**Edgar Mahinda Fernando** – – – – – – *Appellant*

*v.*

**The Queen** – – – – – – – – *Respondent*

**and**

**Lionel Mendis Karunaratne** – – – – – – *Appellant*

*v.*

**The Queen** – – – – – – – – *Respondent*

FROM

**THE SUPREME COURT OF CEYLON**

---

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 1ST DECEMBER 1970

---

*Present at the Hearing:*
LORD HODSON
VISCOUNT DILHORNE
LORD WILBERFORCE
LORD PEARSON
LORD DIPLOCK
(*Delivered by* VISCOUNT DILHORNE)

---

These appeals were heard together as in each of them the same points arose for decision.

Fernando was indicted and convicted on the following charge:

> " That on the 16th day of July 1963, at Narahenpita . . . , you did accept from the said Malalagama Badalge Ariyasena a gratification of a sum of Rs.1000/- 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."

Karunaratne was indicted and convicted on the following charges:—

> " 1. That on or about the 7th day of December 1960 at Handala in the Division of Colombo, within the jurisdiction of this Court, you did solicit a gratification of a sum of Rs.250/- from Arumabadaturuge David Singho as an inducement for procuring employment for the said Arumabadaturuge David Singho in an establishment of the Government to wit; the Ceylon Transport Board and that you are thereby guilty of an offence punishable under Section 20 of the Bribery Act.

2. That on or about the 13th day of December 1960 at Wattala in the Division of Colombo, within the jurisdiction of this Court, and in the course of the same transaction, you did accept a gratification of a sum of Rs.250/- from the said Arumabadaturuge David Singho as an inducement for procuring employment for the said Arumabadaturuge David Singho in an establishment of the Government, to wit, the Ceylon Transport Board, and that you are thereby guilty of an offence punishable under Section 20 of the Bribery Act."

S.20 of the Bribery Act, No. 11 of 1954, so far as material, reads as follows:—

"20. A person—

(*a*) who offers any gratification to any person as an inducement or a reward for

. . . .

(iv) 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, or

. . . .

(*b*) who solicits or accepts any gratification as an inducement or a reward for his doing any of the acts specified in sub-paragraphs . . . (iv) . . . of paragraph (*a*) of this section,

shall be guilty of an offence punishable with rigorous imprisonment for a term of not more than seven years and a fine not exceeding five thousand rupees."

The appellant Fernando was sentenced to three years rigorous imprisonment and a fine of Rs.1000/- and in default one year's rigorous imprisonment.

The appellant Karunaratne was sentenced on each count to one year's rigorous imprisonment to run concurrently and a fine of Rs.250/-.

It was contended on behalf of the appellants that the Ceylon Transport Board was not a department, office or establishment of the Government and that consequently their convictions were wrong and should be quashed. It was not disputed that the Ceylon Transport Board was not a department, office or establishment of the Government and that the charges which alleged that it was were in this respect inaptly drawn.

S.87 of the Bribery Act reads as follows:—

"Every reference in this Act to the Government shall be construed as including a reference to a local authority and to every scheduled institution."

Mr. Cotran with some temerity argued that s. 87 did not apply in relation to s. 20 (*a*) (iv) of the Bribery Act. In that sub-paragraph of s. 20 he said that the words "the Government" were not to be interpreted as including a local authority and a scheduled institution.

Their Lordships see no reason thus to restrict the operation of s. 87 which is mandatory in its terms. It is not prefaced by the words "Unless the context otherwise requires", and in their Lordships' view the effect of s. 87 is to extend s. 20 (*a*) (iv) so as to make it an offence for any person to offer or to accept a gratification for procuring or furthering the securing of employment in a department, office or establishment of a scheduled institution.

"Scheduled institution" is defined in s. 90 of the Bribery Act to mean "any such board, institution, corporation or other body as is for the time being specified in the Schedule to this Act".

The Ceylon Transport Board is not specified in the Schedule to the Act. By s. 84 the Governor-General was given power to amend the Schedule by Proclamation published in the Gazette. If the Board had been added to the Schedule by a Proclamation, a person would thereafter be liable to conviction under s. 20 if he offered or accepted a gratification in relation to the securing of employment with the Ceylon Transport Board, and a person so convicted would suffer the disqualifications imposed by s. 29.

S. 29 (*a*) provides that a person convicted or found guilty of bribery shall by reason of that conviction or finding become incapable for a period of seven years from the date of conviction of being registered as an elector or of voting at any election under the Ceylon (Parliamentary Elections) Order in Council 1946, or for a period of five years under the Local Authorities Elections Ordinance, or of being elected or appointed a Senator or Member of Parliament or member of a local authority and if at that date he has been elected or appointed as a Senator or Member of Parliament or member of a local authority, his election shall be vacated from that date.

Mr. Gratiaen for the Crown conceded that this part of this section effected an amendment of the Ceylon (Constitution) Order in Council. S. 29 (4) of the Ceylon (Constitution) Order in Council 1946 gave the Parliament of Ceylon power to amend or repeal any of its provisions but provided that no Bill for the amendment or repeal of any of the provisions of the Order in Council should be presented for the Royal Assent unless it was endorsed with a certificate under the hand of the Speaker that the number of votes in its favour in the House of Representatives amounted to not less than two-thirds of the whole number of the members of the House (including those not present).

The Bill which became the Bribery Act was presented for the Royal Assent with the necessary certificate endorsed upon it.

S. 11 of the Motor Transport Act No. 48 of 1957 provides that:—

> "The Ceylon Transport Board shall be 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."

In their Lordships' opinion the Bribery Act like any other Act of Ceylon could and can be amended by the Parliament of Ceylon. The fact that the Governor-General was by s. 84 of that Act given power to amend the Schedule by Proclamation and so could add to the list of scheduled institutions in no way restricted the powers of the Ceylon Parliament.

If, however, a Bill to amend the Bribery Act sought to amend or repeal any provision of the Ceylon (Constitution) Order in Council, then the proviso to s. 29 (4) of that Order in Council would have to be complied with and the Bill could not be presented for the Royal Assent unless it had endorsed upon it a certificate by the Speaker that it had been passed with the necessary majority.

Mr. Cotran contended that s. 11 of the Motor Transport Act was ineffective and invalid as that Act was passed by a simple majority. He contended that the result of the amendment would be that persons convicted of bribery in relation to employment with the Ceylon Transport Board, assuming that s. 87 operated to make s. 20 (*a*) (iv) apply to a scheduled institution, would suffer the disqualifications imposed by s. 29 (*a*) which as has been said, amended the Ceylon (Constitution) Order in Council. Persons so convicted would suffer greater disqualifications than they would otherwise have incurred under that Order in Council.

The validity of this argument depends on whether s. 29 (*a*) can be regarded as inseparable from s. 20 and the Schedule to the Bribery Act. S. 20 and ss. 14–19 and 21 and 22 create criminal offences in relation to bribery and prescribe the punishments therefor. The inclusion of s. 29 (*a*) made it necessary that the Bribery Bill should be passed by not less than a two-thirds majority and have the Speaker's certificate endorsed on it but if ss. 14–22 and the Schedule had been in a separate Bill, it could not have been contended that such a Bill would require the Speaker's certificate before being presented for the Royal Assent. Clause 29 (a) is clearly severable.

In these appeals the question for determination is whether a provision in a Bill declaring that a body shall be deemed to be a scheduled institution within the meaning of the Bribery Act, a provision which, if valid, would have the same effect as an amendment to the Schedule, makes it necessary for that Bill to be passed by not less than a two-thirds majority before being presented for the Royal Assent.

In their Lordships' opinion the answer is in the negative. Such a provision does not amend or repeal any provision of the Ceylon (Constitution) Order in Council.

In these appeals only the validity of the convictions has been in issue. It has not been necessary to determine whether a person convicted of bribery in relation to employment with the Ceylon Transport Board is by law bound to suffer the disqualifications imposed by s. 29 (*a*) of the Bribery Act, and their Lordships express no opinion on this point.

Their Lordships are of the opinion that the convictions were valid and that the appeals should be dismissed. They will humbly advise Her Majesty accordingly.

**In the Privy Council**

---

**EDGAR MAHINDA FERNANDO**

*v.*

**THE QUEEN**

**and**

**LIONEL MENDIS KARUNARATNE**

*v.*

**THE QUEEN**

---

DELIVERED BY
VISCOUNT DILHORNE

Printed by HER MAJESTY'S STATIONERY OFFICE
1970