

SRI LANKA TRANSPORT BOARD
v
COLOMBO METROPOLITAN BUS COMPANY AND OTHERS

SUPREME COURT
SHIRANI BANDARANAYAKE, J.
FERNANDO, J.
SOMAWANSA, J.
SC SPL. LA 77/2007
CA 143/2003
JULY 10, 2007
SEPTEMBER 4, 2007
MARCH 11, 2008

Sri Lanka Transport Board Act 27 of 2005 – S2-S3-S11 (1) a – S17 (1) – S18(1). Is the Sri Lanka Transport Board a body corporate? – Characteristic of a Corporation – Ceylon Tourist Boards Act 10 of 1966 – S31 Ceylon Broadcasting Corporation Act – S2 (2). S4 (1) Public Records Ordinance – Shipping Corporation Act S2 (2) – Gem Corporation Act S2 (2) – Common Amenities Board Law 10 of 1973 – S2 Public Trustee Ordinance S3.

Held:

- (1) The common characteristics of a corporation are a distinctive name, a common seal and perpetuity of existence. As a Rule the contracts of a corporation must be under seal of the corporation.

Per Shiranee Bandaranayake, J.

"It is evident that for the establishment of an institution as a body corporate clear provision to that effect should be provided in the enactment".

- (2) In the absence of any direct provision or any intent to incorporate, it is evident that the Sri Lanka Transport Board under the present Act cannot be registered as a body Corporate.

APPLICATION for Special Leave to Appeal – preliminary objection.

Case referred to:

- (1) *The Land Commissioner v Ladamuthu Pillai* – 62 NLR 182

Dulindra Weerasuriya with Amila Vilhana for petitioner.

Murudu Fernando DSG for 1st and 2nd respondents

Manohara de Silva PC for 3rd respondent.

Percy Wickremaratne with Shanthy Silva for 4th, 5th and 6th respondents.

Cur.adv.vult

July 2, 2008

SHIRANI BANDARANAYAKE, J.

This is an application for Special Leave to Appeal from the judgment of the Court of Appeal dated 12.02.2007. By that judgment the application of the cluster Companies for a mandate in the nature of a *writ of certiorari* to quash the order made by the 1st respondent by his letter dated 03.09.2002 informing the cluster Companies that they will have to calculate the gratuity payable to the retiring employees, taking into account the entire period in which such employees were in service, including the period that they have served at the Regional Transport Boards prior to the cluster Companies being formed (for which period gratuity had already been paid by such Regional Transport Boards), subject to the deduction of the amounts that may have been paid by such Regional Transport Boards prior to such employees joining the cluster Companies, was dismissed. The petitioner, namely the Sri Lanka Transport Board, filed an application before this Court against that judgment. When this matter was taken for support for special leave to appeal, learned President's Counsel for the 3rd respondent took up a preliminary objection that the petitioner, described as the Sri Lanka Transport Board, was not a legal persona and therefore lacked capacity to institute and maintain this application.

All parties were accordingly heard on the preliminary objection.

Learned President's Counsel for the 3rd respondent contended that the petitioner in its application to this Court had stated that at the time, the application before the Court of Appeal

01

10

20

was proceeding, the Sri Lanka Transport Board, Act No. 27 of 2005 was enacted and thereby the petitioner was established as the lawful successor to the 11 cluster Companies, which instituted the application in the Court of Appeal. Accordingly, the petitioner had come before this Court in the capacity of being the successor to the 11 cluster Companies that instituted action in the Court of Appeal. The contention of the learned President's Counsel for the 3rd respondent was that the said Sri Lanka Transport Board Act, No. 27 of 2005, does not contain any provision incorporating the 'Sri Lanka Transport Board' and therefore the said Board has no corporate personality.

Learned Counsel for the petitioner contended that the objection raised by the learned President's Counsel for the 3rd respondent is based on the fact that the Sri Lanka Transport Board Act, No. 27 of 2005 does not contain any provision, which expressly states that the 'said Board shall be a body-corporate with perpetual succession and a common seal and may by its name sue and be sued' and therefore the petitioner is not a body corporate.

Accordingly, the contention of the learned Counsel for the petitioner was that when examining or interpreting a statute, it should be considered as a whole and an interpretation should be given to that statute preserving the spirit and the object for what it was enacted. Further, it was submitted that when one examines the Preamble of the statute in question there is reference that the present Act was enacted to achieve similar objectives of the previous enactments and as the earlier Acts had specific reference of those Boards being body corporates, that position should apply to the present Act as well. Learned Counsel for the petitioner also made reference to Sections 11(1)a, 17(1) and 18(1) of the Act to stress the point that the Board has the legal status of a body corporate. His contention with regard to the aforementioned sections were as follows:

1. Section 11(1) makes provision for the Board to acquire, hold, give on lease, mortgage, pledge and sell etc. of immovable property;
2. Section 17(1) states that where any land is required for the purpose of the business of the Board, such land can

be acquired under the Land Acquisition Act and be transferred to the Board; and

3. Section 18(1) makes provision that where any immovable property of the State is required for the purpose of the business of the Board, such land can be given to the Board by a special grant or lease.

Accordingly, learned Counsel for the petitioner took up the position that for the implementation of the aforementioned provisions, the Board has to have the legal status of a body corporate and therefore the statute in question has by implication recognized the said Board as a body corporate. 70.

Considering the contentions of the learned President's Counsel for the 3rd respondent and the learned Counsel for the petitioner, it is evident that, the question that has to be examined is whether a Board such as the Sri Lanka Transport Board established in terms of Act, No. 27 of 2005 would have the status of a body corporate even if there is no specific provision to that effect, under the said Act. 80

The common characteristics of a Corporation, as generally known, are a distinctive name, a common seal and perpetuity of existence. Almost all enactments dealing with Public Corporations contain similar provisions, which provide for the establishment of the institutions as bodies corporate, having perpetual succession and a common seal. Referring to the basic features of a Public Corporation, Dr. A.R.B. Amerasinghe (Public Corporations, pgs. 22-23) has stated that,

"Every Public Corporation in Ceylon is a separate legal person. **Substantially similar provisions in all the Acts provide for the establishment of the institutions as bodies corporate**, having perpetual succession and a common seal. (emphasis added)" 90

In his discussion, on the common characteristics of a Corporation, Dr. Amerasinghe had referred to several enactments, which had clearly made provision to state that they are bodies corporate, having perpetual succession and a common seal (Section 3 of the Tourist Board Act, Section 2(2) of Ceylon

Broadcasting Corporation Act, Section 4(1) of the Rubber
Research Ordinance, Section 2(2) of the Shipping Corporation Act,
Section 2(2) of the Gem Corporation Act).

100

The salient features of a body corporate was considered by
Professor C.G. Weeramantry (The Law of Contracts, Vol.I, pg. 517-
518), where he had clearly made reference to the necessity of the
existence of common characteristics for that to be incorporated.
Professor Weeramantry had stated thus:

"The common characteristics of a corporation are a
distinctive name, a common seal and perpetuity of
existence As a rule the contracts of a corporation
must be under the seal of a corporation. So important is
a seal in the existence of a body corporate that the non-
existence of a seal in the case of a body alleged to be a
corporation, though not conclusive, is cogent evidence
against corporation."

110

It is therefore evident that for the establishment of an
institution as a body corporate, clear provision to that effect should
be provided in the enactment. The provisions specified in the
Universities Act, No. 16 of 1978, as correctly submitted by the
learned President's Counsel for the 3rd respondent, clearly
demonstrate the necessity for specific provisions to be contained in
the statute in order to establish legal personality. Section 2(2) of the
Universities Act, No. 16 of 1978 refers to the University Grants
Commission and states as follows:

120

"The Commission shall by the name assigned to it by
subsection (1) be a **body corporate, with perpetual
succession and a common seal and with full power
and authority to**

(a) in such name to sue and be sued in all courts;

(b) to alter the seal at its pleasure" (emphasis added).

130

Section 24(a) of the Universities Act, also confers legal
personality on the University College and this section reads as
follows:

'...establish a University College, which shall be a body corporate with perpetual succession and a common seal for the purpose of providing, promoting'

However, although the University Grants Commission and the University Colleges are incorporated with perpetual succession and a common seal in such name to sue and to be sued in terms of Sections 40 to 51 of the Universities Act, the University Court, Council, the Senate, the Campus or Boards, or the Faculties are not conferred with any legal personality on them. Accordingly, in terms of the Universities Act only the University Grants Commission and the University Colleges would be regarded as bodies corporate and the University Council, the Senate or the Faculties of the Universities would not have such status under the said Act. 140

Learned Counsel for the petitioner submitted that there are statutes, which are similar to the Sri Lanka Transport Board Act, No. 27 of 2005. He referred to Section 2 of the Ceylon Tourist Board Act, No. 10 of 1906, Section 2 of the Common Amenities Board Law, No. 10 of 1973 and Section 2(1) of the Ceylon Electricity Board Act, No. 17 of 1969 and stated that they have established the Ceylon Tourist Board, Common Amenities Board and the Ceylon Electricity Board, respectively. Learned Counsel for the petitioner accordingly submitted that Section 2(1) of the statute in question, similarly established the Sri Lanka Transport Board and as the structure of the aforementioned Boards are almost similar to the structure of the Sri Lanka Transport Board and as those three Boards under their respective statutes are bodies corporate, the Sri Lanka Transport Board also should be considered as a body corporate. 150 160

Section 2 of the Sri Lanka Transport Board Act refers to the establishment of the Sri Lanka Transport Board and Section 3 of the said Act deals with the *quorum for and procedure at the meetings of the Board*. However, the Ceylon Transport Board Act and the Common Amenities Board Law are evidently quite different.

Sections 2 and 3 of the Ceylon Tourist Board Act, read as follows:

- "2. There shall be established a public authority which shall be called the Ceylon Tourist Board, and which

shall consist of the persons who are for the time being members of that Board under Section 6. 170

3. The Board shall, by the name assigned to it by Section 2, be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in that name.*

Sections 2 and 3 of the Common Amenities Board Law, too contain similar provisions which are reproduced below.

"2. There shall be established a public authority which shall be called the Common Amenities Board (hereinafter referred to as 'the Board') and which shall consist of the persons who are for the time being members of the Board under Section 8. 180

3. The Board shall by the name assigned to it by Section 2 be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in such name.*

The Ceylon Electricity Board Act also contains similar provisions as in the Ceylon Tourist Board Act and the Common Amenities Board Law.

Accordingly it is apparent that unlike the Sri Lanka Transport Board Act, the other enactments have specific provisions, which had created the respective Boards, as bodies corporate and therefore it is evident that a Corporation and / or a Board cannot be regarded as a legal personality, if it is not expressly created by law. 190

Considering the basic principles which deals with bodies corporate, it is thus apparent that, for the purpose of incorporation, there should be express provisions, which would reveal such desire for incorporation. This position was specifically stated by Lord Morris in the Privy Council decision in *The Land Commissioner v Ladamuttu Pilla*⁽¹⁾, where the Privy Council had considered the Land Commissioner's liability to be sued and had held that, 200

"In the interpretation section (Section 2) it is laid down that 'Land Commissioner means' the officer appointed

by the Governor under Section 3 of this Ordinance and includes any officer of this Department authorized by him in writing in respect of any particular matter or provision of this Ordinance." **The Land Commissioner is not expressly created a Corporation Sole by any legislative enactment nor is it laid down that he may sue or be sued in a corporate name. Futhermore no legislative enactment seems to reveal any intention to incorporate If there had been a desire to incorporate the Land Commissioner there could have been express words of incorporation. Thus in the case of the Public Trustee it is enacted by Section 3 of the Public Trustee Ordinance of 1930 as follows:**

210

"The Public Trustee shall be a Corporation sole under that name with perpetual succession and an official seal and may sue and be sued under the above name like any other Corporation sole."

220

All these considerations including the absence of any evident intent to incorporate lead their Lordships to regret the submission that the Land Commissioner can be regarded as a Corporation sole." (emphasis added)

The contention of the learned Counsel for the petitioner regarding the objection raised by the learned President's Counsel for the 3rd respondent was that under the present Sri Lanka Transport Board Act, a Board was established and the said Board should have the legal status of a body corporate in order to achieve the objects and purpose of the Act and that this objective could be achieved, on a consideration of the provisions contained in the previous enactments dealing with the Sri Lanka Transport Board. It is however not disputed that the learned Counsel for the petitioner made no reference to any direct provisions or to any other provisions, which reveal the intention of the Sri Lanka Transport Board to be a body corporate under the present Act. In the absence of any direct provisions or any intent to incorporate, it is evident that the Sri Lanka Transport Board, under the present Act cannot be regarded as a body corporate.

230

240

Accordingly for the reasons aforementioned, I uphold the preliminary objection raised by the learned President's Counsel for the 3rd respondent and dismiss this application for special leave to appeal.

I make no order as to costs.

RAJA FERNANDO, J. - I agree.

ANDREW SOMAWANSA, J. - I agree.

Preliminary Objection upheld.

Application dismissed.