

THE CEYLON PETROLEUM CORPORATION
v.
WEERAKOON AND ANOTHER

SUPREME COURT.

G. P. S. DE SILVA, C.J.

KULATUNGA, J. AND

RAMANATHAN, J.

S.C. NO. 21/95

APRIL 28, AND JUNE 30, 1995.

Industrial Dispute – Is special security force classifiable under Security Service Trade? – Wages Board Ordinance Section 6(1).

The Special Security Force (3rd to 38th respondents) was established for the purpose of providing security, *inter alia*, for the installations of the Corporation of Sapugaskanda. The special security force was qualitatively different from the normal security service trade contemplated by the Order made under section 6(1) of the Wages Board Ordinance and had been established for a particular task or assignment, namely, to meet a national emergency and to provide protection against terrorist attacks.

APPEAL from judgment of the Court of Appeal.

L. C. Seneviratne, P.C. with Percy Wickramasekera, S. Jayasinghe and H. V. Situge for the petitioner-appellant.

R. Weerakoon for the 2nd to 5th respondents.

P. A. Ratnayake, S.S.C. for the Commissioner of Labour.

Cur adv vult.

July 27, 1995.

G. P. S. DE SILVA, C.J.

There was a dispute between the appellant (petitioner), the Ceylon Petroleum Corporation, (hereinafter called the Corporation) and the members of the Special Security Force (3rd to the 38th respondents) established for the purpose of providing security, *inter alia*, for the installations of the Corporation at Sapugaskanda. The dispute related to a claim for the payment of overtime made by the members of the Special Security Force. The Commissioner of Labour intervened to settle the dispute but ultimately the Corporation was called upon by the Commissioner of Labour to pay the members of the Special Security Force their claim for overtime. Thereupon the Corporation moved the Court of Appeal by way of an application for a writ of certiorari to quash the orders (P7 and P21) of the Commissioner of Labour requiring the Corporation to pay the aforesaid claim for overtime.

The Court of Appeal dismissed the application for a writ of certiorari; hence the appeal against the judgment of the Court of Appeal by the Corporation to this Court.

Special Leave to appeal to this Court was granted on the following matters:

- (1) Is the Special Security Force a trade or business covered by the Wages Boards Ordinance? ;
- (2) In as much as the Special Security Force was constituted for a particular task or assignment, can the said Special Security Force be regarded as a trade or business as envisaged by the Wages Boards Ordinance?

It is common ground that by an order made under section 6(1) of the Wages Boards Ordinance (and duly gazetted) the provisions of Part II of the Wages Boards Ordinance have been made applicable to the **Security Service Trade**. This order was made on 26.10.82 and published in gazette extraordinary No. 216/13 of 29.10.1982. It came into force on 15.11.1982. The question then is whether the Special Security Force established at Sapugaskanda in or about March 1986 falls within the meaning of the expression "Security Service Trade" in the Order made under section 6(1) of the Wages Boards Ordinance. If it does, then the application for the Writ of Certiorari necessarily fails.

Mr. Seneviratne for the Corporation submitted that in deciding this question, the purpose for which the Special Security Force was established is a relevant consideration. Paragraph 26 of the petition filed in the Court of Appeal sets out the true reason for establishing the Special Security Force. It reads thus:—

"26. The petitioner states that the special security unit was in fact established as a para-military force in view of the serious threats from terrorists attacks on vital government installations. Most of the personnel selected had a service or police background and were given initial training by the Army Commando Regiment and at the Army Training Centre at Ratmalana, for a period of 1 1/2 months. The personnel of the said security force were armed with UZI automatic pistols and strike guns. They were also provided with 2 jeeps and radio communication. Further, as in normal para-military service, they had to reside within the installation complex and were not entitled to overtime payments. Bachelor status, living accommodation and facilities for cooking with cooks which are not available to the normal security service were also provided for this special security unit. They were on the other hand, paid a higher emolument than employees in the normal security service and were also paid a risk allowance. The petitioner

states that all these factors are characteristic of a Special Security Force being a para-military service."

It would thus appear that the special security service was not intended merely to provide the normal security service; rather it was established to meet a national emergency that had arisen at that time, namely, to provide a special form of protection against terrorist attacks. As submitted by Mr. Seneviratne, the personnel recruited to this unit had a "service" or "police" background and had undergone a special course of training. The officer in charge of the unit held the office of Major in the Army. The document R3 produced with the statement of objections filed in the Court of Appeal is entitled "The contingency plan for the refinery in the event of terrorist attack..." It seems to me that R3 supports the argument of Mr. Seneviratne that the objective of the unit was to meet a "national exigency."

It is also to be noted that it was on special terms and conditions that the respondents were recruited to this security unit. Paragraph 9 of the petition (filed in the Court of Appeal) refers to the terms and conditions: "... (a) to be on call duty for 24 hours; (b) not entitled to overtime payment; (c) to be resident throughout within the security complex; (d) entitled to be paid a sum equivalent to 50% of their salary; (e) entitled to a risk allowance of Rs. 250/- and (f) a meal allowance of Rs. 400/- which was subsequently increased to Rs. 500/-."

On the other hand, Mr. Weerakoon for the respondents strenuously contended before us that despite the special terms and conditions and the rigour and "intensity" of the training given to the recruits, the Special Security Force remained a "security service trade" within the meaning of the Order made under section 6(1) of the Wages Boards Ordinance. Counsel also referred us to the wide terms in which the expression "trade" is defined in section 64 of the Wages Boards Ordinance.

On a consideration of the rival contentions advanced on behalf of the Corporation and the respondents it seems to me that the Special Security Force established in 1986 is qualitatively different from the normal security service trade contemplated by the Order made in 1982 under section 6(1) of the Wages Boards Ordinance. In my view, the Court of Appeal in dismissing the application for a Writ of Certiorari has erred, in as much as the Court has failed to consider sufficiently the totality of the facts namely the basic objective in establishing the Special Security Force, the special terms and conditions on which persons were taken into the new unit, and the character of the training given. These facts have a direct bearing on the essential character of the security service trade established in 1986.

It is true that the expression "trade" has been defined in wide terms to include, *inter alia*, any occupation or calling performed by a worker. But the true question is whether the security force at Sapugaskanda was an occupation or a calling covered by the "Security Service Trade" specified in the Order made under Section 6(1) of the Ordinance noting that, the expression "Security Service" itself has not been defined.

The lawfulness of establishing the security force to meet a "national exigency" has not been challenged. The only dispute is whether the said force is covered by the Minister's Order; if so, whether the provisions of part II of the Ordinance which include the requirement to pay overtime apply. The said provisions empower a Wages Board to determine hours of work, a normal working day, intervals for meals and rest, weekly and annual holidays, overtime, and different rates of wages in a trade etc. If these provisions had to be applied to the appellant, then, the security force at Sapugaskanda could not have been lawfully established. This would confirm the view that the Order relied upon by the 3rd to 38th respondents has no application to the said security force.

I accordingly allow the appeal, set aside the judgment of the Court of Appeal and direct that an order in the nature of a writ of certiorari do issue to quash P7 and P21. In all the circumstances, I make no order as to costs. ...

KULATUNGA, J. – I agree.

RAMANATHAN, J. – I agree.

Appeal allowed.