

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

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

Court of Appeal Case No.

CA/WRT/0557/2021

Unilever Sri Lanka Limited,
258, M Vincent Perera Mawatha,
Colombo 14.

Petitioner

Vs

1. **B.K Prabath Chandrakeerthi,**
Commissioner General of Labour
3rd Floor
Department of Labour
Labour Secretariat
Colombo 5.
2. **L.M. Hewavithana,**
Deputy CCommissioner of Labour.
Zonal Labour Office,
Western Zone II,
131/2/1, Old Road,
Kaluthara South.

3. **D.L. Dayananda,**
Assistant CCommissioner of Labour
District Labour Office
Panadura.
4. **D.A.M. Silva,**
No 115, Yashodhara Lane, Dalugama,
Kelaniya.
5. **M.A.R.P Munasinghe,**
No 330/D/1, Walauwaththa
Delgoda.
6. **H.M Ishantha Priyankara,**
No 46/2, Withana Lane,
Oruthota
Gampaha.
7. **L.R Colambage,**
No 17, Pilikunthuwa
Buthpitiya,
Yakkala.
8. **M.K.D.L Crishantha,**
No 362/4,Habarakada
Homagama.
9. **P.C Jayatunge,**
No 81.Kanewala
Pokunuwita.
10. **N.L.T.N Asanka,**
No 100,Thelawala road
Mt. Lavinia.

11. **W.H.M Alwis,**
No 111/D, Katuwawala Milgahawatha
Road,
Boralesgamuwa.
12. **T.P Samarakoon,**
Kalunadiya,
Ilimba
Horana.
13. **K.C.I.M Amaratunge,**
68, Sandagiri Gardens,
Bellapitiya,
Horana
14. **M.J Nishantha,**
No 350/1, Pinthaliya Road
Kadawatha.
15. **D.D.S.S Dahanayake,**
No 119, Mosque Road.
Bendiyamulla
Gampaha.
16. **W.T.C Madushan,**
No 410/3/B,
Imbulgoda Lower Imbulgoda.
17. **R.M Nandimithra,**
No 413, Podikumbura
Ragama.
18. **S.H.C.M Senarath,**
No 499/2, Munasinghepura
Kiriella.

19. **M.P Pannila,**
No 497, Halapitiya
Welmilla Junction.
20. **M.D.S Fernando,**
No 18 Punnayananda lane,
Wekada
Panadura.
21. **D.T.C Madanayake,**
58/6 Pahala Hena, kaburugoda
Bandaragama
22. **Y.D.I.N Dunuweera,**
No A 81/5, Medagoda
Amithirigala.
23. **M.G.P.S Makelwala,**
No 301/A, Thapumuila, Uduwa Souti,
Kuda Uduwa,
Horana.
24. **P.A.G Priyashantha,**
No 464/A, Dombagaskanda
Ingiriya.
25. **W.K.S Weerakkody,**
55/9, Kekulaliya rd,
Poruwadanda.
26. **W.A.K.D Wijesooriya,**
No 129/3, Dewala Road
Paththambuwana
Minuwangoda

27. **S.M.J Chandana,**
No 19, Akurumulla
Delgoda
28. **D.M,S. Clamax**
232/B, Ederamulla
Wattala
29. **M.I Sanjeewa**
No 185/2 1C,Araliya Garden, Depanama
Pannipitiya.
30. **H.K.S Thilakasiri**
No 293/8,Temple Road,
Kanduboda
Delgoda.
31. **M.D.S.L Jayasekara**
No 184/163,
Nisala Raja Dahana,
Wilimbula
Henegama
32. **E.A.E Faber**
No 25/2,Sri Shasanajothi Lane,
2nd Lane, Thelawala
Mount Lavinia
33. **I. Attygalle**
No 720/2,Perera Lane, Pelawaththa
Battaramulla.
34. **P.K.D.S.R Sanjeewa,**
No 740/1,Dawatagahawaththa
Eaderamulla
Waththala

35. **E.M.S Udaya Kumara,**
No 280/J/8/1B,
Sooriyapaluwa,
Kadawatha.

36. **Inter Company Employees Union,**
No. 259/9, Seth Siri Mawatha
Koswatte
Thalangama.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**
S. U. B. KARALLIYADDE, J.

Counsel: Chamantha Unamboowe with T. Nanayakkara for the
Petitioner, instructed by Julius and Creasy.

A.S.G Sumathi Dharmawardena P.C with Ms. A. Weerakoon
S.C., for the 1st to 3rd Respondents.

Shantha Jayawardena with Ms. Thilini Vidanagamage for the
4th to 36th Respondents, instructed by Ms. Chamali
Ranatunga.

Argued on: 29.08.2023

Written Submissions on: 18.10.2023 (By the Petitioner)
27.09.2023 (By the 1st to 3rd Respondents)
16.10.2023 (By the 4th to 36th Respondents)

Decided on: 15.12.2023

MOHAMMED LAFFAR, J.

At the outset, the Petitioner in this Application is seeking a mandate in the nature of a Writ of Certiorari quashing the Certificate dated 26th July 2021 issued by the 2nd Respondent filed in case No:62859/21 in the Magistrate's Court of Horana, marked “P12(b)”, and an Order in the nature of a Writ of Certiorari quashing the Notice dated 24.12.2020 issued by the 3rd Respondent marked “P8”

When this matter was taken up for argument before this Court on 29th August 2023, the Learned Additional Solicitor General for the 1st to 4th Respondents raised a preliminary legal objection as to the maintainability of this application stating that as the facts are involved in this matter it has to be resolved before the learned Magistrate’s Court where the action is pending. The learned Counsel for the 4th to the 36th Respondents raised a preliminary objection stating that there is a delay in invoking the Writ jurisdiction of this Court. This Court having heard the Counsel appearing for the Petitioner and the Respondents in this regard and taking cognizance to the above preliminary objections permitted the parties to file written submissions.

Prior to deciding on the preliminary objections raised by the Counsel for the Respondents, it is first necessary to familiarize oneself with the factual sequence that relates to the matter at hand.

The Petitioner, who is a duly incorporated Company under and in terms of the laws of Sri Lanka, states that it entered into a Collective Agreement with the 4th to 35th Respondents on the 5th March 2011. The said Collective Agreement was published by the Commissioner of Labour in terms of Section 6 of the Industrial Disputes Act No. 43 of 1950 as amended, in the Extraordinary Gazette bearing No. 1862/10 dated 13th May 2014 (P2). The Collective Agreement of 2011 (herein after sometimes referred to

as the Principle Agreement) sets out in Clause 6 the work patterns and systems agreed upon by the parties is as follows:

06. WORK PATTERNS AND SYSTEMS.

*(a) All the new work patterns and systems are proposed to ensure round the clock manufacturing on 7 days a week improving asset utilization, time utilization and skill utilization. The union and its members agree to implement 7 days work pattern in the Company in which **Saturday and Sunday are considered to be normal working days**. In this system an employee will work continuously 6 days a week in 8 hour shifts. After the 6th day the employee will enjoy the weekly off day on the 7th day. Based on the needs of the Company the 6th day week will be arranged on a staggered basis at the discretion of the management.*

In this process, if the Union requires to change the weekly off day to a different day subject to a maximum of once in 3 months in the case of all employees, an employee will be required to work 7 (seven) consecutive days as normal working days. Immediately after the 7th day the weekly off day will be granted.

(b) The Union and its members also agree to consider Sunday as a normal working day for categories of the employees who are covered by the wages board for the Engineering trade. As per the Wages board Engineering employees who work on Sunday need to be remunerated at an enhanced rate of wages and a day off granted in lieu of Sunday. This has been incorporated in the Special Benefit package under project morph granted for accepting the new work patterns and systems. Details of this are described in clause No.6 section (a). The day off in lieu of Sunday is granted on a different day as the weekly off day.

The Petitioner states that the above Clause 06(b) which specifically sets out the Agreement between the parties to treat Sunday as a normal working day for employees covered by the Wages Board for the Engineering trade, was included for the reason that the said Wages Board decision required employees who are categorized as Engineers to be given their weekly holiday on Sunday and to be paid not less than 1.5 times the minimum wage if they were to work on Sunday. The said Wages Board decision for the Engineering trade is annexed hereto marked "P3"

In March 2014 the Petitioner Company and the Union representing the Respondents agreed to amend the Principle Agreement by repealing and replacing Clause 06. The amendment to Clause 06 of the Agreement reads as follows:

06. WORK PATTERNS AND SYSTEMS.

a. All employees rostered to work on shifts during the working week from Monday to Friday shall be required to work 8 hours per day.

On Saturdays employees will be rostered to work from 6.00 am to 6.00pm for a period of 12 hours. Overtime will be paid as applicable after the normal hours of work.

Sunday will be regarded as the weekly holiday for all employees` who are rostered to work on shifts.

The Union and the employees covered and bound agree that they shall extend their fullest cooperation to run the plant operations smoothly, including the commitment to provide "essential services" as per the requirements of the Company.

Approximately 3 years thereafter, on 21st July 2017, the aforesaid amendments brought about by the Agreement of 2014 were amended and the work patterns and systems introduced by the Principle Agreement were re-introduced. The amendment brought about in July 2017 to Clause 06 is as follows:

- a. The Union and its members agree to implement the 7 days working pattern in the Company where Saturdays and Sundays would be considered as normal working days. It is further agreed that in this work pattern, an employee will work continuously for 6 days a week on 8 hour shifts, and after the 6th day, such employee will enjoy the weekly off day on the 7th day. Normal working hours per week will be equivalent to an average of 45 hours.*
- b. The Union and its members also agree to consider Sunday as a normal working day for categories of the employees who are covered by the decisions of the wages board for the Engineering trade/Factories Ordinance.*

On or about 18th August 2020 a Labour Officer from the District Labour Office, Panadura, arrived at the Petitioner's Factory premises at Horana and requested the officers of the Petitioner Company for wage records, EPF payment details and receipts, and the attendance records of the employees in the Engineering category and served the Petitioner's Officers with a notice requesting them to attend the District Labour office at Panadura on 2nd September 2020. The discussion which ensued on the 2nd September 2020 at the District Labour Office was regarding Sundays being treated as a normal working day for those in the Engineering trade being in contravention of the Engineering trade Wages Board decision that Sunday should be the weekly holiday. On behalf of the Petitioner, the submission was made that the Union and the workers had agreed by Collective Agreement, to treat Sunday as a normal working day and to have another day in the week as the weekly holiday. Towards the end of December 2020, the Petitioner Company received from the

Panadura District Labour Office a notice dated 24th December 2020 under Section 46(3) of the Wages Boards Ordinance directing the Petitioner to deposit with the Assistant Labour Commissioner of Panadura, a sum of Rs. 2,685,239.32 as the Petitioner had allegedly defaulted in paying the amounts specified in the said Notice to the employees specified therein, which amounts were due as overtime pay in terms of the Wages Boards decisions for the Engineering trade (**P8**). The said Notice contained the names of the 4th to 35th Respondents and the amounts allegedly due to each of the said employees. The period for which the payment was due was said to be from 1st of July 2017 to 31st August 2020.

The Petitioner thereafter received summons from the Magistrate's Court of Horana in case No. 62859/21 (**P12-a**), directing it to appear before the said Court on 25th November 2021. A Certificate dated 26th July 2021 purporting to be under Section 3 D(2) of the Wages Boards Ordinance, No. 27 of 1941 as amended and issued by the 2nd Respondent was attached to the summons. In terms of the said Certificate the Petitioner was required to pay a total sum of Rs. 2,685,239.32 to the 4th to 35th Respondents who were the 32 employees in the Engineering category named in the said certificate (**P12-b**). The said Certificate states that the petitioner has failed to pay to the workmen named in the Schedule annexed to the said Certificate, their earned wages, for the period 1st July 2017 to 31 Augst 2020, being a total of Rs. 2,685,239.32.

However, it is the contention of the Respondents that the Trade Union and its members are not a party to the Collective Agreement bearing No 13 of 2011. And further state that the Petitioner Company has employed 32 employees of whom all are governed by the Wages Board Ordinance, No. 27 of 1941 (hereinafter referred to as the 'WBO'). The said employees fall under Part II of the said Ordinance (the Engineering Sector Wages Board). According to the decisions of the Engineering Sector Wages Board Sunday is considered the weekend holiday and Saturday is

regarded as a half day and accordingly, Sunday is classified as the "off day" (weekly holiday) and if an employee is asked to work on a Sunday, one day off should be allowed during the ensuing 6 days. However, the Respondents note that the Petitioner Company has treated Saturday and Sunday as normal working days which is in contravention of the Engineering Sector Wages Board. The Respondents further state that the Collective Agreement (P2) entered into in 2011 has expired on 31st July 2014 and therefore it ceases to exist. This Collective Agreement was Gazetted under Section 6 of the Industrial Disputes Act. Thereafter, another Collective Agreement (P6) was entered into on 12th July 2019 however this Collective Agreement has not been Gazetted under Section 6 of the Industrial Disputes Act.

Facts in Dispute

In dealing with the first Preliminary objection, we see that the facts are in dispute as to whether such a Collective Agreement was binding upon parties and thereby whether Sunday could be decided as an off day or a normal working day. Therefore, the Petitioners are not entitled to invoke the Writ jurisdiction of this Court. In this regard, I refer to the judgement of **Thajudeen Vs. Sri-Lanka Tea Board**¹ where the Court of Appeal held that;

"Where the major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct, a Writ will not issue. Mandamus is pre-eminently a discretionary remedy. It is an extraordinary, residuary and supplementary remedy to be granted only when there are no other means of obtaining justice. Even though all other requirements for securing the remedy have been satisfied

¹ (1981) 2 SLR 471

by the applicant, the Court will decline to exercise its discretion in his favour if a specific alternative remedy like a regular action equally convenient, beneficial, and effective is available."

This was further expanded in **Habarana Lodge Limited Vs. Commissioner General of Labour**² where Padman Surasena J. observed that;

"Writ jurisdiction of this court is an extraordinary jurisdiction which this court should exercise when it is really necessary. On the other hand, it is not open for this court to approbate to itself and assume the jurisdiction which has been conferred on the Magistrate by the statute. And in any case one cannot decide this question of fact without holding a proper inquiry."

Similarly, as the matter is still pending in the relevant Magistrate's Court, the facts of the situation as to the outcome of such a Collective Agreement are still ambiguous. Therefore, it is not for a Writ Court to resolve the facts at hand as that is the role of the Court of first instance, it is the duty of the Writ Court to adjudicate on the law at hand.

Thereby, I uphold the 1st preliminary objection raised by the Learned Additional Solicitor General for the 1st to 4th Respondents.

Laches

The Petitioner has invoked the Writ jurisdiction of this Court on 12th November 2021, that is after 10 months and 19 days after the Notice being given to the Petitioner stating that some of their employees are underpaid in terms of the law. It is evident

² CA WRT 236/2015, CA Minuted, 01-06-2016

that here is substantial delay in invoking the jurisdiction of this Court and that the Petitioner has failed to duly explain the delay.

In this regard, I refer to the observation made In Bisomenike Vs. C. R. de Alwis³, Sharvananda, J., (as he then was) observed that;

"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. The exercise of this discretion by Court is governed by certain wellaccepted principles. The Court is bound to issue it at the instance of a party aggrieved by the order of an inferior tribunal except in cases where he has disentitled himself to the discretionary relief by reason of his own conduct, submitting to jurisdiction, laches, undue delay or waiver. The proposition that the Application for Writ must be sought as soon as the injury is caused is merely an Application of the equitable doctrine that delay defeats equity and the longer the injured person sleeps over his rights without any reasonable excuse the chance of his success in Writ Application dwindles and the Court may reject a Writ Application on the ground of unexplained delay. An Application for a Writ of Certiorari should be filled within a reasonable time"

In Sarath Hulangamuwa Sriwardena Vs. The Principal Vishaka Vidyalaya⁴, the Court of Appeal held that;

"The Writs are extraordinary remedies granted to obtain speedy relief under exceptional circumstances and time is of the essence of the Application.... The laches of the Petitioner must necessarily be a determining factor in deciding the Application for

³ (1982) 1SLR 368

⁴ (1986) 1 SLR 275

Writ as the Court will not lend itself to making a stultifying order which cannot be carried out." The foregoing line of authorities are united in deciding that the delay and laches are the most significant aspects to be considered in Writ Applications. If there is a delay and laches on the part of the Petitioner, which has not been explained to the satisfaction of the Court, the Court will not issue prerogative Writs."

Thereby, I uphold the 2nd preliminary objection raised by the learned Counsel for the 4th to the 36th Respondents as well.

Thus, the preliminary objections are upheld, and accordingly the Application is dismissed. No costs.

Application dismissed. No Costs.

JUDGE OF THE COURT OF APPEAL

S. U. B. KARALLIYADDE, J.

I agree.

JUDGE OF THE COURT OF APPEAL