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

In the matter of an Application for Orders in the nature of Writs of Certiorari, Prohibition and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Serendipol (Pvt) Ltd,
Pannala Road, Dandagamuwa,
Kuliyapitiya.

CA (Writ) App. No. 158/2023

PETITIONER

Vs.

1. Commissioner General of Labour,
   Labour Secretariat,
   Narahenpita, Colombo 05.

2. Ms. Padma Rathnayake,
   Assistant Commissioner of Labour
   Zonal Labour Office,
   Wayamba Zone,
   Parkrambahu Mawatha,
   Meegahakotuwa, Kulliyapitiya.

3. R.D. Lal Padmasiri,
   Pahala Kalugamuwa, Kuliyapitiya.

4. L.A.S.P. Gunathilaka,
   Hammalawa Waththa, Kuliyapitiya.

5. U.A. Priyantha Sulalith,
   Kolongahamulahena,

Dandagamuwa West, Kuliyapitiya.

6. D.M. Wijepala,
   Kaburapola, Moonamaldeniya.

7. M.K.N.T. Perera,
   Kaburapola, Moonamaldeniya.

8. S.A. Thilak Sanjeewa,
   Bangalawaththa, Ahugoda, Pothuhera.

9. W.N. Kumar Fernando,
   Kaburapola, Moonamaldeniya.

10. S. Sathyanandan,
    No. 21, Senanigama, Dandagamuwa,
    Kuliyapitiya.

11. A.A. Priyankara Perera,
    Kaburapola, Moonamaldeniya.

12. J.K.R.S. Jayasinghe,
    No. 65/1, Pinlinda Road, Urupitiya,
    Kuliyapitiya.

13. P.K.D. Ajith Sampath,
    Ihalagama Uthura, Udubaddawa.

14. H.K. Thilakaratne,
    Ihalagama Kalugamuwa,
    Thalahitimulla.

15. K.P.R.L. Kumara,
    Wilapola, Udubaddawa.

16. R.L. Dayananda,
    No. 313/15, Paragodamulla,
    Walakuburumulla.

17. M.M.A. Pushpakumara,
    Kaburapola, Moonamaldeniya.

18. S.P.T.S. Somananda,
    Ihala Kalugamuwa, Thalaitimulla,
    Kuliyapitiya.

19. J.M.N. Jayakody,
    08 Post, Wendesiwaththa,
    Thalahitimulla, Kuliyapitiya.

20. M. Rathnasiri,
    Haugammana, Thalahitimulla.

21. M.R.I. Perera,
    No. 285/3, Kaburapola,
    Moonamaldeniya.

22. R.D.C. Nishantha,
    Polgaha Agara, Wathugahamulla.
    Nathtandiya.

23. M.S.S.D. Perera,
    Kaburapola, Moonamaldeniya.

24. W.A.W.R. Wickrama Arachchi,
    No. 18/1, Kaburapola,
    Moonamaldeniya.

25. M.I.N.S. Priyantha,
    Boruwewa, Ilukhena.

26. H.M.A. Herath,
    Kaburapola, Moonamaldeniya.

27. K.M.U.S. Karunanayake,
    Pahala Elathalawa, Katuwalla,
    Deegalla.

28. W.A. Ranasinghe,
    Kumbalwela, Illukhena.

29. A.M.P. Wickramasinghe,
    Ihala Kanogama, Katupotha.

30. H.A.T. Hettiarachchi,

Rathmale Waththa, Pahala Diyadora.

31. H.M.D.P. Dissanayake,
Ihala Elathalawa, Deegalla.

32. S.W.R.V. Kumara,
Alankare, Moragane.

33. S.P.M.N.M.P. Kumara,
Wahumuwa, Kithalawa.

34. T.A.A. Fernando,
No. 77, Yaganwela, Dummalasuriya.

35. H.M.R. Pushpakumara,
Pahala Elathalawa, Katuwella.

36. K.M.M.P. Kasthuri,
Demaladora, Katupotha.

37. M.P.S. Kumara,
Ihala Kalugamuwa, Thalahitimulla. Kuliyapitiya.

38. J.A.B.S. Kumara,
Walakumburumulla, Weralugama.

39. L.P.S. Kumara,
Walakumburumulla, Weralugama.

40. L.R.J.S. Kumara,
Pahala Elathalawa, Deegalla.

41. W.A.P.P. Kumara,
Ihala Kalugamuwa, Thalahitimulla.
Kuliyapitiya.

42. K.B.R. Nayanajith,
Ihala Kalugamuwa, Thalahitimulla.
Kuliyapitiya.

43. G.D.K. Godagamage,
Koskele Watta, Kabalewa, Deegalla,
Kuliyapitiya.

RESPONDENTS

Before: Dr. D. F. H. Gunawardhana, J.

Counsel:

Geoffrey Alagaratnam, P.C., with Luwie Ganeshathasan for the Petitioner.

Mihiri de Alwis, S.S.C., for the 1st Respondent.

Chamara Wannisekara with Isuri Cooray instructed by Dineth Kaushalya for the 3rd to 11th, 15th, 16th, 17th, 19th to 26th, 31st and 32nd Respondents.

Argued on: 09.03.2026

Delivered on: 16.07.2026

Dr. D. F. H. Gunawardhana, J.

Judgement

Introduction

The Petitioner is a body corporate incorporated under the laws of Sri Lanka, and it claims that it is a company partnered with more than 1,000 coconut farmers who grow coconuts within the Coconut Triangle and process approximately 30 million coconuts annually. The Petitioner processes such coconuts into virgin coconut oil, coconut milk, desiccated coconut, coconut chips, and coconut water, primarily for export. Thus, it supports farmers in transitioning to regenerative organic methods that enrich the soil, promote the system and improve yields, help sequester atmospheric carbon, and increase resilience levels. The Petitioner further claims to be the first company in the world to obtain a Regenerative Organic Certification for coconuts.

Further, the Petitioner asserts that, between the years 2017 and November 2021, it employed the 3rd to 43rd Respondents for the purpose of collecting, loading, and transporting coconuts from plantations to the factory, and that their employment was not governed under the purview of the Motor Transport Trade Wages Board.

On a complaint made by the 3rd to 43rd Respondents, the 2nd Respondent on the direction of the 1st Respondent had taken a decision to recover the overtime payable between January 2017 to December 2017, and January 2018 to November 2021, separately. For that purpose, the 2nd Respondent had issued two notices marked as **P1** and **P2** annexed to the Petition, which the Petitioner challenges in this Application.

Accordingly, the Petitioner is a body corporate incorporated under the laws of Sri Lanka and is capable of suing and being sued in its corporate name. The 1st Respondent is the Commissioner General of Labour, who is vested with the authority to take decisions under the Wages Boards Ordinance and the regulations made thereunder. The 2nd Respondent is the Assistant Commissioner of Labour, Kuliyapitiya, and the 3rd to 43rd Respondents, according to the Petitioner, are complainants who made complaints against the Petitioner to the 2nd Respondent and are the beneficiaries of the notices marked **P1** and **P2** annexed to the Petition.

After the issuance of formal notice, the Respondents filed their respective Objections and moved for the dismissal of this Application.

This was argued before me on 09.03.2026, followed by the submission of Written Submissions; hence, this judgement.

The Petitioner's complaint

The Petitioner is a body corporate, and it can sue and be sued in its corporate name; further, to establish this the Petitioner has marked **P3**, its Certificate of Incorporation, and the Petitioner claims that its main business is collecting coconuts from various producers who are suppliers, and then, in its factory, the coconuts so collected are subjected to processing into various products. Thus, the end products are desiccated coconut and various other value-added products. The Petitioner is engaged in the export and sale of the said value-added products overseas and is thereby earning foreign exchange.

Further, the Petitioner admits that the 3rd to 43rd Respondents were employed by the Petitioner to collect coconuts from various suppliers, and for that purpose they were employed to operate lorries and various other modes of transportation and bring the collected coconuts back to the factory.

In addition to that, by the two letters marked **P4** and **P5**, the Petitioner received notices from the 2nd Respondent stating that they had received complaints from the 3rd to 43rd Respondents, who were employed under the Petitioner, regarding the Petitioner's failure to pay their overtime for the periods from January 2017 to December 2017 and from January 2018 to November 2021. Thereby, the 2nd Respondent called the Petitioner for information to calculate their overtime and wages.

Thereafter, in response to those two letters, the Petitioner furnished all the required information, which is reflected in the document marked **P6**. In addition to that, the Petitioner has marked documents **P6(a)** to **P6(e)** as annexures to **P6**, which relate to the overtime and payments of the Respondents. However, **P6(e)** is a document containing an extract of the Wages Boards Ordinance and the relevant regulations made thereunder. Thereafter, based on that, the Petitioner has taken the position that the overtime of the 3rd to 43rd Respondents had been calculated according to the basic wages applicable to a worker in the coconut industry and not the transport industry, though the said Respondents may have been engaged in the transportation of coconuts and, of course, not only transportation but also collecting and picking coconuts as well.

Since, the Petitioner's main business is not transportation, but processing coconuts through value addition. For that purpose, the Petitioner has to collect coconuts from various estates belonging to suppliers to obtain the coconuts necessary for its industry. Thus, the 3rd to 43rd Respondents were employed mainly to collect and bring coconuts to the factory. Therefore, they cannot be treated as employees engaged in the transportation industry but rather as employees in the coconut industry.

Further, although part of their work may involve transporting coconuts, they are not engaged solely in transportation. Therefore, the Petitioner's position is that it has calculated the wages according to the wages applicable to the coconut industry and, in fact, has paid amounts in excess of what was required as overtime.

The Petitioner maintains the position that it is not in arrears of any payment and has not calculated or paid less than what is required. However, thereafter, the Petitioner claims that it received the two letters marked **P8** and **P9**. Accordingly, the document marked as **P8** is regarding the wages and overtime had not been calculated correctly for the period between January 2017 and December 2017, and therefore, the calculations had been made according to the relevant regulations. Thus, if there was any issue with regard to the same, the Petitioner was instructed to meet the Labour Officer in Kuliyapitiya, one Mrs. Abeysinghe. In addition, similar information was given as reflected in the document marked **P9.** However, that is related to the period commencing from January 2018 to November 2021.

Further, there was subsequent correspondence between the Petitioner and the 2nd Respondent, which is marked as **P10** and **P1**1; the document marked as **P10** relates to the period from January 2017 to December 2017, while **P11** relates to the period commencing from January 2018 till November 2021.

Further, the Petitioner raised its objections by the document marked **P12** annexed to the Petition with regard to those two documents. However, the Petitioner had received notices under Section 46(3) of the Wages Boards (Amendment) Act, No. 14 of 2019, (hereinafter referred to as the "Act"), from the 2nd Respondent, which are marked as **P13** and **P14.**

Thereafter, there was further correspondence between the parties. However, after a final notice was issued, and the 2nd Respondent instituted action in the Magistrate's Court of Kuliyapitiya, which is reflected in the document **P21**, to recover the calculated amount of arrears of overtime payments due to the 3rd to 43rd Respondents, as calculated by the 2nd Respondent and reflected in **P1** for the period between January 2017 and December 2017. Moreover, by a similar intimation, notice was also given with regard to the period from January 2018 till November 2021 for the overdue overtime payable by the Petitioner to the 3rd to 43rd Respondents, which is marked as **P2**. Thereby, payment was demanded by those two letters, and since the Petitioner had not paid the same subsequent to the notices marked **P13** and **P14**, the Respondents instituted the said application in the Magistrate's Court.

Therefore, the Petitioner challenges the documents marked **P1** and **P2** on the basis that the calculations were made by the 2nd Respondent without affording the Petitioner for a hearing and on the basis of Motor Traffic Transport Wages Board Ordinance.

Secondly, the Petitioner challenges the same on the basis that the calculations are erroneous, since by the time the claim was made, more than four years have passed. However, the calculations were made on the basis that the arrears could be calculated for a period of six years in terms of the amendment introduced in 2022.

The Respondents' Objections

It is the position of the Respondents that, since the Petitioner had failed to calculate and pay the overtime payments arrears to the employees, namely the 3rd to 43rd Respondents to this application, upon their complaint and based on the information provided by the Petitioner, the 2nd and 3rd Respondents calculated the amount due and payable after deducting the amounts already paid.

Thereby, the balance overdue payment was then communicated to the Petitioner by the documents marked **P8** and **P9**; thereafter, the Petitioner failed to make the said payments. Accordingly, the Respondents had no other option but to institute action.

Further, the Respondents rely upon five documents, namely **R1** to **R5,** annexed to their Statement of Objections; **R1** and **R2** are the two documents relied upon by the Respondents in calculating the salaries and overtime payable according to the wages paid by the Petitioner to the Respondents. Further, **R3** reflects the minutes of the meeting conducted by the 2nd and 3rd Respondents. In addition to that, the Respondents also rely upon two other documents marked **R4** and **R5**, which have been marked by the Petitioner as **P11** and **P13**, respectively.

After filing the averments contained in the Statement of Objections, the Petitioner filed its Counter Affidavit denying the averments contained therein and further reaffirming the averments set out in the Petition.

Thereafter, the matter was argued before me on 09.03.2026, and the following arguments were advanced.

Arguments

First argument advanced by Mr. Alagarathnam is that **P1** and **P2** are *ultra vires*, since the Petitioner is only engaged in an industry related to coconut and coconut products and by-products; therefore, the transport is merely an ancillary service, and in the course of its business, if it has employed some employees to transport coconuts and if they work overtime, that does not fall within the industry of the Petitioner. Therefore, basing such employees who are working under the Petitioner within the Wages Board Ordinance and based on that, calculating overtime is erroneous and *ultra vires*.

Secondly, Mr. Alagarathnam argued that Section 46 of the Act is not only a procedural section but also a penal section, since it defines the offence. It is now being applied retrospectively from 2019 and goes backward for six years, which is two years more than the earlier period. Therefore, that has to be considered when the Petition is filed.

Thirdly, Mr. Alagarathnam argued that, in terms of Section 21, only the minimum salary can be taken into consideration when overtime is calculated. However, in this particular instance, the Commissioner has based the calculation on the salary paid to the employees, which is much higher than the minimum salary provided and contemplated by the Act itself. Therefore, that is also irrational.

However, on the other hand, Ms. Mihiri De Alwis argued that the Petitioner has employed employees in the course of its business; therefore, it falls within the purview of the Petitioner's business and industry, and therefore it is not *ultra vires*. Secondly, the salary paid by the Petitioner has to be taken as the basis on which overtime is calculated.

Questions to be decided

In view of the facts stated in the Petition, Objections, and the arguments advanced by way of oral submissions and written submissions, it is my view that the following questions arise for my consideration;

(i) What type of business or trade is the Petitioner engaged in

(ii) Is the 2nd Respondent justified at arriving at the decision to issue notice under Section 46 to recover overtime calculated in terms of the Motor Traffic Transport Wages Board Ordinance

(iii) Ancillary matters to be considered

The Petitioner asserts that it later became aware that the 3rd to 43rd Respondents had made complaints to the 2nd Respondent relating to overtime payments. Thereby, pursuant to the said complaints, the 2nd Respondent sought certain information from the Petitioner regarding the employees, and the Petitioner furnished the same by the documents marked as **P4** and **P5**.

By letter marked as **P6**, and annextures therein marked as **P6(a)**, **P6(c)**, **P6(d)**, and **P6(e)**, the Petitioner submitted that the calculations of overtime payments based on the minimum rates of wages prescribed under the Wages Boards Ordinance with regard to the employment. Therefore, based on those calculations, the Petitioner claims that the 2nd Respondent has miscalculated the wages.

However, the Petitioner states that, to its surprise and shock, the 2nd Respondent had issued two notices in respect of overtime payments, marked **P1** and **P2**. The first notice relates to overtime payments for the period from January 2017 to December 2017, while the second relates to the period from January 2018 to November 2021.

Further, the Petitioner raised its objections to the wage calculations by letter **P7** addressed to the 2nd Respondent. Thereafter, the 2nd Respondent responded to the said letter **P7** by two letters marked **P8** and **P9**.

The Petitioner's trade or business

The Petitioner challenges **P1** and **P2** mainly on the basis that the 2nd Respondent has arrived at his decision without considering the trade or business of the Petitioner as the basis for calculating the wages of the 3rd to 43rd Respondents. It is argued that the 2nd Respondent based his decision on the specific work performed by the 3rd to 43rd Respondents in the discharge of their duties as workmen. Therefore, Mr. Alagarathnam argued that such an approach is contrary to the wording of the Act, the intention of the legislature, and the interpretation given by the superior courts of this country. I will now consider that aspect of the argument.

According to the Petitioner, its main business is the collection and purchase of coconuts from various suppliers and processing them in its factory with value addition. It is stated that there are about 1000 suppliers registered with the Petitioner. Once the harvest is collected, the coconuts are processed into various value-added products, which are then exported and sold in the international market. Thus, earning foreign exchange is the main business of the Petitioner. Therefore, it is argued that transportation for the purpose of collecting coconuts is only an ancillary activity and cannot be considered as constituting the business, or even part of the business, of the Petitioner. Accordingly, it is contended that the decisions of the 2nd Respondent, to conclude overtime on the basis of the regulations made under the Motor transport Wages Board Ordinance resulting in **P1** and **P2**, are erroneous and irrational.

On a perusal of the Wages Board Ordinance, No. 27 of 1941, what is contemplated in Section 36 is the trade or business of the employer and not that of the employee.

For further clarity, I reproduce the said Section 36;

"36. Where a worker is employed on piece-work and a general minimum time-rate but no general minimum piece-rate has been determined under this Ordinance, the employer of that worker shall be deemed to pay wages at less than the minimum rate unless he shows that the piece-rate of wages paid would yield in the circumstances of the case at least the same remuneration as the general minimum time-rate"

This provision has been interpreted in two cases, namely *Sinnathamby v. Jinasena*[1], decided by Justice Basnayake, and *Abeygoonesekara v. Sinnathamby*[2], decided by Justice Nagalingam. In *Sinnathamby v. Jinasena*, it was argued that overtime should be calculated according to the work rendered by the workman. However, the Court held thus;

"The trade contemplated in the section is the trade of the employer and not that of the worker. In the instant case, the trade of the employer is the engineering trade, and the trade of the worker is the motor transport trade. The obligations imposed by section 36 in respect of an employer in the motor transport trade do not therefore fall on him. It is submitted by learned Crown Counsel that the words" in any trade" in section 36 are wide enough to catch up not only the employer's trade, but also the worker's trade. By themselves they are words of wide import, but their meaning is controlled by the context in which they occur. When the other provisions of the Ordinance are examined, it becomes apparent that when the Ordinance uses the words 'employer in any trade' it contemplates the employer's trade and not the worker's. Section 35 speaks of a worker in any trade, while section 37 speaks of every person engaged in any trade. The latter section also makes it clear that the obligation imposed thereby is imposed in respect of the trade of the employer and not that

[1] 53 NLR 139.
[2] 52 NLR 403.

of the worker. When it comes to the payment of wages the Ordinance provides that the employer shall pay the minimum wages applicable to the worker's trade (section 21)."

In the same breath, in the case of *Abeygoonesekara v. Sinnathamby*, wherein Justice Nagalingam held thus;

"'Trade includes any industry, business, undertaking, occupation, profession or calling carried out, performed or exercised by an employer'.

Having regard to this definition it would be clear that where an employer carries on a particular business or undertaking, then such business or undertaking would fall within the definition of the term - 'trade' as used in the Ordinance and before an employer can be said to be in the motor transport trade he must be shown to be carrying on the business or undertaking of a motor transport agent, that is to say, of one who holds himself out as being prepared to transport for reward goods by means of motor vehicles. Clearly, as indicated earlier, the appellant does not carry out, perform or exercise the business of a transport agent. Mr. Fernando ultimately conceded that this view -may be correct. Mr. Fernando, however, relies for his contention upon a reading of the definition from the standpoint of the worker, which would then run as follows:

'Trade includes any industry, business, undertaking, occupation, profession or calling carried out, performed or exercised by a worker.'

Looking at this definition it would be manifest that any occupation or calling exercised by a worker is in itself a trade and regarded as such for the purpose of the Ordinance. The trade of the worker, that is to say, the occupation or calling of the worker is in no way dependent upon and need not be related to any industry, business or undertaking in which the employer may be engaged. The employer in point of fact need have no business *whatsoever, and to this extent our law departs "largely from the law of England. That the occupation or calling exercised by the worker in this case is that of a lorry driver is undoubted. It would therefore be correct to describe the worker as one who is engaged in the lorry-drivers' trade, which trade is a branch of the larger trade designated the motor transport trade. The worker whom the appellant Is alleged to have underpaid is therefore one in the motor transport trade and he certainly is entitled under the notification to be paid the minimum wage, though the appellant may not be in the motor trade himself.*

The germ of the idea behind our definition of " trade" is to be found in the case of Skinner v. Jack Breach1[(1927) 2 K. B. 220] where the contention was put forward that both the worker and the employer must be engaged in the same business before that business could be regarded as a trade within the meaning of the Trade Boards Act. This contention was rejected in that case and the Judges took the view that it was immaterial that the employer was engaged in a trade different from that he employs the worker to carry on. Our Legislature adopted this view and gave it legal recognition by enacting the definition of the term 'trade' so as to include the occupation or calling of a worker, irrespective of what the trade of the employer may be. In other words, the definition catches up both classes of cases (1) where the employer and the worker are engaged in the same trade and (2) where the employer and the worker may be engaged in two different trades."

Accordingly, it is my view that the main business of the Petitioner is the collection, processing, and production of coconut into value-added products, and not transportation. If the Petitioner were engaged in the transportation business and rendered transportation services to third parties, it could then be said that the Petitioner is engaged in the business of transportation. However, that is not the position in the present case. Therefore, the decision taken on the basis of the Motor Wages Board Ordinance will apply to the workmen (3rd to 43rd Respondents) is irrational and erroneous.

Miscalculation of overtime

In this case, it is argued for and on behalf of the Petitioner that the 2nd Respondent has miscalculated the overtime based on actual wages paid. It is argued that the overtime under the Motor Traffic Transport Wages Board, if at all to be settled in favour of the 3rd to 43rd Respondents, cannot be calculated on actual wages; it has to be based on minimum wages. In support of this argument, the Petitioner relies upon the document marked as **P6(e**) annexed to the Petition, which is the Order of the Wages Board for the Motor Transport Trade as published in the Sri Lanka Labour Gazette No. 52 of 2001.

For further clarity, the relevant section of **P6(e)** is reproduced below which reads thus;

> *"OVERTIME RATE:*
>
> *1. In respect of each hour in excess of the normal working day the minimum overtime rate shall be one and half times the minimum hourly rate ascertained by dividing minimum monthly rate by 200."*

Accordingly, it is my view that the said argument is tenable; as such, the overtime calculated by the 2nd Respondent based on the actual wages under the Motor Traffic Transport Wages Board is erroneous. Therefore, what is reflected in **P1** and **P2** as overdue overtime payment recoverable from the Petitioner, payable to the 3rd to 43rd Respondents, are erroneously calculated. Thus, it is irrational and have to be quashed.

Prescription

The next argument is on the prescription of the determination reflected in **P1** and **P2**.

It is further contended on behalf of the Petitioner that Section 19(a) does not apply retrospectively, but only prospectively. Therefore, the calculation from 2017 is prescribed and thus cannot be sustained.

On the other hand, it was argued for and on behalf of the Respondents that the prescriptive period is extended up to six years; therefore, it is covered up to 2017 from the date of the calculation. As such, Section 19(a) introduced in 2022 is applicable.

It is argued that four years has to be calculated backwards from the date of the determination in terms of Section 19(a). However, Section 19(a) has been amended in 2019; according to which, the prescriptive period is now six years.

However, it is argued on behalf of the Petitioner countering the six-year period that Amending Act was brought in 1990, amending Section 19 and introduced Section 19(a), and it applies prospectively and not retrospectively. Even assuming that it accepts prospectively, only the 2017 calculation is prescribed because it is outside the four years.

Nevertheless, the argument based on that is unnecessary to be considered since I have already decided to issue writs quashing the decisions reflected in **P1** and **P2**, based on the other two grounds. Accordingly, the third matter is not necessary to be considered.

Conclusion

For the reasons adumbrated above, *Writ of Certiorari* is issued as prayed for in prayer *(b)* of the Petition, without costs.

JUDGE OF THE COURT OF APPEAL