

**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.*

Prima Ceylon (Private) Limited,
No. 50, Sri Jayewardenepura Mawatha,
Rajagiriya

CA (Writ) App. No. 417/2023

PETITIONER

Vs.

1. Commissioner General of Labour,
Department of Labour,
Kirula Road, Colombo 5.
2. S.A. Wasantha Algama,
Commissioner of Labour
(Development),
Special Investigation Division,
Department of Labour,
12th Floor,
Mehewara Piyasa Building,
Colombo 5.
3. Anusha Ferdinandusz,
Labour Officer - Special Investigation
Division,

Department of Labour,
12th Floor,
Mehewara Piyasa Building,
Colombo 5.

4. N. Navajeewana,
Deputy Commissioner of Labour
Trincomalee District Labour Office,
Post Office Road, Trincomalee.
5. Inter Company Employees Union,
No 10, Council Lane, Dehiwala.

RESPONDENTS

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

Counsel:

Suren Fernando with Jivan Goonethileka and Khyati Wikramanayaka for the Petitioner.

S. Kularatne, PC, ASG for the 1st to 3rd Respondents.

Chamara Nanayakkarawasam for the 5th Respondent.

Argued on: 30.01.2026

Delivered on: 08.07.2026

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

Judgement

Introduction

The Petitioner is a company duly incorporated under the laws of Sri Lanka and is also recognised as a BOI company. Its main business is importation of wheat from suppliers and the processing of same into various products in Sri Lanka, which mainly include wheat flour and its by-products. Its sales islandwide amount to 500,000 metric tons per annum, whilst its export sales exceed 700,000 metric tons per annum.

Further, its wheat processing factory is situated in Trincomalee, in the Eastern Province of Sri Lanka, and it maintains several offices and other outlets scattered across different cities in Sri Lanka, including Colombo.

In addition, its employees are mainly concentrated in the main factory in Trincomalee, which is claimed to employ about 507 employees.

The Petitioner asserts that up to August 2022, no body or trade union had made any attempt to enter into a collective agreement with the Petitioner. In 2022, the 5th Respondent, who claims to be a trade union representing more than 40% of the employees as its members, indicated to the Petitioner that it wished to enter into a collective agreement for and on behalf of the employees.

However, the Petitioner, as its records indicate, refused to recognise that more than 40% of the employees were members of the 5th Respondent and therefore challenged this position. Several letters were exchanged between the parties in this regard. However, in January 2023, by **P7** dated 03.01.2023, the 5th Respondent made a complaint in terms of Section 32 of the Industrial Disputes

Act to the 1st Respondent, the Commissioner of Labour. The 1st Respondent referred the matter to the 2nd Respondent to inquire into the complaint with assistance of the 3rd Respondent.

Initially, having decided to inquire into the matter and make a determination based on the evidence available and placed before the Commissioner (1st Respondent), the 2nd Respondent thereafter finally decided to hold a poll to ascertain whether 40% of the employees are members of the 5th Respondent, as claimed, without making any determination on the initial application.

The said letter is referred to as **P23** by the Petitioner, and the Petitioner challenges the same in this Application.

After the issuance of formal notice, the 1st to 4th Respondents filed their Statement of Objections, whilst the 5th Respondent filed a separate Statement of Objections; both set of Respondents moved for the dismissal of this Application.

This was argued before me on 30.01.2026; hence, this judgement.

Arguments

The first contention advanced by Mr. Fernando is that there is a dereliction of statutory duty on the part of the 1st to 4th Respondents, particularly the 2nd and 3rd Respondents, who had held an inquiry without taking a decision under Section 32. His contention is that without taking a decision after the inquiry, the 2nd and 3rd Respondents along with the 1st and 4th Respondents have directed the parties, namely the Petitioner and the 5th Respondent, to have a poll to see whether there is sufficient membership to form a union.

Further, he argued that when the 1st to 4th Respondents, as required by the statute, embarked upon an inquiry they are required to take a decision thereupon, and in fact, they had called upon for

written submissions and agreed to do so; nevertheless, without taking a decision, they had decided to go for a poll which is illegal, irrational, and against the evidence placed before the 1st to 4th Respondents.

Further he contended that when the 5th Respondent claimed that they had sufficient membership of 40% to form the union to have bargaining power under Section 32, the burden is on them. However, despite that, the Petitioner to this Application has gone beyond their limits and disproved the Petitioner's claim and in fact, by submitting letters of sufficient number of employees to the effect that they have resigned from the union or have no intention to join the said union, were not considered by the 1st to 4th Respondents to arrive at a decision. Even the 5th Respondent has not discharged its burden to establish that they have sufficient number of memberships.

In addition, he argued that paragraph 16 of the Petition has not been properly answered by the 3rd Respondent, who has been one of the inquiring officers into the application of the 5th Respondent. Therefore, what is stated in paragraph 16 stands as proven fact, and he relies heavily on the case *Edrick De Silva v. Chandradasa De Silva* [1968]¹.

On the other hand, Mr. Kularatne, President's Counsel, argued that the Commissioner's job, or what is expected by and required by the Commissioner under Section 2 of the Industrial Disputes Act is to settle the dispute rather than giving orders or decisions which might affect the parties. In the instant case, none of the 1st to 4th Respondents, who are his clients, have taken a decision affecting the rights of the Petitioner; therefore, the Petitioner cannot complain against the 1st to 4th Respondents.

¹ 70 NLR 169.

Further, it was argued that in terms of Section 32A, the 1st to 4th Respondents are empowered to order a poll before taking a decision; therefore, a decision has not been taken, and no rights have been affected as they were acting within their power. Thus, this Application cannot be maintained.

Having referred to several documents, including document marked as **P23** annexed to the Petition, he argued that the 1st to 4th Respondents never endeavoured to force the parties to go for a poll; still they have requested the parties to go for a poll in a very palatable manner.

Mr. Nanayakkarawasam, Counsel for and on behalf of the 5th Respondent contended that since no decision affecting the rights of the Petitioner has been taken, he cannot come before this Court as he has not satisfied the test enunciated in the case of *R v. Electricity Commissioners ex p London Joint Committee and Others* [1924]². He further argued that Section 32A was introduced in 1999 to the Industrial Disputes Act as an amendment to meet the international standards of labour rights. Accordingly, the 5th Respondent and the membership that they had, were unduly kept under pressure by the Petitioner to obtain letters from them to show that they are not members of the 5th Respondent, which itself establishes that there is unfair treatment against the workmen. As such, going for a poll is quite justifiable.

In fact, he argued, having referred to several documents written by the Attorney-at-Law for the Petitioner, with the annexing letters obtained under duress from the workmen (employees of the Petitioner) that they write to the 5th Respondent, except on their own, they never wrote to the 5th Respondent. This too establishes the duress under which the employees were kept under by the Petitioner.

² 1 K.B. 171.

In response, Mr. Fernando argued that **P23** and **P28** establish that the decision has been taken to go for a poll by the Respondents, which is a dereliction of duty since without taking a decision on the inquiry on the evidence and written submissions submitted by the parties, ordering for a poll is illegal, irrational, and against the norms of an inquiry. In fact, it was argued for and on behalf of the Petitioner that the Petitioner had protested after the said order was delivered.

The Petitioner's position

The Petitioner is a company duly incorporated under the laws of Sri Lanka and is capable of suing and being sued in its corporate name, carrying on a business of operating a wheat flour mill in Trincomalee and sells its manufactured wheat flour and its by-products island wide as well as exports. The Petitioner is also recognised as a BOI project. The Petitioner has annexed its Certificate of Incorporation, marked as **P1** to the Petition in order to establish the same.

Further, by letter dated 29.11.2002, the Petitioner received a communication from the 5th Respondent, which claims to be a recognised trade union, indicating that it desires to enter into a collective agreement with the Petitioner, as it claims to command more than 40% of the Petitioner's employees as its members. The said letter is marked as **P2** annexed to the Petition.

However, the Petitioner claims that it has approximately 647 employees employed across the island; of the total workforce, the majority, amounting to 507, are attached to the Trincomalee factory and the office complex, to establish this, the Petitioner has annexed the document marked **P3**. Further, the Petitioner claims that it has the right and authority to submit the necessary evidence, as marked in document **P4**.

The Petitioner, by the documents marked as **P5** and **P6**, indicates to the 5th Respondent that it does not have the requisite membership of 40% of the employees to enter into a collective agreement; accordingly, the Petitioner refuses to enter into such an agreement.

However, the Petitioner contended that 5th Respondent submitted a complaint to the Commissioner General of Labour, alleging that the Petitioner is refusing to engage with it as a trade union, which represents 40% of the Petitioner's employees. The said letter is marked as **P7** (same is marked as **5R4**) annexed to the Petition. Thereafter, several documents and letters are annexed to the Petition to establish that, as claimed by the Petitioner, the 5th Respondent does not have the requisite membership of 40% of the employees to be recognised as a trade union. However, contrary to this, there are letters sent by the 5th Respondent asserting that it does have the necessary membership; these letters are annexed to the Petition and marked as **P8, P8(a), P9, P9(a), P10, P10(a), P11, and P11(a)**.

However, the Petitioner claims that the 5th Respondent does not have the requisite membership of 40% of the employees, though initially some members had joined it but subsequently resigned from it. The said letters are also annexed, as referred to above, as **P10, P10(a), P11, and P11(a)** to the Petition. Further, the Petitioner asserts that the 5th Respondent has threatened, coerced, and intimidated its employees to become members of the trade union.

Further, the Petitioner asserts that it has received certain complaints from employees who were subjected to harassment by the officers of the 5th Respondent; the said letters are marked as **P12(a)** to **P12(g)** annexed to the Petition. In addition, the Petitioner claims some employees have made police complaints to the China Bay Police and the Uppuveli Police, which are reflected in **P13(a)** to **P13(e)**.

Further, the Petitioner alleges that 5th Respondent has falsely charged the Petitioner that some of its employees were suspended on baseless allegations. The Petitioner claims that this occurred at a time when the employees were being intimidated by the 5th Respondent to join the 5th Respondent as members. Some of the said letters are marked as **P14(a)** to **P14(e)** annexed to the Petition. Thereafter, the Petitioner also submitted a complaint to the Commissioner of Labour, which is marked as **P15** and **P15(a)**, subsequent to the complaint made by the 5th Respondent on 03.01.2023 against the Petitioner to the 1st Respondent, seeking to intervene under the Industrial Disputes Act to ascertain whether the Petitioner has the requisite number of members.

However, at the inquiry held by the 2nd and 3rd Respondents, the Petitioner, having maintained that the 5th Respondent does not command the membership of 40% of the Petitioner's employees and therefore, cannot possess any bargaining power, sought an appropriate order on the materials submitted by it to the Respondents.

Thereafter, the 2nd and 3rd Respondents, without considering the matter based on the material placed before them by the Petitioner and the 5th Respondent, decided to direct the parties, namely the Petitioner and the 5th Respondent, to proceed with a poll in terms of Section 32A of the Industrial Disputes Act, by the letter marked as **P23**. The Petitioner challenges the said letter in this Application.

The Respondents' Objections

The 1st to 4th Respondents have filed their Objections, and marked documents **R1** to **R174 (R173** has several sub numbers), and it is their position that the 5th Respondent is a trade union which is operating and according to the documents, they appear to command a sufficient number of membership to represent them and to have a bargaining power to enter into an agreement with the

Petitioner; therefore, when they had asked for discussions, the Petitioner had not given any discussion or meeting with the office bearers of the 5th Respondent.

In addition to that, it is asserted by the 1st to 4th Respondents that the members of the 5th Respondent, who are employees under the Petitioner, were harassed, coerced, and put under immense pressure to renounce their membership with the 5th Respondent Union; therefore, the 5th Respondent had made a complaint by **P2** to the Commissioner General of Labour.

Additionally, it is their position that on several occasions the Petitioner has taken disciplinary actions against some of the employees of the Petitioner who are members of the 5th Respondent, to compel them to renounce their membership and prevent them from actively participating in trade union activities. In addition to that, the 1st to 4th Respondents have heavily relied upon the documents marked as **R173(a)** to **R173(d)**, which are several complaints made against the management for engaging in vindictive moves to harass the members of the 5th Respondent trade union who are employees of the Petitioner. Therefore, it is their position that since the 5th Respondent does commands at least 40% of its employees, they have decided to go for a poll which is within the provisions of Section 32A of the Industrial Disputes Act introduced in 1999; as such, moves for a dismissal of this Application of the Petitioner.

The 5th Respondent has also filed its Objections, and along with its Objections, it has filed the documents marked as **5R1** to **5R20**.

It is their position that since there is more than 40% of the employees of the Petitioner as its membership, it had written to the Human Resources Manager of the Petitioner by **5R1** to have a meeting with them to discuss the welfare of the employees. Nevertheless, no response had been made to the said letter, and thereafter, several reminders had been made.

In the meantime, some of the employees of the Petitioner who are trade union activists of the 5th Respondent within the factory and outlet of the Petitioner in Trincomalee, had been subjected to harassment by the Petitioner, a person named Ruwansiri has been harassed, compelling him to renounce his membership with the 5th Respondent; thereof, a complaint has been made against the same by the 5th Respondent to the 2nd Respondent. Further, one Ekanayake, who is an active member of the 5th Respondent trade union and an employee of the Petitioner, had been suspended from work due to his trade union activities, and therefore, on a complaint made by the 5th Respondent to the 2nd Respondent, the 2nd Respondent had intervened and directed the Petitioner to reinstate him by the letter marked as **P27**.

The 5th Respondent has filed several correspondence exchanged between the 5th Respondent and different officers of the management of the Petitioner, and some of the complaints made against the Petitioner by the 5th Respondent on behalf of the employees of the Petitioner, for unlawful labour practices, unlawful pressure exerted to renounce their membership with the 5th Respondent, and the coercion made to refrain from participating in the activities of the 5th Respondent within their employment. Thus, in that background, it is the 5th Respondent's position that on a complaint made by 5th Respondent, the dispute had been referred to the 2nd and 3rd Respondents to inquire into the matter.

After the inquiry, they had directed the parties to go for a poll since the Petitioner consistently took up the position that the 5th Respondent does not have a sufficient number of memberships to enter into a collective agreement or bargain on behalf of the employees with the management of the Petitioner.

In those circumstances, it is the position of the 5th Respondent that the 1st to 3rd Respondents are justified in coming to the conclusion that a poll should be held to ascertain whether the 5th

Respondent has sufficient number of memberships to have bargaining power with the Petitioner on behalf of the employees or not.

Issues to be decided

In view of the facts asserted in the pleadings by the Petitioner as well as the Respondents, as opposed to the facts asserted in the averments in the Petition and the Arguments advanced before me by way of oral submissions and written submissions, it is my view that the following questions arise for my consideration;

- (i) Whether there was an inquiry held by the 2nd to 3rd Respondents on the directions of the 1st Respondent on the complaint by the 5th Respondent which is marked as **5R4 (P7)**
- (ii) If so, are they are bound to take a decision
- (iii) If the answer to the above is in the affirmative, consequently, whether the Respondents had taken a decision based on the inquiry as complained by the Petitioner
- (iv) If the answer is affirmative to the above question, are the Respondents bound to take a decision, or if the answer is in the negative, are the Respondents justified in directing the Petitioner to go for a poll

No decision taken on the complaints

On a perusal of the record as the matters averred by the Petitioner as well as the 5th Respondent, the 5th Respondent has by letter marked as **5R1** dated 29.11.2022, requested the management of the Petitioner to recognise it as a union who claims to represent more than 245 employees which comprises of 40% of Petitioner's employees, for them to have bargaining power as well as to enter into a collective agreement, and thereby sought a meeting from the management.

The 5th Respondent asserts that thereafter, the management of the Petitioner had never responded to it, and nevertheless, they had started harassing, applying pressure, and coercing the members of the 5th Respondent to resign from the same. However, there had been reminders sent by the 5th Respondent to the Petitioner by letters marked as **5R2** and **5R3**.

Nevertheless, the 5th Respondent alleges that the Petitioner had continued to exert pressure on the employees to resign from the 5th Respondent trade union and had never given any interview or meeting to the 5th Respondent, and therefore, the 5th Respondent had decided to make a formal complaint to the 1st Respondent which was made on 03.01.2023 by **5R4** (same is marked as **P7** annexed to the Petition).

On the other hand, the Petitioner alleges by its Petition that the 5th Respondent had right-throughout started creating such an atmosphere and disturbance impeding the conduct of the factory and management, and therefore, the management was unable to run the factory at Trincomalee and the company. Thus, it also made a formal complaint, which was done by **P15**, dated 26.04.2023. The said complaint has been made by the Petitioner to the 1st Respondent, seeking his intervention to prevent the 5th Respondent from creating problems impeding the management in running the factory.

However, on a perusal of the case record, I found that by the letter marked as **P16** dated 14.02.2023, by which the Petitioner was informed to participate at an inquiry on the complaint made by the 5th Respondent dated 03.01.2023 (**5R4**). Thereafter, the Petitioner had participated at the said inquiry, on a later date, and sought to file written submissions objecting to the complaint made by the 5th Respondent; accordingly, the written submissions had been permitted to be filed, and the same was filed which is also file of record, which is marked as **P17** annexed to the Petition and where it moved for the dismissal of the complaint made by the 5th Respondent.

The Petitioner contends that though the 5th Respondent claims that its membership comprises of more than 40% of the employees of the Petitioner, most of the so-called members of the trade union who had initially joined the 5th Respondent without knowing its background, have later resigned, and it does not command a membership of 40%, which is not reflected in the document **P7 (5R4)** dated 03.01.2023. Further, it is the position of the Petitioner taken at the said inquiry that out of the 507 employees who are attached to its Trincomalee factory, the 5th Respondent does not command a membership of 250, which comprises of 50% of the membership; therefore, the Petitioner cannot accept the 5th Respondent as a trade union in terms of the law. Accordingly, the Petitioner has sought an order from the Inquiring Officer based on the evidence placed before the Commissioner by the Petitioner and the 5th Respondent.

However, no decision has been taken by the 1st to 4th Respondent on the preliminary objections made by the Petitioner.

New decision taken by 1st to 3rd Respondent under the Section 32A

The Petitioner alleges that on a fresh complaint received by the 1st Respondent, a new investigation and inquiry had commenced, and the Petitioner was asked to participate at the Trincomalee Labour Office on 15th May 2023, by **P18**. However, the Petitioner had sent an e-mail that it does not recognise the 5th Respondent as a trade union who represents its employees; the said letter is marked and annexed to the Petition as **P19**.

It should be noted that there had been two complaints made; one by the 5th Respondent and the other by the Petitioner. The 5th Respondent's complaint is that the Petitioner is not prepared to recognise it as a trade union; despite that the Petitioner has made representation on the inquiry held on that complaint and sought a decision. Without taking a decision, now the 1st to 3rd Respondents

have decided to go for a poll; the said decision is reflected in **P23, P26, P27, P28, and P32**. The decisions contained in those letters are challenged in this Application.

Thereafter, the Petitioner alleges that some officers from the 1st Respondent Office had visited the Petitioner's factory to whom entry was not permitted due to the restriction on the basis that it is a food processing institution and sudden entry would not be permitted unless there was prior arrangement. However, the Petitioner asserts that they had returned on their own volition; nevertheless, later, letters were sent informing the Petitioner to send 50 of its employees to an Investigation Division of the 1st Respondent's Department for a poll. Several of such letters have been sent directing to have a poll, which the Petitioner resisted, and thereafter, the Petitioner has come before this Court.

The Petitioner challenges the decision of the 2nd Respondent informing the Petitioner and asking the Petitioner to send 50 of its workers to an inquiry division to take a decision based on their views on the matters at issue.

There had been an inquiry embarked upon by the 3rd Respondents, on the directions of the 1st Respondent, on the complaint made by the 5th Respondent first. However, at the inquiry, a preliminary issue has been raised by the Petitioner as to the maintainability of the said complaint.

The Respondents had decided to take a decision based on the views expressed by 50 employees from the Sinhala and Tamil communities who are employed under the Petitioner, as reflected in **P27**, the Petitioner challenges the same in this Application.

Further, it is contended on behalf of the Petitioner that exercising discretion in an arbitrary manner without taking a decision, instead opting to go for a poll, is also a ground to quash the decisions reflected in the said documents marked as **P23, P26, P27, P28 and P32**.

As argued on behalf of the Petitioner, once a complaint is made by the 5th Respondent to the 1st Respondent and when the 1st Respondent has delegated the matter and referred the matter to the 2nd Respondent to take the decision, and when the Petitioner was notified to come before it, as reflected in documents **P16**, and having appeared at the inquiry, the Petitioner has raised his preliminary objections which go to the root of the complaint made by the 5th Respondent, which is dated 03.01.2023; therefore, the 1st to 3rd Respondents are under a duty to take a decision on that.

It is very clear that there is a decision yet to be taken by the 2nd and 3rd Respondents; however, they have not taken any decision on the said preliminary matter to ascertain whether the 5th Respondent can maintain the complaint made against the Petitioner. If they accept the same contention, then the question of having a poll will not arise later in terms of Section 32A.

To come to the second stage to see whether there is in fact an industrial dispute between the Petitioner and the employees or the Petitioner and the 5th Respondent, first, the 5th Respondent has to be recognised as a trade union which commands sufficient membership.

Further, a contention was advanced on behalf of the Petitioner that certain facts pleaded by the Petitioner in the Petition, have not been denied or controverted by any of the Respondents; they include:

- (a) The fact that the 5th Respondent had made the first complaint to the 1st Respondent on 03.01.2023 by the document marked as **5R4**.
- (b) The Petitioner was directed to appear before the 2nd Respondent by **P16**

- (c) The Petitioner raised the preliminary objection at the inquiry, as to the maintainability of the complaint based on the 5th Respondent not commanding a membership of 40% of employees
- (d) The 2nd Respondent had called for written submissions to be filed
- (e) No decision has been taken yet with regards to the same.
- (f) Thereafter, the Petitioner had made a complaint dated 26.04.2023, against the 5th Respondent for creating problems in the factory

The Respondents have not denied the said averments contained in the Petition. Therefore, as argued by learned Counsel for the Petitioner, what is stated in the Petition with regard to those facts remains as proven fact; vide *Edrick De Silva v. Chandradasa De Silva*³.

However, despite all that failure to take a decision on the preliminary issue raised on **5R5 (P7)** is a clear case of dereliction of duty and denial of the right to a reasoned order on the part of the 2nd and 3rd Respondent. Therefore, their failure to take a decision is amenable to judicial review.

The legitimate expectation

The Petitioner claims that it entertained a legitimate expectation with regard to the decision that was going to be taken on the preliminary issue raised and, thereafter, on the oral and written submissions made by the parties on the first complaint dated 03.01.2023 marked as **P7 (5R4)**. However, the Inquiring Officer, without taking a decision thereon, pushed the issue before him aside and then decided on a subsequent purported complaint by the document marked as **P18**, to make a visit and thereafter to go for a poll. (Such a complaint has not been made available to the Petitioner except for the document marked as **P18**).

³ 70 NLR 169.

Legitimate expectation is a concept developed under English law. For a party to establish a legitimate expectation, the person or party claiming such legitimate expectation must show that there exists a legitimate right or interest and that in due course, the relevant authorities will take a decision that such party is legitimately entitled to expect.

In this case, the question then arises whether the Petitioner, as a party, entertained a legitimate right. By **5R4** dated 03.01.2023, the 5th Respondent had made a complaint under the Industrial Disputes Act to the 1st Respondent against the Petitioner, stating that the Petitioner, without allowing the 5th Respondent to engage in trade union activities, had refused to accept it as a trade union and thereby prevented it from entering into any collective agreement, thus denying the rights of its members, who constitute more than 40% of the workforce of the Petitioner. Accordingly, the Petitioner admits that the 5th Respondent had made such a complaint, as reflected in the document marked as **P7**.

The Respondents notified the Petitioner to appear at an inquiry, as marked **P15**. Although not at the first instance, the Petitioner subsequently appeared at the inquiry and, at the very first opportunity, raised an objection as to the maintainability of the complaint made by the 5th Respondent to the 1st Respondent. It was their position that the 5th Respondent did not have 40% of the workforce as its members. They further submitted certain documents and based on those documents, the parties moved the 2nd and 3rd Respondents to take a decision, upon which they reserved their decision.

Thereafter, the parties were permitted to file written submissions. The Petitioner's written submissions are on record and marked **P17**. Approximately three months thereafter, without making any order thereon, the Respondents apparently entertained another complaint made by the 5th Respondent, and based only on that, took the decision that they had to go for a poll.

Therefore, it is my view that the Petitioner had a legitimate right to obtain an order, either in its favour or against it. At the same time, the Petitioner legitimately expected that such a decision would be taken by the Respondents on the material available before them. Thus, they have derelicted their duty owed to the Petitioner. Therefore, as correctly enunciated in several judgements, the proposition of law and the test that have been developed in England are now part of our law, and I wish to follow them.

To buttress my view, I wish to rely on the following passage from the case of *Wickremratne v. Jayaratne and Others*⁴, wherein Justice Gunawardene states as such;

“...being public functionaries could at any time resile from any promise or undertaking when, as in this case (according to her submission) there is an overriding public interest that they should do so. Of course, the court has to be alive to the possibility that any policy or undertaking given by a public body or official might have to be revised from time to time as the public interest required.”

Further, I wish to discuss the other matters that had been argued before me.

The unreasonableness and irrationality of the proposed poll

The next matter that should also be taken into consideration in this Application is that suddenly, on a purported complaint made by the 5th Respondent, the 1st to 3rd Respondents have decided to go for a poll. Thus, the 2nd Respondent has informed the Petitioner to send 50 employees from different communities to a place that is nominated by the 2nd Respondent to go for a poll. As pointed out by the Counsel for the Petitioner at the hearing, out of the 507 employees who are employed in the Petitioner’s factory, if the Petitioner is required to send only 50 employees, it is

⁴ [2001] 3 Sri L.R. 161.

something unreasonable and irrational, for the simple reason on how the 50 people are selected, whether they can be treated as representatives, or whether there should be a raffle or some other method to select them, or on what basis the 50 people can be selected out of the 507 employees, is not clarified.

Therefore, irrationality in taking that decision on the part of the 2nd Respondent is a ground to quash the decision to go for a poll as reflected in **P23, P26, P27, P28, and P32**.

Quite apart from that, in the course of the arguments it was argued on behalf of the Petitioner that the 5th Respondent Trade Union is run by a political party as its trade union; and certain politicians, whose names are referred to in the Petition, are behind the core scenario. Further, when they make inroads into a commercial establishment, where employment opportunities are created by an entrepreneur like the Petitioner, the invisible people who are behind the 5th Respondent indulge in creating an atmosphere to disrupt the operations of such commercial establishments, and they extort money from the management by using the powers of a trade union; thus, creating an adverse atmosphere for the smooth functioning of such establishment.

In addition to that, it was argued that after the economic debacle that was experienced in 2022, the politicians who are behind the 5th Respondent Trade Union exerted a lot of political pressure on the 1st to 3rd Respondents to go for a poll without any rationality. Therefore, that is a tenable argument, since the way everything has occurred without any reasonableness or rationality, the 1st to 3rd Respondents have taken the decision to go for a poll without making a proper decision.

Irrationality

Further, it was argued on behalf of the Petitioner that the 1st to 3rd Respondents had taken the decision to go for a poll without any evidence. Therefore, it is irrational, as there was no evidence

placed before, or apparently considered by the 1st to 3rd Respondents before deciding to go for a poll or, at the very least, before holding a hearing as mentioned above.

Therefore, the decision to go for a poll, particularly by the 2nd Respondent, is irrational. It is not only irrational because, without hearing the Petitioner and without taking a decision on the first inquiry, they suddenly decided to go for a poll, which itself is arbitrary. The manner in which they took the said decision is a typical arbitrary order.

Further, although it was argued on behalf of both sets of Respondents that the 1st to 3rd Respondents are empowered to take a decision to go for a poll in terms of Section 32A, having accepted that argument, it is my view that, without hearing the Petitioner, without taking into consideration the first and second complaints, and without taking a decision thereon, namely, the preliminary objection raised in respect of the first complaint made by the 5th Respondent after hearing the parties, as well as the second complaint made by the Petitioner, they suddenly moved to the next stage by deciding to go for a poll without following the proper procedure.

Therefore, that constitutes an arbitrary act on the part of the 1st to 3rd Respondents. As such, it is my view that a writ lies.

The violation of the rules of natural justice

Further, it was argued on behalf of the Petitioner that, due to a decision taken and by proceeding to go for a poll, there was a violation of the rules of natural justice because there was no notification, at least to the Petitioner, nor was the Petitioner heard before such a decision was taken in terms of Section 32A of the Industrial Disputes Act. Therefore, the Petitioner complains that the rules of natural justice have been violated. I shall now consider that issue.

Accordingly, the 1st to 3rd Respondents, without taking a decision on the first complaint made by the 5th Respondent dated 03.01.2023 which is reflected in **5R4 (P7)** annexed to the Petition, were also faced with a subsequent complaint made by the Petitioner on 26.04.2023 (**P15**) to the effect that the 5th Respondent had created an atmosphere of disturbance and trouble in the Petitioner's workplace, together with certain employees, thus hindering or impeding the operations of the Petitioner. However, the 1st to 3rd Respondents have not taken a decision on that complaint either as to whether they should hold an inquiry or not.

Further, they suddenly decided to make a field visit to the Petitioner's factory. However, the officers who came to carry out the field visit were not allowed entry since there were many restrictions, as the factory is a food processing plant.

As such, the Petitioner asserts that, on their own volition, with or without entry, the Respondents later decided to go for a poll with 50 members as representatives sent from the Petitioner to participate in the poll. Without taking a decision after such a hearing, the Respondents took that decision. They did not follow the rules of natural justice, namely, hearing both parties before making a decision. In fact, although it is provided that the Respondents are empowered to take a decision to go for a poll, before doing so they must properly hear the parties. Further, in taking such a decision, no reasons have been given anywhere in the documents challenged by the Petitioner in this Application.

Therefore, as held by His Lordship Justice Mark Fernando in the case of *Karunadasa v. Unique Gem Stores Ltd and Others*⁵, when an administrative authority takes a decision without affording an opportunity to a party to be heard, it amounts to a violation of the rules of natural justice. His

⁵ [1997] 1 Sri L.R. 256.

Lordship further extended the same concept to the effect that the parties are entitled to be given a reasoned order or decision and that, where even a reasoned decision is not given, that too amounts to a violation of the rules of natural justice.

To buttress my view, I rely upon the observations made by Justice Mark Fernando in the said case of *Karunadasa* [1997];

“The 2nd respondent says that he delegated to the 3rd respondent, an Assistant Commissioner of Labour, the function of holding an inquiry, as permitted by section 11. At that inquiry several witnesses gave evidence. The 2nd respondent says that, having considered the notes of inquiry (which were made available to the parties), and the 3rd respondent's recommendation (which was not), he approved that recommendation and made his order dated 30.4.95. which recorded, without further elaboration, that the appellant's services had been terminated contrary to section 2(1) of the Act, and directed reinstatement with effect from 1.6.95 and back wages of Rs. 13,200. Although by letter dated 19.5.95 the 1st respondent expressed dissatisfaction with that order, and asked the 2nd respondent to disclose his reasons, he merely repeated what he had already said. The 1st respondent applied to the Court of Appeal for certiorari to quash the order on the ground that the failure to give reasons was a violation of the principles of Natural Justice.

...To say that Natural Justice entitles a party to a hearing does not mean merely that his evidence and submissions must be heard and recorded: it necessarily means that he is entitled to a reasoned consideration of the case which he presents. 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": certainly, the Court cannot be asked to presume that they were valid reasons, for that would be to surrender its discretion. The 2nd respondent's failure to produce the 3rd Respondent's recommendation thus justified the conclusion that there were no valid reasons, and that Natural Justice had not been observed..." [Emphasis is mine]

Conclusion

For the reasons adumbrated above, it is my view that the decision to go for a poll reflected in the documents marked as **P23, P26, P27, P28** and **P32** are irrational, unreasonable and violation of the rules of the natural justice; therefore, liable to be quashed. As such, I grant relief as sought in prayers (b) and (c) of the Petition.

Further, since there was considerable resistance, I wish to grant Rs. 21,000/- (Twenty-One Thousand Rupees) as cost of litigation, payable jointly and severally by the Respondents in this Application.

JUDGE OF THE COURT OF APPEAL