

CREDIT INFORMATION BUREAU OF SRI LANKA
vs
MESSRS JAFFERIEE & JAFFERJEE (PVT) LTD

SUPREME COURT
S. N. SILVA, CJ
J. A. N. DE SILVA; J. AND
WEERASURIYA, J
S. C. APPEAL NO. 47A/ 2003
C. A. NO. 1406/2001
9th FEBRUARY AND 19th MARCH 2004

Write of mandamus - Public or statutory duty - Non- availability of the remedy where the statutory duty is not compellable - Sections 6 and 7 of Act, No. 18 of 1990 amended by Act, No. 8 of 1995

The Credit Information Bureau of Sri Lanka was established by Act, No. 18 of 1990 as amended by Act, 8 of 1995 (the Act.) The object of the Bureau is to assist its shareholders such as the Bank of Ceylon (vide Section 29) and protect them being misled by the information given by borrowers such as the respondent.

The provisions relating, *inter -alia*, to the functions and powers of the Bureau for providing credit information on borrowers and lending institutions are contained in sections 6 and 7 of the Act, as amended. In terms of these provisions, the Bureau is required to furnish information on request in confidence to shareholders of the Bureau (i.e, to lending institutions.) The duty to furnish such information is unqualified. However, the borrowers are entitled

to obtain such information only upon a request by shareholders subject to such terms and conditions as may be determined by the Bureau. This means that the provisions of any information to a borrower is conditional on a request by a shareholder and is not compellable.

However, the Court of Appeal granted a writ of mandamus directing the Bureau (the appellant) to furnish credit information to the respondent (a borrower) which information had been provided to lending institutions and the nature of the information that has been so furnished.

Held :

1. Although the appellant was a public body and could be compelled by mandamus to provide information to shareholders, the court was in error in using a writ of mandamus to compel the giving of information to the respondent (a borrower).
2. The respondent had no right to compel the giving of such information by mandamus without a request by a shareholder.
3. In any event, the court was informed that the respondent had obtained the information by other means. Hence the issue of the writ of mandamus was futile. This was another ground to refuse the writ.

Cases referred to :

1. *R. V. Barnstaple Justices* (1937) 54 TLR 36
2. *Napier ex parte* 1852 18 QB, 692 at 695
3. *R. V. Lewishan Union* (1897) 1 QB 498
4. *P. K. Benarji V H. J. Simonds* AIR (1947) Cal 347
5. *Sanjeevayya V Election Tribunal* AIR (1967) SC 1211

APPEAL from the judgment of the Court of Appeal.

Romesh de Silva, P.C. with *Geethaka Gunawardene* for appellant

P. Nagendra, P. C. with *C. W. Pannila* for respondent.

Cur.adv.vult

August 31, 2004

J. A. N. DE SILVA J.

This is an appeal against the judgment of the Court of Appeal dated 19/02/2003 wherein the Court of Appeal issued a writ of Mandamus directing the

Respondent Appellant (hereinafter referred to as the Appellant) to disclose to the Petitioner Respondent (hereinafter referred to as the Respondent) the credit information that it had provided to lending institutions and the nature of the information that been so furnished.

When the application for Special Leave to Appeal was supported, Special Leave was granted on the following questions:

- (a) Have their Lordships failed to analyse the provisions contained in Section 7 (b) of Act, No. 18 of 1990 as amended by Act, No. 8 of 1995?
- (b) Have their Lordships erred in law in the interpretation of the provisions contained in Section 6 (b) of Act, No. 18 of 1990 as amended read together with Section 7 (b) of the Act?
- (c) Have their Lordships erred in law in interpreting the word "simultaneously" found in Section 6 (b) and the preamble of the Act?
- (d) Have their Lordships erred in law in giving an interpretation to this word "simultaneously" to mean that the Appellaht was bound in law to provide such information simultaneously to the borrower even without a request from it's shareholders?
- (e) Have their Lordships failed to appreciate that the data base of the Respondent is consistently changing and the information that it possessed in respect of the year 2000 is not presently before it as such information is updated by other information?
- (f) Have their Lordships failed to appreciate that a prospective borrower has no right in law to demand, obtain and receive a loan and/ or a functional accommodation and / or facility from a financial institution, and the further arguments that such loans and / or financial facilities would be disbursed only at the absolute discretion of the said financial institutions?
- (g) The Respondent is not entitled to the Public Law Remedy namely writ of Mandamus.
- (h) In any event the Respondent is not entitled to a writ of Mandamus in that the Petitioner is guilty of laches.

The case of the Respondent in the Court of Appeal was that under and in terms of Section 6 (b) of the Credit Information Bureau of Sri Lanka Act, No. 18 of 1990 as amended by Act, No. 8 of 1995, the Appellant is bound to provide the credit information to its shareholders and simultaneously forward such information to borrowers and prospective borrowers to whom such information relates. The Respondent's grievance was that the Appellant had wrongfully, unlawfully and / or illegally refused to forward such information to the Respondent and thereby failed to perform its statutory duty and obligation.

All the questions raised in this appeal could be resolved in my view by considering the availability of the writ of Mandamus to the Respondent. The learned counsel for the Appellant submitted that a writ of Mandamus being a public law remedy is not available to the Respondent as the Credit Information Bureau is not a State entity or instrument of the State. The answer to this is found in the following passage in *Halsbury's Laws of England*, Vol (1), 4th Edition (Administrative Law) paragraph 132, "An order of Mandamus will be granted ordering that an act to be done which a statute requires to be done and for this rule to apply it is not necessary that the party or corporation on whom the statutory duty is imposed should be a public official or an official body." The Credit Information Bureau is created by an Act of Parliament. It is not akin to a private club, as contended by the counsel for the Appellant, which is governed by its own constitution/ rules or regulations. Every action has to be taken within the four corners of the statute and according to the procedure set out in the Act.

The Board Members of the Credit Information Bureau are appointed in the following manner (vide Section 5);

- (a) A Deputy Governor of the Central Bank nominated by the Monetary Board who shall be the Chairman of the Board.
- (b) A Senior Officer of the Central Bank nominated by the Monetary Board.
- (c) A Senior Officer of the Bank of Ceylon nominated by the Board of Directors of the Bank of Ceylon.
- (d) A Senior Officer of the People's Bank nominated by the Board of Directors of the People's Bank.

- (e) Person elected by the share holding Finance Companies
- (f) A person nominated by the Minister in charge of the subject of Finance from the Board of Directors of the National Development Bank, Development Finance Corporation and State Mortgage and Development Bank.

When considering the composition of the Board of Directors of the Credit Information Bureau one cannot get behind the fact that it is functioning under the control of "Public Officers" and that they discharge public functions. In these circumstances it is not difficult to conclude that the Credit Information Bureau is amenable to a writ of Mandamus if the other conditions are satisfied.

The judicial control over the fast expanding maze of bodies affecting rights of the people should not be put into water tight compartments. It should remain flexible to meet the requirements of variable circumstances.

There is rich and profuse case law on Mandamus on the conditions to be satisfied by the Applicant. Some of the conditions precedent to the issue of Mandamus appear to be :

- (a) The Applicant must have a legal right to the performance of a legal duty by the parties against whom the Mandamus is sought (*R v Barnstaple Justices*)⁽¹⁾ The foundation of Mandamus is the existence of a legal right (*Napier Ex parte*)⁽²⁾
- (b) The right to be enforced must be a "Public Right" and the duty sought to be enforced must be of a public nature.
- (c) The legal right to compel must reside in the Applicant himself (*R v Lewisham Union*)⁽³⁾
- (d) The application must be made in good faith and not for an indirect purpose
- (e) The application must be preceded by a distinct demand for the performance of the duty
- (f) The person or body to whom the writ is directed must be subject to the jurisdiction of the court issuing the writ.

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- (g) The Court will as a general rule and in the exercise of its discretion refuse writ of Mandamus when there is another special remedy available which is not less convenient, beneficial and effective.
 - (h) The conduct of the Applicant may disentitle him to the remedy.
 - (i) It would not be issued if the writ would be futile in its result.
 - (j) Writ will not be issued where the Respondent has no power to perform the act sought to be mandated.

The above principles governing the issue of a writ of Mandamus were also discussed at length in *P. K. Benarji Vs H. J. Simonds* ⁽⁴⁾. Whether the facts show the existence of any or all pre-requisites to the granting of the writ is a question of law in each case to be decided not in any rigid or technical view of the question, but according to a sound and reasonable interpretation. The court will not grant a Mandamus to enforce a right not of a legal but of a purely equitable nature however extreme the inconvenience to which the applicant might be put.

In the instant case we have to consider whether the Respondent has a legal right to get any information from the Credit information Bureau. The Credit Information Bureau of Sri Lanka (Applicant) was established by Act, No. 18 of 1990 specifically setting out

- (a) as functions of the Bureau, it *inter alia* :
 - (i) To collect and collate, credit and financial information on borrowers and of lending institutions.
 - (ii) To provide credit information, *on request* to lending institutions who are shareholders of the institutions who are shareholders of the bureau.
- (b) as powers and duties of the bureau *inter alia* :
 - (1) to forward credit information on request and in confidence to shareholders of the bureau and to prescribe the forms in which such information is to be furnished.

Act, No. 18 of 1990 was subsequently amended by Act, No. 8 of 1995. By this amendment the functions of the Bureau was amended as follows:

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- (A) "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".
- (B) The powers and duties of the Bureau were amended as follows: "in discharging its functions the Bureau may exercise and perform all or any of the following"
- (i) to furnish information on request in confidence to shareholders of the Bureau.
 - (ii) to furnish information on request by a shareholder of the Bureau to a borrower or to a prospective borrower to whom such information relates, subject to such terms and conditions as may be determined by the Bureau.

It is therefore clear that prior to the amendment it was imperative that all credit information was furnished by the Appellant strictly in confidence to its shareholders and no other. By the amendment the Credit Information Bureau was granted powers to furnish credit information on request in only two give situation, i. e.

(a) When a request is made by a shareholder for such information, then the Appellant can accede to such a request and furnish the relevant credit information to such shareholder in confidence ; or

(b) If there is a request from a shareholder to the Appellant then the Appellant Bureau may furnish credit information to the borrower or prospective borrower to whom such information relates.

It is relevant to note that "on request" pre dictates both situations where information is provided.

In the first situation there is only a furnishing of information, exclusively to the shareholders. The use of the words " in confidence" clarifies this position. In the second situation, information can be furnished to a borrower to whom such information relates, provided that there is a satisfaction of two important pre conditions, namely,

(A) There must be a request from the shareholder. More specifically the shareholder of the Bureau must request the Bureau to provide such credit information to the borrower or the prospective borrower and

(B) The Credit Information Bureau determines the terms and conditions and the form on such information is to be furnished.

From the above discussion it is clear that the Respondent has no clear legal right to demand the information from the Credit Information Bureau which is the basis or foundation to grant a Mandamus. Borrowers cannot as of right request for information to be given to them. Their right, if any, came into operation only when a lending institution makes a request to that effect. Therefore there is no legal duty cast on the Credit Information Bureau to furnish information on a request made by a borrower. It was the contention of the Respondent that as the word "simultaneously" appears in the preamble of the amended Act, there is a duty cast on the Credit Information Bureau to convey the credit information regarding the borrower which is furnished to a lending institution to be given to the borrower also simultaneously. This was the argument accepted by the Court of Appeal.

The preamble is certainly a part of the Act. It is elementary to say that the intention of the legislature must be gathered from the language of the Act itself. It is only where there is ambiguity and when an expression used by the legislature is capable of more than one meaning that it is permissible for the Court to look at the Preamble. When there is a conflict between the Preamble and the provisions of an Act the latter shall prevail. It is a well settled rule of construction that the provisions of a statute should be so read as to harmonize with one another and the provisions of one section cannot be used to defeat those of another unless it is impossible to effect reconciliation between them (*vide Sanjeevayya Vs Election Tribunal*⁽⁵⁾).

I am mindful of the fact the Credit Information Bureau was established to assist Financial Institutions and to protect them from being misled by the information given by borrowers. The Credit Information Bureau is an autonomous body created by an Act of Parliament cast with the duty to furnish information to Financial Institutions on credit standing of the borrowers. Financial Institutions can be shareholders in this corporation. Due to this fact Financial Institutions can claim that the information should be confined only to them and that no borrower has a legal right to obtain

this information from the Credit Information Bureau. By the amending act of 1995 a concession has been granted to the borrowers in that if a lending institution requests the information could be given to the borrowers too simultaneously. Other than this there is no independent legal right for the borrowers to call for this information as and when they want.

At the stage of the argument it was brought to the notice of this court that the information the Respondent requests has already been obtained by them through other means. Therefore it would be futile in its result to issue a writ of Mandamus. This is another ground to refuse the writ.

In these circumstances I am of the view that all the questions raised in this appeal are answered fully in the above discussion. I hold that the judgment of the Court of Appeal is erroneous and set aside the same and allow the appeal without costs.

SARATH N. SILVA, C. J. — I agree.

WEERASURIYA, J. — I agree.

Appeal allowed.
