

Ceylon Tyre Rebuilding Co., Ltd.

v.

Perera and Others

COURT OF APPEAL.

WIMALARATNE, P. AND K. C. E. DE ALWIS, J.

C.A. APPLICATION 2062/78.

SEPTEMBER 25, 1980.

Industrial Disputes Act—Minister's reference to arbitration under section 4 (1)—Same dispute pending before Labour Tribunal—Validity of the reference.

The petitioner Company terminated the 1st respondent's services as Secretary to the Company. Whilst the 1st respondent's application to the Labour Tribunal was pending, the 3rd respondent, as Minister of Labour, made an order under section 4 (1) of the Industrial Disputes Act referring the dispute for arbitration by the 2nd respondent.

The petitioner's objection to the arbitrator's jurisdiction was disallowed and the petitioner made this application to quash the arbitrator's decision and to prohibit him from further proceeding with the reference.

Held

The Minister had the power to make a reference under section 4 (1) of the Act even when there was pending in the Labour Tribunal an application seeking relief in respect of the same dispute.

Nadarajah Ltd. v. Krishnadasan distinguished.

Cases referred to

- (1) *Nadarajah Ltd. v. Krishnadasan*, (1975) 78 N.L.R. 255.
- (2) S. C. 122/68—L.T. 2/19537, S.C. Minutes of 13.11.72.
- (3) *Wimalasena v. Navaratne & Others*, (1978-79) 2 Sri L.R. 10.

APPLICATION for Writs of Prohibition and Certiorari.

H. L. de Silva, with *Chula de Silva*, for the petitioner.

Isidore Fernando, for the 1st respondent.

C. Sithamparapillai, Senior State Counsel, for the 3rd respondent.

Cur. adv. vult.

October 15, 1980.

WIMALARATNE, P.

By this application the petitioner seeks to quash an order dated 12.11.79 made by the 2nd respondent, an arbitrator appointed by the 3rd respondent under section 4 (1) of the Industrial Disputes Act (Cap. 131); and also seeks to prohibit the arbitrator from proceeding further with the arbitration. The order in question is one made on an objection relating to his jurisdiction, taken by the petitioner as a preliminary objection. The objection was on the ground that the Minister of Labour had no power to make a valid reference of an industrial dispute to arbitration under section 4 (1) when there was pending in the Labour Tribunal an application seeking relief under section 31B of the Act in respect of the same dispute. The arbitrator has overruled the preliminary objection.

The events leading to the reference to arbitration are briefly as follows, and do not appear to be in dispute. The 1st respondent's services as secretary of the petitioner company were terminated as from 1.4.76. She made two applications, both on 5.4.76. In one she invoked the provisions of section 6 of the Termination of Employment of Workmen (Special Provisions) Act, No. 45 of 1971; and in the other she sought relief under section 31B of the Industrial Disputes Act in the Labour Tribunal claiming compensation in a sum of Rs. 100,000. The Commissioner of Labour held an inquiry and determined that the termination of her services was illegal, but recommended that she should pursue the question of compensation for wrongful termination before the Labour Tribunal. That was on 23.2.77. The employer filed answer thereafter on 14.3.77 and one of the objections taken was that as the employee had invoked the provisions of the Termination Act, she was not entitled to the relief claimed before the Labour Tribunal; and this, in spite of the fact that the inquiry before the Tribunal was postponed of consent on several occasions pending the disposal of the matter before the Commissioner of Labour.

Whilst written submissions were tendered by the parties pertaining to the jurisdiction of the Labour Tribunal, the 3rd respondent who is the Minister of Labour, made an order under section 4 (1) dated 31.1.78 referring the dispute as to whether the termination of the services of the 1st respondent by the petitioner was justified and as to what relief she is entitled, for determination by the 2nd respondent. Counsel for the 1st respondent thereupon invited the Tribunal to make an order in terms of section 31B (2) (b) which is in the following terms:—

“A labour tribunal shall, where it is so satisfied that such matter constitutes, or forms part of an industrial dispute referred by the Minister under section 4 for settlement by arbitration to an arbitrator, or for settlement to an Industrial Court, make order dismissing the application, without prejudice to the rights of the parties in the industrial dispute.”

The Tribunal made order on 14.7.78 dismissing the application before it without prejudice to the rights of the parties. The petitioner appealed against this order, but the Supreme Court dismissed the appeal on 20.7.79. It is under these circumstances that the Arbitrator made his order disallowing the objection to his jurisdiction.

Learned counsel for the petitioner relied heavily on the decision of the Supreme Court in *Nadarajah Ltd. v. Krishnasadan* (1) on the principle that the Executive cannot interfere

in a pending proceeding of a judicial nature. In that case the Minister had referred an industrial dispute for arbitration by X. He subsequently revoked the reference and issued a fresh reference to Y. But the present case is clearly distinguishable. Not only that, but there is specific provision for such a course implicit in section 31B (2) (b) referred to above. In my view this subsection is applicable not only to a reference to arbitration made before an application is made to the Labour Tribunal, but also to a reference made whilst an application before a Labour Tribunal is pending. Otherwise, it would be quite easy for a party to an industrial dispute to frustrate the Minister's powers under section 4 (1) by "rushing" to a Labour Tribunal with an application for relief under section 31B. This view is supported by a judgment of the Supreme Court (2). In that case too the Minister referred an industrial dispute for arbitration under section 4 (1) whilst proceedings in respect of the same dispute were pending in the Labour Tribunal. The Tribunal refused to suspend the proceedings, heard the case and dismissed it as the application had been filed out of time. G. P. A. Silva, J. held that the proceedings were irregular and without jurisdiction in view of the imperative provisions of section 31B (2) (b); and held further that the Tribunal should have dismissed the action under that section.

The same view has been taken by Ratwatte, J., also in an unreported case (3), where the facts are identical to the facts in the present case.

I am therefore of the view that a reference of an industrial dispute by the Minister under section 4 (1) of the Industrial Disputes Act is a valid reference, even though it be made at a time when proceedings instituted under section 31B of the Act are pending before a Labour Tribunal.

It has also been contended that although the termination of the 1st respondent's services was on 1.4.76, the Minister's reference under section 4 (1) was not made until 31.1.78. Quite apart from the absence of a time limit stipulated in section 4 (1), it has to be stated that the petitioner himself was solely responsible for the delay, and cannot be heard to complain.

For these reasons I would dismiss this application, with costs payable by the petitioner to the 1st respondent in a sum of Rs. 500, and to the other respondents in a sum of Rs. 500.

K. C. E. DE ALWIS, J.—I agree.

Application dismissed.