

**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, Prohibition and
Mandamus in terms of Article 140 of the
Constitution of the Republic of Sri Lanka.*

CA/WRIT/349/2021

M. Jeganathan carrying on a Partnership
Business under the name style and firm of
Woodlands Company No. 192,
4th Cross Street,
Colombo 12.

Petitioner

Vs.

1. Hon. Basil Rohana Rajapaksa
- 1A. Hon. Ranil Wickremasinghe
Hon. Minister of Finance,
Ministry of Finance,
The Secretariat,
Colombo 01.
(1A Substituted Respondent)
2. S. R. Attygalla
- 2A. K. M. Mahinda Siriwardana
Secretary to the Minister of Finance &
Secretary to the Treasury,
Ministry of Finance,
The Secretariat,
Colombo 01.
(2A Substituted Respondent)

3. T. V. D. Damayanthi S. Karunarathne
- 3A. T. T. Upulmalee Premathilaka
Controller General,
Department of Imports & Export Control,
No. 75 1/3, 1st Floor, Hemas Building,
York Street,
Colombo 01.
(3A Substituted Respondent)
4. Major General G. V. Ravipriya (Retd.)
- 4A. P. B. S. C. Nonis
Director General of Customs,
Sri Lanka Customs,
Sri Lanka Customs House,
Main Street,
No. 40,
Colombo 11.
5. P. D. A. L. P. Saparamadu
Director of Customs,
Social Protection Directorate,
Sri Lanka Customs,
Sri Lanka Customs House,
Main Street,
No. 40,
Colombo 11.
6. G. B. Gnanaraj
Deputy Director of Customs,
Port Control Unit,
Sri Lanka Customs,
Sri Lanka Customs House,
Main Street,
No. 40,
Colombo 11.
7. The Manager
Sampath Bank PLC,
Pettah Branch,
People's Park Shopping Complex,

No. 999, Bodhiraja Mawatha,
Colombo 11.

8. The Manager
Commercial Bank of Ceylon PLC, Pettah
Branch,
People's Park Shopping Complex,
No. 180/1/31,
Colombo 11.

9. The Manager
NDB Bank PLC,
Head Office, No. 40, Navam Mawatha,
Colombo 02.

10. Hon. Attorney General
Attorney General's Department,
Colombo 12.

Respondents

Before : Sobhitha Rajakaruna J.
Dhammika Ganepola J.

Counsel : K. Deekiriwewa with Dr. M. K. Herath, Dr. Kanchana De Silva for the
Petitioner.

Vikum De Abrew PC, ASG with Suranga Wimalasena DSG for the 1st to
6th and 10th Respondents.

Senaka Hewavitharana for the 7th Respondent.

Kushan Seneviratne with S. Cassim for the 9th Respondent.

Decided on : 16.12.2022

ORDER

Sobhitha Rajakaruna J.

The Judgement of this case was delivered by this Court on 08.12.2022. For the reasons set out in the said Judgement, the Court held that the Petitioner is not entitled to any of the reliefs prayed for in the prayer of the Petition and accordingly, the Application was dismissed.

The learned Counsel for the Petitioner on the same day the said Judgement was delivered made an oral application to Court under Rule 22(1) of the Supreme Court Rules for leave to appeal from the said Judgement and sought for time to consider the making of an oral application for such leave. The learned Counsel for the Petitioner did not formulate any substantial question of law orally or otherwise on the date of the said Judgement. Anyhow, by way of a motion dated 13.12.2022, the Petitioner submitted 5 questions claiming to be substantial questions of law and sought leave to appeal under the aforesaid Rule 22(1).

The question that needs consideration by this Court is whether the said questions tendered by way of the aforesaid motion would come within the real ambit of the substantial question of law. This is merely because the Court of Appeal is empowered to grant leave to appeal under the Supreme Court Rules only based on a substantial question of law.

The following abstract of questions among what referred to the Supreme Court by the Court of Appeal in *Collettes Ltd vs. Bank Of Ceylon (1982) 2 Sri. L.R. 514* for determination are very much pertinent here;

1. What constitutes a "question of law"?
2. When does such a question of law become a "substantial" question of law, within the meaning of the provisions of the said Article?
3. What are the tests adopted on that behalf?

Sharvananda J., Wimalaratne J., Victor Perera J. and Soza J., conscientiously have assessed the difference between 'Questions of Law' and 'Substantial Questions of Law' and have

unanimously laid down the following tests to be applied in determining whether a question of law is substantial or not;

- i. A question of law which has been definitely settled by the Supreme Court or in respect of which there is no difference of opinion is not a substantial question of law. It should be such as to impress the Court that it is debatable in view of the authorities or that the authorities themselves may require reconsideration. It must be such that there may be some doubt or difference of opinion or there is room for difference of opinion.
- ii. A question of law will not be substantial merely because much is at stake on the answer to it.
- iii. The word "substantial" does not imply that the question of law must be of general interest or importance. It is sufficient if a substantial question of law, as between the parties to the litigation is involved. This however does not mean that every question of law as between the parties is a substantial question. A question of law is substantial between the parties if the decision turns one way or another on the particular view taken of the law. If it does not affect the decision, then it cannot be substantial as between the parties. An important or difficult question would of course be a substantial question; but even if a question is not important or difficult, if there is room for reasonable difference of opinion on the question then it would be a substantial question of law.
- iv. If there is a conflict of judicial opinion and there is no direct decision of the Highest Court on the question of law raised then there would be a substantial question of law.
- v. If the question of law raised is a question of law directly and substantially affecting the rights of the parties and if it is an open question in the sense that it is not finally settled by the Supreme Court or is not free from difficulties or calls for discussion of alternative views then, it is a mere question of applying well settled principles. If the plea raised is palpably absurd, the question would not be a substantial question of law.
- vi. Orders passed in the exercise of the discretion of the Court do not ordinarily involve a substantial question of law but a question whether a Court could in law, exercise any discretion at all in a given case, is a substantial question of law.

- vii. Objections on the ground of defects in the form or procedure are not substantial questions of law, unless such defects appear to have greatly prejudiced any party.
- viii. A question as to prescription or jurisdiction may be a substantial question of law.
- ix. Whether the construction of documents is or is not a substantial question of law depends upon the facts of each case. If the document in question is a document of title or the very foundation of the action, its meaning may involve a substantial question of law.
- x. Questions as to the status of parties or the applicability of any point of law or provision of a statute may raise substantial questions of law.
- xi. When a particular set of facts can lead to alternative findings of law, then a substantial question of law would be involved.
- xii. Where the case has occupied the court for a very long time and on which there is a very elaborate judgment, it cannot, be argued that no substantial question of law is involved by endeavouring to demonstrate that on the merits of the case the decision sought to be appealed from is "obviously right".
- xiii. Whether the judgment contains anything ex facie bad in law which bears on the determination is a substantial question of law. If the facts found are such that no person acting judicially and properly instructed as to relevant law could have come to the determination under appeal, then a substantial question of law arises on the ground that there has been some misconception of the law and this has been responsible for the determination.
- xiv. Where there is no evidence to support the determination or where the evidence is inconsistent with or contradictory of the determination or where the true and only reasonable conclusion contradicts the determination, a substantial question of law is involved.

I take the view that it is reasonable to adopt the tests set forth in the above case to examine whether the questions tendered to Court in writing by the Petitioner can be regarded as substantial questions of law. I have very carefully perused those 5 questions enumerated in the said motion of the Petitioner. I am unable to find whether any such question or part of a

question submitted by the Petitioner would fall into any of the limbs of the tests applied in the said *Collettes* case.

The tests laid down in the *Sir Chunilal V. Mehta and Sons Ltd. vs. Century Spinning and Manufacturing Co. Ltd. 1962 AIR 1314, 1962 SCR Supl. (3) 549* to determine whether a substantial question of law is involved are;

1. Whether directly or indirectly it affects the substantial rights of the parties;
2. Whether the question is of general public importance;
3. Whether it is an open question in the sense that the issue has not been settled by pronouncement of the highest court in the land;
4. The issue is not free from difficulty; or
5. It calls for a discussion for alternative view.

In *Hero Vinoth vs. Seshammal 2 (2006) 5 SCC 545*, it was held that “a question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.”

On perusal of the purported questions raised by the Petitioner, it implies that those are mostly questions of facts or mixed facts and law. Any of the questions raised in the motion of the Petitioner are not qualified to be regarded as substantial questions of law as narrated in above tests adopted by Courts.

It is a salient feature in Rules 20(1) and 22(1) of the Rules to;

- i. make an application any time before the conclusion of the hearing for leave to appeal based on substantial question of law which needs to be recorded forthwith by Court.
- ii. make an oral application for leave to appeal on the day of the final order or Judgement is delivered.

Hence, I take the view that the scheme of these Rules 20 and 22 is to consider an application for leave to appeal before the conclusion of the hearing or on the day of the final order/Judgement, only based on a substantial question of law, if any, raised by a party to the respective case.

In the circumstances, application for leave to appeal is refused.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal