1971 *Present :* H. N. G. Fernando, C.J., Sirimane, J., and Samerawickrame, J.

RIVER VALLEYS DEVELOPMENT BOARD, Appellant, *and* A. M. SHERIFF, Respondent

S. C. 178/69—Labour Tribunal Case No. 8/343/69

Industrial Disputes Act (Cap. 131)—Sections 31A, 31B, 39 (1)(a) (b)(ff) (h), 39 (2)—Termination of services of a workman by his employer—Application to Labour Tribunal for relief or redress—Time limit of three months for making such application—Validity of Regulation 16 of Industrial Disputes Regulations, 1958—Rule making power of Minister.

Regulation 16 of the Industrial Disputes Regulations, 1958, which were published in the *Gazette* of 2nd March 1959, provides that "every application under paragraph (*a*) or (*b*) of section 31B (1) of the Industrial Disputes Act in respect of any workman shall be made within three months of the date of termination of the services of that workman ".

Held, by FERNANDO, C.J., and SIRIMANE, J. (SAMERAWICKRAME, J., dissenting), that Regulation 16 was valid and within the authority given to the Minister by paragraph (*h*) of section 39 (1) of the Industrial Disputes Act to make regulations "in respect of all matters necessary for carrying out the provisions of this Act or giving effect to the principles thereof ".

Ram Banda v. River Valleys Development Board (71 N. L. R. 25) overruled.

APPEAL from an order of a Labour Tribunal. This appeal was referred to a Bench of three Judges for the purpose of a review of the decision in *Ram Banda v. River Valleys Development Board* (71 N.L.R. 25).

H. W. Jayewardene, Q.C., with *Paul Perera* and *Miss U. J. Kurukulasuriya*, for the respondent.-applellant

M. S. M. Nazeem, with *M. Sivananthan* and *M. A. M. Bakir*, for the applicant-respondent.

S. Sivarasa, Crown Counsel, as *amicus curiae*.

Cur. adv. vult.

November 24, 1971. H. N. G. FERNANDO, C.J.—

This appeal was set down for hearing before a Bench of three Judges for the purpose of a review of the decision in *Ram Banda v. River Valleys Development Board* [1], which held to be *ultra vires* regulation 16 of the Industrial Disputes Regulations, 1958. That regulation provides that an application by a workman or a trade union on his behalf to a Labour Tribunal under s. 31B of the Industrial Disputes Act, shall be made within three months of the date of termination of the services of the workman.

[1] *(1968) 71 N. L. R. 25.*

It is necessary now to summarize the reasons for that decision :—

1. A regulation prescribing a time limit for the making of applications to a Labour Tribunal is not within the scope of the power conferred in s. 31A to prescribe "the manner" in which such applications may be made.

2. Paragraphs (*a*) and (*b*) of s. 39 (1) provide only that the Minister may make regulations for matters which are required by the Act to be prescribed or provided for by regulations, and the imposition of this time limit is not such a matter.

3. A regulation restricting the time within which such an application must be made is a provision, not of procedure, but of substantive law, and is therefore not within the authority conferred by paragraph (*ff*) of s. 39 (1).

4. This regulation is not within the authority conferred in the Minister by paragraph (*h*) of s. 39 (1) to make regulations "in respect of all matters necessary for carrying out the provisions of this Act or giving effect to the principles thereof".

I see no reason to disagree with the grounds which have been summarized at (1), (2) and (3) above, and I propose to re-consider only the fourth of these grounds.

In the consideration of the effect of Regulation 16, the judgment in *Ram Banda's* case contains the following general observations :—

> "On the other hand the imposition of a time bar upon the workman's right of access to a tribunal operates so as to strike at the foundation of the statutory benefits accruing to him from that portion of the Industrial Disputes Act relating to Labour Tribunals. In other words, unlike the litigant barred by limitation from an ordinary court of law, he retains not even the empty shell of those special rights which the Legislature has given him but sees them vanish away in their totality the moment the time bar springs into effect. Left with no access to the special tribunal created for him, he is destitute of all benefits conferred on him by the statute and is thrown back simply upon the common law contract as administered by the common law—that self-same subjection to the letter of his covenant which these legislative provisions were designed to mitigate and soften."

These observations of Weeramantry J. mean that a right of access to a Labour Tribunal, if limited in regard to the time of its exercise, is virtually no right at all ; indeed in his opinion the provision for a time limit constitutes a "total deprivation" of the right. But it is not unusual that rights conferred by statute are thus limited, particularly rights of redress against alleged invasions of common law rights. Familiar examples of this exist in Customs and Tax Laws : if goods are seized by Customs Officers from the possession of their true owner,

the owner has only one month in which to pursue the only remedy which the Statute allows him ; if a totally incorrect assessment for income tax is made, the assessee has only one month in which to object, or else a Court will be bound to set in motion its process of execution for the recovery of the tax. If s. 31B of the Industrial Disputes Act had itself specified that an application to a Labour Tribunal must be made within three months of the termination of a workman's services, the criticism that the right conferred by the Section is virtually no right at all would surely be unreasonable. How then is it reasonable to say that a Regulation which imposes the same time limit constitutes a " total deprivation " of the right of access ?

With much respect, I must differ from the initial approach to the context of Regulation 16 which was made in *Ram Banda's* case, and from the consequent opinion that the Regulation constitutes a " total deprivation " of the new remedy which the Act allows.

In considering the validity of Regulation 16, it is useful to have regard to the circumstances in which the legislation relating to Labour Tribunals came into operation.

Provision relating to Labour Tribunals was introduced into the principal Act by the amending Act No. 62 of 1957, which inserted a new Part IVA containing Sections 31A, 31B, 31C and 31D.

The amending Act received the assent of the Governor-General on 30th December 1957. Thereafter the regulations under the title of " Industrial Disputes Regulations, 1958 " were made by the Minister. But the regulations did not then take effect. They were, in terms of sub-section (2) of s. 39, approved by the House of Representatives on 20th November 1958 and by the Senate, and they took effect only after notification of such approval was published in the *Gazette* of 2nd March 1959.

Even at this stage, despite the enactment of Part IVA and of the Regulations, there was yet not in existence any Labour Tribunal, and the first of these Tribunals was established by the Minister under s. 31A of the Act only in May 1959. In the result, when in and after May 1959 workmen were first able to exercise their right of access to Labour Tribunals, the composite scheme contained in Part IVA and in the Regulations included the provision in Regulation 16 limiting the time within which applications may be made to a Labour Tribunal. The scheme, be it noted, could not have operated without the Regulations, for numerous matters had to be provided for in the Regulations before the right of access could be effectively exercised and before the Tribunals could perform their functions. Thus, from the moment when the scheme became effective in law, it contained this limitation as to the time for access to Labour Tribunals. Having regard to these circumstances, concerning the coming into effect of the legislation and the subsidiary

legislation concerning Labour Tribunals, I am unable to agree that workmen had at any stage enjoyed any right which was later taken away by Regulation 16. This is another reason why I do not agree that there was any " deprivation ".

Weeramantry J. states that " *it is doubtful* that the imposition of such a rule (that is the limitation of time) is a *sine qua non* for carrying out the provisions of the Act or giving effect to its principles ". As to this matter, it is fairly clear from the fact that the Minister made Regulation 16 that he himself considered it necessary to do so for the purposes specified in paragraph (*h*) of s. 39 (1). There may of course be instances where it is manifest to a Court that some provision in a regulation is quite unconnected with the objects and purposes of an Act ; but if a Court is *only doubtful* whether a Regulation is necessary for the purposes specified in paragraph (*h*), then a decision that it is *ultra vires* may not rest on safe grounds. In fact the judgment does refer to the consideration that stale claims must be discouraged. There is the further consideration that the imposition of a time limit by Regulation 16 may well be salutary, in that employers can order their affairs with the knowledge that claims by former workmen for compensation or re-instatement cannot be set up after the lapse of a specified period. It has to be borne in mind that while the immediate purpose of the Industrial Disputes Act is to secure the settlement of industrial disputes, the ultimate purpose is to promote the efficient administration of industrial undertakings.

The new Sections of the Act allowed to workmen the hitherto unknown relief of re-instatement, or of compensation in lieu thereof. The Minister may well have considered that prejudice and disorganisation will ensue if relief of this kind is granted long after a workman's services are terminated, and that a time limit for applications was necessary for giving effect to the principles upon which the right to such relief can fairly be based.

In the case of *Kruse v. Johnson* [1], a Divisional Court of seven Judges was specially convened to consider a by-law passed by a County Council restricting street noises in a residential area. The Court held (with one dissent) that the by-law was valid. Lord Russell of Killowen C.J. made the following observations :—

" When the court is called upon to consider the by-laws of public representative bodies clothed with the ample authority which I have described, and exercising that authority accompanied by the checks and safeguards which have been mentioned, I think the consideration of such by-laws ought to be approached from a different standpoint. They ought to be supported if possible. They ought to be, as has been said, ' benevolently ' interpreted, and credit ought to be given to those who have to administer them that they will be reasonably administered. This involves the introduction of no new canon of construction. But, further, looking to the character of the body

[1] *(1898) 2 Q. B. 91.*

legislating under the delegated authority of Parliament, to the subject-matter of such legislation, and to the nature and extent of the authority given to deal with matters which concern them, and in the manner which to them shall seem meet, I think courts of justice ought to be slow to condemn as invalid any by-law, so made under such conditions, on the ground of supposed unreasonableness. Notwithstanding what Cockburn C.J. said in *Bailey v. Williamson*, an analogous case, I do not mean to say that there may not be cases in which it would be the duty of the Court to condemn by-laws, made under such authority as these were made, as invalid because unreasonable. But unreasonable in what sense? If, for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the court might well say: 'Parliament never intended to give authority to make such rules; they are unreasonable and *ultra vires*'. But it is in this sense, and in this sense only, as I conceive, that the question of unreasonableness can properly be regarded. A by-law is not unreasonable merely because a particular Judge may think that it goes further than is prudent or necessary or convenient, or because it is not accompanied by a qualification or an exception which some Judges may think ought to be there."

These observations were cited with approval by Scott L. J. in *Sparks v. Edward Ash, Ltd.*[1] who also made the following comment :—

> "If it is the duty of the courts to recognise and trust the discretion of local authorities, much more must it be so in the case of a minister directly responsible to Parliament and entrusted by the constitution with the function of administering the department to which the relevant field of national activity is remitted. Over and above these grounds for trusting to that minister's constitutional discretion is the further consideration that these regulations have to be laid on the table of both Houses."

The Industrial Disputes Regulations, the validity of one of which has been challenged, were made by a Minister directly responsible to Parliament; under sub-section (2) of s. 39 they were not merely laid on the table of both Houses, but were in fact approved expressly by a vote of both Houses of our Parliament. Thus in this case we are invited to hold that Regulation 16 was not necessary for the purpose of carrying out the provisions of the principal Act, despite the fact that Parliament, which had provided for the establishment of Labour Tribunals, had approved this regulation and thus permitted it to have legal effect. In the language of Lord Russell, I am satisfied that "credit ought to be given" to the Minister who made this Regulation and to Parliament

[1] *(1943) 1 K. B. 223.*

which approved it, that the Regulation was made and approved because it was necessary for the purposes set out in paragraph (*h*) of Section 39 (1). For this reason the validity of the regulation " ought to be supported if possible " and I feel bound accordingly to uphold its validity as being " necessary for carrying out the provisions of this Act ".

True it is that it is the function of the Court, and not of Parliament, to interpret laws. But where, as in this case, Parliament has itself approved a Regulation, that is a matter which has to be taken into account in considering whether Parliament intended that such a Regulation may be " necessary for carrying out the provisions of the Act or giving effect to its principles ".

Having regard to the conclusion which I have reached, there is no necessity in this case to review the correctness of the opinion expressed in the judgment in *Ram Banda's* case that " it is within the competence of the Court to subject regulations to the *ultra vires* test ", despite the provisions of sub-section (2) of s. 39 of the Act, and despite the fact that these regulations were approved by Parliament. I restrict myself to just one observation : while there have been criticisms of the dicta of Lord Herschell in *Lockwood's* case, there has apparently not been during the succeeding 75 years any instance in which an English Court has ruled to be *ultra vires* any subsidiary legislation made by a Minister which has been duly laid before Parliament, or which (as in the instant case) has been actually approved by Parliament.

In the result I would set aside the order of the President of the Labour Tribunal dated 27th October 1969 and dismiss the application made to the Tribunal by the applicant-respondent.

SIRIMANE, J.—I agree.

SAMERAWICKRAME, J.—

In this matter I have the misfortune to disagree with the view taken by My Lord, the Chief Justice and Sirimane, J. As the appeal was set down for hearing before us to review a decision of this Court and is therefore of some importance I propose to state the grounds of my dissent.

The matter for consideration was whether the decision in *Ram Banda v. River Valleys Development Board* [1] correctly held Regulation 16 of the Industrial Disputes Regulations, 1958, to be *ultra vires*. It is to be noted that a workman does not have a pre-existing right by virtue of some other rule of law which he seeks to enforce by his application to a Labour Tribunal. He differs in this respect from a party to an action who seeks to enforce a right to which he claims he is

[1] *(1968) 71 N. L. R 25.*

already entitled. The relief or redress obtained from a labour tribunal is not referable to a prior legal right but is granted by the order and comes into existence on the making of the order. The order and the order alone is in law the *fons et origo* of the entitlement to relief or redress awarded by it. Before the relief is spelled out in the order no legal right to it exists. Accordingly in point of law the right which the workman has is the right to obtain an order which is just and equitable on an application to a labour tribunal and in the circumstances that right appears to me to be in the nature of a substantive right.

By its very nature that right is not wider than the right or power of the workman to make an application to the labour tribunal. Any limitation of time within which such an application may be made will operate to restrict that right. The Act contains no express provision setting a time limit for an application. The requirement that the order made shall be just and equitable will however indirectly have the effect of precluding the grant of relief on stale applications. Only in an exceptional case, for example, will it be just and equitable to order reinstatement where there has been delay in making the application. It is a general rule that where the question of the grant of equitable relief is in question, laches may bar the grant of relief. It is not delay by itself but delay which having regard to the circumstances of the particular matter renders the grant of relief harsh or unfair that constitutes laches. The position under and in terms of the provisions of the Act is that delay should be considered with reference to the facts of a particular case and would operate to defeat an application only in circumstances where the lapse of time has rendered the grant of relief not equitable. An arbitrary time limit applicable to each and every application that may be made and which precludes the grant of relief on an application made outside that time limit without any reference to the facts and circumstances of the case is the antithesis of the position under the Act.

Regulation 16 which provides a time limit of three months for the making of an application is therefore, in my opinion, fundamentally opposed both to the provisions of the Act and the principles underlying them. Section 39 (1) (*b*) authorises the making of regulation " in respect of all matters necessary for carrying out the provisions of the Act or giving effect to the principles thereof ". Regulation 16 appears to me neither to carry out the provisions of the Act nor to give effect to the principles of such provision or of the Act and is therefore *ultra vires* and inoperative.

The last provision in s. 39 is :—

> " Every regulation so approved shall be as valid and effectual as though it were herein enacted. "

I am of the view that this provision only applies to a regulation duly made within the rule making power. I am not deterred from taking this view by the dictum of Lord Herschell in *Institute of Patent Agents v. Lockwood* [1]. Griffith and Sheet: Principles of Administrative Law (2nd edition) states, " Much discussion has followed *Lockwood's* case and the Committee on Ministers Powers (Cmd. 4060 p. 40) thought that *Minister of Health v. The King* (on the prosecution of Yaffe)—1931 A.C. 494—had made clear that Lord Horschell's dicta were not to be followed ". On this point I agree with respect with the observations of Weeramantry, J., in *Ram Banda's* case.

I am therefore of the view that *Ram Banda v. River Valleys Development Board* was correctly decided. On the finding at which I have arrived it will be necessary to hear further argument on the other matters raised in the appeal.

Appeal allowed.