1969 *Present :* H. N. G. Fernando, C.J., and Weeramantry, J.

THE COCONUT RESEARCH BOARD, Petitioner, *and* N. R. SUBRAMANIAM *et al.*, Respondents

S. C. 85/68—Application No. L. T. 8/16766

Industrial Disputes Act—Section 49—Coconut Research Board—Incapacity of the Board to claim Crown privilege in an industrial dispute—Corporations depending on and controlled by the Government—Whether they can claim to be servants or agents of the Crown—Interpretation Ordinance, s. 3—Coconut Research Ordinance (Cap. 440) s. 4 (7).

The Coconut Research Board, which is a body corporate established and incorporated under the provisions of the Coconut Research Ordinance, does not perform functions and duties which have traditionally been performed by the Crown or the Government. Therefore the Board is not entitled to invoke the provisions of section 49 of the Industrial Disputes Act, in order to claim as against its employees the privileges available to the Crown in respect of Crown employees.

A Corporation, such as the Coconut Research Board, depending on and controlled by the Government, may nevertheless be the employer of persons in its services within the meaning of the definition of "employer" in the Industrial Disputes Act. In such a case, such Governmental control does not bring the Corporation within the scope of the exemption provided by section 49 of the Industrial Disputes Act.

APPEAL from an order of a Labour Tribunal.

Walter Jayawardena, Q.C., with *Lakshman Kadirgamar* and *V. Kandasamy*, for the petitioner.

N. Satyendra, for the 2nd respondent.

H. L. de Silva, Crown Counsel, for the Attorney-General, on notice.

Cur. adv. vult.

June 23, 1969. WEERAMANTRY, J.—

In this application the petitioner contests the right of the second respondent, one of its employees, to invoke the provisions of the Industrial Disputes Act. It is the petitioner's contention that it performs functions and duties which have traditionally been performed by the Crown or the Government and that it is therefore entitled to claim as against its employees the privileges available to the Crown in respect of Crown employees.

The petitioner is a body corporate established and incorporated under the provisions of the Coconut Research Ordinance (Cap. 440) for the purpose of establishing and maintaining a coconut research institute and otherwise managing, conducting and furthering scientific research in

respect of coconuts and problems connected with the coconut industry. In particular the Board is concerned with the growth and cultivation of coconut palms, the prevention and cure of diseases and pests and the utilisation and marketing of the products of the coconut palm.

Though dependent on Government funds, the Board has full power and authority generally to govern, direct and decide on all matters connected with the appointment of its officers and servants, the administration of its affairs and the accomplishment of its objects and purposes [1]. There is also express provision in the Ordinance that any such officers or servants when appointed shall for the purposes of discipline and otherwise be subject to the control and supervision of the Chairman of the Board [2].

Dependence on the Crown for funds does not of course have the effect, by itself, of making a Corporation a Government institution or a Government undertaking [3] nor does Government control necessarily render a Corporation a servant or agent of the Crown [4]. Furthermore, as this Court recently decided in *Air Ceylon Ltd. v. Rasanayagam* [5], provisions in an Act creating a corporation which show Governmental contributions of capital, Governmental control of appointments and Governmental rights to the surplus remaining out of nett receipts does not have the effect that in law the Crown or the Government is the employer of persons employed on the staff of such Corporations.

Having regard to these principles Mr. Jayawardena for the petitioner rightly stated that he was not submitting that his client was a servant or an agent of the Crown, and conceded that the second respondent employee was an employee of the petitioner and not of the Government. His position however was that his client performed functions and duties traditionally performed by the Crown or the Government and as such was *in consimili casu* with a servant or agent of the Crown and entitled to claim the privileges of Crown servants or agents.

Reliance was placed, in support of this contention on the *Mersey Docks Case* [6] where Blackburn, J. recognised that a Corporation not subject to control by the Crown or by a Minister and whose revenues were not Crown revenues, could claim Crown privilege on the ground that it was performing a public duty. Blackburn J. observed:[7] "In these latter cases it is difficult to maintain that the occupants are, strictly speaking, servants of the Sovereign so as to make the occupation that of her Majesty; but the purposes are all public purposes, of that kind which, by the constitution of

[1] *Section 4 (7).* [2] *Section 4, proviso.*

[3] *Ceylon Tea Propaganda Board v. Commissioner of Inland Revenue (1963) 67 N. L. R. 1.*

[4] *Ceylon Bank Employees' Union v. Yatawara (1962) 64 N. L. R. 49.*

[5] *(1968) 71 N. L. R. 271.*

[6] *Mersey Docks and Harbour Board Trust v. Cameron (1865) 11 H. L. C. 443.*

[7] *ibid at p. 501-2.*

this country, fall within the province of Government and are committed to the Sovereign, so that the occupiers, though not perhaps strictly servants of the Sovereign might be considered *in consimili casu.*"

No detailed inquiries are necessary for an appreciation of the manifest distinction between the cases of the Mersey Docks and Harbour Board Trustees and the Coconut Research Board, for applying the tests formulated in that judgment itself, the functions performed by the former were public purposes which by the constitution of Great Britain fell within the province of Government and were committed to the Sovereign. On the other hand the functions performed by the Coconut Research Board cannot be said to be of a kind which by the constitution of this country fall within the province of Government and are committed to the Crown. The constitution of this country is written and neither under the constitution nor under any of the other laws of this country can any provision be pointed out which makes coconut research a function or duty of the Government or commits such matters to the Crown.

Mr. Jayawardena contended that agriculture has traditionally been a Governmental function and duty in this country, and that scientific research pertaining to a major crop is likewise a Governmental function or duty. There is no material before us on which we can arrive at the conclusion that " the management conduct and furthering of scientific research in respect of coconuts and problems connected with the coconut industry " (to borrow the words of the Statute itself) has traditionally been a function of the Government of this country. The Coconut Research Ordinance goes as far back as the year 1928 and we are unable to say that the functions for which the Board was set up had been traditionally performed by the Government prior to this date. Even if we were in a position to arrive at this conclusion, the tests set out in the *Mersey Docks* case would still remain unsatisfied, for this function could not under our laws be described as one committed to the Government.

It is of importance also to note that what was contemplated in the *Mersey Docks* case was not the question of the employer-employee relationship but the question of Crown privilege in regard to liability to rates of premises occupied by such an agency for the purposes of the Government.

Learned Crown Counsel appearing as *amicus curiae* referred us to a number of cases in which Crown privilege was successfully claimed by statutory bodies which, though not strictly servants of the Crown, were considered as being *in consimili casu.* All these cases likewise turned out to be cases of a claim of privilege vis-a-vis the State or the public, as for example in matters of taxation, rating and patent rights. We have not been referred to any decision dealing with a claim of privilege in regard to the employer-employee relationship subsisting between such Boards and their employees.

It is hence unnecessary to refer in detail to the various cases cited or to the tests therein propounded for determining the question whether such an agency may claim Crown privilege. We may however make reference to the case of *Pfizer Corporation v. Ministry of Health*[1] where it was held that the supply of drugs to National Health Service Hospitals for administration to out-patients and in-patients was a use for the services of the Crown and was accordingly within the authority conferred by section 46 (1) of the Patents Act of 1949 granted to a Government Department to use and exercise a patented invention for the services of the Crown. The speeches in this case are of interest for the observations they contain in relation to the changed nature of " Services of the Crown " in the present age. Lord Reid observed[2] that " although in Victorian times the armed services—the Navy and the Army—the Civil Service, the foreign colonial and consular services, the Post Office and perhaps some others comprise the services of the Crown ", today there are many newer services, such as hospital service, which are nevertheless services of the Crown. So also Lord Evershed pointed out[3] that there is not and cannot be in this day and age a true antithesis between the services of the Crown in the sense of services related to the functions of Government as such and services of the Crown in the sense of the provision of facilities commanded and defined by Act of Parliament for the general public benefit. "

This view still does not avail the applicant in the present case, for the Hospital Boards and Committees which administered these hospitals were manifestly discharging duties laid upon the Minister by statute. The National Health Services Act of 1946 placed upon the Minister, in specific terms, a statutory obligation to promote the establishment of a comprehensive health service designed to secure improvement in the physical and mental health of the people, and the Boards and Committees were discharging these duties committed by statute to the Minister. No such statute placed upon any section or Department of the Government of this country at any time the specific function of conducting scientific research in respect of coconuts, and government did not therefore stand charged or committed with such a duty.

Section 49 of the Industrial Disputes Act provides that nothing in the Act shall apply to or in relation to the Crown or the Government in its capacity as employer or to or in relation to a workman in the employment of the Crown or the Government. In *Air Ceylon Ltd. v. Rasanayagam*[4] this Court has already held that a Corporation depending on and controlled by the Government was nevertheless the employer of persons in its services within the meaning of the definition of " employer " in the Industrial Disputes Act and that such Governmental control did not bring such a corporation within the scope of the exemption provided by section 49. Mr. Jayawardena has failed to satisfy us that there is any distinction between the corporation there under consideration and the Coconut

[1] *(1965) A. C. 512 (H. L.)*
[2] *ibid at p. 533.*
[3] *ibid at p. 543.*
[4] *Supra.*

Research Board, and the cases to which we have been referred only serve to confirm this court in the view taken in that case. Moreover we see no merit in the contention that this view in any manner affects the rights of the Crown which are protected by section 3 of the Interpretation Ordinance, for what we are here considering are admittedly not the rights of the Crown or of a Crown agent or servant.

For these reasons we are of the view that the contention that Crown privilege may be claimed by the Coconut Research Board as a Crown agent must fail, and that the Board would be amenable to the jurisdiction of a Labour Tribunal in terms of the Industrial Disputes Act.

Another ground of attack upon the order of the Tribunal was that the application by the second respondent was out of time. This ground was not however pressed by Mr. Jayawardena as it rested on a very technical view of the nature of the amendment to the original application.

For the reasons set out the petition fails and is dismissed with costs payable to the second respondent which we fix at Rs. 315.

H. N. G. FERNANDO, C.J.—I agree.

Application dismissed.