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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 2048/35 – 2017 දෙසැම්බර් 07 වැනි බ්‍රහස්පතින්දා – 2017.12.07

No. 2048/35 – THURSDAY, DECEMBER 07, 2017

(Published by Authority)

PART I: SECTION (I) – GENERAL

Government Notifications

My No.: IR/21/39/2013.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Sri Lanka Nidahas Sewaka Sangamaya, No. 493/1, 2nd Floor, T. B. Jayah Mawatha, Colombo 10, Independent Workers Trade Union, No. 45, Nawala Road, Narahenpita, Colombo 05 of the one part and Milco (Pvt) LTD, No.45, Nawala Road, Narahenpita, Colombo 05 of the other part was referred by order dated 24.12.2013 made Under Section 4(1) of the Industrial Dispute Act, Chapter 131 (as amended) and published in the *Gazette* of the Democratic Socialist Republic of Sri Lanka Extraordinary No. 1842/20 dated 27.12.2013 for Settlement by Arbitration is hereby published in terms of section 18(1) of the said Act.

A. WIMALAWEERA,
Commissioner General of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05.
25th November, 2017.



In the matter of an Industrial Dispute*Between,*

1) Sri Lanka Nidahas Sewaka Sangamaya,
No. 493/1, 2nd Floor,
T. B. Jayah Mawatha,
Colombo 10.

2) Independent Workers Trade Union,
No.45, Nawala Road,
Narahenpita,
Colombo 05.

*Of the one Part**Case No. A/3531**and*

Milco (Pvt) Ltd,
No. 45, Nawala Road,
Narahenpita,
Colombo 05.

*Of the other Part***THE AWARD**

1. The Honourable Minister of Labour and Labour Relations by virtue of the powers vested in him by Section 4 (1) of the Industrial Disputes Act, Chapter 131 of the Legislative Enactment of Ceylon (1956 Revised Edition), as amended by Acts, Nos. 14 of 1957, 62 of 1957, 4 of 1962 and 39 of 1968 (read with Industrial Disputes – Special Provisions) Act, No. 37 of 1968, appointed me to be the Arbitrator and referred the dispute hereunder for settlement by Arbitration, per his order dated 24th December, 2013.

2. The matter in dispute is as follows:-

“Whether the injustice has been caused to Mr. K. Bandusiri and Mr. I.P. Sunanda working at the Narahenpita factory of Milco (Pvt) Ltd by interdiction and by being sent on compulsory leave respectively, which has lead the way to the strike, and if such injustice has been caused to what reliefs each of them is entitled.”

3. On behalf of the applicant Mr. L. P. Sunanda, Mr. L. A. Pathirawithana Attorney at Law appeared and on behalf of applicant Mr. K. Bandusiri, representative Mr. P. G. Chandrasena appeared.'

Respondent Company was represented by Mr. Ranjith Ranawaka, assisted by Mrs. Anushka de Soysa, attorneys at Law.

4. On behalf of the respondent, Mr. Sunil Wickramasinghe, Chairman stated that:-

- (a) He joined Milco (Pvt) Ltd. On 1st June 2010 and prior to that he had worked as a Estate Superintendent and joined the Nestle's as a Marketing and Sales Manager, and then moved to take up appointment as the Director, Marketing of the Pacific Region and, thereafter General Manager in the same organization.
- (b) He instructed the Deputy Chairman to notice the employees of certain matters concerning the payment of bonus, Shifting of the factory to Badalgama etc. Accordingly the Deputy Chairman along with another Director had placed a notice on the notice board on 6th December 2013 (Chairmen promised to produce the document subsequently P 10 notes of 16 January 2014)

- (c) On the 7th December 2013, he was informed that the said notice has been torn off by some employees and he instructed to ascertain who the employees were.
- (d) Manager, Human Resources along with security officers had obtained statements and on the basis of CCTV projection, 17 employees were interdicted with effect from 9th December 2013. Workers thereafter went on strike.
- (e) On the instructions of Minister Honourable Arumugan Thondaman, Former Secretary of the Ministry was appointed as the Inquiry Officer requiring him to submit the report within 3 days, Based on his findings, 15 were interdicted while 2 were to continue under interdiction L. P. Sunanda, Secretary of Sri Lanka Nidahas Sewaka Sangamaya Branch and K. Bandusiri, President of Independent Union of Milco Ltd.

5. The next witness of respondent Mr. P. L. O. Fernando, General Manager stated that:-

- (a) He had served the organization in various capacities, during the past 27 years. Having joined as an executive.
- (b) On 7th December 2013, employees had gathered near the gate and torn off the notice placed by the Management in the notice board. The tearing off of the notice is shown on CCTV. After tearing off of the notice, Management had then taken note of it, and obtained statements from Security Guards and Others who had witnessed.
- (c) Based on the CCTV projection and the statements, 17 employees were interdicted on 9th December. Thereafter the workers went on strike. While on strike, Deputy Inspector General of Police Mr. Anura Senanayake visited the premises and talked to Trade Unionists. Thereafter he had discussed with the Minister of Livestock Development Hon. Thondaman and parties were summoned for a discussion. Minister, Thereupon appointed the retired Ministry Secretary, Mr. Gamage to conduct a preliminary inquiry and determine the persons responsible and others to be given back the jobs. Accordingly Mr. Gamage, had proposed 15 employees be reinstated and 2 to be interdicted.
- (d) President of Sri Lanka Nidahas Sewaka Sangamaya, had met the Hon. Minister and after the discussion Minister had proposed that Mr. Sunanda be sent on compulsory leave waving off the interdiction.

6. Respondent's next witness Mr. Madapalage Gamini Bandara Transport Manager Stated that -

- (a) He is incharge of security, where 29 during day and 28 in the night guards are engaged, who belonged to the Brave Guards. On 7 December 2013, around 8.10am., Chief Security Officer phoned me and stated that 2 employees, along with 15 to 20 employees came near Chief Security Officer's Security room shouting and using bad words, concerning the notice posted on the previous day He informed the higher management of the incident and was asked to bring the recording on CCTV.
- (b) The CD record was screened at head office, at Vajira Rd. by Executive Director Mr. Naushad, General Manager PI Fernando, HR Manager Upananda and himself. Film showed Mr. Bandusiri arriving for work and 20 were identified. The CD showed that Bandusiri returning to the notice board, with several other employees, and he torn off the notice pasted on notice board.
- (c) The CD cameras have been fixed at different locations. in addition employees are required to sign a separate attendance register as well as a location existed for fringer prints.
[Pg 128 - LO entry state that Sunanda was present at the time notice had been torn off - which later denied. Entry made by Chief Security Officer - Pg - 129]
- (d) OIC (Security) was one Munaweera, who reported in his report that Sunanda was seen near the place where the incident had happened. Whereas; none of the CD films, Sunanda is seen. The notice in question prepared at head office was sent the previous day between 6.30 to 7.00 pm (Night), It was brought by Security Officer Head office, which were in A3 and A4 size, 5 or 6.

- (c) The notice board was of 4'x3' size, without a Lid or locking device.

[Notice is said to have fixed on the 6th, But CD film does not exhibit - Pgs. 158, 165]

- i. ප්‍රශ්නය - තමුන් නිශ්චිතව පැහැදිලිව මෙය ගැලවීම් බන්දුසිරි මහතා කියලා කියන්න පුළුවන් ද ?
උත්තරය - ආරක්ෂක නිලධාරීන් කිව්වා
- ii. ප්‍රශ්නය - බන්දුසිරි මහතා කමල් මහතා ගලවන්නේ කුමන දැන්වීම ද කියලා කියන්න පුළුවන් ද?
උත්තරය - දර්ශන අනුව මට කියන්න බැහැ ආරක්ෂක අංශය කියපු තොරතුරු අනුව මා දන්නේ
- iii. ප්‍රශ්නය - දුන් මේ දර්ශන අනුව ආරක්ෂක අංශයේ නිලධාරීන් සිටියා ද?
උත්තරය - මේ දර්ශන අනුව පෙනෙන්නේ නැති උනට ඒ අයගේ ප්‍රකාශ අනුව ඒ සිටි බව පැහැදිලි වෙනවා
- iv. ප්‍රශ්නය - ඔබගේ මූලික සාක්ෂියේ දී බන්දුසිරි මහතා අත් දෙකෙන්ම ඉරනවා කියලා තිබෙනවා. එය හරි ද?
උත්තරය - එය වැරදීමක්. දර්ශන එද බැලුවාට පසුව මෙහෙත් බලනකම් බැලුවේ නැහැ.

7. Respondent next witness Weerakkodige Neil Fernando, Human Recourse and Administration Manager Stated that -

- (a) Notice of 6 December 2013 contained the following issues - casual contractors, shift of office to Badalgama, payment of bonus and reduction of price of Milk packets.
- (b) There were 10 unions of employees. Total staff strength was 1400. There are separate notice boards for different unions in outstation branches. Notice board in Head Office, do not separate Union notices and organization notices.
- (c) Tearing of a notice in the notice board had been reported by CSO Manager Mr. Kumara per statement Chairman examined the statement along with Executive Director and Managing Director, who ordered that former Secretary to the Ministry Mr. Gamage to be appointed to conduct a preliminary investigation.
- (d) Mr. Gamage held the inquiry and 15 employees were reinstated and two were suspended.
- (e) Respondent company had 1400 employees, and 10 Trade Unions were functioning of the unions Sri Lanka Nidahas Sewaka Sangamaya had the largest number of members, but for the discussion convened by the Minister, Sri Lanka Nidahas Sewaka Sangamaya Union Head Office, which commanded the largest membership had not been summoned.
- (f) Worker unions submitted 4 major demands, V12 - payment of bonus, confirmation of casual employees, reduction of milk foods issued by the welfare shop and shifting of Narahenpita factory to Badalgama.

The 10 unions of the company formed a joint front to demand the said issues LP Sunanda was the Secretary and K.Bandusiri was the Vice - President, which had not been registered with the Registrar of trade unions.

- (g) Minister had convened a conference with Sri Lanka Nidahas Sewaka Sangamaya, Digana and Ambewela. In addition Jathika Sewaka Sangamaya, Inter Companies Union, Executive Union and union of employees in Livestock Development.
- (h) Sri Lanka Nidahas Sewaka Sangamaya 769, Jathika Sewaka Sangamaya 228, Exacatives 93, Independent union 218, Inter Companies Union 94 and Ceylon Workers Congress 40 - were the membership in unions.
- (i) On 17.10.2013, Hon. Arumugam Thondaman, Minister of Livestock Development had discussions with the following, and agreed to grant the demands placed - unions were - Sri Lanka Nidahas Sewaka Sangamaya (Digana Branch) Sri Lanka Nidahas Sewaka Sangamaya (Ambewela Branch) Jathika Sewaka Sangamaya, Inter Companies Employees Union, Executive officers union and Employees union of Livestock Development.

The demands settled were -
Confirm all employees who had completed 5 years of employment.
Grant bonus in respect of 2015.
Expedite new factory construction.
Ensure security of employment of all employees.

- (j) In consequence of events on 07.12.2013, 17 employees had been interdicted and except for 2 others was reinstated after an investigation done by a former Secretary of a Ministry. The 2 employees were Bandusiri, and Sunanda, and Sunanda was kept on compulsory leave.
- (k) Instantaneously Sri Lanka Nidahas Sewaka Sangamaya of Milco, Ltd Trade Union Unity, wrote a memo to Chaiman, signed by 7 officers, requiring Management to answer the request of 2 nd December 2013, Else Trade Union action would be taken. It contained 9 demends.
- (l) Inquiry conducted by former Secretary, lasted for 2 hrs.
- (m) Notices tearing off was detected per the CCTV camera film Factory manager and Security Officer's statements.
- (n) With regard to moving the Narahenpita complex to Badalgama, discussions were held with the main union at head office, but that union was not called for the discussion with the minister.

8. Respondent's next witness, Ratnayake Mudiyansele Jayathileke Bandara Ratnayake, Factory Manager states that –

- (a) Although it was not a working day for him, he had to come to the head office as per instructions from the Chairman.
- (b) Having discussed the question of tearing off of the notice, those present observed the recording of the CCTV camera, and thereafter Chairman as well as the Executive Director , Instructed him to loge a complaint at the Police Station, Narahenpita, Although a complaint was made a copy of the complaint was not furnished. It reached very lately.
- (c) Documents of Security Division specify the name of Sunanda, but not regarding tearing of notice, but with regard to shouting Bandusiri name too he remember.

9. Respondent's next witness, Pothana Mudiyansele Eranda Ramyakumara, Security Guard states that –

- (a) Explained that security cheek point was on the right side of the entrance, the notice board was on the left. He joined to the security firm about a year ago.
- (b) He was about 20 ft. away from the notice board. Since He was attending to unloading of goods, he did not clearly understand what was happening but heard sounds of several people talking in loud voice.
- (c) At Bambalapitiya head office, Management obtained a statement, regarding the incident From the cool room, he had seen several employees coming closer to the notice board, and that Sunanda scolding the Chief Security Officer using bad words.
- (d) He being an employee, of Brave Guard Security Service, started work at 7 p.m. But according to the register, he has reported for work on at 1.00 a.m. see pgs. 333 and 334.

10. Respondent's next witness, Widana Arachchige Chinthaka states as follows:-

- (a) As an employee of Brave Guard Security, joined 8 months ago. 07th December 2013, He was attached to Milco, but now works at Fort naval camp In civil work.

- (b) That Sunanda, went closer to the Security OIC's office, and using bad words enquired who pasted the notice on the board on previous night.
- (c) That on 31st December 2013 he left the Brave Guard Employment. On the day in question he worked at main gate and observed the movements of employees. From the main gate to the notice board, it's 50 meters away.
- (d) Said that he saw Sunanda at the vehicle park, and with several others, went upstairs.

11. Respondent's next witness, Adikarige Neil Parakrama Adikari, Driver sates as follows:

- (a) Works as Driver at Digama branch of Sri Lanka Nidahas Sewaka Sangamaya and holds the position of President of the Union.
- (b) He attended the discussion, with regard to payment of bonus which was not paid for 2013. He appealed to the Chairman, and the chairman telephoned him to call over for a discussion with the Minister. There were Sri Lanka Nidahas Sewaka Sangamaya representatives from Ambewela. Representatives from Janatha Vimukthi Peramuna at the discussion Minister promised to pay a higher bonus in 2014.
- (c) Pg 382

ප්‍රශ්නය - මෙහි ඇති ඉල්ලීම අනුව තමුන්ලා ජයග්‍රහණය කළා නම් කළේ සමස්ථ සේවකයින් වෙනුවෙන් ද තමුන්ගේ වෘත්තීය සමිති සේවකයන් වෙනුවෙන් ද?

උත්තරය - සමස්ථ සේවකයින් වෙනුවෙන්.

PG 384 අධිකරණයේ දී

ප්‍රශ්නය - තමුන් මුලින්ම කිව්වා තීරණයක් ගන්නා කියලා. එම තීරණය ගන්නා විට මව් සංගමයෙන් කැමැත්ත ගන්නා ද? තමුන් දිගත ශාඛාවේ සභාපති තමුන්ට සමස්ථ සේවකයින් වෙනුවෙන් ම පෙනී සිටින්න බලයක් තිබෙනවාද?

උත්තරය - මට තිබෙන්නේ මගේ ශාඛාවේ සේවකයන් වෙනුවෙන් පෙනී සිටින්න පමණයි.

12. Respondents next witness Sellampulige Nimal Rosa, Labour Officer states that-

- (a) He did not handle the dispute but appeared to present the conncted file relating to the dispute.
- (b) Conferences were held concerning the dispute on 15.10.2013, 06.11.2013, 11.11.2013, 20.11.2013 and 17.12.2013, but were unsuccessful.
- (c) For most conforences Parent union members of Sri Lanka Nidahas Sewaka Sangamaya attended
- (d) Issues discussed were-
 - Shifting of factory at Narahenpita to Badalgama.
 - Increase of price of Milko pack given on welfare basis.
 - Payment of an advance, instead of bonus.

13. Respondent's next witness Jayasuriya Mudiyanse Deepika Malkumara states that -

- (a) He works at Ambewela factory as Engineering Assistant, and had served the organization for 22 years.
- (b) He is the present President of Ambewela branch of Sri Lanka Nidahas Sewaka Sangamaya.

- (c) Permanency of casual employees, payment of bonus Etc were issues, that we were interested Chairman, Milko said that these matters require Minister's consent and could obtain a date for discussion and Minister summoned for a discussion on 17.10.2013 . Some of the Unions did not participate, he said.
- (d) The discussion with the Minister, the demands were accepted and unions were satisfied, with the assurances.
- (e) Under cross examination, witness accepts that he is not the Branch President. Also witness accepts that the branch is not registered, the parent union of Sri Lanka Nidahas Sewaka Sangamaya is and that nobody from Sri Lanka Nidahas Sewaka Sangamaya attended the discussion - vise pale 401.

14. Respondent's next witness Mapala Hettiarachchige Nandana Hettiarachchi states that -

- (a) That he works as livestock herd Development project, Mahaoya freezing centres. And their union has 40 members and was only a member.
- (b) Issue like payment of bonus and permanency of workers were discussed and resolved.

15. Respondent's next witness A. H. Gamage, states that -

- (a) The Secretary, Ministry of Live Stock and Rural Community Development requested him to investigate an issue, where workers in Milco entered the factory and torn off a notice, for which 17 workers had been interdicted.
- (b) The investigation was done along with the management team, deviating from the normal routine and procedure. As such no statements of persons were recorded. The reporte was required to be given within 3 days.
- (c) He presumed that workers entered forcefully, since several entered simultaneously, but there had been no mention anywhere.
- (d) Two statements had by security guards were seen, but not verified the correctness. These statements were handed over by management staff.
- (c) Only one day and 2 Hrs were taken to complete the investigation and said he was satisfied in seeing the CCTV footage, the torn off notice, about 5 statements and the letters of interdiction.
- (f) No statements were recorded from anybody - Ref pgs. 420, 423, 424, 425 and 426.

16. Respondent's next witness Jayantha Jayasundara, Welfare Assistant states of follows –

- (a) That he is the Secretary of Jathika Sewaka Sangamaya, and said that series of discussions were held between the management, concerning payment of bonus, permanency of casual hands and shifting of factory away from Colombo.

17. Respondent's next witness Gallelage Chaminda Kumara Priyadarshana, Regional Marketing Deveopment Officer state as follows –

- (a) That he is the President of Inter Companies' Employees Union of Milko (Pvt) Ltd, and said that grant of permanency to casual employees. Who served more than 5 years and payment of full bonus were discussed with Minister.
- (b) Since management had no solution to the dispute. Invitation of the Minister was accepted and thereafter responded to his call.

18. Respondent's next witness was Mohamad Naushad Junaid, Executive Director, stated that–

- (a) A notice was pasted on the notice board, some workers torn off and temporally suspended 17 of them, which occurred in December 2013. The notice was signed by him and Vice - Chairman.

- (b) Sunanda and Bandusiri were continued to be kept under suspension, as they had committed offences previously and sought permission to meet the document for which, applicant's Lawyer objected on the ground that the document in question had been signed by the Chairman, where as he should have marked to request was turned down.
- (c) Sunanda and Bandusiri were continued with suspension, bearing in mind the previous issues of misconduct. However it surfaced that disciplinary report concerning Bandusiri had not reached the management at the time of incident.

19. Applicant, L. P. Sunanda stated

- (a) That he works as the Marketing Executive, and said that as usual he reported for work, but did not see any notice, signed by Executive Director and Vice Chairman.
- (b) That he is the General Secretary of Sri Lanka Nidahas Sewaka Sangamaya of MILCO. And had serves the Company for 20 years. He analysed the composition of membership of Unions functioning in the company, where his union carried the bulk membership.
- (c) Questions were raised about the union strength,
- (d) Usually if and when a circular is issued by the management, It is customary to transmit a copy of it to the Unions/ but in this instance management had not done so.
- (e) Workers struck work on 9th December 2013, concerning the interdiction of Union Leaders as well as failure to grant the demands and the union did not initiate the strike.
- (f) Stated that since Management had not resolved the issues, such matters were taken up with the Department of Labour. Several Conferences were held with regard to - transfer of factory Xo Badalgama, increase of the price of Milk Powder, release salary advances, payment of bonus, delay in payment of salaries giving out the Milk centres to outsiders and bowser driver's issues.
- (g) Said that he had no connection whatsoever regarding the tearing of the notice or calling the workers on strikes.

20. Kalansuriyage Bandusiri stated-

- (a) That he joined as a Labouaer on 1st December 1978, and now works as superintendents (Distribution) and had been interdicted on 9th December 2013, on a charge of tearing off of a notice.
- (b) On 7th December 2013, when he reported and noted attendance, a group of workers came near him and stated that a notice had been pasted on the notice board along with them he went to see the notice which dates 06th December 2013.
- (c) Although the charge sheet state that he true the notice or encouraged somebody to tear it off, he deny both. Of course he tore off a notice, which meant to thank and another where a request for donation of gifts were indicated, as the notice board was open to anybody.
- (d) He admit picking up the notice, as it stated that matters in issue would be resolved by discussion. But on Monday 9th, when reported for work, the charge sheet was handed over. The torn notice was handed over to the inquirer Mr. Gamage on the day of inquiry.
- (e) Mr.Gamage in his report it is stated Bandusiri, removed the notice but did not tear it off which Bandusiri rejects Inquirer did not ask any questions from him.
- (f) Asked about involvement in other unions and activities for which he atated that a combination of unions was formed which was not a legal entity.

- (g) That the notice board contain notices displayed by the management as well as the Trade Unions. The notice board do not have a covering lid. Its open witness accepts that the notice board belongs to the management.
- (h) Other two notice board are also belongs to the company and used by the Unions. No notice are pasted in the night.
- (i) The notice in question state to communicate with Human Resource Manager, who works at Head Office, Bambalapitiya. Saturday being a non working day, he cannot contacted, he had the notice in hand, at expected to discuss with the Management on next working day, Monday.

My Findings and Observations

(A) Two Trade Union Leaders

- * Mr. K. Bandusiri , President of Independent Workers Trade Union, and
- * Mr. L. P. Sunanda, Secretary of Milco Branch of Sri Lanka Nidahas Sevaka Sangamaya.

were accused of certain issues of misconduct and K. Bandusiri was interdicted while L. P. Sunanda, was sent on compulsory leave. It was alleged that, K. Bandusiri, tore up a management notice placed on the notice board and L. D. Sunanda, addressed the Chief Security Officer using bad words. Both incidents occurred on 6th December 2013, at factory premises.

The matters in issue had been promptly brought to the notice of Hon. Thondaman, MP the then Minister of Livestock and Rural Country Development and promptly appointed Mr. A. H. Gamage, to inquire and report based on a CCTV projection, 17 were suspected of tearing off of an important notice, and they were interdicted. After the inquiry except in relation to two persons (*i.e.* Bandusiri and Sunanda) others were reinstated.

(B) Mr. A. H. Gamage, had inquired into the incident, and submitted a eight page report to the Minister. It was based on this report, the two Trade union leaders were interdicted/ placed on compulsory leave.

It is said that an inquiry cannot be said to have been properly held unless -

- (i) The employee proceeded against has been informed clearly the charges levelled against him;
- (ii) The witnesses are examined ordinarily in the presence of the employee in respect of the charges;
- (iii) The employee is given a fair opportunity to cross examine witnesses;
- (iv) He is given a fair opportunity to examine witnesses including himself in his defense if he so wishes on any relevant matter; and
- (v) The Inquiry Officer records his findings with reasons for the same in the report.

The principle of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by the judicial or Quasi-Judicial authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice and principles are now well settled.

Since The procedure formalities have not been adhered to the inquiry is not free from bias.

(C) The matter under reference has direct connection to the industrial dispute taken up by the Union before Industrial Relations Division of the Labour Department. The Union and the management had series of conferences to resolve the following issues -

- (i) Shifting of the Milco factory from Narahenpita to Badalgama;

- (ii) Increased price of milk powder issued to workers;
- (iii) Payment of an advance in lieu of bonus;
- (iv) Salary payment delays;
- (v) Chilling plant issue; and
- (vi) Issue concerning bowser drivers.

On 06 Nov. 2013; 11 Nov. 2013, 20 Nov. 2013 and 17 Dec 2013 both parties discussed at Labour Dept., but had no settlement. In the meantime, the Unions formed a Joint Council to agitate for their common issues. Management is not approve of it, as it's not registered.

However it might be stated that Trade Unions, although they belong to different sectors professing different ideologies on common issues, form ad-hoc Joint Councils, as a show of strength. It is true to say that prior to introduction of Trade Union Ordinance in 1935, employers recognized Trade Unions for the purposes of bargaining though they were not legal entities. Such as Ceylon Printers Union, All Ceylon Trade Union Congress, All Ceylon Indian Estates Workers Federation, to name a few.

Non recognition of joint Council was a failed attempt on the part of management.

(D) Normally, when Unions and management resolve disputes, parties sign a memorandum of understanding, it will be bi-partite or if signed before a labor official, a tri - partite but the document R/3, that Minister had resolved the following issues on 17.Oct.2013 with the Unions, is neither bi-partite nor tri-partite. The issues said to have resolved are -

- (i) Grant of permanency for those over 5 Years of service;
- (ii) payment of Bonus for the year 2012;
- (iii) Expedite construction of the Badalagama Factory; and
- (iv) Ensuring safety of all workers.

The Union who signed the document R/3 are-

- (i) Jathika Sewaka Sangamaya
- (ii) Inter Companies Union
- (iii) Executive Officers Union
- (iv) Sri Lanka Nidahas Sewaka Sangamaya - Digana Br. And
- (v) Sri Lanka Nidahas Sewaka Sangamaya - Ambewela Br.

For resolution of the general demands, management had contrived to obtain the signatures of branch Unions of Sri Lanka Nidahas Sewaka Sangamaya Digana and Ambewela, whereas they were not mandated to adhere to such an arrangement.

The position could be examined in line with the practices prevail in the country. The Committee of Inquiry into the law and practise of the Trade Union Ordinance, appointed by the Minister of Labor has in its report of 7th July, 1967 made certain recommendations on the question of recognition. It has recommended first that which allows any seven or more persons to form a Trade Union, a minimum of 100 persons or 10 percent of the eligible membership, whichever is less be required as regards recognition, it has recommended that "provision be made making it compulsory for an employer to recognize and negotiate with-

- (i) Any registered Trade Union it makes representation regarding an individual employee, provided that such employee is a member of such Union;
- (ii) Any registered Trade Union which makes representation of general nature in respect of its members provided that such Union has a membership of at least 33% of the work force at particular work place; and
- (iii) Where there is more than one Union having a membership of atleast 33% of the workforce at any particular workplace, that such Union be compelled "when representation of a general nature on behalf of their members to make such representation jointly."

The Committee recommendation was in accord with the present practise and employers recognize Union with 51% of workers in a workplace as the exclusive bargaining agent.

By passing the exclusive bargaining agent, i.e. Sri Lanka Nidahas Sewaka Sangamaya, which had commanded more than 51% membership, management opened to discuss the general issues with minor Unions who had negligible membership in their own fields. SLNSS has 769 members, out of the total workforce of 1400.

(E) Suprisingly, management representatives refused to discuss the burning issues, with the representatives of the Joint Council of Milco, as it was only an Ad-Hoc Committee, and not registered by the Registrar of Trade Unions. However, it is crystal clear from evidence tendered by Jayasuriya Mudiyanse Deepika Malkumara of Sri Lanka Nidahas Sewaka Sangamaya of Ambewala branch stating that he was the President, but under cross examination, accepted that he is not the Branch President. Similarly, Adikarige Neil Parakrama Adikari of Sri Lanka Nidahas Sewaka Sangamaya, Digana Branch said that he is the Branch president, who spoke on behalf of its Branch members. Both branches Digana as well as Ambewela are not registered by the Registrar of Trade Unions.

(F) With regard to the tearing off of the notice management utilized the projection from Close Circuit Television Camera (CCTV) which was screened to the witnesses requiring them to identify the persons who tore off the notice. There were several hands moving towards the notice board, but most of them were clueless as to whose hands were they.

The notice board in question, wherein the notices were pasted, had no cover or a locking device. All sorts of notices were pasted. Management notices, Notices of the Trade Unions, obituary notices, and many other notices were posted by concerned parties and removed at their will.

In well-established organizations notice boards are given to Trade Unions separately and management notice board will be properly locked and protected with a glass pane.

(G) Evidence tendered by the following persons reveal –

- (i) Sunil Wickramasinghe, had not seen the tearing off of the notice.
- (ii) PLO Fernando, had not seen the issue concerning the notice.
- (iii) M. Gamini Bandara, who was in charge of security, said that he identifies Tearing off the notice, later on he said that he relied on a statement made by the Security Guards and that Bandusiri tore it was not true, which he said earlier
- (iv) W. Neil Fernando – Not seen the tearing off of the notice
- (v) R. M. Jayathilake Bandara – Not seen the tearing off of the notice
- (vi) P. M. Eranda Ramyakumara – Not seen the tearing off of the notice
- (vii) W. A. Chinthaka – Not seen the tearing off of the notice

It is clear that none of the persons seen or identified Bandusiri tearing off of the notice. Even the CCTV projection do not display any evidence. There were no eye witnesses, Reliability of the CCTV projection indicate several hands moving towards the notice board, but nobody had identified positively who tore it off. That's regarding Bandusiri.

As far as L. P. Sunanda is concerned, it is alleged that he scolded the Chief Executive Officer, with bad words. He had made an entry to that effect but DID not give evidence Two Security Guards gave evidence stating that Sunanda used bad words at Chief Security Officer. These Security Guards stated that they were employees of Brave Guard Security and Investigation service, (EPF Reg No. 33507/A) but records indicate they were not in employment during the period under review.

(H) Several documents concerning past disciplinary issues and punishments imposed were submitted –

Briefly stated they were –

Concerning L. P. Sunanda –

- (a) An incident where 3 workers were involved in a scuffle, as far back as 12 June, 1998;
- (b) Create a unpleasant situation in entering the Milcopremices forcibly and assaulting workers; on 17 Nove. 2005.
- (c) Issues of misconduct, arising from information gathered by management, on 25, Aug. 2011.

Concerning K. Bandusiri –

- (a) Alter documents concerning issue of damaged packeted milk, as far back as 26, Jul. 1996.
- (b) During the period 26, Mar. 2012 and thereafter, arouse worker's feelings by spreading false rumors :

Examination of charge sheets and imposition of punishments, indicate that workmen concerned had not placed their signatures in acknowledgement. The basic formalities in holding disciplinary inquiries have been neglected, violating the fundamentals of concept of natural Justice.

The Industrial Disputes Act, as amended, from time to time in Sec. 32 A state as follows which falls under, labour practices –

No employer shall –

- (a)
- (b)
- (c)
- (d)
- (e)

(f) Dismiss or otherwise take disciplinary action against, any workman or office bearer of a Trade Union –

- (i) For any statement made by such workman or office bearer in good faith before any tribunal or person in authority ; or

- (ii) For any statements regarding acts or omissions of the employer relating to the terms and conditions of employment, of the members of such Trade Union made by such workman or office bearer, in pursuance of an industrial dispute for the purpose of securing redress or amelioration of working conditions of such members ;
- (g) Refuse to bargain with a Trade Union which has in its membership not less than forty per centum of the workmen on whose behalf such Trade Union seeks to bargain.
- (i) Besides the I/LO (International Labour Organization) core Convention No 87 Freedom of Association and the Protection of the Right to Organize, as well as Convention 98 concerning the Right to Organize and Collective bargaining , Sri Lanka has ratified these Conventions provide for a wide variety of safeguards and the country so ratified, has to inform the I/LO if and when violations of the provisions of the Conventions have surfaced.

These Conventions are in conformity with Proclamation of Article 23 (4) of the Universal Declaration of Philadelphia.

It might be true to say that Trade Union leaders cannot be “yes” men. They ought to be skillful, courageous, daring and dauntless. Else members will not carry out his commands. However management has meticulously and cautiously contrived to silence the Trade Union Leaders.

- (j) In the final analysis, I am fully convinced that both K. Bandusiri and L. P. Sunanda are free from blame concerning the alleged issues of misconduct and that –
 - (a) K. Bandusiri be reinstated up to the date of retirement and be paid arrears of salaries, bonus and value of unutilized leave and other entitlements but denied during period of interdiction.
 - (b) L. P. Sunanda be reinstated with all benefits and entitlements. Arrears of salary, increments, denied leave pay value etc.

This award to be implement within 45 days of publication in the *Govt. Gazette*.

This is just and a fair award.

P. NAVARATNE.
Arbitrator.

31, October, 2017

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