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

In the matter of an application for writs of certiorari and mandamus in terms of Article 154P of the Constitution

A. Yasomanike,

Near Somananda Pirivena,

Alawathura.

**Case No. CA(PHC) 71/2009** **Petitioner-Appellant**

**H.C. Kegalle No. SP/HCCC/KAG/3109/2008** **Vs.**

1. Registrar/Commissioner

   Department of Co-operative Development,

   Sabaragamuwa Provincial Council,

   New Town, Ratnapura.

2. SANASA,

   Somananda Pirivena,

   Alawathura,

   Getiyamulla.

3. E. Jayantha Dharmasiri,

   Co-operative Inspector,

   Agalawatta, Higgoda,

   Udugoda.

**Respondents-Respondents**

**Before:** K.K. Wickremasinghe J.

Janak De Silva J.

**Counsel:**

Sunil Abeyratne for Petitioner-Appellant

Nuwan Pieris State Counsel for 1st Respondent-Respondent

**Written Submissions tendered on:**

Petitioner-Appellant on 13.09.2018

**Argued on:** 18.10.2018

**Decided on:** 11.01.2019

**Janak De Silva J.**

This is an appeal against the order of the learned High Court Judge of the Sabaragamuwa Province holden in Kegalle dated 11.05.2009.

The Petitioner-Appellant (Appellant) was the treasurer of the 2nd Respondent-Respondent (2nd Respondent) from 06.02.1993 and its Manager from 07.01.1997. A dispute pertaining to a shortfall of money of the 2nd Respondent arose between the 2nd Respondent and the Appellant. The 1st Respondent-Respondent (1st Respondent) appointed the 3rd Respondent-Respondent (3rd Respondent) as the arbitrator to hear and determine the said dispute. After inquiry the 3rd Respondent determined that the Appellant has to pay the 2nd Respondent a sum of Rs. 72,398.40 and ordered her to make the said payment (P11).

The Appellant preferred an appeal to the 1st Respondent against the said order. The 1st Respondent dismissed the appeal (P16) which was communicated to the Appellant by P15. The Appellant then filed proceedings before the High Court of the Sabaragamuwa Province holden in Kegalle and sought a writ of certiorari quashing P11, P15 and P16 and further sought a writ of prohibition preventing the 1st and 2nd Respondents implementing P11, P15 and P16. The said application was rejected by the learned High Court Judge and hence this appeal.

***No Evidence***

The Appellant submits that there is no evidence to substantiate the findings of the arbitrator. Generally, courts exercising judicial review do not review errors of fact made by administrative bodies/officials, unless those errors of fact are linked to the assumption of the administrative body's jurisdiction i.e. jurisdictional errors of facts. [*R v. Fulham, Hammersmith and Kensington Rent Tribunal* (1951) 2 K. B. 1 at 6; *Walter Leo v Land Commissioner* 57 NLR 178]. One exception to this general principle is the 'no evidence rule'. Wade and Forsythe, *Administrative Law*, 7th Edition at page 312 observes as follows:

> ***"'no evidence' does not mean only a total dearth of evidence. It extends to any case where the evidence, taken as a whole, is not reasonably capable of supporting the finding, or where, in other words, no tribunal could reasonably reach that conclusion on that evidence".....*** *"It seems clear that this ground of judicial review ought now to be regarded as established on a general basis", and forecasts that 'no evidence' seems destined to take its place as yet a further branch of the principle of ultra vires, so that* ***Acts giving powers of determination will be taken to imply that the determination must be based on some acceptable evidence. If it is not, it will be treated as 'arbitrary, capricious and obviously unauthorised'."***

The observations made by the text writers about this ground of judicial review have been adopted and endorsed by the Supreme Court in *Kiriwanthe v Navaratne* [(1990) 2 Sri LR 393 at 409] and in *Nalini Ellegala* v *Poddalagoda* [(1999) 1 Sri LR 46 at 52]. In *Nicholas* v *Markan Markar* [(1985) 1 Sri. L.R. 130, pp. 140 – 141] the Court of Appeal cited with approval the following dictum about the 'no evidence rule' in the leading English case of *Edwards v. Bairstow* [1956] AC 14:

> *"..it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the court must intervene. It has no option but to assume that there has been some misconception of the law, and that this has been responsible for the determination.....* ***I do not think that it matters much whether this state of affairs is described as one in which there is no evidence to support the determination, or as one***

***in which the evidence is inconsistent with, and contradictory of, the determination, or as one in which the true and only reasonable conclusion contradicts the determination".***

In effect, the no evidence rule has opened up a very narrow path for courts to review non-jurisdictional errors of facts. In the UK, a finding by an administrative body that has been made in ignorance of established and relevant evidence has been held to be amenable to judicial review. [*Regina v. Criminal Injuries Compensation Board Ex Parte A (A.P.)* [1999] 2 AC 330; *Secretary of State for Education and Science v Tameside MBC* [1976] UKHL 6[1]].

In *Hasseen v Gunasekara and others* [CA Application No. 128/86 C.A.M. 02.10.1995] this court considered an order of the Rent Board of Review, affirming an order of the Rent Board which had been "arrived at without an adequate evaluation of the evidence and **by failing to take into consideration relevant items of evidence which could have influenced the finding" and held the Rent Board as well as the Board of Review had "erred in law by failing to take into account relevant items of evidence in arriving at the finding"** and therefore quashed the orders of the Rent Board as well as of the Board of Review

Therefore, when a factual finding by an administrative body is not supported by the evidence on record, or has been made ignoring relevant and established evidence on record, the court has the ability to exercise judicial review. However, in the instant case, I am of the view that the 3rd Respondent has considered all the evidence led before him before arriving at the impugned conclusions. In particular, he has considered the substantial amount of documentary evidence led which shows the culpability of the Appellant for the loss suffered by the 2nd Respondent. Accordingly, this ground must fail.

---

[1] Per Lord Wilberforce
*Sections in this form may. no doubt, exclude judicial review on what is or has become a matter of pure judgment. But I do not think that they go further than that.* ***If a judgment requires, before it can be made, the existence of some facts, then, although the evaluation of those facts is for the Secretary of State alone, the court must enquire whether those facts exist, and have been taken into account, whether the judgment has been made upon a proper self direction as to those facts, whether the judgment has not been made upon other facts which ought not to have been taken into account. If these requirements are not met, then the exercise of judgment, however bona fide it may be, becomes capable of challenge***

***Contradictory Letter Demands***

The Appellant submits that the arbitrator has failed to consider that the 2nd Respondent sent three letter demands at different times demanding different amounts from the Appellant. It is true that the 2nd Respondent sent P1 demanding a sum of Rs. 85,632.35 with interest, P3 demanding the same sum, P3 demanding a sum of Rs. 82,067 with interest of Rs. 59,088 and P4 demanding a sum of Rs. 82,067 with interest of Rs. 63,218. However, the 3rd Respondent in making his award considered all the evidence before him prior to making his award and it cannot be said that there was no evidence supporting his conclusion.

Furthermore, it is trite law that a court exercising judicial review does not concern itself with the correctness of the decision but only with its lawfulness. [*Nicholas v. Macan Markar Limited* (1985) 1 Sri.L.R. 130 at 139]. The scheme of the Cooperative Society Law also indicates that the 'correctness' or merits of an arbitral award is left to be determined on appeal by the Registrar of Cooperative Development and not a civil court. Hence this ground also must fail.

For the foregoing reasons I see no reason to interfere with the order of the learned High Court Judge of the Sabaragamuwa Province holden in Kegalle dated 11.05.2009.

The appeal is dismissed with costs fixed at Rs. 30,000/=.

Judge of the Court of Appeal

**K.K. Wickremasinghe J.**

I agree.

Judge of the Court of Appeal