

CEYLON ESTATE STAFFS' UNION
v.
LAND REFORM COMMISSION

SUPREME COURT.

SHARVANANDA, C. J., ATUKORALE, J., AND H: A. G. DE SILVA, J.

S.C. No. 7/86; C.A No. 1092/83.

MARCH 30, 1987.

Certiorari—Industrial Disputes Act No. 43 of 1959 s. 4(1)—Arbitration—Award—Vesting of Estate in Land Reform Commission—Land Reform Law s. 42 (B) 5(a)—Land Reform (Special Provisions) Act No. 39 of 1981 s. 27A—Land Reform Amendment Law No. 39 of 1975 s. 42H.

One Nandasena an employee of Halpe Estate belonging to Ceylon Rubber Co. Ltd. was interdicted from his employment on 17.07.1975 on being taken into custody on an accusation of attempted murder by poisoning of the Superintendent of the Estate. He was acquitted by the High Court on 13.09.77 on withdrawal of the indictment but was not reinstated. On a reference to arbitration dated 21.01.81 under the Industrial Disputes Act No. 43 of 1959 s. 4(1) the arbitrator made award on 28.02.83 ordering reinstatement and back wages. On 17.10.75 Halpe Estate vested in the Land Reform Commission (LRC) and accordingly the rights and liabilities of the former owners passed to the LRC. By order of the President the Janatha Estates Development Board (JEDB) was established and in terms of s. 27A of the Land Reform (Special Provisions) Act No. 39 of 1981 read with s. 42 H of the Land Reform Amendment Law No. 39 of 1975 Halpe Estate was vested in the JEDB by order dated 12.03.1982. The liability of the Commission in respect of the non-employment of Nandasena devolved on the JEDB. The award of the arbitrator was against the LRC and made on 28.02.83 but on 12.03.82 Halpe Estate had vested in the JEDB. The Court of Appeal issued a writ of certiorari quashing the award against the LRC. On appeal to the Supreme Court an application to substitute the JEDB in the room of the LRC was resisted on the ground of prejudice.

Held—

- (1) Add JEDB as a party.
- (2) Justice requires that the JEDB in whom Halpe Estate is presently vested be directed to perform the obligation of the LRC towards the workman as directed by the award.
- (3) Award amended to make JEDB liable.

APPEAL from order of Court of Appeal.

Mark Fernando P.C. with N. Abdul Rahman and Miss S. Wijeyagunasekera for the respondent.

Faiz Mustapha for JEDB.

Cur. adv. vult.

May 27, 1987.

SHARVANANDA, C.J.

By application dated 7th September, 1983, the Land Reform Commission petitioned the Court of Appeal for a mandate in the nature of a Writ of Certiorari to quash the award dated 20.02.83 made by the Arbitrator, Industrial Court on a reference to him of the dispute by the Minister of Labour in terms of section 4(1) of the Industrial Disputes Act No. 43 of 1959.

By this award the Arbitrator ordered that—

- (a) the workman S. A. Nandasena, who was a member of the petitioner Union—the Ceylon Estate Staffs Union (the Petitioner before this Court)—be reinstated by the Land Reform Commission from the date of his interdiction from work, namely 17.07.75.
- (b) that the workman be paid all back wages consequent to reinstatement from date of interdiction up to 31.03.83.
- (c) that the workman should be considered as having been in service during the period of interdiction for the purpose of increment, promotion and any other statutory payment.

The workman was an employee of Halpe Estate belonging to the Ceylon Rubber Co. Ltd., in 1961 as an Assistant Factory Officer and Storekeeper. The estate was managed by George Steuart & Co. Ltd., as managing agents. The workman was taken into custody for suspected poisoning of the Estate Superintendent. He was released on bail on 16.07.75. He asked for his job back on 17.07.75, but by letter A1 he was interdicted. The workman was charged with attempted murder and acquitted by the High Court. The indictment had been withdrawn on 13.09.77 as there was no prima facie case.

In the meantime on 17.10.75 Halpe Estate had vested in the Land Reform Commission, under the Land Reform (Amendment) Law No. 39 of 1975, which provided for the vesting of estate lands owned by public companies. Then the workman demanded his job. He was not re-employed. The Ministry of Labour by reference dated 21.01.81, referred the dispute to an Arbitrator. The matter in dispute was whether the non-employment of the workman by the Management of the Halpe estate was justified; if not, to what relief the workman was

entitled. The parties to the dispute were Ceylon Estate Staffs Union (petitioner to this court) which sponsored the workman's cause on the one part and the Ceylon Rubber Co. Ltd., which owned Halpe Estate and the Land Reform Commission which was vested with the estate on the other part.

As stated earlier Halpe Estate had vested in the Land Reform Commission on 17.10.75 in terms of section 42 (B) 5(a) of the Land Reform Law No. 1 of 1972, as amended by Land Reform Amendment Law No. 39/75.

Section 42(B) 5(a) provides—

"Where any estate land is vested in the commission, the rights and liabilities of the former owner of such estate land under any contract or agreement, express or implied, which relates to the purposes of such estate land and which subsists on the day immediately prior to the date of such vesting, and the other rights and liabilities of such owner . . . shall become the rights and liabilities of the Commission: . . ."

I agree with the Court of Appeal that the section applies to rights and liabilities flowing from contracts of employment, as such rights and liabilities relate to the running of such estate land. So the rights and liabilities of the former owners, namely Ceylon Rubber Co. Ltd., vested in terms of the above section on the Land Reform Commission on 17.10.75, and the workman became an employee of the Land Reform Commission though he was under interdiction.

Thereafter the President of Sri Lanka being in charge of the subject of the State Agricultural Corporations Act No. 11 of 1972, by orders published in Government gazette extraordinary No. 77/2-80 of 25.2.80 established Corporations with the corporate name "Janatha Estates Development Board" Nos. 1-4 for the purposes set out in the First Schedule thereto.

In pursuance of the request by the Land Reform Commission, the Minister of Agricultural Development and Research in terms of section 27A of the Land Reform (Special Provisions) Act No. 39 of 1981 read with section 42H of the Land Reform Amendment Law No. 39 of 1975 vested Halpe Estate in the Janatha Estates Development Board by order notified in the Government gazette extraordinary hereinafter referred to as 'JEDB' No. 183/10 - 1982 of 12.3.82. By this order Halpe Estate became vested in the Janatha Estates Development Board (hereinafter referred to as JEDB).

Section 27A (3) of the Land Reform (Special Provisions) Act No. 39 of 1981 provides that –

“Where any agricultural land or estate land or any portion thereof is vested in a State Corporation by an order made under subsection (1) all the rights and liabilities of the Commission under any contract or agreement, express or implied, which relate to such agricultural land or estate land or portion thereof, and which subsist on the day immediately prior to the date of such vesting, shall become the rights and liabilities of such State Corporation”.

By virtue of this provision, the liability of the Commission in respect of the non-employment of the workman S. A. Nandasena devolved on the JEDB.

Upon the reference by the Minister, proceedings before the Arbitrator commenced and oral evidence of the workman was taken on 2.12.81. The JEDB was made a party to the Arbitration as *agents* of the L.R.C. and was discharged. The fact that Halpe Estate had vested in the JEDB on 12.3.82 was communicated to the Arbitrator after the proceedings, but in the course of written submissions. The Arbitrator made his award on 28.2.83. By the said award he ordered—

- (a) That the workman S. A. Nandasena be reinstated by the Land Reform Commission from the date of the interdiction from work, namely 17.7.75;
- (b) That the workman be paid all back wages from the date of interdiction up to 31.3.1983, aggregating to Rs. 45,093.75;
- (c) That the workman should be considered as having been in service during the time of interdiction;
- (d) That the sum of Rs. 45,093.75 be deposited by the Land Reform Commission with the Assistant Commissioner of Labour, Avissawella, within a week of the date of the publication of the award in the Government gazette;
- (e) Further held that the vesting of Halpe Estate in the JEDB from 12.3.82, did not govern the dispute that was referred to him.

Dissatisfied with this award of the Arbitrator, the Land Reform Commission moved the Court of Appeal for a writ of certiorari, quashing the award of the Arbitrator on the ground that the rights and liabilities of the Commission had, by Halpe Estate vesting in the JEDB devolved on the JEDB on 12.3.82.

The Court of Appeal by its order dated 22.1.85 held that the rights and liabilities of the Land Reform Commission as de facto employer had passed on to JEDB and that on the date of the award the Commission had ceased to be the employer of the workman and had been relieved of liability by operation of law. The Court held that the Arbitrator had erred in making the award against the Commission and hence it quashed the award. The basis of the judgment of the Court of Appeal was that the liability of the Land Reform Commission had, prior to the date of the award, devolved on the JEDB and that as the Land Reform Commission had ceased to be the workman's employer it could not carry out the directions contained in the award. Being aggrieved with the order of the Court of Appeal the Ceylon Estate Staffs Union has, with the leave of this court preferred this appeal.

On the submission of counsel for the Commission, it appeared to this court that the JEDB as successor of the Commission, should be added as a party and be heard as to why it should not be substituted in place of the Land Reform Commission in the award made by the arbitrator and be bound by the award. At the hearing of this appeal before this court, counsel appearing for the JEDB objected to be added as a party. He submitted that the JEDB was cited as a party in the arbitration proceedings, though only as agents of the Land Reform Commission and had quite correctly been discharged and that after the vesting of the estate, namely after 12.3.82, it had become a necessary party to the arbitration proceedings and that though it had become necessary to make it a party to the proceedings, it was not added as a party, and that in the circumstances JEDB would be prejudiced, if in this appeal it is added as a party for it to be bound by the award.

I see the force of the argument of counsel for JEDB. Ordinarily I would have upheld the objection, but since the award was made on a Labour dispute and the workman will be greatly prejudiced and grave injustice be caused to him if the award made by the Arbitrator is absolutely quashed only on the ground that the liabilities of the Land Reform Commission had passed on to the JEDB and that the latter has

not been made a party by the Arbitrator, as held by the Court of Appeal. The workman should not suffer on account of the fact that the JEDB had become vested with the ownership of the estate, subsequent to the Minister's reference to arbitration. The objection of counsel for the JEDB is a technical objection. There is no question that as at the time of the reference to the Arbitrator the Land Reform Commission was liable to the workman, for the default of its original owner. But by the time the award came to be made in 1983 the JEDB had become the owner of the estate and had succeeded to the rights and liabilities of the Commission. In terms of section 27A (3), the liabilities of the Commission became the liabilities of the JEDB. The award made by the Arbitrator related to that liability. Had JEDB been substituted in place of the Land Reform Commission in the arbitration proceedings, the Arbitrator would on the facts, have made the same award against JEDB.

In the circumstances justice requires that the JEDB in whom Halpe Estate is presently vested, should be directed to perform the obligation of the Land Reform Commission towards the workman as directed by the award. The workman should not be driven from pillar to post and post to pillar in his quest for justice especially as, had the JEDB been substituted in place of the Commission before the arbitrator, the evidence shows that he would have made the same award against the JEDB.

In the circumstances this court makes order adding JEDB a party to this appeal, as the successor, in law of the Land Reform Commission.

Counsel for the JEDB conceded that the JEDB became liable to employ the workman and pay him his wages and arrears as from the date Halpe Estate vested in the Board. He disputed the Board's liability to pay the arrears of wages prior to that date. He contended that section 27A (3) of Act No. 39 of 1981 did not make the liability of the Commission for such arrears the liability of the Board.

We do not agree with this contention. We hold that by operation of law the JEDB has succeeded to the rights and liabilities of the Commission in respect of the workman and that the liability in respect of which the award was made became the liability of the JEDB and that JEDB will have to give effect to the reliefs ordered by the award. Accordingly we substitute and add the JEDB in place of the Land

Reform Commission in the award dated 22nd February, 1983 and make order discharging the Land Reform Commission and directing the JEDB—

- (a) To reinstate S. A. Nandasena from the date of interdiction from work, 17.7.75;
- (b) To pay S. A. Nandasena all back wages from the date of interdiction up to 31.3.1983 aggregating to Rs. 45,093.75;
- (c) That S. A. Nandasena should be considered as having been in service during the period of interdiction for purposes of increments, promotions and any other statutory payments;
- (d) To pay S. A. Nandasena a further sum of Rs. 15,000 on account of all back wages from 1.4.83 to 31.5.87;
- (e) That a total sum of Rs. 60,093.75 be deposited by the JEDB with the Assistant Commissioner of Labour, Avissawella on or before 30.6.87.

We have in the interests of justice taken the unusual course of amending the award to make the JEDB liable. We formally dismiss the appeal against the Land Reform Commission without costs, subject to the variation that we make order as above against the JEDB who has been added as a party to this appeal.

ATUKORALE, J. — I agree.

H. A. G. DE SILVA, J. — I agree.

Award amended to make JEDB liable.