[PRIVY COUNCIL]

1971 *Present:* Lord Morris of Borth-y-Gest, Lord Guest, Viscount Dilhorne, Lord Simon of Glaisdale and Lord Cross of Chelsea

MALIBAN BISCUIT MANUFACTORIES LTD., Appellants, *and* R. SUBRAMANIAM, THE CEYLON MERCANTILE UNION, N. L. ABEYWIRA and another, Respondents

PRIVY COUNCIL APPEAL No. 48 of 1970

S. C. 207/68—Application for Conditional Leave to appeal to Her Majesty the Queen-in-Council in S. C. Application No. 428/67

Appeals (Privy Council) Ordinance (Cap. 100)—Section 3—Scope and meaning of the words "civil suits or actions" — Applicability to a writ of certiorari*—Section 52 of the Ceylon Charter of Justice of 1833—Civil Procedure Code (Cap. 101), ss. 5, 6—Industrial Disputes Act (Cap. 131), s. 4 (1).*

An application to the Supreme Court for a writ of *certiorari* in a civil matter is a "civil suit or action" within the meaning of section 3 of the Appeals (Privy Council) Ordinance. The reasoning which was the basis of the decision of the Supreme Court in *Silverline Bus Co., Ltd. v. Kandy Omnibus Co., Ltd.* (58 N. L. R. 193) cannot stand.

Tennekoon v. Duraisamy (59 N. L. R. 481) and *Colombo Apothecaries Co. Ltd., v. Wijesooriya* (71 N. L. R. 258) approved.

APPEAL, with special leave, from a judgment of the Supreme Court reported in (*1969*) *74 N. L. R. 76.*

An industrial dispute was referred to a Labour Tribunal in terms of section 4 (1) of the Industrial Disputes Act (Cap. 131). The appellant-Company raised the preliminary objection that the Labour Tribunal had no jurisdiction to enquire into the matters in the reference. This objection was rejected by the Labour Tribunal and subsequently, in an application for a writ of *certiorari*, by the Supreme Court. The appellants then applied to the Supreme Court for conditional leave to appeal to the Privy Council from the judgment of the Supreme Court, but this application was refused on the sole ground that the application for the writ of *certiorari* was not a civil suit or action within the meaning of section 3 of the Appeals (Privy Council) Ordinance. Thereafter the appellants filed the present appeal to the Privy Council after obtaining special leave.

E. F. N. Gratiaen, Q. C., with *Eugene Cotran*, for the appellants.

No appearance for the respondents.

Cur. adv. vult.

1*—K 7955—2,255 (10/71)

July 19, 1971. [*Delivered* by LORD MORRIS OF BORTH-Y-GEST]—

In the exercise or in the purported exercise of powers vested in him by section 4 (1) of The Industrial Disputes Act (Chapter 131 of the Legislative Enactments of Ceylon), as amended by other Acts, the Minister of Labour on 14th June 1967 referred an industrial dispute between the appellants and the second respondents to the first respondent as President of the Labour Tribunal for settlement by arbitration. Various matters were specified by the Minister as being in dispute between the appellants and the second respondents. The appellants contended however that the order of reference was not valid in law : that the Tribunal had no jurisdiction to entertain a reference relating to the matters which were specified : and that the second respondents had no right to represent any of the persons named in the reference. The appellants raised and argued their contentions (which need not be referred to in detail) as preliminary objections at a hearing before the first respondent. The first respondent considered them and by an Order made on 12th December 1967 he held, rejecting the contentions, that the reference taken as a whole was valid and that subject to certain stated exceptions the Tribunal had jurisdiction to enquire into the matters in the reference.

The appellants thereupon by Petition dated 19th December 1967 applied to the Supreme Court for a Mandate in the nature of a *writ of certiorari* against the first respondent quashing the proceedings held by him and his order of 12th December 1967 and for a Mandate in the nature of a *writ of prohibition* against the first respondent prohibiting him from having any further proceedings in the matter.

The application was heard by the Supreme Court on 26th and 27th January 1968. Counsel appeared for the appellants : the second respondents were also represented by Counsel : as also was the third respondent for whom Crown Counsel appeared. The hearing was before H. N. G. Fernando Chief Justice and Abeyesundere J. By their decision which was given on 9th April 1968 the Supreme Court held that none of the several grounds of objection taken by the appellants " could have justified any hope of a decision either by the Arbitrator or by the Supreme Court that proceedings should not be taken by the Arbitrator upon the reference ". The application of the appellants was therefore dismissed and the appellants were ordered to pay costs (fixed at Rs. 1,050) to the second respondents.

The appellants desired to appeal to Her Majesty in Council against the Decision and Order of the Supreme Court. By Petition they made application (on 30th April 1968) to the Supreme Court for conditional leave to appeal. It is provided by section 3 of the Appeals (Privy Council) Ordinance (Chapter 100) as follows :

" 3. From and after the commencement of this Ordinance the right of parties to civil suits or actions in the Supreme Court to appeal

to Her Majesty in Council against the judgments and orders of such court shall be subject to and regulated by—

(*a*) the limitations and conditions prescribed by the rules set out in the Schedule, or by such other rules as may from time to time be made by Her Majesty in Council ; and

(*b*) such general rules and orders of court as the Judges of the Supreme Court may from time to time make in exercise of any power conferred upon them by any enactment for the time being in force. "

Rules 1 and 2 of the Schedule are as follows :

" 1. Subject to the provisions of these rules, an appeal shall lie—

(*a*) as of right, from any final judgment of the court, where the matter in dispute on the appeal amounts to or is of the value of five thousand rupees or upwards, or where the appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the value of five thousand rupees or upwards ; and

(*b*) at the discretion of the court, from any other judgment of the court, whether final or interlocutory, if, in the opinion of the court, the question involved in the appeal is one which, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council for decision.

2. Application to the court for leave to appeal shall be made by petition within thirty days from the date of the judgment to be appealed from, and the applicant shall, within fourteen days from the date of such judgment, give the opposite party notice of such intended application. "

The application of the appellants stated that Notice of the intended application for leave to appeal had been given to each of the respondents in terms of Rule 2. The Petition stated that the Judgment of the Supreme Court of 9th April 1968 was a final judgment and that the matter in dispute amounted to or was of the value of upwards of Rs. 5,000 and that the appeal involved directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the value of upwards of Rs. 5,000.

The second respondents presented a statement of objections in which they asserted that the Judgment or Order of 9th April 1968 was not a final judgment within the meaning of that expression in Rule 1, that the matter in dispute did not amount to Rs. 5,000, that the appeal did not involve any property claim or question of that value, and that the application for a Writ which the appellants had made was not a civil suit or action within the meaning of section 3 of the Appeals (Privy Council) Ordinance.

The application was heard by the Supreme Court on 19th, 20th and 23rd August 1968. Counsel appeared for the appellants. Counsel appeared for the second respondents. The Court gave its decision on 19th December in the following year (1969). From the terms of the Judgment it appears that the main contention of Counsel for the second respondents was that the Judgment or Order of the Supreme Court dismissing the application of the appellants for *writs of certiorari* and *prohibition* was not an order which was made in a civil suit or action. The Judgment records that Counsel for the second respondents also contended that the matter in dispute on the appeal did not amount to Rs. 5,000 and that the appeal did not involve any property claim or question of that value. It does not appear to have been contended that the Judgment or Order of the Supreme Court was other than a final judgment.

The conclusion of the Supreme Court was that their previous Judgment or Order was not one made in a civil suit or action. On that ground they held that the appellants were not entitled to appeal. Their application was therefore dismissed with costs. The Court found it unnecessary to consider the contention that the matter in dispute on the appeal did not amount to Rs. 5,000 and that the appeal did not involve any property claim or question of that value.

On 25th February 1970 an Order in Council was made granting the appellant special leave to appeal to Her Majesty in Council.

The question which now arises for decision is whether the Supreme Court were correct in deciding that the appellants were not entitled to appeal to Her Majesty in Council for the reason that the Judgment or Order against which they contend they have a right of appeal was not a judgment in a civil suit or action. If the Supreme Court were wrong in so deciding then subject to their being satisfied in regard to the questions above noted as to the value of the matter or claim in dispute and subject to the satisfaction of prescribed conditions it would be their duty to accede to the appellants' application and to grant leave to appeal.

The reasons which guided the Supreme Court to their conclusion that the appellants were not entitled to appeal were (*a*) that it had been decided in the Supreme Court in the case of *Silverline Bus Company Ltd. v. Kandy Omnibus Company Ltd.*[1] 58 N.L.R. 193 that *certiorari* proceedings did not "fall within the category of proceedings known as suits or actions" and (*b*) that that conclusion was untouched by the decision of the Privy Council in the case of *Tennekoon v. Duraisamy*[2] [1958] A.C. 354.

It is clear that the right to appeal to Her Majesty in Council to which section 3 of the Appeals (Privy Council) Ordinance relates is the right of "parties to civil suits or actions". The Ordinance does not relate to criminal matters. Their Lordships are only here concerned with a

[1] *(1956) 58 N. L. R. 193.*

[2] *(1958) A. C. 354; 59 N. L. R. 451.*

civil matter. The question which is now raised is whether the application which the appellants made in this case for a *writ of certiorari* or of *prohibition* was within the designation of a civil suit or action.

The Appeals (Privy Council) Ordinance contains an Interpretation section (see section 2) but there is no definition of civil suit or action. In the Civil Procedure Code (Chapter 101) there is an Interpretation Clause (section 5). Subject to context the word "action" in the Ordinance has the meaning of "a proceeding for the prevention or redress of a wrong". By section 6 it is provided that "Every application to a court for relief or remedy obtainable through the exercise of the Court's power or authority, or otherwise to invite its interference, constitutes an action". The Code provides that the procedure of an action may be either "regular" or "summary" and the Code prescribes both the course of regular and of summary procedure.

As there is no provision by which the words "civil suits or actions" as appearing in the Appeals (Privy Council) Ordinance are given express definition the question as to their scope and meaning calls for consideration. In their Lordships' view this question was decided in the Judgment of the Board in *Tennekoon v. Duraisamy* [1] [1958] A.C. 354. In that case there had been an appeal to the Supreme Court under section 15 of the Indian and Pakistani Residents Citizenship Act. The Supreme Court allowed leave to appeal from their Judgment to Her Majesty in Council. On the hearing of the appeal before the Board a preliminary objection was taken to the competency of the appeal. So the issue was raised as to whether the Judgment of the Supreme Court had been given in a civil suit or action. The preliminary objection was argued and in delivering the Judgment of the Board Lord Morton of Henryton dealt fully (see pp. 373–9) with the reasons why it failed. It was held that the words "civil suits or actions" in section 3 of the Appeals (Privy Council) Ordinance bore the same meaning as they bore in section 52 of the Ceylon Charter of Justice of 1833.

In the course of the Judgment Lord Morton said :

> "It was argued before their Lordships that the judges of the Supreme Court were wrong, that they had not power to grant leave to appeal, and that consequently their Lordships had no jurisdiction to hear the appeal, unless and until an application to Her Majesty for special leave to appeal was successfully made. It is thus necessary to examine whether the proceedings before the Supreme Court were a 'civil suit or action' within the meaning of section 3. There has been a conflict of authority in Ceylon upon the point.
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> The words 'civil suit or action' first occur in section 52 of the Charter of 1833, which conferred on the subject a right to appeal to the Sovereign. It is in the following terms: '52. And We do

[1] *(1958) A. C. 354 ; 59 N. L. R. 481.*

further grant, ordain, direct, and appoint that it shall be lawful for any person or persons being a party or parties to any civil suit or action depending in the said Supreme Court to appeal to Us Our heirs and successors in Our or Their Privy Council against any final judgment, decree, or sentence, or against any rule or order made in any such civil suit or action, and having the effect of a final or definitive sentence, and which appeals shall be made subject to the rules and limitations following '.

There follow a number of rules and limitations designed, among other things, to exclude cases considered of insufficient importance to be the subject-matter of an appeal to the Privy Council. It is to be observed that the section enabled a person, subject to these rules and limitations, to appeal as of right to the Sovereign. Section 53, which their Lordships think unnecessary to set out here, preserved intact the right of the Sovereign to admit appeals from the subject even where the subject could not appeal as of right.

It was argued before the Supreme Court and their Lordships that a civil suit or action means a proceeding in which one party sues for or claims something from another. No doubt the words are properly applicable to such cases, and they are the cases to which the words are most frequently applied. But it is necessary to inquire whether the application of the words as they appear in section 52 of the Charter must be limited to such cases. Their Lordships would make the general observation that section 52 of the Charter was granting to a subject labouring under a sense of grievance the fundamental right of appealing to the Sovereign and that, though it would be natural to exclude from the range of permissible appeals cases of insufficient importance, it would be difficult to imagine an intention to exclude cases differentiated by reference to the form of the proceedings, regardless of the gravity of the result occasioned by them. And as section 3 of the Appeals Ordinance sets out the manner in which 'the right of parties to civil suits or actions in the Supreme Court to appeal to His Majesty in Council' is to be regulated, their Lordships do not doubt that the words 'civil suits or actions' must be given the meaning which they bore in the Charter of 1833."

Having referred to and adopted the reasoning of the Board in the case of *Commissioner of Stamps, Straits Settlements v. Oei Tjong Swan* [1] [1933] A.C. 378 (where the meaning of the words "civil cause" was considered) Lord Morton referred to the definition of the word "action" in the Courts Ordinance and in the Civil Procedure Code—*i.e.*, as "a proceeding for the prevention or redress of a wrong" and proceeded:

"It was argued that the order of the deputy commissioner could not be said to be a wrong in the sense that a tort or a breach of contract can be said to be a wrong, as there was nothing illegal in the action

[1] *(1933) A. C. 378.*

of the deputy commissioner. On the other hand, it was argued that the word 'wrong' in the definition has a wider connotation and would include the consequence of an order made by a commissioner which is wrong though legally made. It is not necessary for their Lordships to decide the point. The Charter was granted long before the two Ordinances mentioned were enacted and, as their Lordships have already pointed out, the words 'civil suits or actions' in the Privy Council Appeals Ordinance must bear the same meaning as they bore in the Charter.

> In addition to the definition of 'action' (contained in section 5) mentioned above the Civil Procedure Code contains the following in section 6: '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'. This is what their Lordships think is the meaning of 'action' in the Charter and in the Appeals Ordinance though, as will have been seen, they do not found their decision on this section."

In the light of the ruling of the Board in the passages above quoted their Lordships think that it is clear that the decision of the Supreme Court rejecting the appellants' application for *writs of certiorari* or *prohibition* in this case was a judgment or order in a civil suit or action. Their Lordships do not find it necessary to refer fully to the Judgment of the Supreme Court in *Silverline Bus Co. Ltd. v. Kandy Omnibus Co. Ltd.*[1] 58 N.L.R. 193. It had there been held that an application for a *writ of certiorari* did not come within the words "civil suit or action" and it was held that such words should be construed in their ordinary sense of a proceeding in which one party sues for or claims something from another in regular proceedings. That case was referred to by Lord Morton who stated that it had been decided after the Supreme Court had granted the application for leave to appeal in the *Tennekoon* case. He said that the point actually decided in the *Silverline Bus Co. Ltd.* case was not before their Lordships and so they heard no argument upon it. He added however that it followed from the views that their Lordships had expressed that they could not 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".

The point that arose in the *Silverline Bus Co. Ltd.* case does arise in the present case. In view of the decision and reasoning expressed in the Judgment of the Board in *Tennekoon v. Duraisamy* their Lordships consider that the reasoning which was the basis of the decision in the Supreme Court in the *Silverline* case cannot stand. The Judgment or Order of the Supreme Court dismissing the appellants' application for

[1] *(1956) 58 N.L.R. 193.*

writs of certiorari or *prohibition* was a judgment or order in a civil suit or action. The recent case of *Colombo Apothecaries Co. Ltd. v. Wijesooriya* [1] 71 N.L.R. 258 was correctly decided.

For the reasons which they have set out their Lordships will humbly advise Her Majesty that the appeal should be allowed and that the Decree of the Supreme Court of the 19th December 1969 dismissing the application for conditional leave to appeal should be set aside and that the application be remitted to the Supreme Court to be dealt with in accordance with this Judgment.

The costs of the appellants before the Supreme Court on the application for leave to appeal and before their Lordships' Board must be paid by the second respondents.

Appeal allowed.