

1961

Present : T. S. Fernando, J.

G. H. L. JAYASENA, Appellant, and A. M. M. SIDEEK and two others,  
Respondents

S. C. 203 of 1961—M. C. Colombo, 35321/B

*Industrial Court—Delegation of its functions—Illegality—Award of Industrial Court—  
Right to challenge its validity at the stage of execution—Industrial Disputes  
Act, No. 43 of 1950, as amended by Act No. 62 of 1957, ss. 4, 22, 33 (2).*

An Industrial Court cannot delegate to a third party its function of deciding a dispute which has been referred to it for settlement. Where an award is made in violation of this rule, any sum of money due upon it cannot be recovered in a Magistrate's Court in terms of section 33 (2) of the Industrial Disputes Act.

The award of an Industrial Court contained, *inter alia*, a direction the terms of which were as follows :—

“ We direct that all payments due under this award shall be made through the Commissioner of Labour to whom the manager of Messrs. Wahid Brothers shall submit a schedule of the amounts due to the various workers. *Should any disagreements arise as regards the correct computation, the decision of the Commissioner of Labour or any other officer nominated by him shall be final.*”

*Held*, that the direction amounted to a delegation of the functions of the Industrial Court rendering the award itself bad.

**A**PPEAL from an order of the Magistrate's Court, Colombo.

No appearance for the petitioner-appellant.

*E. B. Vannitamby*, for the respondents.

*Cur. adv. vult.*

November 23, 1961. T. S. FERNANDO, J.—

The petitioner-appellant sought an order from the Magistrate's Court (in terms of section 33 (2) of the Industrial Disputes Act, No. 43 of 1950, as amended by section 15 of the Industrial Disputes (Amendment) Act, No. 62 of 1957) directing the respondents to pay to him a sum of Rs. 1,130.54, money which he claimed was due to him from them upon an award of an Industrial Court, and, if not so paid by the respondents, directing that the amount be recovered in like manner as a fine imposed by the Court. The application of the petitioner was opposed by the respondents on two grounds, one of which was that the award of the Industrial Court was a nullity in that the Court had delegated the function of deciding the dispute between the parties to a third party. The learned Magistrate held with the respondents on this ground, and I am of opinion that he was right in so doing.

The award in this matter came to be made consequent upon an Order made by the Minister under section 4 of Act No. 43 of 1950 referring for settlement by an Industrial Court a dispute which had arisen between the Ceylon Press Workers' Union and W. M. A. Wahid & Brothers. An Industrial Court consisting of three persons was accordingly constituted in terms of section 22 of the Act, and that Court made an award on January 19, 1959. This award contained, *inter alia*, a direction which has been attacked by the respondents as amounting to a delegation of the functions of the Court rendering the award itself bad. The terms of the direction are reproduced below :—

“ We direct that all payments due under this award shall be made through the Commissioner of Labour to whom the manager of Messrs. Wahid Brothers shall submit a schedule of the amounts due to the various workers. *Should any disagreements arise as regards the correct computation, the decision of the Commissioner of Labour or any other officer nominated by him shall be final.* ”

The complaint of the respondents is that the other terms of the award were such that disagreements were bound to arise as regards the correct computation, and that such disagreements did in fact arise as a result of computations having been made in the Department of the Commissioner of Labour, and that in the result the award has become in fact and in law the award not of the Industrial Court but of the Labour Commissioner's Department. They point also to the circumstance that the award left the decision not only to a third party, viz. the Commissioner of Labour, but made it possible even for any nominee of the Commissioner to make the award in this case. The functions of an Industrial Court under the

Act are undoubtedly in the nature of judicial functions, and judicial functions cannot normally be delegated—see per Lord Somervell of Harrow in *Vine v. National Dock Labour Board*.<sup>1</sup> The English Courts have consistently refused to enforce awards which are bad as being made by persons to whom the power to make the award could not have been delegated.

In *Pedley v. Goddard* <sup>2</sup>, Lord Kenyon C.J., in holding that an award of arbitrators was not final, stated :—“ The case that most resembles this is that cited from 3 Lev. 18 : but that is like the common case of leaving costs to be taxed by the officer of the Court, which does not vitiate the award. But here the arbitrators, instead of determining the points in dispute between the parties, have left one sum in dispute to be decided by the person who of all others was the least qualified to decide, the defendant himself ”. Then again, in *Tomlin v. The Mayor of Fordwich* <sup>3</sup>, the Court in refusing to enforce an award upheld the principle that an arbitrator cannot delegate his power. In a local case, *Ekanyake v. Prince of Wales Co-operative Society Ltd.*<sup>4</sup>, Windham J. (with whom Nagalingam J. agreed) held that where application is made to execute an award which is invalid for want of jurisdiction it is open to the executing court to refuse to execute it. Said Windham J., quoting from a judgment in a case decided in India, “ it is common ground that the general rule is that an executing court cannot go behind the decree. It must take the decree as it is and must proceed to execute it. To this general rule, however, there is a well established exception that if there was a lack of inherent jurisdiction in the court which had passed the decree and for some other reasons, the decree is a nullity, the executing court must refuse to execute it. ”

I am clearly of opinion that the Industrial Court had no power to delegate to anyone else its function of settling the dispute. I need not here consider what might have been the position if the Industrial Court had enlisted the assistance of the Commissioner of Labour or of the Department in the computation and then, with the figures before it, had itself reached a decision on the amount to be awarded and thereafter made an award.

I would dismiss the appeal.

*Appeal dismissed.*

<sup>1</sup> (1957) A. C. at 512.

<sup>2</sup> (1796) 7 Term Rep. 73 at 77. 101 Eng. Rep. 861 at 863.

<sup>3</sup> (1836) 5 Ad. & Ell. 147 at 152. 111 Eng. Rep. 1121 at 1123.

<sup>4</sup> (1949) 50 N. L. R. at 297.