Obeysekera v. Albert and Others

COURT OF APPEAL.
SOZA, J. AND ABDUL CADER, J.
C.A. (S.C.) APPLICATION NO. 871/78.
APRIL 2, 1979.

Writ of Certiorari—Application to quash award of arbitrator under Industrial Disputes Act—Objection that another remedy avilable—Whether Court of Appeal would exercise its discretion in these circumstances—Industrial Dispute Act, section 20 (1).

Where in an application for Writ of Certiorari to quash an award made by an arbitrator in respect of an industrial dispute the objection was taken that this remedy should not be granted as the petitioner had another remedy by virtue of section 20 (1) of the Industrial Disputes Act, and could repudiate the award in terms of that sub-section :

Held

Certiorari is a discretionary remedy and will not normally be granted unless and until the plaintiff has exhausted other remedies reasonably available and equally appropriate. Section 20 (1) of the Industrial Disputes Act conferred the right on the aggrieved party to repudiate the award and accordingly he cannot seek a discretionary remedy like certiorari.

Case referred to

Baldwin & Francis Ltd. v. Patents Appeal Tribunal and Others, (1959) 2 All E.R. 433 ; (1959) A.C. 663 ; (1959) 2 W.L.R. 826.

APPLICATION for a Writ of Certiorari.

E. J. Dharmaratne, for the petitioner.
H. M. P. Herath, for the 1st respondent.
S. C. Dickens, State Counsel, for the 2nd respondent.
3rd and 4th respondents unrepresented.

Cur. adv. vult.

April 11, 1979.

SOZA, J.

This is an application for a mandate in the nature of a writ of certiorari quashing the award made by the 3rd respondent in respect of an industrial dispute referred to him for arbitration. Learned Counsel for the 1st respondent raised an objection *in limine* that the Court should not grant prerogative remedies like certiorari where a party has another remedy provided for him by the statute. He referred to subsection (1) of section 20 of the Industrial Disputes Act by which any party, trade union, employer or workman bound by an award made by an Arbitrator under the Industrial Disputes Act may repudiate the award by a written notice in the prescribed form sent to the Commissioner and to every other party, trade union, employer and workman bound by the award. Learned Counsel for the petitioner sought to meet this argument by submitting that the use of the word "may" in subsection (1) of section 20 suggests

that the option is given to the aggrieved party to either proceed under that section or to directly seek the intervention of this Court. I regret I cannot agree with this interpretation. Certiorari is a discretionary remedy and therefore it will not normally be granted unless and until the plaintiff has exhausted other remedies reasonably available and equally appropriate. The word 'may' is used because the object of the provision is merely to confer a right on the persons and parties mentioned to seek the intervention of the Commissioner of Labour where they wish to canvass an award made by an arbitrator in an industrial dispute. What subsection (1) of section 20 does is to confer a right on the aggrieved party to repudiate an award. A party to an award if aggrieved will have to proceed under subsection (1) of section 20. Where the right of appealing to the Commissioner of Labour is available to him, he cannot seek a discretionary remedy like certiorari. In the House of Lords case of *Baldwin & Francis Ltd. v. Patents Appeal Tribunal and Others* (1), Lord Denning applied this principle saying:

> "I am prepared to assume that the appellants are aggrieved, but as they have another remedy open to them, the Court in its discretion should refuse a certiorari."

It was submitted that subsection (1) of section 20 does not apply to the facts in the instant case because the word repudiate cannot be interpreted as meaning rejection *ab initio*. Among the meanings given to the verb 'to repudiate' in the Shorter Oxford English Dictionary are—

1. "to reject; to refuse to accept or entertain (a thing) .."
2. "to refuse to discharge or acknowledge (a debt or other obligation)."

There is no support for the submission that the word to repudiate does not apply where the rejection is *ab initio*. When an award is made against a party and he considers himself not bound by it and so declares himself he can be said to be repudiating it.

We were addressed on the facts of the case too but it must be remembered that where the remedy by way of certiorari is sought the nature of proceedings is that the record alone is examined and there can be no trial of disputed facts. In the instant case it cannot be contended that the arbitrator has acted in excess of jurisdiction or that there is error on the face of the record. I therefore make order refusing the application. On the question of costs it must be borne in mind that the 1st respondent has been the recipient of very generous treatment by the petitioner and earlier by the petitioner's father. The present situation has been brought about by the difficulties created by the Land Reform Law of 1972. Hence I make no order as to costs.

Application for certiorari dismissed without costs.

ABDUL CADER, J. —I agree.

Application dismissed.