

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

In the matter of an application for the issue of a writ of Mandamus and Certiorari under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**C.A. Writ Appln.  
No. 737/07**

**Ceylon Grain Elevators Limited**  
No. 15, Rock House Lane,  
Colombo 15.

Petitioner.

Vs..

01. Inter Companies Employee's Union,  
No. 158/18, E.D. Dabare Mawatha,  
Colombo 15.

(For and on behalf of 159 Employees)

And 07 others.

Respondents.

Before : **S. Sriskandarajah, J (P/CA) &  
H.N.J. Perera, J.**

Counsel : Nihal Fernando, P.C. with Rohan Dunuwila  
for the Petitioner.

Dr. Almeida Gunaratne for the 1<sup>st</sup> Respondent.  
Anton Fernando for the 8<sup>th</sup> Respondent.

Vicum de Abrew, S.s.C, for A.G.

Argued on : 8.12.2011

Decided on : 30.5.2012

**H.N.J. Perera, J.**

The Petitioner has filed this application seeking inter alia for an issue of an order in the nature of a Writ of Certiorari quashing the notifications marked X4, X5 and the decision dated 27.4..2007 marked X11 in the petitions. The petitioner has further prayed that the reference to the Industrial Court marked X5 be referred back to the 5<sup>th</sup> Respondent for amendment. .

In this application made to this Court the Petitioner states that on or about 28.04.2006. The Petitioner entered into a

contract with the 8<sup>th</sup> Respondent Global Engineering and supplies for the supply of labour to its Company and as per agreement marked X2 8<sup>th</sup> Respondent was the employer of the workmen listed in the schedule to the reference. It is the position of the petitioner in that the 8<sup>th</sup> Respondent Global Engineering and Supplies employed the said workmen, paid the salaries of employees and contributed to the Provident Fund and Employees Trust fund and was at all times material in control of the said workmen and in the circumstances aforesaid the 8<sup>th</sup> Respondent, was the employer of the said workmen and that this fact was admitted before the Industrial Court in the first instance and on the application of the 1<sup>st</sup> Respondent a dispute has arisen between 1<sup>st</sup> Respondent and the Petitioner and the 8<sup>th</sup> Respondent the 5<sup>th</sup> Respondent referred the purported dispute to the Industrial Court for settlement and 6<sup>th</sup> Respondent by notice dated 26/5/2006 informed the Petitioner of the purported dispute referred to the Industrial Court marked 'X5'.

The 1<sup>st</sup> Respondent in his objections states that the 8<sup>th</sup> Respondent is not a natural or legal person and that the employees had not worked for the 8<sup>th</sup> Respondent, at any time. It is further

submitted on behalf of the 1<sup>st</sup> Respondent that the Petitioner had employed the employees named in the document marked in "X5" but tries to avoid his responsibility regarding the referred employees, stating that the employees belong to the Global engineering Limited and supplies the 8<sup>th</sup> Respondent and further goes on to state that an employer cannot avoid the responsibility for the workers on his business in the name of outsourcing and such denial of responsibility is unjustified. The 1<sup>st</sup> Respondent further states that both that Respondent and the employees are totally unaware about the document marked "X2" and that the said document was not produced before the Industrial court and further that the employees had been interviewed by the Petitioner, checking the suitability of working and the employees had been employed in the premises of the petitioner and that they were supervised by the Petitioner and the equipment needed for works supplied by the petitioner. Therefore the 1<sup>st</sup> Respondent submits that the order of the Industrial Court regarding the preliminary objections is very just and reasonable.

This application is connected to the application No 746/2007 made by the petitioner to this court and as the facts and circumstances are similar, for the reasons stated in the judgment in case no

746/2007 I dismiss this application of the petitioner with Rs 15000/= as cost payable by the petitioner to the 1<sup>st</sup> Respondent

JUDGE OF ~~THE~~ COURT OF APPEAL

**S. Sriskandarajah, J. (P/C.A)**

I agree.

PRESIDENT OF THE COURT OF APPEAL