

SHAW WALLACE AND HEDGES LTD.
v.
PALMERSTON TEA CO. LTD. AND OTHERS

SUPREME COURT
SAMARAKOON, C.J., WANASUNDERA, J., AND SOZA, J.
S.C. APPEAL NO. 9/81; 21/82
MAY 19, 1982.

*Industrial dispute - Termination of employment - Industrial Disputes Act, s. 48
- Who is an 'Employer' - Land Reform Law, Section 42 B 5 (a)*

The petitioner was employed as Superintendent, Queensland Estate, Maskeliya. His services were terminated on 27.05.71. The estate was owned by Palmerston

Tea Co. Ltd. and managed by Shaw Wallace and Hedges Ltd. who were both managing agents and secretaries.

At the request of the petitioner the Minister of Labour referred the dispute regarding dismissal to the Labour Tribunal for arbitration under section 4(1) of the Industrial Disputes Act.

In the course of the inquiry the appellant objected to further proceedings on the following grounds.

1. Messrs Shaw Wallace and Hedges was only an agent and could not be made a party.
2. Queensland Estate vested in the Land Reform Commission and consequently the liabilities of Messrs Palmerston vested in the Land Reform Commission.

The Arbitrator terminated the inquiry on upholding the above objections. The Court of Appeal issued Writ of Certiorari quashing the order and Writ of Mandamus ordering continuance of inquiry. On appeal to Supreme Court -

Held: -

- (1) Liabilities vested in the Land Reform Commission and hence no liability attached to Palmerston Tea Co. Ltd.
- (2) The contract of employment was with Palmerston Tea Co. and not with Shaw Wallace and Hedges. Hence Shaw Wallace and Hedges could not be made a party.

Cases referred to:

- (1) *Carson Cumberbatch and Co. Ltd. v. Nandasena* (1973) 77 N.L.R. 73, 84
- (2) *Archer v. Kelly J Dr. & Sm.* 300
- (3) *Williams v. Williams* (1911) 1 Ch. D. 450

APPEAL from order of the Court of Appeal.

E.R.S.R. Coomaraswamy with N.T.S. Kularatne and Nilantha Herath for respondent.

Mark Fernando for appellant.

Cur. adv. vult.

May 27, 1982.

SAMARAKOON; C.J.

The petitioner-respondent (hereinafter referred to as the petitioner) was employed as Superintendent, Queensland Estate, Maskeliya and his services were terminated on 27th May, 1971. The Estate was owned by the Palmerston Tea Co. Ltd (hereinafter referred to as the 1st respondent). It was managed by Messrs Shaw Wallace & Hedges Ltd. (the appellant) who were the Managing Agents and Secretaries of the 1st respondent. On the 9th September, 1971, the petitioner made an application to the Labour Tribunal, citing the 1st respondent and the appellant as employers, and complaining that they had illegally and without justification terminated his employment. By way of relief he claimed reinstatement in employment with back wages, compensation and gratuity. This application was not pursued because the then Supreme Court in November, 1971, ruled that an application made after the expiry of three months from date of termination was barred by effluxion of time. By a letter dated 14th October, 1972, the petitioner appealed to the then Minister of Labour to get him out of the difficulty by making a reference under the provisions of section 4(1) of the Industrial Disputes Act (Chapter 131). The Minister acceded to this request and referred the dispute to Labour Tribunal No.II for arbitration. The 1st respondent and the appellant were made party respondents. The reference was as follows:-

"The matter in dispute between the aforesaid parties is whether the termination of services of Mr. C. H. C. de Run by the Management of Queensland Estate, Maskeliya, is justified and to what relief he is entitled to."

It is relevant to note that in this reference the 1st respondent is described as the proprietor of Queensland Estate and the appellant as the agent of the 1st Respondent. The parties filed their respective statements before the Arbitrator and the inquiry commenced. On the 9th May 1975 which was the twentieth day of hearing, Counsel for the two Companies objected to further proceedings being held for the following reasons:-

- 1 That Messrs Shaw Wallace & Hedges was only an Agent and could not be made party to the reference.

2. That Queensland Estate had become vested in the Land Reform Commission by the provisions of amending Act 39 of 1975, and by reason of the provisions of Section 42B(5) of the amending Act the liabilities of Messrs Palmerston Tea Co. Ltd have become the liabilities of the Land Reform Commission. The reference was therefore frustrated.

The Arbitrator by his ruling of 5th July 1976, upheld both contentions and held that for these reasons the Tribunal had no jurisdiction to proceed with the matter. The petitioner thereafter applied to the then Supreme Court for a Writ of Certiorari to quash the said order of the Arbitrator and for a Writ of Mandamus to compel the Arbitrator to continue the arbitration proceedings to a conclusion. The appellant and the 1st respondent resisted this application. The Court of Appeal allowed both writs and directed the Arbitrator to continue and complete the inquiry. The appellant was granted special leave to Appeal by this Court and its appeal is No.9/81. The 1st respondent has been granted leave to appeal by the Court of Appeal but has not filed any petition of appeal for want of sufficient time because we directed that 1st respondent's appeal be heard together with S.C.9/81. The 1st respondent's appeal bears No.21/82. This order covers both S.C.9/81 and S.C.21/82.

The reference to the Arbitrator (document 'D') containing the statement of matters in dispute described the appellant as "the Agent for Palmerston Tea Co. Ltd." Admittedly the appellant was only managing Queensland Estate for the 1st Respondent. It was a well known Agent for estate management in Sri Lanka and was at that time managing other estates as well. Section 4(1) of the Industrial Disputes Act empowers the Minister to refer to arbitration an industrial dispute which in his opinion is a minor dispute. Section 48 of the Act defines an industrial dispute thus-

"48.

"

"Industrial dispute" means 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 conditions of labour, or the termination of the services, or the reinstatement in service, of any person, and for the purpose of this definition 'workmen' includes a trade union consisting of workmen;

We are here concerned with a dispute between employer and workman. "Employer" is defined in section 48 as follows:-

"employer" means any person who employs or on whose behalf any other person employs any workman and includes a body of employers (whether such body is a firm, company, corporation or trade union) and any person who on behalf of any other person employs any workman;"

This definition deals with three types of persons-

1. Any person who employs a workman.
2. Any person on whose behalf any other person employs any workman.
3. Any person who on behalf of any other person employs any workman.

This definition must be read with the definition of "workman" in section 48 which states that a workman is "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." "The existence of a contract with his employer is the *sine qua non* for identifying a workman". *Carson Cumberbatch & Co. Ltd Vs. Nandasena* (1). The question for decision then is whether the appellant was an Agent which entered into a contractual obligation with the petitioner and thereby made itself liable to the petitioner. Document 'A' which is relied on as the letter of appointment has the following heading:-

THE PALMERSTON TEA CO. LTD.
SHAW WALLACE & HEDGES LTD.
AGENTS & SECRETARIES."

Paragraph 7 states that leave could be availed of by agreement with the Agents & Secretaries. Paragraph 8 provides for termination of service by three calendar months written notice by either party

or by payment of three months salary and allowances, in lieu of notice "in the event of termination being effected by the employer". "Employer" in this para is not a reference to the appellant but is a reference to the 1st respondent. Para 10 reads thus:-

"10. The foregoing terms relate to your appointment by this Company on Queensland Estate. It will, however, be open to Shaw Wallace & Hedges Ltd., the Agents & Secretaries of this Company, in agreement with the Board of Directors, to arrange at any time for you to be transferred for employment by another Company in this Agency. In these circumstances, Clause 8 of the Agreement will not be considered operative."

It is not happily worded but it makes it abundantly clear that the appellant was acting as Agents & Secretaries of another Company. The words "this Company" refers to the 1st respondent. The petitioner was aware and accepted the fact that the 1st respondent was the proprietor of Queensland Estate. In his application to the Labour Tribunal filed on 9-9-71 he cited the 1st respondent as one of the employers meaning thereby that by the letter of appointment (Document A) the 1st respondent was under a contractual obligation to him as a workman. Document 'A' is not a contract with the appellant but one with the 1st respondent. The appellant was not the employer of the petitioner and therefore has been wrongly made a party to the reference by the Minister.

The next question to be decided is whether the operation of the Land Reform (Amendment) Law No.39 of 1975 absolved the employer, viz, 1st respondent from liability to the petitioner in respect of the termination of his employment and rendered the reference by the Minister nugatory. Section 42(B)(5)(a) of the Law 39 of 1975 reads thus:-

"42(B)(5)(a) Subject to the provisions of paragraph (b), where any estate land is vested in the Commission, the rights and liabilities of the former owner of such estate land under any contract or agreement, express or implied, which relates to the purposes of such estate land and which subsist on the day immediately prior to the date of such vesting, and the other rights and liabilities of such owner which relate to the running of such estate land and which subsist on such day, shall become the rights and liabilities of the Commission; and the amounts required to discharge all such liabilities shall be deducted from the amount of compensation payable in respect of such estate land."

The liability to the petitioner was one which related to the running of Queensland Estate and one which subsisted on the day immediately prior to the day Queensland Estate vested in the Land Reform Commission. This liability passed to the Land Reform Commission. "The word 'become' in its usual and proper acceptation imports a change of condition, that is the entering into a new state or condition" per Kindersley, V.C. in *Archer vs Kelly* (2) quoted by Eve, J. in *Williams Vs. Williams* (3). Thus the liability of the 1st respondent ceased in law on the date the Land Reform (Amendment) Law No.39 of 1975 came into operation and it became the sole liability of the Land Reform Commission. The continuance of the proceedings in the present form has therefore become a futile exercise. In this state of affairs the Arbitrator had no alternative but to stop proceeding with the inquiry.

I therefore allow the appeals of the appellant and the 1st respondent and set aside the order of the Court of Appeal allowing the writs prayed for. The appellant and 1st respondent will be entitled to costs here and in the Court of Appeal.

WANASUNDERA, J. - I agree.

SOZA, J. - I agree.

Appeal allowed.