THE
Sri Lanka Law Reports

Containing cases and other matters decided by the Supreme Court and the Court of Appeal of the Democratic Socialist Republic of Sri Lanka

[2005] 2 SRI L. R. - Part 6

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CM 6555– 2,500 (2006/10)

Accordingly, the Act not only provides better protection to consumers but also protects traders and manufacturers against unfair trade and restrictive practices. For purposes of convenience Section 18(3) of the said Act is reproduced below.

> "A manufacturer or trader who seeks to obtain the approval of the Authority under sub section (2), shall make an application in that behalf to the Authority and the Authority shall, after holding such inquiry as it may consider appropriate :–
>
> (a) approve such increase where it is satisfied that the increase is reasonable ; or
>
> (b) approve any other increase as the Authority may consider reasonable.
>
> and inform the manufacturer or trader of its decision within thirty days of the receipt of such application."

This section makes it mandatory that when a manufacturer or trader makes an application to the first respondent Authority in order to get the approval to increase the retail or wholesale price, the Authority shall act in the following manner :

(i) To hold an inquiry as it may consider necessary ; and
(ii) Approve such increase where it is satisfied that such increase is reasonable ; or
(iii) Approve any other increase as the Authority may consider reasonable.

Though the aforesaid section gives certain amount of discretion to the Authority in order to decide on the increase of a reasonable price, the exercise of such discretion necessarily implies good faith in discharging public duty. The abuse of power or discretion constitutes a ground of invalidity independent of excess of power. It is to be borne in mind that when a power granted for one purpose is exercised for a different purpose or a collateral object or in bad faith, the court will necessarily intervene and declare such act as illegal or invalid. Statutory powers conferred for public purposes are conferred upon trust and not absolutely. That is to say, that they can be validly used only in the right and proper manner. The

lawful exercise of a statutory power presupposes not noly compliance with the substantive and procedural conditions laid down for its performance but also with the implied requirements governing the exercise of the discretion. Thus, all statutory powers must be exercised fairly and reasonably, in good faith, for the purposes for which they are given with due regard to relevant considerations without being influenced by irrelevant considerations.

The important question that arises for consideration is whether the first respondent Authority in fact complied with the substantive and procedural requirements laid down in Section 18(3). The petitioner in paragraph 17(c) of the petition specifically states that the first respondent has violated the principles of natural justice by failing to hold an inquiry prior to rejecting the petitioner's application dated 02nd September, 2004. This averment was only denied by the second respondent in paragraph 6 of his affidavit dated 15th April, 2005. The inquiry proceedings before the first respondent Authority which is material to the respondents' case were not annexed to the affidavit of the second respondent. In the absence of any notes of inquiry, the only inference the court may draw is that in fact no inquiry was held as contemplated by Section 18(3).

When Section 18(3) prescribes the manner in which the statutory power has to be exercised, the power must be exercised in that manner alone ; if the exercise of power is in utter violation of the mandatory procedure laid down therein it cannot be regarded as an act done in pursuance of the said provision. In the circumstances, I hold that the impugned decision of the second respondent without following the procedure prescribed in Section 18(3) becomes illegal, invalid and is of no force or avail in law.

The learned counsel for the petitioner urged that the first respondent Authority has no power to refuse an application sought to increase the wholesale or retail price. Counsel argued that the use of the word **"shall"** in the said section compels the first respondent Authority either to approve the price increase sought or approve such other price increase as the Authority considers reasonable. The responsibility of the court is to construe and enforce the laws of the land as they are and not to legislate on the basis of personal inclinations. Thus, the function of a judge is to give effect to the expressed intention of Parliament as stated in the enactment. If the words of an Act are plain and clear, a court must follow them and leave it

to Parliament to set it right rather than to alter those words to give a different interpretation, Hence, I am in total agreement with the submissions made by the learned counsel for the petitioner that the legislature in all its wisdom has not empowered the first respondent Authority to refuse an application for a price increase in its entirety. Therefore, I hold that the impugned decision of the first respondent Authority marked P8/P8 (a) is not a decision in terms of Section 18(4) and hence is void and a nullity in law.

The learned Counsel for the petitioner also submitted that no reasons were given for the decision contained in the documents marked P8 and P8(a). It is a general principle of law that whenever a right of appeal or review is given from the order of a statutory body, a duty to record findings and give reasons is implied. Reasons have to contain findings on the disputed matters that are relevant to the decision. Once proceedings commence against the first respondent Authority, it is under a legal obligation to disclose to court its reasons in arriving at the decision impugned in these proceedings. No such disclosure has been made in the case in hand. Unless the petitioner is able to discover the reasoning behind the decision, it may be unable to decide whether such decision is reviewable or not and be deprived of the protection of the law. Therefore, failure to give reasons amounts to a denial of justice and is itself an error of law.

Learned State Counsel on the other hand contended that despite the order made by the first respondent, the petitioner as averred in paragraph 22 of the petition increased the price of a 400g pack of Nespray to Rs. 146 with effect from 20th October, 2004. On this basis, Counsel argued that the illegal conduct disentitles the petitioner to the discretionary reliefs sought. If the petitioner had in fact acted illegally, the Act makes provision for the first respondent Authority to institute proceedings in the relevant Magistrate's Court against the petitioner for contravening the provisions of the Act. This however, does not prevent the petitioner from challenging the decision marked P8/P8(a) made by the first respondent Authority by following a wrong or incorrect procedure. If there has been some procedural failing such as a false or incorrect step in the procedure, the act of the Authority is condemned as unlawful and unauthorized by law. Since I have held that P8/P8(a) is devoid of any legal effect, the first respondent is under no legal duty to implement it. The decision in P8/P8(a) is a nullity and every proceeding which is followed on is also bad and incurably bad. Accordingly, the court issues a Writ of Certiorari quashing the order dated 24th September, 2004 marked P8/P8(a).

For the avoidance of any doubt, the court holds that the application made by the petitioner for a price increase remains undetermined as the purported decision marked P8/P8(a) is not a decision in the eyes of the law. In view of the conclusion reached, the petitioner is entitled to the protection of the law provided for in Section 18(4). Hence, the relief sought by the petitioner in terms of paragraph (c) of the prayer to the petition for a writ of Mandamus directing the first respondent to consider and determine the petitioner's application dated 02nd September, 2004 is refused.

The petitioner is entitled for costs in a sum of Rs. 15,000 payable by the first respondent Authority.

BASNAYAKE J. I agree.

Application refused.

REV. RATMALANE SRI SIDARTHA
vs
ATTORNEY GENERAL

COURT OF APPEAL
BALAPATABENDI, J.
IMAM, J.
CA 1329/2004
H. C. RATNAPURA 160/03
OCTOBER 1, NOVEMBER 1, DECEMBER 6, 2004

Judicature Act 2 of 1978 - Section 9, 47(1), 47(2), 47(3) - Transfer of a High Court case (Southern Province) to a High Court in the (Sabaragamuwa Province) - Legality -one province to another Province - Penal Code Section 345, 360(1), 335 - Constitution-Article 154, Article 154(1), 153 P3(a) - 13th Amendment - does it repeal Section 47 of Judicature Act-High Court of the Provinces (Sp. Pro.) Act, 19 of 1990 - Section 2(2) - Application for re-transfer-According to Law ? - Discretion of the Attorney-General? - Criminal Procedure Code, S 450 - Trial at Bar - according to Law?.

The non-summary Inquiry was transferred from Tissamaharama Magistrate's Court to the Galle Magistrate's Court on a fiat by the Attorney General. The accused was indicted in the High Court of Matara. The trial was fixed to be heard in the High Court of Hambantota. The case was thereafter transferred to the High Court of Ratnapura by the Attorney General by a fiat.

Accused sought a re-transfer of the case on the ground that, after the enactment of the 13th Amendment to the Constitution, a Provincial High Court did not have jurisdiction to try and determine an offence outside that jurisdiction and therefore the Provincial High Court of Sabaragamuwa Province did not have jurisdiction to hear an determine an offence which had been committed in the Southern Province. The accused Appellant contended that Section 47(1) of the Judicature Act does not empower the transfer of a case from one province to another and that jurisdiction of the Provincial High Court could not be transferred by ordinary statute to any other High Court.

Held

(i) The 13th Amendment does not repeal Section 47 of the Judicature Act and Section 47 is not in conflict with any of the Articles of the 13th Amendment. Under Section 450 of the Criminal Procedure Code, Trials-at-Bar are conducted generally in Colombo outside the provincial jurisdiction of the particular court.

(ii) According to Section 9, of the Judicature Act the offence should be tried, heard and determined in the manner provided by written law-which includes statutes.

(iii) According to law means according to the common law and statute law.

(iv) The directions of the Attorney General is supported by the facts set out in the objections filed by the 2nd Respondent.

APPLICATION to transfer High Court case under Section 47(2) of the Judicature Act.

Cases referred to :

1. *Weragama* vs. *Eksath Lanka Wathu Samithiya and others* - 1994 1 Sri LR 299.
2. *Saranapala* vs *Solanga Arachchi* - 1992 - 2 Sri LR 10.
3. *Mohideen* vs *Goonewardena* - 4 Sriskantha Part 2 at 16

Anil Silva for Accused Petitioner
Navaratne Bandara - S. S. C. for 1st Respondent
Aravinda Athurapane for 2nd Respondent

Imam, J.

This is an application filed by the accused-Petitioner (hereinafter referred to as the Petitioner) under the Provisions of Section 47(2) of the Judicature Act, No. 2 of 1978 praying *inter-alia* for a relief to retransfer High Court *Ratnapura Case* bearing No. 160/03 to the High Court of *Hambantota.* On 25.08.2004 counsel for the 2nd Respondent filed objections, subsequent to which on 01.11.2004, counsel for the petitioner tendered written submissions, on which occasion Mr. Athurupane indicated to Court that he was not appearing for the 2nd Respondent. Senior State Counsel for the 1st Respondent tendered his Written Submissions on 06.12.2004, consequent to which this application was fixed for Order.

The Petitioner who is the Chief Incumbent of the Vedahetikanda Viharaya, Kataragama was earlier in - charge of the Sella Kataragama Ganadevi Kovil as well. The Petitioner contends that there was a dispute regarding the possession/management of the Sella Kataragama Kovil between the Petitioner and one Piyadasa Dissanayake, which resulted in certain powerful persons fabricating a case against the Petitioner on the basis that he was in possession of unlicensed firearms. The Petitioner further submits that he was kept under detention for a considerable period, subsequent to which he was indicted in the High Court of Matara. The Petitioner in his petition further states that during this period Piyadasa Dissanayaka took control of the Ganadevi Kovil at Kataragama with the assistance of the aforesaid powerful persons. Nevertheless after a protracted Trial the Petitioner avers that he was acquitted. The Petitioner further avers that after his acquittal, having made representations to the relevant parties he was in the process of regaining the control and management of the Sella Kataragama Ganadevi Kovil when the aforesaid Piyadasa Dissanayaka connived with H. M. Sugathapala the 2nd Respondent in this case which resulted in the 2nd Respondent *making a false complaint* that the Petitioner had *sexually abused* his daughters. The Petitioner admits that the Non-summary Inquiry was held in the *Magistrates Court of Galle,* and that he was committed to stand his Trial in the High Court. On receiving summons from the High Court of Hambantota, the Petitioner appeared in court on 28.08.2003 and an indictment was served on him, a copy of which is marked as 'P1'. Trial was fixed by the learned High Court Judge of Hambantota for *10.12.2003,* and the Prosecution witnesses were summoned to appear in court. The Petitioner further contends that when

he appeared at the High Court of Hambantota on *10.12.2003* he was informed by the learned High Court Judge that the case *had been transferred to the High court of Ratnapura* by the Hon. Attorney General by a fiat in writing, and that he would be informed of the *next date by the High Court of Ratnapura.* The Petitioner avers that on *10.12.2003* before the Court began sessions when he was speaking to his lawyers, the 2nd Respondent who is the father of the 1st four Prosecution witnesses abused and threatened him, which was brought to the notice of the learned High Court Judge, who directed the Petitioner to make a complaint to the police. A certified copy of the proceedings of 10.12.2003, is marked as 'P2', and the complaint made by the petitioner is marked as 'P3'. Subsequently the Petitioner received summons from the High Court of Ratnapura requiring his presence in Court on 23.01.2004. It is contended by the Petitioner that he was ill on 23.01.2004, and thus could not attend the High Court of Ratnapura, on that day in support of which a Medical Certificate marked P4A was tendered to Court, Section 47 of the *Judicature Act states as follows:*

47(1) Whenever it appears to the Attorney General that it is expedient that any inquiry into or trial of any criminal offence shall be transferred from any Court or place, to any other Court or place, it shall be lawful for the Attorney General in his discretion by his fiat in writing to designate such last mentioned court or place, and such inquiry or trial shall be held accordingly on the authority of such fiat which shall be filed of record with the proceeding in such inquiry or trial so transferred as aforesaid.

47(2) Any person *aggrieved* by a transfer made under such fiat of the Attorney General may apply to the Court of Appeal, by motion supported by affidavit, setting out the grounds for such application for retransfer or for transfer to any other court or place of such inquiry or trial, and the Court of Appeal may after notice to the Attorney General, who shall, if he thinks fit, be heard to show cause against such motion, if it considers that good cause has been shown why the application shall be granted, make order accordingly.

The eight offences against the Petitioner as set out in the Indictment relate to three counts of sexual exploitation of children punishable under section 360B of the Penal Code in respect of H. M. Susangika, H. M. Indika and H. M. Ratnamenike. The 4th Count relates to the commission

of the offence of wrongful confinement in respect of H. M. Sujeeva, punishable under section 335 of the Penal Code. The 5th and 6th are counts the commission of statutory rape on H. M. Susangika and H. M. Indika respectively punishable under section 364(2) of the Penal code. the 7th and 8th counts relate to the commission of the offences of sexual harassment punishable under section 345 of the Penal code in respect of H. M. Ratnamenike and H. M. Sujeewa respectively. The complainant girls are said to be sisters of the same family and two of them were said to be minors at the time of the offence. It was contended on behalf of the Petitioner that after the enactment of the 13th amendment to the Constitution, a Provincial High court did not have jurisdiction to try and determine an offence outside that Jurisdiction, and that therefore the Provincial High Court of Sabaragamuwa Province did not have Jurisdiction to hear an offence which had been committed in the Southern Province. Hence the Provisions of Section 47(1) of the Judicature Act does not empower the transfer of the case from one province to another. It was submitted that in transfering a case out of ordinary Jurisdiction the Hon. Attorney General is exercising Judicial Power, which should be justified. It was further pointed out that no Public functionary has an unfettered discretion, that the Hon. Attorney General should place material before Court Justifying his exercise of discretion, and in the absence of such material before Court, this Court should set aside the aforesaid transfer. It was submitted that the facts and circumstances in this case do no warrant the transfer of this case. The Petitioner submits that the objective of the 13th amendment of 1987 to the Constitution was the intention of devolving power to the provinces.

The 2nd Respondent in his Statement of Objections dated 25.08.2004 denies that he connived with Piyadasa Dissanayaka referred to in the complaint to the Police by the Petitioner marked P3. Furthermore the 2nd Respondent denies that he abused and threatened the Petitioner, and alleges that the Petitioner made a false representation to Court on 10.12.2003, only after learning that the case had been transferred out of Hambantota. It is further contended by the 2nd Respondent that the Petitioner is alleged to have connections with notorious persons of ill-repute in Kataragama, Tissamaharama and Hambantota areas and has offered death threats as well as inducements to the 2nd Respondent and family, seeking to have them withdraw the charges against him.

Furthermore the officials of the Children's Home he avers are very reluctant to travel to Hambantota accompanying two of the said victims

due to the threats of the Petitioner and insufficiency of security. The 2nd Respondent further avers that there is an imminent threat to the lives of him and his family including the said 4 victims if the case is tried in the High Court of Hambantota, and thus has no objection to the case being transferred out. Written submissions were not tendered on behalf of the 2nd Respondent.

Senior State Counsel appearing for the 1st Respondent tendered written submissions and sought that the Petition of the Accused-Petitioner be dismissed. This Court considered the application of the Petitioner, the objections of the 2nd Respondent, the Written Submissions tendered on behalf of the Petitioner, the 1st respondent and other material submitted in this case. The Non-Summary Inquiry bearing *No. 43097 Tissamaharama Magistrate's Court was transferred to the Galle Magistrate's Court* on a fiat by the Attorney General possibly taking into consideration the protection of the complainant girls, and subsequently the Non-summary proceedings had taken place at the Galle Magistrate's Court, as illustrated by document marked XI.

This application has been made invoking section 47(2) of the Judicature Act No. 2 of 1978. The relevant procedure to be adopted is set out in section 47(3) of the Judicature Act, and the Court of Appeal Rules do not set out the Jurisdiction which is applicable with regard to section 47(3) of the Judicature Act.

Article 154(1) of the Constitution (the 13th amendment) states that "There shall be a High Court for each of the provinces with effect from the date on which this chapter comes into force. Each such High Court shall be designated as the High Court of the relevant province"

Article 154 P(3) (a) states as follows : "Every such High Court shall exercise according to law, the original Criminal Jurisdiction of the High Court of Sri Lanka in respect of offences committed within the Province. It was submitted on behalf of the Petitioner that the Jurisdiction of the Provincial High Court could not be transferred by ordinary statute to any other High Court. However under Section 450 of the Criminal Procedure Code Trials at Bar are conducted generally in Colombo outside the Provincial Jurisdiction of the particular court.

Section 2(2) of the *High Court of the Provinces* (Special Provisions) Act, No. 19 of 1990 states as follows.

> "The Provisions of the Judicature Act applicable to the transfer of any action, prosecution, proceeding or matter pending before any court to any other Court shall apply to the transfer of any action, prosecution, proceeding or matter pending before any High Court established by Article 154P of the Constitution from a Province to any other High Court established under that Article."

Justice Mark Fernando in *Weragama V. Eksath Lanka Wathu Samithiya and others* (1) held that "There was no intention on the 13th Amendment to devolve judicial power. There was nothing more than a re-arrangement of the Jurisdictions of the Judiciary."

Although it was held in *Saranapala Vs. Solanga Arachchi* (2) that the Constitution is the Supreme Law, section 47 of the Judicature Act is not in conflict with any of the Articles of the 13th Amendment. Furthermore the 13th Amendment does not repeal section 47 of the Judicature Act either expressly or impliedly, which provision thus remains as law up to date.

Siva Selliah, J. held in *Mohideen vs Goonewardena* (3) and others at 16 that the term "According to Law" means according to the common law and statute law. Section 9 of the Judicature Act states that (1) "The High Court shall ordinarily have power and authority and is hereby required to hear, try and determine in the manner provided for by written law all prosecutions on indictment instituted therein against any person in respect of (a) any offence wholly or party committed in Sri Lanka....."

Hence it means that the offences should be tried, heard and determined in the manner provided by written law which obviously includes statutes. Hence it is my view that the 13th Amendment does not repeal section 47 of the Judicature Act, and thus initially the Hon. Attorney General acting under section 47(1) of the aforesaid Act had the legal capacity to transfer the case from the High Court of Hambantota to the High Court of Ratnapura, which has Jurisdiction to hear this case. Section 47(1) of the Judicature Act states that "Whenever it appears to the Attorney General that it is expedient that any inquiry into or trial of any criminal offence shall

be transferred from any Court or place, to any other Court or place, it shall be lawful for the Attorney General in his discretion by his fiat in writing to designate such last mentioned Court or place....."

The direction of the Attorney-General is supported by the facts set out in the objections filed by the 2nd Respondent.

Paragraph 6 of the relevant affidavit states that the officials of the children's home are very reluctant to travel to Hambantota due to threats of the Petitioner and lack of security. The Petitioner is also alleged to have close connections with several notorious persons in Kataragama, Tissamaharama and Hambantota areas, and is said to wield tremendous influence in those areas, which could be detrimental to a fair trial. The 2nd Respondent is said to have received death threats from the petitioner, and inducements are said to have been offered to the family of the 2nd Respondent seeking to withdraw the charges against them. Even at the Non-Summary Inquiry, the 2nd Respondent gave evidence with regard to the death threats which he was subjected to. Thus it appears to be dangerous to the 2nd Respondent and his family if this case is held at the Hambantota High Court. The Petitioner filed this application for a re-transfer of the case on the basis of an alleged threat made to him at the High Court of Hambantota by the 2nd Respondent. The position of the 2nd Respondent is that this complaint was made only after learning that this case had been transferred out of the High Court of Hambantota. On the day in question namely 10.12.2003 counsel for the petitioner on learning that the case had been transferred to Ratnapura, initially objected indicating that he proposed to appeal to this Court against that order of transfer. Consequently he made the complaint of the alleged threat by the 2nd Respondent, as illustrated in Document marked P2. Under these circumstances the allegation of the threat seems more like a false representation to instigate an application for a re-transfer.

When this case was called before the Ratnapura High Court on 23.01.2004 the Petitioner did not appear in courts, and a Medical Certificate was filed on his behalf. On examination of the Medical Certificate marked P4A, which is dated 13.01.2004, the Medical Officer has stated that the petitioner is suffering from chest pain and vertigo and has been recommended bed rest from 20.01.2004 to 27.01.2004 but does not state that he cannot attend Court. Furthermore although the Petitioner in paragraph 11 of the petition states that he was warded at the Intensive Care Unit of the Cardiology

Unit for more than one month, the Petitioner has failed to produce any document to prove this. For the aforesaid reasons I dismiss the application of the Petitioner without costs.

Balapatabendi, J. – I agree.

Application dismissed

DACHCHAINI
VS
THE ATTORNEY-GENERAL

COURT OF APPEAL
BALAPATABENDI, J
EKANAYAKE, J.
SRISKANDRAJAH, J
CA PHC 55/2005 (D.B.)
H. C. COLOMBO 9300/98
OCTOBER 06, 2005

Bail Act, No. 30 of 1997, Section 2, - Section 20 – Earlier Legislation – Court of Criminal Appeal Ordinance 23 of 1938 – Section 15(1) Administration of Justice Law 44 of 1975 – Code of Criminal Procedure Act, No. 15 of 1979 – Compared – Guiding principles in the implementation of the provisions of Bail Act – Rule and the exception – Policy changes – Exceptional Circumstances requirement – No more a principle? – Constitution – Article 138(1). Offences against Public Property Act, No. 12 of 1982 – Poison, Opium and Dangerous Drugs (Amendment) Act, No. 13 of 1984 – Bribery (Amendment) Act, No. 20 of 1994 - Comparison.

The petitioner sought to revise the Order of the High Court Judge refusing to enlarge the accused on the basis that she has not made out any exceptional circumstances.

HELD:

i. The Bail Act, No. 30 of 1997 which came into operation on 28th November, 1997 is the applicable law.

ii. By the enactment of the Bail Act the policy in granting bail has undergone a major change. The rule is the grant of bail. The Rule upholds the values endorsed in human freedom. The exception is the refusal of bail and reasons should be given when refusing bail.

Per **SRISKANDRAJAH, J.**

"By the enactment of the Bail Act there is a major change in the legislative policy and the Courts are bound to give effect to this policy. The High Court judge in the impugned Order has erred in not taking into consideration the policy change that has been brought in by the enactment and mechanically applied the principle that the accused have failed to show exceptional circumstances when this requirement is no more a principle governing bail pending appeal."

APPLICATION for bail form a judgment of the High Court of Colombo.

CASES REFERRED TO:

1. *King* vs *Keerala*, 48 NLR 202
2. *Rex* vs *Cooray*, 51 NLR 360
3. Queen V Cornelis Silva 71 NLR II
4. *Salahudeen* vs *Attorney-General*, 77 NLR 262
5. *Rama Thamotherampillai* vs *Attorney-General*, SC Application 141/75
6. *Q* vs *Liyanage*, 65 NLR 289
7. *Jayanthi Silva and two others V Attorney General 1997 3 Sri LR 117*
8. *Queen Vs Rupasinghe Perera 62 NLR 236*
9. *Anuruddha Ratwatte and four Others* vs *Attorney-General*, SC Application 2.2003-TAB SCM 11.7.2003.
10. *Ward* vs *James* (1965) 1 ALL ER 563 at 571
11. *Addaraarachchige Samson* vs *Attorney-General*, CA (PHC) 10/98 High Court Colombo Case No. 7710/96, CAM 19.5.1988.
12. *P. G. Pieiris (Ex. Chairman, Village Committee)* vs *Chairman, Village Committee (Medasiya Pattu, Matale)* 62 NLR 546.
13. *Herath* vs *Munasinghe*, SC 634 MC Kegalle 16388, SCM 27.8.1957.

Cur. adv. vult.

28.10.2005

SRISKANDARAJAH, J.

The Petitioner in this application has sought to revise the Order of the learned High Court Judge of Colombo dated 11.01.2005 refusing to enlarge

the 1st, 2nd and 3rd Accused Appellants on bail and for an order to enlarge the 3rd Accused Appellant on Bail.

The 1st, 2nd, and 3rd Accused were indicted in the High Court of Colombo on four counts viz.

1. 1st, 2nd and 3rd Accused for aiding, abetting and conspiring, to commit an offence of cheating.

2. 2nd Accused for cheating by promising to sent a person abroad.

3. 1st Accused for cheating in a sum of Rs. 200,000/-.

4. 3rd Accused for cheating in a sum of Rs. 55,000/-.

The 2nd Accused did not appear in court and the trial proceeded in absentia against the 2nd Accused. After trial all the accused were convicted for the aforesaid offences and sentenced to 7 years imprisonment for each count and in addition a fine of Rs. 10,000/- was also imposed on each of them. The accused preferred an appeal against their conviction and sentence.

Pending Appeal an application was made to the High Court of Colombo to release these three accused on bail and this application was refused by the learned High Court Judge in the impugned order dated 11.01.2005. The refusal of bail to the 1st and 3rd accused is on the basis that "these accused have failed to show any exceptional circumstance that is required to consider bail" and the refusal of bail to the 2nd accused is on the basis that "there is no provision to consider bail in respect of the 2nd accused prior to surrendering to court."

As this is a Revision Application this Court has to consider the legality of this order.

The bail pending appeal is now being granted under the provisions of the Bail Act, No. 30 of 1997. But the case law that had been developed in this area was based on different procedural laws that were in existence before the Bail Act came into operation. Therefore it is necessary to consider the legislative history and the evolution of law in this area.

In 1938 the provisions of bail pending appeal was incorporated in the Court of Criminal Appeal Ordinance No. 23 of 1938 in Section 15(1). This section provides:

15(1) The Court of Criminal Appeal may, if they think fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal.

Under this section the court had discretion to enlarge an accused on bail pending appeal,. But the courts when acting under this section had evolved certain restrictions on the exercise of this discretion. The courts have adopted a principle that the bail should not be granted as a rule but it can only be granted in exceptional circumstances. In 1942 Wijeyewardene J in the case of *King vs Keerala*[1] referring to a judgment in 25 Criminal Appeal Reports 167 in deciding an application of bail pending appeal held that "this court does not grant application for bail in the absence of exceptional circumstances". In 1950 *Windham J in Rex vs. Cooray*[2] when releasing the suspect on bail applied the same principle. In 1969 in the case of The *Queen vs Cornelis Silva*[3] Justice Weeramantry held "It is a settled principle that release on bail pending appeal to the Court of Criminal Appeal will only be granted in exceptional cirumstances. I do not think the circumstances urged are sufficient to make the petitioner's case an exeptional one." Similar view was expressed by *Samarawickrama J in Salahudeen vs Attorney General*[4].

In 1973 The Court of Criminal Appeal Ordinance No. 23 of1938 was repealed by Administration of Justice Law, No. 44 of 1973. In *Ramu Thamotherampillai vs A. G*[5]. the counsel for the petitioner argued that in view of the new provision in the grant of bail pending appeal *i. e.* Section 325 (2) the principle that the grant of bail could only be granted in exceptional circumstances cannot be applied. Vythialingam J rejected the contention of learned counsel for the petitioner that the legislative history of the section shows that what the legislature intended was that ordinarily bail should be granted unless there were good grounds for refusing it and held :

> "that the granting of bail is now vested in the court as I have pointed out, by the Administration of Justice Law and other relevant enactments as the case may be. This court is vested with a wide discretion to grant or refuse bail by Section 325(3) with which we are now concerned. But this discretion must be exercised judicially and not arbitrarily or

capriciously. In *Queen vs. Liyanage*[6] the court pointed out at pages 292 and 293. **But it is not to be thought that the grant of bail should be the rule and the refusal of bail should be the exception** where serious non-bailable offiences of this court are concerned," (emphasis added).

The policy enumerated above was considered as the guilding principle of the courts even after the Administration of Justice Law, No. 44 of 1973 was enacted and the courts insisted on exceptional circumstances to the grant of bail.

The chapters dealing with appeal in the Administration of Justice Law was repealed in 1979 and the Code of Criminal Procedure Act, No. 15 of 1979 came in to operation. Justice D. P. S. Gunasekara President Court of appeal (as he then was) in *Jayanthi Silva and Two others vs Attorney General*[6], reviewed the provisions of bail pending appeal. He observed, that as the law as it stands today under the provisions of the Code of Criminal Procedure Act the statute itself draws a distinction between the bail pending appeal form the order of the Magistrate Court and from the order of the High Court Sections 323(1) and 333(3). He further observed the words in Subsection (3) of section 333 clearly vest discretion in the High Court Judge to decide whether to grant bail to an accused who have been convicted or to refuse to grant bail pending appeal. The discretion to grant or refuse bail must be exercised judicially and not arbitrary or capriciously. He also observed that over the years a principle has evolved through judicial decisions that bail pending appeal from convictions by the Supreme Court would only be granted in exceptional circumstances. Justice Gunasekara after analyzing the cases *King vs Keerala (Supra), Queen vs Rupasinga Perera*[8], *Queen vs. Coranelis Silva (Supra), Salahudeen vs Attorney General (Supra)* and *Ramu Thamotheam Pillai vs. Attorney General* (supra) held ; "that from the consideration of the decisions referred to above and the legal provisions, as a general principle there is no doubt that exceptional circumstances must be established by an applicant if the discretion vested in a High Court to grant him bail pending the determination of his appeal is to be exercised in his favour."

The Bail Act, No. 30 of 1997 which has come in to operation on the 28th of November 1997 is the law applicable at the relevant time of this application and at present. The long title of this act states as

"An Act to provide for release on bail of persons suspected or accused of being concerned in committing or of having committed an offence ; To provide for the granting of anticipatory bail and for matters connected therewith or incidental thereto." This act has provided for release on bail of persons at the stage of investigation, at the stage of trial, pending appeal and on anticipatory bail. Section 20(2) of the Bail Act provides for bail pending the determination of appeal against a conviction.

The provisions of bail pending appeal after conviction are similar under the Court of Criminal Appeal Ordinance [Section 15 (1)], the Administration of Justice Law [Section 325(3)], and the Code of Criminal Procedure Act [Section 333(3)] these sections have given a discretion to court to release an accused on bail. But when the Courts implementing these provisions had followed a principle that has evolved through judicial decisions that bail pending appeal from conviction would only be granted in exceptional circumstances. The Bail Act [Section 20(2)] also contains similar provisions in relation to bail pending appeal after conviction but the Bail Act draws a distinction by providing under Section 2 a guiding principle for the implementation of these provisions. Sarath N. Silva the Chief Justice in referring the legislative policy of the Bail Act in *Anuruddha Ratwatte and 4 others vs Attorney General* [9] held. "That Section 2 of the Act gives the guiding principle in respect of the implementation of the provisions of the Act. It is specifically stated that "the grant of bail shall be regarded as the rule and the refusal to grant bail as the exception.""

Lord Denning MR in the case of *Ward vs. James* [11] at 571 stated that "the cases all show that when a statute gives a discretion the courts must not fetter it by rigid rules from which a judge is never at liberty to depart. Nevertheless the Courts can lay down the considerations which should be borne in mind in exercising the discretion and point out those considerations which should be ignored. This will normally determine the way in which the decision is exercised and thus ensure some measure of uniformity of decisions. **From time to time the considerations may change as public policy changes and so the pattern of decisions may change. This is all part of the evolutionary process**" (emphasize added).

By the enactment of the Bail Act the policy in granting bail has under gone a major change. The Parliament in Section 2 of the Act has laid down the principle that should govern the grant of bail under the Bail Act. This section clearly spells out the fundamental principle which should

form part of the law of Sri Lanka. This principle has been articulated as follows: "The guiding principle in the implementation of the provisions of this Act shall be that the grant of bail shall be regarded as a rule and the refusal to grant bail as the exception." It is very important that we distinguish the rule from the exception. the rule is the grant of bail. The rule therefore, upholds the values anchored in human freedom. The exception is the refusal of bail, and reasons should be given when refusing bail.

On the other hand if the legislature had thought it fit in considering the long line of cases that exceptional circumstances is a prerequisite for the grant of bail pending appeal from a High Court it could well have incorporated this provisions in Section 20(2) of the Bail Act. Various enactments that were enacted in the recent past namely; Offences Against Public Property Act, No. 12 of 1982, Poison, Opium and Dangerous Drugs (Amendment) Act No. 13 of 1984, Bribery (Amendment) Act No. 20 of 1994 etc., have specific provisions that exceptional circumstances must be established in granting bail.

By the enactment of the Bail Act there is a major change in the legislative policy and the courts are bound to give effect to this policy. The learned High Court Judge of Colombo in the impugned order has erred in not taking into consideration the policy change that has been brought in by the enactment of the Bail Act and by mechanically applying the principle that the accused have failed to show any exceptional circumstances when this requirement is no more a principle governing the bail pending appeal. Therefore this court set aside the order of the learned High Court Judge dated 11.01.2005 in so far as it relates to the 3rd Accused Appellant since the 1st Accused Appellant has already been released on bail.

This court in exercising its powers under Article 138(1) of the Constitution proceeds to consider the merits of the application for bail to the 3rd Accused Appellant. The Court has discretion under Section 20(2) to release an accused on bail pending appeal after conviction. The Court must exercise

this discretion judicially. It is unwise to confine its exercise within narrow limits by rigid and inflexible rules. The decision must in each case depend on its own peculiar facts and circumstances. But in order that like cases may be decided alike and to ensure some uniformity in decisions it is necessary to lay down some guidance for the exercise of this discretion. In this regard the considerations that are enumerated by Justice D. P. S. *Gunasekara in Jayanthy Silva and Two Others vs Attorney-General* (supra) could be taken in to account in determining the question as to whether there are good reasons to refuse bail of an accused who has been convicted before a High Courts pending his appeal. They are nemely; the main consideration of course is whether if his appeal fails the appellant would appear in court to receive and serve the sentence (when the offence is grave and the sentence is heavy the temptation to abscond in order to avoid serving the sentence in the event of his appeal failing would of course grave), the likelyhood of the appellant committing other offences. the likely hood of the appellant taking revenge on the witness who have testified against him at the trial, the existence of tension between the parties which might be inflamed as a result of the convicted person being released on bail pending the determination of appeal, the chances of success or failure of the appeal, are some considerations that could be taken in to consideration to refuse the accused on bail pending appeal however they are not exhaustive.

In the instant case the 3rd accused is a 50 years old mother of three children. She was convicted in the 1st count for aiding, abetting and conspiring to commit an offence of cheating and was sentence to seven years imprisonment. She was also convicted in the 3rd count for committing an offence of cheating in a sum of Rs. 55,000/- and was sentenced to seven years. In addition a fine Rs. 10,000/- was also imposed. According to the Petitioner the husband of the accused is not living with her and she is the sole breadwineer of the family of three children in these circumstances the chances of absconding is remote. Considering the

facts and circumstances of this case this court is of the view that there is no reason to refuse bail to the 3rd Accused Appellant. Therefore this Court enlarges the 3rd Accused Appellant on bail in a sum of Rs. 50,0000/- cash bail with two sureties of fixed abode and permanent employment in similar amounts.

JAGATH BALAPATABENDI, J

Having had the advantage of reading the Order of my brother Sriskandarajah, J. I agree with the conclusion he has reached that the 3rd Accused-Appellant should be released on bail.

It had been a settled principle that the release of an accused on bail pending appeal was granted only in "exceptional circumstances" (Vide (Supra) the decisions in cases, *King Vs. Keerala, Queen Vs. Rupasinghe* (Supra) , *Salahudeen Vs. Attorney General* (Supra) , *Jayanthi Silva Vs. Attorney General, Addaraarachige Samson Vs. Attorney General*[11]"

Careful study of those cases reveals that the exceptional circumstances which had been considered by Court varied from case to case and there was no uniformity and certainty. Some Judges considered the fact that the long delay in hearing the appeal as an "exceptional circumstance" but some other Judges did not consider it as an "exceptional circumstance".

With the enactment of the Bail Act No. 30 of 1997 the law of bail became a static law. A clear guiding principle was laid down in respect of the grant of bail. Section 2 of the Bail Act states " **Subject to the exceptions as herein after provided for in this Act, the Guiding Principle in the implementation of the provisions of this act shall be, that the granting of bail shall be regarded as the rule and the refusal to grant bail as the exception**".

Also, the High Court has discretion under Section 20(2) to release an appellant on bail pending the determination of his appeal; it is only on valid reasons that the bail should be refused as construed by the L. C. Provisions of the Bail Act, No. 30 of 1997.

I have followed the principle that the appellant should be released on bail only on exceptional circumstances in few Bail Orders written by me after the enactment of the Bail Act.

In the case of *P. G. Peris (Ex- Chairman, Village Committee) Vs. Chairman Village Committee (Medasiya Pattu, Matale)*[12] H. N. G. Fernando J as he then was made the following observation; "The Magistrate relied on my unreported judgment in *Herath Vs. Munasinghe*[13] when he overruled the objection that he had no power to impose a term of imprisonment in default of payment of the certified amount. I have hence held in identical circumstances that a default term of imprisonment may be imposed, and that sub section (1)e of the Criminal Procedure Code would determine the length of the term in such case. While it is disappointing to realize that my judgment was erroneous, I welcome the opportunity now given me to employ the language of Baron Bramwell in a similar situation. **"The matter does not appear to me now as it appears to have appeared to me before".**

As stated above, though I have written those Bail Orders having considered the Principle that the appellant should be released on bail in exceptional circumstances after the enactment of the Bail Act No. 30 of 1997. I my self now disappointed in realizing that the principle adopted was incorrect. Thus, I too make use of the opportunity now given me to employ the language of Baron Bramwell :

> **"The matter does not appear to me now as it appears to have appeared to me before".**

For the above mentioned reasons, I fully agree with the reasons given by my brother for his conclusion.

CHANDRA EKANAYAKE, J – I agree

Application allowed. Bail granted.

ABEY MUDALALI
VS
ATTORNEY-GENERAL

COURT OF APPEAL
BALAPATABENDI, J.
SISIRA DE ABREW, J.
C. A. 13/2003
H. C. BADULLA 62/97
MAY 31, 2005
JUNE 17, 2005
JULY 25, 2005

Penal Code – Section 77, 78, 79, 296 – Benefit under section 79 – Plea of drunkenness – State of Intoxication – Murderous intention ? – Reduction to culpable homicide not amounting to murder – Grave and sudden provocation – Dock Statement – Evidence Ordinance – Section 105 – Applicability.

The appellant stood trial on two counts of murder and was convicted on both counts and sentenced to death.

The appellant sought to reduce the conviction for murder to culpable homicide not amounting to murder on the ground of drunkenness raised in the Dock Statement.

HELD:

(i) In a case of murder when the defence of drunkenness is put forward the burden is on the accused to prove that by reason of the intoxication that there was an incapacity to form the intention The evidence suggests that the accused was not in a state of intoxication at the time he attacked the deceased. Thus the appellant is not entitled to the benefit under section 79.

Per Sisira de Abrew J.

> "In a case of murder, if an accused person raises the plea of drunkenness under section 79, the burden is on the accused to prove on a balance of probability that he had reached the state of intoxication in which he could not have formed a murderous intention at the time of alleged act was done."

(ii) When the evidence is evaluated, the question of grave and sudden provocation does not arise.

APPEAL from the judgment of the High Court of Badulla.

CASES REFERRED TO:

1. *King* vs. *Velaiden, 48 NLR* 409 (DB)
2. *Ratnayake vs. Queen,* 73 NLR 481

Dr. Ranjith Fernando for accused appellant

Yasantha Kodagoda, Senior State Counsel for Attorney-General

Cur.adv.vult.

22.09.2005

SISIRA DE ABREW, J.

The appellant, in this case, stood his trial at the High Court of Badulla on two counts of murder and was convicted on both counts. The appellant was sentenced to death. This appeal is against the said convictions and the sentences.

According to the version for the prosecution, about 6.00 p. m. on 7th February 1990 the appellant and the deceased Bandara Manika, the wife of the appellant, were seen coming to the compound of Loku Manika the mother-in-law of the appellant. At this time the appellant was assaulting his-wife with his hands. Upon witness Nilupa Priyadarshani, the daughter of the appellant, informing Loku Manika of the incident Loku Manika rushed out of the house and asked the appellant as to why he was assaulting Bandara Manika. Since the appellant did not respond, Loku Manika accompanied Bandara Manika into the Kitchen. About 15 minutes later the appellant came into the kitchen, took a pestle and assaulted both Bandara Manika and Loku Manika with the pestle. The blows alighted on their heads. Loku Manika, at this time, was bending and attempting to light the lamp, usually kept in the kitchen. Nilupa and Inoka, in fear of being assaulted, ran away from the house.

The main ground urged on behalf of the appellant was that the convictions for murder should be reduced to culpable homicide not amounting to murder on the ground of drunkenness raised in the dock statement. Learned Counsel urged that the appellant was entitled to the benefit of section 79 of the Penal Code which reads as follows. "In cases where an act done is

not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will."

To give the benefit under section 79 of the Penal Code the fact that "the accused did the act in a state of intoxication must be proved". It is necessary to consider who should prove it and to what degree it should be proved. In this connection it is pertinent to consider certain decisions of the Court of Criminal Appeal. In the case of King Vs Velaiden[1] Howard CJ (Soertsz J, Jayatilaka J, Dias J, and Windham J agreeing) held that "where in a case of murder the defence of drunkenness is put forward the burden is on the accused to prove that by reason of the intoxication there was an incapacity to form the intention necessary to commit the crime."

In the case of Ratnayake vs. Queen[2] Sirimana J (Samarawickrama J and Weeramanthry J concurring) held as follows. "For the purpose of section 79 of the Penal Code the state of intoxication in which a person should be is one in which he is incapable of forming a murderous intention; and whether he has reached the state of intoxication or not is a question of fact for the jury to determine depending on the evidence in each case; and it is for the person who raises the plea of drunkenness to establish on a balance of probability that he had reached the state of intoxication in which he could not have formed a murderous intention." It is pertinent in this regard to consider section 105 of the Evidence Ordinance which reads as follows. "When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Penal Code, or within any special exception or proviso contained in any other part of the same Code, or any other law defining the offence, is upon him, and the court shall presume the absence of such circumstances." Illustration (a) to the above section reads as follows. "A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act. The burden of proof is on A."

Having considered the principles laid down in the above cases and section 105 of the Evidence Ordinance, I hold that in a case of murder, if an accused person raises the plea of drunkenness under section 79 of the Penal Code, the burden is on the accused person to prove on a balance of probability that he had reached the state of intoxication in which he could

not have formed a murderous intention at the time the alleged act was done. If an accused person raises a plea of drunkenness under section 78 of the Penal Code it is for the accused person to prove on a balance of probability that by reason of intoxication there was an incapacity to form the intention necessary to commit the crime. Learned Counsel for the appellant at the hearing of this appeal submitted that he would not claim relief under sections 77 and 78 of the Penal Code. It is necessary to consider whether the appellant, in the present case, was in a state of intoxication at the time the alleged act was committed, since the counsel for the appellant raised the plea of drunkenness under section 79 of the Penal Code. The appellant in his dock statement stated that on the day in question he came home severely drunk and fought with his wife.

Loku Manika and Bandara Manika were killed in Loku Manika's house which was half a mile away from the appellant's house. Soon before the incident the appellant and his wife came to the compound of Loku Manika. The appellant at this time was assaulting his wife with his hands. When Loku Manika made inquiries about the assault inside the kitchen, the appellant said that he would not assault his wife. After the appellant attacked both Bandara Manika and Loku Manika with the pestle he was walking in the direction of Dharmapala's boutique. Dharmapala who, on hearing about the incident, was running to his mother Loku Manika's house, met the appellant who addressed him in the following language. *"I gave work to your mother and sister, go and see."* This statement of the appellant clearly shows that he was conscious of what he had done. Dharmapala did not say that the appellant was drunk. Inoka and Nilupa who saw their mother being attacked by the appellant did not say the appellant was drunk. Although the appellant said that he was drunk on the day of the incident, the above evidence suggests that the appellant was not in a state of intoxication at the time the he attacked Bandara Manika and Loku Manika. For the above reasons, I am unable to agree with the contention of the learned Counsel for the appellant. I therefore hold that the appellant is not entitled to the benefit under section 79 of the Penal Code.

The appellant, in his dock statement, stated after he came home he quarreled with his wife who went away leaving two children at home. I will therefore consider whether he was provoked at the time of the incident. The distance between the houses of Loku Manika and the appellant was about half a mile. The appellant attacked both women 15 minutes after he

came to the compound of Loku Manika. When Loku Manika asked the appellant as to why he was assaulting his wife, the appellant said that he would not do so again. When the above items of evidence are taken into account the question of grave and sudden provocation does not arise.

For the reasons set out in my judgment, I see no reason to interfere with the judgment of the learned High Court Judge. I Therefore affirm the convictions and the sentences of the appellant and dismiss the appeal.

BALAPATABANDI J, - I agree,

Appeal dismissed.

SOMATUNGA AND OTHERS
vs.
CEYLON FERTILIZER COMPANY AND OTHERS

COURT OF APPEAL,
SRIPAVAN, J
BASNAYAKE, J
CA 2370/2004
JUNE 27TH, 2005

Conversion of Public Corporations or Government owned business undertakings into Public Companies Act, 23 of 1987. Sec. 2 (1) - Sec. 3(1) (e) - Companies Act, No. 17 of 1982 - Former Employees becoming employees of the New Company - Right to ask for extension ? - Legitimate expectation - Contractual or Statutory right ?

The 1st Respondent Company was stablished under the provsions of Act 23 of 1987 (Converstion Act) to take over the business of the Ceylon Fertilizer Corporation. All employees who were not offered employment were granted compensation and employees of the corporation to whom employment was offered became employees of the company. The Respondent refused the application of these employees for extension of service after the statutory age of retirement till they reached the age of 60.

The Petitioner sought a Writ of Certiorari to quash the decision refusing the extension.

HELD

(1) The Act 23 of 1987 does not deal with the question of extension of service of employees of the company at all.

(2) If the refusal to grant extension was in breach of the terms of employment contract the proper remedy is an action for declaration for damages.

(3) The Petitioners have no legal right to insist on the first Respondent to extend their services on the basis of a right conferred by any statutory provisions nor the first Respondent under a statutory duty to extend the Petitioners Service.

Application for Writ of Certiorari

Cases referred to :

1. *Chandradasa Vs. Wijayaratne (1982) 1 Sri LR 412*
2. *Trade Exchange (Ceylon) Limited Vs. Asian Hotels Corporation Ltd. (1981) 1 Sr. LR 67*

Sunil Cooray with G. Rodrigo for Petitioner

Nimal Weerakkody for 1st and 2nd Respondent

Y. J. W. Wijayatillake - DSG for 3rd, 4th and 5th Respondents

Cur.adv.vult

July 11, 2005

SRIPAVAN, J.

The petitioners are employees of the first respondent company. It is common ground that the first respondent company was established under the provisions of Conversion of Public Corporation of Government Owned Business Undertakings into Public Compaines Act, No. 23 of 1987 to take over the business of the Ceylon Fertilizer Corporation. In terms of Section 2 (1) of the said Act where the Cabinet of Ministers considers it necessary that a company should be incorporated in order to take over the functions of a Public Corporation, the Minister may in consultation with the Minister-in-Charge of the subject of Finance, forward a memoran-

dum and articles of Association to the Register of Compaines, together with a direction to register such Public Corporation as a Public Company under the Companies Act, No. 17 of 1982. On receipt of such direction, the Registrar of Companies is mandated to publish an order in the Gazette declaring that a Public Company is incorporated and 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.

In terms of Sec. 3(1)(e) of the said Act all officers and servants of the Corporation who are not offered employment with the company shall be entitled to the payment of compensation. Thus the employees of the Corporation to whom employments is offered become the employees of the Company. The petitioners' substantial complaint was that the petitioners being employees of the company have a legitimate right and expectation to ask for extensions of service after the statutory age of retirement till they reach the age of sixty ; and the the decision of the first respondent board refusing to grant extension was ultra vires and unreasonable. Accordingly, the petitioners seek to quash by writ of certiorari the letters marked P8(a), P9(a), P9(j), P10(a) and P11(a) whereby the extensions were refused.

At the hearing, learned Counsel for the first respondent raised an objection that the impugned orders were not made in the exercise of any statutory power but was one made in pursuar ce of purely contractual rights. No doubt the company was established under Act, No. 23 of 1987. But the question is when the first respondent board refused extension did it do so in the exercise of any statuory power ? The Act does not deal with the question of extension of service of employees of the company at all. If the refusal to grant extension of service was in breach of the terms of the employment contract, the proper remedy is an action for declaration for damages. A similar sentiment was expressd by Thambiah, J in *Chandradas Vs. Wijeyaratne*[1].