

**SPORTSMAN TEA (PVT) LTD.,
vs
COMMISSIONER GENERAL OF LABOUR AND OTHERS**

COURT OF APPEAL
SRIPAVAN, J. AND
SRI SKANDARAJAH, J.
C. A. 335/2002
SEPTEMBER 19, 2004

*Employees Provident Fund Act, sections 31 and 32 - Payment of arrears-
Inquiry-Opportunity not given to peruse documents-Breach of natural justice-
Reasons for decision-Is it necessary ?*

The 3rd respondent former Director of the petitioner company, complained to the 1st respondent that a certain sum being arrears of E. P. F. dues has not been paid to him. An inquiry was held by the Assistant Commissioner of Labour, 2nd respondent and after written submissions were filed, the 2nd respondent (Assistant Commissioner of Labour) sought certain clarifications from the petitioner company. The company informed the 2nd respondent that as the inquiry is concluded, order could be made on the material submitted. The 2nd respondent thereafter requested the company to pay a certain sum as E.P.F. dues and the surcharge.

The petitioner company contended that the 2nd respondent has failed to give the petitioner an opportunity to examine the documents on which the 2nd respondent is said to have made the order, and that he has not given reasons for his order.

Held :

- (i) The documents that are relied upon by the Commissioner of Labour and the decision of the Board of Directors, at the meeting held on 28.02.1995 to arrive at this decision are not new documents ; the originals, of these documents are in the possession of the petitioner.
- (ii) The powers of the Commissioner of Labour under the EPF Act are not only to determine claims but also to call for documents (Section 31) and to examine any record or documents relating to any provident fund or scheme (section 32). In this instance, the 2nd respondent having the material necessary in his possession had called for the originals which were in the possession of the petitioner, but the petitioner had failed and neglected to produce same.
- (iii) The 2nd respondent in his affidavit had stated that he has relied on the marked documents, and the reasons are in the departmental file, which was disclosed to court.
- (iv) In the absence of a statutory requirement to give reasons there is no requirement to give reasons.
- (v) However, if the Commissioner fails to give his reasons to court exercising judicial review, an inference may well be drawn that the impugned decision is ultra vires and relief granted on this basis.

APPLICATION for a writ of certiorari.

Cases referred to :

1. *Ceylon Printers and another vs. Commissioner of Labour and Others*
- (1998) 2 Sri LR 29
2. *Kusumawathie & Others vs. Aitken Spence Co. Ltd and Another* (1996)
2 Sri LR 19

Percy Wickremasekera for petitioner.

M. Fernando, Senior State Counsel for 1st and 2nd defendants.

Cur.adv.vult.

SRISKANDARAJAH, J.

The petitioner is a limited liability company. In this company the 3rd respondent was functioning as a Director from 1993 to 20th of September 1998. The position of the petitioner is that the 3rd respondent resigned from the company after the chairman had detected some alterations in bills submitted by the 3rd respondent for reimbursement of money. During this period the 3rd respondent was not paid a salary but he was only entitled to a share of profit. 3rd respondent thereafter made a claim through his lawyer a sum of Rs. 5,000,000 or 4.3 million plus a vehicle for him to completely sever his connection with the company (P1). The petitioner company arrived at a settlement with the 3rd respondent to pay a total sum of Rs. 780,870 out of which 225,000 for transfer of his shares in the company to the chairman and Rs. 555,870 for his services to the company. The respondent accepted these sums and gave a letter that he has no further claims from the company (P4). Thereafter the Assistant Commissioner of Labour Mr. M. R.. Kannangara by his letter of 22nd May 2000 called upon the petitioner company to pay a sum of Rs. 245,000 being arrears of Employment Provident Fund dues to the 3rd respondent and the surcharge. The petitioner company took up the position that the 3rd respondent was never an employee of the company and that therefore, the question of paying him provident fund dues does not arise (P6 & P8). The 2nd respondent summoned the parties for an inquiry and after several dates of inquiry oral and written submissions were made. Thereafter the 2nd respondent by his letter of 05.11.2001 sought certain clarifications regarding the basis on which monthly payments have been made to the

Directors, the statement of salaries paid to the other Directors and the decision made at the board meeting on 28.02.1994 to increase the monthly salary of Directors. The petitioner company in response to the above letter informed the 2nd respondent that the inquiry has been already concluded and the decision may be given on the material before him. The 2nd respondent by his letter of 15.01.2002 conveyed his order to the petitioner company requesting the company to pay the 3rd respondent Rs. 123,000 as Employees Provident Fund dues and the surcharge. The petitioner submitted that the 2nd respondent has failed to give the petitioner an opportunity to examine the material on which the 2nd respondent was said to have made this order and this is a breach of the rules of natural justice.

The 2nd respondent submitted that an inquiry commenced with the complaint (P11) and the reply (P12). Written submissions of both parties were tendered and they made oral submissions on two days. He further submitted that as certain matters needed further clarifications, he dispatched (P15) requesting the petitioner to tender further documents. As the petitioner refused to tender further documents he considered the available documents and having been satisfied that the 3rd respondent had been remunerated monthly and also been satisfied that the Employment Provident Fund contribution with regard to the 3rd respondent has not been forwarded to the department of Labour by the petitioner made order to pay the Employees Provident Fund dues and the surcharge. Under these circumstances the petitioner cannot complain that he was not given a fair hearing. The Senior State Counsel who appeared on behalf of the 1st and 2nd Respondents produced the Department file in court and submitted that the copy of the minutes of the Board of Directors meeting held on 28th February 1994 containing the decision that the monthly salary of the Directors had been increased is filed of record.

The powers of the Commissioner of Labour under the Employees Provident Fund Act is not only to determine claims but also to call for documents (Section 31) and to examine any records or documents relating to any provident fund or pension scheme (Section 32). In this instant case the 2nd respondent having the materials necessary in his possession had called for the originals which were in the possession of the petitioner but the petitioner failed and neglected to produce the same.

The Petitioner complained that he was not given an opportunity to peruse the documents on which the 2nd respondent relied upon to arrive at his decision. He relied on the judgment in *Ceylon Printers Ltd and Another v Weerakoon, Commissioner of Labour and others*⁽¹⁾ where Gunasekara J held ;

“In view of the failure by the Commissioner to give the appellants an opportunity of challenging the new material on which he acted, the Commissioner is under a duty to give reasons for his decision, particularly in view of the fact that it was not he who held the inquiry and recorded the evidence. In the result, the order of the Commissioner was in breach of the principles of natural justice”.

This judgment is not applicable in this instant case as the documents that are relied upon by the Commissioner of Labour namely P 13a, P 13b and the decision of the Board of Directors at the meeting held on 28.02.1995 to arrive at his decision are not new documents. The originals of these documents are in the possession of the petitioner.

The Petitioner further submitted that the 1st respondent has not given reasons for his decision that was communicated to him by letter marked P17. In *Kusumawathe and others v Aitken Spence & Co. Ltd*⁽²⁾ and another the court held ;

“that in the absence of a statutory requirement to give reasons for decisions or a statutory appeal from a decision, there is no requirement of Common Law or the principles of natural justices that a Tribunal or an Administrative Authority should give reasons for its decision, even if such decision has been made in the exercise of a statutory discretion and may adversely affect the interest of the legitimate or reasonable expectations of other persons.

Per Silva, J

“the finding that there is no requirement in law to give reasons should not be construed as a gateway to arbitrary decisions and orders. If a decision that is challenged is not a speaking order, when notice is issued by a Court exercising judicial review, reasons to support it have

to be disclosed. Rule 52 of the SC Rules 1978 - is intended to afford an opportunity to the respondents for this purpose ; the reasons thus disclosed form part of the record and are in themselves subject to review. Thus if the Commissioner fails to disclose his reasons to Court exercising judicial review, an inference may well be drawn that the impugned decision is ultra vires and relief granted on this basis."

The 2nd respondent in his affidavit has stated that he has relied on the documents marked P 13a, P13b (the audit reports which give the monthly remunerations of the Directors) and having been satisfied that the 3rd respondent had been remunerated monthly and also been satisfied that the Employee's Provident Fund contribution with regard to the 3rd respondent had not been forwarded to the Department of Labour he made the order marked as P17. The reasons for the decision are also in the department file of the 2nd respondent which was disclosed to court by the learned Senior State Counsel. Therefore the petitioner cannot complain that there is a violation of the rules of natural justice. The decision of the Commissioner is based on the documents, the originals of which were in the possession of the petitioner and the petitioner had not made any attempt to controvert the facts contained in these documents other than stating that the copies of the documents which were submitted to the Commissioner are not duly signed or authenticated by any person. Therefore the submissions of the petitioner that the decision of the Commissioner is in excess of his jurisdiction and without any material has no merit. Under these circumstances the petitioner is not entitled for the relief claimed for. I dismiss this application without costs.

SRIPAVAN, J. - I agree.

Application dismissed.
