

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

QEG Lanka Private Limited (PV8886s),  
481, Biyagama Road, Pethiyagoda,  
Kelaniya.  
(Principal Place of Business)

**Petitioner**

**Vs.**

**C.A (Writ) Application No. : 80/2015**

1. Commissioner General of Labour, of  
Department of Labour,  
Colombo 05.

2. AD.K.M. Weerakkodi, Assistant  
Commissioner of Labour, North Colombo  
District Labour Office,  
4th Floor, Department of Labour,  
Colombo 05.

3. E. C. P. Dabare  
Assistant Commissioner of Labour  
Special Investigation unit  
"th Floor, Department of Labour,  
Colombo05.

4. Noel Willem Roets  
Mina Al Arab, Villa 5.166, Ras Al Khimha,  
United Arab Emirates.  
Local Address  
C/O M.S.A Wadood,  
Attorney at law, No. 72/2, Anula Road,  
Colombo 06.

**Respondents**

**CA Writ 80/2015**

BEFORE : Vijith K. Malalgoda, PC, J (P/CA) &  
S. Thurairaja, PC, J

COUNSEL : Chandane Wijesooriya with Wathsala Dulanjani for the  
Petitioner.

Priyantha Nawana, SDSG for the State.

ARGUED &

DECIDED ON: 07.10.2016

Vijith K. Malalgoda, PC, J (P/CA)

Petitioner to the present application QEG Lanka Private Limited has come before this Court seeking writ of certiorari quashing the decisions or orders purported to have taken by the 2<sup>nd</sup> respondent which are produced marked before this Court marked P4, P9 and P9E. As revealed before this Court the 4<sup>th</sup> respondent Noel Willem Roets a South African National had been employed as the General Manager of QEG Group and the position taken up by the petitioner was that the 4<sup>th</sup> respondent was not an employee of the petitioner but was an employee of QEG Singapore Private Limited. The complaint of the petitioner before this court was that the 1<sup>st</sup>

and /or the 2<sup>nd</sup> and /or 3<sup>rd</sup> respondents after holding an inquiry under the Provisions in Section 53(3) of the Shop and Office Employee Act had made order directing the petitioner to pay sum of Rs. 11481000/- as remuneration due to the 4<sup>th</sup> respondent. The petitioner's main argument before this Court was based on the service agreement said to have signed between the employer and employee on 1<sup>st</sup> of March 2013 which is produced before this Court marked X1 attached to P3 and a document said to have signed by the Chief Executive Office QEG Singapore Private Limited which is produced marked X2 attached to P3. While submitting the said documents, the petitioner took up the position that it is the director of QEG Singapore Private Limited who has signed X1 as the employer and thereafter when the salary which was due to the 4<sup>th</sup> respondent went in arrears the chief executive officer of QEG Singapore has admitted the liability by X2. Based on the said two documents the petitioner argued that the findings of the 1<sup>st</sup> -3<sup>rd</sup> respondents were reached without sufficient material before them. The petitioners have further taken up position that the 1<sup>st</sup> -3<sup>rd</sup> respondents have failed to give reasons in their impugned decisions and the said failure by the 1-3 respondents is a violation of rules/natural justice.

However, when going through the material placed before us it is observed by this Court that the document X1 which is said to be the employment contract of the 4<sup>th</sup> respondent, the employer is referred as QEG Lanka Private Limited. Page one of the employment contract refers to the two

parties as 1. QEG Lanka Private Limited and, 2. Noel Willem Roets. In page two the parties referred to as QEG Lanka Private Limited incorporated and registered in Sri Lanka with Company No. PV88865 whose registered office is at 40A, Lower Dickson, Galle Sri Lanka and the second Party Noel Willem Roets the South African Notational with passport No. 453734561 of Mina Al Arab Apartments, Ras Al Khaimah UAE. By document produced marked P1 the certificate of incorporation of QEG Lanka Private Limited confirms that it is a registered company in Sri Lanka. It is further admitted before this Court that the mother company of this Sri Lankan Company QEG Lanka Private Limited is QEG Group. When looking at this documents, it is further agreed in page 10 that any dispute or claim arising out of or connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of Sri Lanka. When looking at the above provisions of the employment contract it is clear that the employer of the 4<sup>th</sup> respondent is none other than the petitioner and therefore this Court is not inclined to accept the argument placed by the petitioner before this Court. The fact that the CEO of QEG Singapore accept the liability of the payment of salaries does not take ~~it~~ this case any further since it was admitted before this Court that the petitioner company belongs to a group called QEG Group. However the employer employee relationship with regard to the 4<sup>th</sup> respondent is between the petitioner and the 4<sup>th</sup> respondent. As observed above by document X2 the QEG Group had admitted the none

payment of remuneration to the 4<sup>th</sup> respondent for the period between May and December 2013. As submitted before this Court the agreed remuneration for the 4<sup>th</sup> respondent was 12000 US \$ per month and there is an arrears of salaries for the month of May 5000US \$ and June to December 84000US \$ totaled in to 89000 US \$. The next matter to be decided by this Court is whether the 1<sup>st</sup> -3<sup>rd</sup> respondents have given a fair opportunity to the petitioner when conducting the inquiry under Section 53(3) of the Shop and Office Employees Act. In this regard the learned Deputy Solicitor General appearing for the said respondent brought to our notice ~~of Court~~<sup>of</sup> the document which is produced marked P2 by the petitioner himself. By the said document P2 the petitioner was informed of a complaint received by the 4<sup>th</sup> respondent and a date had been fixed for the inquiry as 24.02.2014 at 2.00 p.m. and a copy of the said complaint of the 4<sup>th</sup> respondent was also attached. As observed by this Court the attached document gives a clear description of the complaint made against the petitioner. As submitted by the learned senior Deputy Solicitor General, petitioner was absent at the inquiry which was fixed for 24.02.2014. The said inquiry was re-fixed for 05.03.2014 but even on that date the petitioner was absent. The matter was thereafter taken up for inquiry with fresh notice to the petitioner on 19.03.2014 on which date the Human Resource Manager of the company represented the company and moved for a date to retain a counsel. The inquiry was then finally re-fixed for 2<sup>nd</sup> April 2014 at 3.00 p.m. However the petitioner was not ready

for the inquiry on that date but an application was made on behalf of him for a postponement. Since it was fixed finally for that date, 2<sup>nd</sup> respondent decided to continue with his inquiry and made his order on that date. When making the said order as submitted by the learned Deputy Solicitor General there was ample material before the 2<sup>nd</sup> respondent for his conclusion since the complaint made by the 4<sup>th</sup> respondent which was annexed to the original notice had given the details of the dispute between the petitioner and the 4<sup>th</sup> respondent sufficiently. However, when the decision of the said inquiry was communicated to the petitioner by P4 on the 02.04.2014 the petitioner submitted an appeal before the 1<sup>st</sup> respondent and requested an opportunity for him to make representation on behalf of him. Even though there is no legal requirement under the provision of the Shop and Office Employee's Act the 1<sup>st</sup> respondent to give an opportunity to a default party, the 1<sup>st</sup> respondent had acted fairly and granted an opportunity for the petitioner to submit his case before the commissioner. The documents before us reveal the fact that the petitioner was given an opportunity to submit his position once again by the 1<sup>st</sup> -3<sup>rd</sup> respondents and the petitioner had in fact filed his written submission also before the respondent for their consideration. Subsequent to the hearing of the appeal the 3<sup>rd</sup> respondent has once again taken his decision and his decision was conveyed to the petitioner by P9 and P9A. As observed by this Court the respondents have given ample opportunity to the petitioner to submit his case before

them and after giving due consideration had reached final decision to direct the petitioner to pay arrears of salaries for the period of May 2013 to December 2013 which will come to Rs. 11481000/- . As submitted by the learned senior Deputy Solicitor General it is clear that there was ample material before the 1<sup>st</sup> -3<sup>rd</sup> respondents when they reached the said decision and therefore we see no reason to interfere with the said findings at this moment. We therefore, decide to dismiss this application with cost fixed at Rs. 25000/-.

Appeal dismissed.

PRESIDENT OF THE COURT OF APPEAL.

S. Thuraiaraja, PC, J

I agree.

JUDGE OF THE COURT OF APPEAL.

NR/-