

**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.*

**Court of Appeal Case No:**  
**CA/WRIT/143/21**

1. Agarapatana Plantations Limited  
No. 53 1/1, Sir Baron Jayathilake  
Mawatha,  
Colombo 01
2. Balangoda Plantations PLC  
No. 110, Norris Canal Road,  
Colombo 10
3. Elpitiya Plantations PLC  
No. 315, Vauxhall Street, Colombo 02
4. Hapugastenne Plantations PLC  
No. 95A, Nambapana,  
Ingiriya
5. S. 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. Kelani Valley Plantation PLC  
No. 400. Deans Road, Colombo 10
9. Kotagala Plantations PLC

No. 53 1/1, Sir Baron Jayathilake  
Mawatha,  
Colombo 01

10. Madulsima Plantation PLC  
No. 833, Sirimavo 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  
12th Floor, Browns Capital Building,  
19, Dudley Senanayake Mawatha,  
Colombo 08

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 03

18. Hatton Plantations PLC  
No. 168, 2nd Floor.  
Negombo Road, Peliyagoda

19. Bogawantalawa Tea Estates PLC  
No. 153, Nawala Road, Narahenpita

20. Lalan Rubbers Pvt. Ltd

No. 95B, Zone B,  
Export Processing Zone, Biyagama

**PETITIONERS**

**Vs.**

1. Hon. Nimal Siripala de Silva  
Minister of Labour  
Labour Secretariat  
Kirula Road, Colombo 05.
2. C. K. Prabath Chandrakeerthi  
Chairman Wages Board for the Tea  
Growing and Manufacturing Trade,  
Chairman Wages Board for the Rubber  
Growing and Manufacturing Trade,  
Labour Secretariat,  
Kirula Road, Colombo 05
3. IFS Devadas
4. S. Suppiah
5. K Marimuttu
6. S Muthukumar
7. RM Krishnasamy
8. Kitnan Selvaraj
9. Sanjaya Gamage
10. Robert Francis
11. K Piyadasa
12. PG Chandrasena
13. SH Shantha

3rd to 13th Respondents are  
Members, Wages Board for Tea  
Growing and  
Manufacturing Trade,

Labour Secretariat  
Kirula Road, Colombo 05.

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

9<sup>th</sup> to 18<sup>th</sup> Respondents are  
Members, Wages Board for Rubber  
Growing and  
Manufacturing Trade,  
Labor Secretariat,  
Kirula Road, Colombo 05.

### **RESPONDENTS**

- Before:** Sobhitha Rajakaruna, J  
Mayadunne Corea, J
- Counsel:** Romesh de Silva PC with Sugath Caldera and Niran Anketell for the  
Petitioners  
Susantha Balapatabendi PC, ASG with M. Jayasingha DSG for the 1<sup>st</sup>  
and 2<sup>nd</sup> Respondents  
Kaushalya Nawaratne with Ms. Mohotti for the 3<sup>rd</sup>, 4<sup>th</sup>, 9<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup>  
Respondents  
Avindra Rodrigo PC with Ashiz Hassim and Vishwaka Peiris for the  
5<sup>th</sup> and 17<sup>th</sup> Respondents'  
Dhanushika Sigera for the 06<sup>th</sup> and 18<sup>th</sup> Respondents  
Malintha Jayasinghe for the 7<sup>th</sup>, 8<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, and 15<sup>th</sup> Respondents  
S. H. A Mohamad for 10<sup>th</sup> and 16<sup>th</sup> Respondents.
- Argued on:** 19.07.2021, 27.07.2021, 24.02.2022, 04.03.2022, 01.04.2022
- Written** Petitioner's written submissions 06.05.2022

**Submissions:** 5<sup>th</sup> – 17<sup>th</sup> Respondents on 06.05.2022  
10<sup>th</sup> and 16<sup>th</sup> Respondents on 17.05.2022  
1<sup>st</sup> and 2<sup>nd</sup> Respondents on 18.05.2022

**Decided on:** 09.08.2022

### **Mayadunne Corea J**

The facts of the case are briefly as follows. 1<sup>st</sup> – 19<sup>th</sup> Petitioners are regional plantation companies and the 20<sup>th</sup> Petitioner is a private limited company (with a sublease from the 19<sup>th</sup> Petitioner). The Petitioners state that several thousands of acres of estate lands were vested with the Land Reform Commission (LRC) which were thereafter handed over to Janatha Estates Development Board and the State Plantations Corporation for management. The Petitioners state that the Government of Sri Lanka was of the view that the state-owned plantations which were incurring substantial losses at the time, be given to be maintained and managed by the private sector. The Petitioners allege that in or around 1992, the private companies were exercising management expertise over the plantations and transformed it into a profit-making sector. The Petitioners state that there existed collective agreements between the trade unions representing the estate workers and the Petitioners in respect of wages of estate workers. The Petitioners state that the latest collective agreement was entered into on or about 28.01.2019 and envisaged a basic wage of Rs 700/- with a supplement of Rs 50/. The Petitioners further state that the Unions specifically agreed to move to a productivity-lined wage regime which was agreed to by the Petitioners.

The Petitioners allege that following the presidential election in 2019, a presidential candidate has promised in his manifesto to increase the daily wage of an estate worker to Rs. 1000/-. The Petitioners state that from or about January 2020, the Petitioners have been urged by the respective government interlocutors to increase the basic minimum wage to Rs. 1000/- in line with the said policy. The Petitioners state that they engaged in negotiations with trade unions in respect of a collective agreement, consistently holding that, the increase of wage to Rs 1000/- should be based on attendance and productivity of workers. The Petitioners state that however, the negotiations on the collective agreement had come to a deadlock. Subsequently, a Wages Board had been appointed to decide on the minimum wage for the Tea industry and the Rubber industry.

The Petitioners allege that the Minister's representatives to the Wages Board for Tea and Rubber were acting under the direction of the Minister to vote to increase the minimum wage. The Wages Board thus proposed the increase of a minimum wage of Rs 900/- with a budgetary allowance of Rs 100. Thereafter the Wages Board called for objections if any pertaining to the decision. The Petitioners allege that the Petitioners were only given a few days to file objections, and on or about 02.03.2020 the Wages Board had deliberated on the

objections and decided to confirm the proposed decision pertaining to the increase of wages to Rs 1000/- which resulted in the publication of the said decision subsequent to the approval of the minister in the Gazette (P12). The Petitioners are now seeking to quash the decisions of the Wages Boards for Tea Growing and Manufacturing and Rubber growing and Manufacturing trades.

### **Petitioners' complaint to Court**

The Petitioners' contention is that,

- The said wage increase is pernicious to the Petitioners' financial objectives which will ultimately undermine the national economy;
- The decision was made by the respective Wages Boards upon the direction of political authority in order to further the political promises made by the Government without considering the ground reality and the feasibility of implementation;
- The respective Wages Boards followed irregular procedures including providing insufficient time for interested parties to tender their objections.

The Petitioners are seeking the following reliefs in this application.

- i. Grant and issue a mandate in the nature of a writ of certiorari quashing P12 and/or the decisions contained therein;
- ii. Grant and issue a mandate in the nature of a writ of certiorari quashing P12 as it relates to the Tea growing and Manufacturing trade and/or the decisions contained therein;
- iii. Grant and issue a mandate in the nature of a writ of certiorari quashing P12 as it relates to the Rubber growing and Manufacturing trade and/or the decisions contained therein;
- iv. Grant and issue a mandate in the nature of a writ of certiorari quashing the decision of the Wages Board for the Tea growing and Manufacturing trade to fix the minimum rate of daily wage for time work at Rs. 1000/-; (Rs 900/- labor and Rs 100/- budgetary allowance)
- v. Grant and issue a mandate in the nature of a writ of certiorari quashing the decision of the Wages Board for the Rubber growing and Manufacturing trade to fix the minimum rate of daily wage for time work at Rs. 1000/-;
- vi. Grant and issue an interim order until final determination suspending and/or staying the effect of P12 and/or the decisions contained therein;
- vii. Grant and issue an interim order and/or suspending the operation of the decision of the Wages Board for the Rubber Growing and Manufacturing Traded to fix the minimum rate of daily wage for time work at Rs. 1000/- (Rs 900/- labour and Rs 100/- budgetary allowance)

The Respondents while denying the allegations raised by the Petitioners, took several preliminary objections to the maintainability of this application. All the Respondents were unified in the following preliminary objections. They are as follows;

- The Petitioner has failed to name necessary parties to this application,
- No grounds for judicial review to invoke the jurisdiction of the Court of Appeal,
- The Petitioner has deliberately misrepresented and/or suppressed material facts pertinent to this matter,
- Therefore, has failed to come before the Court with clean hands,
- Prior conduct of the Petitioners disentitles them from any discretionary relief.

The above objections will be considered hereinafter.

This Court has heard extensive arguments by all parties and at the conclusion, invited all parties to tender written submissions. All parties have tendered their respective written submissions.

The Petitioners challenge the Wages Board decision on three main grounds. They are namely,

- The Wages Board failed to properly consider the wage increase and had failed to consider the Petitioners' position.
- The Wages Board Chairman failed to give a fair opportunity to the Petitioners to submit their objections.
- In any event, the Wages Board failed to give fair and proper consideration to the issue before it and the 2<sup>nd</sup> Respondent and the Minister had acted on a preordained path.

As the Petitioners are challenging the decision of the Wages Board, at this stage, this Court will consider the provisions of the Wages Board Ordinance. It is pertinent to observe that once the Minister has decided to appoint a Wages Board pertaining to a specific industry under section 6 of the Wages Board Ordinance, the Minister has the discretion to constitute a Wages Board specified to a trade. Once the order is made where the Minister has decided to apply part II of the Wages Board Ordinance to a particular trade, the said order will be published by notification in the gazette and would come into force from the date of such publication. Once the notice of intention to apply the Wages Board Ordinance to particular trade is published, the relevant stakeholders have a right to object and under section 7 (3) the Minister is compelled to consider the objections and if necessary to hold an inquiry as well. Thereafter under section 8 of the Ordinance, the Minister will establish the Wages Board for the particular trade. In this instance, the Minister has established Wages Board pertaining to the Tea trade and Rubber trade. The long title to the Wages Board reads as,

***“AN ORDINANCE FOR THE REGULATION OF THE WAGES AND OTHER EMOLUMENTS OF PERSONS EMPLOYED IN TRADES, FOR THE ESTABLISHMENT AND CONSTITUTION OF WAGES BOARDS, AND FOR OTHER PURPOSES CONNECTED WITH OR INCIDENTAL TO THE MATTERS AFORESAID”.***

There is no evidence submitted to this Court pertaining to the establishment of the two Wages Boards or whether there had been any objections to the establishment of the Wages Board. However, it is clear that the establishment of the Wages Board had not been done instantly.

Once such boards are established, they will determine *inter alia* the minimum rate of wages for the workers. The said Wages Board will have an equal number of representatives on behalf of the employers and an equal number of representatives on behalf of the employees and the Minister has the power to appoint nominated members to the Wages Board subject to section 9 of the Wages Board Ordinance. The Wages Board will convene and decide on the proposal submitted, in this instance, it is the minimum wages for a particular trade (that is tea and rubber) in consultation with the representatives of the employers and the employees who will be members of the said Board.

It is observed as submitted by the Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, that the legislature in its wisdom has made provisions to establish the Wages Board to constitute “a tripartite statutory body that enables a consideration of the worker’s rights, employer’s concerns and the policy of the government and who is bound to strike an equitable balance between the competing interest” thus, it’s clear that the deliberations of the Wages Board have to be on a consultative and compromise basis which would be for the best interest of all stakeholders and decisions arrived pursuant to the provisions of the Wages Board Ordinance and make a determination.

However, it is essential for this Court to primarily consider the objections raised by the Respondents pertaining to the maintainability of this action. We find that almost all the Respondents have taken up the same objections pertaining to the maintainability of the instant application.

### **Whether Necessary parties are before Court**

Parties are not at variance on the establishment of the Wages Board and the said Board had discussed a proposal to increase the minimum wages of the workers to Rs 900 plus a budgetary allowance of Rs 100. It is common ground that the representatives of the employers in the Wages Board had objected to the said increase and accordingly a vote had taken place and on the majority decision, the Wages Board approved the proposed minimum wage increase. Thereafter in pursuance of the Wages Board Ordinance, the Chairman of the Wages Board had called for objections. It is also common ground that there had been 179 objections.

The parties are not at variance that the decision of the Wages Board applies to all the regional plantation companies and others including small holdings involved in the tea and rubber sector.

The Petitioners are basically challenging the decision taken by the Wages Board which constitutes a body of persons. The said impugned decision had been taken by the said body of persons after a vote. The vote was required as there had been a division in the decision. All the Respondents contended that the Petitioners have failed to name all the members of the Wages Board as Respondents. Thus, the contention of the Respondents is that the members who made the decision and whose decision is impugned are not made parties.



The Petitioners in their submission contended that a minimum wage of Rs.1000 will adversely affect the entire plantation sector. All parties agreed that the majority of the workers serve in small holdings and one of the contentions of the Petitioners opposing the said increment was that if the minimum wage is increased to 1000 per day the said smallholders would be adversely affected. However, it is observed that none of the small holdings or their representatives are made a party to this application. It was also argued that the impugned decision of the Board will have a serious bearing on the entire tea manufacturing industry. The said decision definitely will have a bearing on the huge number of plantation workers and the Petitioners have failed to name at least the representatives of the plantation workers or the plantation workers. They further submitted referring to 1R1, 1R2, 1R3, and 1R4 that there is an estimated workforce of 640,000 estate workers out of which only about 20% of the workforce are working in the plantation sector while the rest are attached to small holdings. Thus, the contention of the Respondents is that the Petitioners have failed to add all necessary parties to this application.

Responding to the said contention, the Petitioners submitted that they were only challenging the decision of the Minister which is marked as P12 thus, the only necessary party should be the Minister. At the same time, the Petitioners submit that the Chairman of the Wages Board, the workers' representatives on the Board, and all the Minister's nominees to the Wages Board are made Respondents. The Petitioners' contention is that since the Petitioners' own agents or representatives were the employers' representatives at the Wages Board, therefore it need not name the Petitioners' own agents and the representatives as Respondents. Further, the Petitioners' representatives have voted against the Wages Board proposal to increase the minimum salary, and therefore they were not prejudiced by the reliefs sought by the Petitioners. The Petitioners further argue that the plantation companies who did not challenge the Wages Board decision (P12) need not be made parties as by their conduct they were not adversely affected by the impugned decision and accordingly, the two regional plantation companies who have not challenged the Wages Board decision had not been dragged into this case.

The 15<sup>th</sup> to 17<sup>th</sup> Respondents further submitted that not only the employers' representatives of the Wages Board of tea and rubber have been omitted from this application, but the Petitioners have also failed to name the estate workers' representatives or the estate workers, and further the two regional plantation companies namely, Agalawatta Plantation PLC and Pussellawa Plantation PLC in this application.

The Petitioners' own conduct adversely affects their submissions as to the necessary parties. As contended, if the Petitioners thought that they were challenging only the Minister's decision and only the Minister was necessary for the adjudication of this application, particularly the reasons for adding the employee representatives of the Wages Board and its Chairman as Respondents were not given. In my view, the Petitioner has failed to add the representatives of the employers as parties to this case. I will now examine whether the said members are necessary and if the omission to add them was deliberate, hence, fatal to this application.

As per the submissions on behalf of the Petitioners, it is clear that the Petitioners have deliberately not added the parties whom the Respondents contend are necessary parties. In view of the said submission, I am of the view that the non-addition of the parties is intentional and the Petitioners have deliberately decided to omit them. Based on the above grounds, I find that the Petitioners in this application are challenging the decisions of the Wages Board. Whether the employers' representatives who are members of the Wages Board who decided in favor of the minimum wage increment or opposed to it, the final decision, which is the outcome of the Wages Board is considered as the decision of the Wages Board. In view of the Wages Board Ordinance, the short title of the Ordinance pertaining to sections 28 and 29 clearly demonstrates what the legislature has meant is the decision of the Wages Board. Therefore, when the said decision is being challenged, it will eventually affect the entire membership of the Wages Board. The decision of the Wages Board is considered the collective decision (though in this instance by majority vote) of the Wages Board.

**In Benette Bandara and Others Vs. Uva Province Provincial Public Service Commission and others CA/PHC/182/2012 decided on 05/14/2018 it was held *“if it is a body of persons whose decision or exercise of power is sought to be quashed each of the person’s constituting such body who took part in taking impugned decision or the exercise of power should be made respondents, the failure to make him or them Respondents to the application is fatal and provides in itself for the ground of dismissal of the application in limine ”***

As per the composition of the Wages Board, the said Board is not a corporate entity. Therefore, all the members who were involved in the decision-making of the instant Wages Board should have been made a party, irrespective of whether they had supported the said decision or not. As I have mentioned above, the Petitioners are challenging the Wages Board decision *per se* which has been approved by the Minister.

**In Dr. Gamini Gunathilaka and others vs UOC and others 2006 1 SLR 350** where the selection of a Professor of Surgery by the University Council was challenged, the Court held *“in these circumstances, the Court holds the members of the University Council are necessary parties to this application and as the Petitioner has failed to make them as Respondents is a fatal irregularity and hence Court upholds the preliminary objections...”*

**In Wijerathne Commissioner of Motor Traffic vs Ven Dr Haragoda Vimalavansa Thero and others (2011) 2SLR 258** it was held that *‘the 1<sup>st</sup> rule regarding the necessary parties to an application for a writ of certiorari is that the person or authority whose decision or exercise of power is sought to be quashed should be made Respondent to the application. If it is a body of persons whose decisions or exercise of power is sought to be quashed each of the persons constituting such body who took part in taking the impugned decision or the exercise of power should be made Respondent. The failure to make him or them Respondents to this application is fatal and provides in itself the grounds for the dismissal of application in limine.’*

Thus, in my view, the employer's representatives of the Wages Board are a necessary party to this application.

This Court also observes that despite the Petitioner contending that there was no necessity for them to make their own representatives who were members of the Wages Board parties the said members of the Wages Board sought to intervene in this application by a petition dated 04/05/2021. The said application however was not pursued as the Respondents sought to object to the intervention. The Respondents contended that such an attempt has been made subsequent to the Respondents raising the objections of necessary parties and also submitted to the Court that the registered attorney who filed the petition for intervention by the employer's representative at the Wages Board had the same address as the registered attorney for the Petitioner. The Respondents argued that this attempt for intervention clearly demonstrates that the necessary parties are not before Court and the Petitioners have attempted to overcome their failure to add necessary parties.

Keeping the said contention as it may, this Court will now consider the Petitioners' contention that they need not make the members of the Wages Board parties as the impugned decision P12 is approved by the Minister thus, the Minister is the only necessary party since what is impugned is the Minister's decision reflected in P12. I am unable to agree with the said submissions. Section 29 of the Wages Board ordinance deals with the approval of the Minister. However, before the said decision is conveyed to the Minister under section 28, the Wages Board has to publish their proposed decision in the gazette and call for objections. Once the proposed decision is published under section 28, and the Wages Board considers and determines the objections raised against the proposed decision, only then does the Wages Board transmit the confirmed decision to the Minister. As per the provisions of section 29, it is this confirmed decision when received, the Minister would give his approval and publish it in the government gazette or the Minister would refer it back to the Wages Board for reconsideration. When one looks at the wording of sections 28 and 29 of the Wages Board Ordinance, it is clear that the decision is made by the Wages Board, and not by the Minister. The plain reading of section 28 is clear, the word used is the "proposed decision of the Wages Board" until the objections are called and deliberated by the Board. Therefore, the wording used under section 29 is quite clear, what is transmitted to the Minister for his approval is the confirmed decision of the Board.

The said **Section 29 (1)** reads as follows;

(1) every decision made by a wages Board and confirmed under section 28 shall-

*(a) Be signed and dated by the chairman, and*

*(b) Be transmitted to the Minister through the Commissioner together with any report which the Wages Board, the District Wages Committee or the Commissioner may desire to make on any matter to which the decision relates*

Hence, it is clear that the Minister only approves the decision of the **Wages Board** and is confirmed. Once the approved decision of the Wages Board is published in the gazette, only then it will come into effect. This is further buttressed by the provisions of section 30 as it empowers the Wages Board to rescind or vary a decision by way of a subsequent decision of the Wages Board and section 32 of the said Act specifically states as follows;

The said **Section 32** reads as follows: -

*“Every decision of a Wages Board under this Ordinance shall, from the date on which such decision comes into force, have effect notwithstanding anything in any written law (other than this Ordinance), and made by any board or person under any such written law”.* Accordingly, it is clear what comes into effect is the Wages Board decision which is only being approved by the Minister.

The Respondents also contended that the Petitioners have failed to name the parties who would be adversely affected by the outcome of this application. In the decided case of **Rawaya Publishers and Others V. Wijedasa Rajapaksa, Chairman Sri Lanka Press Council & Others (2003) 3 SLR 213** it was held, *“In the context of writ applications, a necessary party is one without whom no order can be effectively made. A proper party is one in whose absence an effective order can be made but whose presence is necessary to a complete and final decision on the question involved in the proceedings. In the case of Udit Narayan Singh v Board of Revenue, it has been held that where a writ application is filed in respect of an order of the Board of Revenue not only the Board itself is a necessary party but also the parties in whose favour the Board has pronounced the impugned decision because without them no effective decision can be made. If they are not made parties then the petition can be dismissed in limine. It has also been held that persons vitally affected by the writ petition are all necessary parties. If their number is very large, some of them could be made respondents in a representative capacity.”*

It is clear that the party that would be most affected would be the estate workers, and accordingly, I find that the Petitioners have failed to add the workers’ representatives or the workers to this application. Beneficiaries of the wage increase of Rs. 1000 are the estate workers who have been given a pledge as submitted by the Petitioners through the manifesto of the candidate of the President-elect (who are in the regional plantation companies as well as small holdings). Hence the Respondents’ contention that the estate workers are not represented in this application has merit.

It is also apparent to note that the two regional plantation companies namely, Agalawatta Plantation PLC and Pussellawa Plantation PLC, which will be affected by this decision have not been made parties. It was submitted that the said companies have been paying the minimum wage as per the Wages Board decision. Even though they have been paying the minimum wage as per the Wages Board decision, I find there is no evidence to demonstrate whether the said companies too had objected to the minimum daily wage.

However, the decision of this application would affect the said two companies. The Petitioners further submitted that there was no necessity to make them parties as they have

failed to challenge the Wages Board decision. I am unable to agree with this submission as well. This Court is not in a position to hear the views of the said two companies who will be affected by the decision of the Court, but the Petitioners have thought that it is not necessary to make them parties, depriving the Court of hearing the views of the said two companies. It is also pertinent to note that the Petitioners' submissions pertaining to the non-inclusion of some affected parties gives credibility to the Respondents' position that the Petitioners have acted with a preconceived notion of not adding the plantation companies who are already paying the Rs. 1000 on the pretext that they are not objecting to the Wages Board decision. Considering all the above submissions, I am of the view that the Petitioners' failure to include the 13 employers' representatives of the Wages Board for Tea and Rubber and failure to add the affected parties, especially the two regional plantation companies and representatives of the small holdings is fatal to this application.

The Petitioners are coming before this Court seeking the discretionary remedy of this Court. I am of the view that it is not for the Petitioner to decide whether a party would consider themselves as being adversely affected or not because they had opted to comply with the Wages Board decision. It is trite law that all parties who are adversely affected should be made parties. **Wijeratne (Commissioner of Motor Traffic) Vs. Ven. Dr. Paragoda Wimalawansa Thero and 4 Others (2011) 2 SLR 258.**

Thus, I hold that all necessary parties are not before Court, and the Petitioners' attempt to not make them parties is fatal to this application.

This takes me to the next objection of misrepresentation and suppression of facts.

### **Misrepresentation and suppression of facts**

The Petitioners in their submissions brought to the attention of this Court the document marked P9. The said document is marked in paragraph 34 as "a true copy of the minutes of the Wages Board for Rubber cultivation and Raw Rubber processing trade is annexed hereto marked P9 and is pleaded as part and parcel hereof" paragraph 35 of the Petition divulges that they were not in possession of the minutes of the Wages Board for Tea but it states that the meeting took largely the same course, which in my mind was what had transpired and referred in P9. In paragraph 36 the Petitioners further state that the Wages Board had not considered relevant facts in making the decision inclusive of the revenue and the expenditure of the plantation company.

The plain reading of P9 gives me the impression that there had been a proposal for a minimum wage of Rs. 900.00 + a budgetary relief of Rs.100 which makes into a daily wage of Rs 1000 and as a counter-proposal, the employers had proposed a daily wage increase of 550 + 2 budgetary relief allocations to make a total sum of 750. Thereafter due to the two conflicting proposals and the ensuing disagreement, a vote had taken place.

The Respondents vehemently contest this document and claim that the said document is not the official minutes of the Wages Board and accordingly has marked the respective minutes of the Wages Board as 2R1 and 2R2. I find that the other Respondents too have filed these proceedings with different markings 3R7, 10R3, and 10R4. The 2R1 document is pertaining to the minutes of the Wages Board of the Tea industry and 2R2 is for the Rubber industry. As per the said 2R2 document what is demonstrated is that the Chairman of the Wages Board had made a PowerPoint presentation pertaining to considerations that should be taken into account in discussing the minimum wages. I also find in the document relating to the tea industry, that the Wages Board has considered the plight of small holdings and has also considered the cost of living where workers' representatives had submitted a figure of Rs 65,000. I find that none of these facts are reflected in the document marked P9. The said P9 document had been signed by an employers' representative while the corresponding Wages Board minutes for the same day marked as 2R2 by the 2<sup>nd</sup> Respondent is signed by the Wages Board's Secretary. I observe that the contents of the two documents differ. The Petitioners have failed to submit the certified copies of the minutes of the Wages Board meeting pertaining to the tea industry although they are seeking to quash the decision that has been proposed at this meeting. The Respondents strenuously argued that by submitting the document P9, which was not the official minutes of the Wages Board the Petitioners have attempted to suppress true facts and mislead and misrepresented facts to the Court. Further, it was submitted that what the Petitioners had pleaded as a true copy of the minutes, are in fact not the official minutes and a description of the events that took place on 08/02/2021. Instead it was a minute prepared by one Mr. Prasad De Silva.

In response, the learned President's Counsel for the Petitioners contends in his submission, that the said minutes were taken by a member of the Rubber Wages Board who was an employer's representative and contends that there were no such minutes maintained for the Wages Board for tea. They contended that the official minutes were not available at the time of filing this case and thus the Petitioners submitted document P9.

When the Petitioners submitted P9, the Petitioners failed to disclose that the official minutes pertaining to the Wages Board meeting for the Rubber trade was not available to them and therefore, they were annexing a minute of what took place as taken down by an employers' representative, and I also find that the Petitioners have failed to disclose the discrepancies of the official version and the minutes in P9. The Petitioners further contended that when the document P9 was filed prior to support and when the limited objections were filed by the Respondents, they had not objected to the document P9. I do not agree with this contention as well. Whether the Respondents in their limited objections pertaining to the issuance of the stay order objected to this document or not, the Petitioners are duty-bound to disclose true facts.

Our Courts have throughout held that a Petitioner who seeks an equitable remedy is obliged to come with clean hands and not misrepresent facts to Court however trivial they may think the misrepresentation is. In my view, document P9 is very much relevant to the issue at hand

as it purported to reflect the events occurring before the Wages Board arrived at the proposed decision.

**In *Biso Menika Vs Cyril De Alwis & others* 1982 (1) SLR 368** it was held *“A person who applies for the extra-ordinary remedy of writ must come with clean hands and must not suppress any relevant facts from Court. He must refrain from making any misleading statements to Court”*. The importance of coming to court with clean hands was recently stressed in ***Orient Pearl Hotels vs Cey Nor-Foundation Limited & others* CA Writ 226/2018 decided on 02.08.2021** where it was held *“It is settled law that a party seeking prerogative relief should come to court with clean hands. The expression is derived from one of equity’s maxims – He who comes to Equity must come with clean hands.”*

If the Petitioners were not in possession of the official minutes, the Petitioners were duty-bound to disclose the same to Court, especially in view of the fact that the Petitioners were seeking to impugn the relevant decision on the basis that the Wages Board had not considered all relevant facts before arriving at the proposed decision taken on 08.02.2021. I also observe that the Petitioners should not have marked the said document P9 stating it’s a true copy of the minutes to the petition when it was not so. It is observed the Petitioners have failed to explain the discrepancies between the official version of the minutes and the purported minutes reflected in P9.

The Petitioners also contended that the said sum of Rs 1000 had been arrived at due to an election pledge. The Petitioners strenuously contended that the three main representatives of the Minister had voted to increase the minimum wages to Rs.1000 and the Wages Board had not considered the relevant facts in making the decision. The only way the Petitioners could establish these facts was by submitting the authenticated minutes of the Wages Board for tea and rubber. I find the Petitioners have failed to submit the minutes of the Wages Board for the tea industry. In the absence of such, this Court would not be in a position to consider whether the relevant facts that the Petitioner alleges had been considered by the Wages Board on the tea trade or not.

However, the Respondents annexed the Wages Board decision for the tea trade. (1R5, 2R1, 10R3). As reflected in the said minute, the Chairman of the Wages Board presented a PowerPoint presentation when the proposal for the minimum wage increase had been considered. This fact had not been disclosed by the Petitioner. Further, as demonstrated in the said minutes, the Wages Board had discussed percentage-wise the salary increases that had been granted. I find that the Petitioners have failed to disclose these facts to the Court which amounts to suppression of material facts.

One of the main contentions of the Petitioners was that, the Wages Board decision was preordained and such submissions were in line with a manifesto pertaining to a presidential election of increasing wages to Rs.1000 or 1500 (P5, P6) and, the Minister’s representatives and the Minister instead of exercising their own judgment, acted to impose Rs.1000 minimum wage. However, I find that as per the documents, the agitation by the workers to

get their minimum salaries increased up to 1000 has a considerable history. The trade union has been agitating for the said increase since the year 2015 which is evident by the documents marked (5R5). Hence, it's clear that the agitation for the minimum wage hike of Rs.1000 was a continuous contention of workers long before the presidential elections were held. It appears that there had been several discussions between the employers and the employees on this demand for a wage hike and in the absence of an agreement, a wages board had been appointed to consider the employees' demands. As there had been no agreement even by the Wages Board as required by statute, the proposal to increase the minimum wage had been put to vote. The proposed decision taken subsequent to a vote becomes the majority decision of the Board. Hence the Petitioners' contention that in view of P5 and P6, the Minister was acting on a preordained path to increase the minimum wages to Rs 1000 has to fail. As per the documents available, what is demonstrated is that, the workers' agitations have been picked up by the contesting candidates who had endorsed the said demands. The Petitioners have failed to disclose these facts.

I will now consider the minutes of the Wages Board for the tea industry of 01.03.2021 submitted to this Court by the Respondents marked as 3R9. As per this document, the previous Wages Board proceedings which deliberated on the proposed minimum wage, have been proposed and confirmed as true. The proceedings have been confirmed by representatives of the employer and further, the representatives of the employer had proposed an amendment to the minutes (2R2). The said proceedings are dated 01.03.2001. The Petitioners filed the instant petition on 10.03.2021. Thus, as per the minutes of the Wages Board which was held on 01.03.2021, it is reasonable to come to the conclusion that the employers' representatives were in possession of the previous day's proceedings for him to propose an amendment to the minutes and to confirm the same as accurate. These were the minutes of the Wages Board meeting where the proposal for minimum wage increment was approved. Therefore, the act of not annexing the said authenticated Wages Board minutes for the rubber industry and for the tea industry, especially in the above-mentioned circumstances, and the subsequent failure to explain the reasons for not submitting the same to court, in my view amounts to the Petitioners suppressing material facts pertaining to the Wages Board meeting that took place on 08.02.2021. Accordingly, I am of the view that the Respondents' objection pertaining to misrepresentation of facts, suppression of material facts and lack of *uberima fides* has to succeed.

In our judicial history, there are a plethora of judgments stating from **Alphonsu Appuhami Vs. Hettiarachchi 77 NLR 131, Dahanayaka and others vs. Sri Lanka Insurance Corporation LTD and others (2005) 1 SLR 67, Fonseka Vs. Lt. General Jagath Jayasuriya (2011) 2 SLR 372** where our Courts have constantly held that if there was suppression, misrepresentation and lack of *uberrima fides* would warrant the dismissal of a writ application without hearing on the merits of the case.

In **Namunukula Plantation Limited vs. Minister of Land and Others SC Appeal No. 46/2008, decided on 13/03/2012** it was held as follows; "*if any party invoking the*



*discretionary jurisdiction of a Court of law is found wanting in the discharge of its duty to disclose all material facts, or is shown to have attempted to pollute the pure stream of justice, the Court not only has the right but a duty to deny relief to such person.*

**Don Mary Roshani Vs. Sri Lanka Medical Council and others CA (Writ) 234/2017 decided on 26/05/2020, “It is established law that discretionary relief will be refused by Court without going into the merits if there has been suppression and/or misrepresentation of material facts”.**

Even though this Court has upheld the objections raised by the Respondents and this application has to fail, for completeness, I will now consider the main arguments of the Petitioners.

The Petitioners’ main contention before us was that the decision on P12 is completely arbitrary and purely based on political consideration.

As discussed above, considering the history of the minimum wage increase and as the impugned decision to raise the minimum wage to Rs 1000 was proposed subsequent to a vote, we are unable to hold with the Petitioners on this ground.

Even though the Petitioners contended that the decision contained in P12 is ultra vires, I take the view that the Petitioners have failed to substantiate the said submission, and I observe that the Respondents have demonstrated that the said decision had been arrived at by the Wages Board pursuant to the provisions of the Wages Board Ordinance and after the proposed decisions had been put to vote.

The Petitioners’ other argument is the aforesaid decision was unreasonable and irrational as it had failed to take into account important and relevant considerations, namely, the minimum wage of other industries, and prevailing inflation rates to determine the need for an increase, etc. The Petitioners’ prime complaint was pertaining to the tea industry, and to determine this contention, the best evidence would have been the minutes of the Wages Board on the tea trade. However, the Petitioners had failed to submit to this Court the relevant minutes of the Wages Board on the tea trade. The said minutes as stated elsewhere in this judgment, were submitted by the Respondents. The said minutes demonstrate that most of the Petitioners’ concerns had been considered by the Wages Board. It was the duty of the employers’ representatives to raise any issue that had to be given due consideration. As per the minutes marked as 3R7, the employers’ representative too had been present at the said Wages Board meeting and had taken part in the deliberations.

The minutes of the subsequent date tendered to this Court by the Respondents, reflect that the employers’ representatives had seconded the minutes to be correct. If there were material facts that the Wages Board should have considered or had failed to consider, then the employers’ representatives were at liberty to raise them and draw the attention of the Wages Board to the said considerations. After all, in my view, the employers’ representatives are

appointed to the said Wages Board for this particular reason, and especially to have a fair representation. Subsequent to the deliberations, as there was no consensus agreement, the proposal for the increased daily wage had been put to vote and had been passed by a majority vote.

It is also pertinent to note that the Wages Board constitutes of employers and employees' representatives who will have the expertise and the best knowledge of the ground situation. As stated earlier in this judgment, the nominated members are there to ensure that the Wages Board decisions blends in harmony with the employer's requirements, employee's aspirations, and the policy of the government in consideration of the socioeconomic factors pursuant to the prevailing laws. It consists of a mixture of persons who can take decisions in the best interest of the particular trade, the worker's rights, and welfare, in a particular situation for the betterment of the industry. The members who are appointed to the Wages Board are experienced in their respective fields and are representing the stakeholders of the particular trade. Thus, it is my view that this Court should not and cannot assume the role of the Wages Board. In the present case before this Court, I find the Wages Board decision had been arrived at subsequent to a vote. In this context, it is my view that this Court can only ascertain the legality of the procedure adopted in arriving at the final decision.

Arriving at this conclusion, I considered the case of **Kalamazoo industries and others Vs. Minister of Labour (1989) 1 SLR 235** where the Court held "*relief by way of a 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 principals of natural justice or pronounces an award which is eminently irrational or unreasonable or is guilty of an illegality*" The Court went further and held "*In the circumstances to 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*".

The Petitioners submit that subsequent to the Wages Board decision dated 08.02.2021 and pursuant to the provisions of the Wages Board Ordinance, the Wages Board had called for objections to the proposed decision by way of a publication in the government gazette and the relevant newspapers. The Petitioners contended that they have not been given sufficient time to raise objections, and accordingly, they have been deprived of the right to object to the proposed decision. However, the Petitioners themselves concede that during the time period given for objections, 179 objections had been received by the Wages Board. Hence, it is clear that sufficient time had been granted for objections and employers had utilized the said opportunity and tendered their objections. Further, the Petitioners have failed to attach any independent evidence to demonstrate that there would have been many objectors if more time was given. There were no affidavits tendered to court from the affected parties seeking further time to file objections or to demonstrate that they had been deprived of filing objections due to the insufficient time given.

Thereafter the said objections too had been deliberated by the Wages Board (3R9). The said deliberations too had concluded on a majority decision. Subsequently, the said final decision had been transmitted to the Minister for his approval pursuant to section 29 of the Wages Board Ordinance.

On close examination of section 29 of the Wages Board Ordinance, I find that once the Wages Board decides to publish the proposed decision, it is also empowered to decide on a date which on or before the objections to the proposed decision had to be submitted. In this instance, the Wages Board had given a specific date in compliance with the provisions of the Ordinance.

The Respondents submitted that the said objection has been deliberated by the Wages Board, while the Petitioners contended the objections have not been properly considered. Thus, the Petitioners' contention becomes a disputed fact. The minutes of the said Wages Board meeting which considered the objections have been tendered to this Court, which demonstrates the consideration of the objections. However, there is no evidence before this Court to ascertain whether it was properly considered or not, especially in the absence of the employers' representatives to the Wages Board who have not been made a party to this application. In any event, when the facts are in dispute, a writ Court will be hesitant to exercise its jurisdiction. In **Thajudeen Vs Sri Lanka Tea Board and another (1981) 2 SLR 471** it was held *"Where the major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct, a writ will not issue."*

It should also be noted that the statute is silent on the time period that should be given to tender objections. In my view, a sufficient time period should be given for objections. The Petitioners have submitted the minutes of the said Wages Board meeting to this Court marked as CA5. The said minutes demonstrate that the 2<sup>nd</sup> Respondent has answered the objection pertaining to the time period given for objections. Further, it also demonstrates deliberations pertaining to the objections raised. Thus, the Wages Board had deliberated the objections where the employers' representatives have been heard. In view of the above, I am unable to agree with the Petitioners' submission that they have not been heard properly in considering the objections submitted.

I find that on the day the objections had been deliberated, the employers' representatives had been present and the final decision had been arrived at once again by way of a majority decision that consented to the increase of the daily wage as proposed by the wages board on its decision dated 08.02.21. (3R9)

I am also mindful of the fact that the collective agreement that existed between the parties has been repudiated with effect from 05.04.2021, hence, leaving the workers who have not been

brought before this Court with an entitlement of a daily wage of Rs 405 (as per P13(a)). The learned Counsel appearing for 5<sup>th</sup> and 7<sup>th</sup> Respondents submitted to this Court, that from the time the Wages Board decision was published, most of the regional plantation companies had been paying the sum determined by the Wages Board.

The learned Counsel for 1<sup>st</sup> and 2<sup>nd</sup> Respondents drew the attention of this Court to documents 1R1 and 1R2, whereby he submitted that out of the total workforce of approximately 653,666 workers, the Petitioners are employing approximately around 120,000 and further submitted that though the Petitioners objected to the Wages Board decision, most of the workers engaged in the respective industries pertaining to the Wages Board decision are already benefitting from the impugned Wages Board decisions. It was also submitted to Court, that given the economic situation, there would be a serious administrative inconvenience if the entire workforce has to be satisfied with the daily wage as per P13(a).

It is also pertinent to note, that the learned President's Counsel appearing for the Petitioners submitted that they would not curtail the wages only to the amounts reflected in P13(a). However, as submitted, this Court observes that with the repudiation of the collective agreement that was in existence prior to the Wages Board decision and in the absence of the Wages Board decisions impugned, what would remain is the wages reflected in P13(a).

This Court observes that all the Counsels in their submissions have referred to the cost-of-living factor as well. It is also pertinent to note, that the Petitioners themselves have taken the privilege to plead that due to the expert management of the companies, the Petitioners had been able to make a loss-making venture into a very profitable venture.

In this context, I am of the view that relief by way of a writ cannot be sought as of a right. It is a discretionary remedy. Even if the Petitioner has a strong case, and grounds exist for the issuance of a writ of certiorari the courts may still not be inclined to grant relief based on other pertinent and important grounds, such as grave Public/administrative inconvenience.

**In Jayaweera v Assistant Commissioner of Agrarian Services Ratnapura and another (1996) 2 SLR 70, Jayasuriya J observed as follows;**

***“I hold that the Petitioner who is seeking relief in an application for the issue of a writ of certiorari is not entitled to relief as matter of course, as a matter of right, or as a matter of routine. Even if he is entitled to relief, still the court has the discretion to deny him relief having regard to this conduct delay, laches, wavier, submission to jurisdiction – are all valid impediments which stand against the grant of relief.”***

And also, In *Mendis Vs Land reform commission and others SC appeal no 90/2009; SC mts 12.2.2006* Supreme Court commented on the discretionary nature of the writ jurisdiction.

In the circumstances, for the reasons stated in this Judgment, I am not inclined to grant the reliefs prayed for by the Petitioners and I dismiss this application without costs.

**Judge of the Court of Appeal**

**Sobhitha Rajakaruna, J**

I agree

**Judge of the Court of Appeal**