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Depositors challenge Pramuka Bank licence cancellation

Depositors aggrieved by the decision of the Central Bank's Monetary Board to cancel the banking licence of Pramuka (a Licenced Specialised Bank) have filed a writ application in the Court of Appeal on 16th January 2003, seeking to quash and declare invalid, the cancellation allegedly made without resorting to the proper steps provided for by the Banking Act to protect the interests of depositors and creditors of the bank.

The petition is to be supported early next week in the Appeal Court by M. A. Sumanthiran (Senior Counsel) with P. S. Bandranayake and Rasika Balasuriya, instructed by Samanthi Kumarasinghe.

The 1st-4th Respondents in the writ application (bearing No. CA 65/2003) are: The Monetary Board of the Central Bank of Sri Lanka, A. S. Jayawardena, Governor, Central Bank of Sri Lanka, P. M. Nagahawatte, Deputy Governor, Central Bank of Sri Lanka and Mrs. P. P. Sirisena, Director of Banking supervision, Central Bank of Sri Lanka.

Pramuka Savings And Development Bank has also been cited as the 5th respondent for purposes of issuing notice of the application.

The Petitioners state in their petition, that they are all people who have placed deposits with the Pramuka Bank (5th Respondent) and thus at all relevant times had a legitimate interest in the proper functioning of Pramuka, which is to be achieved by the legal provisions for control and supervision by the Central Bank.

The petition states that Pramuka Savings And Development Bank Ltd. was incorporated under the Companies Act in or around January 1997 with the primary object of establishing a licensed specialised bank under the Banking Act.

It also states that a licence under the Banking Act was issued by the Monetary Board to Pramuka Bank on 17th July 1997, after C. Rohan S. Perera was required to resign from the posts of Chairman and Director of the 5th Respondent Pramuka Bank. He was however, permitted by the Central Bank to occupy the office of President of Pramuka Bank, which was provided for in its Articles of Association.

Pramuka Savings And Development Bank commenced business operations as a Licenced Specialised Bank on or about 21st July 1997.

The Petitioners allege that as far back as in July 1999, P. M. Nagahawatte, Deputy Governor of the Central Bank initiated a statutory On-Site Examination of the affairs of Pramuka and that gross violations of the provisions of the Banking Act were detected at that examination.

It is alleged that the Report of the Director of Banking Supervision to the Monetary Board stated as far back as August 1999 that "...if the bank continues to grant loans and advances without carrying out a proper evaluation, the failure of the bank may be inevitable".

They also cite newspaper reports (in the Daily Mirror) that an employee of Pramuka had brought to the notice of the 1st to 4th Respondents in April 2002 the irregularities and imprudent banking activities of Pramuka Bank.

The Petitioners complain that despite this situation, by a Gazette Extraordinary No. 1145/25 dated 17th August 2000 the Minister of Finance listed Pramuka Savings And development Bank amongst a select group of banks for deposit of trust funds by the Public Trustee. This has been repeated in the Government Gazette dated 28th June 2002 bearing No. 1243.

Thereafter, in or around June/July 2002 the Central Bank has issued a "cease and desist" order against Pramuka from taking any more deposits. However, in September 2002 the Monetary Board listed Pramuka as a licensed, deposit taking institution regulated by the Central Bank of Sri Lanka in a newspaper advertisement published on 12th September 2002.

On 25th October 2002 the Monetary Board has made an order under the Banking Act, directing Pramuka to suspend business, citing that certain irregularities have been taking place in the conduct of its business.

Thereafter, on 19th December 2002 the Monetary Board cancelled the licence granted to Pramuka Savings And The Petitioners state that the 1st Respondent Monetary Board has been conferred with substantial and specific powers contained in the Banking Act for the effective supervision, regulation on control of licenced specialized banks such as Pramuka. Several of those legal provisions have been extensively quoted in the Petition.

It also states that it is clear from the provisions of the Banking Act, that the powers conferred on the Central Bank as regards supervision, regulation and control of Licenced Specialised Banks such as Pramuka are primarily for the achievement of a public duty of protecting the interests of innocent depositors and creditors.

The position is taken up by the Petitioners that as is apparent from the facts in the petition, the Central Bank has failed to utilise any of the provisions of the statutory powers conferred on them for the benefit of the depositors and creditors of Pramuka.

The Petitioners specifically allege that the 1st-4th Respondents (i.e. the Monetary Board, A. S. Jayawardena, Governor, P. M. Nagahawatte, Deputy Governor and Mrs. P. P. Sirisena, Director of Banking Supervision of the Central Bank) having failed to carry out their specific statutory duties, have now resorted to the extreme step of cancelling the licence of Pramuka in order to cover up their lapses in failing to take action under Part IXA of the Banking Act. The Petition argues that therefore the cancellation of the licence of Pramuka is for a collateral purpose and not in the bona fide exercise of their statutory powers.

The Petitioners further state that Pramuka Bank could have continued to carry on its business and could have been revived if the Central Bank officials had not cancelled its licence, and that even now the Bank can be revived if the 1st-4th Respondents are directed to take responsible steps as provided for in the law for that purpose.

The Petition requests the Appeal Court to make an order calling for the Banking Development file and other records and documents relating to Pramuka Bank maintained by the 1st-4th Respondents, which will testify to the fact that the licence cancellation was for irrelevant considerations.

Court has also been requested to issue an interim order restraining the 1st to the 4th Respondents from proceedings with the process of winding up of the 5th Respondent Pramuka Bank and/or to stop any steps being taken based on the said cancellation until the final hearing and determination of this application.

Pramuka Depositors form Union

by Rohan Mathes

The grieved depositors of defunct Pramuka Bank, in their arduous task of recovering their hard-earned savings, have formed a depositors Union which is to be registered shortly.

Their membership will formulate a constitution of their own and also contribute a nominal membership fee of Rs.100 and another Rs. 1000 as a deposit, per account, to cover their clerical expenses.

The depositors have given an undertaking to the Central Bank that they will retain their deposits/debentures placed at Pramuka Savings and Development Bank for a further period of two years from the date of reopening the bank, provided that - Pramuka Savings and Drevelopment Bank reopens under an acceptable new management and it operates under the supervision and control of Central Bank.

Meanwhile, the employees of Pramuka Bank who have lost even their EPF contributions, are also eagerly anticipating to resume their duties with dignity and serve their cherished 15400 customers who have pooled over 3.4 billion to the bank.