

CHANDRASENA AND TWO OTHERS

v.

NATIONAL PAPER CORPORATION AND TWO OTHERS

SUPREME COURT.

SARVANANDA, A. C. J., COLIN-THOME, J. AND SOZA, J.

S.C. APPLICATION No 88/82

NOVEMBER 11 AND 15, 1982.

Application to the Supreme Court under Article 126 of the Constitution—Refusal to collect and remit trade union membership fees—Executive and administrative action

The petitioners were employees of the Embilipitiya Factory of the National Paper Corporation (1st respondent) and members of the local branch of the trade union called the All Ceylon Corporation Employees Union. Union membership fees were collected and remitted to the Treasurer of the Union by the 1st respondent until July 1982 but not thereafter. The petitioners attributed the refusal to collect these union fees to political motivation.

A preliminary objection that the alleged action of the 1st respondent did not amount to executive or administrative action was upheld.

Cur. adv. vult.

APPLICATION under Article 126 of the Constitution.

Cases referred to

Wijetunga v. Insurance Corporation (1984) 1 S.L.R. 1,

Nimal Senanayake S.A., with Miss S.M. Senaratne and Miss A. Telespha for 1-3 Petitioners.

Sivarasa with A. P. Niles and Miss S. Devathasan for 1st respondent.

Suri Ratnapala, Acting Senior State Counsel, for Attorney-General (3rd respondent).

November 29, 1982.

SARVANANDA, A. C. J.

The petitioners are members of a trade union called All Ceylon Corporation Employees Union.

The 1st respondent is a public corporation duly incorporated under the provisions of the State Industrial Corporations Act No. 49 of 1957, to carry on the industrial undertaking of manufacturing paper and sponsoring the production of paper and paper products.

The petitioners are employees of the Embilipitiya Factory of the respondent corporation. They state they are actively involved in trade union work. The petitioners further state that the Branch Union of the petitioners' union had forwarded a list of persons who have joined the said Union and that till July 1982, union membership fees of the said members were remitted to the

Treasurer of the petitioners' union, but 1st respondent had for the purpose of obstructing the lawful activities of the union deliberately omitted to make deductions from August 1982 and to forward them to the All Ceylon Corporation Employees Union. The petitioners allege that the Corporation was acting in concert with the members of the Jatika Sevaka Sangamaya, a rival union affiliated to the U. N. P. and were attempting to demolish the strength and influence of the union to which the petitioners belong. Petitioners further stated that the majority of the members of their union are members of the political sympathisers of Janatha Vimukthi Peramuna. Petitioners complain that the failure to deduct the membership fees of the members of the All Ceylon Corporation Employees Union members in the Embilipitiya Factory constitute political discrimination against the said union. Petitioners state that the 1st respondent corporation had infringed fundamental rights of the petitioners, in that the 1st respondent had discriminated against the petitioners purely on their political opinion. The petitioners have applied to this court invoking the jurisdiction of this court under Article 126 of the Constitution in respect of the alleged infringement of their fundamental rights as set out in Article 12(2) of the Constitution and have applied for relief.

While denying discrimination and alleged infringement of their fundamental rights complained of by the petitioners, the 1st respondent Union has taken the preliminary objection that this court has no jurisdiction to entertain the petition as the matter referred to in the petition did not amount to executive or administrative action.

Since the preliminary objection raised in this case was of the same tenor as that raised in a similar application against the Insurance Corporation of Sri Lanka in case No. 87/82, both applications were heard together.

For reasons set out in my judgment in 87/82, the preliminary objection raised by the 1st respondent is upheld and this application is refused without costs.

COLIN-THOME, J.—I agree.

SOZA, J.—I agree.

Preliminary objection upheld and application dismissed.