

St. Regis Packaging (Private) Limited
Nos.33 & 34, Lanka Industrial Estates,
Sapugaskanda, Makola

PETITIONER

Court of Appeal Writ
Application No. 628 / 2011

-Vs-

1. Commissioner General of Labour
Department of Labour
Labour Secretariat
Narahenpita
Colombo 00500
2. J V de Soysa
Assistant Commissioner of Labour
Central Colombo District
Labour Secretariat
Narahenpita
Colombo 05
3. P A Lionel
Labour Officer
Central Colombo District
Labour Secretariat
Narahenpita
Colombo 00500

C.A. (Writ) Application No: 628/2011

BEFORE : **A.H.M.D. NAWAZ, J.** and
P. PADMAN SURASENA, J.

COUNSEL : M.A. Sumanthiran Attorney-at-Law with V. Arulanantham
instructed by Sinnadurai Sundaralingam and Balendra for the
Petitioner

Chaya Sri Nammuni SC for the 1st to 3rd Respondents

ARGUED AND

DECIDED ON: 18.01.2017

A.H.M.D. NAWAZ, J.

This Court has heard both Mr. M.A. Sumanthiran for the Petitioner and Ms. Chaya Sri Nammuni State Counsel for the Respondents. By a notice marked **P18**, the petitioner company was summoned for an inquiry in relation to a complaint made by the 4th respondent on 18.09.2010. Upon a perusal of the proceedings that have been furnished before this Court, it appears that the notices recite Section 2 of the Industrial Disputes Act. Section 2 of the Industrial Disputes Act is quite emphatic that the Commissioner has to hold all such inquiries as are necessary to determine whether an industrial dispute exists or not. In the objections filed before this Court the State has furnished the notes of inquiry that took place before the Commissioner General of Labour. In the recommendation that has been made by the statutory functionary which is briefed to us as **1R6**, a determination has been made on the question of EPF and the petitioner has been

ordered to make a payment in relation to the employee in question namely the 4th Respondent. This document **1R6** refers to proceedings that took place on 26.01.2011. In the aforesaid recommendation that has been marked as **1R6**, the inquiring officer who conducted the inquiry on behalf of the Commissioner General of Labour refers to *oral evidence and other documents that he had taken into account*. The learned State Counsel also points out that this inquiry conducted by the inquiring officer had a witness from the employer-company (the petitioner) being present before the inquiry. The learned State Counsel relies upon P10- the written submissions that were filed on behalf of the employer. However, the written submissions filed on behalf of the employer-company makes serious allegations of procedural impropriety that was inherent in the proceedings dated 26.01.2011 such as bad faith, bias, and the partisan and aggressive manner in which the inquiry had been conducted has also been alluded to. In other words the complaint of the petitioner company is that even though it was represented at the inquiry, it was not afforded a fair hearing at the inquiry held on 26.01.2011. In the teeth of these allegations it becomes imperative that the proceedings dated 26.01.2011 should have been made available to this Court. It has to be noted that the 1st, 2nd and 3rd Respondents (the officers of the Department of Labour) have failed to furnish the proceedings relevant to the date, on which the partisan inquiry, as the petitioner avers, took place. In this context this Court bears in mind the observations of Justice Senanayake in the Court of Appeal in **Unique Gemstones v Karunadasa**.¹ Emphasising that the rules of natural justice requires that reasons be provided, Justice Senanayake observed:

¹(1995) 2 Sri.LR 357 (CA)

*"The action of the Public Officers should be 'transparent' and they cannot make blank orders. The giving of reasons is one of the fundamentals of good administration.....it is implicit in the requirement of the fair hearing to give reasons for a decision. The standard (sic) of fairness are not immutable."*²

Transparency of proceedings manifests elements of due process and I have to observe that even when judicial review commenced before this Court, the proceedings dated 26.01.2011 were not available for this Court to determine that the ground of invalidity that was argued did not exist.

In the circumstances, this Court holds that the grounds urged by the petitioner that the recommendation dated 04.05.2011 (**1R6**) is tainted with procedural impropriety has to be accepted.

Therefore, this Court proceeds to issue a mandate in nature of a writ of certiorari quashing the letter dated 12.10.2011 (**P2**) that imposed the liability on the petitioner.

JUDGE OF THE COURT OF APPEAL

P. PADMAN SURASENA, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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²Id pp 360-61