HUNTER AND COMPANY LTD.
v.
THE MINISTER OF LABOUR AND VOCATIONAL TRAINING AND OTHERS

SUPREME COURT.
DHEERARATNE, J.,
ANANDACOOMARASWAMY, J. AND
DR. GUNAWARDANA, J.
S.C. APPEAL NO. 65/95
S.L. SLA NO. 102/95
C.A. APPLICATION NO. 157/93
MARCH 14, APRIL 9, AND MAY 5, 1997.

Industrial dispute – Repudiation of a Collective Agreement under Section 8(1) of the Industrial Disputes Act – Whether the implied terms of the Agreement continue to be in force – Applicability of the doctrine of respect for acquired rights – Whether the Arbitrator's Award is Just and Equitable.

The Employers' Federation of Ceylon, acting on behalf of a number of employers, including the appellant-company, entered into a Collective Agreement with the 4th respondent Union. The Employers' Federation repudiated the said Collective Agreement in so far as it related to the appellant-company by Notice dated 6.11.1987. The appellant-company itself gave notice of repudiation on 13.11.1987. The Commissioner of Labour published a Notice in the Government Gazette stating that the said Collective Agreement has ceased to be of force with effect from 1.1.1988, in so far as the appellant-company is concerned. Although the said Collective Agreement was repudiated by the appellant-company with effect from 1.1.1988, it continued to pay the NRCOLG allowance to its workmen, for a further period of 1 year 3 months i.e. till April 1989.

The appellant-company entered into a Memorandum of Settlement with the Branch Union of the 4th Respondent Union, on 28th April 1989, and thereafter discontinued the payment of the said NRCOLG allowance. The parent Union disowned the said Memorandum of Settlement by letter dated 24th November 1989.

The 1st respondent referred the dispute for arbitration to 3rd respondent in regard to the non-payment of the said NRCOLG allowance and the terms of remuneration of the clerical, supervisory and allied staff employed by the appellant-company.

The 3rd respondent by his Award held that the repudiation of the said Collective Agreement did not bring "the statutory implied terms" to an end. Further he ordered the payment of the said NRCOLG allowance, and approved the said terms of remuneration of the said staff, as set out in the said Agreement, on the basis that such payments were just and equitable.

Held:

(1) (Dheeraratne, J. dissenting) That there was evidence before the Arbitrator that NRCOLG allowance was paid to the workmen for nearly 1 year and 3 months, even after the repudiation of the said Collective Agreement by the appellant-company. It was also the evidence of the appellant-company's Personnel Manager that the Company realised that, to stop the NRCOLG allowance the Company needed to have an Agreement with employees. In the absence of an Agreement the Company continued to pay the NRCOLG allowance, till the Memorandum of Settlement was signed. Hence the workmen can be said to have acquired a right for the continued payment of the said NRCOLG allowance.

***Per* Gunawardana, J.** "The concept of 'acquired rights' is based on the recognition of the sanctity of property rights under a particular municipal legal system. Thus the recognition of the continuation of the "Statutory implied terms", under the said Collective Agreement, will be in conformity, with the doctrine of respect for acquired rights."

(2) (Unanimously) That it was just and equitable for the Arbitrator to have held that, the repudiation of the Collective Agreement did not bring the "Statutory implied" terms to an end.

(3) (Unanimously) That the deprivation of the rights and privileges of the workmen, was an unfair labour practice.

APPEAL from the judgment of Court of Appeal.

Faisz Musthapha, P.C. with *Anil Silva* and *Sanjeewa Jayawardana* for the petitioner-appellant.

Gomin Dayasiri with *Aravinda R.I. Athurupane* for the 4th respondent-respondent.

Cur. adv. vult.

June 16, 1997.
DR. GUNAWARDANA, J.

The Employers' Federation of Ceylon acting on behalf of a number of employers including the appellant-company, entered into a Collective Agreement (P1) with the 4th respondent Union, on 20th November 1981. The said Collective Agreement whilst comprehensively covering the terms and conditions of the employment dealt with in particular the following:-

(a) the consolidation of salaries, (Clause 13).
(b) the payment of a non-recurring cost of living gratuity (NRCOLG) (Clause 15) and
(c) the modalities for the revision of salaries. (Clause 13(6)).

The Employers' Federation repudiated the said Collective Agreement insofar as it related to the appellant-company by Notice dated 6.11.1987 (P3). The appellant-company itself gave notice of the repudiation on 13.11.1987 (P2). The Commissioner of Labour published a Notice in the Government Gazette stating that the said Collective Agreement has ceased to be of force with effect from 1.1.1988, insofar as the appellant-company is concerned. Although the said Collective Agreement was repudiated by the appellant-company with effect from 1.1.1988, it continued to pay the NRCOLG allowance to its workmen, for a further period of 1 year and 3 months i.e. till April 1989.

On 28th April 1989 the appellant-company entered into a Memorandum of Settlement (P5) with the Branch Union of the 4th respondent Union, purporting to act under Section 12 of the Industrial Disputes Act. It is significant to note that this Memorandum was not signed by the office bearers of the parent Union but was signed by three workmen of the appellant-company, purporting to act on behalf of the parent Union. The parent Union by letter dated 24th November 1989 (P6) disowned the said Memorandum of Settlement, and informed the appellant-company that the persons who signed the said Memorandum of Settlement were not authorised by the parent Union to do so.

The 1st respondent referred the dispute for arbitration by the 3rd respondent, at first, in the following terms. (P8).

"The matter in dispute between the aforesaid parties is whether the non-payment of cost of living gratuity to employees who are members of the Ceylon Mercantile Industrial and General Workers Union with effect from September 1987 by the Management of M/S Hunter & Co. Ltd. is justified and to what relief each of them is entitled."

During the pendency of the said arbitration, the 1st respondent referred, a further matter, for arbitration in the following terms. (P13).

"(2) what should be the terms of remuneration of the clerical, supervisory and allied staff employed at M/S Hunter & Co. Ltd."

The item (1) referred to arbitration by P13 is identical to the matter referred for arbitration by P8. The second reference was taken up for arbitration along with the first, with the consent of the parties, and an award was made in favour of the 4th respondent Union in respect of both matters referred for arbitration. The appellant-company being aggrieved by the said award made an application for a Writ of Certiorari, to the Court of Appeal to have the said award quashed. The Court of Appeal by its judgment dated 13.2.1995 (P23) dismissed the application of the appellant-company. Thereafter the appellant-company made an application for Special Leave to Appeal to this Court and leave to appeal was granted against the said judgment of the Court of Appeal.

The learned Counsel for the appellant-company pointed out that the Court of Appeal in its judgment has held that, "the repudiation of the Collective Agreement did not bring the implied contracts of employment that was in existence at the time the Collective Agreement was in force, to naught, but the conditions remained till a new contract of employment was brought into force." This conclusion he submitted was untenable in law in view of the provisions of Section 8(1) of the Industrial Disputes Act which reads as follows:-

> "8 (1) Every Collective Agreement which is for the time being in force shall, for the purposes of this Act be binding on the parties, trade Unions, employers and workmen referred to in that agreement in accordance with the provisions of Section 5(2); and the terms of the agreement shall be implied terms in the contract of employment between the employers and workmen bound by the agreement."

The learned Counsel for the appellant-company further submitted that the said conclusion reached by the Court of Appeal set at naught, the legislative injunction that, terms of the Collective Agreement shall be implied terms in the contract of employment only so long as the Collective Agreement is, "for the time being in force" and that too in respect of workman, "bound by the agreement." He argued that in the instant case, since there is a valid repudiation of the said Collective Agreement under Section 9 of the Industrial Disputes Act, the implied terms of contract of employment in terms of

the said Collective Agreement, which had been repudiated, would cease to have effect.

The learned Counsel for the 4th respondent submitted that the said Section 8(1) of the Industrial Disputes Act is separated into two limbs by a semicolon. The first limb of Section 8(1) accomplished two purposes. The first limb firstly speaks as to "who" are bound by a Collective Agreement and secondly as to, "during when", they would be so bound. In the first limb, only the Collective Agreement is spoken of. The words, "which is for the time being in force" occur in the first limb which is separated by a semicolon from the second limb. Therefore, he argued that, those words do not apply to the second limb of Section 8(1). The function of those words is to specify during which time the Collective Agreement shall be binding on the parties to the Collective Agreement. It is most vital to note that the words, "Contract of Employment" do not occur in the 1st limb of Section 8(1). He added that, the second limb of Section 8(1) speaks as to the terms of the Collective Agreement being made "statutorily implied terms" in the contracts of employment between the employer and workman. The second Section 8(1) has the words, "employers and workmen bound by the agreement." These words he submitted are there to specify or describe whose contracts of employment are affected by the provision, and not for the purpose of limiting the applicability of the implied terms, to any period within which the Collective Agreement itself is to be in force. Those words are only descriptive as to whose contracts of employment are dealt with by the second limb of Section 8(1).

The learned Counsel for the 4th respondent contended that if the legislature intended to provide that once the Collective Agreement is repudiated the, "statutory implied terms" also should cease to have effect, then it would have, in its wisdom, expressly stated so. It is to be noted that Industrial Disputes Act does not expressly state so. He submitted that if the "statutorily implied terms" ceased to apply with the repudiation of the Collective Agreement, the workmen would be without terms and conditions in their contracts of employment until a fresh Collective Agreement is entered into. There is much substance in that argument of the learned Counsel for the 4th respondent.

Furthermore the Court of Appeal in its judgment has referred to the practical difficulty that would arise if the repudiation is to be treated as abrogating "statutory implied terms". It has pointed out that according to Clause 13(4) of the Collective Agreement, the consolidated salaries payable under the Agreement included the allowances received by employees prior to the said Collective Agreement, and it's specifically stated in the Collective Agreement that the allowances set out at Clause 13(4) (a) to (e) would not be payable, after the Collective Agreement came into effect. Similarly, clause 14 of the Collective Agreement sets out the conversion scales of the consolidated salaries. In that context, the Court of Appeal has observed that, "If the submission of the learned Counsel is accepted, with the repudiation of P1 then all the conditions in clause 13(4) would have to be reintroduced and all the benefits that was bestowed by one would be made nugatory. (pages 10 and 11 of P23).

In this regard it is pertinent to refer to the observation made by S.R. de Silva in his book titled, "Legal Framework of Industrial Relations" at pages 94 which states as follows:-

"At the termination of a Collective Agreement in terms of Section 9 of the Industrial Disputes Act the Agreement ceases to have statutory effect under the first part (limb) of Section 8(1), but would continue to form part of the contract of employment of each of the workmen who were bound by it since the provisions of the agreement have been incorporated into such contracts of employment by the latter part (2nd limb) of Section 8(1)."

There was evidence before the Arbitrator that, NRCOLG allowance was paid to the workmen for nearly 1 year and 3 months, even after the repudiation of the said Collective Agreement by the appellant-company. It was also the evidence of the appellant-company's Personnel Manager that the Company realised that, to stop NRCOLG allowance the Company needed to have an agreement with the employees. (Page 41) and that in the absence of an agreement the Company continued to pay the NRCOLG allowance (Page 41), till the Memorandum of Settlement was signed. (Page 30). Hence the workmen can be said to have acquired a right for the continued payment of the said NRCOLG allowances. In that context in my view

it is appropriate to consider this issue in light of the doctrine of respect for acquired rights. The doctrine of respect for "acquired rights" or "vested rights" has gained recognition as a general principle of law both in Municipal law and in International law. In considering this doctrine I will first turn to the question as to what is meant by "acquired rights". Although there is no uniformity in various municipal legal systems in regard to the character and content of acquired rights, broadly "rights" may be divided into two categories viz. "property" rights and "personal" rights. "Property" rights in general will not be limited to only real or movable property, but will also include rights *in rem* in tangible and intangible goods and contractual rights, whose content is economic. "Personal" rights relate to moral or political matters. O 'Connell in his book International Law. Vol. 2 (Second Edition – London 1970) at Page 763 defines acquired rights as, "Acquired rights are any right, corporal or incorporal, property vested under the municipal law in a natural or juristic person and of an assessable monetary value." The concept of "acquired rights" is based on the recognition of the sanctity of property rights under a particular Municipal legal system. Thus the recognition of the continuation of the "statutory implied terms" under the Collective Agreement, will be in conformity, with the doctrine of respect for acquired rights.

In view of all the matters discussed above, I hold that it was just and equitable for the Arbitrator to have held that repudiation of the Collective Agreement did not bring "the statutory implied terms" to an end, but that they continued to remain valid till a new contract of employment is brought into force.

The learned Counsel for the appellant-company also contended that the Arbitrator erred in law in holding in the Award that, the repudiation of the said Collective Agreement *per se* was an unfair labour practice. The learned Counsel for the 4th respondent submitted that there is no such finding anywhere in the said Award (P21). The learned Counsel for the 4th respondent added that it was the deprivation of the rights and privileges of the workmen who were bound by the Collective Agreement that was held to be an unfair labour practice, and cited page 5 of the Award (P21). He pointed out that, the Arbitrator has examined the circumstances under which the

said rights and privileges were deprived of namely, by entering into a purported memorandum of settlement by the appellant-company with two committee members of the 4th respondent Trade Union's Branch at the appellant's company. The Arbitrator has referred to the fact that the "parent Union" i.e. the 4th respondent, had not been notified before or after the said settlement was signed. It is stated in the said Award that, the, "two signatories on behalf of the Union has been unjustly benefitted by consenting to sign the settlement. "The evidence of the Personnel Manager of the appellant-company led before the Arbitrator show that, one Kulawansa, who was one of the signatories to the said settlement, was given a promotion after the said settlement, from the Clerical Grade to the Executive Grade and a salary increase of about Rs. 1000/- to Rs. 1500/-. One Grenier, who was another signatory to the said settlement was given an extension of service, although he was over 60 years of age, at that time, and also received a salary increase of about Rs. 640/-. The third signatory to the said settlement, one Vitharana, was given a salary increase of Rs. 346/-, although he was a mental patient, and was hospitalised in that regard. After reviewing the evidence, the Arbitrator had come to the conclusion that, "If the company had effected this settlement with the Branch Union behind the back of the Parent Union, the Company will have to blame itself for this irregularity. As such it is my view that this memorandum of settlement should be rejected."

The Court of Appeal after careful consideration of the facts and circumstances of the case also came to the conclusion that the, "said purported settlement was an unfair labour practice adopted by the petitioner."

Furthermore the learned Counsel for the 4th respondent drew our attention to the following relevant points from the evidence of the said Personnel Manager of the appellant's company.

(i) that the Employers' Federation of Ceylon, the appellant's Trade Union, conceded that the Memorandum of Settlement was not valid – page 68.

(ii) that the Company realised that, to stop NRCOLG the Company needed to have an agreement with the employees. (Page 41).

(iii) that in the absence of such an agreement the Company continued to pay NRCOLG (despite the repudiation of the Collective Agreement). (Page 41).

(iv) that NRCOLG was being paid up to April 1989 (even after the repudiation in November 1987) and that with the said settlement the NRCOLG was stopped. (Page 30).

(v) that the Company had declared 30% profit dividend. (Page 30).

(vi) that NRCOLG was stopped not because of financial incapacity. (Page 34).

(vii) that NRCOLG is about Rs. 300/- to Rs. 400/- per person per month. (Page 35).

(viii) that NRCOLG is a payment made to the workman (each month) to cushion the effects of rising cost of living.(Page 36).

The learned Counsel for the 4th respondent submitted that upon a consideration of the above items of evidence it is apparent that Award made by the Arbitrator is just and equitable as envisaged under the provisions of Section 17 of the Industrial Disputes Act.

In the circumstances I see no basis to interfere with finding of the Arbitrator, and affirmed by the Court of Appeal, that the deprivation of the rights and privileges of the workmen, was an unfair labour practice.

Accordingly, the appeal is dismissed with costs fixed at Rs. 5000/-, to be paid to the 4th respondent.

DHEERARATNE, J.

I agree with my brother Gunawardana, J. that the order made by the Arbitrator is just and equitable in the circumstances and that the appeal should be dismissed. However, I have my reservations on that part of his reasoning based on the "acquired rights" of workmen.

ANANDACOOMARASWAMY, J. – I agree.

Appeal dismissed.