

CITY CARRIERS LTD.
v.
THE ATTORNEY-GENERAL

SUPREME COURT
BANDARANAYAKE, J.
KULATUNGE, J. AND
DHEERARATNE, J.
S.C. APPEAL NO. 7/91
C.A. NO. 126/85
M.C. MT. LAVINIA NO. 7086
6 MAY 1992.

Industrial Law – Employees Provident Fund Act No. 16 of 1958 amended by Act No. 8 of 1971 – Requirements of the Certificate for recovery filed under s. 38 (2) of the the Employees Provident Fund Act – Question of law raised for the first time in appeal.

Section 38 (2) of the Employees Provident Fund Act No. 16 of 1958 as amended by Act No. 8 of 1971 imposes the duty on the Commissioner of Labour to give particulars of the sum due in the Certificate he files in the Magistrate Court for recovery of Provident Fund dues. Where the Certificate contains no particulars of the sum claimed, there is in law no certificate.

This is a question of law arising upon documents filed and considered in the Magistrate Court and considered by the Court of Appeal, and can be raised in the Supreme Court even though it was not specifically taken as an issue in the Court of Appeal.

APPEAL from the judgment of the Court of Appeal.

*R. K. W. Goonesekera with S. M. Uvais and A. P. Niles for Appellant.
N. G. Ameratunge S.S.C. for Respondent.*

Cur. adv. vult.

6th May, 1992.

BANDARANAYAKE, J.

This matter comes up for leave to appeal from the judgment of the Court of Appeal.

The Deputy Commissioner of Labour filed a document purporting to be a certificate in terms of section 38(2) of the Employees Provident Fund Act No. 16 of 1958 as amended by Act No. 8 of 1971 against the respondent-petitioner in the Magistrate Court of Mt. Lavinia for the recovery of a sum of Rs. 552,279.17 as contributions and surcharges against the petitioner.

The Magistrate by order dated 24.8.84 allowed evidence to be led to challenge the purported certificate on the footing that the respondents had not been duly assessed. In the course of his order whilst considering matters on which the certificate may possibly be challenged, the Magistrate proceeded to state that he would permit evidence to be led to show that the assessment was not duly made. Against this decision the Attorney-General moved for revision of the Magistrate Order before the Court of Appeal. The Attorney-General filed marked X1 before the Court of Appeal, a copy of the aforesaid purported certificate filed in the Magistrate Court by the Commissioner of Labour in terms of section 28(2). This is the only document concerning the aforesaid Certificate made available for the perusal of this Court.

The Court of Appeal whilst comparing decisions of the Court in regard to the Implementation of the Land Reform Laws and Co-operative Societies Laws took the view that the respondent in

those situations could not challenge the correctness of the statements in a certificate. Accordingly, the Court of Appeal allowed the petition of the Attorney-General in revision and set aside the order of the Magistrate and directed the Magistrate to proceed to recover the total sum stated in the aforesaid purported certificate.

Mr. Goonesekera for the petitioner-respondent submits that the certificate which the Commissioner of Labour is permitted to issue in terms of section 38(2) must contain the particulars of the sum stated to be due. In the instant case the document X1 contains only the total sum alleged to be due but does not set out any particulars whatsoever in regard to e.g. the computation of that sum, the period within which that sum became due, the number of employees concerned in making the computation or their names and emoluments etc. Mr. Goonesekera submits that section 38(2) permit the respondent to show cause as to why the sum claimed is not payable. The law therefore envisages an opportunity given to the respondent in the Magistrate Court to challenge the sum claimed. He will not be able to avail himself of that opportunity given to him by the law, unless he is given particulars so that he knows, what matters the Commissioner of Labour has taken into account in arriving at the sum claimed. Therefore Mr. Goonesekera argued that as the document filed in the instant case does not give any particulars as required by law, P1 is not a certificate envisaged by subsection 2 of section 38. The subsection contains the words "containing particulars of sum due". The Law, therefore, Mr. Goonesekera submits clearly imposes the duty on the Commissioner of Labour to give such particulars as to how he came to arrive at the total sum claimed.

In cases decided under Income Tax Laws, the Court took the view that the respondent could challenge the jurisdiction of Court to deal with a certificate where the default arises elsewhere; or the respondent is not proved in law to be defaulter; or where there is no tax in default; or the respondent has not been duly assessed as the time bar has come into operation. Mr. Goonesekera has cited before this Court the judgment of this Court in S.C. Appeal No. 3/89 C.A. Applications No. 454/81 and 457/81 decided on 18.12.91. The Court there permitted the respondent to challenge a certificate where there were circumstances which invalidated the certificate.

Upon a perusal of XI which contains no particulars of the sum claimed, we are of the opinion that there was no certificate filed before the Magistrate Court in terms of section 38 subsection 2 of the Employees Provident Fund Act. Learned Counsel for the state argued that this point was not taken in the Magistrate Court or in the Court of Appeal. We are of the view, that this is a matter of law which arises from the proceedings of the Court or Appeal upon the document X1.

Accordingly we allow the appeal and set aside the judgment of the Court of Appeal and quash the proceedings held before the Magistrate Court and discharge the appellant.

KULATUNGA, J. – I agree.

DHEERARATNE, J. – I agree.
