

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

**In the matter of an application for mandates  
in the nature of Writs of Certiorari and  
Prohibition under and in terms of Article  
140 of the constitution**

**Kumagai Gumi Company Limited,  
Sri Lanka Branch Office,  
01, Gunasekara Lane,  
Colombo 08.**

**Petitioner**

**Court of Appeal Writ No;  
148/2013**

**Vs,**

**1. Commissioner General of Labour,  
Department of Labour,  
Labour Secretariat,  
Kirula Road,  
Colombo 05.**

**2. Assistant Commissioner of Labour,  
District Labour Office,  
Galle.**

**3. W.J.K.A. Indrajeewa,  
133, Anagarika Darmapala Mw,  
Galle.**

**4. H.L. Udulawathi,  
58/2, Thalagahawatte,  
Anagarika Darmapala Mw,  
Galle.**

**5. K.W.T. Malani,  
107, Morris Road, Millidduwa,  
Galle.**

**6. Anoma Mallawarachchi,  
21/82, Anagarika Darmapala Mw,  
Galle.**

**7. T.A. Raninona,  
123/1, Morris Road,  
Galle.**

**8. P.L. Nilakshi Priyadarshini,  
353/1, Godawatte, Morris Road,  
Galle.**

**9. K.A. Somapala,  
Sagala, Yakgaha,  
Walahanduwa.**

**Respondents**

**Before : Vijith K. Malalgoda PC J (P/CA) &  
H.C.J. Madawala J**

**Counsel : Suren Fernando for Petitioner  
Suranga Wimalasena SSC for the respondents**

**Argued On: 13.02.2015**

**Order On: 18.05.2015**

**Vijith K. Malalgoda PC J**

Petitioner to this application Kumagai Gumi Company Limited has filed this application seeking inter alia.

- a) For a mandate in the nature of a writ of certiorari quashing the purported determination / purported notice dated **21<sup>st</sup> May 2012 (P- 16)** of the 1<sup>st</sup> and /or 2<sup>nd</sup> Respondent, that the Petitioner is liable to pay EPF and Surcharge in respect of the 3<sup>rd</sup> – 9<sup>th</sup> Respondents and quashing the purported final notice dated **23<sup>rd</sup> April 2013 (P-20)**
- b) For a mandate in the nature of a writ of the Prohibition, prohibiting the 1<sup>st</sup> and /or 2<sup>nd</sup> Respondent and /or their agents or servants from taking any further legal action against the Petitioner in respect of the recovery of EPF allegedly due to the 3<sup>rd</sup> -9<sup>th</sup> Respondents or Surcharge thereon, and /or from

taking any further action pursuant to the purported notice dated **21<sup>st</sup> May 2012 (P-16)** and /or the purported final notice dated **23<sup>rd</sup> April 2013 (P-20)**

The issue arose in this application between the petitioner and the 1<sup>st</sup> Respondent was with regard to a finding given by the 1<sup>st</sup> Respondent under Employees Provident Fund Act, directing the petitioner to pay EPF with regard to 7 Employees of the Petitioner Company. The purported orders of the 1<sup>st</sup> Respondent were produced marked **P-16** and **P-20**.

The position taken up by the Petitioner right through out this case was that the seven employees namely 3<sup>rd</sup> to 9<sup>th</sup> Respondents to this application were domestic servants (*house boys/house maids*) at the Engineers Residences and the "Domestic Servants" are not coming under "covered employment" which attracts liability to EPF under sec.10 of the EPF Act.

Sec. 10(3) of the Employees Provident Fund Provides,

**The liability of an employee in a covered employment and his employer to pay contributions under this section shall commence on the day immediately after the date fixed in relation to such employment by the Minister by Order published in the Gazette. Different dates may be fixed under this subsection for different classes of employees in the same covered employment.**

By **Gazette No 14,936 dated 11<sup>th</sup> December 1970** minister had made order fix in relation to the covered Employment under **sec.10(3)** of the Employees Provident Fund Act and **paragraph 38** of the schedule to the Gazette. Notification reads as follows.

**38. Employment in the service of any undertakings not being an undertaking carried on by a person as an undertaking in which only members of his family are employed , in which less than five persons are employed in any covered employment other than any employment**

c) In domestic service.

According to the petitioner, he was summoned for an Inquiry by the 2<sup>nd</sup> Respondent, by letter dated **22/02/2012** with regard to nonpayment of EPF to six employees of Petitioner Company. At the said inquiry Petitioner had submitted his position to the Inquiry Officer. Petitioner was further summoned for an Inquiry by two letters dated **27<sup>th</sup> March 2012** with regard to 7 employees including the 6 employees referred to in the earlier notice dated **22/02/2012**.

Petitioner submitted that he consistently maintained that in terms of **Gazette No.14, 936 dated 11/12/ 1970** EPF was not payable to the 3<sup>rd</sup> -9<sup>th</sup> Respondents, who were admittedly in domestic service providing assistance as domestic servants at the residences of the Engineers employed by the Petitioner.

I will now deal with the Inquiry conducted by the officers attached to the 2<sup>nd</sup> Respondent's office.

At the said Inquiry the statements of the 3<sup>rd</sup> to 9<sup>th</sup> Respondents and the statement of the Petitioners Representative were recorded and those statements are attached to the statement of objection of the 1<sup>st</sup> Respondent.

3<sup>rd</sup> to 9<sup>th</sup> Respondents in their statements had taken up the position that they were employed by the Petitioner as labourers and thereafter assigned them to work in the official residences of the Engineers at the Engineer's housing scheme, Dharmapala Mawatha, Galle. However in the statement of the Petitioners Representative Poruwalage Rohane Karunaratne accountant attached to the Petitioner Company, has taken up the position that the Petitioner as the chief contractor of the Galle High Way project was entitled to be re-imbursed under the agreement between the contractor and RDA, the payments made to the domestic aids of the Engineers attached to the High Way project. He had further said that 3<sup>rd</sup>- 9<sup>th</sup> Respondents were employed by the Petitioner as domestic aids and in fact they were issued with identity card conforming their designation.

In addition to making the above statement, Petitioner has submitted a written opinion they obtained from an Attorney at Law to the inquiry officer.

After the said Inquiry the petitioner had received **P- 16** directing him to deposit EPF money. After receiving **P-16** from the 2<sup>nd</sup> Respondent Petitioner had re submitted the legal opinion they obtained from an Attorney at Law along with a covering letter but, by letter dated **9<sup>th</sup> November 2012** the 2<sup>nd</sup> Respondent had informed the Petitioner that he has been advised by the Legal Branch that the Petitioner is liable for the payment of EPF dues.

2<sup>nd</sup> Respondent had thereafter served the Petitioner with a Final Notice to pay **Rs. 932 264. 84** as EPF arrears and penalty with immediate effect.

At the argument before this Court the Petitioner took up the Positions that the 1<sup>st</sup> and 2<sup>nd</sup> respondents have failed to provide reasons in the notice served on him marked **P-16**. When the Petitioner appealed against the said order, Petitioner has again submitted a copy of the legal opinion he obtained from an Attorney at Law but by **P-20** 2<sup>nd</sup> Respondent once again ordered the Petitions to deposit the said money. In any of the said orders, no reasons were given for the rejection of the position taken up by the Petitioner, and the legal opinion submitted in support of Petitioners position.

The second Respondent on two occasions i.e. on **21<sup>st</sup> May 2012** and **23<sup>rd</sup> April 2013** decided that the Petitioner is liable to pay EPF to the 3<sup>rd</sup> to 9<sup>th</sup> Respondents. As submitted by the Petitioner non of these order contain any reason as to how the 1<sup>st</sup> and / or 2<sup>nd</sup> Respondent reached the said decision rejecting the position taken up by the Petitioner.

1<sup>st</sup> respondent had produced marked **R-10** the reasons and recommendation submitted to him by the inquiring officer who conducted the inquiry. When go through **R-10**, we find that the above

recommendation was solely based on the fact, that the petitioner had the control over the 3<sup>rd</sup> -9<sup>th</sup> Respondents and no consideration had been given to the position taken up by the petitioner and the legal opinion submitted on behalf of the Petitioner.

The Principles of natural justice do not as yet include any general rule that reasons should be given for decisions.

However, the importance of giving reasons irrespective of the fact that there is no express or implied obligation to do so had been clearly shown in many Judicial Decisions.

As Wade says, **“Nevertheless there is strong case to be made for the giving of reasons as an essential element of administrative Justice. The need for it has been sharply exposed by the expanding law of judicial review, now that so many decisions are liable to be quashed or appealed against on grounds of improper purpose, irrelevant considerations, and errors of law of various kinds. Unless the citizen can discover the reasoning behind the decision, he may be unable to tell whether it is reviewable or not, and so he may be deprived of the protection of the law”**. (H.W.R.Wade and C.F.Forsyth Administrative Law 10<sup>th</sup> Edition page 436)

The necessity to give reasons were considered by our courts in number of instances. Hapuarachchi and others Vs Commission of Elections and others 2009 I Sri LR 1, Karunadasa Vs Unique Gem Stones 1997 I Sri LR 256, Surangani Marapona Vs The Bank of Ceylon 1997 3 Sri LR 156 are few such decisions .

In the case of Karunadasa Vs Unique Gem Stones Mark Fernando J has observed the need to give reasons as follow.

**“To say that Natural Justice entitles a party to a hearing does not mean merely that his evidence and submission must be heard and recorded, it necessarily means that he is entitled to a reasoned consideration of the case which he presents. And whether or not the parties are also entitled to be told the reasons for the decision, if they are withheld, once judicial review commenced...”**

In the case of Hapuarachchi Vs Commissioner of Elections and other Shirani Bandaranayke Chief Justice observed that **“It is not disputed that in the instant application, although the 1<sup>st</sup> respondent had informed this court his reasons for the refusal of petitioners’ application for recognition of the party in question, that in his communique to the petitioners on 21/01/2008 (X7) referred to above, no reasons what so ever were given, which in my view a denial of Justice, an error of law and more importantly in connection to this matter, the said decision to withhold the reasons is arbitrary, unfair and unreasonable within the framework of sec. 12(1) of the constitution”**

In the present case as discussed by me earlier, 1<sup>st</sup> Respondent and / or his officers had failed to give reason and consider the submission of the Petitioner at the inquiry they conducted to decide

whether the Petitioner is liable to pay EPF on 3<sup>rd</sup> to 9<sup>th</sup> Respondents or not. From the material placed before this court by the Petitioners, it appears to this court that the petitioner was acting in good faith and was of the opinion that the 3<sup>rd</sup> to 9<sup>th</sup> Respondents who worked as domestic helpers to Engineers employed at the Southern Highway Project were not considered as covered employment and therefore are entitled to know under what circumstance 1<sup>st</sup> and 2<sup>nd</sup> Respondents decided that the 3<sup>rd</sup> to 9<sup>th</sup> Respondents are coming under “covered employment”.

In such circumstance this court decides to issue a mandate in the nature of writ of certiorari quashing the decision of the 2<sup>nd</sup> Respondent reflected in *P-16* and *P-20* and order the 1<sup>st</sup> and /or 2<sup>nd</sup> Respondent to hold a fresh inquiry giving due consideration to the matters raised before this court by the petitioner.

**PRESIDENT OF THE COURT OF APPEAL**

**H.C.J. MADAWALA,**

I agree,

**JUDGE OF THE COURT OF APPEAL**