

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

In the matter of an application under and
in terms of Article 126 of the Constitution

SC/FR/ Application No. 117/2007

1. Ranaweerage Sarath Nandalal,
No. 52/4, Vauxhall Street,
Colombo 02.
2. Ariyachakra Bandaranayake
Thewanga Mudiyanselage
Ariyawanse Bandaranayake,
'Sampath', Kanumale, Uhumiya.

Petitioners

SC /FR/ Application No. 117/2007

SC/FR/ Application No. 158/2007 vs,

1. Public Enterprise Reform Commission,
No. 10-11, West Tower, World Trade
Centre, Echelon Square, Colombo 01.
2. Sri Lanka Insurance Corporation Ltd,
'Rakshana Mandiraya', No. 21, Vauxhall
Street, Colombo 02.
3. Milford Holdings Pvt Ltd,
No. 110, Norris Canal Road,
Colombo 10.
4. Greenfield Pacific EM Holdings Ltd,
C/O Asia Box Consultancy Services (Pvt)
Ltd, 61, Club Street, Singapore 069436.
5. Distilleries Company of Sri Lanka Ltd,
110, Norris Canal Road, Colombo 10.

6. Altken Spence & Company Ltd,
305, Vauxhall Towers, Vauxhall Street,
Colombo 02.
7. Altken Spence Insurance (Private) Ltd,
305, Vauxhall Towers, Vauxhall Street,
Colombo 02.
8. P.B. Jayasundara,
Secretary to the Treasury,
Ministry of Finance,
Colombo 01.
9. Hon. The Attorney General,
Attorney General's Department,
Colombo 12.
10. D.H.S. Jayawardena,
C/O Milford Holdings (Pvt) Ltd,
110, Norris Canal Road,
Colombo 10.

Respondents

SC/FR/ Application No. 158/2007

Vasudeva Nanayakkara,
Attorney at Law, Advisor to His
Excellency President,
Secretary, the Democratic Left
Front, No. 491/1, Vinayalankara
Mawatha, Colombo 10.

Petitioner

Vs,

1. K.N. Choksy, MP, PC,
No. 23/3, Sir Ernest De Silva Mawatha,
Colombo 07.
2. Milinda Moragoda, MP,
Former Minister of Economic Reform,
No. 3/2, Ailen Methiniyarama Road,
Colombo 05.
3. Sripathy Sooriyarachchi, MP,
Attorney at Law, Former Minister of
Public Enterprises reforms, No. 22,
Niwasa Mawatha, Rilaulla, Kandana,
4. Charitha Ratwatta,
Former Secretary to the Treasury, No.
16, Jawatta Road, Colombo 05.
5. Faiz Mohideen,
Former Deputy Secretary to the
Treasury, No. 5/2, Liberty Plaza Flat
250, R.A. De Mel Mawatha, Colombo
03.
6. N. Pathmanathan,
Former Deputy Secretary to the
Treasury, No. 16, Gregory's Place,
Dehiwala.
7. P.B. Jayasundara,
Secretary to the Treasury, Former
Chairman, Public Enterprises Reform
Commission (PERC)
The Secretariat,
Colombo 01.

8. Chrishantha Perera,
Former Chairman PERC, Sri Lanka
Insurance Corporation Limited (SLIC),
No. 40/10, Lake Garden, Off Lake Drive,
Rajagiriya.
9. M. Kandasamy,
Member of the Steering
Committee/General Manager SLIC,
“Rakshana Mandiraya” No. 21,
Vauxhall Street, Colombo 02.
10. V. Kanagasabhapathi,
Chartered Accountant, Member of
Steering Committee/ Former Member
of PERC, No. 79/3, W.A. Silva Mawatha,
Colombo 06.
11. Dayanath Jayasuriya,
Member of Steering Committee/
Former Director General of SEC/
Member PERC, Apt. 3/1, Segul
Apartments, No. 12, Melbourne
Avenue, Colombo 08.
12. Rani Jayamaha,
Member of Steering Committee/
Deputy Governor Central Bank, No. 30,
Janadhipathi Mawatha, Colombo 01.
13. Nihal Sri Amarasekera,
Chartered Accountant,
Former Chairman PERC, No. 167/4,
Vipulasena Mawatha, Colombo 10.

14. M.D. Bandusena,
Chairman PERC, No. 11/01, West
Tower, World Trade Centre, Colombo
01.

15. Shamalee Gunawardene,
Attorney at Law, Former Director Legal
PERC, No. 500/111, Thimbirigasyaya
Road, Colombo 05.

16. Aneela De Soysa,
Chartered Accountant, Former Director
PERC/ Later Partner Pricewaterhouse
Coopers Sri Lanka, No. 207/22,
Dharmapala Mawatha, Colombo 07.

17. PT Pricewaterhouse Coopers FAS
Gedung Pricewaerhouse Coopers JI
H.R. Rasuna Said, Kav C-3, Jakarta
12950, Indonesia.

18. Rooger De Montfort
Chartered Accountant,
Former Attorney in Fact
PT Pricewaterhouse Coopers FAS
Gedung Pricewaerhouse Coopers JI
H.R. Rasuna Said, Kav C-3, Jakarta
12950, Indonesia.

19. Devasiri Rodrigo,
Cratered Accountant, Former Senior
Partner- Pricewaterhouse Coopers, No.
42/8, Rosmead Place, Colombo 07.

20. Y. Kanagasabai,
Chartered Accountant, Former Partner
Pricewaterhouse Coopers, No. 100,
Bray-brook Place, Colombo 02.

21. S. Manohara,
Chartered Accountant,
Partner Pricewaterhouse Coopers,
No. 100, Bray-brook Place, Colombo
02.

22. Asite Talwatte,
Chartered Accountant, Partner- Ernst &
Young, No. 201, De Saram Place,
Colombo 10.

23. Ruwan Fernando,
Chartered Accountant, Partner- Ernst &
Young, No. 201, De Saram Place,
Colombo 10.

24. Distilleries Company of Sri Lanka Ltd,
No. 110, Norris Canal Road,
Colombo 10.

25. Aitken Spence & Company Ltd,
No. 305, Vauxhall Towers, Vauxhall
Street, Colombo 02.

26. Aitken Spence Insurance (Private) Ltd,
No. 305, Vauxhall Towers, Vauxhall
Street, Colombo 02.

27. Sri Lanka Insurance Corporation Ltd,
Rakshana Mandiraya, No. 21, Vauxhall
Street, Colombo 02.

28. Milford Holding Pvt Ltd, No 110, Norris
Canal Road, Colombo 10.

29. Greenfield Pacific EM Holdings Ltd,
C/O Asia Box Consultancy Services (Pvt)
Ltd, No. 61, Club Street,
Singapore 069436.

30. Channa De Silva,
Director General Securities and
Exchange Commission of Sri Lanka (SEC)
Level 11/01, East Tower, World Trade
Centre, Echelon Square, Colombo 01.
31. President,
Institute of Chartered Accountants of Sri
Lanka, No. 30A, Malalasekera Mawatha,
Colombo 07.
32. F.H. Puvimanasinghe, Chartered
Accountant, Senior Partner F.H.
Puvimanasinghe and Co, 126-2/1, 2nd
Floor, YMBA Building, Sir Baron
Jayathilake Mawatha, Colombo 01.
33. Wijedasa Rajapaksa, MP, PC,
Chairman, Parliamentary Committee on
Public Enterprises (COPE), No. 17,
Wijeba Mawatha, Off Nawala Road,
Nugegoda.
34. Inspector General of Police,
Police Headquarters, Colombo 01.
35. Deputy Inspector General of Police,
Criminal Investigation Department, 04th
Floor, New Secretariat Building,
Colombo 01.
36. Chairman, Commission to Investigate
Allegations of Bribery and Corruption,
No. 37, Malalasekera Mawatha,
Colombo 07.
37. Hon. The Attorney General,
Attorney General's Department,
Colombo 12.

38. D.H.S. Jayawardena,
C/O Milford Holdings (Pvt) Ltd,
110, Norris Canal Road,
Colombo 10.

Respondents

Before: **Justice Vijith K. Malalgoda PC,**
Justice A.H.M.D. Nawaz,
Justice Janak De. Silva,

Counsel: S.A. Parathalingam, PC, with Nihal Fernando, PC, N.R. Surendran, Rajendra Jayasinghe, Harshula Seneviratne, Ms. Nishendram on the instructions of Upendra Gunasekera for the 28th and 29th Respondents in SC FR 117/2007

S.A. Parathalingam, PC, with Nihal Fernando, PC, N.R. Surendran, Rajendra Jayasinghe, Harshula Seneviratne, Ms. Nishendram on the instructions of Upendra Gunasekera for the 3rd and 4th Respondents in SC FR 158/2007

Dr. Kanag-Isvaran, PC. With Lakshmanan Jayakumar and Niranjan Arulpragasam instructed by G.G. Arulpragasam for the 2nd Respondent in SC FR 117 and 27th Respondent in SC FR 158/2007

Viraj Dayaratne, PC. ASG. With Dr. Avanti Perera, DSG for the Hon. Attorney General.

Order on: 08.08.2024

Order of Court

These two applications were filed impugning the sale of 90% of the shares of the Government owned Sri Lanka Insurance Corporation Ltd. (SLICL) to the private sector companies named as respondents to their applications. The judgment in these two applications were delivered on 04.06.2009.

The relief granted and the consequential orders and directions made in the judgment are as follows:

1. *The Court declares that the petitioners have established an infringement of the fundamental right guaranteed by Article 12(1) of the Constitution in respect of the sale of 90% of the shares of SLIC, a company fully owned by the Government of Sri Lanka and that such infringement has occurred due to wrongful and unlawful executive administrative actions. Accordingly the relief sought in prayer (b) of both applications, namely that there has been an infringement of the fundamental right guaranteed by Article 12(1) of the Constitution, is granted.*
2. *This Court has already held that the SSPA signed by the 5th, 28th, and 29th Respondents is null and void ab initio. Accordingly the Court holds that the sale of 90% of the shares of SLIC to 28th and 29th respondent companies under and in terms of the SSPA was also illegal and invalid ab initio. Accordingly the Court directs that the legal ownership of the 90% of the shares purported to have been sold to 28th and 29th respondent companies shall forthwith vest in the Secretary to the Treasury to be held on behalf of the Government of Sri Lanka. The Board of Directors of SLIC stands removed forthwith. In order to ensure the continuity of the commercial transactions of the SLICL, effected in the ordinary course of business, the Court declares and directs that the 90% of the shares of SLICL purported to have been sold to the 28th and 29th respondent companies on 11.4.2003 shall be deemed to have been held by the 28th and 29th respondent companies from 11.4.2003 for and on behalf of the Secretary to the Treasury.*

3. The purchase price of 90% of the shares of SLICL namely Rs. Six Billion and Fifty million shall be returned to the 28th respondent Milford Holdings (Private) Ltd by the Government of Sri Lanka. The Government of Sri Lanka had nothing to do with the 29th respondent foreign company Greenfield Pacific EM Holdings brought into this transaction by the 5th respondent Acting Secretary to the Treasury. The Government had not financial transactions with it. The purchase price for the shares sold to the 29th respondent company had been paid to the Government by the 28th respondent Milford Holdings (Private) Ltd. The Secretary to the Treasury is directed to cause Treasury Bonds redeemable in 5 years from today at current interest rates be issued in favour of Milford Holding (Private) Ltd for the said sum of Rupees Six Billion and Fifty Million (Rs. 6,050,000,000/-).
4. The 28th and 29th respondents are entitled to retain the profits of the SLICL derived by them from 11.4.2003 to 4th June 2009 in lieu of the interest for the aforesaid sum of Rs. Six Billion and Fifty Million (Rs. 6,050,000,000/-). The Secretary to the Treasury is directed to cause profits of the SLICL computed and audited from the date of the last audited balance sheet of the SLICL to 4th June 2009 to enable the 28th and 29th respondents to obtain the net profits after tax of SLICL from the date of the last audited balance sheet of the SLICL to 4th June 2009. The Secretary to the Treasury shall pay the amount of profits due to 28th and 29th respondent companies according to the audited computation to be made as aforesaid. It is further directed that since the SSPA was void ab initio, the return of the purchase price by Treasury Bonds redeemable in five years with the current rate of interest and the right to the retention of profits from 11.4.2003 to 4.6.2009 has been ordered on the basis of a quasi contract to grant just and equitable relief to the 28th and 29th respondents in respect of the payment they have made for the purported purchase of the shares of SLICL. This direction is made after taking into consideration the public interest which this Court is bound to uphold. The 28th and 29th respondents are not entitled to any other payment, except the payment authorized under relief number 6 set out below.
5. Since it is necessary in the interest of the public to ensure proper and efficient management of SLICL, this Court directs the Secretary to the Treasury, in consultation

with the Minister of Finance, to submit to this Court for its approval the appropriate number of names of persons who have recognized academic/professional qualifications and more than 10 years' experience in any one or more of the fields of business management, accountancy, law, commerce, economics, and insurance to be appointed to the Board of Directors of SLICL. The Secretary to the Treasury is directed to submit the list of names within two weeks from today. The Secretary to the Treasury is hereby authorized to make suitable arrangements to administer the affairs of SLICL until a Board of Directors is appointed.

6. *Employees of the SLICL were allotted 10% of the shares of SLICL. Under the SSPA the purchasers were entitled to purchase shares allotted to employees from those who agreed to sell their shares to the 28th and 29th respondents at the same price paid to the Government per share for 90% of the shares. (Rs. 134 per share) In view of the declared invalidity of SSPA, the right given to the 28th and 29th respondents to purchase employees' shares has no legal basis. Accordingly if any share or shares has/have been purchased by the 28th and 29th respondents from employees after 11.4.2003, all such shares shall also vest forthwith in the Secretary of the Treasury to be held on behalf of the Government Payment to the 28th and 29th respondents for such shares shall be made by the Secretary to the Treasury in the manner provided for the repayment of the purchase price paid to the Government.*
7. *It is clear from the material placed before this Court that Ernst and Young who functioned as auditors to SLICL when it belonged to the Government has continued to function as auditors of SLICL under the purchasers thereby serving two masters with conflicting interests (during the period fixed for the adjustment of purchase price consideration). Accordingly we direct that Ernst and Young stand removed forthwith from the position of Auditor of the SLICL. The new Board of Directors shall select and appoint an Auditor for SLICL according to the appropriate procedure.*
8. *The petitioners in both applications, SCFR 117/2007 and SCFR 158/2007, have filed their applications in public Interest. The Court notes the expenses they have incurred and the efforts they have made to bring the subject matter of these applications before this*

Court. The Court does not wish to award costs to them as it is not proper to value their services in terms of money. Instead the Court places on record its appreciation of the valuable services rendered by them to uphold the public interest. We direct the Registrar of this Court to issue a certified copy of this judgment to the petitioners of SCFR 117/2007 and the petitioner in SCFR 158/2007 without payment.

9. *The Registrar of this Court is directed to send a certified copy of this judgment forthwith to the Secretary to the Treasury.*

10. *The Secretary to the Treasury may seek directions from this Court which he may deem necessary from time to time.*

On 03.03.2022, the 28th and 29th Respondents in S.C.F.R. Application No. 158/2007 and 3rd and 4th Respondents in S.C.F.R. Application No.117/2007 filed motions in the respective cases. After a lengthy narrative of events that took place subsequent to the delivery of judgment, the following reliefs were sought:

- a) Direct the Secretary to the Treasury to comply with the Judgment dated 4th June 2009 and/or the subsequent consequential Orders made in this case by Your Lordships' Court,
- b) Direct the Secretary to the Treasury (representing the Democratic Socialist Republic of Sri Lanka) to pay the Net Profit entitlement of the 3rd and 4th Respondents (28th and 29th Respondents in SCFR Application No: 158/2007) to the 3rd Respondent (28th Respondent in SCFR 158 / 2007), with legal interest,
- c) In the alternative to (b) above, since Net Profits were Ordered to be paid in lieu of interest, direct the Secretary to the Treasury (representing the Democratic Socialist Republic of Sri Lanka) to pay legal interest on the capital sum of Rs. 6050 million for the period from 11.4.2003 to 4.6.2009 to the 3rd Respondent (28th Respondent in SCFR 158/2007) after deducting the dividends paid during the subject period, with legal interest on the said aggregate amount from 4.6.2009 until date of payment in full.

The Hon. Attorney General filed a motion dated 03.11.2022 objecting to this application on the following amongst other grounds:

- (a) The Court has not permitted any other party other than the Secretary to the Treasury to seek further directions from Court.
- (b) In view of the settled principles in **Ganeshanathan v. Vivienne Goonewardene [(1984) 1 Sri. L. R. 319]** and **Jeyaraj Fernandopulle v. Premachandra De Silva and Others [(1996] 1 Sri. L. R. 70]**, this Court does not have the jurisdiction to re-hear, review, alter or vary its decision except in limited circumstances which have not been made out in this case.
- (c) The 28th and 29th Respondents in S.C.F.R. Application No. 158/2007 and 3rd and 4th Respondents in S.C.F.R. Application No.117/2007 are seeking to implement a misconceived interpretation of the judgment and orders made in this application.

Parties were heard in favour and against the contents of the motion dated 03.03.2022.

In **Ganeshanathan (supra)**, it was held that the Supreme Court has no jurisdiction to act in revision of cases decided by itself. None of the provisions of the Constitution expressly conferring jurisdiction confer such a jurisdiction on it. Nor has the Legislature conferred such a jurisdiction by law. The Supreme Court if a Court of last resort in appeal and there is finality in its judgment whether it is right or wrong. That is the policy of the law and the purpose of Chapter XV of the Constitution. As a superior Court of record the Supreme Court has inherent powers to correct its errors which are demonstrably and manifestly wrong and where it is necessary in the interests of justice Decisions made per incuriam can be corrected. These powers are adjuncts to existing jurisdiction to remedy injustice - they cannot be made the source of new jurisdictions to revise a judgment rendered by that court.

In **Jeyaraj Fernandopulle (supra)**, it was held that when the Supreme Court has decided a matter, the matter is at an end and there is no occasion for other judges to be called upon to review or revise a matter. The Supreme Court is a creature of statute and its powers are statutory. The Court has no statutory jurisdiction conferred by the Constitution or by any other law to rehear, review, alter or vary its decision. Decisions of the Supreme Court are final. As a general rule, no Court has power to rehear, review, alter or vary any judgment or order made by it after it has been entered. A Court has no power to amend or set aside its judgment or order where, it has come to light or if it transpires that the judgment or order has been obtained by fraud or false evidence. In such cases relief must be sought by way of appeal or

where appropriate, by separate action, to set aside the judgment or order. The object of the rule is to bring litigation to finality. However, all Courts have inherent power in certain circumstances to revise an order made by them.

Nevertheless, an examination of the motions filed in these two cases show that it is to seek directions on the Secretary to the Treasury to comply with the judgment dated 4th June 2009 and the subsequent orders. There is nothing mentioned of any error on the part of the Court in pronouncing the judgment and for any correction thereto.

The application is to direct the Secretary to the Treasury to pay the Net Profit entitlement of the 28th and 29th Respondents to the 28th Respondent with legal interest, or alternatively, direct the Secretary to the Treasury to pay legal interest on the capital sum of Rs. 6050 million for the period from 11.4.2003 to 4.6.2009 to the 28th Respondent after deducting the dividends paid during the subject period with legal interest on the aid aggregate amount from 4.6.2009 until the date of payment in full.

In support of this contention, the learned President's Counsel for the 28th and 29th Respondent in S.C.F.R. Application No. 158/2007 and 3rd and 4th Respondents in S.C.F.R. Application No.117/2007 relied on the relief granted under (4) above by Court which reads as follows:

"The 28th and 29th respondents are entitled to retain the profits of the SLICL derived by them from 11.4.2003 to 4th June 2009 in lieu of the interest for the aforesaid sum of Rs. Six Billion and Fifty Million (Rs. 6,050,000,000/-). The Secretary to the Treasury is directed to cause profits of the SLICL computed and audited from the date of the last audited balance sheet of the SLICL to 4th June 2009 to enable the 28th and 29th respondents to obtain the net profits after tax of SLICL from the date of the last audited balance sheet of the SLICL to 4th June 2009. The Secretary to the Treasury shall pay the amount of profits due to 28th and 29th respondent companies according to the audited computation to be made as aforesaid. It is further directed that since the SSPA was void ab initio, the return of the purchase price by Treasury Bonds redeemable in five years with the current rate of interest and the right to the retention of profits from 11.4.2003 to 4.6.2009 has been ordered on the basis of a quasi-contract to grant just and equitable relief to the 28th and 29th respondents in respect of the payment they have made for the

purported purchase of the shares of SLICL. This direction is made after taking into consideration the public interest which this Court is bound to uphold. The 28th and 29th respondents are not entitled to any other payment, except the payment authorized under relief number 6 set out below."

We are of the view that there is no merit in the contention of the 28th and 29th Respondent in S.C.F.R. Application No. 158/2007 and 3rd and 4th Respondents in S.C.F.R. Application No.117/2007.

The first paragraph makes it clear that the 28th and 29th Respondent in S.C.F.R. Application No. 158/2007 are **entitled to retain** the profits of the SLICL derived by them from 11.4.2003 to 4th June 2009 in lieu of the interest for the aforesaid sum of Rs. Six Billion and Fifty Million (Rs. 6,050,000,000/-). The Court has proceeded on the basis that such profits are with the 28th and 29th Respondents and held that they are entitled to retain them. This has been explained by Court in the same paragraph later in stating *that since the SSPA was void ab initio, the return of the purchase price by Treasury Bonds redeemable in five years with the current rate of interest and the right to the retention of profits from 11.4.2003 to 4.6.2009 has been ordered on the basis of a quasi contract to grant just and equitable relief to the 28th and 29th respondents in respect of the payment they have made for the purported purchase of the shares of SLICL* (emphasis added).

The next part of the judgment further clarifies the first paragraph of (4) by directing the Secretary to the Treasury to cause profits of the SLICL to be computed and audited from the date of the last audited balance sheet of the SLICL to 4th June 2009 to enable the 28th and 29th Respondents to obtain the net profits after tax of SLICL for the said period. There was no dispute between the parties that the accounts of the SLICL had been audited up to 31.12.2008.

Hence, the Secretary to the Treasury was under a duty to cause profits of the SLICL to be computed and audited from the date of the last audited balance sheet of the SLICL to 4th June 2009.

According to the Financial Statements dated 4th June 2009 as audited by KPMG for the period 01.01.2009 to 06.04.2009, the SLICL had not made any profits but in fact incurred a loss during

this period. Thus, there is no question of payment of any profits to the 28th and 29th Respondents for the period 01.01.2009 to 06.04.2009.

Upon an examination of all the material placed before Court, we are of the view that there are no further obligations that the Secretary to the Treasury must perform in terms of the judgment delivered in this case.

Accordingly, we are of the view that the application of the 28th and 29th Respondent in S.C.F.R. Application No. 158/2007 and 3rd and 4th Respondents in S.C.F.R. Application No.117/2007 must be rejected. To allow their application will amount to Court acting contrary to the established legal position as expounded in **Ganeshanathan v. Vivienne Goonewardene [(1984) 1 Sri. L. R. 319]** and **Jeyaraj Fernandopulle vs. Premachandra De Silva and Others [(1996) 1 Sri. L. R. 70]**.

Relief prayed for in motions dated 03.03.2022 filed by the 28th and 29th Respondents in S.C.F.R. Application No. 158/2007 and 3rd and 4th Respondents in S.C.F.R. Application No.117/2007 are refused.

Justice Vijith K. Malalgoda, P.C.

I agree,

Judge of the Supreme Court

Justice A.H.M.D. Nawaz,

I agree,

Judge of the Supreme Court

Justice Janak De Silva,

I agree,

Judge of the Supreme Court