

**MUDALIGE GROUP (PVT) LTD.**  
**v**  
**COMMISSIONER OF LABOUR**

COURT OF APPEAL  
UDALAGAMA, J. (P/CA)  
C.A. 1362/2000  
SEPTEMBER 18, 2003  
OCTOBER 28, 2003

*Employees Provident Fund Act – Sections 2(1), 3, and 10 – Is the business of betting on horse racing, a business within the ambit of a “covered employment?” – Betting and Gambling Levy Act, No. 40 of 1988*

The petitioner contended that, the company was not liable to contribute to the E.P.F.

**Held:**

- (i) In the E.P.F. Regulations of 1958 as amended, reference is made to three categories of employment excepted from the ambit of covered employment. The business of betting on horse racing is not one of them. It is a business within the ambit of the term “covered employment.”

*Per Udalagama, J.*

“Petitioner is not entitled to evade payment relying on the company’s own illegal conduct which in my view amounts to controverting principles of public policy, the Betting and Gambling Levy Act is valid law for the purpose of

State revenue, betting and gambling are not considered illegal for revenue purposes.”

**APPLICATION** for a *Writ of Certiorari*.

*K.S.Thilakaratne* petitioner.

*Sathya Hettige*, D.S.G for the respondents.

*Cur.adv.vult*

December 3, 2003

**UDALAGAMA, J.**

The petitioner-company, purportedly defunct, by this application 01  
moved to quash by way of a *Writ* in the nature of *Certiorari* the deci-  
sion contained in a letter authored by the 2nd respondent dated  
11.02.2000 marked “E”.

Significantly the prayer to the petition is without a specific plea for  
specific relief although the caption refers to a prerogative *Writ*.

Admittedly document “E” refers to the subject of the failure on the  
part of the petitioner-company to deposit Employees Provident Fund  
contributions and surcharge made thereon due to the petitioner’s  
default as set out in document marked “D”. 10

It is amply clear to this court that the details contained in the afore-  
said documents “D” and “E” had been made consequent to a regular  
inquiry. There is not even a suggestion of impropriety in respect of the  
inquiry or that the conduct of the said inquiry violated the principles of  
natural justice or was conducted in an unreasonable manner.

The petitioner-company had been afforded an opportunity to partic-  
ipate in the inquiry referred to above (2R2). The only submission of the  
learned Counsel for the petitioner-company against the impugned let-  
ter “E” appears to be that the employees had been engaged in an ille-  
gal business of betting on horse racing, and that the employees were 20  
paid a commission on the daily collection and that the latter were not  
entitled to E.P.F. benefits.

The learned Counsel also brought to the notice of this court the  
case of S.C.(Spl) Application No.157/98 advertent to the fact that the  
said application in respect of the unlawful termination of employment  
also made against the same petitioner-company had been rejected on  
the basis that employment having reference to an illegal activity was  
dismissed.

Perusing the evidence of Labour Tribunal case No.1/454/94 and the subsequent appeal to the High Court bearing No.HCA/LT/1168/95 and the refusal for relief by the Supreme Court in S.C.(Spl) L.A. No.157/98 it is amply clear that the proceedings in the above action pertains to the Industrial Disputes Act in respect of unjust termination. (see documents A.B.C. respectively) 30

Apart from the petitioner's failure to adduce this submission as referred to above before the President of the Labour Tribunal, I am inclined to the view that the claim in the instant action is under section 10 of the Employees Provident Fund Act as amended.

Provisions of section 3 of the aforesaid Act specifically provides for the declaration of a "covered employment" which term is defined in section 2(1) read with Schedule (1) of the EPF Regulations of 1958 as amended. Vide above Regulation reference is clearly made to three categories of employment excepted from the ambit of "covered employment". The business of betting on horse racing is not one of them. 40

The business of betting on horse racing is in my view a business within the ambit of the term "covered employment". Nor does the exception refer to an illegal business. The proviso in my view refers to such business which have an alternative retirement scheme.

In any event the petitioner-company is not entitled to evade payment relying on the Company's own illegal conduct which in my view would amount to controverting principles of public policy. In fact the petitioner-company by this application also appears to evade its fiscal liability to defraud the Government of revenue. The Betting and Gambling Levy Act, No.40/88 is valid law for the purpose of State revenue and betting and gambling are not considered illegal for revenue purposes. 50

Apart from the above it is my considered view that to deny to employees (3-14 respondents) statutory entitlement under the E.P.F. on the basis that the employer conducts an illegal business is clearly unreasonable. 60

On the issue of the employment registration number quoted in document "E" in respect of one N.W.J.Mudalige and the suggestion that same does not apply to the petitioner-company is untenable, firstly as

no such objection had been taken up before the President of the Labour Tribunal at the inquiry to the application of the employees on 08.09.98(2R2). Secondly as in any event no prejudice would be caused as the aforesaid M.W.J. Mudalige was admittedly was the Chairman of the petitioner-company (para 4 of the petition).

For the aforesaid reasons this application of the petitioner-company for relief by way of prerogative *Writ* is refused and dismissed. 70

*Application dismissed.*