

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

In the matter of an application in terms of Article
140 of the Constitution of the Democratic Socialist
Republic of Sri Lanka for a mandate in the nature
of a Writ of Certiorari.

CA-WRT-466/2022

Ceylon Steel Corporation Limited,
Oruwala
Athurigiriya

Petitioner

Vs.

1. B. K. Prabath Chandrakeerthi
Commissioner General of Labour
Labour Secretariat
No.41, Kirula Road
Colombo 05.
2. D. A. S. Wijesundara
Deputy Commissioner General of Labour
Labour Secretariat
No.41, Kirula Road
Colombo 05.
3. W.P.M.P. Wijayawardhana
Assistant Commissioner of Labour, Colombo
East District Labour Office, 18th Floor,
Mehewara Piyasa Building, Colombo 05.

4. The Magistrate, Magistrates Court of
Kaduwela, Kaduwela

5. Sri Lanka Nidahas Sewaka Sangamaya
(on behalf of Satharasinghege Ruwan
Chaminda Wajirakantha Perera) 4th Floor
No. 341/21, Sarana Mawatha
Rajagiriya

6. Satharasinghege Ruwan Chaminda
Wajirakantha Perera
No. 105/46C
Grandpass Road, Colombo 14

Respondents

Before : N. Bandula Karunarathna, P/CA, J.
B. Sasi Mahendran, J.

Counsel: Kamal Dissanayaka with Hasara Matharaarachchi for the Petitioners
Shanil Kularatne, ASG for the 1st- 4th Respondents
M. Sarathchandra for the 5th and 6th Respondents.

Supported On: 29.10.2024, 25.11.2024, 29.11.2024, 03.12.2024 and 12.12.2024

Written

Submissions: 15.01.2025 and 20.01.2025 (by the Petitioner)
On 21.01.2024 (by the 5th and 6th Respondents)

Order On: 28.01.2025

ORDER

B. Sasi Mahendran, J.

This order pertains to whether to issue notice to the Respondents and to grant interim reliefs.

The Petitioner instituted this action by the petition dated 01.12.2022 praying *inter alia* to stay the proceedings of the case bearing No. 45887/21 in the Magistrate Court of Kaduwela and for writs of Certiorari quashing the approval contained in the document marked P9 and the order made by the 2nd Respondent marked P5.

The factual matrix relevant to this application is as follows:

According to the Petitioner, the Petitioner is a duly incorporated company in terms of the law which has achieved its brand identity as 'LANWA Sanstha Wane' playing its role as a leader and trendsetter in the steel industry.

The Petitioner states that the 6th Respondent joined the Petitioner Company on or about 12.11.1996 as a Security Officer (Grade 5) and held the position of Pulpit Operator - Rolling Mill. The Petitioner further states that the 6th Respondent was issued nine warning letters and suspended from the service twice for various misconducts during his employment. The 6th Respondent was the Chairman of the 5th Respondent Union's branch at the Petitioner company from the year 2015 until his termination. The Petitioner states that by letter dated 31.03.2020, the 6th Respondent was terminated on the grounds of disciplinary grounds/ misconducts with effect from 01.04.2020 on the basis that the 6th Respondent had gone to the market without permission during the Covid-19 Pandemic period. It should be noted that the Petitioner is a factory where the workers are not allowed to go out without permission, especially during the period of Covid-19 where the movement of people was highly restricted and scrutinized. It is important to note that being a union

leader, the 6th Respondent acted irresponsibly when the entire country was closed down.

On or around 15.04.2020, the 5th Respondent made a complaint to the 3rd Respondent regarding the termination of the 6th Respondent from the Petitioner Company. The Petitioner states that inquiries were held at the Colombo East District Labour Office on several occasions from 21.05.2020 to 23.09.2020.

The Petitioner further avers that on 16.09.2020, the 5th Respondent filed an application in the Labour Tribunal of Kaduwela bearing No. LT/30/1831/2020 despite which the proceedings at the Colombo East District Labour Office were continued.

The Petitioner states that on or around 17.03.2021, the Petitioner received a letter marked as P5 from the 3rd Respondent informing that an order was made in terms of the powers vested under Section 12 (4) of the Industrial Disputes Act No. 43 of 1950 as amended (hereinafter referred to as the Act) inter alia to reinstate the 6th Respondent, subsequent to the Labour Department inquiry. The Petitioner replied to the said letter marked P5 by letter dated 02.04.2021 inter alia informing that the Petitioner at no point agreed to reinstate the 6th Respondent in the same post and that the Petitioner never received a recommendation in terms of Section 12 (4) of the Act, and further that the 3rd Respondent has no power or authority to make an order as contained in P5 in terms of the said Section. The Petitioner states that after the above-said letter dated 17.03.2021, no communication was received from the 1st or 3rd Respondents. The Petitioner further avers that to the utmost surprise of the Petitioner, on or about 06.12.2021, the Petitioner received summons from the Magistrate Court of Kaduwela for case bearing No. 45887/21. The Petitioner states that the Petitioner appeared before the Court on 06.12.2021 and obtained a copy of the charge sheet issued against it, according to which the Petitioner has acted contrary to Sections 32A (b), (c), (e), and 40 (1) of the said Act and thus guilty of an offence under Section 43(2)(1a) of the said Act. The Petitioner states that there had

never been an inquiry in terms of Section 32A or any complaint against the Petitioner about the violation of Section 32A of the Act which relates to unfair labour practices.

We are mindful that the 6th Respondent at no point has indicated that he was terminated on the ground of being a member of the 5th Respondent Union.

The Petitioner further states that when perusing the proceedings of the Magistrate Court case bearing No. 45887/21, it contains the approval of the 2nd Respondent to prosecute the Petitioner with regard to the purported allegations of unfair labour practices. The Petitioner avers that the perusal of the proceedings of the inquiry of the labour department indicates that the 1st and/or 3rd Respondents have continued the inquiry even after the order of the 3rd Respondent dated 17.03.2021 without summoning the Petitioner and recorded statements of several persons.

The Petitioner further avers that according to Minute dated 30.09.2021, one of the Labour Officers had indicated that the evidence was not enough against the Petitioner regarding unfair labour practices. Thereafter, a statement was recorded by the Labour Officer from the Secretary of the 5th Respondent in the absence of the Petitioner.

The main contention of the Petitioner is that the failure to give the Petitioner an opportunity to reply to the allegations and place evidence before the Commissioner denied the Petitioner of a fair hearing violating the principles of natural justice. The Petitioner therefore contends that the order marked P5 and the approval marked P9 are nullity and have no force in law.

The Petitioner thus invokes the writ jurisdiction of this Court seeking inter alia writs of Certiorari quashing the approval contained in the document marked P9 and the order made by the 2nd Respondent marked P5.

In this instance, we are mindful of the following judgment that discusses the principle of 'natural justice'.

In B. Surinder Singh Kanda v. Govt. of Malaya, 1962 Appeal Cases, page 322 at page 337, Lord Denning held that;

“In the opinion of their Lordships, however, the proper approach is somewhat different. The rule against bias is one thing. The right to be heard is another. Those two rules are the essential characteristics of what is often called natural justice. They are the twin pillars supporting it. The Romans put them in the two maxims: *Nemo iudex in causa sua*: and *Audi alteram partem*. They have recently been put in the two words, Impartiality and Fairness. But they are separate concepts and are governed by separate considerations. In the present case inspector Kanda complained of a breach of the second. He said that his constitutional right had been infringed. He had been dismissed without being given a reasonable opportunity of being heard.

If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them. This appears in all the cases from the celebrated judgment of Lord Loreburn L.C. in *Board of Education v. Rice* & down to the decision of their Lordships' Board in *Ceylon University v. Fernando*.”

In the instant case, there is no indication by the Respondents that there was a proper inquiry conducted with regard to unfair labour practices as alleged against the Petitioner. Instead of that, they have taken the preliminary objections on delay, suppression of material facts and alternative remedy which could be considered at a later stage.

Considering the above facts, I am of the view that a prima facie case has been established by the Petitioner to issue notice against the Respondents. Thus, we issue notice against the Respondents and issue an interim order as prayed in the prayers (b) and (c) until the final determination of this case.

JUDGE OF THE COURT OF APPEAL

N. Bandula Karunarathna,J (P/CA)

I AGREE

PRESIDENT OF THE COURT OF APPEAL