

**THE WIDESHEEYA CHITHRAPATA ANAYANAYA
KARANNANGE SANGAMAYA
v.
THE NATIONAL FILM CORPORATION OF SRI LANKA
AND OTHERS**

SUPREME COURT
FERNANDO, J.,
DHEERARATNE, J. AND
WEERASEKERA, J.
S.C. APPLICATION NO. 991/97
FEBRUARY 3, 1999.

Fundamental rights – Statutory control of import and distribution of films – National Film Corporation Act, No. 47 of 1971 – Discriminatory application of criteria for importing films – Article 12 (1) of the Constitution.

The import, distribution and exhibition of foreign films is controlled by the National Film Corporation of Sri Lanka (1st respondent). Section 57 of the National Film Corporation Act, No. 47 of 1971, prohibits such activity except with the written authority of the Chairman of the Corporation (2nd respondent). The petitioner was an association having eight members who were engaged in the business of importing foreign films and who were registered with the Film Corporation. The petitioner was registered as a company with limited liability under the Companies Act (but without the word "Limited" in terms of section 21 (1)). Criteria for importing foreign films laid down by the Corporation require that only brand new prints may be imported. However, the Corporation permitted the 5th respondent (Lakshmi Pictures (Pvt) Ltd.) to import and supply used prints of films besides granting other concessions, but permitted the members of the petitioner to import and supply only brand new prints.

Held:

The 1st respondent violated the fundamental rights, under Article 12 (1) of the members of the petitioner by permitting the 5th respondent (and others) to import and supply used and/or runnable prints. The petitioner was an association, formed in the exercise of the fundamental rights of association of its members and those members were entitled to vindicate their fundamental rights under Article 12 (1) through the petitioner.

Per Fernando, J.

"The monopolistic power which the 1st respondent has, in respect of the importation, distribution and exhibition of foreign films, is held in trust and must be exercised for the benefit of the public. It has violated that trust."

Cases referred to:

1. *Wijesuriya v. Lal Ranjith* (1994) 3 Sri LR 276.
2. *Piyasena v. People's Bank* (1994) 2 Sri LR 65.
3. *Perera v. Monetary Board* (1994) 1 Sri LR 152.
4. *Samarasinghe v. Air Lanka* (1996) 1 Sri LR 259.
5. *Bandara v. Ratwatte* (1997) 3 Sri LR 360; (1998) 2 Sri LR 96.
6. *Amirtharajah v. CGIR* SC Minutes 20 September, 1996.
7. *Nanayakkara v. Bandusena* SC 572/95 Minutes 1 February, 1996.
8. *Surendran v. UGC* (1993) 1 Sri LR 344.
9. *Perera v. Institute of Aesthetic Studies* SC 18/95 SC Minutes 27 July, 1995.
10. *Wickremanayake v. Telecom* SC 222/94 SC Minutes 12 December, 1995.
11. *Jayawickreme v. University of Colombo* (1998) 2 Sri LR 235.
12. *Rajanayagam v. Commissioner of Excise* SC 389/98 SC Minutes 1 October, 1998.
13. *Smith Kline Beecham v. State Pharmaceuticals Corporation* (1997) 3 Sri LR 20.
14. *Swissary v. Fernando* SC 51/94 SC Minutes 25 July, 1994.
15. *Ratnayake v. SLRC* SC 867/96 SC Minutes 11 June, 1998.

APPLICATION for relief for infringement of fundamental rights.

Sanjeeva Jayawardana for the petitioner.

K. Dharmawardana, DSG with N. Pulle, SC for the 1st to 4th and 6th respondents.

S. Mahenthiran with K. S. Ratnavel for the 5th respondent.

Cur. adv. vult.

February 24, 1999.

FERNANDO, J.

The petitioner is an association registered as a company with limited liability under the Companies Act, No. 17 of 1982 (but without the word "Limited" in terms of section 21 (1)). The primary object of the

company is to advance the cause and secure the interests of importers of foreign films. It has eight members who are engaged in the business of importing foreign films and who are also registered with the National Film Corporation, the 1st respondent, as importers of foreign films.

The 1st respondent is a public Corporation established by the National Film Corporation Act, No. 47 of 1971. One of its objects (stated in section 4 of the Act) is to import films, and section 57 goes on to provide that no person shall import into Sri Lanka, or sell, supply or distribute within Sri Lanka, any films without the written authority of the Chairman, and that no person shall, except with the written authority of the Chairman, exhibit any film which has not been distributed through the 1st respondent. The Act thus empowers the 1st respondent effectively to control the import, distribution and exhibition of foreign films.

In this application the petitioner complains that the fundamental rights of its members, under Article 12 (1), have been infringed by the 1st respondent by permitting the 5th respondent to import and supply *used* prints of films, while permitting the members of the petitioner to import and supply only *brand new* prints. The petitioner further alleges that the 5th respondent was allowed other concessions as well – that it was permitted to import five copies instead of a maximum of three; that it was allowed to supply and advertise films even before it signed formal agreements with the 1st respondent; and that the 1st respondent made payments of sums due to the 5th respondent direct to a non-resident account so as to evade the levy of taxes due thereon.

It is necessary to outline the procedure for the importation of films at the relevant time. Persons wishing to import and supply films to the 1st respondent for distribution had to submit an application to the 1st respondent for registration as a supplier; a registered supplier wishing to import a particular film had to submit to the 1st respondent for approval a videotaped copy; if approval was given, the supplier had then to make a written application under section 57 (1) for written authority to import and supply that film; the written authority thereupon given was to import and supply (one or more) *brand new* prints of

that film; the supplier could then import those prints, which he had then to submit to the 1st respondent for examination; the 1st respondent issued condition reports; and if satisfied with the condition of the prints the 1st respondent entered into a distribution agreement with the supplier.

The petitioner's contention that only "brand new" prints, as defined, were permitted, and that other, or "used", prints were prohibited, is supported by the 1st respondent's standard form documents used in connection with the importation, supply and distribution of films. Both the application for registration and the application for written authority required the applicant to agree to the "terms and conditions" annexed thereto. The 1st respondent produced a copy of the "terms and conditions applicable to prospective suppliers", which provide :

"the supplier will be required to hand over two to three *brand new* prints whichever number [is] determined by the NFC of each film selected . . ." [emphasis added throughout].

The written authority issued by the 1st respondent stipulated:

"3 All print/s to be imported under this AUTHORITY shall be *brand new*, defined as bearing no more than three joints in a three hundred metre reel and no more than six joints in a six hundred metre reel, *with no side cuts, roller marks, perforation tears and hole enlargements.*

The distribution agreement also required the importer to deliver *brand new* prints to the 1st respondent. Finally, one of the printed entries in the form used by the 1st respondent for condition reports was "*new/used*", and the form made no provision for any other category.

In its petition dated 27. 11. 97, the petitioner alleged that the 1st respondent had accepted prints of nine named films imported by the 5th respondent although they were not "brand new". In response to an order made by this court the 1st respondent produced condition

reports in respect of eight of those nine films. Of those, one ("Alexander") had not been imported by the 5th respondent, but by a supplier who had purchased it from the 5th respondent. The photocopies of the condition reports in respect of another film are not clear. The condition reports in respect of the prints of the remaining six films show that out of seventeen prints only about half had been classified as "new". The 1st respondent produced an internal memorandum dated 17. 12. 97 by which condition reports had been forwarded to the Legal Officer – probably, to enable compliance with the court order – and that too shows that several "used" prints had been accepted from the 5th respondent.

The petitioner further alleged (in a counter-affidavit dated 14. 9. 98) that an used print of yet another film ("Jai Hind") supplied by the 5th respondent, had been released to a theatre; and that the print was so badly damaged through previous use that on or about 24. 7. 98 the audience "had rioted within the theatre and caused damage to the theatre". The 3rd respondent, the Additional General Manager of the 1st respondent, in his affidavit dated 19. 11. 98, explained that "inadvertently a used print had been *released* to the said cinema". I find that explanation far from convincing. Condition reports issued in respect of that film, in March, 1997, had categorized the prints as "used". Despite knowledge of that deficiency, the 1st respondent entered into a distribution agreement in respect of that film on 15. 7. 97. That was signed by the 3rd respondent, and what he had to explain was not why those prints had been *released*, but how and why he had *signed* a distribution agreement in respect of sub-standard prints; that could hardly have been explained away as an inadvertent mistake.

To illustrate the difference in the treatment meted out to other suppliers, the petitioner cited the film "Karuppa Nilla". Upon the written authority to import *brand new* prints, an importer purchased what was described in the airway bill as an "used runnable print"; by a letter dated 29. 06. 97 the importer informed the 1st respondent that the print had been exhibited in India for about one week, and requested

a letter from the 1st respondent in order to obtain its release from the customs. The 3rd respondent replied on 11. 7. 97 drawing attention to paragraph 3 (quoted above) of the written authority issued to the importer, and stated that in terms of the conditions stipulated he could not be allowed to import an used print. Consequently the importer had to re-export the prints, and to import new prints. The petitioner, also referred to other instances of prints being rejected on the basis that they were "used". In his affidavit dated 4. 8. 98, the 3rd respondent repeatedly denied the claim that the import of "used" prints had been allowed: "the 1st respondent has not given permission to the importer of the film "Karuppa Nilla" or any other importers to import used films"; "in the written permission granted to them it is clearly stated that they are required to import brand new prints of the films . . . no approval was granted to import used prints . . . "; and, again, "no permission has been granted by the 1st respondent Corporation to any importer to import used prints . . . the 1st respondent Corporation has however permitted the release of . . . runnable prints".

The petitioner has thus established, on a balance of probability, that (a) the policy and the practice of the 1st respondent in general was to allow the importation only of *brand new* prints, and (b) the 1st respondent nevertheless accepted from the 5th respondent prints which were not "*brand new*" as defined, and that these instances were neither isolated nor accidental or inadvertent. I will deal with the question of "*runnable*" prints later.

An examination of the condition reports also reveals that in two instances ("Minisara Kanavu" and "Avvai Shanmugi") the 5th respondent had submitted four prints (some "used"), giving credence to the petitioner's claim that the 5th respondent had been given preferential treatment even in regard to the number of prints imported and supplied. No explanation has been given by or on behalf of the respondents.

As already noted, this application was filed on 27. 11. 97. As a result of the respondents delaying unduly in filing their objections, this court made the following order on 31. 7. 98 :

"It is noted that objections have not been filed up to date although several extensions have been granted for this purpose.

As this court has recently observed, the Attorney-General is equally bound as any other ordinary litigant to comply with the Rules. A very strict view of this matter will be taken.

Objections . . . to be filed within three days . . . [if not] this court will exercise its discretion under the Rules not to hear the Attorney-General . . . Hearing on 17. 9. 98 . . ."

The 3rd respondent's affidavit dated 4. 8. 98 was then filed. The petitioner, belatedly, filed a counter-affidavit dated 14. 9. 98 and when the application was taken up for hearing on 17. 9. 98 this court at first declined to permit that counter-affidavit to be relied on. However, in the course of the hearing, the court found it necessary to require the 1st respondent to produce additional documents, and adjourned the hearing for 23. 11. 98. In view of that adjournment, the court accepted the petitioner's counter-affidavit, and gave the respondents four weeks' time to reply. It was only on 20. 11. 98, long after the due date, that the 3rd respondent's further affidavit dated 19. 11. 98 was filed. As counsel was indisposed on 23. 11. 98, the hearing had to be adjourned again, for 3. 2. 99.

I must now turn to the submissions made by the learned Deputy Solicitor-General. He claimed that members of the petitioner (as well as other suppliers) had been allowed to supply "used" prints; that sometimes the 1st respondent would respond to representations made by suppliers – when their prints were categorized as "used" – that they had only been shown for a short time (eg at Film Festivals) or that there were extra joints because of editing; and that the 1st respondent often made "concessions" to suppliers. He added that because of this case, he had advised the 1st respondent not to make any such concessions in future. Finally, he contended that it had been the consistent practice of the 1st respondent to accept – in addition to "brand new" prints – even "runnable" prints, and he argued that

the prints supplied by the 5th respondent had been accepted because they were "runnable" prints.

The claim that members of the petitioner had been allowed to submit "used" prints was not supported by a single document. In paragraph 16 of its petition dated 27. 11. 97 the petitioner had unequivocally alleged that "in all cases other than in the case of the [5th] respondent, the 1st respondent insists that the films supplied must be brand new". While it is true that there was a general denial in his affidavit dated 4. 8. 98, the 3rd respondent, when replying to paragraph 16, did not even suggest that "used" prints had ever been accepted from the members of the petitioner. Indeed, I have already referred to three assertions by the 3rd respondent in that affidavit that permission had not been given to any importer to import "used" prints. It was in that state of the pleadings that on 3. 2. 99 – and that, too, only after learned counsel for the petitioner had concluded his submissions – the learned Deputy Solicitor-General sought permission to produce what he said were condition reports pertaining to "used" prints accepted from members of the petitioner. When learned counsel for the petitioner objected, he explained that those documents had been brought to his notice only during the preceding fortnight, but he could not explain why a supporting affidavit authenticating the documents had not been promptly prepared, and a motion filed, with notice to the petitioner, seeking the leave of court to tender such affidavit and documents. While it is true that this court has a discretion in the interests of justice to permit the production of documents even in the midst of hearing, whether that discretion would be exercised depends on the nature of the documents and their effect on the case, the state of the pleadings, the circumstances in which the documents came to light, and the need to avoid delay and surprise.

The 3rd respondent had categorically stated at least thrice that the 1st respondent had not granted permission to import "used" prints. While he did claim that "the 1st respondent has permitted the release of [prints] which fall within the criteria of 'runnable' prints", he conceded that "the petitioner has made no request to date to submit

'runnable prints' for selection to the 1st respondent". The position sought to be taken up, at the eleventh hour, was thus quite inconsistent with the 3rd respondent's affidavit.

The condition reports were throughout with the 1st respondent. The 1st respondent had been allowed more than enough time to file its pleadings. If the documents were admitted, a further adjournment would have been necessary, so as to allow the 1st respondent time to submit them with a supporting affidavit, and the petitioner time to respond. But even assuming that those documents might show that in a few instances "used" prints had been accepted, yet that would not contradict the evidence that in many instances they had been rejected; and, besides, they would have seriously contradicted the 3rd respondent's own assertions, and raise serious doubts as to his credibility in general. We therefore refused to permit the documents to be produced.

As for the alleged practice of making "concessions" in response to representations, there was not even a hint of any such representations or concessions in any of the affidavits or documents filed on behalf of the respondents; and the 3rd respondent's stance in relation to "Karuppa Nilla" is totally inconsistent with any such practice. The material before the court points not to an even-handed practice of making concessions in appropriate cases, but only to unexplained and unjustified exceptions in favour of the 5th respondent.

The second submission by the learned Deputy Solicitor-General was that the 1st respondent had adopted a consistent practice of accepting "runnable" prints. According to the 3rd respondent's affidavit dated 4.8.98, what was a "runnable" print was determined by criteria "which had been consistently applied over a very long period of time and was common knowledge"; and that the criteria "were substantially new prints but having a small degree of wear and tear determined by the number of joints, the size of the *circumference*, the *proliferations*, etc." The 4th respondent, the acting Stores Manager, tendered an affidavit in almost identical terms.

That position is flatly contradicted by the documents pertaining to the film "Karuppa Nilla". The Indian exporter of that film had described it in the airway bill as a "used runnable print". If at that time such a concept was also accepted in Sri Lanka by the 1st respondent, the 3rd respondent could not have refused to allow its importation. His refusal, drawing attention to the contractual documents, is clear proof that the 1st respondent did insist on the observance of the contractual terms, and that "runnable" prints were neither acceptable nor accepted. The learned Deputy Solicitor-Genéral tried to get round this difficulty by claiming that importation was a matter for the customs, which insisted on new prints; if, however, an importer succeeded in importing a print which was in fact not new, the 1st respondent would accept it if it was "runnable". He tried to make us believe that the 1st respondent – the repository of statutory authority in respect of the importation of films – stipulates that only new prints may be imported; that the customs gives effect to that stipulation; but that an importer who contravenes that stipulation but somehow gets past the Customs is rewarded by the 1st respondent despite violation of the express terms of the written authority for importation issued under section 57. If, indeed, that is the 1st respondent's practice, it is a practice which rewards wrongful conduct, and cannot be condoned. If its policy – as incorporated in its documents – was that only "*brand new*" prints should be imported, it was bound at least to penalise, if not also to black-list, importers who flouted it. If it wished to allow any other category of prints, that policy should have been formally adopted, given due publicity, and reflected in its documents.

It is also relevant that on 5.2.98 when this court was considering the grant of an interim order to restrain the 1st respondent from releasing "*used*" prints to any theatre, learned State Counsel then appearing for the 1st respondent sought exemption for "*used*" films imported by the 1st respondent for screening in "*flow down*" theatres. The fact that no request was made in respect of the release of "*runnable*" prints suggests that the 1st respondent did not recognise such a category at that stage.

The only material relied on to establish that the 1st respondent had a consistent practice of permitting "*runnable*" prints, were two affidavits dated 4.8.98, of the 3rd respondent and the 4th respondent, the acting Stores Manager. To these were annexed a Board decision, and a Board paper dated 20.3.98 signed by the 3rd respondent, together with the report (annexed to that Board Paper) of a committee. The 3rd respondent having alleged a long and consistent practice, and well-known criteria, claimed that:

"(as) the criteria . . . had not been formally adopted and published, it was decided by the 1st respondent to review the present practices and to formalise the process and publish a well-defined criteria; . . . the 1st respondent Corporation had by a Board decision approved the defined criteria. . ."

Although the Board paper is dated 20.3.98, it would seem that the report annexed to it had not been finalised on 20.3.98: because on that day it had not been signed by five of the six members of the committee. Only the Chairman had signed on 20.3.98, while another member had signed on 21.3.98, and the other four on 23.3.98. I will ignore that discrepancy. The Board paper stated that only new prints were being accepted for exhibition, although at times exigencies compelled the acceptance of prints suitable for exhibition, for release to "flow-down" theatres (ie theatres other than those to which films are first released), these being films which were certified as not having been exhibited abroad to the public (eg those exhibited at a Film festival). The Board paper did not refer to any existing practice of accepting "*runnable*" prints. It then went on to say that a committee was appointed by the Board in order to establish criteria for classification of "*new*", "*runnable*", and "*used*" prints. Clearly, that was for the future. Likewise, the report of the committee, too, did not refer to any existing practice of accepting "*runnable*" prints, or any existing criteria therefor. It proceeded to lay down the criteria. "*New*" prints are those with not more than three joints per 300 metre reel; with *no* sprocket enlargements, sprockets run over, or broken sprockets; and with no scratches, side-cuts, roller marks. "*Runnable*" prints are

those with five joints; not more than 20 sprocket enlargements, run overs, or breaks per 300 metres; and not more than 5% scratches per reel. No reference was made to the two features mentioned by the 3rd and 4th respondents in their affidavits: "the size of the circumference, the proliferations, etc". The Board granted approval for that classification in language which did not suggest any ratification of past practice.

The printed forms used for condition reports have columns for entries regarding sprockets, scratches, cuts, roller marks, etc., but in none of the condition reports produced have entries been made recording the number or percentage of such defects.

The 3rd respondent also produced with his second affidavit dated 19.11.98, affidavits from a theatre owner and a registered supplier, both of whom claimed – in words identical even in regard to misspelling – that "it has been the practice for the Film Corporation to permit the importation and select 'runnable [*sic*] films' for exhibition as opposed to brand new films"; they claimed to have had those prints for over a year. Both seemed to be claiming that they had been authorized to import *runnable* prints, and had done so. But it was possible that having been authorized to import only *brand new* prints, they had nevertheless imported *used* prints. That could not be clarified because, unfortunately the 1st respondent had not failed to produce the documents pertaining to the importation of those prints, and the condition reports. When asked whether it was correct that the practice of the 1st respondent was to permit the importation of *runnable* prints, the learned Deputy Solicitor-General submitted that it was not; and that the aforesaid affidavits were incorrect in that respect. In the absence of the relevant condition reports it is not safe to accept their claim that the prints imported by them had been accepted as *runnable* prints.

I must now turn to the film "Alexander". The only condition report in which a print has been categorized as "runnable" is one in respect of this film. That report is dated 12.10.98, ie *after* the Board decision

approving the new classification and criteria. But what is disturbing is that both the written authority dated 9.4.98 and the distribution agreement dated 13.10.98 required *brand new* prints, as previously defined, and did not permit any other category – “*runnable*” or “*used*”.

In regard to the importation, supply and acceptance of *runnable prints*, I am unable to place any reliance on the affidavits of the 3rd and 4th respondents, and the two importers. They are contradicted by the 3rd respondent's Board paper and the committee report, as well as all the documents pertaining to importation and all the condition reports. I hold that there was never a known practice of authorizing the importation or the supply of *runnable* prints, and that the Board decision taken while this case was pending was purely prospective; and that the contrary position taken up by the 3rd and 4th respondents – in a vain attempt to justify the acceptance of “*used*” prints from the 5th respondent – is entirely unsupported by the facts.

The 1st respondent's decision in March, 1998, to permit “*runnable*” prints led to a protest in August, 1998, from the National Cinema Owners' Association, which claimed to represent 154 cinema owners. The Association urged that only new prints be imported, because *used* prints could only be exhibited for a much shorter period than *brand new* prints. Consumers were thus prejudiced: either the exhibition of those films would have to be stopped when their condition deteriorated beyond a point, or if exhibition was continued even thereafter, they would have only poor quality entertainment. The 1st respondent's decision to change the classification and criteria should not have been taken without affording registered suppliers and cinema owners an opportunity of stating their views.

The monopolistic power which the 1st respondent has, in respect of the importation, distribution and exhibition of foreign films, is held in trust and must be exercised for the benefit of the public. It has violated that trust. It had laid down and made known to prospective importers and suppliers the criteria for the importation and supply of films – *only brand new* prints, as defined – and that was incorporated

in the statutory and contractual documents pertaining to importation and distribution. Prospective importers and suppliers were entitled to expect that the declared policy of the 1st respondent would be adhered to, and would not be relaxed, secretly or for a favoured few: that was a "protection" which the Law afforded to them. That expectation is often expressed in homely, and perhaps hackneyed, terms: that there must be "a level playing field", that the "rules of the game" must be observed, and that there must be no "shifting of the goal posts". A long series of decisions shows that this court has insisted on conformity to duly declared policy and criteria in very many spheres: in public employment, whether recruitment (*Wijesuriya v. Lal Ranjith*⁽¹⁾) promotion (*Piyasena v. People's Bank*⁽²⁾) *Perera v. Monetary Board*⁽³⁾ *Samarasinghe v. Air Lanka*⁽⁴⁾) transfer (*Bandara v. Ratwatte*⁽⁵⁾) retirement (*Amirtharajah v. CGIR*⁽⁶⁾) and retirement benefits (*Nanayakkara v. Bandusena*⁽⁷⁾), admission to Universities (*Surendran v. UGC*⁽⁸⁾) and the conferment of degrees (*Perera v. Institute of Aesthetic Studies*⁽⁹⁾) the award of scholarships (*Wickremanayake v. Telecom*⁽¹⁰⁾) professional registration (*Jayawickreme v. University of Colombo*⁽¹¹⁾) the issue of licences (*Rajanayagam v. Commissioner of Excise*⁽¹²⁾) and the processing of tenders (*SmithKline Beecham v. State Pharmaceuticals Corp*⁽¹³⁾) *Swissray v. Fernando*⁽¹⁴⁾) and the selection of teledramas for telecast (*Ratnayake v. SLRC*⁽¹⁵⁾).

I hold that the 1st respondent has violated the fundamental rights, under Article 12 (1), of the members of the petitioner by permitting the 5th respondent (and others) to import and supply *used* and/or *runnable* prints. The petitioner is an association, formed in the exercise of the fundamental right of association of its members, and those members are entitled to vindicate their fundamental rights under Article 12 (1) through the petitioner. I direct the 1st respondent, within six months from today, to define and publish its criteria for the importation, supply and distribution of films (including the terms and conditions thereof, and the procedure therefor), after affording registered suppliers, cinema owners and members of the public an opportunity of making written representations; and to follow the same procedure whenever it amends such criteria. If any print of a film is not accepted,

the 1st respondent will notify its reasons in writing. I also direct the Registrar to forward a copy of this order to the Auditor-General to enable him to determine whether there have been any irregularities or shortcomings in regard to the importation, supply and distribution of films during the period 1995 to 1998, and if so, the persons responsible and the resulting loss, damage or prejudice. The Auditor-General will submit a report to the appropriate authorities, with a copy to the Registrar of this court, within six months from today.

The evidence shows that an "used" print cost about US\$ 500, and a "brand new" one about US\$ 1,900. An importer who supplied a new print would therefore have incurred an additional expense of about US\$ 1,400. He would receive more income because that print could be exhibited for a longer period, and that extra income may perhaps exceed the additional cost. However, assuming a new print to cost three times an used one, an importer would have to make three times the profit in order to have the same percentage of profit as the importer of an used print. It is probable therefore that importers of new prints suffered a loss of profit in comparison to those allowed to import used prints. The 1st respondent produced a letter dated 2. 6. 98 from one of the members of the petitioner naming nine films of which he could import brand new prints. It is therefore probable that, collectively, the members of the petitioner did supply several films, thereby incurring considerable additional expense. I therefore direct the 1st respondent to pay the petitioner a sum of Rs. 400,000 as compensation and costs, and to submit proof of payment to the Registrar, on or before 9. 4. 99, failing which the Registrar will list this application for an order of court as to enforcement.

Learned counsel who appeared for the 5th respondent (whose address was given in the application as "18, School Lane, Colpetty") submitted that the 5th respondent had no dealings with the 1st respondent; and that it was with another company with the same name, incorporated in the United Kingdom, that the 1st respondent had had dealings. The 1st respondent's position was that it dealt with the Sri Lanka company. Whether an undue exception had been made in favour of the UK company or the Sri Lankan company, made no

difference to the merits of the petitioner's case. The question of costs, however, arises: if the 5th respondent had been unnecessarily made a party, then it would be necessary to order the petitioner to pay costs. I find that it is not the petitioner, but the two companies which are mainly responsible for the confusion. Correspondence has been addressed to the 1st respondent on letter-heads giving both a UK and a Sri Lankan address. Agreements have been entered into between the 1st respondent and "M/s Lakshmi Pictures" of Shrubbery Gardens, but signed by one Shanmugarajah, described as power of attorney holder for S. Selvakumaran of Lakshmi Pictures of 118 Tooting High Street, London. The 1st respondent also produced a letter dated 5. 8. 97, signed by the 3rd respondent, addressed to S. Selvakumaran, Lakshmi Pictures (Pvt) Ltd. 18, School Lane". It is not clear whether the 1st respondent was dealing with "Lakshmi Pictures" or with "Lakshmi Pictures Ltd.", and whether of School Lane, Shrubbery Gardens, or Tooting High Street, although it seems more probable that the 1st respondent thought it was dealing with a Sri Lankan entity.

DHEERARATNE, J. – I agree.

WEERASEKERA, J. – I agree.

Relief granted.