
**MRS. W. PETER DE SILVA
V.
HERATH AND OTHERS**

SUPREME COURT

WANASUNDERA, J., RATWATTE, J. AND ABDUL CADER, J.
S.C. NO. 65/82, C. A./L. A. NO. 9/82, C. A. NO. 319/81
NOVEMBER 11, 1983.

Ceylon Petroleum Corporation Act, Sections 44 and 45 — Claims for compensation—Reference to the tribunal for determination — Petitioner and 11th to 15th Respondents failed to make submissions within the stipulated time.

The property in question was vested in the Ceylon Petroleum Corporation and the Chairman by notice published in the Gazette in terms of Section 44 of Act No. 28 of 1961 directed all persons who were interested in the property to make their claims within a period of one month. The 6th to 10th Respondents submitted their claims within time and the Chairman of the Corporation referred it to the Compensation Tribunal for determination of the amount of compensation payable. The Petitioner and the 11th to 15th Respondents did not submit any claims to the Corporation, but made their claims before the Compensation Tribunal which was divided on whether it should be entertained. As their term of office was about to expire they made a minute for the matter to be placed before the new tribunal which however rejected the claim.

It was submitted that since the first tribunal had permitted the Petitioner and the other respondents to intervene, it was not open to the 2nd tribunal to set aside that order and also that section 45 does not exclude the determination by the Compensation Tribunal of claims other than those forwarded by the Chairman of the Corporation.

Held —

The Compensation Tribunal has no jurisdiction to entertain any claims for compensation other than those referred to it by the Chairman of the Corporation.

The second tribunal was right in refusing to entertain the claims for the reason that they had failed to make their claims to the Chairman of the Board of Directors in accordance with the provision of Section 44.

As the first tribunal has no jurisdiction to permit the Petitioner and the Respondents to intervene before the tribunal, the second tribunal was not bound by the order of the first tribunal.

APPEAL from judgement of the Court of Appeal.

Faiz Musthapha for Appellant.

I. G. H. De J. Seneviratne with *M. B. Peramune* for the 6th 10th Respondeants.

Romesh de Silva for the 11th — 15th Respondents.

Cur. adv. vult

November 1, 1983.

ABDUL CADER, J.

The property in question was vested in the Ceylon Petroleum Corporation on 23.4.74 and the Chairman by notice published in the Gazette on 26.4.74 in terms of Section 44 of Act No. 28 of 1961 directed all persons who were interested in the property to make their claims within a period of one month reckoned from 1.6.74. The 6 to 10 Respondents submitted their claims within the due period and the Chairman of the Corporation referred it to the Compensation Tribunal for determination of the amount of compensation payable. The petitioner and the 11th to 15th respondents did not submit any claims to the Corporation, but made their claims before the Compensation Tribunal. The date of reference is not known, but Counsel admitted that the claims were submitted to the Tribunal on 29.11.79 after the Corporation had referred the matter to the Compensation Tribunal. It is conceded—(1) that the petitioner and the 11th to 15th Respondents had failed to submit their claims within the stipulated one month in terms of Section 44 and (2) they had not made their claims to the Corporation.

When the matter came up before the Tribunal, objection was taken to the Petitioner and the Respondents being heard. While two members of the Tribunal took the view that their claims may be entertained, the Chairman took the contrary view. When their term of office was about to expire, they made a minute that this dispute was to be decided by the new Tribunal without reference to their order. The new Tribunal rejected the claims of the petitioner and these 11th — 15th respondents.

It is against this order that the Petitioner and the Respondents appealed to the Court of Appeal. The Court of Appeal took the

view that " a person who has made a claim for compensation: " referred to Section 65 (1) (a) and the entirety of Section 63 can only mean in the context, a person who has made a claim at the outset to the Chairman of the Board of Directors in terms of Section 44 of the Act and any other interpretation would render meaningless Section 64(3) and held that the Compensation Tribunal has no jurisdiction to entertain any claims to compensation other than those referred to it by the Chairman of the Corporation.

As a second contention, the Petitioner has submitted that in-as much as the first Tribunal had permitted the Petitioner and the other Respondents to intervene, it was not open to the 2nd Tribunal to set aside that order. The Court of Appeal decided that the second Tribunal was right in refusing to entertain the claims for the reason that they had failed to make their claims to the Chairman of the Board of Directors in accordance with the provisions of Section 44.

In appeal before us, Mr. Musthapha contended for the Petitioner that Section 45 does not exclude the determination by the Compensation Tribunal of claims other than those forwarded by the Chairman of the Corporation and in support of his contention he drew our attention to Section 65 (i)(e) which requires the Tribunal to apportion the compensation among the persons entitled to compensation. To the word " entitled " he gave the broadest meaning, namely any person who is entitled to the property acquired would be entitled to compensation if he makes his claim before the tribunal which is the determining authority. He also sought to obtain assistance from Section 65 (2) and submitted that it did not apply where there is or are one or more claimants before the Tribunal and the purpose of appointing a tribunal being to distribute the compensation among all persons found to have title to the property, the law should be interpreted so as to enable the conclusion of all matters in dispute as between the rival claimants.

Counsel also sought assistance from Section 54 which states that where compensation is payable to any person

and " where such person is dead or not in existence or not known " it shall be paid to any District Court " He gave the illustration of one person who is entitled to half share, in the process proving his brother's title to the other half in favour of his brother who is not a claimant and submitted that here was a case where the half share owner was known and there is no provision in Section 54 for such an eventuality. He submitted that though Section 46 requires the Chairman of the Corporation to transmit to the Compensation Tribunal " all claims made to such compensation, together with all documents furnished by the claimants in support of their claims ", it does not mean that only the claims made to the Chairman in response to the notice fall within the jurisdiction of the Compensation Tribunal for determination.

Section 65(c) cannot be read alone by itself, but it is part of the entire Section as shown by the word " and " at the end of the sub-paragraph B of Subsection 1. Section 65(1) reads as follows :—

" Where a reference for an award as to compensation is made to the Tribunal in respect of any property vested in or requisitioned for the Corporation, the Tribunal shall, after considering all such matters and hearing all such witnesses as may be necessary for the purpose and after complying with the provisions of section 63 and section 64, make, save as otherwise provided in sub-section (2), an award determining "—

- (a) whether or not each person who has made a claim to compensation is a person entitled to compensation, and if so, the capacity in which he is so entitled,
- (b) the amount of the compensation payable in respect of such property in accordance with the provisions of this Act **and**
- (c) the apportionment of the compensation among the persons entitled to compensation :

Provided that, where there is a dispute as in the persons entitled to such compensation or as to the apportionment

of such compensation among the persons entitled to such compensation, the Tribunal shall defer making an award and shall refer the dispute for the decision to the District Court within whose local jurisdiction such property, being immovable property, is situate, or being movable property, was kept at the time it was so vested, and shall, after such Court makes its decision on such dispute, make an award in accordance with such decision."

This Section refers to the reference made under Section 46 and under Section 46, only claims that have been made to the Chairman are remitted along with the reference to the Tribunal. Section 63 refers to every person " who has made a claim to compensation " and section 64 has provisions in regard to the evidentiary value of the material furnished under Section 45 in response to the notice under Section 44.

Section 65 (1)(a) refers to " a person who has made a claim to compensation ", whether such person is entitled to compensation. Subsection (c), therefore, refers to the apportionment of compensation decided in terms of subsection (a). To give the wide meaning that Counsel for the petitioner gave to this subsection would be to enlarge the meaning of the word " entitle " beyond its scope and the context of all these sections.

As regards Section 54, it is no doubt true that this Section does not refer to a person who to the knowledge of the Tribunal, as a result of the evidence placed before the Tribunal by some other person, is entitled to a share of the property, but that will not alter the meaning of all the other Sections which are quite clear. It is to be noted that this section is applicable only when compensation is payable. In any event, such a situation does not arise in these proceedings as the two sets of parties are rival claimants to the entirety of the compensation. It may well be that in appropriate circumstances, the words ' not known ' may include " not claimed in terms of the Act ".

Counsel for the 11th to 15th respondents, for his part, referred us to proviso to Section 65(1) and attempted to find support from the phrase " entitled to such compensation " appearing in

that proviso. The phrase "entitled to such compensation" is applicable to Section 65 (1)(a) and the phrase "apportionment of such compensation" to Section 65(1)(c). It is significant that the word "entitled" appears in one clause and "apportionment" in another, so as to spotlight the distinction between paragraph (a) and paragraph (c), but, nevertheless, in a complementary nature of one to the other. To accept this contention would be to set at nought the time limit prescribed in Section 14 and the procedure outlined in the subsequent sections.

Therefore, the first submission that the parties are entitled to make a claim before the Tribunal in the first instance fails.

As regards the second submission that the second Tribunal should adopt the decision of the first Tribunal, even if such a duty rests on the second Tribunal, there cannot be any application of that principle to what has been done by the first Tribunal without jurisdiction. As the first Tribunal has no jurisdiction to permit the Petitioner and the Respondents to intervene before the Tribunal, the second Tribunal was not bound by the order of the first Tribunal.

The appeal is therefore, dismissed.

The Petitioner and the 11th to 15th Respondents will jointly pay the costs of this appeal to the 6th to 10th Respondents.

WANASUNDERA, J. — I agree.

RATWATTE, J. — I agree.

Appeal dismissed