PADDY MARKETING BOARD

v.

S. V. INDUSTRIES (CEYLON) LTD.

COURT OF APPEAL
WIJETUNGA, J. AND ANANDACOOMARASAMY, J.,
C.A. No. 1257/86,
D.C. COLOMBO 2458/SPL.,
OCTOBER 13, 14 AND 28, 1989.

Revision — Civil Procedure Code Section 1753 — Failure to comply with Supreme Court Rule 46

Arbitration — Award - Misconduct — What is joint participation by the arbitrator.

Revision being an extraordinary remedy, he who invokes the revisionary powers of the court should provide the necessary material to enable the relief sought to be obtained.

The issue of notice in an application for revision does not have the effect of the case being brought before court as in due course of appeal. Even though revision may lie, the Court of Appeal is not obliged to call for the record of the case merely on the ground that notice has been ordered to issue.

So long as the arbitrators are all present together during the proceedings, their deliberations in regard to the form that the award should take does not necessarily require their presence together at a given place.

Wijetunga, J.—

"We have moved a long way from the decisions around the turn of the century, when the courts insisted on the presence of all the arbitrators at all meetings including the last, for an award to be valid.

Presumably, the courts have taken into account the changed circumstances resulting from the transformation that was taking place due to technological advancement. When we are barely a decade away from the 21st century, it would not accord with reason to interpret the concept of 'joint participation' as being physically present together at one and the same place.

The three arbitrators knew what the others were thinking in regard to the matter before them. There was consultation and an opportunity to exchange views. A draft had been provided (by one arbitrator) for the consideration of the other arbitrators. In all these circumstances, there was joint participation."

Cases referred to :

(1) *Navaratnasingham v. Arumugam [1980] 2 Sri LR 1*
(2) *Mariam Beebee v. Seyed Mohamed 68 NLR 36*
(3) *Muthaliff v. Pedrick 28 CLW 22*

(4) *Rustom v. Hapangama & Co. [1978-79] 2 Sri LR/225*
(5) *Cassim Lebbe Marikar v. Samal Dias 2 NLR 225*
(6) *European Grain and Shipping Ltd., v. Johnston 1982 Lloyd's Rep 414, 1982 3 All ER 989*
(7) *London Export Corporation Ltd., v. Jubilee Coffee Roasting Co. Ltd 1958 2 All ER 411*
(8) *Abu Samid Zahir Ala v. Golam Sarwar AIR 1918 Calcutta 865*
(9) *Babua Lal Pardhan v. Badri Lal Pardhan AIR 1919 Patna 74*
(10) *Appayya V. Venkataswami AIR 1919 Madras 877*
(11) *Dharmu V. Krushna AIR 1956 Orissa 24*
(12) *Ganesh Chandra v. Artatrana AIR 1965 Orissa 17*
(13) *R. V. Watson 1988 1 All ER 897*
(14) *Re Beck and Jackson (1857) 1 CB (NS) 695*

APPLICATION for Revision of the order of the District Judge of Colombo.

K. N. Choksy, P.C. with *D.H.N. Jayamanne* and *A. L. Bitto Muthunayagam* for respondent—petitionor.

H.L. de Silva, P.C. with *E. Gunaratne* for petitioner — respondent.

Cur. adv. vult.

April 28, 1989

WIJETUNGA, J.

The petitioner-respondent made an application to the District Court under the provisions of Section 696 of the Civil Procedure Code seeking to file in Court the majority award made in certain arbitration proceedings between the petitioner-respondent and the respondent-petitioner. The petitioner-respondent further sought to obtain judgment according to the said majority award. The respondent-petitioner filed objections to the said application and the matter proceeded to inquiry. The learned District Judge, by his judgment dated 25.09.86, held that the majority award must be filed in Court in terms of Section 696 of the Civil Procedure Code and made the order *nisi* absolute.

The respondent-petitioner now seeks, by the present application for revision inter alia to set aside the said judgment.

The facts relevant to this matter are briefly as follows : —

The parties entered into a contract on or about 11th January, 1980, to construct certain buildings under the terms and conditions of the said contract. Provision was made therein for any dispute or difference that may arise to be referred to arbitration by three arbitrators one to be appointed by each party and the two arbitrators so appointed to

designate the third arbitrator. It was further provided that the decision or award of the majority of the arbitrators shall be final and binding on the parties. Disputes having arisen between the parties, the respondent-petitioner appointed Mr. J. F. A. Soza as arbitrator, while the petitioner-repondent appointed Mr. K.Thuraisingham as arbitrator. The two of them appointed Mr. M. Chandrasena as the third arbitrator. The award sought to be filed in Court is that of Messrs. Thuraisingham and Chandrasena, Mr. Soza having dissented there from. The dissent of Mr. Soza too was sought to be filed in Court with the majority award. After objections and inquiry as aforesaid, the learned District Judge made the order complained of which is sought to be revised in these proceedings.

The preliminary matter which arises for consideration is whether this case attracts the revisionary procedure. It is submitted by learned President's Counsel for the respondent that the petitioner should have moved this Court by way of leave to appeal and come under section 754(2) of the Civil Procedure Code. In any event, he submits that for the revisionary powers of this Court contained in Section 753 to operate, those powers must be properly invoked but in the instant case, it is submitted that the petitioner has failed to do so as there has been non-compliance with Rule 46 of the Supreme Court Rules, 1978.

Learned President's Counsel for the petitioner, on the other hand, contends that leave to appeal is not the correct procedure and if at all, it should have been a direct appeal under Section 754(1). He, however, submits that notwithstanding a right of appeal, revision lies in appropriate circumstances and cites a number of authorities in support. It is his submission that applying the principles laid down in those cases, revision does lie in respect of this case as extraordinary circumstances exist which warrant the exercise of those powers by this Court.

In regard to the contention that there has been non-compliance with Rule 46 of the Supreme Court Rules, he submits that, that the Rule must be read subject to Section 753 of the Civil Procedure Code and that such Rules must subserve and not govern. Once the petitioner satisfies the Court that there is a *prima facie* case and notice is issued, it is obligatory in his submission for the court to call for the record. He further submits that the court cannot deal with the matter in revision unless the record is called for and it is still open to the court to make such a direction.

Rule 46 requires that an application by way of revision shall, in addition to the requirements in regard to applications under Article 140 and 141 of the Constitution be accompanied by two sets of copies of proceedings in the Court of First Instance, tribunal or other institution.

In *Navaratnasingham v. Arumugam,* (1) Soza, J. has expressed the view that in relation to an application for revision, the term 'proceedings' as used in Rule 46 means much of the record as would be necessary to understand the order sought to be revised and to place it in its proper context.

It is the contention of the respondent that the petitioner having failed to furnish copies of the proceedings in the District Court as contemplated by this Rule, has thereby omitted to provide the necessary material to enable this court to exercise the powers of revision. The documents filed with the petition consist of copies of the majority award (P.1), the dissent (P.2), the petition and objections filed in the District Court (P.3 and P.4) the judgment (P.5), the notice of appeal (P.6), the application for execution of the decree (P.7) and the Journal Entries (P.8). The evidence led at the inquiry in the District Court etc. has not been made available to us. One would assume that the petitioner has advised itself that only so much of the record would be necessary to understand the order sought to be revised and to place it in its proper context. Revision being an extrordinary remedy, he who invokes the revisionary powers of the Court should in my view, provide the necessary material to enable the relief sought to be obtained.

In regard to the submission that Section 753 casts an obligation on the Court to call for the record once notice is issued, it becomes necessary to examine the scope and ambit of that Section.

Section 753 provides that this court "may upon revision of the case *so brought before it* pass any judgment or make any order which it might have made had the case been *brought before it* in due course of appeal instead of by way of revision".

Now in respect of cases *brought before it in due course of appeal,* the Code has made specific provision in regard to the procedure to be followed. In the case of a direct appeal, section 755(4) provides that "upon the petition of appeal being filed, the court shall forward the petition of appeal together with all the papers and proceedings in the case

relevant to the judgment or decree appealed against as speedily as possible, to the supreme Court....." The duty to forward the record thus rests with the original court.

Where the procedure for leave to appeal has to be resorted to, Section 756(7) provides that "upon leave to appeal being granted the Registrar or the Supreme Court shall immediately inform the original court, and, unless the Supreme Court has otherwise direced, all proceedings in the original court shall be stayed and the said court shall as speedily as possible forward to the Supreme Court all the papers and proceedings in the case relevant to the matter in issue". It should be noted that at the previous stage when notice is ordered to issue, the proceedings in the original court are not stayed, nor is the record forwarded to this court.

If as submitted by counsel, the record should be called for by this court *whenever notice is ordered to issue in an application for revision*, it would have the effect of the case being brought before it at that stage as in due course of appeal, instead of by way of revision. If that were the intention of the legislature, it would have made provision similar to that referred to above, requiring the record to be forwarded to this Court upon notice being ordered to issue.

I am unable to agree with this submission. It is precisely for the purpose of avoiding the record being forwarded to this court at the stage when notice is ordered to issue, that Rule 46 of the Supreme Court Rules requires that an application by way of revision shall....."be accompanied by two sets of copies of proceedings in the Court of First Instance, tribunal or other institution."

This rule to my mind does not govern but subserves the provisions of the Code and gives effect to those provisions by regulating the practice and procedure.

In terms of this Rule an application for revision should be by way of peitition and affidavit in support of the averments set out in the petition and should be accompanied by originals of documents material to the case or duly certified copies thereof in the form of exhibits. In addition, it should also be accompanied by two sets of copies of proceedings in the Court of First Instance, tribunal or other institution. The objections of the respondent and counter-affidavit, if any, would comprise the other

material available to the Court, unless the parties have filed amended or additional papers or objections in conformity with the Rules. The scope and ambit of the application is thus restricted to the material referred to above. It is therefore important that a person who seeks this extraordinary remedy should advise himself as to what constitutes 'proceedings' in the case and would in my opinion, stand or fall by the material so furnished.

In the instant case, the legality and propriety of the award is being challenged on the ground that the decision is vitiated. It is further submitted that there has been a departure from the accepted principles of law relation to arbitration. *Prima facie,* therefore a question of law of considerable importance in arbitration appears to come up for decision in circumstances which it is submitted are extraordinary.

As has been held in *Marim Beebee* v.*Seyed Mohamed* (2) the power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of this court.

In *Muthaliff* v. *Pedrick* (3) it has been held that the Supreme Court will exercise its powers of revision even in a case in which an appeal lies where inter alia a fundamental rule of judicial procedure has been isolated.

More recently in *Rustom v. Hapangama & Co.* (4) it has been held that the powers by way of revision conferred on the Appellate Court are very wide and can be exercised whether an appeal has been taken against an order of the original Court or not. However, such powers would be exercised only in exceptional circumstances when an appeal lay and as to what such exceptional circumstances are dependant on the facts of each case.

The term extraordinary though it is synonymous with the term 'exceptional', is in my view more appropriate in the context of the circumstances of this particular case. Such extraordinary 'circumstances' should in my opinion attract the revisionary powers of this Court which are themselves extraordinary. The petitioner is therefore *prima facie* entitled to invoke the revisionary powers of this Court independently of whether an appeal lies or not.

As early as in 1896, the Supreme Court has in *Cassim Lebbe Marikar v. Samal Dias* (5) in fact exercised its revisionary powers in a matter concerning a reference to arbitration.

However while holding that revision lies in these circumstances, this Court for the reasons stated above, does not consider itself obliged to call for the record of the case merely on the ground that notice has been ordered to issue.

The petitioner has come to this Court on the ground of 'misconduct of the arbitrator' mentioned in Section 691(2) (*a*) of the Civil Procedure Code. It is submitted that a valid award could not have been made as the three arbitrators were unable to meet and discuss the matter, before the award was made. This being a basic legal requirement, it is submitted that there has been legal misconduct on the part of the arbitrator.

The ground relevant to this submission is set down in para. 6 (*b*) of the petition as follows:–

> "that the 3 Arbitrators had failed to consider and discuss the matters which formed the subject of the purported "majority award jointly with each other and that, therefore, the majority award was thereby vitiated and ought not to be filed and enforced."

The circumstances in which the three arbitrators 'had failed to consider and discuss the matters' as aforesaid are set out in the dissent of Mr. Soza, filed with this petition marked 'P.2', wherein he states as follows:–

> 'I regret to have to write my own award because it was not possible for me to work out any accord with Mr. M. Chandrasena in the discussions I have had with him. The other Arbitrator Mr. K. Thuraisingham left Sri Lanka on the night of 31.10.1984 for America after three inconclusive conferences on 29, 30 and 31st October which I attended only in deference to his requests although I had not yet studied the proceedings sufficiently. In fact the proceedings had been concluded only on the 28th October and the last batch of the record of the proceedings was received by us on 31st October around 4.30 p.m. Mr. Thuraisingham has sent me draft award signed by him wherein he differs from the views expressed by Mr. Chandrasena especially on the reckoning of liquidated damages. In the covering letter (incidentally dated 31.12.1984) enclosing the draft dated 20.11.1984 and posted in Sri Lanka by Registered post on 27.12.1984, Mr. Thuraisingham states "It will be clear from my report that no one will incur any loss other than the cost of arbitration." I cannot however see how this could be the effect of his findings in his draft 'report'. Further he invites my

comments and my "draft copy". Having regard to the manner in which he has committed himself to his conclusions I do not think any purpose would be served by my furnishing my comments or draft to Mr. Thuraisingham. His non-availability for discussions after all three arbitrators had reasonable time to study and consider all the proceedings together was a severe handicap. Further in a letter sent subsequently to that enclosing his "draft" to Mr. Chandrasena he has indicated that he will agree with him (Mr. Chandrasena) in case I do not agree with Mr. Chandrasena.'

"I do not rule out the possibility of Mr. Thuraisingham not agreeing on all points with Mr. Chandrasena but do not agree with both of them. In this situation I have no course open to me but to set down my own findings on the questions or issues referred to us."

It is clear from these circumstances that the three arbitrators had not 'met and dicussed' the award in person. It is submitted that the failure to so meet and discuss the award is legal misconduct.

In A. R. R. 1928 Bombay 49, It has been held that "the word misconduct ..... does not necessarily imply anything in the nature of fraud. But it certainly may include cases where the arbitrator had failed to perform the essential duties which are cast upon him as an arbitrator, as he is occupying a quasi-judicial position."

In A.I.R. 1958 Allahabad 692, it has been held that:

"misconduct not amounting to moral turpitude is called legal misconduct and has a very wide meaning. It is difficult to give an exhaustive definition of what amounts to legal misconduct. It may however be stated that legal misconduct means misconduct in the judicial sense arising from some honest, though erroneous, breach and neglect of duty and responsibility on the part of the arbitrator causing miscarriage of justice. There may be ample misconduct in a legal sense to make the court set aside the award even when there is no ground to impute the slightest improper motive to the arbitrator. It includes failure to perform the essential duties which are cast on an arbitrator as such. It also includes any irregularity of action which is not consonant with general principles of equity and good conscience which ought to govern the conduct of an arbitrator."

Halsbury (4th Ed.): Vol. 2: Arbitration states at para 622 – example (4) that if there has been in the proceedings as, for example, where the reference being to two or more arbitrators, they did not act together, the arbitrator has misconducted himself and the court has power to set aside his award.

Russel on Arbitration (20th Ed., 1982), dealing with 'misconduct' at page 406 states that "where the reference is to three arbitrators all must participate in the process of determining the dispute even though the award of any two is sufficient."

He cites the case of *European Grain and Shipping Ltd. v. R. Johnston* (6) where one of three arbitrators absented himself leaving behind a signature intended to certify participation, and it was held that he was wrong in so doing and the other two arbitrators were equally wrong to proceed to a decision in his absence. The award would have been set aside but for the fact that the party seeking to set it aside had waived the irregularity.

Again, in *London Export Corporation Ltd., v. Jubilee Coffee Roasting Co. Ltd.,* (7) it has been held that an award had been rightly set aside because, apart from any question of custom or practice, the procedure of the board in giving private audience to the umpire and conferring with him in the absence of the parties would be an irregularity amounting to 'misconduct' justifying the board's award being set aside.

These authorities indicate what amounts to ' misconduct' and are ample to support the proposition that where 'legal misconduct' is established, the court would be justified in setting aside an award.

It has now to be examined whether such misconduct has been established in the instant case. The misconduct complained of is the alleged failure of the three arbitrators to consider and discuss the matters which formed the subject of the purported majority award, jointly with each other. This brings us to the question of the arbitrators' duty to act together.

In *Abu Samid Zahir Ala v. Golam Sarwar* (8) A. I. R. 1918 Calcutta 865, it has been held that inasmuch as the parties to a submission to arbitration have the right to the presence and effect of the arguments, experience and judgment of each arbitrator at every stage of the proceedings, so that by conference they may mutually assist each other in arriving at a just

conclusion, it is essential that there should be an unanimous participation by the arbitrators in consulting and deliberating upon the award to be made.

In *Babua Lal Pardhan v. Badri Lal Pardhan* (9) it has been held that the presence of all the arbitrators, where there are more than one, at all meetings and above all at the last meeting when the final act of arbitration is done is essential to the validity of the award.

In *Appayya v. Venkataswami,* (10) it has been held that for a final award by arbitrators to be valid, it is essential that all the arbitrators should have been present at all the meetings including the last, that witnesses should have been examined in the presence of all and that all should have consulted together as to the form that their award should take.

In *Dharmu v. Krushna,* (11) it has been held that when a matter is referred to the arbitration of more than one arbitrator, all the arbitrators must act together in every stage in order that the parties to the reference may have the benefit of the considered judgment of every one of the arbitrators in the matter of the reference, and that it contemplates a deliberation jointly of all the arbitrators, though after this joint deliberation and joint partaking in all the proceedings by all the arbitrators, there might be a difference of opinion when a majority decision would be final.

In *Ganesh Chandra v. Artatrana,* (12) it has been held that there would be misconduct unless all arbitrators act together in every stage of the arbitration proceedings.

In *European Grain and Shipping Ltd. v. Johnston* (6) (Supra), it has been held that an arbitration conducted by a tribunal of several arbitrators necessarily required a joint process of full and complete adjudication by all of them, so that the ultimate award represented the state of mind of all of them at the time when they signed it. Although it was not necessary for the arbitrators themselves to sign the award at the same time and place, the award could only be determined after the arbitrators had each considered the facts in dispute and had mutually reached an agreement as to the form the award should take. It followed that since the arbitrator appointed by the sellers had not actually participated in the award, although on the face of it he appeared to be a party to it, there were grounds for setting aside the whole award. However, since the sellers had accepted the benefit from the first part of the award, they could not afterwards dispute the award by challenging the second part.

R. V. Watson, (13) though not directly in point, deals with a direction given to a jury warning them that it might cause public inconvenience or expense if they cannot agree, and stresses that a jury has a duty to act not only as individuals but collectively by giving their own views and listening to the views of the others in arriving at a verdict. It holds that such a direction should not be given because of the risk that it might impose pressure on jurors to express agreement with a view they do not truly hold.

Mustill & Boyd in the Law and Practice of Commercial Arbitration in English, (1982 Ed.) state at pages 322 and 323 that where the reference is to more than one arbitrator, all the arbitrators must act together, unless the arbitration agreement provides otherwise and quote Creswell, J's observations in *Re Beck and Jackson* (14) (citing Russel) that "the parties are entitled to have recourse to the arguments, experience and judgment of each arbitrator at every stage of the proceedings brought to bear on the minds of his fellow judges so that by conference they shall mutually assist each other in arriving together at a just conclusion". Although the award itself may properly reflect the views of only two members, all three must participate in the reference.

On the authorities cited above, it is patently clear that there should be 'joint participation' for an award to be valid. As what is required is bringing the minds together, the question arises whether face to face sittings are always necessary for the process of consultation. Cannot there be 'joint participation' through such devices as the telephone, telex and fax? Or for that matter, cannot there be a meeting of the minds through correspondence via the post, by exchanging views and circulating drafts for each other's consideration ? As 'participation' requires availing one's self of the opportunity for 'discussion,' was there such an opportunity available to the three arbitrators in the instant case ?

To my mind, in this modern age, 'joint participation' does not necessarily mean sitting together at a table and engaging in a discussion. If the same objective could be achieved through other media, I see nothing objectionable in such a course of action. This attitude is reflected in the *European Grain and Shipping Ltd.,* case (Supra) when it states that it was not necessary for the arbitrators themselves to sign the award at the same time and place. What was required was a joint process of full and complete adjudication so that the ultimate award represented the state of mind of all of them at the time when they signed it.'

Lord Denning's observations in that case are quite apposite in this context :-

> "I think the time has come when we should lay down a different rule. Business convenience requires it. Nowadays, whenever an agreement or award or any other document is to be done by two or three jointly, the practice is for one or the other to draw up a draft and send it to the other or others for their consideration and comments. One or other may suggest amendments and send it back. So it goes to and fro until the draft is agreed. Once the draft is agreed, all that remains is for it to be copied out in a legible form ready for signature. If it is already legible, it need not even be copied out. It is then sent round and signed by each separately. Once all have signed, it becomes the final document. It is quite unnecessary for them all to meet together to sign it. When each appends his signature, he expresses his assent to it and then, as soon as the others sign, it becomes final. In short, whenever all have signed, each must be regarded as having assented to it, even though each signed it at a different time or place from the others. That principle applies to an award of arbitrators just as it does to a written agreement or any other document to be executed by two or three people."

Unlike in a jury trial where the law requires the jurors to be all present together until the verdict is signed by the foreman, the physical presence of the arbitrators at the same time and place to sign the award is no longer necessary. But, the arbitrators could still adhere to the principles laid down in *R. vs. Watson* (Supra) in regard to the duty to act not merely as individuals but collectively by 'giving' their own views and 'listening' to the views of the others throught the methods of communication available to them. In my view, so long as the arbitrators are all present together during the proceedings, their 'deliberations' in regard to the form that the award should take does not necessarily require their physical presence together at a given place.

We have moved a long way from the Indian decisions around the turn of the century, when the courts insisted on the presence of all the arbitrators at all meetings including the last, for an award to be valid. The 1956 Indian decision in *Dharmu v. Krushnu* (Supra) is indicative of this trend when it speaks of the arbitrators having to 'act together in every stage'. The 1965 decision in *Ganesh Chandra v. Artatrana* (Supra) has also adopted the words 'act together in every stage'. Presumably, the Courts have taken into account the changed circumstances resulting

from the transformation that was taking place due to technological advancement. When we are barely a decade away from the 21st century, it would not accord with reason to interpret the concept of 'joint participation' as being physically present together at one and the same place.

It would be appropriate at this stage to consider the sequence of events in the case before us. According to Mr. Soza's dissent itself, the arbitrators had held 16 sittings in all, spanning a period of over six months, from April to October, 1984. the last of such sittings being on 28th, October. There had thereafter been 3 conferences on 29th, 30th and 31st October. We are not aware of the length or duration of those conferences. Mr. Thuraisingham had left the Island on the night of 31st October. He had sent Mr. Soza a draft award which would have been received by the latter around 28th December, 1984. He had invited Mr. Soza's comments on the draft. But, according to Mr. Soza, 'having regard to the manner in which he has committed himself to his conclusions, (he did not) think any purpose would be served by (his) furnishing, (his) comments or draft to Mr. Thuraisingham.' Though Mr. Soza did not 'rule out the possibility of Mr. Thuraisingham not agreeing on all points with Mr. Chandrasena', he did not 'agree with both of them.'

These observations indicate that the three arbitrators knew what the others were thinking in regard to the matter before them. It is not that they were acting independently of each other and coming to their own conclusions.There was consultation and an opportunity to exchange views. Differences of opinion apparently did exist even between Mr. Thuraisingham and Mr. Chandrasena. A draft had been provided by Mr. Thuraisingham for the consideration of the other arbitrators. In all these circumstances, there was, in my view, joint participation. Mr. Soza himself knew on what points he differed from the other arbitrators, but it appears that he found himself unable to agree with the other two and there was no possibility of bridging the gap. The resulting position then was that the majority decision became the award in the case. In this situation, the complaint of 'legal misconduct' cannot be sustained and the petitioner fails on the principle ground.

This Court is being called upon to test the validity of the conclusions reached by the learned District Judge. The Judgment refers to the fact that Mr. Soza had been called by the present petitioner to testify at the inquiry, but we do not have the advantage of perusing his testimony, as

the oral evidence led at the inquiry has not been made available to us. It was incumbent on the petitioner to have provided the necessary material and it must, therefore, take the consequences of its failure.

However, on the available material, the learned District Judge was well entitled to have reached the conclusions contained in his judgment. There is nothing to indicate that those conclusions were insupportable. Nor is there any evidence of a miscarriage of justice.

In the result, the petitioner has failed to satisfy this court that its revisionary powers should be exercised, in the facts and circumstances of this case. The application therefore, is dismissed with costs.

ANANDA COOMARASWAMY, J.—I agree.