

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

Eliyatamby Thambiah,  
General Secretary,  
People's Workers Union,  
No. 52/3, Church Road,  
Kahawatha.  
Petitioner

**CASE NO: CA/439/2016/WRIT**

Vs.

1. The Commissioner of Labour,  
Labour Secretariat,  
Colombo 5.
2. The Chairman,  
The Employer's Federation of Ceylon,  
No. 385 J3, Old Kotte Road,  
Rajagiriya.
3. The General Secretary,  
Workers' Congress,  
No. 72, Ananda Coomaraswamy Mawatha,  
Colombo 7.
4. The General Secretary,  
Lanka Jathika Estate Workers' Union,  
No. 60, Bandaranayakepura,  
Sri Jayawardenapura Mawatha,  
Welikala,  
Rajagiriya.

5. The General Secretary,  
Joint Plantations Trade Union Centre,  
No. 89, Dharmapala Mawatha,  
Matale.  
And 23 Others  
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: E. Thambiah for the Petitioner.

Nayomi Kahawita, S.C. for the 1st, 26th and 28th  
Respondents.

K.S. Perera for the 2nd, 6th-8th, 10th, 11th, 13th-  
15th, 17th, 19th, 19th-25th Respondents.

Sunil Abeyratne for the 4th Respondent.

S. Gurugalgoda for the 5th Respondent.

Decided on: 12.06.2018

Samayawardhena, J.

The petitioner as the General Secretary of the People's Workers Union filed this application seeking prerogative remedies in the nature of writs of certiorari, mandamus and prohibition basically to quash the Collective Agreement (P15) and the Gazette Notification which published it (P17) on the basis that some of the clauses of the said Agreement are against the best interests of the members of the said Union.

The respondents have taken up a preliminary objection to the maintainability of this application on the premise that the petitioner has no *locus standi* to file this application.

The Collective Agreement P15 was entered into between the 2<sup>nd</sup> respondent as the party of the first part and the 3<sup>rd</sup>-5<sup>th</sup> respondents as the party of the second part. The 2<sup>nd</sup>-5<sup>th</sup> respondents are Trade Unions. This Agreement taken in isolation is a private Agreement between the two parties who are not public officers and therefore not amenable to writ jurisdiction.

The only public officer among the respondents is the 1<sup>st</sup> respondent—the Commissioner of Labour who is statutorily required to cause the Collective Agreement to be published in the Gazette in terms of section 6 of the Industrial Disputes Act, No. 43 of 1950, as amended. I will assume that the Collective Agreement published in the Gazette under the hand of the 1<sup>st</sup> respondent (P17) attracts writ jurisdiction.

However the petitioner in my view shall fail at the threshold level itself.

The petitioner on the one hand in the 1<sup>st</sup> paragraph of page 13 of his written submissions dated 23.04.2018 states that “*his Union is not a party to the said Collective Agreement.*” If his Union is not a party to the Collective Agreement the petitioner cannot have sufficient interest to file this application as only the parties to the Collective Agreement are bound by it—vide sections 5(2) and 8 of the Industrial Disputes Act.

Conversely, the petitioner in paragraph 5 of the original petition dated 22.12.2016 states that “*on behalf of the members of the petitioner’s union too the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents have signed the agreement*” intimating that the petitioner’s Union is bound by the Agreement.

The petitioner cannot approbate and reprobate, affirm and disaffirm, blow hot and cold the same transaction simultaneously.

If the petitioner's Union is bound by the Agreement for the reason that the 3<sup>rd</sup>-5<sup>th</sup> respondents have signed the Agreement on behalf of the members of the petitioner's Union, the petitioner cannot bypass the 3<sup>rd</sup>-5<sup>th</sup> respondents and straightaway come to this Court seeking annulment of the Agreement published in the Gazette by way of a prerogative writ. That has to be done through the 3<sup>rd</sup>-5<sup>th</sup> respondents who are the parties to the Agreement. The petitioner does not say that the 3<sup>rd</sup>-5<sup>th</sup> respondents have signed the Agreement on behalf of the petitioner's Union without their consent and against their wishes.

On the other hand, even the 3<sup>rd</sup>-5<sup>th</sup> respondents need not come before this Court seeking annulment of the Agreement by way of a prerogative writ. In terms of section 9 of the Industrial Disputes Act, they can, if they want, repudiate the Agreement, in whole or in part, by written notice to the Commissioner of Labour and the other relevant parties.

Looking at from any angle, the petitioner's application, in my view, is misconceived in law.

I uphold the preliminary objection and dismiss the application with costs.

Judge of the Court of Appeal