

1968

Present : Wijayatllake, J.

THE SUPERINTENDENT, NAKIADENIYA GROUP,
NAKIADENIYA, Appellant, and B. A. CORNELISHAMY,
Respondent

S. C. 11/68—Labour Tribunal, 2903/G.

*Industrial Disputes Act—Labour Tribunal—Application, by workman, for relief—
Failure to make a natural or legal person as respondent—Amendment of
pleadings at stage of appeal to Supreme Court—Permissibility.*

In an application made before a Labour Tribunal, the applicant (a workman) prayed for relief against "The Superintendent, Nakiadeniya Group, Nakiadeniya" as the employer, and was awarded a certain sum of money as compensation.

Held, that, inasmuch as the application failed to name a natural or legal person as the employer, the order of compensation was not an enforceable order. *Superintendent, Deeside Estate, Maskeliya v. I. T. Kazhakam* (70 N. L. R. 279) followed.

Held further, that the designation of the employer could not be amended at the stage of appeal by the Supreme Court *ex mero motu*, so as to substitute a natural or legal person retroactively. *Manager, Ury Group, Passara v. Democratic Workers' Congress* (71 N. L. R. 47) not followed.

APPEAL from an order of the Labour Tribunal, Galle.

Lakshmun Kudirgamar, for the employer-appellant.

P. K. Liyanage, for the applicant-respondent.

August 31, 1968. WIJAYATILAKE, J.—

This is an appeal from the order of the President, Labour Tribunal, Galle, awarding a sum of Rs. 1,800 as compensation to the applicant, a lorry driver of Nakiadeniya Group estate.

Mr. Lakshman Kadirgamar, Counsel for the appellant, draws my attention to the application made before the Labour Tribunal. It would appear that B. A. Cornelishamy, the applicant, has prayed for relief against the Superintendent, Nakiadeniya Group, Nakiadeniya, as the employer. In the order made by the President he refers to this fact that the application has been filed against the "Superintendent of Nakiadeniya Estate".

The regulations framed under the Industrial Disputes Act, No. 43 of 1950, appearing in the Government Gazette of 2nd March, 1959, set out in the first schedule, form D showing the form of the application to be made against the employer. The Industrial Disputes Act, as amended by Act No. 62 of 1957, provides that an "employer" means any person who employs or on whose behalf any other person employs any workman and includes a body of employers (whether such body is a firm, company, corporation or trade-union) and any person who on behalf of any other person employs any workman. Mr. Kadirgamar accordingly submits that in the instant application the applicant has failed to name either a natural person or a legal person. In support of his submission he relies on the case of *The Superintendent, Deeside Estate, Maskeliya v. I. T. Kazhakam*¹ where Siva Supramaniam, J. has held that under the Industrial Disputes Act the party against whom a Labour Tribunal is bound to make an order must be a natural or legal person, for it is only against such a person that the order can be enforced. The Labour Tribunal had made this order against the Superintendent, Deeside estate directing him to re-instate a labourer, whose services had been summarily terminated and to pay his back wages. It was held that the order was unenforceable because the Superintendent of Deeside estate "was not a legal person". A Corporation Sole must be expressly created by Legislative Enactment. In the course of his judgment he has relied on the principle set out by the Privy Council in the case of *Land Commissioner v. Ladamuthupillai*².

Mr. Kadirgamar concedes that this point has not been raised in the petition of appeal but he submits that he is entitled to do so at this stage. He refers me to the recent judgment in the case of *Walker Sons & Co. Ltd. v. Fry*³.

Counsel for the respondent states that the owners of this estate are the Malay Tea & Rubber Co. Ltd., and he concedes that in view of the judgment of Siva Supramaniam, J. there is a technical difficulty which he is unable to surmount. I am inclined to uphold the submission made by

¹ (1968) 70 N. L. R. 279.

² (1960) 62 N. L. R. 169

³ (1965) 68 N. L. R. 73.

Mr. Kadirgamar that the order made by the President is not an enforceable order on the authority of the judgment of Siva Supramaniam, J. The question does arise as to whether the applicant is barred by prescription from pursuing this matter before the Labour Tribunal by duly amending the designation of the respondent to the application. Mr. Kadirgamar refers me to the judgment of Weeramantry, J. reported in 74 C. L. W. at page 81, according to which it would appear that the plea of prescription would not be available to the appellant, in the event of the applicant filing a fresh application. Moreover, as this application to follow would be tantamount to a renewal of the application by naming as the respondent the natural person or legal person as contemplated in the judgment of Siva Supramaniam, J. to enable the President to make an enforceable order, I do not think any objection can be taken to it on the ground of prescription. Subject to the applicant's right to renew his application I allow the appeal. The parties shall bear their own costs of appeal.

Since dictating the above order in Court my attention has been drawn to a judgment of Samerawickrame, J. in S.C. 184/67, Labour Tribunal Case No. B/1869 decided on 7.7.1968¹ where in an analogous situation, while agreeing with the judgment of Siva Supramaniam, J. referred to above that an application should be made against a natural or legal person, he observed that there should not be the same insistence on the proper naming of the respondent as there should be, for example, in the case of an application made to a Court of Law and if there is such a designation or description from which the identity of the employer can be known, it should be sufficient. He thereupon directed an amendment of the caption in the pleadings and in particular in the order of the President by stating the employer to be W Wickremasinghe, The Manager, Ury Group, Passara. It would appear that he has got this information on a perusal of the proxy, filed by the respondent to this application.

With respect I am unable to adopt the course taken by my brother Samerawickrame, J. No doubt, it would appear to be practical and expeditious but I do not think where the President has made an unenforceable order this Court in appeal can *ex mero motu* make any such amendment to take effect retroactively. If the respondent to this application consents to such an amendment it would perhaps be different. Furthermore, the definition of the term "employer" in the Industrial Disputes Act catches up different categories of employers and it is the applicant who should exercise his discretion in selecting one or more of them. I do not think the Supreme Court in Appeal is justified in doing so.

I see no reason to vary the order I have already made.

Appeal allowed.

¹ (1968) 71 N. L. R. 47.