

91192

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

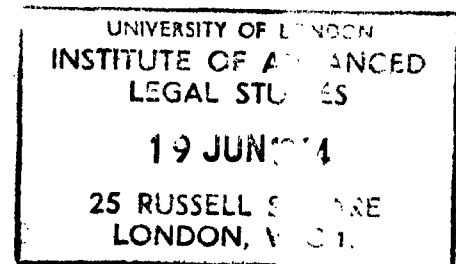
Appellant

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS



74052

SMILES & CO.,
15, Bedford Row,
London, W.C.1.
Solicitors for the Appellant.

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.
Solicitors for the Respondent.

IN THE PRIVY COUNCILNo. 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

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page
1	Complaint submitted by Mr. H.S. Roberts, with Annexures	3rd December 1959	1
	"A" - Order	21st November 1959	3
	"B" - Proceedings	28th November 1959	4
	"X" - Document complained of	28th November 1959	6
<u>IN THE SUPREME COURT</u>			
2	Rule Nisi issued on V.W. Vidyasagara, Advocate	17th February 1960	8
3	Affidavit of V.W. Vidyasagara, with Annexures	1st March 1960	9
	"A1" - Letter of Reference to Industrial Court	2nd September 1959	11
	"A2" - Statement of Matter in Dispute	27th July 1959	12
	"A3" - Statement of Union	22nd September 1959	13

INDEX OF REFERENCE (Continued)

No.	Description of Document	Date	Page
<u>IN THE SUPREME COURT</u>			
3	Affidavit of V.W. Vidyasagara, with Annexures (Continued)		
	"A4" - Statement on behalf of P.R. Perera	23rd September 1959	14
	"A5" - Answer of P.R. Perera	14th October 1959	17
	"A6" - Answer of the Union	19th October 1959	18
	"B1" - Proceedings	30th October 1959	20
	"C1" - Application by Union	15th November 1959	31
	"C2" - Industrial Court Direction	18th November 1959	32
	"D1" - Proceedings and Order	21st November 1959	33
	"D2" - Letter, Union to Minister of Labour	25th November 1959	37
	"E" - Proceedings	28th November 1959	40
4	Judgment of the Supreme Court	20th May 1960	42
<u>IN THE PRIVY COUNCIL</u>			
5	Order granting special leave to appeal	21st December 1960	55

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

RECORD OF PROCEEDINGS

10

No. 1
COMPLAINT SUBMITTED BY MR. H.S. ROBERTS,
WITH ANNEXURES A, B AND X

No. 1

Complaint sub-
mitted by Mr.
H.S. Roberts,
with annexures
A, B and X.

Industrial Court,
No.81, Vauxhall Street,
Colombo 2.

3rd December
1959.

3rd December, 1959.

Sir,

20

I have the honour to submit my complaint of a contempt committed against and in disrespect of the authority of the Industrial Court which was constituted by my appointment to it by the Honourable the Minister of Labour to hear the dispute and make my award in Industrial Court proceedings in No. I.D. 228 of 1959.

30

2. Proceedings commenced before me on 30th October 1959. The dispute referred to the Court was whether the refusal by Mr. P.R. Perera to employ four persons who had previously been under the employment of a Mrs. de Saram, who was the previous petrol dealer at the Shell Petrol Station, Mirigama, was justified and to what relief they are entitled. The inquiry into the dispute came up before me on 30th October 1959. The parties

No. 1
 Complaint sub-
 mitted by Mr.
 H.S. Roberts,
 with annexures
 A, B and X.
 3rd December
 1959 -
 continued.

to the dispute were the Petroleum Service Station Workers' Union representing the four workmen, and Mr. P.R. Perera, the petrol dealer at Mirigama. On that date neither the union nor the four persons they sought to represent were present, nor was any explanation tendered for their absence. But, the other party to the dispute, Mr. P.R. Perera was present and was represented by Mr. Advocate Kadirgamar. The Court then proceeded to make all such inquiries into the dispute and to hear such evidence as was tendered on behalf of Mr. P.R. Perera. Subsequently the union moved for permission to be heard. This application was allowed and the matter was fixed for inquiry. On that date too an application was made for a postponement on the ground that counsel for the union could not attend owing to illness. This application too was allowed and a date fixed for further hearing in terms of the Order made on that date, a copy of which is also forwarded herewith marked "A". On that date Mr. V.W. Vidyasagara, Advocate, appeared for the union and instead of placing any evidence before me, read out from a typewritten document which documents he handed over and abruptly withdrew from the case and left the Court. This document I filed of record marked "X". This document which is forwarded herewith contains the following statement, namely

"... 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 the matter. The union is therefore compelled to withdraw from the proceedings and will not consider itself bounded by any Order made ex-parte which the Union submits would be contrary to the letter and spirit of the Industrial Disputes Act ... "

Copy of the proceedings of 28.11.59 (marked 'B') is forwarded herewith. This statement, it is submitted, is calculated to bring into disrepute the Industrial Court and to insult me in the course of an inquiry by me as a duly constituted Tribunal and is a contempt of the Court. I therefore make my complaint as aforesaid and forward herewith the document "X" complained against and a copy of the proceedings of that day for such action to be taken regarding the conduct of Mr.

10

20

30

40

V.W. Vidyasagara, Advocate as to Your Lordship shall seem meet, in terms of the provisions of Section 40A(4) of the Industrial Disputes Act, No. 43 of 1950 as amended by the Industrial Disputes (Amendment) Act, No. 62 of 1957.

No. 1
Complaint submitted by Mr. H.S. Roberts, with annexures A, B and X.
3rd December 1959 -
continued.

10 I am now informed that an application was made by this union to the Honourable the Minister of Labour to take action to restrain me from continuing to make my award in the matter of the dispute that was referred to me and that the Minister of Labour has refused to entertain this application as he was not vested with authority under the Industrial Disputes Act to make order applied for by the Union.

I am, Sir,
Your Obedient Servant,

Sgd. H.S. ROBERTS.

The Honourable the Chief Justice of Ceylon, Colombo.

20 ANNEXURE "A" - ORDER

Annexure "A" to Complaint submitted by Mr. H.S. Roberts.

O R D E R

21st November 1959.

30 The question to be decided is whether the court should grant a postponement to the union. This case was fixed for inquiry for the 30th October, but the union was not represented on that day and the court proceeded to hear the case ex-parte and fixed the 10th November as the date for the award. In the meantime an application was made by the union to be allowed to intervene. This application was allowed on the union paying Rs.105 as costs of that day.

The case was fixed for inquiry today, but in the meantime the union made an application for a postponement on the ground that their Counsel Mr. Malcolm Perera is ill and is unable to attend court today. Mr. Kadirgamar, on behalf of the respondent, objects to a date on the ground that the union had plenty of time to retain other counsel and also that the union had not instructed

No. 1
Annexure "A" to
Complaint sub-
mitted by Mr.
H.S. Roberts.
21st November
1959 -
continued.

the All Ceylon Oil Companies Workers' Union to lift the boycott of the respondent's service stations at Mirigama and Minuwangoda respectively. As a result of the boycott the respondent has not been able to carry on his business for over five months and has suffered considerable loss. Moreover, this boycott is a boycott of an essential service and is against the Emergency Regulations. 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 exparte trial shall stand.

10

Adjourned for 9.15 a.m. on 28.11.59.

Annexure "B" to
Complaint sub-
mitted by Mr.
H.S. Roberts.
28th November
1959.

ANNEXURE "B" - PROCEEDINGS

28.11.59 9.15 a.m. I.D.228.

Mr. Adv. S.J. Kadirgamar instructed by Messrs. Julius and Creasy, appears for the proprietor, Mr. P.R. Perera.
Mr. Adv. V.W. Vidayasagara instructed by Mr. Saravanabagavan appears for the union.

20

Mr. Vidayasagara - reads from document:

"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 fulfil unasmuch 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.

30

The said condition, 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.

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. (Document handed and Mr. Vidayasagara retires.)

No. 1

Annexure "B" to
Complaint sub-
mitted by Mr.
H.S. Roberts.

28th November
1959 -

continued.

10
20
30
40
50

Mr. Kadirgamar: It is my duty with the fullest sense of responsibility as an Advocate, not merely appearing for a party but as an Advocate who owes a duty to this Court or to whatever Court, to state and protest strongly against the conduct of the Union through its representative today and against the statement they have chosen to make so readily and in the manner in which they have withdrawn from the presence of this Court. I feel myself obliged out of a sense of duty to this Court to deprecate this conduct which is an obvious stunt intended to intimidate the dignity of the court. On the merits of the statement which my learned friend had chosen to make I have to state and to point out and to hope that my learned friend will read the transcript of the proceedings of this case, in order that he may know that it was no fault of mine, or to hear what I have said. I wish to emphasize that there is no foundation for my friend commencing his statement today by saying that it was a condition imposed on the union by the order of this court and that it is a condition which the union is unable to fulfil. If my friend had only cared to read the transcript of the proceedings of the last day, that is the 21st November, he will find the reason urged by me on behalf of my client to this court was that my client who is a humble citizen was being savagely oppressed by the combined strength of the Petroleum Service Station Workers Union and the All Ceylon Oil Company Workers Union. I pointed out to court that one of the productions, namely a letter written by the All Ceylon Oil Company Workers Union, clearly disclosed the position in so many express words that the All Ceylon Oil Company Workers Union was requested by the Petroleum Service Station Workers Union to instruct its members, namely the drivers of the Shell Company, to refuse to supply oil or petroleum products to Mr. P.R. Perera at his Petrol Stations in Mirigama

No. 1
Annexure "B" to
Complaint sub-
mitted by Mr.
H.S. Roberts.
28th November
1959 -
continued.

ard Minuwangoda. All that the Court requested the Petroleum Service Station Workers Union on the last occasion was to address a similar request to the All Ceylon Oil Company Workers Union to withdraw the boycott which the latter union had imposed at the request of the Petroleum Service Station Workers Union. It will be seen that neither was there any condition imposed by this court on the Petroleum Service Station Workers Union nor was there any condition which the Union was unable to fulfil. I respectfully say that the resultant position is that this stalked its way into this court to make a settlement and has withdrawn, which I submit is a deliberate act, and they have made it quite clear that they do not suggest to say or urge anything in respect of the Petroleum Service Station Workers Union. It is now for the Court to proceed to make its award.

10

In conclusion I really do feel that I should, owing to the profession to which I belong, offer a vicarious apology for the disrespectful conduct adopted by the representative for the union today. I would urge you to consider very carefully and earnestly as to whether action ought not to be taken in the protection of the dignity of the Industrial Court.

20

Court: I will make my award later.

At this stage proceedings terminated.

True copy of the proceedings before me in I.D.228 on 28th November 1959 is annexed.

30

Sgd. Herbert S. Roberts.

ANNEXURE "X" - DOCUMENT COMPLAINED OF

Annexure "X" to
Complaint sub-
mitted by Mr.
H.S. Roberts.
28th November
1959.

23.11.59.

The Union states that the condition imposed on it by the order of this Court dated the 21st November, 1959, is a condition which it is unable to fulfil 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.

The said condition, the Union submits is ultra vires 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.

10 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 the 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.

Original of document "X" handed to the Court by Mr. V.W. Vidiyasagara Advocate on 28th November 1959.

20

Sgd. Herbert S. Roberts.

No. 1

Annexure "X" to
Complaint sub-
mitted by Mr.
H.S. Roberts.

28th November
1959 -

continued.

In the Supreme
Court

No. 2

Rule Nisi
issued on V.W.
Vidyasagara,
Advocate.

17th February
1960.

No. 2
RULE NISI ISSUED ON V.W. VIDYASAGARA, ADVOCATE

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

ELIZABETH THE SECOND, QUEEN OF CEYLON
AND OF HER OTHER REALMS AND TERRITORIES,
HEAD OF THE COMMONWEALTH.

In the matter of a rule nisi issued on
Vijaya Wickramatunga Vidyasagara, Advocate,
residing at 139, St. Sebastian Hill,
Colombo 12, in terms of Section 40A(4) of
the Industrial Disputes Act, No.43 of 1950
as amended by Industrial Disputes (Amend-
ment) Act No. 62 of 1957. 10

Upon reading a complaint communicated in
terms of Section 40A(3) of the Industrial Disputes
Act, No. 43 of 1950, as amended by the Industrial
(Amendment) Act No. 62 of 1957 by Herbert Spencer
Roberts Esquire, duly appointed by the Minister of
Labour to constitute an Industrial Court to which
a dispute between Mr. P.R. Perera, Petrol Dealer
of Mirigama and the Petroleum Service Station
Workers' Union had been referred, it is ordered
that Vijaya Wickramatunga Vidyasagara Advocate,
residing at 139, St. Sebastian Hill, Colombo 12,
do appear in person before the Supreme Court at
Hultsdrop on the 1st day of March 1960 at 11
o'clock in the forenoon and show cause why he
should not be punished for the offence of contempt
committed against or in disrespect of the autho-
rity of the said Industrial Court in that he, as
Advocate representing the Petroleum Service
Station Workers' Union, did at a proceeding held
on November 28, 1959 read out from a document the
following statement contained therein :- 20 30

"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 the 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 40

In the Supreme
Court

No. 3

Affidavit of
V.W.Vidyasagara,
with Annexures.

1st March
1960 -
continued.

Service Stations' Workers' Union that the Hon. Minister of Labour had referred the industrial dispute between the said Union and one Mr. P.R. Perera for settlement by an Industrial Court. The statement of the matter in dispute forwarded with the said letter is annexed hereunto marked A2.

4. In due course, as required by the Registrar of the Industrial Court, the Union submitted its statement dated 22nd September, 1959. A copy of the said statement is annexed hereunto marked A3.

10

5. Messrs. Julius and Creasy filed a statement dated 23rd September, 1959, for and on behalf of Mr. P.R. Perera, a copy of which statement is annexed hereunto marked A4. Copies of the answers of Messrs. Julius and Creasy and the Union dated 14th and 19th October, 1959, respectively, are annexed hereunto marked A5 and A6.

6. At an inquiry fixed for 30th October, 1959, the Union failed to appear as 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. On the said date, H.S. Roberts Esquire heard the case ex-parte. A copy of the proceeding of the said date is annexed hereunto marked B1.

20

7. On 2nd November, 1959, the Union made an application that the Court be pleased to permit the Union to place its case before the Court. The application was allowed on the Union paying Rs.105/- as cost of that day and the matter was fixed for hearing on 21st November, 1959.

30

8. On 15th November, 1959, the Union made an application for reasons given, that a date "three weeks hence" be fixed for hearing. A copy of the said application and of the Court's direction thereon dated 18th November, 1959, are annexed hereunto marked C1 and C2 respectively.

9. The Union gave notice to both Messrs. Julius and Creasy and Mr. P.R. Perera, and the General Secretary of the Union duly appeared on 21st November, 1959, and supported the said application. A copy of the proceedings of 21st November, 1959 including the order made by Court are annexed hereunto marked D1.

40

10. On 25th November, 1959, the Union addressed to the Hon. Minister of Labour a letter, of which a copy is hereunto annexed marked D2.

In the Supreme Court

No. 3

Affidavit of V.W.Vidyasagara, with Annexures.

1st March 1960 -

continued.

11. When I was retained to appear on behalf of the Union on 28th November, 1959, a copy of the aforesaid letter D2 was placed before me and I was instructed to make to Court the statement which will be found in the annexed copy of the proceedings of 28th November, 1959, marked E.

10 12. The passage set out in the Rule served on me is an extract from the said statement and was intended to inform the Court of the fact of the appeal to the Minister and of the reason therefor so that the Court would be in a position to understand the course of action adopted by the Union.

20 13. On this occasion I was acting in my capacity as Counsel for the Union seeking both to represent my client's interests and to do my duty to Court. I handed the document from which I read to Court at the request of the Court and having thanked the Court, withdrew.

14. At no stage did I intend any manner of disrespect towards the Court.

Sgd.

Sworn on this 1st day of March)
1960, at Colombo.

ANNEXURE "A1" - LETTER OF REFERENCE
TO INDUSTRIAL COURT

Annexure "A1" to Affidavit of V.W.Vidyasagara.

2nd September 1959.

30 No. C/I.681
2. 9. 59.

Sir,

In the matter of an industrial dispute between the Petroleum Service Station Workers' Union and Mr. P.R. Perera, Dealer, Shell Petroleum Station at Mirigama.

I am directed by the Hon. Minister of Labour

In the Supreme
Court
No. 3
Annexure "A1"
to Affidavit of
V.W.Vidyasagara.
2nd September
1959 -
continued.

to inform you that he has, by virtue of the powers vested in him by section 4(2) of the Industrial Disputes Act, No. 43 of 1950 as amended by the Industrial Disputes (Amendment) Act, No.25 of 1956, No.14 of 1957 and No.62 of 1957, referred the industrial dispute which exists between the Petroleum Service Station Workers' Union and Mr. P.R. Perera, Dealer, Shell Petroleum Service Station at Mirigama for settlement by an Industrial Court to be constituted in accordance with the provisions of section 22 of the Act.

10

2. A copy of the statement of matter in dispute is sent herewith.

I am, Sir,
Your Obedient Servant,

Sgd. C.B. Kumarasinha.

Permanent Secretary.

1. P.R. Perera Esq.,
Asgiriya,
Gampaha.
2. The General Secretary,
Petroleum Service Station Workers' Union,
16, Albion Place,
Colombo 9.

20

TRUE COPY

Dept. of Labour,
Colombo.

21st March 1960. for Actg. Commissioner of Labour.

Annexure "A2"
to Affidavit of
V.W.Vidyasagara.
27th July
1959.

ANNEXURE "A2" - STATEMENT OF MATTER IN DISPUTE

30

THE INDUSTRIAL DISPUTES ACT, NO.43 of 1950

In the matter of an industrial dispute
between

the Petroleum Service Station Workers'
Union, No.16, Albion Place, Colombo 9.

and

Mr. P.R. Perera, Dealer, Shell Petroleum
Station at Mirigama, Asgiriya, Gampaha.

STATEMENT OF MATTER IN DISPUTE

In the Supreme Court

No. 3

Annexure "A2"
to Affidavit of
V.W.Vidyasagara.

27th July
1959 -

continued.

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 :-

10

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

Dated at Colombo this 27th day of July 1959.

Sgd. N.L. Abeywira

Acting Deputy Commissioner
of Labour.

TRUE COPY

Sgd.

for Actg. Commissioner of
Labour.

20

Dept. of Labour,
Colombo, 21st March, 1960.

ANNEXURE "A3" - STATEMENT OF UNION

Annexure "A3"
to Affidavit of
V.W.Vidyasagara.

22nd September
1959.

THE INDUSTRIAL DISPUTES ACT NO.43 of 1950

In the Industrial Court at Colombo

In the matter of an Industrial Dispute between the Petroleum Service Stations' Workers' Union, 16 Albion Place, Colombo 9, and Mr. P.R. Perera, Dealer, Shell Petroleum Station at Mirigama, Asgiriya, Gampaha.

30

In the Supreme Court

THE STATEMENT OF THE PETROLEUM SERVICE STATIONS WORKERS' UNION OF THE MATTER IN DISPUTE

No. 3

On this 22nd day of September 1959.

Annexure "A3" to Affidavit of V.W.Vidyasagara. 22nd September 1959 -

The matter in dispute arose over the refusal of Mr. P.R. Perera, Dealer, Shell Petroleum Station at Mirigama, to employ the following persons at the said station as from 17th June 1959.

continued.

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

10

The above persons were workers at the said station for several years. The Union demands that Mr. P.R. Perera, continue the services of the said workers.

PETROLEUM SERVICE STATIONS' WORKERS' UNION

(Sgd.)

General Secretary.

True copy,

Sgd.

Registrar,
Industrial Court.

20

Annexure "A4" to Affidavit of V.W.Vadyasagara.

ANNEXURE "A4" - STATEMENT ON BEHALF OF P.R. PERERA

23rd September 1959.

JULIUS & CREASY,
Solicitors, Proctors
& Notaries Public,
Colombo.

THE INDUSTRIAL DISPUTES ACT NO.43 of 1950

In the matter of an Industrial Dispute
Between
The Petroleum Service Station Workers Union
No.16, Albion Place, Colombo 9
and

30

Mr. P.R. Perera, Dealer, Shell Petroleum Station at Mirigama, Asgiriya, Gampaha.

In the Supreme Court

No. 3

Annexure "A4" to Affidavit of V.W.Vadyasagara.

23rd September 1959 -

ccntinued.

We, the undersigned Messrs. Julius and Creasy, Solicitors, Proctors and Notaries of Colombo do hereby on behalf of Mr. P.R. Perera as required thereof do set out his position in the matters in dispute between himself and The Petroleum Service Station Workers Union (hereinafter called "the Union")

10 1. The matters in dispute between Mr. P.R. Perera and the Union, as set out by the Deputy Commissioner of Labour in the statement dated the 27th day of July 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

20 and 4. K.P. Jinadasa.

2. Mr. P.R. Perera became the dealer at the Shell Petroleum Station at Mirigama, Asgiriya, Gampaha in June 1959 and as such intended to employ and did employ at the said Petrol Station employees of his own choosing including himself.

30 3. The previous dealer was one Mrs. de Saram who employed the four persons who are the subject matter of the reference and who gave them due notice of termination of contract. At no time have the said four persons been employed or offered employment by Mr. P.R. Perera.

4. The Industrial Court will have to consider whether or not it has jurisdiction to make an order in this dispute as an Industrial Dispute is defined in the Industrial Dispute Act No. 43 of 1950 (as amended) as -

40 "any dispute or difference between employers and workmen or between workmen connected with the employment or non-employment, or the terms of employment, or with the conditions of labour or the termination of the services, or the reinstatement in service, of any person, and for the purposes of this definition "workmen" includes a trade union consisting of workmen."

In the Supreme
Court

No. 3

Annexure "A4"
to Affidavit of
V.W.Vadyasagara.

23rd September
1959 -

continued.

and the definition of a workman is -

"any person who has entered into or works under a contract with an employer in any capacity, whether the contract is expressed or implied, oral or in writing and whether it is a contract of service or of apprenticeship, or a contract personally to execute any work or labour, and includes any person ordinarily employed under any such contract whether such person is or is not in employment at any particular time, and, for the purpose of any proceedings under this Act in relation to any industrial dispute, includes any person whose services have been terminated."

10

As the said four persons had their services terminated by Mrs. de Saram and at no time have they been employed by Mr. P.R. Perera and as their demand is that they should be so employed it would appear that such a demand cannot give rise to an Industrial Dispute within the meaning of the Industrial Disputes Act, therefore the Court will have no jurisdiction to make an award thereon.

20

5. Without prejudice to the foregoing Mr. P.R. Perera's position is as follows:-

Mr. P.R. Perera took over the said Service Station in June 1959. In order to run the Service Station, he himself worked there together with other persons whom he employed, such persons being previously employees of his with one exception.

30

The Union demanded that the four persons discontinued by Mrs. de Saram should be employed by Mr. P.R. Perera which demand was refused by Mr. P.R. Perera on the grounds that -

(A) He is entitled when running a business to choose his own employees

(B) He had chosen and had taken into employment persons for the purpose of working at the Service Station.

6. Mr. P.R. Perera will contend that the four persons under reference have neither in law of equity a just grievance against him and that if they have grievances at all it can only be against

40

their former employer Mrs. de Saram from whom they can demand compensation for loss of employment and if necessary have such a demand adjudicated upon before a Labour Tribunal.

In the Supreme
Court

No. 3

Annexure "A4"
to Affidavit of
V.W.Vadyasagara.

23rd September
1959 -

continued.

10 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.

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

20 8. Mr. P.R. Perera will lead such evidence and submit such documents as may be necessary to prove the statements been made to the satisfaction of the Court.

Sgd. Julius & Creasy,
Julius & Creasy
for and on behalf of
Mr. P.R. Perera.

At Colombo this 23rd day of September, 1959.

True Copy,

Sgd.

Registrar,
Industrial Court.

30 ANNEXURE "A5" - ANSWER OF P.R. PERERA

COPY

JULIUS & CREASY
Solicitors, Proctors
& Notaries Public,
Colombo.

Annexure "A5"
to Affidavit of
V.W.Vidyasagara.

14th October
1959.

THE INDUSTRIAL DISPUTES ACT NO.43 of 1950

In the Supreme Court

No. 3

Annexure "A5" to Affidavit of V.W.Vidyasagara.

14th October 1959 -

continued.

In the Industrial Court at Colombo

In the matter of a dispute between the Petroleum Service Station Workers Union

and Mr. P.R. Perera.

I. D. 228.

We, Messrs. Julius & Creasy, Solicitors, Proctors and Notaries Public of Colombo do hereby as required thereof set out the answer of Mr. P.R. Perera to the Petroleum Service Station Workers Union statement dated the 22nd day of September 1959.

10

The statement of the Petroleum Service Station Workers Union admits no answer as the statement does not set in full the Union's case as required thereof under regulation 20(1) made under the Industrial Dispute Act No.43 of 1950.

At Colombo this 14th day of October 1959.

Sgd. Julius & Creasy,

for and on behalf of Mr. P.R. Perera.

20

TRUE COPY.

Sgd.

Registrar, Industrial Court.

ANNEXURE "A6" - ANSWER OF THE UNION

Annexure "A6" to Affidavit of V.W.Vidyasagara.

19th October 1959.

The Industrial Disputes Act No. 43 of 1950

In the matter of an Industrial Dispute Between

The Petroleum Service Stations' Workers' Union, No. 16, Albion Place, Colombo 9.

30

and P.R. Perera Esquire, Dealer, Shell Petroleum Station at Mirigama.

On this 19th day of October 1959.

The answer of the Petroleum Service Stations' Workers' Union showeth as follows:-

1. Answering paragraph three of the statement submitted by Mr. P.R. Perera, the Union admits that Mrs. de Saram had employed Messrs. J.R. Bastian Perera, J.A. Piyasena, J.P. Gunadasa and K.P. Jinadasa.

In the Supreme Court

No. 3

Annexure "A6"
to Affidavit of
V.W.Vidyasagara.

19th October
1959 -

continued.

Further answering the Union specifically denies that the said Mrs. de Saram gave the said employees "notice of termination of contract" and puts Mr. P.R. Perera to the strict proof thereof.

10 2. The Union further pleads that, on his taking over the Shell Filling Station from Mrs. de Saram, Mr. P.R. Perera, became employer of the above-mentioned four persons.

3. In the premises the Union submits that the matter referred, is an "Industrial Dispute" within the meaning of the Industrial Disputes Act No.43 of 1950 and hence the Industrial Court has jurisdiction to hear and adjudicate upon this dispute.

20 4. The Union, submits, in answer to paragraph seven of the statement, that whatever disputes 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.

Petroleum Service Stations' Workers' Union.

Sgd.

General Secretary.

True Copy.

Sgd.

30 Registrar,
Industrial Court.

In the Supreme
Court

ANNEXURE "B1" - PROCEEDINGS

No. 3

Annexure "B1"
to Affidavit of
V.W.Vidyasagara.

No. I. D. 228

30th October
1959.

In the matter of an Industrial Dispute
between
The Petroleum Service Station Workers' Union
and
Mr. P.R. Perera, Shell Petroleum Station,
Mirigama, Gampaha.

Before: H.S. Roberts, Esq.

Date & Time: 30.10.59 - 9.15 a.m.

10

Appearances: Mr. S.J. Kadirgamar with Mr.
Weeraratne instructed by Mr. A.
Senanayaka and Julius & Creasy for
Mr. P.R. Perera the respondent to
the application.
The union is absent.

Registrar: Mr. S. Dharmalingam.

Court: I find that neither the representatives of
the Petroleum Service Station Workers' Union nor
J.R. Bastian Perera, J.A. Piyasena, J.P. Gunadasa
and K.P. Jinadasa the unemployed persons are
present. It is now five minutes past ten o'clock
(10.05 a.m.) The Union was required to be present
here in court at 9.15 a.m. This is a scandalous
waste of time and I therefore propose to hear the
case ex-parte.

20

Mr. S.J. Kadirgamar states - I will briefly explain
the position. The facts in this case are so
shocking that I am scarcely able to restrain my
language although out of deference to this Court
I am obliged to be factual as possible. The
Petroleum Service Station Workers' Union in col-
laboration with the All Ceylon Oil Company Workers'
Union has sought to victimise the respondent, my
client Mr. P.R. Perera, really shamelessly. I
have set out the facts of this case in my state-
ment to the court. The court will observe that
I have set out my position very clearly, but the

30

union which was also obliged to file a statement apprising this court of its position has, in an extremely cowardly attitude, dodged the issue by merely stating that the matter in dispute arose over the refusal of Mr. P.R. Perera, Dealer, Shell Petroleum Station at Mirigama, to employ the following persons at the said station as from 17th June 1959, namely J.R. Bastian Perera, J.A. Piyasena, J.P. Gunadasa and K.P. Jinadasa. The above persons were workers at the said station for several years. The Union demands that Mr. P.R. Perera, continues the services of the said workers.

In the Supreme
Court

No. 3

Annexure "B1"
to Affidavit of
V.W.Vidyasagara.

30th October
1959 -

continued.

In short the position is Sir, my client, Mr. Perera, this old gentleman was a government servant and retired from the Government Clerical Service (Railway) in 1952 after a period of 34 years service. He had undertaken a small business after retirement as he was on pension. So in 1956 he took over on a contract from the Shell Company the shell filling station at Minuwangoda. He was just like anyone of the Shell dealers scattered all over running petrol filling stations.

I will produce the contract signed with the Shell Company. The previous shell dealer at the Minuwangoda Shell filling station was a lady by the name of Mrs. S.B. de Saram. She was also running this on a contract with the Shell Company. She however gave up this contract and handed it over to the Shell Company and the Shell Company entered into a fresh covenant with Mr. Perera. We are not concerned with the Minuwangoda station. This same lady, Mrs. de Saram, was running another petrol station also on a dealer's contract at Mirigama. She, for reasons of her own, terminated that contract with the Shell Company and the Shell Company then entered into a contract with us. The contract was entered into and dated 19th June 1959. There are two contracts one which deals with Kerosene and the other which deals with Motor Spirits. On the 17th of June, that was the day Mrs. de Saram terminated her contract, we took over the shell filling station but entered into documents on the 19th June. Mrs. de Saram had as her employees the four people whose names are set out in the reference. They were her employees. They were people who were entirely unknown to my client. He had never seen them before at any time. They had been employed by Mrs. de Saram, and she

In the Supreme
Court

No. 3

Annexure "B1"
to Affidavit of
V.W.Vidyasagara.

30th October
1959 -

continued.

on her own terminated their employment. I have with me a photostat taken, the original being with Mrs. de Saram, of a letter signed by these four men on the 17th June 1959 acknowledging receipt of their salaries from Mrs. de Saram for the month of June and a further one month's salary in lieu of notice. Mrs. de Saram terminated her own employees because she gave up her business. These men have accepted the notice given to them. In pursuance of our contract Mr. Perera decided to start his own shell filling station working as storekeeper himself and having two of his own employees. In an undertaking of this nature it is absolutely essential that responsibilities should be entrusted to people personally known to him and they should be trusted employees otherwise he could be victimised if they were a sort of unscrupulous lot. He could not let himself down. In the circumstances we are entitled to select our own employees when we start our business. Furthermore these four men never even came and asked for employment before the 17th June or after the 17th June. They severed their connections with the shell filling station with Mrs. de Saram and that was all as far as they were concerned. Now we signed a contract with the Shell Company and we placed an order for the initial stock of oil and petrol and we paid for it. Only two loads were delivered by the Shell Company and they were willing to deliver the balance later.

Then an astonishing thing happened - The All Ceylon Oil Company Workers' Union, which claims in its membership among other people the drivers of the Shell Company decided to boycott our petrol station in the sense that they refused to load or transport oil from the Shell Installation in the shell wagons and they decided to defy the instructions of the Shell Company to deliver oil and petrol to Mr. Perera at Mirigama on the ground that Mr. Perera had refused to take into his service these four men. In that state of affairs this matter has come to this court; the boycott is still in operation. Now that we are prepared to meet them in this court the union has not represented itself. My client is an old pensioner who is endeavouring to supplement his income by running these shell filling stations. This matter was referred to this court; after the reference to Court we have asked the All Ceylon Oil Company Workers Union to lift this boycott but it operated

even to the Minuwangoda station. We have run that station since 1956 and the employees may or may not belong to the union but the result is that I am not able to run the station here, and I was later willing to come to court to find out whether I have behaved unjustifiably towards the men, although it cannot give rise to an industrial dispute, and also to ask the court in the interests of public justice whether it is proper labour practice and whether it is fitting to operate such a boycott.

In the Supreme
Court

No. 3

Annexure "B1"
to Affidavit of
V.W.Vidyasagara.

30th October
1959 -

continued.

10

Mr. P.R. Perera: Affd: Xd by Mr. Kadirgamar.

Q. What year were you born?

A. I was born in 1901.

Q. How old are you?

A. 58 years.

Q. You were in Government Service?

A. Yes.

20

Q. For what period?

A. From 1918 to 1952.

Q. You retired in 1952?

A. Yes.

Q. You received a communitated pension?

A. Yes.

Q. What is your pension amounting to?

A. Rs.260/-.

Q. You are married?

A. Yes.

30

Q. Any children?

A. No.

Q. After your retirement to supplement your income you engaged yourself in a small business?

A. Yes.

Q. In October 1956 you entered into a contract with Shell Company?

A. Yes.

Q. And you became a shell dealer and ran a shell filling station at Minuwangoda?

A. Yes.

In the Supreme
Court

No. 3

Annexure "B1"
to Affidavit of
V.W.Vidyasagara.

30th October
1959 -

continued.

Q. The previous shell dealer for that station was Mrs. de Saram?

A. Yes.

Q. She worked that station with employees of her own?

A. Yes.

Q. And then she gave up that contract?

A. Yes.

Q. And handed over to the Shell Company?

A. Yes.

10

Q. You entered into a contract with Shell Company?

A. Yes.

Q. And you employed your own employees?

A. Yes.

Q. How many employees did you employ?

A. I was the storekeeper. I employed two pumpers.

Q. They were your own men?

A. Yes.

Q. Did you take over anyone of Mrs. de Saram's employees?

A. No.

20

Q. You were running that filling station and you are endeavouring to run it still although there is boycott?

A. Yes.

Q. This Mrs. de Saram was under a contract with Shell Company also running a shell filling station at Mirigama?

A. Yes.

Q. Mrs. de Saram terminated her contract with the Shell Company?

A. Yes.

30

Q. You applied for and obtained the contract with the Shell Company?

A. Yes.

Q. You signed with the Shell Company two contracts which you produce. Marked R.1 is the contract dated 18.6.59 signed between yourself and the

Shell Company in regard to Kerosene. And, you also produce R.2 the contract between yourself and the Shell Company also dated 18.6.59 in respect of motor spirits?

A. Yes.

Q. These two documents are the documents which regulated your relationship with the Shell Company?

A. Yes.

10 Q. Under this contract you buy from the company kerosene and motor spirits for which you pay cash?

A. Yes.

Q. And the Shell Company delivers the kerosene and the motor spirits to your station using their own transport?

A. Yes.

Q. And you take into your storage tank these oil and sell it at a price fixed by the company?

20 A. Yes.

Q. R.1 and R.2 are contracts you have entered with Shell Company?

A. Yes.

Q. You are not a servant of the Shell Company?

A. No.

Q. Mrs. de Saram handed over the Mirigama station to the Shell Company on the 17th June 1959?

A. Yes.

Q. And the Shell Company handed it over to you?

30 A. Yes.

Q. And the contracts R1 and R2 were signed?

A. Yes.

Q. And Mrs. de Saram had been running the Mirigama station with employees of her own?

A. Yes.

Q. She terminated the services of her employees when she terminated her contract with Shell Company?

A. Yes.

In the Supreme
Court

No. 3

Annexure "B1"
to Affidavit of
V.W.Vidyasagara.

30th October
1959 -

continued.

In the Supreme
Court

No. 3

Annexure "B1"
to Affidavit of
V.W.Vidyasagara.

30th October
1959 -

continued.

Q. Her employees were J.R. Bastian Perera, J.A. Piyasena, J.P. Gunadasa and K.P. Jinadasa?

A. Yes.

Q. You produce, marked R3, a photostat copy of an original document dated 17th June 1959 which was signed by the four employees?

A. Yes.

Q. Those four employees are the people whose names are set out in the reference?

A. Yes.

Q. Those four employees acknowledged having received from Mrs. de Saram their salaries for the month of June and one month's salary in lieu of notice; they have signed it?

10

A. Yes.

Q. You got this document R.3 from Mrs. de Saram?

A. Yes.

Q. Had you even seen or even known any of these men?

A. Never.

Q. As a matter of fact you did not know who they were?

20

A. No.

Q. Did they come before or after you took over the station and asked for employment?

A. No, never.

Q. When you decided to enter into a contract with Shell Company you decided to work that station by yourself and with your own men?

A. Yes.

Q. You intended to run this with yourself as store-keeper and two of your own men as pumpers?

30

A. Yes.

Q. Were the men you were employing trustworthy people?

A. Yes.

Q. Men who had been working for some time?

A. Yes.

Q. It is essential for you in respect of a petrol

shed business to have men on whom you can have trust?

A. Yes.

Q. Otherwise you can be robbed and the public can be robbed?

A. Yes.

Q. After the contracts R1 and R2 had been entered you ordered from the Shell Company oil and kerosene on orders which you had placed dated 16th June 1959. You placed this order on the official Shell Company form?

10

A. Yes.

Q. And you have the document with you?

A. Yes.

Q. Did you make payment for that?

A. Yes.

Q. How much?

A. About Rs.12,000/- in all.

Q. And that petrol would have been supplied by the Shell Company?

20

A. Yes; only two loads were supplied, 1,200 of super shell and 1,200 of kerosene.

Q. You were expecting the balance to come?

A. Yes.

Q. Did the balance come?

A. Not up to date. Not after 5 that day.

Q. What date?

A. On the 17th - After that I did not receive anything more.

30

Q. This oil and motor spirits is ordinarily conveyed to your station by transport by the Shell Company in wagons or tankers of its own, operated by its own employees?

A. Yes.

Q. You are aware that the All Ceylon Oil Company Workers' Union is a union which has in its membership drivers of the Shell Company?

A. Yes.

Q. The All Ceylon Oil Company Workers' Union.

In the Supreme
Court

No. 3

Annexure "B1"
to Affidavit of
V.W.Vidyasagara.

30th October
1959 -

continued.

In the Supreme
Court

No. 3

Annexure "B1"
to Affidavit of
V.W.Vidyasagara.

30th October
1959 -

continued.

decided to operate a boycott of you?

A. Yes.

Q. The drivers of the Shell Company and other employees in the All Ceylon Oil Company Workers' Union decided not to transport any oil or products to your station at Mirigama?

A. Yes.

Q. You produce marked R.4 a letter dated 17th June 1959 written by the All Ceylon Oil Company Workers' Union and signed by the General Secretary to the Installation Manager, Shell Company. A copy of R.4 was sent to the Commissioner of Labour. By R.4 the Union informed the Shell Company that at the request of the Petroleum Service Station Workers' Union that their members will not assist in the transportation of products to either of the shell stations at Minuwangoda or Mirigama?

A. Yes.

Q. And no petrol products have been brought to either station?

A. They have not been brought.

Q. And that situation still exists?

A. Yes.

Q. You have suffered considerable loss and damage?

A. Yes.

Q. Ever since the boycott began?

A. Yes.

Q. This also interfered with arrangements which you had in regard to the supply of Kerosene to Mr. S. Kandiahpilla who is a dealer of yours?

A. Yes.

Q. You submit, Mr. Perera, that it is unfair conduct on the part of both the All Ceylon Oil Company Workers' Union and the Petroleum Service Station Workers' Union to victimise you in the manner in which they are doing, by operating a boycott?

A. Yes.

Q. You also submit, as your proctor has done in the statement to court, that you are entitled

10

20

30

40

when running a business to choose your own employees?

A. Yes.

Q. And you have taken into employment persons of your choice for the purpose of working at these stations?

A. Yes.

Q. You also submit that such a matter as this cannot be referred to and is not an industrial dispute?

10

A. Yes.

Q. And you say Mr. Perera that when Mrs. de Saram terminated her contract with Shell Company and when you entered into your own contract nobody even suggested neither Mrs. de Saram, nor the employees concerned nor the men whose names are in the reference to this court nor the Shell Company nor the Unions, that these men J.R. Bastian Perera, J.A. Piyasena, J.P. Gunadasa, and K.P. Jinadasa should be taken into your employment?

20

A. No.

Court: Are you bound to take those people over.
A. I am a new dealer. They were Mrs. de Saram's employees and she settled with them.

Court: Did not Mrs. de Saram suggest that you should employ these people?
A. No, never.

Xd. ends.

30

Mr. Kadirgamar:- I wish to say that everything that we have set out in the statement to court, dated 23rd September 1959, is borne out by facts. I produce the document which shows that this was a combined and vicious act on the part of two powerful unions, The All Ceylon Oil Company Workers' Union and the Petroleum Service Station Workers' Union jointly to use their strength against a poor man who is an individual contractor with Shell Company and what is terrible is that when this case has come for adjudication the unions and the employees have been acting cowardly in not being able to face our cross-examination which we were ready to subject them to. Their conduct has been set out in writing.

40

In the Supreme Court

No. 3

Annexure "B1"
to Affidavit of
V.W.Vidyasagara.

30th October
1959 -

continued.

In the Supreme
Court

No. 3

Annexure "B1"
to Affidavit of
V.W.Vidyasagara.

30th October
1959 -

continued.

In their statement they have tried to avoid the answers, and now they have not come to court. They have brought into play the strength of the All Ceylon Oil Company Workers' Union - at the invitation of the Petroleum Service Station Workers' Union. Were they to pit their strength against any big company that company would be able to look after itself but here is an individual man only contracting for the Shell Company. These men were never employees of Mr. Perera. They were employees of Mrs. de Saram and the document produced shows that they have accepted the terms of service. These men were never my employees - they never asked me for employment. In fact the union itself never asked for employment. We knew from the 17th June, the day on which we took over from the Shell Company, that very day, that the All Ceylon Oil Company Workers' Union decided to operate a boycott. I am no employee of Shell Company; I am only an individual contractor whereby the dealer pays cash to the Shell Company and obtains its requirements and sells it at a fixed price and gets the profit from the margin allowed by the Shell Company.

I respectfully urge that the court be pleased to make an award dismissing the application - not merely dismissing it in the interests of industrial peace but in the interests of justice and fair play to Mr. Perera. I earnestly ask the Court to pronounce its judgment as to the conduct of both the All Ceylon Oil Workers' Union and the Petroleum Service Station Workers' Union at whose insistence this industrial dispute was referred to this Court but who did not have the courage to face it. The Supreme Court of India has set out in a preface that unions must not forget that the justice must prevail. As much as the court is desirable of doing justice to workers an individual like Mr. Perera has to have protection from a vicious combination of the two unions. I respectfully submit that the unions must not be allowed to get away with it; placing pressure and having it referred to an industrial court and then in that cowardly fashion keeping away from the industrial court. The chances are that they have not even filed answer to the statement although we have filed. I ask Court to make an award for costs of this case against the Unions. I ask for costs so that these unions will know that they cannot continue in this reprehensive attitude;

they called it a dispute, asked for an industrial court and they have not got the guts to be present.

In the Supreme Court

No. 3

Proceedings terminated.

True copy.

Annexure "B1" to Affidavit of V.W.Vidyasagara.

Sgd.

30th October 1959 -

Registrar,
Industrial Court.

continued.

ANNEXURE "C1" - APPLICATION BY UNION

Annexure "C1" to Affidavit of V.W.Vidyasagara.

10

COPY

IN THE INDUSTRIAL COURT AT COLOMBO

15th November 1959.

I.D.228

In the matter of an industrial dispute between the Petroleum Service Stations' Workers' Union and Mr. P.R. Perera, Shell Petroleum Station at Mirigama, Asgiriya, Gampaha.

On this 15th day of November, 1959.

20

I move that the Court be pleased to postpone the date of hearing of the above dispute since 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.

I must accordingly request that a date three weeks hence be fixed by Court for the hearing of the said dispute.

PETROLEUM SERVICE STATION WORKERS' UNION.

30

General Secretary.

True Copy.

Sgd.

Registrar,
Industrial Court.
21.3.60.

In the Supreme
Court

ANNEXURE "C2" - INDUSTRIAL COURT DIRECTION

No. 3

Annexure "C2"
to Affidavit of
V.W.Vidyasagara.
18th November
1959.

Registered.

No. I.D.228

Office of the Industrial Court,
Colombo (2), 18th November 1959.

Sir,

In the matter of an industrial dispute
between the Petroleum Service Stations
Workers' Union and Mr. P.R. Perera, Dealer
Shell Petroleum Station at Mirigama,
Asgiriya, Gampaha.

10

With reference to your motion dated 15th
instant, I am directed by the Industrial Court
constituted to settle the above matter to inform
you that the Union was not represented on the
last date, viz. 30th October; and the Union was
allowed to re-open the matter and the matter was
put off for the 21st instant.

I am further directed to inform you that you
should support the application for a postponement
in Court on the 21st instant at 9.15 a.m. with
notice to the other party. Your application will
be considered on that date.

20

I am, Sir,
Your Obedient Servant,

Sgd.

Registrar,
Industrial Court.

The General Secretary,
The Petroleum Service Station
Workers' Union,
16, Albion Place,
Colombo 9.

30

ANNEXURE "D1" - PROCEEDINGS AND ORDER

In the Supreme
Court

No. 3

Annexure "D1"
to Affidavit of
V.W.Vidyasagara.21st November
1959.I.D.228Date and time: 21.11.59 - 9.15 a.m.Appearances: Mr. Alfred Perera, Secretary of the
Petroleum Service Station Workers'
Union, appears for the Union.
As on the previous day, for the
Respondent.

10 Mr. Alfred Perera says that Mr. Malcolm Perera
who has been retained by the Union is ill and is
unable to be present in court today and asks for
another date.

20 Mr. Kadingamar: While ordinarily I would never
raise a word of objection when an application is
made on behalf of illness or indisposition of
counsel, more particularly in this case where Mr.
Malcolm Perera is an esteemed personal friend of
mine, I find myself in this difficult position.
Several days ago my proctor had informed me that
the union would be applying for a date and I was
instructed by him to expect this application for a
date and to oppose it for the reason that this
boycott which we have already mentioned to you on
the last occasion is still in operation, that my
client, Mr. P.R. Perera, is a small man who has
now been kept out of business for over five months
and is unable to carry on his business and earn a
livelihood because the boycott operates on both
his petrol stations and the union has not acceded
30 to our request to lift this boycott pending an
ultimate decision of this court, a refusal which
in my submission was calculated to work hardship
on Mr. Perera and to drive him into submission,
and a refusal which is disrespectful to the
authority of this court. While appreciating that
Mr. Malcolm Perera will not be able to conduct
this case in view of what the union representative
has stated, namely, that he has been poisoned, my
respectful submission is that there was sufficient
40 time for this union to retain other counsel.

Ordinarily I never, either in court of else-
where, as my colleagues at the barknow, make the
suggestion when an advocate falls ill that another

In the Supreme
Court

No. 3

Annexure "D1"
to Affidavit of
V.W.Vidyasagara.

21st November
1959 -

continued.

should replace him, but in a case of this nature where playing for time is of advantage to the union and where time weighs heavily on my client this union, which is asking for indulgence from this court to be allowed to come into these proceedings now where the court has closed the proceedings, should have taken immediate steps to retain other counsel.

Another very good and esteemed friend of mine, Mr. Vidyasagara, telephoned me last night and said that Mr. Malcolm Perera has been poisoned and will not be able to come to court today and asked me to concur in a date. I explained to Mr. Vidyasagara exactly what I had stated to court, now, namely, that both Mr. Vidyasagara and Mr. Malcolm Perera being esteemed friends and colleagues at the bar I would never oppose a personal application on the ground of indisposition but that in this case I felt myself obliged to because my own proctor said over ten days ago to expect an application and oppose it. Moreover the union has not written to the court and explained now or why they did not come before court. To make it worse, this union has filed no statement or answer in the proceedings before you in time. Subsequent to the last date of hearing they have, I believe, submitted an answer dated 19.10.59 in which again there is not one word of explanation or excuse for their default to answer earlier or absence of the union from the court on the last date. I say that only one inference is drawn from that, i.e. the union was aware of these proceedings. It cannot plead that the date was not known or there was some mistake or confusion. They have offered no explanation because no explanation is possible. But when they found that the court took up the matter ex-parte and was to make an order they have made an application asking the court to exercise its indulgence to permit them to take part in the proceedings without any explanation as to why they did not come on the last day. In these circumstances when they found that Mr. Malcolm Perera took ill it was up to them to retain other counsel and not make application asking for a date.

It is with reluctance but with a firm sense of duty to my client that I oppose the application. As I informed Mr. Vidyasagara I have no other alternative because I am so instructed by my proctor. While repeating that in ordinary circumstances I would have been the first to accommodate

any representative of the union whose illness prevents him from coming to court, in the circumstances of this case since time weighs so heavily on my client and is so much of advantage to the union where they are operating a boycott and also where they cannot but know the state of congestion in this court that there cannot possibly be a hearing before January or February and Mr. Perera who has given evidence and is awaiting the decision of the court has to wait till January or February, I regret I have to oppose the application. The Union has forgotten that today is a day where they have to show cause why they should come into the proceedings. The effect of this is to starve my client into submission. My client cannot last out till January or February.

In the Supreme
Court

No. 3

Annexure "D1"
to Affidavit of
V.W.Vidyasagara.

21st November
1959 -

continued.

10

Court: Why don't you lift the boycott?

20

Mr. Alfred Perera: The executive committee has to take that up with the All Ceylon Oil Companies Workers' Union.

Mr. Kadirgamar: In the belated statement filed by the union they deny that Mrs. de Saram gave her employees notice of termination of contract. I produced the photostat copy. I have summoned Mrs. de Saram. She has with her the original. I have called her to prove to this Court that there is no foundation - in fact it is a false averment to say - that Mrs. de Saram did not terminate the services of her employees.

30

Court: I will give you another date provided you instruct the All Ceylon Oil Companies Workers' Union to lift the boycott.

Mr. Alfred Perera: I will tell the committee.

40

Mr. Kadirgamar: I produce a letter dated 17.6.59 signed by Mr. M.Y. Premachandra, General Secretary of the All Ceylon Oil Companies Workers' Union addressed to the Shell Co. (Reads letter). I concur with the suggestion of the court to my friend from the union that his union should request the A.C.O.C.W.U. to call off this boycott which the A.C.O.C.W.U. has been operating. If they agree to do that I consent to a date.

Mr. Alfred Perera: I will have to put it to the committee and they will have to decide.

In the Supreme
Court

No. 3

Annexure "D1"
to Affidavit of
V.W.Vidyasagara.

21st November
1959 -

continued.

Mr. Kadirgamar: This union is virtually committing a contempt of court. They being requested to make a request to the A.C.O.C.W.U. This request is being made to them by me and a suggestion made by court in the circumstances of a case where having defaulted and not explained their default they come before you and ask for permission to take part in the proceedings, and they ask for time to consider such a request. I say this virtually amounts to a contempt of court because the court is not obliged to go out of its way to make suggestions of this nature. If they accept it readily then it establishes their bona fides. While I appreciate that the court should give as much latitude and opportunity to unions before matters are heard and decided to prevent labour stating that court do not give them a fair hearing, there is still a limit to what the court can do. In the special context of this case where at every stage they have defaulted, it is my submission that this union is not entitled to latitude, especially where it is patently clear that justice will be denied to my client if he is starved into submission by the union. Therefore the suggestion of this court that the union should request the A.C.O.C.W.U. to lift the boycott is as far as the court can possibly go in the matter of latitude in accommodating labour, and if they do not accept it, then Sir, the matter must end.

10

20

O R D E R

30

The question to be decided is whether the court should grant a postponement to the union. This case was fixed for inquiry for the 30th October, but the union was not represented on that day and the court proceeded to hear the case ex-parte and fixed the 10th November as the date for the award. In the meantime an application was made by the Union to be allowed to intervene. This application was allowed on the Union paying Rs.105 as costs of that day.

40

The case was fixed for inquiry today, but in the meantime the Union made an application for a postponement on the ground that their counsel, Mr. Malcolm Perera, is ill and is unable to attend court today. Mr. Kadirgamar, on behalf of the respondent, object to a date on the ground that the union had plenty of time to retain other counsel and also that the Union had not instructed

the All Ceylon Oil Companies Workers' Union to lift the boycott of the respondents service stations at Mirigama and Minuwangoda respectively. As a result of the boycott the respondent has not been able to carry on his business for over five months and has suffered considerable loss. Moreover, this boycott is a boycott of an essential service and is against the Emergency Regulations.

In the Supreme Court

No. 3

Annexure "D1"
to Affidavit of
V.W.Vidyasagara.

21st November
1959 -

continued.

10 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.

Adjourned for 9.15 a.m. on 28.11.59.

True copy.

Sgd.

20 Registrar,
Industrial Court.

ANNEXURE "D2" - LETTER, UNION TO
MINISTER OF LABOUR

Annexure "D2"
to Affidavit of
V.W.Vidyasagara.

PETROLEUM SERVICE STATIONS' WORKERS' UNION.
No.16, Albion Place, Colombo,9. 25 November, 1959.

25th November
1959.

The Hon. Minister of Labour,
Colombo.

Dear Sir,

30 I.D.228 (In the matter of an industrial dispute between The Petroleum Service Stations' Workers' Union and Mr. P.R. Perera, Shell Petroleum Station at Mirigama, Asgiriya, Gampaha.)

The Union wishes to place the following facts and submissions before you in regard to the above dispute:

In the Supreme
Court

No. 3

Annexure "D2"
to Affidavit of
V.W.Vidyasagara.

25th November
1959 -

continued.

1. This dispute which concerns the non-employment of four workers at the Mirigama Shell Petroleum Station by Mr. P.R. Perera the Dealer of the said Station, was referred to the Industrial Court for adjudication before H.S. Roberts Esquire, and the inquiry was fixed for the 30th of October, 1959.

2. Due to causes over which the Union had no control, the Union was not represented in Court on the said date and the Court proceeded to hear the case ex-parte and fixed the 10th of November as the date for the award. 10

3. The Union immediately after the said ex-parte proceedings, made an application that it be allowed to intervene and furnished the Court with the reasons for its absence on the date fixed for the inquiry. This application was allowed by Court on the Union paying Rs.105 as costs of that date, and the 21st of November, 1959, was then fixed as the date for the inquiry into the dispute.

4. On the 15th of November, 1959, the Union moved that the Court be pleased to postpone the inquiry on the ground that its representative, Mr. Advocate Malcolm Perera who was to appear for the Union, had suddenly entered hospital and was medically advised that he would not be in a fit physical condition to conduct the Union's case on the said date. The Union was directed by a letter sent to it from the Industrial Court that this application should be supported on the date fixed for inquiry, and this was accordingly done after notice to all parties. 20

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: 30

- (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. 40

(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.

In the Supreme Court

No. 3

Annexure "D2"
to Affidavit of
V.W.Vidyasagara.

25th November
1959 -

ccntinued.

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.

Yours faithfully,
PETROLEUM SERVICE STATIONS' WORKERS' UNION.

Sgd.

for General Secretary.

True copy.

40

Sgd.
for Acting Commissioner
of Labour.



In the Supreme
Court

ANNEXURE "E" - PROCEEDINGS

No. 3

Annexure "E"
to Affidavit of
V.W.Vidayasagara.
28th November
1959.

28.11.59.

9.15 a.m.

Mr. Ad. S.J. Kadirgamar instructed by Messrs.
Julius and Creasy, appears for the proprietor,
Mr. P.R. Perera.

Mr. Ad. V.W. Vidayasagara instructed by Mr.
R. Saravanabagavan appears for the union.

Mr. Vidayasagara - reads from document:

"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.

10

The said conditions, the union submits, is
ultra vires to this Court and is not a considera-
tion 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.

20

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. (Document
handed and Mr. Vidayasagara retires.)

30

Mr. Kadirgamar. It is my duty with the fullest
sense of responsibility as an Advocate, not merely
appearing for a party but as an Advocate who owes
a duty to this Court or to whatever Court, to
state and protest strongly against the conduct of
the Union through its representative today and
against the statement they have chosen to make so
readily and in the manner in which they have with-
drawn from the presence of this Court. I feel
myself obliged out of a sense of duty to this

40

court to deprecate this conduct which is an obvious stunt to intimidate the dignity of the court. On the merits of the statement which my learned friend had chosen to make I have to state and to point out and to hope that my learned friend will read the transcript of the proceedings of this case, in order that he may know that it was no fault of mine, or to hear what I have said. I wish to emphasize that there is no foundation for my friend commencing his statement today by saying that it was a condition imposed on the union by the order of this court and that it was a condition which the union is unable to fulfil. If my learned friend had only cared to read the transcript of the proceedings of the last day, that is the 21st November, he will find the reason urged by me or behalf of my client to this court was that my client who is a humble citizen was being savagely oppressed by the combined strength of the Petroleum Service Station Workers' Union and the All Ceylon Oil Company Workers' Union. I pointed out to Court that one of the productions, namely a letter written by the All Ceylon Oil Company Workers' Union, clearly disclosed the position in so many express words that the All Ceylon Oil Company Workers' Union was requested by the Petroleum Service Station Workers' Union to instruct its members, namely the drivers of the Shell Company, to refuse to supply oil or petroleum products to Mr. P.R. Perera at his Petrol Stations in Mirigama and Minuwangoda. All that the Court requested the Petroleum Service Station Workers' Union on the last occasion was to address a similar request to the All Ceylon Oil Company Workers' Union to withdraw the boycott which the latter union had imposed at the request of the Petroleum Service Station Workers' Union. It will be seen that neither was there any condition imposed by this court on the Petroleum Service Station Workers' Union or was there any condition which the Union was unable to fulfil. I respectfully say that the resultant position is that this union stalked its way into this court to make a settlement and has withdrawn, which I submit is a deliberate act, and they have made it quite clear that they do not suggest to say or urge anything in respect of the Petroleum Service Station Workers' Union. It is now for the Court to proceed to make its award.

In the Supreme Court

No. 3

Annexure "E"
to Affidavit of
V.W.Vidyasagara.

28th November
1959 -

continued.

50 In conclusion I really do feel that I should,

In the Supreme
Court

No. 3

Annexure "E"
to Affidavit of
V.W.Vidyasagara.

28th November
1959 -

continued.

owing to the profession to which I belong, offer a vicarious apology for the disrespectful conduct adopted by the representative for the union today. I would urge you to consider very carefully and earnestly as to whether action ought not to be taken in the protection of the dignity of the Industrial Court.

Court: I will make my award later.

At this stage proceedings terminated.

True copy.

Sgd.

Registrar,
Industrial Court.

10

No. 4

Judgment.

20th May 1960.

No. 4

J U D G M E N T

In the matter of a Rule Nisi issued on Vijaya Wickramatunga Vidyasagara, Advocate of the Supreme Court, in terms of Section 40A(4) of the Industrial Disputes Act, No.43 of 1950 as amended by Act No. 62 of 1957.

20

Present: Basnayake, C.J., H.N.G. Fernando, J.,
and Sinnetaamby, J.

Counsel: Colvin R. de Silva with H. Wanigatunga,
E.R.S.R. Coomaraswamy, M.L. de Silva,
K. Shinya and Nimal Senanayake for
Respondent.
D.St. C.B. Jansze, Q.C., Attorney-
General with V.S.A. Pullenayegum,
Crown Counsel, as amicus curiae (on
notice).

30

Dates of Inquiry: March 30 and 31, and April 1,
1960.

Decided on: May 20, 1960.

Basnayake, C.J.

The respondent appeared before this Court on

the service of the following rule :-

In the Supreme
Court

No. 4

Judgment.

20th May 1960 -
continued.

10

"Upon reading a complaint communicated in terms of Section 40A(3) of the Industrial Disputes Act, No.43 of 1950, as amended by the Industrial (Amendment) Act No. 62 of 1957, by Herbert Spencer Roberts Esquire, duly appointed by the Minister of Labour to constitute an Industrial Court to which a dispute between Mr. P.R. Perera, Petrol Dealer of Mirigama, and the Petroleum Service Station Workers' Union had been referred, it is ordered that Vijaya Wickramatunga Vidyasagara, Advocate, residing at 139 St. Sebastian Hill, Colombo 12, do appear in person before the Supreme Court at Hultsdorp on the 1st day of March 1960 at 11 1'clock in the forenoon and show cause why he should not be punished for the offence of contempt committed against or in disrespect of the authority of the said Industrial Court in that he, as Advocate representing the Petroleum Service Station Workers' Union, did at a proceeding held on November 28, 1959, read out from a document the following statement contained therein;

20

30

"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 the 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."

and did abruptly withdraw from the said proceedings after handing in the document to the said Court."

40

He showed cause by filing an affidavit in which he stated :-

"2. I represented the Petroleum Service Station's Workers' Union as Advocate duly instructed at a proceeding held on 28th November 1959 referred to in the Rule issued on me. The circumstances in which I came to

In the Supreme
Court

No. 4

Judgment.

20th May 1960 -
continued.

appear for the said Union are set out hereinafter.

3. By a letter dated 2nd September 1959 a copy of which is annexed hereunto marked A1, the Permanent Secretary to the Ministry of Labour informed the General Secretary of the Petroleum Service Stations' Workers' Union that the Hon. Minister of Labour had referred the industrial dispute between the said Union and one Mr. P.R. Perera for settlement by an Industrial Court. The statement of the matter in dispute forwarded with the said letter is annexed hereunto marked A2.

10

4. In due course, as required by the Registrar of the Industrial Court, the Union submitted its statement dated 22nd September 1959. A copy of the said statement is annexed hereunto marked A3.

5. Messrs. Julius and Creasy filed a statement dated 23rd September 1959 for and on behalf of Mr. P.R. Perera, a copy of which statement is annexed hereunto marked A4. Copies of the answers of Messrs. Julius & Creasy and the Union dated 14th and 19th October 1959 respectively are annexed hereunto marked A5 and A6.

20

6. At an inquiry fixed for 30th October 1959 the Union failed to appear as 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. On the said date, H.S. Roberts Esquire heard the case ex-parte. A copy of the proceedings of the said date is annexed hereunto marked B1.

30

7. On 2nd November 1959 the Union made an application that the Court be pleased to permit the Union to place its case before the Court. The application was allowed on the Union paying Rs.105/- as cost of that day and the matter was fixed for hearing on 21st November 1959.

40

8. On 15th November 1959 the Union made an application for reasons given that a date

'three weeks hence' be fixed for hearing. A copy of the said application and of the Court's direction thereon dated 18th November 1959 are annexed hereunto marked C1 and C2 respectively.

In the Supreme
Court

No. 4

Judgment.

20th May 1960 -
continued.

10

9. The Union gave notice to both Messrs. Julius & Creasy and Mr. P.R. Perera, and the General Secretary of the Union duly appeared on 21st November 1959 and supported the said application. A copy of the proceedings of 21st November 1959 including the order made by Court are annexed hereunto marked D1.

10. On 25th November 1959 the Union addressed to the Hon. Minister of Labour a letter of which a copy is hereunto annexed marked D2.

20

11. When I was retained to appear on behalf of the Union on 28th November 1959 a copy of the aforesaid letter D2 was placed before me and I was instructed to make to Court the statement which will be found in the annexed copy of the proceedings of 28th November 1959 marked E.

12. The passage set out in the Rule served on me is an extract from the said statement and was intended to inform the Court of the fact of the appeal to the Minister and of the reason therefor so that the Court would be in a position to understand the course of action adopted by the Union.

30

13. On this occasion I was acting in my capacity as Counsel for the Union seeking both to represent my client's interests and to do my duty to Court. I handed the document from which I read to Court at the request of the Court and having thanked the Court, withdrew.

14. At no stage did I intend any manner of disrespect towards the Court."

40

Learned Counsel for the Respondent argued that the Rule Nisi issued on him was not a valid Rule in that

(a) it was not signed by the Chief Justice,
and

In the Supreme
 Court

 No. 4
 Judgment.
 20th May 1960 -
 continued.

(b) it did not contain sufficient particulars to indicate that it was issued in conformity with the provisions of section 40A of the Industrial Disputes Act, No. 43 of 1950, as amended by the Industrial Disputes Amendment Act No. 62 of 1957.

We are unable to uphold the contention of respondent's counsel that a Rule Nisi issued under Section 40A subsection (4) should be signed by the Chief Justice or should refer to the nature of the communication made or contain other particulars than those contained in the Rule that has been issued in this case.

10

Counsel also submitted that the Rule failed to specify the acts of the respondent which bring him within the ambit of section 40A. He submitted that it should have specified whether he published any statement or did any act or interfered with the lawful process of the court or the arbitrator, and that for want of particulars the Rule Nisi was bad. This contention too we are unable to uphold.

20

Learned Counsel further submitted that the act of the respondent was not an act committed against or in disrespect of the authority of the Industrial Court, that he merely communicated to that Court what his client felt and that it was within the scope of his duty to communicate to the Court the instructions given to him by his client.

It will be useful before we express our views on this submission if the facts are briefly set out.

30

By virtue of the powers vested in him by section 4(2) of the Industrial Disputes Act, No. 43 of 1950, as amended by the Industrial Disputes Amendment Act No. 25 of 1956, No. 14 of 1957, and No. 62 of 1957, the Minister of Labour referred to Mr. H.S. Roberts, a member of the panel of the Industrial Court, the dispute between the Petroleum Service Station Workers' Union and Mr. P.R. Perera, Dealer, Shell Petroleum Service Station at Mirigama. This fact was communicated to the General Secretary of the Petroleum Service Station Workers' Union by letter of 2nd September 1959 by the Permanent Secretary to the Ministry of Labour. The statement of the matter in dispute attached

40

to that letter reads as follows:

"THE INDUSTRIAL DISPUTES ACT, NO.43 of 1950

In the matter of an Industrial dispute
between

The Petroleum Service Station Workers'
Union, No.16, Albion Place, Colombo, 9

and

Mr. P.R. Perera, Dealer, Shell Petroleum
Station at Mirigama, Asgiriya, Gampaha.

In the Supreme
Court

No. 4

Judgment.

20th May 1960 -
continued.

10

Statement of Matter in Dispute

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:

20

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

Dated at Colombo, this 27th day of
July, 1959."

30

The Petroleum Service Station Workers' Union
filed a statement on 22nd September 1959 in which
they stated that the matter in dispute arose over
the refusal of Mr. P.R. Perera, Dealer, Shell
Petroleum Station at Mirigama, to employ as from
17th June 1959 the persons named above and that
they were workers at the said station for several
years and demanded that Mr. Perera should continue
the services of the said workers.

40

Mr. P.R. Perera became the dealer at the
Shell Petrol Service Station at Mirigama in June
1959. The previous dealer was one Mrs. de Saram
who employed the four persons who are the subject
matter of the reference. She gave them due notice
of termination of contract. At no time were they
employed by Mr. P.R. Perera, nor were they ever
offered employment by him. The services of the
four persons referred to were terminated by Mrs.

In the Supreme
 Court
 No. 4
 Judgment.
 20th May 1960 -
 continued.

de Saram and it was submitted by the employer that as he never employed the four persons in question and as services were terminated not by him but by Mrs. de Saram no question of an industrial dispute arises as between him and them. Since the beginning of the dispute between the Petroleum Service Station Workers' Union and Mr. P.R. Perera, the All-Ceylon Oil Company Workers' Union instructed its members, who inter alia are amongst the employees of the Shell Company, to refuse to deliver petrol to Mr. P.R. Perera, and he was unable to carry on his business as a result of this refusal.

10

On 30th October 1959 the matter came up for investigation and the Union was absent. Neither the representative of the Petroleum Service Station Workers' Union nor the persons mentioned above appeared before the Industrial Court. The Judge waited till 10.05 a.m. although the parties were required to attend at 9.15 a.m. and as the Union did not appear even at that hour he proceeded to investigate the dispute. After having recorded the fact that the Union had not attended, he said "I therefore propose to hear the case ex parte."

20

Mr. Kadirgamar, counsel for Mr. Perera, briefly stated the facts and pointed out that Mrs. de Saram it was who had terminated the services of the persons mentioned after due notice and that Mr. Perera had no contract with them.

Mr. Perera was then called to give evidence and was examined by Mr. Kadirgamar and the proceedings terminated after his evidence. On 15th November 1959 the General Secretary of the Petroleum Service Station Workers' Union filed a notion in which he moved that the Court be pleased to postpone the date of hearing of the above dispute on the ground that Mr. Advocate Malcolm Perera who had been retained for the Union was ill and in hospital and was unfit to conduct the Union's case on Saturday the 21st November 1959. The Registrar of the Court informed the Petroleum Service Workers' Union that the dispute was investigated on 30th October 1959 and directed the Union to support the application for a postponement in Court on 21st November at 9.15 a.m. with notice to the other side and stated that their application would be considered on that date. On that date Mr. Alfred Perera, the Secretary of the Petroleum

30

40

Service Station Workers' Union, appeared in Court and stated that Mr. Malcolm Perera was still ill and was unable to be present in Court and asked for another date. Mr. Kadirgamar opposed the application and stated that he had no alternative because he was so instructed by his Proctor to oppose it, unless the boycott was lifted. The Court enquired from the representative why they did not lift the boycott and to that he answered that the Executive Committee had to take it up with the All-Ceylon Oil Company Workers' Union. The Court informed the representative "I will give you another date, provided you instruct the All-Ceylon Oil Company Workers' Union to lift the boycott" and the representative answered "I will tell the Committee". The representative also stated that he would put it to the Committee and that they will have to decide it. Thereupon the Judge made his order in the course of which he stated "I am willing to allow another date provided the Union instructs the All-Ceylon Oil Company Workers' Union to lift the boycott immediately. I put the case off for the 28th instant. If the boycott is lifted then the case shall proceed to inquiry, if not trial shall stand. Adjourned for 9.15 a.m. on 28.11.59".

In the Supreme
Court

No. 4
Judgment.
20th May 1960 -
continued.

On 25th November 1959 the Union addressed a communication to the Minister of Labour in which they set out the following facts:

30 "The Union wishes to place the following facts and submissions before you in regard to the above dispute:

1. This dispute which concerns the non-employment of four workers at the Mirigama Shell Petroleum Station by Mr. P.R. Perera the Dealer of the said Station, was referred to the Industrial Court for adjudication before H.S. Roberts Esquire, and the inquiry was fixed for the 30th of October 1959.

40 2. Due to causes over which the Union had no control, the Union was not represented in Court on the said date and the Court proceeded to hear the case ex parte and fixed the 10th of November as the date for the award.

3. The Union immediately after the said ex parte proceedings, made an application

In the Supreme
Court

No. 4
Judgment.
20th May 1960 -
continued.

that it be allowed to intervene and furnished the Court with the reasons for its absence on the date fixed for the inquiry. This application was allowed by Court on the Union paying Rs.105 as costs of that date, and the 21st November, 1959, was then fixed as the date for the inquiry into the dispute.

4. On the 15th of November 1959 the Union moved that the Court be pleased to postpone the inquiry on the ground that its representative, Mr. Advocate Malcolm Perera who was to appear for the Union, had suddenly entered hospital and was medically advised that he would not be in a fit physical condition to conduct the Union's case on the said date. The Union was directed by a letter sent to it from the Industrial Court that this application should be supported on the date fixed for inquiry, and this was accordingly done after notice to all parties. 10

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: 20

(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. 30

(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. 40

(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.

In the Supreme
Court

No. 4

Judgment.

20th May 1960 -
continued.

- (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.

10

6. For the reasons aforesaid, the Union states that the purpose 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.

20

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."

30

On 28th November 1959 Mr. Kadirgamar appears for Mr. Perera and the respondent instructed by Mr. R. Saravarabagavan appeared for the Union. The proceedings of that day read as follows:

"Mr. Vidyasagara - reads from document:

'The Union states that the conditions imposed on it by the order of this Court dated 21st November 1959 is a condition which it is unable to fulfil 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.

40

The said condition, the Union submits,

In the Supreme
Court

No. 4

Judgment.

20th May 1960 -
continued.

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.

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.'

10

I therefore withdraw from this case.

(Document handed and Mr. Vidyasagara retires.)"

Thereafter Mr. Kadirgamar made his submissions and apologised to the Court for the conduct of the Union through its representative, the respondent.

20

It was argued for learned counsel that the respondent did not commit any of the acts which are deemed to be contempt of Court under section 40A subsection (1) of the Industrial Disputes Act as amended by Act No.25 of 1956, Act No.14 of 1957, and Act No.62 of 1957, and that counsel enjoyed a certain latitude to make representations to the Court as to why a particular party before it did not desire to proceed with the matter in dispute. He also stated that the respondent was merely a channel of communication of the Union's views.

30

Section 40A(1) reads -

"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

40

inquiry conducted by such Arbitrator,
Court or Tribunal; or

- (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.

In the Supreme
Court

No. 4

Judgment.

20th May 1960 -

continued.

10 We are unable to agree that Counsel is a mere mouthpiece of the person who retains his services. Counsel has a responsibility 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.

20 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
30 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.

40 It is not necessary to refer to the cases cited by learned counsel as they are not relevant to the question that arises for decision. The act of the respondent is clearly an act calculated to bring the Industrial Court into disrepute during the progress of its investigation and is punishable as if it were a contempt of Court.

We accordingly make the Rule absolute and impose the punishment of a fine of Rs.500/- on the respondent. If he does not pay the fine he will undergo six months' rigorous imprisonment.

In the Supreme
Court

No. 4

Judgment.

20th May 1960 -

continued.

As the offence is a very serious one and seeing that the respondent is an Advocate of five years' standing he should have known the gravity of the act which he committed with deliberation.

Sgd. Hema H. Basnayake

Chief Justice.

H.N.G. Fernando, J.

I agree.

Sgd. H.N.G. Fernando

Puisne Justice.

10

Sinnetamby, J.

I agree.

Sgd. N. Sinnetamby

Puisne Justice.

No. 5
ORDER GRANTING SPECIAL LEAVE TO APPEAL

In the Privy
Council

No. 5

At the Court at Buckingham Palace
The 21st day of December, 1960.

Order granting
special leave
to appeal.

21st December
1960.

Present

The Queen's Most Excellent Majesty

Lord President

Sir David Eccles

Lord Carrington

Mr. Boyd-Carpenter

10 WHEREAS there was this day read at the Board
a Report from the Judicial Committee of the Privy
Council dated the 5th day of December 1960 in the
words following viz:-

20 "Whereas by virtue of His late Majesty King
Edward the Seventh's Order in Council of the 18th
day of October 1909 there was referred unto this
Committee a humble Petition of VijayeWickramatunga
Vidyasagara in the matter of an Appeal from the
Supreme Court of Ceylon between the Petitioner and
Your Majesty Respondent setting forth: that the
30 Petitioner seeks special leave to appeal from the
Judgment and Decree of the Supreme Court dated the
20th May 1960 whereby the Petitioner was found
guilty under Section 40A (1) of the Industrial
Disputes Act No. 43 of 1950 as amended by Act No.
25 of 1956 Act No. 14 of 1957 and Act No. 62 of
1957 of the offence of contempt committed against
or in disrespect of the authority of an Industrial
Court established under the Act at a proceeding
thereof held on the 28th November 1959 by making a
certain statement to the said Court in his capacity
as an Advocate representing one of the parties to a
dispute before the Court: And humbly praying Your
Majesty in Council to grant him special leave to
appeal from the Judgment and Decree of the Supreme
Court of Ceylon dated the 20th May 1960 or for
further or other relief:

40 "The Lords of the Committee in obedience to
His late Majesty's said Order in Council have
taken the humble Petition into consideration and
having heard Counsel in support thereof and in
opposition thereto Their Lordships do this day
agree humbly to report to Your Majesty as their

In the Privy
Council

No. 5

Order granting
special leave
to appeal.

21st December
1960 -

continued.

opinion that leave ought to be granted to the
Petitioner to enter and prosecute his Appeal
against the Judgment and Decree of the Supreme
Court of Ceylon dated the 20th day of May 1960:

"And Their Lordships do further report to
Your Majesty that the proper officer of the said
Supreme Court ought to be directed to transmit
to the Registrar of the Privy Council without
delay an authenticated copy under seal of the
Record proper to be laid before Your Majesty on
the hearing of the Appeal upon payment by the
Petitioner of the usual fees for the same."

10

HER MAJESTY having taken the said Report into
consideration was pleased by and with the advice
of Her Privy Council to approve thereof and to
order as it is hereby ordered that the same be
punctually observed obeyed and carried into
execution.

Whereof the Governor-General or Officer
administering the Government of Ceylon for the
time being and all other persons whom it may
concern are to take notice and govern themselves
accordingly.

20

Sgd. W.G. Agnew.

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

RECORD OF PROCEEDINGS

SMILES & CO.,
15, Bedford Row,
London, W.C.1.
Solicitors for the Appellant.

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.
Solicitors for the Respondent.

and spirit of the Industrial Disputes Act."

and did abruptly withdraw from the said proceeding after handing in the document to the said Court.

It is further ordered that this rule nisi be served by the Fiscal, Western Province.

Witness the Honourable Heme Henry Basnayake, Q.C., Chief Justice, at Colombo, this 17th day of February in the Year One thousand Nine Hundred and Sixty and of Our Reign the Ninth.

Sgd. J.W. Subasinghe

REGISTRAR OF THE SUPREME COURT

In the Supreme Court

No. 2

Rule Nisi issued on V.W. Vidyasagara, Advocate.

17th February 1960 -

continued.

10

No. 3
AFFIDAVIT OF V.W. VIDYASAGARA, WITH ANNEXURES

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of a rule nisi issued on Vijaya Wickramatunga Vidyasagara, Advocate, residing at 139, St. Sebastian Hill, Colombo 12, in terms of Section 40A(4) of the Industrial Disputes Act, No. 43 of 1950 as amended by Industrial Disputes (Amendment) Act, No. 62 of 1957.

I, Vijaya Wickramatunga Vidyasagara being a Christian do hereby make oath and state as follows:

1. I am the respondent in the above matter.

2. I represented the Petroleum Service Stations' Workers' Union as Advocate duly instructed at a proceeding held on 28th November, 1959, referred to in the Rule issued on me. The circumstances in which I came to appear for the said Union are set out hereinafter.

3. By a letter dated 2nd September, 1959, a copy of which is annexed hereunto marked A1, the Permanent Secretary to the Ministry of Labour informed the General Secretary of the Petroleum

20

30

No. 3

Affidavit of V.W.Vidyasagara, with Annexures.

1st March 1960.