

1970 Present : H. N. G. Fernando, C.J., and Sirimane, J.

THE PORT CARGO CORPORATION, Appellant, and MESSRS
MOHAMED THAMBY & SON, Respondents

S. C. 101/66 (F)—D. C. Colombo, 1041/Spl.

Port (Cargo) Corporation Act No. 13 of 1958, as amended by Act No. 67 of 1961—Sections 26 (1), 39, 40, 47, 55, 56, 57, 57A, 58, 58A, 59, 60, 62A, 62B—Gratuities payable by a port entrepreneur of the Port of Colombo after deducting compensation payable to him—Admission by the entrepreneur of the correctness of the sum payable by him to the Port (Cargo) Corporation—Procedure for recovery of the sum—Co-operative Societies Ordinance—Estate Duty Ordinance (Cap. 241), s. 57—Income Tax Ordinance (Cap. 242), ss. 84, 85—Constitutional law—Power of Parliament to create a liability retrospectively.

In April 1963 the Port (Cargo) Corporation filed in the District Court a Certificate in which the Chairman of the Board of Directors of the Corporation certified in terms of section 62A of the Port (Cargo) Corporation Act No. 13 of 1958, as amended by Act No. 67 of 1961, that a sum of Rs. 90,003 was due from the respondent Firm to the persons who became employees of the Port (Cargo) Corporation and who were formerly employed by the said Firm at the time when the services performed by the Firm ceased by virtue of the provisions of section 26 (1) of the Port (Cargo) Corporation Act. With this Certificate the Corporation also filed a petition moving the Court to issue writ of execution against the respondent in terms of section 62B of the Act for the recovery of the sum of Rs. 90,003 specified in the Certificate.

Objections to the Certificate were raised by the respondent, and the application for writ of execution was refused by the District Court on the main ground that, although Act No. 67 of 1961 which amended section 55 of the principal Act imposed on an entrepreneur a new and additional liability retrospectively in respect of payment of gratuities to employees whose services had terminated on 1st August 1958, the Legislature had not in any express provision of the amending Act clearly stated its intention to impose such retrospective liability.

Held, that since the Certificate issued by the Chairman of the Board of Directors under section 62A of the Port (Cargo) Corporation Act was in fact valid on its face, the Judge was bound to perform the ministerial act, under section 62B, of directing a writ of execution to issue. It was not open to the District Court to consider the objections which were raised by the respondent. The sum of Rs. 90,003 was admitted by the Firm to be due from it as gratuities to the employees after deducting the amount of its own entitlement to compensation. The provisions, therefore, of section 47 (1) (a) (ii) were applicable, and the Corporation was bound by the Statute to recover the sum. The procedure for recovery of the money in the present case was fairly comparable with the procedure for recovery of Estate Duty or Income Tax by application to a District Court.

Held further, that Act No. 67 of 1961 which amended section 55 of the Port (Cargo) Corporation Act so as to impose an additional liability retrospectively on Port entrepreneurs was valid. The Legislature has power to create a retrospective liability, provided that its intention to do so is clearly expressed in the relevant legislation.

APPEAL from a judgment of the District Court, Colombo.

H. W. Jayewardene, Q.C., with *B. J. Fernando* and *Paul Perera*, for the petitioner-appellant.

C. Ranganathan, Q.C., with *K. Nadarajah* and *K. Kanagaratnam*, for the respondent-respondent.

Cur. adv. vult.

November 7, 1970. H. N. G. FERNANDO, C.J.—

The Port Cargo Corporation Act No. 13 of 1958 provided by Section 26 (1) that the Minister shall by Order declare that on and after the date specified in the Order certain Port Services shall be provided in the Port of Colombo exclusively by the Port Cargo Corporation. The Order thus contemplated was made to take effect from 1st August 1958. A consequence of the Order was that as from 1st August 1958 all Port Entrepreneurs ceased to have the right to carry on undertakings in the Port of Colombo for providing Port services. Subsequent Sections in the Act provided for the vesting in or requisitioning by the Corporation of property of former Port entrepreneurs and ss. 39 and 40 provided for the payment by the Corporation of compensation for such property.

Sections 55 to 57 of the Act relate to persons who had formerly been employees of a Port Entrepreneur. The effect of sub-section (2) of Section 55 was that if a person had been employed by a Port entrepreneur at any time during the period commencing on 20th December 1950 and ending on 1st August 1958, the employer shall pay a gratuity in respect of the employee's service calculated at the rate specified in the sub-section. If after 1st August 1958 any such employee became an employee of the Corporation, then the gratuity due to him was to be paid to the Corporation; and if not, the gratuity was to be paid to the employee himself.

Similarly if a former employee of an entrepreneur had been a contributor to a Provident Fund and the employee became employed by the Corporation, then s. 56 required the Administrators of the Fund to transfer to the Corporation the amount which was to the credit of the employee in that Fund.

Section 57 provided that any sum due from an entrepreneur to a former employee under a collective agreement, shall if the employee became an employee of the Corporation be paid to the Corporation.

Section 47 of the Act of 1958 provided that where an entrepreneur is entitled to compensation from the Corporation, the Board of Directors shall pay from the amount of such compensation *inter alia* "(a) any

sum certified by a Labour Tribunal constituted under this Act to the Chairman of the Board of Directors to be due from such person under section 55, section 56, or section 57."

The provision in s. 47, to which reference had just been made, was intended to enable the Corporation to recover the sums which, by reason of ss. 55, 56 and 57 became payable to the Corporation by an entrepreneur to or in respect of the latter's former employees. But it was apparently realized that that provision was defective in many ways; for instance, it necessitated a Certificate from a Labour Tribunal as to the sums due to the Corporation on this account from an entrepreneur, but the Act (in s. 60) only authorised the Labour Tribunal to consider such matters in the event of a *dispute* between the Corporation and an entrepreneur as to the amount due. Thus there was no power for the Corporation in s. 47 to make a deduction under that section except in cases where the liability of an entrepreneur to make payments to the Corporation under ss. 55 or 56 or 57 became the subject of a dispute. Another defect or omission in the original provision in s. 47 was that if the amount of the compensation due from the Corporation to an entrepreneur was less than the amounts payable to the Corporation by the entrepreneur under ss. 55, 56 and 57, there was no special provision in the Act giving to the Corporation a means of recovering the deficit.

The Act No. 67 of 1961 amended the Act of 1958 in a manner clearly designed to remedy these and other defects in the original Act. Section 47 was amended by substituting, for the former paragraph (a) (reproduced above), a much more comprehensive provision. Under s. 47 as thus amended the Board of Directors were required to pay from the compensation due to any person " (a) any sum—

- (i) which is certified in writing by a Labour Tribunal constituted under this Act to the Chairman of the Board of Directors to be due from such person under section 55, section 56, or section 57; or
- (ii) which is admitted by such person to be due from him under section 55, section 56, or section 57, and is certified in writing by the Chairman of the Board of Directors to that Board to have been admitted by such person to be so due to an employee of the Corporation, or is certified in writing by the Commissioner of Labour to the Chairman of the Board of Directors to have been admitted by such person to be so due to anyone who is not an employee of the Corporation; or
- (iii) which is neither admitted nor denied by such persons to be due from him under s. 55, s. 56 or s. 57, and is certified in writing by the Chairman of the Board of Directors to that Board to have been neither so admitted nor so denied by such person and to be so due from such person to any employee of the Corporation, or

is certified in writing by the Commissioner of Labour to the Chairman of the Board of Directors to have been neither so admitted nor so denied by such person and to be due from such person to anyone who is not an employee of the Corporation ; ”

A new section 62A was also introduced in the following terms :—

“ 62A. Where the compensation to which a person is entitled in respect of any property vested in or requisitioned for the Corporation is inadequate to pay the whole or any part of any sum payable out of that compensation under section 47 (1) (a), then, if that sum is due to an employee of the Corporation, the Chairman of the Board of Directors, or, if that sum is due to anyone who is not an employee of the Corporation, the Commissioner of Labour, shall certify in writing the amount due from that person which cannot be paid out of that compensation.”

Thus the Legislature provided that when in any case the compensation due to an entrepreneur under the Act was insufficient to enable the Corporation to pay out the sums specified in s. 47, the amount could be recovered from the entrepreneur under the authority of a certificate issued by the Chairman of the Board of Directors ; and a new section 62B provided that upon the production of this certificate before a District Court “ the Court shall direct a writ of execution to the Fiscal ” for the seizure and sale of property necessary for the recovery of the sum in deficit.

I should also refer at this stage to another new section introduced by the Act of 1961. The new s. 58A required every entrepreneur of the Port of Colombo to furnish to the Corporation a statement specifying the name of every person in respect of whom the entrepreneur is liable to make a payment under s. 55 or s. 57, and also the amount of such payment and the details of the mode of computation of that amount. Section 58A also required the Administrators of Provident Funds to which former employees had been contributing, to furnish similar statements regarding the names of the former contributors and the amount and mode of computation of payments due to such contributors.

There was yet another amendment effected in 1961 which is of importance in the present case. The original s. 55 of the Act had provided that the gratuities payable by an entrepreneur in respect of the services of his former employees should be calculated at the rate of one-half of one month's salary for every 12 months of employment. It was apparently thought or realized that under the original section no gratuity will be payable in respect of any part a period of employment falling short of a complete year. The mode of calculation set out in the original s. 55 was amended in 1961 so that the sum payable as a gratuity in respect of an employee's former service shall be calculated “ at the rate of one-half of one month's salary for every 12 months and one and one-fourth days wages for every complete month in every period of service.”

Prior to the enactment of the amending Act, the Corporation had called for reports from entrepreneurs setting out particulars of the names of employees and of payments due to them whether in respect of gratuities as provided in s. 55 or in respect of amounts due to them on account of their contributions to former provident funds. In the present case, the Respondent Firm, which had previously carried on business of a Port entrepreneur, had with the document A3 of 1st April 1959 furnished a statement, a summary of which is stated in A3 (2). According to this summary, the Respondent Firm stated that the amount of the gratuities due to its ex-employees taken over by the Port Cargo Corporation was Rs. 147,875.52. A3 itself stated that the aggregate amount of gratuities due from the Firm was Rs. 91,961.72, and it is common ground now that this sum of Rs. 91,9621.72 was the amount payable as gratuities by the Respondent Firm in terms of the original s. 55 of the Act, that is to say, in respect of the services of past employees for all complete periods of 12 months. It is also common ground that this figure was properly reached by the deduction from the sum of Rs. 147,875.52 of a sum of Rs. 55,913.80 which had apparently (according to A3 (2)) been the employers' former contributions to Provident Funds.

I have referred already to the amendment of s. 55 in 1961 which increased the amount of gratuities by requiring periods of less than a year to be taken into account in the computation of gratuities. The amendments of 1961 became effective on December 7, 1961, when assent was given to the amending Act. Thereafter, the Respondent Firm furnished the documents A7 and A7 (1), the former being a summary of the latter. These documents were presumably furnished in terms of the new section 57A which required the Respondent Firm to furnish a statement of the names of its former employees and the total amount of the gratuities payable in terms of s. 57 (a) as amended. According to the summary the gratuities in respect of seven categories of employees was stated to be Rs. 185,004.25. In addition the last two pages of the statement A7 show gratuities due to two other categories of employees, i.e., Labour Supervisors and Office Clerks. The total stated by the Respondent Firm in the documents as being due is thus Rs. 189,234.86.

On 28th September 1962, the Corporation wrote to the Respondent the letter AS setting out what was according to the Corporation the present position "with reference to the payment of additional gratuity on the statement supplied by you". In this letter the Corporation first gave credit to the Respondent for Rs. 34,244 as amount of the compensation award and for Rs. 55,853 as the amount of the Respondent Firm's contribution to the Provident Fund. (It will be seen that the figure in AS in respect of contributions to the Provident Fund differs only minutely from the corresponding amount which the respondent had claimed in the statement A3 (2).)

In A8, the Corporation claimed, on account of gratuities due to the Firm's employees, a sum of Rs. 189,100; after giving credit for the two amounts referred to in the preceding paragraph, the Corporation demanded from the Respondent a sum of Rs. 90,003.

In April 1963, the Corporation filed in the District Court a Certificate in the following terms:—

“ I, Vidane'age Samson Manuel de Mel, Chairman of the Board of Directors of the Port (Cargo) Corporation do hereby certify in terms of Section 62A of the Port (Cargo) Corporation Act, No. 13 of 1958, as amended by the Port (Cargo) Corporation Amendment Act, No. 67 of 1961, that a sum of *Rupees Ninety Thousand and Three* (Rs. 90,003) is due from the Respondent Firm to the persons who became employees of the Port (Cargo) Corporation and who were formerly employed by the said Firm M. Mohamed Thamby & Son, when the services performed by the said Firm ceased by virtue of the provisions of Section 26 (1) of the Port (Cargo) Corporation Act.”

With this certificate the Corporation also filed a petition moving the Court to issue writ of execution against the Respondent in terms of s. 62B of the Act for the recovery of the sum of Rs. 90,003 specified by the Certificate.

On this motion the learned District Judge ordered the petitioner to support the motion on 23.5.63. On that day Counsel for the petitioner informed the Court that notice had been given in writing to the Respondent Firm of the filing of the Certificate, but upon the order of the Judge, Counsel agreed that notice be served on all the members of the Firm. Thereafter proxy was filed on behalf of all the members and also their objections. The learned District Judge then proceeded to hold an inquiry into those objections.

At a later stage of the inquiry the objections were formulated in the form of issues as follows:—

“ 1. Do the provisions of Port (Cargo) Corporation Amendment Act No. 67 of 1961 apply in respect of any gratuity payable in respect of the relevant period commencing 20th December 1950 and ending 31st July 1958.

2. Are the provisions of s. 62A and 62B of the Act No. 67 of 1961 applicable to gratuities if any payable in respect of the said period.

3. Does the certificate marked A conform to the provisions of s. 62A of the Act No. 67 of 1961.

4. Does the certificate marked A or the production thereof to this Court entitle the petitioner to any one or more of the reliefs claimed by the petitioner.

5. (a) Is the Chairman empowered by section 62A(a) to issue one certificate in respect of the aggregate amount due as gratuity to a number of employees.

(b) to issue a certificate in respect of the gratuity referred to in paragraph 7 and/or 8 of the petition.

6. Is the petitioner entitled to apply for one writ for the recovery of the aggregate amount aforesaid.

7. If one or more of the issues 1 to 6 are answered in the negative—

(a) is the certificate marked A invalid and of no force or avail in law.

(b) can the petitioner have and maintain this application or action.

8. Is the plaintiff's action prescribed.

9. (a) At the time of the issue of the certificate marked A, has the full amount of the gratuities been paid to the employees.

(b) If so, can the petitioner have and maintain this application or action.

10. Did the petitioner reduce or agree to reduce by way of relief the gratuity alleged to be payable by the respondent by a sum of Rs. 34,948.

11. What sum is due to the petitioner upon the sum of Rs. 43,244 as interest under the provisions of the Act No. 13 of 1958.

12. Is the certificate marked A invalid, void and of no force or effect in law, in that the amount in the said certificate has been computed without giving credit to the defendants or taking into account the said sum of Rs. 34,948 and the interest aforesaid.

In connection with issue No. 2, it was contended for the respondent that the amendment of s. 55 which was effected by the amending Act of 1961 created a new and additional liability: whereas the original s. 55 provided only for the payment of a gratuity in respect of an employee's past services calculated at the rate of 15 days wages for every completed 12 months service, the amendment of 1961 provided additionally for the payment of a gratuity in respect of each additional complete month in the period of service. It was further contended that in this way the amending Act created in 1961 a new liability in respect of employees whose services had terminated on 1st August 1958; that, although the new liability was retrospective, the Legislature had not in any express provision of the amending Act clearly stated its intention to impose such retrospective liability.

The learned District Judge agreed with this contention of the respondent firm, and this was the principal ground upon which he rejected the petitioner's application for execution. Since however there had been full arguments on the other objections taken by the respondent, the learned Judge also briefly expressed his views on those objections and held that they were not maintainable.

In appeal, Counsel for the Corporation has argued that under the procedure contemplated in ss. 62A and 62B, the District Court had no jurisdiction to consider any of the objections which were formulated on behalf of the respondents. Counsel conceded that when an application is made to a Court for execution in terms of a provision like s. 62A the Court may consider whether the certificate upon which the application is based is valid on its face in the sense that it is issued by an authority competent to issue it and that it specifies that a sum is due from the person named in it. Counsel was also willing to concede that since sub-section (2) of s. 62B requires notice to be given to the person concerned of the issue of the certificate, it was open to the District Judge to hear the respondents on the question whether a certificate under s. 62A was valid on its face. Counsel's principal argument was that since the certificate in this case was in fact valid on its face, and since the Judge did not find in the certificate any invalidity of this nature, he was bound to perform the ministerial act under s. 62B of directing a writ of execution to issue.

Counsel for the respondents relied on the majority decision in *Randahamy v. Senanayake*¹, which approved the decision in *Jayasinghe v. Boragodawatta Co-operative Stores*².

It is sufficient for present purposes to cite the relevant statement of Gratiaen J. in the latter case which was approved by the majority decision in the former :—

“ The principle involved is one of substance and not merely of form. Justice requires that a party who invokes the aid of a Court to obtain the enforcement of an extra-judicial decision purporting to grant him relief against someone else should proceed in two stages : (1) he must in the first instance place sufficient material before the Court to establish that the decision in question had been validly made by a person vested with jurisdiction over the dispute ; and (2) it is only after he has obtained judicial recognition of the extra-judicial decision that he may proceed to take steps to have it carried into execution. It would be quite improper for the Court to grant final recognition to an extra-judicial decision without giving the party alleged to be affected by it an opportunity of challenging its validity.”

¹ (1960) 62 N. L. R. 313.

² (1955) 56 N. L. R. 462.

It will be seen that in the instant case the last of the pre-requisites formulated by Gratiaen J. was clearly satisfied in that the respondent firm did have an opportunity to challenge the validity of the certificate. The further question is whether and to what extent the dictum of Gratiaen J. is applicable to a consideration by the District Court of the validity of a certificate purporting to have been issued under such a provision as s. 62A of the Port Cargo Corporation Act. I think it proper to take into account in this connection the respective contexts: the one, in which an award is made under the Co-operative Societies Ordinance, and the other, in which a certificate is issued under s. 62A of the Port Cargo Corporation Act.

The dictum cited above from *Jayasinghe's case* indicates that an arbitrator's award is one made upon a dispute, and it is obvious that such an award is a nullity if it was made by a person "not vested with jurisdiction over the dispute". In fact Gratiaen J. himself, in the earlier case of *W. Barnes de Silva v. Galkissa Wattarappola Co-operative Stores Society*¹ stated his opinion more fully when he said that "it is the clear duty of a Court of law whose machinery as a Court of execution is invoked to satisfy itself, before allowing writ to issue, that the purported decision or award is prima facie a valid decision or award made by a person duly authorised under the Ordinance to determine a dispute which has properly arisen for the decision of an extra-judicial tribunal under the Ordinance."

I myself entirely agree that the prima facie validity of an award made under the Co-operative Societies Ordinance is not established, unless the award has been made by a person properly constituted the arbitrator in a dispute, and unless the nature and character of the dispute, and the parties to a dispute, are such that it was properly referable to arbitration in terms of the Ordinance. If these conditions are not satisfied, the award is a nullity for the reason that the arbitrator had no jurisdiction to make the award. In the context therefore of the Co-operative Societies Ordinance, the question whether an award has prima facie validity depends on the existence of facts which are not apparent on the face of the award and the presence of which have to be prima facie established to the satisfaction to the Court of execution.

Let me now examine the circumstances in which a certificate is issued under the new Section 62A of the Port Cargo Corporation Act. When a former employer is liable under any of the provisions of ss. 55, 56 and 57 to pay any sum to the Corporation in respect of past employees, s. 47 provides that such sums shall be paid out from the compensation to which the former employer is entitled. But this payment is only made upon the authority of a certificate issued under one of the three sub-paragraphs of s. 47 (1) (a).

¹ (1953) 54. N. L. R. 326.

A certificate under the 1st of the sub-paragraphs is one issued by a Labour Tribunal. The circumstances in which such a certificate will be issued by a Labour Tribunal could perhaps have been set out in the amending Act in clearer terms. Nevertheless, the object of s. 59 (as amended in 1961) was that if a claim to a payment due under ss. 55, 56 or 57 is made by the Corporation to a former port employer, the employer has the right to refer the claim to a Labour Tribunal; and the Tribunal would then, if it upholds fully or partly the Corporation's claim, issue the certificate which is referred to in the 1st paragraph of s. 47 (1) (a). In the instant case the Corporation made a claim of Rs. 90,003 in the letter A8 of 28th September 1962. The respondent firm, if desirous of contesting that claim, could have referred that claim to the Labour Tribunal. Since however no such reference was made, there was no scope in this case for the application of the first sub-paragraph of s. 47 (1) (a).

In fact there was issued in this case a Certificate (A2) of 2nd January 1963 which is referable to the second sub-paragraph of s. 47 (1) (a). In this certificate, the Chairman of the Board of Directors of the Corporation certified to the Board of Directors that the respondent firm had admitted this amount to be due. It has been shown earlier in this judgment that the sum of Rs. 189,100 specified in the Corporation's "claim" (A8) was based on computations stated and summarised in the statements A7 and A7 (1), which were furnished by the respondent firm, and that the deduction from this amount which was allowed to the firm on account of its former contributions to a provident fund was also based on the statement A3 which had been furnished by the firm on 1st April 1959. After the claim A8 was made by the Corporation in September 1962, and until March 1963, the firm neither referred the claim to a Labour Tribunal nor denied in any way the correctness of that claim. In these circumstances the Chairman in my opinion correctly certified to the Board by A2 that the firm had admitted liability in respect of its employees of the amount of Rs. 189,000 odd reduced by the total of its former contributions to the provident fund.

Let me refer also to the third sub-paragraph of s. 47 (1) (a), in order to complete my examination of the "scheme" in the Act. Under this sub-paragraph the certificate of the Chairman may state that an amount is neither admitted nor denied to be due. The sub-paragraph provides for an eventuality different from the two eventualities contemplated in the two earlier sub-paragraphs. If for instance the Corporation makes to an employer a claim which is not based on the employer's own computation, and if the employer does not refer that claim to a Labour Tribunal, and if furthermore the firm does not make to the Corporation a denial of liability, the case would appear to be one in which the liability is neither admitted nor denied. If so, the Legislature contemplated the issue of a certificate under the third sub-paragraph.

Upon the issue in this case of the Chairman's Certificate A2 to the Board of Directors, the substantive provision of s. 47 became operative, namely that the Corporation *became bound* to pay out the sums so certified as being due to employees of the Corporation, and (in terms of s. 58 of the Act) to credit the payment to the individual accounts of the respective employees. Thus although the liability of a former employer under ss. 55, 56 and 57 is to make certain payments *to the Corporation*, and although in appearance the Chairman issued a Certificate as to a payment due to the Corporation itself, yet in fact the Corporation was merely an agent required by the Statute to receive these payments for the benefit of its employees. I must repeat that the Corporation was bound by the Statute to recover these payments. If then the compensation to the credit of the Respondent Firm had sufficed to defray the certified liability, the Corporation was perfectly entitled in terms of the Act to apply that compensation in the payment of the firm's liability; and in the circumstances of the instant case, I much doubt whether the Respondent Firm could have had any legitimate complaint if the amount to its credit had been exhausted by a recovery in terms of the Certificate. Thus the only reason why it was necessary for the Corporation to resort to s. 62A was because the firm's liability exceeded the amount of the compensation to which the firm was entitled. In the result, the Certificate issued under s. 62A that a sum of Rs. 90,000 was due, was a mere arithmetical computation of the difference between the firm's liability (which I have shown was admitted) and the amount of its own entitlement to compensation, which latter has never been disputed. In these circumstances, one can easily understand why the Legislature clearly expressed in s. 62B its intention that on production of the Certificate, a District Court "shall direct a writ of execution".

In my opinion the provisions of ss. 62A and 62B of the Act are fairly comparable with other statutory provisions which have in recent years been the subject of decisions in our Courts, namely s. 57 of the Estate Duty Ordinance (Cap. 241), and ss. 84 and 85 of the Income Tax Ordinance (Cap. 242).

In *Ranaweera v. Commissioner of Inland Revenue*¹ it was held that when a Certificate of collection to recover Estate duty is issued by the Commissioner of Inland Revenue in terms of s. 57 of the Estate Duty Ordinance, it is incumbent on a District Court to issue a writ of execution; and it was pointed out that in such a case the Court has no duty to satisfy itself whether the application for execution is in conformity with the Rules of the Civil Procedure Code covering applications for execution.

¹ (1965) 67 N. L. R. 131.

In a case between the same parties reported in 70 N. L. R. p. 564, a Certificate for the recovery of Income Tax had been issued to the District Court under s. 84 of the Income Tax Ordinance. One point which was raised was that the Commissioner had not in his Certificate repeated the words of the section, that recovery by other means was impracticable or inexpedient. The Court however held that such a statement was unnecessary. Both these decisions proceeded on the basis that in ordering execution upon a Certificate for the collection of Estate Duty or Income Tax, a District Court acts only ministerially and not judicially. The same principle was recognized in 70 N. L. R. p. 294, although in that case it was pointed out that if the Court stays execution after writ was issued, then the Court does act judicially.

I am unable to agree with the contention of Counsel for the Respondent Firm that there is any valid distinction between the procedure for recovery provided in ss. 62A and 62B of the Port Cargo Corporation Act, and the procedure for the recovery of Estate Duty or Income Tax by application to a District Court. The issue of a Certificate under s. 62A is not preceded by anything which can be properly called a decision in a dispute between the Corporation and an employer. Save in a case in which a claim by the Corporation is actually challenged by reference to a Labour Tribunal, the Certificate issued is for the recovery of an undisputed liability, and in the instant case the amount of the liability was computed by the employer himself. If the employer thought fit to challenge even his own computation, then it was open to him to refer the Corporation's claim to a Labour Tribunal. The Act having properly provided a means of redress to an employer who disputes the Corporation's claim, the Act then adopts a Certificate procedure for the recovery of amounts which are either undisputed or which are certified by the appropriate Tribunal.

For these reasons I hold that it was not open to the District Court to consider the objections to the Certificate which were raised in this case.

Although the conclusion just stated is decisive, I will, out of deference to the learned District Judge and to learned Counsel who appeared for the Respondent Firm, briefly discuss some of the objections taken by the Respondent.

Section 55 of the Port Corporation Act, as originally enacted, imposed in May 1958 a liability on employers in the Port of Colombo to pay gratuities to their employees in respect of periods of employment which commenced long before 1958 and which were due to terminate after May 1958. The section as amended in 1961 imposed an additional liability to pay a further gratuity in respect of some months in the same periods, which periods had terminated before 1961. Let me now assume

that the learned District Judge correctly decided that the additional liability was retrospectively imposed. Since the power of Parliament to create a retrospective liability is not and cannot be denied, the only question is whether the intention to create such a liability was clearly expressed in the relevant legislation.

At the time when the Amending Act of 1961 was enacted, an Order under s. 26 of the principal Act had already been made (effective on 5th August 1958) by reason of which former port entrepreneurs had become disentitled to carry on undertakings in the Port of Colombo; and by that time also, the former employees of such entrepreneurs had ceased to be their employees. The additional liability was imposed in 1961 by an amendment of the original s. 55, which in terms (cf. sub-section (1)) applied only to employees in the Port of Colombo. The additional liability itself was to pay gratuities in respect of some months in periods of employment which had terminated long before 1961. Hence *the sole effect* of the amendment of s. 55 was to require the payment of additional gratuities—

- (a) *only by* former entrepreneurs in the Port of Colombo;
- (b) *only to* their former employees; and
- (c) *only in respect of* former periods of employment.

I cannot imagine any terms in which Parliament could have expressed more clearly an intention to impose a retrospective liability.

There was also a submission that ss. 62A and 62B are not applicable for the recovery of the amounts due as gratuities *under the original* s. 55, on the ground that the remedy provided in these two sections is not available to the Corporation. This submission is founded on an argument that Parliament has not clearly expressed its intention that the two new sections can be utilised by the Corporation to recover the amounts of gratuities due under the original s. 55.

I have already pointed out that the original expectation of Parliament in enacting s. 47 was that the amount of compensation due to a port entrepreneur would suffice to enable the Corporation to pay therefrom the amount of gratuities to employees due from the entrepreneur. But s. 62A in terms establishes a design of Parliament to provide for a case in which the compensation due to an employer "is inadequate to pay a sum payable out of the compensation under s. 47 (1) (a)". Even after the amendments of 1961, the major part of the sum payable under s. 47 (1) (a) is attributable to the liability to pay gratuities which was imposed in the original s. 55 of the Act.

Parliament has explicitly stated in s. 62A that the Certificate procedure will be available to the Corporation for the recovery of sums payable in terms of s. 47 (1) (a), which clearly provided, both before and after its amendment, that the sums due as gratuities under the original s. 55 of the Act had to be paid under s. 47 (1) (a). Parliament has thus manifested its intention that the Certificate procedure is applicable for, and only for, the recovery of sums payable under s. 47. If ss. 62A and 62B are retrospective, in that they provide a new remedy for the recovery of a past liability, Parliament has clearly manifested the intention that the new remedy is retrospective.

The two submissions which have now been rejected were in substance arguments that the relevant enactments of Parliament are meaningless and futile. It will perhaps assist Counsel to know that the Courts will presume that enactments of Parliament are both meaningful and purposeful, unless the contrary is clearly established.

I need refer only to one other matter. It appears that at some stage the Cabinet had decided that some part of the liability of former Port Entrepreneurs to pay gratuities to their former employees would, as a concession to these Entrepreneurs, be borne by the Government. Accordingly, the Respondent Firm had in its statement A7 claimed a deduction from its liability on this basis, and the Corporation in its claim A8 of September 1962, had allowed for that deduction in demanding immediate payment of its claim. Had the Respondent complied with that demand for payment on the reduced basis, the matter would no doubt have ended there. But since such payment was not in fact made, it became necessary for the Corporation to set in motion *the statutory procedure* for the recovery of what was *statutorily due* from the Respondent Firm to its former employees. The statutory procedure necessitated the issue by the Chairman of the Certificate A2 of the amount due under the Statute, and the subsequent Certificate under s. 62A had necessarily to be issued for the recovery of the difference between the amount certified in A2 and the amount due as compensation to the Respondent Firm.

The submission of Counsel in this connection was that the Certificate issued under s. 62A is invalid, for the reason that the Certificate should have taken into account the Cabinet decision that the Government will bear a part of the liability of the Respondent Firm. There *may have been* substance in this submission, if, before the issue of the Certificate, Parliament had passed a resolution to assume or under-write a part of the statutory liability of the Respondent Firm. Evidence of such a resolution of Parliament could easily have been available. In the absence of any such evidence, the statutory liability of the Respondent Firm remained intact, and the Corporation was in my opinion bound to issue the Certificate actually issued under s. 62A of the Act.

For these reasons, I would allow the Corporation's appeal. The District Judge will order writ of execution to issue against the Respondent Firm in terms of s. 62B of the Act. The Respondents will pay to the Corporation the costs in both Courts.

SURIMANE, J.—I agree.

Appeal allowed.

