VOLANKA LIMITED
v.
ALL CEYLON COMMERCIAL AND INDUSTRIAL WORKERS' UNION AND OTHERS

SUPREME COURT
FERNANDO, J.,
PERERA, J. AND
WIJETUNGA, J.
SC (SPL) APPEAL NO. 62/93
CA NO. 393/88
ARBITRATION NO. A 1824
JULY 25, 1994

Industrial Dispute – Arbitration under section 4 (1) of the Industrial Disputes Act – Holding a meeting on the employer's premises contrary to a collective agreement – Decision of the secretary of the workers' union to hold the meeting – Dismissal of the secretary – Whether conduct qua secretary is a mitigating factor – Error of law on the face of the record.

The services of the 2nd respondent, the secretary of the 1st respondent union were terminated by the employer for holding a meeting of workers on the employer's premises without the employer's permission contrary to a collective agreement. The said termination of services was included in the terms of reference in an arbitration under section 4 (1) of the Industrial Disputes Act. The Arbitrator (3rd respondent) held that the 2nd respondent acted *qua* secretary of the union, and that the 2nd respondent's conduct was mainly in a representative capacity which was a mitigatory factor. Hence, the termination of his services was unjustifiable.

Held:

(I) The 2nd respondent himself was a workman on whom the collective agreement imposed an obligation not to participate in unauthorized meetings and that his representative capacity was not a mitigatory factor.

(II) No distinction can be made between an error of law on the face of the record by inadvertence and an error made in consequence of reasoning.

The order of the Arbitrator constituted an error of law on the face of the record which the Court of Appeal had the jurisdiction to correct by the writ of *certiorari*.

Case referred to :

1. *Ramaswamy Padayachi v. Shanmugha Padayachi* – (1959) 2 Madras LJ 201.

APPEAL from the judgment of the Court of Appeal.

H. L. de Silva, PC with *F. Musthapha*, PC for appellant.

B. Weerakoon with *Chamantha Weerakoon* and *Ramani Muththetuwegama* for respondent.

July 25, 1994

FERNANDO, J.

A Collective Agreement dated 31. 07. 1971 was entered into between 01
the Employers' Federation of Ceylon and three trade union federations: the Ceylon Federation of Labour, the Ceylon Federation of Trade Unions and the Sri Lanka Independent Trade Union Federation. The appellant company was a member of Employers' Federation of Ceylon, while the 1st respondent union was a member of one of the trade union federations. Under that Collective Ageement, trade unions were given certain rights in respect of union meetings. If a union desired to hold a meeting on the employer's premises, it was required to make an application for permission to the employer, and if the employer 10
decided to grant permission, he was entitled to impose certain conditions.

Certain disputes between the appellant and the 1st respondent union were referred for settlement by arbitration, under section 4 (1) of the Industrial Disputes Act, to the 3rd respondent. The dispute which is relevant to the present appeal was whether termination of the services of the 2nd respondent (who was the secretary of the 1st respondent's branch union at the employer's factory) was justified, and to what relief he was entitled.

The 3rd respondent held that the termination was not justified and ordered the reinstatement of the 2nd respondent but without back wages. The appellant unsuccessfully applied for a writ of *certiorari* to the Court of Appeal, and thereafter appealed to this court with special leave. According to the 3rd respondent's order the workmen in the appellant's factory had resumed work on 04. 06. 1979, after a strike which had lasted about 2 1/2 months. The Assistant Factory Manager of the appellant testified that on 05. 06. 1979 the 2nd respondent had requested permission to hold a meeting from 8.45 am to 9.00 am which was the tea break; he refused permission, whereupon the 2nd respondent said he would hold the meeting, with or without permission. The 3rd respondent concluded that unauthorised meetings were held on 05. 06. 1979, 19. 06. 1979 and 23. 06. 1979. In his order, he stated that he found "the evidence of the witnesses for the employer more acceptable than the evidence given by the (2nd respondent)"; that the evidence of the Assistant Factory Manager in particular "was quite convincing"; that "his demeanour and the forthright manner in which he gave his evidence. . . (made him) accept his evidence"; that the 2nd respondent's "demeanour and the vacillating and evasive manner in which he gave his evidence was in direct contrast to the forthright evidence given by the witnesses for the employer". The 3rd respondent therefore accepted the evidence of the appellant's witness that these three meetings were held by the 2nd respondent workman, without permission.

Having come to this finding, the 3rd respondent correctly observed that the main question which remained to be decided was whether the termination of the 2nd respondent was justified. In coming to the conclusion that termination was not justified, a matter to which the 3rd respondent gave great importance was that the 2nd respondent's "misconduct (was) in relation to union activities", that his conduct was "mainly in his representative capacity as secretary of the union". In assessing the seriousness of that misconduct, the 3rd respondent observed that the 2nd respondent "has failed in his duty as secretary, and it is the union that must take the rap more than the workman in his personal capacity as a workman. The 3rd respondent found himself unable to hold that these unauthorised meetings justified such a serious punishment as dismissal" when considering the importance and sacred position held by trade unions in guaranteeing social justice".

Mr. H. L. de Silva, PC submitted that the order was vitiated by an error of law in that the 3rd respondent has treated the 2nd respondent's representative capacity as an exculpatory factor, which clearly it was not. Assuming, however, as Mr. Weerakoon contended, that it was a mitigatory factor, Mr. de Silva submitted that it could be so regarded only if the 2nd respondent's conduct in holding these meetings was completely *bona fide*. He urged, however, that the 3rd respondent had failed to take into consideration the attitude of defiance which the 2nd respondent had displayed when refused permission by the Assistant Factory Manager. This was a circumstance which the 3rd respondent did not even mention in coming to the conclusion that dismissal was not justified. Even if that is ignored, it seems to me that the 3rd respondent has given undue weight to this as a mitigatory factor, in observing that in some way the union must take the rap "more" than the 2nd respondent as a workman. The 2nd respondent was first and foremost an employee, and the Collective Agreement imposed an

obligation on him not to participate in unauthorised meetings; if he did so his liabitiy would not significantly diminish because he was a trade union officer. Mr. H. L. de Silva further submitted that the conduct of the respondent could not be viewed in isolation; it had to be considered in the context of its effect on other employees, as for instance that it had induced collective acts of indiscipline on the part of other employees, namely participation in unauthorised meetings in violation of the Collective Agreement.

In these circumstances, I hold that the 3rd respondent's conclusion that termination was not justified was vitiated by an error of law apparent on the face of his award in that he regarded the 2nd respondent's representative capacity as being an exculapatory factor, or attached undue importance to it as a mitigatory factor, while failing to take into account relevant material which established lack of good faith as well as aggravation of the misconduct.

While the Court of Appeal regarded the conduct of the 2nd respondent as being in defiance of the employer, its reluctance to interfere appears to have been occasioned by the decision in *Ramaswami Padayachi* v. *Shanmugha Padayachi*[1] on the basis of which it held that the power to review mistakes or errors apparent on the face of the record is confined to errors which had been committed by inadvertence, and does not include errors of law arrived at after a process of conscious reasoning. That decision had nothing to do with the scope of the writ of *certiorari*, but related to Order 47 Rule 1 of the Indian Civil Procedure Code which provides for the correction of inadvetant errors, of the kind which section 189 of our Civil Procedure Code deals with. However, the jurisdiction to correct errors of law on the face of the record, by the writ of *certiorari*, has always been recognised as including errors of law made after a conscious process of reasoning.

I hold that the award of the 3rd respondent is vitiated by errors of law apparent on the face of the order, and should have been quashed by the Court of Appeal by *certiorari*. The appeal is allowed, the judgment of the Court of Appeal is set aside, and the order dated 02. 11. 1987 made by the 3rd respondent (published in the *Gazette* of 01. 01. 1988) is quashed. There will be no costs.

PERERA, J. – I agree.

WIJETUNGA, J. – I agree.

Appeal allowed.