

**JAFFERJEE & JAFFERJEE (PVT) LTD.**  
**v.**  
**CREDIT INFORMATION BUREAU OF SRI LANKA**

COURT OF APPEAL  
TILAKAWARDANE, J. AND  
WIJEYARATNE, J.  
CA NO. 1406/2001  
NOVEMBER 15, 2002

*Credit Information Bureau of Sri Lanka Act, No. 18 of 1990 – Amendment Act, No. 8 of 1995, sections 6 (b) and (7) (1) (a) and (b) – Providing credit information to lending institutions who are shareholders – Should the borrower be informed?*

**Held:**

- (1) The intention of the legislature was that not only was the information regarding the credit worthiness of borrowers should be furnished to lending institutions who are its shareholders but also that the borrowers and prospective borrowers should be simultaneously informed of this information that has been provided.

*Per* Tilakawardane, J.

"It is clear that by this amending law No. 8 of 1995, where even the long title has been amended, that the intention of the legislature was to safeguard the interests of the borrowers / prospective borrowers from any erroneous information being disseminated due to inadvertance which would be adverse to the interests of such persons."

**APPLICATION** for writs in the nature of *certiorari* and / or *mandamus*.

*P. Nagendran*, PC with *C. W. Pannila* for petitioner.

*Romesh de Silva*, PC with *Geethaka Gunawardena* and *Sugath Caldera* for respondent.

*Cur. adv. vult.*

February 19, 2003

**SHIRANEE TILAKAWARDANE, J.**

The petitioner has preferred this application seeking writs of *mandamus* 01 to direct the respondent to disclose to the petitioner the credit information it has received from the Bank of Ceylon or other lending institutions relating to the petitioner and also to disclose the names and addresses of all the lending institutions to which the respondent had furnished this credit information relating to the petitioner and the particulars of the information so furnished.

The petitioner company is an exporter of tea bags obtaining letters of credit, discounting of bills and credit facilities for the purpose of its business. The respondent is a Bureau established under the Credit Information Bureau of Sri Lanka Act, No. 18 of 1990, with the capacity 10 to sue and be sued in its name.

In terms of section 7 (1) (a) and (b) of the Credit Information Bureau of Sri Lanka Act, No. 18 of 1990 as amended by the Credit Information Bureau of Sri Lanka (Amendment) Act, No. 8 of 1995, the respondent was empowered to have and maintain a data base on those who have made borrowings from several lending institutions in Sri Lanka and to collect and collate trade credit and financial information on borrowers and / or prospective borrowers of lending institutions. Among its functions and duties in terms of section 6 (b) of the amended Act 20 No. 8 of 1995, it was incumbent upon the respondent to also provide credit information to lending institutions who are shareholders of the said respondent Bureau and in terms of this section such information had to be **simultaneously provided to borrowers and prospective borrowers** to whom such information relates.

The petitioner had made several applications for credit facilities to the Hatton National Bank (October 1999), the Sampath Bank (January 2000) and the Development Finance Corporation of Ceylon, but was refused credit facilities.

Parties agree that the only issue that has to be determined in this case is whether when the Credit Information Bureau of Sri Lanka provides credit information on request to institutions who are shareholders of the Bureau, it is incumbent upon them to inform the petitioner against whom such information was being given, that such information had been provided to other lending institutions and the nature of the information that had been so given. 30

It is not in dispute that several applications had been made by the petitioner to several lending institutions as referred to above and that credit facilities had been refused by these several lending institutions. 40

It is also not in dispute that credit information regarding the petitioner had been furnished on request to lending institutions, who are shareholders of the respondent Bureau, related to information either regarding the lack of creditworthiness of borrowers or information that adversely affects the creditworthiness of borrowers like the petitioner.

The original Act, the Credit Information Bureau of Sri Lanka Act, No. 18 of 1990, did not provide as a function of the Bureau, the duty to furnish information to the borrowers, regarding any credit information that was given to lending institutions who are shareholders of the Bureau, in relation to these borrowers. However, section 2 of the amending Act, No. 8 of 1995 amended the long title of the said Credit Information Bureau of Sri Lanka Act, No. 18 of 1990 to read as follows: 50

"For the provision of such information on request to the shareholders of the Bureau and simultaneously to any borrower or prospective borrower to whom such information relates" in place of the words "for the provision of such information to the shareholders of the Bureau".

This also has to be taken in the context that even section 6 of the Credit Information Bureau of Sri Lanka Act, No. 18 of 1990 was amended to conform with the long title. Section 6 of the parent Act states that:

"The functions of the Bureau shall be to collect and collate, trade, credit and financial information on borrowers and prospective borrowers of lending institutions and to provide credit information, on request, to shareholders of the Bureau which are lending institutions."

This section was repealed and the new section 6 (b) included, reads as follows:

"To provide credit information, on request, to lending institutions who are shareholders of the Bureau and simultaneously to borrowers and prospective borrowers to whom such information relate. . .".

It is clear therefore, that by this amendment, that the intention of the legislature was that not only was the information regarding the creditworthiness of borrowers to be furnished to lending institutions but also that the borrowers and prospective borrowers should be simultaneously informed of this information that has been so furnished. It is obvious that such information given will cause incalculable harm to a person who is involved in a business, where even inadvertently, wrong information was furnished by the respondent Bureau, even though the lending institutions may *bona fide* believe the veracity of such information at the time it was furnished by them. Especially in the current operative, established procedures of the banks, there can be mistakes made inadvertently or even due to negligence due to computer errors and account errors, and such erroneous information can adversely affect the creditworthiness of borrowers and prospective borrowers. Therefore, it is of paramount importance, that the borrowers and prospective borrowers be given the earliest opportunity to rectify any such errors and thereby prevent wrongful information relating to

their creditworthiness being disseminated in the business world and especially to other lending institutions with the consequential irreparable repercussions in relation to their business operations which would inevitably fall upon to the borrower or prospective borrower. It is clear that by this amending Act, No. 8 of 1995, where even the long title of the Act itself has been amended, the intention of the legislature was to safeguard the interests of the borrowers and prospective borrowers from any erroneous information being disseminated due to inadvertence, which would be adverse to the interest of such persons. <sup>100</sup>

The petitioner therefore has a valid claim that he has not been afforded the opportunity that was granted by the amended provisions of law, which make it incumbent upon the respondent, who admits furnishing information regarding the creditworthiness of the petitioner to lending institutions, to simultaneously provide the petitioner a copy of the information so furnished. This becomes all the more important in the context of the allegation of the petitioner that erroneous information of a bank had been given against him due to accounting errors of the bank. He could then be given a reasonable opportunity to rectify any errors that may have been given from the originating bank, so that he could prevent any unfair, and erroneous information regarding his creditworthiness being disseminated, which would have drastic consequences against the operation of his business, especially in the relatively small business community that exists in Sri Lanka. <sup>110</sup>

In all these circumstances, this Court therefore issues a writ of *mandamus* directing the respondent to disclose to the petitioner the credit information that it has provided to lending institutions and the nature of the information that has been so furnished. Therefore, the application relating to prayer "b" is granted. This Court does not have powers to issue relief prayed for in paragraph "a" as the Bank has not been made a party to this case. The application is therefore allowed, but relief is limited to prayer "b". No costs. <sup>120</sup>

**WIJEYARATNE, J.** – I agree.

*Writ of mandamus granted.*