

[PRIVY COUNCIL]

1969 Present: Lord Hodson, Lord Guest, Lord Pearce,
Lord Pearson, Lord Diplock

R. RATNAGOPAL, Appellant, and THE ATTORNEY-
GENERAL, Respondent

PRIVY COUNCIL APPEAL NO. 30 OF 1968

APN/GEN/2 of 1968—*In the matter of a Rule under Section
47 of the Courts Ordinance*

Commission of Inquiry—Scope of inquiry—Requirement that it should be limited by the Governor-General and not be left to be decided by the Commissioner—Power of Commission to summon a person residing in Ceylon—Meaning of expression “residing in Ceylon”—A witness’s refusal to be sworn or to answer a question—Contempt of Court—Irrelevancy of allegation of bias or interest on the part of the Commissioner—Commissions of Inquiry Act (Cap. 393), ss. 2 (1), 7, 10, 11, 12—Courts Ordinance, s. 47.

The appellant was convicted of contempt of Court for refusing to be sworn when he was summoned to give evidence at a meeting of a Commission appointed under the Commissions of Inquiry Act. The terms of the warrant of appointment issued to the Commissioner were that he should inquire into and report on abuses in connection with certain tenders made to or contracts entered into by contractors between 1st June 1957 and 31st July 1965. The scope of the inquiry was left entirely to the Commissioner’s discretion. Under the terms of the warrant the Commissioner was entrusted with deciding what tenders and what contracts required to be inquired into.

Held, that, inasmuch as the scope of the inquiry was not limited by the Governor-General and was to be decided by the Commissioner, the appointment of the Commissioner in terms of the warrant was *ultra vires* and invalid having regard to the powers of the Governor-General under section 2 of the Commissions of Inquiry Act. It followed that the conviction of the appellant for contempt of Court should be set aside.

Obiter: (i) No intention of permanently residing in Ceylon is necessary in order that a person may be liable to be summoned under section 7 of the Commissions of Inquiry Act to give evidence at a meeting of a Commission.

(ii) A person who refuses to be sworn under the power given to the Commissioner by section 7 (b) of the Commissions of Inquiry Act is guilty under section 12 (1) (b) of the offence of contempt of Court, whether or not he has reasonable cause to refuse to take part in the proceedings on the ground of the Commissioner’s bias or interest. If such refusal be considered as a refusal to answer a question, this refusal too may well not be justified by an allegation of bias or interest on the part of the Commissioner.

APPPEAL, by special leave, from a judgment of the Supreme Court reported in (1968) 70 N. L. R. 409.

Sir Dingle Foot, Q.C., with *E. Cotron*, for the appellant. [In the application for special leave to appeal :—*Sir Dingle Foot, Q.C.*, with *Hamavi Haniffa* and *R. R. Nalliah*, for the appellant.]

E. F. N. Gratiaen, Q.C., with *M. P. Solomon* and *H. L. de Silva*, for the respondent.

Cur. adv. vult.

June 30, 1969. [Delivered by LORD GUEST]—

This is an appeal by special leave against a conviction for contempt of Court by a judgment of the Supreme Court of Ceylon, whereby the appellant was fined 1,000 rupees or in default was sentenced to one month's imprisonment.

The matter arises out of a warrant published in the Ceylon Government Gazette of 22nd October 1965 whereby Mr. E. G. Wikramanayake, Q.C., was appointed Commissioner under section 2 of the Commissions of Inquiry Act (Cap. 393) to inquire into and report on abuses in connection with certain tenders made to or contracts entered into by contractors between 1st June 1957 and 31st July 1965.

Section 2 (1) of the Commissions of Inquiry Act is in the following terms :

- “(1) Whenever it appears to the Governor-General to be necessary that an inquiry should be held and information obtained as to—
- (a) the administration of any department of Government or of any public or local authority or institution ; or
 - (b) the conduct of any member of the public service ; or
 - (c) any matter in respect of which an inquiry will in his opinion, be in the interests of the public safety or welfare,

the Governor-General may, by warrant under the Public Seal of the Island, appoint a Commission of Inquiry consisting of one or more members to inquire into and report upon such administration, conduct or matter.”

The warrant was addressed by the Governor-General to the Commissioner and appointed him for the purpose of—

- “(1) Inquiring into, and reporting on, whether, during the period commencing on the first day of June 1957, and ending on the thirty-first day of July 1965, all or any of the following acts or things, hereafter referred to as ‘abuses’, occurred, directly or indirectly, in relation to, or in connection with, all such tenders (including quotations or other offers by whatsoever

name or description called) made by persons or bodies of persons (other than any local authority or Government department), hereafter referred to as 'contractors', for the performance of contracts for the construction of buildings or any other works (including contracts for the supply of services or equipment in connection with such first-mentioned contracts), by whatsoever name or designation called, for or on behalf of any Government department, and all such contracts of the description hereinbefore referred to given to contractors, whether in consequence of the making of tenders or otherwise, as you the said Commissioner may in your absolute discretion deem to be, by reason of their implications, financial or otherwise, to or on the Government, of sufficient importance in the public welfare to warrant such inquiry and report (hereafter referred to as 'relevant tenders' and 'relevant contracts', respectively : "

There followed an enumeration in very general terms of "relevant tenders" and "relevant contracts".

Paragraph 2 (so far as relevant) continues as follows :

"(2) making such recommendations as you the said Commissioner deem necessary as a result of the inquiry to prevent the recurrence of such abuses in the future, and, in particular, with regard to the law, practice and procedure relating to the custody, receipt, scrutiny or disposal of tenders for the performance of contracts with Government departments, the giving or performance of such contracts, and the supervision of the performance of such contracts : "

Following upon this there are two paragraphs in the following terms :

"And I do hereby direct you, the said Commissioner, to recommend to me the action that should be taken against the persons, if any, whom you have found to be guilty of any such abuses :

And I do hereby authorise and appoint you, the said Commissioner, to hold all such inquiries and make all such investigations into the aforesaid and other like matters as may appear to you to be necessary, and require you to transmit to me, with as little delay as possible, a report thereon under your hands : "

By section 7 of the Commissions of Inquiry Act the Commissioner has power *inter alia* to require the evidence of any witness to be given on oath or affirmation and—

"to summon any person residing in Ceylon to attend any meeting of the commission to give evidence."

By section 10 it is provided—

"Every offence of contempt committed against or in disrespect of the authority of a commission appointed under this Act shall be punishable by the Supreme Court or any Judge thereof under

Section 47 of the Courts Ordinance as though it were an offence of contempt committed against or in disrespect of the authority of that court."

Section 11 contains provision regarding service of summonses.

Section 12 provides—

"(1) If any person upon whom a summons is served under this Act—

(a) fails without cause, which in the opinion of the commission is reasonable, to appear before the commission at the time and place mentioned in the summons; or

(b) refuses to be sworn or, having been duly sworn, refuses or fails without cause, which in the opinion of the commission is reasonable, to answer any question put to him touching the matters directed to be inquired into by the commission;

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such person shall be guilty of the offence of contempt against or in disrespect of the authority of the commission."

Subsection 2 of section 12 is in the following terms :

"(2) Where a commission determines that a person has committed any offence of contempt (referred to in subsection (1)) against or in disrespect of its authority, the commission may cause its secretary to transmit to the Supreme Court a certificate setting out such determination; every such certificate shall be signed by the chairman of the commission, or where the commission consists of only one person by that person.

(3) In any proceedings for the punishment of an offence of contempt which the Supreme Court may think fit to take cognizance of as provided in section 10, any documents purporting to be a certificate signed and transmitted to the court under subsection (2) shall—

(a) be received in evidence, and be deemed to be such a certificate without further proof unless the contrary is proved; and

(b) be conclusive evidence that the determination set out in the certificate was made by the commission and of the facts stated in the determination."

By section 47 of the Courts Ordinance it is provided that the Supreme Court has power to take cognizance of and try in a summary manner any offence of contempt committed against or in disrespect of the authority of itself or any other Court.

The Commissioner commenced the inquiry proceedings on 2nd September 1967. After a number of witnesses had given evidence on oath, the appellant after being duly summoned to attend as a witness appeared at the proceedings on 8th January 1968. Before the proceedings commenced the appellant placed before the Commissioner an affidavit in which he alleged that he had no confidence in the Commissioner because the Commissioner was associated either as a shareholder or a director in a number of companies with which the company (in which the appellant's wife was the chief shareholder and of which he (the appellant) was Overseas Representative) would be in business competition. The appellant also stated that he was not residing in Ceylon having surrendered his passport and become registered as a British citizen. After making certain observations regarding the allegations contained in the appellant's affidavit the Commissioner directed the appellant to be sworn or take an affirmation. The appellant then said that he would not proceed further with the proceedings. He was again called upon by the Commissioner to take the oath or affirmation and to testify. The appellant again declined.

On 16th January 1968 the Commissioner issued a certificate in terms of section 12 (2) of the Commissions of Inquiry Act in which the Commissioner after narrating the facts as above stated :

“When directed to be sworn or affirmed, he refused to proceed any further and refused either to be sworn or to give evidence. In doing so, he has been guilty in my view of contempt of this Commission.”

The matter then proceeded by means of a Rule under Section 47 of the Courts Ordinance directing the appellant to show cause.

The judgment of the Supreme Court was given on 9th April 1968 and the relevant order was issued on 15th April 1968 in which it was adjudged that the appellant was guilty of the offence of contempt committed against and in respect of the Commissioner.

Three points were taken by the appellant before their Lordships. A point regarding service of the summons was excluded when special leave to appeal was granted. It was argued, firstly, that the appointment of the Commissioner was *ultra vires* of the Act ; secondly, that the appellant was not residing in Ceylon at the relevant time and that the Commissioner accordingly had no jurisdiction to summon him to attend as a witness, and thirdly, that the appellant had reasonable cause to refuse to give evidence on the ground that the Commissioner in view of his conflict of interest might be biased against the appellant.

The main question which arises accordingly is whether the appointment of the Commissioner in terms of the warrant was *ultra vires* and invalid having regard to the powers of the Governor-General under section 2 of the Commissions of Inquiry Act. Under that section he is empowered

if it appears to him to be necessary that an inquiry should be held and information obtained as to any matter in respect of which an inquiry would in his opinion be in the interests of the public safety or welfare to appoint a Commission of Inquiry to inquire into and report upon the matter. When the appointment of the Commissioner is examined it will be found that the scope of the inquiry is left entirely to the Commissioner's discretion. In effect he is empowered to inquire into whether during the period in question any abuses occurred in relation to such tenders and such contracts as the Commissioner should in his absolute discretion deem to be by reason of their implications financial or otherwise on the Government of sufficient importance in the public welfare to warrant an inquiry and report. Under the terms of the warrant the Commissioner is being entrusted with deciding what tenders and what contracts require to be inquired into. Under section 2 of the Act the matter to be inquired into must be one in respect of which an inquiry will "in the opinion of the Governor-General" be in the interests of the public welfare. Under the warrant the Commissioner is given the power of selecting the matters which he will inquire into and report upon whereas the selection is by the Act imposed on the Governor-General. The scope of the inquiry instead of being limited by the Governor-General, as in terms of the Act it should be, is to be decided by the Commissioner. Thus the power of selection is by the Gazette delegated to the Commissioner. On behalf of the respondent it was submitted that in the nature of such an inquiry into a great number of different transactions there must in the necessity of things be a roving inquiry by the Commissioner at the initial stage in order to decide which matters require investigation and report and that it would be impracticable to remit all the contracts and all the tenders to the Commissioner at the outset. It was suggested that when the Commissioner had made this preliminary investigation it might be open to the Governor-General to appoint the same or another Commissioner to inquire into specified matters. This argument is reflected in the point taken by the Chief Justice in his judgment where he suggested that if the terms of reference had been drafted in such a form that the inquiry was to be into all tenders and contracts and if the Commissioner reported that he had inquired into certain selected matters the report would not be rendered invalid because the Commissioner had decided not to report in the certain other matters. But the answer to this point is that the Commission did not take this form and that the validity of the appointment of the Commissioner cannot be tested by the result of the inquiry. It may be that another form of reference might by different means have achieved the same end. But their Lordships' attention must be confined to the terms of the actual warrant of appointment.

The importance of construing section 2 of the Commissions of Inquiry Act quite strictly is illustrated when section 12 (1) (b) is considered. In that section the safeguard provided to a witness against being required to answer irrelevant questions is to be tested by whether the question touches the matter directed to be inquired into by the Commissioner. If the

ambit of the inquiry is not limited to any particular matter but is at large, then there would be no limit to the questions which a witness might be obliged to answer.

Their Lordships have reached the conclusion that for these reasons the appointment of the Commissioner was *ultra vires* of the Act and cannot stand. It follows that the conviction for contempt by the Supreme Court must be set aside.

Such a decision renders unnecessary an examination of the remaining points taken by the appellant, but as they were forcefully argued their Lordships propose quite shortly to state their views.

The appellant argued that as he was not "residing in Ceylon" on the relevant date he was not amenable to the jurisdiction of the Commissioner under section 7 of the Act. The Supreme Court have carefully examined the facts in relation to the appellant's visits to Ceylon and their Lordships agree with the view of the Supreme Court that no intention of permanently residing in Ceylon is necessary in order that the appellant may fall within the terms of the section. They do not propose to elaborate further on the necessary requirements of residence. There was clearly material in the facts as narrated by the Supreme Court upon which they could hold that the appellant was residing in Ceylon at the relevant time. If the point had been alive, their Lordships do not consider that any reasons had been shown why they should interfere with the Supreme Court's judgment.

The last matter related to the allegation of bias or interest made against the Commissioner. This arose in relation to the appellant's refusal to be sworn under the power given to the Commissioner by section 7 (b) of the Act. The appellant submitted that he had reasonable cause to refuse to take part in the proceedings on the ground of the Commissioner's interest and possible bias and he was therefore not guilty of contempt of Court. As can be seen from the certificate by the Commissioner which by section 12 (3) (b) of the Act is conclusive evidence of the facts therein stated, his refusal was to being sworn. The offence in relation to such a refusal is under section 12 (1) (b) absolute. No question of reasonable cause arises in regard to this refusal. If however the refusal be considered as a refusal to answer a question, this refusal to answer a question may well not be justified by an allegation of bias or interest on the part of the Commissioner. It is the Commissioner's duty to require a witness to answer a question touching the matter directed to be inquired into by the Commissioner. Whether his refusal is without reasonable cause relates to the form of the question. It is unlikely that the section would impose on the Commissioner the duty of deciding whether he is a suitable person to require the witness to answer a question. He is appointed as Commissioner by the Governor-General and his authority to require a witness to answer a question derives from section 12. But quite apart from these technical considerations their Lordships agree with the views

expressed by the Supreme Court that the allegations of bias and interest are vague and unsubstantial and quite insufficient to justify the appellant's refusal to take part in the proceedings. If therefore this latter point had been open their Lordships would have agreed with the judgment of the Supreme Court.

Their Lordships will therefore humbly advise Her Majesty that the appeal should be allowed and that the Decree of the Supreme Court by which the appellant was adjudged guilty of contempt and was punished accordingly should be set aside. There will be no order as to the costs of the appeal.

Appeal allowed.
