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8, 1963

IN THE PRIVY COUNCIL

No. 35 of 1961

ON APPEAL  
FROM THE SUPREME COURT OF CEYLON

B E T W E E N

VIJAYA WICKRAMATUNGA VIDYASAGARA  
Appellant

- and -

THE QUEEN Respondent

UNIVERSITY OF LONDON  
INSTITUTE OF LEGAL STUDIES  
19 JUN 1963  
25 RUSSELL SQUARE  
LONDON, W.C.1.

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CASE FOR THE RESPONDENT

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10 1. This is an appeal, by Special Leave, from a  
Judgment and Decree, dated the 20th May, 1960, of  
the Supreme Court of Ceylon (Basnayake, C.J., H.N.G.  
Fernando and Sinnetamby, J.J.), whereby the Appel-  
lant was convicted, under section 40 A of the  
Industrial Disputes Act, No. 43 of 1950, as amended  
by the Industrial Disputes (Amendment) Acts, No. 25  
of 1956, No. 14 of 1957, and No. 62 of 1957, (the  
said Act as so amended being hereinafter referred  
to as "the Act"), of the offence of contempt against  
or in disrespect of the authority of an Industrial  
20 Court, and whereby the Appellant was ordered to pay  
a fine of 500 Rupees, and in default of payment to  
undergo six months' rigorous imprisonment.

2. The nature of the offence of which the Appel-  
lant was convicted was the making of a certain  
statement to an Industrial Court before which he  
was appearing as Advocate representing the Petroleum  
Service Station Workers' Union (hereinafter called  
"the Union"), at a proceeding of the Court held on  
28th November, 1959.

30 The main question raised by this appeal is  
whether in the circumstances the Supreme Court of  
Ceylon had reasonable grounds for adjudging that  
the Appellant had committed the said statutory  
offence of contempt of Court as stated in paragraph  
1 hereof.

3. The provisions of Section 40 A of the Act are  
as follows :-

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40 A. (1) Where any person -

(a) without sufficient reason publishes any statement or does any other act that brings any arbitrator, Industrial Court or Labour Tribunal or any member of such Court into disrepute during the progress or after the conclusion of any inquiry conducted by such arbitrator, Court or Tribunal, or

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(b) interferes with the lawful process of such arbitrator, Court or Tribunal;

such person shall be deemed to commit the offence of contempt against or in disrespect of the authority of such arbitrator, Court or Tribunal.

(2) Every offence of contempt committed against or in disrespect of the authority of any arbitrator or Industrial Court or Labour Tribunal shall be punishable by the Supreme Court or any Judge thereof under Section 47 of the Courts Ordinance as though it were an offence of contempt committed against or in disrespect of the Supreme Court.

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(3) Every complaint of a contempt committed against or in disrespect of the authority of any arbitrator or Industrial Court or Labour Tribunal shall be communicated to the Chief Justice by letter signed by the arbitrator, or by the President of the Industrial Court or, where such Court consists of one person, by such person, or by the person presiding over such Tribunal.

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(4) The Chief Justice may, upon his receiving a communication under sub-section (3), issue a rule nisi for contempt of court on the person named in that communication as having committed the offence of contempt referred to in that communication.

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(5) A person on whom a rule nisi is issued under sub-section (4) shall be liable to be punished unless he shows cause to the

satisfaction of the Supreme Court or a Judge thereof.

10 (6) In any proceedings against any person for the offence of contempt committed against or in disrespect of the authority of any arbitrator or Industrial Court or Labour Tribunal, such arbitrator or any member of such Court or the person presiding over such Tribunal shall not be liable to be summoned as a witness by the first mentioned person, but the Supreme Court may, if it considers it necessary to do so, examine such arbitrator or any member of the Industrial Court or the person presiding over such Tribunal."

4. The provisions of Section 47 of the Courts Ordinance (Chapter 6, Volume 1, Legislative Enactments 1958 Edition) referred to in Section 40 A.(2) of the Act, are as follows :-

20 "47. The Supreme Court or any Judge thereof, whether at Colombo or elsewhere, shall have full power and authority to take cognizance of and to try in a summary manner any offence of contempt committed against or in disrespect of the authority of itself or any offence of contempt committed against or in disrespect of the authority of any other court, and which such court has not jurisdiction under section 57 to take cognizance of and punish, and on conviction to commit the offender to jail until he shall have purged his contempt or for such period as to the court or Judge shall seem meet; and such imprisonment shall be simple or rigorous as such court or Judge shall direct, and the offender may in addition thereto or in lieu thereof, in the discretion of such Court or Judge, be sentenced to pay a fine not exceeding five thousand rupees."

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40 5. The Industrial Court before which the Appellant appeared on 28th November, 1959, had been constituted by the Minister of Labour under Section 22 (3) of the Act, by the selection from the panel appointed under that section of the Act, of Mr. H.S. Roberts. On 2nd September, 1959, the Minister referred to the aforesaid Industrial Court for settlement an industrial dispute between the Union and one P.R.Perera, in exercise of his power under Section 4 (2) of the Act. The formal statement of the matter in dispute

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prepared by the Acting Deputy Commissioner of Labour was as follows :-

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"The matter in dispute between the Petroleum Service Station Workers' Union and Mr. P.R. Perera, Dealer, Shell Petroleum Station at Mirigama, is whether the refusal by the said Mr. P.R. Perera to employ the following persons is justified and to what relief each of the said persons is entitled :-

1. J.R. Bastian Perera
2. J.A. Piyasena
3. J.P. Gunadasa and
4. K.P. Jinadasa."

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The above mentioned four persons are hereinafter referred to as "the four workmen".

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6. The Union submitted to the Industrial Court a Statement of the matter in dispute, dated 22nd September, 1959, alleging that the four workmen were workers at the Shell Petroleum Station at Mirigama for several years, and that P.R. Perera had refused to employ them at the station as from 17th June 1959, and demanding that P.R. Perera "continue the services of the said workers". (The Industrial Court has power under Section 33 (1) of the Act to order the reinstatement in service of a workman "whose dismissal or continuance in employment is a matter in dispute").

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7. The said P.R. Perera, in his Statement to the Court of the matter in dispute, dated 23rd September, 1959, stated that the four workmen had at no time been employed by him, and contended accordingly that the Court had no jurisdiction or power to make an order against him in their favour. He further alleged that the four workmen had been employed by one Mrs. de Saram (who was the dealer in occupation of the Shell Petroleum Service Station at Mirigama before P.R. Perera became the dealer in June 1959), and that their employment had been duly terminated by Mrs. de Saram, and contended that if the four workmen had any grievance it was against Mrs. de Saram. The statement also referred to the alleged action of another trade union in the following terms :-

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"7. Since the beginning of the dispute between Mr. P.R. Perera and the Union the

All Ceylon Oil Companies Workers Union has instructed its members who inter alia are amongst the employees of Shell Company (Ceylon) Limited to refuse to deliver Petrol to Mr. P.R. Perera and this situation is still continuing even though the dispute has been referred to the Industrial Court with the consequence that Mr. P.R. Perera has been unable to carry on business.

10 The Court will be asked to go into the merits of this matter and make order accordingly."

8. The Union, by their Answer dated 19th October, 1959, alleged that P.R. Perera became the employer of the four workmen "on his taking over the Shell Filling Station from Mrs. de Saram", and joined issue on the question of the Court's jurisdiction. In answer to paragraph 7 of the Statement of P.R. Perera the Union submitted "that whatever disputes

20 Mr. P.R. Perera has, with other Unions, cannot be gone into, in this case, as they are matters foreign and irrelevant to the issues in this dispute". p.18 p.19

9. The dispute came up for hearing before the Industrial Court (Mr. H.S. Roberts) on 30th October, 1959. No representative of the Union or of the four workmen, and none of the four workmen, attended the hearing. The Court received no communication, either on or before the day of the hearing, that there would be no appearance by the Union or by the four workmen. P.R. Perera appeared by Counsel. The Court proceeded to hear the matter, and fixed the 10th November, 1959, as the date for the award. In regard to the failure of a party to attend any proceedings of the Industrial Court, Regulation 28 of the Industrial Disputes Regulations, 1958, (made by the Minister of Labour under Section 39 of the Act, and published in Gazette No. 11,688 on 2nd March, 1959), provides as follows :-

40 "28. If without sufficient cause being shown, any party to any proceedings before an Industrial Court ... fails to attend or to be represented, the Court ... may proceed with the matter notwithstanding the absence of such party or any representative of such party".

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Further, the relevant powers and duties of the Court are provided in Section 24 of the Act, as follows :-

"24.(1) It shall be the duty of an industrial court to which any dispute, application or question or other matter is referred or made under this Act, as soon as may be, to make all such inquiries and hear all such evidence, as it may consider necessary, and thereafter to take such decision or make such award as may appear to the court just and equitable.

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(2) Subject to such regulations as may be made under section 39(1)(f) of this Act in respect of procedure, an industrial court conducting an inquiry under this Part may lay down the procedure to be observed by such court in the conduct of the inquiry."

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10. At the said hearing on 30th October, 1959, evidence was given by P.R. Perera to the following effect :-

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- (1) In October, 1956, he became the dealer in occupation of a Shell Petroleum Service Station at Minuwangoda, by contract with the Shell Company (Ceylon) Limited (hereinafter called "the Shell Company"), in succession to one Mrs. de Saram.
- (2) On 17th June, 1959, he became the dealer in occupation of the Shell Petroleum Service Station at Mirigama, in succession to the said Mrs. de Saram, by agreement with the Shell Company.
- (3) Each of the four workmen, who were all employed by Mrs. de Saram while she was the dealer at the Mirigama station, signed a document dated 17th July, 1959, (a photostat copy of which document was produced to the Court), acknowledging receipt from Mrs. de Saram of his salary for the month of June, 1959, and of one further month's salary in lieu of notice.
- (4) The four workmen had not at any time been employed by him.

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- (5) After 17th June, 1959, he did not receive any deliveries of petroleum products at the Mirigama Station from the Shell Company, although supplies which had been previously ordered had not been delivered.
- (6) The General Secretary of the All Ceylon Oil Company Workers' Union informed the Installation Manager of the Shell Company, by a letter dated 17th June, 1959, (which letter was produced to the Court), that, at the request of the Petroleum Service Station Workers' Union, the members of the All Ceylon Oil Company Workers' Union (who included drivers employed by the Shell Company) would not assist in the transportation of products to either the Minuwangoda station or the Mirigama station.
11. On 2nd November, 1959, the Union applied to the Court to be permitted to place its case before the Court. The Court allowed the application and the matter was fixed for hearing on 21st November, 1959. The Appellant has deposed, in the affidavit filed by him in the Supreme Court, that the reason for the failure of the Union to appear before the Industrial Court on 30th October, 1959, was that "the lawyer who was to have represented the Union had suddenly taken ill and the Union had come to know of this fact only in the evening of the said day".
12. On 15th November, 1959, the Union applied in writing to the Industrial Court for a postponement of the date of hearing "to a date three weeks hence", on the ground that "Mr. Advocate Malcolm Perera who appears for the Union is under treatment in a hospital and is medically advised that he will not be in a fit physical condition to conduct the Union's case on Saturday, 21st November, 1959".
- The order of the Court on this application was that the Union should support the application for a postponement at the hearing on 21st November, 1959, with notice to the other party.
13. At the hearing before the Industrial Court on 21st November, 1959, the General Secretary of the Union renewed the Union's application for an adjournment on the grounds of the continuing illness of the Union's Counsel. Counsel for P.R. Perera opposed the application on the ground that the

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refusal of the Union to accede to his client's request to lift the boycott pending the award of the Court, and any further delay, were calculated to drive his client into submission, and on the further ground that the Union had had ample time in which to instruct other Counsel. The Court said to the General Secretary of the Union - "I will give you another date provided you instruct the All Ceylon Oil Company Workers' Union to lift the boycott". The General Secretary replied that he would have to put it to the Executive Committee of the Union and they would have to decide. The Court after stating its reasons ordered as follows :-

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"I am willing to allow another date provided the Union instructs the All Ceylon Oil Companies Workers' Union to lift the boycott immediately. I put the case off for the 28th instant. If the boycott is lifted before then the case shall proceed to inquiry; if not, the ex-parte trial shall stand.

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Adjourned for 9.15 a.m. on 28.11.59."

14. On 25th November, 1959, the Union addressed a letter, signed by the General Secretary, to the Minister of Labour, protesting against the aforesaid order of the Industrial Court and requesting the Minister to reconstitute the Court. The last two paragraphs of the letter are as follows :-

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"5. The Court thereupon made an order, a copy of which is annexed hereto. The Union is compelled to protest against this order on the following grounds:

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(a) The condition imposed on the Union in the said order is wrong and cannot be justified. It is not correct to impose as a condition precedent to the grant of a postponement on the ground of the illness of a Union Representative, a condition that one of the parties to the dispute should influence a third party in regard to some matter affecting the third party and over which the party to the dispute had no control.

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(b) The Court by means of the said order



has sought to compel this Union to bring its pressure to bear upon and to influence the All Ceylon Oil Companies' Workers' Union who is not a party to this dispute, on a matter which pertains to the activities of that Union.

10 (c) The said order makes it evident that the Court was not acting in the spirit and manner in which an Industrial Court should, for the maintenance and furtherance of industrial peace in the country.

(d) The said order reflects a positive degree of prejudice on the part of the Court against this Union, and the All Ceylon Oil Companies' Workers' Union who have sympathised with this Union in the dispute now before Court.

20 6. For the reasons aforesaid, the Union states that the purposes of justice would be defeated if the Court as presently constituted was to inquire into and adjudicate upon the dispute now before it. The Union further is of the view that an impartial inquiry into the matter cannot be had at the hands of a tribunal which has made an order of this nature.

30 Accordingly, the Union states that it will be unable to consider itself bound by any order made by this Court, and requests you as the Minister of Labour to intervene in the interests of justice and industrial peace, and to take necessary steps to have the Court re-constituted in order that the dispute may be heard de novo and determined by another member of the Industrial Court Panel."

40 15. The threat by the Union not to regard itself as bound by any order made by the Industrial Court presided over by Mr. H.S. Roberts was made notwithstanding Section 26 of the Act, which provides that the award of an Industrial Court shall be binding on the parties referred to in the award, and notwithstanding Section 40 of the Act, which creates a number of offences relating to the contravention of an award.

16. The Minister refused the aforesaid request

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of the Union, on the ground that he had no power to accede to it under the Act.

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17. On 28th November, 1959, at the adjourned sitting of the Industrial Court, the Appellant appeared as Counsel for the Union. At the commencement of the proceedings the Appellant read a statement to the Court from a document, after which he handed the document to the Court and withdrew. The document reads as follows:-

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"The union states that the conditions imposed on it by the order of this Court dated the 21st November, 1959 is a condition which it is unable to fulfill inasmuch as it amounts to a condition that it should influence another Union in a matter affecting that Union and over which it has no control.

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The said conditions, the union submits, is ultra vires to this Court and is not a consideration which ought to have been made a condition precedent to the grant of a postponement on the ground of the illness of a Union representative.

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In the circumstances, the Union having felt that this Court by its Order had indicated that an impartial inquiry could not be had before it, has appealed to the Minister to intervene in this matter. The Union is therefore compelled to withdraw from these proceedings and will not consider itself bound by any order made ex-parte, which the union submits would be contrary to the letter and spirit of the Industrial Disputes Act. I therefore withdraw from this case."

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Counsel for P.R. Perera then addressed the Court, and the Court announced that it would make its award later, whereupon the proceedings terminated.

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18. By letter dated 3rd December, 1959, Mr. H.S. Roberts made complaint of contempt in regard to the aforesaid statement by the Appellant, to the Chief Justice of Ceylon, in accordance with Section 40 A (3) of the Act. On 17th February, 1959, a rule nisi was issued on the Appellant

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for contempt of court, in accordance with Section 40 A (4) of the Act.

19. The Appellant appeared by Counsel before the Supreme Court (Basnayake, C.J., H.N.G. Fernando J., Sinnatamby J.) on 20th May, 1960, to show cause. The Supreme Court, after hearing Counsel for the Appellant, and the Attorney-General who appeared as amicus curiae, by its Judgment, dated the 20th May, 1960, made the rule absolute, and imposed a fine of 500 Rupees upon the Appellant and in default six month's rigorous imprisonment.
20. Delivering the main Judgment of the Court Basnayake, C.J. (with whom H.N.G. Fernando J. and Sinnatamby J. agreed) referred to, but did not accept the argument advanced on behalf of the Appellant, that the rule nisi was bad in that -
- (1) it was not signed by the Chief Justice;
  - (2) it did not contain sufficient particulars to indicate that it was issued in conformity with the provisions of Section 40 A of the Act;
  - (3) it failed to specify the acts bringing the case within the ambit of Section 40 A, namely, whether the Appellant was alleged to have published any statement, or to have done any other act that brings the Court in disrepute, or to have interfered with the lawful process of the Court.
21. The other ground relied upon by the Appellant was, as appears in paragraphs 11, 12 and 13 of the Appellant's affidavit showing cause, that he was instructed by his client to make the statement complained of, that the purpose of making the statement was to inform the Court that the Union had written an appeal to the Minister, and to inform the Court of the Union's reasons for so doing, that he was acting within the scope of his duty as Counsel for the Union, and that he did not intend any manner of disrespect to the Industrial Court. In regard to this contention the judgment of the Chief Justice was as follows :-
- "We are unable to agree that Counsel is a mere mouthpiece of the person who retains his services. Counsel has a responsibility

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which requires him to conduct himself deferentially and respectfully before the Tribunal before which he appears. If the person who retains his services wishes to take a certain course of action which would amount to an offence, it is his clear duty to point that out to his client and advise him that that course is a perilous one which he as counsel could have nothing to do with.

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In the instant case the respondent did not do so. On the contrary he committed the very act penalised by the section and he did so deliberately. The proceedings show that the Union was from the very outset on the ground of illness of the counsel they had originally retained delaying the performance of its duty by the Court. The Tribunal was considerate and gave the Union every opportunity of presenting their case. Prolonged illness of counsel does not confer on a party a right to have the proceedings postponed till he recovers. If a counsel retained by a party is not able on ground of illness or otherwise to appear on the day fixed for the hearing of a matter, the party should either retain another counsel or be prepared to present his case in person."

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22. The Respondent respectfully submits that the publication of the aforesaid statement by the Appellant was an act that brings the Industrial Court into disrepute, within the meaning of Section 40 A (1)(a) of the Act, more particularly in that :-

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- (1) The statement imputed lack of impartiality and improper motives to the Court; and
- (2) It contained a threat that the Appellant's client would disregard the orders of the Court, including the award of the Court which would, when made, be binding on the client.

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23. The Respondent further submits that the Appellant had no grounds for relying on the words "without sufficient reason" in Section 40 A (1)(a) of the Act. In the submission of the Respondent no sufficient reason for making the aforesaid

statement was afforded by the conduct of the Industrial Court, by the duties and privileges of the Appellant as Counsel for the Union, or by any of the circumstances of the case.

10 24. Against the said Judgment of the Supreme Court this appeal to Her Majesty in Council is now preferred, the Appellant having been granted special leave to appeal as stated in paragraph 1 hereof. The Respondent humbly submits that the decision of the Supreme Court of Ceylon is right and should be affirmed, and that this Appeal should be dismissed for the following amongst other

R E A S O N S

1. BECAUSE the publication by the Appellant of the said statement was a contravention of Section 40 A (1)(a) of the Industrial Disputes Act.
- 20 2. BECAUSE the said statement was in the circumstances a statement capable of bringing the Industrial Court into disrepute.
3. BECAUSE there was no sufficient reason for the publication by the Appellant of the said statement.
4. BECAUSE the Appellant exceeded the rights and privileges of Counsel.
5. BECAUSE the Appellant failed in the duties of Counsel towards the Industrial Court and towards his client.
- 30 6. BECAUSE the Rule Nisi issued on the Appellant is good in law.
7. BECAUSE the punishment imposed on the Appellant was appropriate and not excessive.
8. BECAUSE for reasons stated therein the Judgment of the Supreme Court was right.

KENNETH POTTER.

No. 35 of 1961

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