

## **The Post of Vice-chancellor, University of Jaffna**

Professor V.Tharmaratnam, age 80; former Professor of Mathematics at the University of Colombo and later at the University of Jaffna, and is presently a member of the Council, University of Jaffna.

**Professor Tharmaratnam had 'Appeared in Person' in the Supreme Court Case SC Appeal 87/09 and in that case the Supreme Court gave him an opportunity to make oral and/or written submissions on 2<sup>nd</sup> September, 30<sup>th</sup> September and 18<sup>th</sup> November, 2010 against the FIVE BENCH judgment in SC Appeal 101-A/2009 of S.Rajendra Chettiar and others v Sitranjan Chettiar and others, which was decided on 10<sup>th</sup> June, 2010.**

He expressed his opinion at the Council meeting held on 25<sup>th</sup> February, 2017 that Professor Thiagalingam's application should be accepted and voted at the elections **held on 26<sup>th</sup> February, 2017 after stating that he is participating in the elections without prejudice to his rights to pursue his legal opinion.**

**Professor Tharmaratnam's written opinion based on his presentation to the Council on 25<sup>th</sup> February 2017 is given below.**

### **Legal Opinion:**

The Post of Vice-Chancellor, University of Jaffna was advertised on the 25<sup>th</sup> of November 2016, with 3 p.m., on 16<sup>th</sup> January 2017 as the closing time. Applications were invited by Hand or by Registered Post and there was a note that applications received after the closing time will not be considered.

Professor Sam Thiagalingam from Boston University, U.S.A. had posted his application on the 27<sup>th</sup> of December, 2016 and the application was received at the University of Jaffna on the 18<sup>th</sup> of January, 2017

As the University of Jaffna **had specified Registered Post as a medium of transmission for applications** the following questions arise...

- i. Is the postal rule which is applicable in most common-law countries including the USA and UK applicable in this case?
- ii. Normally the post from the USA would have arrived in Sri Lanka in about ten days, but in this case, it has taken more than 21days to reach the University of Jaffna. Who, if any, should take responsibility for the delay?

- iii. Can the behaviour of Professor Sam Thiagalingam in this case be said to be the behaviour of a reasonable man in the given circumstances?
- iv. The postal rule (or mailbox rule in the United States, also known as the "postal rule" or "deposited acceptance rule") is an exception to the general rule of contract law in common law countries that acceptance of an offer takes place when communicated.

Under the postal rule, acceptance takes effect when a letter is posted (that is, dropped in a post box or handed to a postal worker). In plain English, the "meeting of the minds" necessary to contract formation occurs at the exact moment word of acceptance is sent via post by the person accepting it, rather than when that acceptance is received by the person who offered the contract.

The rules of contracts by post (postal rules) include the following:

1. An offer made by post/letter is not effective until received by the offeree.
2. Acceptance is effective as soon as it is posted.
3. For revocation to be effective, it must be received by the offeree before they post their letter of acceptance.

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The rule was established by a series of 19th century cases, starting with *Adams v Lindsell* (1818) B & Ald 681, which was later confirmed and expanded in *Dunlop v Higgins* (1848) 1 HL Cas 381, *Household Fire Insurance Company v Grant* (1879) 4 Ex D 216 and *Henthorn v Fraser* [1892] 2 Ch 27.

The posting rule applies only to acceptance. Other contractual letters (such as one revoking the offer) do not take effect until the letter is delivered, as in *Stevenson, Jacques & Co v McLean* (1880) 5 QBD 346. The implication of this is that it is possible for a letter of acceptance to be posted after a letter of revocation of the offer has been posted but before it is delivered, and acceptance will be complete at the time that the letter of acceptance was posted - the offeror's revocation would be inoperative.

Thus, **if the postal rule is applicable in Sri Lanka to this case**, the date of receipt of Professor Sam Thiagalingam/s application is 27<sup>th</sup> December, 2016 and hence his application should have been accepted.

We will examine the extent to which the postal rule is applicable in Sri Lanka later in our submissions

1. In **Boulton v Vallipurampillai** (1921) 23 NLR 218 our Supreme Court held that:

“Where the post is indicated by a party as a medium of transmission to him, the risk of loss of the article so transmitted is on the person so indicating the post as a medium.”

Thus, in this case the responsibility for the delay in the post is on the University and consequently the application of Professor Sam Thiagalingam should have been accepted.

2. The applicant has acted reasonably in making his application i.e. he has posted the application 3 weeks prior to the deadline from Boston, The USA. The fact that there was a postal delay in the delivery was beyond his control.

The intention to respond to the advertisement was clearly established when he actually posted the application demonstrating his interest in the position advertised. It was beyond his reasonable contemplation that the application would arrive a day or so later than the deadline set out in the advertisement. The test on the reasonable man on the Clapham bus should be applied in assessing the merits of the actions of the applicant namely whether a reasonable man placed in his position would have acted the same way given the same circumstances.

**Again it is clear that Professor Thiagalingam has acted reasonably and on this ground too his application should have been accepted.**

By the Proclamation of 1796 by which Ceylon came under the British rule the Roman Dutch law as operative in Ceylon at that time was declared as the common law of Ceylon. Thus, though the postal rule was operative in England for almost two hundred years we have to check whether the rule is operative in Sri Lanka.

Though we have not been able to trace the development of the postal rule in Sri Lanka we find that Professor Christopher Weeramantry (former Judge of our Supreme Court) had quoted with approval in his book on Law of Contracts Volume 1 (as follows), the Five Bench decision of our Supreme Court in the **University of Ceylon v Fernando** (1957) 59NLR8, affirming the postal rule:

“In Ceylon the matter of the post as a medium of transmission has been considered by the Courts in connection with the transmission of a matter of application for conditional leave to appeal to the Privy Council. A Bench of five judges held that where the post is used as a medium of transmitting the prescribed notice the applicant for leave was required to do no more than send, in due time, a properly addressed prepaid letter containing the name and address of the opposite party. Basanayake CJ quoted with approval Abbot CJ in **Wallace v Haynes** (1824) 171 ER 975 to the effect that where a letter fully and particularly directed to a person at his usual place of residence, is proved to have been put into the post office, this is equivalent to proof of a delivery onto the hands of that person, because it is a safe and reasonable presumption that it reached its destination.”

In the Courts when we file affidavits we attach the registration receipt as proof having sent the copy to the Respondents even though the posting may have been done only a few minutes earlier. What is relevant is the time at which the documents were handed over to the Post Office

Rule 2 of the Appeals (Privy Council) Ordinance requires an applicant for leave to appeal to the Privy Council: -

- (a) To give within fourteen days from the date of judgment to be appealed from, the opposite party notice of his intention to apply for leave, and
- (b) Make an application to his Court by petition within thirty days from the date of such judgment.

The advertisement requires the application to be given by hand or sent by Registered post. When the application is sent by Registered post, the postal rule that is, where the post is used as a medium of transmitting the prescribed notice the applicant for leave was required to do no more than send, in due time, a properly addressed prepaid letter containing the name and address of the opposite party. (see decision of a Bench of Five Judges in **University of Ceylon v Fernando** (1957)59NLR 8

Further in this case the application has been sent well in time and it is the candidate's legitimate expectation that the application will reach the University well in time as US mail in its website claims a delivery time of 7 to 10 days from Boston to any country in the world and the applicant in this scenario has despatched the application 21 calendar days prior to the closing date. This is well within the bounds of reasonableness on the part of the applicant.

Thus, we find that even if **the postal rule is not applicable in Sri Lanka, the application of Professor Thiagalingam should have been accepted, on the criterion of reasonableness and the legitimacy of his expectation.** However, we know from Professor Weeramntry's book that **THE POSTAL RULE WAS OPERATIVE IN Sri Lanka TILL THE LATE 1960'S AND UNLESS someone produces an Act of Parliament or a Supreme Court Judgement over-ruling the Five Bench decision in University of Ceylon v Fernndo we may safely assume that the POSTAL RULE IS STILL VALID IN SRI LANKA**

**Thus, the application of Professor Thiagalingm should have been accepted.**