KAMIL HASSAN
v.
FAIRLINE GARMENTS (INTERNATIONAL) LTD. AND TWO OTHERS

SUPREME COURT.
FERNANDO, J., KULATUNGA, J. AND RAMANATHAN, J.
S. C. APPEAL No. 50 OF 1988,
NOVEMBER 29 AND DECEMBER 1, 1989.

Industrial Dispute - Termination - Termination of the Employment of Workmen (Special Provisions) Act, No. 45 of 1971, amended by Law No. 4 of 1976 - Non-compliance with Commissioner's order - Rule nisi *for contempt - Difference between 'appeals' and*

'applications' for certiorari - Use of contempt proceedings to secure execution - Article 105 (3) of the Constitution.

In an application for relief in an industrial dispute the Commissioner's order entitled the petitioner to -

(a) re-instatement with effect from 8.9.87
(b) back wages (Rs. 139,437.50) for period from 16.8.85 to16.9.87
(c) no other benefits from 16.8.85 to 8.9.87

The Employee appealed to the Court of Appeal which after issuing a stay order, set aside the Commissioner's order. The Supreme Court allowed the appeal of the workman and set aside the order of the Appeal Court. On the Supreme Court judgment the petitioner would be entitled to -

(i) reinstatement with effect from 22.9.89.
(ii) back wages from 16.8.85 to 8.9.87.
(iii) back wages for the period from 8.9.87 until compliance with order for reinstatement.
(iv) all "benefits" which he would have been entitled to estimated later at Rs. 100,000.

The only variation by the Supreme Court is the postponement of the date for reinstatement caused by the time lag in the disposal of the petitioner's application.

The petitioner moved for a rule *nisi* for an alleged contempt of the Supreme Court, for enforcement of the Supreme Court judgment and compensation.

Held :

(1) The employer sent the petitioner a letter reinstating him. The petitioner reported for work on one day but did not attend thereafter through fear of the security personnel in the premises. Further, no work was allocated. The employer explained that the security personnel were there because one of the Directors was an M. P. and there was no work which the Company was able to give.

The true position was that the petitioner would not have gone for work through fear even if work was assigned, although *prima facie* the petitioner was not re-instated on 22.9.89. The material was insufficient to establish *prima facie* that the employer acted wilfully or deliberately in not assigning work.

(2) Unlike in proceedings under the Termination Act, when the burden of proving compliance with an order under the section is placed (by section 7 (2)) on the employer, in these (contempt) proceedings it is for the petitioner to establish *prima facie* that there was no reinstatement and that this was intentional. Nor does the material establish *prima facie* that the Company or any Director was acting in defiance of the judgment of the Court or wilfully refusing to obey. The date fixed for reinstatement could not be complied with because the Court of Appeal had issued a stay order and later quashed the order of the Commissioner.

(3) Re the back wages the Company had paid a part and pleaded for time because of their liquidity problems. There was no contempt here.

(4) The benefits had not been quantified until later when it was stated to be of the value of Rs 100,000. The breakup of this Rs. 100,000 was given only on 6.10.89 by the petitioner's attorneys-at-law.

(5) The nature of *certiorari* proceedings as distinct from appellate proceedings must be borne in mind. *Certiorari* will lie to quash the order of the Commissioner wholly or in part, where he assumes a jurisdiction which he does not have, or exceeds that which he has, or acts contrary to natural justice, or is guilty of an error of law; it cannot be utilised to correct errors, or to substitute a correct order for a wrong order. If the Commissioner's order was not quashed in whole or in part, it had to be allowed to stand unaltered.

Judicial review is radically different from the system of appeals. When hearing an appeal the court is concerned with the merits of the decision under appeal. In judicial review, the Court is concerned with its legality. On appeal the question is 'right or wrong'. On review the question is lawful or unlawful. Judicial review is a fundamentally different operation. Instead of substituting its own decision for that of some other body as happens when an appeal is allowed, the court on review is concerned only with the question whether the act or order under attack should be allowed to stand or not. Hence neither of the appellate bodies can vary the Commissioner's order and any ambiguity must be resolved on the basis that no such variation is intended.

(6) In the case of disobedience to injunctions and undertakings given to court *'coercive orders'* there is strict liability. But in the case of other orders, non-compliance with the judgment of a court would not ordinarily be a contempt of court. In the latter case where the law provides for execution, contempt proceedings should not be resorted to obtain execution. Even where there is no provision for execution, contempt proceedings cannot be resorted to as a thumbscrew to obtain execution and mere disobedience would not be a contempt unless there is defiance of the court or contumacious conduct.

Cases referred to :

1. *Ismail v. Ismail 22 NLR 190*
2. *State Graphite Corporation v. Fernando [1981] 2 Sri LR 401, [1982] 2 Sri LR 684*
3. *Dayawathie v. Fernando [1988] 2 Sri LR 314*

APPLICATION for rule *nisi* for contempt and enforcement of Supreme Court judgment.

Dr. H. W. Jayewardene Q. C, with *Ifthikar Hassim, Harsha Amarasekera* and *Harshal Cabraal* for Petitioner.

H. L. de Silva, P. C. with *Mahanama de Silva* and *M.S.M. Suhaid* for 1st and 4th Defendant.
Faiz Mustapha, P. C. with *Nigel Hatch* for 5th and 10th Respondents.

D. Premaratne, Deputy Solicitor-General with *Kalinga Indatissa, S. C.* as *amicus curiae.*

Cur. adv. vult.

March 2, 1990.
FERNANDO, J.

On 16.8.85, the Petitioner complained to the 2nd Respondent, the Commissioner of Labour ("the Commissioner"), that the 1st Respondent

Company ("the Company") had terminated his employment as a Purchasing Officer, in contravention of the Termination of Employment of Workmen (Special Provisions) Act, No. 45 of 1971, as amended by Law No. 4 of 1976 ("the Termination Act"). After inquiry, the 2nd Respondent by order dated 28.8.87 directed the Company to reinstate the Petitioner in his employment as Purchasing Officer with effect from 8.9.87, without a break in service, and to pay him back wages, amounting to Rs. 139,437.50, in respect of the period of non-employment, on or before 8.9.87.

The Company did not comply, and applied to the Court of Appeal on 30.9.87 for *Certiorari* to quash that order; the operation of that order was stayed pending the conclusion of the *Certiorari* proceedings, and on 2.9.88 that order was quashed. On 4.11.88 the Petitioner was granted leave to appeal to this Court, which by its judgment dated 21.8.89 allowed the appeal -

> "..................the judgment of the Court of Appeal is set aside and the order of the Commissioner of Labour restored. The 1st respondent Company is directed to re-instate the appellant in the post as its Purchasing Officer on or before 22nd September, 1989, with all back wages from the date of his non-employment to the date of his re-instatement. All such back wages including all benefits which the appellant would have been entitled to will be paid by the Company on or before 22nd September, 1989. The appellant will also be entitled to costs fixed at Rs. 1,500."

The quantum of the back wages, and the nature and value of the "benefits", were not specified. The Petitioner by letter dated 1.9.89 (P6) requested the Commissioner to quantify these, and by letter dated 5.9.89 (P7), indicated that the back wages from the date of termination upto 22.9.89 would amount to Rs. 283,187.50 - at the rate of Rs. 5,750 p.m., admittedly his salary immediately prior to termination. He also stated that the "benefits" consisted of normal increases of salary, annual bonus, annual leave and the facility of a vehicle with fuel provided. The very next day the 2nd Respondent confirmed that according to the information supplied by the Petitioner Rs. 283,187.50 was payable as back wages and that he was entitled to all the benefits previously enjoyed by him.

The Petitioner's Attorney-at-law thereupon addressed several letters dated 6.9.89 to the 4th-10th Respondents (all stated to be Directors of the

Company), claiming the aforesaid amount as back wages, - "together with all other benefits enjoyed by him, such as Annual Bonus, Annual Increments, Annual Leave and vehicle provided with fuel".

The Company replied on 19.9.89, enclosing one cheque for Rs 1,500 in full settlement of costs, and another for Rs 30,000 being part settlement of back wages, adding -

> "We are unable to pay the total sum referred to immediately as the Company is faced with a serious liquidity problem. We are making efforts to settle this claim as early as possible.
>
> Please ask your client to report to work on 22.09.89 at 9.00 a.m."

It was by letter dated 22.9.89, sent by his Attorneys-at-law, that the Petitioner quantified the "benefits" for the first time, assessing these at Rs. 100,000 but without indicating any basis of computation.

The Petitioner reported for work on 22.9.89, and signed the Attendance Register; he was asked to wait, in solitary splendour, on the ground floor where a table and a chair were provided; there he remained until 2.30 p.m., when wearied by idleness, he went up to the 3rd floor and met the 7th Respondent. What transpired thereafter is in dispute. The Petitioner says that he asked for his balance dues and for work, but that the 7th Respondent said that the Company could not comply with the judgment of this Court, that the post of Purchasing Officer no longer existed, that *he cannot give any work,* and to go back and wait on the ground floor. He felt that by staying there his life was in danger, as he was alone, and there were armed security personnel in and around the building. All this was set out in a statement to the Police made on 23.9.89. In a letter dated 23.9.89 (P14) to the Commissioner he stated -

> "(The 7th Respondent) stated that he is unable to comply with the said judgment as they have financial difficulties and the post of Purchasing Officer no longer exists in the Company, and he wanted me to remain in the ground floor. I remained in the ground floor until 5 p.m. closing time.
>
> In the aforesaid circumstances, please be good enough to inquire into the said matter and see that the Supreme Court judgment is enforced forthwith. "

By letter dated 25.9.89 to the Company and the 4th-10th Respondents, the Petitioner's Attorneys-at-law stated -

"(the 7th Respondent) informed him that the Company is unable to comply with the orders of the Supreme Court in that the said post of Purchasing Officer no longer existed in the Company and the back wages would be paid in instalments as the Company had financial difficulties."

There is no suggestion that the 7th respondent stated that "he cannot give any work".

On 2.10.89, the 7th Respondent, on behalf of the Company, replied to the letters dated 22.9.89 and 25.9.89 -

"It was intimated to him that he would be required to make purchases as and when orders are issued to him. It was further intimated to him that the Company was complying with the order of re-instatement and that he would be entitled to his remuneration from the day of re-instatement.

However your client left the premises at the end of the day and has not reported to work......................the Company will make efforts to pay the balance as early as possible in view of the severe financial problems presently faced by the Company................ your reference to benefits of employment in your letter of 22.9.89 is not intelligible and is not borne out by the judgment of the Supreme Court."

Presumably the latter comment was made because the basis of assessment of the value of the "benefits" was not set out in the judgment of this Court. By letter dated 6.10.89 the Petitioner's attorneys-at-law gave a break up of this sum of Rs 100,000.

The Petitioner's present application has two distinct limbs :

(1) for the issue of a Rule *nisi* for an alleged contempt of this Court, on the 4th-10th Respondents; and consequential action in respect thereof; and

(2) for orders -

(a) for the enforcement of the judgment of this Court;

(b) directing the Company and the 4th-10th Respondents to pay the Petitioner Rs. 313,500 as compensation in lieu of re-instatement.

On 29.11.89, the Company and the 4th-10th Respondents were given time to file objections in respect of the second limb of the Petitioner's application, and the question whether a Rule *nisi* should be issued was considered. Learned Queen's Counsel, as well as Mr. Premaratne, D. S. G., who appeared on notice as *amicus*, were heard in support, both on the facts and the law. We did not rule on Learned Queen's Counsel's submission that Counsel for the Respondents had no right to be heard at this stage, and in the exercise of our discretion, called upon learned President's Counsel appearing for the Company and the 4th Respondent to make submissions on the questions of law in relation to the issue of a Rule. Counsel were given and availed themselves of the opportunity to make further submissions in writing; the 1st and 4th-10th Respondents' submissions were filed only on 19.2.90.

The first question we have now to determine is whether the material placed before us establishes *prima facie*, as alleged in the draft Rule tendered by the Petitioner, that the 4th-10th Respondents "by deliberately and wilfully neglecting and /or refraining from complying with the judgment and order of this Court" (in respect of re-instatement, payment of back wages in a sum of Rs. 283,187.50,and/or "benefits" in a sum of Rs. 100,000), acted "in defiance of the order and judgment of the Supreme Court and wilfully (refused) to obey the same".

In so far as non-payment of "benefits" is concerned the judgment of this Court does not indicate what these "benefits" are, or their value, or the period for which they are payable, or the mode of assessing their value. The Petitioner first estimated their value only by letter dated 22.9.89; being the last date for payment the Respondents could not have known the amount claimed even on 22.9.89; the basis of assessment was first set out on 6.10.89. In the correspondence, one of the "benefits" mentioned is "*annual* leave" ; but in his supplementary petition setting out the detailed computation of "benefits", what is claimed is "leave *pay* ". The relationship between annual leave and leave pay is not explained. The claim in respect of a vehicle was not mentioned in that letter. Another component of the "benefits" claimed is "annual increments" or "annual salary increases"; whether annual increments are included in back wages, or are other "benefits", is not clear. These matters could have been, but were not, brought to the notice of this Court while the appeal was being heard, and hence the judgment of this Court is neither precise nor clear as to what these "benefits" are, and how their value is to be ascertained. While clarification in respect of these matters may well be

obtained in other proceedings, contempt proceedings are not inappropriate for clarification or enforcement of this part of the judgment.

In regard to non-payment of the back wages, although the judgment does not mention either the amount or the basis of computation, this would appear to be a straight forward arithmetical exercise; monthly salary multiplied by the number of months of non-employment. The Petitioner's calculation has not been questioned by the Respondents in the correspondence. The Respondents' letters do not indicate a wilful non-compliance, but suggest an inability to pay due to circumstances beyond their control; the delay in payment up to the time the Petitioner came to Court, was 17 days. Although it was submitted that the Company had extensive business interests and assets, matched by equally extensive borrowings from banks, no material was placed before us which even suggested - let alone *prima facie* established - that the Company had the capacity to pay or that there was wilful non-compliance or defiance on the part of the Respondents. Failure to pay would not ordinarily be, *per se*, a contempt of Court *Ismail v. Ismail (1)*.

In regard to re-instatement, the Company's letter dated 19.9.89 manifests an intention of re-instating the Petitioner. The events of the morning of 22.9.89 do not indicate any change in that intention; in view of the intermittent nature of the work of a Purchasing Officer the failure to assign work that morning is equivocal. It is the conversation between the 7th Respondent and the Petitioner soon after 2.30 p.m. which, according to the Petitioner's version, suggests a wilful refusal to re-instate. According to the Petitioner's statement to the Police, the 7th Respondent stated "that he cannot give any work"; but this is not mentioned in the Petitioner's letters dated 23.9.89 and 25.9.89 to the Commissioner and the Company. It would appear from these letters, particularly the former, that any remark by the 7th Respondent as to inability to comply with the judgment may have related to the payment of back wages and not to re-instatement. However I will assume that these two letters are not inconsistent with the Petitioner's statement to the Police; even on this assumption, it is consistent with the Company's position (in letter dated 2.10.89) that work would be given when available. Further, from the Petitioner's Police statement, his letters and the averments in his affidavits, it would seem that the Petitioner wished to leave the premises that very afternoon, and not to return to work thereafter, as he felt his life to be in danger; he did not leave that afternoon because he even feared to leave the premises by himself, and therefore waited till closing time when he could leave in the company of his fellow workers. One can understand that a person

unaccustomed to being surrounded by armed guards may reasonably have feared danger to life or limb. Learned Queen's Counsel submitted that the 7th Respondent was a Member of Parliament; and I can assume that it was in that capacity that heavy security was provided for him. Although it was submitted that these armed guards were brought to frighten the Petitioner, there is nothing in the affidavits and the documents to suggest that these armed guards were improperly on the premises, or that they were brought in order to intimidate or threaten the Petitioner, or that they did so. The dominant reason for the Petitioner's failure to report for work on 23.9.89 thus appears to have been fear, and not the alleged refusal of work; the fear entertained by him appears to have been so serious that he would not have returned to work even if work had been assigned.

An order for re-instatement of a workman requires not merely that he should be restored to his place of work, and paid his remuneration, but also that he should be afforded all the rights, duties and functions of his employment. In that sense there was no re-instatement of the Petitioner on 22.9.89. However, the restoration of duties must necessarily depend on the nature of the employment. If a hospital is ordered to re-instate a surgeon, there may not be operations scheduled for the appointed date; and there will be sufficient compliance if appropriate work is provided within a reasonable time. The Petitioner has not placed any material suggesting that work could have been assigned to him that day; nor has he given any particulars as to the work performed by him prior to termination from which an inference might have been drawn that work could have been assigned to him that day. An inference that the employer was wilfully not assigning work could have been drawn if the Petitioner was kept in enforced idleness for several days. Hence the material placed before us establishes *prima facie* that the Petitioner was not re-instated on 22.9.89; but is insufficient to establish *prima facie* that the Company or any Director "deliberately or wilfully neglected and/or refrained from complying with" the order for re-instatement. Unlike in proceedings under the Termination Act, where the burden of proving compliance with an order under the section is placed (by section 7 (2)) on the employer, in these proceedings it is for the Petitioner to establish *prima facie* that there was no re-instatement, and that this was intentional. The material placed before us by the Petitioner also does not establish *prima facie* that the Company or any Director was acting in defiance of the judgment of this Court, or was wilfully refusing to obey the same, and this ingredient of the charge set out in the draft Rule tendered by him has also not been established *prima facie.*

Learned Queen's Counsel urged that these matters could be established to the satisfaction of the Court after a Rule is issued. However, I am satisfied, for the reasons set out below, that contempt proceedings are not appropriate at this stage, and hence there is no purpose in granting the Petitioner the indulgence of a further opportunity of submitting material to satisfy us that there is a *prima facie* case.

Learned Queen's Counsel submitted that there had been disobedience to *an* order *of this Court.* Learned President's Counsel, for the Respondents, contended that, the judgment of this Court was that "......... the judgment of the Court of Appeal is set aside and *the order of the Commissioner of Labour restored,"* so that the operative order continued to be that of the Commissioner, made under the Termination Act; that therefore there could be no contempt of this Court; that the jurisdiction of this Court under Article 105 (3) did not extend to punishing contempts of any other court or tribunal; and that the Termination Act provided the proper, and an adequate, remedy in respect of any alleged non-compliance with the order.

It is very clear that the Commissioner's order entitled the Petitioner to-

(*a*) re-instatement with effect from 8.9.87;
(*b*) back wages (Rs. 139,437.50) for the period 16.8.85 to 8.9.87;
(c) No other "benefits" for the period 16.8.85 to 8.9.87.

Had there been no writ proceedings, if the employer failed to comply with that order, the Petitioner would also have become entitled, under section 8 (1) of the Termination Act, to an order for -

(*d*) remuneration from 8.9.87 until there was compliance;
(*e*) other "benefits" to which he would have been entitled had he been duly re-instated on 8.9.87.

The judgment of this Court entitled the Petitioner to -

(i) re-instatement with effect from 22.9.89;
(ii) back wages for the period 16.8.85 to 8.9.87;
(iii) back wages for the period 8.9.87 until there was compliance with the order for re-instatement;
(iv) all "benefits which (he) would have been entitled to".

In my view, (iv) does not refer to the benefits which the Commissioner did not award (i.e those referred to in (c)), but refers only to (e); if this

Court was intending to vary the Commissioner's order, it would have done so expressly. As the question of "benefits" was not raised in appeal, it is legitimate to assume that only "benefits" consequent on the Commissioner's order were contemplated. Items (ii) and (iii) are identical to *(b)* and *(d)*. Hence the only variation is the postponement of the date for re-instatement. Had the Company not obtained a stay order, upon the ultimate dismissal of the writ proceedings, criminal proceedings could have been taken under section 7 of the Termination Act for failure to re-instate on 8.9.87. Having obtained a stay order, the Company refrained from re-instating both while the stay order was in force, and after the Court of Appeal quashed the Commissioner's order. It may well be inequitable to expose a party to a criminal prosecution for an act done or omitted in pursuance of a Court order; indeed, it may have been a good defence for the Company to plead that non-compliance was justified by such order. Possibly to prevent controversy over such matters, this Court while restoring the Commissioner's order, varied it to the extent rendered strictly necessary by the intervening writ proceedings in the two Appellate Courts, so as to obviate any injustice, anomaly and delay. It was not enough for this Court to substitute a new date (22.9.89) in item (a), for then it might have been argued that the Commissioner's order in respect of back wages was limited to a sum of Rs. 139,437.50 for the period 16.8.85 to 8.9.87, and that "benefits" would only be due for the period after 22.9.89. Hence it was necessary to specify that other aspects and consequences of the Commissioner's order (items *(d)* and *(e)*) were not being varied, and this the Court did. If the matter had been finally concluded in the two appellate courts *before* the date specified in item *(a)*, then this Court could have simply affirmed and restored the Commissioner's order; the efflux ion of time and the stay order necessitated an adjustment of the date, and nothing more than this was done.

In coming to this conclusion, I have been mindful of the nature of *Certiorari* proceedings, as distinct from an appellate jurisdiction. *Certiorari* in relation to the Termination Act will lie to quash an order of the Commissioner, wholly or in part, where he assumes a jurisdiction which he does not have, or exceeds that which he has, or acts contrary to natural justice, or is guilty of an error of law; it cannot be utilised to correct errors, or to substitute a correct order for a wrong order. If the Commissioner's order was not quashed in whole or in part, it had to be allowed to stand unaltered. If the Petitioner was dissatisfied with the Commissioner's order, in that "benefits" for the period 16.8.85 to 8.9.87 had not been awarded, it was open to him to have sought relief by way of writ, perhaps even by a counter claim (as in *State Graphite Corporation v. Fernando,*

(2) although on appeal that claim failed on the merits; [1982] 2 *Sri L. R.* 684); not having done so, the Petitioner could not have asked the Court of Appeal or this Court to vary the Commissioner's order in his favour. Wade, Administrative Law, (12th ed.), concisely puts the matter thus -

> "..................... judicial review is radically different from the system of appeals. When hearing an appeal the court is concerned with the merits of the decision under appeal...................[in] judicial review, the court is concerned with its legality. On an appeal the question is 'right or wrong ?'. On review the question is 'lawful or unlawful?'................ Judicial review is a fundamentally different operation. Instead of substituting its own decision for that of some other body, as happens when an appeal is allowed, the court on review is concerned only with the question whether the act or order under attack should be allowed to stand or not." (pp. 34-35)

Thus, apart from minor, incidental or consequential variations, rendered necessary by the *Certiorari* proceedings themselves, or the orders made in the course thereof, neither of the appellate courts would have had jurisdiction to vary the substance of the Commissioner's order; and ambiguity in the judgment dated 21.8.89 of this Court must be resolved on the basis that no such variation was intended.

The order that has to be enforced is the Commissioner's order. Mr. H. L. de Silva, P. C., categorically stated that this was his client's position, and that in the Magistrate's Court or in any other proceedings a contrary position would not be taken up; we understand that Mr. Faiz Mustapha, P. C., on behalf of his clients, fully concurred in this position. Even if it had been the order of this Court that had to be enforced; learned Queen's Counsel accepted that the principles applicable had been correctly set out in *Dayawathie v. Fernando, (3).* In the case of disobedience to injunctions and undertakings given to court - "coercive" orders - there is strict liability. But in the case of other orders, non-compliance with the judgment of a Court would not ordinarily be a contempt of Court *Ismail v. Ismail (1).* In the latter case, *(a)* where the law provides for execution contempt proceedings should not be resorted to as a means of obtaining execution, and *(b)* even where there is no provision for execution, contempt proceedings cannot be used as "a legal thumbscrew" to compel enforcement, and mere disobedience would not be contempt, unless there is defiance of the court, or contumacious disregard of its order. Not only is there no "coercive" order here, but sections 7 and 8 of the

Termination Act make adequate provision for the enforcement of the Commissioner's order in the Magistrate's Court. Learned Queen's Counsel contended that the Petitioner had no status in those proceedings, and that the Commissioner alone could decide on the institution of proceedings and the specific charge; if there was some error by the Commissioner, or if a wrong order was made, the Petitioner had no remedy. He was unable to point to any provision excluding the Petitioner's right to institute proceedings, and even in his written submissions no reference was made to any statute or precedent controverting learned President's Counsel's submission that section 136(1) *(a)* of the Code of Criminal Procedure Act, read with the definition of "offence", entitles the Petitioner to institute proceedings. It was also submitted that the Commissioner had failed in his statutory duty to protect the interests of the workman, by his failure to appeal against the order of the Court of Appeal and to appear or be represented in the appeal to this Court. The Commissioner in holding an inquiry is exercising a *quasi - judicial* function, and is not expected to lean towards the workman; If his order is challenged, whether by the employer or the workman, his duty would be the same, and I doubt whether he must strive officiously to keep his order alive at all costs. He had instituted M. C. Colombo 83555/5 in 1988 in respect of his order, and when requested by the Petitioner's letter P 14 to enforce the order of the Supreme Court, he tendered an amended plaint. His response to the Petitioner's letters P6 and P7 might even have been characterized as too prompt. There is no basis for any criticism of his conduct.

Finally, it was submitted on behalf of the Petitioner that the contempt jurisdiction of this Court was "much wider in scope and content than previously vested by section 47 of the Courts Ordinance, and section 41(3) of the Administration of Justice Law"; "to take cognizance of and to try in a summary manner any offence of contempt committed against or in disrespect of the authority of itself", by reason of the omission of the phrase "to try in a summary manner" in Article 105 (3); that this Court now has jurisdiction to punish for disobedience of orders of court. That phrase neither conferred nor referred to the jurisdiction, but only to the manner of its exercise; trial in a summary (or expeditious) fashion, rather than in a "regular" manner, drawing a distincton similar to that between regular and summary procedure in the Civil Procedure Code. Article 105 (3) does not define or expand the contempt jurisdiction, but continues the pre-existing jurisdicton.

The Petitioner's application for a Rule *nisi* is therefore refused. The application will be set down for hearing in due course, in respect of the second limb, namely prayers *(d)*, *(f)*, *(g)*, *(h)* and *(i)*.

KULATUNGA, J. - I agree.

RAMANATHAN, J. - I agree.

Application for rule nisi refused.

Application for enforcement of Supreme Court judgment and compensation set down for hearing.