

IN THE COURT OF APEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA

In the matter of an application for a mandate
in the nature of writs of certiorari,
Prohibition and Mandamus in terms of
Article 140 of the constitution of the
Democratic Socialist Republic of Sri Lanka.

Case No.685/2010

Gintota Plywood Manufacturers (Pvt)
Limited, No.282 C,
Galle Road, Colombo 03.

Petitioner

Vs.

1. Upali Wijeweera,
Commissioner of Labour,
Department of Labour,
Labour Secretariat,
Narahenpita, Colombo 05.
2. H.R.L. Sugathadasa,
Assistant Commissioner of Labour,
District Labour Office, Galle.
3. A.N.W. Perera
Deputy Commissioner of Labour
Legal Division, Labour Secretariat,
Narahenpita, Colombo 05.

Respondents

BEFORE : S. SRISKANDARAJAH, J (P/CA)
DEEPALI WIJESUNDERA, J

COUNSEL : Mohan Peris P.C with Chandana Perera, Shamil
Amarawickrema and S. Senanayake,

for the Petitioner.

Nayomi Kahavita SC

for the Respondents.

Argued on : 13.07.2012

Written Submission on : 05.09.2012 and 18.10.2012

Decided on : 20.02.2013

S.Sriskandarajah.J

The Petitioner is a limited liability company. It is the successor to the former "Ceylon Plywood Corporation" which was incorporated as a government sponsored corporation in the year 1958. The nature and type of machines used and the job description of the employees of the petitioner company is the same as that of the Ceylon Plywood Corporation. The Department of Labour had never categorized the said employees of the Petitioner Company or its predecessor as falling into the engineering trade when the Wages Board was in existence for the engineering trade. For the first time on 10/08/2008, it has decided that the employees of the Petitioner Company must be classified into the category of the engineering trade and, accordingly, the wages of the engineering trade must be applicable to the employees of the Petitioner Company. In pursuance of the said decision, the 3rd Respondent filed an application in the Magistrate's Court of Galle under and in terms of Section 3(d)(2) of the Wages Board

Ordinance No.27 of 1941, as amended, declaring that a sum of Rs.1,382,704/75 is due as additional wages to 157 employees of the Petitioner for the period 1/05/2007 up to 30/11/2007.

The Petitioner contended, the engineering industry was classified into 4 branches, viz., civil engineering, mechanical engineering, electrical engineering, and electronic engineering. The Wages Board is applicable to these 4 branches and to other activities incidental and/or connected to the said 4 branches. The Petitioner further contended, the Petitioner Company is only manufacturing plywood sheets and plywood products and it is in no way connected to the engineering industry, which is more complicated and intricate, and requires academic knowledge. The manufacture of plywood is a simpler process and does not require engineering skills. Accordingly, the decision of the 2nd Respondent to apply the Wages Board of the engineering trade to the activities of the Petitioner Company is erroneous. In these circumstances the Petitioner is seeking a writ of certiorari to quash the decision of the 2nd Respondent appearing in his notice dated 30/09/2008.

The Wages Board Ordinance, under engineering trade, has given the description of trade, and the descriptions were published in the Gazette of the Republic of Sri Lanka under No.77 of September 14, 1973, and it came into force on September 15, 1973, the said trade had included nearly 41 categories, including Machinists (Wood working). It is the position of the Petitioner, the itemized description "Machinist" (wood working) relates to machine operators who solely work on wood, such as carving and sewing, but the business of manufacturing plywood sheets is entirely different. It is the contention of the Petitioner that plywood consists of thin wood or veneer firmly glued together with an adhesive.

It is also the contention of the Petitioner, a separate Wages Board should have been established for the plywood manufacturing trade. In terms of section 8(1) of the

Wages Board Ordinance, a Wages Board can be established for any trade and, under section 64 of the Wages Board Ordinance, a trade includes any industry or business and, therefore, a separate Wages Board for the plywood manufacturing industry should have been established without bringing the workmen under the engineering trade. The plywood manufacturing industry, together with all of its branches, function or process, and constitutes a different trade and should not be confused by including the workmen of the Petitioner Company as Machinists (wood working) under the engineering trade.

The category of trade depends on the nature of the work, the particular workman is engaged in any industry that is relevant for consideration when making a determination with regard to the applicable Wages Board that a workman should be classified for the prescription of wages.

In the instant case the employees are in the manufacturing of plywood sheets and fundamentally plywood sheets are made by gluing together thick wooden sheets and they are being used for creating various wooden items. Plywood is made out of timber logs that were treated and by softening and soaking in water and, therefore, they were softened by means of boiler machines and the peeling of wood by means of a peeler machine, and they were rolled by means of bobbing machines and they were clipped by means of a clipping machine, and the clipped wood dried by means of drying machines, and the pasting together of plywood sheets by means of gum spreading machine and pressing of the plywood sheets together by means of pressing machines. By these processes it is evident that the employees of the plywood manufacturing industry fall into the category of machinists for wood work under the engineering trade and, therefore, that the application of the wages prescribed in the engineering trade can be made applicable for the workmen working in the plywood industry and, therefore, this Court has no reason to interfere with the decision made by the 1st and 2nd Respondents to apply the Wages Board of the engineering trade to the manufacturing

activities of the Petitioner Company and, for this reason, I dismiss this Application without cost.

President of the Court of Appeal

Deepali Wijesundera J

I agree,

Judge of the Court of Appeal