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

In the matter of an application for the issue of a Writ of Certiorari and Writ of Prohibition under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka

1. Hettiarachi Gamage Dadly Shelton
   Owner Ruwan Lanka Garments
   No. 19 Railway Access Road,
   Matara. *Now Deceased.*

Court of Appeal Case No:
CA/WRIT/336/2014

1A. Dishan Chaminda Hettiarachi Gamage
Owner Ruwan Lanka Garments,
No. 19 Railway Access Road,
Matara.

Now at
10 Orme Road, Newcastle
ST5 2nd,
The United Kingdom

Appearing by Power of Attorney Holder
Hettiarachi Gamage Dadly Shelton
No. 19 Railway Access Road,
Matara.
An heir of the deceased 1st Petitioner

2. Dishan Chaminda Hettiarachi Gamage
   Owner Ruwan Lanka Garments
   No. 19 Railway Access Road,
   Matara.

   Now at
   10 Orme road, Newcastle ST5 2nd
   The United Kingdom
   Appearing by Power of Attorney holder

   Hettiarachi Gamage Dadly Shelton
   No. 19 Railway Access Road,
   Matara.

PETITIONERS

Writ Application No. 336/2014
Termination Unit
Application No. TEU/A/24/2011

Vs.

1. W. J. L. U Wejeweera
   Acting Commissioner General of Labour
   Labour Secretariat Narahenpitiya
   Colombo 05.

2. W. J. L. U Wejeweera
   Secretary
   Ministry of Labour and Labour Relations

Narahenpitiya
Colombo 05.

3. G. W. N. Viraj
   Deputy Commissioner of Labour,
   Termination Unit,
   Department of Labour
   Labour Secretariat Narahenpitiya,
   Colombo 05.

4. Sujeewa Niroshan Baddewitharana
   No. 47/3, O. P. Perera Mawatha,
   Boralasgamuwa

5. Madagedara Mahesh Pushpakumara,
   No.151/2, Maligagodalla Road,
   Udumulla, Mulleriyawa

6. D. K. Jayanthi Perera
   C5/3/2 Sulohitha Place,
   Colombo 10.

7. Inoka Mendis
   Rannai Heppumulla
   Ambalangoda

8. D. K. Damayanthi Perera
   302/34, Kuriniyawatha
   Wellampitiya

9. M. A. Anoma Priyadarshani

468/7, Madinnagoda
Rajagiriya

10. Indrani Hemalatha
    423/1, Kalapuwawa
    Badalkumbura

11. A. M. Seelawathi
    Bathalakotuwegedara
    Sapuroda,
    Passara

12. P. Premalatha
    97, Mahagama, Bokalagama
    Meerigama

13. Deepa Sandanayaka
    173/1A, Walpola
    Angoda.

14. K.M.V Banda
    Madusanka Niwasa
    Methihakka, matale

15. H. A. Inoka Hettiarachchi
    79/14, Madinnagoda
    Rajagiriya

16. Raja Kandasami
    8/13, Meethotamulla Road
    Wellampitiya

17. Subramaniam Kuganashan
    Thangamale Watha
    Sarniya Edamegama

18. Ranjani Hettiarachchi
    172/11, Court Road
    Colombo 12.

19. Pallegedara Pathma Kumari
    216, East Bara Medda
    Hunsgiriya

20. R. M. Sarath Kumara
    Sarniya Estet
    Thangamale Badulla

21. Nilupa Pushpa Kumari
    153/1, Wani Ella Road
    Eggaloya Damana

22. Luxman Abeysekara
    Labunoruwa
    Mahgala Road

23. Asoka Rathnayake
    765/445-F-3,
    Bodihiriraja Mawatha
    Maligawatta, Colombo 10

24. Anoma Pushpalatha
    Dolehena Ihala Athuraliya
    Akuressa

25. Malika Damayanthi
    228, Dabagolla Road
    Galewewla

26. Gayani Rasika
    Diyaunnatgenna Pitiya
    Kumbura, Babarapana

27. Thangaveli Thiliban
    Part Tw Ledger Estete
    Kandegedara

28. Lechchuman Ravindra
    Uva Benford Estate
    Welimada

29. Madurai welaudan
    Thandamale Division
    Sarniya Estate, Badulla.

30. Ajantha Priyadarshani,
    Indiketiyahena, Dummala
    Gallidamulla, Katuwana.

31. Nadaraja Thebawadani
    6/6, Uva Benford Estate
    Welimada

32. Niluka Padmakanthi
    05, 10th Mile Post
    Werangama

33. T. Bivula Weerawansa
    Aluthtarama Mahiyanganaya
    Watarangoda, Walapane.

34. Dhanushka Nuwan
    Bawmalkatiya Kalugal Oya
    Kalugama

35. M. M. Lokumaneke
    15th Mile Post
    Kirimatiya, Mahiyanganaya

36. Dhanushka Madushanka
    53/9/5 I. D. H. Salamulla
    Kolonnawa.

37. Iranga Amani
    83, Madinnagoda
    Rajagiriya

38. Chandra Ranasingha
    350/2, School Lane
    Kalapuwawa

RESPONDENTS

Before:	C.P Kirtisinghe, J Mayadunne Corea, J
Counsel:	K. K. N. Lochani Welagedara with Isuru Lakpura for the Petitioner Yuresha Fernando DSG with Medhaka Fernando SC for 1st to 4th Respondents
Argued On:	27.07.2022
Decided on:	29.11.2022

Mayadunne Corea J

The facts of the case are briefly as follows, the 1st Petitioner had a proprietorship business called 'Ruwan Lanka Ayatenaya' established on 26.07.1990. Subsequently, on 28.07.2010 it was converted into a partnership called 'Ruwan Lanka Garments' with the 2nd Petitioner who is his son. The 1st Petitioner's brother-in-law, Jayalath Padmalal was the CEO. The 1st Petitioner states that he merely invested his money and that the said Jayalath Padmalal effectively managed the general administration of the business.

The 1st Petitioner states that the business was not operating viably for the financial years of 2009/2010 and following discussions with his brother-in-law, he had withdrawn from the business with effect from 21st February 2011. The 1st Petitioner further states that he closed down the business on 21.02.2011 and informed the Provincial Registrar of Companies about the said closure, following which the Registrar issued a certificate, notifying the removal of Ruwan Lanka Garments from the Register of Business with effect from the above date (P7).

The 1st Petitioner states that subsequently, from March 2011, his brother-in-law had carried out the business as his own, and paid the salaries of employees for March and April 2011. The 1st Petitioner further states that his brother-in-law had failed to pay the salaries for the month of May 2011 and had instigated the employees to lodge a false complaint against the 1st Petitioner. The 5th to 59th Respondents to the petition who are the employees of the said business entity are alleging that their services were terminated in contravention of the provisions of the Termination of Employment of Workman (Special Provisions) Act No. 45 of 1971 as amended. The Petitioner states the services of the employees were not terminated but their employment continued under Jayalath Padmalal the brother-in-law of the Petitioner.

The 4th Respondent conducted an inquiry according to the Act and issued an order. The 1st Petitioner states that the Commissioner General of Labour is the only officer legally empowered to issue such an order under the Act, thus alleging that no such authority is extended to the Acting Commissioner General of Labour and the Secretary, Minister of Labour and Labour Relations, who are signatories to the order. The Petitioners thereby allege that the order has no legal force and the Respondents are in violation of the provisions of the Act. It is further contended that the 2nd Petitioner who is the son of the 1st Petitioner and a partner of Ruwan Lanka Garments, had not been informed of the inquiry but had been served with the order subsequent to the inquiry.

Hence this application for a Writ of Certiorari to quash the said order.

The Petitioner has sought the following reliefs *interalia*;

- Issue a mandate in the nature of a writ of certiorari to quash the order marked P9, P9a, and P9b dated 27.06.2014.

Petitioner's complaint to the Court

a) The impugned order is against the accepted norms and principles of rules of natural justice,

b) The impugned order is against the provisions of Termination of Employment of Workman (Special Provisions) Act No. 45 of 1971,
c) The 2nd Respondent who is the Acting Commissioner of Labour has no legal right to issue the impugned order,
d) The 3rd Respondent who is the Secretary, of the Ministry of Labour and Labour Relations has no legal right to pronounce the order,
e) No notice was given to the 2nd Petitioner to appear and defend himself before the 4th Respondent, thus violating the rules of natural justice,
f) The said order is against the weight of evidence.

The Respondents while denying the allegations raised by the Petitioner, took several preliminary objections to the maintainability of this application. They are as follows;

- The application is misconceived in law,
- The Petitioner's conduct does not warrant a grant of a discretionary writ,
- The Petitioner has misrepresented facts and failed to disclose material facts to Court,
- The Petitioners have failed to adduce satisfactory evidence in support of their application.

This Court will consider the said objection in due course.

It is common ground that the subject business entity was registered as a sole proprietorship under the 1st Petitioner (page 160 of the brief marked as X) (P1). The said business had been registered under the Business Names Ordinance on 04.09.95, where the owner is declared as the 1st Petitioner. Subsequently, on 28.07.2010 an amendment had been carried out and the business entity Ruwan Lanka Garments had been registered as a partnership whereby the 2nd Petitioner who is the son of the 1st Petitioner had been brought in and registered as a partner (page 58 of the brief) (P1a).

In the year 2011, a complaint had been lodged with the Labour Commissioner by an employee on behalf of 57 workers stating that the business entity Ruwan Lanka Garments had been closed down without notice and the employees aggrieved by the said closure are seeking relief. (page 1 of the brief.) Thereafter the Commissioner General notified the employees and the 1st Petitioner to be

present for an inquiry[1]. Another notice had been sent to the business entity with a copy to the 1st Petitioner asking to be present for an inquiry[2].

The 1st Petitioner had failed to be present for the inquiry and after several dates, the 1st Petitioner had given authorization to one Mr. Jayadeva Ruwanpura to represent him and appear at the said inquiry. As per the proceedings on 09.09.2011, the said authorized person had appeared with a lawyer to represent the employer, partnership "Ruwan Lanka Garments".

It was submitted by the Respondents that at the inquiry it had also been revealed that on a complaint made by the employees to the police, the 1st Petitioner had been summoned by the Wellampitiya police for an inquiry. At the said inquiry the 1st Petitioner and the employees had been present and the 1st Petitioner had given a statement dated 06.08.2011 admitting that as the business was incurring losses, he was compelled to close Ruwan Lanka Garments in May, and he had also admitted that he had failed to pay the employees from the month of May[3]. The 1st Petitioner had also given the undertaking to dispose of the machinery of the said factory and to settle the payments.

This position was challenged by the 2nd Petitioner. The Petitioners contended that the said statement had been obtained under duress. However, this Court observes that if the said complaint had been obtained under duress, then the 1st Petitioner had ample opportunity to go with his lawyers and complain to the higher authorities in the police. No such material was tendered to Court. In the absence of such material, this Court is not inclined to accept the contention of duress as submitted by the Petitioners.

[1] Letter dated 10.8.2011

[2] Letter dated 09.8.11 and 19.8.11

[3] Page 60 of the brief complaint dated 6.8.2011

Originally this case was filed by two Petitioners, namely H. D. D. Shelton and D. C. H. Gamage who was his son. However, D.C.H Gamage had appeared through his power of attorney holder who was again the 1st Petitioner. While this case was pending the 1st Petitioner passed away. By way of a motion dated 06/07/2020 substitution has taken effect whereby the 2nd Petitioner has been named as 1A, the substituted Petitioner in addition to him being the 2nd Petitioner.

The Commissioner of Labour by his letter dated 27.06.14 had delivered his order and the said order is marked as P9, P9a, P9b. The said order is addressed to the 1st Petitioner and the 2nd Petitioner. In the said order paragraph 2 he had held,

"2008 අංක 20,2003 අංක 12,1998 අංක 51 හා 1976 අංක 04 දරන පනත් වලින් සංශෝදිත කම්කරුවන්ගේ රක්ෂාව අවසන් කිරීමේ (විශේෂ විධිවිධාන) පනතේ 6 (අ) වගන්තිය යටතේ මා වෙත පැවරී ඇති බලතල අනුව ඉල්ලුම්කරුවන්ට ගෙවීම සදහා එම පනතේ 6(අ) වගන්ත්ය යටතේ දිනැති අංක 1387/07 දරන අතිවිශේෂ ගැසට් නිවේදනයේ දැක්වෙන වන්දි සූත්‍රයට අනුකූලව ගණනය කරන ලද රුපියල් තිස්නව ලක්ෂ විසිහතර දහස (රු.3,924,000.00) ක වන්දි මුදල 2014.07.31 දින හෝ එදිනට පෙර කම්කරු කොමසාරිස් ජනරාල් වෙත තැන්පත් කරන ලෙස මෙයින් නියෝග කරමි".

Now, this Court will advert to the grievance raised by the Petitioner.

<u>The signing of the order by the 2nd and 3rd Respondents makes the order invalid.</u>

The Petitioner contended that the order in P9 had been signed by the Acting Commissioner General of Labour and not by the Commissioner General, thus the order is illegal as the Acting Commissioner General has no legal status or a legal right under the Act to sign the impugned order. This Court will now consider the said ground urged by the Petitioner.

The impugned order P9 has been signed by W. L. J. U Wijeyweera Acting Commissioner of Labour. The 2nd Petitioner's position is the said order could be signed only by the Commissioner of Labour which would not include an acting appointment. It is his contention that the Court should not give a wider interpretation to the Commissioner of Labour to include an acting appointment. It is also his contention that only the holder of the permanent post is empowered under the Act to sign the order. Considering the relevant section, we find that sections 6 and 6A of the Termination of Employment of Workmen (Special Provisions) Act, give the power to the Commissioner to issue orders in instances where the employer terminates the scheduled employment of a workman in contravention of the provisions of this Act.

Section 6A clearly stipulates that where the scheduled employment of any workman is terminated in contravention of the provisions of this Act, in consequence of the closure of employment of any trade, industry, or business, the power to order the employer to pay such workman is vested with the Commissioner. Thus, the contention is that the order should be signed only by the Commissioner and not the Acting Commissioner.

The next contention of the Petitioner is that the order consists of 3 parts mainly the reasoning and two schedules. One gives the main reasoning for the order which is in P9, the first schedule which contains the name of the people who have been awarded compensation (P9a), and the second schedule in P9b are employees' names who have not been awarded compensation.

The Petitioner contended that in P9, the Commissioner of Labour has signed as the Acting Commissioner General of Labour, hence the argument that as the Acting Commissioner General of Labour, he lacks the power that is vested with the Commissioner under sections 6 and 6A. The Petitioner drew the attention of this Court to various interpretations given under the Shop and Office Act and the Gratuities Act and invited the Court to give a very narrow meaning to the word Commissioner.

As per section 19 of the Termination of Employment of Workmen (Special Provisions) Act, the Commissioner is defined and reads as follows,

Section 19 "Commissioner" means the person for the time being holding the office of the Commissioner of Labour;

The Act itself has clearly defined that Commissioner means the person, who for the time being holds the office of Commissioner General of Labour. In the absence of any proof submitted by the Petitioners to demonstrate that the signatory to P9 was not the person holding the office of the Commissioner of Labour and as per the above definition provided by the Act itself, this Court is not inclined to agree with the said submission of the Petitioner.

Further in response, the Respondent invited the Court to consider the provisions of the Interpretations Ordinance. This Court observes that section 14 of the Interpretations Ordinance is relevant in this instance. Section 14(e) of the Ordinance states as follows,

Section 14 (e) In all enactments- ….

(e)for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, it shall be deemed to have been and to be sufficient to mention the official title of the officer executing such functions at the time of the passing of the enactment; and…."

Considering submissions made by both parties, I do not think this Court can subscribe to the arguments tendered by the learned Counsel for the Petitioner. It is also pertinent to note that if this Court is to give such a narrow meaning to the definition of the Commissioner, section 19 would be redundant. This will also create a chaotic situation not only in the instant case but in the general administration of the Act.

If the legislator in his wisdom had intended to give a very narrow meaning, then it would not have given the interpretation it had given. Therefore, we are not inclined to accept the said objection.

However, we do observe that schedules of P9a and P9b are signed by the same person who signed P9, but under his signature in P9a and P9b, there is a seal, which is the seal of the Secretary of Labour, Ministry of Labour, and Labour relations. This Court observes the Petitioners are not challenging that the person named Mr. W. J. L. U Wijeyweera, is the Acting Commissioner. It is also not disputed that the said Mr. Wijeyweera is the Secretary to the Ministry of Labour. This has been admitted by the Petitioner in their petition in paragraph 30. As stated above this Court has come to the conclusion that the Acting Commissioner falls within the definition of the Commissioner as per the interpretation clause under Act No. 45 of 1971. Hence the Petitioner's contention pertaining to the validity of the signature to P9 fails.

However, in this instance, we find that P9 contains the main decision and the two schedules contain the names of the employees who had taken part in the inquiry and the second schedule contains the names of the employees who had failed to take part in the inquiry. It was submitted by the Respondents that the Acting Commissioner has signed in the capacity as the Acting Commissioner in P9a and P9b but placed the seal of the Secretary which too was himself. The Respondents further submitted that this is a clerical error and, in any event, the main body of the determination is signed and has the seal of the Acting Commissioner. Even though in the public office this kind of mistake is serious, in our view, it should not vitiate the entirety of the decision, especially in view of the fact that the person who signed the two documents marked P9a and 9b is the holder of the position of Acting Commissioner of Labour, who is empowered to sign, as decided above by this Court.

As we have held in this judgment, Mr. Wijeyweera is the Acting Commissioner and as invited by the Petitioner, if we are to quash P9a and P9b, for the reason that the wrong seal had been placed under the signature of the correct person holding the office it would result in untold misfortune for the employees who have lost their jobs through no fault of their own, which would amount to a travesty of justice. This would result in a serious administrative inconvenience. However, this

Court observes that the Petitioner's argument would have merit if it was two different personnel who occupied the two positions.

The employer

The second ground the Petitioner urged was that the inquiring officer had not given an order on the vital question of who the employer is. The 2nd Petitioner has brought to our attention pages 21 and 22 of the brief where the inquiring officer has held in response to the objection taken by the 1stPetitioner, to suspend the inquiry before the Labour Commissioner due to a pending case in the Commercial High Court, the said inquiring officer has held as follows,

"මෙම පරීක්ෂණය සම්බන්ධයෙන් මෙම දෙපාර්ශවය හැර අමතර පාර්ශවයක් ලෙස ඉදිරිපත් වන ජයලත් මහතාගේ මූලික ප්‍රකාශ අද දින සටහන් කර ගන්නා ලදී. සේවා යෝජක පාර්ශවය ඉදිරිපත් කරන පරිදි මහාධිකරණයේ පවතින නඩුව මෙම පරීක්ෂණයට අදාල නම් කා එයින් යම් තීරණයක් ලැබෙන තෙක් මෙම පරීක්ෂණය අත්හිටු වීමට අවශ්‍ය නම් ඉන් තහනම් නියෝගයක් ලබාගෙන ඉදිරිපත් කරන ලෙස දන්වා සිටිමි. එසේ නොමැති නම් සේවා යෝජක කවුරුන්ද යන්න තීරණය කිරීමට හා සේවය අවසන් කිරීමේ පනත යටතේ වන පරීක්ෂණය ඉදිරියට ගෙන යාමට සිදුවන බව ද පාර්ශවයන්ට දන්වා සිටිමි".

The Petitioners raised the objection on the employer on one ground, namely, that at the time of the termination of the employees, he had withdrawn from the business and the business entity was run by the CEO his brother-in-law. It is therefore the contention of the Petitioner that at the time of cessation of employment of the workers, his brother-in-law the CEO was the employer of the entity. It was also argued that the Petitioners had prayed from the Commercial High court for a judgment to declare that the defendant in the said case, the CEO, was responsible for making salary payments and the statutory dues of the workers.

This Court observes that the Petitioner's objection to the inquiring officer going ahead with the inquiry was due to the expectation that he would succeed in a declaratory judgment against the CEO, whereby he could pass the liability to the CEO. However, as per the proceedings of the inquiry that was submitted to this Court, the inquiring officer has specifically stated that in the absence of any interim order from the Commercial High Court to suspend the inquiry under the Termination of Employment of Workmen (Special Provisions) Act, he would proceed with the inquiry to decide who the employer is and the issue of termination at the said inquiry. This we believe was due to the inquiring officer's concern that he could not wait for a protracted trial to come to an end to decide whether the employees had been terminated legally or not. However, the inquiring officer had correctly given the option to the Petitioners to obtain a restraining order prohibiting him from conducting the inquiry under the Termination of Employment of Workmen (Special Provisions) Act. This Court was not submitted with any documents to demonstrate that the Petitioner had been successful in obtaining a restraining order from the Commercial High Court to stop the inquiry that was being carried out under the said Act.

It is pertinent to observe that under the Termination of Employment of Workmen (Special Provisions) Act, section 2(4) clearly states that for the commencement of the inquiry, there should be a termination of work by the employer. Therefore, it is clear that for an inquiry under the Termination of Employment of Workmen (Special Provisions) Act to commence, there should have been termination by the employer. For this particular purpose, in this instance, it is vital for the inquiring officer to come to the conclusion of who the employer is. The Petitioner also contended that there was no termination of the employees, this ground would be addressed elsewhere by this Court.

Riveting back to the 1st Petitioner's objection pertaining to the decision on the employer, this Court observes that the 1st Petitioner's position is that the employer at the time of termination was not him but his brother-in-law Jayalath, hence the inquiring officer should have considered and given a determination as to, who the employer is but the said inquiring officer has failed to do so.

It is his contention that failure to do so created a substantial error of law by omitting to determine the vital issue of the employer.

To answer this issue, this Court will consider the background of this business. It is not in dispute that the business had been commenced by the 1st Petitioner and said Jayalath had been an employee of the business. As per paragraph 7 of the plaint filed in the Commercial High Court (P6) by the 1st Petitioner he pleads that the said Jayalath was the CEO of the business Ruwan Lanka Garments. As submitted by the Respondents, the Petitioners have not taken the position that the said Jayalath is a partner. It is clear as the CEO, he is yet another employee of the entity. The learned Counsel for the Petitioner submitted that the Petitioner not only left the business Ruwan Lanka Garments but had informed the Western Provincial Council to remove the said trade name from the business name form register (P7). Accordingly, the notification of removal from the business name register had been issued dated 02.09.2011 to be effected from 21.02.2011, which was long after the dispute between the employees and the employer had commenced. It appears that this action has been taken after the commencement of the inquiry before the Labor Commissioner under the Termination of Employment of Workmen (Special Provisions) Act. Thus, it is clear that at the time the dispute arose the entity had been in existence and the Petitioners were the owners of the said entity. As stated above the Petitioner's whole contention of not being the employer is based on his withdrawal from the business entity. It was not his contention that before he withdrew, he was not the employer.

The reason the Petitioner has raised this objection on the employer and invited to decide who the employer is because of his contention that he has left Ruwan Lanka Garments and canceled the trade name of Ruwan Lanka Garments with effect from 21.02.2011. It is his contention that his employee, Jayalath Padmalal had been carrying on the said employment and had thereafter terminated the services of the employees. It is pertinent to note that as per the inquiry proceedings, the Commissioner nor this Court has been submitted with any material to demonstrate that subsequent to the closure by the 1st Petitioner, all the workers of Ruwan Lanka Garments had been working under the said Jayalath Padmalal and under the business name Ruwan Lanka Garments.

In any event, this Court observes even though the 1st Petitioner has removed the business name and contended that he is not responsible for the workers subsequent to the business name being removed, the question remains as to what happened to the workforce who were employed at Ruwan Lanka Garments Ltd at the time the 1st petitioner decided to close the business entity and also when he decided to withdraw from the entity. It is also pertinent to note that even though the business entity had been taken out of the registration with effect from 21.2.2011, the said entry in the business registration register (P7) itself says that it is removed from the day after the instructions were given by the Petitioners for removal, which is on 02.09.11. This clearly demonstrates that the Petitioner had waited till the 8th month when the inquiry started and thereafter wanted the business to be removed from the register with effect from a date long before the date on which the actual request was made. The Petitioner has failed to explain this conduct to Court.

Even though the name of Ruwan Lanka Garments has been removed from the business register as per the Business Registration Act, that does not mean that the employees of Ruwan Lanka Garments have ceased to be employed as per the Termination of Employment of Workmen (Special Provisions) Act from that particular day. The 1st Petitioner has the right to withdraw from the partnership and the business entity and the Petitioners also will have the right to inform the registrar to remove the business name but that does not clear them from their liabilities under the law. This is the very question the inquiring officer was called upon to inquire under the Termination of Employment of Workmen (Special Provisions) Act.

This Court observes that no material has been submitted to this Court to demonstrate when Ruwan Lankan Garments, as alleged by the Petitioners had actually ceased to operate other than the document marked (P7) and the removal of its name from the business registration register. No material has been submitted to this Court to demonstrate the status of the workforce of the said Ruwan Lanka Garments as of that day. In the circumstances, it is incumbent on the Petitioner to demonstrate that when they removed the name of Ruwan Lanka Garments from the business registration register, It had been done with the permission of the Commissioner or that there had

been an agreement to handover the workforce to Jayalath Padmalal or the said employees work had been terminated pursuant to Termination of Employment of Workmen (Special Provisions) Act or what action was taken pertaining to the workforce.

This Court finds the Petitioner has failed to give a sufficient explanation to this question nor has he explained the action of removing the business name with effect from a prior date namely about 7 months before the date he actually informed the registrar. However, the Petitioner contended that subsequent to their removing the business name, Jayalath Padmalal had taken over part of the workforce and it was he who terminated the work of the employees.

In response, the Respondents contended that by the evidence it is established who the employer is. Specifically, they have drawn the attention of this Court to the evidence of the 1st Petitioner and the statement he made to the police station, where he has accepted that he is the owner and had accepted the liability to pay the salaries of the employees. Further, we find that the Petitioner has failed to submit any documentary evidence to demonstrate that he had ceased to be the employer of the workforce from the day the dispute arose. Even document P7, where he sought to revoke the trade name of Ruwan Lankan Garments which had been done long after the dispute arose, has been shrewdly backdated to have effect as of 21.02.2011. We also find the Petitioners have failed to submit any documentary proof to demonstrate that the partnership has been dissolved and that the Petitioners are not liable for any acts of the partnership.

There is no material to show that as alleged by the Petitioner, his CEO had carried on Ruwan Lanka Garments as his own business. The evidence that has been led before the Commissioner of inquiry contradicts the Petitioner's contention of not being the employer, instead, it demonstrates that the witnesses had admitted the 1st Petitioner to be their employer and the said, Jayalath Padmalal only as an employee under the 1st Petitioner who worked as a CEO.

It is also pertinent to note that in view of the police complaint the 1st Petitioner has made, he has clearly admitted that he has closed the business as he was incurring losses and that he has failed to

pay the employees. He has further undertaken to sell the machines and pay the salaries that have gone into arrears. The Petitioners contended that this statement which is reflected on page 60 of the brief had been taken under duress. As observed earlier this Court is not inclined to accept the said submission for the reasons stated above in this Judgment. Especially in view of the fact that by the time the purported statement was made, there was litigation between the 1st Petitioner and his CEO. In the said circumstances it is safe to come to the conclusion that by this time the petitioner had access to legal advice.

Further, perusing the inquiry proceedings, we find that even in the identity cards that have been issued to the employees, the 1st Petitioner's name has been reflected as the owner of the business entity Ruwan Lankan Garments. It was also brought to our attention of proceedings of 05.10.2011 where the employer's attorney had moved for a date on the basis that there is a Commercial High court case.

Coming to the question as to whether the inquiring officer had considered who the employer is the Court's attention is drawn to the order of the inquiring officer.

In delivering his decision he had held as follows;

'අද දින සේවායෝජක පාර්ශවය කරුනු ඉදිරිපත් කරන්නේ මහාධිකරණයේ පවත්නා නඩුවක් හේතුවෙන් මෙම පක්ෂණය පවත්වාගෙනයාමට නොහැකි බවයි. මෙම පරීක්ෂණය සම්බන්ධයෙන් වන නීතිමය නොහැකියාවක් පිළිබඳව සේවායෝජක පාර්ශවය කරුණු ගෙන හැර දක්වයි. <u>ඒක පුද්ගල ව්‍යාපාරයක හිමිකරුවකු වන සේවායෝජක වෙතින් මිස වෙනත් අයගේ විරෝධතා සම්බන්ධ කුරුණු ඇසීම ඵලක් නැත</u>'.

Here the inquiring officer has come to the conclusion as to the employer. It was also submitted that the admission of the 1st Petitioner which is reflected on page 60 of the inquiry proceedings, is also an admission as to who the employer is. Further, the second and third paragraph of the

impugned decision clearly demonstrates that the Commissioner had come to the conclusion as to the employer.

“එබැවින් මෙම සහතිකය මගින් ආයතනය වැසූ දිනය තහවුරු කර ගත නොහැකි අතර සේවායෝජකයා විසින් 2011.08.06 දින වැල්ලම්පිටිය පොලිස් ස්ථානයේදී කර ඇති ප්‍රකාශයේ රුවන් ලංකා ගාමන්ට්ස් ආයතනය 2011 වර්ෂයේ මැයි මාසයේ වසා දැමූ බවට සේවායෝජකයා විසින්ම ප්‍රකාශ කර ඇති බැවින් රුවන් ලංකා ගාමන්ට්ස් 2011,02.21 දිනෙන් පසුව පවත්වාගෙන නොගිය බව සනාථ කිරීමට ආයතනය දැරූ උත්සාහය අසාර්ථක වීම.

එමෙන්ම 1971 අංක 45 දරන කම්කරුවන්ගේ රක්ෂාව අවසන් කිරීමේ (විශේෂ විධිවිධාන) (පසුව සංශෝධිත) පනතේ 2 (1)වන වගන්තියෙන් දක්වා ඇත්තේ කම්කරුවකුගේ රැකියාව අවසන් කිරීම සම්බන්ධයෙනි. නමුත් මෙම සේවායෝජක උත්සාහ කර ඇත්තේ ව්‍යාපාරය 2011.02.21 දිනට පසුව ක්‍රියාත්මක නොවූ බව තහවුරු කිරීමටය. මෙම ව්‍යාපාරය 2011.02.21 දිනට පසුව ක්‍රියාත්මකව පැවතියේ ද නොපැවතියේ ද යන්න සුවිශේෂී කරුණක් නොවේ, 2011 මාර්තු සහ අප්‍රේල් මාස සඳහා වැටුප් මෙම සේවකයන්ට ගෙවීම මගින්ද "මම සේවකයින්ට ගෙවිය යුතු මැයි මාසයේ වැටුප් මුදල් ආයතනයෙන් මා හට අයිති මැෂින් විකුණා 201108 16 දින සේවකයින්ට වැටුප් ගෙවීමට පොරොන්දු වෙනවා" යනුවෙන් 2011.08.06 දින වැල්ලම්පිටිය පොලිසියේදී ප්‍රකාශ කර තිබීම මගින් ද මෙම සේවායෝජක හා සේවකයන් අතර 2011 මැයි මාසය වන විට ද සේව්‍ය සේවක සබඳතාවය පැවති බව තහවුරු වීම”.

Considering the above it is clear that the inquiring officer had come to the conclusion of who the employer is and proceeded with the said conclusion.

It was also brought to our attention that when the Respondent issued orders P9 and P9a addressed to the owner of Ruwan Lanka Garment, it ex-facie demonstrates the inquiring officer's decision as to who the employer is. This Court agrees with the submissions of the learned State Counsel for the Respondent that on a plain reading of the impugned decision in P9, the inquiring officer had come to the correct decision as to who the employer is.

It is also pertinent to note that the Petitioner by raising this objection has endeavored to shift the burden of the employer to his CEO. However, we find that even in the Commercial High Court case, he had attempted to do the same. Strangely, the Petitioner failed to submit any documents to this Court pertaining to the outcome of the case in the Commercial High Court and whether the Court had delivered its decisions as to prayer (a) which states as follows.

"රුවන් ලංකා ගාමන්ට් ආයතනයේ සේවකයන්ට ගෙවිය යුතු හිඟ වැටුප් අර්ථසාධක අරමුදල් (EPF) සේවා භාරකාර අරමුදල් (ETF) පාරිතෝෂික මුදල් හා සියලු ව්‍යවස්ථාපිත දීමනා ගෙවීමට විත්තිකරුට නියෝගයක් නිකුත් කරන ලෙසත්".

In the said prayer, the Plaintiff who is the 1st Petitioner had sought an order from the Court against his CEO, compelling the CEO to pay the employees' salaries, EPF, and ETF from the defendant in the said High Court case. The said CEO and defendant was Jayalath Padmalal in the said case.

The Respondents submitted that this case is now concluded. In view of the Petitioner's contention on the employer and his reliance on the Commercial High Court case, in our view, the Petitioner is duty-bound to inform this Court of the outcome of the said case especially on the judicial pronouncement on the liability to pay the employees. This Court comes to the said conclusion as the Petitioner himself had submitted the High court plaint to this Court in an attempt to cast doubt as to the employer. The Petitioner has failed to submit any material on the outcome. It is also

pertinent to note that even if the Commercial High Court case was not concluded by the time this petition was filed, still it could have been submitted by way of a motion after obtaining this court's permission as the petitioner's counsel himself conceded about the conclusion of the commercial High court case.

In any event, the Petitioner's contention that he is not the employer is challenged by the Respondent. We also find that the Petitioner has failed to establish before the Commissioner nor this Court by placing any evidence pertaining to the fact that at the time of the commencement of the dispute, he was not the employer. In considering all the material, this Court is of the view that the Commissioner has sufficiently identified the employer.

Was the employment of the workers terminated?

The Petitioners argued that 14 employees whose names are reflected in the complaint are still working under his brother-in-law Jayalath Padmalal. However, the Petitioner has failed to demonstrate to this Court or before the Commissioner whether Jayalath is carrying on the business under his own name or in another capacity. Also, the Petitioner has failed to demonstrate that all the employees who are reflected in the impugned order P9a are now working with the said Jayalath Padmalal.

On the Petitioner's own admission at the police station, it is clear that he has admitted that there had been 86 employees and their employment has come to an end. There is an admission that the said employees' salaries have not been paid followed by an undertaking to pay the salaries. As per the evidence led before the commissioner, it is demonstrated that the employee's employment has come to an end.

In paragraph 27 of the petition, the Petitioner admits that he closed down the business on 21.02. 2011. The said corresponding paragraph in the affidavit of the 1st Petitioner states as follows,

27(a) "*That I commenced my business in 1997 and close down the business on 21.2.2011*"

This averment by the 1st Petitioner by way of his own admission once again demonstrates that the owner and employer of Ruwan Lanka Garments is the 1st Petitioner. There is also an admission that he closed the business on 21.02.2011. Subsequently, he states that the CEO continued the said business for another two months. This contradicts his conduct and the statement given at the police station and his admission of non-payment of salaries as well as his undertaking to pay the salaries, but the Petitioner has failed to substantiate his argument of the continuation of the business by the CEO with any material evidence. In view of the above admission, it is the view of this Court, that it was incumbent on the Petitioner to demonstrate the status of the employees after the closure or whether the closure was informed to the relevant authorities under the prevailing statutes.

Furthermore, even if this Court is to agree without conceding, that some of the employees of Ruwan Lanka Garments are working with Padmalal, in the absence of any documentary evidence, this Court cannot come to the conclusion that the said employees are still working in Ruwan Lanka Garments or whether the workers are working in a different capacity in a different institution under Jayalath Padmalal. However, this will not exculpate the liability of the Petitioners as the owners of Ruwan Lanka Garments, subsequent to its registration as a partnership. Further, the Petitioner has failed to clearly identify the employees whom he says are still working.

As correctly submitted by the Respondents, for the Petitioner's liability to come to an end, he should have demonstrated when he ceased to be the employer of the workers and what happened to the workforce. He has failed to demonstrate to the satisfaction of this Court whether he had handed over the workforce and the continuation of the business to Jayalath as he alleges, or whether the liability had come to an end by the termination of employment of the workforce according to the provisions of the Termination of Employment of Workmen (Special Provisions) Act. The Petitioner has failed to demonstrate to this Court whether the business entity was completely closed after the removal of the business name and also whether such closure was done with the approval of the Commissioner of labour. As stated above the Petitioners cannot exculpate themselves by merely stating that they have withdrawn as the employer and by taking steps to

remove the trade name from the business name registry. It is observed by the Court that by both these acts, their liabilities towards the employees under the Termination of Employment of Workmen (Special Provisions) Act do not come to an end.

As stated above it is also pertinent to note that the Petitioner has failed to name the 14 employees whom he alleges to be still working under his brother-in-law. This would be an appropriate time to consider section 2(4) of the Termination of Employment of Workmen (Special Provisions) Act. The said section states as follows

Section 2(4) For the purposes of this Act, the scheduled employment of any workman shall be deemed to be terminated by his employer if for any reason whatsoever, otherwise than by reason of a punishment imposed by way of disciplinary action, the services of such workman in such employment are -terminated by his employer, and such termination shall be deemed to include-

> ***(a) non-employment of the workman in such employment by his employer, whether temporarily or permanently, or***
>
> ***(b) non-employment of the workman in such employment in consequence of the closure by his employer of any trade, industry or business.***

As considered quite correctly by the Commissioner, it is clear that when the 1st Petitioner himself conceded that he has closed down the business of Ruwan Lanka Garments, in his police statement, the only conclusion in the absence of any contrary evidence that the Commissioner can come to is that the employment of the employees has come to an end which amounts to termination of employment within the meaning of e section 2 (4) of Termination of Employment of Workmen (Special Provisions) Act. As submitted, whether another person has re-employed all the employees or part of them does not remove the liability of the employer under the Termination of Employment of Workmen (Special Provisions) Act. It is also pertinent to note the petitioner has failed to demonstrate that he had obtained the permission of the commissioner before he withdrew and

closed the business entity or that there was a transfer of the employees with their consent to another entity.

As per the material available, and in the absence of any explanation as to what happened to the employees when Ruwan Lanka Garments was removed from the business names registry, this Court is satisfied that the commissioner has come to the correct conclusion on termination.

This brings us to the next ground as to whether the 2nd Petitioner had sufficient notice of the inquiry.

Notice to the 2nd Petitioner

The 2nd Petitioner contends that before the commencement of the inquiry, he had not been issued any notice pertaining to an inquiry against Ruwan Lanka Garments. He does not challenge the fact that he is a partner in the said entity. Under section 17 of the Termination of Employment of Workmen (Special Provisions) Act, it is clear that an inquiry should be conducted to protect the rules of natural justice. The 2nd Petitioner argued that throughout the proceedings of the inquiry, the 2nd Petitioner had never been notified of the said inquiry. It was his contention that only the 1st Petitioner had been notified and had appeared at the inquiry, it was also pertinent to note that the 1st Petitioner is the father of the 2nd Petitioner. It is observed that the 1st Petitioner even though he made the 2nd Petitioner a partner in the partnership, had never mentioned before the inquiring officer that Ruwan Lanka Garments was a partnership and about the existence of the other partner.

With the available material, it is evident that Ruwan Lanka started as a sole proprietorship and eventually changed its status to a partnership on 28 July 2010. Thereby the 2nd Petitioner too has been added as a partner. Strangely, when the Petitioner instituted action against Jayalath Padmalal his CEO in the Commercial High Court, we find that the Petitioner has never disclosed to the Court that Ruwan Lanka Garments is a partnership. He has failed to disclose that Ruwan Lanka Garments is a partnership nor was the 2nd Petitioner involved in the litigation before the CHC. The 1st

Petitioner has only submitted that he had commenced the business entity called Ruwan Lanka Garments. This Court also observes that in the prayer of the petition in the said High Court case which is marked as P6 in the brief, he had pleaded for declaratory relief from the court to declare that he is the owner of the goods and property belonging to the said Ruwan Lanka Garments described in the schedule.

Leaving it as it is, this Court may now consider whether there was sufficient notice given to the 2nd Petitioner. Section 18 of the Termination of Employment of Workmen (Special Provisions) Act specifically provides how a party should be notified. It is pertinent to note that when the complaint of the employees was received, the Assistant Commissioner had issued notice on the 1st Petitioner as the owner of Ruwan Lanka Garments to his address No. 19 Station Road, Matara which this Court observes as the address given by the 2nd Petitioner as well. It is also pertinent to note that in addition, the Commissioner has issued another notice to the registered address of the business entity Ruwan Lanka Garments. The said letter is copied once again to the 1st Petitioner. Subsequently, as per (pages 9, 10, and 11 of the brief) another letter had been sent on 09.08.2011 to the registered address of Ruwan Lanka Garments. As per the document which has been marked as X2 at the inquiry, Ruwan Lanka Garments had been registered as a partnership and the address is given as 687 Alhena Road, Gothatuwa, Angoda. The two notices addressed to Ruwan Lanka Garments are also sent to the same address.

Section 18 of the Termination of Employment of Workmen (Special Provisions) Act which deals with services of notices states as follows,

Section 18. Any notice which is required by this Act to be served on, or given to, any person shall, if it is not served on, or given personally to, such person, be deemed to have been duly served or given-

> ***(a) if it is left at the usual or last known place of abode or business of such person; or***
>
> ***(b) if it is sent to him by post in a registered letter addressed to the usual or last known place of abode or of business of such person.***

It was the contention of the Respondents that in any event, the Commissioner has complied with section 18 of the Termination of Employment of Workmen (Special Provisions) Act by issuing the notices not only to the 1st Petitioner but also to the partnership which had the registered address of Ruwan Lanka Garments. We also find that on receipt of the said notice on 09.09.2011, a representative had appeared before the inquiring officer with an attorney-at-law. They have represented the employer and had been empowered by the 1st Petitioner to appear. As stated earlier, the attorney-at-law who represented the employer had taken several legal objections but strangely failed to submit to the inquiring officer that in fact, Ruwan Lanka garments is a partnership nor has he confined his appearance only to the 1st Petitioner but has appeared for the employer the partnership.

The 2nd Petitioner has failed to disclose to this Court that it had never been disclosed to the inquiring officer that Ruwan Lanka Garments is a partnership by the legal representative who appeared for the entity. Subsequently, the 1st Petitioner himself appeared at the inquiry. The Respondents also brought to the attention of this Court, a letter issued by Ruwan Lanka Garments, authorizing a representative to appear before the inquirer on behalf of Ruwan Lanka Garments itself. The said letter empowers the agent to represent not a single partner but the entire partnership the business entity as the employer. The said letter is found on page 117 of the brief and states as follows,

“ඉහත අංකය යටතේ පවත්වනු ලබන පරීක්ෂණය සඳහා අප ආයතනය වෙනුවෙන් මර්වින් කන්නන්ගර මහතා පත්කල බව කරුණිකව දන්වා සිටිමි. ව්‍යාපාරය වෙනුවෙන් ඔහු තීරණ ගන්නා බව මම තවදුරටත් සහතික කරමි”.

It is also pertinent to note there is a letter issued by an attorney-at-law dated 29.11.2011 addressed to the Deputy Commissioner of the Termination Unit whereby he has specifically informed that he is appearing for the Respondent employer Ruwan Lanka Garments at the inquiry.

However, the Petitioners contended that the Petitioner being a partner, should have been issued with a separate notice. The said contention is based on the premise that under the Partnership Law of Sri Lanka, if action is instituted against partners, it should be against all partners. To substantiate this submission, he has extensively relied on the judgment of this Court in **Oretra Enterprises and others v Wijekoon (2003) 3 SLR page 1** where the court held, under the Civil Procedure Code, if action is instituted against the partnership all partners should be made parties to the case. Therefore, it was his argument that the whole inquiry that resulted in the determination P9 should be annulled for violation of rules of natural justice as far as the 2nd Petitioner is concerned, as he had not been sufficiently notified.

In response, it was contended by the Respondents that there is sufficient notice given to the 2nd Petitioner as reflected in the proceedings and there is sufficient compliance of giving notice pursuant to section 18 of the Termination of Employment of Workmen (Special Provisions) Act. It was submitted that the Commissioner has issued notice not only to the 1st Petitioner but also to the registered address of the partnership of Ruwan Lanka Garments which is sufficient notice as far as section 18 of the Act is concerned. We are also mindful of the fact that an inquiry under the Act Termination of Employment of Workmen (Special Provisions) Act is an inquiry and not a court proceeding.

The Respondents further argued that as per the prevailing substantive law in Sri Lanka, issuing notice to one partner is good as issuing notices to the partners. They relied on section 3 of the Civil Law Ordinance, and the prevailing English law. Civil Law ordinance section 3 states as follows;

Section 3; In all questions or issues which may hereafter arise or which may have to be decided in Sri Lanka with respect to the law of partnerships, corporations, banks and banking, principals and agents, carriers by land, life and fire insurance, the law to be administered shall be the same as would be administered in England in the like case, at the corresponding period, if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any enactment now in force in Sri Lanka or hereafter to be enacted :

Provided that nothing herein contained shall be taken to introduce into Sri Lanka any part of the Law of England relating to the tenure or conveyance, or assurance of, or succession to, any land or other immovable property, or any estate, right, or interest therein.

Thus, as contended, we observe that any substantive law issue on the law of partnership, if provisions are not made under the local legislation, then by operation of the Civil Law Ordinance has to be decided in accordance with the law on that matter or question, as prevailing in England.

We find that this argument finds support in **"Commercial Law"** by **Dr Wickramaweerasooriya** at page 188 where he states as follows ***"Like in the case of the law relating to agency, the law governing partnership in Sri Lanka is English law. This is made clear by the civil law ordinance No.5 of 1852. This statute is also referred to as the introduction of the law of England ordinance. Section 3 of that ordinance states that in all questions or issues which have to be decided in Sri Lanka with respect to the Law of partnerships, the law to be administered shall be the same as would be administered in England in the like case."***

In **Wright and three Others V. People's Bank (1852) 2 SLR 292, G. P. S. De Silva, J. at 299** stated, ***"Having regard to the wide language used, namely "the law to be administered shall be the same as would be administered in England in the like case, in the corresponding period, if such question or issue had arisen or had to be decided in England", it is not only the English Common Law but also the statute law of England that is made applicable…"***

As observed by Dalton, J. in **Usman v. Rahim** (1930) 32 NLR 259: ***"Ordinance No. 5 of 1852 directs that in maritime matters the law to be administered in Ceylon shall be the same as that administered in England 'in the like case at the corresponding period'.....Ordinance No. 22 of 1866 provides that in certain commercial matters set out the law to be administered shall be same as would be administered in England 'at the corresponding period' if the question or issue arising had arisen or had to be decided in England.....All these cases show the***

Legislature has provided in express terms for the application in Ceylon of English Law that may only come to be enacted in England after the local enactment was passed."

The question that arises then is whether a partner in a partnership is an agent of the partnership firm as a whole and of the partners in the firm. We have considered the written submissions and the submissions made by the Counsel. This Court observes that in the written submissions tendered by the Petitioners they have heavily relied on the decision of this Court in **Oretra Enterprises & Others v Wijekoon,** where the court held as we have a Partnership Ordinance as well as the Civil Procedure Law, Sri Lankan procedural law shall govern and prevail on procedural matters and therefore English law should not be imported.

It is common ground that the 1st Petitioner has been noticed and had taken part in the inquiry. It is also common ground that notices have been sent to the partnership Ruwan Lankan Garments itself. The Respondents argued that when the 1st Petitioner appeared on behalf of the partnership, he becomes an agent for the partnership firm and for the other partners of the firm. It was further argued that this issue is not governed under procedural law but is a matter to be dealt with under substantive law, whereby the English law prevailing should be imported under section 3 of the Civil Law Ordinance.

Section 5 of the UK Partnership Act of 1890 as amended, states as follows,

Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner.

It was further argued and we do agree that the Sri Lanka Partnership Ordinance has not displaced the said rule of partnership agency of an individual partner in the partnership. Therefore, it was

contended that section 5 of the English Partnership Act becomes applicable in Sri Lanka pursuant to section 3 of the Civil Law Ordinance. Thus, it was further contended that when the 1st Petitioner appeared before the inquiring officer, he acted as an agent of the partnership firm as well as the other partners. This Court also observes that when one Mervyn Kannangara appeared before the inquiring officer as reflected on page 117 of the appeal brief. He has marked his appearance as the representative of the employer, specifically for Ruwan Lanka Garments, the partnership.

As discussed earlier in this judgment, at the commencement of the inquiry too, a representative and an attorney had appeared and marked their appearances for the employer which is the entire partnership.

This Court is inclined to agree with the submission of the Respondents regarding the applicability of English law in Sri Lanka Pertaining to the applicability of substantive law governing partnerships.

This Court observes that in the **Oretra Enterprise case,** Court has decided on the applicability of English law on procedural matters to which this court too agrees. In the instant case, the question is whether the notice given to one partner and the partnership is sufficient notice to all partners and, whether it amounts to a substantive law question, which has not been decided in the Oretra Enterprises case. We find the said case specifically confines its view to the procedural aspect and has kept open the application of English law pertaining to the substantive law questions. It is also pertinent to note that the said case is pertaining to a civil action in the District Courts but the issue before us is not so. The matter before us is pertaining to a notice to appear pertaining to an inquiry before the Labour Commissioner. Therefore, in our view, the facts and circumstances of Oretra's case are different from the case before us. In my view, the question before this Court is a substantive law question that is not dealt with under the Oretra Enterprise Case

However even if this Court does not go to that extent, still in our view, there is sufficient notice given to the 2nd Petitioner pursuant to section 18 of the Termination of Employment of Workmen

(Special Provisions) Act. Therefore, in our view, the 2nd Petitioner has had sufficient notice of the inquiry pending before the inquirer.

When we come to this conclusion, we have also considered the fact that the 2nd Petitioner has not submitted to this Court that he was unaware of the happenings in the partnership nor has he said that he was a silent or a sleeping partner and not taken part in administration or investing money in the partnership. In the absence of such, it is safe for this Court to come to the conclusion that the 2nd Petitioner was aware of the facts and was aware of the inquiry especially when Ruwan Lankan Garments itself has nominated a representative, an attorney-at-law to represent the employer before the inquiring officer.

It is also pertinent to note that when the registrar of business registration is informed of the removal of the business entity's name from the register the said removal is informed to both the Petitioners. It is also pertinent to note that the removal of the business name from the register took place subsequent to the commencement of the inquiry under the Termination of Employment of Workmen (Special Provisions) Act before the commissioner.

Therefore, we are unable to agree with the contention of the Petitioner that there was no sufficient notice issued to the 2nd Petitioner pertaining to the inquiry and therefore there is a violation of the rules of natural justice as contemplated under section 17, thereby making the impugned order P9 bad in law. Accordingly, the said contention has to fail.

We have also considered the fact that the Petitioner has failed to submit to this Court whether they had complied with the Termination of Employment of Workmen (Special Provisions) Act when the business entity Ruwan Lanka Garments was removed from the registration of Business Names, on the request of both the Petitioners. The Petitioners have failed to submit to this Court any material to demonstrate as to whether they obtained the permission of the commissioner prior to their actions stated above especially the closure of the business. The only material that is before

this Court is the proceedings of the inquiry which culminated in the impugned determination before this Court.

It is also pertinent to note that the application forwarded to the Registrar informing him to remove the name of the business entity from the business names register has not been tendered to the Court. What is available is only the communication sent by the registrar to the two Petitioners informing them of the removal of the business registration name from the register with effect from 21.02.2011 (Letter dated 02.09.2011 (P7).

The Respondents' objections.

The Respondents have taken several objections to the maintainability of this application. This Court will now consider the said objections.

Misrepresentation and suppression of facts and the conduct of the Petitioners.

As stated elsewhere in this judgment, the Petitioner in his pleadings as well as the argument stage submitted to the Court, that the Petitioners had informed the Provincial Registrar of companies, Western province to remove the business name Ruwan Lanka Garments from the business register. Further, they contended that the said removal was affected from 21.02.2011 thus the contention, that Ruwan Lankan Garments was not in operation from 21.02.2011 and the employees who had been working subsequent to that had not been employed by the said entity under the Petitioners.

As submitted by the Respondents, and on a close perusal of the document P7, we find the registrar has removed Ruwan Lanka Garments with effect from 21.02.2011 however it had been done so as per the request made by the Petitioners on 01.09.2011. Document P7 bears the date 02.09.2011 which is one day subsequent being informed to remove the business name. As observed by the

Court earlier, by the time this notice was sent to the provincial registrar of companies the dispute between the employer and employees had already commenced and inquiry under the Termination of Employment of Workmen (Special Provisions) Act had also commenced. The Respondents submitted this notice has been sent subsequent to the commencement of the inquiry on advice. As stated in the above heading, the Petitioner has failed to disclose that even though the business registration was removed from the register it had been done not on 21.02.2011 but to be effective from 21.02.2011. The Petitioners have failed to disclose this to the Court.

It is also observed by this time the 1st Petitioner had gone before the Wellampititya police station and had admitted that he was the employer and that he has failed to make payments of the salaries and he had undertaken to pay the salaries. This statement too had been made in June 2011 which is subsequent to the business name removal coming into effect but before the application to remove the business name had been done. We find the Petitioners have failed to disclose this to Court and to explain their conduct. The Petitioners were duty-bound to inform the court of the date the application was made but have failed to do so. We also find that the Petitioners were obliged to disclose and explain the reason as to why they informed the request for the removal of the business name to be effective from a date months before the actual request was made.

It is necessary in this context to refer to the following passage from the judgment of Pathirana J in **W. S. Alphonso Appuhamy v L. Hettiarachchi 77 NLR 131 at 135-136, *"The necessity of a full and fair disclosure of all the material facts to be placed before the Court when an application for a writ or injunction is made and the process of the Court is invoked is laid down in the case of the King v The General Commissioner for the Purpose of the Income Tax Acts for the District of Kensington-Ex parte Princess Edmorbd de Poigna. Although this case deals with a writ of prohibition the principles enunciated are applicable to all cases of writs or injunctions. In this case a Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Court of Appeal affirmed the decision of the Divisional Court that there had been a suppression of material facts by the applicant in her affidavit and therefore it was justified in refusing a writ of prohibition without going into the merits of the case. In other***

words, so rigorous is the necessity for a full and truthful disclosure of all material facts that the Court would not go into the merits of the application, but will dismiss it without further examination."

Similarly in **Blanca Diamonds (Pvt) Ltd v Wilfred Van Else and others (1997) 1 SLR 360 at 362** Jayasuriya J emphasized the duty a party owes to the Court for full disclosure when initiating writ proceedings in the following manner- ***"In filing the present application for discretionary relief in the Court of Appeal Registry, the petitioner company was under a duty to disclose uberrima fides and disclose all material facts to this Court for the purpose of this Court arriving at a correct adjudication of the issues arising upon this application. In the decision in Alphonoso Appuhamy v Hettiarachchi Justice Pathirana in an erudite judgement, considered the landmark decisions on this province in English law, and cited the decision which laid down the principle that when a party seeking discretionary relief from the Court upon an application for a writ of certiorari he enters into a contractual obligation with the Court he files an application in the Registry and in terms of that contractual obligation he is required to disclose uberrima fides and disclose all material facts fully and frankly to his Court."***

Thus, in our view, there is a suppression of material facts and misrepresentation thus the said objection of the Respondents has to succeed.

We also find, as stated earlier, the Petitioners have failed to submit to this Court the outcome of the Commercial High Court case in which the Petitioners relied to get a postponement of the Termination of Employment of Workmen (Special Provisions) Act inquiry, on the basis that they had asked for a declaration from the Commercial High Court to declare that they were not liable to pay the employees but in fact, it was the CEO.

The Petitioners have also failed to disclose to this Court that at the inquiry before the Commissioner of Labour, an attorney-at-law had appeared on behalf of the employer and not only for the 1st petitioner. The effect of this cumulative conduct alone is sufficient to disentitle the Petitioner from obtaining the discretionary remedy of a writ from this Court.

In our view, this unexplained conduct of the Petitioners disentitles themselves from getting the relief they have prayed for, especially the writ jurisdiction being a discretionary remedy it is

paramount that Petitioners who have invoked the said remedy should come to court with clean hands. Thus, the objection of the Respondents whereby they submitted that their conduct does not warrant a grant of discretionary remedy, succeeds.

Accordingly, for the aforesaid reasons, we are not inclined to grant the reliefs claimed by the Petitioners and we dismiss this application without costs.

Judge of the Court of Appeal

C.P Kirtisinghe, J

I agree

Judge of the Court of Appeal