

ATTORNEY GENERAL
V
CITY CARRIERS LIMITED

COURT OF APPEAL
PALAKIDNAR, J
C.A. APPLICATION NO. 126/85
M.C. MT. LAVINIA CASE NO. 7086
20 MAY, 1991

*Employees Provident Fund - Conclusiveness of certificate issued by Deputy
Commissioner of Labour- Function and powers of Magistrate's Court.*

Held:

The Certificate filed by the Deputy Commissioner of Labour under section 38(2) of the Employees Provident Fund Act, No. 15 of 1958 as amended by Act, No. 8 of 1971 for recovery of contributions and surcharge is conclusive. There is a statutory bar against the Magistrate permitting evidence to be called to question the correctness of the statement contained in the certificate. The Magistrate's Court is a Court of recovery simpliciter.

The only permissible defences are:

- (1) the respondent has paid the amount due;
- (2) the respondent is not the defaulter;
- (3) the certificate has been filed in a Court which has no jurisdiction to initiate recovery proceedings.

Cases referred to:

1. *Mendis v. Commissioner of Income Tax* 61 NLR 95
2. *Mendis v. Commissioner of Income Tax* 53 NLR 280
3. *Hamid v. Commissioner of Inland Revenue* 71 NLR 563
4. *Isurial v. Commissioner of Inland Revenue* (1982) Sri LR 222

APPLICATION in revision of the order of the Magistrate of Mount Lavinia.

N. A. Kumaratunga, S.S.C. for the petitioner

S. M. Uvais for respondent.

20 MAY, 1991

PALAKIDNAR, J.

The Deputy Commissioner of Labour filed a certificate (marked 'X1') under section 38(2) of the Employees Provident Fund Act No. 15 of 1958 as amended by Act 8 of 1971 against the Respondent Company in the Magistrate's Court of Mt. Lavinia for the recovery of a sum of Rs. 552,279.17 as contributions and surcharge against the said Company.

The learned Magistrate by order dated 24.08.84 allowed evidence to be led to challenge the certificate of 'X1' on the footing that the Respondent Company has not been duly assessed.

In his order he has considered the three matters on which the certificate can be possibly challenged. Firstly that the Respondent has paid the amount due, secondly that he is not the defaulter named in the certificate, thirdly, that the certificate has been filed in the

Court which has no jurisdiction to initiate recovery proceedings. These defences have been set out in *Mendis vs Commissioner of Income Tax* (1) by Sansoni, J, as he then was.

The learned Magistrate thereafter proceeded in his order to state that he would permit evidence to be led to show that the assessment was not duly made. It is against this ruling that the Petitioner has moved for a revision of the order.

These proceedings were initiated by the Commissioner of Labour in the Magistrate's Court under section 38(2) of the Employees Provident Fund Act. A certificate issued for the recovery of the sum due contains the particulars of the sum due. The Magistrate shall therefore summon such employer to show cause as to why further proceedings should not be taken against him for the recovery of the sum due.

These proceedings are recovery proceedings simpliciter. Further proceedings would be the recovery of the amount due as a fine and steps under section 291 of the Criminal Procedure Code. Cause can be shown by the party summoned before a Magistrate to show that the sum is not due as it has been paid on adducing proof of payment. The party summoned can also show by way of cause that he is not the defaulter. The illustration is borne out by decided authority in the case of *Mendis vs the Commissioner of Income Tax* (3). In that case a vicarious liability sought to be imposed on the personal representative of a company was resisted on the ground that he was not liable to pay in so far as he is not the defaulter. Gratiaen, J held that this was permissible. That position does not arise in this case.

In all the other cases cited by the Respondent the principle that the correctness of the certificate shall not be called in question or examined by the Court in any proceedings under this section has been affirmed. Sirimanne, J in *Hamid vs Commissioner of Inland Revenue* (3) reiterates this principle.

Subsection (3) of section 38 states thus:

"The correctness of any statement in a certificate issued by the Commissioner is any proceedings under this section shall not be

called in question or examined by the Court in any proceedings under this section and accordingly nothing in this section shall authorise the Court to consider or decide the correctness of any statement in such certificate and the Commissioner's certificate shall be sufficient evidence that the amount due under this Act from the defaulting employer has been duly calculated and that such amount is in default."

The plain wording of this relevant subsection does not admit of any argument that the sum shown to be due has to be accepted as correct and recovered by the Magistrate. To accept the argument that the certificate is not conclusive evidence that the sum due has been duly calculated would require the Magistrate to hold a new inquiry into the liability and actual amount due which is the very situation that the statute seeks to prevent.

Under Part V of the Act claims under the Act can be determined by the Commissioner under section 28 of the Act. There is provision for appeals under section 29(1) of the Act to a Tribunal. There is further provision for review of such decision of the Tribunal by the Court of Appeal-*vide* section 29(1) & (2). In the light of these provisions the sum referred to in the certificate has to be deemed to be duly calculated. The statutory bar prevents a Magistrate from leading evidence to call in question the correctness of the statement contained in the certificate.

I do not think that the decision in *Isurial vs Commissioner of Inland Revenue* (4) has given a ruling that such a challenge to the correctness of the statement is permissible under the Inland Revenue Act in the Magistrate's Court.

The provisions of the Inland Revenue Act and the Co-operative Societies Act also provide for certificates to be issued by the Competent Authority to the Magistrate for recovery of sums due. The wording in these analogous provisions are identical. This question has arisen more often in Income Tax matters. It has also been raised in provisions under the Co-operative Ordinance. I do not find that the principle that the Magistrate's Court is a Court of recovery *simpliciter* has been deviated from in any one of these decisions.

I therefore allow the petition in revision and set aside the ruling of the learned Magistrate and direct that he proceed to recover the sum due under provisions of the Criminal Procedure Code. The application is allowed with costs.

Application allowed.