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The Gazette of the Democratic Socialist Republic of Sri Lanka
EXTRAORDINARY

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No. 1703/41 - FRIDAY, APRIL 29, 2011

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. : CI/104/2002(sub).

In the Matter of an Industrial Dispute Between :

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Jathika Sevaka Sangamaya, No. 416, Kotte Road, Pitakotte/Sri Lanka Nidahas Sewaka Sangamaya, No. 301, T. B. Jaya Mawatha, Colombo 10 of the one part and Lanka Ceramic Limited, No. 696, Galle Road, Colombo 03 of the other part was referred by order dated 17.08.2005 made under Section 4(1) of the Industrial Disputes Act, Chapter 131, (as amended) and published in the *Gazette* of the Democratic Socialist Republic of Sri Lanka Extraordinary No. 1416/25 dated 27.10.2005 for settlement by Arbitration is hereby published in terms of section 18(1) of the said Act.

1. Jathika Sevaka Sangamaya,
No. 416, Kotte Road,
Pitakotte.
2. Sri Lanka Nidahas Sevaka Sangamaya,
No. 301, T. B. Jaya Mawatha,
Colombo 10.

..... of the one part

Case No. A/3123

and

Lanka Ceramic Limited,
No. 696, Galle Road,
Colombo 03.

..... of the other part

THE AWARD

V. B. P. K. WEERASINGHE,
Commissioner General
of Labour.

The Honourable Minister of Labour Relations and Foreign Employment by virtue of the powers vested in him by section 4(1) of the Industrial Disputes Act Chapter 131 of the Legislative Enactments of Ceylon (1956 revised edition) as amended by Act, Nos. 14 of 1957, 4 of 1962 and 39 of 1968 read with Industrial Disputes (Special Provisions) Act, No. 37 of 1968 appointed me as Arbitrator by his order dated 17th August 2005 and referred the following disputes to me for settlement by arbitration.

Department of Labour,
Labour Secretariat,
Colombo 05,

01st April, 2011.

The matter in dispute between the aforesaid parties are:-

Whether the seven hundred and fifty three employees whose names are given in the attach schedule who worked in Piliyandala factory of Lanka Ceramic Limited are entitled to receive the following payments and if not to what relief each of them is entitled.

1. The salaries for the period of 05.06.2002 to 31.08.2002 during which the Piliyandala factory of Lanka Ceramic Limited was closed.

2. Balance half of the salaries for the period of 01.09.2002 to 31.12.2002 as agreed to consider by the Lanka Ceramic Limited to pay its employees at the time of their leaving company's service voluntarily on payment of compensation.

Appearance :

Mr. E. V. N. Cabral
For the party of the First Part

Mr. Prasad De Silva, Attorney-at-Law,
For the party of the Second Part

(Mr. Kanishka Weerasinghe, Attorney-at-Law,
also appeared at the beginning of inquiry)

The Party of the Second Part made preliminary objections stating that the reference by the Minister was bad in law and therefore the matter should not be taken for inquiry. The objection was rejected.

Mr. Pathmasiri Ranawaka Arachchi, Assistant General Manager (Human Resource) in his evidence stated as follows :

He stated that on 19th January 1990, Lanka Ceramic Corporation was privatized as Lanka Ceramic Limited.

The witness further stated that a section of the worker's opposed to the Company's decision to shift Distribution Centre from the Piliyandala to Boralessgamuwa. He further stated that those workers violently protested against the shifting of finished goods from the factory at Piliyandala to the Distribution Centre at Boralessgamuwa.

The witness further said since he has not seen the incident himself he is giving evidence as per the documents available to him.

The witness further said on 04th June 2002, the management of the Respondent Company interdicted 4 workers on disciplinary grounds. The witness said on following day he came to know that the General Manager (Sales) were assaulted by some of the workers and other senior managers were forced to confined to their office rooms by workers and kept them as hostages.

The witness further said that even though the police was present that time they could not control the situation.

The witness stated that at the time of incident he was not present there as he was attached to the factory at Boralessgamuwa.

The witness further said after the incident Piliyandala factory was kept closed with effect from 05.06.2002.

The witness further said after having discussion with the respective parties to re-open the factory section 12(1) settlement was signed before Commissioner of Labour on 26.08.2002.

He further said after considering condition No. 8 of the settlement arrived, the respondent company had come to a decision that the 1/2 salary for the period 01.09.2002 to 31.12.2002 should not be paid to the workers.

The witness when cross examined by the party of the First Part stated as follows :

- (i) At the time of privatisation the respondent company was running at a profit.
- (ii) He said since he was not present at Piliyandala factory when incident occurred on 04.06.2002, his evidence is based on documents and by the information received from Piliyandala factory.
- (iii) The management decided to close the factory by midnight on 05.06.2002 as the workers unrest prevailed.
- (iv) The factory land at Piliyandala consisting 27 acres were sold by the respondent company during the years 2003/2004.
- (v) Subsequently Negombo and Hungama factories also closed by the respondent company.
- (vi) The management decided to close Piliyandala factory as it way imposible to run the factory due to prevailing conditions.

- (vii) The workers behaved violently after taking disciplinary action against some of them. The workers even took senior managers as hostages. He emphasised that in such a situation factory could not be operated.
- (viii) The staff officers who reported for duty was paid their salaries.
- (ix) The General Manager (sales) was assaulted by the workers and was hospitalised. A complaint was made to the police in respect of this incident.
- (x) After selling the factory land, settling compensation and paying gratuity there has been an excess of Rs. 10 million.

Mr. Rajiv Casie Chitty, Executive Director in his evidence stated as follows :

- (i) There were about 750 people were employed in the factory at the time of the incident. In all the factories there were about 2000 people working at that time.
- (ii) He said he was a member of the management team at that time and the decision to open a distribution point at Boralessgamuwa was taken to improve sales.
- (iii) He said there were violent protest against the loading lorries to take stocks to Boralessgamuwa from Piliyandala.
- (iv) The reasons for setting up an additional distribution point was duly informed to the Unions.
- (v) The witness said, the Deputy Chairman of the Respondent Company wrote to the General Secretary of JSS stating that the membership was obstructing the implementation of the management decision to setting up a sales outlet at Piliyandala and as there was no response the management decided to take disciplinary action against the members of JSS who were obstructing to the transfer of goods from Piliyandala to Boralessgamuwa.
- (vi) The witness said that he was informed by the General Manager, Marketing that he was pulled up from his vehicle and assaulted and he had managed to run up to the stores and saved himself.
- (vii) The witness further said that some of the senior Managers were held as hostages to achieve a certain motive.

- (viii) Piliyandala police was informed and they were unable to deal with the situation as their strength was not sufficient. When deputy Chairman informed the Minister of Defence and Ministry of Interior, ASP Ranjan arrived with the riot squad. Since riot squad could not deal with the situation the management feared for the safety of employees and the suspension order against 4 employees were withdrawn.
- (ix) The witness said after the incident executives feared for their life and did not report to work. After lot of discussion the factory was closed.
- (x) The witness said since employees were acting in a hostile manner the management was worried about safety of the kilns as kilns had to be shut down systematically over a period of time.
- (xi) The witness said during the discussion held afterwards at the Labour Department the management did not agree to pay salaries for the period during which the factory closed.
- (xii) The witness said withdrawal of letters of suspension of 4 workers was done under duress.
- (xiii) The witness further stated the Commissioner of Labour has instructed to make a half payment of salaries for the 2 months during which the company was closed, but the Board of Directors did not agree to that as the closure of the factory was brought about by hostile action and indiscipline of the work force.
- (xiv) The witness further said after the strike closing down of Negombo and Piliyandala factories the group had suffered a loss of Rs. 521 million. In the circumstances, it was not possible to make any payment which the management undertook to consider paying to employees.

In cross examinations the witness stated the GM Marking identified certain people who assaulted. The witness further stated that over 700 employees agreed to leave on VRS.

Witness further admitted that now the company is improving financially and shareholders are being paid dividends.

Witness further admitted that the closure of the factory was of 2 reasons firstly, the security of the executives and secondly the situation of the kilns.

Air Vice Marshall (retd) Deputy Chairman P. M. Fernando in his evidence stated as follows :

- (i) He said he wrote to JSS (the letter marked R4) explaining the purpose of establishing another Distribution network at Boralessgamuwa. The letters of suspension issued to those who found guilty of preventing this movement.
- (ii) He further said the decision to close down the factory was not a decision taken arbitrarily but on facts and figures that took place giving priority to the safety of personnel. He said kilns cannot be closed suddenly as sudden difference in temperature that will arise due to such closure is bad for the kilns.
- (iii) He further said Committee of Experts were appointed to ascertain the damage to 3 kilns and other equipment. The witness further said the repairs would require about 8 to 9 weeks and would require about 40 workers to assist.
- (iv) The witness further said police did not take any action against the workers and no arrest was made with regard to the incident took place on 05.06.2002.

When cross examined by the party of the First Part the witness said police advised the management to withdraw suspension of the workers and the management did so under duress. He further said that the agreement also signed under duress.

Cross examination on 10.09.2009.

Q. R 13 is the agreement signed after discussion between the General Secretary of the J.S.S. and General Manager (Operations) of your company.

A. Yes

Q. In terms of this Agreement, the company has agreed to withdraw the suspension letters served on the 4 workers.

A. Yes, this is a decision taken after discussions my Manager had with the police. The police said, please withdraw we are going. Our managers were locked up and it came to the point I do allow that or I withdraw in duress.

Q. Your position is that although this Agreement does not embody any statement relating to duress, this was in fact signed under duress ?

A. I agree.

He further said the decision to not to pay 1/2 months salary was taken by himself as the Deputy Chairman and by Mr. Casie Chitty the executive Director for the following reasons.

- a. Due to losses incurred and loans Company have to pay.
- b. All the staff wanted to leave on VRS and therefore there was no case of making any profits.

The witness further said the most of the workers are the share holders and they are paid dividends when the company run at a profit.

Miss Ena Thanapathi giving evidence for the party of the First Part stated as follows :

- (i) She said she was the Secretary of the Sri Lanka Nidahas Sevaka Sangamaya of the Respondent Company.
- (ii) The witness further said the goods which were stored at Piliyandala was transferred to Kithulwatte by the management for the benefit and easy access of the traders. She further said JSS fiercely opposed to this decision.

- (iii) The witness said when she reported for work in the morning there was a notice on the gate saying that the factory was closed after 12 midnight of 05.06.2002. She further said some of the kiln operators were allowed to come in order to bring down the temperature of the kilns.

When cross examined by the respondent's lawyer, the witness further said a period of about two weeks is needed to cool down the kiln.

The witness further said Sri Lanka Nidahas Sevaka Sangamaya did not participate in the protest.

The witness further said that she was not aware of the presence of the Riot Squad during the time protest.

The witness further said that she was not aware of hostage taking by the workers.

P. J. Harrison, Kiln operator in his evidence stated as follows :

The witness said when he reported for work on 06.06.2002 he was not allowed to go in as the factory was closed.

The witness further said when he met Dayaratne, a fellow Kiln Operator after a few days Dayaratne told the witness that he shut down the kiln as he left.

During the cross examination, the witness further said,

To start operation, the temperature of a kiln should be brought 1080 C⁰. This was done by burning large amount of furnace fuel. When a kiln is shutting down no production could be done. He further said it takes 5 to 6 days to bring about to required temperature of the kiln and to shut down takes about 4 days.

Both parties have filed written submissions.

On overall analysis of evidence I have come to following conclusions,

- (i) The management decision to relocate the distribution centre to Boralesgamuwa is purely an administrative act.
- (ii) There is no reason to justify workers objecting to the management decision to shift the distribution centre to Boralesgamuwa.
- (iii) There had been violence and intimidation by a section of wokers against the management at the time of the protest.
- (iv) The management was forced to withdraw letters of suspension of 4 workers under duress.
- (v) The Respondent Company suffered a considerable loss due to closure of the factory.
- (vi) The party of the First Part failed to prove that there had been no violence or intimidation against the management at the time of protest.
- (vii) Any relief granted under threat or intimidation will be a bad precedent.

Any form of violence against the employer or employee cannot be acceptable at any cost. The Ceramic Corporation was privatised by the Government which was in power at that time. The Government consisted the elected representative of the people. The objective of the Company who took over the

business is to run it with a profit while providing the employment. If the Enterpreuner is threatened or intimidated he will not risk investing the capital in ventures that will provide employment. In such a scenario the Enterpreuner will look for safe heaven for it's capital such as investing in banks or other financial institutions without risking investing in employment generating projects.

In the case of Nakiyakanda Group Vs. Lanka Estate Worker's Union (1969) 77 CLW 52 De Kretzer J stated that in making a just and equitable order, it is important that not only the interests of the employee but also the interests of the employer and the interest of the country should be considered as the object of social legislation is to be not only a contented employee but a contended employer too.

In Health and Co (Ceylon) Ltd Vs. Kariyawasam

The Supreme Court held "the use of obscene language when addressing the employers representatives coupled with threats of violence should not be condoned in the name of industrial peace. Such a course can lead to industrial chaos.

For the reasons aforesaid it is my finding that the violent behavior or some of the workers are responsible for the closure of the factory.

In the circumstances taking into consideration the totality of evidence led before me I make award that the Party of the First Part, be awarded no relief.

I further make order that this award should be implemented within 21 days of the publication in the *Government Gazette* of the Democratic Socialist Republic of Sri Lanka.

I consider this award just and equitable.

KAPILA M. SARATHCHANDRA,
Arbitrator.

01st March 2001.

05-340