

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

Rican Lanka (Private) Limited
No. 07, Suleiman Terrace,
Colombo 5.

PETITIONER

C.A 411/2007 (Writ)

Vs.

1. The Commissioner General of Labour,
The Secretariat
Narahenpita
Colombo 5.

23. Dewasiri Narayanage Rammalatha
No. 108, Kahadilihena,
Udathuththiripitiya.
(Deceased)

And 67 others

RESPONDENTS

AND NOW

Rican Lanka (Private) Limited
No. 07, Suleiman Terrace,
Colombo 5.

PETITIONER-PETITIONER

Vs.

1. The Commissioner General of
Labour, The Secretariat
Narahenpita,

And 67 others

RESPONDENTS-RESPONDNETS

1. Dewasiri Narayanage Thilini Madhushani
No. 126, Gorakadeniya,
Udathuththiripitiya.
2. Dewasiri Narayanage Tharanga Sudarshani
No. 126, Gorakadeniya,
Udathuththiripitiya.

RESPONDENTS

BEFORE: Anil Gooneratne J.

COUNSEL; Chandrasiri Wanigapura for the petitioner
Milinda Gunatilleke S.S.C. for 1st & 2nd Respondents

ARGUED ON: 19.10.2012

DECIDED ON: 28.11.2012

GOONERATNE J.

This is an application for a mandate in the nature of Writs of Certiorari and Prohibition to quash the order marked P17 dated 24.1.2007 by the Commissioner General of Labour (1st Respondent). The Petitioner is a company (P1) registered under the Board of Investment Law of this country, (Act No. 4 of 1978) mainly engaged in manufacturing of metal accessories

for the Garment Industries (BOI Certificate marked P2). According to the Petition filed in this court and the submissions of learned counsel for Petitioner, the Petitioner Company had invested a large sum of money (as in paragraph 6 of petition) for the purposes of the business and also had to obtain a loan in a sum of US £ 4.2 million, which had to be obtained from the people's Bank. The loan facility was granted on the mortgage of land and building with machinery of the company. However Petitioner could not repay the loan and the People's Bank proceeded to recover same by the Bank passing a resolution in terms of the law and the properties were sold by public auction.

In view of losing movable and immovable properties as a result of non payment of loans, the Petitioner could not repay the People's Bank loans, and as such the Petitioner found it difficult to proceed with the business activities and was compelled to or had no option but to close down the factory and business (as described in paragraphs 9, 11,12 – 15) of the Petitioner Company. Petitioner's submission was that all this happened due to reasons beyond his control. However the 3rd to 69th Respondents who were employees of the Petitioner Company preferred an application to the 1st Respondent alleging termination of employment (vide P8(1) to P8 LXvii)

The above Respondent by document P9, had also given the 1st Respondent details of service as regards a salary dates of employment and termination. Subsequently the 2nd Respondent by document P10 requested the Petitioner to attend an inquiry. P10 gives certain details of what is expected to be done. This is a full disclosure of the application made to the 1st Respondent, and that the inquiry would proceed under the provisions of the termination of Employment of Workman Act of 1971, as amended. P10 refer to the mode of conduct of inquiry.

At the inquiry and as submitted to this court by learned counsel for the Petitioner, took up the position that in view of the fact that Petitioner company is a BOI registered company any dispute arising between the employer and it's employees should be referred to arbitration in terms of clause 6 'C' of the BOI agreement (P12). Despite the objection the 2nd Respondent proceeded to hold the inquiry. The learned counsel for Petitioner raised the above position as a preliminary issue in this court. He also referred to paragraph 27 of the petition which according to learned counsel would suggest the basis of this application or the grounds on which he relies to invite court to issue the writs prayed for in the prayer to the petition.

I cannot see any merit in the main preliminary argument advanced on behalf of the Petitioner, i.e to resort to arbitration procedure as

Petitioner is a BOI Company. Act No. 45 of 1971 as amended took away the employers control and discretion to terminate the employment of an employee on non disciplinary grounds. This is the main basis of the statute. Section 2 (1) of the Act requires the employer to obtain (a) prior written consent of employee or (b) prior written approval of the commissioner of Labour if the employer wishes to terminate employment.

However Section 2(1) of the Act has certain exceptions. Petitioner has not been successful in proving the contemplated exception. There is no material placed before court to demonstrate that the workman is not in a schedule employment etc.

At the inquiry the Petitioner was heard and duly represented by an Attorney-at-law. The document P17 also gives sufficient reasons and enabled the 1st Respondent to take the steps as required by Section 6 of the Statute, since the Petitioner did not act in terms of Section 2 of the statute, which is a mandatory requirement. Nor has the Petitioner proved the financial difficulties and the alleged consequence which the company had to meet, on the People's Bank taking steps according to law to recover the loans from the Petitioner. As such there is justification for the 1st Respondent to deliver the order at P17. In other words there is no error on the face of the record.

This court also observes that the Petitioner is guilty of laches (Senior State Counsel did not wish to press this point). Order P17 is dated January 2007. The Petitioner filed this application on or about May 2007 (delay of 5 months). These are discretionary remedies of court. This court would have to consider delay though the 1st & 2nd Respondents did not pursue their case on those lines. It is for the court to consider all grounds which would entitle or disentitle a party for relief.

In all the above circumstances I see no merit in the Petitioner's application. As such this application is dismissed without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL