1962 *Present :* **Tambiah, J., and Sri Skanda Rajah, J.**

E. P. PIYADASA, Appellant, *and* THE BRIBERY COMMISSIONER, Respondent

S. C. 3 of 1962—Bribery Tribunal Case No. 30/I. 307/60

Bribery Tribunal—Incapacity to try persons for offences of bribery—Lack of capacity of Legislature to create tribunals vested with judicial power—"Judicial power"—Appeal preferred under Bribery Act—Right of Supreme Court to entertain it—Bribery Act No. 11 of 1954, as amended by Act No. 40 of 1958, ss. 28, 42, 47, 66 (1), 68, 69A—Ceylon (Constitution) Order-in-Council, 1946, ss. 29, 39 (1), 45, 52, 55—Ceylon Independence Act, 1947.

A Bribery Tribunal, constituted under the Bribery Act No. 11 of 1954, as amended by Act No. 40 of 1958, consists of members not appointed by the Judicial Service Commission and is, therefore, not competent not only to impose a sentence on the person charged before it but even to investigate and pronounce judgment in respect of the charge. The Legislature has no power, except by an appropriate amendment of the Ceylon (Constitution) Order-in-Council, 1946, to create a tribunal and confer upon it judicial power exercised by the Supreme Court or by judicial officers appointed by the Judicial Service Commission under section 55 of the Constitution Order-in-Council.

It is competent for the Supreme Court to entertain an appeal preferred to it in terms of section 69A of the Bribery Act. *Don Anthony v. The Bribery Commissioner* (1962) 64 N. L. R. 93, not followed.

APPEAL under the Bribery Act.

No appearance for the accused-appellant.

Basil White, Crown Counsel, for respondent.

M. Tiruchelvam, Q.C., as *amicus curiae.*

Cur. adv. vult.

October 31, 1962. TAMBIAH, J.—

The appellant was prosecuted before the Bribery Tribunal, constituted under the Bribery Act, No. 11 of 1954, as amended by the Bribery (Amendment) Act, No. 40 of 1958, on four counts involving charges of bribery and was convicted on all four counts and sentenced to three months' rigorous imprisonment, the sentences to run concurrently. At the hearing of the appeal, the appellant was neither present nor was he represented by counsel. Mr. Basil White, Crown Counsel, appeared for the respondent and at the invitation of this Court, Mr. M. Tiruchelvam Q.C., was kind enough to assist as *amicus curiae.*

2——R. 6868—1,856 (12/62)

Mr. White contended that in view of the decision in *Don Anthony v. The Bribery Commissioner* [1] the appellant had no right of appeal. He further contended that if this Court should hold that the Bribery Tribunal had no jurisdiction to pass the sentence, then it must also go to the extent of holding that it has no power to try and convict the appellant in this case. Mr. Tiruchelvam submitted that the case of *Don Anthony v. The Bribery Commissioner* (*supra*) was wrongly decided and urged that this Court could entertain this appeal. He also submitted that the Bribery Tribunal is an unconstitutional body which had no power to try, convict or punish persons charged before it.

In *Don Anthony v. The Bribery Commissioner* (*supra*) the Supreme Court held that no appeal lies from the order of the Bribery Tribunal to an appellant who contends that the Act itself is *ultra vires*. The learned judges in that case relied on the ruling of their Lordships of the Privy Council in the case of *The King-Emperor v. Benoari Lal Sarma* [2]. In the latter case, it was held that the Special Criminal Courts Ordinance (Indian) No. 2 of 1942, which purported to create special criminal courts during a period of Emergency, was *ultra vires* since the provisions of that Act were in conflict with the provisions of the Indian Constitution. This special Ordinance did not give a right of appeal to the High Court. From the decision of the special tribunal the matter was brought by way of revision to the High Court and from thence there was an appeal to the Judicial Committee of the Privy Council. In repelling an argument that a special court had no jurisdiction since all the provisions of Special Criminal Courts Ordinance (Indian) (*supra*) were *ultra vires*, their Lordships of the Privy Council rightly took the view that if the provisions of the statute were invalid, then those provisions which constituted the special tribunal were also null and void and, consequently, the Judge, who sat in that Court, did so in his capacity as a private citizen. Further, since revisionary powers were given, under the general statutes of India, to High Courts to revise errors committed only by courts of law, no revisionary power existed in the High Court to revise the orders of private persons who purported to act as judges. Another distinguishing feature in *Benoari's Case* was that there was no right of appeal given by statute to the High Court. The present case, however, is distinguishable from *Benoari's case*. The section of the Bribery Act (*supra*) which gives a right of appeal from the decisions of the Bribery Tribunal to the Supreme Court is *intra vires*. The Legislature, having constituted the Bribery Tribunal, made its orders justiciable by the Supreme Court (vide section 86A). We see no reason why this Court should be deprived of the right of hearing this appeal from an order of a statutory body when such a right has been conferred specifically by the Bribery Act.

The objection taken in the case of *Senadhira v. The Bribery Commissioner* [3] was of a similar nature. The counsel for the appellant in that case made it clear that he was not attacking all the provisions of the

[1] *(1962) 64 N. L. R. 93.*
[2] *(1945) A. C. at 20.*
[3] *(1961) 63 N. L. R. 313.*

Bribery Act, as amended, as *ultra vires*, but was only submitting that the provisions of the Act empowering the tribunal to pass sentence on persons charged before it were *ultra vires* as they conflicted with the Constitution of Ceylon. The learned judges in *Senadhira's case* agreed with the contention of the respondent's counsel and held that they had jurisdiction to hear the appeal.

A Legislature can pass an enactment, some of the provisions of which are *ultra vires*, while others are *intra vires*. The contention that all the provisions of the Bribery Act, as amended, are null and void must therefore necessarily fail. We hold that the appellant has a right of appeal in the instant case.

Although the appellant was not present at the hearing of the appeal, nor was he represented, nevertheless it is the duty of this Court to consider the appeal on its merits as if it is an appeal from the decision of a District Court in Criminal Cases (vide section 69 (*a*) of the Bribery Act, No 11 of 1954, as amended by Act No. 40 of 1958, which brings into operation sections 339–352 of the Criminal Procedure Code (Chapter 20)).

The competency of the Bribery Tribunal, consisting of members not appointed by the Judicial Service Commission, to try persons charged before it, convict and to sentence them received the earnest consideration of the judges in the case of *Senadhira v. The Bribery Commissioner* (*supra*). In that case, Sansoni, J. (with whom T. S. Fernando, J., agreed), held that the power given to the Bribery Tribunal by section 66 (1) of the Bribery Act (as amended) to inflict a fine, convict and imprison a person charged before it, was unconstitutional since such power, being exclusively a judicial power, can only be exercised by the Supreme Court, or by a judicial officer appointed by the Judicial Service Commission, in terms of section 55 of the Ceylon Constitution (Order-in-Council) 1946. The learned judges, however, were of the opinion that the Bribery Tribunal could investigate and pronounce a judgment on a question of fact as such an investigation and pronouncement is the exercise of an arbitral power.

This case raises a constitutional point of great importance. It is hardly necessary to state that the Ceylon Constitution, being a written constitution, is paramount legislation which can only be amended (and that, too, only in certain respects) by a two-thirds majority of the members of the House of Representatives, as provided by section 29 (4) of the Ceylon Constitution (Orders-in-Council) 1948 (hereinafter referred to as the Order-in-Council).

The legislative powers of the Ceylon Parliament, as contained in section 29 of the Order-in-Council, is not that of a sovereign legislature (vide The Constitution of Ceylon—Sir Ivor Jennings (Oxford Press) p. 22 and 23), inasmuch as it derives its authority from the Order-in-Council which imposes certain fetters on its powers of legislation (vide also observations of Sinnetamby, J., in *P. S. Bus Co., Ltd. v. Members and*

Secretary of Ceylon Transport Board [1]). When a statute creates a Parliament, it cannot act contrary to the terms of the statute (vide *Harris v. Minister of the Interior* [2]). Section 29 (2) and (3) prohibit the Parliament from passing certain discriminatory legislation, except by a two-thirds majority of the members of the House of Representatives. Section 39 of the Order-in-Council states that every measure passed by the Parliament will have to be assented to by the Governor-General as the representative of Her Majesty the Queen. As a constitutional monarch, the Queen, through her representative seldom withholds her assent, but if it appears to Her Majesty's government in the United Kingdom that " any law which has been assented to by the Governor-General and which appears to Her Majesty's Government in the United Kingdom—(*a*) to alter, to the injury of the stock-holder, any of the provisions relating to any Ceylon Government stock specified in the Second Schedule to the Order ; or (*b*) to involve a departure from the original contract in respect of any of the said stock ", then the assent given by the Governor-General may be disallowed by Her Majesty through a Secretary of State, and ceases to have the force of law (vide section 39 (1) of the Order-in-Council).

The question in whom the judicial power of the State is vested by the Order-in-Council, could only be looked for in the entrenched provisions of the said statute. English decisions throw little light on this question as the legal position in England is different (vide Courts and Judgments—Presidential Address of Sir Carleton Allen, published by the Holdsworth Club of the Birmingham University 1959, p. 2, *et seq.*).

The three functions of a government, legislative, executive, and judicial first adumbrated by Aristotle, and later developed by other jurists, are clearly recognised in the Order-in-Council, though no rigid partitions have been built to separate these functions from one another. (Compare, however, the positions in America and Australia ; vide *Shell Co. of Australia v. Federal Commissioner of Taxation* [3] ; *Marthineau v. City of Montreal* [4] ; *Labour Relations Board of Saskatchewan v. John Eastern Iron Works, Ltd.* [5]

Part II of the Order-in-Council deals with the appointment and functions of the Governor-General. He is authorised to execute all powers, authorities and functions of Her Majesty, as she may be pleased to assign to him. These powers are exercised, subject to the provisions of the Order-in-Council and any other law for the time being in force, as far as may be in accordance with the constitutional conventions applicable to the exercise of similar powers, authorities and functions in the United Kingdom. Part III of the Order-in-Council deals with the Legislature and confers on it the legislative powers of the State. This function again, has to be exercised subject to the provisions of the Order-in-Council.

The first Schedule of the Order-in-Council states that the Colonial Laws Validity Act, 1865 does not apply to any law made after the appointed day by the Ceylon Parliament. It also empowers the latter to make laws

[1] *(1958) 61 N. L. R. 491 at 493.*
[2] *(1952) South African Law Reports, p. 428.*
[3] *(1931) A. C. 275.*
[4] *(1932) A. C. 113.*
[5] *(1949) A. C. 134.*

having extra-territorial application. These provisions are taken almost verbatim from the Statute of Westminster (vide—Constitution of Ceylon, Sir Ivor Jennings, p. 129).

Part V deals with the Executive. Section 45 states that " the executive power of the Island shall continue to be vested in His Majesty and may be exercised on behalf of His Majesty by the Governor-General in accordance with the provisions of this Order-in-Council and any other law for the time being in force ". This section is based on section 42 of the Minister's Draft and was re-drafted. Neither in Part III nor in Part IV is judicial power conferred on the Legislature or Executive.

The provisions of the Order-in-Council, which vests the executive power in Her Majesty, enshrine the well-known principle that executive power is vested in Her Majesty throughout the Commonwealth. In Ceylon, however, as well as in other Dominions, Her Majesty exercises these executive powers through her representatives (vide Constitution of Ceylon by Sir Ivor Jennings, p. 192). The Letters Patent of 1947 determine the distribution of powers between the Queen and the Governor-General and empowers the Governor-General " to appoint all such judges, Commissioners, Justices of the Peace and other officers as may lawfully be constituted or appointed by me ". This power, again, has to be exercised subject to the provisions of the Order-in-Council.

Part VI of the Order-in-Council deals with the Judicature. Section 52 (1) empowers the Governor-General to appoint a Chief Justice, Puisne Justices of the Supreme Court and Commissioners of Assize. It states that the judges of the Supreme Court hold office during " good behaviour " (not " at pleasure ") and can only be removed for misconduct by the Governor-General on an address by the Senate and the House of Representatives (vide section 52 (2)). The age of retirement of a Supreme Court judge is fixed by Statute at sixty-two years (vide section 52 (3)). The salaries of the Supreme Court judges have to be determined by the Parliament and are charged on the Consolidated Fund (vide section 52 (4)), and cannot be diminished during their terms of office (vide section 52 (6)).

These statutory provisions, ensuring the independence of the judiciary, are based on the English practice that the judiciary should not be subjected to any extraneous interference. Blackstone, as early as 1768, (vide Blackstone's Commentaries of 1768) states that the " legislative power " is vested by the English constitution in Parliament, " the executive power in the King or Queen ". With regard to the judicial power, he said " By long and uniform usage of many ages, our Kings have delegated their whole judicial power to the Judges of their several courts... And in order to maintain both the dignity and independence of the judges in the superior courts, it is enacted by the statute (13 Will III c. 2) that their commissions shall be made (not as formerly *durante bene placito*, but) *quamdiu bene se gesserint*, and their salaries ascertained and established ; but that it may be lawful to remove them on the address of both houses of Parliament. And now, by the noble improvements of that

law, in the statute of 1 Geo III, c. 23, enacted at the earnest recommendation of the King himself from the throne, the Judges continued in their offices during their good behaviour, notwithstanding any demise of the Crown (which was formerly held immediately to vacate their seats), and their full salaries are absolutely secured to them during the continuance of their commissions ; His Majesty having been pleased to declare, ' that he looked upon the independence and uprightness of the Judges as essential to the impartial administration of justice, as one of the best securities of the rights and liberties of his subjects ; and as most conducive to the honour of the Crown '."

A consideration of the relevant portions of the Order-in-Council and other statutes shows that the judicial power exercised by the civil courts of this country, when the Order-in-Council came into operation were in fact conferred on the Judges of the Supreme Court and the judicial officers appointed by the Judicial Service Commission, although no special mention has been made therein to this effect (vide *Senadhira's case* (*supra*) and *the Queen v. Liyanage and others* [1]).

At the time the Order-in-Council came into operation, a Supreme Court, already clothed with certain powers, rights and duties, existed. It had original jurisdiction to try offences, appellate jurisdiction to correct errors of the lower Courts and, *inter alia*, jurisdiction to issue prerogative writs. It was not necessary, therefore, for a re-definition or re-statement of these general powers, rights and duties of the Supreme Court, in the Order-in-Council. The Ceylon Independence Act, 1947, adopted the provisions of the Order-in-Council of 1946, with certain changes, as the Constitution of Ceylon.

The Order-in-Council created the Judicial Service Commission and empowered only this statutory body to appoint judicial officers. A constitution must be interpreted by attributing to its words the meaning which they bore at the time of its adoption and in view of the commonly accepted canons of construction, its history, early and long-continued practices under it (vide *Lois Myers v. United States* (*12.10.1926*) [2]).

When section 52 of the Order-in-Council made it obligatory for the Governor-General to appoint the Chief Justice, Puisne Justices and the Commissioners of Assize, it recognised the existence of the Supreme Court which was first created by the Charter of 1801 and later continued by the Charters of 1833 and the Courts Ordinance (Cap. 6).

The precise question for decision in this case is whether the Legislature could take away the " judicial power ", vested by our Constitution on the Supreme Court and officers appointed by the Judicial Service Commission, and formerly exercised by the Civil Courts, and confer the same on tribunals otherwise appointed, without amending the Constitution. We are of the opinion that the Legislature cannot do so, or, for that matter, even create tribunals presided by persons not appointed by the Judicial Service Commission, which have concurrent jurisdiction with the Supreme Court or Courts presided over by Judicial

[1] *(1962) 64 N. L. R. 313.*
[2] *United States Reports, 52 at 237.*

Officers appointed by the Judicial Service Commission. Indeed, if such a course was open to the Legislature, then it would venture to create tribunals with greater powers and jurisdiction than those of the above-mentioned Courts. If judicial power could be conferred on persons other than judicial officers appointed by the Judicial Service Commission then the provisions in the Order-in-Council relating to the Judicial Service Commission would be rendered nugatory. Any departure from these salutary provisions of the Order-in-Council, ensuring to the citizen the independence of the Judiciary, will no doubt lead to malpractices. As Blackstone states (vide Blackstone's Commentaries Vol. 1 at p. 269), "In this distinct and separate existence of the judicial power in a peculiar body of men, nominated indeed, but not removable at pleasure by the Crown, consists one main preservative of the public liberty which cannot subsist long in any state, unless the administration of common justice be, in some degree, separated both from the legislative and also from the executive power. Were it joined with the legislative, the life, liberty and property of the subject would be in the hands of arbitrary judges, whose decisions would be then regulated only by their opinions, and not by any fundamental principles of law; which though legislators may depart from, yet judges are bound to observe. Were it joined with the executive, this union might soon be an overbalance for the legislative." (cited with approval by Sansoni, J., in *Senadhira's case* (63 N. L. R. at p. 318)).

The expression "judicial power" needs elucidation. The definition of this term has caused much difficulty and has been the subject matter of controversy both among jurists and judges. (vide Courts and Judgments—Presidential Address of Sir Carleton Allen—published by the Holdsworth Club of the Birmingham University (1959).) In *The Waterside Workers' Federation of Australia v. J. W. Alexander Ltd.* [1] Isaac and Rich JJ., referring to arbitral power, said as follows :

> "That is essentially different from judicial power. Both of them rest for their ultimate validity and efficiency on the legislative power. Both presuppose a dispute, and a hearing of investigation, and a decision. But the essential difference is that *judicial power is concerned with the ascertainment, declaration and enforcement of the rights and liabilities of the parties as they exist, or are deemed to exist, at the moment the proceedings are instituted ; whereas the function of arbitral power is to ascertain and declare, but not to enforce, what, in the opinion of the arbitrator ought to be the respective rights and liabilities of the parties in relation to each other.*"

This dictum has been approved by the Judicial Committee of the Privy Council (vide *Attorney-General for Australia and the Queen v. The Boiler Makers' Society of Australia* [2] and also by our Courts (vide *Senadhira v. The Bribery Commissioner* (*supra*) per Sansoni, J., at page 319).

[1] *(1918) 25 Commonwealth Reports 434 at 463.* [2] *(1957) A. C. 288 at 310.*

In the *Shell Company of Australia v. The Federal Commission of Taxation*[1] Lord Sankey L.C., having posed the question what is judicial power, answered it as follows :

> " Their Lordships are of opinion that one of the best definitions is that given by Griffiths, C. J., in *Huddard, Parker & Co. v. Moorhead*[2], where he says " I am of opinion that the words ' judicial power ' as used in section 71 of the Constitution, means *the power which every sovereign authority must of necessity have to decide controversies between his subjects or between itself and its subjects, whether the rights relate to life, liberty or property.* The exercise of this power does not begin until some tribunal *which has power to give a binding and authoritative decision,* whether subject to appeal or not, is called upon to take action."

In *Senadhira's Case,* the judges applied the test of execution as the hall-mark of judicial power (vide 63 N. L. R. at p. 319 per Sansoni, J.). But Wynes states (vide Legislative, Executive and Judicial power by Wynes (2nd Edition) The Law Book Co. of Australasia Pty. Ltd., p. 562) that " enforcement would not be a necessary attribute of a court exercising judicial power ". For example, the power of execution might not belong to a tribunal yet its determination might amount to the exercising of a judicial power. In the United States, it does not appear that a power of enforcement is regarded as an essential element of judicial power (vide *Nashville C & St. L. Railway Co. v. Wallace*[3]; *United States v. West Virginia*[4]; *Tutan v. United States*[5]).

We shall proceed to examine the relevant provisions of the Bribery (Amendment) Act, (No. 40 of 1958), with the view of determining whether the Legislature had overstepped, perhaps by an oversight, the limitation prescribed by the Order-in-Council. Section 5 of the Bribery Act, as unamended, empowers the Attorney-General, if he was satisfied that there was a prima facie case of bribery, to indict the offender, if he was not a public servant, before the Supreme Court, or the District Court. When the alleged offender is a public servant, two courses were open to the Attorney-General. He could either indict the alleged offender before the Courts above-mentioned, or arraign him before the Board of Inquiry constituted under the Bribery Act.

Far reaching changes were brought about by the Bribery (Amendment) Act, No. 40 of 1958. This Act abolished trials before the Supreme Court and the District Courts and also inquiries before Boards of Inquiry; it established what are known as " Bribery Tribunals ", presided over by officers not appointed by the Judicial Service Commission but by the Governor-General on the advice of the Minister of Justice. These " Bribery Tribunals " were constituted for " trials of persons for bribery " (vide section 42) " with power to hear, try and determine any prosecution for bribery made against any person before the tribunal " (vide section 47). The offences of bribery specified in Part II of the Act are punishable

[1] *(1931) A. C. 275 at 295.*
[2] *8 Commonwealth Law Reports 330 at 357.*
[3] *(1933) U. S. 249.*
[4] *(1935) U. S. 463.*
[5] *(1926) U. S. 270.*

with rigorous imprisonment for a term not exceeding seven years or a fine, not exceeding five thousand rupees, or both, and these offenders are no longer triable by the Supreme Court or the District Court.

Section 28 of the same Act, as amended, provides that the sentence of imprisonment passed by a Bribery Tribunal on a person found guilty by it, would be treated as if the sentence was one which was passed by a Court of Law. The Bribery Tribunals could also inflict a fine or penalty; such a fine or penalty could be recovered by the Attorney-General by an application made by him to the District Court. Section 68 of the Bribery (Amendment) Act (*supra*) empowers the Bribery Tribunal to enforce its authority and obedience. Any disregard or disobedience to its authority, committed in its presence, or in the course of the proceedings before it, is declared punishable as contempt. For this purpose, it has been conferred with the same powers as those conferred on a Court of Law by section 57 of the Courts Ordinance and Chapter 65 of the Civil Procedure Code.

A brief survey of the abovementioned and other provisions of the Bribery Act, as amended, clarly show that the Legislature has purported to create a tribunal and has conferred upon it the judicial power exercised by the Supreme Court and the minor Courts presided over by judicial officers appointed by the Judicial Service Commission.

Lord Atkin, commenting on the British North America Act of 1887, which protected the independence of the judges of Canada by making provisions that judges of the superior, district and country courts should be appointed by the Governor-General and that by enacting that judges of the superior Courts should hold office during good behaviour and also their salaries should be fixed by Parliament and not reducible, uttered the following pregnant words: " These are three pillars in the temple of justice and they are not to be undermined " (vide *Toronto Corporation v. York Corporation*[1]).

Sansoni, J., in *Senadhira's Case* proceeded to add a fourth pillar to the temple of justice in our legal system, namely, the Judicial Service Commission (vide 63 N. L. R. at page 318). Could this Court, which has jealously guarded the rights of the citizen for so long, allow the erection of another " temple of justice " which is unauthorised by the Order-in-Council.

The Bribery Tribunals were constituted under the amending Act (No. 40 of 1958) for the " trials of persons for bribery " (vide section 42) " with powers to hear, try and determine any prosecution for bribery made against any person before the tribunal " (vide section 47), If no judicial power could be conferred on the Bribery Tribunal, except by an amendment of the Order-in-Council, then we fail to see how it could try and hear persons charged for bribery and determine the issue therein.

[1] *(1938) A. C. 415.*

There is no provision in the Bribery Act, as amended, which states that the Bribery Tribunal can inquire and come to a finding. There is no provision in its constitution for us even to construe it as a fact finding commission. Bribery is an offence still justiciable and punishable by the Supreme Court and the minor Courts under the Penal Code.

In *Senadhira's Case* (*supra*), the question whether the Bribery Tribunal can try persons charged before it for bribery was not fully investigated as this point was conceded by the counsel for the respondent in that case. A "trial" is the conclusion, by a *competent* tribunal, of questions in issue, in legal proceedings whether civil or criminal (vide Stroud's Judicial Dictionary (3rd Edition) Vol. 4, page 3092).

In view of our finding that the Bribery (Amendment) Act (No. 40 of 1958) conferred no judicial power on the Bribery Tribunal, we are of the opinion that it has no power to try persons for offences of bribery, as the word "try." and other words used in this context can only be used where a tribunal is vested with judicial power.

Therefore we are in agreement with Mr. White's contention that the Bribery Tribunal has no jurisdiction to try and find the accused guilty of the offence of bribery. For these reasons we set aside the conviction and acquit the accused.

SRI SKANDA RAJAH, J.—

I have had the advantage of reading the judgment prepared by my brother Tambiah and I agree that the conviction should be quashed and the accused acquitted.

As the questions which we are called upon to decide are of some importance I wish to add a few observations.

Crown Counsel submitted that, in the event of our holding that the accused has a right of appeal, the Bribery Tribunal had no power not only to impose a sentence on the appellant but even to try and/or convict him.

When we saw Mr. Tiruchelvam, who appeared for the appellant in the *Don Anthony Case* [1] and whose argument in that case was "not without attraction" to the learned judges who decided that case, we invited him to assist us. He submitted that the preliminary objection, based on the observations of their Lordships of the Privy Council (1945 Appeal Cases 14), raised by Crown Counsel both in the *Senadhira* [2] and *Don Anthony* Cases, were untenable and that the Bribery Tribunal is an unconstitutional body.

In the *Senadhira Case*, counsel for the appellant contented himself in limiting his submission to the power of the Bribery Tribunal to pass sentence as being *ultra vires*. He indicated that he was not going to argue that the Bribery Tribunal was an unconstitutional body.

[1] *61 C. L. W. 100.* [2] *60 C. L. W. 65.*

By the very terms of the Ordinance under which *Benoari Lal Sarma* [1] was charged and tried by a Special Magistrate there was no right of appeal to the High Court. The matter was taken to the High Court by way of revision under the provisions of the Code of Criminal Procedure. It was pointed out by their Lordships of the Privy Council that this could have been done only on the assumption that the court below was a valid court and, therefore, having moved the High Court on that assumption it was not open to the accused to challenge the Ordinance, which brought into existence such court, as invalid.

That is not the position in this case. Here the Bribery Act itself gives the accused the right to appeal to the Supreme Court. In my view, therefore, the preliminary objection, based on the passage in the *Benoari Lal Sarma Case*, raised in the two cases under reference, if I may say so with respect, is untenable. The accused has the right to appeal.

I may add that even when an Act expressly provides that the jurisdiction of a court to try an offence shall not be called in question in any court whether by way of writ or otherwise it is still open to this Court to consider whether that particular provision is *ultra vires* the Legislature (vide—*The Queen v. Liyanage* et al. [2]).

In the *Senadhira Case* as the appellant's counsel did not argue that the Bribery Tribunal was an unconstitutional body the court was not called upon to consider that question.

I would respectfully agree with the finding in that case that the Bribery Tribunal was not validly constituted to receive judicial authority and any exercise of judicial power by it is invalid, being in breach of section 55 of the Ceylon (Constitution) Order-in-Council, 1946.

When by section 68 of the Bribery Act the Legislature purported to empower the Bribery Tribunal to punish any act of contempt committed in the course of the hearing of any charge of bribery as provided by section 57 of the Courts Ordinance and Chapter LXV of the Civil Procedure Code, i.e., as a contempt of Court, a power which hitherto resided solely in the Judicature, it intended in unmistakable terms, to vest the Bribery Tribunal with judicial power even at the stage it tries an accused and/or convicts him. This is clearly a violation of section 55 of the Ceylon (Constitution) Order-in-Council. Therefore, the Bribery Tribunal is an unconstitutional body and all proceedings before it are null and void.

Appeal allowed.

[1] *(1945) A. C. 14.*

[2] *(1962) 64 N. L. R. 313.*