

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

In the matter of an application made in terms of Article 140 of the constitution for mandates in the nature of writ of certiorari and prohibition.

Finlays Colombo Limited
No. 309/6/A, Negombo Road,
Welisara.

C.A.WRIT NO.187/2023

Petitioner

Vs

1. Hon. Manusha Nanayakkara
Minister of Labour and Foreign
Employment
6th Floor, "Mehewara Piyesa",
Narahenpita,
Colombo 05.
2. The Secretary
The Ministry of Labour and Foreign
Employment
6th Floor, "Mehewara Piyesa",
Narahenpita, Colombo 5.
3. The Commissioner General of
Labour
Labour Secretariat,
No. 41, Kirula Road,
Colombo 05.
4. United Tea Rubber and Local
Produce
Worker's Union
No. 513-2/1, Elvitigala Mawatha,
Colombo 05.

(With its Members being the 5th to
16th Respondents named herein.)

5. P. Velayudan
6. W.G.B. Kamal Jayasena
7. D.M Theekshana
8. K.A.Nimalsiri
9. Sarath Guruge
10. R.R.Pathmasiri
11. J.S.J. Fernando
12. S. R.Rozairo
13. M.W.Wijitha Wijesinghe
14. E.D.Sumith Ranasinghe
15. S.Wickramasinghe
16. P.B.S. Gunaratne

(Represented by the 4th Respondent
Union named herein.)

Respondents

Before : **Hon. N. Bandula Karunarathna, J.(P/CA)**
Hon. M. Ahsan R. Marikar, J.

Counsel : Geoffery Alagaratnam P.C with Luwie Ganeshathasan
for the Petitioner

R. Aluwihare S.C for the 1st to 3rd Respondents

Lakmali Hemachandra for the 7th Respondent.

Written Submission : Filed by the Petitioner on 06.07.2023
Filed by the 1st, 2nd & 3rd Respondents 06.07.2023

Argued on : 06.06.2023

Decided on : 11.07.2023

M. Ahsan R. Marikar, J.

Introduction

- 1) The Petitioner had instituted this action and sought reliefs by the amended petition dated 22nd May 2023. The instant application pertinent to the aforesaid amended petition is to consider issuance of notice and interim reliefs prayed for in prayers **d)** and **g)**.
- 2) The said interim reliefs prayed for is as follows,
 - d)** Grant an interim order preventing the 3rd Respondent and/or his subordinates and/or his agents from instituting and/or maintaining any further proceedings in the Magistrates Court or otherwise based on the decision of the 3rd Respondent and/or his subordinates contained in documents marked as A2 and A5 dated 3rd September 2019 and 7th July 2017 respectively until the final hearing and determination of this application;
 - g)** Grant an interim order preventing the 3rd Respondent or their agents from proceeding with the said decision referred to in terms of document marked as A2 and A5 in any manner until the final hearing and determination of this application.

Facts of the Petitioner's case

- 3) The instant application between the Petitioner Company and the Respondents is a labour dispute between the 4th Respondent who is the Trade Union of the Petitioner Company and the 5th to 16th Respondents are the employees.

- 4) The dispute had arisen between the said parties by the Petitioner issuing letters of termination marked and produced as A10(1) - A10(12) with the petition.
- 5) The said letters had been issued after an inquiry had been held between the said parties.
- 6) Subsequently, the said matter had been referred to arbitration in terms of Section 4(1) of the Industrial Disputes Act.
- 7) Beside the matter being referred to arbitration, the 4th Respondent had lodged a separate complaint to the Commissioner General of Labour and an inquiry had been held. The Commissioner General of Labour had held that the Petitioner had violated Clause No.25(5) of the Collective Agreement between the Petitioner and the 4th to 16th Respondents.
- 8) The Petitioner had filed this action to invoke the Writ Jurisdiction of this Court to restrain the Commissioner General of Labour from instituting criminal action in the Magistrate Court prior to commencing and concluding the arbitration proceedings to determine whether Clause No.25(5) of the Collective Agreement had been violated.

Facts of the 1st, 2nd and 3rd Respondents' Objections

- 9) The said Respondents had denied the position taken by the Petitioner and contended in terms of Section 10A of the Industrial Disputes Act, the 3rd Respondent is vested with the Statutory Duty to resolve any dispute with regard to the interpretation of the Collective Agreement.
- 10) Further, the breach of any provision contained in the Collective Agreement is an offence under Section 40(1)(a) of the Industrial Disputes Act. The 4th Respondent has lodged a complaint pertinent to the breach of the Collective Agreement by the Petitioner.
- 11) Thus, the 3rd Respondent is entitled to interpret the Collective Agreement clauses when there are two possible literary interpretations.
- 12) Furthermore, the said Respondents have contended the arbitration procedure instituted in terms of Section 4 of the Industrial Disputes Act

does not impede the 3rd Respondent's ability to decide whether there is a breach of the Collective Agreement by the Petitioner.

- 13) On the said grounds the 1st, 2nd and 3rd Respondents had moved to dismiss the Petitioner's application to issue notice and to reject to grant interim reliefs prayed for by the Petitioner.

Disputed facts

- 14) Considering the facts pertinent to the application made by the Petitioner and on perusal of the documents and written submissions and the facts argued by the Counsels for the Petitioner and the Respondents on 30th June 2023, I am of the view that to issue the notices to the Respondents and to grant the interim reliefs, the following questions should be addressed without going into the merit of the case.

- I. Has the Petitioner issued letters of termination to the 5th to 16th Respondents?
- II. Has the 4th Respondent made a complaint to the Commissioner General of Labour against the Petitioner, that the Petitioner had violated the terms and conditions of the Collective Agreement?
- III. Is this matter referred to arbitration?
- IV. If so, is the Petitioner entitled for notice and interim reliefs claimed?

I. Has the Petitioner issued letters of termination to the 5th to 16th Respondents?

- 15) The Petitioner is a diversified subsidiary of a larger conglomerate established within Sri Lanka conducting its business under the Finlays Group in Sri Lanka which has a subsidiary.

- 16) The Petitioner has explained that the incident pertinent to this application as per the paragraphs 5 to 17 of the petition, is that the 4th Respondent is a Trade Union of the Petitioner's Company and 5th to 16th Respondents are employees who launched an illegal Go-Slow Campaign against the Petitioner and the Subsidiary Company.

- 17) After holding a domestic inquiry, the Petitioner had terminated the 5th to 16th Respondent employees by letters marked and produced as A10(1) to A10(12).
- 18) Subsequently, the 4th Respondent had made a complaint to the 3rd Respondent, the Commissioner General of Labour, of the said terminations and he had held an inquiry and both parties agreed to settle the dispute by way of arbitration in terms of Section 4(1) of the Industrial Disputes Act.
- 19) In the said circumstances issuing the termination letters are not disputed.

II. Has the 4th Respondent made a complaint to the Commissioner General of Labour against the Petitioner that the Petitioner had violated the terms and conditions of the Collective Agreement?

- 20) The crux of this application is based on the aforesaid Clause No. 25(5) of the Collective Agreement.
- 21) After the 4th Respondent had complained to the Commissioner General of Labour, the Commissioner General had held an inquiry and decided that the Petitioner had violated the terms and conditions of Clause No. 25(5) of the Collective Agreement.
- 22) On that the Commissioner General had issued A22 letter and confirmed the same after hearing the Petitioner by A29.
- 23) The argument raised by the Petitioner is that whilst the 3rd Respondent accepted the 4th Respondent's position related to the aforesaid clause, calculating the dates to issue the letters of termination, at the same the 3rd Respondent had not rejected the position taken by the Petitioner counting the period on which the letter of termination should be issued under Clause No.25(5) of the Collective Agreement which is reflected in A28.
- 24) The argument raised by the Petitioner is the decision taken by the 3rd Respondent is in violation of the Clause No.25(5) and in the event the

Commissioner General of Labour institutes action under that provision that will prejudice their rights as the matter is referred to arbitration.

III. Is this matter referred to arbitration?

- 25) Both parties have admitted by CA Writ 381/2019 and have agreed that this case should be referred to arbitration. That fact is supported by document marked and produced as A13. In the terms and conditions of A13 document both parties have agreed for the Arbitrator to decide the date on which the letter of termination issued and to settle the dispute between the parties acting under the Section 4(1) of the Industrial Disputes Act.
- 26) Therefore, it is obvious that the dispute related to the current issue of interpreting of Clause No.25(5) of the Collective Agreement is subject to arbitration.
- 27) The State Counsel has argued the Commissioner General of Labour is entitled to hold any inquiry and he is empowered to do so.
- 28) My considered view is the arguments raised by the State Counsel should not be considered at this stage. Presently, this court has to consider whether there is a *prima facie* case to issue an interim order to stop any violation or prejudicial order issued by the 3rd Respondent.
- 29) In the said circumstances interpreting Clause No.25(5) of the Collective Agreement by the Commissioner General prior to the arbitration award being made, will violate the rights of the Petitioner.

IV. If so, is the Petitioner entitled for notice and interim reliefs claimed

- 30) In the instant action I do not have to go into the merit of the case. Only the facts, documents and the arguments raised by the parties should be considered whether there is a *prima facie* case against the Respondents. If so, notice and interim order can be issued.

- 31) It is abundantly clear that both parties preferred to go before an Arbitrator to resolve the dispute related to Clause No.25(5) of the Collective Agreement.
- 32) Whilst the said arbitration proceedings are pending the 4th Respondent had made a complaint to the 3rd Respondent on the same grounds to hold an inquiry. The Commissioner General of Labour had held an inquiry and decided that the Petitioner has violated the provisions of Clause No.25(5) of the Collective Agreement.
- 33) However, A28 document had proven that the Commissioner General is doubtful of his decision that the Petitioner had violated Clause No.25(5) of the Collective Agreement.

The following decided cases further indicate the judicial approach towards arbitrary decisions.

R v. Deputy Industrial Injuries Commissioner, Ex P. Moore¹ by Diplock, LJ.

“A decision is irrational in the strict sense of that term if it is unreasoned; if it is lacking ostensible logic or comprehensible justification. Instances of irrational decisions include those made in arbitrary fashion, perhaps “by spinning a coin or consulting an astrologer”

Karunadasa vs Unique Gem Stones Ltd., and Others² by Mark Fernando, J.

“To say that Natural Justice entitles a party to a hearing does not mean merely that his evidence and submissions must be heard and recorded; it necessarily means that he is entitled to a reasoned consideration of the case which he presents. And whether or not the parties are also entitled to be told the reasons for the decision, if they are withheld, once judicial review commences, the decision “may be condemned as arbitrary and unreasonable”; certainly, the Court cannot be asked to presume

¹[1965] 1 Q.B. 456 at 488.

² [1997] 1 Sri L.R. 256.

that they were valid reasons, for that would be to surrender its discretion.”

- 34) In the said circumstances, if the Commissioner institutes the Magistrate Court proceedings before the conclusion of the Arbitration proceedings, I am of the view that grave injustice will be caused to the Petitioner.

CONCLUSION

- 35) In view of the aforesaid analysis and in considering the documents, written submission and the arguments raised by both parties in the instant application there is a *prima facie* case against the Respondents and there are important matters to be considered.
- 36) On that we issue notices to the Respondents and grant an interim order against the Respondents prayed for in prayer ‘d)’ of the amended petition dated 22nd May 2023.

Judge of the Court of Appeal

N. Bandula Karunaratna, J. (P/CA)

I agree

President of the Court of Appeal