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PART I : SECTION (I) — GENERAL

Government Notifications

My No. : CI/10/93(5)ප්‍ර(2). Case No. A/3081 and

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between The Ceylon Mercantile Industrial and General Workers Union (CMU), No. 03, 22nd Lane, Colombo 03 of the one part and Colombo Commercial Company (Engineers) Ltd., No. 33, Epitamulla Road, Pitakotte/Public Enterprises Reform Commission of Sri Lanka, No. 11 - 01 West Tower, World Trade Center, Achelon Square, Colombo 01 of the other part was referred by order dated 30.11.2004 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. 1372/14 dated 22.12.2004 for settlement by Arbitration is hereby published in terms of section 18(1) of the said Act.

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

Department of Labour,
Labour Secretariat,
Colombo 05,
11th November, 2011.

Case No. A/3081

In the Matter of an Industrial Dispute Between :

The Ceylon Mercantile Industrial and
General Workers Union,
No. 03, 22nd Lane,
Colombo 03.

..... of the one part

1. Colombo Commercial Company
(Engineers) Ltd.,
No. 33, Epitamulla Road,
Pitakotte, Kotte.
2. Public Enterprises Reform Commission
of Sri Lanka
No. 11 - 01, West Tower,
World Trade Centre,
Achelon Square,
Colombo 01.

..... of the other part

THE AWARD

The above mentioned matter in dispute as specified by Commissioner of Labour Relations in his statement was referred to me by 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 version) as subsequently amended from time to time for settlement for arbitration having appointed me as the Arbitrator for the said purpose.

The matter in dispute as specified in the said statement of the Commissioner is whether the non-payment of monies in full to the Sixteen (16) employees referred to in the schedule attached to the said statement out of 54 employees in terms of the arbitrators award No. 2406 issued in respect of the Industrial Dispute exists between the Ceylon Mercantile Industrial and General Workers Union (CMU) and Colombo Commercial Company (Engineers) Ltd is justified and if not to what relief each of them is entitled.

At the commencement of the inquiry the 1st Respondent CCC Engineers Ltd has taken up a preliminary objection stating that the employees under reference had ceased to be employees when both matters, A-2406 and A-3081 were referred for arbitration and therefore there is no live dispute as the workmen under reference had ceased to be employees when this matter was referred for arbitration. The other point raised in that objection of the 1st Respondent CCC was in regard to the non compliance of the award in arbitration No. A-2406. The position taken by the CCC was that it is the matter for the Commissioner General of Labour for enforcement which in any event cannot be the subject matter before any subsequent arbitration in terms of the Industrial Dispute Act and therefore the reference in the instant matter should be returned to the Minister. The applicant Union in reply to the aforesaid objection stated in its objection that when a dispute had arisen whilst the contract of employment existed could be referred to for settlement by arbitration although the contract of employment had been later terminated. Further the dispute arose before the resignation or retirement of the 16 employees referred herein is a matter of evidence and therefore this issue cannot be decided in limine and the preliminary objection taken by the CCC has no merit and should be rejected.

I have accepted the argument of the Union and overruled the preliminary objection taken up by the CCC on the basis that at the preliminary stage of the proceeding and without sufficient materials before me I could not decide the matter without hearing the parties at the inquiry and I further said in my interim order dated 22.08.2006 that in terms of Section 19 of the Industrial Dispute Act the terms of the award shall be implied terms in the contract of employment between the employer and the workmen bound by the award and if the employees referred in the instant case were covered by the said award No. 2406 it implied that the said terms of the award became implied terms in the contract of employment between the said employees and the CCC bound by the award. Therefore if there arose a dispute while the contract of employment subsisted if become an Industrial Dispute that could be referred for arbitration. In the course of the proceedings the 2nd Respondent PERC also made an application stating that PERC must be discharged from the proceedings of the present dispute as any legal liability or responsibility could not be imputed to the PERC in connection with the instant dispute for the reason that PERC is not the employer of the 16 workmen concerned. The applicant made no objection to discharge the PERC from proceedings but CCC made an objection to such a move for the reason that Arbitrator has no power to discharge PERC at this stage of the proceedings.

I did not make any order on this application as it was not the time to make any order of discharge of any party from the proceedings but assured parties that I will make an appropriate order on this point after hearing the parties at the inquiry.

Inquiry was commenced on 29.01.2009. On behalf of the 16 employees concerned the Union called Mr. Matarage, the Branch Secretary of CMU (one of the applicant) to give evidence on behalf of 16 employees. He stated in his short evidence that the present dispute is on non payment of monies in full to 16 out of 43 employees covered by the arbitration award No. 2406. He further said in his evidence that the 16 employees were paid only the salary but medical, OT, NRCLOG, bonus, overtime, ETF MSPS were not paid to them and it is the responsibility of the CCC to pay the said dues. The witness in his evidence marked following documents :-

- A1 - A1A } Letter issued by PERC dated 12.06.1998 and
- A1 B } the payment bill in terms of award 2406.
- A2 - Gazette notification with regard to award No. 2406.
- A3 - Letter addressed to Branch Secretary by CCC dated 12.06.2001.

Witness concluded his short evidence and on the day given for cross examination all the parties including the applicant agreed to determine this matter by way of written submission without proceeding with oral evidence. Accordingly the written submission of the respondent namely CCC Engineering Co. Ltd., and PERC were tendered in time. Tendering of submission by the applicants were unwarrantedly delayed. Finally after number of reminders by the Registrar on my direction 06.12.2010, the authorized representative of the union Mr. E. V. N. Cabral tendered submission along with documents marked X and Y on behalf of the applicant.

In determining this matter, I have perused the written submission made by all the parties and the documents tendered by them along with their written submissions. I first deal with the written submission of the PERC. The PERC in its submission has stated inter alia, that it was never a party to the share sale and purchase agreement (SSPA) nor a stake holder in CCC (Engineers) Ltd., but only assist the Govt of Sri Lanka in selling in CCC's (Engineers) Ltd., shares to Serendib Engineering and Agencies (Pvt) Ltd., Therefore no legal liability or responsibility can be imputed to PERC in connection with this matter.

Further that in pursuant to the Industrial Award No. A 2406 GOSL agreed to make payment to all employees deemed to be eligible to make a claim in terms of the said award and accordingly audit report was carried out and 43 employees were declared eligible to receive payments in terms of the said

award and list of all the sums each employee was entitled to be paid was prepared by CCC (Engineers) Ltd., which was certified by the Secretary of CMU (Applicants Union) and payment were made initially to 36 out of 43 employees in the said list and subsequently settled the remaining 7 employees in full and the said payments were accepted by the said employees as a full and final settlement of the same. PERC has further stated in para 8 of its submission that the above position is clearly reflected in the proceedings dated 16.03.2001 in the Fort Magistrate Court case No. 46177 which was filed by the Commissioner of Labour to enforce the Industrial award No. A-2406 where all parties represented by Attorney-at-Law admitted in open court that all except 7 employees in the list had been paid in full.

I am inclined to accept the contention of the PERC that if the CCC Engineers Ltd., had not paid money in full to the 16 employees concerned, who were covered under the award No. A 2406 they would have canvassed this matter in MC case No. 46177 and would have claimed relief in regard to those 16 employees.

In this regard I have perused the document marked 2R4 which is the order made on 16.03.2001, in case No. 46177 Labour in the Magistrate Court of Colombo. There it is clearly stated in said order that out of 43 workmen covered under the award No. A 2406 that payments for 36 employees have been paid in full and only 7 employees are remaining to be paid. By perusing the said order conclusions that can be arrived at are as follows :—

01. There were only 43 workmen covered under the award A 2406 to receive payments in terms of the said award (this number was certified correct by the applicant witness Mr. Matarage when he gave his evidence and according to the list forwarded by the Secretary of the Union to the PERC consisting of only 43 workmen is clear proof that there were only 43 workmen who were to receive benefits as per the arbitration award No. A 2406)
02. When this case No. 46177 in MC of Colombo came up for hearing on 16.03.2001 the lawyers appearing for the Union, Company and the department of Labour had accepted that 36 workmen out of 43 workmen of arbitration award A 2406 have been settled and that only 7 workmen whose names given in page 2 of the proceedings are to be settled before the MC.
03. Though the 36 employees who received payment in full in terms of the award A 2406 were not mentioned in names in the Magistrate Court proceeding, the fair conclusion that can be arrived at is that 16 employees

in the present matter included into the list of 36 employees who had been settled at the time union lawyers made representations at the MC on 16.03.2001.

The list attached to the document marked C (document submitted by PERC) contains letters submitted from 16 employees concerned and the perusal of the said letters clearly establish that the payments made to them according to document “C” have accepted by them as full and final settlement of any dues in relation to the purported collective agreement from CCC Engineers Ltd.

The PERC further argued that the PERC as a distinct and separate legal entity was never the employer of the 16 employees concerned therefore no Industrial Dispute could have occurred between the PERC and the said 16 employees.

It is appropriate in making this award to consider the application made by PERC at the out set of the proceedings that PERC should be discharged from the proceedings of this dispute.

I am convinced with the submission made by PERC that PERC is only a facilitator acting on behalf of the GOSL to sell its share of CCC (Engineers) Ltd and did not own any shares or control over CCC (Engineers) Ltd and in the circumstances no employee could make any claims against PERC and there cannot be an Industrial Dispute between the said employees and PERC in terms of Section 48 of the Industrial Dispute Act. For above reasons I am of the view that no Industrial Dispute as defined in the Act could have arisen between PERC and the 16 employees concerned. Further at one stage when the application was made by PERC for a discharge from the proceedings Mr. Cabraal who appeared on behalf of the 16 employees have no objection to discharge PERC from the proceedings.

In the circumstances my award in respect of PERC (2nd Respondent) is that the said 16 employees cannot make any claim whatsoever against PERC and accordingly dismiss the claims of the 16 employees against PERC with no costs.

I will now consider the submissions of CCC (Engineers Ltd. (1st Respondent) Along with its submission CCC (Engineers) Ltd forwarded documents marked “A to G”.

Document “A” is share sales and purchase agreement entered into on 17th December 1997 between Govt of Sri Lanka and Serendib Engineering and Agencies (Pvt) Ltd. The document and contents therein were not disputed by parties.

Document “B” is the copy of the award of A 2406 which was given on 12.09.1995. The document and the contents were not disputed by the parties in the present proceedings.

Document “C” is the list of claims giving details of workmen numbering 43 who are entitled to benefits its terms of award A-2406. On the face of this document it is apparent, that this document had been prepared by the Applicant’s Union. This fact was not disputed by the applicants.

Document “D” is the letter written by the applicant’s Union to PERC dated 17.02.1999 informing PERC that there is a shortage of arrears paid to 16 workmen and if happened due to non availability of relevant information with the Union at the time they presented the earlier claim. It shall be observed that by the time this letter was written by the Union, the 16 workmen had left employment and ceased to be employees of CCC (Engineers) Ltd.

Document “E” is the letter sent by PERC dated 18.11.2001 informing the Union, that no payment can be made as the Attorney General had given a ruling that there is no obligation of the part of the GOSL to make a further payment in respect of arbitration award No. A-2406 as the 16 workmen concerned had accepted the earlier payment as full and final settlement.

I am convinced that by receiving payments by 16 workmen concerned along with other 27 workmen from PERC (acting on behalf of the GOSL) according to the list provided by the Union and subsequently accepting the said payments as full and final settlement of money due to them by the said 43 workmen covered by the award A-2406. The said 16 workmen who are the applicants in the present matter cannot claim any arrears of money from PERC or for that matter from CCC (Engineers) Ltd in the present case. As I mentioned earlier in this award if there was a dispute if any over the non payment of money due in terms of the award A 2406 to these 16 workmen who were covered by the said award, they should have claimed it in the Magistrate Court case No. 46177. The Magistrate Court proceedings of 16th March 2001 marked “G” and annexed to the written submission of CCC (Engineering) Ltd which was the matter filed by Commissioner of Labour to enforce the Industrial award No. A-2406 where all the parties represented by Attorneys-at-Law. Perusing the said order it is clearly reflected that only 43 workers are covered by the award A 2406 and 36 out of the said 43 workers had been already paid the monies due before the institution of the said action. The remaining 7 who have not recovered their due payments in terms of the award A-2406 were paid in the said action.

It is to be noted here that the applicants in their written submission or when giving oral evidence failed to mention anything about this MC case and its settlement. It creates doubts in my mind that the applicant union deliberately avoided to disclose this fact in order to take undue advantage of the proceedings before me.

So in regard to the dispute referred to me in the present matter I am of the view that 16 employees set out in the schedule to reference for arbitration are estoppel from claiming any payments from CCC (Engineers) Ltd pursuant to having accepted payments by 16 employees as full and final settlement of the Industrial award A-2406 and had confirmed in Magistrate Court case No. 46177 that all the employees covered in award A-2406 had been settled in full.

In the circumstances I hold that CCC (Engineers) Ltd is not liable to make any payment in respect of the 16 employees referred herein and I make this award accordingly and dismissed the claim of the applicants without costs.

LLOYD GALHENA,
Arbitrator.

03rd October, 2011.

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My No. : IR/22/17/2008.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. Y. M. Sunil Premaratne, “Mishan”, Gawarawela, Demodara of the one part and Sri Lanka Transport Board, No. 200, Kirula Road, Colombo 05 of the other part was referred by order dated 24.03.2010 made under Section 4(1) of the Industrial Disputes Act, Chapter 131, (as amended) for settlement by Arbitration is hereby published in terms of section 18(1) of the said Act.

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

Department of Labour,
Labour Secretariat,
Colombo 05,

11th November, 2011.

In the Matter of an Industrial Dispute Between :

Mr. Y. M. Sunil Premaratne,
Mishan,
Gawarawela,
Demodara.

..... of the one part

Case No. A/3328 and

Sri Lanka Transport Board,
No. 200, Kirula Road,
Colombo 05.

..... of the other part

THE AWARD

The Honourable Minister of Labour Relations and Manpower 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 Acts 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 24th March 2010 and referred the following disputes to me for settlement by arbitration.

The matter in dispute between the aforesaid parties are :-

Whether the suspension of the services temporarily for the period of 01.12.2007 to 31.05.2008 of Mr. Y. M. Sunil Premaratne, the Forman of Keppetipola Depot of the Sri Lanka Transport Board in terms of the Appeal Board's decisions dated 15.11.2007 referred to in the letter dated 27.11.2007 issued to him by the Depot Manager of the said Depot is justified and if not justified, to what relief he is entitled.

Appearance :

Mr. T. N. Yoosuf
Representative for the party of the First Part

Mr. Rakitha Abeygunawardena, Attorney-at-Law
Appeared for the party of the Second Part.

Mr. Arawinda Wijeratne, Assistant Depot Manager Keppetipola Depot appearing for the Party of the First Part in his evidence stated as follows :

- (a) The applicant was attached to the Engineering Division of the Keppetipola Depot as a Foreman. On 11.06.2007, busdriver Piyal informed to the Depot about a breakdown by document marked VI (p4). He further said that the breakdown was occurred at a place called Gettuwa.
- (b) The applicant along with technicians had gone in a breakdown vehicle to attend the repairs. They had taken with them has among other tools an used break drum. The witness stated that the old break drum was not necessary to attend such repair. The gate pass issued in this respect was marked as P5.

(c) The witness further said that the shortest way to reach Gettuwa was via Welimada, Bogahakumbura, Boralanda, but the applicant had gone to Gettuwa via, Welimada, Keppetipola, Welioya Haputale road as the prospective buyer for the break drum lived in that road. According to V3 (statement made by C. Ratnayake of the security division) when the applicant returned to the Depot after attending to repairs he failed to bring the break drum with him. After inquiry it was revealed that the applicant had sold the break drum for Rs. 500 to a trader called M. M. Elliyas (V5).

(d) The value of the break drum is estimated around Rs. 1,500. The applicant was charge sheeted on 11.07.2007. (V7) and a disciplinary inquiry was held.

(e) As per the disciplinary inquiry report on 11.08.2007 (V8), the Applicant was punished under disciplinary order dated 21.09.2007 as follows.

1. Suspension of service for a period of 6 months without pay.

2. The applicant was severely warned not to repeat such offences.

When Cross examined by the Applicants representative the witness stated. That the break drum was returned to the depot by Ajith Priyantha and Anura Gamini (A1).

In reexamination the witness stated that Anura Gamini paid Rs. 500 to the trader and brought back the break drum. Anura Gamini also was punished after the disciplinary inquiry.

Applicant appealed to the Appeal Board and they also confirmed the Disciplinary Order against the applicant (V17).

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

- (i) The Respondent Board has acted bona fide towards the applicant by holding a disciplinary inquiry and subsequent hearing of the appeal.
- (ii) The Applicant was not singled out in meted with the punishment but the others who involved was also punished.
- (iii) The applicant has failed in his duties as a Foreman towards the Respondent Board.

In the circumstances, I wish to quote the decision of Democratic Workers Congress Vs The Superintendent, Kalugalla Estate. "The management with the knowledge and experience of the problems which confront it ordinarily ought to have the right to decide what the punishment should be".

For the reasons aforesaid it is my finding that the Respondent Board (party of the Second Part) has not caused an injustice to the applicant. (party of the First Part)

In the circumstances taking into consideration the totality of evidence led before me I make award that the Applicant (Party of the First Part) is not entitled to any relief.

I consider this award just and equitable.

KAPILA M. SARATHCHANDRA,
Arbitrator.

02nd October, 2011.

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