

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

In the matter of an Appeal in  
terms of the provisions in the  
Constitution read together with  
the provisions of the High  
Court of the Provinces (Special  
Provisions) Act No. 19 of 1990.

H. Wijeratne,  
Assistant Commissioner of  
Labour  
(Enforcement Division) ,  
Labour Department  
Colombo 05.

**Complainant**

**VS.**

CA (PHC) Appeal No. 80/2005  
HC Revision No. 539/2004  
MC Colombo Case No. 41795/05

Design Consortium Ltd.  
No.85, Kynsey Road,  
Colombo 8.

**Respondent**

**AND BETWEEN**

Design Consortium Ltd.  
No.85, Kynsey Road,  
Colombo 8.

**Respondent – Petitioner**

**VS.**

1. H. Wijeratne,  
Assistant Commissioner of  
Labour,  
(Enforcement Division),  
Labour Department,  
Colombo 5.

**Complainant-Respondent**

2. Lanka Weerasinghe,  
44/2, Templers Road,  
Mount Lavinia.

**Respondent**

**AND NOW BETWEEN**

Design Consortium Ltd.  
No.85, Kynsey Road,  
Colombo 8.

**Respondent-Petitioner-  
Appellant**

**VS.**

1. H. Wijeratne,  
Assistant Commissioner of  
Labour  
(Enforcement Division),  
Labour Department,  
Colombo 5.

**Complainant-Respondent –  
Respondent.**

- 1(a) Nalini Rupika Ranasinghe,  
Assistant Commissioner of Labour  
(Enforcement Division),  
Labour Department,  
Colombo 5.

**Substituted- Complainant –  
Respondent – Respondent**

2. Lanka Weerasinghe,  
44/2, Templers Road,  
Mount Lavinia.

**Respondent-Respondent**

BEFORE : W.M.M. Malinie Gunaratne, J. and  
P.R. Walgama, J.

COUNSEL : Nihal Fernando, P.C. with H. Seneviratne  
For the Appellant.  
G.R.B. Obeysekera with H.M.P.S. Dissanayake  
For the 2<sup>nd</sup> Respondent.

Argued : 27.11.2015  
Written submissions  
filed on : 02.02.2016 and 05.02.2016  
Decided on : 27.04.2016

**Malinie Gunaratne, J.**

On 23.10.2002 the 1st Complainant – Respondent – Respondent (hereinafter referred to as the 1<sup>st</sup> Respondent), Assistant Commissioner of Labour, instituted proceedings against the Respondent – Petitioner – Appellant (hereinafter referred to as the Appellant) in the Magistrate’s Court of Colombo in Case No. 41794/05 for the recovery of a sum of Rupees Three hundred and twenty thousand (Rs.320,000/-) in respect of non-payment of salary for the period from November 1998 to June 1999, to the 2<sup>nd</sup> Respondent – Respondent (hereinafter referred to as the 2<sup>nd</sup> Respondent), in terms of Section 50 (c) (2) of the Shop and Office Employees (Regulation of Employment and Remuneration) Act (hereinafter referred to as the Act) as amended from time to time.

The issue of a certificate does not compel the Magistrate’s Court to proceed automatically to recover the sum stated: the Court must first give the alleged defaulter an opportunity to show cause why further proceedings for the recovery of the sum claimed should not be taken. The law thus expressly incorporates the *audi alteram partem* rule.

Accordingly, when the matter was taken up for inquiry the learned Magistrate had given an opportunity to the Appellant to show cause as to

why the sum specified on the certificate is not payable. The Appellant showed cause by way of affidavit; took up the position that he is not liable to pay the said sum of Rupees Three hundred and twenty thousand (Rs.320,000/-) to the 2<sup>nd</sup> Respondent as he was not its employee.

The learned Magistrate in his Order held that, he has no jurisdiction to inquire whether the 2<sup>nd</sup> Respondent was an employee or not of the Appellant and ordered the Appellant to pay the said sum of Rupees Three hundred and twenty thousand (Rs.320,000/-) to the 2<sup>nd</sup> Respondent in two instalments.

Being aggrieved by the said Order, the Appellant filed a revision application in the High Court of Colombo against the said Order of the learned Magistrate. The learned High Court Judge, delivering his Judgment on 24.02.2005, affirmed the Order of the learned Magistrate and dismissed the revision application filed by the Appellant.

Thereafter the Appellant has invoked the appellate jurisdiction of this Court to intervene by setting aside the Judgment of the learned High Court Judge dated 24.02.2005, and the Order of the learned Magistrate dated 26.03.2004.

At the hearing of this Appeal the learned President's Counsel for the Appellant contended that, the main grievance of the Appellant is, that, the 2<sup>nd</sup> Respondent was never an employee of the Appellant; but an independent contractor and the learned Magistrate has not considered this position when he made the impugned order. The learned President's Counsel further contended as such, the Judgment of the learned High Court Judge which affirms the Order of the learned Magistrate, is completely erroneous in fact and in law.

It is the stance of the learned State Counsel for the 1<sup>st</sup> Respondent that, the Appellant cannot question the validity of the said certificate in those proceedings but is given the opportunity of satisfying the Magistrate and showing cause as to why steps for recovery of the said sum of money, should not be taken; since the Magistrate's Court is empowered to simply verify the particulars set out in the certificate.

Hence, the sole question arising for decision in this case is whether the learned Magistrate has the jurisdiction to look into the matter that, the Appellant was not an employee of the Appellant but only an independent contractor.

It is relevant to note, that the 1<sup>st</sup> Respondent has issued the said certificate in terms of Section 50 (c) (2) of the Shop and Office Employees (Regulation of Employment and Remuneration) Act. The Section 50 (c) (3) of the said Act reads thus:-

“The correctness of any statement in a certificate issued by the Commissioner for the purpose of this section shall not be called in question or examined by Court in any proceedings under this section and accordingly nothing in this section shall authorise the Court to consider or decide the correctness of any statement in such certificate and the Commissioner's Certificate shall be sufficient evidence that the amount due under sub section (1) from the defaulting employer has been duly calculated and that such amount is in default”.

Hence, in terms of Section 50 (c) (3) of the Act, there is no provision for the Magistrate's Court to hold an inquiry to consider or decide the

correctness of statements in the said certificate except on the following grounds:

- (a) That the lack of territorial jurisdiction of the relevant Magistrate's Court;
- (b) that the Employer has already paid the sum to be recovered;
- (c) that the Employer is not liable; and
- (d) that no proper particulars given in the certificate.

The following cases of both the Supreme Court as well as the Court of Appeal have held that a certificate of this nature filed in a Magistrate's Court for enforcement can only be canvassed and impugned on the said grounds.

- (i) Attorney General vs. City Carriers Ltd; (1991) 1 SLR 227;
- (ii) City Carriers Ltd; vs. Attorney General (1992) 2 SLR 257;
- (iii) Mohamad Ameer and Another vs. Assistant Commissioner of Labour (1998) 1 SLR 156.

A certificate filed in terms of the EPF Act and/or the Shop and Office Employees Act could be impugned or controverted only on the above grounds as enumerated by Appellate Courts.

It is relevant to note that, the Appellant has merely attempted to impugn the said certificate on the ground that the 2<sup>nd</sup> Respondent was never an employee of the Appellant but an independent contractor but not on the aforesaid grounds.

The question whether the 2<sup>nd</sup> Respondent was in fact an employee of the Appellant has been determined by the 1<sup>st</sup> Respondent after a due inquiry

and an opportunity had been given to both parties to present their cases, orally and documentarily following *audi alteram* rule.

The Appellant had appealed against the said Order to the Deputy Commissioner of Labour and he had rejected the contention of the Appellant. Therefore, I am of the view that the Appellant cannot question the validity of the said certificate in these proceedings. The only forum where this order could have been canvassed was by invoking the Writ Jurisdiction of this Court, which the Appellant has failed to do.

Hence, I am of the view, by this Appeal the Appellant has sought to challenge an administrative order again to set aside the initial order of the Commissioner of Labour made after an inquiry.

In the course of the hearing in this Court, the learned President's Counsel for the Appellant had sought to impress upon Court that, the learned Magistrate has made his Order erroneously without considering the evidence led by the Appellant showing cause as to why the amount stated in the certificate is not recoverable from the Appellant. I am unable to agree with the submissions made by the learned President's Counsel in the light of the above reasoning.

For the reasons set out above, I hold that the learned Magistrate's Order is correct and as such there is no reason to set it aside. Therefore, it is not necessary to interfere with the judgment of the learned High Court Judge who affirmed the order of the learned Magistrate.



Accordingly, no ground exists which justifies the intervention of this Court to set aside the Order of the learned Magistrate dated 26.03.2004 and the Order made by the learned High Court Judge dated 24.02.2005.

For the above reasons, I hold that there is no merit in this Appeal and I dismiss it with costs of Rupees Fifty thousand (Rs.50,000/-).

I direct the learned Magistrate to execute the enforcement order without delay.

**JUDGE OF THE COURT OF APPEAL**

P.R. Walgama, J.

I agree

**JUDGE OF THE COURT OF APPEAL**

Appeal is dismissed