

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

**In the matter of an application in  
the nature of Writs of *Certiorari*  
and *Mandamus* under article 140  
of the Constitution of the  
Democratic Socialist Republic of  
Sri Lanka.**

Francis Richard De Zoysa  
No. 5/A, Havelock Place,  
Off Havelock Road,  
Colombo 05

**Petitioner**

**CA WRIT 32/2013**

**Vs,**

1. Commissioner General of Labour  
Department of Labour,  
Labour Secretariat,  
P.O.Box 575, Colombo 05
2. Assistant Commissioner of Labour  
Colombo – West  
Department of Labour,  
Labour Secretariat,  
P.O.Box 575, Colombo 05.
3. Mass Organization (Private) Limited,  
No.4,  
Fairline Road,  
Dehiwala.
4. M.M.E.Weerabangsa  
No.4,  
Fairline Road,  
Dehiwala.
5. A. Weerabangsa  
No.4,  
Fairline Road,  
Dehiwala.

**Respondents**

**Before : L.T.B. Dehideniya J (P/CA) &  
S. Thurairaja PC. J**

**Counsel : Saliya Peiris for the Petitioner  
M.Kahawita SC for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent  
Shashika de Silva for the 3<sup>rd</sup> Respondent  
Athula Bandara Herath for the 4<sup>th</sup> and 5<sup>th</sup> Respondent**

**Order on : 06<sup>th</sup> July 2017**

**\*\*\*\*\***

## Order

### **S.Thurairaja PC J**

The Petitioner had prayed in his petition to issue a Writ of Certiorari quashing the decision/order of the 1<sup>st</sup> respondent of issuing certificates to recover the payment of Employees' Provident Fund.

The Petitioner submits that he was the sole shareholder and the managing director of De Zoysa Organisation (Private) Ltd till the 31<sup>st</sup> August 2005 and also submits that it's a limited liability company duly incorporated under the Companies Act.

The Petitioner submits that the company De Zoysa Organisation (Private) Limited had signed a Memorandum of Understanding to transfer the company's business portfolio to Mass Organisation (Private) Limited the 3<sup>rd</sup> respondent. Copy of the Memorandum of Understanding is marked and produced as P1. There are several agreed terms in P1 including the payment of Employees' Provident Fund and Employees' Trust Fund.

De Zoysa Organisation (Private) Limited defaulted the payment of Employees' Provident Fund and Employees' Trust Fund regarding the Employees' Provident Fund the 1<sup>st</sup> respondent had issued notices and filed certificates at the Magistrates Court. The Petitioner claims that the Memorandum of Understanding signed between the company and the 3<sup>rd</sup> respondent was not honoured by the 1<sup>st</sup> respondent. Therefore, the Petitioner is seeking a Writ of Mandamus.

This court draws attention to the case of **Borella Private Hospital v Bandaranayake and Two others; CA/1006/2000 (Writ)** where it was held that:

*"In an application for Mandamus, where the petitioner alleges a statutory functionary as having acted without jurisdiction and/or authority, the petitioner is obliged to disclose the statutory provision that has been violated that establishes a legal right in the Petitioner and a corresponding legal duty on the statutory functionary."* [Emphasis Added]

It could be seen that the Petitioner has misconceived the prayer for a Writ of Mandamus.

The counsel for the 4<sup>th</sup> and 5<sup>th</sup> respondent raises a preliminary objection that the Petitioner has no **locus standi**. The counsel further submits, the notices and certificates were issued on the company namely De Zoysa Organisation (Private) Limited and also a Memorandum of Understanding if any is between the said company and 3<sup>rd</sup> respondent. Therefore, the Petitioner has no status quo in this application. The counsel moves that the petition of the Petitioner be rejected *in limine*.

The counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents submits that the Memorandum of Understanding between two private parties will not bind the Commissioner General of Labour. The payment of Employees' Provident Fund is governed by the relevant statute. Any transfer of liability should be done in accordance with the law.

Therefore, the petition of the Petitioner fails on its own merit and moves to dismiss the application.

The Petitioner, Francis Richard De Zoysa claims that he is the managing director of the company called De Zoysa Organisation (Private) Limited. As per our Companies Act the said company is incorporated and recognised as a juristic person. As per the objection raised by the 4<sup>th</sup> and 5<sup>th</sup> respondent, the Petitioner had not signed the Memorandum of Understanding on his behalf. Further the notices and certificates were issued by the 1<sup>st</sup> and 2<sup>nd</sup> respondents on the company and not on the Petitioner therefore I find that the Petitioner has no *locus standi*. I incline to uphold the objections raised by the counsels of the 4<sup>th</sup> and 5<sup>th</sup> respondents.

In lieu of the merits of this case I find that the company in question had made payments of arrears of Employees' Provident Fund and accepted its liability of payment of the same fund.

Considering the preliminary objections, I rule that the petitioner has no locus standi to file and maintain this application. Even if we consider all materials available before us, we do not find any merit for issuance of Writs of Certiorari and Mandamus. Accordingly we refuse to grant any relief prayed for.

**Petition dismissed without cost.**

**JUDGE OF THE COURT OF APPEAL**

**L.T.B. Dehideniya J (P/CA)**  
I agree,

**PRESIDENT OF THE COURT OF APPEAL**