

TOPA SPORTING GOODS (PVT) LTD.
v.
THE COMMISSIONER OF LABOUR AND THREE OTHERS

SUPREME COURT.
G. P. S. DE SILVA, C.J.,
RAMANATHAN, J. AND
DR. BANDARANAYAKE, J.
S.C. APPEAL NO. 48/96.
C.A. NO. 3/96.
FEBRUARY 17 AND MARCH 26, 1997.

Certiorari – Termination of Employment of Workman (Special Provisions) Act, No. 51 of 1988 – Order to pay compensation – Rejection of application on ground of laches and delay.

Ordinarily a court should be very slow to dismiss an application without issuing notice on the respondents on the ground of delay of a short period of six months unless there are compelling circumstances such as grave and substantial prejudice caused to a party by reason of such delay. To refuse certiorari solely on the ground of delay may undermine the rule of law particularly where the decision is sought to be quashed on the basis of want of jurisdiction.

Case referred to:

Sebastian Fernando v. Katana Multi-Purpose Co-operative Society Ltd., and Others [1990] 1 Sri.L.R. 342.

APPEAL from the order of Court of Appeal.

Sanjeeva Jayawardena for the petitioner-appellant.

S. Sinnathamby for the 4th respondent-respondent.

U. Egalahewa, S.C. for the 1–3rd respondents-respondents.

May 02, 1997.

G. P. S. DE SILVA, C.J.

The petitioner-appellant, a private limited liability company engaged in the principal business of the manufacture of tennis rackets for export moved the Court of Appeal by way of a writ of certiorari to quash the order made by the 1st respondent (the Commissioner of Labour) in terms of section 6A (1) of the Termination of Employment of Workman (Special Provisions) Act. The order (P27) dated 18.6.95 required the petitioner-appellant to pay certain sums of money as compensation to the workmen whose names were set out in the schedule to P27. The appellant company was ordered to pay the money on or before 31.7.95. The application for the writ of certiorari was filed on 2.01.96. The Court of Appeal took the view that the delay of six months was fatal to the application and dismissed it summarily without issuing notice on the respondents. It is right to add that the Court of Appeal observed that the reason given in the petition for the delay was false.

It was averred *inter alia*, in the petition that P27 was illegal, null and void inasmuch as it failed to take into account "relevant circumstances" and was "totally arbitrary" for the reason that there was "no rational basis of computation of the compensation."

Special leave to appeal to this court was allowed on the question whether the Court of Appeal erred in holding that the petitioner appellant was guilty of laches and whether summary dismissal was justified.

Several decisions have dealt with the question whether delay *per se* is fatal to an application for a writ of certiorari. Some of these decisions are referred to in *Sebastian Fernando v. Katana Multi-Purpose Co-operative Society Ltd., and Others*⁽¹⁾ and reference to that case would suffice for present purposes. Fernando J., observed, "Although the court has a discretion, in appropriate circumstances, to refuse certiorari and mandamus on the ground of delay, that plea involves equitable considerations. ... (at page 345) Kulatunga, J., in

a separate judgment citing S. A. de Smith, *Judicial Review of Administrative Action*, 4th Edition, p. 423-424 said, "Even where (as in England) time for making an application is provided by rules, delay by itself would not defeat an application. It is only a discretionary bar to be applied, having regard to the conduct of parties, the issues involved and substantial prejudice which may result in varying the impugned order." (at page 352).

Ordinarily a court would be very slow to dismiss an application without issuing notice on the respondents on the ground of delay of a short period of six months unless there are compelling circumstances such as grave and substantial prejudice caused to a party by reason of such delay. To refuse certiorari solely on the ground of delay may undermine the rule of law particularly where the decision is sought to be quashed on the basis of want of jurisdiction. It seems to me that this was eminently a case where the court should have issued notice and left it to the respondents to take the plea in their objections, if so advised.

I accordingly allow the appeal, set aside the judgment of the Court of Appeal and direct the Court of Appeal to issue notice on the respondents and hear and determine the application.

There will be no costs.

RAMANATHAN, J. – I agree.

BANDARANAYAKE, J. – I agree.

Appeal allowed.