

1977 Present: Udalagama, J., Sharvananda, J. and Ratwatte, J.

THE CEYLON MERCANTILE UNION, Appellant *and* THE INSURANCE CORPORATION OF SRI LANKA, Respondent.

S.C. 347/74(F) – D.C. Colombo 2857/Z

Registered Trade Union – Action on behalf of its members – *Locus Standi*.

Plaintiff, a registered trade union, instituted action on behalf of its members against the defendant Corporation for declaration that according to the contracts entered into between its members and the defendant certain revised rates of allowances were payable to them.

HELD:

That a trade union has no *locus standi* to institute an action for any relief based on the contracts of its members. The provisions of the Civil Procedure Code do not contemplate or countenance in a Court of Law an action or suit by a trade union on behalf of its members.

APPPEAL from a judgment of the District Court of Colombo.

V. A. S. Pullenayagam with K. Shanmugalingam, K. Balasubramaniam and Miss S. Gnanakaran for the plaintiff-appellant.

Douglas Premaratne Senior State Counsel for the defendant-respondent.

Cur. adv. vult.

July 12, 1978. SHARVANANDA, J.

The plaintiff in this action is a duly registered Trade Union and the defendant is a Corporation duly established under the provisions of the Insurance Corporation Act, No. 2 of 1961.

The plaintiff – Trade Union, in its plaint dated 28.9.73, averred as follows:–

“(4) The plaintiff – Trade Union has a Branch in the work-place of the defendant-Corporation consisting of employees of the defendant-Corporation and the said Branch has a membership of about 77 percent of the non-executive staff of the defendant-Corporation. All the said members of the said Branch Union are members of the plaintiff-union.

(5) All the employees, including the members of the plaintiff-Union employed by the defendant-Corporation, were recruited on a basic salary plus rent allowance and other allowances as paid to employees in the Public Service. In conformity with the said contracts of employment, the defendant-Corporation has been paying the said allowances as stipulated above as paid to employees in the Public Service.

(6)

(7) The Interim Report of the Salaries & Cadres Commission, 1969, headed by Mr. L. B. de Silva, dealt with the salaries structure of employees in the Public Service and the allowances payable to them. The said Report recommended revised rates of allowances and the said recommendations were implemented by the Government of Ceylon with effect from 1.10.69 in the Public Service and other institutions, except the defendant-Corporation where allowances were paid at Government rates in terms of the contracts of employment.

(8) But the defendant-Corporation, even after 1.10.69 up to date, has been paying and is continuing to pay allowances at the old rates payable prior to October, 1969, and which old rates ceased to be operative in the Public Service after 1.10.69.

(9) The plaintiff-Union states that the failure of the defendant-Corporation to pay living allowances as recommended in the said Interim Report of the Salaries & Cadres Commission of 1969 and implemented in the Public Service from 1.10.69, and the payment by the defendant-Corporation of allowances at rates that are non-operative after 1.10.69 are irregular, wrongful and unlawful, amounting to a deliberate failure on the part of the defendant-Corporation to fulfil its contractual obligations.

(10)

(11) The plaintiff-Union states that the contracts of employment marked X1 and X2 (which are specimen copies of letters of appointment issued to the employees by the defendant-Corporation) undertaking to pay all allowances as in the Public Service could, after 1.10.69, only be implemented by paying the allowances as recommended in the aforesaid Interim Report.

(12).....

(13) A cause of action has thus accrued to the plaintiff to sue the defendant for the declaration that the defendant-Corporation is liable to pay and the employees of the defendant-Corporation are entitled to receive the allowances under their contracts of employment (as recommended in the Interim Report referred to above) with effect from 1.10.69.”

By its answer, the defendant-Corporation stated, *inter alia*, that it had acted in terms of the directive given by the Minister of Foreign and Internal Trade dated 18.10.72, as it was in law bound to do, and that in the circumstances the defendant has acted lawfully in terms of the Insurance Corporation Act No. 2 of 1961. As a matter of law, the defendant further pleaded that the plaintiff cannot have and maintain this action in law and that the plaintiff had no legal right or status to seek for the declaratory relief prayed for in the plaint.

The case proceeded to trial on the following preliminary issues, viz. issues 5 and 6:–

5. Is the plaintiff-Union, in law, entitled to the relief asked for in the plaint?
6. (a) According to the Cabinet decision, has the Minister for Foreign and Internal Trade directed that the above-mentioned allowances should not be paid?
 - (b) If so, has the Court the jurisdiction to compel the defendant Corporation to pay the said allowances?
 - (c) If so, is the plaintiff-Union legally entitled to the relief asked for ?

By order dated 27.9.74, the learned District Judge held that the plaintiff cannot have and maintain this action and also that the Corporation was bound by the directive issued by the Minister of Foreign and Internal Trade, in terms of the provisions of the Insurance Corporation Act, not to pay the additional allowance and was justified in refusing to pay the additional allowances. He dismissed the plaintiff's action on these grounds. From the said order, this appeal has been preferred.

This appeal involves an important question of law as to the status of the plaintiff-Union to institute and maintain an action in respect of the contractual rights of its members with their employer. The matter for decision is whether the plaintiff-Union has a cause of action against the employer-Corporation. If it does not have a cause of action, its action fails on the ground that the plaintiff does not have a *locus standi* to institute and maintain this action in its own name or on behalf of its members.

The Civil Procedure Code defines an action as a proceeding for the prevention and redress of a wrong – a proceeding by which one party seeks in a Court to enforce some right against or to restrain the commission of a wrong by another party. This concept of an action implies the existence of parties, of an alleged right, of an alleged infringement thereof, and of a Court having jurisdiction to enforce such right, or to grant the necessary relief. Thus the essential ingredients of an action are:

- (a) Opposing parties, viz. plaintiff and defendant;
- (b) a subject in dispute between the parties;
- (c) A cause of action; and
- (d) A demand for relief.

In order that an action may be properly instituted, there must be at least two persons: one, the plaintiff who complains of an infringement of his right and claims relief, and the other the defendant against whom the right to any relief in favour of the plaintiff is alleged to exist. Basic to action is the requirement that the injury which gives rise to the cause of an action should be the injury suffered by the plaintiff. A person cannot be a plaintiff unless he has a vested interest in the subject-matter of the action; he must claim a relief or advantage for himself.

In an action founded on a contract, the proper plaintiff is the person with whom or on whose behalf the contract was made, or in whom the rights under the contract are vested. In *Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge and Co. Ltd.*¹ Lord Haldane stated:

“In the Law of England, certain principles are fundamental. One is that only a person who is a party to a contract can sue on it. Our law knows nothing of a *jus quaesitum tertio* arising by way of contract.”

¹(1915) A.C. 847 at 853.

Under our law, which is the Roman Dutch Law, a stipulation in a contract for the benefit of a third party may be enforced by such party where it has been accepted by him. *Jinadasa v. Silva*,² *de Silva v. Margaret Nona*³. But where a contract does not purport to confer any benefit on a third party, such a party cannot sue on the contract to which he is a stranger; he has no cause of action against the party who has committed a breach of the contract – he has no *locus standi* to sue the party in default. It is on the fundamental principle that an issue may not be brought to Court by a stranger that the elaborate structure of pleadings in our law is erected. The plaintiff must be a person in whom a right to relief is alleged to exist. The alleged right to relief alone gives competence to the plaintiff to institute the action.

Section 11 of the Civil Procedure Code provides that all persons may be joined as plaintiffs in whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative in respect of the same cause of action. Thus, the right to relief in the action is the *sine qua non* to acquire *locus standi* as plaintiff in an action. The plaint must show that the plaintiff has an actual existing interest in the subject-matter of the action. The cause of action complained of by the plaintiff is the particular act of the defendant which gives the plaintiff his cause for complaint.

Section 40 of the Code sets out the requisites of a plaint. The plaint must contain a prayer and a concise statement of the circumstances constituting the cause of action and a demand for the relief which he claims. Section 34 requires every action to include the whole of the plaint which the plaintiff is entitled to make in respect of the cause of action. Lord Esher defines a cause of action as every fact which it would be necessary for the plaintiff to prove if traversed in order to support his right to the judgment of the Court. (*Read v. Brown*).⁴

It is a fundamental rule of practice and pleading that two or more different plaintiffs, each having a separate and different cause of action though similar, cannot be joined in the same action. Under this rule, no two members of the plaintiff-Union could have joined in one action to sue for a declaration that the defendant-Corporation was liable to pay each one of them the allowance referred to in the plaint; for the grievance of each is separate and distinct though similar; they had no joint cause of action and hence could not have joined in one action to sue for the relief prayed for.

In this case, the plaintiff is a registered Trade Union. While it is not a legal person, it is endowed by the legislature with many rights characteristic of a Corporation – rights which an unincorporated Corporation does not possess. It can own property through its trustees. (Section 42 of the Trade Union Ordinance, Chap. 138). A registered Trade Union may sue or be sued

²(1935) 34 N.L.R. 344.

³(1939) 40 N.L.R. 251.

⁴(1889) 22 Q.B.D. 128 at 131.

in its registered name (section 30). Every Trade Union shall be liable on any contract entered into by it or by any agent acting on its behalf (section 28). It can be sued by its own member for wrongful expulsion, i.e. breach of contract. (*Bonsor v. Musicians' Union*.⁵) A registered Trade Union might sue in its own name for defamation where the defamatory statement touches its collective reputation. (*General and Municipal Workers v. Gillian*.⁶) A registered Trade Union may thus be described as having been given a quasi corporate status by the legislature which has however carefully avoided conferring corporate personality on a Trade Union. A registered Trade Union has thus been given recognition by law as a body distinct from individuals who from time to time compose it, although it is an unincorporated body. By registration, the Trade Union acquires some 'existence' in law apart from the members. It is thus a statutory legal entity capable of rights and duties. "A Trade Union (which is a body unincorporate) is a separate entity." — per *Lord Denning in Willis v. Association of Universities*.⁷

The question that arises in this case is whether the plaintiff-Union has, as a quasi-Corporation, a cause of action which would entitle it to the declaratory judgment prayed for. "I cannot call to mind any action for declaration in which the plaintiff claims no right for himself." — per *Viscount Maugham in London Passenger Transport Board v. Moscrop*.⁸ The plaintiff is an Association having as its members, among others, 77 percent of the non-executive staff of the defendant-Corporation, each one of whom entered into individual contracts with the defendant-Corporation on the basis of the specimen agreement referred to as X and Y. But the plaintiff-Union has as such not entered into any such contract. The dispute complained of in the plaint is the dispute of each member with the Corporation. The plaintiff-Union has no direct interest in the said dispute. In the circumstances, it has no *locus standi* at all and is not entitled to come to Court for any relief based on the contracts of its members. The breach alleged to have been committed by the defendant does not affect the plaintiff in its corporate status. Mr. Pullenayagam however contended that in view of the definition of a Trade Union given in the Trade Union Ordinance, viz: "A Trade Union means an Association . . . having among its objects the representation . . . of either workmen or employers in trade disputes", the plaintiff-Union has the status to represent its members in a Court of Law in the dispute which its members have with the defendant-Corporation. This definition does not however warrant the institution of an action by the Union on behalf of its members. The representation referred to in the definition is not representation in a proceeding in a Court of Law. Civil proceedings in a Court of Law are governed by the provisions of the Civil Procedure Code and, as stated earlier, the provisions of the Code do not contemplate or countenance in a Court of Law an action or suit by a Trade Union on behalf of its members. A representative action in a Court of Law can only be

⁵(1956) A.C. 104; (1955) A.E.R. 518.

⁷(1964) 2 All E.R. 39 at 42.

⁶(1945) 2 All E.R. 593.

⁸(1942) A.C. 332 at 344.

brought by following the procedure laid down in section 16 of the Code. Section 16 of the Code provides that when there are numerous persons having a common interest in bringing or defending an action, one or more of such parties may, with the permission of Court, sue or be sued, or may defend in such an action on behalf of all the parties so interested. This rule presupposes that each one of the numerous persons by himself has a right of suit. A person who has no right of suit cannot therefore be allowed to sue in a representative capacity. It is essential for the application of this rule that the representative must himself have a right of action. If the representative has no such interest, he cannot sue or be sued. Mr. Pullenayagam conceded that the present action is not tenable under the said section 16. Of course, where under the substantive law itself a person is entitled to represent a body of persons having the same interests in a certain matter and sue on behalf of such a body, he can do so without following the procedure referred to in section 16. Thus, though an action under section 102 of the Trust Ordinance is a representative one, the procedure laid down in section 16 need not to be followed. But, unfortunately for the plaintiff, the legislature has not made any provision giving legal sanction for a registered Trade Union to institute an action on behalf of its members in a Court of Law. It is to be noted however that the legislature has, in the Industrial Disputes Act (Chap. 131), provided that a Trade Union could, on behalf of a workman who is a member of that Union, make an application in writing to a Labour Tribunal for relief (section 31B). Thus, though the legislature is aware of the status and function of a Trade Union, it has to date failed to make statutory provision for a registered Trade Union to represent its members in civil proceedings in a Court of Law.

In view of the above, I agree with the District Judge that the plaintiff-Union has no legal status to institute or maintain this action and hence the present action fails *in limine*. In view of the above finding of the plaintiff's *locus standi* to institute this action on behalf of its members, it is not necessary to go into the next preliminary question as to how far the Minister's directive to the defendant-Corporation that the allowance should not be paid is an effective defence for the defendant-Corporation, need not to be gone into. However, I must state while passing that there appears to some substance in Counsel's argument against the defendant's contention.

In the circumstances, the appeal is dismissed without costs.

UDALAGAMA, J. — I agree.

RATWATTE, J. — I agree.

Appeal dismissed.