

**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 Writ of Certiorari under and in
terms of Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Ceylon Company Group (Pvt) Ltd,
No. 515, Galle Road,
Mount Lavinia.

Petitioner

Vs.

**CA Writ Application No:
155/2019**

1. R.P.A. Wimalaweera,
Commissioner General of Labour,
Labour Secretariat,
Colombo 05.
2. P.B. Chandi Premabandu
Assistant Commissioner of Labour,
District Labour Office,
(Colombo West),
Labour Secretariat,
Colombo 05.
3. W.A.U. Weerasekara
Labour Officer,
District Labour Office,
(Colombo West),
Labour Secretariat,
Colombo 05.
4. L.J. Rubera,
62, Baddegana Road North,
Pitakotte, Kotte.

Respondents

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

Kushan De Alwis, PC, with R. Dias, P. Perera and A. Wickramasinghe for the
Petitioner

Ms. S. Ahamad, SC for the 1st, 2nd and 3rd Respondents

K.G. Jinasena with D.K.V. Jayanath for the 4th Respondent

Argued on: 15.03.2022

Order delivered on: 31.08.2022

S.U.B. Karalliyadde, J.

The Court heard the oral submissions of the learned President's Counsel appearing for the Petitioner. The Court also heard the oral submissions of the learned State Counsel appearing for the 1st to 3rd Respondents and the learned Counsel appearing for the 4th Respondent.

By this writ application, the Petitioner seeks reliefs, *inter alia*, a mandate in the nature of writs of Certiorari to quash the decisions of the 2nd and/or 3rd Respondent containing in the documents marked as P-2, P-5 and P-6 to pay the gratuity to the 4th Respondent. The Petitioner, The Ceylon Company Group (Pvt) Ltd (hereinafter referred to as the Company) is a duly incorporated and registered Company under and in terms of the Companies Act, No. 7 of 2007. The 4th Respondent who was an employee of the Company, made a complaint on 11.08.2017 (marked as P-1) to the Department of Labour, under the Payment of Gratuity Act, No.12 of 1983 (hereinafter referred to as the Act) alleging that the Company has not paid his gratuity which amounts to Rs. 3,646,423/=. The 3rd Respondent who is a Labour Officer held an inquiry regarding that

complaint and the Company admitted the liability to pay the said sum to the 4th Respondent as gratuity. Upon admitting the liability, the 2nd Respondent, who is an Assistant Commissioner of Labour informed the Company by letter dated 28.06.2018 (marked as P-2) that as per the calculation set out in P-2, the Company is liable to pay a total sum of Rs. 4,740,349.90 (gratuity together with a surcharge) to the 4th Respondent and if it fails to deposit that sum with the Labour Secretariat within 14 days, steps will be taken against the Company in term of section 8 (1) of the Act to recover the said amount. Then the Company informed the 2nd Respondent by letter dated 23.07.2018 marked as P-3, that it had less than 15 workmen under its employment during the period of 12 months immediately preceding the termination of the services of the 4th Respondent and hence, in terms of section 5 of the Act, it is not liable to pay gratuity to the 4th Respondent. The Company further sought an opportunity to substantiate that position. Upon receiving P-3, the 2nd Respondent reopened the inquiry regarding the complaint made by the 4th Respondent marked as P-1. At the inquiry before the 3rd Respondent, both parties agreed to dispose the matter by way of written submissions and accordingly, tendered their written submissions. In the written submissions, the Company took up the position that it is an independent company which is incorporated and registered under the Companies Act and no manner affiliated with any other company which the Directors of the Company hold Directorship nor it belongs to a group of companies. It was also the position of the Company that even though, the 4th Respondent was employed to serve in a company called CC & C Teas (Pvt) Ltd which was to be incorporated and registered under the Companies Act, it was never incorporated and therefore, the 4th Respondent was employed to serve in the Company and it had less than 15 workmen under its employment to the date of the termination of the employment of the 4th Respondent. Considering the material placed at the inquiry, the 2nd Respondent has come to the conclusion that the Company is liable

to pay the amount mentioned in P-2 as gratuity to the 4th Respondent. Accordingly, by letter dated 26.11.2018 marked as P-5, the 2nd Respondent informed the Company to make the payment as mentioned in P-2. In addition to that, upon receiving the legal instructions on the matter from the legal division of the Labour Department, the 2nd Respondent sent another letter dated 19.03.2019 marked as P-6 to the Company stating that the 4th Respondent had been appointed by the Company as the Financial Director of the CC & C Teas (Pvt) Ltd which is a subsidiary company among the group of companies of the Company and in calculating the number of 15 employees in terms of section 5 of the Act, the number of employees employed in the principal company as well as in the group of companies should be calculated together. Therefore, by P-6, the Company was further informed to act according to the letter marked as P-2.

It is the position of the Respondents that, the Company is the mother company of a group of companies including Ceylon Company Green Teas (Pvt) Ltd, Ceylon Management & Investments (Pvt) Ltd and East Asia Construction Co. Pvt. Ltd and that fact is borne out from the Audit Report marked as 1R1‘C’ as well as from the appointment letter of the 4th Respondent (1R1‘B’) whereby the Company has directed him *‘you will have to perform duties in relation to other companies under the Ceylon Company Group as well’* and from the facts that the Company had its accounts consolidated with the financial statements of the other companies in the group of companies and since the 4th Respondent joined the Company in February 1998, his salary has been paid by the Company until August 1998 and from September 1998 to March 2000 by the CC & C Teas (Pvt) Ltd which is a fully owned subsidiary of the Company and thereafter, from April 2000 by the Company until his resignation on 08.03.2017. To substantiate the position of the Respondents that the Company is a group of companies which consists of five other subsidiary companies, the 4th

Respondent has tendered to the Court with his limited statement of objections, the Audited Accounts of the Company as at 31st December 2014. Apart from that, to displace the position of the Company that the CC & C Teas (Pvt) Ltd was never incorporated and registered the Certificate of incorporation of that company at the Registrar of Companies on 03.04.1998 under the Companies Act, its memorandum and Article of Association are tendered to Court marked as 4R1 and 4R1A. In order to satisfy the Court that the CC & C Teas (Pvt) Ltd carrying-on its businesses, its bank statements of a current account for 6 months, which the 4th Respondent is one of the signatories to that current account (marked as 4R2, 4R2A to 4R2E), the copies of the EPF Certificate of Membership of the 4th Respondent and Statement of Accounts for 1999/2000 for the ETF contributions made by the CC & C Teas (Pvt) Ltd for its employees under the Employee's Registration No. 31913 (marked as 4R3, 4R4A, 4R5B and 4R5), the license issued by the Sri Lanka Tea Board for 1999 to the CC & C Teas (Pvt) Ltd for tea brokering (marked as 4R6) has been tendered to the Court. It is the position of the 4th Respondent that he was paid his salary and his ETF and EPF contributions were made by the CC & C Teas (Pvt) Ltd and more than 150 employees worked under him in the Company and its subsidiary companies.

The learned President's Counsel argued that the decisions containing in the documents marked as P-2, P-5 and P-6 are *ex facie* unjustified and/or illegal and/or *ultra vires* and/or unreasonable and/or irrational on the basis that the 4th Respondent was employed under the Company and it had less than 15 workmen under its employment on any day during the period of 12 months immediately preceding the termination of employment of the 4th Respondent and therefore, in terms of section 5 of the Act, the Company is not liable to pay the gratuity to the 4th Respondent.

In the instant application, the Company seeks reliefs from this Court on the basis that it is an independent company, neither belongs nor affiliated with any other group of companies, the 4th Respondent was employed to serve in CC & C Teas (Pvt) Ltd, but it was never incorporated and therefore, he was employed to serve in the Company. Further, that it had less than 15 workmen under its employment. It is the position of the Respondents that the 4th Respondent had been appointed by the Company as the Financial Director of the CC & C Teas (Pvt) Ltd which is a subsidiary company among the group of companies and the Company is the mother company, CC & C Teas (Pvt) Ltd carrying-on its businesses and the salary of the 4th Respondent was paid in certain periods by the Company and in certain periods by the CC & C Teas (Pvt) Ltd. Under the above stated circumstances, it is clear that the parties are at variance about the material facts related to this application. When the main matters as such are in dispute, the Court cannot come to its conclusions only on the affidavit evidence of the parties. A.S. Choudri in his book on the *Law of Writs and Fundamental Rights* (2nd edn, Vol.2) (at page 449) states thus:

"Where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, a writ will not issue."

Referring the above stated quoting, in the case of *Thajudeen V. Sri Lanka Tea Board and Another*¹, Ranasinghe J with Seneviratne J agreeing held:

"That the remedy by way of an application for a Writ is not a proper substitute for a remedy by way of a suit, specially where facts are in dispute and in order to get at the

¹ (1981) 2 Sri LR 471.

truth, it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity examining their witnesses and the Court would be better able to judge which version is correct, has been laid down in the Indian cases of: Ghosh v. Damodar Valley Corporation 3 , Porraju v. General Manager B. N. Rly 4” (at page 474).

Upon consideration of the above stated facts and circumstances, I decide that since the material facts in this application which cannot be decided on affidavit evidence are in dispute, the Court should not issue the writs as prayed for in the Petition. Accordingly, the application is dismissed. The Company should pay Rs. 50,000/= to the 4th Respondent as costs of this application.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL