[IN THE COURT OF APPEAL OF CEYLON]

1972 *Present :* **Fernando, P., Sirimane, J., Samerawickrame, J., and Siva Supramaniam, J.**

CEYLON PRESS WORKERS' UNION (on behalf of W. Peter Perera), **Applicant,** *and* **THE COLOMBO APOTHECARIES COMPANY LTD.,** Respondent

APPLICATION NO. 11 OF 1972

S. C. 111/1970—L. T. 14/429/69

Court of Appeal Act, No. 44 of 1971—Section 8 (1) (d)—Scope of expression " civil cause or matter "—Labour Tribunal—Order made by it against employer—Judgment of Supreme Court reversing the order—Jurisdiction of Court of Appeal to grant leave to appeal therefrom—Industrial Disputes Act (Cap. 131), ss. 31A, 31B, 31D2—Courts Ordinance, ss. 2, 19, 36.

Section 8 (1) (*d*) of the Court of Appeal Act, No. 44 of 1971, reads as follows :—

" An appeal shall lie to the Appellate Court, at the instance of an aggrieved person, with the leave of the Appellate Court, from any judgment of the Supreme Court given in the exercise of its appellate jurisdiction in any civil cause or matter in which is involved, in the opinion of the Appellate Court, a question of general or public importance. "

Held, that where the Supreme Court allows the appeal of an employer from an order made by a labour tribunal in an industrial dispute, the Court of Appeal has jurisdiction under section 8 (1) (*d*) of the Court of Appeal Act to allow leave to appeal from the judgment of the Supreme Court. In such a case it cannot be contended that the judgment of the Supreme Court sought to be appealed from was not one given in the exercise of " its appellate jurisdiction in any civil cause or matter ".

" The word ' cause ', while it certainly includes an action, is wide enough to embrace other forms of proceedings initiated to obtain relief from wrongs or grievances ; but whether the word ' cause ' is or is not wider in meaning than the word ' action ', the word ' matter ' is indeed of very wide import. "

APPLICATION for leave to appeal from a judgment of the Supreme Court.

S. Sharvananda, with *R. Ravindra*, for the applicant.

H. W. Jayewardene, Q.C., with *Ben Eliyathamby* and *Miss I. Marasinghe*, for the respondent.

V. Tennekoon, Q.C., Attorney-General, with *H. A. G. de Silva*, Senior Crown Counsel, as *Amicus Curiae*.

Cur. adv. vult.

April 24, 1972. FERNANDO, P.—

This is an application for leave to appeal from a judgment of the Supreme Court delivered on the 26th of January 1972 allowing an appeal by an employer and dismissing with costs an application made to a Labour Tribunal by a trade union on behalf of a dismissed workman claiming relief by way of re-instatement and payment of back wages.

Section 8 (1) (*d*) of the Court of Appeal Act, No. 44 of 1971, enables this Court to grant leave to appeal from a judgment of the Supreme Court given in the exercise of its appellate jurisdiction in any civil cause or matter in which is involved, in the opinion of this Court, a question of general or public importance.

A preliminary objection was taken before us by the respondent that the judgment of the Supreme Court sought to be appealed from was not one given in the exercise of its "appellate jurisdiction in any civil cause or matter." We are thankful to learned counsel for the applicant and the respondent as well as to the learned Attorney-General who was good enough to assist us at our instance on the preliminary objection for their full and helpful arguments addressed to us.

Act No. 62 of 1957 which amended the Industrial Disputes Act (Cap. 131) made provision (1) for the establishment of labour tribunals (Section 31A), (2) for applications to be made to any such labour tribunal by a workman (Section 31B), and (3) for appeals to the Supreme Court on questions of law by any workman or employer who may be dissatisfied with orders of a labour tribunal (Section 31D (2)).

Mr. Jayewardene, for the respondent, has argued that the expression "appellate jurisdiction" of the Supreme Court in the aforesaid Section 8 (1) (*d*) has no other meaning than the expression "appellate jurisdiction" in Sections 19 and 36 of the Courts Ordinance (Cap. 6). Section 19 of the Courts Ordinance confers on the Supreme Court an appellate jurisdiction for the correction of all errors "as hereinafter specified" which may be committed by any original Court, and sole and exclusive

cognizance by way of appeal and revision of all causes, suits, actions, prosecutions, matters and things of which such original Court may have taken cognizance.

The expressions "court" and "original court" are defined in Section 2 of the Courts Ordinance. It will be sufficient to note that "court" denotes a judge or body of Judges empowered by law to act judicially.

An authoritative decision, *United Engineering Workers' Union v. Devanayagam* [1], having already placed labour tribunals outside the category of bodies exercising judicial power, or, in other words, to use language more germane to the argument we are here considering, outside the definition of "court" in the Courts Ordinance, Mr. Jayewardene submitted that the legislature, when it enacted Section 8 (1) (*d*), had in contemplation nothing other than what he termed the traditional (or Courts Ordinance) appellate jurisdiction. He invoked reference to certain decisions of the Supreme Court, *Soertsz v. The Colombo Municipal Council* [2], *R. M. A. R. A. R. R. M. v. Commissioner of Income Tax* [3] and *Settlement Officer v. Vander Poorten* [4], all of which denied any right of appeal to the Privy Council from judgments of the Supreme Court. Gratiaen A.C.J. in *Attorney-General v. Ramaswamy Iyanger* [5] attempted to explain the first and second of these decisions on the basis of the principle that, when a Court exercises jurisdiction which is merely consultative in character or makes a declaration in the nature of an award in proceedings which from beginning to end were ostensibly and actually arbitration proceedings, its decision cannot be equated to a judgment pronounced in a "civil suit or action".

Support for the respondent's objection was also sought from a decision of the Privy Council in *Rangoon Botatung Co. Ltd. v. The Collector, Rangoon* [6] which held that no appeal lay to Her Majesty in Council from a decision of the Chief Court of Lower Burma on a reference to that Court by the Collector of Rangoon in proceedings under the Land Acquisition Act after an award made by him as to the value of the land acquired. The Privy Council did not there accept the argument or suggestion that, when once the claimant was admitted to the High Court, he has all the rights of an ordinary suitor including the right to carry an award in an arbitration as to the value of the land taken for public purposes up to the Board as if it were a decree of the High Court made in the course of its ordinary jurisdiction. This decision has been explained in later cases, and we content ourselves with quoting the explanation of Lord Simonds in *Adaikappa Chettiar v. Chandrasekhara Thevar* [7]:—

> "That case, however, has been explained in later decisions of the Board as depending on the fact that the proceedings were from beginning to end ostensibly and actually arbitration proceedings. ....

[1] *(1967) 69 N. L. R. 289.*
[2] *(1930) 32 N. L. R. 62.*
[3] *(1935) 37 N. L. R. 447.*
[4] *(1942) 43 N. L. R. 436.*
[5] *(1954) 55 N. L. R. 574.*
[6] *40 Ind. Dec. (N. S.) Cal. 21.*
[7] *(1948) A. I. R. (P. C.) at p. 14.*

> The true rule is that where a legal right is in dispute and the ordinary Courts of the Country are seized of such dispute the Courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies, if authorised by such rules, notwithstanding that the legal right claimed arises under a special Statute which does not in terms confer a right of appeal."

The cases referred to above as having been relied on by Mr. Jayewardene showed a tendency to place a narrow meaning on the words "civil suits or actions" appearing in the Appeals (Privy Council) Ordinance (Cap. 100). This tendency was more marked in the later case of *Silverline Bus Co. Ltd. v. Kandy Omnibus Co. Ltd.*[1], where a Divisional Bench of five judges of the Supreme Court by a majority decision ruled that the words "civil suit or action" in the Appeals (Privy Council) Ordinance should be construed in their ordinary sense of a proceeding in which one party sues or claims something from another in regular civil proceedings. The Privy Council disapproved of this narrow meaning in *Tennakoon v. Duraisamy*[2]. After making reference to Section 52 of the Charter of 1833 where the words "civil suit or action" first appeared, the Privy Council observed that, "though it would be natural to exclude from the range of permissible appeals cases of insufficient importance, it would be difficult to imagine an intention to exclude cases differentiated by reference to the form of the proceedings, regardless of the gravity of the result occasioned by them". The learned Judges went on to observe that the words "civil suits or actions" must be given the meaning which they bore in the Charter of 1833. Following a decision in a case from the Straits Settlements where a relevant Colonial Charter of 1855 permitted leave to appeal in any "civil cause", they saw no good ground for drawing any distinction between the words, "civil cause" and "civil action". A comparatively recent decision of the Privy Council, *Maliban Biscuit Manufactories Ltd. v. Subramaniam*[3], clearly overruled the *Silverline Bus Co.* case, and it would be difficult to resist the inference that the line of cases relied on by Basnayake C.J. in his judgment in the *Silverline Bus Co.* case, which indeed was the line of cases mainly relied on by Mr. Jayewardene before us, has now been impliedly overruled. In any event, that line of cases will, if and when necessary, have to be reviewed.

Tennakoon v. Duraisamy[4] was a case that dealt with an application by a person for registration as a citizen under the Indian and Pakistani Citizenship Act. The Deputy Commissioner who inquired into that application was in no sense a Court. Nevertheless, the Privy Council determined that at the stage the dispute came before the Supreme Court by way of an appeal it had become "a civil suit or action in the Supreme Court". We do not, however, consider it necessary to pronounce whether there was in the case before us "a civil suit or action in the Supreme Court" as the requirement of Section 8 (1) (*d*) of the Court of

[1] *(1956) 58 N. L. R. 193.*
[2] *(1958) 59 N. L. R. 481.*
[3] *(1971) 74 N. L. R. 343.*
[4] *(1958) 59 N. L. R. 481.*

Appeal Act is that the judgment of the Supreme Court be one given in the exercise of its appellate jurisdiction " in any civil cause or matter ". We think the word " cause ", while it certainly includes an action, is wide enough to embrace other forms of proceedings initiated to obtain relief from wrongs or grievances ; but whether the word " cause " is or is not wider in meaning than the word " action ", the word " matter " is indeed of very wide import.

Mr. Jayewardene attempted to distinguish the upholding of the right of appeal in *Tennakoon v. Duraisamy*[1] by suggesting that there the civil right of a citizen to citizenship was involved. He submitted that the Supreme Court has been granted by the Industrial Disputes Act a special power to decide questions of law, and that when the Court is exercising that special power it is not exercising its appellate jurisdiction under the Courts Ordinance but is deciding a special category appeal, as he termed it, and not one arising in a civil cause or matter. In other words, he sought to place a technical meaning on the words " appellate jurisdiction " appearing in Section 8 (1) (*d*) of Act No. 44 of 1971. We do not consider that such a narrow and technical meaning is justified. The expression " appellate " in Section 8 (1) (*d*) above referred to denotes, in our opinion, appellate as opposed to original ; and the expression " civil " is also there used, as submitted by applicant's counsel, in contradistinction mainly to " criminal ". It is unnecessary, however, for the purpose of this application for us to consider the question whether every proceeding before a Court that cannot be said to be " criminal " necessarily falls within the category of " civil ". That question too can be decided if and when it should arise.

It is also unnecessary, in our opinion, to go on to consider whether a workman is or is not claiming a legal right when he makes an application for relief to a labour tribunal in terms of Section 31B of the Industrial Disputes Act. We would in this connection like to refer to the observation of Gratiaen J. made at the stage of leave to appeal in *Tennakoon v. Duraisamy*[2] that the proceedings before the Deputy Commissioner did not at that stage constitute " a civil suit or action " but that the parties to the appeal were parties to " a civil suit or action in the Supreme Court ". We respectfully agree with this observation, and, had it been necessary, we would have been ready to apply that reasoning to the situation that was present at the stage of appeal to the Supreme Court from the judgment of the labour tribunal. That is to say, even if the application to the labour tribunal did not qualify as a civil cause or matter, when the appeal was preferred what was invoked was an appellate jurisdiction of the Supreme Court " in a civil cause or matter ". When a workman has been successful in obtaining an award he has acquired a legal right to the fruits of that award, a right which is indeed under the statute capable of enforcement. In other words, the labour tribunal has at the time of making its award created a right. Therefore, when the parties came up before the Supreme Court by way of appeal, the judgment of the Supreme

[1] *(1955) 57 N. L. R. at p. 439.*

[2] *(1955) 57 N. L. R. at p. 439.*

Court thereafter was undoubtedly given both (*a*) in the exercise of its appellate jurisdiction and (*b*) in a civil cause or matter. The relevant time for our purposes is the time of delivery of the judgment of the Supreme Court. At that time it was a judgment given in a civil cause or matter. Mr. Jayewardene questioned what would be the position if the labour tribunal had held against the applicant-workman, that is to say, if the labour tribunal had not created a right. The answer to that question would appear to be that in that event the appeal to the Supreme Court by the workman would be on the basis that he is aggrieved by a denial of the right to receive an award.

An argument was addressed to us by Mr. Jayewardene as to whether the labour tribunal was not exercising judicial power. We do not need to examine this argument as, in our opinion, whatever be the nature of the power the labour tribunal was exercising, the Supreme Court in hearing and deciding the appeal was undoubtedly doing so in the exercise of its judicial power.

While we therefore overrule the objection, we have to state that the applicant has failed to satisfy us that the question or questions involved in the appeal are of general or public importance. We would therefore dismiss the application, but without costs.

Application dismissed.