

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

THE CEYLON INSURANCE COMPANY LTD., Petitioner, and  
E. V. PERERA and others, Respondents

*S. C. 874-880/70—Applications for mandates in the nature of Writs of  
Certiorari and Prohibition on E. V. Perera and others*

*Industrial Disputes Act (Cap. 131)—Section 31 B (3)—Expression “proceedings  
under any other law” therein—Whether proceedings under Chapter XII of the  
Criminal Procedure Code fall under that expression—Criminal Procedure  
Code, ss. 121 (2), 126, 127, 129, 131, 148 (1) (b), 150.*

The petitioner-Company terminated the services of some of their workmen (the respondents) on the ground that certain Police investigations that were pending in regard to their conduct showed that there was reason to suspect that each of them was “party to misappropriation of funds belonging to the Company”. Thereupon the respondents made applications to a Labour Tribunal seeking reinstatement or compensation, back wages, gratuity, etc. The Company took objection that the Labour Tribunal had no power to hear the applications while the investigation which was being conducted by the Police, presumably by virtue of an order from a Magistrate under section 129 of the Criminal Procedure Code, was still pending. The objection was based on section 31 B (3) of the Industrial Disputes Act which reads as follows :—

“Where an application under subsection (1) relates—

(a) to any matter which, in the opinion of the tribunal, is similar to or identical with a matter constituting or included in an industrial dispute to which the employer to whom that application relates is a party and into which an inquiry under this Act is held, or

(b) to any matter the facts affecting which are, in the opinion of the tribunal, facts affecting any proceedings under any other law, the tribunal shall make order suspending its proceedings upon that application until the conclusion of the said inquiry or the said proceedings under any other law, and upon such conclusion the tribunal shall resume the proceedings upon that application and shall, in making an order upon that application, have regard to the award or decision in the said inquiry or the said proceedings under any other law.”

The objection taken by the Company was overruled by the President of the Labour Tribunal. The present application for Writs of Prohibition were made for the purpose of challenging the correctness of the President's orders.

*Held*, that section 31 B (3) of the Industrial Disputes Act contemplates that proceedings before a Labour Tribunal must be suspended only if there are pending some other proceedings in which an award or decision having legal effect will or can be made. An investigation under Chapter XII of the Criminal Procedure Code is not a proceeding contemplated in the Section.

**A**PPPLICATIONS for Writs of Prohibition directing the President of a Labour Tribunal not to proceed with the hearing of certain applications made by workmen to the Tribunal under the Industrial Disputes Act.

*H. W. Jayewardene, Q.C., with Neville Samarakoon, Q.C., Sam P. C. Fernando and Miss U. J. Kurukulasuriya, for the petitioner in each Application.*

*L. V. R. Fernando, for the 1st respondent in Application No. 874.*

*Prins Rajasooriya, for the 1st respondent in Application No. 875.*

*K. Shanmugalingam, for the 1st respondent in Applications Nos. 877 and 880.*

*I. F. B. Wikramanayake, Senior Crown Counsel, with F. Mustapha, Crown Counsel, on notice.*

*Cur. adv. vult.*

November 10, 1971. H. N. G. FERNANDO, C.J.—

These are applications for Writs of Prohibition directing the President of a Labour Tribunal not to proceed with the hearing of certain applications made by workmen to the Tribunal under the Industrial Disputes Act.

These workmen were in the employment of the present petitioner, the Ceylon Insurance Company Limited (hereinafter referred to as "the Company") for periods prior to July 1967. At that stage, it is alleged, the Company discovered a loss of funds in its Life Department, in which these workmen (hereinafter referred to as "the respondents") had been employed. On 12th July, 1967, the Company served on the respondents notices stating that investigations into the loss of funds were being made and that for the purposes of the inquiry it was necessary to interdict the respondents from their employment. The notices of interdiction stated however that until further notice their salaries would be paid.

It appears also that sometime before April 1968 the Criminal Investigation Department (C.I.D.) had conducted inquiries into the alleged loss of funds, and that on 22nd April 1968 the Superintendent of Police, C.I.D., informed the Company that authority from Court had been obtained to investigate the case. This presumably was a reference to an order from a Magistrate under s. 129 of the Criminal Procedure Code which was necessary because the offences suspected to have been committed were non-cognisable. The Superintendent's letter also informed the Company that "inquiries so far conducted disclose that a large scale fraud has been practised in the Life Department".

On 2nd May 1968 the Company informed each of the respondents that "it is clear from the present stage of investigations that you have been party to a misappropriation of funds belonging to the Company" and that his conduct "amounts in fact and in law to a repudiation by you of your contract of service with the Company which you have thus

terminated". On 6th May 1958 each of the respondents made his application to the Labour Tribunal seeking the relief of reinstatement or compensation, back wages, gratuity, etc.

In its "answers" filed on 4th July 1968, the Company re-iterated the position stated on 2nd May 1968 that the conduct of the respondents amounted in fact and in law to a repudiation of their contracts of service, and that the action of the Company was justified. On these and similar grounds the Company prayed for the dismissal of the applications.

I note at this stage however, that in these answers the Company did not set up an objection which the Company subsequently took when the applications were taken up for inquiry by the President of the Tribunal, Mr. Rasanayagam on 1st October 1968. That objection was under s. 31 B (3) :—

"(3) Where an application under subsection (1) relates—

(a) to any matter which, in the opinion of the tribunal, is similar to or identical with a matter constituting or included in an industrial dispute to which the employer to whom that application relates is a party and into which an inquiry under this Act is held, or

(b) to any matter the facts affecting which are, in the opinion of the tribunal, facts affecting any proceedings under any other law,

the tribunal shall make order suspending its proceedings upon that application until the conclusion of the said inquiry or the said proceedings under any other law, and upon such conclusion the tribunal shall resume the proceedings upon that application and shall, in making an order upon that application, have regard to the award or decision in the said inquiry or the said proceedings under any other law."

On 23rd March 1969 Mr. Rasanayagam made order holding that "the Police Investigations cannot be considered to mean proceedings under any other law" within the meaning of s. 39 (3) and over-ruled the objections taken up by the Company. Mr. Rasanayagam further ordered that the applications will be called on 14th April 1969 to fix dates for trial.

It appears that before the applications were again called, Mr. Rasanayagam had been transferred from the office of President of this Tribunal but that he was nevertheless prepared to continue the inquiry. But Counsel for the Company then informed the President "that there was a large volume of evidence to be placed before the Tribunal and as such the President will have to come down from Kandy several times to inquire into these applications". Thereupon Mr. Rasanayagam made order for the applications to be heard *de novo* before some other President.

On 27th October 1970, the applications were taken up for hearing by the new President, before whom the same objection which had previously been rejected by Mr. Rasanayagam was again taken, and the new President over-ruled it. The present applications by the Company to the Supreme Court were made for the purposes of challenging the correctness of the new President's orders.

The questions of law which arise for our determination are whether :—

(a) the investigation which is being conducted by the Police, presumably under Chapter XII of the Criminal Procedure Code, constitutes "proceedings under any other law" within the meaning of s. 31 B (3) of the Industrial Disputes Act, and

(b) the facts affecting these applications to the Labour Tribunal are facts affecting the investigation.

In regard to the first and principal question, Counsel appearing for the Company has not referred to any other statutory provision in our law whereby a Police investigation into some suspected offence is regarded as "a proceeding", nor has my own research revealed that such an investigation has been held in any English case to be a "proceeding". But it may yet be that s. 31 B (3) is an exceptional provision which requires that a Police investigation is to have priority before the proceedings of a Labour Tribunal, and it is necessary to examine the provisions of this sub-section to ascertain whether such is indeed the case.

It will be seen that the ground for suspension first set out in *paragraph (a) of sub-section (3)* is that a matter to which an application relates is similar to or identical with a matter constituting or included in an industrial dispute into which another inquiry is being held. In other words, a Labour Tribunal's proceedings have to be suspended, because of the likelihood that an award will be made in the industrial dispute on a similar or identical matter; and after that award is made the Labour Tribunal is required to have regard to that award when the Tribunal makes its own order on the application. Thus *paragraph (a)* appears to be based on the familiar concept that different Tribunals should not contemporaneously adjudicate upon similar or identical matters, and that the adjudications made by one tribunal should ordinarily receive some recognition by another tribunal.

This same concept however is not clearly expressed in the terms of *paragraph (b) of sub-section (3)*. But in this connection also, when a Labour Tribunal suspends its proceedings because there are "proceedings under any other law", the Tribunal is required subsequently when making its own order, to have regard to the decision in the other proceedings. Assuming then for the moment that a Labour Tribunal's proceedings must be suspended during a Police investigation under Chapter XII of the Criminal Procedure Code, what will be "the decision" in the investigation to which the Tribunal must subsequently have regard?

Section 131 of the Code requires that as soon as an investigation is completed, the officer-in-charge shall forward to the Magistrate's Court a report in the prescribed form. It does not appear that the form of this report has been in fact prescribed; but Sections 126 and 127 appear to provide for the action to be taken upon the completion of a Police investigation. If there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate's Court, then no action is taken, except presumably to report accordingly to a Magistrate. If on the other hand there is sufficient evidence or reasonable ground as aforesaid the accused is forwarded to the Magistrate's Court or security is taken from him for his appearance at such Court, and the report under s. 131 will allege that he has committed some offence, and will in terms of s. 148 constitute the institution of proceedings in the Court. When, in this second eventuality, proceedings are instituted in terms of s. 148 (1) (b) of the Code, then undoubtedly, *at that stage*, there will be "proceedings" *in a Magistrate's Court*, and if the facts affecting those proceedings are similar to or identical with a matter before a Labour Tribunal, s. 31 B (3) (b) will commence to operate, and the Tribunal must suspend its own proceedings.

But the fact that, *at this stage*, "proceedings" are or are about to be commenced in a Court, has no bearing on the question whether a Police investigation is also a proceeding, and whether there can be in such an investigation any "decision" to which a Labour Tribunal must have regard.

Let me now consider a case in which the investigation terminates, and the Police do not institute proceedings in Court.

Counsel appearing for the Company argued that even if the ultimate decision in a Police investigation is that there is no sufficient evidence upon which to institute a prosecution, a Labour Tribunal would have regard to such a decision. With great respect I am quite unable to see in what way a Tribunal can take account of the fact that no prosecution is launched after a Police investigation.

In the instant case for example, can the Labour Tribunal, without hearing evidence, ultimately hold that the respondents were not concerned in a fraud on the Company, on the ground that the Police "decided" not to prosecute them? So to hold would be for the Tribunal to abandon its jurisdiction and its duty to decide a question of fact. Again, if there is evidence before the Tribunal which would ordinarily compel it to hold that the respondents were guilty of a fraud, can the Tribunal nevertheless decide that they are not guilty, because the Police did not think them guilty? That would be to reach a decision because of an extraneous fact, which is not relevant upon the question of the guilt of the respondents.

Even in a case in which the Police, after investigation, do institute a prosecution, the “decision” to prosecute is in reality the consequence of *an opinion* “that there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate’s Court”. But the “decision” has no legal effect in relation to the accused. He is not in law accused of an offence, unless and until a report is actually made to the Court in terms of s. 148 of the Code. I have already tried to show that in this event a Labour Tribunal’s proceedings may have to be suspended, but only for the reason that there are proceedings pending in the Magistrate’s Court, and not for the reason that there has been an earlier Police investigation. When a Tribunal’s proceedings are thus suspended, the Tribunal must subsequently have regard to the “decision” in the proceedings in the Court, i.e., to the ultimate order of conviction, acquittal or discharge.

To meet the considerations to which I have just referred, Counsel for the Company made the surprising submission that, when a Police investigation is followed by a written report under s. 148, and there is ultimately a conviction of the accused, the functions respectively performed by the Police and by the Court together constitute one “proceeding”, and that thus the conviction entered by a Magistrate is a “decision” in the “proceeding” of investigation by the Police. But our system of criminal procedure is not the Continental, in which to some extent the functions of investigation and committal are both vested in a Magistrate, and the times when a Magistrate in Ceylon was also Superintendent of Police are now happily no more.

Some apparent justification for this submission of Counsel is afforded by the opinion of a Bench of 3 Judges of this Court in the Trial at Bar in the case of *The Queen v. Gnanaseeha Thero and others*<sup>1</sup> (73 N. L. R. 154 at p. 141):—

“Proceedings in a Magistrate’s Court can be commenced in one or other of the ways set out in section 148 (1) (a) to (f). It is unnecessary to refer in detail to these different ways of instituting proceedings; it is important to note however that a written report made by an officer-in-charge of a Police Station or by an enquirer under section 121 (2) can amount to the institution of criminal proceedings in the Magistrate’s Court within the meaning of section 148 (1) (b); this would be so even though at that stage the offender is unknown—see section 150 (1).”

A report under s. 121 (2) is made when a police officer or inquirer “has reason to suspect the commission of a cognisable offence”; whereas the written report referred to in s. 148 (1) (b) is one “to the like effect” as in s. 148 (1) (a), i.e. containing “a complaint that an offence has been committed”. The sharp differences in the language of the

<sup>1</sup> (1968) 73 N. L. R. 154 at p. 191.

two sections sufficiently emphasise the difference in the purport of the reports ; a report under s. 121 (2) that there is *reason to suspect* that A has been murdered is very far removed from a report under s. 148 that *X has committed* the murder of A. Even if there may be cases in which, "from information furnished" to a Police officer, he is justified in immediately making a report that A has been murdered by X or by a person unknown, in such a case the report will indeed be one under s. 148 (1) (b). It seems to me the better view that, even in such an unusual case, the report to Court is legally made under s. 148, and not under s. 121. The terms of s. 150 (which is referred to in the cited opinion) give jurisdiction to the Magistrate, not because there has been a report under s. 121, but *because proceedings have been instituted under s. 148*."

Although I have taken this opportunity to express some doubt regarding the correctness of the opinion cited from the judgment in *Gnanaseeha's* case, that opinion does not really support the arguments of Counsel for the Company in the instant case. Even if a report under s. 121 (2) of the Code can properly "amount to the institution of criminal proceedings in a Magistrate's Court", it does not follow that any Police investigation carried out thereafter is part of those criminal proceedings. If the report does amount to the institution of criminal proceedings, then s. 31 B (3) of the Industrial Disputes Act may apply because those proceedings are pending in the Court, but not because some Police investigation may be pending.

Counsel also argued that, because the Police investigation in this case is being carried out upon an order from a Magistrate under s. 129 of the Code, that investigation is a proceeding in the Magistrate's Court. It is clear that Chapter XII of the Code authorises a Police investigation into a *cognisable offence* without authority from a Magistrate. If such an investigation is not a proceeding of the Court, then an investigation into a *non-cognisable offence* does not become a proceeding of the Court merely because this investigation cannot be carried out without a Magistrate's order. There are many acts which a public officer or a private citizen cannot lawfully do without the authority of a Court or other public official ; but it does not follow that when the act is done, it is a "proceeding" of the Court or official which permits it. If a Police permit is granted for holding a public meeting, or if a search warrant is issued by a Court, or if a competent authority permits food to be served at a function for more than 150 persons, it does not follow that the meeting is held by the Police, or that the search is conducted by the Court, or that the competent authority is host at the function.

In considering the question whether a Police investigation is a "proceeding" contemplated in s. 31B (3) of the Industrial Disputes Act, it is relevant to note certain features of Chapter XII of the Code. Section 122 (1) provides that no oath or affirmation shall be administered to a person so examined, and sub-section (3) severely restricts the use

which may be made of a statement recorded in the investigation. It is clear that the sole purpose of the investigation is only to enable the Police to gather evidence and to form an opinion whether or not the evidence justifies the institution of proceedings. A comparison of the provisions of the Commissions of Inquiry Act, for instance reveals that in the latter Act, unlike in Chapter XII of the Code, there is provision for the sanction of an oath or affirmation for a penalty for false evidence and for punishment for contempt. Even if it be correct that the pendency of proceedings before a Commission of Inquiry may be a ground for the suspension of proceedings before a Labour Tribunal, the possibility that the pendency of a Police investigation is also a contemplated ground for such suspension, is extremely remote.

For these reasons, I reach the conclusion that s. 31B (3) of the Industrial Disputes Act contemplates that proceedings before a Labour Tribunal must be suspended only if there are pending some other proceedings in which an award or decision having legal effect will or can be made, and that an investigation under Chapter XII of the Criminal Procedure Code is not a proceeding contemplated in the Section.

I cannot conclude this judgment without reference to the circumstances in which the Company has made these applications. The President, Mr. Rasanayagam, had made order on 23rd March 1969 rejecting the Company's objection that the Labour Tribunal must suspend its proceedings pending the Police investigation into an alleged fraud. If the Company thought in good faith that the order should be challenged, the proper course was to have made an application to this Court in or about April 1969. By their desisting from that course, and by instead representing to Mr. Rasanayagam that a large volume of evidence had to be led, the Company impliedly expressed its agreement that the inquiry by the Labour Tribunal should proceed without suspension, although before a different President. Nevertheless, the Company again raised the same objection under s. 31B (3) before the new President in October 1970, and thereafter made the present applications. The Company has in this way contrived to delay for nearly 3 years the inquiry by the Labour Tribunal. Even if my construction of s. 31B (3) had been different, I would have refused these applications on the ground that the reprehensible "tactics" employed by the Company justifies a denial of the discretionary relief which it sought from this Court.

The applications of the Petitioner are dismissed. The Petitioner will pay Rs. 105 as costs to each respondent who was represented in this Court.

SANERAWICKRANE, J.—I agree.

*Application dismissed.*