A.F. JONES (EXPORTERS) CEYLON LTD.,
v.
BALASUBRAMANIAM

SUPREME COURT
WANASUNDERA, J., RATWATTE, J. AND SOZA, J.
S.C. APPEAL No. 53/81
C.A. APPEAL No. 700/76
M.C. COLOMBO No. 72083/A
MARCH 5 AND 29, 1982

Industrial Law – Industrial Disputes Act, ss. 8 and 10 – Collective agreement – Minister's right to extend application of selected clauses of collective agreement – Recognised terms and conditions – Failure by employer to pay in terms of extension.

Whatever benefits a workman would be entitled to by way of an extension of an application of a collective agreement are either the terms and conditions set out in the agreement or terms and conditions not less favourable than the terms and conditions set out in the agreement. Under section 8(2) of the Industrial Disputes Act the extension operates by operation of law and there is no room for the selective application of clauses of a collective agreement. The recognised terms and conditions are nothing but the totality of the terms and conditions set out in the agreement.

The Minister's order should have the effect of an equal application of the law and not be discriminatory of either the workmen *inter se* or the employer *inter se*. A selective application of the clauses of a collective agreement can result in

such discrimination. This is another reason why any extension should be of the whole agreement.

Case referred to:

1. *Express Newspapers Ceylon Ltd.* v. *Attorney-General* S.C. 14/75 - S.C. Minutes of 12.11.1975.

H.W. Jayewardene Q.C. with *Mark Fernando, W. Siriwardene, Miss P. Seneviratne* and *S. Ronald Perera* for accused-appellant.

M.S. Aziz, Deputy Solicitor-General for Attorney-General.

Cur. adv. vult.

May 18, 1982.

WANASUNDERA, J.

This appeal involves an important question of law as to the extent of the Minister's discretion in extending a collective agreement and relates to the proper interpretation of section 10 of the Industrial Disputes Act. The question was raised by way of defence in a prosecution in the Magistrate's Court, where the accused-appellant Company – a tea export company – was charged with having failed to make certain payments to one of its employees and thereby contravened an order made by the Minister of Labour under section 10 of the Industrial Disputes Act. By this order the Minister had extended the provisions of Collective Agreement 3B of 1971 between the Employers' Federation of Ceylon and the Eksath Thay, Rubber Saha Merate Drauwya Kamkaru Samithiya to "every employer in the Tea Export Industry employing not less than 25 workmen in that industry". The accused-appellant was convicted in the Magistrate's Court and the conviction has been affirmed by the Court of Appeal.

The accused-appellant has challenged the validity of the extension order made by the Minister of Labour. Mr. Jayewardene who appeared for the appellant has referred to the Minister's order published in Government Gazette No. 14995/8 dated 1st February 1972 and drawn our attention to the fact that the order does not extend the whole of the collective agreement but has sought to apply only certain selected clauses in the agreement. About ten clauses have been deliberately omitted and Mr. Jayewardene submitted that these omitted clauses have an important bearing on employer-employee relationship. He also submits that, since the collective agreement has been hammered

out by a process of give and take and hard bargaining, none of the provisions (except those obviously inappropriate in the present context) can be regarded as being superfluous and therefore the entirety of the provisions has to be considered as constituting one single and integrated agreement. He submitted that when section 10(5) of the Act empowers the Minister to extend the collective agreement by an order "with .... any limitation as to its applicability", a distinction has to be drawn between the contents of the collective agreement which cannot be modified by him and the applicability of the collective agreement, meaning the range of its operation, i.e., as regards the type of employer or the locality or area in respect of which the Minister can undoubtedly exercise a discretion.

Part III, Section A, of the Industrial Disputes Act deals with collective agreements and sections 8 and 10 need special examination in this case. Section 8(1) of the Act makes a collective agreement legally binding on the parties, trade unions, employers and workmen referred to in that agreement, and the terms of the agreement are made implied terms in the contract of employment between the employers and workmen bound by the agreement.

Section 8(2) provides for a limited 'extension' of the collective agreement to all workmen in the same work place. It states:-

> "(2) Where there are any workmen in any industry who are bound by a collective agreement, the employer in that industry shall, unless there is a provision to the contrary in that agreement, observe in respect of all other workmen in that industry terms and conditions of employment which are not less favourable than the terms and conditions set out in that agreement."

A reading of the above provision shows that it casts a statutory obligation on the employer to observe terms and conditions which are not less favourable than the terms of the collective agreement in respect of the other workmen at the work place.

Section 10, as the marginal note indicates, empowers the Minister to extend the provisions of a collective agreement to certain employers who are not bound by collective agreement as provided by section 8. Here too, the obligations are cast on the employer while the workmen would be entitled to enjoy the benefits of a collective

agreement. Section 10(2) is worded as follows:-

> ".... the Minister may, in respect of any industry to which any such collective agreement as is referred to in subsection (1) relates, make an order that every employer, or every employer of any class, in such industry in any district or in Ceylon, on whom that ágreement is not binding as provided in section 8, shall observe either the terms and conditions set out in that agreement (hereinafter referred to as the 'recognized terms and conditions') or terms and conditions which are not less favourable than the recognized terms and conditions."

Subsection (1) of section 10 sets out the conditions that have to be satisfied for the extension of a collective agreement. It states that –

"Where the parties to a collective agreement that is in force are one or more trade unions consisting of employers in any industry and one or more trade unions consisting of workmen in such industry, then, if the Minister considers that those parties are sufficiently representative –

(a) of the employers and the workmen, or
(b) of a class of employers and a class of workmen, or
(c) of the employers and a class of workmen, or
(d) of a class of employers and the workmen, in such industry in such district, or in such industry in Ceylon, he may make an order under subsection (2) in respect of every employer, or of every employer of such class of employers, in such industry in such district or in such industry in Ceylon, on whom such agreement is not binding as provided in section 8."

The other clauses of section 10 contains provision setting out the procedure for making an extension order and also a provision – 10(5) – indicative of the extent of the Minister's authority in respect of such an extension order. A party to a collective agreement could request the Minister to have the agreement extended to other employers. When the Minister proposes to act in terms of section 10, the Commissioner of Labour has to give public notice of the Minister's intention and call for objections. Section 10(5), which is in issue before us, reads –

"The Minister shall consider all objections to the proposed order

and may either not make the order, or make the order with or without any limitation as to its applicability."

Section 10(3) states that an extension order shall have the force of law. Section 10(8) states that an extension order shall be operative only so long as the collective agreement is in force and will cease with the cessation of the collective agreement. Section 10(7) empowers the Minister to rescind the extension order if he considers it necessary.

Now the kind of order the Minister is empowered to make is shown in section 10(2). He can order the employers concerned to "observe either the terms and conditions set out in that agreement (hereinafter referred to as the recognised terms and conditions) or terms and conditions which are not less favourable than the recognised terms and conditions. The Minister cannot alter the statute law. For example, he cannot by order lower the standards indicated by the legislature and tell the employers that they need not observe the standard laid down by the law, namely terms and conditions no less favourable than the recognised terms and conditions. Similarly the expression "recognised terms and conditions" has a statutory meaning. It means the terms and conditions set out in *the agreement.* I do not think it would be legitimate for the Minister to abstract some of the terms and conditions from the agreement and call them "the recognised terms and conditions." The order he makes is in respect of or with reference to "the recognised terms and conditions" which are nothing but the totality of the terms and conditions set out in the agreement.

The language of section 8(2) also supports this view. Both under section 8(2) and section 10(2), whatever benefits a workman would be entitled to by way of an 'extension' are either "the terms and conditions set out in *the agreement*" or terms and conditions "which are not less favourable than the terms and conditions set out in *the agreement.*" In fact under section 8(2) the extension operates by operation of law and question of the selective application of clauses does not arise. The precise extent of such terms and conditions, namely, the rights and benefits accruing to the workmen, will have to be gleaned from an examination of the entire collective agreement. This is a question of interpretation which is often of a complex nature. One would not normally expect a Minister, who is concerned with decisions on broad policy matters to be made the arbiter in respect of detailed and factual matters of this type. There is also no

appeal from the order of the Minister. To take any other view would be to place an undue responsibility on the Minister and it is doubtful whether such a view will be conducive to the maintenance of industrial peace in the country.

There is also another aspect to the matter. The Minister's order should have the effect of an equal application of the law and not be discriminatory of either the workmen *inter se* or the employers *inter se*. By a process of selection of the clauses that should be extended – and this can be done at the absolute discretion of the Minister – it is not difficult to imagine cases where some workers may be more advantageously placed than others while on the other hand some employers may be at a disadvantage and handicapped as compared to others. The legislature could not have intended such a result when the whole intention of the law was to spread the benefits won under a collective agreement to other workers not bound by that agreement. As regards employers who do business in a highly competitive field, it is equally necessary that one set of employers ought not to be given favoured treatment by the State at the expense of others.

The view I have taken above gains support from the provisions of section 10(9) which has spelled out the intentions of the legislature in no uncertain terms. Section 10(9) has set out the procedures for resolving problems concerning the nature, scope and effect of the recognised terms and conditions or of terms and conditions not less favourable than the recognised terms and conditions in cases of such extension. These questions as stated earlier can be of a complex nature. It is not difficult to visualise cases where rights and obligations may be so interwoven that the greatest care and skill would be needed to come to a finding as to what are the applicable rights and benefits. It is therefore not surprising to find that the legislature has provided for such matters to be decided in the first instance by the Commissioner of Labour with an appeal from his decision to the Industrial Court, indicating that it has followed the accepted procedure in this country for compulsory arbitration of matters that can lead to industrial disputes. Section 10(9) states –

"If any question arises as to the nature, scope or effect of the recognized terms and conditions in any industry in any district

> or in Ceylon or as to whether an employer is observing the recognized terms and conditions or is observing terms and conditions which are not less favourable than the recognized terms and conditions, that question shall be decided by the Commissioner, subject to an appeal within the prescribed time and in the prescribed manner to the industrial court, and the decision of that court on that question shall be final."

I am therefore of the view that Mr. Jayewardene is correct when he submitted that the words "with .... any limitations as to applicability" in section 10(5) do not refer to the contents of the collective agreement but refer only to the range of its applicability, e. g., as regards the type of employer or whether it should be in a district or in the whole of Ceylon.

In the Court of Appeal, Victor Perera, J., was inclined to take the same view, but he considered that he was bound by the judgment of Pathirana, J., in *Express Newspapers Ceylon Ltd.* v. *Attorney-General,* and was therefore unable to give relief. It has been submitted that the decision in *Express Newspapers* has not adequately dealt with this matter and in any event that decision is not binding on us.

Although our ruling is decisive of this case and the appeal is allowed, our judgment should not be viewed with any sense of apprehension by labour or the Labour Department.

It would appear that hitherto the Labour Ministry has acted on the assumption that section 10 has vested the Minister with a wide ranging power in the application of a collective agreement so as to enable him to select such of the provisions as are in his opinion suitable for extension. We have ruled that this view is not tenable in law. With the need to bring in the entire collective agreement into the picture, labour will now have the opportunity of extracting the full extent of the rights and privileges they are legitimately entitled to from the agreement that has been extended. This was not possible earlier because of the selective application of the provisions of the agreement and because of the finality of the Minister's decision.

As far as this case is concerned, we hold that the Minister's order under section 10(2) is bad because it deals with only portions of the collective agreement and not with its entirety. We therefore set aside the conviction and acquit the accused.

The appeal is therefore allowed.

RATWATTE, J. – I agree.

SOZA, J. – I agree.

Appeal allowed.