

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

Lanka Electricity Company (Private) Ltd,
NO. 411, E.H. Cooray Building,
Galle Road,
Colombo 03.

Petitioner

Vs.

Court of Appeal Application
No : **CA (Writ) 322/2018**

1. The Commissioner General of Labour
Department of Labour
Narahenpita
Colombo 5.

2. N. R. Ranawaka
The Assistant Commissioner of Labour
Colombo East District Labour Office
Department of Labour
Narahenpita
Colombo 5.

3. H. A. S. Thissera
Labour Officer,
Colombo East District Labour Office
Department of Labour
Narahenpita,
Colombo 5.

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4. Sri Lanka Nidahas Sewaka
Sangamaya
4th Floor, Sarana Mawatha
Rajagiriya.
5. Upul Thilakaratna
6. Madushan De Alwis
7. Nuwan Balasuriya
8. Aruna Rangana
9. Nishantha Arthanayake
10. Dhammika Arthanayake
11. Duminda Rathnayake
12. Chandima Wijerathne
13. Tharanga Jayasinghe
14. Hemantha Sanjaya Silva
15. Sanjeewa Gamage
16. Sampath Sanjeewa
17. Saman Kumara
18. Chaminda Disanayake
19. K.A.D.I.T. Kumara
20. Janaka Jayawardena
21. Sanjaya De Alwis
22. Upul Bandara
23. Kapila Gunasekara
24. Roshan Prasanna
25. Nilantha Pushpakumara
26. Vijitha Liyanage
27. S.D. Sepala
28. K.A.D. Shantha

All of
C/o. Sri Lanka Nidahas Sevaka
Sangamaya,
4th Floor, Sarana Mawatha
Rajagiriya.

Respondents

BEFORE : D. N. Samarakoon J
Neil Iddawala J

COUNSEL : Kushan De Alwis PC with Ruwan Dias,
Ayendra Wickremasekara and Amandie
Perera instructed by Palitha Perera for
the Petitioner

Sehan Soyza SC for the 1st-3rd
Respondents

Tharanatha Palliyaguruge for the 4th-28th
Respondents instructed by Wijedeera

Argued on : 18.05.2023

Decided on : 12.07.2023

Iddawala – J

This is an application filed by Lanka Electricity Company (Private) Ltd (*hereinafter referred to as the Petitioner*) seeking a mandate in the nature of Writ of Certiorari quashing directives and/or decisions issued by the Commissioner of Labour (*hereinafter referred to as the Commissioner*). The application challenges the decisions of the Commissioner conveyed at three separate instances (marked P14, P16 and P17) considering the grievances of the respondent employees of the petitioner Company. The 5th- 28th respondents who are the employees of the petitioner company are made party to this application for the purpose of notice.

The facts of the case are as follows. The petitioner is a duly incorporated company under the provisions of the Companies Act No 07 of 2007 and is the largest electricity distribution company in Sri Lanka. Presently, there are 24 customer service centres island wide, managed through 7 branch offices. The task of managing materials that were delivered to the customer service centres was originally performed by a technician attached to each customer service centre and not by someone specifically designated for

this task. Petitioner submits that as they (5-28 respondents) had neither training nor requisite qualification

in the field it became difficult to control materials and to ensure accountability. Thereby to redress this issue, around the year 2007 the post of 'Stores Assistant Grade II' was introduced and presently there are 23 employees serving in this post.

Addition to the said Store Assistants serving in the customer service centres, there are also store assistants in the 7 branch offices. The petitioner submits that there is a significant distinction between the two groups as the latter acts as the conduit between the main stores of the petitioner Company and customer service centres. Store assistants attached to the customer service centres work the same working hours as their technicians which is 7.30 am – 5.00 pm on weekdays and store assistants attached to branch offices have different working hours of 8.30 am – 5.00 pm. Petitioner submits that this distinction is due to the difference in roles and functions, and to maintain the practice adopted by the petitioner in respect of the technicians at customer service centres.

Petitioner further submits that although the store assistants in the customer service had no objection about the working hours, on or around 16.03.2012, the said 23 store assistants in the customer service centres (5th-27th respondents) referred a complaint to the General Manager of the petitioner company of the grievance of them working for 9 hours (7.30 am – 5.00 pm) and that it is allegedly in contrary to the Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954 as amended (*hereinafter referred to as the SOE Act*). They further sought an amendment to the working hours by the petitioner company. Upon explaining the rationale for the difference in working hours, the petitioner submits that 5th – 27th respondents accepted the rationale given, however on or around February 2016 the LECO branch of the 4th Respondent trade union has again raised the said matter.

Petitioner claims that there is no illegality in the said working hours and SOE Act has no application to the said employees. Further, even under the Act, the said employees never worked beyond the weekly prescribed working hours of 45 hours. The petitioner had also sought opinion from the Employers Federation of Ceylon and Labour Standards Division of Labour Department with respect to the working hours. In

response, Employers' Federation of Ceylon stated a similar position to that of the petitioner (marked P8).

On or about 22.06.2017, petitioner received a notice from the Assistant Commissioner of Labour directing the petitioner to be present at an inquiry on 05.07.2017 with regard to a complaint lodged by 4th Respondent. The inquiry was conducted by the labour officer named as the 3rd Respondent. Upon its conclusion, on or about 28.05.2018 the 2nd Respondent communicated a decision and/or directive (marked P14) which held that the employees fall within the purview of the SOE Act and that they are made to work 9.5 hours. It further directed that the petitioner is ought to pay the said employees' overtime in respect to the time of work which exceeded the regular working hours of 9 hours (including the lunch hour).

The 2nd Respondent has communicated a further decision on 08.09.2018 which was received by the petitioner around 02.10.2018 (marked P16). This has directed the petitioner to make payments of Rs.3, 788, 011.59, as overtime payments for the 5th–28th respondents for the period of 15.06.2013 to 31.07.2018. A separate schedule with amounts that need to be paid to each respondent is annexed to this directive. The petitioner claims that this particular directive includes the 28th Respondent who is an employee of the petitioner company but not attached to the customer service centres. However, 1st–3rd respondents submit that the name of the 28th respondent appears as a complainant in document marked P6. Thereafter, the 2nd respondent has issued another letter dated 14.11.2018 directing the petitioner to pay an amount of Rs.2,908,656.20 as overtime payment to the employees for the time period of 01.01.2015 to 31.07.2018 (marked P17). The 1st–3rd respondents submit to this Court that P17 was a subsequent directive issued to correct the amount in P16 as the applicable period reduced, and that the faulty date of P16 mentioned in P17 is due to a typographical error.

The fundamental contention at the hand of this Court is whether the respondent employees are governed by the SOE Act. The petitioner has submitted to this Court that, the particular customer service centres are tasked with providing services to the general public such as installation of new electricity connections etc., thus in cognizance of full functions these centres do not fall under the definition of either 'shop' or 'office'. Section 68 (1) of the SOE Act defines the 'office' as follows;

“office” means any establishment maintained for the purpose of the transaction of the business of any bank, broker, insurance company, shipping company, joint stock or other company, estate agent, advertising agent, commission agent or forwarding or indenting agent, or for the purposes of the practice of the profession of any accountant, and includes

(a) the office or clerical department of any shop, factory, estate, mine, hotel, club or other place of entertainment, or of any other industrial, business or commercial undertaking (including the business of transporting persons or goods for fee or reward and any undertaking for the publication of newspapers, books or other literature), and

(b) such other institutions or establishments as may be declared by regulation to be offices for the purposes of this Act, whether or not they are maintained for the purposes of any profession, trade or business or for the purposes of profit;

In the instant matter, the petitioner company is a body incorporated under the Companies Act. The Gazette No. 11,564 of 24.10.1958 where the Section 39B Part IV of the regulations stated under the SOE Act states that the following establishments are declared to be offices for the purposes of the Act: -

PART IV- PROVISIONS RELATING TO CERTAIN CLASSES OF SHOPS AND OFFICES AND PERSONS EMPLOYED THERE

(3) *Every establishment maintained for the purpose of administering the business of –*

(iv) *anybody, corporate or incorporate*

Thereby, unambiguously the petitioner company, Lanka Electricity Company (Pvt.) Ltd. accords with the definition of ‘office’ as per the Act. Section 68 (2) of the SOE Act states;

*(2) For the purposes of this Act, a person shall be deemed to be employed in or about the business of a shop or office if he is wholly or mainly employed (a) in a shop, in connexion with the serving of customers or the receipt of orders or the dispatch or delivery of goods, or as the case may be, in **an office, in connexion with the business for the purposes of the transaction of which the office is maintained;***

(b) in the service of the employer upon any work, whether in the shop or office or outside it, which is ancillary to the business carried on in that shop or office, and notwithstanding that he receives no reward for his labour; but he shall not be deemed to be so employed if his only employment in the service of the employer is in the capacity of a caretaker or watcher [Emphasis added].

The document marked P5 (a) indicates the tasks/duties expected of respondent employees who are store assistants attached to the customer service centres of the petitioner company. They are assigned with functions such as controlling material, catering to customer needs etc., where they perform functions that are clearly ancillary to the principal purpose of the petitioner company, supply of electricity. Thereby, the respondent employees clearly fall within the ambit of the Act. Within this context, the argument of the petitioner, that the respondent employees provide a service to general public is found to be unsound by this Court and, is thus relinquished. The respondent employees are duly governed by the SOE Act and should be subjected to the provisions of the Act. As his Lordship Chief Justice G.P.S. de Silva echoed in **Rajapakse Vs Dissanayake** (1998) 1 Sri. L.R. 398, “*On a reading of the entire Act, it seems to me that there is no warrant for giving a narrow or restrictive meaning to the word ‘employee’. To do so would tend to defeat the object of the Act and render its salutary provisions largely nugatory*”.

Diverting to the working hours mandated by law, the **Section 3** of the SOE Act mentions the following;

3. (1) *Subject to the provisions of any regulation referred to in subsection (3) and subject to the provisions of subsection (5), the normal period during which any person may be employed in or about the business of any shop or office*

(a) on any one day shall not exceed eight hours, and

(b) in any one week shall not exceed forty-five hours.

The period referred to in this subsection shall not include any interval allowed for rest or for a meal under any provisions of this Act or any interruption permitted by any regulation referred to in subsection (3).

The relevant excerpts of the Regulations of Employment issued under the Act which are indicated in the PART I of Regulations Chapter of the Act are as following;

PART I - REGULATION OF EMPLOYMENT

(Gazette No.314 of 21.4.1978)

2 (1) No male who has not attained the age of 18 years and no female shall be employed in or about the business of any shop or office for any period (including overtime and an interval for rest or for a meal and any interruption permitted under regulation 4) exceeding 9 hours a day.

Gazette No.10, 899 of 2.3.1956. Gazette No.12, 553 of 21.7.1961.

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6. The period during which a person may be employed overtime in or about the business of any shop or office shall not exceed an aggregate of twelve hours in any one week.

7.No person shall be employed overtime in or about the business of any shop or office, unless he is paid separately for such overtime work in respect of each hour, at a rate not less than one and one-half times the hourly rate of his ordinary remuneration. The remuneration payable for any part of an hour of overtime work done by him shall be determined in the proportion that part bears to the hour.

It is *ex facie* apparent that the respondent employees have worked from 7.30am-5.00pm for 9.5 hours exceeding the maximum daily working hours from 30 minutes. The Commissioner has conveyed its decision regarding the illegality of such working hours on 28.05.2018 via the document marked P14 directing to pay for the overtime. The SOE Act has granted powers to the Commissioner by the following provisions. Section 53 (3) of the Act has empowered the Commissioner to direct the employers by written notice to pay any amount or balance amount unpaid from the remuneration required under the Act.

(3) Where an employee has not been paid the whole or a part of the remuneration required by this Act to be paid to him by his employer, the Commissioner may, if he thinks fit so to do, by written notice require the employer to pay such amount or the balance of such amount to the Commissioner within the time specified in the notice so that the Commissioner may remit it to such employee. Where the employer when served with such notice pays such amount or such balance directly to such employees instead of transmitting it to the Commissioner as required by such notice, he shall be deemed not to have paid such amount or such balance to such employee.

46. (1) The Commissioner of Labour shall be the officer in charge of the general administration of this Act.

(2) Subject to any general or special directions of the Commissioner, any Deputy or Assistant Commissioner of Labour may exercise, perform or discharge any power, duty or function of the Commissioner under this Act or under any regulation.

The Assistant Commissioner of Labour who is the 2nd respondent of the application has been the entity that has decided and corresponded with the petitioner company at all instances regarding the matter at hand. Under Section 46 (2) the Assistant Commissioners are duly authorised to perform and discharge powers under the Act and thereby the directives issued by the 2nd respondent are deemed to be legal by this Court.

Furthermore, upon perusal of the inquiry notes marked R1- R3 it is apparent to this Court that the inquiry proceedings of this matter at the Commissioner have been conducted duly without any concerning defects. Following such fair inquiry only the directives marked P14, P16 and P17 are issued. The petitioner has raised concerns and objections regarding the disputed Schedule to P17. As noted above, P17 is the directive with revised the total amount payable, due to the change in the time period considered for calculation. P17 further mentions that it annuls the prior directive marked P16. According to the affidavit submitted by the 1st respondent all annexures are sent along with P17 in the registered post, however the petitioner denies this. On the other hand, the respondents have failed to submit a copy of such schedule of P17 that they claim to have sent from there end, as well.

It is argued that the 1st Respondent, who has custody of the Schedule, should have presented it instead of claiming to have sent it via registered post as stated in their

objections. However, it should be noted that the failure to produce this Schedule, which was prepared by the 1st Respondent, should not be considered as a mean to deprive the legal entitlements of the 4-28 respondents. The total amount to be distributed among these respondents is clearly stated in P17 and is documented in the file. However, it is observed by this Court that it is essential to send a detailed schedule with amount payable to each respondent employee as the total amount payable is revised. Further, in the directive marked P17, the date of P16 is mentioned inadvertently and the petitioner in his petition mentions this fact. This Court does not intend to be concerned with the faulty date on P17 as it is a minuscule matter that has not posed a serious threat to justice and proceed to accept the 1st-3rd respondents' submission that it was a typographical error.

In the instant matter, it is evident to this Court that the respondent employees are unquestionably governed by the SOE Act and the Commissioner has correctly decided on the matter directing the petitioner company to pay remunerations for the overtime work of the respondent employees. Therefore, to effect the decision duly, this Court directs the respondent Commissioner to re-send a copy of detailed schedule on the revised amount mentioned in P17 to the petitioner company with detailed amounts payable to each respondent employee, forthwith.

Application dismissed

Neil Iddawala

JUDGE OF THE COURT OF APPEAL

D. N. Samarakoon J.

I agree.

JUDGE OF THE COURT OF APPEAL