

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

In the matter of an Appeal in terms of Article 154P of
the Constitution of the Democratic Socialist Republic
of Sri Lanka read with section 9(b) and 11 of High
Court of Provinces (special Provisions) Act No. 19 of
1990

Court of Appeal case no. CA/PHC/143/2002

H.C. Kurunegala case no. HCA 160/1998

T.B.Dissanayake,
67, Samodaya Niwasa, Mawathagama.

Petitioner

Vs.

1. Ranjith Widyathilake,
Commissioner and Registrar of Cooperative
Development (Northwestern Province),
Cooperative Development Commissioner's Office,
73, Malakduwawa Rawum Road, Kurunegala.
2. Multi Purpose Cooperative Society Ltd.
58, Negombo Road, Kurunegala.

Respondents

AND NOW

T.B.Dissanayake,
67, Samodaya Niwasa, Mawathagama.

Petitioner Appellant

Vs.

1. Ranjith Widyathilake,

1A. B.M.C.Disanayake,

Commissioner and Registrar of Cooperative

Development (Northwestern Province),

Cooperative Development Commissioner's Office,

73, Malakduwawa Rawum Road, Kurunegala.

Substituted 1A Respondent Respondent

2. Muti Purpose Cooperative Society Ltd.

58, Negombo Road, Kurunegala.

Respondent Respondent.

Before : H.C.J.Madawala J.

: L.T.B. Dehideniya J.

Counsel : Chula Bandara with Gayanthi Kodagoda for the Petitioner
Appellant.

: Suranga Wimalasena SSC for the 1A Respondent Respondent

: T.M.S. Nanayakkara for the 2nd Respondent Respondent

Argued on : Decided on written submissions

Written submissions filed on 05.12.2016 and 29.03.2017

Decided on : 05.04.2017

L.T.B. Dehideniya J.

This is an appeal from the High Court of Kurunegala.

The Petitioner Appellant (hereinafter sometimes called and referred to as the Appellant) was an employee of the 2nd Respondent Respondent Society as a store keeper. It has been found that there was a shortage of money and

goods in the stores. Later the Appellant was served a charge sheet and disciplinary action taken against him. The shortage was presented to an arbitrator for inquiry to recover the amount from the Appellant. The arbitrator held that the Appellant was not liable to pay. Being aggrieved, the 2nd Respondent Society (hereinafter sometimes called and referred to as the 2nd Respondent) appealed to the 1st Respondent Respondent Commissioner of Cooperative Development and Registrar. (Hereinafter sometimes called and referred to as the 1st Respondent) The 1st Respondent set aside the order of the arbitrator and held that the Appellant is liable to pay Rs. 269,037.80. The Appellant filed an application for a mandate in the nature of a writ of certiorari to quash the order of the 2nd Respondent in the High Court of Kurunegala. The learned High Court Judge after inquiry dismissed the application. Being dissatisfied, the appellant presented this appeal.

The argument of the Appellant is that the 2nd Respondent considered the document marked P15 without calling the author to give evidence and the findings in the said P15 are based on assumptions and not on the actual facts and figures. The learned High Court Judge has considered this aspect in length and found that the figures in the document are based on the records available at the Society. The learned High Court Judge has found a few discrepancies in P15 but has come to the conclusion that they do not vitiate the entire document. I do not see any reason to interfere with this finding.

This is an application for a writ, not an appeal against an order of the 1st Respondent. Correction of errors cannot be done in an application for a writ unless there is a violation of natural justice or acted in ultra vires. In the present case the 1st Respondent has the statutory power to hear the appeal and he has acted within his power. He has given a hearing to the Appellant before making the decision. There is no violation of natural justice or ultra vires.

Administrative Law by Wade Ninth Edition at page 250 it says that:

The same distinction sometimes expressed in terms of the liberty to err. It is inherent in all discretionary powers that it includes the power to decide freely, whether rightly or wrongly, without liability to correction, within the area of discretion allowed by the law. The principle was clearly expressed long ago by Holt CJ, who spoke of this diversity, (viz.) that if the commissioners had intermeddled with a thing which was not within their jurisdiction, then all is coram non judice, and that may be given in evidence upon this action; but 'tis otherwise if they are only mistaken in their judgment in a matter within their consance, for that is not inquirable, otherwise than upon an appeal.

The present case is not an appeal against the order of the 1st Respondent, it is an application for a prerogative writ to quash the said order. The appellant has failed to establish any violation of natural justice or the decision is ultra vires.

Under these circumstances, I do not see any reason to interfere with the findings of the learned High Court Judge.

The appeal is dismissed subject to costs fixed at Rs. 10,000/-

Judge of the Court of Appeal

H.C.J.Madawala J.

I agree.

Judge of the Court of Appeal