

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

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

**C.A. (Writ) Application
No: 0327/2022**

S & K Engineering Enterprises (Pvt) Ltd.
No. 380, Udumulla,
Mulleriyawa New Town.

Petitioner

Vs.

1. B.K. Prabhath Chandrakeerthi,
Commissioner General of Labour,
- 1A. H.K.A.A. Jayasundara,
Commissioner General of Labour,
- 1B. Mrs H.M.D.N.K. Wataliyadda,
Commissioner General of Labour,
2. D.P.K.R. Weerakoon
Commissioner of Labour (EPF),
- 2A. A.M.G.N.D. Sumanasena,
Commissioner of Labour (EPF),
- 2B. Mr K.L.K. Perera,
Commissioner of Labour (EPF).

(Both the 1B & 2B respondents are of:
The Department of Labour, No. 41,
Kirula Road, Colombo 05.)

3. C.P. Herathgama,
Assistant Commissioner of Labour,
District Labour Office,

ADM, Complex C, Siribopura,
Hambantota.

4. Rohitha Wijethunga
No. 126, Godawaya, Ambalantota.
5. Aluth Patabadige Palitha
Galwewa Temple Road,
Mahaara, Baragama, Ambalantota.
6. S.G.G. Somarathna
Hakurammulla, Pahala Baragama,
Ambalantota.
7. H.G. Jayawardhana,
No. 196/3, Baragama, Dahaviyura,
Ambalantota.
8. G.G. Dharmasena
No. 867, UD 67,
Nagarawewa, Mirijjawila,
Hambantota.
9. Daweddanage Sirisena
Nagarawewa, Mirijjawila,
Hambantota
10. D.N. Sirisena,
Galwewa, Mahaara, Baragama,
Ambalantota.
11. Lal Priyantha Wijesekara
No. 372/2, Udabaragama,
Ambalantota.
12. Desil Kumara Garusinghe
No. 249/C, Hakurammulla, Pahala
Baragama, Ambalantota.
13. Edirimannage Cyril
No. 42, UD 67,
Nagarawewa, Mirijjawila
Hambantota.

14. Mahesh Disanayake
Pasal Mawatha, Udabaragama
Ambalantota.
15. Wedage Ruwan Kumara
No. 993, Aluthpara, Katuwewa,
Hambantota
16. Dedduwa Jayathungage Premasiri
No. 867, Katuwewa, Hambantota.
17. K.D. Sanjeewa
No. 31, Dahampura, Pahala
Baragama
Ambalantota.

Respondents.

Before : R. Gurusinghe, J.
&
Dr. S. Premachandra, J.

Counsel : Asthika Devendra with Wasantha S. Widanage
Instructed by T. Jayawardena
for the Petitioner

N. Kahawita, S.S.C.
for the 1st to 3rd Respondents

Argued on : 18-02-2026

Decided on : 07-05-2026

JUDGMENT

R. Gurusinghe, J.

The petitioner is a company engaged in the construction business. Petitioner was sub-contracted by CCCC Second Harbour Engineering

Company Limited for the execution of earth work, minor structures, underpass construction, and drainage works relating to the extension of Southern Expressway Project in Pahala, Andarawewa area, in terms of the sub-contract No. 02-SEEP-GCFD-201608011 dated 09-09-2016. The Second Harbour Engineering Company Limited has, in turn, been sub-contracted by the main contractor, namely, “China Harbour Engineering Company”.

The 4th to 17th respondents made complaints before the District Labour Office, Hambantota, alleging that the petitioner has failed to make contributions in respect of Employees' Provident Fund (EPF) payments, Employee Trust Fund (ETF) payments, and payments due for work performed on Sundays and Poya days. There was an inquiry before the 3rd respondent, namely, the Assistant Commissioner of Labour, Hambantota, consequent to which an order dated 03-08-2022 was made.

The petitioner in paragraphs 5 and 6 states as follows:

“5. The Petitioner states that by the Application, the Petitioner is *inter alia* seeking to challenge the arbitrary, discriminatory, irrational, illegal, unreasonable, procedurally flawed, bias, malicious and prejudicial actions and/or inactions of one or more or all of the 1st to 3rd Respondents when conducting the impugned inquiry and arriving at the impugned order/decision/notice dated 03.08.2022 (morefully described herein later)

6. For the purpose of clarity, the petitioner states that the above referred impugned inquiry and order/decision/notice dated 03.08.2022 (morefully described herein later) arose out of a ‘fresh inquiry’ conducted in *lieu* of the settlement dated 20.07.2020 in CAWR 322/2019 (morefully described herein later) filed by the petitioner before Your Lordship’s Court by way of Petition and supporting Affidavit dated 19.07.2019.”

In CA Writ Application No. 322/2019, the 1st respondent consented to the holding of a fresh inquiry and vacated the order of the 3rd respondent dated 24-06-2019 marked P10 in that Application and marked X4 in the present application. Thereafter, a fresh inquiry was held pursuant to which the 3rd respondent made the order dated 03-08-2022.

The complainant respondents’ position at the said inquiry was as follows:

1. They were employees of the petitioner company being recruited to service by the officers of the company, namely Gayan, Chathuranga,

and Ajith, and they were paid a sum of Rs. 1,100/- as daily wages, and they collected their pay enclosed in an envelope upon signing a register.

2. They reported to work at the petitioner company office located at Katuwewa Handiya Road, Hambantota, at 7.00 a.m. and engaged in laying the drainage and flattening the soil, and the persons called Bandusena, Chamara, Ajith and Gayan had been at the project site acting as supervisors.

The petitioner's position was that the complainants were not employees of the petitioner company. It was further contended that the petitioner company has been in operation for approximately twenty-eight years and has been adhering to an established procedure in recruiting employees, and that a supervisor, such as the individual named Ajith, whom the complainant was alleged to be the person who had employed them, was not vested with the requisite authority to recruit employees on behalf of the company.

The petitioner further states that any prospective employee is required to execute a service agreement with the petitioner company, and, in support thereof, copies of a specimen service agreement were produced, marked P9A and P9B. The petitioner further states that each employee's salary will be credited directly to their respective bank accounts. The petitioner further states that none of its employees has been remunerated by way of cash payments in envelopes, as alleged by the complainants. Copies of a few salary slips, containing EPF details, were produced, marked P10A and P10B.

The petitioner further states that the attendance of employees was recorded on attendance cards, which were duly countersigned by both the employee and the employer, and that a copy of the attendance card was retained by the employee. It was further contended that if the complaint is in fact employed by the petitioner, they should have possessed an attendance card for each month they have been employed. Petitioner further states that such attendance cards were produced by the petitioner at the inquiry; however, the 3rd respondent did not mark the same, as they did not contain the names of the complainants.

Petitioner further states that several companies were subcontracted by the main contractor, and that the main contractor's subcontractors, including Second Harbour Engineering Company Limited, also in turn subcontracted other companies, including the petitioner, to facilitate and expedite the execution of the project. Petitioner further states that the work so

subcontracted included work of a similar nature or the identical work for which the petitioner company was subcontracted.

On behalf of the respondents, the 3rd respondent filed an affidavit together with supporting documents. The 3rd respondent states that the inquiry was conducted by affording both parties to be heard. The 3rd respondent further states that the 4th to 17th respondents had given affidavits affirming that they had served under the petitioner company. The petitioner company contended that the 4th to 17th respondents were not employees of the petitioner company.

Upon conclusion of the inquiry, the 3rd respondent informed the petitioner by letter dated 12-07-2022 marked P18, as follows:

WH/COM/MS/22/15 අංක දරණ පැමිණිල්ල සම්බන්ධවයි

උක්ත අංක දරණ පැමිණිල්ලට අදාළව ඔබ විසින් ලිඛිත දේශන හා වාචික කරුණු ඉදිරිපත් කිරීමෙන් අනතුරුව සේවක අභිසාධක අරමුදල් ගණනය කර අයකර ගැනීමට තීරණය කළ අතර යථාකාලයේදී ගණනය කරන ලද සේවක අභිසාධක අරමුදල්වලට අදාළ නිවේදන ඔබ වෙත එවීමට කටයුතු කරන බව මෙයින් කාරුණිකව දන්වා සිටිමි.

Thereafter, by the letter dated 03-08-2022, marked P19, the 3rd respondent informed the petitioner that the sum of Rs. 1,395,899.40 was payable as EPF contributions, together with a surcharge applicable for the period from September 2016 to December 2019.

The petitioner filed this application seeking *inter alia* the following reliefs:

- B. Make an order directing one or more or all of the 1st to 3rd Respondents to submit the final decision and/or reasons of the impugned inquiry on which the order/decision/notice dated 03.08.2022 (marked as P-19) is based on;
- C. Grant and issue an interim order suspending the operation of the order/decision/notice dated 03.08.2022 (marked as P-19) until the final determination of this application;
- D. Grant and issue a mandate in the nature of a Writ of Certiorari quashing the decision reflecting in letter/correspondence dated 12.07.2022 (P-18);

- E. Grant and issue a mandate in the nature of Writ of Certiorari quashing the order/decision/notice dated 03.08.2022 (marked as P-19);
- F. Grant and issue a mandate in the nature of Writ of Prohibition, prohibiting one or more or all of the 1st to 3rd Respondents from executing the order/decision/notice dated 12.07.2022 (marked-18);
- G. Grant and issue a mandate in the nature of Writ of Prohibition, prohibiting one or more or all of the 1st to 3rd Respondents from executing the order/decision/notice dated 03.08.2022 (marked as P-19)
- H. Grant and issue a mandate in the nature of Writ of Prohibition prohibiting one or more or all of the 4th to 17th Respondents from seeking to execute the order/decision/notice dated 03.08.2022 (marked as P-19).

The petitioner's position is that the 4th to 17th respondents were not employed by the petitioner company, and that, in any case, they failed to provide any material evidence at the inquiry to establish that they were employed by the petitioner.

One of the complaints of the petitioner is that the inquiring officer asked the petitioner company to prove the negative proposition, in other words, to prove that the petitioner did not employ the complainants. The 4th to 17th respondents have not produced any document material to establish that they were employees of the petitioner company. The 4th to 17th respondents have merely filed affidavits without any supporting documents as evidentiary proof. Paragraphs 11, 14, paragraph 29 IX, paragraph 30 (d) of the objections filed by the 3rd respondents are as follows:

Paragraph 11

4 සිට 17 දක්වා වග උත්තරකරුවන් ඉදිරිපත් කරන ලද දිවුරුම් ප්‍රකාශ වල නිරවද්‍යතාවය පරීක්ෂා කිරීමේ බලයක් මාහට නොමැති බැවින් ද ඒවා සාවද්‍ය බව පිළිගැනීමට ප්‍රමාණවත් හේතුවක් නොමැති බවින් ද සේ.අ.අ. අයකිරීම සම්බන්ධව බාධාවක් නොමැති බවට කමිකරු දෙපාර්තමේන්තුවේ නීති ක්‍රියා අංශය මගින් උපදෙස් ලැබී ඇති බැවින්ද හිඟ සේ.අ.අ. ගණනය කළ බව ප්‍රකාශ කරමි.

Paragraph 14

පෙත්සම් කාර පාඨවයට සාක්ෂිකරුවන් ඉදිරිපත් කිරීමට කටයුතු කරන ලෙස කැඳවීම් ලිපි මගින් දැනුම් දී තිබුනද ඔවුන් විසින් සාක්ෂි කරුවන් ඉදිරිපත් කිරීමෙන් වැලකී සිටි බවද 4 සිට 17 දක්වා වග උත්තරකරුවන් විසින් තොරතුරු ලබා දුන් සාක්ෂි කරුවන් 02ක් පරීක්ෂනයට කැඳවුවත් ඔවුන් සාක්ෂි ලබාදීමට නොපැමිණි බවද ප්‍රකාශ කර සිටිමි.

Paragraph 29 IX

පෙත්සම්කාර ආයතනයට සාක්ෂි කරුවන් රු ගෙන එන ලෙස 2020.01.24 දිනැති ලිපිය මගින් දැනුම් දුන්නද ඒ සඳහා ඔහු උනන්දුවක් නොදැක්වීම අදාල ලිපිය X53 ලෙස සලකුණු කර ඉදිරිපත් කරමි.

Paragraph 30 d

පෙත්සම්කරු විසින් මෙම පැමිණිලිකරුවන් සේවයේ යොදවන ලද ස්ථානය තුළ සේවය කරන ලද ස්ථිර සේවකන් පරීක්ෂණ අවස්ථාවට ඉදිරිපත් කිරීමට දැනුම් දුන්නද එසේ කිරීමට අපොහොසත් වීම හෝ මහ හැරීම මගින් පරීක්ෂනය සඳහා අවශ්‍ය සහාය නොදැක්වීම හා කරුණු වසන් කිරීමට උත්සහ දැන බව ප්‍රකාශ කරමි.

Paragraph 11 of the objections indicates that 3rd respondent had not evaluated the correctness of the facts set out in the submitted affidavits. Further, the said objections of the 3rd respondent, referred to above, clearly demonstrate that the 3rd respondent directed the petitioner to prove that the petitioner had not employed the 4th to 17th respondents, and that the 3rd respondent acted contrary to the settled principles of the burden of proof.

Sections 101 and 102 of the Evidence Ordinance are as follows:

101. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Accordingly, the 4th to 17th respondents were required to establish that they were employed by the petitioner company. Proving an employer-employee relationship when the employer denies it requires demonstrating that the reality of the working arrangement was one of employment, regardless of how the employer labelled the worker.

The 3rd respondent substantially relied on Section 33 of the Employees Provident Fund Act. Under the said provision, the burden shifts to the employer or the petitioner only if they have tendered prima facie sufficient evidence showing that they have been working for the petitioner company.

Section 33 of the EPF Act is as follows:

33. *Every employer of employees in a covered employment shall maintain such records as may be determined by the Commissioner and notified in the Gazette.*

The 3rd respondent has been highly critical of the petitioner, stating that the Petitioner has failed to maintain proper records in respect of the 4th to 17th respondents. This provision must be applied only if there is some material evidence indicating that the 4th to 17th respondents have, in fact, served under the petitioners.

The petitioner has produced the documents regarding its employees. The 3rd respondent states that the petitioner produced only the documents regarding permanent employees. The petitioner produced documents regarding its employees, including their labourers' who worked on the Southern Expressway at Hambantota.

The definition of Employee and Employer according to the EPF Act is as follows:

“employee” means any person who has entered into or works under a contract with an employer in any capacity, whether the contract is expressed or implied, or oral or in writing, and whether it is a contract of service or of apprenticeship or a contract personally to execute and work of labour, and includes any person ordinarily employed under any such contract, whether such person is or is not in employment at any particular time, and does not include a detached worker for the period of time specified in a social security agreement applicable to such detached worker;

“Employer” means any person who employs or on whose behalf any other person employs any workman and includes a body of employers (whether such body is a firm, company, corporation or trade union), and any person who on behalf of any other person employs any workman, and includes the legal heir, successor in law, executor or administrator and liquidator of a company; and in the case of an incorporated body, the President or the Secretary of such body, and in the case of a partnership, the Managing Partner or Manager.

The 3rd respondent in the document marked X 47, dated 22-06-2022, refers to three tests for the identification of the employer-employee relationship.

1. Controlled test
2. Integration test
3. Economic reality test/dependants test

The above tests are applicable only when the 4th to 17th respondents have produced some evidence to the effect that they have served under the petitioner company. Apart from their bare assertions, there is no other evidence to establish that the 4th to 17th respondents were employees of the petitioner. They stated that they were paid salaries by putting the money in an envelope. They also state that they have served for a period of approximately 2 years. However, if the mode of payment was correct, it is reasonable to expect at least the name and the amount paid to be written on the envelope. The 4th to 17th respondents have not produced any such envelope in support of their claim.

The 3rd respondent stated in X47 that one storekeeper of the petitioner company, namely Bandusena, had given a statement to the effect that the complainants had worked on the petitioner's site and had been issued with equipment, such as a hoe. However, in the document marked P13 e, the 3rd respondent herself has recorded as follows:

P13 e

ආයතනයේ ස්ථීර සේවකයකු ලෙස සේවය කල යු.ඩබ්.ඒ. බන්දුසේන නැමැති අය අද දින සාක්ෂි ඉදිරිපත් කිරීම සඳහා කාර්යාලයට පැමිණ සිටිය. පැමිණිල්ලට අදාල සේවකයන් සියලු දෙනා පිළිබඳ මතකයක් නොමැති බවත් පැමිණිල්ලට අදාල ප්‍රේමසිරි නැමැති අය, ඊ. එම්. සිරිල් නැමැති අය සහ ඩබ්. පී. ජයවර්ධන නැමැති අය නම්වලින් මතක බවත් තවත් සමහර පුද්ගලයින් නම් වශයෙන් මතක නැති බවත් පුද්ගලයන් වශයෙන් පමණක් මතක බවත් ප්‍රකාශ කරයි. එසේම උපකෝන්ත්‍රාක්කරුවන්ද ඒ අතර සේවය කල බවත් ප්‍රකාශ කරයි. මෙම පැමිණිලි කරුවන් මෙම සේවකයා යටතේ සේවය කල ද යන්න සනාථ කිරීමට නොහැකිබව ද ප්‍රකාශ කරයි.

Bandusena had not made any statement under oath or affirmation. Document marked P 13(e) indicates that Bandusena's statement does not prove that the 4th to 17th respondents have served under the petitioner. His statement merely indicates that workers from other subcontractors had been working on the same work site. Further, he said he was not in a position to confirm that the 4th to 17th respondents had been served under the petitioner company.

In Paragraph 37 x of the petition, the petitioner states as follows:

“On both 14-03-2022 and 28-03-2022, the 3rd respondent has directed the company representatives to leave and has retained the complainants and

proceeded to have discussions with the complainants in her official cubicle once the inquiry concluded.” Further, in paragraph 37 xi of the petition, the petitioner states as follows:

“At the inquiry held on 14.03.2022 when inquired as to how and why would the inquiry proceed if there is no proof of employment of the Complainants to which the 3rd Respondent had informed that even if documents are not available, she is convinced that even though the period of employment alleged by the Complainants may not be accurate she is well aware of their employment; මෙහෙල්ලෝ වැඩකරා කියන කාලය වැරදි වෙන් පුලුවන්, හැබැයි මෙයාලා වැඩ කරලා තියෙනවා. ඒ බව මම පෞද්ගලිකව විශ්වාස කරනවා.”

The above statement demonstrates that the 3rd respondent had already decided the matter in favour of the complainant before the conclusion of the inquiry. It is apparent that the 3rd respondent was biased and inclined in favour of the Complainants even in the absence of any proof of employment.

The 3rd respondent has not specifically addressed the two allegations above in her affidavit. The petitioner also states that it brought irregularities to the attention of the 1st respondent by letter dated 05-04-2022, marked P14.

There exist material contradictions between the standard complaints and the affidavits of the 4th to 17th respondents. For example, the 6th respondent's standard complaint form states that he joined in September 2016, and no date is specified for when he left the petitioner company. But in his affidavit, he states that he began work on 07-08-2017 and continued until 03-01-2018. Similarly, the 9th respondent's standard complaint indicates that he joined the petitioner company on 02-01-2016 and left on 13-10-2018. However, the affidavit states he joined the petitioner company on 01-02-2017.

In paragraph 51 of the petition, the petitioner describes the contradictory position taken by the 5th, 11th, 12th and 17th respondents. The 3rd respondent has failed to answer paragraph 51 of the petition in her affidavit. The 3rd respondent states that she had no reason to disbelieve the affidavits of the 4th to 17th respondents. Accordingly, the 3rd respondent's decision was based on such unreliable evidence. The 3rd respondent did not have evidence to calculate the EPF as she did in P19. That decision, therefore, is arbitrary.

The 3rd respondent has failed to give reasons for the decisions in documents marked P18 and P19. In the case of Karunadasa v. Unique Gem Stones Ltd. And others [1997] 1 Sri LR 256 The Supreme Court held that *“Natural Justice also means that a party is entitled to reasoned consideration of his*

case; 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.”

As the 3rd respondent has failed to give reasons for decisions in P18 and P19, she has not properly observed the rules of Natural Justice.

Accordingly, for the foregoing reasons, the Court allows the petitioner’s application. Petitioner is entitled to the relief sought in paragraphs D, E, F, G and H of the prayer of the petition.

Application is allowed.

Judge of the Court of Appeal

Dr. S. Premachandra J.

I agree.

Judge of the Court of Appeal.