

**WICKRAMASINGHE**

v.

**SRI LANKA STATE TRADING CORPORATION ADDED IN PLACE  
OF CONSOLIDATED EXPORTS LIMITED, RESPONDENT**

COURT OF APPEAL.

PALAKIDNAR, J.

NOVEMBER 7, 1989.

*Industrial Dispute - Jurisdiction - Waiver - Estoppel - Employer terminating employment and ceasing to exist on purchase of its shares by new Corporation - Liability.*

The Sri Lanka State Trading Corporation was established under s. 2(1) of the Sri Lanka State Trading Corporation Act, No. 33 of 1970, in terms of Gazette Extraordinary No. 14 of 996/10 of 2.2.1972. The shares of Consolidated Exports Limited under whom the applicant Wickramasinghe was employed were purchased by the Sri Lanka State Trading Corporation and Consolidated Exports Limited did not function from 2.2.1972. The applicant's employment was terminated by Consolidated Exports Ltd. and he filed his application against them claiming reinstatement with back wages or, in the alternative, compensation and other reliefs. During the pendency of the application, as the shares of Consolidated Exports had been purchased by the Sri Lanka State Trading Corporation, the latter Corporation was substituted as respondent. The only question was whether the liability of any of the original respondents would attach to the substituted Corporation.

**Held :**

(1) Under the Sri Lanka State Trading Corporation Act, No. 33 of 1970, the employees of Consolidated Exports Limited were not deemed to be employees of the substituted respondent. Hence the contention that the applicant- appellant is not a workman of the substituted Corporation is a valid one.

(2) Even if the present respondent agreed to be substituted in place of the previous respondent it cannot be conduct amounting to estoppel or even an admission of liability. Jurisdiction is always in issue and consent cannot give jurisdiction. The question of jurisdiction does not admit of waiver.

**Cases referred to:**

- (1) *In re S. S. Arnaldo de Bresica* 23 NLR 191.
- (2) *Attorney- General v. A. D. De Silva* 53 NLR 529.
- (3) *Arnolda v. Gopalan* 53 NLR 153.

PRELIMINARY OBJECTION that the substituted respondent is not an employee of the original respondents.

*E. D. Wickramanayake* with *Mr. Niles* for applicant- appellant.

*J. W. Subasinghe, P. C.* with *Mr. Devasagayan* for respondent.

March 2, 1990.

**PALAKIDNAR, J.**

The Applicant- Appellant brought this action against the Consolidated Exports (Ceylon) Ltd. praying that he be reinstated in employment with back wages or in the alternative for compensation and other reliefs.

It was his case that his services were terminated on 1.2.1970 in an illegal and unjust manner having being employed as a Manager of the Tea Department from 12.6.1968 in the firm of abovenamed.

At a stage of the inquiry the Respondents were substituted in place of the firms abovenamed, and cited originally as the Respondent and the inquiry proceeded therefrom. At the conclusion of the inquiry the learned President dismissed the application and did not grant any relief prayed for by the applicant- appellant.

At the hearing of the appeal of the Appellant learned President's Counsel for the Appellant raised a preliminary point before this court, that the present Respondent to the appeal is not the Employer of the appellant workman.

He referred to the proceedings where the Respondents were added in place of the original Respondents and the caption was amended accordingly.

The present Respondents Corporation was established under section 2(1) of the Sri Lanka State Trading Corporation Act, 33 of 1970, in terms of Gazette Extraordinary 14 of 996/10 of 2.2.72. The shares of the Consolidated Exports Limited were purchased by the Sri Lanka State Trading Corporation. An affidavit filed by the Chairman of the Respondent Corporation dated 22.6.87 was filed in this court without objection by the Respondent. In that affidavit it was stated that the original Respondent Company is not and has not been functioning since the establishment of the Respondent Corporation, i. e. from 2.2.72 (vide date of Gazette Extraordinary).

The question therefore arises whether the applicant who was an employee of the original Respondent was a workman under the present substituted Respondent. It is to be noted that the appellant's services

were terminated on 1.2.70 (vide Application of the appellant in Labour Tribunal). It would lead to the further question whether an employee whose services were terminated before the present Respondents came into existence, could sue the present respondents for the relief that he claims.

He was plainly under no contract of employment with the present Respondents. Therefore the only question is whether the liability if any of the original respondents to give him the reliefs that he claims could attach to the present respondents.

The manner of the transfer of ownership has therefore to be examined. The affidavit shows that the shares were purchased and a minority of the shares which were not purchased were vested in the State Trading (Consolidated Exports) Corporation.

Under section 5(2) of Act, No. 33 of 1970 (Cl. 183 vol. C. L. E.) subsection (b) empowers the Respondent to employ, remunerate and control its officers, servants and agents. Therefore on the Respondent coming into being a fresh employment of officers, servants and agents is provided for. The previous employees are not deemed to be employees of the Respondent. Therefore the contention that the appellant is not a workman under the present Respondent is a valid objection.

The other point that arises is whether there was consent by the Respondent to jurisdiction of the Labour Tribunal to be treated as a Respondent in place of the previous employer-respondent. It would appear from the proceedings that the present respondent got itself substituted in place of the previous respondent and the inquiry proceeded without any objection by the present respondent. Learned Counsel for the Respondent referred us to the case of *In re S. S. Arnaldo de Bresica (1)* where it was held that a court cannot refuse to entertain the objection to the jurisdiction at any stage of the suit. It is a matter always in issue. Holding an inquiry against a person who is found to be a party against whom relief cannot be sought is primarily a question of jurisdiction. Thus when the court acts without jurisdiction consent cannot give jurisdiction. Thus even if the present respondent agreed to be substituted in place of the previous respondent it cannot be conduct amounting to estoppel or even an admission of liability.

In the Privy Council case of the *Attorney General vs. A. D. de Silva* (2) it was held that the admission of liability by the Solicitor General does not bind the court on a question of law. Thambiah, J. in *Arnolda v. Gopalan* (3) held that even if a party had consented to a settlement order against him in the Labour Tribunal the question of the liability of such a party could be reviewed by an appellate court. Thambiah, J. said that the mere fact that a party had consented to pay would not confer jurisdiction to the tribunal, when it has in fact no jurisdiction conferred on it by statute law. Maxwell on Interpretation of Statutes (9th Edn. page 392) states, consent cannot give jurisdiction and therefore any statutory objection which goes to the jurisdiction does not admit of waiver. Applied to the facts of the present case the fact that the present respondent consented to be added as a party would not be an estoppel as could be contended by the appellants.

The further principle that the employer had ceased to exist and the liability of a new party without any specific legal statute conferring a status of being in the position of the previous employer for the purpose of a relationship of workman and employer cannot be enforced was affirmed by Thambiah, J. in his judgment quoted above.

I would respectfully agree with the view expressed and hold that the preliminary objection raised is valid and dismiss the appeal with costs.

*Preliminary Objection upheld.*

---