclude merely from the presence of Mr. Medagoda's frank on the notice of assessment that there was a real possibility that he was biased when he subsequently determined the appeal.

The material distinction is between prior participation in the decision under appeal and an administrative act connected with the communication of that decision. The former may give rise to an appearance of prejudgment. The latter, without more, does not.

The Court of Appeal correctly identified the objective test applicable to an allegation of apparent bias. However, with respect, it erred in its application of that test to the facts of the present case.

Accordingly, the question whether the Court of Appeal was correct in holding that the determination was contrary to the rules of natural justice on the ground of apparent bias is answered in the negative.

The judgment of the Court of Appeal dated 27.05.2020, insofar as it allowed the appeal on that basis, is set aside.

The appeal is allowed with costs.

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court

Sampath K.B. Wijeratne, J.

I agree.

Judge of the Supreme Court