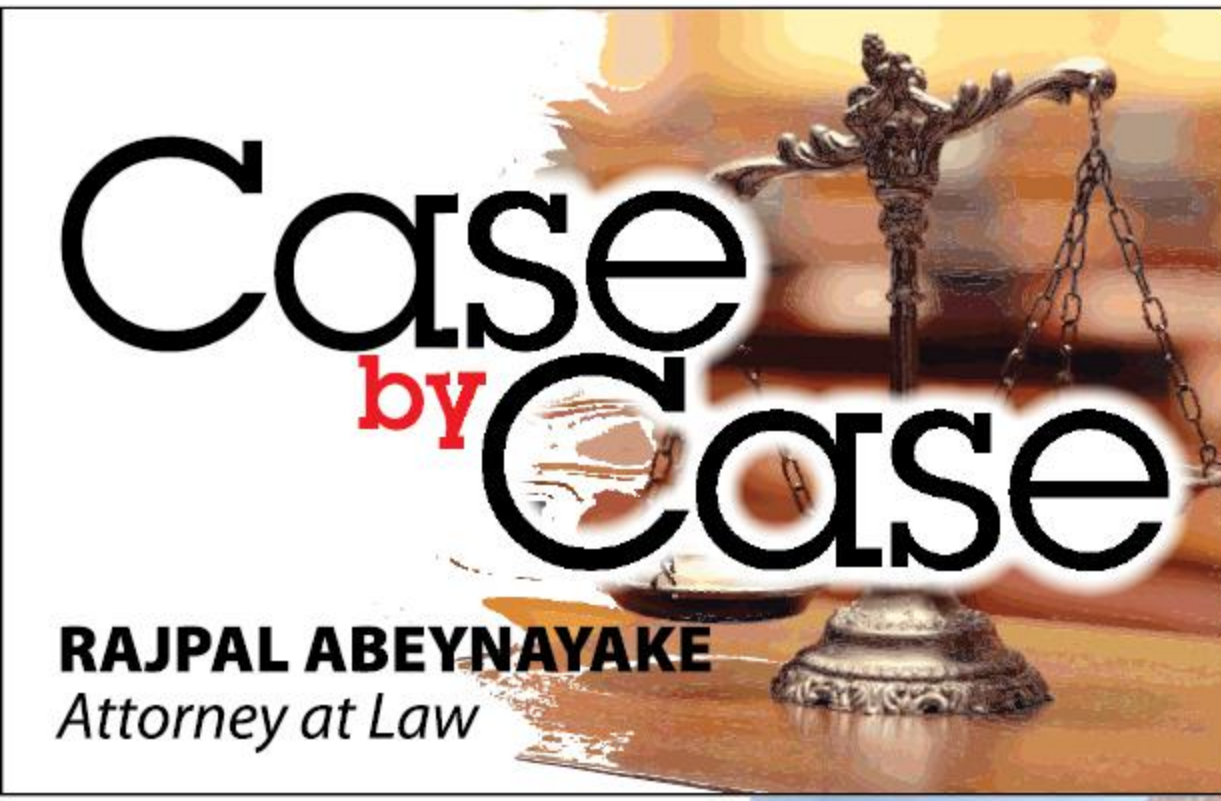


COURT OVERRULES MONETARY BOARD THAT OVERRULES BANK



Central Bank of Sri Lanka



Depositors of the Pramuka Bank made an application in the Court of Appeal seeking to quash the Central Bank Monetary Board's order to cancel the license of the Bank and liquidate the bank. (Benedict and Others v. Monetary Board of the Central Bank of Sri Lanka and Others (Pramuka Bank Case) - SLR - 68, Vol 3 of 2003 [2003] LKCA 49; (2003) 3 Sri LR 68 (June 9, 2003).)

The fourth respondent to the application, the Director Banking Supervision in her post-suspension examination report on the activities of the bank had submitted:

a) That the bank was engaged in an unsound and improper financial practice whereby interest recovered by granting fresh loans to convert non-performing loans into performing loans after the balance sheet date had been wrongfully accounted as income for the bank.

b) That the bank had fictitiously inflated its profit for the accounting year 1999 and thereby showed a profit of Rs.8.3 million when in fact the bank has suffered a loss of Rs.16.5 million for that year.

c) The bank had been able to avoid making the required provisioning and thereby violated the directions issued by the Central Bank on this matter.

The Monetary Board of the Central Bank of Sri Lanka having considered the aforementioned report directed that the deposits from the public be frozen. Before that, the activities of the Bank had been suspended by the Monetary Board.

In the case of such a suspension the Monetary Board had

Court took a firm view that the Monetary Board, though enjoying the right to take that decision to wind up the bank's affairs, had not exercised its discretion properly. The Appeal Court judges opined that the fourth respondent considered certain steps with regard to the affairs of the Bank, but the Monetary Board had not properly exercised their discretion over the matter of perhaps recommending these steps instead of winding up.

the option to a) To make an order permitting the bank to resume business either unconditionally or subject to such conditions as the first respondent (Monetary Board) may consider; or

b) To cancel the licence issued to the bank and to direct the Board of Directors of the bank to apply for winding up.

However, the Monetary Board had chosen winding up and this process was noted in the judgement of the Court of Appeal:

"The report containing the findings of the fourth respondent Director of Banking Supervision, was sent to the first respondent, who having considered the said report directed the bank to freeze the deposits from the public and the advances as at 12th July 2002. The Counsel for the petitioner submitted that having issued the said direction, the first respondent so listed the bank as a licensed deposit taking institution by an advertisement published in the *Ceylon*



Daily News dated 12th September 2002 marked P7. It is to be noted that the said advertisement provided, *inter alia*, as follows - "On the other hand, the financial institutions registered and recognised by the Central Bank of Sri Lanka are supervised and regulated by the Central Bank of Sri Lanka. The fact that they are supervised does not mean that your money is guaranteed by the Central Bank of Sri Lanka. By supervision and regulation, the Central Bank of Sri Lanka attempts

to ensure that the financial institution acts in a prudential manner, without exposing the deposits of the public to undue risk".

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erly exercised their discretion over the matter of perhaps recommending these steps instead of winding up. In the eye of the law they had not exercised their discretion at all, the judges seemed to say in judgement.

The Monetary Board had merely called a meeting of the Pramuka Bank directors but had not shown any inclination to reasonably go into the facts of why other options recommended by the 4th Respondent Director Banking had not been complied with, the Court of Appeal judgement also points out.

The following is the verbatim extract to that effect from the judgement:

"It only appears that the first respondent invited the members of the Board of Directors of the Bank and gave them an opportunity on 13th December 2002 (1R37) to respond to the findings of the examination conducted by the Central Bank. The response of the Board of Directors was that they did not have a proposal for reviving the bank. How can the first respondent expect any plans/proposals from the same Board of Directors when the suggestion by the fourth respondent was to re-constitute the Board? As submitted by the learned Counsel for the petitioners, there is not an iota of suggestion in 1R36 that the several options contained in clause 13.3 received the attention of

the first respondent and a decision was taken to reject all of them."

The Court of Appeal bench was particularly irked that no reasoning was given to back up the Monetary Board's decision. Moreover, the Petitioners were misled, inferred the court. Though they were led to believe that the first respondent (Monetary Board) arrived at a decision to cancel the licence of the bank and to wind up its affairs after considering the report A19 submitted by the fourth respondent the Director of Banking Supervision, no reasons whatsoever were given as to why the first respondent rejected the options suggested by the fourth respondent even if they were considered.

In other words, it was as if the report had not been considered or scrutinized properly.

The judgement notes:

"In the absence of reasons for the Monetary Board to wind up the affairs of the Bank, it is impossible to determine whether or not the first respondent in fact considered the four options given in clause 13.3. Failure to give adequate reasons therefore amounts to a denial of justice and is itself an error of law", the Appeal Court judgement states.

A Writ of Certiorari was issued quashing the cancellation of the Bank's Licence, and a Writ of Mandamus issued to consider the several options.