INDUSTRIAL & GENERAL WORKERS UNION
v.
P. C. IMBULANA AND OTHERS

COURT OF APPEAL
H. W. SENANAYAKE, J.
C.A. 432/88
A/2033
11 MAY 1992.

Writs – Certiorari – Industrial Law – Collective Agreement – Validity of extension of selected clauses of the agreement.

It is only the entirety of a Collective Agreement that could be extended and not selected clauses.

Case referred to:

Jones v. Balasubramaniam. S.C. Appeal No. 58/81 CA Appeal No. 700/76 M.C. Colomblo 72083/A SC Minutes of 18.5.82

APPLICATION for Writs of Certiorari and Mandamus.

G. V. Vivekananda with *C. Hewamanna* and *F. V. Puvithana for* Petitioner
Chula de Silva, P.C. with *M. Hussain* for 4th Respondent.

Cur. adv. vult.

11th September, 1992

SENANAYAKE, J.

The Petitioner had filed this application for Writs of Certiorari and or Mandamus to quash the Award made by the 3rd Respondent published in the Government Gazette dated 25.11.77 as X6.

The facts briefly are as follows. The 4th Respondent Company was paying the member of the Petitioner's Union a non-recurring cost of living allowance for a period of over 10 years and the 4th Respondent discontinued the payment of non-recurring cost of living allowance (hereinafter referred to as NRCLA) in June 1982 after the decision of the Supreme Court in the case of *Jones v. Balasubramaniam*[1]. The Supreme Court held that the Extension Order made by the Minister (in respect of the Tea Export Industry) under Section 10 of the Industrial Disputes Act is bad because it deals with only portions of the Collective Agreement and not with its entirety that the workers are now being paid the minimum wages prescribed under the respective Wages Board decisions and that therefore it is not bound to pay any sum as N.R.C.L.A.

The 3rd Respondent held that he was bound by that decision and held that, that the non-continuance of the payment of the N.R.C.L.A. to the workers who are members of the Petitioner's Union was justified according to law. As such the Petitioner's Union was not granted relief.

The learned counsel for the Petitioner submitted that the decision of the Supreme Court in *A. F. Jones v. Balasubramaniam* has no

application to the matter. But however he conceded that if the decision of the Supreme Court was that the extension order made by the Minister of Labour applied only to selected clauses of the Collective Agreement and therefore it was bad in law, the Petitioner cannot obtain the relief prayed for. In my view the word bad in law means that the extension order of selected parts of the Collective Agreement is of no force in law; in other words it is null and void.

It was an accepted fact that R2 the Collective Agreement of 31.07.1991 covered workers of the Engineering Trade and Motor Transport Trade and covered the Members of the Federation and Members of the Union enumerated in the first schedule of R2 and the scales of R2 and the scales of consolidated monthly wages paid to the various workers in terms of the second schedule R1. The 4th Respondent Company was not a party to this Collective Agreement R2 but by R3 Gazette No. 14995/8 of 1.2.1972 every Employer on the Engineering Industry employing not less than 25 workers in that Industry who were not parties to the Collective Agreement R2 shall observe either

(a) the terms and conditions set out in clauses 5 to 14 (inclusive) clause 15 (other than that proviso thereof) clause 16, clause 17 other than paragraph (2) thereof. clause 18, clause 20, clause 22, clause 26 , clause 27 and clause 35 of the Agreement.

(b) terms and conditions which are not less favourable than the terms and conditions set out in the aforesaid clauses of the Agreement.

The same terms were extended to every employer in the Motor Transport Industry employing not less than 25 workmen in that Industry or not less than 10 workman when the Motor Transport Industry is ancillary to the main business.

The 4th Respondent Company paid the N.R.C.L.A. according to the Collective Agreement R2 after the extension order R3 in terms of clause 17 of the Collective Agreement R2.

The extension order R3 does not extend the whole of the Collective Agreement but has sought to apply only certain selected clauses in the Agreement.

Section 8 of the Industrial Disputes Act gives the binding force on the parties and the terms of the agreement shall be complied with the terms in the contract of employment between the employers and workmen bound by the Agreement.

Section 10(1) empowers the Minister to make order under 10(2) in respect of every employer or every employer of such class of employers in such Industry in such district or in such industry in Sri Lanka, on whom such agreement is not binding as provided in Section 8.

Section 10(2) reads as follows . . .

"The Minister may, in respect of any industry to which any such Collective Agreement as is referred to in subsection (1) relate: "Make an order that every employer or every employer of any class, in such industry in any district or in Sri Lanka on whom that agreement is not binding as provided in Section I8 shall observe either the terms and conditions set out in that agreement (hereinafter referred to as the recognised terms and conditions) or terms and conditions which are not less favourable than the recognized terms and conditions."

Section 10(3) states that an extension order shall have the force of law.

The learned counsel for the Petitioner contented that the decision of the Supreme Court did not declare the extension in R3 to be null and void. A reading of the judgment of Wanasundara, J. clearly indicates that the Minister of Labour cannot order an extension piecemeal, unless the entirety of the Collective Agreement was extended. A process of Selection of the clauses would give favoured treatment to some while others would be at a disadvantage and this was not the intention of the Legislature. And in no uncertain language Wanasundara, J. observed "We hold that the Minister's order under Section 10(2) is bad because it deals with only a portion of the Collective Agreement and not with the entirety."

I am unable to agree with the submission of the Learned Counsel. I am of the view the effect of the extension order R3 was of no effect in law in view of the aforesaid Supreme Court decision.

I do not see any merit in the application. In the circumstances I dismiss the Petitioner's application with costs fixed at Rs. 1050/-.

Application dismissed.