

**SWASTHIKA TEXTILE INDUSTRIES LTD.,
v.
THANTRIGE DAYARATNE**

SUPREME COURT.
BANDARANAYAKE, J.,
FERNANDO, J. AND
KULATUNGA, J.
S. C. REFERENCE NO. 7/92
H. C. (W. P.) NO. 127/91
L. T. NO. 2/347/90
OCTOBER 19, 1992.

Jurisdiction of High Court of the Province to hear appeals from orders of Labour Tribunals – Section 31D (3) of the Industrial Disputes Act as amended by Act No. 32 of 1990 (s. 4) – Articles 82(6) 154P, 154P (3) (c) and 138 of the Constitution – High Court of the Provinces (Special Provisions) Act No. 19 of 1990 (s. 3).

The following questions were referred to the Supreme Court in terms of Article 125 of the Constitution.

01. Does section 3 of the High Court of the Provinces (Special Provinces) Act No. 19 of 1990 read with Article 154P of the Constitution empower the High Court established for the relevant Province under Article 154P, to hear and dispose of Appeals from the orders of the Labour Tribunals, notwithstanding the provisions of Article 138 of the Constitution?

02. Does Section 31 (D) (3) of the Industrial Disputes Act as amended by Act No. 32 of 1990, entitle a party aggrieved by an order of a Labour Tribunal to prefer an appeal to the High Court of the relevant province as established under Article 154P notwithstanding the provisions of Article 138(1).

03. Can the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 (in particular section 3 thereof), and the Industrial Disputes (amendment) Act No. 32 of 1990 (in particular section 4 thereof) be considered as provisions of Article 154P (3) (c), for the purpose of conferring upon the High Court established under Article 154P jurisdiction to hear and dispose of appeals preferred from orders of Labour Tribunals?

04. Could the Supreme Court and/or the High Court make order in terms of Article 82 (6) of the Constitution that the provisions of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 (and/or section 3 thereof) and the Industrial Disputes (Amendment) Act No. 32 of 1990 (and/or section 4 thereof) do not have the force and effect of superseding and nullifying the provisions of Article 138(1) of the Constitution?

Held :

1. Section 3 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 read with Articles 111, 138 and 154P (3) (c) conferred concurrent appellate and revisionary jurisdiction on the High Court in respect of orders of Labour Tribunals; and Section 31D (3) of the Industrial Disputes Act as amended by Act No. 32 of 1990, made that jurisdiction exclusive (thereby taking away the jurisdiction of the Court of Appeal in that respect). Those provisions were enacted in the exercise of the powers conferred by the Constitution and were not in any way an amendment of the Constitution, and the question of compliance with Article 82 did not arise nor were they inconsistent with the Constitution, and the question of compliance with Article 84 did not arise. There being no inconsistency between the provisions of those amending Acts and the Constitution, those provisions cannot, by any process of interpretation be treated as inoperative or ineffective. In so far as the validity of those provisions is concerned, Article 80 (3) precludes the Supreme Court from inquiring into, pronouncing upon or in any manner calling in question, the validity of these provisions.

The questions referred are answered as follows :-

1. Yes.
2. Yes.

3. No. Those enactments are not " provisions of Article 154P (3) (c) " but have been enacted in pursuance, inter alia, of powers conferred by that Article.
4. Does not arise, as those provisions are authorised by, and are not inconsistent with the Constitution.

Reference to the Supreme Court under Article 125 (1) of the Constitution.

S. Somasundaram with A. M. Somapala and D. G. Karunasena for applicant-respondent.

S. Egalhewa for employer – appellant.

K. C. Kamalabayason, D. S. G., for the Attorney-General.

cur. adv. vult.

October 27, 1992.

FERNANDO, J.

Being dissatisfied with an order of the Labour Tribunal, the Employer–Appellant filed an appeal on 1.8.91, to the High Court of the Western Province, purportedly under section 31D (3) of the Industrial Disputes Act as amended by Act No. 32 of 1990. Under and in terms of Article 125 of the Constitution, the High Court of the Western Province referred the following questions which arose in that Court in the course of the proceedings in respect of that appeal :

1. Does section 3 Of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, read with Article 154P of the Constitution empower the High Court established for the relevant province under Article 154P, to hear and dispose of Appeals from the orders of the Labour Tribunals, notwithstanding the provisions of Article 138 of the Constitution.
2. Does section 31D (3) of the Industrial Disputes Act, as amended by Act No. 32 of 1990, entitle a party aggrieved by an order of a Labour Tribunal to prefer an appeal to the High Court of the relevant province as established under Article 154P, notwithstanding the provisions of Article 138 (1).
3. Can the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 (in particular section 3 thereof), and the

Industrial Disputes (Amendment) Act, No. 32 of 1990 (in particular section 4 thereof), be considered as provisions of Article 154P (3) (c), for the purpose of conferring upon the High Court established under Article 154P jurisdiction to hear and dispose of appeals preferred from orders of Labour Tribunals.

4. Could the Supreme Court and/or the High Court make order in terms of Article 82(6) of the Constitution that the provisions of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 (and/or section 3 thereof) and the Industrial Disputes (Amendment) Act, No. 32 of 1990 (and/or section 4 thereof) do not have the force and effect of superseding and nullifying the provisions of Article 138 (1) of the Constitution.

Article 154P (3) of the Constitution provides :

- (3) Every such High Court shall –
 - (a) exercise according to law, the original criminal jurisdiction of the High Court of Sri Lanka in respect of offences committed within the Province ;
 - (b) notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province ;
 - (c) exercise such other jurisdiction and powers as Parliament may, by law provide.

Learned Counsel for the Applicant-Respondent, who had taken the objection that the High Court had no jurisdiction, submitted to us that Article 154P (3) neither conferred, nor authorised Parliament by an ordinary law to confer, on the High Court appellate jurisdiction in respect of Labour Tribunals; that Article 154P (3) (c) empowered Parliament to confer " other jurisdictions ", meaning thereby jurisdictions other than the " original criminal jurisdiction (referred to in Article 154P (3)) and the " appellate and revisionary jurisdiction " (referred to in Article 154P (3) ; that if by the Thirteenth Amendment it was intended to empower Parliament to confer appellate and revisionary jurisdiction in respect of Labour Tribunal's, Article 154P (3) (c) would

have included a reference to " other *appellate and revisionary* jurisdiction ; that appellate jurisdiction in respect of Labour Tribunals was vested in the Court of Appeal under Article 138 (1) and Article 154P (3) (c) did not authorise Parliament to take away a jurisdiction constitutionally vested in the Court of Appeal and to vest it in the High Court, otherwise than by a constitutional amendment or an Act passed with a special majority ; that by virtue of Article 82 (6), Article 138 (1) should not be deemed to have been repealed or amended by Act No. 19 of 1990 or Act No. 32 of 1990 ; and therefore that the High Court of the Western Province did not have jurisdiction.

In dealing with *The Agrarian Services (Amendment) Bill* (Supreme Court S.D. Nos. 2/91 and 4/91 ; determined on 7.2.91) this Court referred to important principles governing the jurisdiction of courts and tribunals exercising the judicial power of the people, and the interpretation of Article 154P (3);

1. Apart from jurisdictions constitutionally vested and entrenched, directly or indirectly, Parliament may, by ordinary legislation, abolish, alter or transfer jurisdictions ; Parliament may create a new jurisdiction or transfer an existing jurisdiction, so long as such jurisdiction is vested in a person or body constitutionally entitled to exercise the judicial power of the people ;
2. The appellate and revisionary jurisdiction of the Court of Appeal under Article 138 (1) is not entrenched, as it is " subject to the provisions of the Constitution or of any law " ; it may therefore be abolished, amended or transferred. By contrast, its jurisdictions under Articles 140 and 141 are entrenched ; but for the proviso inserted by the First Amendment, its jurisdiction under Article 140 cannot be transferred even to the Supreme Court ;
3. The jurisdiction of the High Court under Article 111, originally and after the Thirteenth Amendment, was neither defined nor entrenched and had to be conferred by Parliament, by ordinary law. Article 154P (3) (b) conferred jurisdiction on the High Court " notwithstanding anything in Article 138 ", thus avoiding any possibility of an argument that these provisions were contradictory, and manifesting an intention to confer a concurrent jurisdiction. That jurisdiction was also " subject to any law ", and therefore (as in the case of Article 138) was not entrenched, and was liable to alteration by Parliament by ordinary law.

4. Article 111(1) and 138 enabled Parliament by ordinary law, to transfer an existing jurisdiction of the Court of Appeal under Article 138, to the High Court. Accordingly, there is no justification for adopting a restrictive interpretation of Article 154P (3) (c), inconsistent with those provisions – as, for instance, by requiring a law passed by a special majority ; its plain meaning and effect is to empower Parliament to confer any " other " jurisdiction on the High Court, i.e. in addition to the "original criminal jurisdiction ", and the " appellate and revisionary jurisdiction in respect of convictions, (etc.) by Magistrates Courts and Primary Courts "; " appellate and revisionary jurisdiction in respect of orders made by Labour Tribunals " is " other " jurisdiction.

It is therefore beyond argument that section 3 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990, read with Articles 111, 138 and 154P (3) (c), conferred concurrent appellate and revisionary jurisdiction on the High Court in respect of orders of Labour Tribunals ; and section 31D (3) of the Industrial Disputes Act, as amended by Act No. 32 of 1990, made that jurisdiction exclusive (thereby taking away the jurisdiction of the Court of Appeal in that respect). Those provisions were enacted in the exercise of the powers conferred by the Constitution, and were not in any way an amendment of the Constitution, and the question of compliance with Article 82 did not arise ; nor were they inconsistent with the Constitution, and the question of compliance with Article 84 did not arise. There being no inconsistency between the provisions of those amending Acts, and the Constitution, those provisions cannot, by any process of interpretation, be treated as inoperative or ineffective. Insofar as the *validity* of those provisions is concerned, Article 80 (3) precludes this Court from inquiring into, pronouncing upon, or in any manner calling in question, the validity of those provisions.

The questions referred have therefore to be answered as follows:

1. Yes.
2. yes.
3. No. Those enactments are not " provisions of Article 154P (3) (c) ", but have been enacted in pursuance, *inter alia*, of powers conferred by that Article.
4. Does not arise, as those provisions are authorised by, and are not inconsistent with, the Constitution.

The Employer–Appellant will be entitled to costs, payable by the Applicant–Respondent, in a sum of Rs. 500/-.

BANDARANAYAKE, J. – I agree.

KULATUNGA, J.

I have perused in draft the determination of my brother Fernando J. on the questions referred to this Court by the High Court of the Western Province. I am substantially in agreement with the answers to those questions formulated by my brother. I would, however, prefer to base the answers entirely on Article 80 (3) of the Constitution which reads :

" Where a bill becomes law upon the certificate of the President or the Speaker, as the case may be, being endorsed thereon, no Court or tribunal shall inquire into, pronounce upon or in any manner call in question, the validity of such Act on any ground whatsoever "

On the face of Section 3 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 and Article 31D (3) of the Industrial disputes Act as amended by Act No. 32 of 1990, the High Court established for any Province has the jurisdiction to hear and determine appeals from the orders of Labour Tribunals within the Province, which jurisdiction is now made exclusive (thereby taking away the jurisdiction of the Court of Appeal in that respect). In view of Article 80(3) " no Court or tribunal shall inquire into, pronounce upon or in any manner call in question " the validity of the said enactments. Hence the jurisdiction of the High Court and the right of the employer–appellant to review the order appealed from cannot be questioned.

In these proceedings, the applicant–respondent is in effect invoking our constitutional jurisdiction under Article 120 of the Constitution which he may have invoked in terms of Article 121 and the Supreme Court Rules before the enactments under reference became law. This he cannot do. I would, therefore, answer the questions referred to this Court as follows :

1. Yes.
2. Yes.
3. No. Those enactments are not " provisions of Article 154P (3) (c) ", but have been enacted by Parliament and confer juris

diction on the High Court of the Province to hear and determine appeals from an order of a Labour Tribunal.

4. Does not arise.

Questions referred

answered
