

**WINIFREEDA MILLS LIMITED**

v

**W. TILLEKERATNE, ARBITRATOR AND OTHERS**

COURT OF APPEAL.

SENEVIRATNE, J. AND T. D. G. DE ALWIS, J.

C.A. No. 956/82-INDUSTRIAL DISPUTE ARBITRATION No. A/1921.

OCTOBER 27, 1983.

*Certiorari – Dispute between group of workmen of a union and employer – Reference of dispute by Minister to Arbitration – Does earlier dismissal of individual applications of some workmen as they were time-barred estop arbitration? – Section 31 B(5) of Industrial Disputes Act.*

The Minister of Labour referred a dispute between a group of workmen belonging to a union and the petitioner Mills, their employer, for arbitration. The workmen had made individual applications to the Labour Tribunal for relief against the petitioner Mills but these applications had been dismissed as they were time-barred. Yet the arbitrator made an award overruling the preliminary objection that the reference to arbitration was without jurisdiction by virtue of the provisions of section 31 B (5) which laid down that where an application under sub-section (1) is entertained by a Labour Tribunal and proceedings thereon are taken and concluded, the workman to whom the application relates shall not be entitled to any other legal remedy in respect of the same matter. The petitioner made an application for a writ of certiorari to have the reference and award quashed on the grounds that they were made without or in excess of jurisdiction.

**Held –**

As the individual applications of the workmen had been dismissed on the ground that they were made out of time it cannot be said these applications had been "entertained" by the Labour Tribunal and "proceedings thereon taken and concluded". Further, the reference to arbitration was made by the Minister in the

exercise of his statutory powers under section 4 (1) of the Industrial Disputes Act and was not the result of an application by the workmen concerned. The doctrine of estoppel by *res judicata* cannot prevent the performance by the Minister of his statutory duty. Hence the reference and award were within jurisdiction.

#### Cases referred to

- (1) *Mendis v. River Valleys Development Board*, (1971) 80 C.L.W. 49.
- (2) *The Estates and Agency Company Limited v. J. S. A. Perera*, (1975) 78 NLR 289.

APPLICATION for Writ of Certiorari.

*H. L. de Silva, S. A.*, with *D. S. Wijesinghe* for petitioner.

*Mahanama de Silva* for 2nd respondent.

*Cur. adv. vult.*

March 23, 1984.

#### SENEVIRATNE, J.

On 29.9.1981 the Minister of Labour referred to arbitration by the 1st respondent a dispute between the petitioner Winifreda Mills Limited, and a group of workmen of this mill set out in the schedule to the reference.

At the hearing on 1.2.1982 the attorney-at-law for the petitioner raised a preliminary objection that the 1st respondent the Arbitrator had no jurisdiction to determine the dispute and make an award in view of section 31 B (5) of the Industrial Disputes Act. This submission was based on the fact that each of the workmen included in the schedule to the Reference had made applications to the Labour Tribunal under section 31 B (1) on the same matters in dispute and the applications had been dismissed. Section 31 B (5) on which the submission was based is as follows : -

“ Where an application under sub-section (1) is entertained by a Labour Tribunal and the proceedings thereon are taken and concluded, the workman to whom the application relates shall not be entitled to any other legal remedy in respect of the matter to which that application relates, and where he has first resorted to any other legal remedy, he shall not thereafter be entitled to the remedy under subsection (1)

The 2nd respondent union had in reply to this objection submitted that though these workmen made applications to the Labour Tribunal the applications were dismissed as they were made out of time – after the six month period. The main reason for dismissal being that the applications had been made out of time, the Labour Tribunal had no jurisdiction to "entertain" the applications. It was submitted that due to these reasons section 31 B (5) will not apply in this instance.

The Arbitrator, 1st respondent by his order dated 28.1.1982, upheld the submission made by the union, and held that he had the jurisdiction to proceed to arbitration. The Arbitrator dismissed the objection following a decision of de Krestor, J. in *Mendis v. River Valleys Development Board* (1). The present application is to quash the said order made by the Arbitrator, the 1st respondent by way of Writ of Certiorari on the ground that the said order has been made by the Arbitrator without jurisdiction and/or in excess of his jurisdiction.

Learned counsel for the petitioner urged that the applications made by the workmen to the Labour Tribunal had been in terms of section 31 B (5) "entertained" by the Labour Tribunal and "proceedings thereon taken and concluded". As such the workmen are not "entitled to any other legal remedy in respect of the matter to which that application relates". In reply the learned counsel for the 2nd respondent (union) submitted that the applications were not "entertained" by the Labour Tribunal but were dismissed *in limine*. On the objection to jurisdiction learned counsel in addition submitted that the workmen (union) had not in this instance sought "any other legal remedy" as these arbitration proceedings were not the result of an application made by the workmen (union) but was a reference to arbitration made by the Minister of Labour exercising his statutory powers under section 4 (1) of the Industrial Disputes Act. I agree with the proposition that as the applications made to the Labour Tribunal were time barred and as such were dismissed, the applications cannot be said to have been "entertained by the Labour Tribunal and proceedings thereon taken and concluded". The decision of the Supreme Court in the case – *The Estates and Agency Company Limited v. J. S. A. Perera and others* (2) applies to this application. It was decided by the Supreme Court in this case –

- (a) That the applications before the Labour Tribunal were dismissed or terminated without any adjudication on the merits, and no finality attaches to the proceedings relating to the applications made to the Labour Tribunal ;
- (b) If the Minister is satisfied of the existence of an industrial dispute, no doctrine of estoppel by *res judicata* between the parties can prevent the performance by the Minister of his statutory duty. ,

The application is dismissed with costs fixed at Rs. 500.

**T. D. G. DE. ALWIS. J.**—I agree.

*Application dismissed.*

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