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

In the matter of an Application for mandates in the nature of Writs of Certiorari under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No: 310/2017

Lanka Electricity Company (Private) Limited,
No. 411, Galle Road, Colombo 3.

PETITIONER

Vs.

1. T. Piyasoma,
   No. 77, Pannipitiya Road, Battaramulla.

2. R.P.A.Wimalaweera,
   Commissioner General of Labour.

3. W.D.J. Seneviratne,
   Minister of Labour.

3A. Ravindra Samaraweera,
   Minister of Labour.

3B. Gamini Lokuge,
   Minister of Labour.

3C. Daya Gamage,
   Minister of Labour.

3D. Dinesh Gunewardena,
   Minister of Foreign Relations and Labour.
   2nd, 3rd, 3A – 3D Respondents at
   Labour Secretariat, Colombo 5.

4. M.N. Fernando,
   162/1, Dampe Road, Palliaywatte,
   Piliyandala.

RESPONDENTS

Before:	**Mahinda Samayawardhena, J** **Arjuna Obeyesekere, J**
Counsel:	Kushan D' Alwis, P.C., with Ruwan D.V.Dias and Ayendra Wickremesekera for the Petitioner
	Ms. Ganga Wakishtaarachchi, Senior State Counsel for the 2nd, 3rd, 3A – 3D Respondents
Argued on:	7th July 2020
Written Submissions:	Tendered on behalf of the Petitioner on 14th December 2018 and 30th May 2019
	Tendered on behalf of the 2nd, 3rd, 3A – 3D Respondents on 13th May 2019
Decided on:	11th September 2020

Arjuna Obeyesekere, J

The Petitioner has filed this application seeking *inter alia* a Writ of Certiorari to quash the arbitral award marked '**P5**' made in terms of the Industrial Disputes Act by the 1st Respondent.

The facts of this matter very briefly are as follows.

The Petitioner states that by an internal memorandum dated 3rd November 2008 addressed to its Chairman, the Chief Internal Auditor of the Petitioner had sought approval to deploy two Office Assistants to assist the Investigation Teams that detect the illegal tapping of electricity. According to the said memorandum, their services were required for the purpose of carrying ladders etc.[1] The 4th Respondent, whose father was employed in the house of the then Chairman of the Petitioner, and who by then had submitted his curriculum vitae with a covering letter titled '*application for a suitable post*', had been considered for the said post by the Petitioner.[2] After an

[1] This memorandum has been marked 'R32' before the Arbitrator, and is at page 465 of 'X', which is the marking given to the entire proceedings before the 1st Respondent.
[2] The curriculum vitae has been marked 'R8a', and is at page 426 of 'X'.

interview, the 4th Respondent had been recruited to the post of Office Assistant (කාර්යාල කාර්ය සහායක) in the Petitioner Company, and had been issued with a letter of appointment dated 21st November 2008, to the post of Office Assistant. The 4th Respondent had continued to hold the said post until his complaint to the Department of Labour in 2012.

It is not in dispute that the Petitioner had served as a Maintenance Assistant in his previous employment, and that he was knowledgeable in the repair and maintenance of domestic electrical appliances. It is also not in dispute that the 4th Respondent had been assigned to the Investigation Teams of the Petitioner that was engaged in the detection of illegal tapping of electricity.

In his complaint made to the Department of Labour in 2012, the 4th Respondent, while admitting that he was recruited as an Office Assistant, had stated that from day one, he worked as an Electrician (විදුලි කාර්මිකයෙකු) in the Investigation Team. He had stated further that he was transferred from the Investigation Team in November 2011, but that on an appeal filed by him, the said transfer had been cancelled. The 4th Respondent goes onto state that he had been transferred again on 1st February 2012 to the Moratuwa Branch where he assumed duties but that the work assigned to him was that of an *Office Assistant*. The grievance of the 4th Respondent was that having worked as an Electrician, *his new assignment as an Office Assistant amounted to a demotion*.[3] The said complaint had thereafter been inquired into by the Department of Labour, but in the absence of a resolution of the said dispute, the Minister of Labour, acting in terms of the powers vested in him in terms of Section 4(1) of the Industrial Disputes Act, had referred the following dispute for resolution by arbitration:

> "ලංකා විදුලි පුද්ගලික සමාගමේ කාර්යාල කාර්ය සහායකයෙකු ලෙස සේවයට බඳවාගෙන 111 වන ශ්‍රේණියේ විදුලි කාර්මික තනතුර ලබා නොදී විදුලි කාර්මිකයෙකු ලෙස සේවයේ යෙදවීම නිසා එම්. එන්. ප්‍රනාන්දු, මහතාට යම් අසාධාරණයක් සිදුවුයේද, යන්න හා එසේ වුයේ නම් ඔහුට හිමි වියයුතු සහන මොනවාද යන්න පිලිබඳව වේ."[4]

[3] Vide statement of the 4th Respondent, at page 24 of 'X'.
[4] Vide reference to arbitration marked 'P2'.

This would be a convenient place to consider the role of an Arbitrator appointed under the Industrial Disputes Act. Section 17(1) of the Industrial Disputes Act reads as follows:

> "*When an industrial dispute has been referred under section 3(1)(d) or section 4(1) to an arbitrator for settlement by arbitration, he shall make all such inquiries into the dispute as he may consider necessary, hear such evidence as may be tendered by the parties to the dispute, and thereafter make such award* ***as may appear to him just and equitable***."

The wide powers and duties conferred on an arbitrator were considered by the Supreme Court in **Brown & Company v. Minister of Labour**,[5] where it was held as follows:

> "*Arbitration under the Industrial Disputes Act is intended to be even more liberal, informal and flexible than commercial arbitration, primarily because the Arbitrator is empowered to make an award which is "just and equitable". When an industrial dispute has been referred under Section 3 (1)(d) or Section 4(1) of the Industrial Disputes Act to an Arbitrator for settlement by arbitration, Section 17(1) of the said Act requires such Arbitrator to "make all such inquiries into the dispute as he may consider necessary, hear such evidence as may be tendered by the parties to the dispute, and thereafter make such award as may appear to him just and equitable". In my view, the word "make" as used in the said provision, has the effect of throwing the ball into the Arbitrator's court, so to speak, and requires him to initiate what inquiries he considers are necessary. The Arbitrator is not simply called upon "to hold an inquiry", where the ball would be in the court of the parties to the dispute and, it would be left to them to tender what evidence they consider necessary requiring the arbitrator to be just a judge presiding over the inquiry, the control and progress of which will be in the hands of the parties themselves or their Counsel. What the Industrial Disputes Act has done appears to me to be to substitute in place of the rigid procedures of the law envisaged by the "adversarial system", a new and more flexible procedure, which is in keeping with the fashion in which equity in English law gave relief to the litigants from the rigidity of the common law. The function*

[5](2011) 1 Sri LR 305; Marsoof, J.

of the arbitral power in relation to industrial disputes is to ascertain and declare what in the opinion of the Arbitrator ought to be the respective rights and liabilities of the parties as they exist at the moment the proceedings are instituted. His role is more inquisitorial, and he has a duty to go in search for the evidence, and he is not strictly required to follow the provisions of the Evidence Ordinance in doing so. Just as much as the procedure before the arbitrator is not governed by the rigid provisions of the Evidence Ordinance, the procedure followed by him need not be fettered by the rigidity of the law."

Chief Justice H.N.G.Fernando in **Municipal Council Colombo vs Munasinghe**[6] stated as follows:

"*I hold that when the Industrial Disputes Act confers on an Arbitrator the discretion to make an award which is 'just and equitable',* ***the Legislature did not intend to confer on an Arbitrator the freedom of a wild horse****. An award must be 'just and equitable' as between the parties to a dispute; and the fact that one party might have encountered 'hard times' because of personal circumstances for which the other party is in no way responsible is not a ground on which justice or equity requires the other party to make undue concessions. In addition, it is time that this Court should correct what seems to be a prevalent misconception.* ***The mandate which the Arbitrator in an industrial dispute holds under the law requires him to make an award which is just and equitable, and not necessarily an award which favours an employee****. An Arbitrator holds no licence from the Legislature to make any such award as he may please,* ***for nothing is just and equitable which is decided by whim or caprice or by the toss of a double-headed coin***."

This position was confirmed by the Supreme Court in **Ceylon Tea Plantations Company Limited vs Ceylon Estate Staff Union**,[7] where it was held that:

"*A just and equitable order must be fair by all parties. It never means the safeguarding of the interest of the workman alone*."

[6] 71 NLR 223 at page 225. Referred to with approval in Standard Chartered Grindlays Bank Limited vs The Minister of Labour [SC Appeal No. 22/2003; SC Minutes of 4th April 2008].
[7] SC Appeal 211/72; SC Minutes of 15th May 1974.

In **Singer Industries (Ceylon) Limited vs The Ceylon Mercantile Industrial and General Workers Union and others**,[8] the Supreme Court agreed with the observations in Municipal Council Colombo vs Munasinghe[9] and held as follows:

> "*It is a cardinal principle of law that in making an award by an arbitrator* ***there must be a judicial and objective approach*** *and more importantly the perspectives both of employer as well as the employee should be considered in a balanced manner and undoubtedly just and equity must apply to both these parties*."

Thus, it is clear that the Arbitrator must take control of the proceedings, elicit the material that is required for a determination of the question referred to him, consider the material that is before him and arrive at a just and equitable order, without favouring one party over another.

Proceedings had commenced before the 1st Respondent Arbitrator on 19th July 2014. While the 4th Respondent had given evidence, the Petitioner too had led the evidence of its Investigation Officer and an Executive from the Human Resources Division. The parties had also been afforded an opportunity of filing written submissions. The Petitioner has no complaint with regard to the manner in which the proceedings were conducted by the 1st Respondent and the hearing afforded to the Petitioner.

By his Award marked '**P5**' dated 17th January 2017, the 1st Respondent had directed the Petitioner as follows:[10]

> "**එබැවින්** 2008.11.24 **දින සිට ක්‍රියාත්මක වන පරිදි එම්. එන්. ප්‍රනාන්දු, මහතා ලංකා විදුලි පුද්ගලික සමාගමේ 111 වන ශ්‍රේණියේ විදුලි කාර්මිකයෙකු ලෙස පෙරදාතම් කරන ලෙස ලංකා විදුලි පුද්ගලික සමාගමට නියෝග කරම්. මෙම නියෝගය ශ්‍රී ලංකා ජනරජයේ ගැසට් පත්‍රයේ ප්‍රසිද්ධ කර මාස දෙකක් ඇතුළත ක්‍රියාත්මක කල යුතුයි.**"

Aggrieved by the said decision, the Petitioner had repudiated the said Award by a Notice of Repudiation dated 24th July 2017 in terms of Section 20 of the Industrial

[8] [2010] 1 Sri LR 66.
[9] Supra.
[10] The said Award has been published in Extraordinary Gazette No. 2021/48 dated 2nd June 2017, marked 'P7'.

Disputes Act.[11] This application was filed thereafter seeking a Writ of Certiorari to quash the arbitral award '**P5**', and the notice of award marked '**P7**' published in the Gazette. [12]

Considering the fact that the role of an arbitrator is to deliver an order which is just and equitable by both parties, it would be useful to understand the manner in which an Arbitrator must evaluate the evidence placed before him.

In **Heath and Company (Ceylon) Limited vs Kariyawasam**,[13] the Supreme Court held that in the assessment of evidence, an arbitrator appointed under the Industrial Disputes Act must act judicially. It was held further that where his finding is completely contrary to the weight of evidence, such a finding can only be described as being perverse and his award is liable to be quashed by way of Certiorari.

In **All Ceylon Commercial and Industrial Workers Union vs Nestle Lanka Limited**[14] this Court held as follows:

> "***The arbitrator*** *to whom a reference has been made in terms of section 4 (1) of the Industrial Disputes Act as amended* ***is expected to act judicially****. He is required in arriving at his determinations to decide legal questions affecting the rights of the subject and hence he is under a duty to act judicially. Although such arbitrator does not exercise judicial power in the strict sense, it is his duty to act judicially.*
>
> *It has been stressed that such an arbitrator's function is judicial in the sense that he has to hear parties, decide facts, apply rules with judicial impartiality and his decision is objective as that of any court of law, though ultimately he makes such award as may appear to him to be just and equitable. Vide the decision in Nadaraja Limited and 3 others. v. Krishnadasan and 3 others."*[15]

[11] Notice of Repudiation has been marked 'P8'.
[12] Vide paragraphs (b) and (c) of the prayer to the petition.
[13] 71 NLR 382
[14] (1999) 1 Sri LR 343 at page 348.
[15] 78 NLR 255.

In **Brown & Company v. Minister of Labour and Others**[16] the Supreme Court, having referred to the following description of irrationality given by Lord Diplock in **Council of Civil Service Unions v Minister for the Civil Service**:[17]

> "*By 'irrationality' I mean what can now be succinctly referred to as 'Wednesbury unreasonableness'*[18]*. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it*."

held that "*in my opinion, these words are applicable with equal force to the discretionary powers exercised by an arbitrator …. in an industrial arbitration under Section 4(1) of the Industrial Disputes Act*."

Thus, in arriving at a decision which is both just and equitable, it is clear that the Arbitrator must act judicially and that his decision must be reasonable and rational.

The principal argument of the learned President's Counsel for the Petitioner was that the Arbitrator has failed to consider the material placed before him by the Petitioner, and that the award is not supported by the evidence that was led before the 1st Respondent, thereby rendering the award arbitrary and irrational. Whether a Court can intervene when there is 'no evidence' to support the finding of the administrative body has been discussed in **Administrative Law** by Wade and Forsyth[19] in the following manner:

> " "*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. This 'no evidence' principle clearly has something in common with the principle that perverse or unreasonable action is unauthorised and ultra vires. It also has some affinity with the substantial evidence rule of American law, which requires that findings be supported by substantial evidence on the record as a whole*."

[16] Supra.
[17] [1985] AC 374.
[18] Associated Provincial Picture Houses Ltd v Wednesbury Corporation 1948(1)KB 223
[19] 11th Edition; page 227.

In support of his argument, the learned President's Counsel adverted to several documents that were placed before the 1st Respondent, which he submitted established the position (a) that the 4th Respondent was employed in the capacity of an Office Assistant; (b) that he continued to hold the said post at all times; and (c) that the Petitioner was never entrusted with the duties of an Electrician.

I shall now consider the said material.

It is clear from the internal memorandum that was referred to earlier that the requirement of the Petitioner was for the services of two Office Assistants. It is also clear that the 4th Respondent was able to secure an interview with the Petitioner due to his father being employed at the residence of the then Chairman of the Petitioner. The 4th Respondent had submitted his application seeking employment in a post commensurate with his qualifications, and after facing an interview for the post of Office Assistant,[20] the 4th Respondent had been requested to report for duty as an Office Assistant.[21] The Petitioner, by reporting to work on receipt of the said letter, had accepted the offer of the Petitioner of an appointment as an Office Assistant. The letter of appointment issued to the 4th Respondent to the post of Office Assistant had been signed and accepted by the 4th Respondent without any reservation. Thus, I am of the view that there cannot be any doubt that the appointment of the 4th Respondent was as an Office Assistant.

The learned President's Counsel for the Petitioner submitted that recruitment to the post of Electrician (Grade III) is carried out after the publication of a notice in the newspaper, and having afforded all those who respond to the said advertisement an equal opportunity of being selected. Thus, recruitment to the post of Electrician is not carried out in an ad-hoc manner similar to the manner in which the 4th Respondent was selected, as referred to above, once again confirming that the recruitment of the 4th Respondent could not have been to the post of Electrician.

What is more important is that an applicant for the post of Electrician must possess a simple pass in Mathematics at the GCE Ordinary Level Examination, and should have successfully completed a 3 ½ year full time course either at the National Apprentice

[20] Vide internal memorandum dated 18th November 2011, marked 'R33', at page 466 of 'X'.
[21] Vide letter dated 24th November 2008 marked 'R6' at page 421 of 'X'.

and Industrial Training Authority or the Apprentice Institute, Katubedda or a similar programme.[22] It is admitted that the 4th Respondent did not possess any of the above qualifications, and therefore, I am of the view that the 4th Respondent was not eligible to be employed as an Electrician at the Petitioner.

The Petitioner has also produced the Job Description for the post of Electrician (Grade III). I have examined the said document, and observe that the post is of a highly technical nature, and include the following duties:

> "2. විදුලි පද්ධතියේ සියළුම මෙහෙයුම් නඩත්තු කටයුතු කිරීම සහ බිඳ වැටීම් පිළිබඳ දැන්වීම් මත කණ්ඩායම් නායකයාගේ අධීක්ෂණය යටතේ අළුත්වැඩියා කටයුතු කිරීම.
>
> 3. නියම කරන අවස්ථාවලදී පා.සේ. විදුලි සැපයුම් විසන්ධි කිරීම් සහ යලි සන්ධි කිරීම.
>
> 9. සාමාන්‍ය සේවා සැපයුම් මණු පරීක්ෂා කිරීමට සහය වීම.
>
> 11. විදුලි කණු සිටුවීම. යටිබහන් විදුලි රැහැන් එලීම, ඉදි කිරීම, නඩත්තු/පිළිසකර කටයුතු කිරීම සහ වැඩ බිම්වලට අදාල සියළුම කාර්යයන් අධීක්ෂණය යටතේ සිදු කිරීම.
>
> 12. බෙදා හැරීම පද්ධතියේ දෝෂ සොයා ගැනීම. දෝෂ සහිත කොටස් වෙන් කිරීම සහ අළුත්වැඩියා කර යථා තත්වයට පත්කිරීමට සහය වීම."

The duties that go with the post of Electrician is ample proof as to why the Petitioner was seeking persons with the qualifications referred to earlier for the post of Electrician. I have no doubt that the post of Electrician would have required a sound technical knowledge of the subject, and that the 4th Respondent, who did not have the educational qualifications required for the said post, could not have functioned in the post of Electrician, even if he possessed the practical experience. One must remember that the Petitioner is one of the two entities that have been entrusted with the task of transmission of electricity in the Country, and that the Petitioner simply cannot afford to allow unqualified personnel to perform tasks which need to be performed by duly qualified personnel.

The following documents too establish that the post held by the 4th Respondent was that of an Office Assistant:

[22] Vide paper advertisement published in August 2009 marked 'R19', August 2010 marked 'R20' and January 2012, marked 'R4', at pages 444, 445 and 419, respectively, of 'X'.

a) The identity card issued to the 4th Respondent in January 2009, and in January 2014 refer to the post of the Petitioner as an Office Assistant;[23]

b) Membership Certificate issued to the 4th Respondent by the Sri Lanka Nidhahas Sevaka Sangamaya refers to the post of the Petitioner as an Office Assistant;[24]

c) In the Personal Loan Protection Application signed by the 4th Respondent in January 2010, the post held by the 4th Respondent is specified as Office Assistant ;[25]

d) The application of the 4th Respondent for a distress loan submitted in December 2009 too refers to the post held by the 4th Respondent as Office Assistant;[26]

e) The letters by which the Petitioner was informed of his salary increments prior to the complaint in 2012 refer to the 4th Respondent as an Office Assistant.[27]

The position taken by the 4th Respondent before the Arbitrator was twofold. The first is that at the time he assumed duties with the Petitioner in November 2008, the then Chairman of the Petitioner had held out to him:

(a) That he is being recruited to the post of Office Assistant due to the absence of vacancies in the post of Electrician;

(b) That he would however be entrusted with the duties of an Electrician;

(c) That he would be appointed to the post of Electrician once vacancies arose in the said post.

Even if the above position is true, I am the view that the then Chairman of the Petitioner did not have the legal authority to make the said representation,

[23] Vide 'R21' and 'R9' at pages 446 and 424, respectively, of 'X'.
[24] Vide document marked 'R16', at page 440 of 'X'.
[25] Vide application dated 4th January 2010, marked 'R17', at page 441 of 'X'.
[26] Vide application dated 23rd December 2009, marked 'R18', at page 442 of 'X'.
[27] Vide letters dated 4th March 2010 marked 'R22', 22nd January 2011 marked 'R23', 6th December 2011 marked 'R24'at pages 447, 449, 450 of 'X'.

especially in the absence of the 4th Respondent possessing the qualifications required for the post of Electrician. In any event, vacancies did arise in the post of Electrician in August 2009, and August 2010, as borne out by the newspaper advertisements published at that time,[28] and if the version of the 4th Respondent was right, he should have been appointed to the said post, either in August 2009 when the same person was the Chairman, or August 2010. Thus, I am not inclined to accept the position of the 4th Respondent.

The second aspect of the 4th Respondent's position was that he was carrying out the functions of an Electrician, and for that reason he should be appointed to the said post. In support of this, the 4th Respondent had produced before the Arbitrator, several plaints filed in the Magistrate's Court against persons who had illegally tapped electricity, where the 4th Respondent had been referred to as an Electrician. While the circumstances under which this was done is not clear, even if the 4th Respondent's argument is accepted, I am of the view that the fact that he performed the duties of an Electrician does not entitle the 4th Respondent to be appointed as an Electrician. I certainly cannot subscribe to the view that a person who does not have the entry qualifications to a post should be appointed to the said post, merely because he carried out the functions of that post.

It is in the above factual circumstances that the 1st Respondent decided the aforementioned question that was referred to him by the Minister in favour of the 4th Respondent, with the Petitioner complaining to this Court that the said decision is not supported by the evidence that was led before the 1st Respondent, and therefore the award is arbitrary and irrational.

This Court will now proceed to consider whether the award made by the Arbitrator is just and equitable by both parties. I have examined the award of the 1st Respondent '**P5**' in the light of the above material that was referred to by the learned President's Counsel, and observe that the Arbitrator has not considered the aforementioned material that was available to him. He has arrived at his decision, primarily for two reasons. The first is that the 4th Respondent was a *clever young man who had carried out the duties entrusted to him in an exemplary manner*. This is borne out by the following paragraph:

[28] Vide 'R19' and 'R20', at pages 444 and 445, respectively, of 'X'.

> "ඉල්ලුම්කරු 2008.11.24 දින සිට 2012.01.09 දක්වා අවුරුදු 4ට අධික කාලයක් තමන්ට සහතික තිබුණත් නැතත් ලංකා විදුලි පුද්ගලික සමාගම 111 වන ශ්‍රේණියේ විදුලි කාර්මිකයෙකුගේ සේවය ඉතා ඉහළ මට්ටමින් සිදු කරමින් සමාගමටත් ජනතාවටත් නිහතමානී සේවයක් කර ඇත. මේ කාලය තුල ඔහුට ඉහළින් සේවය කළ කිසිම නිලධාරියකු ඉල්ලුම්කරුගේ සේවය ගැන කිසිම පැමිණිල්ලක් හෝ දෝෂයක් පෙන්වා නැත. තම හැකියාව සහ දැනුම යොදා ගනිමින් ඔහු වැදගත් සේවයක් සිදු කර ඇත."

The second reason for the said decision is that the Investigation Team did not have an electrician, and that this task was performed by the 4th Respondent.

The 1st Respondent has lost sight of the fact that every employee must, at the very least, carry out the duties entrusted to him by his or her employer to the best of his ability, and in a satisfactory manner. Doing so does not entitle him to benefits that he is otherwise not entitled to. Furthermore, taking the position of the 4th Respondent at its best, the mere fact that the 4th Respondent carried out the duties of an Electrician does not make the 4th Respondent eligible to be appointed to the said post, especially in view of the educational qualifications that are required for the said post.

In these circumstances, this Court is in agreement with the submission of the learned President's Counsel for the Petitioner that the conclusion reached by the Arbitrator that the 4th Respondent should be appointed to the post of Electrician is not supported by the evidence placed before him. I must state that the 1st Respondent has clearly taken into consideration matters which were irrelevant to the issue before him. I am of the view that the decision of the Arbitrator is so unreasonable and irrational that it is not a decision that a sensible person who had applied his mind to the evidence available to him could have arrived at. The said decision is therefore liable to be quashed by a Writ of Certiorari.

There is one matter that I wish to advert to, even though the Petitioner has not challenged the reference to arbitration. In terms of Section 4(1), the Minister must form the opinion that there exists an industrial dispute, prior to making any reference of such dispute for resolution by arbitration. The Minister would be guided in this regard by the Commissioner General of Labour who therefore has the duty to carefully consider if an industrial dispute has been made out by the complainant.

The complaint of the 4th Respondent to the Department of Labour was supported only by the fact that he had been referred to as an Electrician in the plaints filed before the Magistrate's Courts. That being the position of the 4th Respondent, and in the light of the material placed by the Petitioner, it does not appear that the Minister had applied a judicial mind or even an objective mind, or with all due deference a sensible mind to the issue before him, prior to making the reference. An inquiry by an arbitrator can take several days, is a costly exercise and a strain on the limited resources of the State, and therefore, is all the more reason why both the Commissioner General of Labour and the Minister of Labour must examine matters carefully prior to arriving at a decision whether a reference should be made. In my view, this is a classic case where the Petitioner could have challenged the reference of the Minister on the basis of it being irrational and unreasonable.

At this stage, I would like to refer to the judgment of this Court in **Standard Chartered Bank vs The Minister of Labour Relations and Manpower and Others**,[29] where this Court held as follows:

> "*This Court is of the view that in terms of Section 4(1) of the Industrial Disputes Act, the Minister is not obliged to refer for arbitration, each and every dispute that he or she is presented with. The Minister must look at each request objectively and exercise his discretion judiciously. The fact that the Minister has a discretion is clearly established when one considers that the Minister* ***may*** *refer for arbitration only if, "he is of the opinion that an industrial dispute is a minor dispute". How does he form an opinion that there exists an industrial dispute and that such dispute is a minor dispute? Is it only by considering the argument advanced by the employee or should the Minister also consider the position of the employer, as well as any other matters that the Minister may consider relevant? This Court, whilst not subscribing to the view that it is mandatory for the Minister to obtain the views of all parties prior to making a reference under Section 4(1), takes the view that in this application, given the background circumstances such as the inquiry under the TEW Act, and the litigation challenging the findings of the Inquiry Officer, the Minister was under a duty to consider the documents '**X10**', '**X11**' and '**X12**' prior to forming an opinion that there exists an industrial dispute. Unfortunately, the Minister has*

[29] CA (Writ) Application No. 231/09; CA Minutes of 17th July 2019.

not done so, and therefore it is the view of this Court that the Minister has failed to take into consideration relevant matters, prior to arriving at a decision.

The learned Senior Deputy Solicitor General for the 1st and 2nd Respondents had submitted that in terms of Section 4(1), the consent of the parties is not required for a reference and that this is an indication that the Minister does not have to consult the other party, prior to making the reference to arbitration. Whilst agreeing that the consent of the parties is not required, this Court is of the view that this is not an indication that the Minister is not required to address his mind in a judicial manner. If this Court may borrow the language used by the Supreme Court in ***Municipal Council Colombo vs Munasinghe***[30] *with reference to the power of an arbitrator appointed under the Industrial Disputes Act, the Minister or for that matter, no public official 'has the freedom of the wild horse' to do whatever he or she wants to. All exercise of statutory duties and functions must be within the four corners of the statute that confers such duties and functions, and any transgression will be dealt with in terms of the law*."

In the above circumstances, I am of the view that the decision of the Arbitrator is irrational, unreasonable and arbitrary. I therefore issue Writs of Certiorari in terms of paragraphs (b) and (c) of the prayer to the petition quashing the award marked '**P5**', and the decision to publish the award in the Gazette, as reflected by '**P7**'. I make no order with regard to costs.

Judge of the Court of Appeal

Mahinda Samayawardhena, J

I agree

Judge of the Court of Appeal

[30] Supra.