

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

Padmalatha Manawadu,
Pitiwella, Bogahawatte,
Boossa.

Petitioner-Appellant

Court of Appeal Case No:
CA (PHC) 35/2015
H.C. Galle Case No:
05/2013 (Writ)

-Vs-

1. Commissioner of Co-operative,
Development/ Registrar,
Department of Co-operative Development,
No. 147/3, Pettigalawatte,
Galle.
2. S.N. Somasiri (Arbitrator),
No. 143/A, Edirisinghe Mawatha,
Uluwitike.
3. Pitiwella Savings and Credit Co-operative
Society,
Pitiwella, Boossa.
4. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent-Respondents

Before : A.L. Shiran Gooneratne J.

&

Dr. Ruwan Fernando J.

Counsel : Kanaga Sivapathasundaram with Daya Guruge for the
Petitioner-Appellant.

Sachintha Dias, SC for the 1st and 4th Respondent-
Respondents.

Written Submissions: By the 1st and 2nd Respondent-Respondents 03/09/2018

By the Appellant on 05/09/2018

Argued on : 18/09/2020

Judgment on : 18/11/2020

A.L. Shiran Gooneratne J.

This is an Appeal seeking to set aside an order made by the Provincial High Court of Galle, arising from an application for writ in the nature of *certiorari* to quash the award made by the 2nd Respondent Arbitrator, as reflected in document marked “P4”, and also to quash the decision made by the 1st Respondent, Commissioner of Co-operative Development, as reflected in document marked “P10”. The learned High Court Judge by order dated 27/01/2015, refused to grant the said reliefs and dismissed the application.

The award by the 2nd Respondent, Arbitrator was made in pursuant to an inquiry into a dispute between the Appellant and the 3rd Respondent, Pitiwella Savings and Credit Co-operative Society, which sought to recover a shortfall in cash amounting to Rs. 568,659.45/-. At the conclusion of the inquiry, the Arbitrator held that the Appellant was liable to pay a sum of Rs. 540,250.45/- to the 3rd Respondent.

When this matter was taken up, the Appellant confined the argument to the following grounds in appeal,

- a) that the Appellant was not afforded the opportunity to be represented before the Arbitrator, thereby acting in violation of the rules of natural justice.
- b) the Appellant was not given sufficient time/opportunity to peruse relevant documents prior to the making of the award.

It is a very basic and a fundamental principle in public law that rules of natural justice should be observed by any Court, Tribunal or other body or person empowered by law to inquire into a matter affecting the rights of parties. (*Amerasinghe vs. Wijeratne and others 2012 (BLR) 390*). Before the commencement of the inquiry, (Vide page 130 of the brief) when the Appellant was informed of his right to be represented, the Appellant declined to be represented and accordingly, with consent of both parties, the Arbitrator commenced the inquiry. On 23/02/2012, the complaint was read over and the Appellant denied liability to the short fall in cash. Thereafter, the Appellant had

over a period of 30 days to peruse documents disclosed by the complainant. The inquiry resumed on 26/04/2012, for the complainant to lead evidence. The Appellant was given the opportunity to cross examine the complainant witnesses and was also explained the right to call witness evidence in defence. At no stage of the proceedings before the Arbitrator, the Appellant complained of a denial of his right to be represented, insufficiency of time granted to peruse available documents or regarding any other matter affecting the rights of the Appellant. In the circumstances, the denial of right to be represented or a breach of rules of natural justice is utterly misconceived.

The learned State Counsel has drawn attention of Court to document marked "3@3", in which the Appellant has admitted liability to the shortfall in cash and the Appellant's agreement to pay the total sum due within 5 months. It is contended that the Appellant did not disclose the said document in the pleadings and thereby suppressed the said document in proceedings before the Provincial High Court. In response to the statement of objections filed by the Respondents, at paragraph 4(a) of the counter objections, the Appellant contended that document marked "3@3", was obtained by factual misrepresentation. However, the Appellant did not challenge the said document before the Arbitrator or the appeal proceedings before the 1st Respondent, in spite the 1st Respondent making reference to the said document in the determination dated 15/03/2013, marked "P10" (Vide page 153 of the brief). The unchallenged document "3@3", was

expressly referred to in the inquiry proceedings and it was within the knowledge of the Appellant to be material/ relevant to the complainants' case. The Appellant failed to plead or to disclose the existence of such document in the petition or to file it along with the petition in the application made to the Provincial High Court. A party applying for a prerogative writ is under a duty to the Court to truthfully disclose all material facts within its knowledge, which the Appellant has failed to do.

In all the above circumstances, it is the view of the Court that there is no reason to interfere with the findings of the learned High Court Judge and therefore, the appeal is dismissed. Parties are directed to bear their own costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

Dr. Ruwan Fernando, J.

I agree.

JUDGE OF THE COURT OF APPEAL

