EKSATH KAMKARU SAMITHIYA

v.

UPALI NEWSPAPERS LTD AND OTHERS

SUPREME COURT
FERNANDO, J.
WIJETUNGA, J. AND
ISMAIL, J.
SC APPEAL NO. 70/99
CA WRIT APPL. NO. 615/96
LT NO 2/A/1/89
12TH AND 30TH JUNE 2000

Writ of certiorari - Industrial dispute - Termination of services - Application to a Labour Tribunal for relief - Section 31B(1) of the Industrial Disputes Act - Reference of the same dispute for settlement by arbitration under section 4(1) of the Act - Jurisdiction of the Minister to refer the dispute - Articles 170, 114 and 116(1) of the Constitution.

The services of seven employees of Upali Newspapers Ltd., the petitioner-respondent were terminated between 16. 04. 88 and 19. 04. 88. The 1st respondent-appellant, a registered trade union filed applications on behalf of six workmen who were its members seeking relief in the Labour Tribunal Colombo in terms of section 31B(1) of the Industrial Disputes Act (the Act). While these applications were pending, the Minister of Labour acting under section 4(1) of the Act made an order on 21. 09. 89 referring the dispute regarding the dismissal of all seven employees for settlement by arbitration by the 4th respondent who was also the President of the Labour Tribunal before whom the six applications had been filed. When it was brought to the notice of the Tribunal that the identical dispute had been referred for arbitration, the applications before the Tribunal were dismissed.

The arbitration procedure commenced on 17. 01. 90 and by his award dated 23. 03. 96, the arbitrator directed that two of the workmen be re-instated with compensation.

On the application of the petitioner-respondent the Court of Appeal quashed the award by certiorari on the ground that it was made without jurisdiction.

Held :

In view of Article 116(1) of the Constitution, the Minister had no power to refer the dispute regarding the termination of services for

compulsory arbitration when applications in respect of the said dispute were pending in the Labour Tribunal. Such reference would infringe and violate the principle of the independence of the judiciary, enshrined in Article 116 of the Constitution.

APPEAL from the judgement of the Court of Appeal reported in (1993) 3 SRI LR 205.

C. Hewamanage for 1st respondent-appellant.

Anil Tittawela for petitioner-respondent.

Ms. Demuni de Silva, Senior State Counsel for 2nd and 3rd respondents-respondents.

Cur. adv. vult.

August 24, 2000.

ISMAIL, J.

The services of seven employees of Upali Newspapers Ltd., the petitioner-respondent, were terminated between the dates 16. 04. 88 and 19. 04. 88. The 1st respondent-appellant, a registered trade union, filed applications on behalf of six workmen who were its members seeking relief in the Labour Tribunal, Colombo in terms of section 31B(1) of the Industrial Disputes Act.

While these applications were pending before the Labour Tribunal, the Minister of Labour, acting in terms of the powers vested in him under section 4(1) of the Industrial Disputes Act, made an order on 21. 9. 89 referring the dispute regarding the termination of all seven workmen for settlement by arbitration before the 4th respondent-respondent who was also the President of the Labour Tribunal before whom the six application were filed.

The applications filed on behalf of three workmen bearing Nos. 2/461/88, 2/462/88 and 2/463/88 were dismissed on

02. 09. 89. The applications bearing Nos. 2/464/88 and 2/465/88 were dismissed on 02. 01. 90. The application bearing No. 2/466/88 was also dismissed on 04. 01. 90. Four of these applications were dismissed by the Tribunal upon it being brought to its notice by both parties that the identical dispute had been referred by the Minister for compulsory arbitration. Two of the applications were dismissed on the same ground on the application made by the employer.

The proceedings before the Arbitrator commenced on 17. 01. 90 and by his award made on 23. 03. 96, he directed that five of the workmen be reinstated with compensation calculated on the basis of their period of service.

The petitioner-respondent being aggrieved by that award filed an application in the Court of Appeal for a writ of certiorari to have it quashed. The Court of Appeal by its judgment dated 19. 03. 99 quashed the award of the arbitrator on the ground that it was made without jurisdiction.

The 1st respondent-appellant was granted special leave to appeal to the Supreme Court on 18. 08. 99 on the questions of law set out in paragraph 11(a) to (d) of the petition and on the following two questions;

1. Has the Court of Appeal erred in the interpretation of Article 116(1) of the Constitution?

2. Does the Minister have power under section 4(1) of the Industrial Disputes Act to refer a matter to arbitration notwithstanding the pendency of a Labour Tribunal application?

The only matter urged by counsel on behalf of the employer at the hearing in the Court of Appeal was that the Minister had no power to refer a dispute for settlement by

arbitration in terms of section 4(1) of the Industrial Disputes Act while applications in respect of the same dispute were pending in the Labour Tribunal.

The Court of Appeal held as follows:

> 'The combined effect of the provisions of Interpretation Article 170, Articles 114 and 116 is that the decision in *Wimalasena v. Navaratne and others* (1978-79) 2 SLR 10, can no longer be considered as valid authority for the proposition that the Minister has unlimited powers under section 4(1) of the Industrial Disputes Act which would enable him to refer a dispute which is pending before a Labour Tribunal to an Arbitrator for settlement. Such an interpretation would necessarily infringe and violate the principle of the independence of the judiciary enshrined in Article 116 of the Constitution which is paramount law".

I have considered the matters set out in the written submissions tendered by counsel on behalf of the 1st respondent-appellant. However, I see no reason to interfere with the finding of the Court of Appeal.

I accordingly hold that the Court of Appeal has not erred in the interpretation of Article 116(1) of the Constitution and that the Minister had no power to refer the dispute regarding the termination of services for compulsory arbitration when applications in respect of the said dispute were pending in the Labour Tribunal. In the circumstances it will not be necessary to deal with the other questions of law set out in paragraph 11 of the petition which were not raised by the appellant in the Court of Appeal.

Counsel for the 1st respondent-appellant submitted that, despite its finding, the Court of Appeal has erred in failing to restore the six applications for further hearing by the Labour

Tribunal as the employer too had consented and moved for an order of dismissal of the applications in view of the reference to arbitration. The withdrawal of an application pending before a Tribunal is essentially a matter for the applicant. The aquiescence of employer in an order of dismissal being made in these circumstances cannot be a reason for the re-hearing of the said applications that have already been dismissed.

For the reasons set out above the appeal is dismissed without costs.

FERNANDO, J. - I agree.

WIJETUNGA, J. - I agree.

Appeal dismissed.