

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

Commissioner of Labour
Labour Secretariat,
Narahenpita,
Colombo 05.

Case No: CA (PHC) 44/99

with

CA (PHC) 59/99

Complainant

Vs.

**1) Translanka Investments
Limited,
No. 7, Rotunda Gardens,
Colombo 03.**

Directors

- 2) K.D. Ganegoda**
- 3) V.N. Inbarajah**
- 4) J.D.A. Perumal**
- 5) L. Dayalal**
- 6) P.H. Gunatilake**
- 7) J.C.H.R. de Soysa**

Respondents

AND

Jeyam Immanuel Ayam
Perumal,
No.11 B, Barnes Place,
Colombo 07.

4th Respondent – Petitioner

Vs.

Commissioner of Labour,
Labour Secretariat,
Narahenpita,
Colombo 05.

Complainant – Respondent

AND

Jeyam Immanuel Ayam
Perumal,
No. 11 B, Barnes Place,
Colombo 05.

**4th Respondent – Petitioner –
Appellant**

Vs.

Commissioner of Labour,
Labour Secretariat,
Narahenpita,
Colombo 05.

**Complainant – Respondent –
Respondent**

Before : W.M.M.Malinie Gunarathne, J

: P.R.Walgama, J

**Counsel : Hiran De Alvis with Asima Ranasinghe for the
4th Dependant – Petitioner – Appellant.**

**: Milinda Gunathilake DSC for the Complainant –
Respondent – Respondent.**

Argued on : 31.08.2015

Decided on: 05.02.2016

CASE – NO – CA(PHC) 44/99 JUDGMENT – 05/02/2016

P.R.Walgama, J

The instant appeal raises a short point in relation to the Certificate filed by the Complainant in terms of Section 38(2) of the Employees Provident Fund Act No. 15 of 1958, seeking to recover a sum of Rs. 1,901,302.13 as E.P.F. Contributions and surcharge due from Translanka Investment limited, where the 4th Respondent – Petitioner was a Director in the said Company.

By the document marked P1, the Complainant – Respondent instituted action in the Magistrate Court Fort, against the Directors of the said Company under Section 38(2) of the above Act, for the

recovery of the said money as the EPF contribution by the Employees and the surcharge thereto.

In a very summary term the 4th Respondent-Petitioner-Appellant had raised a preliminary issue as to the legality of the Certificate filed by the Complainant-Respondent, as the said certificate lacks certain particulars which should be contained therein.

The Learned Magistrate in dealing with the above issue, in the impugned order has adverted to the case of CITY CARRIES .VS ATTORNEY GENERAL-1992 (2)- SLR 257. And was of the view that Section 38(2) of the Employees Provident Fund Act, it is only mandatory to mention in the said Certificate the amount due to the Employees, and in addition to the afore said detail the above Section does not require any other particulars to be included in the said certificate. But in the instant matter the Complainant has given more particulars about the number of the employees , Contribution made by the Employer, Contribution made by the Employee, and the relevant period that the payment was defaulted, and the surcharge payable in terms of Section 16 of the above Act.

It was also the position of the Respondent - Petitioner - Appellant that the said Company is not a going concern and the assets belong to the Company are under the control of the Central Bank.

Nevertheless the Learned Magistrate has held that the Directors of the said Company are liable to pay the amount as EPF and the surcharged thereto.

Being aggrieved by the said the 4th Respondent – Petitioner – Appellant has come by way revision to the High Court seeking to set aside the said order.

The Learned High Court Judge in dealing with the vital issue raised therein has drawn his attention to the facts stated by the Counsel for the Respondent, in that it is stated that the above certificate was filed in respect of all the employees namely 251 employees of the said Company. Further it is said that the Complainant – Respondent has filed a schedule containing names, E.P.F. numbers, remuneration, and E.T.F. contribution was filed in the Magistrate's Court and before the Commissioner of Labour. Therefore it is contended by the Respondent that the Petitioner cannot claim to be unaware of the particulars of the employees.

In the above setting the Learned High Court Judge has held that the said impugned certificate has been filed in respect of all the employees of the said Company and was of the view that the alleged Certificate is in conformity with the Section 38(2) of the above Act. Further the Learned High Court Judge has also referred to the case of AMEER ANOTHER .VS. YAPA DEPUTY COMMISSIONER OF

LABOUR- and was of the view that the above case differ from the case in hand as the Certificate in the said case is only in respect of two employees whose names are not disclosed in the Certificate.

It is further noted that the 4th Respondent – Petitioner was a Director of the said Company during the relevant period, and had ceased to hold office thereafter.

The Petitioner – Appellant contends that, as he is not a Director in the Company at present he could not be liable under the above Section 38(2) of the said Act.

In the above setting the Learned High Court Judge held as the Respondent – Petitioner was a Director during the relevant period and as such he is liable to pay the sum due as the EPF and the surcharge thereto.

Being aggrieved by the said order of the said High Court Judge the Respondent – Petitioner – Appellant has appealed to this Court on the following grounds;

That the 4th Respondent – Petitioner – Appellant was one time a Director of the said Company but ceased to be a Director with effect from 05.12.1994.

The categorical position of the Petitioner – Appellant is that in terms of Section 40 of the above Act, it is the present Directors of the Company who can be

deemed guilty of an offence under Section 40 of the above Act.

In response to the above issue the Complainant-Respondent had adverted to the judgment of CA(PHC)-APN-65/2009 – wherein Their Lordships have held that the Directors who held office during the relevant period are be liable, to pay the amount as E.P.F.

In dealing with the above issue Their Lordships had cognizance of the Section 40 of the Employees Provident Fund Act, and stated thus;

“where an offence under the said Act is committed by a body of persons then if such body of persons is a body corporate shall be deemed to be guilty of the offence. Therefore it is clear that apart from the recovery procedure set out in Section 17,38(1), and 38(2) of the said Act as amended, the Commissioner has to institute a separate action in the relevant Magistrate Court to punished the employer who has defaulted.”(emphasis added)

Hence in the said back drop it was held in the above case it is the Directors who held office during the relevant period will be liable to pay the amount stated in the Certificate.

It is also worthy to mention at this juncture that the Court should not interpret the statute to give

an absurd and obnoxious effect which is against the intention of the Legislature.

Therefore this Court is of the view that the particulars furnished by the Respondent is sufficient to the Petitioner to defend his case.

The Respondents had reiterated the case of CITY CARRIERS LIMITED .VS. COMMISSIONER OF LABOUR- 1992 2 SLR - 257 and has stressed the fact that in the above case, Their Lordships had observed that the following particulars should contained in the certificate.

1. The period for which the sum is due
2. The computation of the sum and
3. The number of employees concerned in making the computation.
4. In the alternative names and emoluments should be provided.

It is to be noted that the rationale behind the said particulars to be furnished in the so called Certificate is for the employer to have an opportunity to challenge the sum claimed.

It is viewed from the certificate filed in the present case the above particulars are being provided and hence this Court is of the view that such information should be suffice to institute action against the defaulter in the Magistrate Court.

Having regard to all of the above, this Court is of the view that the dismissal of the appeal is reasonable.

Hence the Appeal is dismissed accordingly, subject to a costs of Rs.10,000/-

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunarathne, J
I agree,

JUDGE OF THE COURT OF APPEAL