

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

In the matter of an Application in terms of Article 105(3) of the Constitution of the Democratic Socialist Republic of Sri Lanka for punishment for Contempt of Court.

Tharanga Vishvajith Sembukuttiarachchi,
140/1, Maha Buthgamuwa,
Angoda.

Petitioner

Court of Appeal Contempt of Court

-Vs-

Case No: CA/COC/10/2022

1. Prof. N.T. Sohan Wijesekera,
Chairman, Construction Industry Development
Authority,
"Savsiripaya",
No.123, Wijerama Mawatha,
Colombo 07.
2. R. Ramalingam
Director General (currently on compulsory leave)
Construction Industry Development Authority,
"Savsiripaya",
No.123, Wijerama Mawatha,
Colombo 07.
3. Udaya S. Abeyratne,
Working Director/Member of the Board of
Management
4. Eng. R. G. S. K. Rajapaksha,
Director/Member of the Board of Management
5. Ajantha Galhena,
Director/Member of the Board of Management
6. Prof. (Mrs.) Chitra Weddikkara,
Director/Member of the Board of Management
7. Ch. QS. Upul Shantha,
Director/Member of the Board of Management
8. Eng. M. G. Hemachandra,
Director/Member of the Board of Management
9. Eng. M. H. Samantha Indika,
Director/Member of the Board of Management
10. Eng. A W Gamage,
Director/Member of the Board of Management

11. Eng. Major Ranjith Gunatilleke,
Director/Member of the Board of Management
12. Eng. J A Tissa Seneviratne,
Director/Member of the Board of Management
13. Mr. Susantha Ranjith Liyanarachchi,
Director/Member of the Board of Management
14. N.S. Wathukarawatta Acting Director (Finance)
15. Mr.A. R.M. P. Rathnayaka
The Director (HR) (currently on compulsory leave)
Construction Industry Development Authority,
16. Ms. Chandi De Alwis, Legal Officer Construction
Industry Development Authority,
4th to 16th Respondents all at Construction Industry
Development Authority,
"Savsiripaya",
No.123, Wijerama Mawatha,
Colombo 07.

Respondents

Before: **N. Bandula Karunarathna J.**

&

R. Gurusinghe J.

Counsel: Udara Thilakawardena AAL with P.K. Prince Perera AAL with Nadeesha Aberathne instructed by Ishani K. Wimal Herath AAL for the 1st, 3rd, 4th, 5th, 7th, 8th, 9th, 10th, 11th, 12th, 14th, 15th and 16th Respondents.

Dilrukshi Dias Wickramasinghe AAL with Dilumi de Alwis AAL and Sithari Perera AAL instructed by Nelusha Dheerasekara AAL for the Petitioner.

Upul Kumarapperuma AAL with Muzar Lye AAL for the 2nd Respondent.

Supported on : 03.10.2022

Decided on : **14.10.2022.**

N. Bandula Karunarathna J.

Learned President's Counsel for the Petitioner supported this application in Open Courts.

The petitioner states that he is a citizen of Sri Lanka, 43 years of age and presently partially reinstated as Director of Finance in Construction Industry Development Authority (CIDA). The 1st Respondent is the Chairman of the Construction Industry Development Authority. The 2nd Respondent was acting as the Director General of the Construction Industry Development Authority at the time material to this Application and has, since 20.09.2022 been placed on compulsory leave purportedly by the 3rd to 13th Respondents at the instigation of the 1st Respondent.

The 3rd to 13th Respondents are Members of the Board of Management of the Construction Industry Development Authority, appointed under and in terms of section 9 of the CIDA Act, in whom the management and administration of the affairs of the Construction Industry Development Authority are vested under and in terms of the said Act. The 14th Respondent is currently covering up duties of the Director (Finance) of the Construction Industry Development Authority, and despite the Petitioner having been reinstated in office continues to function, in the said capacity.

The 15th Respondent is the Director of Human Resources at the time material to this Application and has, since 20.09.2022 been placed on compulsory leave purportedly by the 3rd to 13th Respondents at the instigation of the 1st Respondent. The 16th Respondent above-named is the Legal Officer of the Construction Industry Development Authority, both of whom are responsible for the implementation and the lack thereof, of the judgment dated 29.07.2022 issued in CA WRIT 40/2022, which is the subject matter of this Application.

The respondents defied and blatantly flouted the Judgment made by the Court of Appeal dated 29.07.2022 in contempt. The petitioner filed a Writ Application challenging the unlawful termination of his service by the 1st Respondent before the Court of Appeal bearing No.CA/WRIT/40/2022 on 27.01.2022. Consequent to the respondents filing their Statement of Objections the Petitioner filed its Counter Affidavit. Thereafter, the said application was taken up for argument on 15.06.2022. Parties tendered their Written Submissions on 15.07.2022.

The Court of Appeal pronounced its judgment on 29.07.2022 in the presence of the Attorneys-at-law appearing for the Petitioner and Attorneys-at-Law appearing for Respondents, and held *inter alia* as follows;

- i. that the Chairman (1st Respondent) has no authority whatsoever to discriminate an officer when using his or her discretion under Clause 3.3 of the Circular. The said Chairman among other decisions particularly in his decision reflected in '1333', has oppressed the discretion of the petitioner, impeding him from exercising such discretion at his pleasure.
- ii. No formal disciplinary inquiry has been held against the petitioner before taking the decision to terminate his services.

- iii. The Chairman has assumed a jurisdiction that he does not have and has exceeded his jurisdiction by acting contrary to the rule of natural justice and also by arriving at a decision which is eminently irrational and unreasonable in respect of the concept of the discretion of an officer.
- iv. Any subsequent act or decision flowing therefrom, particularly the charges against the petitioner on misappropriation of funds are also ultra vires and void.
- v. The petitioner's instant application to this Court is for Judicial Review in Administrative Law. In that context, the Labour Tribunal is not competent to quash an order or a decision of a public authority based on principles of ultra vires.
- vi. The petitioner will not be able to secure an effective and efficacious remedy by applying to Labour Tribunal at the first instance. The reasons for said findings are that not only the wrongful decisions of the Chairman but even the subsequent decisions of the authorities following the Chairman's said the decision should become void for the petitioner to get an effective and efficacious remedy upon his all grievances.
- vii. The argument of the respondents that the petitioner was under a three-year probationary period and his services could be terminated at any given time upon valid reasons, is not strong enough to outweigh the above findings in respect of the unlawful decisions of the said Chairman and other authorities.
- viii. 1st to 14th Respondents (currently 1st, 2nd to 13th Respondents in this Application) to reinstate the petitioner with immediate effect under the same conditions of service prevailing at the time of his termination together with all emoluments lawfully entitled by the petitioner for the period commencing from the date of termination until his reinstatement and without a break of service.

Upon the said Judgment dated 29.07.2022 being delivered in the Court of Appeal directing that the petitioner be "reinstated with immediate effect", the petitioner by email dated 31.07.2022 informed the 1st to 12th Respondents as well as the 16th Respondent, the legal officer of Construction Industry Development Authority and Secretary of Urban Development and Housing that the Petitioner will be reporting to work on the immediate next working date namely, 01.08.2022.

The petitioner's Attorney-at-Law also took steps to inform the Director General as well as the Board of the Construction Industry Development Authority by e-mail dated 31.07.2022 of the fact that the petitioner would be reporting to work on the next date. Accordingly, on 01.08.2022, the petitioner reported to work at the Construction Industry Development Authority and handed over a copy of the Judgement delivered by the Court of Appeal in the aforesaid Writ Application and the letter dated 31.07.2022 sent under the hand of petitioner's Attorney-at-Law, informing about the said judgement and specifically informing to reinstate the petitioner with immediate effect.

The petitioner further submitted another letter to the Construction Industry Development Authority on 01.08.2022 giving notice of reporting to service.

As per the instructions of the 2nd Respondent, then Director General of the Construction industry Development Authority, the petitioner reported to work and placed his signature on the employee attendance book from 01.08.2022. However, the petitioner was not given access to his former office nor assigned any official duties and the petitioner was thus compelled to merely avail his time seated at the lobby of the authority, awaiting the required clearance and permission for him to resume work. The petitioner having reported working continuously from 01.08.2022 until the filing of this Application, the respondents failed and neglected to take necessary steps to give effect to the judgment of the Court of Appeal and duly reinstate the petitioner and thereby failed to permit him to commence work immediately, as directed by the Court of Appeal.

The petitioner further submitted another letter under the hand of his Attorney-at-Law to the Director General of the Authority on 02.08.2022, requesting the immediate compliance of the Court of Appeal Judgment. The petitioner thereafter requested leave on 03.08.2022, which is legally allocated to every government servant and the same was approved by the 2nd Respondent, as the Director General. Further, due to the current fuel crisis in the country, the petitioner requested two more days of casual leave on 10.08.2022, half days on 15.08.2022 and 16.08.2022 and the 2nd Respondent, as Director General approved the same.

On 12.08.2022, the petitioner sent a further letter by hand to the 2nd Respondent requesting to pay the petitioner's back wages that were legally due to him.

Given the continued and wilful default on the part of the respondents to comply with the said Judgment of the Court of Appeal to duly reinstate the petitioner with immediate effect, the petitioner was once again compelled to write to the Auditor General, on 17.08.2022 with copies to *inter alia* the 2nd Respondent, the then Director General on 19.08.2022. After much persuasion, the 2nd Respondent, the then Director General of the Construction Industry Development Authority issued the letter on 26.08.2022, formally reinstating the petitioner in the capacity of Director (Finance) of the Construction Industry Development Authority. Consequent to the petitioner receiving the letter of reinstatement, the petitioner sent a letter dated 26.08.2022 addressed to the 14th Respondent, the Director who was covering the subject of Finance with copies to the 2nd Respondent, Director General, requesting for a report on the incomplete work, in order for the petitioner to take over the function of Finance and to smoothly continue to the said work.

Even after the issuance of the said letter of reinstatement, the petitioner was not allowed to take over the official duties, which the petitioner informed the 2nd Respondent Director General by letter dated 29.08.2022. The petitioner was informed by the 14th Respondent, who is covering the duties of the petitioner that the 16th Respondent, the Legal Officers of the authority had intimated to him a request of the Chairman, the 1st Respondent not to hand over duties to the petitioner. The petitioner took immediate steps to document this and inform the same to the 2nd Respondent, Director General by his letter dated 30.08.2022. Thereafter, on 01.09.2022, the petitioner once again wrote to the 2nd Respondent Director General and informed that the petitioner was not handed over duties.

Additionally, by letter dated 30-08-2022, the Secretary of the Ministry gave written directions to the 1st Respondent to obtain the advice of the Attorney General in respect of compliance of the Judgment of the Court of Appeal, if the Authority intended to prefer an appeal therefrom and to report the AG's advice back to the Secretary. Nonetheless, the Authority, in derogation of the specific directions given by the Secretary of the Ministry, is engaged in abusing public office and acting in blatant violation of the said Judgment.

The respondents having wilfully refrained from giving effect to the said Judgment and duly handing over the work of Director Finance to the petitioner, the 1st Respondent, with the devious intention of safeguarding himself and the Board of the Authority, have issued the purported letter dated 22.08.2022 to the 2nd Respondent, the Director General to, *inter alia*, take urgent and responsible action to avoid any contempt of court. Despite the issuance of the said letter, the respondents continued to give effect to the Judgment of the Court of Appeal and further failed to pay the petitioner the salary for the month of August and to hand over any duties and functions of the post of Director Finance to the Petitioner to date. As evident from the aforesaid Judgment issued by the Court of Appeal dated 29.07.2022, the said Judgment is binding on the Construction Industry Development Authority, its members, Secretary and servants and agents and the Construction Industry Development Authority are bound to enforce the same and give effect thereto.

The learned President's Counsel for the petitioner states that 55 days have lapsed since the learned Justices of the Court of Appeal delivered the Judgment but, to date, the petitioner has not been paid his salary nor allowed to resume work nor given any duties in his post as Director Finance.

The petitioner states that the respondents wilfully and deliberately refrained from complying with the aforesaid Judgment of the Court of Appeal and the failure on part of them to immediately give effect to the said Judgment is tainted with malice and extraneous reasons and in blatant violation of the law.

The decisions made by the Court of Appeal are final and conclusive, unless and until the same is stayed and set aside by a Competent Court, in this instance the Supreme Court. The respondents are obliged to first comply and then complain as the learned Justices of the Court of Appeal since the Order specifically stated to reinstate the petitioner with immediate effect. The petitioner pleads that the 1st and 3rd to 13th Respondents as Board members of the Construction Industry Development Authority, and the 2nd Respondent as the Director General, who is the chief administrative officer of the said Authority, the 15th and 16th Respondents as heads of their respective functions and the 14th Respondent who was covering the function of the Director Finance are obliged in law to comply with and enforce the said Judgment issued by the Court of Appeal.

The respondents have not complied with and given effect to and not taken any steps to execute the said Judgment of the Court of Appeal since 29.07.2022 and acted in total breach thereof by failing to duly reinstate the petitioner with immediate effect and failing to allow the petitioner to resume duties in the post of Director (Finance) with immediate effect and further failing to pay the petitioner his back wages as well as his current emoluments since being formally reinstated by the letter 26.08.2022.

The petitioner pleads that the Chairman and the Board members of the Construction Industry Development Authority as well as the 14th 15th and 16th Respondents, thereby having wilfully failed to comply with and give effect to and not taken any steps to give effect to the said Judgment of the Court of Appeal dated 29.07.2022 to permit the petitioner to resume work with immediate effect, thereby acting in wilful disobedience and contrary to the aforesaid order of the Court of Appeal. The 2nd Respondent, despite having issued the letter dated 26.08.2022 reinstating the petitioner, has failed to give due and full effect to the Judgment of the Court by failing to allow the petitioner to physically commence work as head of the Finance Department and also by failing to pay the petitioner his back wages and any type of emolument since being so reinstated.

The petitioner stated that by letter dated 12.09.2022, the petitioner complained to the Department of Labour of the actions of the officers of the Construction Industry Development Authority in failing to comply with the Judgment of the Court of Appeal and duly reinstate the petitioner and pay his back wages and further failure to pay his current emoluments. The Labour Commissioner by letter dated 14.09.2022 informed the petitioner of an inquiry fixed on 26.09.2022.

Pending the delivery of the order in the Court of Appeal, the petitioner lodged an application before the Labour Tribunal and the said application is currently pending.

In the circumstances, the petitioner pleads that the 1st to 16th Respondents have failed to comply with and given effect and take steps to give effect to the said Judgment of the Court of Appeal to duly reinstate the petitioner with immediate effect and to pay the petitioner as directed by the said Judgment and by law and thereby breached and acted in violation of the said Judgment dated 29.07.2022 of the Court of Appeal from 29.07.2022 and are liable to be charged and punished for the offence of Contempt of Court.

The petitioner states that in the light of the aforesaid wilful defiance of the said Judgment of the Court of Appeal dated 29.07.2022, it has become necessary for the petitioner to invoke the Jurisdiction of this Court to punish the 1st to 16th Respondents for contempt in terms of Article 105(3) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The learned President's Counsel for the petitioner further pleads that unless this court were to take cognizance of the aforesaid acts of Contempt of the Court of Appeal as pleaded and to take appropriate actions against the respondents in respect thereof, it would result in a mockery of Justice as the noncompliance of the said Judgment has made the reliefs sought and obtained in the aforesaid Writ Application before the Court of Appeal, nugatory.

The petitioner prays that;

- (i) issue Summons and/or Rules on the 1st to 16th Respondents in the forms annexed hereto to show cause why each one of them should not be punished for contempt of the Honourable Court of Appeal for not complying with and/or giving effect to and/or not taking any steps to give effect to the said Judgment and thereby acting in violation and/or in breach of the said Judgment issued by the Court of Appeal in Writ Application bearing No. CA/WRIT/40/2022 dated 29.07.2022.

- (ii) punish the 1st to 16th Respondents as for Contempt of the Court of Appeal for not compiling with and/or giving effect to and/or not taking any steps to give effect to the said Judgment issued by the Court of Appeal to reinstate the petitioner with immediate effect to make payment to the petitioner as stipulated and thereby for violation and/or disobedience to comply with the said Judgment issued by the Court of Appeal in Writ Application bearing No. CA/WR1T/40/2022 dated 29.07.2022 by not allowing the petitioner to resume duties in the post of Director (Finance) with immediate effect;
- (iii) make an order determining that the respondents are guilty of acting in contempt of the Court of Appeal;
- (iv) grant the petitioner cost, and
- (v) grant such other and further relief this Court seem meet.

Thus, the petitioner pleads that 1st to 16th Accused-Respondents have committed the offence of Contempt of Court punishable under Article 105(3) of the Constitution.

Considering the submissions made by the learned President's Counsel for the petitioner and the documents filed by the petitioner in the present case, we are of the view that this court should issue summons on the 1st to 16th Accused-Respondents as to why they should not be punished for Contempt of Court.

The registrar is directed to issue summons/rules to the 1st to 16th Accused-Respondents to show cause why they should not be punished for Contempt of Court punishable under Article 105(3) of the Constitution.

Summons returnable on 15.11.2022.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree.

Judge of the Court of Appeal