

SENEVIRATNE
v.
CEYLON PETROLEUM CORPORATION

COURT OF APPEAL
F. N. D. JAYASURIYA J.
C.A. 265/87
LT. ADL. 1/ADD/5730/84
SEPTEMBER 11, 1996

Labour Tribunal - Documents not tendered at the close of the case - Labour Tribunal President arrived at a finding relying on the oral evidence elicited before him in regard to the contents of the documents Legality ?

Held :

- (i) The construction and interpretation of a document is a question of law which must engage the attention of the Judge and this court is not entitled to delegate its functions to a witness who attempted to testify in regard to the effect of such documents.
- (ii) Court is unable to act on the oral evidence elicited in regard to the contents of the documents, especially where court is called upon to construe and interpret the documents.

APPEAL from the order of the Labour Tribunal.

J. de. Almeida Gunaratne with Francis Gunawardena for Applicant-Appellant.

No legal appearance for Respondent.

Cur. adv. vult.

SEPTEMBER 11, 1996.
JAYASURIYA, J.

Learned Counsel for the Appellant brings to my notice that the documents marked at the inquiry before the learned President, namely, documents R1, R2, R3, R5, R6, R7, R8, have not been tendered to the Labour Tribunal as at the close of the respective cases. That submission is substantiated by the finding made by the learned President at page 60 wherein he

states documents marked by the respondent have not been tendered to the Tribunal. At the conclusion of the inquiry however, the learned President has arrived at a finding against the Applicant-appellant relying on the oral evidence elicited before him. In regard to the contents of the documents, in the course of the proceedings learned Counsel for the Appellant states that he is intending to make legal submissions on the interpretation and construction of the documents produced. In preferring submissions on behalf of the Applicant-Appellant, unfortunately, due to the failure to tender these documents marked by the employer, learned Counsel is handicapped in making his submissions and this court is deprived of an opportunity of interpreting those documents. I hold that this court is unable to act on the oral evidence elicited in regard to the contents of the documents, especially where this court is called upon to construe and interpret the documents. The construction and interpretation of a document is a question of law which must engage the attention of the Judge and this Court is not entitled to delegate its functions to witness Peiris who attempted to testify in regard to the effect of such documents. In the circumstances, I set aside the order of the learned President dated 08. 06. 87 and I direct that a de novo trial be held before another President and I direct that President to give this matter priority and precedence over all other matters pending in his trial roll and inquiries. Appeal allowed with costs in a sum of Rs. 1570/- payable by the employer-respondent to the Applicant-Appellant. This order has been made by this Court due to the culpable default and failure of the employer to tender to the Labour Tribunal documents R1 to R8 and certain other documents which were marked in the course of the proceedings. This accounts for order for costs in favour of the Applicant-Appellant. Appeal allowed with costs. I direct the Registrar to forward the judgment of this court with the Record to the appropriate Labour Tribunal at his earliest convenience.

Appeal allowed.