1962 *Present :* **Sansoni, J.**

THE CEYLON BANK EMPLOYEES UNION, Applicant,
and S. B. YATAWARA *et al.*, Respondents

S. C. 41/1962—I. D. 306 of 1961/Application for Mandates in the nature of Writs of Certiorari and Prohibition under Section 42 of the Courts Ordinance (Cap. 6)

Industrial Disputes Act No. 43 of 1950, as amended by Act No. 62 of 1957—Sections 4 (2), 22, 24 (1), 24 (3), 26, 27, 33 (1) (b), 36 (5), 36 (6), 40 (1) (p), 43, 46 (3) (b), 47, 48—Dispute between a body of employers and their workmen—Power of Minister to refer it to an industrial court for settlement—Liability of workmen to be punished by employer pending inquiry—"Employer"—"Industrial dispute"—"Trade union"—"Workman"—Public corporation—Constitutional position of public corporation—Difference between a corporation and a Government Department—Liability of Bank of Ceylon to be made a party to an industrial dispute—Finance Act No. 65 of 1961, ss. 2, 5, 8, 10, 11—Certiorari.

The definitions of the terms "employer", "industrial dispute", "trade union" and "workman" in section 47 of the Industrial Disputes Act No. 43 of 1950 do not preclude a Trade Union consisting of several independent employers being made a party to an industrial dispute.

The definition of "industrial dispute" does not limit a reference under section 4 (2) of the Industrial Disputes Act to one which concerns a single employer and his workmen. It includes a dispute involving more than one employer on the one hand and their workmen on the other.

The Bank of Ceylon did not become a Government Department in consequence of the passing of the Finance Act No. 65 of 1961. A public Corporation, even when it is controlled by a Government Department, is not necessarily a servant or agent of the Crown.

Under section 40 (1) (*p*) of the Industrial Disputes Act, it is open to an Industrial Court to allow, pending the inquiry into an industrial dispute which has been referred to it for settlement, an application made by the employer for approval of such court to punish workmen who are on strike. But the workmen with regard to whom the approval is being sought must be given notice of the application, in order that they may be heard before the court makes its order on the application.

On the 30th December 1961 the Minister of Labour and Nationalised Services made an order under section 4 (2) of the Industrial Disputes Act No. 43 of 1950 in which he stated that an industrial dispute existed between the Ceylon Bank Employees Union of the one part and the Bank of Ceylon and the Commercial Banks Association (Ceylon) of the other part. By that order, the Minister referred the dispute for settlement to an Industrial Court to be constituted in accordance with section 22 of the Act. There were four matters in dispute, namely, (1) the scale of salaries of the Bank employees, (2) Dearness Allowance on pension, (3) additional seven days leave in lieu of the curtailed Bank holidays, (4) three months leave preparatory to retirement.

Pending the hearing of the dispute the Bank of Ceylon and the Commercial Banks Association applied on the 12th January 1962 for permission in writing to be granted by the Industrial Court to terminate the services of, or

2——R 3899—1,883 (7/62)

punish in such other way as the Banks deemed necessary, all or any of the employees who went on strike and who were continuing to strike notwithstanding the reference of the dispute to the Court. On the 27th January 1962 the Industrial Court, after hearing the parties in full, allowed the application.

On the 7th February the present application for writs of certiorari and prohibition was made by the Ceylon Bank Employees Union. The respondents to it were the three members of the Industrial Court, the Bank of Ceylon, the Commercial Banks Association (Ceylon) and the Minister.

Held, (i) that there was a valid reference of an industrial dispute into which an Industrial Court could inquire. Although there were nine banks in the Commercial Banks Association, it was not necessary that, in their case, there should be nine different references under section 4 (2) of the Industrial Disputes Act. A body of Banks, each of which employs workmen, falls within the meaning of the word " employer " as defined in section 47 of the Act.

(ii) that, although the Bank of Ceylon had salary scales different from those of the other Banks, while those other Banks themselves had no uniform salary scale, there was nothing undesirable or unfair in a composite reference, the object of which would be to bring about uniformity in terms and conditions of service in the Banking industry. The terms of reference showed that there was a dispute which was identifiable as a common dispute, and it was more desirable that there should be, if it were legally permissible, one inquiry which would be much more expeditious than ten inquiries.

(iii) that the Bank of Ceylon is not, since the passing of the Finance Act No. 65 of 1961, virtually a Government Department. Accordingly, section 48 of the Industrial Disputes Act was not contravened by the inclusion of the Bank of Ceylon as a party to the industrial dispute.

(iv) that, in view of section 40 (1) (*p*) of the Industrial Disputes Act, it was competent for the Industrial Court to entertain the application made on the 12th January 1962 on behalf of the Banks for its approval to terminate the services of, or punish in any other way, their employees who were on strike. By virtue of sections 36 (5) and 36 (6) of the Act, and also by regulation 37 (*b*), notice given to the trade union concerning the application was notice to each of the workmen who were members of the Union.

(v) that the Industrial Court, when it allowed the application made by the Banks on the 12th January 1962, could not be said to have (1) acted without or in excess of jurisdiction, (2) made any error apparent on the face of the record, or (3) acted in contravention of the rules of natural justice. No particular type of inquiry is provided for before approval under section 40 (1) (*p*) is granted by the Court.

APPLICATION for writs of Certiorari and Prohibition.

Colvin R. de Silva, with *P. B. Tampoe*, *K. Shinya*, *P. K. Liyanage*, *K. Shanmugalingam*, *Prins Rajasooriya* and *N. Karalasingham*, for Applicant Union.

G. G. Ponnambalam, *Q.C.*, with *S. J. Kadirgamar*, *Vernon Wijetunge*, *K. Viknarajah*, *W. T. P. Goonetilleke*, *K. N. Choksy* and *R. Ilayperuma*, for the 4th and 5th Respondents.

A. C. Alles, Deputy Solicitor-General, with *R. I. Obeysekera*, Crown Counsel, for the 6th Respondent.

Cur. adv. vult.

March 19, 1962. SANSONI, J.—

Before I deal with the points in controversy between the parties, I shall set out some of the matters about which there can be no dispute.

On 27th December, 1961, there commenced a Bank strike which involved those employees of the Bank of Ceylon and the Banks forming the Commercial Banks Association (Ceylon) who were members of the Ceylon Bank Employees Union. That strike is still on. On 30th December there was a conference held by the Senior Assistant Commissioner of Labour with the representatives of the Banks concerned and the Union. A Union representative is reported, in the minutes of the conference, to have stated that the Union was not prepared to call off this strike unless certain matters in dispute between the Union and the Banks were satisfactorily settled. No settlement was reached and the proceedings ended in a deadlock. On that same day the Minister of Labour and Nationalised Services made an order under section 4 (2) of the Industrial Disputes Act No. 43 of 1950 in which he stated that an industrial dispute existed between the Union of the one part and the Bank of Ceylon and the Commercial Banks Association (Ceylon) of the other part. By that order, the Minister referred the dispute for settlement to an Industrial Court to be constituted in accordance with section 22 of the Act. The statement accompanying the order set out the four matters in dispute, namely, (1) the scale of salaries of the Bank employees, (2) Dearness Allowance on pension, (3) additional seven days leave in lieu of the curtailed Bank holidays, (4) three months leave preparatory to retirement.

The Industrial Court began its hearing of the dispute on the 10th January, and it then had before it two notices of applications pursuant to section 40 (1) (*p*) of the Act. These notices had been sent to the Registrar of the Court by the respective lawyers of the Bank of Ceylon and the Commercial Banks Association, and a copy of each notice was sent to the Secretary of the Union. They informed the Registrar therein that they intended at the hearing of the Court to make application, on behalf of the Bank of Ceylon and the members of the Commerical Banks Association, for permission in writing to be granted by the Court to terminate the services of, or punish in such other way as the Banks deemed necessary, all or any of the employees who went on strike and who were continuing to strike notwithstanding the reference of the dispute to the Court. Such an application was, in fact, made on behalf of the Banks on 12th January. Counsel for the Banks made his submissions on that day. The representative of the Union replied on that day and on the 16th, 17th, 22nd, 23rd and 24th January. Counsel for the Banks replied on the 24th, and on the 27th January the Court allowed the applications and directed that its order be communicated to the parties in writing. The Registrar of the Court, by his letters of 29th January to the respective proctors of the Banks, informed them that their applications had been allowed. Copies of these letters were sent to the President of the Union.

On the 2nd February each Bank, through its Manager, wrote to each of its employees informing him that the Court had allowed the application for its approval to terminate the services of or otherwise punish the employees who continued to be on strike. That letter also informed the employee that since he continued to be on strike he was liable to be dismissed or otherwise punished, but it was the hope of the Banks that all their employees would return to work. The letter warned the employee that if he did not respond to this request to return to work he would be compelling the Banks to commence recruiting new staff to replace him. An appeal on similar lines was published by the Banks in various newspapers on the 3rd February. The reply to the letters was made on a cyclostyled form, a specimen of which was put before me. The writer there informed the Manager of the particular Bank that an application was being made within the next day or two to the Supreme Court, inter alia, in respect of the order of the Industrial Court referred to in the Bank's letter. The employee stated that in the circumstances he was in duty bound to await the order of the Supreme Court. By adopting this attitude he, in effect, rested his case on the outcome of the present application. I do not think that the making of this application in any way precluded him from resuming duties.

On the 7th February the present application before me, for writs of certiorari and prohibition, was made by the Union. The respondents to it are the three members of the Court, the Bank of Ceylon, the Commercial Banks Association (Ceylon) and the Minister. Notices were issued on the Respondents. On the 8th February Counsel appearing for the Banks informed me in Court that, without intending any disrespect to the Court, his clients wished to proceed with such action as they intended taking before the notices were issued. On that day each Bank Manager wrote to each employee pointing out that neither the order of the Industrial Court nor the application to the Supreme Court constituted an impediment to his resumption of duty. He was informed in the letter that since he had been unlawfully on strike from the 27th December and had failed to respond to the request to resume duties he was dismissed from service with immediate effect. He was further informed that before commencing the recruitment of new staff the Bank would consider his re-engagement as a new entrant, if he applied on the sub-joined form on or before the 14th February and reported for duty at the time and on the date which would be notified to him in the letter of appointment. Such re-engagement was to be on probation and on certain other conditions.

I might also refer to one other document which was filed by the respondent Banks with their statements of objections. It is a copy of a bulletin purporting to have been issued by the Secretary of the Propaganda Committee by order of the General Council of the Union. Referring to the intention of the Banks to apply for permission to dismiss or otherwise punish the members of the Union who are on strike, the Council informed the members that this move was anticipated, the members should not

get alarmed over this suggestion, and they should resolve that whatever difficulties confronted them they would only go back with the demands settled to their satisfaction.

When the hearing began before me, Mr. de Silva drew my attention to two letters written by the President of the Union to the Manager of the Bank of Ceylon and to the Chairman of the Commercial Banks Association respectively, on 26th December. By those letters he informed them that at a Special General Meeting of the Union held on 26th December it was resolved that the suspended strike of the members of the Union be resumed with effect from 27th December. In that letter the President complained that deadlock had been reached as a result of the stand taken by the Banks on the question of the revision of the salary scales of their employees, and he asked them to reconsider their stand on this question and pave the way for settlement of the outstanding disputes between them.

I shall now refer to the matters urged by Mr. de Silva in support of his application. His first submission was that the Minister's order of 30th December was invalid, in that it was not a reference of an industrial dispute within the meaning of the Act. He relied on the definitions contained in section 47 of the Act of the words " employer ", " industrial dispute ", " trade union " and " workman ". Those words are defined in the Act thus :—

> " 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 ;
>
> " industrial dispute " means any dispute or difference 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 purposes of this definition " workmen " includes a trade union consisting of workmen ;
>
> " trade union " means any trade union (whether of employers or of workmen) registered under the Trade Unions Ordinance ;
>
> " workman " means 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.

He pointed out that although in the clause defining " industrial dispute " the word " workmen " includes " a trade union consisting of workmen ", the clause does not say that the word " employers " includes a trade union of employers. He urged that the definition of " employer " cannot include a trade union of employers in the sense of a trade union whose members are employers : and that it can, as framed, only mean a trade union which is a separate employer in itself. He relied on the juxtaposition of the words " firm, company, corporation ", each of which could form a body of employers having its own employees, and argued that a trade union having its own employees could in that sense be an employer, and in no other sense. He would, in other words, treat the words " trade union " as *eiusdem generis* with " firm, company or corporation ". Each Bank was a separate employer, and he argued that as there were nine banks in the Commercial Banks Association there should be nine separate references in their case. He excluded the possibility of the Commercial Banks Association being treated as an " employer " as the definition now stands. He did not concede that the Association could come within the phrase " body of employers " since, he submitted, the words within brackets show what the draftsman meant. In short, his objection was that the statute did not contemplate the Commercial Banks Association being a party to a reference, and consequently there was no valid reference into which an Industrial Court could inquire.

Mr. Ponnambalam's reply was that the Act contemplates a Trade Union of several independent and distinct employers representing its members and being a party to an industrial dispute. Where such a Union takes up a dispute it can be a party to a reference. He also stressed the phrase " body of employees " and the presence of the words " trade union " in the bracketed clause, and argued that the Commercial Banks Association, which is a body of employers and a Trade Union of employers would fall within those words. He referred to several sections of the Act, and to some of the regulations made by the Minister by virtue of the powers vested in him by section 39, in support of his contention. Confining the references to that Part of the Act which deals with Industrial Courts, he mentioned section 24 (3) which provides that reference shall be made in every award of an Industrial Court to the parties and Trade Unions to which, and the employers and workmen to whom, such award relates. Section 26 provides that every award shall be binding on the parties, Trade Unions, employers and workmen referred to in that award. Section 27, which deals with reconsideration of an award, in proviso (*b*) enacts that where a Trade Union is, or is included in, a party bound by an award, no application in respect of that award made independently of that Trade Union by any employer or workman who is a member of that Trade Union, shall be entertained by the Minister. The proviso to section 36 (5) contemplates an employer, who is a member of a Trade Union which is a party to proceedings before the Court, raising a matter relating to the

dispute. Section 46 (3) (*b*), which deals with representation before the Court, again refers to employers who are members of a Trade Union which is a party to a proceeding.

Amongst the regulations, he referred to regulation 37 (*a*) which provides for the service of notices, summons, etc. In the case of an employer such notices can be effected (1) on the employer himself (2) where the employer is represented by a Trade Union, on the President or the Secretary or any other officer of such Trade Union, (3) where the employer is an incorporated body, on any Director, manager or other principal officer of such body, (4) where the employer is a firm, on any partner of the firm. This regulation, he pointed out, seems to have been framed in the light of the definition of " employer " in section 47 of the Act, for it refers to (1) an individual employer, (2) a Trade Union representing an employer, (3) an employer which is a company or corporation, and (4) an employer which is a firm such as a partnership.

Mr. de Silva, in reply to these arguments, analysed many of the provisions of the Trade Unions Ordinance, Cap. 138, the Wages Boards Ordinance, Cap. 136, and the Industrial Disputes Act in its original and present form. He stressed that a Trade Union of employers need not be a *party to an industrial dispute*, though it can be added as a party *pending proceedings* after the inquiry begins. It can also be a party likely to be affected or bound by a dispute, and it can be mentioned in an award. I think Mr. de Silva conceded that the structure of the Industrial Disputes Act appeared, in some parts, to support the view that a Trade Union of employers could be a party to an industrial dispute. I do not see why one should not look at the whole Act before arriving at the meaning of words which are defined in the interpretation section, if there is any uncertainty about the matter. The other parts " throw light on the intention of the Legislature and may serve to show that the particular provision ought not to be construed as it would be alone and apart from the rest of the Act."

I hope I will not be thought discourteous if I do not set out and examine more closely Mr. de Silva's detailed argument. But I am by no means satisfied that the definitions in section 47 preclude a Trade Union consisting of independent employers from being made a party to a dispute. The argument that the definition of the phrase " industrial dispute " does not specifically refer to a Trade Union of employers is met by the fact that the word "employer" as already defined has such a reference. The word " workman ", on the other hand, had yet to be defined and the draftsman could have placed it either in the definition of " industrial dispute " or in the definition of " workman " : he chose the former course. The numerous references in the Act to Trade Unions consisting of employers show clearly that such a concept was well known to the draftsman. It also points to the words " trade union " having a wider import than Mr. de Silva gave to them.

It is legitimate and proper, when construing the word "employer", to do so not by taking the definition by itself but by reading the Act as a whole, looking at its general purpose, and asking oneself the question "In this statute, in this context, relating to this subject matter, what is the true meaning of that word"? : see the judgment of Lord Greene, M.R. in *in re Bidie* [1]. The rule is that the word alone should not be looked at when one is trying to arrive at its meaning, nor only its definition as given in the Act. One must also look at the context, and arrive at the meaning according to what would appear to be its meaning in that context. "Context" in its widest sense means "other enacting provisions of the same statute, its preamble, the existing state of law, other statutes *in pari materia*, and the mischief which I can, by those and other legitimate means, discern the statute was intended to remedy": see the judgment of Viscount Simonds in *Attorney-General v. Prince Ernest Augustus of Hanover* [2]. It should be noted also that the interpretation section 47 begins "In this Act, *unless the context otherwise requires*".

Apart from these considerations, however, when one analyses the definition of the word "employer", one finds that its first meaning is "any person who employs", and the third meaning is "a body of employers (whether such body is a firm, company, corporation or trade union)". Now a person can be either a natural person or an artificial or legal person. A company or corporation can be a person. Thus, when we come to the phrase "body of employers", a body of Banks, each of which employs workmen, would come within that phrase, and the words "trade union" within the brackets would include such a body of Banks. Mr. de Silva sought to confine the meaning of "trade union" to a Trade Union as a particular kind of employer, analogous to a firm, company or corporation. To arrive at that result one would have to exclude artificial persons from the conception of "person" and "employer" in the definition ; one would also have to give the phrase "trade union" a very restricted meaning, and treat it as only being a species of the genus firm, company or corporation. If, however, one includes artificial persons as falling within the words "person" and "employer", and if one reads the words in brackets disjunctively rather than according to the *eiusdem generis* rule, the Commercial Banks Association would clearly fall within the meaning of the word "employer" as defined in section 47. I hold, having regard to the purpose of the Act, its different provisions to which I have referred, and the result produced by an examination of the definition of the word itself in section 47, that the Minister's order was valid, and that the industrial dispute was properly referred to the Industrial Court. The Industrial Court, therefore, has jurisdiction to inquire into the dispute.

It is, of course, not open to doubt that the Union was entitled to attack the jurisdiction of the Court, by trying to show that what was referred by the Minister was not an industrial dispute within the meaning of the

[1] *(1949) Ch. 121.* [2] *(1957) A. C. 436.*

Act. It was also within the inherent power of the Court, when the question was raised, to see whether the dispute was one which fell within its jurisdiction, for if it did not so fall it would have no power to adjudicate on the dispute. It is clear that a Tribunal of special jurisdiction created by a statute can only act if the terms contained in the statute giving it jurisdiction are complied with. If they are not complied with, the jurisdiction does not arise.

But the " factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon, and it will not be competent for this Court to hold the reference bad and quash the proceedings for want of jurisdiction because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters " : see *The State of Madras v. C. P. Sarathy and another* [1]. I refer to this as it was a matter of complaint made by the Union, both before the Industrial Court and before me, that the Government unreasonably thrust itself betwen the Union and the Banks when they were in the process of arriving at a voluntary agreement, when it should not in this way have attempted to force them to resolve their differences. I also quote the following passage from the concluding paragraph in the judgment of Patanjali Sastri, C.J. in that case : " In view of the increasing complexity of modern life and the interdependence of the various sectors of planned national economy, it is obviously in the interests of the public that labour disputes should be peacefully and quickly settled within the framework of the Act rather than by resort to methods of direct action which are only too well calculated to disturb public peace and order and diminish production in the country, and Courts should not be astute to discover formal defects and technical flaws to overthrow such settlements. " The Act envisages an industrial dispute being referred to an Industrial Court for settlement, for those are the very terms of section 4 (2) ; its title is an Act " to provide for the prevention, investigation and settlement of industrial disputes ". This Court cannot pronounce on the desirability or otherwise of letting the contestants in an industrial dispute work out their own solution in the knowledge that no settlement can ever be imposed by a statutory Tribunal. The Act empowers an Industrial Court to make an award which may appear to it to be just and equitable, and such an award is binding and enforceable, though provision has also been made for its reconsideration.

Mr. de Silva urged that the Bank of Ceylon has salary scales different from those of the other Banks, while those other Banks themselves have no uniform salary scale. He adduced this as an argument against the consolidation of this dispute to which the Bank of Ceylon and the Commercial Banks Association had been made parties. Mr. Ponnambalam, on the other hand, submitted that the dispute referred raised questions common to all the Banks, and there was no reason why the dispute should be separated into smaller compartments. The definition of " industrial dispute " does not limit a reference to one which

[1] *A. I. R. (1953) S. C. 53.*

concerns a single employer and his workmen. It contemplates a dispute involving more than one employer on the one hand and their workmen on the other. I cannot see anything undesirable or unfair in a composite reference, the object of which would be to bring about uniformity in terms and conditions of service in the Banking industry. The terms of reference here show that there was a dispute which was identifiable as a common dispute, and it is surely more desirable that there should be, if it were legally permissible, one inquiry which would be so much more expeditious than ten inquiries. It is significant that a particular matter which concerned only the Chartered Bank was *not* referred to the Court. It was omitted because, I suppose, it was not a matter which was common to all the Banks.

The next point raised by Mr. de Silva was with regard to the Bank of Ceylon being made a party in the order made by the Minister. He submitted that the order was invalid on this account, because the Bank of Ceylon is, since the passing of the Finance Act No. 65 of 1961, virtually a Government Department. In this view he contended that section 48 of the Industrial Disputes Act made the order bad.

Section 48 reads :

> " Nothing in this Act shall apply to or in relation to the Crown or the Government in its capacity as employer, or to or in relation to a workman in the employment of the Crown or the Government.".

His argument was that the employees of the Bank of Ceylon are workmen in the employment of the Government. In support of this argument he relied on certain provisions of the Finance Act. By section 2, all the ordinary shares of the Bank of Ceylon became vested in the Government. Yet section 11 provides that the Bank shall be deemed not to have ceased to be a Corporation under the Bank of Ceylon Ordinance. He submitted that this was only a matter of form, for in substance the Government is the employer of all the workmen in the Bank and for the purposes of the Industrial Disputes Act they are Government servants. He next pointed to the powers of the Minister who has the right, under section 8, to appoint and to remove all the Directors of the Bank except for the *ex officio* Director, who is the Secretary to the Treasury for the time being. He pointed out that under section 5 the Secretary to the Treasury has the power to issue directions with regard to certain kinds of business which had been done prior to the date of commencement of the Act. He drew attention to section 10 which enables the Minister to make regulations for the purposes of carrying out the principles and provisions embodied in Part I of the Act. The Government, he submitted, had entered a field formerly occupied by private enterprise, and the true character of the Bank was that of a Government Department.

Mr. Alles, in reply, urged that the staff of the Bank is not appointed by the Government but by the Board of Directors. The Directors are not the agents of the Government but of the Corporation, and the Bank

continued as a Corporation under the Bank of Ceylon Ordinance by virtue of sections 10 and 11 : no new Corporation was created, although the Minister would have more powers of control. The regulations that may be framed would not be directives to the Directors but would only be concerned with questions of policy.

Obviously each Corporation, and the terms of the Statute governing it, must be the subject of scrutiny when the question of its true character is raised. For instance, a Corporation to which the State Industrial Corporations Act, No. 49 of 1957, applies is of a widely different sort from the Bank of Ceylon. Once the principles applicable to the determination of the question are known, the character of the particular Corporation can be decided.

In *Tamlin v. Hannaford* [1], Denning, L.J. after pointing out that ministerial control over such a body as this is insufficient to make it a servant or agent of the Crown, said : " When Parliament intends that a new Corporation should act on behalf of the Crown, it as a rule says so expressly, as it did in the case of the Central Land Board by the Town and Country Planning Act, 1947. . . . . In the absence of any such express provision, the proper inference, in the case, at any rate of a commercial Corporation, is that it acts on its own behalf, even though it is controlled by a Government Department." He also pointed out that in the eye of the law the Corporation (in that case the British Transport Commission) is its own master, it has none of the immunities or privileges of the Crown, its servants are not civil servants, and its property is not Crown property. The same observations may properly, I think, be made about the Bank of Ceylon.

There is also the instructive judgment of Rajagopala Ayyangar, J. in *Narayanaswamy Naidu v. Krishnamurthi* [2], which dealt with the Life Insurance Corporation of India. The learned Judge quoted the following passage from an article by Professor Wade in Current Legal Problems, 1949 : " The public Corporation, as an agency distinct from the usual form of Government Department over which a political Minister presides, has evolved in its modern guise from the need for resolving two conflicting considerations ; (*a*) the demand for some form of State intervention (*b*) the resistance to a form of nationalisation which would involve direct administration by the Civil Service. Hence the constitutions of these State agencies have been influenced by the desire to safeguard some of the features of private enterprise and to avoid the closer control necessarily involved in direct administration by the State. "

The tests for determining the constitutional position of such a Corporation laid down by the learned Judge are :

(1) The incorporation of the body, though not determinative, is of some significance as an indication by Parliament of its intention to create a legal entity with a personality of its own distinct from the State.

[1] *(1950) 1 K.B. 18.* [2] *A. I. R. (1958) Madras 343.*

(2) The degree of control exercised by the Minister over the functioning of the Corporation is a very relevant factor, a complete dependence on him marking it as really a governmental body, while comparative freedom to pursue its administration is treated as an element negativing an intention to constitute it a Government agent.

(3) The degree of dependence of the Corporation on the Government for its financial needs.

Guided by these authorities and applying them to the provisions of the Finance Act, No. 65 of 1961, I hold that the Bank of Ceylon is not a Government Department, and that section 48 has not been contravened by the inclusion of the Bank of Ceylon as a party to this industrial dispute.

The next point raised by Mr. de Silva was that the Industrial Court had no power to entertain the application made on behalf of the Banks for its approval in writing to terminate the services of, or punish in any other way, their employees who were on strike. He raised several other objections to the validity of the order made by the Court on these applications. The first objection was that the notice filed by the proctors for the Commercial Banks Association, was not on behalf of the individual Banks, and as the Association had no employees to be dealt with in that way the notice was bad. The Association, as the Union representing its individual members, was entitled to give the notice. But it must not be overlooked that the notice mentions that the application will be made on behalf of the members of the Association for permission in writing to terminate the services of or punish all or any of the employees employed by members of the Association. The second objection was that the notices referred to all or any employees who went on strike and were continuing to strike, without specifying their names. It is true that the strikers are referred to as a class ; the class comprising every employee who struck and was continuing to strike. I do not think it was necessary to mention each employee by name, since both the employee and the employer would know who was intended. The third objection was that nothing was specified as to what punishment, if any, was to be inflicted ; indeed, as appears from the proceedings before the Industrial Court, no decision on this question had been taken by any Bank. In this connection, my attention was invited to the word " approval " to be found in section 40 (1) (*p*).

Section 40 (1) (*p*) reads :

" Any person who being an employer, after an industrial dispute in any industry has been referred for settlement to an industrial court, or for settlement by arbitration to an arbitrator, but before an award in respect of such dispute has been made—

(i) terminates the services of, or punishes in any other way, without the approval in writing of such court or arbitrator, any workman concerned in such dispute, for any act or omission connected with, arising from, or constituting or included in such dispute, or

(ii) in regard to any matter connected with such dispute, alters, to the prejudice of any workman concerned in such dispute, the conditions of service applicable to such workman immediately before the reference of such dispute to such court or arbitrator. shall be guilty of an offence under this Act. "

Mr. de Silva submitted that the appropriate word would have been "permission" if what was contemplated by the Act was a lifting of the ban against action on the part of the employer, as contrasted with "approval" which could only refer to action which had already been decided upon.

This ground of objection raises a large question as to the meaning and effect of section 40 (1) (*p*), which occurs in a section dealing with offences made punishable under section 43 of the Act, and I think I should make a few preliminary observations. Section 40 provides that any person who commits any of the numerous offences specified in that section, one of them being an offence described in section 40 (1) (*p*), shall be guilty of an offence under the Act. The purpose underlying this provision is to preserve the status quo pending proceedings ; to protect workmen concerned in a dispute against victimisation by the employer for having raised, or for continuing, those proceedings. Another purpose is to maintain a peaceful atmosphere until those proceedings are concluded by an award. It will be noticed that, unlike in India where section 33 of the Industrial Disputes Act, 1947, in terms imposes a ban on the employer taking any action against the workman, our Act only makes it a criminal offence to take such action unless approval in writing is obtained. Nevertheless, there is an implied ban in section 40 (1) (*p*), which also provides for the removal of that ban by the granting of approval by the Court or arbitrator.

One thing is clear, and it is that this is a provision dealing only with the criminal liability that will be incurred by an employer who takes certain action against a workman pending the proceedings, and which provides that in order to avoid such liability he must get the approval of the particular tribunal which is inquiring into the dispute. It is open to that tribunal to grant or to refuse its approval, acting entirely in its discretion. Before making its order it could hear evidence if it so desired, or it could only hear arguments. The circumstances of the particular case will undoubtedly decide what course it will adopt. It will be dealt with as an incidental matter brought up by an employer who wishes to protect himself against criminal liability. But the workman or workmen with regard to whom the approval is being sought must undoubtedly have notice of the application, in order that they might be heard before it makes its order on the application. Here I disagree with Mr. Ponnambalam who argued that the employee concerned need not have notice because, he submitted, nothing may eventually be done by the employer and in that event no prejudice will be suffered by the employee. It is clearly a quasi-judicial order that the Court is asked to make, and notice is essential according to the *audi alteram partem* rule.

What happened in the case of these applications was that notice regarding them was given on 8th January, and Counsel for the Banks mentioned them on 10th January before the Court when it began its sittings. The representative of the Union objected to its being dealt with on that day, and the Court directed that it be heard on 12th January. On that day and on six days thereafter, the application was made the subject of argument, and the objections raised before me were also raised before the Court. On 27th January, the Court allowed the applications.

Before I deal with the third objection, I shall deal with a fourth objection raised by Mr. de Silva. He urged that each employee should have been given separate notice of the application made against him, before an order was made against him. I think this objection is answered by the provisions of sections 36 (5) and 36 (6) of the Act, and also by regulation 37 (*b*). The employees who were on strike were being represented before the Court by the Union. The Act and the regulations provide for such representation. The provisions I have referred to enact, in effect, that notice to an officer of the Union is notice to the workmen who were members of the Union. The application was not a new dispute (as Mr. de Silva argued), but "fresh matter relating to the dispute" within section 36 (5). When section 36 (6) says that a workman who is a member of a Trade Union need not be notified of such fresh matter "independently of his Trade Union" it says more than that the notice need not be sent "care of his Trade Union"—which was the meaning Mr. de Silva gave to those words. Now, the application was made against all those employees who were on strike, and it was made on a ground common to all of them, namely, that they were committing an offence by continuing to remain on strike. There can be no doubt that the Union's representative who spoke for the employees well knew that it was one charge that was being brought against all the striking employees, based on one circumstance, viz. that by concerted action they were continuing on strike. The facts were self-evident, although it was disputed whether, by participating in the strike, the employees had rendered themselves liable to be dismissed or otherwise punished.

Returning to the third objection, I find that section 33 of the Indian Act, as amended, provides for "permission in writing" in one class of cases, and "approval of the action taken by the employer" in another class of cases. It is not easy to say exactly what the word "approval" in our Act connotes. It may mean that the employer's application for the removal of the existing embargo on disciplinary action is merely granted. It may also mean that the employer who has decided on a particular course of action, and wants the Tribunal to permit him to follow it, is allowed to do so. The case of *Davis v. Corporation of Leicester* [1] is not an authority for the proposition that you cannot approve of action that is proposed to be taken in alternative ways. It only decided that before approval can be given by a person, he must have full knowledge of what he is giving his approval to. I do not regard the decision of this question as

[1] *(1894) 2 Ch. 208.*

important, because these are Certiorari proceedings. In this case the parties were heard fully before the Court gave its approval, and I am unable to say that the order giving approval is, in the circumstances, one that is liable to be quashed on certiorari. By that I mean that in making its order the Court does not seem to me to have (1) acted without, or in excess of, jurisdiction to make it; (2) made any error apparent on the face of the record; or (3) acted in contravention of the rules of natural justice. As Mr. Ponnambalam pointed out, no statutory procedure is laid down as to what should be done by an employer when he is seeking approval, or by the Tribunal before it gives approval. No time is specified as to when such application should be made, or at what stage in the proceedings, or whether before or after a punishment has been decided upon. No particular type of inquiry has been provided for, nor have the grounds upon which the tribunal should grant or refuse its approval been stipulated. This is, therefore, not even a case where there has been a failure to comply with statutory requirements, in which event it might have been necessary to consider the effect of such failure on the question of jurisdiction. It is a case where the Court itself had to decide, without statutory guidance, whether to allow or to refuse the application. Where all these matters that I have detailed are left unprovided for in the statute, one is only left with the question whether there has been a violation of the principles of natural justice. I can find none here, because the grounds upon which the application was made were known, and a full hearing was accorded to the representative of the employees.

Several cases were cited by either Counsel on the question whether or not an act that is penalised by Statute can be valid. The cases seem to establish the principle that the intention of the legislature must be ascertained from an examination of the particular Statute. In the case of Statutes dealing with the Revenue, and even in others which do not indicate that the act was penalised for the protection of the public or any particular section of the public, the only result of a breach of the Statute will be the incurring of the prescribed penalty. But if the Statute indicates that the prohibited act was intended to be illegal and void, due effect will be given to that intention. My own view, having regard to the object of the Act, which was to ensure industrial peace and prevent victimisation during the pendency of an inquiry into an industrial dispute, is that any action taken by an employer in breach of section 40 (1) (*p*) should be treated as invalid. But in this case, as the orders of dismissal have the protection of the Court's order, that question does not arise for decision.

Many Indian judgments, mainly delivered by the Supreme Court, were referred to in the course of the argument. After careful consideration I have decided that detailed reference to them will only result in confusion rather than clarity. The Indian Statutes and the administrative machinery in India are different, and it is safer to proceed on an examination of our law. I must, however, acknowledge my indebtedness to the Indian judges whose judgments I have read and re-read with admiration. I have profited much thereby, for I have learnt in this way a great deal

about a branch of the law of which I was comparatively ignorant. My thanks are also due to the three Counsel who argued their respective cases with marked ability.

Mr. de Silva urged that there should have been a preliminary inquiry held by each Bank, against each employee upon a proper charge, before the application under section 40 (1) (*p*) was made. As there is no such requirement in this or any other Act, the failure to follow such a procedure cannot, in any event, result in the order being liable to be quashed on certiorari. The reason is that an employer dealing with a workman in disciplinary proceedings does not, on that account, act in a quasi-judicial capacity. The only quasi-judicial order made since this dispute began is the order made by the Court giving its approval: and I have already explained why it was in a judicial position between the Banks and their respective employees. I can see no ground for interfering with it.

There is no legal necessity for an employer to hold an inquiry before he applies for an order under section 40 (1) (*p*), but it may be desirable in some cases, for instance where misconduct of some sort is alleged. The particular tribunal may not be satisfied that there is a prima facie case or that there is bona fides, if there has been no inquiry. But these are matters for the tribunal to consider, when it has to decide the application. I would add that I have no power to sit in judgment on the correctness of the decisions made, for I am not sitting now as a Court of appeal. I can only interfere on certiorari if the order is invalid on any of the three grounds which I have already mentioned. It is for this reason that I have refrained, as far as possible, from expressing any opinions on the merits of this dispute. They have yet to be inquired into. They are irrelevant in the realm of certiorari.

Before I conclude this judgment, I wish to refer to one question which has a bearing on this point. It relates to the reinstatement of the dismissed workmen. Mr. de Silva insisted that the orders of dismissal were final and not open to review by the Industrial Court, because it had made its order allowing the applications of the Banks. He referred me to section 24 (1) which requires the Court to take such decisions as may appear to it to be just and equitable. Mr. Ponnambalam was equally insistent that the Industrial Court could deal with the matter of reinstatement, after going into the merits, acting under section 33 (1) (*b*) which permits an award to contain decisions, inter alia, " as to the reinstatement in service . . . . of any workman . . . . who was dismissed . . . . in the course of any strike . . . . arising out of the industrial dispute ".

I realise that it is a risky thing to make judicial observations obiter, though it is also a well established practice. My only excuse for dealing with this matter is that it affects the employees who have been dismissed, and I feel that if the subject is brought up before the Industrial Court some guidance may be useful. I have already said that no particular type of inquiry is provided for before approval under section 40 (1) (*p*) is granted by the Court. No reasons need be given—as indeed was the case here.

Only the prima facie aspect of the matter has to be considered, and approval granted or refused—without the imposition of any conditions—according as the Court considers that a prima facie case has or has not been made out. The order, if granting approval, does not validate the dismissal, for its effect is only to remove the ban imposed on the employer. What if the workman is dissatisfied with the order ? In India he is entitled to complain to the very tribunal before which the proceedings were pending, and that tribunal is bound to adjudicate upon the complaint as if it were a dispute referred to or pending before it. It has jurisdiction to do complete justice between the parties after going into the merits of the order of dismissal : and it will make, or refuse to make, an order of reinstatement after considering their conflicting claims. I think the position is the same under our law.

I have now dealt with the matters that awaited my decision. But I should like to add one word more. Nobody who listened to the arguments which have been addressed to me over so many days, nobody who heard the beginning and the subsequent history of this dispute unfolded by Counsel on either side, can fail to realise that difficult and anxious human problems await solution. My jurisdiction is a limited one, but the members of the Industrial Court, when their turn comes to inquire into these problems, will no doubt appreciate that they do not sit as a Court of law sits, strictly to adjudicate upon and enforce contractual rights, and obligations. They can create new contracts, and modify existing ones. They have to take account of considerations which bear upon industrial peace and the social well-being of the entire community. It is hardly necessary for me to stress what an anxious and heavy responsibility lies upon them.

In view of my findings—(1) on the validity of the reference, and (2) on the validity of the orders made by the Court upon the applications of the Banks, it follows that this application fails. The Respondents are entitled to their costs.

Application refused.