

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

An application of appeal against the order delivered on 17.12.2015 by the Provincial High Court of the Central Province Holden in Kandy on the matter of an application under and in terms of Article 154(P) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Article 7 of the High Court of Provinces (Special Provisions) Act No.19 of 1990 in the nature of a writ of certiorari.

Court of Appeal Application
No. C.A.(P.H.C.)225/2015
Kandy Provincial High Court
Application No.WRIT/02/2012

1. Lakshman Dharmaratne
Woodlowe, Bo Bebila.
2. S.K.G. Ananda Gnanasiri,
Pussellagolla, Udispattuwa.
And five others.

Petitioners

Vs.

1. W.M.P.K. Weerasekera
Co-operative Development Commissioner and
Registrar of Cooperative Societies of the Central

Province, Ehelepola Kumarihamy Mawata,
Bogambara, Kandy.

2. Udispattuwa Multi-Purpose Co-operative Society
Limited, Udispattuwa.
And two others

Respondents

NOW AND BETWEEN

- 1 Lakshman Dharmaratne,
Woodlowe, Bo Bebila.
2. S.K.G. Ananda Gnanasiri,
Pussellagolla, Udispattuwa.
And five others.

Petitioner-Appellants

Vs.

1. W.M.P.K. Weerasekera,
Co-operative Development Commissioner and
Registrar of Cooperative Societies of the Central
Province, Ehelepola Kumarihamy Mawata, Bogambara,
Kandy.
2. Udispattuwa Multi-Purpose Co-operative Society
Limited, Udispattuwa.
And two others

Respondent-Respondents

BEFORE: **PRESHANTHA DE SILVA, J.**
 K.K.A.V. SWARNADHIPATHI, J.

COUNSEL: W.D. Weeraratne
 For the Appellant

Medhaka Fernando, SC
 For the 1st and 4th Respondents-Respondents

Iresha Kithulgoda
 For the 2nd Respondent

Argument: By way of written submissions.

Date of Judgment: 18.10.2022

K.K.A.V. SWARNADHIPATHI, J.

JUDGMENT

The Petitioners of this case were the Chairman and members of Udispattuwa Multi-Purpose Co-operative Society Limited, from 23.9.2006 to 20. 09.2006, who was named as the 2nd Respondent.

On or around 10.01.2008, after a preliminary inquiry, two employees of the 2nd Respondent Society were interdicted by the Petitioners. However, one person was re-employed by the Petitioners. The other employee applied for a Mandamus from the Provincial High Court to compel the cooperative Society to conduct the disciplinary inquiry.

The Petitioner of that case (the other employee) was successful. By the time the order of the High Court was delivered, the present Petitioners had ceased to hold office in the 2nd Respondent society.

The 2nd Respondent then held a disciplinary inquiry against the employee as ordered by the High Court. The Officer who conducted the inquiry recommended reinstating the employee after giving a warning. The recommendation further stated that the employee should be paid his back wages.

The successors of the Petitioners to the 2nd Respondent were of the view that all expenses incurred by the 2nd Respondent by way of the cost of litigation and back wages should be collected from the Petitioners.

The Petitioners were informed to pay the 2nd Respondent a sum of Rs.351,729.04. Since the Petitioners did not agree to pay it, the matter was referred to arbitration. The 3rd Defendant held the arbitration and, by order dated 16.09.2011, ordered the Petitioners to pay the 2nd Respondent society a sum of Rs.280,668.90.

Aggrieved by the arbitrator's decision, the Petitioners appealed to the 1st Respondent, who held an inquiry and held against the Petitioners.

Aggrieved by the decision, the Petitioners then moved to the Provincial High Court of Kandy, praying for a writ of certiorari to quash the arbitrator's order.

After hearing the parties, the learned High Court Judge held on 17.12.2015 that the Petitioners had failed to establish any grounds to invoke writ jurisdiction and dismissed the application.

Aggrieved by the said decision, the Petitioners have sought the intervention of this Court. The Petitioners argued that the appointment of the 3rd Respondent as arbitrator was a violation of natural justice, and the arguments placed before the High Court were not considered.

The learned High Court Judge contended that the Petitioner had not objected to the arbitrator's appointment. A perusal of the judgment of the learned High Court Judge revealed that "a perusal of the notes of the arbitrator which was annexed to the High Court marked as P5" indicates that Petitioners had consented to arbitration.

The document "P5" was the arbitrator's notes on the first date. B.M. Gunasekera represented the Petitioners. On that date, this appeal's 1st to 4th and 6th Petitioners had been present before the arbitrator.

The 5th Petitioner, D.P. Mangala Hemamali, had sent a telegram to her representative seeking to excuse her presence and consent for further proceedings in her absence. Other than the 6th Petitioner, other Petitioners who were Respondents before the arbitrator had signed denying the charges read to them. Only after the denial that the inquiry commence.

The Petitioners should have objected on that first date. They could have exercised their right by objecting to the arbitrator before the second date. A perusal of the proceedings before the arbitrator proves the observation of the learned High Court Judge.

In *Ismalebbe Vs. Assistant Commissioner of Agrarian Services*¹ held, "In instances where the court found that the Officer or authority has either not erred, or that the error did not vitiate jurisdiction, certiorari has (unless the error in question was an error of law on the face of the record) been refused.

In this instance, the appointment and the proceedings before the arbitrator are according to law. The Petitioners had not succeeded in showing this court any irregularity of proceedings. The only objection to the appointment of the 3rd Respondent as arbitrator is that the Petitioner had not established a gross variation of rules of natural justice.

¹ (1991) 2 SLR 332

The mere saying that there was a breach of natural justice will not be accepted as proof. Their silence during the arbitration is the consent of the parties for arbitration.

Therefore, I see no grounds to disturb the judgment entered in case No: Writ 2/12 dated 17.12.2015 by the Provincial High Court Judge of Kandy.

I dismiss the appeal.

Judge of the Court of Appeal

PRESANTHA DE SILVA, J.

I agree.

Judge of the Court of Appeal