

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

In the matter of an Application for mandates in the nature of Writs of Certiorari and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka

CA (Writ) Application No. 143/2021

- 1) Agrapatana Plantations Limited,
No. 53 1/1, Sir Baron Jayatilake Mawatha,
Colombo 1.
- 2) Balanagoda Plantations PLC,
No. 110, Norris Canal Road, Colombo 10.
- 3) Elpitiya Plantations PLC,
No. 315, Vauxhall Street, Colombo 2.
- 4) Hapugastenna Plantations PLC,
No. 95A, Nambapana, Ingiriya.
- 5) Horana Plantations PLC,
No. 400, Deans Road, Colombo 10.
- 6) Kahawatte Plantations PLC,
No. 111, Negombo Road, Peliyagoda.
- 7) Kegalle Plantations PLC,
No. 310, High Level Road,
Nawinna, Maharagama.
- 8) Kelany Valley Plantation PLC,
No. 400, Deans Road, Colombo 10.
- 9) Kotagala Plantations PLC,
No. 53 1/1, Sir Baron Jayatilake Mawatha,
Colombo 1.
- 10) Madulsima Plantations PLC,
No. 833, Sirimawo Bandaranaike
Mawatha, Colombo 14.

- 11) Malwatte Valley Plantations PLC,
No. 280, Dam Street,
Colombo 12.
- 12) Maskeliya Plantations PLC,
No. 310, High Level Road,
Nawinna, Maharagama.
- 13) Maturata Plantations Limited,
19, Dudley Senanayake Mawatha,
Colombo 8.
- 14) Namunukula Plantations PLC,
No. 310, High Level Road,
Nawinna,
Maharagama.
- 15) Talawakelle Tea Estates PLC,
No. 400, Deans Road, Colombo 10.
- 16) Udupussallawa Plantations PLC,
No. 95A, Nambapana, Ingiriya.
- 17) Watawala Plantations PLC,
No. 60, Dharmapala Mawatha,
Colombo 7.
- 18) Hatton Plantations PLC,
No. 168, Negombo Road, Peliyagoda.
- 19) Bogawanthalawa Tea Estates PLC,
No. 153, Nawala Road,
Narahenpita.
- 20) Lalan Rubbers (Private) Limited,
No. 95B, Export Processing Zone,
Biyagama.

PETITIONERS

Vs

- 1) Hon. Nimal Siripala De Silva,
Minister of Labour.
- 2) C.K.Prabhath Chandrakeerthi,
Chairman, Wages Board.
- 3) IFRD Devadas.
- 4) S. Suppiah
- 5) K. Marimuttu
- 6) S. Muthukumaru
- 7) R.M. Krishnasamy
- 8) Kitnan Selvaraj
- 9) Sanjaya Gamage
- 10) Robert Francis
- 11) K. Piyadasa.
- 12) P.G Chandrasena
- 13) S.H.Shantha.

3rd – 13th Respondents are members of the Wages Board for the Tea Growing and Manufacturing Trade.

- 14) Devmith Rohana
- 15) V. Mapalagama
- 16) C. Samarasinghe
- 17) S. Rajamany
- 18) D. Kumari

9th – 18th Respondents are members of the Wages Board for the Rubber Growing and Manufacturing Trade.

All Respondents at the Labour Secretariat,
Kirula Road, Colombo 5.

RESPONDENTS

Before: Arjuna Obeyesekere, J / President of the Court of Appeal
Mayadunne Corea, J

Counsel: Romesh De Silva, P.C., with Sugath Caldera and Niran Anketell for
the Petitioners

Susantha Balapatabendi, P.C., Additional Solicitor General with
Vikum De Abrew, Senior Deputy Solicitor General, Ms. Anusha
Fernando, Deputy Solicitor General and Manohara Jayasinghe,
Senior State Counsel for the 1st and 2nd Respondents

Kaushalya Navaratne with Ms. Bhagya Herath for the 3rd, 4th, 9th,
14th and 15th Respondents

Avindra Rodrigo, P.C., with Ashique Hashim and Vishwaka Peiris
for the 5th and 17th Respondents

Ms. K.C. Stephney for the 6th and 18th Respondents

Malintha Jayasinghe for the 7th, 8th, 11th and 12th Respondents

S.H.A Mohammed for the 10th and 16th Respondents

Vishwa Vimukthi for the 13th Respondent

Supported on: 30th March 2021 and 31st March 2021

Delivered on: 5th April 2021

Arjuna Obeyesekere, J., P/CA

Estate lands which were vested in the Land Reform Commission in terms of the Land Reform Commission Act No. 1 of 1972 were subsequently vested in the Janatha Estates Development Board (JEDB) and the Sri Lanka State Plantations Corporation (SLSPC) and were managed by the JEDB and the SLSPC. In 1992, the management of majority of these estates was handed to the Petitioner companies, commonly referred to as *Regional Plantation Companies*.

The Petitioners state that wages of estate workers were negotiated through collective bargaining between the Petitioners and Trade Unions, and that there were no wage increases to the employees other than through Collective Agreements. The Petitioners state further that the last Collective Agreement marked 'P4' was entered into on 28th January 2019, in terms of which an employee was entitled to receive a minimum wage of Rs. 700 per day, together with an incentive allowance for productivity, as well as a Fixed Price Share Supplement of Rs. 50.

It is admitted that the issue of a wage increase for employees of estates was raised during the last Presidential Elections held in December 2019, with the candidates of the two main political parties promising a minimum daily wage of Rs. 1000. The Petitioners state that several attempts were made thereafter to increase the minimum daily wage to Rs. 1000 per day, and that the Petitioners were agreeable to the said proposal, subject to it being linked to the minimum attendance of the worker and productivity of the worker. However, the negotiations had not been successful.

In January 2021, the Minister of Labour had appointed a Wages Board for the Tea Growing and Manufacturing Trade as well as for the Rubber Growing and Manufacturing Trade, with each Wages Board consisting of six Employers representatives, six Employees representatives and three Nominated members. The Petitioners have no complaint with the composition of the Wages Board and their appointment.

The above Wages Boards had met on 8th February 2021 where the issue of minimum daily wage had been discussed. The Petitioners state that they objected to the proposal of a minimum daily wage of Rs. 900 and a budgetary allowance of Rs. 100 without linking it to attendance and productivity. The Petitioners claim that the Wages Board had disregarded their objections, and by majority decision had approved the above wage increase. The Petitioners state that the 2nd Respondent, the Chairman of the Wages Board had thereafter called for their objections, as required by the Wages Board Ordinance.

A further meeting of the Wages Board had been held on 1st March 2021, chaired by the 1st Respondent, and attended by all members of the Wages Board. The wage

increase proposed at the meeting on 8th February 2021 and the said objections of the Petitioners had been discussed at the said meeting and the wage increase had been adopted by majority decision.

The 1st Respondent, the Minister of Labour, acting in terms of Section 29(3) of the Wages Board Ordinance had thereafter published in Extraordinary Gazette No. 2217/37 dated 5th March 2021 a notice marked 'P12' declaring that the minimum daily wage of an employee shall be Rs. 900 together with a Budgetary Relief Allowance of Rs. 100.

Aggrieved by the above decision of the Minister of Labour, the Petitioners filed this application, seeking *inter alia* the following relief:

- (a) A Writ of Certiorari to quash 'P12';
- (b) A Writ of Certiorari to quash the decision of the Wages Board to fix the daily wage of an employee at Rs. 900 together with a Budgetary Relief Allowance of Rs. 100;
- (c) Interim Order staying the operation of 'P12' until the final determination of this application.

The arguments of the learned President's Counsel for the Petitioners are three fold. The first is that the Wages Board did not properly consider the wage increase and that the position of the Petitioners was not considered. The second is that the 2nd Respondent, the Chairman of the Wages Board did not afford the Petitioners a proper opportunity of presenting their objections. The third is that there has not been a proper consideration of the issues and that the Wages Board as well as the Chairman of the Wages Board and the Minister of Labour have followed a pre-ordained course.

Having considered the submissions of all learned Counsel, I am of the view that formal notice of this application must be issued on all Respondents.

The next issue that I must consider is whether the operation of 'P12' should be stayed until the final determination of this application. In doing so, I shall bear in mind the following observation by Chief Justice Neville Samarakoon in Billimoria v. Minister of Lands and Land Development & Mahaweli Development and two others¹ in relation to interim orders:

"It would not be correct to judge such orders in the same strict manner as a final order. Interim orders by their very nature must depend a great deal on a Judge's opinion as to the necessity for interim action."

In Duwearachchi and another vs Vincent Perera and others² this Court considered the application for an interim order in the light of three essential considerations:

- a) Will the final order be rendered nugatory if the petitioner is successful?
- b) Where does the balance of convenience lie?
- c) Will irreparable and irremediable mischief or injury be caused to either party?

The decision in Duwearachchi has been consistently followed by this Court.³

I must state that the party that would be affected by an interim order would not be the Respondents but the employees of the estates that are managed by the Petitioners.

It is clear that the final order – i.e. the quashing of 'P12' – will not be rendered nugatory if the interim order is not issued, in that, having afforded the Respondents an opportunity of filing Objections and after a full hearing, if this Court agrees with

¹ 1978-79-80 (1) Sri LR (SC) 10 at page 15.

² 1984 (2) Sri LR 94.

³ See Ceylon Tobacco Company PLC vs Hon. Maithripala Sirisena, Minister of Health and others [CA (Writ) Application No. 336/2012; CA Minutes of 22nd February 2013; Tokyo Super Cement Company Lanka (Private) Limited vs Sri Lanka Ports Authority and others [CA (Writ) Application No. 258/2013; CA Minutes of 30th August 2013]; NatWealth Securities Lanka (Private) Limited vs The Monetary Board of the Central Bank and others [CA (Writ) Application No. 335/2015; CA Minutes of 29th March 2016]; F Hoffmann La-Roche Ltd and another vs National Medicines Regulatory Authority and others [CA (Writ) Application No. 98/2016; CA Minutes of 22nd June 2016] and Wadugodage Wijeratne vs Faiszer Mustapha, Minister of Provincial Councils and Local Government and another [CA (Writ Application) No. 373/2017; CA Minutes of 22nd November 2017]

the Petitioner, it can yet quash 'P12', and the status quo that prevailed as at today will be restored.

What I need to consider however is where the balance of convenience lies and whether irreparable and irremediable mischief or injury will be caused to either party by the issuance/non-issuance of the interim order. The manner in which these two issues should be considered has been laid down by the Supreme Court in **Felix Dias Bandaranaike vs The State Film Corporation and Another**⁴ in the following manner:

“This is tested out by weighing the injury which the defendant will suffer if the injunction is granted and he should ultimately turn out to be the victor against the injury which the plaintiff will sustain if the injunction were refused and he should ultimately turn out to be the victor. The main factor here is the extent of the uncompensatable disadvantage or irreparable damage to either-party.”

It is admitted that in terms of a notice published in Extraordinary Gazette No. 1872/31 dated 24th July 2014 marked 'P13a', the Wages Board had proposed that the minimum daily wage of an employee in the Tea Growing and Manufacturing Trade should be Rs. 405.⁵ This Court has not been apprised whether a similar notice has been published in respect of the Rubber Manufacturing Trade.

The above rate in 'P13a' had been revised in terms of the Collective Agreement 'P4' entered into in January 2019 between the Employers Federation of Ceylon, on behalf of the Petitioners and the Ceylon Workers Congress and the Lanka Jathika Estate Workers Union, in terms of which an employee was due to receive the following sums of money:

- a) A daily wage of Rs. 700;
- b) A Fixed Price Share Supplement (FPSS) of Rs. 50 per day;
- c) An over kilo rate of Rs. 40;⁶

⁴ [1981] 2 Sri LR 287.

⁵ See paragraph 53 of the petition where the Petitioners admit that in terms of ;P13a', the minimum rate of daily wages had been set at Rs. 405.

⁶ The over kilo rate is paid whenever an employee plucks more than the minimum quantity of green leaf stipulated by the relevant estate.

- d) Where an employee works on Sunday, 1 ½ times of the daily wage and the Fixed Price Share Supplement.

This Court requested all learned Counsel to submit details of the wages that an employee was receiving in terms of the Collective Agreement 'P4'. The learned President's Counsel for the Petitioners submitted pay slips of several employees of the Petitioners for the period December 2020 - February 2021. The net pay of a few employees chosen at random can be summarised as follows:

Employee	Number of Days	Sundays/Poya days	Over Kilo	FPSS	Total
Shanthi	21 @ 700	7.5 @ 700	544 @ 40	1475	43885
Sathikala	21 @ 700	7.5 @ 700	337 @ 40	1475	35605
Indradevi	31 @ 700	5 @ 700	713 @ 40	1550	55270
Seetha	26 @ 700	-	182 @ 40	1300	26780
Pushpa	19.5 @ 700	-	156 @ 40	925	20815

Thus, an employee who works a minimum of twenty days and whose productivity is high, stands to benefit by way of a higher salary.

The learned President's Counsel also handed over the Harvest Average Analysis Reports of several estates for the period 1st March 2021 – 30th March 2021. I have examined the said reports and observe the following in respect of the Summerhill Division of Court Lodge Estate:

Number of days	Over Kilo	Average per day earning
25	250	1289
22	180	1220
22	17	919
17.5	41	982

According to the said Reports, those employees who work as many days as possible and who pluck approximately 300 kg in excess of the stipulated quantum of green leaf that they must pluck, have received as much as Rs. 1521 per day while those

who have an attendance of only 14 days and do not exceed the minimum stipulated quantum, will receive a sum of Rs. 888 per day.

It is also observed from the said Reports that approximately 50% of the employees received an average daily wage of Rs.1000 and above, while all employees received an average daily wage of Rs. 855. Thus, by the time discussions commenced in 2020 with regard to a wage increase, approximately 50% of the employees were drawing a salary well in excess of Rs. 1000 per day.

With the publication of the Notice 'P12', an employee is entitled to receive Rs. 1000 per day in terms of 'P12'. The employees however will not receive any incentive payment or the FPSS as the Employers Federation of Ceylon, acting on behalf of the Petitioners, by its letter dated 24th February 2021 marked 'P20' has given notice of repudiation of the Collective Agreement 'P4' as well as all previous Collective Agreements. The effect of 'P20' is that after 24th March 2021, an employee will no longer receive the payments that he or she was receiving in terms of 'P4'. With the said repudiation of 'P4' and in the absence of 'P12', an employee would only be entitled to a daily wage of Rs. 405 in terms of the notice 'P13a'.

It is thus clear that if I were to issue an interim order staying the operation of 'P12', an employee who currently receives *for example* Rs. 1500 would receive only Rs. 405 per day. Thus, a stay of 'P12' would clearly cause irreparable and irremediable mischief and injury to all employees employed by the Petitioners, who incidentally are not before this Court.

On the other hand, what is the mischief that would be caused to the Petitioners, if I refuse to issue an interim order staying the operation of 'P12'? The Petitioners have stated in their petition that *due to the management expertise of the Petitioners, the RPC's turned the loss making plantation sector around and started consistently posting profits.*⁷ The fact that the Petitioners are paying some workers well in excess of Rs. 1000 per day indicates that the Petitioners can operate at a profit, even after the payment of a daily wage in excess of Rs. 1000 per day to 50% of the workers.

⁷ Vide paragraph 11 of the petition.

The Petitioners have however stated further that *in the event they are compelled to pay Rs.1000 as a minimum wage to every estate worker, they would incur significant losses and the Petitioner companies would all run at a loss for the foreseeable future.*⁸ While the Petitioners have not filed any material to support this averment, the said averment does not take into consideration the fact that there would be a significant saving by paying only Rs. 1000 per day in terms of '**P12**', as opposed to an average sum of Rs. 1200 per day to approximately 50% of the workers. Thus, while on the Petitioners own admission, they are profit making at the moment, the Petitioners can offset the extra payment from the savings it would make. The damage that the Petitioners would suffer by the non-issuance of the interim order therefore is less than the damage that would be caused to the employees.

In the above circumstances, I am of the view that the balance of convenience is not in favour of the Petitioners but in favour of the employees covered by '**P12**'. Hence, I see no legal basis to issue the interim orders prayed for.

President of the Court of Appeal

Mayadunne Corea, J

I agree

Judge of the Court of Appeal

⁸ Vide paragraph 48 of the petition.