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

In the matter of an appeal from the order of the Provincial High Court of the Western Province holden at Colombo.

CA (PHC) 77/01

Don Sunil Wijesinghe of No: 106/27,
Vijithapura Mawatha, Walpola,
New Town, Mulleriyawa.

PHC Colombo 50/97

And 2 others.

Petitioner – Appellants

Vs.

Agalawatte Multipurpose Co-operative
Society Ltd,
Liyanagedera, Agalawatte.

And 11 others.

Respondent – Respondents

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

: P.R.Walgama, J

Counsel : Ruwantha Cooray for the Petitioner.

: Chamantha Weerakoon Unamboowe for the 1st Respondent.

Argued on : 20.10.2015

Decided on: 08.06.2016

CASE-NO- CA (PHC)-77-2001- JUDGMENT- 06/06/2016

P.R.Walgama, J

The Petitioner- Appellants had preferred the instant appeals bearing No. 77/2001, 78/2001, 79/2001 and had impugned the judgment of the Learned High Court Judge dated 22/12/2000, for dismissing the applications for a mandate in the nature of writs of Certiorari to quash the Awards of the Arbitrators.

The said application of the Petitioner- Appellants had attracted the Learned High Court Judge on the following details;

The Petitioner – Appellants by the afore said application moved court to set aside the order of the 2nd Respondent the Commissioner made on 17.02.1997 and the arbitral award made by the Arbitrator on 04.08. 1995.

The Learned High Court Judge by his order dated 22.12 2000 has dismissed the Petitioners applications on the basis that as per Section 58(5) of the Co operative Societies Act, the decision of the Registrar is final and conclusive and cannot be questioned in a Court of law and further more that the Petitioners although had challenged the appointment of the Arbitrator, had in fact had appeared before the Arbitrator and had placed their grievances.

In addition it was observed by the Learned High Court Judge that the Petitioners had made this application with inordinate delay, and held that the said application should fail.

Being aggrieved by the said order of the Learned High Court Judge, the petitioners had appealed to this Court to have the said impugned order set aside.

The following facts had emerged from the petition of appeal;

That the 1st ,2nd and the 3rd Petitioner – Appellants had held office in the 1st Respondent Society namely the Agalawatta Multipurpose Co- operative Society Ltd, as the President, Acting General Manager, and as the Acting Accountant.

As per Section 46(1) of the said Act the 3rd Respondent engaged him self to investigate the activities of the said Society and while the said process was going on the 2nd Respondent Commissioner has appointed 6th ,7th, and 8th Respondents as Directors of the said Society, and had ouster the 1st Petitioner- Appellant, and appointed the 6th Respondent as the President of the said Society.

Thereupon the Minister concerned had appointed a board comprising 7th ,9th and 10th as competent authority, of the 1st Respondent.

Consequently the said Competent Authority by their letter dated 11.02.94 had demanded a sum of Rs. 137,843, being the alleged loss to the 1st Respondent Society by purchasing an unauthorised stock of chillies which has been sold at a price less than the purchased price.

It is the contention of the Petitioner – Appellants that after the emergency was lifted the appointment of the Competent Authority became functus and as a result the appellants had resumed their office as they held in the 1st Respondent Society.

It is alleged by the Petitioner – Appellants that the 1st Respondent Society had held a meeting on 09.07.1994 and had taken the decision to remove the 1st Petitioner- Appellant and others from the office in which they held.

The 3rd Respondent acting in the capacity as the Arbitrator has summoned the Petitioner -Appellants in terms of the above Act to inquire in to the alleged loss of Rs. 137,843/ by selling the stock of chillies. After the inquiry the Petitioner – Appellants were found liable for the payment of the said amount.

Being aggrieved by the said determination, the Petitioner – Appellants had appealed to the 2nd Respondent – Commissioner against the said finding and the 2nd Respondent – Commissioner dismissed the appeal

and upheld the order of the Arbitrator without giving his reasons in doing so.

Therefore it is alleged by the Petitioner – Appellants that the 2nd Respondent has acted in a manner contrary to the Section 62 (c) of the Co operative Societies law.

It is the contention of the Petitioner – Appellants that in the circumstances it was prudent to sell the stock of chillies to the price that was sold.

It is contended by the Petitioner – Appellants that the appeal should be allowed on the following grounds;

That the reference to arbitration is bad in law since it has been effected by the 3rd Respondent, where as the 2nd Respondent is the authority vested with such powers.

Further the Petitioners assail the finding of the Arbitrator and the 2nd Respondent – Commissioner on the premis that no reasons had been adduced for the said determination.

Besides it is alleged that the Minister concerned has acted in violation of the principles of Natural Justice.

Hence in the above context it is contended by the Petitioner – Appellants that the Respondents had acted in an arbitrary and illegal manner, and therefore the decision marked P10 and P14 should be set aside.

It is to be noted that the Learned High Court Judge has held that the decision of the 2nd Respondent is final and Therefore it is ostensible

that the objection taken by the appellants that the 2nd Respondent has not given reasons is of no weight in this matter, and as such same shall be rejected.

It is viewed from page 215 of the brief that the Arbitrator has pronounced the judgment on 04.08.1995, stating that, his views, reasons, and the determinations are embodied in the judgment. The proceedings before the Arbitrator is marked as P10. But nevertheless the said impugned judgment of the Arbitrator is in page 148 of the brief and therefore the argument set forth by the Petitioner – Appellants is devoid of merits and should stand rejected.

The Petitioner – Appellants adverted court to Section 58(2) of the Co operative Societies Law No. 5 of 1972, which states thus;

58(2) "the Registrar may, on the receipt of a reference under subsection (1)

a. Decide the dispute himself, or
b. Refer it for disposal to an arbitrator or arbitrators"

Therefore it is said that the 2nd Respondent Registrar was vested with the power to refer any matter to the arbitrator.

But it is alleged by the Petitioner- Appellants that the instant matter it was not the 2nd Respondent – Registrar – Commissioner, who had appointed the Arbitrator but the 3rd Respondent who is the Assistant Commissioner of Co operative Development has

appointed the arbitrator. Therefore it is contended by the Petitioner – Appellants that the appointment of the Arbitrator bad in law.

Hence it is contended by the Petitioner – Appellants that the 2nd Respondent could have not delegated his powers to 3rd Respondent who was the Assistant Commissioner of Co operative Development.

But it is the position of the Respondents that in terms of Section 2 of the Co operative Societies Act the Minister concerned is empowered to make the appointment of persons to act as Registrars.

1. .....
2. .....
3. .....
4. Each of persons appointed to assist the Commissioner of Co operative Development shall have and may exercise such of powers of the Registrar under this law and under any rules made or deemed to be made there under as may be specified by the Minister in any general or special order made under this section.

Therefore it is contended by the Respondents that the Assistant Commissioner is duly empowered to issue the document P9. Further it is stated by the Respondents that the Petitioners never challenged P9 in the High Court on the basis that the Assistant Commissioner did not have powers to issue the said document.

Further it is alleged by the Respondents that the Petitioner – Appellants did not have any objection for the arbitrator conducting the inquiry.

As a comprehensive response to the issue raised by the Petitioner – Appellants as to the failure of the Arbitrator to adduce reasons for his determination, it is stated that in certain cases the Superior Courts had held the view that it is not mandatory to adduce reasons, provided that the decision is made after holding a fair inquiry. It was thus held in the case of SAMALANKA LTD .VS. WEERAKOON- 1994 1 SLR-17.

Further the Counsel for the Respondents has adverted Court to the case of YASSEN OMAR .VS. PAKISTAN INTERNATIONAL AIR LINES- 1999- B2 SLR- 375 HAS EXPRESSED THUS;

"Neither the Common law nor principles of Natural Justice require as a general rule that administrative tribunals or authorities should give reasons for their decisions that are subject to judicial review."

Therefore in the above context it is apparent that necessity to adduce reasons for the determination of the Arbitrator's is not mandatory in the light of the judicial interpretation given by the above case.

The Respondents in answering the issue as to the failure to deposit the 10% of the award as a precondition to the filing of appeal in terms of Rule

49 (XII)(b) of the Rules made under the Corporative Societies Act, state thus;

To fortify the legality of the above rule the counsel for the Respondents draws the attention of Court to the case of SOMARATNE .VS. COMMISSIONER OF CO OPERATIVES -SC Appeal 58/80 - which held thus;

"in the present instance section 58(3) of law 5 of 1972 gives the Minister the power to regulate an appeal within such period and in such manner as may be prescribed by rules. This section read with Section 61(2) of the same law entitles the Minister to frame rules by which he may,

"Prescribed forms to be used, the fees to be paid, the procedure to be observed and all other matters connected with or incidental to the presentation, hearing and disposal of appeals under this law or rules made there under".

Therefore it is abundantly clear that the Minister's act under the above rule is not ultra vires, and rule was recognised in the case of CA Application No. 889/2000 and further held that the depositing of security is a mandatory requirement to entertain an appeal.

In addition if this Court is to be guided by the rational embodied in the case of SEBASTIAN FERNANDO. VS. KATANA MULTI PURPOSE CO-OPRATIVE SOCIETY LTD- 1990 1 SLR 342, it is worthy to

mention that the issue of ultra vires was never considered in the above casc.

In the above circumstances it is apparent that the Petitioner – Appellants application is unmeritorious and should stand dismissed.

Accordingly appeal is dismissed subject to a cost of Rs.10,000/-

JUDGE OF THE COURT OF APPEAL

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

JUDGE OF THE COURT OF APPEAL