WERAGAMA
v.
EKSATH LANKA WATHU KAMKARU SAMITHIYA AND OTHERS

SUPREME COURT.
FERNANDO, J.
DHEERARATNE, J. AND
WADUGODAPITIYA, J.
S.C. APPEAL NO. 45/94
H.C. (WP) NO. 21/92
OCTOBER 28TH, 1994.

Certiorari and Mandamus – High Court of a Province – Jurisdiction to issue writs of Certiorari and Mandamus against the President of a Labour Tribunal – Constitution Article 154 P(3) and (4) – High Court of the Provinces (Special Provisions) Act No. 19 of 1990, s. 3.

Article 154P introduced by the Thirteenth Amendment did not confer on High Courts writ jurisdiction in respect of Presidents of Labour Tribunals.

Nor did Parliament by Law confer such a jurisdiction on High Courts under and in terms of Article 154 P(3) (C).

If a law or a statute is covered by a matter in the (exclusive) Provincial Council List, but not otherwise, the exercise of powers thereunder are subject to the writ jurisdiction of the High Court.

Apart from an error in punctuation (semicolon to be ignored or replaced by a comma) the meaning of Article 154P(4) is perfectly clear; and there is no ambiguity, absurdity or injustice justifying modification of language. In the Thirteenth Amendment there was no intention to devolve power. There was nothing more than a re-arrangement of the jurisdictions of the judiciary.

The Jurisdiction of the Court of Appeal is not an entrenched jurisdiction because Article 138 provides that it is subject to the provisions "of any law", "Hence it was always constitutionally permissible for that jurisdiction to be reduced or transferred by ordinary law. (of course, to a body entitled to exercise judicial power). It was the absence of such a provision that made Parliament unable to reduce or affect the jurisdiction of the Court of Appeal under Article 140; because its jurisdiction under Article 140 and 141 are entrenched; but for the proviso inserted by the First Amendment, its jurisdiction under Article 140 cannot be transferred even to the Supreme Court.

Article 154P(3) did not authorise Parliament, by ordinary law, to confer the writ jurisdiction of the Court of Appeal under Article 140 (either exclusively or concurrently) on the High Courts.

Section 3 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990, conferred on the High Courts, appellate and revisionary jurisdiction in respect of Labour Tribunals; the phrase "appellate and revisionary jurisdiction" has been used in Article 154P(3) in contradistinction to the writ jurisdiction and hence the same phrase in Section 3 cannot be interpreted to include the writ jurisdiction.

Cases referred to:

1. *Swastika Textile Industries Ltd. v. Dayaratne*, SC No. 7/92, SC Minutes of 27.10.92.
2. *In re the Thirteenth Amendment*, [1987] 2 Sri LR 312.
3. *In re the Agrarian Services* (Amendment) Bill SC Special Determinations Nos. 2 & 4 of 1991 – Decided on 7.02.1991.

APPEAL from order of High Court (W P).

L C. Seneviratne P.C. with *Lakshman Perera and Shayamal Jayasinghe* for respondent-respondent-appellant.

A. A. de Silva with *Nimal Punchihewa* for applicant-petitioner-respondent.

Cur adv vult.

November, 04th, 1994.
FERNANDO, J.

In this appeal we have to decide whether the High Court of a Province has jurisdiction to issue writs of Certiorari and Mandamus against the President of a Labour Tribunal.

The President of the Labour Tribunal Avissawella refused his application to order the production for inspection of a document from which a witness giving evidence was apparently refreshing his memory, and then granted the Applicant-Petitioner-Respondent ("the Respondent") a postponement subject to payment of costs. Being dissatisfied with those two orders, the Respondent applied to the High Court of the Western Province (sitting at Avissawella) for *Certiorari* and *Mandamus*. A preliminary objection by the Respondent-Respondent-Appellant ("the Appellant") that the High Court had no writ jurisdiction in respect of a President of a Labour Tribunal was overruled by the High Court, relying on *Swastika Textile Industries Ltd. v. Dayaratne* [1], which is contrary to this view of the writ jurisdiction, as I will show later in this judgment – and an article written by Justice Sarath Silva, of which neither the reference nor a copy is in the brief. The Appellant appealed to this Court with special leave.

Prior to the Thirteenth Amendment to the Constitution, the jurisdictions of the Court of Appeal included exclusive appellate and revisionary jurisdiction (under Article 138), and exclusive "writ jurisdiction" (namely, to grant *habeas corpus* under Article 141, and the other prerogative writs under Article 140). These jurisdictions applied *inter alia*, to High Courts, District Courts, Magistrate's Courts, Primary Courts and Labour Tribunals.

The relevant provisions introduced by the Thirteenth Amendment are as follows:

> "154P (3) Every ... High Court (of a Province) shall –
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> (a) exercise according to law, the original criminal jurisdiction of the High Court of Sri Lanka in respect of offences committed within the Province;

(b) notwithstanding anything in Article 138 and subject to any law, exercise appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrate's Courts and Primary Courts within the Province;

(c) exercise such other jurisdiction and powers as Parliament may, by law, provide.

154P (4) Every such High Court shall have jurisdiction to issue, according to law,–

(a) orders in the nature of *habeas corpus* in respect of persons illegally detained within the Province; and

(b) orders in the nature of writs of *certiorari*,prohibition, *procedendo, mandamus*, and *quo warranto*, against any person exercising within the Province, any power under–

(i) any law; or
(ii) any statutes made by a Provincial Council established for that Province,

in respect of any matter set out in the Provincial Council List."

These amendments affected the appellate, revisionary and writ jurisdiction of the Court of Appeal only in two respects. Firstly, Article 154P (3) (b) conferred appellate and revisionary jurisdiction (but not writ jurisdiction) in respect of Magistrate's Courts and Primary Courts (but not Labour Tribunals, or other courts and tribunals); this was "notwithstanding anything in Article 138" (and that Article was in any event "subject to the provisions of the Constitution"), and so **either** the jurisdiction of the Court of Appeal was *pro tanto* transferred to the High Courts or the Court of Appeal and the High Courts had concurrent jurisdiction. Secondly, Article 154P (4) conferred writ jurisdiction over any person exercising, within the Province, any power under any law or statute specified therein; this was not stated to be "exclusive", or "notwithstanding anything in Articles 140 and 141", and hence the High Courts had concurrent jurisdiction with the

Court of Appeal. The Respondent says that "any law" included the enactments under which Presidents of Labour Tribunals exercised their powers, and that therefore High Courts had writ jurisdiction over Labour Tribunals. Apart from that, the Respondent has an alternative submission: he refers to Article 154P (3) (c) – which empowered Parliament, by ordinary law, to confer other jurisdictions on High Courts – and says that Parliament did by law confer on High Courts writ jurisdiction in respect of Presidents of Labour Tribunals; this, he claims, was done by section 3 and/or section 7 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, and/or sections 31D (4) (b) and 31DDD of the Industrial Disputes Act (Cap. 131) as amended by Act No. 32 of 1990.

Thus the appeal involves two questions:

1. Did Article 154P, introduced by the Thirteenth Amendment, confer on High Courts writ jurisdiction in respect of Presidents of Labour Tribunals?

2. Alternatively, did Parliament by law confer such a jurisdiction on High Courts, under and in terms of Article 154P (3) (c)?

1. It is accepted that the Industrial Disputes Act and any other enactments which may confer powers on Labour Tribunals are not within the scope of any item or matter in the Provincial Council List; and also that it is only the Reserved List which contains any item or matter which would cover those enactments and Labour Tribunals – "Justice in so far as it relates to the judiciary and the courts structure [including] ... jurisdiction and powers of all courts ...". Accordingly, those enactments would not fall within "any law ... in respect of any matter set out in the Provincial Council List", and High Courts would not have writ jurisdiction over Labour Tribunals.

However, learned Counsel for the Respondent contends that the final clause of Article 154P (4) does not qualify "any law", but only sub-paragraph (ii). The semicolon appearing after "any law" is an obvious error, because the preceding word "under" must govern both sub-paragraphs (i) and (ii), if sub-paragraph (ii) is to make any sense. Learned Counsel says it should be a full stop, but even then

sub-paragraph (ii) would be meaningless. Accordingly, that semi-colon must be ignored, or a comma substituted. In that event the final clause qualifies both sub-paragraphs which then make perfect sense: if a law or a statute is covered by a matter in the (exclusive) Provincial Council List, but not otherwise, the exercise of powers thereunder are subject to the writ jurisdiction of the High Court. Despite this, learned Counsel invites us to interpret this provision "liberally", and to hold that the final clause qualified only "any statutes". He advanced two reasons for doing so. He referred to the well-known principles of interpretation justifying modification of language in cases of ambiguity, absurdity, injustice, patent error, and the like; and he also urged that the intention of the Thirteenth Amendment was to "devolve" judicial power to the Provinces, which he said had been recognised in the Determination of this Court *In re the Thirteenth Amendment* [2]. On that basis he urged that this Court should adopt a broad interpretation so as to allow writ jurisdiction to the High Courts in respect of powers exercised under any law whatsoever.

Apart from the error in punctuation, the meaning of Article 154P (4) is perfectly clear; and there is no ambiguity, absurdity, or injustice justifying modification of language.

As to the intention of Parliament in adopting the Thirteenth Amendment, this Court cannot attribute an intention except that which appears from the words used by Parliament. I find nothing suggesting a general intention of devolving power to the Provinces; insofar as the three Lists are concerned, only what was specifically mentioned was devolved, and "all subjects and functions **not** specified in List I or List II" were reserved – thus contradicting any such general intention. As for the Determination of this Court regarding the Thirteenth Amendment, the majority held that it did not effect any change in the structure of the Courts or the judicial power of the People; that vesting additional jurisdiction in the High Courts only brought justice nearer home to the citizen, reducing delay and expense; and that the Provincial Council had no control over the judiciary functioning in the Province (per Sharvananda, C.J. at R. 323). Of the three dissenting judgments, only the principal dissent referred to the judiciary. That judgment dealt exhaustively with the

provisions of the Thirteenth Amendment, and its background – terrorism and the secessionist problem, the reasonable governmental efforts made to solve it politically without seeking a military solution, the various negotiations, etc. Although taking the narrow view that there was excessive devolution in respect of legislative and executive power, yet, significantly, it did not find in the Bill, or even in its legislative and executive history, any intention of devolution in regard to the judiciary – and it went no further than observations that the conferment of concurrent writ jurisdiction on the High Court was interference with, and devaluation of, the writ jurisdiction of the Court of Appeal (per Wanasundera, J., at p. 380). None of the five judgments support the Respondent's contention that there was in the Thirteenth Amendment an intention to devolve judicial power. There was nothing more than a re-arrangement of the jurisdictions of the judiciary. To accede to Counsel's invitation to adopt a liberal interpretation would be, in this instance, a clear trespass into the legislative domain.

The first question must therefore be answered in the negative.

2. By the Thirteenth Amendment, Parliament could have taken away (or diminished) even an entrenched jurisdiction of the Court of Appeal, because a constitutional provision can be amended by a later constitutional amendment. But Parliament cannot, by a constitutional amendment, give itself a blanket authorisation to affect an entrenched jurisdiction by means of a subsequent ordinary law. For example, Parliament cannot confer an entrenched jurisdiction of this Court (e.g. under Articles 125 to 127) on High Courts, by an Act passed under and in terms of Article 154P (3). However, the jurisdiction of the Court of Appeal under Article 138 is not an entrenched jurisdiction, because Article 138 provides that it is subject to the provisions "of any law"; hence it was always constitutionally permissible for that jurisdiction to be reduced or transferred by ordinary law (of course, to a body entitled to exercise judicial power). That is the reason why I held (in *Swastika Textile Industries Ltd. v. Dayaratne*, [1] that section 3 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, conferred concurrent, appellate and revisionary jurisdiction on the High Courts

in respect of Labour Tribunals, and that thereafter section 31D3 of the Industrial Disputes Act, as amended by Act No. 32 of 1990, made that jurisdiction exclusive, thereby taking away the jurisdiction of the Court of Appeal in that respect). And it was the absence of such a provision that made Parliament unable to reduce or affect the jurisdiction of the Court of Appeal under Article 140: because "its jurisdictions under Articles 140 and 141 are entrenched; but for the proviso inserted by the First Amendment, its jurisdiction under Article 140 cannot be transferred even to the Supreme Court" (Determination *in re the Agrarian Services (Amendment) Bill* [3]). It had first to remove the entrenchment, thereby giving Parliament the power, by subsequent ordinary law, to transfer part of that jurisdiction to this Court. If a constitutional amendment was necessary in order to transfer part of an entrenched jurisdiction from the Court of Appeal to a higher Court, it would be anomalous indeed if a transfer to an inferior court was possible without such an amendment.

Had the power conferred by Article 154P (3) (c) been enlarged by the inclusion in sub-paragraph (c) of words such as "notwithstanding anything to the contrary in Article 141 of the Constitution", the position might have been different. But in the absence of any removal of the entrenchment of that Article, I hold that Article 154P (3) did not authorise Parliament, by ordinary law, to confer the writ jurisdiction of the Court of Appeal under Article 140 (either exclusively or concurrently) on the High Courts.

While this makes it unnecessary to consider the Respondent's submissions on the second question, I must mention that there is no doubt whatever that Parliament did not even attempt to affect the writ jurisdiction of the Court of Appeal. Section 3 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, conferred on the High Court appellate and revisionary jurisdiction in respect of Labour Tribunals; the phrase "appellate and revisionary jurisdiction" has been used in Article 154P (3) in contradistinction to the writ jurisdiction, and hence the same phrase in section 3 cannot be interpreted to include the writ jurisdiction. None of the other provisions relied on by the Respondent purport to confer jurisdiction.

I therefore answer the second question in the negative.

The order of the High Court is set aside, and appeal is allowed, with costs in a sum of Rs. 2,000.

DHEERARATNE, J. – I agree.

WADUGODAPITIYA, J. – I agree.

Order of High Court set aside.