

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF  
SRI LANKA**

*In the matter of an Application for Orders in  
the nature of Writs of Certiorari, Prohibition  
and Mandamus under Article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.*

**CA (Writ) App. No. 683/2025**

1. Placid Insurance Brokers (Pvt) Ltd,  
No. 259/67,  
Bandaranayakapura,  
Kalapaluwawa,  
Rajagiriya.
2. Sunil Pitigala Siyasena,  
Principal Officer,  
Placid Insurance Brokers (Pvt) Ltd,  
No. 259/67,  
Bandaranayakapura,  
Kalapaluwawa,  
Rajagiriya.
3. Rinkoon Lanka Insurance Brokers (Pvt)  
Ltd,  
No. 81/6, Thimbirigasyaya Road,  
Colombo 05.
4. Samarakoon Mudiyansele Ranjith,  
Principal Officer,

Rinkoon Lanka Insurance Brokers (Pvt)  
Ltd,  
No. 81/6, Thimbirigasyaya Road,  
Colombo 05.

**PETITIONER**

**Vs.**

1. Insurance Regulatory Commission of Sri Lanka,  
Level 11, East Tower,  
World Trade Centre,  
Colombo 01.
2. Dr. W. A. R. De Mel,  
Chairman,  
Insurance Regulatory Commission of Sri Lanka,  
Level 11, East Tower,  
World Trade Centre,  
Colombo 01.
3. Damayanthi Fernando,  
Director General,  
Insurance Regulatory Commission of Sri Lanka,  
Level 11, East Tower,  
World Trade Centre,  
Colombo 01.
4. Secretary to the Ministry of Finance,  
Planning and Economic Development,  
Ministry of Finance,

Planning and Economic Development,  
The Secretariat,  
Colombo 01.

5. Pritha J Fernando,  
President of Sri Lanka Insurance  
Broker's Association,  
No. 252/A 1/5,  
Methodist Central Building,  
Galle Road, Kollupitiya,  
Colombo 03.

### **RESPONDENTS**

**Before:** S. U. B. Karalliyadde, J

Dr. D. F. H. Gunawardhana, J.

**Counsel:**

Shantha Jayawardena with Hirannya Damunupola, Azra Basheer, Niroshika Weegiriya,  
Wihangi Tissera and Tharuka Ranathunga for the Petitioner.

Sumathi Dharmawardena, Additional Solicitor General, President Counsel with Rajika  
Aluwihare, State Counsel for the 1<sup>st</sup> to 4<sup>th</sup> Respondents.

Jiva Goonetilake with Delan De Silva instructed by D L & F De Saram for the 5<sup>th</sup>  
Respondent.

**Supported on:** 30.07.2025

**Order delivered on:** 27.08.2025

**Dr. D. F. H. Gunawardhana, J.**

## **Order**

### **Introduction**

The 1<sup>st</sup> and 3<sup>rd</sup> Petitioners are two distinct corporate entities; each incorporated under the Companies Act No. 7 of 2007. The 2<sup>nd</sup> Petitioner is a Director-cum-Principal Officer (Chief Executive Officer) of the 1<sup>st</sup> Petitioner, while the 4<sup>th</sup> Petitioner is a Director-cum-Principal Officer (Chief Executive Officer) of the 3<sup>rd</sup> Petitioner. Furthermore, they assert that the 1<sup>st</sup> and 3<sup>rd</sup> Petitioners are small-scale insurance brokers. The Petition additionally states that their business operations fall under the purview of the Regulation of Insurance Industry Act, No. 43 of 2000 (as amended). It is further stated in the Petition, that the said Act, namely the Regulation of Insurance Industry Act, No. 43 of 2000 (hereinafter referred to as the 'RII Act'), has been amended several times. This includes the amending Acts No. 27 of 2007, No. 03 of 2011, and No. 23 of 2017. It is also asserted that insurance brokers play a major role in the insurance industry and insurance business, as they have been recognised under the RII Act as legally established entities.

Insurance brokers are an integral part of the insurance industry. They are regarded as intermediaries who act between the insurer and the insured, or the insurer and the re-insurer. Insurance brokers are recognised under RII Act (as amended), and their qualifications are also provided for in the Act itself (subject to the acceptance of the Board). To practice or carry on the business of an insurance broker within Sri Lanka, such a broker must be registered with the Board established under RII Act.

The 1<sup>st</sup> Respondent, as the Regulatory Commission created under the RII Act, is responsible for regulating the insurance industry and insurance business in Sri Lanka. The 2<sup>nd</sup> Respondent is the Chairman, while the 3<sup>rd</sup> Respondent is the Director General thereof. The 4<sup>th</sup> Respondent is the Secretary to the Ministry of Finance, who is in charge of the subject to the portfolio of finance under which insurance also falls within. According to the RII Act, the 1<sup>st</sup> Respondent is empowered to make regulations for the purpose of operating and functioning within the insurance industry. This includes regulating the qualifications of brokers as stipulated in the RII Act itself. It is further stated that when the segregation took place in 2011, no change to the composition of brokers took place, since the said RII Act was promulgated with the consultation of the brokers' association, and the 5<sup>th</sup> Respondent is the chairperson thereof as well.

However, it is an undisputed fact, that from time to time, the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents have changed the rules made in terms of Section 80(1) of the RII Act. It is alleged that by 'P17', the Respondents made certain rules amending the qualifications of the brokers.

### **Complaint**

In those circumstances, the Petitioners complain, that when the said new set of rules contained in 'P17' commence its operation, there could be practical segregation of brokers in the insurance industry. Consequently, it violates the RII Act (as amended), since segregation can only be brought by amending the Act itself. However, by introducing a new set of rules, particularly contained in 'P17', the qualifications of brokers and their share capital have changed. It is required that hereafter, brokers need to have two sets of qualified employees within the broker's company for the purpose of the operation of general insurance and life insurance separately. Therefore, if such employees are not employed by a broker, automatically such a broker would have to confine its activities to one particular section; thereby, segregation is automatically created. As there is an

enhancement of the share capital, small-scale insurance brokers like the Petitioners will find it very difficult to survive in the industry. In this circumstance, this has created a monopoly in certain insurance brokers. Consequently, if it operates, there will be only four surviving insurance brokers engaged in the industry as foreign insurance brokers (as indicated by the Petitioners). As there is segregation, they complain that 'P17' is violative of the RII Act itself and further contend that it is *ultra vires* and irrational. Accordingly, they seek to have 'P17' quashed by a *Writ of Certiorari*.

This was supported before this Court by Mr. Jayawardena on 30.07.2025. This application was vehemently opposed by Additional Solicitor General, Mr. Sumathi Dharmawardhana P.C., and the following submissions were made by them.

### **Arguments**

The Counsel for the Petitioner, Mr. Jayawardena's argument is of two folds: First, by changing the qualifications of the brokers, the Respondents have violated Section 80(1) read with Section 114 of the RII Act. Therefore, their very decision published in the Gazette notification 'P17' is *ultra vires*.

The second part of the argument is that by changing the qualifications, without amending the RII Act, the Respondents have created an anomaly; and therefore, a new segregation was created among the brokers. As a new segregation cannot be created without amending the RII Act, these brokers are now also subjected to the said segregation. Therefore, what is reflected in 'P17' is unattainable in law, and as such, it is amenable to a *Writ of Certiorari*.

Mr. Dharamawardena P.C., contended that the Insurance Regulatory Commission is a statutory body that has been vested with certain powers for them to take cognisance of certain matters. One such power is to regulate matters relating to Section 80(1)(a) to (c) of the RII Act.

Mr. Dharamawardena further contented that the Board is empowered to make rules with regard to the qualification of the brokers in terms of Section 80(1) of the RII Act. The rules contained in 'P17' fall within the very ambit of the Section 80(1) of the RII Act; therefore, it is *intra vires*.

### **Insurance broker is an integral part of the insurance industry**

There is always a regulatory machinery operating under the 1<sup>st</sup> Respondent, who is also a creation of the same statute, the RII Act, for the purpose of regulating the entire machinery of the insurance industry in Sri Lanka. It is an undisputed fact, that even after the segregation of the insurance business between 'general insurance' and 'life insurance' (long term insurance), the brokers who happened to be brokers right throughout and recognised under the original RII Act, never changed their status and continued to function as brokers, acting between insurers engaged general insurance and their customers or long term insurers engaged in life insurance and their customers. Therefore, it is asserted that despite the amendment that was brought about by the Regulation of Insurance Industry (Amendment) Act No. 03 of 2011, for the purpose of segregation, no corresponding division of brokers of the insurance industry was imposed; therefore, they continued to be the same brokers, continuing to act as intermediaries between the customers and insurers, and insurers and reinsurers.

It is an undisputed fact in this case that the segregation of the insurance business, or the insurance industry, took place with the promulgation of the Amending Act No. 03 of 2011 and the segregation took place within 4 years and by 2015, the segregation of the insurance industry was over since an interim period was given by the Act itself. Consequent to the segregation, no insurer registered under RII Act No. 43 of 2000 was permitted to engage simultaneously in both 'general insurance' and 'long-term insurance', otherwise referred to as life insurance. Accordingly, each insurer was required to confine its operations to one distinct segment of the industry. The

Petitioners, however, point out that although the Brokers' Association was consulted during the segregation process, no similar separation was applied to brokers. As a result, brokers continued their activities as before, handling business across both sectors. Therefore, there was in fact no segregation of brokers. Even now, brokers continue to act in relation to both general and life insurance between the insurer and the insured. In addition to that, in relation to reinsurance, it is evident that risks undertaken by an insurer must necessarily go through a broker, as it is an established principle of international insurance practice that no reinsurer will assume liability for a risk unless it is presented through a broker.

This can be further elucidated by citing from textbooks on the subject as illustrated below;

*“The law concerning insurance intermediaries is of special importance since in effect all insurance business is conducted through the medium of agents of one sort or another. Most insurers are and have to be companies or, in exceptional cases, other corporate bodies or associations and such bodies can of necessity act only through agents, ranging from directors and senior management down to junior employees. The only natural person who can be an insurer is a Lloyd’s underwriter and by custom, enshrined in statute, he can act only through the agency of Lloyd’s as the people through whom only can a Lloyd’s policy be effected. ... An insured may act through another intermediary in approaching a Lloyd’s broker. Not all intermediaries act full-time in that capacity. There are people such as motor dealers, solicitor, mortgage lenders, travel agents and estate agents, whose principal job is clearly not the selling of or advising on insurance, but who may sell insurance part-time or as an incidental part of their major work, often having pre-existing links with particular insurers.”<sup>1</sup>*

As such, the proposer of such an insurance contract or a policyholder has to always go through a broker to propose for the insurance contract or to enter into an insurance contract. Likewise, insurers are obligated to utilise brokers when reinsuring a part or the entirety of the risk an insurer

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<sup>1</sup> Birds, J., ‘Birds’ *Modern Insurance Law*’ (2007) 7th Edition, Chapter 10 “Intermediaries”

has undertaken, whether with foreign or local reinsurers. The term ‘broker’ is defined under Section 114 of the RII Act.

### **Qualification of brokers to be determined by the Board**

On the perusal of Section 78 of the RII Act, all brokers must register with the Board, and their qualifications are spelt out in terms of Section 80. According to Section 80, the Board of the Regulation Commission is empowered to determine the qualifications of the brokers. The Board is empowered to make rules with regard to the composition of any broker or the directorate of persons with such qualifications and experience in the insurance business. In addition to that, the Board is empowered to make rules either to enhance or reduce the share capital of any broker. This is spelt out in the following manner;

*“78. (1) An insurer or broker is permitted to appoint an individual as an insurance agent, who shall be registered with such insurer or broker as an insurance agent. Every insurer or broker shall maintain in such manner as specified by the Board by rules made in that behalf, a register of all individuals who are registered with them as insurance agents.*

*(2) Every insurer or broker is required to send a copy of the register being maintained under subsection (1) annually to the Board, and shall keep the Board informed of any additions or deletions made in the list.*

*(3) The Board shall have the right to require an insurer or broker as the case may be, to delete the name of any insurance agent appearing in the register submitted to the Board by such insurer or broker, when it considers the person concerned to be unsuitable to function as an insurance agent, having regard to the interests of the policy holders.*

*(4) The Board may by rules made in that behalf, determine the qualifications required of any person for purposes of being appointed as an insurance agent.*

*(5) No insurer or broker shall appoint as an insurance agent any individual who is already required of any individual who is already registered as an insurance agent with any other insurer or broker.*

79. *No person shall act or hold itself out as an insurance broker unless such person is a holder of a certificate of registration as a broker granted by the Board and is a member of an Association of Insurance Brokers approved by the Board.*

80.(1) *No person shall be registered as; an insurance broker under this Act. unless such person-*

*(a) is a company registered under the Companies Act. No. 17 of 1982. having a paid-up share capital not less than such amount as shall be determined by the Board, by rules made in that behalf;*

*(b) has in its employment or on its directorate, persons with such qualifications and experience in insurance business as shall be acceptable to the Board;*

*(c) takes out a policy or policies of insurance for professional indemnity with two or more insurers;*

*(d) fulfils such other requirements as may be laid down by the Board by rules made in that behalf, for the purpose ensuring the protection of the interests of the insured public.” [Emphasis is mine]*

### **Power to issue ‘P17’**

According to Section 80(1)(d), the Regulatory Board can enhance the capital of any broker. Secondly, in terms of Section 80(1)(b), the Board can change the qualification of any broker, this also includes the composition of the employees or composition of the management; the qualification of the members of the employees or of the management can also be determined as required by the international standard. Therefore, by the Gazette notification, the Commission can decide to raise or enhance the capital of the brokers to have certain degree of responsibility. In addition to that, to have required standard of qualification, the Board has decided to enhance the quality of the brokers to the extent that they are dealing with not only local insurance requirement, but also, international insurance standards. As such, the complaint of *ultra vires* is baseless as they have acted within the law.

On the perusal of the RII Act, it must be noted that when a broker seeks registration under the RII Act in order to carry on business, such broker is required to possess the qualifications stipulated in the Act, together with those set out in the rules made and published from time to time by the Board. The impugned rules contained in P17 have been made pursuant to Sections 80(1)(a), 80(1)(b), 80(1)(c) and 80(1)(d) of the RII Act. Accordingly, the Board of Governor derives its power to make those rules directly from the RII Act.

### **Jurisprudential influence**

The authority exercised by the Board is derived directly from the RII Act itself. This can be further elucidated through the lens of the “Pure Theory of Law”, a jurisprudential theory profounded by the renowned jurist Hans Kelsen<sup>2</sup>. The RII Act draws its powers from the Constitution. As the Constitution functions as the ‘*grundnorm*’, the RII Act is a subordinate ‘*norm*’. The Board is appointed under Section 2 of the RII Act; therefore, the Board's authority originates from a ‘*norm*’ itself, within the legal hierarchy. The rules issued by the Board under Section 80(1)(a) to (d) also constitute ‘*norms*’, and the rules found in **P17** form part of that normative structure. This framework can be properly understood according to the “Pure Theory of Law”, and it confirms that the Board’s actions are indeed *intra vires*.

1978 Constitution ( ‘*Grundnorm* ’  
(Power to legislate)



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<sup>2</sup> Dias, *Jurisprudence* (1985) 5<sup>th</sup> Edition, Butterworth World Student Reprints, Chapter 17 “The Pure Theory”

RII Act No. 43 of 2000 ( 'Norm' )



Section 2 of the RII Act ( 'Norm' )  
(Power to appoint the Board)



Section 80(1)(a) to (d) ( 'Norm' )



'P17' ( 'Norm' )

It is also not in dispute that, from time to time, the Board of Commission established under Section 2 of RII Act had initially made rules for the brokers to be qualified as brokers, which were subject to change with time. The impugned rules were amended in 2024, with effect from 2025.

The impugned rules referred to above were made under Sections 80(1)(a) to 80(1)(d) of the RII Act. Hence, the said rules fall squarely within the ambit of the law. As such, the argument that such rules are *ultra vires* cannot be accepted.

Accordingly, it is my view, that what has happened in the present case is that the Board of the 1<sup>st</sup> Respondent has decided to change the required qualifications of brokers who are particularly engaged in reinsurance, due to the high risk involved in such reinsurance, and in certain instances as Mr. Dharmawardhana P.C. argued, certain reinsurance is a specialised business especially those

based on terrorism and related activities. Additionally, reinsurance is mainly based on the international market as well.

In those circumstances, it is my view, by the introduction of new qualifications of an insurance broker (namely the composition of the employees and the qualifications of the members of the directorate, and also share capital) falls well within the ambit of Section 80(1) of the RII Act (as amended); and by this section, the Board is well-empowered to make rules relating to the qualifications of the employees of any broker or the Members of the Directorate, in addition to the share capital. As such, after the new rules contained in 'P17', though only the four insurance brokers can engage in reinsurance at the international level, it is my view that the brokers must have the necessary qualifications to be competitive at an international level. Requiring brokers to have experts in both 'life insurance' and 'general insurance' does not create any segregation among the brokers, as the same broker can still operate in both sectors; therefore, no segregation of brokers is created by the document marked as 'P17'. As such, the complaint of the Petitioners should fail, and the argument advanced by for and on behalf of the Counsel for the Petitioners also is not tenable in law.

The principles followed in Sri Lankan jurisprudence are primarily rooted in English legal principles and traditions. Under the British system, such writs initially emerged as prerogative remedies and later evolved into statutory remedies, serving as mechanisms to restrain statutory bodies or judicial and quasi-judicial authorities whose decisions affect individual rights. This

evolution is clearly illustrated in the famous dictum of Lord Atkin in the *R v Electricity Commissioners ex p London Electricity Joint Committee Co. (1920) Ltd.* case<sup>3</sup>.

*“Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.”*<sup>4</sup>

These writs are used to restrain the authority of Government agencies or statutory bodies, many of which were established during the latter part of the Victorian era, coinciding with the emergence of the ‘welfare state’. However, even in that background, for the purpose of upholding the Rule of Law and the democratic rights of the public, writs are issued to curtail the powers exercised by the Government agencies. However, Courts should not issue writs in the nature of *Certiorari* or *Prohibition* against them to quash their decisions or prevent them from taking decisions for flimsy reasons, when they are equipped with power, expertise or knowledge and when they follow due process in taking decisions.

In support of my view, I wish to adopt certain tests enunciated in an English judgement of the Queen’s Bench Division *London and Continental Stations and Property Limited v. The Rail Regulator Midland and Main Line Limited* [2003], where the decision of a similar agency of the Government was challenged.

In this case, a Railway Regulator’s decision taken through due process to award compensation, was challenged. The Court having gone through the procedure adopted by the Regulator and also having considered the due consideration given to the empirical evidence and submissions made by the parties, decided that the Railway Regulator had taken the correct decision after following the

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<sup>3</sup> [1924] 1 KB 171

<sup>4</sup> H. W. R. Wade and C.F. Forsyth, “Administrative Law” (8<sup>th</sup> Edition) Chapter 17 “Prerogative Remedies” Page 597

due process. It was further held that he is also empowered to do so; therefore, his decisions cannot be upset. The following tests were enunciated in the said judgement by the Queen's Bench.

*"... Firstly, the fundamental nature of the Rail Regulator's role is founded on Section 4 of the 1993 Act. The Rail Regulator is required to exercise his powers in a way which furthers the national and public interest in having an efficient and effective railway system (see paragraph 16). The Rail Regulator has a "broader public interest role" (see paragraph 32) and a "supervisory role" relating to the running of the railways as a whole (see paragraph 33).*

*28. Secondly, having regard to his role as guardian of the public interest, the Regulator is not constrained in the directions he may make by the wishes of the parties. The directions he gives may be different from those which an applicant for the directions sought (see paragraph 20). He may have a separate agenda (see paragraph 21). He is not a judge or arbitrator but performs a broader role than that required of a judicial or quasi-judicial decision maker (see paragraph 21 and 34). In those circumstances he is not constrained by the wishes of the parties.*

*29. Thirdly, he is better placed than a court to make an overall assessment of what is in the interest of the rail network (see paragraph 33). This third principle explains why the court has limited scope for intervention. In relation to the analogous situation of the Director General of Telecommunications Lightman J pointed out in R v Director General of Telecommunications ex parte Cellcom and others [1999] ECC 314 at para 26:-*

*"Where the Act has conferred the decision making and function on the Director, it is for him, and him alone, to consider the economic arguments, weigh the compelling considerations and arrive at a judgment. The applicants have no right of appeal; in these judicial review proceedings so long as he directs himself correctly in law, his decision may only be challenged on Wedensbury grounds. The court must be astute to avoid the danger of **substituting its views for the decision maker** and of contradicting*

*(as in this case) a conscientious decision maker acting in good faith and with knowledge of all the facts."*<sup>5</sup>

Now I will apply the same tests enunciated in the said judgement to the case in hand. (On a perusal of the RII Act itself) I found that the Section 4 of the RII Act stipulates the composition of the Board. Specifically, the Section 4(a) to 4(d) stipulates that the Board is to include the Deputy Secretary to the Treasury, the Deputy Governor of the Central Bank of Sri Lanka (as designated by the Monetary Board), the Director General of the Securities and Exchange Commission, along with four individuals selected by the Minister. Section 4(2) of the RII Act also provides that the minister should nominate who the chairman should be out of the members so appointed ex-officio as well. These appointees must possess academic credentials, professional experience in the field of insurance, commerce, or finance. Therefore, they are not ordinary people with simpleton minds, but rather individuals with the necessary acumen to make critical decisions in professional and prudent manner in the national interest, specifically in the interests of current and potential policyholders<sup>6</sup>. On a consideration of the entirety of the RII Act, what one can find is that the main thread that runs through the entire web of the Act is that the powers given to the Board of the Commission established in terms of Section 2 of the RII Act; therefore, the Board is equipped with the power. In addition to that, in this matter, they being the relevant officers of different departments to which either finance of the nation or insurance is entrusted (or related); therefore, they have first-hand knowledge of the insurance business or insurance industry of the country.

As such, decisions taken by them are justified in taking the decisions contained in document marked as 'P17'. However, I must also mention that such decisions are amenable to writs when

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<sup>5</sup> *London and Continental Stations and Property Limited v. The Rail Regulator Midland and Main Line Limited* [2003] EWHC 2607

<sup>6</sup> Section 3 of the Regulation of Insurance Industry Act, No. 43 of 2000

the need arises. Accordingly, the decisions to change the rules relating to the qualifications of the brokers are justified in view of the above test.

As enunciated in the case of *London and Continental Stations and Property Limited v The Rail Regulator Midland and Main Line Limited*, which characterized such individuals as custodians of the insurance sector. The actions taken by the Respondents were therefore, in alignment with national interest, given that the insurance industry plays a significant role in that broader interest.

I wish to add one more thing. Constitutional democracies similar to that of Sri Lanka, do not follow similar principles in Administrative Law that had evolved in English Law. Constitutional democracies like the United States of America and India follow that the issuance of writs in the nature of *Certiorari*, *Prohibition* and *Mandamus* is a constitutional right; a principle first articulated in foundational constitutional cases such as *Marbury v. Madison*<sup>7</sup> by Chief Justice John Marshall. It is to be noted that in American jurisprudence, particularly under the First Amendment which constitutionally enshrines the right to freedom of expression is accepted by Courts and respected by the people. Still, even within that framework, the Court has held that the powers exercised by the state agencies in controlling the right to freedom of expression, especially in relation to the reporting or broadcasting of offensive language, should not be curtailed or restrained by the intervention of the Court in the case of *Federal Communication Commission v Fox Television Station, Inc.*<sup>8</sup>, where Justice Scalia expressed the opinion in the following manner;

*“... But it need not demonstrate to a court's satisfaction that the reasons for the new policy are better than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better, which the conscious change of course adequately indicates. This means that the*

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<sup>7</sup> 5 U.S. 137

<sup>8</sup> (2009) 556 U.S. 502

*agency need not always provide a more detailed justification than what would suffice for a new policy created on a blank slate....”*

**Conclusion**

For the reasons adumbrated by me above, I cannot see any reason to interfere with the decision contained in ‘**P17**’; therefore, I have decided to refuse to issue notice; accordingly, this application should be *pro-forma* dismissed.

**Dr. D. F. H. Gunawardhana, J.**

**JUDGE OF THE COURT OF APPEAL**

**S. U. B. Karalliyadde, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**