26, 1971

IN THE PRIVY COUNCIL No.48 of 1970

ON APPEAL

FROM THE SUPREME COURT OF CEYLON

BETWEEN

MALIBAN BISCUIT MANUFACTORIES LIMITED
Appellant

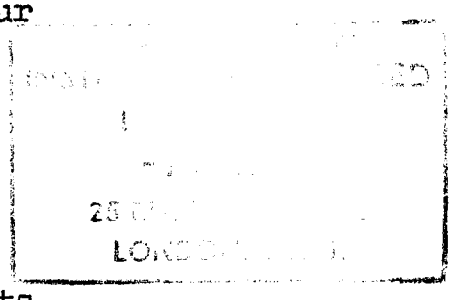
- and -

1. R. SUBRAMANIAM ESQ. President Labour Tribunal

2. THE CEYLON MERCANTILE UNION

10 3. N.L.ABEYWIRA ESQ., Commissioner of Labour

4. THE SECRETARY, Labour Tribunal
Respondents



CASE FOR THE APPELLANT

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1. This is an appeal by Special Leave against the Judgment of the Supreme Court of Ceylon (Samerawickrame J. and Pandita - Gunawardene J.) Dated the 19th day of December 1969 whereby the 20 said Court dismissed with costs the Appellant's application for leave to appeal to Her Majesty in Council against a Judgment and Order of the said Court dated the 9th day of April 1968 refusing the Appellant's application for mandates in the nature of writs of certiorari and prohibition. pp.40-43 p.14-p.20 l.24

2. The sole ground upon which the Supreme Court dismissed the Appellant's application 30 for leave to appeal to Her Majesty in Council was that the order sought to be appealed from,

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being an order in an application for certiorari and prohibition, was not one made in "a civil suit or action".

The sole issue therefore which arises in this appeal is whether the Supreme Court was right in so holding. In the Appellant's respectful submission the Suprene Court so held upon a view of the law which was erroneous and was rejected in principle by their Lordships of the Privy Council in the case of Tennekoon v. Duraisamy 1958 A.C.354.

3. The following statutory provisions are relevant to this Appeal :-

Appeals (Privy Council) Ordinance (cap.100)

"section 3 From and after the commencement of this Ordinance the right of parties to civil suits or actions in the Supreme Court to appeal to Her Majesty in Council against the judgments and orders of such court shall be subject to and regulated by -

(a) the limitations and conditions prescribed by the rules set out in the Schedule, or by such other rules as may from time to time be made by Her Majesty in Council; and

(b) such general rules and orders of court as the Judges of the Supreme Court may from time to time make in exercise of any power conferred upon them by any enactment for the time being in force".

SCHEDULE

"Rule 1. Subject to the provisions of these rules, an appeal shall lie -

(a) as of right, from any final judgment of the court, where the matter in

dispute on the appeal amounts to or is of the value of five thousand rupees or upwards, or where the appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the value of five thousand rupees or upwards; and

(b) at the discretion of the court, from any other judgment of the court, whether final or interlocutory, if, in the opinion of the court, the question involved in the appeal is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to Her Majesty in Council for decision."

Civil Procedure Code (cap.101)

"section 6 Every application to a court for relief or remedy obtainable through the exercise of the Court's power or authority, or otherwise to invite its interference constitutes an action".

4. The antecedent history of the matter is that the Minister of Labour had, in purported exercise of powers vested in him by section 4(1) of the Industrial Disputes Act, Chapter 131 of the Legislative Enactments of Ceylon (1956 Revised Edition) as amended by Acts, Nos.14 and 62 of 1957 and 4 of 1962, purported to refer an industrial dispute between the Appellant and the 2nd Respondent to the 1st Respondent for settlement by arbitration. p.49

5. That various matters were specified by the Minister as being in dispute between the Appellant and the 2nd Respondent. pp.50-55

These included whether the termination of employment of or non-offer of work to some 400 named employees of the Appellant was justified and to what relief each was entitled.

6. At the hearing before the 1st Respondent,

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the Appellant submitted that the purported order of reference of the Minister of Labour was invalid, that the 2nd Respondent had no right to represent any of the persons therein named and that the 1st Respondent had no jurisdiction to inquire into any of the matters therein specified. The Appellant's said submissions were put forward and argued as preliminary objections.

p.102 l.30 - p.115

On the 12th day of December 1967 the 1st Respondent adjudicated upon these submissions, accepting that he had no jurisdiction to inquire into certain of the matters specified in the reference but holding that the order of reference was valid and that he had jurisdiction to inquire into the remaining matters specified in the reference.

pp.1-7

7. By Petition dated the 19th day of December 1967 the Appellant applied to the Supreme Court for certiorari and prohibition. The relief claimed was as follows :-

p.6 l.38 - p.7 l.10

"WHEREFORE the Petitioner Prays that Your Lordships Court be pleased :-

(a) to inspect and examine the record of the 1st Respondent and/or of the President of the Labour Tribunal No.8 who purported to sit as an Arbitrator and grant and issue according to law a Mandate in the nature of a Writ of Certiorari against the 1st Respondent quashing the said proceedings held by him and his order dated 12.12.67.

(b) To grant and issue a Mandate in the nature of a Writ of Prohibition against the 1st Respondent prohibiting him from having any further proceedings in this matter.

(c) To make an order that further

proceedings be not had and that all further proceedings be stayed pending the hearing of this application and its final determination

(d) To award costs against the 1st and 2nd Respondent.

(e) To grant such other further relief as t Your Lordships' Court shall seem meet".

8. On the 9th day of April 1968 the Supreme Court dismissed the Appellant's application with costs to be paid to the 2nd Respondent. p.14-p.19 l.2

9. By Petition dated the 30th day of April 1968 the Appellant applied to the Supreme Court for Conditional Leave to Appeal against the said Judgment and Order to Her Majesty in Council. The said application was supported by by an affidavit of K.G.N.Seneviratne, the Secretary of the Appellant-Company, in which he deposed inter alia that the matter in dispute on the appeal amounted to or was of the value of upwards of Rs.5000/-, and the appeal involved directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the value of upwards of Rs.5000/-. p.20 l.30-p.22 pp.27-30 p.30 l1. 26-30

10. A Statement of Objections was filed on behalf of the 2nd Respondent (supported by an affidavit of its General Secretary) in which it was pleaded as follows :- pp.23-24 pp.25-26

"1. The Judgment and/or Order and/or Decision and/or Decree of this Court pronounced on the 9th day of April 1968 in the matter of the above-named application for a Writ, is not a Final Judgment within the meaning of that expression in Rule 1 of the Schedule to the Appeals (Privy Council) Ordinance. p.24 l1.18 -30

2. The matter in dispute on the Appeal

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does not amount to, and is not of the value of upwards of Rs.5000/-.

3. The Appeal does not involve directly or indirectly any claim or question to or respecting property, or any civil right amounting to or of the value of Rs.5000/- or upwards.

4. In any event the above-named application for a writ is not a civil suit or action within the meaning of Section 3 of the Appeals (Privy Council) Ordinance."

pp.40-43

11. On the 19th day of December 1969 the Supreme Court dismissed the Appellant's application for Conditional Leave to Appeal with costs.

The principal Judgment (with which Pandita-Gunawardena J. agreed) was delivered by Samerawickrame J., who, holding that the Court was bound by the decision of the Divisional Bench in Silverline Bus Co.Ltd. v. Kandy Omnibus Co.Ltd. 58 N.L.R.193, and rejecting the Appellant's submission that this decision had in effect been overruled by their Lordships of the Privy Council in Tennekoon v. Duraisamy 1958 A.C.354, held that an application for certiorari or prohibition was not a civil suit or action and that accordingly leave could not be given.

It is respectfully submitted that the learned Judge was wrong in so holding and that the effect of the decision in Tennekoon v. Duraisamy is that the ratio decidendi of Silverline Bus Co.Ltd. v. Kandy Omnibus Co.Ltd. must now be regarded as overruled. If the latter case was not overruled expressly, it is submitted that the reasoning upon which it was founded can no longer be supported having regard to the ratio of Tennekoon v. Duraisamy, which was that the words "civil suit or action" in section 3 of the Appeals (Privy Council) Ordinance were not to be limited to "a proceeding in which one party sues for or claims something from another in regular civil proceedings." In the respectful submission of the Appellant, once this limitation is rejected, as it now

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must be, there can be no reasonable or acceptable construction of the words "civil suit or action" which could exclude the sort of proceeding from which in the present case leave to appeal was sought.

12. The learned Judge did not hold that the matter in dispute amounted to less than Rs.5,000/- or that the claims, questions or rights involved were of a less value than that sum, saying that it was unnecessary to consider that contention; but in any event the Appellant submits that such a finding would have been, and would be, inconceivable in view of the nature and extent of the matters specified as being in dispute. p.43 11.11-14

13. On the 25th day of February 1970 an Order in Council was made granting the Appellant Special Leave to Appeal to Her Majesty in Council. pp.45-46

14. The Appellant respectfully submits that the Judgment of the Supreme Court of the 19th day of December 1969 is wrong and that this appeal should be allowed with costs and that the Supreme Court of Ceylon be directed to grant the Appellant leave to appeal as of right subject to the prescribed conditions for the following among other

R E A S O N S

1. BECAUSE the words "civil suit or action" in section 3 of the Appeals (Privy Council) Ordinance are not limited to a proceeding in which one party sues for or claims something from another in regular civil proceedings;

2. BECAUSE an application for a writ of certiorari or prohibition does fall within the ambit of the words "civil suit or action";

3. BECAUSE the decision of the

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Divisional Bench in Silverline Bus Co. Ltd. v. Kandy Omnibus Co. Ltd. had been overruled by the Privy Council in Tennekoom v. Duraisamy.

4. BECAUSE the judgment of the Supreme Court herein is wrong

E.F.N.GRATIAEN

EUGENE COTRAN

No.48 of 1970

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4. THE SECRETARY, Labour Tribunal Respondents

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