THIRUNAVAKARASU

v.

SIRIWARDENA AND OTHERS

SUPREME COURT
SAMARAWICKREMA J, ISMAIL J. AND WANASUNDERA J.
S. C. 33/80 C. A. APPLICATION NO. 669/78
C. A. (L. A.) NO. 14/80 S. C. JANUARY 22ND AND 23, 1981.

Writs – Certiorari and Mandamus – S 20(1) and s 34 Industrial Disputes Act – Interpretation of Award – Failure to quantify award – Jurisdiction – Regulation 29 made under Industrial Disputes Act – Right of arbitrator to correct clerical and arithmetical error – Repudiation.

Regulation 29 (made under the Industrial Disputes Act) allows an arbitrator to correct any clerical or arithmetical error in the award. This is a merely ministerial or administration act and can be exercised *ex mero motu* by the tribunal and in the absence of the parties. On other hand the powers given by s 34 of the Industrial Disputes Act are markedly different and can only be exercised by the Tribunal upon a reference by the Commissioner or one of the interested parties. The section contemplates a "decision" on the part of the Tribunal upon such reference. If, for any reason, the matter cannot be referred to the original Tribunal, it must go to an Industrial Court. The decision must follow a hearing. A hearing is essential and can be dispensed with only upon the consent of the parties. Section 34 clearly envisages proceedings of a quasi-judicial nature. It permits interpretation of the original award. It enables the arbitrator to quantify the back wages ordered in the original award and so make a supplementary award.

What an award seeks to do is to resolve the dispute by formulating a new set of terms and conditions, which are fair and reasonable to both parties and imposing such terms on the parties so that these terms and conditions will supersede the original position of the parties and provide a new relationship that would henceforth guide the conduct of the parties. These terms and conditions are statutorily made implied terms in the contract of employment. The award will additionally be operative for a minimum period of twelve months. The law allows a repudiation at any time after the required minimum period but such repudiation can have only prospective application and cannot affect any rights and obligations that have already accrued to the parties. From and after the date of repudiation the parties are freed from the constraints and fetters of the award and the parties may order their affairs like any other employer or employee but any change can only be effected from the prevailing position – the terms and conditions then subsisting (including those that came in by way of the award) necessarily forming the starting point.

(1) *Commercial Banks Association v Thalgodapitiya* – 60 *N* L R 241
(2) *South Indian Bank v Checko* (1964) Labour Law Journal 19
(3) *Yamuna Mills Co. Ltd. v. Majoor Mahajan Mandal* (1957) (1) Labour Law Journal 620.
(4) *Bilash Chandra Mitra v. Balmer Lawrie & Co. Ltd* A I R 1953 Cal. 613.
(5) *J. C. Adak v. Mukherjee* AIR 1950 Cal. 577.
(6) *Mangaladas Narandas v. Payment of Wages Authority* (1957) (11) Labour Law Journal 256.
(7) *Workmen of Andra Bank Ltd. v. Andra Bank Ltd* (1964) (1) Labour Law Journal 243.

Appeal from judgment of the Court of Appeal.

V. S. A. Pullenayagam with S. C. Chandrahasan and Miss Mangalam Kanapathipillai for petitioner-appellant.

1st respondent-respondent not represented.
Nimal Senanayake with Miss S. M. Senaratne and Mrs A. B. Dissanayake for the 2nd respondent-respondent.

Douglas Premaratne, Senior State Counsel with K. C. Kamalasabayson, State Counsel for 3rd respondent-respondent.

Cur. adv. vult,

March 12, 1981

WANASUNDERA, J.

This is an appeal from a Judgment of the Court of Apeal refusing the application of the appellant for the issue of Mandates in the nature of Writs of *Certiorari* and *Mandamus* to quash an award of the 1st respondent who functioned as an arbitrator under the Industrial Disputes Act.

In February 1973, the appellant-employer had terminated the services of six workmen (who are represented in these proceedings by their Union, the 2nd respondent) on the grounds of insubordination and absenteeism. Upon representation made to him, the Minister in terms of section 4 of the said Act referred this dispute to the 1st respondent for settlement by arbitration. The award of the 1st respondent was made on 5th November 1975 and was published in the Gazette of 5th December 1975.

The award was to the effect that four of the workmen should be reinstated with full back wages during the period of non-employment. Another one was also to be reinstated, but with half back wages. The sixth workman was to be reinstated without the payment of back wages. In his case, however, the employer was given the choice of keeping him or terminating his services upon the payment of compensation.

The appellant sought to quash this award by an application for a Mandate in the nature of a writ of *Certiorari.* In June 1977, the Supreme Court refused his application. The workmen were thereafter reinstated, but the appellant refused to pay the back wages declared by the award. The appellant's excuse is that the award is defective inasmuch as the arbitrator had failed or neglected to compute the actual amount he was liable to pay.

On 4th November 1977, the appellant, acting in terms of the provisions of section 20(1) of the Act, gave written notice to the Commissioner of Labour and the respondent Union repudiating the award. In terms of this section, the award comes to an end only upon three months succeeding the month in which the notice is received by the Commissioner of Labour, and that would be from 1st March 1978.

In December 1977, that is while the award was still operative and awaiting the repudiation taking effect, the 2nd respondent Union, acting in terms of section 34, made an application to the arbitrator seeking an interpretation of the award. This was presumably done to have the matter of back wages elucidated.

The appellant objected to these proceedings and he made another application to the Court for a Mandate in the nature of a Writ of Prohibition to prevent the arbitrator from embarking on any such inquiry. This petition was numbered S. C. Application No. 206/78.

The arbitrator who had already taken some steps to hold an inquiry proceeded with the inquiry since further proceedings by him were not restrained by any order of court. After inquiry on the 1st of September 1978, the arbitrator made an order quantifying the amounts which were due as back wages to these workmen.

The appellant has now made a further application to quash this "supplementary award". The present application and application No. S. C. 206/78 were taken up together by the Court of Appeal. The two grounds urged before us by Mr. Pullenayagam were also the basis of the submissions before that Court.

The first ground relates to the interpretation of the provisions of section 34. More specifically it turns on the correct meaning to be assigned to the words "Interpretation of any award". in that section. Mr. Pullenayagam contended that the "Interpretation "

permitted by section 34 was a restricted power. He seeks support for his submission in the ordinary meaning of the word 'interpret' and submits that this restricted power does not enable the arbitrator to quantify the back wages as he sought to do in this case.

Mr. Pullenayagam's second submission is more substantial in nature. It challenges the jurisdiction of the arbitrator to make the "supplementary award". This is the manner in which he has reasoned it out. The "supplementary award" is by section 34(2) " deemed to form part of and shall have the same effect in all respects as the original award". Since the original award ceased to be operative with effect from 1st March 1978, the arbitrator had no authority, subsequent to that date, to engage in the interpretation of an award which was now null and void.

The Court of Appeal has held against the appellant on both these grounds.

Our attention has been drawn to regulation 29 made under the Industrial Disputes Act and the decision in *Commercial Bank Association v. Thalgodapitiya*[1] which relates to the first ground. There are no local decisions touching the second ground and the matter as far as we are aware is *res integra.*

Regulation 29 allows an arbitrator to correct any clerical or arithmetical error in the award. Mr. Premaratne, Senior State Counsel, has quite rightly compared this regulation with the power given to a Court by section 189, Civil Procedure Code, to correct clerical or arithmetical errors or any error arising from an accidental slip or omission. The powers given here are merely ministerial or administrative in nature and can be exercised *ex mero motu* by the tribunal and in the absence of the parties. On the other hand, the power given by section 34 of the Industrial Disputes Act is markedly different. Under section 34 of the Act, the power can only be exercised by the Tribunal upon a reference by the Commissioner or one of the interested parties. The section contemplates a "decision" on the part of the Tribunal upon such reference. If, for any reason, the matter cannot be referred to the original Tribunal, it must go to an Industrial Court. The decision must follow a hearing and a hearing is essential and can be dispensed with only upon the consent of the parties. Section 34 clearly envisages proceedings of a

quasi-judicial nature. The very fact that there exists another provision for the correction of clerical or arithmetical errors in regulation 29 is sufficient to indicate the wider scope of the powers of section 34.

Let me now see whether the restricted meaning of the word "interpretation"given by Mr. Pullenayagam adequately fits the context of section 34. The dictionary meaning or the word "interpretation" is "the action of interpreting or explaining: explanation, exposition". And the word interpret is defined as "to expound the meaning of (something abstruse or mysterious); to render (words, writings or author etc.) clear or explicit; to elucidate, to explain". In fact one of the first examples given in the use of the word is "Interpretation of Nature" a phrase used by Bacon to denote the discovery of natural laws by means of induction. It will be observed that these meanings are consonant with what we understand by the term 'interpretation' in the legal sphere.

Courts when called upon to interpret statutes and documents are permitted to look at extraneous material. The functions of a court cannot be equated to that of a mechanical instrument which merely reproduces faithfully and impersonally something that has been pre-recorded. It is now generally admitted that courts have and often do play a creative role in exercise of their functions. If authority is needed to show the use of this term in its wider context, one has only to think of cases like *Heydon's case* or of statutes and reputed texts which recognise the right of a court to admit extrinsic material in aid of interpretation. In such contexts we find that the term interpretation is used to describe that exercise. *Vide* Phipson : Evidence, 8th Edn., Chapter XLVI.

Turning from these general observations to the facts of the present case I find that it bears close similarity to the facts in the case of *Commercial Bank Association v. Thalgodapitiya.* (supra) In that case the Commissioner of Labour referred for settlement by arbitration an industrial dispute relating to certain superannuation schemes. The arbitrator in his award had formulated two separate schemes—one in respect of pensions and the other for a provident fund. As regards the provident fund scheme, the arbitrator had specified the date on which it should come into force; but due to

inadvertence, he failed to specify a date for the commencement of the pension scheme.

The matter was referred back to the arbitrator in terms of section 34 and the arbitrator stated that he had intended the pension fund scheme also to start from the same date as the provident fund scheme. It was sought to argue that the arbitrator had misconstrued section 34 and had acted contrary to the provisions of section 18(2) which deals with the date the award comes into force. It would appear that the point now taken up by Mr Pullenayagum was not an argument put forward in that case. Weerasooriya, J., however, in the course of his judgment went on to make certain observations about the scope of section 34. He said:

> "The Act does not contain express provision for the correction or modification of an award once it has been made. Such provision is contained in section 14 of the Arbitration Ordinance (Cap. 83) and section 687 and 688 of the Civil Procedure Code. But section 21 of the Act provides that neither the Arbitration Ordinance nor the provisions of the Civil Procedure Code relating to arbitration shall apply to proceedings before an arbitrator under the Act. Notwithstanding the absence of express provision in the Act for the correction or modification of an award, I am unable to take the view that an award once made must remain unalterable even in respect of obvious errors and omissions. It seems to me that an arbitrator to whom an award is referred for interpretation under section 34(1) of the Act is entitled to correct such errors and omissions in the award in giving his decision on any question submitted to him."

At the date of this decision, regulation 29 had not been enacted and the absence of such a provision has obviously influenced these *dicta*. The provision of section 34 are no doubt circumscribed and must be interpreted within limits, but Justice Weerasooriya appears to have taken an unduly narrow view of these provisions almost equating them to regulation 29. I have already contrasted these two provisions and sought to show that they are mutually exclusive and should operate as such.

Justice Weerasooriya was loth to inquire into the corresponding position where arbitration under the civil law was concerned. I

think such a comparison could be useful bearing in mind no doubt that there are some differences between such civil law arbitration and industrial arbitration. An industrial arbitrator has much wider powers both as regards the scope of the inquiry and the kind of orders he can make than an arbitrator in the civil law. In short we can fairly say that arbitration under the Industrial Law is intended to be even more liberal, informal and flexible than commercial arbitration. And the effect of section 21 of the Industrial Disputes Act is to indicate that even the rules relating to arbitration in the civil law should not be allowed to trammel the powers of inquiry given to an arbitrator under the Act. Nevertheless, some of the basic principles and concepts of arbitration are common to both. While it is true that the Industrial Disputes Act expressly states that the provisions relating to arbitration under the civil law are inapplicable, a comparison of these provisions should no doubt be helpful and enable us to take our bearings and to accord to industrial arbitration a latitude even greater than what now obtains in arbitration under the civil law.

But under the Civil Procedure Code and the Arbitration Ordinance (Cap. 98), there are wide-ranging provisions for amendments and corrections to be made in an award. Section 14 of the Arbitration Ordinance reads:

> "The court may, on the application of either party, modify or correct an award, where it appears that a part of the award is upon matters not referred to the arbitrators (provided that such part can be separated from the other part and does not affect the decision on the matter referred), or where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision. The court may also, on such application, make such order as it thinks just respecting the costs of the arbitration, if any question arise respecting such costs and the award contains no sufficient provision concerning them."

Section 15 provides for remitting the award back to the arbitrator. It reads:

> "In any of the following cases the court shall have power to remit the award or any of the matters referred to arbitration to

the reconsideration of the same arbitrators or umpire, upon such terms as it may think proper, that is to say:

(a) if the award has left undetermined some of the matters referred to arbitration, or if it determine matters not referred to arbitration;

(b) if the award is so indefinite as to be incapable of execution;

(c) if an objection to the legality of the award is apparent upon the face of the award."

The corresponding provisions of the Civil Procedure Code are sections 688 to 690.

Coming back to the present case, we find that the arbitrator has ordered back wages for the period of non-employment. The wages including allowances are generally ascertainable from the pay sheet and about which there could be little likelihood of contention. At the second inquiry these matters appear to have been agreed upon as revealed by the arbitrator's order:

"As regards the amounts payable to the workmen concerned up to the date on which they were to be reinstated according to the award, there is no dispute between the parties."

In the case of *Commercial Bank Association v. Thalgodapitiya (supra)*, a date which was in the mind of the arbitrator of which there was no specific indication in the written record came to be inserted as a correction. In the present case, the correction of the award involves a pure arithmetical exercise, namely the calculation of the sum concerned which has to be arrived at by multiplying two readily available figures, i. e. the amount of wages into the number of months that were relevant. The results arrived at correspond exactly to the determination in the award and is now spelled out numerically and in no wise go beyond it or fall short of it. In these circumstances, could one say that the arbitrator acted unreasonably or that he ought not to have acted in the manner he has done, or that his action falls outside the provisions of section 34 ? For the above reasons I am unable to accept the argument submitted to me by the appellant and this ground therefore fails.

The second submission of Mr. Pullenayagam is a matter of some complexity and we have been informed that there are no local decisions dealing with the question. The question that has been posed is whether or not an award once it is repudiated has the effect, as it were, of wiping the slate clean so that the award and its effects will

disappear altogether as if they had never existed from the inception. I must confess that I find it difficult to accept this argument both on principle and practice. I do not think it can be seriously contended that in respect of the factual position relating to such an award that facts and events that had already transpired could be wished away and made to disappear in this manner. The view that any rights and obligations created and subsisting under an award would also be rendered null and void from their inception by virtue of a repudiation, is based on a similar misconception. To find an answer to this question we need go to the roots of industrial arbitration and try to understand what it signifies.

The Industrial Disputes Act provides for State intervention in the resolution of disputes between management and workmen. The procedures that are devised therein for the settlement of industrial disputes are founded on a view that such disputes reach beyond the interests of the contesting parties and are matters of real concern to the community at large.

The award in the case of an arbitration therefore is not intended to be a respite and to provide a temporary breathing space leaving the parties free thereafter to reopen the disputes. No; the award is intended to be a true settlement of the existing dispute and that settlement is made binding on the parties with the sanction of the award behind it. What the award seeks to do is to resolve the dispute by formulating a new set of terms and conditions, which are fair and reasonable to both parties, and imposing such terms on the parties so that these terms and conditions will supersede the original position of the parties and provide a new relationship that would henceforth guide the conduct of the parties. These terms and conditions are statutorily made implied terms in the contract of employment. In addition to that, the award will be binding on the parties and is made operative in its character of an award for a minumum period of twelve months. This means that there are some special sanctions, including criminal sanctions to back the award in its character as an award. During that period and in respect of that period when the award will subsist, all rights and liabilities pertaining to the award in its character as an award can be enforced as an award.

The law no doubt allows a repudiation of the award at any time after the required minimum period. What then is the effect of such a repudiation? In my view such a repudiation can have only prospective application and cannot affect any rights and obligations that have already accrued to the parties and have become terms and conditions of service. From and after the date of repudiation the parties are freed from the constraints and fetters of the award in its nature as an award. Henceforth the parties would be at liberty to order their affairs like any other employer or employee but - and this is important—any change that is sought can only be effected from the prevailing position; by this I mean that the terms and conditions then subsisting (which will include those that came in by way of the award) must necessarily form the starting point. A repudiation of an award in my view can never result in a going back to the contentious position of the parties which had originally prevailed at the time of the dispute. To do so would be to devalue the concept of arbitration altogether and to make arbitral proceedings an almost useless exercise.

In this connection I observe that the Indian cases that I have been able to peruse appear to proceed on these same lines. In *South Indian Bank v. Checko* [2] which is a judgment of the Indian Supreme Court, I find a clear exposition of the legal position relating to this matter. The court observed:

"Quite apart from this, however, it appears to us that even if an award has ceased to be in operation or in force and has ceased to be binding on the parties under the provisions of S. 19(6), it will continue to have its effect as a contract between the parties that has been made by industrial adjudication in place of the old contract. So long as the award remains in operation under S. 19(3), S. 23(c) stands in the way of any strike by the workmen and lockout by the employer in respect of any matter covered by the award. Again, so long as the award is binding on a party, breach of any of its terms will make the party liable to penalty under S. 29 of the Act, to imprisonment which may extend to six months or with fine or with both. After the period of its operation, and also the period for which the award is binding have elapsed Ss. 23 and 29 can have no operation. We can however see nothing in the scheme of the Industrial Disputes Act to justify a conclusion that merely

because these special provision as regards prohibition of strikes and lockouts and of penalties for breach of award cease to be effective, the new contract as embodied in the award should also cease to be effective. On the contrary, the very purpose for which industrial adjudication has been given the peculiar authority and right of making new contracts between employers and workmen makes it reasonable to think that even though the period of operation of the award and the period for which it remains binding on the parties may elapse—in respect of both of which special provisions have been made under Ss. 23 and 29 respectively—may expire, the new contract would continue to govern the relations between the parties till it is displaced by another contract."

In *Yamuna Mills Co. Ltd. Majoor Mahajan Mandl,* (3) Justice Tendolkar of the Bombay High Court had attempted to analyse the legal position between the employer and employee consequent on a repudiation or termination of an award. He said as follows:

". . . But the question that we have been called upon to determine goes a little further than that and the question is by what is the relationship between the employers and the employees regulated after an award is terminated? Does termination of the award create a vacuum and leave the employees to the tender mercy of the employer? Does it, by providing that the award shall cease to have effect, get rid of the award so as to bring about the result that any agreement that governed the relations of the parties prior to the date of the award is thereby revived; or does it preserve such rights as the employees have, prior to the date of termination, already enjoyed under the award or does it preserve the whole of the award until it is changed by the procedure prescribed by the Bombay Industrial Relations Act for a change? Now, quite obviously it would not be possible for any court to take the view that the termination of the award creates a vacuum in which the employees are at the tender mercy of the employer; nor does it appear to us to be possible to hold that by the termination of the award the contract or agreement that governed the relations of the employer and the employees prior to the award is in some manner revived. Initially that contract or agreement had binding effect; but it ceased to have such effect on the award taking effect and the

moment the award became binding on the parties, the antecedent contract or agreement was superseded by the award. It is not a case of an antecedent contract or agreement being suspended, because there is no provision for suspension which can even be spelt out from any of the sections of the Bombay Industrial Relations Act. The award, or as the case may be, a registered agreement or a settlement under the Bombay Industrial Relations Act, has obviously the effect of superseding the contract or agreement that existed and that regulated the relations between the employer and the employees prior to the registered agreement, settlement or award taking effect under the provisions of the Act. Then we come to the next possibility: Is only so much of the award preserved as relates to the rights already enjoyed by the employees before the termination of the award? We find it difficult so to hold. There is no principle or logic in dealing with an award in this piecemeal manner and preserving rights that have already been actually enjoyed and destroying those which, although they may have accrued, have to be enjoyed in future in terms of the award. Mr. Patel for the petitioners has argued that on the termination of the award the effect or rather the result that is brought about is that the rights of parties are frozen as of that date. Assuming such a concept of freezing the rights was adopted, even the freezing would be in respect of rights that have already accrued and it is not quite easy to conceive of rights which would not accrue to an employee under an industrial award and which can only be contingent. In any event, if the original contract or agreement has been superseded by the award, holding that the award is no longer what governs the relations between the employer and the employees would necessarily create a vacuum. Trying to save the creation of a vacuum by splitting up the award into two parts, the award under which benefits have already been enjoyed and that part of the award under which benefits have not been enjoyed, is dissecting the award in a manner not justified in law or logic. There appears to be on the scene after the termination of the award only one thing that can govern the relations between the employer and the employees and that undoubtedly can be nothing else than the award itself. The result of the award ceasing to have effect is not that the award ceases to exist; the result of the award ceasing to have effect is,

as I have already pointed out, that it is open to either party to give a notice of change and to attempt to bring about a change. Further, it is open to the employer in cases in which he can bring about a change without a notice of change such as the matters enumerated in Sch. III to proceed to bring about the change, because the impediment placed in his way by S. 46(3) is removed. But until a change is brought about by the act either of the employer or the employee after following the relevant provisions in the Bombay Industrial Relations Act, 1946, the award that exists shall continue to regulate the relations between the employer and employees."

In *Bilash Chandra Mitra v. Balmer Lawrie & Co. Ltd.* [4] we find that facts are somewhat similar to the case before us.

In that case the plaintiff, who was the employee, brought an action in the civil court, claiming a declaration that he continued to be in employment and for the recovery of pay and allowances under an award. The award had been made in consequence of an industrial dispute in which the plaintiff alleged that he was wrongfully retired from his post. The award had decreed reinstatement and the payment of salary and allowances commencing from the date of such termination. The plaintiff however had neither been reinstated nor paid his salary and allowances.

One of the objections taken in the case was that, since the plaintiff had not been reinstated, he cannot claim wages or salary, The Court said:

". . . . The Award declared that the plaintiff is reinstated to his previous service and post with effect from the date on which the Award would become effective and as a consequence of reinstatement the plaintiff would get arrears of pay and allowances. Further, a time limit was fixed within which the amount had to be paid. It is thus clear that nothing was left to be done by the defendant company. The plaintiff was restored to his service by the Award itself and he was declared entitled to arrears of pay and allowances. There was automatic reinstatement by virtue of the Award. The Award fixed the liability of the company to pay the arrears of salary and allowances. In other words a sort of decree for a sum to be calculated arithmetically had been passed against the defendant and in favour of the plaintiff."

Another objection that was taken was that relief by way of ordinary action did not lie and the proper mode of action was recovery under section 29 of the Industrial Disputes Act. In answer, the Court said:

> "In the present case the plaintiff is not merely claiming the arrears of salary and allowance due up to the date of the Award but also salary and allowance which accrued due after the Award on the strength of the declaration as to reinstatement made by the Award. In other words the plaintiff's claim extends to or comprises further relief which flows from the Award. The Award has created a debt in favour of the plaintiff and I fail to see why payment of such debt cannot be enforced by suit. The debt has accrued from the relationship of the master and servant. It is a civil liability and for enforcement of such liability recourse can be had to an action in a civil court (S. 9 Civil P. C.) though no doubt the remedy of proceedings for enforcement of the provisions of S. 29 of the Act is also available for punishing the person so liable."

The decision in *J. C. Adak v. Mukherjee,* [5] is even more in point. In this case an award had been made under the provisions of the Industrial Disputes Act declaring that the workman should be paid dearness allowances at a certain rate. The award was binding on the parties and was operative for a period of one year. There was provision in the Act to reconsider the matter if a material change occurs in the circumstances upon which the award was based. Accordingly, while the award was still in effect, such a reference was made and the Tribunal dealing with it declared that the term imposed by the original award had by lapse of time become inoperative and sought to nullify the award.

In an application to quash this second award, the respondent took an objection somewhat similar to the one taken in by the appellant in the present case. The court said -

> "On behalf of the respondent, it was contended that the award of 15. 5. 1948 had ceased to be effective after 25. 5. 1949 and, therefore, the modification of the award made by the award of 20. 5. 1949 could not affect the interest of the petitioner. Therefore, this Court should not make an order which is of no benefit to the petitioner. This contention, I do

not think, is right. It overlooks the fact that though the award of 15. 5. 1948 had become ineffective by the passing of time, the rights flowing therefrom have not been wiped out. The award directed payment of certain dearness allowances which, if not paid, created a debt in favour of the workmen, and it was a binding debt. The award binds the parties in the same way, as if the terms were agreed between them. In my view, the payment of this debt can be enforced by a civil suit. It is a fallacy to say that the penalty clause in the Act bars such a suit."

The above case was cited with approval in *Mangaldas Narandas v. Payment of Wages Authority,* [6] where the court said:

"When an award is delivered by the industrial tribunal it has the effect of imposing a statutory contract governing the relations of the employer and the employee. It is true that statutory contract may be terminated in the manner prescribed by Sub-sec. (6) of S. 19. After the statutory contract is terminated by notice the employer by failing to abide by the terms of the award does not incur the penalties provided by the Industrial Disputes Act, nor can the award be enforced in the manner prescribed by S. 20 of Industrial Disputes (Appellate Tribunal) Act, 1950. But the termination of the award has, in our judgment, not the effect of extinguishing the rights flowing therefrom. Evidently by the termination of the award the contract of employment is not terminated. The employer and the employee remain master and servant in the industry in which they are engaged, unless by notice the employer has also simultaneously with the termination of the award terminated the employment of the employee. If the employment is not terminated, it is difficult to hold that the rights which had been granted under the award automatically cease to be effective from the date on which notice of termination of the award becomes effective. In our Judgment, the effect of termination of the award is only to prevent enforcement of the obligations under the award in the manner prescribed, but the rights and obligations which flow from the award are not wiped out."

Similar views have been expressed in *Workmen of Andra Bank Ltd. v. Andra Bank Ltd.* [7].

For the reasons set out above, this appeal fails and I would accordingly dismiss it with costs. The appellant will pay to each of

the 2nd and 3rd respondents half the amount at which the costs of such party is assessed on taxation in respect of this appeal.

Mr. Senanayake complained that over five years have elapsed since the date of the original award and the appellant, by successive resort to the court, has succeeded till now in keeping these workmen away from what was rightly due to them. He expressed a fear, having regard to some remarks made at the hearing, that there may be a likelihood of further obstacles being placed in his way. The decision we have now given places beyond doubt the continuing obligation of the appellant to pay these amounts to the workmen. Since no date appears to have been fixed for payment, to avoid technical advantage being taken of this and/or of the delay occasioned by orders for stay of executions made by the courts, we would, in the exercise of our powers, order that they be paid to the workmen on or before the 15th of May 1981. In view of this order, we hope that fears expressed by Mr. Senanayake will prove groundless.

Samarawickrema, J. I agree
Ismail, J. I agree

Appeal dismissed