

32,1970

IN THE PRIVY COUNCIL

No. 18 of 1969

O N A P P E A L
FROM THE SUPREME COURT OF THE ISLAND
OF CEYLON

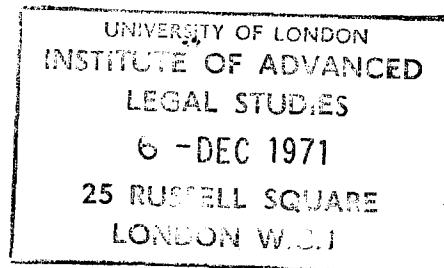
B E T W E E N :

EDGAR MAHINDA FERNANDO Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS



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O N A P P E A L
FROM THE SUPREME COURT OF THE ISLAND
OF CEYLON

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

B E T W E E N :

EDGAR MAHINDA FERNANDO Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

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PROCEEDINGS TRANSMITTED AND NOT REPRODUCED

Description of Document	Date
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Journal Entries	29th April to 6th December 1967
Summary of Facts	27th April 1967
<u>Prosecution Evidence</u>	
(i) M.B. Ariyasena	22nd November 1967
(ii) K. Sugathadasa	22nd November 1967
(iii) D.D. Kandage	27th November 1967
(iv) B.P. Perera	27th November 1967
(v) H. Kondegama	27th November 1967
(vi) E.L. Gunawardena	27th November 1967
(vii) W.R.L.K. Fernando	27th November 1967
<u>Evidence of Accused</u>	
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Addresses of Counsel	28th November 1967

EXHIBITS TRANSMITTED AND NOT REPRODUCED

Mark	Description	Date
P1) P5) P6)	Documents relating to Application of M.B. Ariyasena for post of Driver	2nd April 1963
P7	Personnel Division Circular letter No. 16	March 1963

O N A P P E A L
FROM THE SUPREME COURT OF THE ISLAND
OF CEYLON

B E T W E E N :

EDGAR MAHINDA FERNANDO Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

10

No. 1

In the District
Court

INDICTMENT

No. 1

THE QUEEN

Indictment

versus

27th April
1967

EDGAR MAHINDA FERNANDO

of "Teklyn", Avissawella.

I, Abdul Caffoor Mohamed Ameer, Queen's Counsel,
Her Majesty's Attorney-General, do hereby indict
you on the following charges:-

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1. That on or about the 14th day of June 1963 at
Narahenpita in the division of Colombo within the
jurisdiction of this Court, you being a public
servant, to wit, Internal Audit Officer, Ceylon
Transport Board, did solicit from one Malalagama
Badalge Ariyasena a gratification of a sum of
Rs.250/-, which you were not authorised by law or
the terms of your employment to receive, and that
you have thereby committed an offence punishable

In the District Court

No. 1

Indictment

27th April 1967
(continued)

under Section 19 of the Bribery Act.

2. That on or about the 16th day of July, 1963, at Narahenpita in the course of the same transaction, you being a public servant, to wit, Internal Audit Officer, Ceylon Transport Board, did accept from Malalagama Badalge Ariyasena a gratification of a sum of Rs.100/-, which you were not authorised by law or the terms of your employment to receive and that you have thereby committed an offence under Section 19 of the Bribery Act.

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3. That on the 16th day of July, 1963, at Narahenpita in the course of the same transaction, you did accept from the said Malalagama Badalge Ariyasena a gratification of a sum of Rs.100/- as an inducement for procuring employment for the said Malalagama Badalge Ariyasena as a driver in an establishment of the Government, to wit, the Ceylon Transport Board, and that you have thereby committed an offence punishable under Section 20 of the Bribery Act.

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This 27th day of April, 1967.

(Sgd.) A.C.M. Ameer

ATTORNEY-GENERAL

No. 2

Verdict

28th November 1967

No. 2

VERDICT

I acquit the accused on Counts 1 and 2, and I find him guilty on Count 3.

(Sgd.) C.V. Udalagama

A.D.J.

28.11.67.

Reasons and sentence on 5.12.67.

30

EXTRACT FROM JUDGMENT AND SENTENCE

Extract from Judgment and Sentence

5th December 1967

JUDGMENT

10 The accused in this case is indicted on 3 counts to wit, (1) that on or about the 14th day of June, 1963, at Narahenpita in the Division of Colombo within the jurisdiction of this Court, being a public servant to wit, Internal Audit Officer, Ceylon Transport Board, did solicit from one Malalagama Badalge Ariyasena, a gratification of a sum of Rs. 250/- which he was not authorised by law or the terms of his employment to receive and thereby committed an offence punishable under section 19 of the Bribery Act.

20 (2) That on or about the 16th of July 1963, at Narahenpita in the course of the same transaction being a public servant, accept from one Malalagama Badalge Ariyasena a gratification of the sum of Rs.100/- which he was not authorised by law or the terms of his employment to receive and that he thereby committed an offence punishable under section 19 of the Bribery Act.

30 (3) That on the 16th day of July 1963, at Narahenpita in the course of the same transaction, did accept from the said Malalagama Badalge Ariyasena a gratification of a sum of Rs.100/- as an inducement for procuring employment for the said Malalagama Badalge Ariyasena as a driver in an establishment of the Government to wit, the Ceylon Transport Board and that he thereby committed an offence punishable under Section 20 of the Bribery Act.

x x x x x x x x

40 Learned Crown Counsel conceded that Counts 1 and 2 in the indictment failed as no evidence on those two counts had been led by the prosecution. According to Counts 1 and 2, the prosecution had to prove that the accused "was not authorised by law or the terms of his employment to solicit a gratification or accept a gratification". In 69 N.L.R. page 337, it was held, where a public servant is charged under section 19(c) of the Bribery Act

In the District
Court

No. 3

Extract from
Judgment and
Sentence

5th December
1967
(continued)

with having accepted a gratification which he was not authorised by law or the terms of his employment to receive, the burden of proving that the gratification was unauthorised lay on the prosecution. Learned Crown Counsel conceded that the prosecution had failed to discharge this burden. The accused is therefore entitled to be acquitted on Counts 1 and 2, and I accordingly acquit him on Counts 1 and 2.

As regards count 3, Learned Crown Counsel submitted that the acceptance of the Rs. 100/- from Ariyasena was proved by the prosecution and admitted by the accused, in the form of the two 50-rupee notes. The question therefore, for the Court to decide was whether Ariyasena gave this money to the accused for the sole purpose of satisfying a request by the accused for a bribe to get him employment as a driver in the Transport Board, or whether as contended by the accused, it was a loan given by Ariyasena to the accused. Under Section 20, a person who solicits or accepts any gratification as an inducement or a reward for his doing any of the acts specified in sub-paragraphs (1), (2), (3), (4), (5), (6) and (7) of paragraph (a) of the Act, commits an offence. Under section 20(a)(4) a person who offers any gratification to any person as an inducement to a reward for his procuring or furthering the securing of any employment for the first mentioned person or for any other person in any Department, Office, or establishment of the Government, commits an offence. Under section 87, every reference in the Act to the Government, shall be construed as including a reference to a Local Authority and to every scheduled Institution. Under Section 11 of the Motor Traffic Act No. 48 of 1957, the Ceylon Transport Board is deemed to be a scheduled institution for the purpose of the Bribery Act. Therefore, it will be seen that employees working in the Transport Board come within the provisions of the Bribery Act. Learned Counsel for the defence submitted that as the Transport Board is not mentioned in the schedule to the Bribery Act, and therefore the employees of the Ceylon Transport Board would not come within the scope of the Bribery Act. I am unable to agree with Learned Counsel for the defence in view of section 11 of the Motor Traffic Act No. 48 of 1957.

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On Count 3 the prosecution relied on the evidence of Ariyasena, Sugathadasa, Kandage, Kondegama, Gunawardena and Bernard Perera.

In the District
Court

No. 3

x x x x x x x x

The accused's defence was that this money which Ariyasena gave to him was a loan.

Extract from
Judgment and
Sentence

x x x x x x x x

5th December
1967
(continued)

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For the above reasons, I reject the accused's defence that the money given to him by Ariyasena was a loan and not as a gratification to obtain for him the post of driver. I accordingly find the accused guilty on Count 3 and acquit him on counts 1 and 2.

(Sgd.) C.V. Udalagama

A.D.J.

5.12.67

Sentence:

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Learned Counsel for the accused has argued that my finding of the accused is bad as Section 11 of the Motor Traffic Act is repugnant to Section 84 of the Bribery Act. I have dealt with this matter in my judgment. Moreover, I do not think I have now the jurisdiction to alter my verdict.

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On the question of sentence, Learned Counsel for the accused conceded that the offence is a grave one. I am therefore, unable to take a lenient view of the offence which the accused has committed. It is quite clear that the accused has tried to live a life which is beyond his means. The result is that the accused had been led to make easy money. I accordingly convict the accused and sentence him to three (3) years rigorous imprisonment and to a fine of Rs.1000/-, in default, one (1) years' rigorous imprisonment.

(Sgd.) C.V. Udalagama

A.D.J.

5.12.67

In the Supreme Court

No. 4

PETITION OF APPEAL

No. 4

IN THE SUPREME COURT OF CEYLON

Petition of Appeal

D.C. Colombo

The Queen

5th December 1967

case No. B/27

vs

S.C.No.

Edgar Mahinda Fernando of "Teklyn", Awissawella.

Accused-Appellant.

To:-

The Honourable the Chief Justice and the other Judges of the Hon'ble The Supreme Court of Ceylon.

10

On this 5th day of December 1967.

The petition of appeal of the above named accused-appellant states as follows:-

1. The accused-appellant was indicted before the District Court of Colombo, on the following charges:-

(i) That on or about 14th June 1965 at Narahenpita in the Division of Colombo within the jurisdiction of this Court, you being a public servant, to wit, Internal Audit Officer, Ceylon Transport Board, did solicit from one Malalagama Badalge Ariyasena a gratification of a sum of Rs.250/- which you were not authorised by law or the terms of your appointment to receive, and that you have thereby committed an offence punishable under S.19 of the Bribery Act.

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(ii) That on or about the 16th July 1963 at Narahenpita in the course of the same transaction, you being a public servant, to wit, Internal Audit Officer of the Ceylon Transport Board, did accept from one Malalagama Badalge Ariyasena a

gratification of a sum of Rs.100/- which you were not authorised by law or the terms of your appointment to receive and you have thereby committed an offence punishable under S.19 of the Bribery Act.

In the Supreme
Court

No. 4

(iii) That on the 16th day of July 1963 at Narahenpita in the course of the same transaction, you did accept from the said Malalagama Badalge Ariyasena, a gratification of a sum of Rs.100/- as an inducement for procuring employment for the said Malalagama Badalge Ariyasena as a driver in an establishment of the Government, to wit, the Ceylon Transport Board, and that you have thereby committed an offence punishable under S.20 of the Bribery Act.

Petition of
Appeal

5th December
1967
(continued)

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2. The accused appellant pleaded not guilty and after trial the learned trial judge, on 28th November 1967 - acquitted the accused-appellant on the first two counts and convicted him on the third count.

3. On the 5th of December 1967 the learned trial Judge delivered his order and sentenced the appellant to 3 years rigorous imprisonment and a fine of Rs.1000/- in default of which for a further period of one year R.I.

4. Being dissatisfied with the said Judgment and sentence the accused-appellant begs to appeal therefrom, on the following among other grounds that may be urged by Counsel at the hearing of this appeal.

(a) The said judgment is contrary to law and against the weight of evidence in the case.

(b) As the Ceylon Transport Board is not a Scheduled Institution among those institutions referred to in the S.90 of the Bribery Act itself, the accused-appellant could not have been convicted under the provisions of the Bribery Act.

(c) The provisions of the Section 11 of the Motor Transport Act No. 48 of 1957 is of no legal effect in as much as

In the Supreme
Court

No. 4

Petition of
Appeal

5th December
1967
(continued)

- (i) It is contrary to the meaning of the definition given to the word "Scheduled Institution" in Section 90 of the Bribery Act.
- (ii) It amends the Section 90 of the Bribery Act.
- (iii) It is repugnant to the provisions of the Section 84 of the Bribery Act.
- (d) Evidence of M.B. Ariyasena is not supported by any other independent evidence apart from the evidence of the Security Officers of the Ceylon Transport Board who laid the trap for the accused-appellant. 10
- (e) Hearsay evidence has been admitted in this case.
- (f) The learned trial Judge refused to grant a short date of postponement of trial, to enable the appellant to summon a material witness through the process of Court and thereby his defence was prejudiced.
- (g) The learned trial Judge has misdirected himself in the application of the law relating to the reasonable explanation given by the accused-appellant as to the transaction alleged as a bribe. 20
- (h) In any event the sentence passed on the appellant is excessive.

Wherefore the appellant prays that your Lordships' Court be pleased to set aside the said conviction and sentence and for such other and further relief as to your Lordships' Court shall seem meet. 30

(Sgd.) Illegible

Accused-Appellant.

No. 5

In the Supreme
CourtJUDGMENT

No. 5

S.C. Case No. 1/'63
(Bribery)D.C. Colombo case No.B/27.

Judgment

14th March
1969Edgar Mahinda Fernando of "Teklyn",
Avisawella.Accused-Appellant.

Vs.

The Queen

Complainant-Respondent.

10

Before: Alles, J. and De Kretser, J.Counsel: Colvin R. de Silva with G.G. Mendis,
M.D.K. Kulatunga and S. Sahabandu
for the Accused-Appellant.K. Ratnesar, Crown Counsel, for the
Attorney-General.Argued on: 19th January and 6th February, 1969.Decided on: 14th March 1969.Allles, J.

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The accused-appellant, who was an Internal Audit Officer of the Ceylon Transport Board, was convicted of having accepted Rs.100/- as a gratification from Malalagama Badalge Ariyasena, as an inducement for procuring employment for the said Ariyasena, as a driver in the Ceylon Transport Board and thereby committed an offence punishable under section 20 of the Bribery Act. The learned trial judge on finding the accused guilty of this charge sentenced him to 3 years rigorous imprisonment and a fine of Rs.1000/- and in default imposed a further term of one year's rigorous imprisonment.

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At the hearing of this appeal, learned Counsel for the appellant did not canvass the facts and only relied on a question of law that the employees of the Ceylon Transport Board were not

In the Supreme
Court

No. 5

Judgment

14th March
1969
(continued)

liable to be convicted of bribery under the provisions of the Bribery Act. It was his submission that when section 11 of the Motor Transport Act No. 48 of 1957 declared that the Ceylon Transport Board was 'deemed to be a scheduled institution within the meaning of the Bribery Act No. 11 of 1954 and the provisions of that Act shall be construed accordingly', it was a provision that had no legal effect and consequently the employees of the Ceylon Transport Board could not be charged or convicted of bribery under the provisions of the law.

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This same question was argued before my brother Wijayatilake and myself in S.C. case No.10 of 1967; D.C. Colombo No. B/12 and we came to the conclusion that the employees of the Ceylon Transport Board were liable to be dealt with under the provisions of the Bribery Act. Although the arguments advanced by Counsel at the hearing of this appeal are somewhat different to the arguments placed before us in S.C. Case No. 10 of 1967, I see no reason to differ from the view that I had expressed previously that section 11 of the Motor Transport Act is good law.

20

The Bribery Act was passed in 1954 and had the Ceylon Transport Board been included subsequently in the list of scheduled institutions in the Schedule to the Bribery Act, Counsel for the appellant would not have been able to raise the question which he has presently canvassed in the course of the argument in this appeal. Section 84 of the Bribery Act reads as follows:

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"The Governor-General may, on the advice of the Minister of Justice, amend the Schedule to this Act by Proclamation published in the Gazette."

In the original Act of 1954 the section read that the Governor-General may act on the advice of the Prime Minister but by section 67 of the Amendment Ordinance No. 40 of 1958 the Minister of Justice was substituted in place of the Prime Minister. It was, therefore, open to the authorities in 1957, when the Motor Transport Act became law, for the Schedule to the Bribery Act to be amended by the inclusion of the Ceylon Transport Board in the list of scheduled institutions by a Proclamation

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published in the Gazette. The Peoples Bank established under the Peoples Bank Act No. 29 of 1961 has been so added to the list of scheduled institutions by a Proclamation published in Government Gazette No. 1369 of 17th May 1963. However, for some unaccountable reason the authorities had decided to adopt a different procedure in respect of the Ceylon Transport Board.

In the Supreme
Court

No. 5

Judgment

14th March
1969
(continued)

10 Learned Counsel's submission was that section 11 of the Motor Transport Act sought by a simple majority to amend the Bribery Act which was passed by a two-third majority; that any amendment to the Bribery Act required a two-third majority of the Members of Parliament and that in the absence of any amendment to the Bribery Act by such a majority, section 11 of the Motor Transport Act was not passed in accordance with the law. It was his further submission that section 11 sought to amend the Constitution and consequently was of no legal force since the safeguard provided in section 29(4) of the Constitution had not been adopted. Dr. de Silva even went so far as to suggest that the amendment to the Bribery Act by section 67 of Act No. 40 of 1958 which vested the power of granting advice in the Minister of Justice and not the Prime Minister was also unconstitutional since it was not passed by the requisite two-third majority of the Members of Parliament.

30 Section 2 (1) of the Bribery Act reads as follows:

40 "Every provision of this Act which may be in conflict or inconsistent with anything in the Ceylon (Constitution) Order-in-Council 1946 shall for all purposes and in all respects be as valid and effectual as the other provisions where any act for the amendment of that Order-in-Council enacted by Parliament after compliance with the requirement imposed by the proviso of sub-section 4 of section 29 of that Order-in-Council;

(2) Where the provisions of this Act are in conflict or inconsistent with any other written law, this Act shall prevail."

It seems to me that the necessity for enacting section 2 of the Bribery Act arose because some

In the Supreme
Court

No. 5

Judgment

14th March

1969

(continued)

provisions of that Act clearly affected the provisions of the Constitution - (vide sections 14, 15, 16, 20 and 29 of the Act) - but it does not mean therefore that all the provisions of this Act in any way affect the Constitution. There are other provisions of the Bribery Act that do not in any way conflict with the Constitution or impinge on its provisions. The mere fact that the entire Act was passed by a two-third majority and contain the safeguards referred to in section 2 of that Act does not make the Bribery Act a document which has constitutional efficacy. I am therefore unable to agree with Counsel's submission that the Bribery Act is 'an indivisible whole and therefore cannot be affected by subsequent legislation passed by a simple majority.'

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Section 84 of the Act provides for the amendment of the Schedule by the addition or removal from the list of scheduled institutions, any Board, Institution, Corporation or other body for the time being specified in the Schedule. Although section 84 was passed with the requisite two-third majority, Parliament considered it adequate for its purposes that the Governor-General should be vested with the power of amending the Schedule by the simple expedient of a Proclamation published in the Gazette. This provision does not in any way conflict or be inconsistent with the provisions of the Constitution and if the Legislature was so inclined could have been passed by a simple majority of the Members of Parliament. If the Governor-General could be vested with such a power, I see no valid reason why the sovereign Legislature cannot pass section 11 of the Motor Transport Act by a simple majority.

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This brings me to the argument raised by Counsel for the appellant that the doctrine of severability has no application because the severable portions would only apply to parts of the same statute. Although section 11 is found in the Motor Transport Act, the language used in section 11 - 'shall be deemed to be a scheduled institution within the meaning of the Bribery Act and the provisions of that Act shall be construed accordingly' - suggests that section 11 has to be read with the provisions of the Bribery Act. Maxwell on Interpretation of Statutes (11th Edn.) page 32, quoting Lord Mansfield says:

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"Where there are statutes in pari materia though made at different times or even expired, and not referring to each other, they shall be taken and construed together, as one system and as explanatory to each other."

In the Supreme
Court

No. 5

Judgment

There is also significance in the use of the word 'deemed' in section 11 of the Motor Transport Act. As Lord Radcliffe remarked in St. Aubyn v. A.G. 1952 A.C.15 at 53, the word 'deemed' is used a great deal in modern legislation.

14th March
1969
(continued)

"Sometimes it is used to impose for the purpose of a statute an artificial construction of a word or phrase that would not otherwise prevail, sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible."

It seems to me applying Lord Radcliffe's test to section 11 of the Motor Transport Act that the sovereign Legislature intended to create an artificial situation whereby the Ceylon Transport Board was created a scheduled institution within the meaning of the Bribery Act. The doctrine of severability therefore applies to the Bribery Act, and section 11 of the Motor Transport Act must be read together with the Bribery Act. The section seeks to amend the Schedule by providing an alternative procedure to that found in section 84, which is a provision of the Act that is not in conflict or inconsistent with the Constitution.

Finally, there is the argument which learned Counsel for the appellant raised that the offence of bribery was one that affects the Constitution and that the class of persons who can be found guilty of bribery has been enlarged and that such persons are necessarily subject to the disqualification in section 29 of the Bribery Act which is a section which clearly affects the provisions of the Constitution.

Learned Counsel for the appellant submitted that in such an event the punishment and the

In the Supreme
Court

No. 5

Judgment

14th March
1969

(continued)

offence is not separable. If learned Counsel's submission is taken to its logical conclusion it would mean that if the sovereign Legislature decided to create an offence where the punishment was such that it affected the disqualifying clause of the Constitution, the creation of such an offence must also be passed by a two-third majority of the Members of Parliament. I am unable to agree with such a broad proposition.

I am therefore of the view that section 11 of the Motor Transport Act is not ultra vires and could have been passed by Parliament by a simple majority and is not in conflict or inconsistent with the provisions of the Constitution.

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The appeal is therefore dismissed and the conviction affirmed.

(Sgd.) A.C.A. Alles

PUISNE JUSTICE.

de Kretser, J.

The facts are set out in the Judgment of Alles, J., which I have had the advantage of perusing. Dr. de Silva's submission for the appellant was based on the contention that the Bribery Act 11 of 1954 which contained provisions affecting the constitution was passed by Parliament as provided for by section 29(4) of the Ceylon (Constitution) Order in Council 1946 as an "Indivisible whole". He submitted that it was not possible to amend any provision in it or even the schedule attached to it other than by an Act passed with the two-third majority requisite whenever there is a Constitutional Amendment. He submitted that section 11 of the Motor Transport Act 48 of 1957 which declared that the Ceylon Transport Board was "deemed to be a scheduled institution within the meaning of the Bribery Act" and that "the provisions of that Act shall be construed accordingly" was bad in law in that it purported to make an amendment to the schedule of the Bribery Act but had not been passed with the requisite two-third majority.

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Dr. de Silva submitted that when section 84

of the Bribery Act was amended by a simple majority by section 7 of Act 40 of 1958 which provided that the Minister of Justice should take the place of the Prime Minister as advisor to the Governor General when there was need to amend the schedule to the Bribery Act by proclamation published in the Gazette, that too was an amendment bad in law.

In the Supreme
Court

No. 5

Judgment

14th March
1969
(continued)

10 I am unable to accept this submission because I am unable to agree that the Bribery Act was passed as an "Indivisible whole".

20 Certain provisions of the Bribery Act 11 of 1954 are "in conflict or inconsistent" with the provisions of the Ceylon (Constitution) Order in Council 1946 - a state of things recognised in section 2(1) of the Bribery Act - in order that they could have validity they had to be passed in Parliament as provided for by section 29(4) of the Constitution. The whole Act was so passed quite clearly because that was the most practical way of presenting it and obtaining its passage through Parliament, but the fact that it was so passed does not give to the sections of it that do not affect the constitution the protection of section 29(4) in regard to amendment. In other words the accident of association in the same Act with provisions which effect the constitution which resulted in their being passed in Parliament by a larger majority as far as they were concerned than was necessary does not give them any right to claim that they can therefore only be amended in the same manner as provisions affecting the Constitution.

30 Section 84 is a section that does not affect the Constitution for it does not do more than provide for how the schedule to the Act is to be amended. It appears to me therefore that the amendment to it by Act 40 of 1958 passed by a simple majority was an amendment which is good in law. I agree with my brother Alles that the Sovereign Legislature would be entitled to do by Act of Parliament what it has authorised the Governor-General to do by proclamation, if it considered it expedient to do so.

40 The submission that the class of persons that could be disqualified owing to convictions of bribery in consequence of additions to the Schedule of Institutions, was being enlarged and that therefore the amendment was one that affected the

In the Supreme
Court

No. 5

Judgment

14th March
1969
(continued)

constitution does not bear examination, for "could be" is something quite different from "would be". In the instant case it was provided in section 11 of the Motor Transport Act passed by a simple majority by the use of the word 'deemed' now increasingly used in the creation of legal fiction, that the Ceylon Transport Board created by the Motor Traffic Act was to be considered, what it would not otherwise have been for the purposes of the Bribery Act, a Scheduled Institution. The procedure provided by section 84 had already been adopted to add to the schedule when the People's Bank was added to it, and it appears a pity that where an Act provides a procedure for amendment that procedure is not consistently followed, if for no other reason than that it avoids confusion when there is need to trace amendments, but that is no bar to the Sovereign Legislature adopting the course it has taken in this case perhaps on the score of immediate convenience and expedition when it was dealing with this particular subject. I am of the view for these reasons that section 11 of the Motor Transport Act passed by Parliament by a simple majority is good in Law. I agree with my brother Alles that the appeal must be dismissed.

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(Sgd.) O.L. de Kretser

PUISNE JUSTICE.

In the Privy
Council

No. 6

No. 6

ORDER GRANTING SPECIAL LEAVE TO APPEAL IN
FORMA PAUPERIS TO HER MAJESTY IN COUNCIL

30

Order granting
Special Leave
to appeal in
forma pauperis
to Her Majesty
in Council

AT THE COURT AT ARUNDEL PARK

The 31st day of July, 1969

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

31st July 1969

Lord President
Earl Marshal
Lord Chalfont

Sir Michael Adeane
Sir Elwyn Jones
Mr. Lever

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy

Council dated the 29th day of July 1969 in the words following viz.:-

In the Privy
Council

No. 6

10 "WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Edgar Mahinda Fernando in the matter of an Appeal from the Supreme Court of Ceylon (Criminal Jurisdiction) between the Petitioner and Your Majesty Respondent setting forth that the Petitioner desires to obtain special leave to appeal in forma pauperis to Your Majesty in Council from the Judgment of the Supreme Court of Ceylon dated the 14th March 1969 dismissing his Appeal against his conviction by the District Court at Colombo on a charge of bribery: And humbly praying Your Majesty in Council to grant him special leave to appeal in forma pauperis from the Judgment of the Supreme Court of Ceylon dated the 14th March 1969 and for further or other relief:

Order granting Special Leave to appeal in forma pauperis to Her Majesty in Council

31st July 1969
(continued)

20 "THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal in forma pauperis against the Judgment of the Supreme Court of Ceylon dated the 14th March 1969:

30 "And Their Lordships do further report to Your Majesty that the authenticated copy of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

40 HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

In the Privy
Council

No. 6

Order granting
Special Leave
to appeal in
forma pauperis
to Her Majesty
in Council

31st July 1969
(continued)

Whereof the Governor-General or Officer administering the Government of Ceylon for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W.G. AGNEW

O N A P P E A L
FROM THE SUPREME COURT OF THE ISLAND
OF CEYLON

B E T W E E N :

EDGAR MAHINDA FERNANDO Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

A.L. BRYDEN & WILLIAMS,
20 Old Queen Street,
London, S.W.1.
Solicitors and Agents
for the Appellant.

HATCHETT JONES & CO.,
90 Fenchurch Street,
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Solicitors and Agents
for the Respondent.