

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application under Article 126 read with Article 17 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Sujeewa Arjune Senasinghe,
No. 03, Chelsea Gardens,
Colombo 03.

Petitioner

S.C. F.R. 457/2012

Vs.

1. Ajith Nivard Cabraal,
Governor, Member,
Monetary Board, Central Bank
of Sri Lanka, No. 30, Janadhipathy Mawatha,
Colombo 1.
2. Monetary Board of the Central Bank
No. 30, Janadhipathy Mawatha,
Colombo 1.
3. P.B. Jayasundera,
Secretary, Ministry of Finance,
No. 30, Janadhipathy Mawatha,
Colombo 1.
4. Nimal Welgama,
Member, Monetary Board,
No. 30, Janadhipathy Mawatha,
Colombo
5. Mrs. Mano Ramanathan,
Member, Monetary Board,
No. 30, Janadhipathy Mawatha,
Colombo 1.
6. N.A. Umagiliya,
Member, Monetary Board,
No. 30, Janadhipathy Mawatha,
Colombo 1.

7. Hon. Sarath Amunugama,
Minister of International Monetary
Cooperation, No. 50/1, Siripa Road,
Colombo 05.
8. H.A.S. Samaraweera,
Auditor General,
Auditor General's Department,
306/72, Polduwa Road, Battaramulla.
9. Hon. Attorney General, Attorney General's
Department, Colombo 12.

Respondents.

BEFORE : K.Sripavan, J.
R. Marasinghe, J.
Sarath de Abrew, J.

COUNSEL Upul Jayasuriya with S.H.A. Mohamed for Petitioner
instructed by Paul Ratnayake Associates.
Sanjay Rajaratnam, Deputy Solicitor General with Mrs. S.
Barrie, Senior State Counsel for Respondents.

ARGUED ON : 22/07/2014 and
04/09/2014

DECIDED ON : **18/09/ 2014**

K. SRIPAVAN, J.

The Petitioner's complaint to this Court is that the 1st and 3rd to 6th Respondents in purchasing Greece Govt. Bonds and / or investment transaction acted in an unlawful, irresponsible and an arbitrary manner. Petitioner further alleged that when making investments Clause 5.2.9 of the Foreign Exchange Reserves Management Guidelines has not been complied with. On a direction issued by Court the learned Deputy Solicitor General on 26.09.12 filed a copy of the Foreign Exchange Reserves Management Guidelines (FRMG) issued by the International Operations

Department of the Central Bank. It is observed that the said guidelines does not contain Clause 5.2.9 relied on by the Petitioner. In any event, it is noted that Section 66 of the Monetary Law Act empowers the Monetary Board to maintain “an international reserve” adequate to meet any foreseeable deficits in the international balance of payments. In terms of Section 67 of the said Act “Securities of Foreign Governments” is considered as one of the assets which includes “International Reserves” . The Governor of the Central Bank is the Chief Executive Officer and charged with the execution of policies and measures approved by the Monetary Board and the direction, supervision and control of the internal management and administration of the Central Bank. In terms of Clause 2.2.1 of the FRMG, the Governor has the delegated authority from the Monetary Board with regard to taking decisions in foreign exchange reserves management.

The document marked “A” filed by the learned Deputy Solicitor General indicates that on 16th March 2011 a discussion was held with the Governor with regard to the possibility of investing in Greece and Ireland Bonds. The said document “A” further shows that the proposed investment in Greece and Ireland were not material as they were less than 1.0 per cent. of the reserves of the Central Bank and would not expose to any undue risk.

The Auditor General in his letter dated 11th October 2012 addressed to Hon. D.E.W. Gunasekera, Chairman on Public Enterprises (with a copy to the Governor, Central Bank) had stated though the Central Bank had incurred a loss from the investment in Greece Government Bonds, it has earned a total net profit of U.S. \$ 430.2 Million on International Reserve Management during the year 2011.

The investment in Greece Bonds and its trade forms part of the risk management strategy. If all investments are maintained as risk free investments the return would be negligible. The Central Bank therefore has to select a mix of low risk and risk bearing investments expecting a reasonably high return.

We must not forget that in complex economic policy matters every decision is necessarily empiric and therefore its validity cannot be tested on any rigid formula or strict consideration. The Court while adjudicating the constitutional validity of the decision of the Governor or Members of the

Monetary Board must grant a certain measure of freedom considering the complexity of the economic activities. The Court cannot strike down a decision merely because it feels another policy decision would have been fairer or wiser or more scientific or logical. The Court is not expected to express its opinion as to whether at a particular point of time or in a particular situation any such decision should have been adopted or not. It is best left to the discretion of the authority concerned. We have to focus on the applicable law and ascertain whether the impugned decision to invest in Greece Bonds was an arbitrary exercise of power serving a collateral purpose.

At the hearing before us, learned Counsel for the Petitioner sought to argue that Clauses 5.2.1 and 3.3.2 of FRMG have not been complied with. It is noted that in his Petition, the Petitioner has failed to take up the said objection; neither sought to amend the Petition after a copy of the FRMG was made available in September 2012. Hence, the new matters now raised are outside the time limit prescribed in Article 126(2) of the Constitution and cannot be gone into. In any event, it is apparent that from the document marked **X6** filed by the Petitioner which contains answers given by the Hon. Minister to queries raised by the Leader of the Opposition that all Bonds were issued by “The Hellenic Republic Ministry of Economy and Finance Public Debt Management Agency” on behalf of the Government of Greece which is the official authority in issuing Government Bonds in Greece. The decision to invest in such Bonds was based on the trade-off between different risks faced and the Central Bank’s tolerance for higher risk on a very small part of its portfolio (Only 0.6% of its portfolio was invested in Greece Bonds). Investing in high yielding sovereign paper is an integral part of fund management of many funds in the world and the Central Bank too had followed a similar practice in investing a tolerable proportion of its resources (0.6%) in Greece Government Bonds. When the Euro Zone took a turn for the worse several weeks after the investments were made, in mid July 2011, the Central Bank sold a part of Greece Bonds at a loss of US\$ 6.6 Million. This measure was taken to mitigate the risk of the Greece investment losing further value due to subsequent development in the Euro Zone. Such loss has been taken into consideration in computing the profit/gains for the year 2011 amounting to US\$ 430.2 Million.

Considering the totality of the circumstances, it is neither possible nor desirable to hold that the Members of the Monetary Board in taking a decision to invest in Greece Bonds, have acted arbitrarily, unreasonably and in a fraudulent manner. In view of the conclusion reached, the Court

is not inclined to express any opinion on the objections raised by the learned Deputy Solicitor General on the maintainability of the application.

Leave to proceed is accordingly refused. No costs.

JUDGE OF THE SUPREME COURT.

R. MARASINGHE, J.

I agree.

JUDGE OF THE SUPREME COURT.

SARATH DE ABREW

I agree.

JUDGE OF THE SUPREME COURT.

