[IN THE COURT OF APPEAL OF CEYLON]

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

UNITED INDUSTRIAL, LOCAL GOVERNMENT AND GENERAL WORKERS' UNION, Applicant, *and* INDEPENDENT NEWSPAPERS LTD., Respondent

APPLICATION No. 9 OF 1972

S. C. 109/1970—L. T. Colombo, 2/31623

Court of Appeal—Leave to appeal thereto from a Supreme Court judgment involving a question of general or public importance—Jurisdiction to grant it in respect of a judgment delivered prior to 15th November 1971—Meaning of expression "judgment"—Court of Appeal Act, No. 44 of 1971, ss. 8 (1) (d), 18—Interpretation of statutes—Two rules of construction—Retrospective legislation affecting matters of procedure—Validity.

Leave to appeal under section 8 (1) (*d*) of the Court of Appeal Act on a question of general or public importance may be granted by the Court of Appeal not only in respect of a judgment delivered by the Supreme Court on or after 15th November 1971, which was the day when the Court of Appeal came into operation, but also in respect of a judgment delivered shortly prior to that date.

Where, in interpreting an enactment, two constructions are possible one of which will cause injustice and the other will avoid that injustice and will keep exactly within the purpose for which the enactment was made, the Court would adopt the second and not the first of those constructions.

A general rule is that a word is considered to be used throughout a statute in the same sense. Accordingly, in order to understand the meaning of the expression "judgment" in Section 8 (1) (*d*) of the Court of Appeal Act, the meaning of the expression "judgment or order" in Section 18 of that Act may be considered.

Legislation affecting matters of procedure (e.g., venue) may be retrospective.

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

Nimal Senanayake, with *Melvin Silva* and *Miss S. M. Senaratne*, for the applicant.

Sinha Basnayake, with *V. Basnayake*, 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 by a trade union seeking to appeal from a judgment of the Supreme Court, delivered on October 13, 1971, varying an award made by a Labour Tribunal.

Section 8 (1) (*d*) of the Court of Appeal Act, No. 44 of 1971, vests in this Court a discretion to grant leave to appeal 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 our opinion, a question of general or public importance.

Mr. Basnayake, for the employer-respondent, specifically stated at the hearing that he did not seek to argue that an application made to a Labour Tribunal in terms of Section 31B of the Industrial Disputes Act is not a "civil cause or matter".

We were satisfied, after hearing Counsel on the point, that the appeal does involve a question of general and public importance, viz., the scope of the jurisdiction and powers of the Supreme Court where an appeal to that Court is limited to consideration and decision of questions of law. Mr. Basnayake has, however, submitted that the jurisdiction vested in the Court of Appeal under Act No. 44 of 1971 does not extend to the granting of leave to appeal from judgments of the Supreme Court delivered before November 15, 1971, which was the date on which the Act came into operation, and we must therefore examine this submission. As the importance of the point raised by him is not confined to the present application, we invited the Attorney-General to assist us thereon, and we would take this opportunity of thanking him for his ready and valuable assistance.

Inasmuch as Part II of the Court of Appeal Act was not in operation till November 15, 1971, Mr. Basnayake submitted that the applicant had a right, between the date of delivery of the judgment of the Supreme Court and the date of the operation of the new Act, to seek any remedy he had by way of an appeal to Her Majesty in Council. He contended that the legislature could not have contemplated two Courts (the Privy Council and the Court of Appeal) having concurrent jurisdiction. As to this, it seems to us that while the Privy Council could have entertained an appeal (provided the applicant had also obtained either the statutory leave or special leave to appeal) up to November 14, 1971, the day before Act No. 44 of 1971 came into operation, the new Court of Appeal could not have considered any question of leave to appeal until November 15, 1971, which was the earliest day the Court of Appeal could have been established. There were, therefore, no two Courts in existence which could have entertained the applications at one and the same time.

Reference was made to a certain decision [1] of the Privy Council on appeal from the Supreme Court of Canada and a number of decisions of the Privy Council as well as of Indian Courts in regard to questions that arose as a result of the abolition in Canada and India of the right to prefer appeals to the Sovereign in Council. We did not consider it necessary to analyse these decisions because neither in Canada nor in India was the legislation of the same pattern as in our Court of Appeal Act. While in

[1] *(1947) A. C. 127.*

Canada the jurisdiction of the Privy Council to hear pending appeals was specially preserved, in India its Constitution made provision for the transfer of those appeals to the new Federal Court.

It is now well-established that a right to appeal is in the nature of a vested right, and that legislation which takes away that right is not one dealing only with procedure. All counsel reminded us of the words of Lord Macnaghten, in *Colonial Sugar Refining Company v. Irving*[1], that " to deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure. In principle, their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new Tribunal. In either case there is an interference with existing rights contrary to the well-known general principle that statutes are not to be held to act retrospectively unless clear intention to that effect is manifested". We would observe, with respect, that a judgment of a Full Bench of the Madras High Court stated the relevant principle correctly when Rajamannar C.J. in *Veeranna v. China Venkanna*[2] stated that—

> "'It must now be taken as well established that the institution of the suit carried with it the implication that all appeals then in force are preserved to the parties thereto till the rest of the career of that suit. But there are exceptions to the application of this rule. One exception is where by competent enactment such right of appeal is expressly or impliedly taken away with retrospective effect. Another exception is that a right of appeal is lost if the Court to which an appeal then lay, that is, at the time of the institution of the suit, is subsequently abolished."

If the position here had merely been an abolition of the right to prefer appeals (whether directly or after obtaining leave) to the Privy Council, then Mr. Basnayake's contention would have been well-founded. But Act No. 44 of 1971, which terminates the jurisdiction in Ceylon of the Privy Council has also set up this new Court of Appeal. After the Act came into operation no appeal to Her Majesty in Council was available to the applicant. That being so, the grant of an appeal to this Court, if Section 8 (1) does grant it, can hardly be said to involve interference with a vested right of appeal and therefore to require express enactment. The position in this matter is different to that in the *Colonial Sugar Refining Company* case. There, if the provision for appeal to the High Court of Australia had applied to the action, it would have taken away the right of appeal to Her Majesty in Council which was otherwise available. But if, upon a proper construction, Section 8 (1) gives an appeal in this case it does not take away a right of appeal to Her Majesty in Council for other provisions of the Act make such an appeal unavailable. It would in fact give an appeal where no appeal would otherwise be available. Rightly apprehended, it seems to us that the question before us cannot

[1] *(1905) A. C. at 372.* [2] *A. I. R. (1958) Mad. at 880.*

be determined by attempting to decide whether Section 8 of Act No. 44 of 1971 has or has not retrospective operation. The essential question is: What is the meaning of the expression "judgment" appearing in clause (*d*) of Section 8 (1) of the Act ?

The legislature, if it intended to restrict the right of aggrieved persons to appeals against judgments delivered after the Act came into operation, could without any difficulty have made its intention obvious by the use of appropriate qualifying words. In the absence of any qualification, we see little justification ourselves to place a restriction on the right as contended for by the respondent.

Assuming that the applicant could have obtained the statutory leave to appeal under the Privy Councils (Appeals) Ordinance, it had a bare 32 days in which not only to obtain that leave from the Supreme Court, but also to have its appeal registered in the office of the Privy Council. It is undeniable, if one has regard to the relevant Rules of the Privy Councils (Appeals) Ordinance, that the time available was insufficient for it to have pursued the question of statutory leave. There was no time limit in the matter of the granting of special leave by the Privy Council itself, but there again it would be unreasonable to conclude that it could have obtained a hearing of its application by the Privy Council before the date of the operation of the Court of Appeal Act. The legislature must be presumed to have been aware of these difficulties. In these circumstances it is not inappropriate for us to consider the application of a well-accepted principle of interpretation which was stated by Lord Cairns in *Hill v. East and West India Dock Company*[1] in the following words :—

> "Where there are two constructions, the one of which will do, as it seems to me, great and unnecessary injustice, and the other of which will avoid that injustice, and will keep exactly within the purpose for which the statute was passed, it is the bounden duty of the Court to adopt the second and not to adopt the first of those constructions."

In Maxwell's Interpretation of Statutes (11th ed., at page 193) the same principle is enunciated in this way :—

> "A sense of the possible injustice of an interpretation ought not to induce judges to do violence to well-settled rules of construction, but it may properly lead to the selection of one rather than the other of two reasonable interpretations. Whenever the language of the legislature admits of two constructions and, if construed in one way, would lead to obvious injustice, the Courts act upon the view that such a result could not have been intended, unless the intention had been manifested in express words."

We think that to place on the expression "judgment" the restrictive meaning of a judgment delivered on or after the date the new Act came into operation would be to work injustice on persons like the applicant who immediately before the time the Act came into operation had certain

[1] *L. R. (1884) 9 A. C. at 466.*

rights vested in them to pursue remedies before another Court, but who, immediately after that Act came into operation, lost those rights by reason of the abolition of the jurisdiction of that Court if they are left without the benefit of recourse to the Court that was, for all practical purposes, its substitute.

What compelling reason is there to think that the legislature intended to deprive a small class of persons who had, before the date of the operation of the Court of Appeal Act, certain remedies of appeal to the Privy Council open to them of those remedies without also providing an alternative remedy ? We are not unmindful in this context of the fact that in the case of appeals in civil causes or matters (clause (*d*) of Section 8 (1)), the remedy provided for in the new Act is of a more limited nature than that previously enjoyed ; but that is a result of the expression of the will of the legislature, and therefore can make no difference to the application in cases like that now before us of the principle above referred to. Moreover, since the expression "judgment" in the several clauses of Section 8 (1) must obviously have one and the same meaning, if the meaning contended for by the respondent is the right one, we have only to consider the plight of an unfortunate person who had, say, on the day before the Act came into operation, had his appeal against a conviction for murder and sentence of death dismissed by the Court of Criminal Appeal to conclude that it is wholly unreasonable to infer that the legislature intended to deprive that unfortunate person of a right he had enjoyed on the day of the dismissal of his appeal leaving him without a possibility of access to the substitute Court.

Yet another approach to the question we have to consider on this application, an approach suggested to us by the learned Attorney-General, commended itself to us as being appropriate. That was an approach on the basis of the construction of identical expressions appearing in a statute which was well-expressed by Jessel M.R. in *Spencer v. Metropolitan Board of Works*[1] in the following words :—

> "We ought to find out the meaning (of the section) from the section itself. If we cannot, then I agree with the principle that as a general rule a word is to be considered as used throughout an Act of Parliament in the same sense, and that therefore we may look through the other sections to see in what sense the word is there used."

Commending the application of this rule of construction to the situation we have here, the learned Attorney-General pointed out that the expression "judgment or order" as used in Section 18 of the Act undeniably includes judgments or orders delivered both before as well as after Act No. 44 of 1971 came into operation. He therefore suggested that the legislature could not have intended to place a different meaning on the expression "judgment" where it occurs in Section 8. That approach has the merit

[1] *(1882) 22 Ch. D. at 162.*

not only of not violating the principle governing the vested substantive right to appeal but also of recognising the rule of construction that legislation affecting matters of procedure (e.g., venue) may be retrospective.

The expression "judgment" in clause (*d*) of Section 8 (1) of the Court of Appeal Act covers, in our opinion, not only judgments delivered on or after the day that Act came into operation but extends to those delivered prior to that date. We are not unmindful of the situations that can arise if endeavours are made to appeal or to apply for leave to appeal to this Court in cases where judgments have been delivered long before the day above referred to, but there are other considerations which can govern our approach to any such endeavour, and it would be quite unprofitable to enlarge here upon the nature of those considerations.

We would grant leave to appeal as prayed for, with costs to the applicant.

Application granted.