

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

*In the matter of an application for a mandate in
the nature of a Writ of Certiorari under and in
terms of Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.*

CA/WRIT/13/2023

Udage Prasanna Udayakumara
New Housing Scheme,
Deeyannagoda,
Bellana.

Petitioner

Vs.

1. Ceylon Petroleum Corporation
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.
2. Mohamed Uvais Mohamed
Chairman,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.
3. Buddhika Ruwan Madihawewa
Managing Director,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.
4. R. M. D. K. Rathnayake
Director,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.

5. G. P. Upananda
Manager,
Human Resources Department,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.
6. D. Duminda Wickrama
Senior Security Assistant
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.
7. Major M. R. S. P. Samarasinghe
Ceylon Petroleum Corporation
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.
8. Hon. Attorney General
Department of the Attorney General,
Colombo 12.

Respondents

Before : Sobhitha Rajakaruna J.
Dhammika Ganepola J.

Counsel : Upul Kumarapperuma with R. Kuruwitabandara for the Petitioner.

Y. Fernando DSG with A. Weerakoon SC for the 1st, 2nd, 4th, 5th, 7th and 8th Respondents.

Decided on : 08.02.2023

Sobhitha Rajakaruna J.

The Petitioner is seeking for a writ of Certiorari quashing the decision of the 1st Respondent, Ceylon Petroleum Corporation ('Corporation') to interdict the Petitioner as reflected in 'P6' and also quashing the Charge Sheet, marked 'P12', issued against the Petitioner.

The Petitioner's main contention is that the Corporation has interdicted the Petitioner violating the basic rules stipulated in Clause 9 of the Disciplinary Rules ('Rules') of the Corporation ('P9'). The Petitioner contends that the Corporation without being satisfied that there is prima facie evidence against the Petitioner, has taken steps to interdict him. Non-completion of the investigation by the Criminal Investigation Department against the Petitioner is the basis for the paramount argument of the Petitioner and accordingly, he asserts that the Charge Sheet, marked 'P12', has been issued without considering proper evidence.

The Respondents' argument is based on Clause 20 of the Rules which provides that if an employee is taken into custody by Sri Lanka Police ('Police') etc., he shall be regarded as interdicted from service. The Clause 20;

20.a. 'If an employee is taken into custody by Police or other authorities he shall be regarded as interdicted from service from the date of his detention. However, this shall not act as a bar for the conduct of a Formal Summary/Disciplinary Inquiry under these rules except where the continued detention of the accused employee makes it impossible for the conduct of the Inquiry.'

20.b. 'The Disciplinary Inquiry under these rules may be proceeded with irrespective of whether the accused employee is charged before a Court or not or by reason of his acquittal or discharge or by reason of the fact that no punishment has been imposed on him in any criminal proceedings instituted against him.'

The B-Reports tendered to Court along with the Petition of the Petitioner evince that the Petitioner has been taken into custody by Police. On a careful perusal of the letter of interdiction, marked 'P6', it implies that the Petitioner has been solely interdicted based on such arrest and however, subject to a disciplinary inquiry being held.

I take the view that the said Clause 20 of the Rules empowers the Corporation to interdict any employee upon an arrest of such employee even before conducting an inquiry as those provisions do not prescribe any pre-condition to be fulfilled before such interdiction. That is merely because when an employee is taken into custody by Police, by operation of such Rules, he shall be regarded interdicted from service from the date of his detention. Thus, in my view, the Corporation in such instances is not bound to be satisfied that there is a prima facie case against the employee before interdicting him.

For the purpose of challenging the said impugned Charge Sheet, the Petitioner takes the same stand that the said Charge Sheet has been issued before concluding the relevant investigations. This Court has constantly decided that when the facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit or at an inquiry where the parties would have ample opportunity to examine their witnesses. The Court would interfere in respect of such an inquiry only if the statutory procedure laid down is insufficient to achieve justice or in an event such procedure has been blatantly violated.

The Petitioner still has ample opportunity to challenge any decision of the Respondents after the investigations (including the domestic inquiry) are over. The interdiction will not be a presumption of guilt and it cannot be considered as a punishment. The interdiction is one of the foremost processes used upon an appropriate criteria to initiate investigations in to allege misconducts. (See-*W. G. Chamila vs. Urban Development Authority and others, CA/WRIT/215/2022 decided on 26.10.2022*)

In passing, I wish to highlight here the following passages by H. W. R. Wade and C. F. Forsyth under the topic of 'no evidence rule' in '*Administrative Law*' (11th Edition) Oxford (at p. 227);

"Findings of fact are traditionally the domain where a deciding authority or tribunal is master in its own house. Provided only that it stays within its jurisdiction, its findings are in general exempt from review by the courts, which will in any case respect the decision of the body that saw and heard the witnesses or took evidence directly. Just as the courts look jealously on decisions by other bodies on matters of law, so they look indulgently on their decisions on matters of fact."

The Petitioner has failed to establish prima facie that the Respondents have taken a decision which is eminently irrational or unreasonable or is guilty of an illegality warranting this Court to issue formal notice of this Application on the Respondents.

Thus, this Court refuses issuing formal notice on the Respondents.

Application is dismissed.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal