

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

Mohammed Saleem Mohammed
Razeen,
No. 418/3,
St. Rita's Road,
Daluwakotuwa,
Kochchikade.
Petitioner

CASE NO: CA/WRIT/352/2015

Vs.

Air Commodore Kasturi
Arachchige Lakshman
Ranatunga,
President,
General Court Martial,
Air Force Head Quarters,
Chittampalam A. Gardiner
Mawatha,
Colombo 2.
And 11 Others.
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Saliya Peiris, P.C., with T. Nandasiri for the
Petitioner.
Vikum de Abrew, Senior D.S.G., for the
Respondents.

Decided on: 08.02.2019

Samayawardhena, J.

The petitioner, a Squadron Leader of the Sri Lanka Air Force, had been cashiered upon conviction after a General Court Martial of two charges framed under the Air Force Act for “disgraceful conduct” by knowingly signing a false payment voucher and a cash cheque for a sum of Rs. 300,000/=. He has filed this application seeking to quash by way of certiorari the said verdict (P9) and the punishment (P10).

The only ground urged by the petitioner to grant that relief is that the summing up of the 11th respondent Judge Advocate after the trial contains misdirections and non-directions and therefore the verdict of guilty entered by the General Court Martial is unsustainable. He says that the Judge Advocate in the summing up failed to mention matters adequately in relation to burden of proof, standard of proof, contradictions and omissions in the evidence led, accused’s rights etc. The said summing up has been produced by the petitioner marked P8. I read the entire summing up running into 27 pages to realize that the said complaint of the petitioner is devoid of merit. It, in my view, covers all the major matters which the petitioner now

complains of. No summing up will be one hundred percent perfect. So do, in my view, Judgments handed down by Courts. It is subjective.

Under judicial review, this Court, unless there is an obvious error of law on the face of the record, will not overturn a decision on merits.¹ I find no such patent error in the said summing up.

In *Kalamazoo Industries Ltd v. Minister of Labour & Vocational Training*², the petitioners sought to quash the arbitral award by certiorari and prohibition. Dismissing that application, Jayasuriya J. *inter alia* stated:

There is no misdirection in point of fact or law which vitiates the award. There is no failure on the part of the arbitrator to take into consideration the effect of the totality of the oral and documentary evidence placed before him and there is no improper evaluation of the evidence placed before the arbitrator on a consideration of the award and the totality of the evidence placed before him in this matter. This court must keep prominently in forefront that it is exercising in this instance a very limited jurisdiction quite distinct from the exercise of appellate jurisdiction. Relief by way of certiorari in relation to an award made by an arbitrator will be forthcoming to quash such an award only if the arbitrator wholly or in part assumes a jurisdiction which he does not have or exceeds that which he has or acts contrary to principles of natural justice or pronounces an award which is eminently irrational or unreasonable or

¹ Vide my Judgment in *Chithrasiri v. National Gem and Jewellery Authority*, CA/WRIT/38/2016 decided on 31.05.2018

² [1998] 1 Sri LR 235 at 248-249

is guilty of an illegality. The remedy by way of certiorari cannot be made use of to correct errors or to substitute a correct order for a wrong order and if the arbitrator's award was not set aside in whole or in part, it had to be allowed to stand unreversed. It is pertinent to refer to the principles laid down by Prof. H. W. R. Wade on "Administrative Law" 12th edition at pages 34 to 35 wherein the learned author states: "Judicial review is radically different from the system of appeals. When hearing an appeal, the court is concerned with the merits of the decision under appeal. But in judicial review, the court is concerned with its legality. On appeal, the question is right or wrong. On review, the question is lawful or unlawful....judicial review is a fundamentally different operation. Instead of substituting its own decision for that of some other body, as happens when an appeal is allowed, a court, on review, is concerned only with whether the act or order under attack should be allowed to stand or not". In the circumstances the objective of this court upon judicial review in this application is to strictly consider whether the whole or part of the award of the arbitrator is lawful or unlawful. This court ought not to exercise its appellate powers and jurisdiction when engaged in the exercise of supervisory jurisdiction and judicial review of an award of an arbitrator.

In *Public Interest Law Foundation v. Central Environmental Authority*³ Gunawardana J. held:

There is a distinction between appeal and review. If one appeals against a decision, one is claiming that the decision

³ [2001] 3 Sri LR 330 at 334

is wrong and that appellate authority or court should change the decision. The Court of Appeal, if it is persuaded by the merits of the case (appeal), may allow the appeal and thereby substitute its view for that of the Court or tribunal of first instance. Under judicial review procedure, the Court of Appeal is not concerned with the merits of the case, that is, whether the decision was right or wrong, but whether the decision is lawful or not. In the words of Lord Brightman: "Judicial review is concerned, not with the decision but with the decision making process" (Chief Constable of North Wales Police v. Evans [1982] 1 WLR 1155 at 1173) It is worth observing that the review procedure is not well suited to determination of disputed facts-factual issues arising in this case being imprecise and disputed.

As seen from R1, unknown to the petitioner, His Excellency the President has approved the said punishment well before the petitioner came before this Court seeking *inter alia* a direction to the 12th respondent the Commander of the Sri Lanka Air Force not to communicate the punishment to His Excellency the President for confirmation until the final determination of this application as such confirmation of the President is not amenable to writ jurisdiction. Hence this application has now become *ex facie* futile.

Application of the petitioner is dismissed with costs.

Judge of the Court of Appeal