

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

Lanka Sathosa Limited,  
Negris Building,  
No.108, York Street,  
Colombo 01.

Presently at:

No.27, Vauxhall Street,  
Colombo 02.

Party of the Second Part –  
Petitioner

**CASE NO: CA/WRIT/342/2017**

Vs.

1. P.H.C. Peiris,  
No.53, Mudagamuwa,  
Bemmulla.  
And 494 others (employees of  
Lanka Sathosa Limited)  
Parties of the First Part –  
Respondents

2. Gamini Lokuge,  
Former Minister of Labour and  
Industrial Relations,  
C/O Ministry of Labour and  
Industrial Relations,  
Labour Secretariat,  
Colombo 05.
3. John Seneviratne,  
Minister of Labour and Trade  
Union Relations and  
Sabaragamuwa Development,  
Labour Secretariat,  
Colombo 05.
4. S.A.N. Saranatissa,  
Secretary,  
Ministry of Labour and Trade  
Union Relations and  
Sabaragamuwa Development,  
Labour Secretariat,  
Colombo 05.
5. V.B.P.K. Weerasinghe,  
Former Commissioner of Labour,  
Labour Secretariat,  
Colombo 05.
6. R.P.A. Wimalaweera,  
Commissioner General of Labour,  
Ministry of Labour and Industrial  
Relations,  
Labour Secretariat,  
Colombo 05.

7. Cooperative Wholesale  
Establishment,  
No.27, Vauxhall Street,  
Colombo 02.
8. K.D.N.R. Asoka,  
Secretary,  
Ministry of Industry and  
Commerce,  
No.73/1, Galle Road,  
Colombo 03.
9. R.H.S. Samarathunga,  
Secretary,  
Ministry of Finance and Mass  
Media,  
Colombo 01.
10. S. Abeysinghe,  
Secretary to the Cabinet of  
Ministers,  
Sir Baron Jayathilake Mawatha,  
Colombo 01.
11. Registrar,  
Industrial Court,  
9<sup>th</sup> Floor,  
Labour Secretariat,  
Colombo 05.
12. Jerral David,  
Liquidator,  
Sathosa Retail Limited,  
C/O No.27, Vauxhall Street,  
Colombo 02.

13. K.M. Sarathchandra,  
Arbitrator,  
Mapalan Gedara,  
Divulapitiya.

14. Attorney General,  
Attorney General's Department,  
Colombo 12.

Respondents

Before: Mahinda Samayawardhena, J.  
Arjuna Obeyesekere, J.

Counsel: Shantha Jayawardena with Chamara  
Nanayakkarawasam for the Petitioner.  
Suren Fernando with Khyati Wikramanayake  
for the 1<sup>st</sup> Respondent.  
Anusha Samaranayake, D.S.G., for the 4<sup>th</sup>, 6<sup>th</sup>  
and 8<sup>th</sup>-10<sup>th</sup> Respondents.

Argued on: 11.09.2020

Decided on: 16.11.2020

Mahinda Samayawardhena, J.

The Petitioner, Lanka Sathosa Limited, filed this application seeking to set aside the arbitral award dated 22.01.2017 by a writ of certiorari.

Sathosa Retail Limited became bankrupt and its liquidation proceedings were concluded in 2013. The Petitioner was established in 2005.

The position of the former employees of Sathosa Retail Limited is that they were given the option of accepting a voluntary retirement scheme and quitting their employment or continuing their service in the new establishment, Lanka Sathosa Limited. Some employees accepted a lump sum under the voluntary retirement scheme and left, while others joined Lanka Sathosa Limited to continue their service.

The position of the Petitioner is that Lanka Sathosa Limited is a distinct legal entity, independent of Sathosa Retail Limited, and there was no agreement that former employees of Sathosa Retail Limited would be able to continue their service in Lanka Sathosa Limited. The Petitioner is emphatic that the employees of Sathosa Retail Limited who joined Lanka Sathosa Limited did so as new employees.

The employees of Sathosa Retail Limited joined the Petitioner in 2005/2006. Sathosa Retail Limited was a State-owned entity; so is the Petitioner, Lanka Sathosa Limited.

This disagreement over the promise of continuity of service can be resolved by *inter alia* adverting to the messages of the subject Minister and the Chairman of Lanka Sathosa Limited published in the first Annual General Meeting Report of Lanka Sathosa Limited, which form part of the evidence led before the Arbitrator.

The Minister's message dated 23 June 2008 is revealing. The Minister clears any lingering doubts in this regard when he says "*The employees who had lost their employment after the cessation of the Sathosa Retail Limited have been absorbed to the cadre of Lanka Sathosa Limited, fulfilling one of the primary objectives of*

*setting up of the Lanka Sathosa Limited.*” The Chairman, in his message dated 24 May 2008, says “*Lanka Sathosa Limited has played a vital role in reducing the burden of inflation on common people and has secured jobs of Sathosa Retail employees which has relieved government of the financial and political stigma.*” If the argument of Lanka Sathosa Limited is correct, the Minister and the Chairman lied to the general public, including the former employees of Sathosa Retail Limited. If the employees of Sathosa Retail Limited joined Lanka Sathosa Limited as new employees, there is no meaning to the Minister’s message, which is not mere impromptu remarks but a formal statement presumably made after serious consideration. I cannot accept the submission of learned Counsel for the Petitioner that the Minister has “loosely” used the word “absorbed” in the message.

The former employees of Sathosa Retail Limited have not raised this issue belatedly. They took up the matter with the proper authorities from the very outset and kept on pursuing it. This is borne out in the employees’ letter dated 27.05.2006 marked A11 to the Secretary to the Ministry of Trade soon after commencing their employment at Lanka Sathosa Limited, their letter dated 11.07.2006 marked A13 addressed to the President of the Republic, and their written complaint dated 14.07.2009 marked A2 to the Minister of Labour and Commissioner of Labour. The same is reiterated in the evidence of the 1<sup>st</sup> Respondent in the arbitration proceedings.

The voluntary retirement scheme offered to employees of Sathosa Retail Limited is marked A6 in the arbitration proceedings. The fifth paragraph of the said document says that as a result of the Minister having informed the Cabinet of the

plight of the employees, a decision was taken by the Government to re-establish the entity and offer employees an *ex-gratia* monthly payment of Rs.4,000 in the interim, indicating that their employment would continue unbroken in the new establishment.

The “Report on Restructuring of Sathosa Retail Ltd” by the Postgraduate Institute of Management (University of Sri Jayawardenapura) marked A21 is also helpful to solve the issue. The said report appears to have been prepared pursuant to a concept paper titled “Restructuring programme to recommence the business activities previously handled by the Cooperative Wholesale Establishment and by Sathosa Retail Ltd.” According to this report and concept paper, the primary objective of the restructuring is *“providing an efficient commodity retail trading service to the consumer public and...providing continued employment to an optimal number of employees of Sathosa Retail Limited”*.

As the promise of continuity of service was not given effect to notwithstanding several discussions between the management of Lanka Sathosa Limited and the said employees, the Minister of Labour, acting in terms of section 4 of the Industrial Disputes Act, referred the following dispute for settlement by arbitration in the year 2011:

*Whether the non-amalgamation of the period of earlier service at the Sathosa Retail Limited to the period of service of Lanka Sathosa Limited of the four hundred and ninety five (495) employees including Mr. P.H.C. Peiris whose names are referred to in the attached schedule at the time of joining them to the service of the new company, i.e.*

*Lanka Sathosa Limited on the liquidation of the former company is justified and if not justified, to what relief each of them is entitled.*

After the inquiry, the Arbitrator made the impugned award granting the relief sought by the employees.

The thrust of the argument of learned Counsel for the Petitioner Lanka Sathosa Limited is that there was no evidence before the Arbitrator to come to that conclusion. I am unable agree.

As learned Counsel for the 1<sup>st</sup> Respondent employee rightly points out, it is illogical to say the 1<sup>st</sup> Respondent employee and the other 494 employees refused the voluntary retirement scheme, whereby they would have easily benefitted financially, and opted instead to join Lanka Sathosa Limited as brand-new employees. If they wanted to join Lanka Sathosa Limited as new employees, it seems they could have done so after having accepted the voluntary retirement package offered by Sathosa Retail Limited. They did not accept the voluntary retirement package because they wanted their period of service to continue uninterrupted.

In addition to defending the arbitral award on the merits, learned Counsel for the 1<sup>st</sup> Respondent employee takes up three preliminary objections to the maintainability of this application. Notwithstanding I am loath to uphold preliminary objections as a means of disposing cases, in the facts and circumstances of this case, I think, of the three, two are cogent enough to dismiss the Petitioner's application *in limine* without going into the merits of the matter.



One objection is failure to add necessary parties as Respondents to the application. The Petitioner admits that the dispute referred for arbitration was in respect of 495 employees. The arbitral award is in favour of all those 495 employees. However, the Petitioner in the petition makes only one employee (i.e. the 1<sup>st</sup> Respondent P.H.C. Peiris) a party and, regarding the remaining employees, simply says “And 494 others”. Those 494 employees have not been made parties to the case. No notices were sent requiring them to be present in Court to defend the arbitral award, if they so desire. Can this Court violate the *audi alteram partem* rule with impunity and quash the decision of the Arbitrator made in favour of those 494 employees without affording them a hearing? Certainly not. Those 494 employees are necessary parties to this application, without whom the case cannot proceed. The Petitioner, having realised this grave omission, endeavoured to amend the petition to add them as parties at a later stage of the case. The application for amendment was refused by this Court and, on appeal, by the Supreme Court. The failure to add those 494 employees as parties to the application is fatal. On that ground alone, the application shall be dismissed.

Another preliminary objection is laches. The arbitral award had been made on 22.01.2017 and the Petitioner filed this application 11 months later on 19.10.2017. The Petitioner does not explain this inordinate delay in the petition. This itself disentitles the Petitioner to the discretionary and equitable relief of certiorari.

I dismiss the application of the Petitioner with costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal