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

In the matter of an application for Appeal under the 13th Amendment to the Constitution and the Supreme Court Rules

Court of Appeal Case No:
CA (PHC) 05/2008
HC Trincomalee Case No:
HCEP/App-Writ/375/02(T)

Herath Mudiyanselage Herath,
No. 84, Galmetiyawa,
Kanthale.

Petitioner-Appellant

-Vs-

1. Mr. A. Subramanium Sharma,
   Commissioner of Co-operative Development and Registrar of Co-operative Societies,
   Eastern Province,
   Department of Co-operative Development,
   Trincomalee.
2. Multi Purpose Co-operative Society,
   Kanthale.

Respondent-Respondents

Before : **A.L. Shiran Gooneratne J.**

&

Mahinda Samayawardhena J.

Counsel : Mahanama de Silva with N. Senanayaka for the Petitioner-Appellant.

Kanishka de Silva, SSC with Sabrina Ahmed, SC for the Respondents.

Written Submissions: By the Petitioner-Appellant on 02/10/2017

By the 1st Respondent-Respondents on 19/06/2019

Argued on : 10/12/2019

Judgment on : **24/01/2020**

Website Copy

A.L. Shiran Gooneratne J.

In this application, the Petitioner-Appellant (hereinafter referred to as the Appellant) seeks to set aside the judgment of the learned High Court Judge of the Eastern Province holden in Trincomalee, rejecting the issue of an order in the nature of writ of *certiorari* to quash a determination given by the 1st Respondent affirming the Arbitration award (T.D/99/43), and also to quash the said Arbitration award made in terms of Section 58(1) of the Co-operative Societies Law No. 5 of 1972 (as amended). The dispute arising as a result of a short fall in stored paddy stocks in the wholesale storage facility from 25/02/1998 to 21/01/1999 referred to Arbitration by the 2nd Respondent was attributed to the Appellant who was the

manager of the facility. At the conclusion of inquiry, the Arbitrator by award dated 27/01/2001, held that the Appellant was liable to pay a sum of Rupees 484, 617/44 for the loss of paddy stocks.

The Appellant has preferred this application on the basis that;

- the arbitrator has failed to give due consideration to the weight loss of stored paddy due to dryness.
- the learned High Court Judge has failed to consider the 'No Evidence Rule' when evaluating the facts of the case.

It is important to note that the Appellant by this application is challenging the correctness of the determination as opposed to the lawfulness of the arbitral award by way of writ jurisdiction.

Section 58 of the Co-operative Societies Law reads as follows: -

(1) (e) ----

A claim by a registered society for any debt, demand or damages due to it from a member, officer or employee, whether past or present, or any nominee, heir or legal representative of a deceased member, officer or employee, whether such debt, demand or damages be admitted or not, shall be deemed to be a dispute touching the business of the society within the meaning of this subsection.

(2) The Registrar may, on receipt of a reference under subsection (1)-

(a) decide the dispute himself, or

(b) refer it for disposal to an arbitrator or arbitrators.

(3) Any party aggrieved by the award of the arbitrator or arbitrators may appeal therefrom to the Registrar within such period and in such manner as may be prescribed by rules.

(4) No party to any appeal made to the Registrar under subsection (3) shall be entitled, either by himself or by any representative, to appear before and be heard by the Registrar on such appeal.

(5) A decision of the Registrar under subsection (2) or in appeal under subsection (3) shall be final and shall not be called in question in any civil court.

The contention of the Appellant is that the short fall in stored paddy was due to dry weather conditions which prevailed in the area during the relevant period. The Appellant also contends that the Arbitrator completely disregarded the evidence given by the General Manager of the 2nd Respondent society that on previous instances store keepers were given a 3.42% waiver on the short fall of stored paddy due to dryness and also in other instances, the shortfall had been completely set off against loss of weight. It is also argued that the arbitrator has failed to consider that the sealed test bags placed inside the storage facility recorded a weight loss of 5.47% due to dry weather conditions. The sealed 9 test bags were kept for the purpose of verifying the process of dryness and were stored

on 03/03/1998 and on 07/03/1998. On 28/12/1998, after a period of 9 months, the said bags were opened and weighed.

It is observed that the Arbitrator had given due consideration to the moisture content of the paddy stored and also to the paddy purchased by other storage facilities which is alleged to have contributed to the loss of weight in the 9 sealed bags. Other related factors attributed to loss of weight were also considered such as the weather report submitted by the Meteorological Department before deciding on the 3% waiver on the said shortfall. Having considered all the above factors led in evidence, the Arbitrator made award reducing the liability of the Appellant from Rs. 983,809/47 to Rs. 484,616/44.

The Appellant admits that there is a short fall in stock, however, attributes it to dry weather conditions. In the circumstances, it is my view that the Arbitrator has given due consideration to all factors resulting in the loss of weight before arriving at the 3% waiver due to the short fall as a result of dryness of the stored paddy.

This brings me to the second issue urged by the Appellant regarding the 'no evidence rule'.

The Appellant at page 5 of the written submissions filed of record admits that there was a shortage of paddy, however, in the same page he contends that the Arbitrator *"had no evidence to indicate that there was a shortage of paddy"* and therefore, Appling the 'no evidence rule', the conclusions arrived on a shortage of

stored paddy is *ultra vires* the powers of the arbitrator and therefore, the impugned award should be set aside. It is observed that the Appellant has failed to adduce any material to support the exception of 'no evidence' to allege that the findings of the arbitral award was made in ignorance of the said rule.

Wade and Forsythe, Administrative Law, 7th Edition at p. 312, states;

"no evidence does not mean only a total dearth of evidence. It extends to any case where the evidence, taken as a whole, is not reasonably capable of supporting the finding or where, in other words, no tribunal could reasonably reach that conclusion on that evidence".

It goes on to state at page 316;

"It seems clear that this ground of judicial review ought now to be regarded as established on a general basis", and forecasts that, no evidence *"seems destined to take its place as yet a further branch of the principle of ultra vires, so that Acts giving powers of determination will be taken to imply that the determination must be based on some acceptable evidence. If it is not, it will be treated as arbitrary, capricious and obviously unauthorized".*

In ***Rajapakse Vs. Gunasekera (1984) 2 SLR 1 at page 6, Sharvananda, J*** (as he then was) cited with approval the following dictum by ***Lord Radcliffe in Edwards Vs. Bairstow (1955) All ER 48, 57*** elucidating the criteria for identifying errors of law.

"I think that the true position of the Court in all these cases can be shortly stated. If a party to a hearing before commissioners expresses dissatisfaction with their determination as being erroneous in point to law, it is for them to state a Case, and in the body of it to set out the facts that they have found as well as their determination. I do not think that inference drawn from other facts are incapable of being themselves findings of fact, although there is value in the distinction between primary facts and inferences drawn from them. When the Case comes before the Court, it is its duty to examine the determination having regard to its knowledge of the relevant law. If the Case contains anything ex facie which is bad in law and which bears on the determination, it is, obviously, erroneous in point of law. But, without any such misconception appearing ex facie, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the Court must intervene. It has no option but to assume that there has been some misconception of the law, and that this has been responsible for the determination. So there, too, there has been an error in point of law."

As pointed out earlier, the Arbitrator had reached his conclusions on facts supported by acceptable evidence. It is only an inference based on a complete absence of evidence that could give rise to a misdirection in law. Therefore, I do not see any reason to apply the 'no evidence rule' as a basis of review in the instant application.

For all the reasons stated above this application is refused. I order no costs.

Parties in CA(PHC)APN- 91/2011 have agreed to abide by the judgment delivered in this case.

Application is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE COURT OF APPEAL