

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

In the matter of an Application under Article  
140 of the Constitution for a mandate in the  
nature of Writ of *Certiorari*.

Devon Overseas (Pvt) Ltd,  
Malimbada,  
Palatuwa,  
Matara.

**PETITIONER**

**Vs.**

**Court of Appeal Case No:**  
**CA/WRIT/572/2021**

1. B.K. Prabath Chandrakeerthi,  
Commissioner General of Labour,  
Labour Secretariat,  
P.O. Box, 575, Colombo 5.
2. Iresha Udayangani,  
Deputy Commissioner of Labour,  
Termination of Employment Unit,  
Labour Secretariat,  
P.O. Box. 575, Colombo 5.
3. P.A.S.E. Pathiraj,  
Assistant Commissioner,  
Termination Unit,  
Labour Secretariat,  
P.O. Box. 575, Colombo 5.
4. P.L.S. Lekamge,  
Labour Officer,  
Termination of Employment Unit,  
Labour Secretariat,  
P.O. Box. 575, Colombo 5.

5. Sharatha Supun Ratnayake,  
No. 102, Godella,  
Dankotuwa.

**RESPONDENTS**

**Before:** Mayadunne Corea, J  
Mahen Gopallawa, J

**Counsel:** Maithree Pitawale instructed by Isuru Perera for the Petitioner.  
Ishara Madarasinghe, S.C. for the 1<sup>st</sup> to 4<sup>th</sup> Respondents.  
Deeptha Perera instructed by A.S. Jayaweera for the 5<sup>th</sup> Respondent.

**Argued on:** 11.11.2025.

**Written Submissions:** For the Petitioner on 08.12.2025.  
For the 1<sup>st</sup> to 4<sup>th</sup> Respondents on 30.12.2025.  
For the 5<sup>th</sup> Respondent on 15.12.2025.

**Decided on:** 13.02.2025.

**Mayadunne Corea J**

The Petitioner in this Application sought, *inter alia*, for the following reliefs:

“b) *Issue a mandate in the nature of a Writ of Certiorari, quashing the said Order and/or decision of the 1<sup>st</sup> Respondent contained in the document marked P9.*”

The facts of the case briefly are as follows. The Petitioner company engages in the business of manufacturing garments. The 5<sup>th</sup> Respondent had made a complaint dated 21.03.2017 to the 2<sup>nd</sup> Respondent on the basis that he was employed by the Petitioner company and that his employment had been terminated with effect from 20.03.2017. Following an inquiry into the said complaint, the 1<sup>st</sup> Respondent made an order marked as P9 directing the

Petitioner to deposit Rs. 1,250,000 as compensation to the 5<sup>th</sup> Respondent. Hence, this Writ Application.

### **The Petitioner's contention**

The Petitioner challenges the acts of the Respondents on the following grounds:

- The 5<sup>th</sup> Respondent was employed by the Petitioner in the capacity of an independent contractor.
- The 1<sup>st</sup> Respondent has acted contrary to the provisions of the Termination of Employment of Workmen (Special Provisions) Act, No. 45 of 1971 (hereinafter referred to as 'TEWA').
- The 1<sup>st</sup> Respondent does not disclose the reasons for his order, and therefore, that the said order is ultra vires and in violation of the rules of natural justice.
- The order of the 1<sup>st</sup> Respondent is unreasonable, procedurally improper, is in violation of natural justice, and is an error of law on the face of the record.

### **The Respondent's contention**

The 5<sup>th</sup> Respondent raised the following objections:

- Delay
- The termination of the employment of the 5<sup>th</sup> Respondent was wrongful and unlawful.
- The issue of whether the 5<sup>th</sup> Respondent was an employee or an independent contractor was not a matter that could be decided at the inquiry.

### **Analysis**

At the hearing the Petitioner's main argument was that the impugned order does not provide reasons for the decision. It is common ground that the 5<sup>th</sup> Respondent had been interviewed by the Petitioner prior to being selected. Although this had not been disclosed in the Petition, the Petitioner did not dispute the said fact. The Petitioner's main contention was that the 5<sup>th</sup> Respondent was not an employee of the Petitioner and accordingly that the

TEWA will not apply. Hence, they challenged the said decision on the said basis. However, it is pertinent to note that the Petitioner had taken part in the said inquiry. The Petitioner's main contention was that the 5<sup>th</sup> Respondent had been employed as a consultant. However, they admitted that the 5<sup>th</sup> Respondent had been given a motor vehicle, a laptop and a residential house. It was their contention that he had been given a professional allowance every month in addition to a fuel allowance and it was further contended that since there was no employer-employee relationship, the 5<sup>th</sup> Respondent was not paid a salary. In response, the 5<sup>th</sup> Respondent contends that he was interviewed and was subsequently appointed as the Chief Operations Officer.

As this is a Writ Application to quash the impugned decision made by the Commissioner General of Labour subsequent to an inquiry, I am mindful of the fact that this is not an appeal. Let me now consider whether the Commissioner of Labour had considered the Petitioner's objection and had arrived at his findings based on the evidence.

### **Should the Labour Commissioner give reasons for his order?**

The inquiry had been held under the TEWA upon a complaint received by the Commissioner of Labour from the 5<sup>th</sup> Respondent stating that his services had been terminated in violation of the Act. Let me now consider the provisions of the TEWA. Section 2 of the TEWA states as follows:

“2.

(1) *No employer shall terminate the scheduled employment of any workman without –*

(a) *the prior consent in writing of the workman; or*

(b) *the prior written approval of the Commissioner.”*

It is common ground that before the termination of employment of the 5<sup>th</sup> Respondent, the Petitioner had not sought permission from the 1<sup>st</sup> Respondent. It is also common ground that the Petitioner had commenced work on 01.01.2015 and that his work had been terminated on 20.03.2017.

It is also pertinent to note that the Petitioner had not given a formal letter of appointment to the 5<sup>th</sup> Respondent. It was their contention that a formal letter of appointment was not given because the 5<sup>th</sup> Respondent was not an employee but an independent contractor. However, I observe that there is no formal contract tendered by the Petitioner to demonstrate that the 5<sup>th</sup> Respondent had been employed as an independent contractor and a consultant.

Let me now consider whether the impugned decision of the Commissioner General, marked as P9 contains the reasons for arriving at the said decision. It is clear by perusing the TEWA that the said Act does not expressly require the Commissioner to give reasons after an inquiry. I have considered section 12 of the said Act which empowers the Commissioner to hold an inquiry. Although the Commissioner is vested with the power to summon and compel the attendance of witnesses, to compel the production of documents, to administer any oath or affirmation to witnesses and has been vested with the powers of the District Court, the said section does not expressly require the Commissioner to give any reasons for his determination.

This Court observes the particular objection pertaining to the absence of reasons has a long history commencing from the case of *Samalanka Limited v. Weerakone, Commissioner of Labour and others* (1994) 1 SLR 405, where His Lordship Kulatunga J held that in the absence of a statutory requirement there is no general principle of administrative law that natural justice requires the authority making the decision to adduce reasons. However, the Court qualified this by stating that the decision must be made after the conduct of a fair inquiry. In the instant case before us, the parties are not at variance of the fact that the Commissioner had held an inquiry, nor does the Petitioner allege that the inquiry was unfair.

Thereafter, this was discussed in the case of *Kusumawathie and others v. Aitken Spence & Co. Ltd and another* (1996) 2 SLR 18, where the Court observed, quoting Smith's *Judicial Review of Administrative Action* (4<sup>th</sup> edition) and Wade's *Administrative Law* (6<sup>th</sup> edition) that rules of natural justice do not contemplate reasons to be given for decisions and also that there is no general rule of English law to give reasons for administrative decisions. Further, the Court in *Kusumawathie* observed that even if there is no statutory requirement to give reasons for administrative decisions, reasons should be given if the decision is revivable.

This was elaborated in *Ceylon Printers Ltd and another v. Weerakone, Commissioner of Labour and others* (1998) 2 SLR 29, where the Court opined that statutory tribunals must give satisfactory reasons in their decisions. The purpose of the said thinking was to allow the losing party to know whether he should exercise his rights of appeal on a point of law. The Court in *Ceylon Printers* (supra) held as follows:

*“In a series of cases it has been held that statutory tribunals must give satisfactory reasons in order that the losing party may know whether he should exercise his right of appeal on a point of law... the House of Lords held that a life prisoner was entitled to be told the Home Secretary’s reasons for rejecting the advice of the trial judge as to the penal element in the sentence (citing R. Home Secretary ex p. Doody) the House of Lords has indicated that if a Minister fails to explain a decision satisfactorily, it may be condemned as arbitrary and unreasonable (citing Padfield v. Minister of Agriculture, Fisheries and Food).*

*Although the lack of general duty to give reasons is recognized as an outstanding deficiency of administrative law, the judges have gone far towards finding a remedy by holding that reasons must be given where fairness so demands; and the decisions show that may now be the case more often than not. It has been held in first instance that English law has now arrived at a point where the duty to act fairly imparts at least a general duty to give reasons, subject to necessary reasons, subject to necessary exceptions and this conclusion seems well justified”.*

The learned Counsel for the Petitioner relied on *Ceylon Printers Ltd and another v. Weerakoon Commissioner of Labour and others* (1998) 2 SLR 29 and also on *Lanka Multimoulds Pvt Ltd v. Wimalasena Commissioner of Labour and others* (2003) 1 SLR 143 to substantiate this argument that for the Commissioner’s decision to be legally valid it should contain reasons.

Hence, it is now settled law that although a statute does not contemplate giving reasons, if the said decision is revivable, reasons should be given. In my view, as observed in *Kusumawathie’s* case, an exception to the said ground would be that the impugned order itself demonstrates the reasons which is called a “speaking order”. With that in mind, let me now consider whether the impugned order marked as P9 contains reasons. On the face of it, the impugned order marked as P9 contains two grounds, namely,

“1. මාලිම්බඩ, පාලටුව, මාතර යන ලිපිනයේ ඩෙවොන් ඕවසීස් (ප්‍රයිවට්) ලිමිටඩ් ආයතනය විසින් මෙම සේවකයාගේ සේවය අවසන් කිරීමේදී, සේවකයාගේ පූර්-ව

ලිඛිත කැමැත්ත හෝ කමිකරු කොමසාරිස් ජනරාල්ගේ පූර්-ව ලිඛිත අනුමැතිය ලබා නොගෙන 1971 අංක 45 දරන කමිකරුවාගේ රක්ෂාව අවසන් කිරීමේ (විශේෂ විධිවිධාන) (පසුව සංශෝධිත) පනතේ විධිවිධානයන්ට පටහැනි ලෙස කටයුතු කර ඇති බව තහවුරු වීම.

2. වගෙත්තරකාර ආයතනය ක්‍රියාකාරී නමුත් ඉල්ලුම්කරු වගෙත්තරකාර ආයතනයේ දරා ඇති තනතුර සහ ඉටුකර ඇති කාර්-යභාරය සැලකීමේදී නැවත සේවයේ පිහිටුවීම කාර්-මික සාමයට බාධාවක් බව අනාවරණය වී තිබීම.”

Hence, in my view, the impugned order marked as P9 appears to lack sufficient reasoning. However, let me consider whether the Commissioner General had specified his reasons in arriving at the order communicated in P9.

### **Inquiry before the Commissioner**

Even though section 12 of the TEWA contemplates the Commissioner General to hold an inquiry, due to the significant number of complaints that are received, it appears that it would be an impossible task for the Commissioner General to hold inquiries for all the complaints received under section 12. This issue has been contemplated by the legislature itself and in section 11, the legislature in its wisdom has devolved power of the general administration of the Act to the Commissioner General but has provided for the Commissioner General to delegate to any officer of the Labour Department any power, function, or duty conferred or imposed on him under this Act. Thus, by utilising this provision, the Commissioner General has delegated his power of holding inquiries to a labour officer and in the instant case to hold and inquire into the dispute that had arisen between the Petitioner and the 5<sup>th</sup> Respondent. It appears that the said inquiry had commenced upon a complaint made by the 5<sup>th</sup> Respondent on 21.03.2017. However, due to postponements sought by the Petitioner and the 5<sup>th</sup> Respondent, and due to the unavailability of the inquiring officer, the said inquiry had concluded only in the year 2021. Parties are not at variance on the holding of the inquiry, nor do they challenge the procedural aspect of the inquiry that was conducted. Subsequent to the inquiry, the inquiring officer had come to a conclusion and made recommendations. The Petitioner does not challenge the conduct of the inquiry, nor does it challenge the said inquiry being conducted by the inquiring officer. At the conclusion of the said inquiry, the inquiring officer had summarised the evidence, the grounds upon which a determination had been arrived at and the reasons for the determination and had submitted the said determination to the Commissioner General. The said determination, the recommendation and the reasons

were tendered to this Court by the learned State Counsel appearing for 1<sup>st</sup> Respondent by way of a motion and marked as X.

Upon perusing the said document marked as X, as stated above, it is evident that the officer had considered the grounds of both parties, arrived at the conclusions and recommendations, and amply set out the reasons for making such recommendations and arriving at those conclusions.

I observe the said document had been forwarded to the Deputy Commissioner of Labour who had agreed on the findings and the reasonings and had endorsed the document and forwarded it to the Commissioner of Labour and the Commissioner General of Labour. Both the Commissioner of Labour and the Commissioner General of Labour had agreed and approved the contents, the recommendations and the conclusions in the said document. This document contains the reasons for arriving at the decisions that were conveyed by the impugned order in P9. Therefore, the Petitioner's contention that no reasoning was given is not tenable. In coming to this conclusion, I have also considered the judgements of *Kusumawathie's* case and *Liyanage's* case which is dealt with below.

In *Kusumawathie's* case (supra), the Court held as follows:

*“Although the letter L1 does not contain the reasons for the decision the Commissioner has disclosed his reasons by way of an affidavit to this Court. He has also annexed the recommendation made by the Assistant Commissioner who held the inquiry. Upon a disclosure of this information, learned Counsel for the Petitioner has not sought to challenge the decision on any ground other than what has been stated above.”*

Further, in the case of *Liyanage and others v. Commissioner of Labour and others (2004) 2 SLR 28*, the Court held as follows:

*“There is no requirement under the Act for the Commissioner to give reasons for his decision. But the present judicial trend is that natural justice requires him to give reasons. Karunadasa v. Unique Gem Stones Limited and others (1997) 1 SLR 256. If the report submitted to him by the officer who conducted the inquiry contains the reasons for the findings and the recommendation and if the Commissioner agrees with the findings and recommendations there is no necessity for him to give separate reasons. He, by his approval of the report, may ‘adopt’ the reasons*

*contained therein. It is sufficient compliance with the duty to give reasons. In this case the Commissioner has placed before Court the report of the 2nd Respondent. His order has been made on the acceptance of the findings of the 2nd Respondent. Therefore his order cannot be assailed on the basis that 'he who decides must hear' (emphasis added)''*

This takes me to the next ground pleaded by the Petitioner.

**Was the 5<sup>th</sup> Respondent an independent contractor providing consultancy services?**

The Petitioner did contend in its arguments that the 5<sup>th</sup> Respondent was an independent contractor and therefore he would not be caught within the provisions of the workmen contemplated in TEWA. I find the Commissioner has considered the said objection and has concluded that the 5<sup>th</sup> Respondent is in fact an employee contrary to the Petitioner’s contention that he is an independent contractor. I find in the reasoning marked as X, where the Commissioner has considered the Petitioner’s arguments of the 5<sup>th</sup> Respondent not being an employee but an independent contractor. The Petitioner in paragraph 8 of the affidavit onwards has pleaded that the 5<sup>th</sup> Respondent was only an independent contractor, and in paragraph 11 he elaborates the employment of the 5<sup>th</sup> Respondent as an independent contractor who provided his services as a consultant to the Petitioner company.

In this instance, as stated above, I am mindful of the fact that this is a Writ application and not an appeal and therefore, the Petitioner in this case is challenging the decision of the Commissioner General and is not asking this Court to sit in appeal of evidence. However, coming back to the decision of the Commissioner General, I find in the reasoning marked as X, the Petitioner’s contention that the 5<sup>th</sup> Respondent is an independent contractor, and has only been providing consultancy services have been disbelieved. In considering whether the 5<sup>th</sup> Respondent had been an employee or not, the Commissioner General has considered the following grounds.

“නිරීක්ෂණ

- ❖ ආයතනයේ නම : ඩෙවරන් ඔවසරීස් (පුද්ගලික) සමාගම
- ❖ ආයතනයේ ලිපිනය : කර්-මාන්ත ශාලාව : මාලිමිබඩ, පාලඬුව, මාතර  
 ප්‍රධාන කාර්යාලය : අංක 160/10- ඒ, අඟුලාන දුම්රියපල පාර කල්දෙවුල්ල මොරඬුව

- ❖ සේවකයාගේ නම : ඹාරන සුපුන් රත්නායක
- ❖ ලිපිනය : නො.102, ගොඩැල්ල, දංකොටුව
- ❖ පත්වීම් දිනය : 2015.01.01 (පැමිණිල්ලේ දිවුරුම් සහතිකය අනුව අවසන් දිනය සලකන ලදී. ආයතනය හබ කර නැත. පිටුව 3, 35, 111)
- ❖ සේවය අවසන් කල දිනය : 2017.03.20 (සේවය අවසන් කිරීම හෝ කල දිනය පිළිබඳ ආයතනය කිසිඳු අවස්ථාවක හබ කර නැත. පිටුව 3 හා 23)
- ❖ සේවකයාගේ වැටුප මූලික රු. 650,000.00 බව පිටු අංක 35 ඇමුණුම අනුව තහවුරු වෙයි. එහි මානව සම්පත් කළමනාකරු විසින් හැටන් නැෂනල් බැංකුවට ලබා දුන් ලිපියකි. ඒ තුලින් දැක්වෙන්නේ මූලික වැටුප රු. 650,000.00 බවත් ඊට අමතරව දීමනා ලබා දුන් බවයි. (පිටුව 35)
- ❖ ඉල්ලුම්කරු 2016.10.18 වන විට ආයතනයේ ප්‍රධාන කළමනාකරු ලෙස නම් කරමින් ඔහු වෙත වෙක්පත් භාර දෙන කළමනාකරු හැටන් නැෂනල් බැංකුවේ මාතර වෙත ඩෙවෝන් ඔර්-වසිස් පුද්ගලික ආයතනයේ අධ්‍යක්ෂ කේ.කේ. වන්දසේන මහතා ලිපි නිකුත් කර ඇත. ඒ අනුව ඔහු එම තනතුර පවරා ඇති බව නිරීක්ෂණය වෙයි.
- ❖ ආයතනයේ ප්‍රධාන තර්-කය වන්නේ මෙම ඉල්ලුම්කරු ස්වාධීන කොන්ත්‍රාත්කරුවකු බවයි. එය සනාථ කිරීමට හේතු ගණනාවක් ඉදිරිපත් කරයි.
  - පත්වීම් ලිපියක් ලබා නොදීම පිළිබඳ කරුණු දක්වයි. ලිපි නිකුත් කිරීමේ වගකීම ඇත්තේ ආයතනයටයි. මෙම ආයතනය විසින් මොහුට සේවකයෙක් නොවන නිසා පත්වීම් ලිපියක් ලබා නොදුන්නා නම් ඔහුට සේවාව සැපයීම වෙනුවෙන් වූ පිවිසුම් ලිපියක් ලබා දිය යුතු වෙයි. නමුත් ආයතනය ඔහු ස්වාධීන කොන්ත්‍රාත්කරුවකු ලෙස තහවුරු කිරීමටද ලිඛිත සාක්ෂි ඉදිරිපත් නොකරයි.
  - අනෙකුත් සේවකයින්ට වැටුප් ගෙවීම් කිරීමේදී කුචිතාංශී ලබා දුන් බවත් මොහු ස්වාධීන කොන්ත්‍රාත්කරුවකු බැවින් වැටුප් කුචිතාංශී ලබා නොදුන් බවට කරුණු ඉදිරිපත් කලද ඉල්ලුම්කරුට මාසිකව ගෙවීම් කල ලේඛන ඉදිරිපත් කරයි. එම ලේඛන වල Professional Charges ලෙස සඳහන් කර ඇති බව නිරීක්ෂණය වෙයි. එමෙන්ම එම ඉන්වොයිස් පත්වල මුදල මාසයෙන් මාසයට වෙනස් වන ස්වභාවයක් නිරීක්ෂණය වෙයි.
- ❖ ඉල්ලුම්කරු තම සැලකිලිමේදී තමාට මූලික වැටුපක් සහ ගමන් වියදම් දීමනාවක් ගෙවූ බවට ප්‍රකාශ කර ඇත. ස්ථිරව ලැබූ වැටුප රු. 650,000.00 ක් බවක් ගමන් වියදම් දීමනාව ප්‍රතිපූරණය කිරීමට යටත්ව ගෙවනු ලැබූ බවත් කියයි. එයට පිළිතුරු ලෙස සේවායෝජක ප්‍රකාශ කරන්නේ ඉල්ලුම්කරුට වෘත්තීය දීමනාවක් මාස් පතා ගෙවූ බවයි. එය බැලූ බැල්මට ලක්ෂ 6 ක් ඉක්ම වූ ලක්ෂ 706,500 ක් දක්වා ගෙවා ඇති බව ඉදිරිපත් කර ඇති ගෙවීම් ලේඛන අනුව පෙනී යයි. එසේ වරින් වර වෙනස් වූයේ කල කායර්යන් ප්‍රමාණය ඇණවුම් අනුව ගණනය කිරීම හේතුවෙන් බවට ප්‍රකාශ වෙයි.
- ❖ මෙහිදී වැදගත් කරුණ වන්නේ වෘත්තීය දීමනාවක් ලෙස ගෙවා ඇති මුදල ලැබීමට ඉල්ලුම්කරු වෘත්තීයයෙක් නොවේ යන්නයි. වෘත්තීයයෙක් නොවන ඉල්ලුම්කරුට වෘත්තීය දීමනාවක් හිමි නොවේ. ඉල්ලුම්කරුට ඒ අනුව ගෙවා ඇත්තේ මාසිකව ලැබිය යුතු වැටුප බව පැහැදිලි වෙයි.

❖ ඉල්ලුම්කරු ඉටු කර ඇති කාර්යයන් සැලකීමේදී සහ ඉල්ලුම්කරුගෙන් ඉටුකර ගැනීමට අපේක්ෂිත වැඩ කොටස් (*List of duties*) ලබා දී ඇත්තේ සේවයෝජක විසිනි. එම වැඩ කොටස් කිසියෙක් යම් ක්ෂේත්‍රයක් සම්බන්ධයෙන් විශේෂ දැනුමක්, පුහුණුවක්, සුදුසුකමක් සහිත වෘත්තිකයෙක් විසින් ඉටු කරනු ලබන කාර්යයන් නොවේ. නිදසුන් ලෙස වෛද්‍ය, ඉංජිනේරු, නීතිඥ, ගෘහ නිර්මාණ ආදී ක්ෂේත්‍ර සැලකීමේදී ඔවුන් වෘත්තිකයින් වේ. වෘත්තීය සහ රැකියාව යන අංශ දෙක සැලකීමේදී වෘත්තීයක් රැකියාවෙන් වෙනස් වන ආකාරය අවබෝධ කරගත හැකි වෙයි. වෘත්තිකයෙකු වෘත්තීය දීමනාවක් සඳහා හිමිකම් ලබන අතර සේවකයෙකු වැටුපක් සඳහා හිමිකම් ලබයි. ඒ අනුව මෙම ඉල්ලුම්කරු සේවකයෙකු ලෙස කටයුතු කර වැටුපක් ලබා ඇති බව තීරණය කරමි”.....

In his reasoning, the Commissioner has taken into consideration the fact that the 5<sup>th</sup> Respondent had worked under the Petitioner, especially pertaining to the issuance of letters of employment to the employees, approval of gratuities to employees who have been terminated, entering into contracts and subcontracts with other institutions on behalf of the Petitioner, purchasing capital assets and of selling goods, collecting monies, representing the Petitioner pertaining to banking matters. The Commissioner also has considered the documents in which the 5<sup>th</sup> Respondent was described as the Chief Operations Officer. Accordingly, he has provided reasons for his rejection of the Petitioner’s version that the 5<sup>th</sup> Respondent is an independent contractor offering consultancy services as opposed to being an employee. In coming to the said conclusion, I observe as per the reasoning of the Commissioner, he has applied the control test in considering the remuneration as laid down in the case of ***Ready-Mix Concrete Ltd v. Minister of Pensions (1968) 1 AER 433***. This is evident when he has summarised the evidence about the 5<sup>th</sup> Respondent being subject to obtaining leave from the board of directors, *and the payments made*. The Commissioner has considered the copies of email that have been produced before him as evidence whereby the 5<sup>th</sup> Respondent had subjected himself to the Petitioner’s supervision.

This Court also observes that the Petitioner has not challenged the compensation awarded which had been calculated on the compensation calculation method published in Gazette Extraordinary 1384/07 of 15.03.2005. It is also observed that the Petitioner in his Petition has not impugned the procedure of the inquiry nor have they challenged the acceptance or of evidence led at the inquiry. Let me now consider the objections of the Respondent.

## **Objections raised by the Respondents**

The 5<sup>th</sup> Respondent has challenged the Petitioner's right to invoke the jurisdiction of this Court on the basis that no proper proxy has been filed on behalf of the Petitioner company, as the person who filed the proxy had ceased to be a director of the company at the time of filing this application. Hence, the argument that the signatory of the proxy could not have represented the company and authorise the lawyers to file this application on behalf of the Petitioner. To demonstrate this, the Petitioner has tendered a certified copy of form 20, marked as 5R1 which demonstrates that the said director had ceased to be a director even in 2020. This position has not been challenged by the Petitioner but the Counsel for the Petitioner submitted, that though the person who signed the proxy was not a director he has been a working director of the company.

Keeping it as it may, the 5<sup>th</sup> Respondent has also taken an objection of undue delay. It appears that the impugned order marked as P9 is dated 09.03.2021. In the said order, the Petitioner has been ordered to deposit the sum depicted thereon on or before the 22.03.2021. However, the Petitioner has invoked the Writ jurisdiction of this Court on 31.10.2021, which is around 7 months subsequent to the date reflected in P9. Hence, the 5<sup>th</sup> Respondent argues that there is an unexplained undue delay in filing this application.

## **Conclusion**

I have considered the submissions made by the Counsel and the material tendered to this Court. As I have stated above the Petitioner's main ground at the argument stage was that there is no valid award as it does not contain reasons. However, by document marked as X the reasons for the award were tendered to this Court by the learned State Counsel which contains the date as 11.01.2021. Hence the Petitioner's main contention of the impugned decision not giving reasons has to fail.

Even though it was not contended at the argument stage, the next ground pleaded namely, the 5<sup>th</sup> Respondent does not fall within the purview of TEWA on the basis that he was an independent contractor providing consultancy services, was considered by the Commissioner, who rejected the same and found that the 5<sup>th</sup> Respondent was an employee. As I observed earlier, this finding was not specifically impugned by the Petitioner.

In my view, the Commissioner by accepting the recommendation and the findings in document marked as X which is the basis and the reasoning for his conveyance of the order in P9, has acted within his powers and taken all relevant matters into consideration and has come to the conclusion. Though the Petitioner pleaded that the impugned order is bad in law as the 1<sup>st</sup> Respondent has acted contrary to the provisions of TEWA the Petitioner failed to demonstrate the instances the Respondent has acted against the provisions of TEWA. Though the Petitioner also contended that the order of the 1<sup>st</sup> Respondent is unreasonable, procedurally improper, is in violation of natural justice, and is an error of law on the face of the record the Petitioner failed to establish the said contention. The Petitioner has failed to establish the allegation of unreasonableness, the instances of procedural impropriety and the instance where the rules of natural justice have been violated. Hence, the said allegations have to fail.

In these circumstances, I see no illegality in the impugned order P9 and the Petitioner has failed to establish any necessity for this Court to interfere with the said decision. Accordingly, for the aforesaid reasons I refuse to grant the reliefs prayed for in the Petition and proceed to dismiss this Writ application. Costs to be borne by the respective parties.

**Judge of the Court of Appeal**

**Mahen Gopallawa, J**

I agree

**Judge of the Court of Appeal**