

1962 Present : H. N. G. Fernando, J., and T. S. Fernando, J.

M. DON ANTHONY, Appellant, and THE BRIBERY  
COMMISSIONER, Respondent

*S. C. 3 of 1961—Bribery Tribunal Case No. 11/I. 168/59*

*Appeal—Statute enabling appeal to Supreme Court—Incapacity of appellant to attack validity of the statute—Bribery Act No. 11 of 1954, as amended by Act No. 40 of 1958—Appeal thereunder—Appellant cannot attack validity of entire Act.*

Where an appeal is preferred to the Supreme Court, it is not competent for the appellant to attack as invalid the very Act of Parliament which alone confers on him the right of appeal. Any relief on the ground of the invalidity of the Act must be found by a process other than appeal.

Accordingly, where the Bribery Act is attacked as invalid, the right of appeal conferred by the Act cannot be exercised, and some remedy other than appeal should be sought.

**A**PPEAL under the Bribery Act.

*M. Tiruchelvam, Q.C., with K. Thevarajah, for the accused-appellant.*

*V. S. A. Pullenayegum, Crown Counsel, for the respondent.*

*Cur. adv. vult.*

April 5, 1962. T. S. FERNANDO, J.—

In *Senadhira v. The Bribery Commissioner*<sup>1</sup> this Court upheld an argument that the power given by the Bribery Act, No. 11 of 1954, as amended by the Bribery (Amendment) Act No. 40 of 1958, to a Bribery

<sup>1</sup> (1961) 63 N. L. R. 313.

Tribunal to pass sentence on a person accused of a bribery offence is *ultra vires* the provisions of the Ceylon (Constitution) Order in Council, 1946. It was there held

- (i) that the power given to a Bribery Tribunal to sentence a person found guilty of having committed a bribery offence to a term of imprisonment or to order such a person to pay a penalty amounts to the conferring on the Tribunal of a judicial power whereas the members of such a Tribunal have not been validly appointed to exercise such powers ; and
- (ii) the provisions of the Bribery Act conferring judicial power on the Tribunals are distinct and severable from other provisions which confer other powers.

Sansoni J., with whom I agreed, in the case above referred to, was inclined to think that the essential difference between arbitral power and judicial power was that, while the function of the former was to ascertain and declare, the function of the latter was not merely to ascertain and declare but also to enforce the rights and liabilities so declared. Mr. Tiruchelvam has on this appeal sought to take the argument put forward in *Senadhira's case (supra)* even further and has contended that, rightly interpreted, a Bribery Tribunal, as constituted under the relevant law, even at the stage of ascertaining and declaring liabilities of persons charged before it, purports to exercise judicial power. It may be mentioned that in *Senadhira's case (supra)*, Mr. H. V. Perera expressly conceded that a Bribery Tribunal acts not unconstitutionally up to the point of finding a person brought before it guilty or not guilty of the specific offence alleged against him. We are free to say that we found the argument presented to us by Mr. Tiruchelvam not without attraction, but do not feel called upon to consider it here as we feel compelled to uphold the preliminary objection raised by learned Crown Counsel that it is not competent for the appellant to attack as invalid the very Act of Parliament which alone confers on him the right to appeal to this Court. Any relief on the ground of the invalidity of the Act must be found by a process other than appeal. Crown Counsel's objection finds support in the observations of the opinion of the Judicial Committee in the case of *The King-Emperor v. Benoari Lal Sarma*<sup>1</sup> and we must give way to it.

At the same time, however, we would on this appeal apply the decision of this Court in *Senadhira's case (supra)* and make order setting aside the sentence of fine of Rs. 1000 imposed on him.

H. N. G. FERNANDO, J.—I agree.

*Appeal partly allowed.*

<sup>1</sup> (1945) A. C. 14 at 20.