

Ramasawmy v Alteo Agri Ltd

2022 IND 39

CN1042/19

THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

Ramdass RAMASAWMY

Plaintiff

v/s

Alteo Agri Ltd (formerly Alteo Limited)

Defendant

RULING (NO. 1) (PARTICULARS)

By way of Plaintiff dated 16-12-19, the Plaintiff is claiming from the Defendant Company **the sum of Rs1 798 628. 58/- representing One Month's Salary In Lieu of Notice and Severance Allowance, with Interests at the legal rate from the date of termination of Employment until the date of payment.**

The present matter is still at the Formal Matters stage, and the Defendant Company is insisting on Particulars being provided in relation to Questions 15 to 21 of the Demand of Particulars.

The matter was therefore set for Arguments, and each Party was duly assisted by Learned Counsel.

The Arguments were held in English.

The Case For The Defendant Company

In essence, Learned Counsel for the Defendant Company submitted to the effect that the Particulars requested at Questions 15 to 21 of the Demand of Particulars dated 26-08-2020 ought to be provided, in order for the Defendant Company to know the case it has to meet, as at paragraphs 8.1 and 8.2 of the Plaintiff, the Plaintiff averred that his Employment was terminated when he “did not suffer from any permanent incapacity to perform his work as Driver [Grade 2] and Chainman” and as the “aforesaid permanent incapacity was, in any case, not certified at the material time by a government medical practitioner”, whereas at paragraph 9 of the Plaintiff, the Plaintiff was averring that “in any case, he was fit to carry out his duties whether as Driver [Grade 2] and/or as a Chainman”.

In effect, according to Learned Counsel for the Defendant Company, the Plaintiff was averring on the one hand that his Employment was terminated on the basis of a permanent incapacity which he did not suffer from, and that the said permanent incapacity had not been certified by a Government Medical Practitioner, but was also averring that he was fit to perform his work on the other hand.

Learned Counsel for the Defendant Company submitted that whilst the Defendant Company was clear about the case it had to meet under paragraphs 8.1 and 8.2 of the Plaintiff, the Particulars requested as per Questions 15 to 21 were in relation to the Plaintiff’s Employment, and were merely for the Defendant Company to know with precision the case it had to meet under paragraph 9 of the Plaintiff, in relation to the Plaintiff’s averment that “he was fit to carry out his duties whether as Driver [Grade 2] and/or as a Chainman”.

In Reply, Learned Counsel for the Defendant Company further submitted the Defendant Company was entitled to Particulars as to the Plaintiff’s fitness, which is different from any permanent incapacity, and added that the wording of paragraph 9 of the Plaintiff was possibly muddling the Plaintiff’s Cause of Action.

The Case For The Plaintiff

Learned Counsel for the Plaintiff submitted essentially to the effect that the Particulars requested were not justified for the following reasons.

The first reason invoked was that the said Particulars were in the nature of Interrogatories, with the Defendant Company seeking to obtain admissions from the Plaintiff, which was oppressive and not permissible.

The second reason raised was that the Defendant Company was on a fishing expedition for evidence, and that the Particulars sought could be expatiated upon in the course of cross-examination of the Plaintiff.

Learned Counsel for the Plaintiff added that the Defendant Company could not be heard to say that the averments were vague or that it did not know what case it had to meet, and that it was also open to the Defendant Company to summon Witnesses to depone.

The third reason given by Learned Counsel for the Plaintiff was that Questions 15 to 21 were extraneous to the averments of Paragraph 9 of the Plaintiff, which questions were therefore irrelevant, and should not be allowed.

The fourth reason invoked was to the effect that the Defendant Company was using Questions 15 to 21 as a tactic, as the Defendant Company was aiming at the evidence which is going to be adduced at Trial.

And the fifth and last reason invoked by Learned Counsel for the Plaintiff was that there was no element of surprise, as the Defendant Company knows fully what case it has to meet, and that the issue of any distinction between incapacity and fitness ought to be thrashed out on the Merits and not at the stage of Particulars.

Analysis

The Court has given due consideration to the Submissions of each Learned Counsel, and to the Authorities referred to by each Learned Counsel.

The following extract from the case of **Emtel Limited v The Information And Communication Technologies Authority & Ors [2014 SCJ 288]** is found of particular relevance to the issue at hand, i.e. whether questions 15 to 21 of the Demand Of Particulars are in the nature of Interrogatories or not:

It is also common ground that the guiding principles governing the question of particulars are authoritatively set down in the case of **Gujadhur and Ors v. Gujadhur & Sons Ltd.** [\[1962 MR 49\]](#) where the Court reaffirmed the general principle laid down in **Rassool and Ors v. Francois** [\[1914 MR 26\]](#) which is as follows:

“The object of particulars is to prevent surprise at the trial by informing the opposite party what the case which he has to meet, to explain and limit the pleadings which are vague or require limitation, and generally to define and narrow the issue to be tried and to save unnecessary expenses.”

In the same case of **Gujadhur**, the Court explained the “clear line of demarcation” which must be drawn between particulars and interrogatories. Particulars are confined to averments in the pleadings and as stated above, the object of particulars is to give to the other party information which the latter reasonably require to defend himself.

It is also explained in the case of **Gujadhur** that the object of interrogatories is two fold: firstly to obtain admissions to facilitate the proof of a case and secondly, to ascertain so far as may be done, the case of the opponent. Interrogatories are generally directed to the evidence on which the interrogating party relies to establish his case.

Whilst applications for particulars are allowed, interrogatories are not. In the case of **Gujadhur**, the case of **Lister Company Ltd. v. Thompson** [\[7 TLR 107\]](#) is referred to as indicating the demarcation line which should be drawn between applications for particulars and interrogatories and also how the Court may refuse an application for further and better particulars as being a series of interrogatories and as being oppressive.

Questions 15 to 21 of the Demand of Particulars are being asked under Paragraph 9 of the Plaintiff, which reads as follows:

The Plaintiff avers that, in any case, he was fit to carry out his duties whether as Driver [Grade 2] and/or as a Chainman.

Question 15

Question 15 of the Demand of Particulars reads as follows:

Q15. Was Plaintiff following any medical treatment whether with the Alteo Dispensary Union Flacq or with any government or private medical practitioner during the course of his employment with the Defendant? If in the affirmative, Defendant moves for full and detailed particulars of such treatment together with all the documentary proof thereof.

Applying the abovementioned principles to the above question, although the wording of the said question is in general terms, with no defined time period and / or type or scope of medical treatment, the Court is of the considered view that the said question is in order and ought to be allowed for the Defendant Company to know what case it has to meet as to the Plaintiff's fitness to carry out his duties whether as Driver [Grade 2] and/or as a Chainman.

Question 18

Question 18 of the Demand of Particulars reads as follows:

Was Plaintiff assigned lighter job by Defendant prior to the termination of his employment?
If in the affirmative, will Plaintiff say which lighter job and the reason thereto?

Applying the abovementioned principles to the present matter, the Court is of the considered view that the said question ought to be allowed, as same has a direct link to the Plaintiff's capacity or otherwise to perform his duties satisfactorily.

Question 16, 17, 19 , 20 And 21

Questions 16, 17, 19, 20, and 21 of the Demand of Particulars read as follows, and may be conveniently dealt with together (and in order to avoid repetition):

Q16. Does Plaintiff suffer from any non communicable disease? If, in the affirmative, will Plaintiff say which disease(s) and since when?

Q17. Does Plaintiff takes (sic) medicines on a daily basis ? If in the affirmative, will Plaintiff say which medicine(s) and since when?

[...]

Q19. Did Plaintiff experience any health problems such as stroke, weakness, sudden dizziness, trouble walking or loss of balance or coordination during the course of

his employment with the Defendant? If in the affirmative, would Plaintiff specify the health problems he suffered from and the symptoms he has frequently experienced during the course of his employment with the Defendant.

Q20. Did Plaintiff take any sick leave during the last 3 years prior to the termination of his employment? If in the affirmative, will Plaintiff say when, for how long and for which reason.

Q21. Did Plaintiff meet with any accident whilst he was in his capacity of driver during the course of his employment with the Defendant? If in the affirmative, Defendant moves for communication of full and detailed particulars of such accident including the date on which it occurred, the reasons and particulars of the said accident.

Applying the abovementioned principles to the above questions, the very wording of the said questions clearly indicates that the Defendant Company is seeking to obtain admissions from the Plaintiff, which is not in order.

Further, in relation to Question 20, the said information ought to be in possession of the Defendant Company.

To allow such questions would be oppressive by all standards, as the said questions are interrogatories,

In light of all the above the Court is of the considered view that the said questions ought not to be allowed.

Conclusion

In light of all the evidence on Record and for all the reasons given above, the Court is of the considered view that:

- 1) Questions 15 and 18 are justified for the Defendant Company to know the case it has to meet as to the Plaintiff's fitness to perform his duties, and the said questions are therefore allowed; and
- 2) Questions 16, 17, 19, 20, and 21 are in the nature of interrogatories and, and are therefore not allowed.

[Delivered by: D. Gayan, Ag. President]

[Industrial Court]

[Date: 27 July 2022]