

**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.*

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

CA (Writ) App. 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 05.
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.Wickramsinghe
16. P.B.S. Gunaratne

(Represented by the 4th Respondent Union named herein)

RESPONDENTS

CA (Writ) App. No. 381/2019

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

PETITIONER

Vs.

1. Hon. Mr. Ravindra Samaraweera,
Minister of Labour and Trade Union
Relations,
2nd Floor, Labour Secretariat,
Colombo 05.

2. The Secretary,
Ministry of Labour and Trade
Union Relations and Social
Empowerment,
2nd Floor, Labour Secretariat,
Colombo 05.
3. The Co-Secretary,
The Ministry of Labour,
2nd Floor, Labour Secretariat,
Colombo 05.
4. Mr. R.P.A. Wimalaweera,
Commissioner General of Labour,
Labour Secretariat,
No. 41, Kirula Road, Colombo 05.
5. Mr. K.D. Manoj Priyantha,
Labour Commissioner,
Industrial Relations Division,
Labour Secretariat,
No. 41, Kirula Road, Colombo 05.
6. Mr. P.A.S.C. Pathiraja,
Additional Commissioner General
of Labour,
Labour Secretariat,
Colombo 05.
7. United Tea Rubber and Local
Produce Worker's Union,
No. 513-2/1, Elvitigala Mawatha,
Colombo 05.
(With its Members being the 8th to
19th Respondents named herein)
8. P. Velayudan
9. W.G.B. Kamal Jayasena
10. D.M. Theekshana
11. K.A. Nimalsiri
12. Sarath Guruge
13. R.R. Pathmasiri

14. J.S.J. Fernando

15. S.R. Rozairo

16. M.W. Wijitha Wijesinghe

17. E.D. Sumith Ranasinghe

18. S.Wickramsinghe

19. P.B.S. Gunaratne

(Represented by the 7th Respondent
Union named herein)

RESPONDENTS

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

Counsel:

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

Prabhashanee Jayasekara, S.C., for the 1st to 3rd Respondent.

Argued on: 05.02.2026

Delivered on: 07.09.2026

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

Judgement

Introduction

The counsel on all sides agreed that both Applications can be disposed by one judgement; therefore, the judgement given in this Application applies to the connected Writ Application bearing No. 381/2019.

The Petitioner is a body incorporated in terms of Act No. 07 of 2007, and it can sue and be sued in its corporate name. It is a subsidiary of a large conglomerate known as the “Finlay Group of Sri Lanka” and carries on the business of *inter alia* processing and producing tea and tea bags for export.

Further, it has a subsidiary, namely, “Finlay Properties (Pvt) Limited and Finlay Teas (Pvt) Limited”. The Finlay parent company was incorporated in 1893 and commenced its operations.

The 1st Respondent is the Minister in charge of Labour, the 2nd Respondent is the Secretary to the Ministry, the 3rd Respondent is the Commissioner General of Labour, the 4th Respondent is the Trade Union named the United Tea, Rubber and Local Produce Workers’ Union, and the 5th to 16th Respondents were employees of the Petitioner and members of the 4th Respondent union.

The Petitioner, by this Application, challenges a decision of the 3rd Respondent, who took a decision on a complaint made by the 4th Respondent, while arbitral proceedings were pending before an arbitrator appointed under Section 4(1) of the Industrial Disputes Act No. 43 of 1950 (as amended) by the 1st Respondent.

Consequently, this matter was argued before me on 05.02.2026; hence this judgement.

The following arguments were advanced at the hearing of the case.

Arguments

It was argued for and on behalf of the Petitioner that making the complaint to the Deputy Commissioner, Mr. Manoj Priyantha (the 5th respondent to the application bearing No. 381/2019), by the 4th Respondent on the basis that the Petitioner had violated Clause 25 of the collective agreement, and entertaining such application and referring the same to the Mr. Pathiraja, the 6th respondent to the application bearing No. 381/2019 (who is not a party to this Application), and finally the decision taken by the 6th respondent to the said application and later affirming the same decision of the 3rd Respondent to this Application, whose decision is reflected in **A22** is to negate or render the arbitration proceedings and the decision therein to be taken by the Arbitrator to render the same as negatory. Therefore, it is argued on behalf of the Petitioner that by confirming the 3rd respondent of the said decision contained in **A22** by the decision contained in **A29** annexed to the present Petition, is capricious, irrational, and illegal.

However, it is argued for and on behalf of the Respondents that in view of Section 10A of the Industrial Disputes Act, No. 43 of 1950 (as amended), any party to a collective agreement can obtain an interpretation from the Commissioner General of Labour or any officer thereof on any clause of such increment. Therefore, the complaint made by the 4th Respondent to Mr. Pathiraja (the 6th respondent to the application bearing No. 381/2019) is rational, and after inquiry, the decision taken by Mr. Pathiraja, whose decision is annexed to this Application as **A22**, is justified.

It is further argued on behalf of the Respondents that the affirmation by the 3rd respondent of the said decision taken by Mr. Pathiraja (the 6th respondent to the application bearing No. 381/2019), is rational and within the law.

In reply, it is further argued for and on behalf of the Petitioner that the embarking upon an inquiry to give an interpretation to Clause 25 when there is already an ongoing arbitration process on the referral made by the 1st Respondent, the Minister, is not rationalised.

Further, it is argued in this present Application for and on behalf of the Petitioner that the affirmation of the decision by the 3rd respondent of the said decision taken by Mr. Pathiraja reflected in **A22** is for improper motives.

In addition to that, it is argued for and on behalf of the Petitioner that the Petitioner entertained a legitimate expectation that the 3rd Respondent would re-consider the decision of Mr. Pathiraja contained in **A22** because pursuant to the settlement entered into between the parties in the application bearing No. 381/2019, the 3rd Respondent had undertaken to reconsider his decision contained in **X50**, a document annexed to the said application bearing No. 381/2019. Therefore, without considering the same, and giving an interpretation which is acceptable and reasonable, other than the decision given by Mr. Pathiraja, cannot be justified.

The Petitioner's position

The Petitioner asserts that the 5th to 16th Respondents are employees of the Petitioner and members of the 4th Respondent Trade Union. The Petitioner and the 4th Respondent had entered into a collective agreement, which is marked as **X37** to the application bearing No. 381/2019 and the 4th Respondent had entered into the said collective agreement for and on behalf of the employees of the Petitioner.

The Petitioner is mainly engaged in the business of processing tea and tea bags for export purposes, and the Petitioner claims that it has about 14,000 employees employed under it.

The Petitioner alleges that in 2017, the 5th to 16th Respondents had started trade union action known as a 'go-slow' campaign, at the instigation of the 4th Respondent, thus causing

disruption to the operations of the Petitioner. This included the failure to perform the following functions in the production process;

1. Carton forming in carton machines;
2. Packing in overwrapping machines; and
3. Value-added packs, such as inserting tea bags into inner cartons.

Consequently, the Petitioner requested them to give up their trade union action, but they did not pay any heed to the said request. Therefore, the Petitioner asserts that it was compelled to give them a warning by letter dated 21.06.2017, which is marked as **A3** annexed to the Petition. Despite that, they continued with the trade union actions, thus resulting in further disruption of the production process of the Petitioner. Therefore, the Petitioner asserts that it was compelled to issue show cause letters to the 5th to 16th Respondents, which the Petitioner has marked as **A4** annexed to the Petition.

Thereafter, the said Respondents responded to the show cause letters issued to them. Accordingly, they submitted their letters of explanation dated 07.07.2017, 10.07.2017, and 11.07.2017, respectively, and the same letters are marked as **A5(1)** to **A5(13)**, respectively.

According to the Petitioner, in the said letters, they had taken the position to justify their trade union action. Thus, the Petitioner asserts that they had taken the stand that they had no other option but to continue with the trade union action. Consequently, the Petitioner was compelled to take disciplinary action against them.

Accordingly, by letter dated 20.07.2017, the Petitioner appointed an inquirer and informed the 5th to 16th Respondents that an inquirer has been appointed to hold a domestic inquiry since their explanations were not satisfactory.

The inquiry commenced on 17.08.2017, and after the inquiry, the 5th to 16th Respondents were found guilty by the inquirer, of all the charges levelled against them; this included

insubordination to the management, disruption of production by engaging in illegal trade union actions which resulted in disrupting the production processes of the Petitioner, and thus, causing heavy loss and damage to the Petitioner.

Therefore, thereafter, the management of the Petitioner decided to terminate their employment, and accordingly, they were informed by letters of termination marked as **A10(1)** to **A10(12)**, respectively, annexed to the Petition.

Thereafter, the 4th Respondent responded to the said letters of termination and insisted that the said 5th to 16th Respondents should be immediately reinstated; otherwise, they would take trade union action against the Petitioner, including calling for a strike.

However, the Petitioner asserts that in the meantime, certain employees walked out on the following day of the termination of the employment of the 5th to 16th Respondents, at the instigation of the 4th Respondent.

In the meantime, the 4th Respondent made a complaint to the Commissioner General, the 3rd Respondent, about the termination of the 5th to 16th Respondents; and consequently, the matter was referred to the 1st Respondent as an industrial dispute.

Accordingly, the 1st Respondent referred the matter to arbitration in terms of Section 4(1) of the Industrial Disputes Act. However, after preliminary objections were raised by the Petitioner, the first arbitration was cancelled, and subsequently, another arbitrator was appointed in terms of Arbitration bearing No. 3 of 2018. After pleadings were completed, the arbitration proceeded.

The Writ Application bearing No. 381/2019

However, the 4th Respondent made another complaint to Mr. Manoj Priyantha, an Assistant Commissioner of Labour, who was cited as the 5th Respondent in the case bearing No. 381/2019, with regard to the violation of the Collective Agreement which had been entered into between

the 4th Respondent and the Petitioner, particularly Clause 25 of the said Agreement. The said complaint is dated 04.12.2017 and was marked as **X38** in the said case bearing No. 381/2019. Thereby, Mr. Manoj Priyantha had referred it to Mr. Pathiraja, a Deputy Commissioner.

However, after notice, the Petitioner received notice with regard to the same by **X39**. The said notice had been sent by the Deputy Commissioner General of Labour, Mr. Pathiraja, requiring the Petitioner to appear for the inquiry. At the inquiry, the Petitioner raised preliminary objections before the inquiring officer, Mr. Pathiraja, who was cited as the 6th Respondent, to the said application bearing No. 381/2019, which is reflected in the proceedings of the case bearing No. 381/2019.

However, after several dates of inquiry, correspondence, letters, and submissions made by the parties, the Deputy Commissioner, Mr. Pathiraja (the 6th Respondent to the said application bearing No. 381/2019), took a decision reflected in **X46**, a document marked in the case bearing No. 381/2019, that the Petitioner had violated Clause 25 of the collective agreement, since the Petitioner had not followed the provision to issue a show cause letter within 30 days after finding the employees guilty of the charges in the domestic inquiry.

However, since no action was taken by the Petitioner pursuant to **X46** of the said case, the 5th Respondent to the Application bearing No. 381/2019, in the case filed action in the Magistrate's Court, as reflected in **X52** and **X53**. The said action was also taken after discussions between the parties before the Commissioner, the 3rd Respondent.

The proceedings of the said decision are also marked in the said case as **X50**.

However, upon a perusal of the said case record bearing No. 381/2019, I found that the said application bearing No. 381/2019, had been resolved between the parties by entering into mutually agreed terms of settlement dated 24.01.2020, which is marked as **A26** to the instant

Application. The parties, as well as their representatives and their respective Attorneys-at-Law, had signed the terms of settlement and filed the same of record.

Accordingly, the said application had been withdrawn.

The Petitioner's present grievance

However, the Petitioner asserts in the Petition in the instant Application that pursuant to the terms of the settlement entered into between the parties on 24.01.2020, since the Petitioner withdrew the said application bearing No. 381/2019, the parties agreed to reconsider the documents marked as **A22** annexed to this Petition, and **X46** annexed to the case bearing No. 381/2019, which is the same document wherein a decision was taken by the 6th Respondent to the said application bearing No. 381/2019.

However, he is not a respondent to this Application, but a subordinate officer of the 3rd Respondent, and it is pursuant to that decision that the said application had been instituted.

However, it is alleged that according to the terms of settlement in the said application bearing No. 381/2019, there was no proper reconsideration of the decision of Mr. Pathiraja marked as **A22**. After the settlement in application bearing No. 381/2019, there was a delay of a meeting due to various circumstances. Finally, a meeting was held between the Petitioner and the 3rd Respondent; therefore, the Petitioner alleges that the 3rd Respondent agreed to reconsider the decision taken by Mr. Pathiraja contained in **A22**, which he had failed to do.

Nevertheless, the Petitioner received a communication marked as **A29** in this Application, indicating that reconsideration of **A22** was not necessary.

Despite that fact, the Petitioner asserts that, at the meeting held on 10.11.2022, the 3rd Respondent indicated that there is possibility of giving an alternative interpretation to Clause

25(5), other than the interpretation given by the Deputy Commissioner General, Mr. Pathiraja, as reflected in **A22**.

Therefore, the Petitioner challenges the said **A29** and **A22** in this Application, on the basis that **A22** is *ultra vires* and **A29** is unreasonable, capricious, and without any evidence.

Objections

The 1st to 3rd Respondents have filed their Objections. Although the 4th Respondent had been represented at the stage of support for notice, there is no representation thereafter, and therefore, I cannot find any Statement of Objections from the 4th Respondent.

According to the 1st to 3rd Respondents, it is their position that the 3rd Respondent or his subordinate officers had taken the decision independently of the arbitration proceedings or the decision pending in terms of Section 10A of the Industrial Disputes Act before the arbitrator, and independently of the proceedings or referral thereto, on a complaint made by the 4th Respondent for and on behalf of the 5th to 12th Respondents, in terms of the interpretation of the collective agreement, which the 3rd Respondent is empowered to do.

Therefore, the final decision pursuant to **A22** taken by the Respondent is justified. As such, the 1st to 3rd Respondents have moved to dismiss this application.

This was argued before me. However, the parties were directed to file written submissions. Nevertheless, none of the Respondents have filed written submissions; only the Petitioner has filed written submissions.

Issues to be considered

In view of the pleadings by both parties by way of the Petition and Statement of Objections, respectively, and the arguments advanced orally and by way of Written Submissions, the following questions arise for my consideration;

- (i) Whether there was an industrial dispute between the Petitioner and the 4th Respondent, who made a complaint for and on behalf of the 5th to 16th Respondents;
- (ii) Whether such dispute was referred to arbitration by the 1st Respondent;
- (iii) Whether it is reasonable for the 3rd Respondent, or any other officer of the Department of the 3rd Respondent, to entertain any complaint made by the 4th Respondent against the Petitioner arising out of the same dispute, when the said arbitration is pending;
- (iv) Whether Mr. Pathiraja has given an interpretation to Clause 25 in his decision marked as **A22**;
- (v) If the answer to the above is in the negative, whether the decision and affirmation made by the 3rd Respondent by **A29** of the decision taken by Mr. Pathiraja contained in **A22**, is rationalised and justified

Now I will consider the matters for clarity in chronological order.

Industrial dispute

The Petitioner complains that there had been a trade union action taken *ex parte* by the 5th to 16th Respondents as the members of the 4th Respondent, who is the Trade Union, against the Petitioner within the course of their employment. The Petitioner asserts that the said trade union action resulted in the disruption of the smooth functioning of the Petitioner's production; thus, resulted in loss and damages to the Petitioner. Therefore, the Petitioner asserts that the 5th to 16th Respondents were initially given a warning, and thereafter, was given a warning in writing.

Despite all that, the 5th to 16th Respondents had continued with their trade union action by going slow and cause disruption in the production, and thereby, affecting the output and sales, which resulted in the loss of profit and damage to the Petitioner. As such, the Petitioner asserts that the Petitioner was compelled to call for explanations, which was followed by letters calling for explanations and justification of their actions by the 5th to 16th Respondents. Therefore, the

Petitioner asserts that the Petitioner had to take disciplinary actions against the 5th to 16th Respondents.

Consequently, an Inquirer had been appointed, and after giving proper notice, there was a domestic inquiry on certain charges elaborated in this case and morefully in case bearing No. 381/2019, based on insubordination, causing disruption, and causing loss and damages to the Petitioner.

After the said disciplinary inquiry, the 5th to 16th Respondents were found guilty, and the report had been forwarded to the Petitioner, who received it on 04.09.2017.

Thereafter, the Petitioner has sent the letter of termination with show cause, and thus, the 5th to 16th Respondents' services were terminated, and thereupon an industrial dispute has arisen between the Petitioner and the 4th Respondent, who acted for and on behalf of the 5th to 16th Respondents. Accordingly, on information made to the Minister, the 1st Respondent, has caused to appoint an arbitrator in terms of Section 4(1) of the Industrial Disputes Act; consequently, an arbitrator has been appointed.

Dispute referred to Arbitration

According to the referral to the Arbitrator which is filed as **X17** in the application bearing No. 381/2019, which reads thus;

“The matter in dispute between the aforesaid parties is

Whether the below mentioned 18 employees who worked at Finlays Colombo Limited had been caused injustice by being terminated from employment on disciplinary grounds and if so, to what reliefs they are entitled”

According to this, the dispute has been properly referred to arbitration, the Arbitrator has taken over the dispute, and the proceedings has properly commenced before him after appearance was made by both parties.

Parallel proceedings by Mr. Pathiraja

However, pending the said arbitration proceedings and the decision thereon, the 4th Respondent, by his complaint dated 04.12.2017 (marked as **X38** in application bearing No. 381/2019), made to the 5th respondent to the said application bearing No. 381/2019, Mr. Manoj Priyantha, alleged that the Petitioner had violated Clause 25 of the collective agreement, in which the Petitioner had not given due notice to the Respondents in the process of terminating their employment. Therefore, the 5th respondent had referred the matter to the 6th respondent, Mr. Pathiraja, to take a decision after inquiry. Subsequently, Mr. Pathiraja had given notice to the Petitioner and the other Respondents to appear before him. However, the Petitioner had raised an objection as to the maintainability of such a complaint.

Nevertheless, Mr. Pathiraja, having considered the objections and written submissions filed by the parties, made his decision contained in **A22**, which is also marked as **X46** in the application bearing No. 381/2019.

However, it is the complaint of the Petitioner that firstly, the said decision taken by Mr. Pathiraja is to render the arbitration proceedings as negatory, and secondly, there is no interpretation given in the said decision of Mr. Pathiraja contained in **A22**.

Now I will consider whether Mr. Pathiraja, the 6th respondent to the application bearing No. 381/2019, has given an interpretation in his decision contained in **A22** (**X46** in application bearing No. 381/2019).

For further clarity, the relevant Clause 25 of the collective agreement reads as thus;

25. DISCIPLINARY ACTION

Where an Employer proposes to proceed against an Employee, then-

5) after holding such inquiry, the Employer shall notify the Employee of the findings on each of the charges in the show-cause notice and the punishment, if any, imposed by the Employer. Provided that if any Employer fails to make an order except for reasons beyond the control of the Employer on the charges in the show-cause notice within thirty (30) working days from the conclusion of the inquiry into such charges, the Employee shall not be able to be punished thereafter in respect of such charges and no inference adverse to the Employee in respect of such charges shall be drawn from such charges.

On a perusal of the decision taken by the 6th respondent, he has not given an interpretation in such a sense, which for the purpose of clarity, I will reproduce below;

සාමූහික ගිවිසුම උල්ලංඝනය කරමින් සේවකයින්ගේ සේවය අවසන් කිරීම පිළිබඳව එක්සත් තේ රබර් සහ මෙරට ද්‍රව්‍ය කම්කරු සමිතිය විසින් ලින්ක්ලෙන් කලමිබු ලිඛිත ආයතනයට එරෙහිව කරන ලද පැමිණිල්ල

උක්ත කරුණ සම්බන්ධව දෙපාර්තමේන්තුව විසින් ඉදිරිපත් කරන ලද කරුණු දැක්වීම අනුව ආයතනයේ විනය පරීක්ෂණ ක්‍රියාවලිය දෙපාර්තමේන්තුව අතර ඇති සාමූහික ගිවිසුම මගින් පාලනය වන බව තහවුරු විය. ඒ අනුව, සාමූහික ගිවිසුමේ 25.5 වගන්තිය අනුව විනය කඩකිරීමක් සම්බන්ධයෙන් පරීක්ෂණයක් පැවැත්වීම සහ එක් එක් චෝදනාව සම්බන්ධයෙන් පරීක්ෂණයෙන් පසුව සොයා ගන්නා කරුණු අනුව සේවයෝජකයා විසින් දඬුවම් ලබා දෙන්නේ නම් ඒ සඳහා හේතු දැක්වීමේ ලිපියක් ලබා දිය යුතු බවත්, එම හේතු දැක්වීමේ ලිපිය, චෝදනා සම්බන්ධයෙන් පරීක්ෂණ අවසන් වී වැඩ කරන දින 30 ක් ඇතුළත ලබා දිය යුතු බවත්, එසේ කිරීමට අපොහොසත් වන්නේ නම් එම චෝදනා සම්බන්ධයෙන් සේවකයින් දඬුවමකට යටත් නොවන බවත් දක්වා ඇත. එසේ වුවත් සේවයෝජකයාට තමාගේ පාලනයෙන් තොර

වන්නා වූ යම් හේතුවක් මත මෙම දින ගණනට වඩා වැඩි දින ගණනක් ගත වී ඇත්නම් එය ප්‍රමාදයක් ලෙස නොසැලකිය යුතුය.

02. එසේ වුවත් උක්ත කරුණ සම්බන්ධයෙන් දඬුවම් ලබා දීමට අදාළ හේතු දැක්වීමේ ලිපිය නියමිත කාලය තුළ ලබා දී නොමැත. එසේම එම ප්‍රමාදයට හේතුව තමන්ට පාලනය කරගත නොහැකි හේතුවක් බව සේවායෝජක විසින් තහවුරු කර නොමැත. එබැවින් මෙම කරුණ සම්බන්ධයෙන් සේවායෝජක පාර්ශ්වය කාර්මික ආරවුල් පනතේ 40.1(අ) යටතේ වරදක් සිදු කර ඇති බව තහවුරු වේ. එමනිසා මෙම ලිපිය ලැබී දින 14 ක් ඇතුළත සාමූහික ගිවිසුමේ ප්‍රතිපාදන අනුව කටයුතු කරන ලෙසත් එසේ නොවුනහොත් ඉදිරි නීතිමය ක්‍රියාමාර්ග ගැනීමට සිදුවන බවත් කාරුණිකව දන්වා සිටිමි.

The 6th Respondent has decided that the termination of the employment of the said employees was a violation of the collective agreement. The Petitioner had also violated Section 4(1)(a) of the Industrial Disputes Act. Therefore, in the event that the Petitioner failed to take the necessary action to rectify or make restitution, otherwise to take the necessary legal action.

Therefore, it is my view that Mr. Pathiraja has not given an interpretation on whether the Petitioner has violated Clause 25 of the collective agreement in that sense of not giving proper notice of termination of service. Thus, affirmation of the said decision by the 3rd Respondent as the Commissioner General of Labour, without considering whether Mr. Pathiraja had not given proper interpretation to Clause 25 of the collective agreement and quoting Section 4(1)(a) of the Industrial Disputes Act that the Petitioner has violated the same, and therefore, can be charged if the Petitioner has not taken steps as directed by Mr. Pathiraja when given an interpretation to Clause 25 of the collective agreement is also capricious, irrational, and unjustifiable.

Further, on consideration of the entire gamut of applications made by the 4th Respondent and the sequence of events that had taken place, it is my view that the 4th Respondent had taken

steps after the dispute was referred to arbitration and the arbitration proceedings had commenced, making a complaint against the Petitioner to the subordinate officer of the 3rd Respondent is to render the entire arbitration proceedings negatory because the Arbitrator, according to the reference as referred to above, can go into all aspects of the dispute that had taken place between the parties.

Therefore, without awaiting the decision of the Arbitrator, making an application in terms of Section 10A of the Industrial Disputes Act to decide independently of the arbitration by the 3rd Respondent or a subordinate officer of the 3rd Respondent, is not justified as the entire dispute is already under consideration. In any case, Mr. Pathiraja has failed to give a proper interpretation, and in fact, as reflected in the proceedings that had taken place after the settlement of the application bearing No. 381/2019, the terms of settlement so entered in **A26** are also reproduced for clarity;

Of consent the parties have settled this case amicably as hereunder:-

- 1. The 1st to 6th Respondents agree to issue a communication per the content of the last paragraph of document marked and annexed as X50 to the Petition, as indicated in the minutes of 25.09.2019 of Your Lordships Court in this matter.*
- 2. Parties agree that term 01 hereof does not, in any way, dictate the discretion of the 1st to 6th Respondents regarding the terms of the communication referred to in term 1 above,*
- 3. The 1st to 6th Respondents agree to withdraw, reserving their right to institute a fresh action if necessary, Magistrate's Court – Colombo case No. C02/290/2019 prior to the issuance of the communication referred to in term 01 hereof,*
- 4. Parties agree that these Terms of Settlement do not affect in any way, the powers conferred on the 1st to 6th Respondents by the Industrial Disputes Act to take further*

measures in pursuance of the communication referred to in term 01 above where necessary,

- 5. Parties agree that these Terms of Settlement are solely towards an amicable resolution and the withdrawal of the Magistrates Court action cannot itself in any manner be used adversely against the Respondents,*
- 6. Parties agree that the content of these Terms of Settlement shall not be read or understood as being indicative of any error, substantive or procedural, actual or implied, on the part of the 1st to 6th Respondents or their officers or agents in regard to the conduct of any and/or all inquiries or investigations pertaining to the dispute underlying the instant Application,*

The Petitioner withdraws the instant Application on the foregoing terms.

However, after the terms of settlement, the Petitioner withdrew the said application; nevertheless, there had been some delay on the part of the 3rd Respondent to re-consider the decision in **A22**.

Writs lie

Thereafter, as asserted by the Petitioner, the meeting had taken place between the Petitioner and the 3rd Respondent on 10.11.2022, where the 3rd Respondent had admitted that there can be another or alternative interpretation given as suggested by the Petitioner, which the Petitioner legitimately expected be given by the 3rd Respondent on the interpretation of Clause 25 of the collective agreement; the 3rd Respondent has failed to do so, instead, a mere rubber stamp affirming the decision taken by his subordinate officer Mr. Pathiraja contained in **A22**. Therefore, this is prime example of just becoming a rubber stamp of a subordinate officer by a superior officer without taking a proper stand or decision on the matter.

Furthermore, legitimate expectation also includes that a party is entitled to be given a reasoned order or decision, and where such a reasoned decision is not given, it amounts to a violation of the rules of natural justice; vide His Lordship Justice Mark Fernando judgement in the case of *Karunadasa v. Unique Gem Stores Limited and Others*.¹

As such, *Writ of Certiorari* lies to quash the decision of the 3rd Respondent contained in **A29** and the decision taken by Mr. Pathiraja contained in **A22** as there is no proper interpretation given; even if there was a proper interpretation given, the whole dispute can be gone into by the Arbitrator because it had already been referred to arbitration, which the referral of the Arbitrator covers the entire dispute.

Conclusion

For the reasons adumbrated above, I grant relief as prayed for in prayers (c), (d), and (e) of the Amended Petition dated 22.05.2023.

JUDGE OF THE COURT OF APPEAL

¹ [1997] 1 Sri L.R. 256.