CEYLON PRINTERS LIMITED AND ANOTHER
v.
GOONEWARDENA AND OTHERS

COURT OF APPEAL,
S. N. SILVA J.,
C.A. No. 30/90,
INDUSTRIAL COURT No. A 1996,
MAY 21 AND 24 1990.

Certiorari and Prohibition – Industrial Dispute – Reference of Industrial dispute for settlement by arbitration under S. 4(1) of the Industrial Disputes Act – Validity of Minister's order – Industrial Dispute – Industrial Disputes Act S. 48 – Regulation 27 of the Regulations dated 25.2.1959.

On 15.9.1983 the then Minister of Labour made order in terms of S. 4(1) of the Industrial Disputes Act referring an industrial dispute between the two petitioner companies and the 2nd respondent union for settlement by arbitration. The 1st respondent was appointed arbitrator. The registration of the 2nd respondent union was cancelled during the pendency of the arbitration, and 3rd respondent took over the representation of the members.

Does the cancellation result in a cessation of the industrial dispute ?

Held :

The definition of the expression Industrial dispute in Section 48 of the Industrial Disputes Act brings together three ingredients, they are –

(i) any dispute or difference ;
(ii) between parties of any of the following descriptions :-
 (*a*) an employer and a workman ;
 (*b*) employers and workmen ;
 (*c*) workmen and workmen.

(iii) the dispute or difference should be connected with –
 (*a*) the employment or non-employment of any person ; or
 (*b*) the terms of employment of any person ;
 (*c*) the conditions of labour of any person ;
 (*d*) the reinstatement in service of any person.

The concluding portion of this provision defines the term "workmen" to include a Trade Union consisting of workmen. A Trade Union is defined in the act to mean any trade union registered under the Trade Unions Ordinance.

(2) An interpretation should be given so as to promote the general legislative purpose underlying the provisions of the Act and to avoid an undue prolongation of the procedure provided for by law. An industrial dispute validly referred for settlement by arbitration in terms of S. 4 (1) of the Act would not cease or be extinguished merely because a party to that dispute named in the referrence dies or ceases to have any interest in the matter in dispute. In these situations the provisions of Section 17 (1) of the Act that require an Arbitrator to "make all such inquiries into the dispute as he may consider" necessary and of Regulation 27 that provides for the addition of any person whose interests are affected by the dispute as a party, are sufficiently wide to empower the arbitrator to continue the arbitration after permitting any person who has acquired or represents the interests of the party that ceased to have interests, to be added as a party.

A Trade Union is named as a party to a dispute purely in a representation capacity.

(3) In the case of a trade union being a party to the arbitration ceasing to exist upon the cancellation of its registration, the proper course would be to permit any other union that represents the workmen connected with the dispute to be added as a party or to permit the workmen concerned to appear directly or through a representative, at the proceedings.

Case referred to :

(1) *Nadarajah Ltd., v. N. Krishnadasan and others 78 NLR 255, 258*

APPLICATION for writ of certiorari and prohibition.

H. L. de Silva, P.C. with *Varuna Basnayake* for petitioners.

L. V. P. Wettasinghe for 2nd and 3rd respondents

Cur. adv. vult.

June 22, 1990

S. N. SILVA, J.

On 15.09.1983 the then Minister of Labour made an order in terms of Section 4 (1) of the Industrial Disputes Act referring an industrial dispute between the two Petitioner Companies and the 2nd Respondent Union, for settlement by arbitration. The 1st Respondent was appointed as the Arbitrator. The statement of the matters in dispute prepared by the Commissioner of Labour has been produced marked 'XI'. Broadly, the matters in dispute relate to two categories. The first category comprises of nine items that relate to terms of employment such as salaries; increments, allowances and bonuses and the second category relate to the termination of services of seven workmen by the Petitioners.

At the commencement of the arbitration in 1983 itself, a preliminary objection was taken by the Petitioners as to the validity of the order of the Minister. The 1st Respondent held against the Petitioners who then filed an application for Writs of *Certiorari* and *Prohibition* in this Court. The Petitioners also obtained an interim order from this Court staying the arbitration. The application was finally taken up for hearing by this Court almost 4 1/2 years later and dismissed by judgment dated 19.02.1988 (C.A. 1485/83-C.A. minutes of 19.2.1988). The Petitioners appealed against the said judgment to the Supreme Court having obtained special leave to appeal. The Supreme Court affirmed the judgment of this Court.

When the arbitration recommenced almost 5 1/2 years after the reference by the Minister, the Petitioners once again urged two preliminary matters. The first is that several workmen who were members of the Union at the time of the reference had since ceased to be employees consequent to death, resignation or retirement. That, without knowing specifically the identity of the workmen who are going to be bound by the award, the Arbitrator would not be in a position to make a firm order in the matter.

The second is that the registration of the 2nd Respondent Union was cancelled by the Registrar of Trade Unions on 5.5.1986, due to its failure to send annual returns in compliance with the provisions of the Trade Unions Ordinance. That the 3rd Respondent being an Union having the same name, address, office bearers and members but registered under a different number nine months after the cancellation, cannot represent the members of the Union registered at the time of the reference by the Minister. The Arbitrator held against the Petitioners on both matters by his order dated 5.1.1990. Thereupon the Petitioners filed this application for Writs of *Certiorari* and *Prohibition* and once again obtained an order from this Court staying the proceedings of the arbitration.

In this application, the first matter raised before the Arbitrator and referred above was not urged by learned President's Counsel appearing for the Petitioners. As regards the second matter, the submission went somewhat beyond the basis urged before the Arbitrator. Here, Counsel submitted that upon the cancellation of the registration of the 2nd Respondent Union, the industrial dispute which is the subject matter of the reference by the Minister "ceased or was extinguished and the Arbitrator becomes *functus officio*". In paragraph 15 (*b*) of the petition

the same matter is stated in slightly different terms, that upon the said cancellation, the reference of the Minister becomes "void and legally inoperative". The basis of this submission is that the existence of two parties is a prerequisite for an industrial dispute as defined in Section 48 of the Industrial Disputes Act. That, the cancellation of the 1st Respondent Union results in one party to the dispute ceasing to exist. Then the dispute or difference ceases to be an industrial dispute. It has to be noted that the submission before the Arbitrator was based on a procedural premise. That the 3rd Respondent Union cannot represent the members of the 2nd Respondent Union at the arbitration. But, in this Court, on the same material, the argument is projected to a higher plane, as one touching the jurisdiction of the Arbitrator and the validity of the reference itself. Indeed, such an escalation in challenge is necessary to base an application for *Certiorari* and *Prohibition*, being the reliefs claimed by the Petitioners.

Counsel for the 2nd and 3rd Respondents conceded that there should be parties to an industrial dispute but submitted that in the instant case the true parties to the industrial dispute are the Petitioners as employers and the members of the 2nd and 3rd Respondent Unions as workmen. That the reference specifies the 2nd Respondent Union as a party to the dispute purely in a representative capacity and as a label descriptive of the workmen connected with the dispute who are its members. That the 3rd Respondent being an Union having the same members as the 2nd Respondent can lawfully represent the workmen at the arbitration. Counsel further submitted that after the reference the Arbitrator is seized of the industrial dispute and is mandated by law to make all such inquiries as may be considered necessary and to make an award that is just and equitable. That the cancellation of the registration of the 2nd Respondent Union does not in any way denude the jurisdiction of the Arbitrator vested in him by law.

Section 48 of the Industrial Disputes Act defines an industrial dispute in the following terms :

"industrial dispute' means any dispute or difference between an employer and a workman or between employer's and workmen or between workmen and workmen connected with the employment or non-employment, or the terms of employment, or with the conditions of labour, or the termination of the services, or the reinstatement in service, of any person, and for the purposes of this definition 'workmen' includes a trade union consisting of workmen".

The definition brings together three ingredients. They are –

(i) any dispute or difference ;

(ii) between parties of any of the following descriptions :-

(*a*) an employer and a workmen ;

(*b*) employers and workmen ;

(*c*) workmen and workmen.

(iii) the dispute or difference should be connected with –

(*a*) the employment or non-employment of any person ; or

(*b*) the terms of employment of any person ;

(*c*) the conditions of labour of any person ;

(*d*) the reinstatment in service of any person.

The concluding portion defines the term "workmen" to include a Trade Union consisting of workmen. A Trade Union is defined in the Act to mean any trade union registered under the Trade Unions Ordinance.

The Submission of learned President's Counsel is based on the definition referred to in the preceding paragraph. It was submitted that the reference describes the 2nd Respondent Union as the other party to the dispute. That upon the cancellation of its registration, it ceases to be a trade union within the meaning of the definition in the Industrial Disputes Act. So, the other party to the industrial dispute ceases to exist and in the words of learned President's Counsel the industrial dispute itself will" cease or be extinguished". This argument strikes me as being rooted in an artificiality or a fiction far removed from reality. The statement of the matters in dispute, prepared by the Commissioner of Labour in terms of Section 16 and filed in these proceedings, shows that there is a wide ranging dispute with regard to terms of employment, emoluments, conditions of service and the termination of the services of seven workmen, between the Petitioners and the members of the 2nd Respondent Union employed by the Petitioners. A question naturally arises from the submission of learned President's Counsel, as to whether this dispute with its many ramifications ceased to exist or became extinguished solely upon the cancellation of the registration of the union of which the workmen were members. Viewed from another angle, could any one possibly convince the workmen concerned that their dispute with the Petitioners is now extinguished ? Similarly, could any one possibly convince the seven workmen named in the statement prepared by the Commissioner of Labour, whose services have been

terminated by the Petitioners, that their dispute with the Petitoners is now extinguished? The answers to these questions should definitely be in the negative. Learned President's Counsel in his submission observed that the proper course would now be for the present Minister to make another reference naming the correct parties to the dispute. This observation, is in my view totally untenable considering that the reference made by the former Minister seven years ago was held to be valid by this Court and by the Supreme Court.

To my mind there are several matters that the argument of learned President's Counsel fails to take into account.

Firstly, the argument ignores the principal ingredients of the definition of the phrase "industrial dispute" in Section 48 (1) being the existence of a difference or dispute of any of the categories mentioned in the definition and, lays undue exphasis on the other ingredient of the definition as to the identity of the parties. In applying this definition to the provisions of the Act the first task is to ascertain whether a given dispute or difference comes within one of the categories specified in the definition. If the dispute or differehce is properly identified as one specified in the definition then, the identification of the parties to that dispute or difference is a secondary matter. The identity of the parties must necessarily be determined according to the several ramifications of a given dispute. As the definition itself shows, the parties could be employers and workmen or even workmen *inter se*. New parties could be brought in, if the ramification of the dispute so demand. It is for this reason that regulation 27 of the Regulations dated 25.2.1959 permits *inter alia* an Arbitrator to join any person as a party to the proceedings if the Arbitrator is "satisfied that such person's interests will be affected to his prejudice if he is not made a party". Similarly, a party may cease to have any interest in the dispute as the proceedings go on. In the course of the submissions learned President's Counsel conceded that where an individual employer or individual workmen who is a party to an arbitration, dies in the course of the proceedings,the dispute itself will not cease but the proceedings should go on upon a proper substitution of the party who represents the interests of the deceased person.

My view that the identification of the parties is only incidental to the proper identification of the dispute itself is also borne out by provisions of Section 17 (2) and Section 19 of the Act. Section 17 (2) requires the Arbitrator to make a reference in the award to "the parties and Trade Unions to which, and the employers and workmen to whom, such award

relates". Section 19 provides that the award will "be binding on the parties, trade unions, employers and workmen referred to in the award in accordance with the provisions of Section 17 (2)". Therefore the identification of the parties at the time of the reference is not a permanent fixation that should remain steadfast throught the arbitration proceedings. The Arbitrator has to make inquiries into the dispute and determine the persons who are to be bound by the award.

The next matter that the argument of learned President's Counsel fails to take into account is the fact that the definition of the phrase "industrial dispute" is contained in the interpretation section of the Act *and is not by itself a substantive provision. As provided in Section* 48, the definition will apply where the phrase "industrial dispute" is used in the Act "unless the context otherwise requires". As regards compulsory arbitration the main provisions are contained in the Act in Section 4 and in Sections 16 to 21. Section 4 empowers the Minister to refer an industrial dispute which is in the nature of a minor dispute, for settlement by *arbitration to an Arbitrator. Here, the definition of the phrase* "industrial dispute" contained in Section 48 will apply. The Minister has to identify the parties and the dispute in his order. The Petitioner is not contesting the fact that the Minister properly identified the parties and the dispute at the stage of the reference. It has now to be considered whether the interpretation of the phrase "industrial dispute" should apply to the other provisions with regard to arbitration. Section 16 provides for the Commissioner to prepare a statement of the dispute between the parties. There is no complaint with regard to this statement, as well. The next provision is Section 17 which relates to the arbitration proceedings itself. It provides that when an industrial dispute has been referred under Section 4 (1) to an Arbitrator for settlement by arbitration "he shall make all such inquiries into the dispute as he may consider necessary, hear such evidence as may be tendered by the parties to the dispute, and thereafter make such award as may appear to him to be just and equitable". The question to be determined is whether, at the stage covered by Section 17(1), the industrial dispute could be considered as having ceased to exist if one of the parties to the dispute ceases to exist by operation of law. In my view the question as to whether there is an industrial dispute and the identification of parties in relation to that dispute, has to be determined by the Minister at the time of the reference. There is no provision in Section 17 which lends itself to an interpretation that the industrial dispute so identified by the Minister will cease to exist, if subsequently one of the parties cease to exist or ceases

to have any interest in the dispute. On the contrary, the Arbitrator is required by law to make all such inquiries, hear evidence and to make a just and equitable award. If the order made by the Minister is valid, the proceedings before the Arbitrator should go on and properly culminate in an award as provided in Section 17 (1). In this connection I wish to cite a passage of the judgment of Sharvananda, J. (as he then was) in the case of *Nadarajah Ltd., v. N. Krishnadasan and others*[1] With reference to the provisions of Section 17 (1) it was observed as follows : –

"This provision stresses that after the reference by the Minister the Arbitrator alone can exercise jurisdiction in respect of the dispute until the proceedings culminate in his award. The Minister, on making the reference becomes functus. The Arbitrator takes over and continues to function for the purpose of making an award and is in control of the proceedings".

The only exception to this situation is recognized in the judgment as instances where the arbitration is frustrated ; if the Arbitrator declines, resigns, dies or becomes incapable of performing his functions or leaves Sri Lanka under circumstances showing that he will not probably return at an early date. It was held, that in these situations the Minister may make a fresh reference. If not, the Arbitrator is required by law to make an award on the dispute as referred by the Minister. The fact that a party ceases to exist does not denude him of this jurisdiction and there is no provision in Section 17 which warrants an inference that the industrial dispute ceases to exist in such circumstances.

The next matter that the argument fails to take into account is the true capacity of a trade union that is named as a party to an industrial dispute. In this connection it is significant to note that the definition in Section 48 states that the term workmen, "includes a trade union consisting of workmen". These words clearly show that the trade union does not have an existence independent of the workmen who are its members. The reference to workmen in these words should be construed in relation to the rest of the definition and be considered as a reference to workmen connected with a given dispute. The workmen connected with the industrial dispute have a direct interest in the arbitration proceedings because, finally as provided in Section 19 of the Act, the terms of the award become implied terms in the contract of employment between the employers and the workmen bound by the award. Therefore, I am

inclined to agree with the submission of Counsel for the Respondents that a trade union is named as a party to a dispute purely in a representative capacity. It represents the workmen who are actually connected with the dispute. It has also to be noted that Section 31 B(1) of the Act with regard to applications to a Labour Tribunal, permits a trade union to make an application "on behalf of a workman who is a member of that union". It could never be contended that the proceedings before a Labour Tribunal will abate where the applicant trade union ceases to exist consequent to a cancellation of its registration. Similarly, with regard to arbitration proceedings too, the trade union, which is a party should not be seen as an entity distinct from its members. If the matter is viewed from its perspective the only conclusion that could be drawn, is that the cancellation of the registration of a trade union which is a party to an industrial dispute, does not result in a situation where the dispute itself is considered as having ceased.

Finally it has to be observed that the contention of learned President's Counsel runs contrary to the general legislative purpose underlying the Industrial Disputes Act. The object of the Act is to promote industrial harmony by the prevention and settlement of industrial disputes. This is seen very clearly from the long title to the Act.

The reference to arbitration is one means of settlement of industrial disputes recognized and provided for by the Act. In order to promote industrial harmony and to avoid unnecessary turmoil it is necessary that the provisions for settlement by arbitration should be expeditious and effective. The submission of learned President's Counsel that an industrial dispute ceases to exist with the cancellation of the registration of a trade union, that is a party to the dispute, if accepted, will clearly result in stultifying this mechanism provided by law for the settlement of industrial disputes. Furthermore, if the matter has to go back to the Minister for a further reference whenever the registration of a trade union is cancelled, it would result in a undue prolongation of the proceedings. In my view an interpretation should be given so as to promote the general legislative purpose underlying the provisions of the Act and to avoid an undue prolongation of the procedure provided for by law. Accordingly, I hold that an industrial dispute validly referred for settlement by arbitration in terms of Section 4 (1) of the Act would not cease or be extinguished merely because a party to that dispute named in the reference dies or ceases to exist by the operation or law of ceases

to have any interest in the matter in dispute. I am of the view that in these situations, the provisions of Section 17 (1) of the Act that require an arbitrator to "make all such inquiries into the dispute as he may consider necessary" and of Regulation 27 that provides for the addition of any person whose interests are affected by the dispute, as a party, are sufficently wide to empower the Arbitrator to continue the arbitration after permitting any person who, has acquired or represents the interest, of the party that ceased to have interest, to be added as a party. In the case of a trade union being a party to the arbitration ceasing to exist upon the cancellation of its registration, the proper course would be to permit any other union that represents the workmen connceted with the dispute to be added as a party or to permit the workmen concerned to appear direcly or through a representative at the proceedings.

For the reasons stated above I see no merit in the submission of learned President's Counsel for the Petitioners and I accordingly dismiss the application. The stay order operative till today is vacated and the 1st Respondent is directed to proceed with the arbitration. The Petitioners will pay a sum of Rs. 2,500 as costs to the 3rd Respondent.

Application dismissed.

Stay order vacated.