

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

In the matter of an Appeal made
under Articles 154 (G) (6) of
Constitution read with Article 138
of Constitution of the Republic of
Sri Lanka.

1. Giridage Sirisena
Garagoda,
Yatinyanthota.
2. W. Nishantha Weragala
Moraliya,
Wahakula.
3. Hewa Kankanamalge Nihal Perera
National House,
Thalduwa,
Avissawella.

Petitioner

Vs.

CA -PHC - 28-2018

HC - Kegalle - Writ -4826

1. Society Co-operative Registrar and
Commissioner of Co-operative
Development,
Sabaragamuwa Provincial Council
New Town,
Ratnapura.
2. A. W. Rukmani Ariyaratne
Acting Commissioner of
Development of Co-operative
Sabaragamuwa Provincial Council
Ratnapura.

3. Assistant Commissioner of Co-operative Development, Kegalle.
4. R. P Premachandra Arbitrator, Shramadana Mawatha, Ballapana, Udabage Galigamuwa Town.
5. Ruwanwella Multi Purpose Co-operative Society Limited
6. H. A. Dharmasena Walgampaha Galapitamada.
7. Ashoka Wijesundara Indurana, Waharaka.
8. K. W. M Ajith Shantha Bandara Mapitigama, Gonagala, Ruwanwella.
9. Palitha Darmapriya Weerasinghe Morawatta, Ruwanwella.
10. P.M. Ariyawansha Bandara Atalugama Dehiovita.
11. J. Nimal Premathilaka Moraliya, Wahakula.

12. H. Samarawansha
Wandala,
Ruwanwella.
13. K. Lalitha Karunarathna
Iriyagolla,
Dehiovita.
14. G. U. Miurin
Eluwana,
Dehiovita.

Respondents

1. Giridage Sirisena
Garagoda,
Yatinyanthota.
2. W. Nishantha Weragala
Moraliya,
Wahakula.
3. Hewa Kankanamalge Nihal Perera
National House,
Thalduwa,
Avissawella.

Petitioner-Appellants

1. Society Co-operative Registrar and
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Development,
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Acting Commissioner of
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Iriyagolla,
Dehiovita.
14. G. U. Miurin
Eluwana,
Dehiovita.

Respondents-Respondents

Before : **Hon. M Sampath K. B Wijeratne,J.(CA)**
: **Hon. M. Ahsan R. Marikar, J.(CA)**

Counsel : Poornima Samarasinghe instructed by S.
B. Dissanayake Associates for the
Petitioner – Appellants.

Pathmasiri Bandara instructed by
Purnima Gnanasekara for the 5th
Respondent – Respondent.

Written Submissions : Filed on behalf of the Petitioner-
Appellant on 19.06.2024.

Filed on behalf of the 5th, 6th and 7th
Respondent-Respondents on 09.02.2024.

Argued on : 27.06.2024

Decided on : 09.08.2024

M. Ahsan R. Marikar, J. (CA)

Introduction

- 1) The Petitioners have made this application against the 1st Respondent Cooperative Development Commissioner, Registrar of Cooperative Development and against the other Respondents to set aside the order of the Provincial High Court of Kegalle dated 18th January 2018 and to grant the reliefs sought in the said High Court Case number 4826 Writ.
- 2) The said reliefs sought in the Appellant's appeal dated 14th March 2018 are as follows;

12. පෙත්සම්කාර අභියාචකයින් මින් පෙර මෙම කරුණ සම්බන්ධයෙන් උතුම් වූ මෙම අභියාචනා අධිකරණයේ අධිකරණ බලය ක්‍රියාත්මක කර නොවැනි බව නිසා සිටියි.

එසේ හෙයින් මෙම පෙත්සම්කාර අභියාචකයින් වෙනුවෙන් ගරු අභියාචනා අධිකරණයෙන් අයදා සිටින්නේ,

අ. ගරු කැගල්ල පළාත්බද මහාධිකරණයේ විනිසුරුතුමන් විසින් 2018. 01. 18 දින 4826/ 80 නඩුවට ලබා දී ඇති නියෝගය ඉවත් කර දෙන ලෙසත්,

ආ. පෙත්සම්කාර අභියාචකයින් විසින් ගරු සබරගමු පළාත්බද කැගල්ල මහාධිකරණය වෙත ඉදිරිපත් කර ඇති 4826/80 නඩුවේ පෙත්සමේ ආයාචනයේ ඉල්ලා ඇති සහන දානය කරමින් නියෝගයක් ලබාදෙන ලෙසත්,

ඇ. මෙම ඉල්ලීම පිළිබඳ නිවේදනය වගඋත්තරකාර වගඋත්තරකරුවන්ට නිකුත් කරන ලෙසත්

ඈ. නඩු ගාස්තු සහ

ඉ. ගරු අභියාචනා අධිකරණයට මැනවැයි හැඟෙන වෙනත් සහ වැඩිමනත් සහන ලබාදෙන ලෙසත් වේ.



(Handwritten signature)

1 සිට 3 දක්වා පෙත්සම්කාර අභියාචකයින්ගේ නීතිඥ

ඒ. ආර්. මැරිකාර් අමරසිංහ
 ඥා. ආර්. මැරිකාර් අමරසිංහ
 2 වන මහලය
 මාර් 18 A, සිංහලානි පාර, කොළඹ

Facts of this case

- 3) On perusal of the petition, the relevant documents, and the written submissions, it was found that the Appellants were the general manager, accountant and sales manager of the 5th Respondent Ruwanwella Cooperative Society.
- 4) During their tenure, with the assistance of the Board of Directors of the said society, printing machines had been purchased for the said society.
- 5) The said printing machines malfunctioned, leading to an inquiry being held against the Petitioners.
- 6) The inquiry report had divulged that the said offset printers and the paper cutting machines had defects at the time of purchase resulting in a financial loss of Rs. 626, 165/for the society.
- 7) The society then appointed an Arbitrator to inquire into the said loss.
- 8) The Petitioners were not satisfied by the decision made by the Arbitrator and appealed against the said decision to the 2nd Respondent.
- 9) The 1st Respondent also had confirmed the decision made by the Arbitrator.
- 10) Aggrieved by the said decision, the Petitioners had filed a Writ application against the said decision to the Provincial High Court of Kegalle and sought for a Writ of Certiorari to quash the decision made by the 1st Respondent.
- 11) However, the learned High Court Judge had dismissed the petition and refused the Writ of Certiorari application made by the Appellants.
- 12) Aggrieved by the said decision, the Appellants have filed this appeal to set aside the order made by the learned High Court

Judge and issue a Writ of Certiorari, quashing the decision made by the 1st Respondent.

Disputed facts

- 13) This is an appeal made against the order of the learned High Court Judge of Kegalle dated 18th January 2018.
- 14) On perusal of the Order made by the learned High Court Judge of Kegalle and the petition submitted by the Appellant to the High Court, it is revealed that the application seeks to stay the proceedings of the Magistrate of Ruvawella and to issue a Writ of Certiorari to quash the decision made by the 1st Respondent.
- 15) Hence, the application made to the High Court of Kegalle is confined to seeking rights under Writ jurisdiction. The following points should be considered to arrive at my conclusion,
 - a. Had the learned High Court Judge considered the matters related to the Appellant's application to issue a Writ of Certiorari?
 - b. If not, can the Appellant maintain this appeal?

I) Has the learned High Court Judge considered the matters related to the Appellant's application to issue a Writ of Certiorari?

- 16) On perusal of the learned High Court Judge's Judgement dated 18th January 2018, it is evident that the learned High Court Judge had considered the facts pertinent to the application made by the present Appellants, and noted the evidence led before the Arbitrator and the decision made by the Arbitrator.
- 17) On the said grounds, the learned High Court Judge had emphasized that the present Appellants had failed to prove any

reason to set aside the Arbitrator's decision before the 1st Respondent.

- 18) The said facts had fortified the decision made by the Arbitrator and the evidence led before the Arbitrator by both parties.
- 19) In making the determination, the High Court Judge specified that to set aside the decision made by the 1st Respondent, the present Appellants had to prove that excessive power was used, that there was excessive jurisdiction and/or that the 1st Respondent made an error and/ or violated the principles of natural justice.
- 20) Further, I will add to this point regarding the issuance of a Writ of Certiorari, there is no unreasonableness proven by the Appellants.
- 21) In considering the 1st Respondent's decision, it was based on the conclusion reached by the Arbitrator who is the 4th Respondent.
- 22) On perusal of the brief, it is evident that lengthy evidence had been led before the Arbitrator and the present Appellants had the opportunity of cross examine the said witnesses.
- 23) The Arbitrator had decided the case based on the evidence led before him.
- 24) It is noteworthy that the petition dated 10th October 2014, filed by the Appellants to the Provincial High Court of Kegalle had sought the following reliefs;

එසේ හෙයින් මෙම පෙත්සම්කරුවන් උතුම් වූ ගරු අධිකරණයෙන් ගෞරවයෙන් අයැදු සිටින්නේ,

- අ. වගඋත්තරකරුවන්ට නොසිසි නිකුත් කිරීමට නියෝග කරන ලෙසත්,
- ආ. මෙම නඩුවෙහි පෙ-15 ලෙසින් ලකුණු කොට ඇති ප්‍රදානය රුවන්වැල්ල ගරු මහේස්ත්‍රාත් අධිකරණය මගින් ක්‍රියාත්මක කරන්නට පලමු දෙවන සහ පස්වන වගඋත්තරකරු පියවර ගන්නේ නම් එකී පියවර මෙම නඩුව අසා අවසන් වන තුරු එකී පියවර අත් හිටුවීමේ නියෝගයක් මගින් අත්හිටුවා ගැනීමට නියෝගයක් කරන ලෙසත්,
- ඇ. දෙවන වගඋත්තරකරුගේ තීරණය එනම් 'පෙ- 10 ලෙස ලකුණු කර පෙත්සම සමඟ ගොනු කර ඇති ලේඛනයෙන් ගෙන ඇති තීරණය නිෂ්ප්‍රභ කරන සර්ටියෝරාටේ රිටි ආඥාවක් නිකුත් කරන ලෙසත්,
- ඈ. නඩු ගාස්තු සහ ගරු අධිකරණයට මැනවැයි හැඟෙන වෙනත් හා වැඩිමහත් සියලු සහන ලබා දෙන ලෙසත්ය.

- 25) In the said reliefs, the present Appellants had only sought to set aside the Order made by the 1st Respondent and had not sought any reliefs against the decision made by the Arbitrator.
- 26) Therefore, even if a Writ of Certiorari is granted to quash the 1st Respondent's decision, it will not affect the Respondents' ability to proceed with the Magistrate Court's application to recover the money based on the Arbitrator's decision.
- 27) Besides these facts, the learned High Court Judge reiterated that there is no ground that excessive jurisdiction was used, that the wrong principles were applied, or that principles of natural justice were violated in making the aforementioned decisions.
- 28) In observing the decision made by the Arbitrator, the Arbitrator has not violated any of the aforesaid grounds. The Appellants also had failed to submit any documents or grounds before the learned High Court Judge or this court, that demonstrated the 4th Respondent had violated the aforesaid grounds referred to by the learned High Court Judge.
- 29) To fortify the above position, I relate an additional fact that the Appellants had failed to produce that in a Writ matter, to set aside an Order made by an official, the party challenging the decision made should show/prove that the said official had acted unreasonably.
- 30) In the instant appeal or application made before the learned High Court Judge the Appellants had failed to show that either the Arbitrator or the 1st Respondent had acted unreasonably in their decisions. In the said circumstances I do not see any reason to set aside the order made by the learned High Court Judge dated 18th January 2018.

II) If not, can the Appellant maintain this appeal?

- 31) In considering the aforesaid analysis, I draw my attention to the decision made in the case of **Geeganageh vs Director General Customs¹**;

"By way of preface, I may say that the arguments put forward by the eminent President's Counsel for the petitioner might, perhaps, have been more acceptably addressed to a court exercising appellate and not supervisory jurisdiction - the latter jurisdiction being the one invoked by the petitioner in his petition seeking, under the judicial review procedure, a quashing of the aforesaid decision made by the 2nd respondent. The arguments advanced on behalf of the petitioner are based solely on factual matters inviting the Court of Appeal more or less, to substitute its view in the interpretation of factual matters or situations dealt with in the Written submissions. The submissions seem to be oblivious of the distinction between appeal and review procedure. If one appeals against a decision, one is claiming that it is wrong, or incorrect.

The Court of Appeal if it is persuaded of the merits of the case may allow the appeal and so it substitutes its view for that of the court or tribunal of first instance. Under the judicial review procedure the court is not concerned with the merits of the case, that is, whether the decision is right or wrong. In review (as opposed to appeal) the court only considers whether the decision is lawful or unlawful."

- 32) In the said Judgement it is decided that in a Writ matter the court will not consider the merits of the case but the court will see whether the decision made by the relevant officer is right or wrong.
- 33) Further, in the case of **Meril vs. Dayananda de Silva²** and others it was held;

"As Certiorari and mandamus... are public law remedies, it is important to know whether the relevant issue or decision under consideration in this matter involves public law... the answer to the question on the issue is; on public law issue depends on either of the two matters or on both viz 1) source

¹ [2001] 3 SLR 273 at 182-3

² [2001] 2 SLR 11 at 32

of power of the authority making the decision; 2) the nature of the function that the authority exercises, or, sometimes, on both on the above considerations.”

and in ***Bisomanike vs. Cyril de Alwis***³ it was held;

“A Writ of Certiorari is issued at the discretion of the Court. It cannot be held to be a Writ of right, or one issued as a matter of course. But exercise of this discretion by Court is governed by certain well-accepted principles. The Court is bound to issue a Writ at the instance of a party aggrieved by the order of an inferior tribunal except in cases where he has disintitiled himself to the discretionary relief by reason of his own conduct, like submitting to jurisdiction, laches, undue delay, or waiver.”

- 34) In the said Judgements it is very correctly pointed that the discretion of court is used and the authority has exercised the powers unreasonably and excessively.
- 35) And the said matter is confirmed by the Judgement of ***Podimahathmaya vs. The Land Reform Commission***⁴ which was held;

“This Court can interfere where there is a manifest unreasonableness in an administrative act. The test is whether the administrative authority has acted within the rules of reason and justice.”

- 36) The above cases have emphasized the test to be applied when issuing a Writ of Certiorari. In most cases, the focus is on whether the authorities have acted within the rules of reason and justice and a Writ can be issued only when an authority has exercised excessive jurisdiction, or in cases of error of law on the face of the record, fraud, collusion, or unreasonableness.

³ [1982] 1 SLR 368

⁴ [1990] 2SLR 416 at 419

- 37) In the instant appeal, the Appellants have failed to support any of the aforesaid grounds. Therefore, I do not see any merit to grant the reliefs claimed by the Appellants.

CONCLUSION

- 38) In view of the aforesaid facts, I dismiss the petition of appeal dated 14th March 2018 subject to tax cost payable to the Respondents.

Judge of the Court of Appeal

M Sampath K. B. Wijeratne, J. (CA)

I agree.

Judge of the Court of Appeal