

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

**In the matter of an Application for a mandate
in the nature of *Writ of Certiorari and
Prohibition* under article 140 of the Constitution
of the Democratic Socialist Republic of Sri
Lanka**

Industrial Washing (private) Limited,
No.32,
Walukarama Road,
Colombo 03.

PETITIONER

CA/WRIT/268/2013

Vs,

1. V.P.B.K Weerasinghe,
Commissioner General of Labour,
7th Floor,
Narahenpita,
Colombo 05.
2. E.A Swarna,
No.79/E,
Madapatha Road,
Kolamunna,
Piliyandala.
3. G. Sandun Amarasekera,
Katugahahena,
Navunthuduwa,
Mathugama.
4. G. Weerasena de Soysa,
142/A, Sharmadana Mw,
Kaluwamodara,
Aluthgama.
5. D. Sarath Kulatunga,

Kitulgalwila,
Lamdagoda,
Mathugama.

6. P.W. Rathnayaka,
36/08, Galgoda Kale,
Malamulla West,
Panadura.
7. D.S. Tissa Devapriya,
No. 34, Lakmini Sevana,
Suwandachchi Mulla,
Payagala.
8. J.V.Priyantha Kumara,
256/09, Butwatta,
Arukgodu,
Aludomulla,
Panadura.
9. T. Sanjeeva Peiris,
No. 26/4, Moses Lane,
Middle Rd,
Kolarawella,
Moratuwa.
10. W.P. Indika Silva,
198/35,
Atambagahawatta,
Angangoda,
Payagala.
11. H.K .Kingsley Fernando,
Suwardachchimulla,
Payagala.
12. H.G. Asoka Hemantha Kumara,
22/1A, Janapriya Mw,
Koralawella,
Moratuwa.
13. L.M. Dammika Suranganie de Mel,
149/2, Methas Place,
Koralawella,

Moratuwa.

14. Y. Sunanda Mendis,
161/7, Ganga Mw,
Koralawella,
Moratuwa.
15. T.V.K Sundarshani,
206/18, Sadhdharmodhaya Rd,
Koralawella,
Moratuwa.
16. M.M. Mallika,
42, Shramadana Mw,
Kaluwamodara,
Aluthgama.
17. B. Arnel Fernando,
152B, Matiyalamulla,
Payagala.
18. H. Nilantha Sujeewa Silva,
77.18, Middle Rd,
Thelapathpitiya North,
Waduwa.
19. M. Sudath Vasana Mendis,
64.14, P.M. Fernando Mw,
6th Lane,
New Galle Road,
moratuwella,
Moratuwa.
20. M. Deepthi Kumuduni Fernando,
44A, Lucky Seven,
Pura Para,
Egoda Uyana,
Moratuwa.
21. K.G. Mahinda Gamini Abeywickrama,
43/1, Niyumagama,
Moratuwa.
22. H. Jeewanthi Priyadarshini Fernando,

- 24/19, Mahawatta Road,
Egodauyana,
Moratuwa.
23. M. Wijemuni Susantha Mendis,
25/9, Vijitha Road,
Nedimala,
Dehiwela.
24. S.P Chitrani Renuka Fernando,
16/A, Constantine Lane,
Koralawella,
Moratuwa.
25. P.K. Asoka Kumari,
326A, Wannimulla,
Kotaha,
Walallawita.
26. W.A. Priyangika Mali Perera,
133/11, Bodhi Mw,
Koralawella,
Moratuwa.
27. M. Janaki Shiromala Peiris,
243,
Koralawella,
Moratuwa.
28. D.L Tharanga Prasanna Gunarathna,
Begamuwa,
Yatawara Handiya,
Kaluthara South.
29. Y.A. Mendis,
No.9, katukurunda,
Moratuwa.
30. A. Nelson Perera,
43, Aruggoda,
Alubomulla.
31. M.B. Lasantha Kumara Fernando,
No.7, Janapriya Mw,

Koralawella,
Moratuwa.

32. K.A.D. Kalana Nuwan Wijesingha
Gunarathna,
230A, Malegoda,
Payagala.

33. H.G. Chandrarathna,
71, Miriswatta,
Mahawila,
Panadura.

34. D.P.H. Vithllin Peiris,
3/1, Janapriya Mw,
Koralawella,
Moratuwa.

35. P.K.Sudath Kumara,
Chartered Accountant
46, Lumbini Mw,
Dalugama,
Kelaniya.

The Liquidator of Alt Freshtex Garment
Finishing Colombo (Private) Limited
(under liquidation) of No. 12, Fife Road,
Colombo 05

RESPONDENTS

Before: Vijith K. Malalgoda PC J (P/CA) &

H.C.J. Madawala J

Counsel: A .Rodrigo with B. Illangathilaka AAL for the Petitioner

S.N. Vijithsinghe for the 2nd to 34th Respondents

Nayomi Kahatawita SC for the state

Written submissions on: 23.09.2015

Order on: 20.11.2015

Order

Vijith K. Malalgoda PC J

Petitioner to the present application Industrial Washing Private Limited has come before this court seeking inter alia,

- c. Issue a Mandate in the nature of Writ of *Certiorari* quashing the direction made by the 1st Respondent dated 7th August 2013 marked P-9,
- d. Issue a Mandate in the nature of Writ of *Prohibition* restraining the 1st Respondent from taking steps to recover the Rs. 11 827 210 .75 as compensation for the termination from the Petitioner.

Petitioner is a limited liability company engaged in the business of Garment washing and finishing. According to the Petitioner, on or about 6th February 2006 the entire business entity of the Petitioner was leased out to Alt Freshtex Garment Finishing Colombo (Private) Limited including all land, premises, building, plant and machinery with all running commercial orders for a period of 36 months.

At the expiration of the said lease agreement, the said agreement was extended for another period of 36 months at a reduced rental. The position taken up by the Petitioner before this court was that the 2nd to 34th Respondents who were employed by petitioner as at 6th February were taken over by the said lessee Alt Freshtex Garment Finishing Colombo (Private) Limited. Petitioner has further submitted that since February 2006 all the salaries of the 2nd to 34th Respondents were paid by the lessee and the 2nd to 34th Respondents were under the control and directions of the said lessee.

In support of the above contention the Petitioner has produced marked P-4 a letter dated 23rd July 2012 addressed to General Manager, Alt Freshtex Garment Finishing Colombo (Private) Limited,

purportedly signed by 3rd to 21st and 30th to 33rd Respondents, requesting a salary increment and an employee insurance.

The Petitioner went before the Commercial High Court of Colombo requesting the said Court to make an order to wind up the said Alt Freshtex Garment Finishing Colombo (Private) Limited **under section 270 (e) and (f) of the Companies Act No. 7 of 2007** since the said company was unable to pay its debts. At the time the said action was filed the said lessee was in arrears of Rent in a sum of US \$ 219, 156 .27.

Whilst the said winding up application was pending before the Commercial High Court the premises at No. 33, Katukurunda Road, Moratuwa at which the Alt Freshtex Garment Finishing Colombo (Private) Limited was operating, was sealed by an order of the Magistrate Court of Moratuwa due to violating environmental regulations.

Pursuant to the winding up application filed by the Petitioner, the High Court made order to wind up the said Alt Freshtex Garment Finishing Colombo (Private) Limited and appointed the 35th Respondent as the liquidator.

Petitioner therefore submitted that due to the factory premises being sealed off due to environmental violation and pending liquidation, the 2nd to 34th Respondents lost their employment and at the time they lost their employment they were employees of Alt Freshtex Garment Finishing Colombo (Private) Limited and not of the Petitioner-Company which was a dormant company without carrying out any business activity.

The 1st Respondent on receipt of a complaint from the 2nd to 34th Respondents summoned the Petitioner for an inquiry on 23.01.2013 at 2.00 pm by P-8.

Petitioner who went before the 1st Respondent had taken up the position that the 2nd to 34th Respondents were in fact employees of Alt Freshtex Garment Finishing Colombo (Private) Limited which is under

liquidation and requested the 1st Respondent to summon the said Alt Freshtex Garment Finishing Colombo (Private) Limited and its liquidator the 35th Respondent for the said Inquiry.

However the 1st Respondent by order dated 7th August 2013 directed the Petitioner to deposit sum of Rs. 11 827 210 .73 as compensation acting under the provisions of *Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971* as amended. (P-9)

Being aggrieved by the said order the Petitioner has come before this court seeking this court to quash the said decisions of the 1st Respondent dated 7th August 2013.

During the argument before this court Petitioner raised two main arguments namely

1. At the time the 2nd to 34th Respondents lost their job their employer was Alt Freshtex Garment Finishing Colombo (Private) Limited and not the Petitioner.
2. For the 1st Respondent to Act under section 6A of the Termination of Employment of Workmen Act No. 45 of 1971 there has to be a Termination consequence of the closure by the employer but in the present case the closure/ sealing of the factory was consequent to court orders and therefore it does not amount to a closure by the employer within the meaning of the Termination of Employment of Workmen Act No. 45 of 1971.

Even though the Petitioner's have denied the employment of the 2nd to 34th Respondents before this court, it was revealed during the argument that there was no change in the legal status of the employees. The Respondents drew the attention of this court to number of document to show that, even after the so called lease agreement between the Petitioner and Alt Freshtex Garment Finishing Colombo (Private) Limited, 2nd to 34th Respondents continued to be the employees of the Petitioner. The 1st Respondent had produced marked 1R1 (a) and (b) the salary slips issued to two employees namely E.A. Swarna (2nd Respondent) and Jeewanthi Priyadarshani (22nd Respondent) for the month of September 2012. Court further observe that several such document were produced at the Inquiry before the 1st Respondent and

they are part and parcel to Inquiry proceedings which was produced along with the statement of objection of the 1st Respondent. 2nd to 34th Respondents have also produced several such documents marked R-1 to R-8 covering the period from 10.09.2008 to 19.07.2012.

During the argument before this court Petitioner relied on two documents in order to challenge the above position. One such document is the document produced by the Petitioner marked P-4, a letter dated 23rd July 2012 addressed to the General Manager Alt Freshtex Garment Finishing Colombo (Private) Limited purportedly signed by 3rd to 21st and 30th to 33rd Respondents.

However the salary slips produced marked 1R1 (a) and (b) clearly demonstrates that even in September 2012 the Petitioner has paid the salaries of the Respondents.

The Petitioner's have further relied on an affidavit tendered by one G.S. Amarasekara during the winding up proceedings before Commercial High Court marked P6b who is also an employee (3rd Respondent) where he has stated in paragraph 1(a) to the affidavit,

“I am the affirment aforementioned and I am in the employment of the business entity managed by Alt Freshtex Garment Finishing Colombo (Private) Limited.”

He has further stated in paragraph 7 of the said affidavit,

“Furthermore I state that although initially the employees were under the employment of the Petitioner (Petitioner to the wind up proceedings in Commercial High Court) they were thereafter and have currently been seconded to the company sought to be would up”

From the above averments in the said affidavit it is clear,

- a) That the said Alt Freshtex Garment Finishing Colombo (Private) Limited was only Managing the Company
- b) The employees were seconded to the said company

Even though the Petitioner's relied on the said affidavit they failed to establish that the 2nd to 34th Respondents were in fact employees of the said lessee but it is evident from the said document that they were only seconded to at the time the company wound up. The court further observes that no fresh letters of appoints were issued to the 2nd to 34th Respondents after the said secondment.

However the documents produced by the Respondents marked 1R1 (a), (b) and R1 to R8, it is crystal clear that payment of salaries granting increments, promotions and payment of special allowances to the 2nd to 34th Respondents solely under the control of the Petitioner.

Even though the Petitioner's have denied the employment of the 2nd to 34th Respondents before this court it is evident from the material placed before this court specially by the 1st Respondent that the Petitioner had accepted the liability to pay the Employees Provident Fund dues in the Magistrate Court of Moratuwa.

This court is mindful of the decisions in *Alponso Appuhamy V. Hettiarchchi 77 NLR 131*, *Blanka Diamonds (Private) Ltd V. Wilfred Van Else and Others 1997 (1) Sri LR 360* and Several Other decisions both by the Supreme Court and the Court of Appeal which emphasizes the importance of the full and fair disclosures of all the material facts when maintaining a Writ Application before court.

In this regard I would like to quote the celebrated words of Pathirana (J) in the afore said Alponso Appuhamy's case as follows;

“...the necessity of a full and or fair disclosure of all the material facts to be placed before the court when, an application for a Writ of injunction, is made and the process of the court is invoked is laid down in the case of the King v. The General Commissioner for the purpose of the Income Tax Acts for the District of Kensington-Ex-parte princess Edmorbd de Poigns [1917KG Div-486] Although this case deals with a Writ of Prohibition the principles enunciated are applicable to all cases of Writs or injunction. In the case a Divisional Court

without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Court of Appeal affirmed the decision of the Divisional Court that there had been a suppression of material facts by the applicant in her affidavit and therefore it was justified in refusing a Writ of Prohibition without going into the merits of the case. In other words so rigorous is the necessity for a full and truthful disclosure of all material facts that the court would not go into the merits of the application, but will dismiss it without further examination....”

This court further observes that due to the above reasons the Petitioner is guilty of suppression of material facts before this court.

Under these circumstances I am declined to uphold the 1st argument raised by the Petitioner and concluded that the 2nd to 34th Respondents were employees of the Petitioner Company at the time they lost their employment.

I will now proceed to consider the 2nd argument raised by the Petitioner.

Section 6A of the Termination of the Employment of Workmen Act No. 45 of 1971 as amended reads as follows;

“Where the scheduled employment of any workmen is terminated in contravention of the Provisions of this Act in consequence of the closure by his employer of any trade, industry or business the Commissioner may order such employer to pay such workman on or before a specified date any sum of money as compensation as an alternative to the reinstatement of such workman and any gratuity or any other benefit payable to such workman by such employer.”

Petitioner argument before this court was that, under the provisions of the above section,

- a) There has to be a termination of employment in contravention of the Act

- b) Such termination must be in consequence of the closure by the employer,

Petitioner's further argued that the term "in consequence of the closure by the employer" excludes instances where the termination occurs in consequence of closure due to reasons other than closure by the employer.

Petitioner took up the position that the termination of employment of the 2nd 34th Respondents were due to

- a) Sealing of the factory on an order made by the Magistrate under Environment Protection Law
- b) Due to an order made by the Commercial High Court made in HC/Civil/60/2012/Co filed by the Petitioner against Alt Freshtex Garment Finishing Colombo (Private) Limited

and therefore termination referred to the present case does not come under section 6A of the Termination of Employment of Workmen Act No.45 of 1971. However the court observes that, out of the two instances referred above, the 1st instance of sealing the Factory Premises on an Order of the Magistrate, does not amount to a closure since it is only a temporary measure which can be rectified by complying with the Environment Regulation.

The second instance the Petitioner had relied upon, had been initiated by non other than the Petitioner Company itself. As concluded by me earlier in this Judgment the 2nd to 34th Respondents were employees of the petitioner Company at the time the winding up application was filed by the Petitioner in the Commercial High Court.

Therefore it is clear, that the Order made by the Commercial High Court to wind up the Alt Freshtex Garment Finishing Colombo (Private) Limited was consequence of an action filed by the Petitioner or in other words the said order made by the High Court is in consequence of the application

of the Petitioner which resulted the termination of the employment of 2nd to 34th Respondents who are employees of the Petitioner itself. There is no material before this court that there is an order by any compitant court to windup the Petitioner, Industrial Washing (Private) Limited. However the Petitioners admit that the services of the 2nd to 34th Respondents are now terminated. Therefore it is understood that the said termination had been effected by the Petitioner without obtaining prior approval from the 1st Respondent.

1st Respondent had submitted the Inquiry proceedings between the Petitioner and the 2nd to 34th Respondents marked 1R2 before this court. The said proceedings contain documentary evidence submitted by the parties and the observation and the finding by the inquiring officer. It is important to note at this stage that the said proceedings disclose a fair and impartial analysis of evidence and a recommendation with adequate reasoning given by the said inquiring officer.

Considering all the issues before this court and the documents submitted including the inquiry proceedings before the 1st Respondent I conclude that this is not a fit and proper case to grant relief as prayed by the Petitioner. Therefore I make order dismissing this application with cost fixed at Rs. 50000/-

PRESIDENT OF THE COURT OF APPEAL

H.C.J. Madawala

I agree,

JUDGE OF THE COURT OF APPEAL