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

In the matter of an Application in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka for a Mandate in the nature of a Writ of Certiorari

CA (Writ) Application No: 102/2017

Splendour Media (Pvt.) Limited,
No. 06, Alwis Terrace, Colombo 3.

PETITIONER

Vs.

1. The Commissioner General of Labour.

2. C. G. H. Sanathlanka,
Assistant Commissioner of Labour,
Colombo East.

3. M.D Nalaka Wishwa Kumara,
382, "Nelum", Batagama South,
Kandana.

4. K. A. P. Navaratne,
Labour Officer, Colombo East.

5. N. R. Ranawaka,
Assistant Commissioner of Labour,
Colombo East.

1st, 2nd, 4th and 5th Respondents at
Labour Secretariat,
Narahenpita, Colombo 5.

RESPONDENTS

Before: **Arjuna Obeyesekere, J**

Counsel: Ms. Manoli Jinadasa for the Petitioner

Susantha Balapatabendi, P.C., Additional Solicitor General for the 1st, 2nd, 4th and 5th Respondents

Written Submissions: Tendered on behalf of the Petitioner on 9th January 2019 and 2nd July 2019

Tendered on behalf of the 1st, 2nd, 4th and 5th Respondents on 11th June 2019

Decided on: 01st November 2019

Arjuna Obeyesekere, J

When this application was taken up for argument on 7th June 2019, the learned Counsel for the parties informed Court that written submissions have been filed and moved that this Court pronounce judgment on the said written submissions as well as the reply written submissions that would be tendered on behalf of the Petitioner.

The Petitioner has filed this application, seeking *inter alia* a Writ of Certiorari to quash the decision of the 1st Respondent, Commissioner General of Labour, reflected in the letters annexed to the petition marked '**P6**', '**P8**' and '**P11**' by which the Petitioner was directed to pay a sum of Rs. 589,400 being the sum of money that the Petitioner ought to have contributed to the Employees Provident Fund (EPF) in respect of certain allowances that had been paid by the Petitioner to the 3rd Respondent.

The facts of this matter very briefly are as follows.

The Petitioner had initially employed the 3rd Respondent as an Assistant Creative Director on the 8th September 2008. Having served the Petitioner for a period of little over four years, the 3rd Respondent had resigned from the Petitioner Company on 30th November 2012. The 3rd Respondent had subsequently rejoined the Petitioner as Creative Director on 3rd November 2014 but had been dismissed from service by the Petitioner on 10th June 2015.

By a petition dated 16th June 2015 annexed to the petition marked '**P2**', the 3rd Respondent had complained to the 1st Respondent that the Petitioner has wrongfully terminated his services and had stated *inter alia* as follows:

> " වගඋත්තරකරු 2015 ජුනි 10 වන දින සිට ක්‍රියාත්මක වන පරිදි අසාධාරණ සහ අයුක්ති සහගත ලෙස මගේ සේවය අවසන් කරනු ලැබූ අතර එ සම්බන්ධයෙන් දැනටමත් මා විසින් කම්කරු විනිශ්චය සභාවේ දි වගඋත්තරකරුට එරෙහිව නඩුවක් ගොනු කර ඇති අතර එය මෙම පැමිණිල්ලට පරිබාහිර එකකි.
>
> මෙම පැමිණිල්ල වන්නේ වගඋත්තරකරු මා හට හිමි අර්ථසාධක ගෙවීම් (EPF) සේවා භාරකාර අරමුදල් (ETF). පාරිතෝෂික දීමනා (Gratuity), ප්‍රසාද දීමනා (Bonus) සහ එම ගෙවීම්වලට අදාළ පොලිය ද (interest) නිසි පරිදි ගෙවීමට කටයුතු කර නොකිරීමය. ඒ බව සනාථ කිරීම සඳහා එම කාල වකවානු 2කට අයත් වැටුප් පත්‍රිකාවන්වල ඡායාස්ථ පිටපත් 2ක් X සහ X1 වශයෙන් ළකුණු කර මෙයට අමුණා ඇත."

This Court must observe that the above complaint relating to the non-payment of the contribution to the EPF was general in nature.

By a letter dated 13th July 2015, annexed to the petition marked '**P3**', the Department of Labour had requested the Petitioner to present itself before the 4th Respondent for an inquiry relating to the complaint of the 3rd Respondent. The said inquiry had subsequently been held only on 26th August 2015. According to the Petitioner, at the said inquiry, the 4th Respondent had informed the 3rd Respondent that he is not entitled to gratuity as the 3rd Respondent had not served a continuous period of five years. The Petitioner states further that, '*the 4th Respondent also perused the payment records of the 3rd Respondent and informed the Company that they were satisfied that EPF and ETF has been correctly and properly calculated and settled by the Petitioner.*'[1] The Petitioner had sent a letter to the 4th Respondent on 26th August 2015 itself, annexed to the petition marked '**P5**', confirming the above understanding of the Petitioner that the 4th Respondent was '*satisfied with the EPF and ETF payments made by the company*'. The Respondents have produced the minutes of the inquiry proceedings relating to 26th August 2015 maintained by the 4th Respondent, marked '**A1**', which refers to the discussion that was had with regard to the payment of EPF in the following manner:

> "පරිගණක පද්ධතිය මගින් මෙම අය වෙත 41089A හා සාමාජික අංක 25 සහ 83 යටතේ ගෙවා ඇති EPF දායක මුදල් විස්තරයක් ලබා ගත් අතර ඒ අනුව තමාගේ ගිණුමට බැර කර ඇති (ආයතනය වෙතින්) EPF දායක මුදල් නිවැරදි බවට පැමිණිලිකරු එකඟ විය. තවද 2015/02 – ජුනි දක්වා කාලය සඳහා එම ලේඛනයේ තොරතුරු සටහන් වී නොමැති බැවින් එම ගෙවීම් මිලඟ පරීක්ෂණ දිනයේ දී (වාර්තා ඉදිරිපත් කරමින් සනාථ කිරීමට සේවය පක්ෂය එකඟ වේ."

While it is admitted by both parties that the inquiry was to be proceeded with on 9th September 2015 with regard to the issue of whether the termination of

[1] See paragraph 10 of the petition.

the services of the 3rd Respondent was justified, neither the Petitioner nor the Respondents have disclosed to this Court if the further inquiry did take place on 9th September 2015 or as to what transpired thereafter. Be that as it may, the 4th Respondent did not respond to '**P5**', even though '**P5**' had been personally delivered to the 4th Respondent. Thus, on the face of '**A1**' and '**P5**', it appears that the complaint of the 3rd Respondent with regard to non-payment of EPF had come to an end on 26th August 2015.

The Petitioner states that by a letter dated 20th September 2016, annexed to the petition marked '**P6**', the 2nd Respondent, with whom the Petitioner has not had any previous communication on the complaint of the 3rd Respondent, had informed the Petitioner as follows:

> "වරින් වර සංශෝධිත 1958 අංක 15 දරන සේවක අර්ථසාධක අරමුදල් පනතේ 10 වැනි වගන්තිය සහ පනතේ 16 වැනි වගන්තිය අනුව ඔබගේ ව්‍යාපාර ආයතනයේ/වත්තේ සේවය කළ සේවකයින් වෙනුවෙන් නියමිත පරිදි දායක මුදල්/අධිභාර මුදල් ගෙවා නොමැති බව අනාවරණය වී ඇත. ඔබ විසින් අත්සන් තබා සහතික කර ඉදිරිපත් කර ඇති 'සී' වාර්තා/ 'ඉපයීම්' වාර්තා පදනම් කර ගෙන මුළු හිඟ දායක මුදල් හා අධිභාරය පහත සඳහන් පරිදි ගණනය කර ඇත.
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> | | | |
> |---|---|---|
> | 1. | නොගෙවූ කාල පරිච්ඡේදය | - 2008/09 - 2015/06 |
> | 2. | මුළු හිඟ දායක මුදල | - රු 394,000.00 |
> | 3. | අධිභාරය | - රු 195,400.00 |
> | | එකතුව | - රු 589,400.00" |

The following breakdown of the said sum of Rs. 589,400 is set out in the attachment to '**P6**':

Period	Total earnings on which EPF has been calculated	Total contribution (20%)	Surcharge
2008/09 – 2002/11	1,530,000[2]	306,000	153,000
2014/11 – 2015/06	440,000[3]	88,000	42400

The Petitioner had replied '**P6**' by letter dated 6th October 2016, annexed to the petition marked '**P7**' and taken up the position that they have already made EPF contributions on the salary that was paid to the 3rd Respondent. The Petitioner had attached to its reply, a summary of the payments made on account of the EPF contributions of the 3rd Respondent. This Court has examined the said attachment and observes that payments have been made on the due date specified in Section 15 of the EPF Act.

By '**P7**', the Petitioner had also informed that the 3rd Respondent was in receipt of the following sums of money in addition to the salary, as evidenced by the salary slips for the months of March – May, 2015:

- ✓ Reimbursement of expenses – Rs. 55,000 (maximum limit)
- ✓ Travelling allowance – Rs. 60,000
- ✓ Promotional Expense reimbursement – Rs. 60,000 (maximum limit).

The Petitioner had taken up the position that it is not liable to contribute to the EPF on the above allowances as none of the said allowances fall within the definition of 'earnings' as defined by the Employee Provident Fund Act No. 15

[2] Calculated at Rs. 30,000 per month.
[3] Calculated at Rs. 55,000 per month.

of 1958, as amended.[4] It does not appear that the Respondents have given any consideration to the position of the Petitioner contained in '**P7**', as the 2nd Respondent had issued the Petitioner a notice dated 10th January 2017 in terms of Section 38(2) of the Act, annexed to the petition marked '**P8**', informing the Petitioner that legal action will be instituted unless the said monies are paid by 31st January 2017. Even though the Petitioner had protested the issuance of the said notice by its letters dated 20th January 2017 and 20th February 2017,[5] the 5th Respondent had informed the Petitioner by letter dated 28th February 2017 annexed to the petition marked '**P11**' that legal action would be instituted unless the sum of Rs. 589,400 is paid within 14 days.

Aggrieved by the decisions contained in '**P6**', '**P8**' and '**P11**' to pay a sum of Rs. 589,400/-, the Petitioner invoked the jurisdiction of this Court, seeking *inter alia* a Writ of Certiorari to quash the said decision.

The learned Counsel for the Petitioner has sought to quash the said decision on the following three grounds:

1) The 1st, 2nd and 5th Respondents have acted contrary to the rules of Natural justice.

[4] 'Earnings' is defined in Section 47 as follows: " 'Earnings' means – (a) wages, salary or fees; (b) cost of living allowance, special living allowance and other similar allowances; (c) payment in respect of holidays; (d) the cash value of any cooked or uncooked food provided by the employer to employees in prescribed employments and any such food commodity used in the preparation or composition of any food as is so provided, such value being assessed by the employer subject to an appeal to the Commissioner whose decision on such appeal shall be final; (e) meal allowance; and (f) such other forms of remuneration as may be prescribed."

[5] The said letters have been annexed to the petition marked 'P9' and 'P10' respectively.

2) The Petitioner has not been given a hearing as to why it is not liable to contribute to the EPF on the said allowances, prior to being directed to pay the said sum of money.

3) Allowances paid to the 3rd Respondent does not fall within the definition of 'earnings' as defined in the Act and hence the said decision is unreasonable and irrational as well as *ultra vires* the provisions of the Act.

The first two grounds urged by the learned Counsel for the Petitioner raise the same issue and this Court is of the view that the said two grounds can be considered together. Prior to re-visiting the facts of this application with regard to the above grounds, it would be useful to consider the rationale for insisting that a party should be heard prior to an order affecting the rights of that party is made.

The importance of natural justice and why Courts insist upon it are captured by the following paragraphs in '**Administrative Law**' by Wade:[6]

> *"Just as the courts can control the substance of what public authorities do by means of the rules relating to reasonableness, improper purposes, and so forth, so through the principles of natural justice they can control the procedure by which they do it. In so doing they have imposed a particular procedural technique on government departments and statutory authorities generally. The courts have, in effect, devised a code of fair administrative procedure based on doctrines which are an essential part of any system of administrative justice.*

[6] 'Administrative Law' by H.W.R. Wade and C.F. Forsyth; 11th Edition; pages 373 and 374.

Procedure is not a matter of secondary importance. As governmental powers continually grow more drastic, it is only by procedural fairness that they are rendered tolerable. A judge of the United States Supreme Court has said: 'Procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied.'[7] One of his colleagues said: 'The history of liberty has largely been the history of the observance of procedural safeguards.'[8]

It is true that the rules of natural justice restrict the freedom of administrative action and that their observance costs a certain amount of time and money. But time and money are likely to be well spent if they reduce friction in the machinery of government; and it is because they are essentially rules for upholding fairness and so reducing grievances that the rules of natural justice can be said to promote efficiency rather than impede it. Provided that the courts do not let them run riot, and keep them in touch with the standards which good administration demands in any case, they should be regarded as a protection not only to citizens but also to officials. Moreover, a decision which is made without bias, and with proper consideration of the views of those affected by it, will not only be more acceptable; it will also be of better quality. Justice and efficiency go hand in hand, so long at least as the law does not impose excessive refinements."

[7] Shaughnessy v. United States, 345 US 206 (1953) (Jackson J).
[8] McNabb v. United States, 318 US 332 (1943) (Frankfurter J).

The nexus between the duty to act fairly and observance of the principles of natural justice has been explained in **Judicial Review of Administrative Action** by De Smith, in the following manner:[9]

> *"That the donee of a power must "act fairly" is a long-settled principle governing the exercise of discretion, though its meaning is inevitably imprecise. Since 1967 the concept of a duty to act fairly has often been used by judges to denote an implied procedural obligation. In general it means a duty to observe the rudiments of natural justice for a limited purpose in the exercise of functions that are not analytically judicial but administrative. Given the flexibility of natural justice, it may not have been strictly necessary to use the term "duty to act fairly" at all, but its usage is now firmly established in the judicial vocabulary. Its value has lain in assisting the extension of implied procedural obligations to the discharge of functions that are not analytically judicial, and in emphasizing that acting in accordance with natural justice does not mean forcing administrative procedures into a straitjacket. The comparatively recent emergence of this use of the "duty to act fairly" may also enable the courts to tackle constructively procedural issues that have not traditionally been regarded as part of the requirements of natural justice."*

Our Courts have consistently held that prior to a decision affecting the rights of an individual are taken, such person must be afforded a right to respond.

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[9] 4th Edition; J.M. Evans; at pages 238- 239.

In **Lalith Deshapriya vs. Captain Weerakoon and Others**, Marsoof, J/President of the Court of Appeal (as he then was) held as follows:[10]

> *"Even more serious is the violation of the two cardinal principles of natural justice embodied in the maxims 'audi alteram partem' and 'nemo judex in causa sua potest'. The first of these principles postulates a fair hearing before the rights of a citizen are affected by a quasi judicial or administrative decision. In this context, it is now recognised that 'qui aliquid statuerit parte inaudita altera acquum licet discerit, haud acquum fecerit' - which means that he who determines any matter without hearing both sides, though he may have decided right, has not done justice. According to the jurisprudence built around the 'audi alteram partem' principal, there should not only be a hearing of both sides, but the hearing should be more than a pretence. The procedure followed should be fair and conducive to the achievement of justice. In Board of Education v Rice[11] Lord Loreburn, L.C. in his famous dictum laid down that a tribunal was under duty to "act in good faith, and fairly listen to both sides for that is a duty lying upon everyone who decides anything." In De Verteuil v Knaggs[12] it was laid down as follows:*
>
> > *"In general, the requirements of natural justice are first, that the* ***person accused should know the nature of the accusation made;*** *secondly, that* ***he should be given an opportunity to state his case;*** *and thirdly, that the tribunal should act in good faith."*[13]

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[10] [2004] 2 Sri LR 314 at page 319.
[11] 1911 AC 179 at 182.
[12] 1918 AC 557 at 560.
[13] Emphasis added.

As his Lordship Sharvananda, C.J. observed in Chulasubadra v The University of Colombo and Others[14], *"the obligation to give the person charged a fair chance to exculpate himself or fair opportunity to controvert the charge may oblige the tribunal not only to inform that person of the hearsay evidence, but also give the accused a sufficient opportunity to deal with that evidence."*

In **Gamlathge Ranjith Gamlath vs Commissioner General of Excise and two others**,[15] Sripavan J (as he then was) held as follows:

"It is one of the fundamental principles in the administration of justice that an administrative body which is to decide must hear both sides and give both an opportunity of hearing before a decision is taken. No man can incur a loss of property by judicial or quasi-judicial proceedings unless and until he has had a fair opportunity of answering the complaint made against him. Thus, objectors at public inquiries must be given a fair opportunity to meet adverse evidence, even though the statutory provisions do not cover the case expressly. (Vide Errington and others v. Minister of Health[16]*). The court would certainly regard any decision as having grave consequences if it affects proprietary rights. In Schmidt and another v. Secretary of State for Home Affairs*[17] *Lord Denning M. R. suggested that the ambit of natural justice extended not merely to protect rights but any legitimate expectation of which it would not be fair to deprive a person without hearing what he has to say."*

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[14] [1986] 2 Sri LR 288 at 303.

[15] CA (Writ) Application No. 1675/2002; CA Minutes of 28th March 2003; referred to in Ratnayake v Commissioner General of Excise and Others [2004] 1 Sri LR 115.

[16] [1935] 1 KB 249.

[17] [1969] 2 Ch. 149 at 170.

The right of a party to be heard prior to a decision affecting his rights being taken even where the Statute is silent on such a requirement, has been confirmed in the following passage from the case of **Lloyd v McMahon**[18]:

> *"In particular, it is well-established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness."*

The necessity for a party to be heard was considered by this Court in **Kalu Banda vs. Upali**.[19] Even though this judgment applied to an inquiry contemplated under Section 110 of the Land Development Ordinance which laid down a specific procedure to be followed prior to cancelling a permit, the principle laid down would apply equally to the present application. In **Kalu Banda's** case, the Counsel for the respondent argued that there was no essential requirement to afford a hearing as the petitioner had violated one of the conditions to the permit. This Court, disagreeing with this position, held as follows:

> *"where provision is made by law in regard to the procedure to be followed when cancelling a lease permit granted to a person, there is no reason why such procedure should be ignored or overlooked. Such conduct would*

[18] [1987] AC 625 at 702; cited in 'Administrative Law' by Wade and Forsyth; 11th Edition pages 423-424.
[19] [1999] (3) Sri LR 391 at pages 399-400.

be illegal and arbitrary and offend the fair administrative procedure expected from public authorities.

On the other hand, even if there was no provision made for a party to be heard before his lease permit is cancelled, principles of natural justice will supply the omission of the legislature. The reason being that the court will not readily accept the position that the Parliament intended an administrative authority to exercise a discretion vested in it by statute, in such a manner so as to offend the principles of natural justice.

Further, it is worth referring here to the words of Byles, J. in the case of ***Cooper v. Wandsworth Board of Works***[20] *where he stated that:*

> *". . . a long course of decisions, beginning with Dr. Bentley's case, and ending with some very recent cases, establish that, although there are no positive words in a statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature."*

The requirement to afford a hearing has been considered extensively by the Supreme Court in **Ranjith Flavian Wijeratne vs. Asoka Sarath Amarasinghe**; where Priyantha Jayewardena, J held as follows:[21]

> *"Principles of natural justice are applicable to every tribunal or body of persons vested with authority to adjudicate upon matters involving rights of individuals. It is likewise applicable to the exercise of judicial powers*

[20] (1863) 14 CB Reports (NS) 180.
[21] SC (Appeal) No. 40/2013; SC Minutes 12th November 2015.

too. Every judicial and quasi – judicial act is subject to the procedure required by natural justice. The breach of any one of the said rules would violate the principles of natural justice. In the case of Ridge v. Baldwin (1964) A.C. 40 Lord Denning held that a breach of the principles of natural justice renders the decision voidable and not null and void ab initio.

An administrative official or tribunal exercising a quasi – judicial power is bound to comply with the principles of natural justice. i.e. to comply with the rules of audi altera partem and nemo judex in causa sua. A quasi-judicial decision may involve finding of facts and it affects the rights of a person. Sometimes such decisions involve matters of law and facts or even purely matters of law.

In Russell v. Duke of Norfolk and Others (1949) 1 All E.R. 109 Tucker L.J. observed that one essential requirement in regard to the exercise of judicial and quasi – judicial powers is that the person concerned should have a reasonable opportunity of presenting his case.

I am of the opinion that where the power is conferred in an administrative body or tribunal which exercises power in making decisions which affect the rights of persons, such body or tribunal should act according to the principles of natural justice except in cases where such right is excluded, either by express words or by necessary implication, by the legislature.

Lord Diplock in the case of O'Reilly and Others v. Mackman and Others (1983) 2 AC 237 at 276 held that the right of a man to be given a fair opportunity of hearing what is alleged against him and of presenting his

own case is so fundamental to any civilized legal system that it is to be presumed that Parliament intended that a failure to observe it should render null and void any decision reached in breach of this requirement.

A tribunal exercising quasi judicial functions is not bound to adopt a particular procedure in the absence of statutory provision. In some situations the tribunals have to act within certain limits. However, it needs to observe certain minimum standards of natural justice and fairness when discharging its functions.

The need to follow the principles of natural justice is an accepted norm in Sri Lankan courts and tribunals as well as in the world over for several decades. ***I am of the opinion that the need to follow principles of natural justice has now become part of the Sri Lankan law.***[22] *Hence, in the absence of special provisions as to how the court or tribunal is to proceed, the law requires that the principles of natural justice to be followed.*

A tribunal must do its best to act justly and to reach just ends by just means. ***It must give the parties notice of what was charged against them and allow them to make representations in answer. A fair opportunity should be given to a party to correct or contradict any relevant statement made to his prejudice.***[23] *The party against whom the charge is made, after he has notice of the charges, is entitled to be heard.*

Whether an oral hearing is necessary or desirable depends on the relevant laws and rules or procedures which the inquiry is held, the

[22] Emphasis added.
[23] Emphasis added.

circumstances, the nature of the right infringed, the occasion for the exercise of authority by the tribunal and the effect of the decision on a person.[24]

The question whether the requirements of natural justice have been met by the procedure adopted in any given case depends to a greater extent on the facts and circumstances of the case in point. Tucker L.J. held in the case of *Russell v. Duke of Norfolk and Others (1949) 1 All E.R. 109 "There are no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth."*

In the case of AG v. Ryan (1980) AC 718 Lord Diplock held that the Minister was a person having legal authority to determine a question affecting the rights of individuals. This being so it is a necessary implication that he is required to observe the principles of natural justice when exercising that authority; and if he fails to do so, his purported decision is a nullity."

As observed earlier, some laws contain provisions that specifically require a hearing to be given while some laws may go a step further and specify the procedure that should be followed in affording a hearing. There are many laws that are completely silent with regard to the requirement for a hearing. The EPF Act is one such law. Except for the requirement in Section 28 of the EPF Act that, *"all claims to benefits shall be determined by the Commissioner or any*

[24] Emphasis added.

officer authorised in that behalf by him...", the EPF Act is silent as to the kind of hearing that should be afforded to an employer, before determining whether an employer has failed to comply with the statutory obligation laid down in Section 10 of the EPF Act to remit the contributions of the employer as well as the employee, to the EPF.

Applying the aforementioned judicial dicta, it is the view of this Court that whenever a complaint is received that an employer has not complied with its obligations contained in the EPF Act, the Department of Labour must:

(a) inform the employer of the nature of the complaint of non-compliance made against it, and where available, make available copies of the complaint to the employer;

(b) afford the employer an opportunity to respond and clarify matters relating to such complaint;

(c) afford the employee an opportunity of responding to the position of the employer.

This Court is of the view that the above process would enable the Officers of the Department of Labour to arrive at a decision which is reasonable by both parties. This Court must state that the form of the hearing – i.e. whether it should be an oral hearing; whether the parties should have the right to cross examine the other party; whether it should be on documents and/or on written submissions; or whether it should be a combination of the above – is

best left to be decided by the relevant Officer of the Department of Labour, taking into consideration the particular circumstances of each complaint.

Bearing in mind the above dicta, this Court will now consider what transpired in this application. Pursuant to the complaint of the 3rd Respondent marked '**P2**', the 4th Respondent directed the Petitioner to be present for an inquiry, which is an admission by the Department of Labour that it cannot take a decision on the said complaint without affording the Petitioner a hearing. The Petitioner did present itself before the 4th Respondent on 26th August 2015. A discussion on the complaint took place that day between the 4th Respondent, Petitioner and the 3rd Respondent. This Court is of the view that given the general nature of the complaint made by the 3rd Respondent in '**P2**' [i.e. මා හට නිම් අර්ථසාධක ගෙවීම් (EPF) නිසි පරිදි ගෙවීමට කටයුතු කර නොකිරීම], what was required was to ascertain if contributions had been made to the EPF on behalf of the 3rd Respondent, and to that extent, the said discussion was sufficient to satisfy compliance with the rules of natural justice. In these circumstances, this Court would not insist on a more formal inquiry, as the issue involved was whether the contributions had been made or not. As observed earlier, the position of the Petitioner that the 3rd Respondent accepted that the EPF contributions have been made on time is confirmed by the minutes of the discussion maintained by the 4th Respondent, marked '**A1**'. It is therefore clear to this Court that (a) the discussion on 26th August 2015 revolved only on whether the Petitioner had complied with its obligation to contribute to the EPF on behalf of the 3rd Respondent; (b) the said discussion did not revolve around the non-payment of EPF on certain allowances that the Petitioner had paid the 3rd Respondent, and (c) the discussion on the complaint of the 3rd Respondent relating to EPF ended on 26th August 2015.

In other words, it is the view of this Court that even though a discussion took place on 26th August 2015, the 4th Respondent did not afford the Petitioner a hearing with regard to the specific issue of whether the Petitioner is liable to contribute to the EPF on the allowances paid to the 3rd Respondent, which is the basis on which the Department of Labour subsequently imposed liability on the Petitioner by '**P6**', '**P8**' and '**P11**'. This conclusion is supported by paragraph 43 of the written submissions tendered on behalf of the Respondents, where it has been submitted that, *'Even if the inquiry was held accordingly, the 4th Respondent has only determined in his inquiry that EPF was duly paid on the basic salary as given in the petition and not that the EPF was calculated for the correct aggregate amount.* ***The 4th Respondent did not determine whether the allowances paid should come within the meaning of 'earnings' and whether it is subject to EPF.***' (emphasis added). In paragraph 44 of the said submissions, it has been submitted further that, *"the determination does not in any way whatsoever refer to the inclusion of additional allowances for EPF"*. If a hearing was not afforded to the Petitioner with regard to its liability to contribute to the EPF on the allowances paid to the 3rd Respondent, that would then be a violation of the principles of natural justice.

However, in response to the averments contained in paragraph 6 of the petition, which deals with the inquiry held before the 4th Respondent on 26th August 2015, the Respondents have stated in paragraph 6 of the said Statement of Objections that, *"at the inquiry it was revealed that EPF on promotional allowances had not been paid to the 3rd Respondent. Accordingly, Rupees 30,000/- monthly for the period September 2008 to November 2012 and Rupees 60,000 monthly for the period November 2014 to June 2015 (has*

been paid). To support this stance, the 3rd Respondent has submitted the relevant salary sheets."

Is the above averment, which is supported by an affidavit of the Commissioner General of Labour, an honest and truthful declaration of what transpired at the inquiry that was held on 26th August 2015 before the 4th Respondent? This Court does not think so for three reasons.

The first is that there is no supporting affidavit from the 4th Respondent.

The second is that if such a discussion did take place and if the 3rd Respondent did submit the relevant salary sheets, why is it that the minutes of the said discussion maintained by the 4th Respondent marked '**A1**' not reflect that fact? It must be stated that other than what has been re-produced earlier in this judgment, the said minutes of the discussion held on 26th August 2015 do not contain any other discussion on the payment of EPF, including on the liability to contribute to the EPF on allowances.

The final reason why the averments in paragraph 6 are not true arises from the quantum of the allowance. The Respondents state that the promotional allowance paid for the period September 2008 – November 2012 is Rs. 30,000. The Petitioner however submits that for the months of September 2008 – March 2009, the 3rd Respondent was only paid his basic salary. This is borne out by the salary slips for the respective months, annexed to the petition marked '**P13a**' – '**P13g**'. If this be so, the statement that Rs. 30,000 was paid from September 2008 is incorrect. Furthermore, only a sum of Rs. 25,000 has been paid as promotional allowance for the months of April – June 2009, as

borne out by the salary slips for the respective months, annexed to the petition marked '**P13h**' – '**P13j**'. This too means that the averment in paragraph 6 is incorrect, and that the discussion that the Respondents claim took place on 26th August 2015 did not actually take place.

The Petitioner admits that during the second stint of his employment, the 3rd Respondent was paid a reimbursement allowance of Rs. 55,000 and a promotional allowance of Rs. 60,000. From the above averment of the Respondents, it is clear that the Petitioner has been directed to pay EPF on the promotional allowance of Rs. 60,000. However, when one considers the attachment to '**P6**' which gives the breakdown of the sums due, it is apparent that the Respondents have calculated the EPF on an allowance of Rs. 55,000, which then means that '**P6**' does not relate to the promotional allowance but to the reimbursement allowance of Rs. 55,000.

In fact, in paragraph 18 of the Statement of Objections, the Respondents state that, *'the insertion of **reimbursable allowances** in every salary slip of the 3rd Respondent shows the intention of the Petitioner to recognise such payment as earnings of the 3rd Petitioner.'* However, in the very next paragraph, the Respondents state that, *'the **promotional allowance** paid to the 3rd Respondent amounts to a fixed (recurring) allowance and should be considered as earnings in calculation of the EPF.'*

Thus, it appears to this Court that there is confusion even in the minds of the Respondents with regard to the allowance that attracts the payment of EPF. The end result is that the averment that it *'was revealed (at the inquiry) that EPF on promotional allowances had not been paid'* is incorrect.

For the above reasons, this Court rejects the explanation of the Respondents that the Department of Labour offered the Petitioner an opportunity on 26th August 2015 of presenting its side of the story as to why it is not liable for the payment of EPF on the allowances paid to the 3rd Respondent.

Other than for the above 'hearing', the Respondents have not taken up the position in their Statement of Objections that it afforded the Petitioner an opportunity of satisfying the Officers of the Department of Labour that it was not liable for the payment of any further sums of money as EPF contributions.

It is in the above background that this Court has to consider the letter dated 20th September 2016 marked '**P6**' sent by the 2nd Respondent, by which the Petitioner was directed by the 2nd Respondent to pay a sum of Rs. 589,400. The simple argument of the learned Counsel for the Petitioner is that the discussion on EPF ended on 26th August 2015 and that the Petitioner was thereafter not afforded any hearing or an opportunity of satisfying the Officers of the Department of Labour that it is not liable to pay EPF on any of the allowances that it has made to the 3rd Respondent. In other words, the complaint of the Petitioner that its views were not sought prior to '**P6**' being issued has not been contradicted by the Respondents, and in these circumstances, this Court is satisfied that the Petitioner was not afforded an opportunity of explaining why it is not liable to contribute to the EPF for the allowances paid to the 3rd Respondent, prior to '**P6**' being issued.

This Court reiterates its view that while the nature of the hearing can be left to the discretion of the administrative body, it is fundamental that an Inquiry Officer follow the principles of natural justice and affords both parties a proper

hearing, including an opportunity to the employer to present his side of the story. It must however be emphasised that in ensuring procedural fairness and the adherence with the principles of natural justice, Courts will not impose requirements that make it impossible for administrative bodies to arrive at decisions in an expeditious manner or impose unnecessary shackles on their ability to take decisions. That being said, this Court is of the view that a conclusion reached in violation of the fundamental principles of natural justice should not be allowed to stand and for that reason, the decision of the 2nd Respondent, contained in '**P6**', is liable to be quashed by a Writ of Certiorari. As the directions in '**P8**' and '**P11**' are a follow up of '**P6**', this Court is of the view that '**P8**' and '**P11**' are also liable to be quashed by a Writ of Certiorari.

In the above circumstances, this Court is of the view that the necessity for this Court to consider whether the said allowances comes within the definition of 'earnings' in the EPF Act does not arise. However, this Court must state that even if one accepts the position of the Respondents that it afforded the Petitioner a hearing, the Department of Labour has not informed the Petitioner the reasons for its decision that contributions must be made to the EPF on the allowances paid to the 3rd Respondent nor have any reasons been set out in the Statement of Objections. Hence, the decision in '**P6**' is liable to be quashed due to the failure by the Respondents to give reasons for its decision.

It is perhaps appropriate at this stage to quote the following passage from the judgment of the Supreme Court in **Karunadasa vs Unique Gem Stones Limited and others**[25]:

[25] (1997) 1 Sri L.R. 256 at page 263.

"To say that Natural Justice entitles a party to a hearing does not mean merely that his evidence and submissions must be heard and recorded; it necessarily means that he is entitled to a ***reasoned*** *consideration of the case which he presents."*

This Court must state that neither party has explained the nature of the said allowances, and in the absence of reasons for the decision in '**P6**', this Court could not have in any event arrived at any finding with regard to the liability of the Petitioner to contribute to the EPF on the allowances.

Accordingly, this Court issues a Writ of Certiorari as prayed for in paragraph (b) of the prayer to the petition quashing the decisions contained in '**P6**', '**P8**' and '**P11**'. The 1st Respondent and the Officers of the Department of Labour may conduct a fresh inquiry into the complaint of the 3rd Respondent, and having afforded the Petitioner an opportunity of presenting its explanation as to why the Petitioner is not liable to contribute EPF on the allowances paid to the 3rd Respondent and/or contradicting the position of the 3rd Respondent, arrive at an appropriate decision.

This Court makes no order with regard to costs.

Judge of the Court of Appeal