

1973

Present : Rajaratnam, J.

*S. C. 263/72—In the matter of an Application for a mandate in the nature of a Writ of Certiorari on the Commissioner of Labour*

COLOMBO PAINTS LTD., Petitioner, and W. L. P. DE MEL (Commissioner of Labour) and 3 others, Respondents

*Termination of Employment of Workmen (Special Provisions) Act, No. 45 of 1971—Sections 6, 19—Scope of the definition of the term “employer”.*

When a branch of the petitioner-Company was closed down, a workman who was employed in that branch continued to be employed on the same terms and conditions under a newly registered private limited liability Company. Both Companies operated under the same centralised administration with regard to personnel management, accounting and salaries. When the services of the workman were terminated about four years later by the new Company, the Commissioner of Labour, acting under section 6 of the Termination of Employment of Workmen (Special Provisions) Act, ordered the petitioner-Company to reinstate the workman.

*Held*, that the Commissioner's order was correct. The petitioner-Company was the workman's employer within the meaning of the definition of the term “employer” in section 19 of the Termination of Employment of Workmen (Special Provisions) Act.

**A**PPPLICATION for Writs of *Certiorari* and *Mandamus*.

*N. Satyendra*, with *D. C. Amerasinghe*, for the petitioner.

*S. Sivarasa*, State Counsel, with *Kumar Ediriweera*, for the 1st and 2nd respondents.

*K. Shanmugalingam*, for the 4th respondent.

*Cur. adv. vult.*

January 23, 1973. RAJARATNAM, J.—

This is an application by the petitioner for a Mandate in the nature of a Writ of *Certiorari* on the Commissioner of Labour to set aside an order made under s. 6 of the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971, directing the petitioner to continue to employ the 4th respondent with payment of all due remunerations notwithstanding his termination.

The petitioner's case was that the order was illegal, null and void and/or of no effect in law, inasmuch as *inter alia*—

- (a) the petitioner was not the employer of the 4th respondent and the 4th respondent was not the workman within the meaning of the said Act and there was no contractual relationship of employer and workman at the relevant time,
- (b) that the 1st respondent or the 2nd respondent failed to observe the principles of natural justice and/or failed to hold a full and proper inquiry.

With regard to (b) I have given careful thought and consideration to the submissions placed before me with great force by learned Counsel for the petitioner and I cannot hold that any principles of natural justice were violated in the course of the inquiry held by the Commissioner and a full and proper inquiry was not held. On the documents and material placed before me I am again not in any position to hold that there has been any prejudice caused to the petitioner. The proceedings and conduct at the inquiry have not in any manner been inconsistent with the principles of natural justice.

With regard to (a) I take into consideration the definition of the term employer which in terms of s. 19 of the Act means *any person who employs or on whose behalf any other person employs (whether such body is a firm, company.....) and any person who on behalf of any other person employs any workman .....*

In terms of the Act therefore if the petitioner is to be considered in law as the employer—

- (a) the petitioner must employ the 4th respondent as the principal, or
- (b) it must be on the petitioner's behalf, that another person, i.e., in this case the Interior Decorators and Consultants Ltd. the 3rd respondent must employ the 4th respondent.

Failing (a) and (b) the petitioner must be the agent of the principal employer.

On the admitted facts the 4th respondent was in the employment of the petitioner from the 1st of August 1966. In April 1967, the 3rd respondent was incorporated and registered as a Private Limited Liability Company and the branch of the petitioner in

which the 4th respondent worked was closed down. The 4th respondent thereafter worked on the same terms and conditions as under the petitioner but then on according to the petitioner under the 3rd respondent. The 4th respondent agreed and acquiesced in such employment. His services were terminated thereafter by the 3rd respondent by letter dated 18.4.71 as from 31.5.71. The petitioner's position therefore was there was no employer-workman contractual relationship at the relevant times between the relevant persons for the said order by the 1st respondent to be made under s. 6 of the aforesaid Act. The 4th respondent however states that he continued to be in the employment of the petitioner, although he was seconded for service under the 3rd respondent Company and has filed an affidavit setting out his position. He has strongly relied on documents 4R1 to 4R7. Quite apart from the documents relied on by the 4th respondent, it was quite within the jurisdiction of the 1st and 2nd respondents to arrive at a finding that the petitioner was the principal on behalf of whom the 3rd respondent employed the 4th respondent. The legal intricacies that lay between the petitioner and the 3rd respondent have not been so mystifying and so distracting as to prevent me from coming to a clear finding that the 4th respondent's employment was within the same family of Companies. He did the same work under the same conditions at the same place under the same persons, before the same faces never breaking off his ties of employment with the petitioner. Whatever changed, the substantial nature and relationship in his employment did not change.

The facts placed before me lead to the only reasonable inference that the petitioner came within the meaning of the term employer as defined by the Act. There were sufficient circumstances for this only reasonable inference. This was a question of fact which the 1st respondent had jurisdiction to decide. I am unable to decide this question differently. The petitioner Company, the 3rd respondent Company, Collettes Ltd. *inter alia* belong to the group of Companies known as the Collettes group. The premises, the telephone number, the telephone address of the petitioner and the 3rd respondent Companies are the same. Some of the directors including the Chairman are the same. It appears that both came under the same centralised administration with regard to personnel management, accounting and salaries. Even in the letter of termination marked by the petitioner as 'B', the 4th respondent's services have been terminated in terms of the letter of employment whereby he first took employment under the petitioner. The documents before me further reveal the lingering ties between the 4th respondent and the petitioner. The 3rd respondent is no

doubt a separate legal personality but when there has been a taking over of responsibility from the petitioner in relation to the employment of the 4th respondent with an identity of interests and a continuation of the same circumstances, it cannot be said that therefore the petitioner ceased to be an employer within the meaning of the term as defined in the Act. Its meaning is wide enough to include the petitioner.

I therefore refuse the application. The petitioner is ordered to pay Rs. 525 as costs to the State and Rs. 210 as costs to the 4th respondent.

*Application refused.*