1968 *Present :* **Siva Supramaniam, J., and Tennekoon, J.**

COLOMBO APOTHECARIES CO. LTD., Petitioner, *and*
E. A. WIJESOORIYA and 4 others, Respondents

*S.C. 127/68—Application for conditional leave to appeal to the Privy Council in S.C. Application 232/67*

*Privy Council—Conditional leave to appeal—Applicability of expression "civil suit or action" to an application for a Writ of Prohibition or Certiorari—"Question of great general or public importance"—Appeals (Privy Council) Ordinance, s. 3, Schedule, Rule 1 (b)—Industrial Disputes Act, s. 4 (1).*

An application for a Writ of Prohibition against a Labour Tribunal was refused by the majority (4) of a Bench of seven Judges who heard it. The question involved was whether or not the law has given the Minister of Labour a discretionary power by means of a reference under section 4 (1) of the Industrial Disputes Act to vest a jurisdiction in a Labour Tribunal in certain circumstances of common occurrence. In the present application the petitioner sought conditional leave to appeal to the Privy Council from the judgment of the Supreme Court.

*Held*, (i) that an application for a Writ of Prohibition, or even an application for *certiorari*, is a civil suit or action within the meaning of section 3 of the Appeals (Privy Council) Ordinance. The decision of a Bench of five Judges to the contrary in *Silverline Bus Co., Ltd. v. Kandy Omnibus Co., Ltd.* (58 N. L. R. 193) was overruled by the Privy Council in *Tennekoon v. Duraisamy* (59 N. L. R. 481).

(ii) that the question involved in the appeal was one of great general or public importance. The provisions, therefore, of Rule 1 (*b*) of the Schedule to the Appeals (Privy Council) Ordinance were applicable.

APPLICATION for conditional leave to appeal to the Privy Council.

*H. W. Jayewardene, Q.C.*, with *B. Eliyatamby*, for the Petitioner.

*B. J. Fernando*, for the 2nd Respondent.

*Cur. adv. vult.*

May 22, 1968. TENNEKOON, J.—

On the 12th of April 1967 the Minister of Labour purporting to act under section 4 (1) of the Industrial Disputes Act referred a dispute between the petitioner-petitioner (hereinafter referred to as the petitioner) and the 5 respondent-respondent (hereinafter referred to as the respondent) for settlement by arbitration to a Labour Tribunal.

The petitioner applied to this Court for a Mandate in the nature of a Writ of Prohibition against the Labour Tribunal prohibiting it from proceeding to hear and settle the said dispute. I was myself one of the seven Judges who heard the application for Prohibition and the following extract from my judgment sets out certain facts relating to the hearing of that application by this court :—

" When this matter was first listed before a Bench of two Judges, of whom My Lord the Chief Justice was one, Counsel for the petitioner indicated that despite the Privy Council decision in *The United Engineering Workers' Union v. K. W. Devanayagam* 69 N. L. R. 289 the constitutional attack on the Industrial Disputes Act was still open to him, as in his submission, any pronouncements made by their Lordships of the Privy Council on the question arising in this case were obiter or at least that the facts relating to the question of jurisdiction in the Privy Council case were capable of being distinguished from the facts that arise in the instant case. My Lord the Chief Justice, being of opinion that it was desirable in the public interest that a question of such a nature should be early and finally settled, referred the matter to a Bench of seven Judges. It is in this way that this matter has come up before the present Bench consisting of that number of Judges.

At the argument however, Counsel for the petitioner indicated that having examined the matter further he found it unnecessary to support his case on the ground that so much of the Industrial Disputes Act which authorises the Minister to refer a dispute relating to termination of the services of a workman for settlement to a Labour Tribunal was unconstitutional and void; he stated that he intended to support the application on a ground which, if it was narrower because it had nothing to do with constitutional law, was equally important viz. that the 5th respondent's lack of jurisdiction arose not from any unconstitutionality in the enabling Act, but for the reason that the dispute referred to the 5th respondent was not an " industrial dispute " within the meaning of the Industrial Dispute Act ."

The Bench of seven Judges by a majority of 4 to 3 held that the Labour Tribunal had power and jurisdiction to hear the dispute and the application for Prohibition was dismissed.

The petitioner has now applied for leave to appeal to Her Majesty in Council under rule 1 (*b*) of the schedule of rules to the Privy Council Appeals Ordinance.

The respondent has objected to the grant of leave. The first ground of objection was that an application for a Mandate of Prohibition was not a civil suit or action within the meaning of section 3 of the Privy Council Appeals Ordinance for the reason that such an application was not a proceeding in which one party sues for or claims something from another in regular civil proceedings.

In the case of *Tennekoon v. Duraisamy*[1] it was held by the Privy Council that an appeal to the Supreme Court from an order made by the Commissioner for the Registration of Indian and Pakistani Residents is a civil suit or action within the meaning of section 3 of the Privy Council Appeals Ordinance. The *ratio decidendi* of this case is that to be a civil suit or action it is not necessary that relief or remedy should be claimed by one person against another. Their Lordships went on to say that in their opinion the word " action " in section 3 of the Privy Council Appeals Ordinance bears the meaning attributed to it in section 6 of the Civil Procedure Code, viz. " Every application to a court for relief or remedy through the exercise of the court's power or authority, or otherwise to invite its interference, constitutes an action ". The respondent however relies on the case of *Silverline Bus Co., Ltd. v. Kandy Omnibus Co., Ltd.*[2] where a Bench of five Judges of this court overruled *In re Goonesinha*[3] and *Kodakan Pillai v. Madanayake*[4] and held, by a majority of 4 to 1 that an application for *certiorari* was not a " civil suit or action " for the purposes of Privy Council Appeals Ordinance for the reason that an application for *certiorari* was not a proceeding in which one party sues for or claims something from another in regular civil proceedings. It is to be noted that the ratio of the *Silverline* case was exactly what was rejected by the Privy Council in the former case. Lord Morton of Henryton in the course of his opinion states as follows :—

> " After the application for leave to appeal to the Privy Council had been granted in the present case a bench of five judges (one of whom dissented) in the case of *Silverline Bus Co., Ltd. v. Kandy Omnibus Co., Ltd.* (1956) 58 N.L.R. 193 after a very full and careful review of two conflicting lines of authority, decided that an application to the Supreme Court for a writ of *certiorari* was not a " civil suit or action " within the meaning of section 3 of the Appeals Ordinance. Counsel for the Commissioner in the present case did not contend that the decision in the *Silverline* case was wrong : the point actually decided is not before their Lordships, and they have heard no argument upon it. It follows, however, from the views which they have already expressed that they cannot accept the view of Basnayake, C.J., that the words ' civil suit or action " in section 3 of the Appeals Ordinance should be limited to " a proceeding in which one party sues for or claims something from another in regular civil proceedings '."

It is true that the Privy Council did not expressly overrule the *Silverline* case. However, in considering the binding authority of a previous decision, it is important to pay attention to the *ratio decidendi* of the

[1] *(1958) 59 N. L. R. 481.*
[2] *(1956) 58 N. L. R.193.*
[3] *(1942) 44 N. L. R. 75.*
[4] *(1954) 55 N. L. R. 572.*

previous case and not to any accidental features which tend to show a similarity or dissimilarity to the case under consideration, and to apply that ratio to any later case which is not reasonably distinguishable.

It seems to me that in *Tennekoon v. Duraisamy* the Privy Council has clearly and unambiguously condemned and rejected the major premise which formed the ratio in the *Silverline* case and applied a ratio under which an application for prohibition (which is this case) and indeed even an application for *certiorari* would clearly be a civil suit or action for the purposes of section 3 of the Privy Council Appeals Ordinance.

The respondents' first ground of objection accordingly fails.

The 2nd ground of objection was that the matter in dispute did not involve a question of great general or public importance. I believe that the Bench of seven Judges in permitting this question to be argued before them recognised it as one of more than ordinary importance ; it seems to me that the question whether or not the law has given the Minister of Labour a discretionary power by means of a reference under section 4 (1) of the Industrial Disputes Act to vest a jurisdiction in a Labour Tribunal or an arbitrator in circumstances such as existed in this case—and which are indeed of common occurrence—is one of sufficient importance fit to be submitted, and one which ought to be submitted, to Her Majesty in Council for a decision.

The respondent finally submits that this court should refuse leave to appeal in the exercise of its discretion in view of delay, hardship and inconvenience to him. I am not persuaded that these features are present in any greater degree in the present case than one finds in the ordinary run of cases under our legal system.

The application for leave to appeal is accordingly allowed subject to the usual conditions.

SIVA SUPRAMANIAM, J.—I agree.

*Application allowed.*