

THAJUDEEN

v.

SRI LANKA TEA BOARD AND ANOTHER

COURT OF APPEAL

RANASINGHE, J., AND SENEVIRATNE, J.

C. A. APPLICATION 1596/77

DECEMBER 3, 1980 AND FEBRUARY 13, 1981.

Writ of Mandamus - will it be granted where facts are in dispute ?

Where the major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct, a writ will not issue.

Mandamus is pre-eminently a discretionary remedy. It is an extraordinary, residuary and supplementary remedy to be granted only when there is no other means of obtaining justice. Even though all other requirements for securing the remedy have been satisfied by the applicant, the court will decline to exercise its discretion in his favour if a specific alternative remedy like a regular action equally convenient, beneficial and effective is available.

Cases referred to

- (1) *Ghosh v. Damodar Valley Corporation A.I. R. 1953 Cal. 581.*
- (2) *Parraju v. General Manager B.N. Rly. A.I.R. 1952 Cal. 610.*

Application for writ of Mandamus

H. L. de Silva for petitioner.

K. N. Choksy with K. Kanag Iswaran for respondent.

Cur. adv. vult.

March 31, 1981.

RANASINGHE, J.

The petitioner, who has been registered as a Manufacturer in terms of the provisions of sec. 6, Tea Control Act No. 51 of 1957 in respect of the Amugala Tea Factory at Danture, Kadugannawa, has instituted these proceedings for a writ of Mandamus to compel the Respondents to pay the petitioner a sum of Rs.143,284.15, which, the petitioner states, is due to him as subsidies for the months of February, March and May 1979 and which said sum of money the Respondents were obliged to pay in terms of a

"Guaranteed Minimum Price Scheme for Green Tea Leaf" operated by the Respondents in accordance with the circulars, tendered with the petition marked P2 and P3, issued by the Tea Commissioner.

Learned Counsel appearing for the Respondents has urged several grounds why the petitioner's application for a writ of Mandamus must be refused: that the petitioner has no legal right to the performance of the duty of which he claims performance: that there is no statutory duty cast on the Respondent to perform any such duty: that there is a dispute on the facts, as to whether or not the sum of money claimed by the petitioner is due to him: that the petitioner's application is, in effect, to obtain payment of money from public funds: that, as the petitioner has failed to exhibit with his petition the two documents, which have been produced by the Respondents marked R6, R7, he has been guilty of suppression of material facts.

The basis of the Petitioner's claim is that he did in accordance with the terms and conditions of the aforesaid Guaranteed Minimum Price Scheme for Green Tea Leaf, purchase, during the relevant period, for manufacture in the Amugala tea factory and did also pay the minimum price specified in respect of such purchases, and that he has also forwarded the requisite returns. The petitioner states that although he has fulfilled all the terms and conditions necessary to qualify for the payment of the subsidy payable under the said scheme, the respondents have failed and neglected to make the said payment. The Petitioner has, in paragraph 6 of the petition, set out in detail how the sum of Rs. 143,284.33, which he claims as the amount due to him in terms of the said Scheme has been computed.

A consideration of the terms and conditions of the said Guaranteed Minimum Price Scheme for Tea Leaf the particulars of which are set out in the document P2, shows that the main object of the said scheme is the guarantee to the tea small-holder of a minimum price for the green tea leaf supplied to a factory registered under the said scheme, and that the essence of the subsidy paid to the registered owner of a tea factory, is the actual purchase of green tea leaf by him from a tea small-holder which, after manufacture in such factory, only fetches a price which is below the specified price. The subsidy is paid only in respect of actual purchases made. The quantum of the subsidy depends on both the price realised by the tea made and the quantity of green tea leaf actually purchased.

The 2nd Respondent has, in his affidavit filed in support of

the objections put forward on behalf of the Respondents, averred that an inspection of the Petitioner's factory carried out on 22.3.79 revealed that quality tea cannot be manufactured at the Petitioner's factory in its existing state: that the petitioner had exaggerated green tea leaf intake with a view to claiming the tea subsidy money: that though the entries made in the factory register showed there were large intakes of green tea leaf, the leaf dealers who were supposed to have supplied the leaf to the factory, were not in a position to prove such supply: that entries in the Factory registers showed green tea leaf intake far in excess of the factory's withering and drying capacities.

The 2nd Respondent has also, in the said affidavit, averred that, in view of the said shortcomings revealed by the said inspection, the 2nd Respondent decided to take action against the Petitioner and the dealers from whom the Petitioner is said to have purchased the green tea leaf in respect of which the subsidy was claimed, and, pending such action, to suspend the payment of the subsidy to the Petitioner: that the Petitioner was called upon to show cause why the registration of the said factory should not be cancelled; why the payment of the subsidy should not be withheld; why legal action should not be instituted against the Petitioner for attempting to defraud the subsidy monies by making false entries in the registers. The Respondents have also denied that the Petitioner has complied with the terms and conditions which would entitle him to the payment of the said subsidy.

A comparison of the respective positions taken up by the Respondents and the petitioner unmistakably shows that the claim of the Petitioner, that he is entitled to the amount set out in his petition, is denied by the Respondents and that such denial is not based only upon questions of law alone. One of the main grounds of objections raised in respect of the said claim is that the said sum of money is not, in fact, due. This objection is one based upon questions of fact. The Respondents dispute the correctness of the figures relating to the purchases of the green tea leaf. They deny that such quantities of green tea leaf were in fact purchased as claimed by the Petitioner. The very foundations of fact, which the petitioner must establish to prove that he is, in fact, entitled to claim the payment of the sum of money, which he seeks to compel the Respondents to pay him, are therefore, not only not admitted by the Respondents but are also very strenuously denied and disputed by the Respondents. The basic and fundamental issues of fact the proof of which is essential, to the claim for the relief the Petitioner seeks in these proceedings, have in the first instance to be established by the Petitioner. In the absence of incontrovertible proof or an admission by the Respondents of

such matters of fact, the Petitioner's claim to the payment of the said sum of money cannot be maintained. All such disputed matters of fact must be resolved before a mandatory order, such as is claimed by the Petitioner in these proceedings, goes out from this Court. The issuance of such an order carries with it the implication that this Court is satisfied that the said amount is in fact due to the Petitioner and that there is no question about the basic primary questions of fact upon which the Petitioner's claim is founded. When, however, such questions of fact are in dispute they can and must only be settled by a regular action between the disputants before the appropriate Court of First Instance. Such questions, the decision of which calls for the leading of evidence, both oral and documentary and the cross-examination of witnesses are all questions which can be best decided by way of regular procedure falling within the ordinary jurisdiction of the Courts of First Instance.

Having regard to both the nature of the Petitioner's claim and the position taken up by the Respondents, it appears to me that the Petitioner's is a claim which can, not only be conveniently decided by way of a regular action in the District Court but also that, that is the most appropriate form of action in which it should be decided.

CHOUDEI in his book on the *Law of Writs and Fundamental Rights* (2nd Ed.), Vol.2, states at page 381: "The rule has been stated that mandamus will not lie to compel a public officer to perform a duty dependent upon disputed and doubtful facts, or where the legal result of the facts is subject to controversy. If the right is in serious doubt the discretionary power rests with the officer to decide whether or not he will enforce it, till the right shall have been established in some proper action, and discretion fairly exercised in such circumstances cannot be controlled by mandamus;" and, at page 449: "Where facts are in dispute and in order to get at the truth it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, a writ will not issue."

That the remedy by way of an application for a Writ is not a proper substitute for a remedy by way of a suit, specially where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, has been laid down in the Indian cases of: *Ghosh v. Damodar Valley Corporation*,⁽¹⁾ *Porra v. General Manager B. N. Rly.*⁽²⁾

Mandamus is "pre-eminently a discretionary remedy;" and "Mandamus has always been awarded as an extraordinary, residuary and 'suppletory' remedy to be granted only when there is no other means of obtaining justice. Even though all other requirements for securing the remedy have been satisfied by the applicant, the court will decline to exercise its discretion in his favour if a specific alternative remedy "equally convenient, beneficial and effectual is available" — *vide De Smith's Judicial Review of Administrative Action* (4th Ed.) ps. 540, 561. "The court will, as a general rule and in the exercise of its discretion, refuse an order of mandamus when there is an alternative specific remedy at law which is not less convenient, beneficial and effective . . . and the court will not, in general, interfere to enforce the law of the land by the extraordinary remedy of an order of mandamus in cases where an action at law will lie for complete satisfaction" — *vide Halsbury* (4th Ed.) para 126, ps. 135–6.

In this view of the matter, it appears to me that, as the major grounds of fact, upon which the Petitioner's claim for the payment of the sum of money in question are founded, are being disputed by the Respondents, and, as the most appropriate procedure for the settlement of such a dispute is an action by way of regular procedure before the appropriate Court of First Instance, and such an action by way of regular procedure also constitutes an "equally convenient, beneficial and effective" remedy, this Court should, in the exercise of its discretion, refuse the Petitioner's application. It is, therefore, not necessary to consider the Respondent's other grounds of objections.

I make order accordingly dismissing the Petitioner's application with costs.

SENEVIRATNE, J. I agree.

Application dismissed.