

In the Court of Appeal of the Democratic Socialist Republic of Sri Lanka

**C. A. Case No.
CA (PHC) APN143/2014**

**P.H.C. Case No:
HCR 04/2013**

**M.C. Chilaw Case No:
49888**

In the matter of a Revision Application under Article 154 P (4) and 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with section 11 of High Court of Provinces (Special Provisions) Act, No. 19 of 1990 and the Wages Boards Ordinance, No. 27 of 1941 (as amended).

D.M. Karunaratne,
Acting Deputy Commissioner of Labour,
Labour Secretariat, Colombo 05.

Complainant

Vs.

Bhuwalka Steel Industries (Sri Lanka) Ltd,
No. 65/2, Sri Chittampalam Avenue.
Gardiner Mawatha, Colombo 02.
Presently at:
No. 5/5-10, East Tower,
5th Floor, WTC, Echelon Square,
Colombo 01.

Respondent

and between

Bhuwalka Steel Industries (Sri Lanka) Ltd,
No. 65/2, Sri Chittampalam Avenue.
Gardiner Mawatha, Colombo 02.
Presently at:
No. 5/5-10, East Tower,
5th Floor, WTC, Echelon Square,
Colombo 01.

Respondent-Petitioner

Vs.

D.M. Karunaratne,
Acting Deputy Commissioner of Labour,
Labour Secretariat, Colombo 05.

Complainant -Respondent

and now between

Bhuwalka Steel Industries (Sri Lanka) Ltd,
No. 65/2, Sri Chittampalam Avenue.
Gardiner Mawatha, Colombo 02.
Presently at:
No. 5/5-10, East Tower,
5th Floor, WTC, Echelon Square,
Colombo 01.

Respondent-Petitioner-Petitioner

Vs.

D.M. Karunaratne,
Acting Deputy Commissioner of Labour,
Labour Secretariat, Colombo 05.

Complainant -Respondent-Respondent

Before: Prasantha De Silva, J.
S.U.B. Karalliyadde, J.

Counsels: Dr. Sunil F.A. Coorey with Mr. Nilanga Perera for the Respondent-
Petitioner-Petitioner
Mr. Maithri Amarasinghe Jayatilake SSC for the Complainant-
Respondent-Respondent

Written Submissions tendered:

on 07.04.2017. and 29.01.2021. by the Respondent-Petitioner-Petitioner
on 31.03.2017. and 07.10.2017. by the Complainant-Respondent-
Respondent

Argued on: 08.03.2021.

Decided on: 20.07. 2021.

S.U.B. Karalliyadde, J.

In this Revision Application, the Respondent-Petitioner-Petitioner Company (hereinafter referred to as the Company) seeks reliefs *inter alia*, to revise and set aside the order dated 23.04.2013. of the learned Magistrate of Chilaw and the order dated 22.07.2014. of the learned High Court Judge of the Provincial High Court of the Western Province holden in Chilaw. The Complaint-Respondent-Respondent (hereinafter referred to as the Respondent) issued a Certificate dated 04.07.2012. (page 471 in the Appeal Brief bearing No. CA (PHC) 106/2014 connected to this Revision Application) to the Magistrate of Chilaw under and in terms of section 3 D (2) of the Wages Boards Ordinance, No. 27 of 1941 (as amended) (hereinafter referred to as the Ordinance) to recover a total sum of Rs: 9,730,536.76 from the Company which is the unpaid wages of 67 employees allegedly employed from 01.07.2008. to 31.08.2011. On failure of the Company to show cause as to why further proceedings should not be taken to recover the said sum, the learned Magistrate by the impugned Order dated 23.04.2013. decided to recover that sum as a fine imposed on the Company. Against that order the Company has filed a Revision Application in the High Court of Chilaw. On failure of the Company to establish the exceptional circumstances, by Order dated 22.07.2014, the learned High Court Judge affirmed the Order of the learned Magistrate

and dismissed the Revision Application. The Company then filed this Revision Application seeking to set aside the Orders of the learned Magistrate and the learned High Court Judge. Even though, this Revision Application has been filed for the purpose of obtaining a stay order from this Court to stay the recovery proceedings in the Magistrate's Court, before filing this Revision Application the Appeal bearing No. CA (PA) 406/2014 has been filed by the Company seeking to set aside the Orders of the Magistrate's Court and the High Court. At the inquiry of this Revision Application both parties consented to abide by a single Order in both cases. Therefore, this Order will apply to both the Revision Application as well as the Appeal.

On behalf of the Company, the learned Counsel argues that the impugned Order of the learned Magistrate dated 23.04.2013. should be set aside on three grounds. One of the grounds which the learned Counsel urge is that the Certificate issued by the Respondent to the Magistrate under and in terms of section 3 D (2) of the Ordinance is not a valid Certificate for the reason that it does not bear the names of the workmen and the period which the Company is in default of wages. Therefore, the learned Counsel argues that the Magistrate had no jurisdiction to act on the Certificate filed in Court and proceed with the action. According to the Certificate (page 471 of the Appeal Brief) the names of the 67 workmen to whom the wages are due to be paid is mentioned in the Schedule filed along with the Certificate. The document marked as ⊖-3-A (from page 466 to 470 of the Appeal Brief) which is the Schedule said to have been filed with the Certificate indicates the names, category of the employees, the period which the wages are in arrears and the method of calculation of arrears alleged to be paid to each 67 workmen. Since that Schedule marked as ⊖-3-A indicates the said particulars and the Court has found that ⊖-3-A is in the Appeal brief, for the confirmation of Court whether it has been filed with the Certificate in the Magistrate's Court, we called for the original case record from the Magistrate's Court and when perusing the original case record, we found that the Schedule marked ⊖-3-A which includes all the above stated details has been tendered to the Magistrate's Court with the Certificate. Therefore, the Court can

be satisfied that the Certificate issued to the Magistrate by the Respondent is in conformity with section 3 D (2) of the Ordinance. Under the said Circumstances, the Court cannot accept the above stated submission of the learned Counsel for the Company challenging the validity of the Certificate.

Nevertheless, be that as it may, section 3D (3) of the Ordinance provides thus;

“The correctness of any statement in a certificate issued by the Commissioner for the purposes of this section shall not be called in question or examined by the court in any proceedings under this section, and accordingly nothing in this section shall authorize the court to consider, or decide the correctness of any statement in such certificate and the Commissioner's certificate shall be sufficient evidence that, the amount due under subsection (1) from the defaulting employer has been duly calculated and that such amount is in default.”

Therefore, in view of the above provisions, even if, the Certificate issued in terms of section 3 D (2) of the Ordinance is incorrect or defective the employer is not entitled to take up that fact as a defence before the Magistrate’s Court.

It is a well-established principle and trite law that a jurisdictional objection should be raised at the very outset or in the first instance. In the case at hand the Company has belatedly taken up that objection at the first instance before this Court. Therefore, this Court cannot consider the jurisdictional objection raised on behalf of the Company.

The learned Counsel for the Company cited a previous decision of this Court in *Bhuwalka Steel Industries (Sri Lanka) Ltd vs D.M. Karunaratne, Acting Deputy Commissioner of Labour (CA/PHC/25/2015)* in which Gunarathne J. has held that non-compliance of provisions in section 3 D (2) is a fatal error which the application of the Commissioner of Labour should be dismissed by the Magistrate. As per the findings of the Court in that case, the alleged Certificate had not specified the particulars about the sum claimed to be recovered, the names of the workmen, the period which there had been a short payment by the employer and the type of work carried out by the workmen.

Nevertheless, as stated hereinbefore, in the case in hand, the document marked D-3-A which has been filed in the Magistrate's Court indicates the names of the 67 workmen, the method of calculation of wages to be paid to them and the type of work performed by them. Hence, for the reason that the facts of the instant case are different from the facts of the case dealt with the authority cited by the learned Counsel for the Company, I hold that the decision of Gunarathne, J. cannot be followed in the instant action.

Another ground which the learned Counsel for the Company argues that the order of the learned Magistrate should be set aside is that the Company was not given an opportunity by the learned Magistrate to show cause and therefore, it amounts to a violation of the rule of natural justice, *audi alteram partem*. The learned Counsel submitted that on the day, which the amended Certificate was due to be filed in Court by the Respondent it was not filed and, nevertheless, the learned Magistrate has ordered the Company to pay the sum mentioned in the Certificate originally filed in Court. When pursuing the Magistrate's Court case record, it elicits the fact that the Court has granted several dates to the Company to show cause. On 22.01.2013, the date which was given by the Court as the final date to the Company to show cause against the Certificate, the Respondent has moved a date to amend the Certificate and the Company also has moved further time to show cause. Therefore, the Court has given 12.03.2013. for both parties to file the amended Certificate and to show cause respectively. Nevertheless, on 12.03.2013, even though, the Respondent has not pursued the application to amend the Certificate the Company has moved a date to show cause. Then the Court has given 23.04.2013. to the Company as the final date to show cause. Nevertheless, on that day the Company has failed to show cause, consequent to which the learned Magistrate has ordered to recover the sum mentioned in the Certificate from the Company as a fine. Under such circumstances, I cannot accept the submission of the learned Counsel for the Company that the Company was not given an opportunity to show cause against the Certificate. Therefore, the allegation on behalf of the of the

Company that the learned Magistrate has acted in violation of the rule of natural justice, *audi alteram partem* is a baseless allegation.

The remedies by way of Revision are discretionary remedies. Therefore, when seeking to exercise the revisionary jurisdiction the petitioner should come to court with clean hands. But when considering the facts and circumstances of the case in hand I am of the view that the Company has misrepresented/suppresses the material facts and tried to mislead the Court taking up the positions that the Certificate issued in terms of section 3 D (2) is not a legally valid Certificate and the Company has not been given an opportunity to show cause. Therefore, I hold that the Company has not come to Court seeking reliefs with clean hands and for that reason also it disqualifies for the reliefs by way of Revision.

The learned Counsel for the Company, as the third ground for this Revision Application argues that the Certificate filed in the Magistrate's Court is not a valid Certificate for the reason that no Wages Board is setup for the steel industry and there is no minimum wage specified by any Wages Board for workers in the steel industry. However, the learned Senior State Counsel for the Respondent has drawn the attention of the Court to the document marked as ⊖-1 (page 464 in the Appeal Brief) which is the work profile of the Company and submitted that it clearly indicates the categories of each workman at the Company. As per document marked ⊖-1, the work carries out by the Company relates to steel industry and includes iron cutting, iron moulding etc., and employed moulders, crane drivers, machinists, etc. According to the Part I of the Extraordinary Gazette No. 1660/35 dated 30.06.2010, (page 389 of the Appeal Brief) the Wages Board set up for 'Engineering Trade' covers the machinists, moulders, joiners, tinkers, riveters, crane drives etc., in the iron and steel industry and minimum wages are specified for those workers (page 391 of the Appeal Brief). Therefore, the Court cannot accept the above stated argument of the learned Counsel for the Company either.

Upon consideration of the above stated facts, I hold that the Company has failed to establish the exceptional circumstances in order to exercise the revisionary jurisdiction of this Court. Therefore, I affirm the impugned Orders of the learned Magistrate and the learned High Court Judge and dismiss the Revision Application. The Company should pay Rs. 75, 000/- as the costs of this Revision Application to the Respondent.

JUDGE OF THE COURT OF APPEAL

I agree.

Prasantha De Silva J.

JUDGE OF THE COURT OF APPEAL