

1969 *Present* : Samerawickrame, J., and Pandita Gunawardene, J.

MALIBAN BISCUIT MANUFACTORIES LTD., Petitioner,  
and R. SUBRAMANIAM *et al.*, Respondents

*S. C. 207/68—Application for Conditional Leave to  
appeal to Her Majesty the Queen-in-Council in  
S. C. Application No. 498/67*

*Privy Council—Certiorari application—Order of Supreme Court refusing it—Appeal  
does not lie therefrom to Privy Council—“ Civil suit or action ”—Civil Procedure  
Code, s. 6—Appeals (Privy Council) Ordinance (Cap. 100) , s. 3.*

An application to the Supreme Court for a writ of *Certiorari* is not a civil suit or action. Accordingly, the Supreme Court will not grant leave to appeal to Her Majesty-in-Council from an order refusing an application for Writs of *Certiorari* and Prohibition.

*Colombo Apothecaries Co., Ltd. v. Wijesuriya* (71 N. L. R. 258) not followed.

A-5

APPLICATION for conditional leave to appeal to the Privy Council.

*C. Ranganathan, Q.C., with S. J. Kadirgamar, Q.C., S. S. Basnayake, H. A. Abeywardene and K. D. P. Wickramasinghe, for the petitioner.*

*N. Satyendra, for the 2nd respondent.*

*Cur. adv. vult.*

December 19, 1969. SAMERAWICKRAME, J.—

The petitioner applies for leave to appeal to Her Majesty-in-Council from an order of this Court refusing an application for writs of Certiorari and Prohibition. The Minister of Labour had referred certain disputes between employees of the petitioner represented by the 2nd respondent and the petitioner-company to the 1st respondent who is President of a Labour Tribunal for settlement by arbitration. At the inquiry the 1st respondent took up for adjudication as preliminary matter objections by the petitioner that the order of the Minister referring the dispute was not valid and that the Tribunal had no jurisdiction to inquire into the dispute. The 1st respondent over-ruled the objections and the petitioner made an application to this Court for a writ of certiorari to quash the order of the 1st respondent and a writ of prohibition against the 1st respondent prohibiting him from having any further inquiry in the matter.

Learned counsel for the 2nd respondent submitted that the order of this Court dismissing the application of the petitioner was not one made in a civil suit or action and relied on the decision of the Divisional Bench in *Silverline Bus Co. Ltd. v. Kandy Omnibus Co., Ltd.*<sup>1</sup>. Learned counsel for the petitioner submitted that that decision had in effect, though not expressly, been over-ruled by the Privy Council in *Tennecoan v. Duraisamy*<sup>2</sup>.

In the *Silverline Bus Co. case*, Basnayake C.J. considered the nature and scope of an application for a writ and said, "The dicta I have cited go to show that proceedings in certiorari do not fall within the category of proceedings known as suits or actions. In certiorari the Court exercises its supervisory functions in order to determine whether the inferior tribunal has exceeded its jurisdiction or committed an error of law apparent on the face of the proceedings, and is not called upon to pronounce judgment on the merits of the dispute between the parties before the inferior tribunal."

<sup>1</sup> (1956) 58 N. L. R. 193.

<sup>2</sup> (1958) 59 N. L. R. 481.

Later in his judgment Basnayake, C.J., referred to *In re Goonesingha*<sup>1</sup>, in which Moseley J. held that an application for a writ of certiorari fell within the definition of action in section 6 of the Civil Procedure Code which reads :—

“ Every application to a court for relief or remedy obtainable through the exercise of the court's power or authority, or otherwise to invite its interference, constitutes an action .”

With reference to Moseley J.'s decision Basnayake C.J. said, “ With great respect I find myself unable to agree with the conclusion of the learned Judge. A writ of certiorari is not a means of obtaining any relief or remedy through the Court's power or authority. It is a purely supervisory function of the Court, while section 6 of the Civil Procedure Code contemplates an entirely different function. In my view it would be wrong to read section 6 by itself without reference to the other provisions of the Civil Procedure Code. To my mind section 6 when read with the other sections of the Civil Procedure Code leaves no room for the view that a writ of certiorari falls within the definition of action in the Code.”

Basnayake C.J., then considered the meaning of the expression “ Civil suit or Action ” in section 52 of the Charter of 1833 and Section 3 of the Appeals (Privy Council) Ordinance. Having referred to certain decisions of the Privy Council he said, “ The above decisions of the Privy Council confirm me in the opinion I have formed that the words ‘ civil suit or action ’ in section 3 of the Ordinance should be construed in their ordinary sense of a proceeding in which one party sues for or claims something from another in regular civil proceedings and that an application for a writ of certiorari does not fall within the ambit of those words in the context in which they occur.”

It would appear that Basnayake C.J. held that an application for a writ of certiorari did not fall within the ambit of “ civil suit or action ” on the following grounds :—

- (a) Proceedings for certiorari are not suits or actions as in them the Court exercises its supervisory functions and is not called upon to pronounce judgments on the merits of the dispute between the parties before the inferior tribunal.
- (b) such an application does not fall within the definition of action in section 6 of the Civil Procedure Code,
- (c) a “ civil suit or action ” must be construed to be a proceeding in which one party sues for or obtains something from another in regular civil proceedings and an application for certiorari therefore does not fall within that expression.

<sup>1</sup> (1912) 44 N. L. R. 75.

In *Tennekoon v. Duraisamy* (supra) the view expressed by Basnayake C.J., in regard to the meaning to be given to the expression "civil suit or action" has been expressly disapproved and accordingly the last ground given by him for regarding an application for certiorari as not being a civil suit or action must be regarded as over-ruled. The Privy Council expressly refrained from otherwise dealing with the decision in the *Silverline Bus Co.* case (supra). It said, "After the application for leave to appeal to the Privy Council had been granted in the present case a bench of five judges (one of whom dissented) in the case of *Silverline Bus Co., Ltd. v. Kandy Omnibus Co., Ltd.*, after a very full and careful review of two conflicting lines of authority, decided that an application to the Supreme Court for a writ of certiorari was not a 'civil suit or action' within the meaning of section 3 of the Appeals Ordinance. Counsel for the Commissioner in the present case did not contend that the decision in the *Silverline* case was wrong: the point actually decided is not before their Lordships, and they have heard no argument upon it. It follows, however, from the views which they have already expressed that they cannot accept the view of Basnayake, C.J., that the words 'civil suit or action' in section 3 of the Appeals Ordinance should be limited to 'a proceeding in which one party sues for or claims something from another in regular civil proceedings'."

Earlier in the judgment of the Privy Council the definition of action in section 6 of the Civil Procedure Code was set out and it was stated, "This is what their Lordships think is the meaning of 'action' in the Charter and in the Appeals Ordinance though, as will have been seen, they do not found their decision on this section." The judgment did not consider whether an application for a writ did or did not fall within the definition for the Board had not before it an appeal from an order on such an application. Nor did the Privy Council deal with Basnayake C.J.'s view that such an application did not fall within the definition.

It would thus appear that though one ground given in the judgment in the *Silverline Bus Co.* case (supra) must be regarded as over-ruled, the other two grounds for the finding that an application for certiorari is not a civil suit or action remain untouched by the Privy Council decision. The Divisional Bench decision was made by a Bench of five judges on a reference under section 31 of the Courts Ordinance and must be conformed to by this Court constituted as it is by two judges. I am therefore of the view that we are bound by that decision and that it is not open to us to take any other view than that an application for writs of certiorari and prohibition is not a civil suit or action.

In *Colombo Apothecaries Co., Ltd. v. E. A. Wijesooriya et al.*<sup>1</sup> Tennekoon, J., took the view that in *Tennekoon v. Duraisamy* (supra) the Privy Council has expressly over-ruled the *ratio decidendi* in the

<sup>1</sup> (1968) 71 N. L. R. 258.

*Silverline Bus Co. case.* With respect, I am unable to agree for the reason, as set out above, that some grounds of the decision in the latter case remain untouched. In the case decided by Tennekoon, J., leave was granted also on the alternative ground that it was a matter of public importance.

Learned counsel for the 2nd respondent also contended that the matter in dispute on the appeal did not amount to rupees five thousand and that the appeal did not involve any property claim or question of that value. It is unnecessary to consider that contention.

I hold accordingly that the order sought to be appealed from is not one made in a civil suit or action and that the petitioner is not entitled for leave to appeal. The application is therefore dismissed with costs.

PANDITA-GUNAWARDENE, J.—I agree.

*Application dismissed.*

---