

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
6-DEC 1971  
25 RUSSELL SQUARE  
LONDON W.C.1

Judgment 5, 1970

IN THE PRIVY COUNCIL

No. 8. of 1969

ON APPEAL FROM THE SUPREME COURT OF CEYLON

B E T W E E N:

THE COLOMBO APOTHECARIES COMPANY LIMITED Appellant

- and -

1. E. A. WIJESOORIYA
2. M. T. MARIKAR BAWA
3. HON'BLE M. HANIFFA MOHAMED, MINISTER  
OF LABOUR, EMPLOYMENT AND HOUSING
4. N. L. ABEYWIRA, COMMISSIONER OF LABOUR
5. W. E. M. ABEYSEKERA, PRESIDENT, LABOUR  
TRIBUNAL II.

Respondents

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CASE FOR THE SECOND RESPONDENT

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1. This is an appeal, by leave of the Supreme Court, of Ceylon granted under the Appeals (Privy Council) Ordinance, Chapter 100 of the Legislative Enactments of Ceylon 1956 Revised Edition, from the Judgment by a majority of a Bench of 7 Judges: of the Supreme Court pronounced on the 29th February 1968 and the consequent Decree of the same date dismissing the application by Petition dated the 20th June 1967 of the above named appellant for a mandate in the nature of a Writ of Prohibition, forbidding the above named Fifth Respondent from continuing to exercise jurisdiction in the matter of an industrial dispute referred to Labour Tribunal II for settlement by arbitration under section 4 (1) of the Industrial Disputes Act. (Chapter 131 of the Legislative Enactments, 1956 Revised Edition, as amended by the Industrial Disputes (Amendment) Acts, No. 14

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of 1967, No. 62 of 1957, No. 4 of 1962 and No. 27 of 1966, hereinafter referred to as the Industrial Disputes Act).

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2. At the hearing of the application for a Writ of Prohibition before the Supreme Court, the only ground urged on behalf of the above named appellant was that the dispute referred to Labour Tribunal II was not an 'industrial dispute' within the meaning of the expression in the Industrial Disputes Act and that accordingly the Fifth Respondent had no jurisdiction to inquire into the matter referred to him. The Supreme Court, by a majority of four to three, took the view that the dispute was an industrial dispute and therefore had been properly referred under section 4 (1) of the Industrial Disputes Act.

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3. Section 4 (1) of the Industrial Disputes Act enacts that "the Minister may, if he is of the opinion that an industrial dispute is a minor dispute, refer it, by an order in writing, for settlement by arbitration to an arbitrator appointed by the Minister or to a labour tribunal, notwithstanding that the parties to such a dispute or their representatives do not consent to such reference".

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4. Section 15A of the Industrial Disputes Act enacts that in the succeeding provisions of the Act, the expression "arbitrator" includes a labour tribunal and section 16 provides, inter alia, that every order under section 4 (1) referring an industrial dispute for settlement to an arbitrator shall be accompanied by a statement prepared by the Commissioner of Labour setting out each of the matters which to his knowledge is in dispute between the parties.

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5. On the 19th of April, 1967 the Minister of Labour made order in writing referring the industrial dispute between the second respondent and the appellant, in respect of the matter specified in the statement of the Commissioner of Labour accompanying the said order, to Labour Tribunal II for settlement by arbitration. The matter in dispute specified by the Commissioner of Labour was whether the termination of the services of the second respondent was justified and to what relief he is entitled.

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6. Labour Tribunals are established under section 31 A (1) of the Industrial Disputes Act and section 48 of the said Act defines the term "industrial dispute" to mean "any dispute or difference between an employer and a workman or between employers and workmen or between workmen and workmen connected with the employment or non-employment, or the terms of employment, or with the condition of labour, or the termination of services, or the reinstatement in service, of any person, and for the purpose of this definition "workmen" includes a trade union consisting of workmen".

7. The term "workman" is defined by section 48 of the Industrial Disputes Act to mean "any person who has entered into or works under a contract with an employer in any capacity, whether the contract is expressed or implied, oral or in writing, and whether it is a contract of service or of apprenticeship, or a contract personally to execute any work or labour, and includes any person ordinarily employed under any such contract whether such person is or is not in employment at any particular time, and, for the purposes of any proceedings under this Act in relation to any industrial dispute, includes any person whose services have been terminated."

8. The definition of the term "industrial dispute" falls into three parts:

- 30 (i) there must be a dispute or difference,
- (ii) the dispute or difference must be between an employer and a workman or between employers and workmen or between workmen and workmen (the word workmen being read as also including a trade union consisting of workmen).
- 40 (iii) the dispute or difference must be connected with the employment or non-employment or the terms of employment or with the conditions of labour or the termination of services or the reinstatement of service of any person.

The first part refers to the fact of the dispute, the second to the parties to the dispute and the

and the third to the subject matter of the dispute.

9. In the present reference, it is clear, and it was not contested by the appellant, that there was factually a dispute. Again, the subject matter of the dispute, namely whether the termination of the services of the second respondent was justified and to what relief he is entitled, is a matter coming within the definition. Also the appellant, being an employer, is properly a party to an industrial dispute. The question that arose was whether the second respondent, whose services had been terminated prior to the reference, was a workman within the meaning of the Industrial Disputes Act. If he was such workman, at the relevant time, then the dispute is an industrial dispute and the reference a valid reference. On the other hand, if he was not a workman at such time, then the dispute, referred by the Minister, is not an industrial dispute and the reference is null and void in law. 10 20

10. The definition of a workman falls into three parts:

- (i) any person who has entered into or works under a contract with an employer in any capacity, whether the contract is expressed or implied, oral or in writing, and whether it is a contract of service or of apprenticeship, or a contract personally to execute any work or labour. 30
- (ii) any person ordinarily employed under any such contract whether such person is or is not in employment at any particular time.
- (iii) for the purposes of any proceedings under the Act in relation to any industrial dispute, any person whose services have been terminated.

11. The first two parts of the aforesaid definition are a verbatim reproduction of the definition of the word "workman" occurring in the Trade Unions Ordinance (Chapter 138), Legislative Enactments of Ceylon 1956 Revised Edition). The third part of the definition was introduced by the Industrial Disputes Amendment Act No. 62 of 1957. 40

12. It is submitted that the true view of the definition "workman" in the Industrial Disputes Act appears from the following extract from the judgment of Sivasubramaniam J.

10 "The definition of "workman", as it stood before the amendment of 1957, included a person ordinarily employed under a contract with an employer "whether such person is or is not in employment at any particular time". Any dispute or difference between "employers and workmen" fell within the definition of an "industrial dispute". The words "employers and workmen" include "an employer and a workman" (Section 2 of the Interpretation Act). On the plain meaning of the words, therefore a person, other than a casual employee, who had ceased to be in the employment of his employer was, nevertheless, a "workman" for the purpose of the Act and could have been a party to an "industrial dispute". Can it be said that the Legislature, when it effected the amendment in 1957, by adding to the definition of "workman" the words "and for the purpose of any proceedings under this Act in relation to any industrial dispute, include any person whose services have been terminated", took away a right to which a workman was already entitled? In my opinion, the amendment was only intended to make the position clear since, under the same amending act, "the termination of the services or the reinstatement in service" of a workman was specifically included in the definition of "industrial dispute" as a subject matter of an "industrial dispute", although such a dispute was already within the ambit of an "industrial dispute" by reason of the words "connected with the employment or non-employment" contained in the earlier definition."

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13. It is respectfully submitted that the second respondent also comes within the third part of the definition of a "workman" and that the view expressed in the following extract from the judgment of Samarawickrama J. is right:

"The last part of the definition of "workman" in Section 48 of the Industrial Disputes Act is as follows, "and, for the purpose of any proceedings under this Act in relation to any industrial dispute, includes any person whose services have been terminated". The term "Industrial Dispute"

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has itself been defined in this Section, but appearing as it does in the provision defining "workman", it need not be given the meaning set out in the definition in Section 48, for that definition itself uses the word "workman". Again, it is a rule of construction that though the meaning of a term is defined in the interpretation clause of an Act, the definition is not necessarily applicable on every occasion where the word interpreted is used in the Act. Vide Craies on Statute Law, 5th edition, page 200. A term should be given its ordinary meaning in the context in which it occurs and recourse need be had to the definition in the interpretation clause only where the meaning is not clear. It is necessary, therefore, to interpret the words "for the purposes of any proceedings under this Act in relation to any industrial dispute" without reference to the meaning given to the term 'Industrial Dispute' in Section 48. On an examination of the provisions of the Industrial Disputes Act, it appears that sections 2 (i), 3 (i), 4 (i) and 4 (2) of the Act provide that proceedings in respect of an Industrial dispute may be initiated or commenced either by the Commissioner or the Minister, in the circumstances and for the purposes set out in those provisions. I am, therefore, of the view that the words set out above do no more than state in compendious form what may be stated at length by the following "for the purposes of any proceedings that may be initiated or commenced either by the Commissioner or by the Minister under Sections 2 (1) or 3 (1) or 4 (1) or 4 (2) of this Act". It follows that for the purposes of proceedings that may be commenced or initiated by the Minister under Section 4 (1) of the Act, a workman includes a person whose services have been terminated".

14. In addition, on the facts of the instant case, the dispute which was referred for settlement by arbitration arose when the relationship of employer and workman subsisted between the appellant and the second respondent and the view expressed in the following extract from the judgment of Sivasubramaniam J. is right :

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"It is necessary to examine when the 'dispute or difference' in connection with the termination of

the services of the second respondent arose between the parties. What are the differences between the parties which the arbitrator will be called upon to consider in connection with the termination of the services of the second respondent to determine whether the termination was justified? They will necessarily be differences that arose between the parties which culminated in the termination of the services and not differences which arose thereafter. Where the propriety of a summary dismissal is questioned by a workman, the dispute or difference at least contemporaneously with the communication of the order of dismissal. The dispute or difference between the petitioner and the second respondent which formed the subject of the reference therefore arose before the relationship of employer and workman came to an end. Any dispute or difference that arose between the parties after the termination of the services of the second respondent will be irrelevant for a consideration of the question whether the termination was justified. The dispute that existed between the parties which was referred for settlement by arbitration by the Minister was therefore an "industrial dispute", within the meaning of section 48 of the Act. The fact that at the date at which the order was made by the Minister under section 4 (1) of the Act the relationship of employer and workman had ceased to exist cannot affect the Minister's power to make an order in respect of the 'industrial dispute' which had already arisen".

15. In any event, section 2 (b) of the Industrial Disputes Amendment Act No. 39 of 1968 has amended the definition of 'workman' in section 48 by the substitution for the words "and, for the purpose of any proceedings under this Act in relation to any industrial dispute, includes any person whose services have been terminated", of the words "and includes any person whose services have been terminated", and by the same section, such amendment is deemed, for all purposes, to have come into operation on December 30th, 1957. The latter date is the date on which the industrial Disputes Amendment Act No. 62 of 1957 came into force. It is respectfully submitted that the second respondent clearly comes within the amended definition of the term "workman" and accordingly the reference in the instant case is

valid in law.

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16. The present appeal to Her Majesty in Council is by leave granted by the Supreme Court under the provisions of Section 3 of the Privy Council Appeals Ordinance (Chapter 100 of the Legislative Enactments of Ceylon, 1956 Revised Edition). It is submitted that an application for a writ of prohibition under section 42 of the Courts Ordinance (Chapter 6 of Legislative Enactments of Ceylon, 1956 Revised Edition) is not a civil suit or action within the meaning of section 3 of the aforesaid Privy Council Appeals Ordinance and that accordingly the Supreme Court had no jurisdiction to grant leave in the instant case and that the present appeal to Her Majesty in Council is not properly made. 10

In the second respondent's respectful submission, the appeal ought to be dismissed with costs for the following among other

R E A S O N S 20

1. BECAUSE the Supreme Court of Ceylon had no jurisdiction to grant leave to appeal to Her Majesty in Council in the instant case:
2. BECAUSE the definition of the term "workman" in the Industrial Disputes Act as amended by the Industrial Disputes Amendment Act No.39 of 1968 makes it self evident that such term includes any person whose services have been terminated:
3. BECAUSE the second respondent was at all relevant times a person ordinarily employed under a contract with an employer "whether such person is or is not in employment at any particular time" and therefore the second respondent was a workman within the meaning of the second limb of the definition of a "workman" in the Industrial Disputes Act: 30
4. BECAUSE the words "for the purposes of any proceedings under this Act in relation to any industrial dispute" in the third limb of the definition in the Industrial Disputes Act have the meaning "for the purposes of any proceedings that may be initiated or commenced either by the Commissioner or by 40



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the Minister of Labour under sections 2, 3 and 4 of the Industrial Disputes Act":

5. BECAUSE, in fact, the dispute that was referred for settlement in the instant case arose when the relationship of employer and workman subsisted between the appellant and the second respondent:
6. BECAUSE the judgment of the majority of the Supreme Court that in the instant case there was an industrial dispute, within the meaning of that expression in the Industrial Disputes Act, is right.
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N. SATYENDRA

Advocate.

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  2. M. T. MARIKAR BAWA
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Minister of Labour, Employment  
and Housing
  4. N. L. ABEYWIRA, Commissioner of  
Labour
  5. W. E. M. ABEYSEKERA, President,  
Labour Tribunal II. Respondents
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CASE FOR THE SECOND RESPONDENT

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Solicitors and Agents for the  
Second Respondent