

CEYLON BANK EMPLOYEES' UNION
v.
STATE MORTGAGE INVESTMENT BANK

SUPREME COURT,
SAMARAKOON, C.J., WANASUNDERA, J.,
AND SOZA, J.
S.C. APPEAL NO. 32/82.
C.A. APPEALS NOS. 315/80 TO 380/80.
L.T. NO. 1/5812/78 AND OTHERS.
JULY 19TH AND 20TH, 1983.

Unjustifiable Termination of Services - Whether the Services provided by the State Mortgage Investment Bank constituted essential services under section 2(9) and (10) of the Essential Services Order No.10 of 1972 - Definition of the rule "ejusdem generis" in construing "any other Bank"- Regulations 2(1), 3(2) and 38(1) of the Emergency (Miscellaneous Provisions and Powers) Regulation No. 20/5 of 15.8.72 declared under section 5 of the Public Security Ordinance.

A Number of employees of the State Mortgage Investment Bank represented by the Ceylon Bank Employees' Union (Appellant), claimed that their employment had been unjustifiably terminated by the Bank (Respondent) and therefore they had asked for gratuity and compensation respectively. The Bank pleaded that these employees were deemed to have vacated their employment in terms of Regulation 38(1)(a) of the Regulation No.8 of 1972. the Bank also claimed inter alia to be a "corporation" within the meaning of Essential Services Regulation

2(9) and therefore exempt from liability. Though the President, Labour Tribunal rejected this submission the Court of Appeal has held that the State Mortgage Bank is a "Bank" within the meaning of the expression 'any other bank' engaged in the transaction of commercial or financial business in paragraph 2(10) of the same order.

The two points for decision are:-

- (1) Whether the Essential Services Order 1972, was bad in law.
- (2) Whether the services provided by the State Mortgage Bank constituted an Essential Service in terms of the Essential Services Order, 1972.

Held -

That the State Mortgage Bank is not a "Bank" within the meaning of the words "any other Bank" in regulation 2(10), and in view of this finding it is not necessary to consider the other point of law regarding the legal validity of the regulations.

Cases referred to -

- (1) *United Towns Electric Co. Ltd. v. Attorney General of Newfoundland* (1939) 1 All E.R. 423, 428.
- (2) *S. Magnihild (owners) v. McIntyre Brothers and Company* (1920) 2 K.B. 321.
- (3) *R.V. Edmonton* (1859) 28 L.J. MC 213, 218.
- (4) *United Dominions Trust v. Kirkwood* (1966) 1 All E.R. 968.

Appeal from the judgment of the Court of Appeal.

H.L. de Silva, Senior Attorney-at-law with *Gomis Dayasiri* and *P. Samararatne* for Applicant - Respondent - Appellant.

Mark Fernando with *M.A. Bastians* for Employer - Appellant - Respondent.

August 29, 1983.
SAMARAKOON, C.J.

This appeal arises out of a dispute between the State Mortgage Bank (Respondent) and its employees represented by the Ceylon Bank Employees Union (Appellant). The dispute was first adjudicated upon by the President, Labour Tribunal (1) who made an award in favour of the employees. The Bank appealed against it to the Court of Appeal and Tambiah J. allowed the appeal and set aside the order of the Labour Tribunal. Hence this appeal.

The facts relevant to the dispute are these. The Union was at all relevant times a registered Trade Union. In the year 1972 it had about 7100 members and a number of Branch Unions which were represented on the governing body of the Parent Union. The State Mortgage Bank Branch was one of these Branches and it had 71 members. From about August 1971 the Union made several demands on behalf of its members which related to their emoluments and conditions of work. The State Mortgage Bank was also presented a set of demands. A joint negotiating Committee of Banks was set up by the then Minister of Finance to negotiate on these demands. The State Mortgage Bank rejected the demands of its own employees and did not participate in these negotiations on the plea that it was not a profit making concern like the other Commercial Banks which were participating in the negotiations. The negotiations failed and the Union gave notice of strike action. The strike continued for a period of 108 days commencing 31-8-72 and ending on 17-12-72.

This strike was staged during a period of emergency declared by the President of the Republic under the provisions of the Public Security Ordinance (Cap.40). Acting under the provisions of

section 5 of that Ordinance the President made, on 15-8-72, a series of regulations captioned the Emergency (Miscellaneous Provisions and Powers) Regulations No.8 of 1972. They were published in the Government Gazette (Extraordinary) No.20/5 of 15-8-72. The two that are relevant for the purposes of this case read as follows:-

Regulation 2(1) -

"' Essential Services' means any service which is declared by order of the President to be of public utility or to be essential for the public safety or to the life of the community, and includes any Department of Government or branch thereof which is so declared to be such a service."

Regulation 38(1) -

"Where any service is declared by order made by the President, under regulation 2 to be an essential service, any person who, on or after August 15, 1972, was engaged or employed, on any work in connection with that service, fails or refuses, after the lapse of one day from the date of such order, to attend at his place of work or employment or such other place as may from time to time be designated by his employer or a person acting under the authority of his employer, or who fails or refuses, after the lapse of one day from the date of such order, to perform such work as he may be directed, by his employer or a person acting under the authority of his employer to perform, he shall, notwithstanding that he has failed or refused to so attend or to so work in furtherance of a strike -

(a) be deemed for all purposes to have forthwith terminated or vacated his employment notwithstanding anything to the contrary in any other law or the terms or conditions of

any contract governing his employment; and

(b) in addition, be guilty of an offence."

At the same time he made the Essential Services Order of 1972 which was published in the same Gazette. Among the several services declared essential two concerned corporations and Banks and read thus -

- 2 (9) - "The services provided by any Government Corporation or branch thereof."
- 2 (10) - "The services provided by the Central Bank of Ceylon and any other Bank engaged in the transaction of commercial or financial business."

"Government Corporation" was defined by Regulation 3(ii) to mean a corporation the capital of which is wholly or partly subscribed by the Government.

On 18-12-72 the employees of the Banks numbering 71 persons reported for duty but the Respondent Bank refused them entry into the premises. Their entry was barred by two policemen who guarded the entrance to the Bank. The Union then filed application in the Labour Tribunal on behalf of these 71 employees; five of which were later withdrawn. The Union claimed that the employment of its members (save four who had in the meantime reached retiring age) had been unjustifiably terminated. Subsequently by negotiation with the Government a majority of these employees were engaged by the Bank of Ceylon while a few secured employment in the public sector. Those employed by the Bank of Ceylon were placed at the same point of salary they were paid by the Respondent Bank at the time of termination of service, but their past services were not recognised in their new employment. In respect of these employees the Union asked for gratuity and compensation. The

Bank denied that it terminated the employment of these employees and pleaded that the employees were deemed to have vacated their employment in terms of Regulation 38(1)(a) of the Regulations No.8 of 1972. At the inquiry before the Labour Tribunal the Bank claimed *inter alia* to be a "corporation" within the meaning of Essential Services Regulation 2(9) and therefore exempt from liability. The President Labour Tribunal rejected this submission. This decision was not canvassed before the Court of Appeal and does not therefore arise for decision by this Court. The two points for decision are as follows:-

- (1) Whether the Essential Services Order, 1972, was bad in law.
- (2) Whether the services provided by the State Mortgage Bank constituted an essential service in terms of the Essential Services Order, 1972.

The Court of Appeal has held that the State Mortgage Bank is a "Bank" within the meaning of the expression "other bank engaged in the transaction of commercial or financial business" in paragraph 2(10) of the Essential Services Order 1972. This conclusion was influenced by the submission of Counsel for the Bank which commended itself to Tambiah, J., viz., "that the common quality the specified institutions possess which bring them under a genus is that the 'Central Bank' and the 'Bank of Ceylon' are both institutions known as banks under the law." I will revert to this later in this judgment.

The Court of Appeal invoked the *ejusdem generis* rule in construing the words 'any other Bank'. Counsel for both parties before us argued their respective cases on the basis that this rule applied to decide the issue *Ejusdem generis* is a rule of construction and not a rule of law. "To invoke the application of the *ejusdem generis* rule

there must be a distinct genus or category" (Craies on Statute Law Edn. 7 p.181) a single species does not create a *genus* or category and the rule cannot therefore apply. *United Town Electric Co. Ltd. vs. A.G. of Newfoundland* (1939, 1 A.E.R. 423 at p.428). In this case the United Towns Electric Co. Ltd was incorporated by a Public Act in 1902 known as the United Towns Electrical Company Act. Section 30 of it said as follows:-

"The Company shall be liable for water rates on all lands and buildings owned by it in the aforesaid towns, but otherwise the Company shall be exempt from taxation."

The Supreme Court of Newfoundland held that the term "taxation" was limited to taxes *ejusdem generis* with water rates and did not include the revenue of the colony such as income tax. The Privy Council rejected this construction as it found "no room for the application of the principle of *ejusdem generis* in the absence of any mention of a *genus*, since the mention of a single species - for example water rates - does not constitute a *genus*....." "The specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects." (Craies on Statute Law Edn.7 p.181). These are the guide lines for the application of the rule of *ejusdem generis*. The Court of Appeal searched for a "common quality the specified institutions possess which bring them under a *genus*" and found it in their birth. The Central Bank was begat by the Monetary Law Act (Cap.422) and the Bank of Ceylon by the Bank of Ceylon Ordinance (Cap.397). They are "both institutions known as bankers under the law", states the Court of Appeal, being creatures of statute. This constitutes them a *genus*. The State Mortgage Bank Ordinance (Cap.398) begat the State Mortgage Bank and it is therefore a creature of

statute like the other two. In the result the *ejusdem generis* rule applies to constitute the State Mortgage Bank a Bank within the ambit of Regulation 2(10). I am unable to agree with this reasoning based on creation. This classification would exclude many Commercial Banks existing in this country that are not creatures of statute but yet recognised by the common law of the country as Banks. All of them render immense and varied services to the country and the community. It is these services that Regulation 2(10) seeks to preserve for the life of the community.

McCardie J. in the case of *SS. Magnhild (Owners) vs. McIntyre Brothers and Company* (1920, 3 K.B. 321) stated that in deciding whether an unspecified thing was *ejusdem generis* with the specified things two questions must be answered. They are -

1. What common quality do the specified things possess which constitutes them a genus?
and
2. Does the unspecified thing possess that same quality?

Quality here refers to their kind and character which make them a class or category. McCardie J. (at page 330) suggested a test for the ascertainment of a genus - Do the specified things possess some common and dominant feature? Their origin is of no consequence. If they are of widely differing character they cannot constitute a class or category. "I accede", said Lord Campbell in *R. vs. Edmundon* (1859, 28 L.J. MC 213 at 218) "to the principle that where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified." They must be similar in character to the specified things. "It is really a question of the assumed intention of the statute",

(Craies on Statute Law Edn 7 p.179). What then is this common character of the two specified Banks which constitute them a genus? This question must necessarily be answered in reference to the services rendered by each because it is these services that the Regulation seeks to preserve in the interests of the life of the community. One common character stands out - they are both engaged in the Banking business and render Banking services necessary for the life of the community. They are both Banks in the accepted sense of the business and commercial world and the common law of the land.

The Central Bank is a Bank of a special kind established by the Monetary Law Act (Cap.422). It is the watch dog of the Island's monetary system and for that purpose it supervises and controls all Banking institutions in the country. The Act also imposes certain duties and obligations in respect of Banking institutions in the Island. It determines the national monetary policy and tenders advice to the Government on monetary and fiscal policy. It controls the sale and purchase of foreign exchange by Commercial Banks. Although it is not a Commercial Bank it is the Banker and Fiscal Agent of the Government and its agencies and institutions (section 106 of the Act). It is the sole official depository of the Government and its agencies (section 107 of the Act). The Monetary Board may however appoint one or more Commercial Banks as its agents to accept government deposits. As a Bank its services to other Banks, the Government, and the country, are so immense and so varied that the life of the community will be seriously disrupted if its services are not available or are hampered.

The Bank of Ceylon is one of those Commercial Banks established by statute - the Bank of Ceylon Ordinance (Cap.397). Its counterpart is the People's Bank, also established by statute of the Legislature. On the other hand there are many Banks which have not been established by statute of the

country's Legislature but are still functioning as Banks registered under the law of the land and have been so functioning for many years - some over 50 years. They are part of the vast network of Commercial Banks which handle the bulk of the Banking in this country. Banks such as the Grindlays Bank, Hongkong and Shanghai Bank, the Imperial Bank of India (now the State Bank of India), the Habib Bank are some of the old Banks whose services are vital to the community. Indeed a stoppage of work in the network of Commercial Banks paralyses the trade of the country, business comes to a near standstill, and the life of the community is seriously affected. They are all Banks well known and accepted as such in the business world. The word "Bank" is not defined in any statute in this country. What then is a Bank? At the risk of being trite I would say a Bank is a place or institution in which Bankers do banking business. But that is not the entire picture. The question will then be asked - who are "Bankers" and what is "Banking". The history of banking and the characteristics of Bankers today were considered in the case of *United Dominions Trust vs. Kirkwood* (1966)(1 A.E.R.968) Lord Denning M.R.referred to the characteristics of a banker in the 18th century thus -

"In the eighteenth century before cheques came into common use, the principal characteristics were that the banker accepted the money of others on the terms that the persons who deposited it could have it back again from the banker when they asked for it, sometimes on demand, at other times on notice, according to the stipulation made at the time of deposit; and meanwhile the banker was at liberty to make use of the money by lending it out at interest or investing it on mortgage or otherwise."

At that time cheques were not used and current

accounts were not kept. Only deposit receipts were issued repayable on notice, or pass books were issued for deposit accounts and withdrawals were permitted on demand, subject to limits, on production of such pass books. This was the method adopted by the Ceylon Savings Bank (established under the Ceylon savings Bank Ordinance (Cap.399) and the Post Office Savings Bank (established under the Post Office Savings Banks (Cap.191)) both of which have now been absorbed by the National Savings Bank which also issue a pass book for deposits. This is no longer considered banking in law. "The March of time has taken us far beyond those cases of fifty years ago. Money is now paid and received by cheque to such an extent that no person can be considered a banker unless he handles cheques as freely as cash. A customer nowadays who wishes to pay money into his bank takes with him his cash and the cheques, crossed and uncrossed, payable to him. Whereas in the old days it was a characteristic of a banker that he should receive money for deposit, it is nowadays a characteristic that he should receive cheques for collection on behalf of his customer. How otherwise is the customer to pay his money into the bank? It is the only practicable means, particularly in the case of crossed cheques. Next, when a customer wishes to withdraw the money which he has deposited or to pay his creditors with it, he does it in most cases by drawing a cheque on the bank. Occasionally he does it by a draft on the bank or a written order. Whereas in the old days he might withdraw it on production of a passbook and no cheque, it is nowadays a characteristic of a bank that the customer should be able to withdraw it by cheque, draft or order. This view has gradually gained acceptance." (per Denning, M.R. at page 975.) Bankers today have three characteristics:

- (i) They accept money from, and collect cheques for, their customers and place them to their credit.

(ii) They honour cheques or orders drawn on them by their customers on presentment and debit them accordingly in their account.

(iii) They keep an account, called a current account, in which the credits and debits are entered.

Diplock L.J. agreed with these propositions. He stated thus -

"What makes a person a banker is not what he does with the money of which he obtains the use, as for instance by lending it at interest (as mentioned by Holmes, J., and Isaacs, J.), by investing it, by discounting bills, etc., but the terms on which he obtains from other persons, his banking customers, loans of money which he can use as he thinks fit. What I think is common to all modern definitions and essential to the carrying on of the business of banking is that the banker should accept from his customers loans of money on "deposit", that is to say, loans for an indefinite period on running account, repayable as to the whole or any part thereof on demand by the customer either without notice or on an agreed period of notice."

"Accordingly it is, in my view, essential to the business of banking that a banker should accept money from his customers on a running account into which sums of money are from time to time paid by the customer and from time to time withdrawn by him by cheque, draft or order. I am inclined to agree with Lord Denning, M.R., and the author of the current edition of Paget on Banking (6th Edn.) that to constitute the business of banking today the banker must also undertake to pay cheques drawn on himself (the banker) by his customers in favour of

third parties up to the amount standing to their credit in their "current accounts" and to collect cheques for his customers and credit the proceeds to their current accounts. This view of the essential characteristics of the business of banking today is supported by the evidence of the witnesses who were unquestionably bankers who gave expert evidence in the present case."

These are the essential characteristics of the business of banking which is conducted by a bank. The Bank of Ceylon and all Commercial Banks have these characteristics. The Central Bank also possesses these essential characteristics. No doubt it has only one depositor but that depositor is probably the largest depositor in the country. My finding therefore is that the "Central Bank" and the "Bank of Ceylon" referred to in Regulation 2(10) form a *genus*.

The next question is whether the State Mortgage Bank belongs to that same *genus*? It does not have any of the essential characteristics of a Bank referred to above. It is not engaged in the business of Banking. Its only claim to that status is that the Ordinance has chosen to call it a Bank. But the name cannot and does not make it a Bank. Its essential characteristic is that of a money lender with mortgages securing the money lent. That is its sole financial business. Such business is done by all finance companies and the well known Chettiars of Sea Street. If the State Mortgage Bank is a Bank doing banking business then these Companies and Chettiars can also lay claim to that title. Neither the law nor the business world would accept them as Banks. The Agricultural and Industrial Credit Corporation did a much larger volume of business similar, if not identical with, that of the Respondent but the law incorporating it did not choose to call it a Bank. The Development Finance

Corporation, by far the largest lending institution, also does not bear the name "Bank". I am of opinion that the State Mortgage Bank is not a "Bank" in Regulation 2(10). I therefore allow the appeal and set aside the order of the Court of Appeal. In view of this finding it is not necessary to consider the other point of law regarding the legal validity of the regulations.

The Appellant will be entitled to costs of this appeal and the proceedings in the Court of Appeal.

WANASUNDERA, J. - I agree

SOZA, J. - I agree

Appeal Allowed