SUPREME COURT

Board of Trustees of Tamil University Movement
V.
F.N. de Silva and others

S.C. Appeal No. 79/80 — CA Appeals 1556/79 — L.T. Case No. 13/6716 – 25/77

Power of Labour Tribunal to change caption of Plaint – Industrial Disputes Act.

The Appellant is a charitable organization incorporated under Section 114 of the Trust Ordinance. The Respondent is a Trade Union of which 10 ex employees of Appellant are members. The Appellant terminated the services of the 10 employees who applied to the Labour Tribunal for reinstatement and back wages.

Upon objections made by the Respondent the Caption 'Tamil University Movement' stating that it was a non-existent person the L.T. President allowed the Petitioner to change the caption from Tamil University Movement to "Board of Trustees, Tamil University Movement" on the ground that no prejudice was caused to the other Party.

Respondent appealed to the Court of Appeal to quash the order by Writ of Certiorari. The Court of Appeal confirmed the decision of the Labour Tribunal

Respondent appealed to the S.C.

Held. Our Labour Tribunals in the exercise of their duty to make just and equitable orders have the power to amend captions in applications where the Respondent is sufficiently identified but wrongly named.

APPEAL from judgment of the Court of Appeal

Before: Wanasundera J., Wimalaratne J., Ratwatte J., Victor Perera J., & Colin Thome J.

Counsel: K. Kanag-Iswaran for the Petitioner-Appellant.
S. Mahenthiran for the 2nd Respondent -Respondent.

Argued on: 6th April, 1982.

Cur. adv. vult.

Decided on: 6th May 1982

WIMALARATNE J.

The Tamil University Movement is said to be a charitable organisation which conducts, inter alia, an Agricultural and Animal Husbandry Centre and Farm at Uppuveli in Trincomalee, where it employs persons in and around the farm as labourers etc. The Trustees of the Movement, seven in number, applied to the Minister of Justice for their incorporation under section 114 of the Trusts Ordinance (Cap. 87), and by order published on 16.6.66 they were incorporated. One of the clauses in the order of incorporation is that the Board of Trustees "shall be able and competent in law to sue and to be sued, to answer and be answered, to defend and be defended in any Court or elsewhere in all causes and actions in respect of the said Tamil University Movement."

The services of ten employees were terminated in or about February 1977. They were all members of the Ceylon General & Industrial Workers Union. The Union took up the cause of these employees and on 1.8.77 made ten applications under section 31 B (1) of the Industrial Disputes Act (Cap. 131) to the Labour Tribunal of Colombo seeking redress by way of reinstatement and back wages. The respondent to these applications was named in the caption as "Tamil University Movement, 16 Fountain Lane, Colombo 10". The "Secretary Tamil University Movement" filed answers on 4.10.77 and pleaded, inter alia, that "the Applications could not be maintained against the T.U.M. and have been filed against the wrong person" When the applications were taken up for inquiry on 7.2.78 the objection to maintainability was clarified; the Tamil University Movement was neither a natural nor an artificial person and could not, therefore,

be made a party. The Union thereupon sought permission to amend the applications by substituting "The Board of Trustees of the Tamil University Movement" as respondent. Objection was taken to this as well, because the Tribunal had no powers to amend. But the Tribunal permitted the Union to amend the applications, which amended applications were served on the respondent on 5.6.78. The respondent filed written submissions setting out its objections to the amended applications, but the President made order on 4.4.79 accepting the amendment on the ground that no prejudice can be caused in allowing the amendment.

The respondent invoked the jurisdiction of the Court of Appeal and sought by way of certiorari to quash the orders of the Tribunal allowing the amendment. The main arguments before that Court seem to be (a) that the actions were a nullity because they had been filed against a non existent person, and (b) that a Labour Tribunal has no jurisdiction to order amendment of pleadings. The Court of Appeal dismissed the applications for the reason that although the Tamil University Movement per se is not a legal person, still nobody would be misled as to the identity of the party from whom relief is being sought. The error in naming the Tamil University Movement as the respondent is one of name and description and not of identity.

The judgment of the Court of Appeal is comprehensive, and embraces the powers of a civil court to substitute or add the right party where the wrong party has been named. It seems to us unnecessary to consider the powers of civil courts as regards amendments except to refer to the case of *Velupillai Vs. The Chairman, Urban District Council* (1936) 39 NLR 464. In that case the party named as defendant to a civil action for damages was the "Chairman, Urban District Council." On objection taken that the action against the Chairman was not properly instituted, the District Judge dismissed the action. The Supreme Court allowed the plaintiff, in appeal, to amend the caption by substituting the U.D.C. for the Chairman, despite the fact that as a result of the amendment the defendant was prejudiced in that it was deprived of the defence of prescription. In the course of his judgment Abrahams C.J. had this to say.-

> "I think that if we do not allow the amendment in this case we should be doing a very grave injustice to the plaintiff. It would appear as if the shortcoming of his legal adviser, the

peculiarities of law and procedure, and the congestion in the Courts have all combined to deprive him of his cause of action and I for one refuse to be a party to such an outrage upon justice. This is a Court of Justice, it is not an Academy of Law." at p.465.

Learned Counsel for the respondent-appellant contended that *Velupillai's case* (above) has been wrongly decided in that Abrahams CJ appears to have followed the case of *Lord Bolinbroke Vs. Townsend* (19 Q.B.D. 394) where the defendant named was Townsend, the clerk of the local Board of Health (which was a body corporate). In permitting the Board to be substituted for Townsend, the Court was substituting an artificial person for a natural person. But in *Velupillai's* case an artificial person was substituted for a non-existent body, which is not permissible. Despite this contention of learned Counsel, it would appear that Abrahams CJ was quite aware of what he was doing and that the two cases were not identical because he said that that case *"bears a close resemblence* to the case of *Lord Bolinbroke Vs. Townsend"* at p. 465.

Though it has been contended that an "employer" within the meaning of section 48 of the Industrial Disputes Act has to be a person or a body of persons, and that such person or persons have to be either natural or artificial, it should be noted that the legislature has recognised certain "non persons" as capable of being employers. Recognition has, for example, been given a "firm" in section 48 itself, and by subsequent legislation to Superintendents and Managers of Estates who could be sued in that designation alone without their actual names being given. Accordingly no hard line should be adopted when premission is sought to substitute a "person" for a " non person" who has mistakenly been made respondent in an application before a Labour Tribunal.

No provision for amendment of captions has been included in the Industrial Disputes Regulations made by the Minister, by virtue of the powers vested in him under section 39 (1) of the Act, to make regulations in respect of the procedure to be observed by labour tribunals. Section 31C of the Act provides that it shall be the duty of the tribunal to make all such inquiries into applications made under section 31B, and to hear all such evidence as the tirbunal may consider necessary, and thereafter make such order as may appear to the tribuanl to be just and equitable. A labour tribunal will not,

in my view, be able to discharge its duty of making a just and equitable order if it is to be hamstrung by technicalities in the correction of mistakes in captions, when the party against whom redress is claimed can easily be identified. It seems to me that the same liberal approach as was adopted in Velupillai's Case may safely be followed in cases before Labour Tribunals as well. Such an approach has in recent years been adopted in problems relating to the corrections of mistakes in describing the employer before a Labour Tribunal. In the *Manager, Ury Group, Passara Vs. The D.W.C.* (1968) 71 NLR 47, Samarawickrema J. thought that there should not be the same insistence on the proper naming of the respondent before a Labour Tribunal as there would be, for example, in the case of an application to a Court of Law. If there is such a designation or description from which the identity of the employer can be known, it should be sufficient. On the face of it the application should be against a natural or legal person for the purpose of enforcement. But where it is not, then a suitable amendment of the caption could be effected before an order is made. In the case of *The Suptd: Deeside Estate, Maskeliya Vs. Ilankai Thozhilar Kazahakan* (1968) 70 NLR 279 Siva Supramaniam J. allowed the appeal of the employer on the sole ground that any order made in favour of the employee could not be enforced against the Suptd: of the estate who was named as the employer. The employee was unrepresented at the appeal and no application appears to have been made even at that stage to amend the caption by naming a person as employer against whom an order could be enforced. In the subsequent *Ury Group Case* (above) Samarawickreme J. did not disagree with the view taken in the *Deeside Estate Case* that the application should be made against a legal or natural person. The amendment of the caption was only for the purpose of making the order enforceable against the person who was intended to be sued. In *Suptd: Nakiyadeniya Group Vs. B.A. Cornelis Hamy* (1968) 71 NLR 142 (decided on 31.8.68) Wijayatilake J. did not adopt the course taken by Samarawickrema J. when the latter judgment was brought to his notice for the reason that although it appeared to be practical and expeditious, he did not think that when the tribunal had made an unenforceable order an appellate Court could ex mero motu make any such amendment to take effect retroactively. That case is easily distinguishable because the application to amend the caption in the present case was made to the Tribunal itself after the respondent had, in the answer, taken the plea that the wrong person had been named as respondent.

It is significant that soon after the decisions in the *Deeside Estate Case* and the *Nakiyadeniya Group Case*, the legislature introduced an amendment by Act No. 39 of 1968 (W.E.F.11.10.66) making it sufficient to designate the employer as "the superintendent" or "the Manager" of the estate where the employer is known as the superintendent or the manager. In the instant case the document of incorporation itself by enabling the trustees to defend actions in respect of the Tamil University Movement, has impliedly recognised the possibility of the Movement itself being made a party.

An argument was also advanced that after Sri Lanka adopted a Republican constitution, institutions created for the settlement and adjudication of industrial disputes have been placed on a par with institutions created for the administration of justice; and as actions instituted in Courts of law against non existent persons are null and void so also should be applications instituted before labour tribunals. Such changes in our Constitution have not, however, deterred our courts from recognising the main duty of labour tribunals, which is still that of making just and equitable orders. Our Courts have accordingly continued the exercise of amending captions in applications where the respondent was sufficiently identified, but wrongly named notwithstanding the absence of statutory provisions or regulations enabling such amendments – vide, for example, the judgment of Rajaratnam J. in *Karunadasa Vs. Sri Lanka State Plantations Corporation* (S.C. 62/75 L.T. 1/8129/73; S.C. Minutes of 9.4.76). It seems difficult to understand how Labour Tribunals, which are also "institutions for the administration of justice which protect, vindicate and enforce the rights of the people" according to Article 105(1) of our constitution can be expected to make just and equitable orders if their powers of amendment, where necessary, are not recognised.

For these reasons I would affirm the judgment of the Court of Appeal, and dismiss this appeal with costs payable to the 2nd respondent, and direct the Tribunal to conclude these cases as early as possible.

Before I conclude this judgment it is necessary to refer to the unnecessary delay entailed in the hearing and disposal of these cases. The workmen complained that their services were unlawfully terminated in February 1977 more than five years ago. It is a matter for regret that the inquiry into their grievences has not even as yet commenced.

The tribunal made its order substituting the Board of Trustees on 4.4.79, a little over three years from today. The employer's application to quash the order by way of certiorari was filed in the Court of Appeal on 12.7.79. The only documents that the employer was required to file in terms of the Supreme Court Rules were copies of the proceedings, which consisted of the pleadings before and the order of the tribunal, and the documents material to the case, which were the gazette publication of incorporation and the application containing the amended caption. They were all filed in the Court of Appeal along with the petition and affidavit. The President of the Labour Tribunal was named as the 1st respondent only because the order sought to be quashed was one made by him, but there was no necessity to have required him to cause to be produced the record at that stage. Indeed, the Court of Appeal quite correctly did not call for the record nor did it order stay of proceedings. Under these circumstances the Tribunal ought to have carried on with the proceedings. If that course had been taken this inquiry may have reached finality by now.

WANASUNDERA J: — I agree.

RATWATTE J: — I agree.

VICTOR PERERA J: — I agree.

COLIN THOME J: — I agree.

Appeal dismissed