[IN THE COURT OF APPEAL OF SRI LANKA]

1973 *Present :* **Fernando, P., Sirimane, J., Samerawickrame, J., Siva Supramaniam, J., and Tennekoon, J.**

MOOSAJEES LTD., Appellant, *and* EKSATH ENGINERU SAHA SAMANYA KAMKARU SAMITHIYA and 2 others, Respondents

APPEAL NO. 5 OF 1973

S. C. 494 of 1969—Application for a Writ of Certiorari in (De Novo) No. 144 of 1964

Industrial Disputes Act (Cap. 131)—Sections 4 (2), 10 (9)—Collective agreement—Correspondence between the Commissioner of Labour and an employer as to wages of workmen—Whether it has a binding effect on the workmen—Dispute in regard to matters not covered or not fully covered by a collective agreement—Power of Minister to refer it to an industrial court for settlement—Court of Appeal Act, s. 8 (1) (b).

There can be no "collective agreement" within the meaning of that expression in the Industrial Disputes Act if, without the knowledge of the workmen, certain correspondence relating to wages has passed between the employer and the Commissioner of Labour. Therefore, if an industrial dispute subsequently arises between the workmen and their employer, an industrial court to which a reference for settlement has been made by the Minister under section 4 (2) of the Industrial Disputes Act would be right in ignoring the correspondence between the employer and the Commissioner of Labour. In such a case it cannot be contended that the Minister had no power to refer the dispute to an industrial court for settlement.

Section 4 (2) of the Industrial Disputes Act enables the Minister to refer *any* industrial dispute to an industrial court for settlement. Accordingly, even if a binding collective agreement is in force, a dispute arising between the parties in regard to matters not covered or not fully covered by the collective agreement can be referred by the Minister for settlement.

APPEAL from a judgment of the Supreme Court refusing to grant a writ of *certiorari*.

Mark Fernando, for the appellant.

Nimal Senanayake, with *Rohan Perera,* for the 1st respondent.

2nd and 3rd respondents absent and unrepresented.

Cur. adv. vult.

December 3, 1973. FERNANDO, P.—

This is an appeal in terms of section 8 (1) (*b*) of the Court of Appeal Act from a judgment of the Supreme Court delivered on February 9, 1973 refusing to grant a writ of certiorari to quash an award dated March 23, 1964, of an industrial court to which the Minister had on November 16, 1960, acting under section 4 (2) of the Industrial Disputes Act, referred for settlement an industrial dispute between the appellant-company and the 1st respondent, a Union of workmen. The industrial court, after a long inquiry, made its award which contains a well considered statement of its reasons therefor.

The appellant on April 29, 1964 applied to the Supreme Court for the issue of a writ of certiorari to quash the award. Among other questions then raised by the appellant before the Supreme Court was an important one relating to an alleged exercise of judicial power by the industrial court without receiving appointment thereto by the Judicial Service Commission. That question was treated in the Supreme Court as a preliminary one and was answered finally against the appellant's contention only after a decision in a case which had raised a similar point had been reached several years later by the Privy Council. When the application had been relisted for argument on the other matters which had been raised by the appellant, only two of those matters were pressed by its counsel. The Supreme Court held against the appellant on both those matters. The appeal before us is confined to the latter of those two matters, viz., that a question arising as to whether an employer is observing the recognised terms and conditions contained in a collective agreement made binding on the parties is one for decision by the Commissioner subject to an appeal as provided for in section 10 (9) of the Industrial Disputes Act, and therefore the Minister had no power to refer the dispute to an industrial court for settlement, and consequently the industrial court itself acted in excess of jurisdiction.

The appellant's counsel referred us to certain correspondence which had passed between the Commissioner of Labour and the appellant in October 1960, and contended that this correspondence resulted in a ruling by the Commissioner in respect of the rates of pay for hackling workers ; that, if the workmen were dissatisfied with that ruling, their remedy was an appeal in the prescribed time and manner to the industrial court as contemplated in section 10 (9) of the Industrial Disputes Act. He argued that the failure in the industrial court's award to consider the said correspondence amounted to a refusal to consider relevant documents, and thus there was error of law

warranting interference by the Supreme Court by way of certiorari. We think the industrial court was right in ignoring this correspondence which had passed between the employer and the Commissioner without the knowledge of the workmen who were sought to be affected by the reduced rate of wages. The workmen could not possibly have exercised their statutory right of appeal if they were unaware of an application to the Commissioner or of any decision by the latter. Moreover, the Commissioner could not have reached a valid or binding decision without hearing both parties.

It was next contended that there was no jurisdiction to make an order under section 4 (2) of the Act in a case covered by a collective agreement. The Supreme Court has, in our opinion, rightly rejected a similar contention. The amending Act No. 62 of 1957 which repealed the earlier section 4 and substituted the existing section 4 enlarged the power of the Minister, and subsection (2) thereof enables the Minister to refer *any* industrial dispute to an industrial court for settlement. Even if a collective agreement is in force, disputes can arise between the parties on whom such an agreement is binding in regard to matters not covered or not fully covered by the collective agreement; if there exists in fact a dispute of that nature, we can see nothing in the statute limiting the power of the Minister to refer that dispute for settlement.

We have set out above very shortly our reasons for the dismissal of the appeal, and we hope that, with this dismissal, this unfortunate industrial dispute which began some thirteen years ago is finally stilled.

Appeal dismissed.