

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

In the matter of an Appeal made in terms of
s. 754 (1) of the Civil Procedure Code.

Jayathilake Amarawickrema,
"Newsiri Amara"
Dehigahalanda, Amabalantota.

Plaintiff.

Vs.

D.C. Colombo: 3609/spl
Court of Appeal No: C.A. 674/2000(F)

Ceylon Electricity Board,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.

Defendant.

AND BETWEEN

Ceylon Electricity Board,
Sir Chittampalam A Gardiner Mawatha,
Colombo 02.

Defendant – Appellant

Vs.

Jayathilake Amarawickrema,
"Newsiri Amara"
Dehigahalanda, Amabalantota.

Plaintiff-Respondent.

Before : E.A.G.R. Amarasekara, J
Counsel : Mr. Sumathi Dharmawardena SDSG for the Defendant -
Appellant.
Mr. Rohan Sahabandu PC for the plaintiff – Respondent.
Decided on : 19.11.2018.

E.A.G.R. Amarasekara, J.

The Plaintiff- Respondent (hereinafter sometimes referred to as the Respondent) instituted the action D.C. Colombo No. 3609/spl in the District Court of Colombo against the Defendant- Appellant (hereinafter sometimes referred to as the Appellant) alleging that the Appellant had unlawfully disconnected the electricity supply to the premises owned by the Respondent, where he ran a rice mill called “Newsiri Amara Haal Mola”. The Respondent sought inter alia a declaration that the said disconnection was unlawful and an order to restore the Electricity supply together with damages in a sum of Rs.200,000/- with continuing damages at Rs. 1000/- per day until the supply of electricity is restored.

The appellant, by his answer dated 07.01.1993, stated that the electricity supply was disconnected on 22.04.1992 because the Respondent illegally tampered with the meter preventing the true consumption of electricity of the rice mill being registered in the meter causing a loss of revenue to the Appellant. In this regard the Appellant further made a claim in reconvention for a sum of Rs.273,857.38 and moved for a dismissal of the Plaint. The Respondent by his replication denied the claim in reconvention.

The learned Additional District Judge by her Judgment dated 13.06.2000 held with the Respondent and ordered a sum of Rs.100000/- be paid by the Appellant Authority to the Respondent as damages. The Appellant Authority being aggrieved by the said Judgment preferred this Appeal to this Court to have the same set aside and has prayed that it be granted its claim in reconvention.

The Appellant's main contention in this Appeal is that there was a total lack of jurisdiction for the learned Additional District Judge to grant the reliefs prayed for in the Plaint.

As per the proceedings dated 30.06.1995 (vide page 67 of the brief), the Appellant's lawyer had consented to accept the admissions suggested by the Respondent except the admission No.6 which was stricken off by the learned District Judge. This Court observes that admission No.2 suggested by the Respondent was the Jurisdiction of the District Court (vide page 384 of the brief). However, if there is a patent lack of jurisdiction, the parties cannot confer jurisdiction by agreement. On the other hand, the lawyer for the Respondent who appeared in the District Court had not objected to eleven issues suggested by the Appellant (vide proceedings dated 30.06.1995 at page 68 of the brief). The learned Additional District Judge has renumbered those issues as issues Nos.4 to 14. The said issues No.4, 10, 11 shall read as follows;

4. ගරු අධිකරණයට මෙම පැමිණිල්ල, විභාග කිරීමට හා තීන්දු ප්‍රකාශය දීමට අධිකරණ බලයක් ඇති ද?
10. කෙසේ වෙතත් විත්තිකරු විසින් පැමිණිල්ලෙන් විදුලිය සිදුලීම විදුලි බල මණ්ඩල පනතේ හා විදුල බල පනතේ ප්‍රතිපාදන ප්‍රකාරව සන්භාවයෙන් කරන ලද්දේ ද?

11. 10 වෙනි විසඳිය යුතු ප්‍රශ්නය විත්තිකරුගේ වාසියට තින්ද කලහොත් පැමිණිල්ලට මෙම නඩුව ගෙන යා හැකිද?

The issue No.4 quoted above directly questions the jurisdiction of the District Court while the issues No. 10 and 11, impliedly question the Respondent's ability to proceed with the case against the acts done in good faith. In other words, issues No. 10 and 11 suggest that the District Court has no jurisdiction to allow the Respondent to proceed with the case if the alleged acts were done in good faith.

The aforesaid circumstances show that, though there was an admission with regard to the jurisdiction of the District Court without any objection, at the same time parties have raised issues that directly and impliedly challenge the jurisdiction of the District Court. The framing of issues with regard to the jurisdiction without any objection indicates that there was no proper consensus indicating that the District Court had jurisdiction to hear the case. However, parties to an action cannot confer jurisdiction to the court by agreement or by making a claim in reconvention when there is a total lack of jurisdiction.

The learned Senior Deputy Solicitor General has brought this Court's attention to the Section 23 of the Interpretation Ordinance and Section 59 of the Ceylon Electricity Board Act. The Section 23 of the Interpretation Ordinance creates a barrier to entertain or to enter a decree or make any order in any action, for a declaration of right or status upon any ground whatsoever, arising out of or in respect of or in derogation of any order, decision, determination, direction or finding which any person, authority or tribunal is empowered to make or issue under any written law. It appears from the written submissions dated 21.03.2013 of the Appellant that the Appellant's stance is that the learned District Judge lacks

patent jurisdiction to grant prayer (a) of the Plaint which prayed for a declaratory relief when aforesaid Section 23 of the Interpretation Ordinance is read with Section 45 of the Electricity Act. It is not disputed that the relevant Authority to order or decide the discontinuation of the supply of electricity is the Appellant, namely the Ceylon Electricity Board but the Section 45 of the Electricity Act gives the power to discontinue the supply of energy only when there is a wrongful conduct of the consumer as described in that section. However, the aforesaid Section 23 of the Interpretation Ordinance does not prevent the Court granting damages in a suitable case. Therefore, one can still argue the District Court had the Jurisdiction to grant reliefs, at least without granting the declaratory relief. Whatever the argument based on Section 29 of the interpretation Ordinance is, the Section 59(1) of the Ceylon Electricity Board Act is more relevant to the issues at hand.

The said Section is quoted below for easy reference;

“59 (1) No suit or prosecution shall lie,

- (a) against the Board for any act which in good faith is done or is purported to be done by the Board under this act or
- (b) against any member, officer, servant or agent of the Board for any act which in good faith is done or is purported to be done by him under this act or on the direction of the Board.

The aforesaid Section clearly indicates that no action can be filed or proceeded against the Ceylon Electricity Board or its members, servants, agents etc., unless it is alleged or could be shown that the purported act was done without good faith. It must be noted that the term good faith is not defined in the said act. However, it has to be given its general meaning in the context of the said act. The following

is extracted from the “WHARTON’S CONCISE LAW DICTIONARY With Exhaustive Reference to Indian Case Law, Universal Law Publishing- 16th Edition, 2016 Reprint.

(Quote)

“Good faith, nothing shall be deemed to be done in good faith which is not done with due care and attention (limitation Act 1963, S. 2(4)). The expression ‘good faith’ has not been defined in the U.P. Imposition of Ceiling on Land Holdings Act, 1960. The expression has several shades of meaning. In the popular sense, the phrase ‘in good faith’ simply means ‘honestly, without fraud, collusion or deceit; really, actually without pretence and intent to assist or act in furtherance of a fraudulent or otherwise unlawful scheme, (see WORDS and PHRASES, Permanent Edition. Vol 18-A page 91). Although the meaning of ‘good faith’ may vary in the context of different statutes, subjects and situations, honest intent free from taint of fraud or fraudulent design, is a constant element of its connotation. Even so, the quality and the quantity of the honest requisite for constituting ‘good faith’ is conditioned by the context and object of the statute in which this term is employed. Brijendra Singh Vs State of U.P, AIR 1981 SC 636(639). (1981) I SCC 597, (1981) 2 SCR 287.

Means a thing, which is in fact done honestly whether it is done negligently or not. [General Clauses Act (10 of 1987) S.2 (4)]”

(Unquote)

What is quoted above demonstrates that some statutes, though they use the phrase ‘good faith’, do not give any specific interpretation to the phrase while the others may give interpretations or guidance to interpret the phrase; However, it is clear the phrase ‘good faith’ indicates a mental element connected to the person who commits the act, that;

- (a) relates to an honest intent free from taint of fraud or fraudulent design
or
- (b) is devoid of fraud, collusion or deceit or
- (c) is free from any fraudulent or unlawful scheme.

A perusal of the plaint dated 30.09.1992 reveals that there is no allegation made against the officers who conducted the raid/or the field investigation to say that they did not act in 'good faith' or that the assessment of purported loss of revenue was not done in good faith. It is true that the averments in the plaint contain allegations of illegalities and unreasonableness. Illegalities may occur due to ignorance of the law or not following the law, rules or regulations etc. If it cannot be established that the breach of law was intentional or pre-planned to cause harm, harassment, inconvenience or undue disadvantage to the Respondent, such an illegality caused by the acts of the officers of the Respondent cannot be considered as acts done without good faith when they were done within their scope of duty.

Even unreasonableness may occur due to the consideration of irrelevant matters and/or non- consideration of relevant matters or not following the law or rules of natural justice etc. Unless a mental element indicating dishonesty, fraud, collusion or deceit is not shown such an unreasonableness cannot be termed as one caused by an act done in bad faith when it is done during one's normal duty.

Only the Respondent has given evidence in support of the plaint and nowhere in his evidence he has alleged that the officers of the Appellant acted in bad faith or the raid or the field investigation was not done in good faith.

As elaborated above, illegality or unreasonableness may not always carry the mental element to prove mala fide intention or attitude. Such an element has to be proved or established by facts, that is through leading evidence to that effect. The evidence led during the trial establishes that relevant field investigation was not the only one done on that day, but several rice mills were covered during the same raid.

No evidence was led during the trial to show that the relevant field investigation was schemed to victimize the Respondent or to cause harm, harassment, discomfort or undue disadvantage to the Respondent.

Even in the Judgment, the learned Additional District Judge has not given any reason to demonstrate that there were evidence indicating the existence of the mental element that establishes mala fide motive or intention or attitude of the officers of the Appellant who participated in the field investigation or calculated the purported loss of revenue to the Appellant. It is true that the learned Additional District Judge has come to the conclusion that;

- i. The disconnection of the electricity supply and the removal of the meter were not based on a reasonable and justifiable investigation;
- ii. The disconnection of the supply of electricity was unlawful;
- iii. There is no reasonable or lawful ground to recover the purported loss of revenue to the Appellant.

However, as said before unlawful, unreasonable or unjustifiable conduct may occur without any mala fide conduct of the party concerned. The mental element that indicates the mala fide conduct has to be proved through evidential material placed

before the Court. Except in the answer to issue No. 10, nowhere in the judgment the learned Additional District Judge has given any reason to indicate that the officers of the Appellant had mala fide motive, intention or attitude in conducting the field investigation and the calculation of the purported loss of revenue. Nowhere in her judgment the learned Additional District Judge has stated that she is compelled by the circumstances to presume under Section 114 of the evidence ordinance that the field investigation was done with a mala fide intention or attitude. The evidence led at the trial indicates that the field investigation was done as part of their normal duty under the direction given by the superiors. There is nothing to indicate that such directions were tainted with bad faith. The relevant officers of the appellant might have:

- i. not done the investigation in a prudent manner
- ii. not given proper notice to the Respondent prior to the field investigation.
- iii. not maintained proper notes of the investigation (please see P6 which is addressed to P. Amarawickrama who appears to be a brother of the Respondent and P 11, in which item no. 1 refers to the Respondent as the owner of the rice mill but the name of the mill, the account number and the meter number relevant to that entry do not tally with the name of the mill, the meter number and the account number relevant to this case. The item no.2 of P 11 refers to P. Amarawickrama who appears to be the brother of the Respondent but the name of the mill, the account number and the meter number relevant to that entry tally with the name of the mill, the meter number and the account number relevant to this case.)
- iv. not considered relevant matters,

v. considered irrelevant matters,

during the field investigation and/or calculation of the purported loss of revenue.

However, to prove that they acted in bad faith, there must be evidential material to show that the field investigation was not done as part of their usual duty, but was schemed or intended to cause harm, or inconvenience or harassment or undue disadvantage to the Respondent. In that backdrop, I do not see the answer to the issue No. 10, which indicates that the Appellant did not act in good faith, is supported by any evidence led at the trial or the reasons given by the learned Additional District Judge. In her answer to the issue No. 10, the learned Additional District Judge has added that there was no reasonable investigation. An investigation may become unreasonable for many reasons but bad faith has to be established by evidential material.

It is my considered view that the answer given to issue No.10 by the learned Additional District Judge indicating that the Appellant did not act in good faith in disconnecting the supply of electricity is not supported by the evidence placed before the learned Additional District Judge. In that backdrop the answer to issue No.10 had to be in the affirmative or at least "the bad faith is not proved" and No. 11 had to be in the negative. The answer to issue no.4 shall be "No, since it is not pleaded or exposed that the acts concerned were done without good faith."

This Court also observes that the learned Additional District Judge, in her judgment has considered P10 as a document relevant to the rice mill in question in this action,

but the address of the rice mill referred to in P10 shows that it belongs to a rice mill mentioned under item 1 of P11. Though item 1 of P11 names the Respondent as the owner of the rice mill under item 1, the meter number, account number and the name of the mill relevant to the said item no. 1 do not tally with the meter number, account number and the name of the mill relevant to this action. This Court observes that Item 2 of P11, though it mentions the name of the brother of the Respondent as the owner of the rice mill, refers to the correct account number, meter number and the name of the mill relevant to this case. The witness Ruben Wickramarachchi had clarified in re-examination that he marked P10 by mistake and P10 relates to another rice mill. {vide proceedings dated 04.12.1997}

However, for the reasons mentioned above, I am of the view that there was no evidential material before the learned Additional District Judge for her to come to the conclusion that the disconnection of the supply of electricity was an act not done in good faith. Hence, I have to allow the appeal and set aside the Judgment dated 13.06.2000 of the learned Additional District Judge of Colombo.

However, this court does not incline to grant the claim in reconvention made by the Appellant in its answer. The Appellant has claimed a sum of Rs.273,857/38 as loss of revenue from 1991.04.30 to 1992.04.22. As per the evidence of Sunil de Silva, last witness for the Appellant, the distribution and the supply of electricity was taken over by the Appellant from the Pradeshiya Sabawa of Ambalantota on 30.04.1991 and the meter was in good condition on that day. If so, the Appellant cannot claim loss of revenue from that date without proving the date or period that the meter reading had become abnormal or suspicious.

For the foregoing reasons, I allow the appeal and set aside the Judgment of the learned Additional District Judge of Colombo in case no.3609/SPL but without allowing the claim in reconvention of the Appellant.

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E.A.G.R. Amarasekara J

Judge of the Court of Appeal.