SERENDIB COCONUT PRODUCTS LTD., (In Voluntary Liquidation) AND OTHERS v COMMISSIONER-GENERAL OF LABOUR AND OTHERS

COURT OF APPEAL
SRIPAVAN, J.
C.A. NO. 1538/2000
MARCH 25 AND
JULY 10, 2003 AND
MARCH 18 AND 25 AND
JUNE 16, AND
AUGUST 25, 2004

Termination of Employment of Workmen (Special Provisions) Act, No. 45 of 1971, sections 2, 5 and 6(A)(1) – Permission sought after closure – Validity – Is voluntary winding up a closure?

Held:

i) Application for seeking permission to terminate the services was made after the closure of the activities of the company. This is in contravention of section 2. It is null and void.
ii) Voluntary winding up is a closure within the meaning of section 6A.

Per Sripavan, J.

"The Termination of Employment of Workmen, (Special Provisions) Act is a special legislation which makes special provision in respect of the termination of the services of workmen in certain employments by their employers. By closure the workmen are suddenly thrown out of employment for no fault of theirs and have to face hardships; that is why the legislature gives a discretion to the Commissioner to make an order for compensation."

i) All what the court can do is to see that the power which is claimed falls within the four corners of the powers given by the legislature and that those powers are exercised in good faith.

APPLICATION for writ of *certiorari*

1. *Browns Engineering Pvt, Ltd.* v *Commissioner of Labour and others* – (1998) 1 Sri LR 88 at 91.
2. *Kamani Chandrika Kumarasinghe* v *Someswaran and others* – CA 242/9 – CAM 24.8.2000
3. *Associated Provincial Picture House Ltd* v *Wednesbury Corporation* – (1948) 1 KB 223

Romesh de Silva, PC with *Harsha Amarasekera* for petitioner

Nihal Jayawardene, Senior State Counsel for 1st and 2nd respondents

Chamantha Weerakoon Unamboowa for 3rd to 6th, 9th and 10th respondents.

Cur.adv.vult

August 27, 2004

SRIPAVAN, J.

The petitioners are the joint liquidators of Serendib Coconut Products Limited (hereinafter referred to as the "Company"). The fourth to tenth respondents were employees of the said company who made complaints to the first respondent alleging that their services with the said company were terminated in contravention of the provisions of the Termination of Employment of Workmen (Special Provisions) Act, No. 45 of 1971 as amended. It would appear that the company closed down its factory for business on 16th July 1999 even though salaries were paid to its employees till the end of July 1999. However, as evidenced by the document

marked X3 an application was made on 27th July 1999 by the Deputy Chairman and Chief Executive of the company, to the first respondent seeking permission to terminate the services of the employees of the company effective from 31st July 1999.

Learned President's Counsel for the petitioner submitted that the company was suffering losses in 1995 as shown by the Audited Accounts marked X1 and the company's products manufactured in Sri Lanka became un-competitive in the world market resulting in further losses being incurred by the company; it was in those circumstances, a decision was taken to voluntarily wind-up the affairs of the company and the petitioners were appointed in order to oversee the liquidation proceedings. Nevertheless, the company made an application to the first respondent to terminate the services of its workmen for the reasons set out in X3.

As observed by Jayasuriya, J. in *Browns Engineering Pvt Ltd* v *Commissioner of Labour and others*[1] "had such an application been made, the Commissioner of Labour would undoubtedly have had the opportunity to inquire and investigate into the actual necessity for closure and also the opportunity to regulate and supervise the process of closure according to the attendant circumstances relating to the desired closure. That opportunity was denied due to the hasty and sudden decision of the petitioner-company to effect a closure without seeking such permission and approval. The petitioner-company in law had the right to take the aforesaid decision but when such a decision is taken, they are liable in law to pay compensation to the employees in terms of the provisions of sec. 6(A)(1) of the Termination of Employment of Workmen (Special Provisions) Act."

In the present application, it is observed that an application for seeking permission was made after the closure of the activities of the company. This is in contravention of sec. 2 of the said Act as no prior written consent of the workmen were obtained. Accordingly, section 5 of the said Act comes into operation and the effect of such termination is that it shall be null and void and be of no effect whatsoever. If an act is a nullity, it is automatically null and void and deprived of any legal effect.

Learned President's Counsel strenuously contended that "vol-

untary winding up" is not a "closure" within the meaning of section 6 A of the said Act. With all due respect, I am unable to agree with this submission. The Termination of Employment of Workmen (Special Provisions) Act is a special legislation which makes special provisions in respect of the termination of the services of workmen in certain employments by their employers. Permission of the first respondent is mandatory prior to such termination unless the workman gives his consent in writing, in advance. Neither the prior written consent of the workmen nor the written approval of the first respondent was obtained before the closure of the company. Further, by closure the workmen are suddenly thrown out of employment for no fault of theirs and have to face hardships. That is why the legislature gives a discretion to the first respondent to make an order for compensation. J.A.N. de Silva, J. (as he then was) in *Kamani Chandrika Kumarasinghe* v *Someswaran and others*(2) observed that the Commissioner of Labour is vested with a discretion to order compensation in terms of section 6 A of the Act. Parliament commits to the first respondent the discretion to decide and if that discretion is *bona fide* exercised, no court can interfere with his decision. All what the court can do is to see that the power which is claimed falls within the four corners of the powers given by the legislature and that those powers are exercised in good faith. As the petition does not disclose any *mala fide* against the first respondent, this court is reluctant to interfere with his findings.

I agree with the submission of the learned Counsel for the respondents that the company failed to comply with the mandatory provision of the Act and as such the order made by the first respondent directing the company to make a payment of two months salary as compensation for each year of employment cannot be considered as unreasonable. It could not have been the intention of the legislature to leave a workman helpless after having provided that termination of his services is null and void. Patent unreasonableness as a ground of challenge was described in *Associated Provincial Picture House Ltd* v *Wednesbury Corporation*(3) as "where a decision is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere; to prove a case of that kind would require something overwhelming."

When subjecting some administrative act or order to judicial review, the court is only concerned with its legality, namely, whether the order under attack shall be allowed to stand. I do not see any abuse of discretionary power on the part of the first respondent. Since the company is under liquidation the amounts ordered by the 90
first respondent has to be paid by the liquidators. The order sought to be quashed is accordingly varied and the liquidators of the company are directed to pay the amounts ordered by the first respondent. Subject to this variation, the petitioners' application is dismissed, in all the circumstances without costs.

Application dismissed; order varied.