

**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 a Writ of Certiorari and a Writ of Mandamus under and in terms of Article 140 of the Constitution.

C.A. (Writ) Appl. No. 509/2010

E.A.S. Perera,
No. 49A, Wickremaratne Mawatha,
Kohuwala.

PETITIONER

-Vs-

1. Commissioner General of Labour,
Labour Secretariat,
P.O. Box 1725,
Colombo 5.
2. Deputy Commissioner of Labour,
Employees Provident Fund,
Labour Secretariat,
P.O. Box 1725,
Colombo 5.
3. The Ceylon Planters' Provident Society,
P.O. Box 855,
No. 32, Vajira Road,
Colombo 5.

RESPONDENTS

BEFORE : A.H.M.D. Nawaz, J.

COUNSEL : Shanaka Ranasinghe, PC for the Petitioner.
Maithri Wickremasinghe, PC with Rakitha Jayatunga for the 3rd Respondent.
Janak De Silva, DSG for the 1st and 2nd Respondents.

Written Submissions on: 06.03.2015 (For the Petitioner)
09.03.2015 (Fro the 3rd Respondent)

Argued on : 05.07.2017

Decided on : 31.10.2017

A.H.M.D. Nawaz, J.

When this matter came up before me for argument on 05.07.2017, all counsel submitted in unison that since they have already filed written submissions in this matter, this Court can proceed to dispose of this matter on the written submissions that have been filed. The 1st and 2nd Respondents (the Commissioner of Labour and Deputy Commissioner of Labour) and the 3rd Respondent-The Ceylon Planters' Provident Society have raised preliminary objections to the maintainability of this application for judicial review.

The gravamen of the petitioner's application is that he seeks *inter alia* the following public law remedies:

- (a) A writ of certiorari to quash P12 which determines that the Petitioner is not entitled to the payment he claims from the Ceylon Planters' Provident Society as his Provident Fund entitlement.¹
- (b) A writ of certiorari to quash P22 which determines that the decision in P12 will not be changed.²

¹ Prayer (c) of the Petition.

(c) A writ of certiorari directing the 1st and 2nd Respondents to calculate the Petitioner's Provident Fund entitlement arrears on the accumulative Provident Fund in the following form and manner;

- (i) From the year 2006 - at the declared rate for 2006 being 10.27%;
(Being from 1st January 2006 to 31st December 2006); and
- (ii) From the year 2007 - at the declared rate for 2007 being 13.44%;
(being from 1st January 2007 to 31st May 2007).³

Thus one finds that the Petitioner has sought mandamus by which he seeks an extra payment from the funds of the Ceylon Planters' Provident Society, which is an approved provident fund wherein the EPF contributions of about 1638 members along with their employer lie. It has to be noted that the Petitioner who was a member of this fund withdrew his dues as far back as June 2007. He was no longer a member of this fund when this application for judicial review dated 30.06.2010 was filed before this Court.

The pith and substance of the preliminary objections is to the effect that if an extra sum of money is to be ordered by mandamus out of the funds, it would eventuate in payment being made to the Petitioner from a fund which belongs to 1638 other members. If a diminution of "trust fund" which belongs beneficially to 1638 members is going to be the consequence as a result of the extra payment that the Petitioner has sought, the salient objection is that the 1638 other members would be adversely affected and they should have been brought before Court.

This objection figures prominently in paragraph 2.3 of the statement of objections. It is specifically stated that the 3rd Respondent fund has 1638 members who together with their employers make contributions to the 3rd Respondent fund. As the mandamus sought in the case would, if issued, denude the 3rd Respondent fund of the funds belonging to 1638 members, those members whose interests would be adversely affected

² *Ibid.*

³ Prayer (d) of the Petition.

must be made Respondents to this application and as a corollary it is contended by way of preliminary objection that the Petitioner is not entitled to have and maintain this application, as necessary parties have not been impleaded. The dicta of Atukorala J. in *Abayadeera and 162 others v. Dr. Stanley Wijesundara, Vice Chancellor, University of Colombo and Another* (1983) 2 SRI L.R 268 are quite pertinent to the issue before this Court. Whilst holding that 115 students of the North Colombo Medical College who would be affected by the issue of the writ should have been made parties to the application and that failure was fatal to the application⁴, Atukorala J. declared:

“It appears to us that the principle to be discerned from these cases is what was stated by Nagalingam, A.J, where an order would affect adversely a party who is not before Court, that party must be deemed to be a necessary party and consequently the failure to make the necessary party a respondent to the proceedings must be regarded as fatal to the application.”⁵

Dr. Sunil F.A. Coorey in his “Principles of Administration Law in Sri Lanka” (Volume I at page 945) has usefully collated the following decisions which have long established this principle in our administrative law- *Caron v. Government Agent, Western Province* 46 NLR 237; *Goonetilleke v. Government Agent, Galle* (1946) 47 NLR 549; 190; *James Perera v. Godwin Perera* (1946) 48 NLR 190; *Dharmaratne v. Commissioner of Elections* (1950) 52 NLR 429 and *In Re Rajah* (1952) 54 NLR 263.

In *James Perera v. Godwin Perera* (1946) 48 NLR 190 it was held that when an application was made for a writ of mandamus to compel a local authority to issue a bakery licence in favour of the Petitioner in circumstances prejudicial to the rights of the person, who was already holding a licence, the failure to make the holder of the licence is a fatal irregularity. Thus, all persons affected by the issue of the writ are necessary parties to the application.

What the Petitioner is seeking to do by way of this application is to obtain an order to compel the 1st and 2nd Respondents to compute his entitlements to what he calls

⁴ (1983) 2 SRI L.R 267 at 292.

⁵ (1983) 23 SRI L.R 268 at 291.

“arrears” based on a higher rate of interest declared by the Central Bank and have these entitlements deducted and disbursed to him out of a private trust fund beneficially belonging to 1638 members, when the Petitioner no longer contributes to this fund. In such a situation the failure to implead the existing 1638 members of the trust fund who are necessary parties to this application is fatal to this application as those members have acquired a beneficial entitlement to this fund and could not be deprived of their dues without being heard. Thus the preliminary objection raised on behalf of the trust is entitled to be sustained on this objection and the application for judicial review is liable to be rejected. Inasmuch as the beneficiaries have not been named, a further objection has been taken that the trustees of the fund namely “Planters’ Association of Ceylon” have also not been made Respondents to this application.

It is quite relevant to observe at this stage that quite curiously the inanimate, non-juristic and amorphous entity in law-“the fund” known as the “Ceylon Planters’ Provident Society” has been brought before Court as the 3rd Respondent in this application for judicial review. Extreme care must be taken not to name inanimate objects/things as Respondents, as they are neither natural nor legal persons. It is not in contention that the amorphous 3rd Respondent is a fund called and known as the “Ceylon Planters’ Provident Society” which was constituted and established as provided for in the Ceylon Planters’ Provident Society Rules and was vested in and is held by the Planters’ Association of Ceylon as Trustee appointed to that fiduciary officer by a deed of trust dated 13.07.1926. The Rules of the trustee - the Planters’ Association of Ceylon have been appended to the statement of objection as 3R1 and the deed of trust dated 13.07.1926 as 3R2. The said Fund and the Rules were approved by the Commissioner of Labour as an approved provident fund.

In the circumstances it cannot be gainsaid that the Planters’ Association of Ceylon is a necessary party to this application whose legal title to the fund and interest would no doubt be adversely affected by the certiorari and mandamus sought by the Petitioner.

Amarasinghe J. in *Gnanasambanthan v. Rear Admiral Perera and others* (1998) 3 SRI L.R 169 at 171 has quite succinctly observed:-

“In my view it is both the law and practice in Sri Lanka to cite necessary parties to applications for Writs of Certiorari and Mandamus. For the reasons already explained, REPIA was a necessary party and in my view the failure to implead REPIA was a fatal irregularity.”⁶

It has to be remembered that in respect of this writ application neither the beneficiaries of the “fund” nor its trustees have been brought before Court. On principle they are necessary parties and in light of the fact that they have been omitted to be named as Respondents, I proceed to uphold the preliminary objections raised as regards the maintainability of this application for judicial review and thus I dismiss this application.

JUDGE OF THE COURT OF APPEAL

⁶ *ibid* at page 172.