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

In the matter of an Application for mandates in the nature of writs of Certiorari and Mandamus under and in terms of Article 138, 139 and 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA WRIT Application NO.

CA.WRIT/283/2023

And read with the Workmen Compensation Ordinance No. 19 of 1934 and the inquiry into the payment of compensation.

Hendrikkan Hewage Karunawathie
No.455, " Kande Gedara",
Paasal Mawatha,
Maharachchimulla
Alawwa.

Plaintiff-Petitioner

v.

1. Anusha Muthukumarana
   Additional Magistrate/ Commissioner for Workmen Compensation
   15th Floor, Mehewara Piyasa,
   Narahenpita,
   Colombo 5.

2. Lakpriya Jayathissa
   Administrative officer

Workmen Compensation
15th Floor, Mehewara Piyasa,
Narahenpita,
Colombo 5.

3. K.H. Rohini Karunanayake
No. 19/1, Dangolla Watta,
Hambuluwa,
Keppetiwalana.

4. Jiffy Sri Lanka Private Limited
Pannala.

5. Hon. Attorney General
Attorney General's Department
Colombo 12.

Respondents

Before : **N. Bandula Karunarathna P/CA, J.**
B. Sasi Mahendran, J.

Counsel: Dishan Dharmasena with R. Bandara for the Petitioner.
Medhaka Fernando, SC for the 1st, 2nd, and 5th Respondents
Lakshman Amarasinghe with Hemamala Kumari for the 3rd Respondent
Shanaka Amarasinghe for the 4th Respondent

Supported on: 02.04.2024

Written Submissions On: 10.05.2024 (by the 3rd Respondent)

Order On: 14.06.2024

B. Sasi Mahendran, J

This Order is pertaining whether to issue notice as well as interim relief,

The Petitioner instituted this action to quash the letter issued to the 3rd Respondent by the 1st and 2nd Respondents, where the 3rd Respondent was asked to produce some documents which related to paying compensation under the Workmen Compensation Ordinance.

The facts of this matter very briefly are as follows.

The deceased Jayawardhana Hamilage Chaminda Pradeep Kumara who was an employee of the 4th Respondent died in an accident on 13.05.2016, while he was working as a Driver. The Petitioner made an application under the Workmen Compensation Ordinance to obtain compensation from the Employer. While the inquiry was pending the 3rd Respondent by letter dated 11.01.2018 informed the Respondent that the deceased was living with her for more than 15 Years and was married and the wife is abroad. Further, she claimed that she is the adopted mother of the deceased.

After the evidence was led by both parties the 1st Respondent directed them to file written submissions. Before the inquiry was concluded, the 1st Respondent directed the 3rd Respondent to submit the following details by letter dated 19.05.2023 which was marked as "පැ2". For easy reference, I will resubmit the contents of the said letter.

ජයවර්ධන හාමිලාගේ චමින්ද ප්‍රදීප් කුමාරට සිදු වූ මාරක අනතුර වෙනුවෙන් වන්දි බෙදීමේ පරීක්ෂණය 2023 මැයි මස 31 වැනි බදාදා පෙ.ව. 10.00 ට කොළඹ කම්කරු වන්දි උසාවියේදී පවත්වනු ලැබේ. එහෙයින් එදින එකී වේලාවට ඔබ මා ඉදිරියේ පෙනී සිටිය යුතු බැව් දත යුතුය. මේ සඳහා පහත සඳහන් ලියකියවිලි ඡායා පිටපත් සමග මුල් ලියවිලි රැගෙන ආ යුතුය. එක් අයෙකුට රු. 25/- ක මුද්දරය බැගින් රැගෙන ආ යුතුය.

1. මරණ සහතිකය, ජාතික හැඳුනුම්පත හා මිය ගිය අයගේ උප්පැන්න සහතිකය
2. මියගිය අය විවාහකනම් විවාහ සහතිකය, වයස අවුරුදු 18 අඩු දරුවන්ගේ උප්පැන්න සහතික, වයස අවුරුදු 18 ට වඩි අවිවාහක දරුවන්ගේ උප්පැන්න සහතික, බැංකු ගිණුම් විස්තර හා ඔබගේ බැංකු ගිණුම් විස්තර

3. මියගිය අය අවිවාහක නම් අවිවාහක බව සහතික කිරීම සඳහා ප්‍රාදේශීය ලේකම් අනුමත කරන ලද ග්‍රාම සේවා සහතිකය, උප්පැන්න සහතික හා බැංකු ගිණුම් විස්තර සමග ඔබ හා මිය ගිය අයගේ සියලුම සහෝදර සහෝදරියන්ද පැමිණිය යුතුය.

4. ජාතික හඳුනුම්පත්

5. මියගිය අයගේ මවද ඇයගේ බැංකු ගිණුම් විස්තර සමග පැමිනීම අත්‍යාවශ්‍ය වේ· (මිය ගොස් ඇත්නම් මරණ සහතිකය ඉදිරිපත් කල යුතුය.)

The said Workmen Compensation Ordinance is to provide for the payment of compensation to workmen who are injured or dead in the course of their employment. According to the section 10 of the said act,

10. (1) The compensation shall be payable to or for the benefit of the workman, or, where death results from the injury, to or for the benefit of his dependents as provided by this Ordinance.

Who is a Dependent was described in the section 2 of the said ordinance.

2. (1) In this Ordinance, unless the context otherwise requires-

" dependent " means any of the following relatives of a deceased workman, namely:-

a) a wife, a minor legitimate son, an unmarried legitimate daughter, or a widowed mother: and
b) if wholly or in part dependent on the earnings of the workman at the time of his death, a widowed mother, a minor illegitimate son, an unmarried illegitimate daughter, a daughter legitimate or illegitimate if married and a minor or if widowed, a minor brother, an unmarried or widowed sister, a widowed daughter-in-law, a minor child of a deceased son, or, where no parent of the workman is alive, a paternal grandparent;

In the instant case, the 3rd Respondent has brought to the notice of the Respondents that deceased is married and he has a wife. Also she claimed that the deceased was the adopted son who has lived with her for more than 15 years. To clarify this matter, the 1st Respondent directed the 3rd Respondent to produce documents for them to decide whether she falls under the definition of the dependent.

We hold that the said letter is an indication that the commissioner has to satisfy himself under section 10 of the ordinance where money should be paid to the Dependent as compensation. The question arises whether the said direction made by the 1st and 2nd Respondents is ultra vires and whether it enable any ground for Judicial Review.

I am mindful of the decision of Grero, J in **Desmond Perera and others v. Karunaratne, Commissioner of National Housing and Others 1994 (3) SLR 316 at page 329,**

"As pointed out by the learned President's Counsel for the 3rd respondent, Lord Diplock in the case of CCSV v. Minister for the Civil Service clearly classified under three heads, the grounds on which administrative action could be made subject to control by judicial review. They are:

I. Illegality;
II. Irrationality; and
III. Procedural impropriety.

Describing the aforesaid grounds Lord Diplock said as follows:

"By 'Illegality' as a ground for judicial review, I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute by those persons, the Judges by whom the judicial power of the state is exercisable".

"By 'irrationality', I mean what can by now be succinctly referred to as unreasonableness. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it".

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision.

Further held that,

"The decision-maker, the 1st respondent, in the instant case in paragraph 21 of his affidavit has stated the reasons why he decided to divest the apartments in question after having obtained the written approval of the Minister. This Court cannot hold that the grounds upon which he decided to divest the apartments or houses are unreasonable. Although the petitioners allege mala fide on the part of the 1st respondent, this Court cannot agree with them. A perusal of the grounds or reasons which he had described in

paragraph 21 of his affidavit reveals, that divesting of these apartments has been done on good and reasonable grounds."

In the instant case, the Petitioner has failed to establish that the direction given by the 1st Respondent in "ඵ2" to submit the documents qualify the grounds for review which was stated in the aforesaid judgements. Also the Petitioner has not established that, whether the Respondent has gone out of jurisdiction by taking to account that, asking the 3rd Respondent to submit the documents to prove the dependence of the deceased.

This Court is on the view that illegality and irrationality could not be attributed to the action taken by the 1st Respondent in this case. Calling to submit the documents where the Petitioner wants to quash it is only a ministerial one. Certiorari does not lie to quash what is purely a ministerial act. Also, we observe that there is no evidence to establish that the 1st Respondent failed to act with procedural fairness towards the parties.

For the above said reasons we dismiss this application with costs.

JUDGE OF THE COURT OF APPEAL

N. Bandula Karunarathna (P/CA), J.
I AGREE

PRESIDENT OF THE COURT OF APPEAL