

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for Leave to Appeal from the Order of the learned High Court Judge Avissawella dated 1st September 2010 under and in terms of the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006.

International Water Management Institute,
No. 127, Sunil Mawatha,
Pelawatta,
Battaramulla.

Respondent-Petitioner-Appellant

SC Appeal No. 11/2011

SC HC (CA) LA No. 323/10

HC Avissawella No. 120/2010 (Revision)

LT Kaduwela No. 30/175/2005

Vs.

Kithsiri Jayakody,
No. 250, Gemunu Mawatha,
Kotuwegoda,
Rajagiriya.

Applicant-Respondent-Respondent

BEFORE : Hon. Saleem Marsoof, PC. J,
Hon. Sathya Hettige, PC. J, and
Hon. Priyasath Dep, PC. J.

COUNSEL : S. Parathalingam, PC. with Shanaka Amarasinghe
and Nishkan Parathalingam, for the Respondent-
Petitioner-Appellant.

Faisz Musthapha, PC. With Shantha Jayawardane,
for the Applicant-Respondent-Respondent.

ARGUED ON : 17.7.2012, 30.8.2013, 9.12.2013, and 28.01.2014

DECIDED ON : 25.3.2014

SALEEM MARSOOF, PC., J.

This is an appeal against the judgment of the Provincial High Court of Civil Appeal of the Western Province holden in Avissawella, dated 1st September 2010, which affirmed an order of the Labour Tribunal, Kaduwela dated 18th December 2009. By the said order, the Labour Tribunal had

overruled a plea of immunity from process of court taken up before the said tribunal by the Respondent-Petitioner-Appellant (herein after referred to as “the Appellant”).

The Appellant is the International Water Management Institute which had been incorporated by the International Irrigation Management Institute Act No.6 of 1985. The said Act was amended by the amending Act No. 50 of 2000, which *inter-alia* renamed the Institute as the International Water Management Institute.

The Applicant-Respondent-Respondent (hereinafter referred as to “the Respondent”) filed an application dated 27th June 2005 in the Labour Tribunal, Kaduwela seeking relief in terms of Section 31B of the Industrial Disputes Act No 43 of 1950 as subsequently amended, for the alleged unlawful termination of his services by the Appellant. When the application came up for inquiry on 2nd July 2006, the Appellant took up a preliminary objection on the basis that it was entitled to immunity under and in terms of the International Irrigation Management Act No.6 of 1985, as amended by Act No. 50 of 2000, read with the “Charter and Founding Documents” of the Appellant’s predecessor, the International Irrigation Management Institute. The Labour Tribunal, by its order dated 18th January 2006 held that the respondent did not enjoy immunity. In overruling the plea of immunity, the Tribunal emphasized Section 33 of the aforesaid Act, that sought to provide the immunity claimed, has to be read subject to the Constitution, particularly, Articles 3 and 4(c) thereof, and cannot violate or supersede the fundamental rights of a citizen.

It is significant to note that when making its aforesaid order dated 18th January 2006, the Labour Tribunal also considered an additional submission advanced by the Appellant that the plea of immunity is strengthened by the order made by the relevant Minister dated 10th December 1997 in terms of Section 4 of the Diplomatic Privileges Act No. 9 of 1996. It rejected this submission on the basis that there was no evidence presented to the Tribunal of the publication of the said order of the Minister in the Gazette as required by Section 4(1) of the said Act. However, when the case came up for trial on 21st July 2006, the Appellant took up the plea of immunity once again, armed with evidence of publication of the said order of the Minister in the Gazette Extraordinary dated 12th December 1997, the Tribunal by a brief order dated 13th February 2007, overruled the plea of immunity once again, on the basis that it “sees no reason to allow the objection”. No other reason was given by the Labour Tribunal in support of its decision. The Appellant filed a revision application in the High Court of the Western Province, holden in Avissawella against the aforesaid order of the Tribunal dated 13thFebruary 2007, and the High Court by its order dated 9th September 2008, set aside the said order for inadequacy of reasons. The High Court further directed the President of the Labour Tribunal to make a fresh order on the preliminary objection with reasons.

Accordingly, the Labour Tribunal made a reasoned order on the 18th December 2009, overruling the preliminary objection, previously taken, primarily on the basis that the Appellant had not tendered “any evidence which is conclusive proof as to whether the order has been placed before Parliament” as required by Section 5(1) of the Diplomatic Privileges Act. The Tribunal also relied on Articles 3, 4(c) and 105(1) of the Constitution, and emphasized that “a charter or any other agreement cannot violate or supersede the fundamental rights of citizen.”

The Respondent filed an application in revision in the Provincial High Court of the Western Province holden in Avissawella against the aforesaid order of the Labour Tribunal dated 18th

December 2009, which entertained the application in revision, and after hearing learned Counsel, by its judgment dated 1st September 2010, affirmed the decision of the Labour Tribunal and dismissed the application for revision with costs. In arriving at his decision, the High Court (M.R.C. Fernando J) examined the relevant provisions of Constitution and the Diplomatic Privileges Act, No. 9 of 1996, and observed as follows:-

“There is no doubt that in terms of section 4(2), an order made by the Minister under section 4(1) comes into force upon the publication of the Gazette and hence the said order made by the Minister came into force on Gazette and hence the said order made by the Minister came into force on the 12.12.1997. However, the operation of this section is subject to one qualification as is specified in section 5(1) of the Act. Thus, in view of section 5(1) of the said Act, the order made by the Minister of Foreign Affairs *shall after its publication in the Gazette be placed before Parliament for approval*. Therefore section 4(2) of the Act does not per se confer immunity and unless the Gazette was placed before Parliament for approval of Parliament and the approval is granted by Parliament as required by section 5(1), mere publication of the Gazette would not make the order made by the Minister valid.”

The learned Judge also noted that the best evidence that could have been adduced by the Appellant before the Labour Tribunal to prove that it is entitled to immunity is the Certification issued under the hand of the Secretary to the Minister in charge of the subject of the Foreign Affairs in terms of Section 6 of the Diplomatic Privileges Act, and no such evidence was available to the Tribunal or even to Court. Having said that, the learned High Court Judge embarked on an exposition of Articles 3, 4(c) and 105 of the Constitution, and observed as follows:-

“It must be stated here that this court is not in this application exercising writ jurisdiction conferred on it by Article 154P (4) of the Constitution but exercising revisionary jurisdiction in terms of Article 154P (3) (c) read with section 3 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.....

The Labour Tribunal which derived jurisdiction from Article 105 of the Constitution read with the provisions of the Industrial Disputes Act, which established such tribunals by an Act of Parliament. Therefore if the jurisdiction of the Tribunal is taken away, it can only be done by Parliament in terms of Article 105 of the Constitution. Therefore, I am of the view that *the jurisdiction conferred on the Labour Tribunal under Article 105 of the Constitution and the subsequent Industrial Disputes Act enacted by Parliament cannot be taken away by an order published by a Minister in a Gazette without any subsequent approval by Parliament.*”
(Emphasis added)

The Appellant filed an application dated 12th October 2010 seeking leave to appeal against the said order of the High Court of the Western Province holden in Avissawella, and this Court after considering “exhaustive submissions” of learned President’s Counsel for both parties, by its order dated 27th January 2011, granted leave to appeal against the said order without restricting the ambit of submissions on appeal to any one or more of the grounds set out in paragraph 13 of the petition filed by the Appellant, which are set out below as follows:

- 13.1. The said Order is contrary to law and against the weight of evidence presented to the learned Judge of the High Court;
- 13.2. The learned High Court Judge has misdirected himself in the application of section 5 of the Diplomatic Privileges Act No. 9 of 1996;
- 13.3. The learned High Court Judge has not properly addressed the issue of the burden of proving immunities, and who discharges the said burden;
- 13.5. The learned High Court Judge has erred in law in holding that the Respondent-Petitioner-Petitioner is not granted immunity by virtue of the Gazette marked X7 until the said Gazette is approved by Parliament;
- 13.6. The learned High Court Judge has not applied his mind to the situation faced in the interim period until the Gazette X7 is tabled before Parliament;
- 13.7. The learned High court Judge has erred in law, in not coming to the finding that the International Irrigation Management Institute Act No. 6 of 1985 displayed the legislature's unambiguous intention to grant the said immunities.

The aforesaid grounds may conveniently be reformulated into the following two substantive questions of law:-

- (a) Did the High Court err in rejecting the plea of immunity raised by the Appellant based on the order 10th December 1997 made by the Minister in terms of Section 4 of the Diplomatic Privileges Act No. 9 of 1996, and published in the Gazette Extraordinary dated 12th December 1997 (X7)?
- (b) Did the High Court err in not coming to the finding that the International Irrigation Management Institute Act No. 6 of 1985, as amended by Act No. 50 of 2000, displayed the legislature's unambiguous intention to grant the said immunity.

I shall consider these questions in turn.

(a) Immunity under the Diplomatic Privileges Act

Mr. S.A. Parathalingam, PC., who appeared for the Appellant has submitted that his client was entitled to immunity from suit in the Labour Tribunal by virtue of the order dated 10th December 1997 made by the Minister of Foreign Affairs in terms of Section 4 of the Diplomatic Privileges Act No. 9 of 1996, and published in the Gazette Extraordinary dated 12th December 1997. He contended that the High Court erred in holding that the said order was not valid as it was not approved by Parliament as contemplated by Section 5(1) of the Diplomatic Privileges Act.

Mr. Faisz Mustapha, PC., has however argued that even if it is conceded that a valid and *intra vires* order made by the relevant Minister would come into force upon publication in the Gazette despite there being no evidence before the Labour Tribunal that it was placed before Parliament as required by section 5(1) of the Diplomatic Privileges Act, in his submission, the said purported order was, in any event, *ultra vires* and invalid.

Before looking at these submissions of learned Counsel, it may be useful to set out the relevant statutory provisions based on which the aforesaid submissions were made. As previously noted in this judgment, the Appellant is the International Water Management Institute which had been incorporated by the International Irrigation Management Institute Act No.6 of 1985, under the name and title of the “International Irrigation Management Institute” (hereinafter sometimes referred to as “IIMI”). The said Act was amended by Act No. 50 of 2000, which *inter-alia* renamed the Institute as the “International Water Management Institute” (hereinafter sometimes referred to as “IWMI”). Before the Labour Tribunal, immunity was claimed by the Appellant in terms of section 4 of the Diplomatic Privileges Act as well as in terms of section 33 of the International Water Management Institute Act, which latter basis for the immunity will be examined in greater detail under question (b) above.

What is relevant for substantive question (a) above, which is being presently considered, are sections 4 and 5 of the Diplomatic Privileges Act, which are reproduced below in full:

- 4(1) Where the Government of Sri Lanka has entered into *an agreement with any inter-governmental or international organization providing for the grant of any immunities and privileges, to the officers or agents or property of such organization*, the Minister may, by Order published in the Gazette, and *to the extent necessary to give effect to the terms of such agreement, declare that such of the provisions of this Act as are specified in such Order shall apply to such officers, agents and property, of such organization as are, or is, specified in such Order, to such extent as is specified therein*, and upon the making of such Order such, of the provisions of this Act as are specified therein, shall, *mutatis mutandis*, apply to such officers, agents and property of such Organization as are, or is, specified therein.
- (2) Every Order made under this section *shall recite or embody the terms of the agreement in consequence of which such Order, was made and shall come into force on the date of publication of such Order, or on such later date as may be specified therein*, and shall remain in force for so long, and so long only, as the agreement in consequence of which such Order was made remains in force. (*Emphasis added*)

I shall now advert to the order purportedly made by the Minister of Finance under section 4(1) of the said Act, and which was published in the Gazette as aforesaid, which said order was to the following effect:-

“By virtue of the powers vested in me by Section 4 of the Diplomatic Privileges Act, No. 9 of 1996, I, Lakshman Kadirgamar, Minister of Foreign Affairs, do, by this order, declare that the provisions of the aforesaid Act shall apply in respect of *the International Irrigation Management Institute, to the extent necessary to give effect to the terms of the Memorandum of Agreement entered into between the Ford Foundation acting on behalf of the International Irrigation Management Institute Support Group and the Government of the Democratic Socialist Republic of Sri Lanka for the establishment of an International Institute for Research and Training in Irrigation Management on 1st of September 1983, the relevant articles of which Agreement are recited in the Schedule hereto.*” (*Emphasis added*)

It is important to note that the Schedule to the said order which is part of the said order published in the Gazette, contains *inter alia* clause 7(a)(1) of the Memorandum of Agreement

mentioned in the order, which was entered between the Ford Foundation, which purportedly acted on behalf of the International Irrigation Management Institute Support Group and the Government of Sri Lanka, in 1983 prior to the incorporation of the predecessor to the Appellant, provides as follows:-

“7. Agreements – (a) The Government of Sri Lanka shall recognize IIMI as an autonomous, international, non-profit, research, educational, and training organization with objectives and engaged in the activities set forth in this Memorandum. The international status and personality of IIMI will be ensured by its Charter and will be recognized by the Government of Sri Lanka.

The Government of Sri Lanka agrees to provide IIMI with certain facilities and to grant certain privileges and immunities which shall be no less favourable than those granted to the UNDP Office in Sri Lanka, including the following:-

(I) IIMI, its property, funds, assets, and officials shall have the privileges and immunities set out in the Annexure to this Memorandum.

IMMUNITIES AND PRIVILEGES

PART I

Immunities and Privileges of the Institute

1. The *Institute, its property and assets* wherever located and by whomsoever held, shall enjoy immunity from *every form of legal process* except, insofar as in any particular case it has *expressly waived immunity*. It is however understood that *no waiver of immunity shall extend to any measure of execution.*” (*Emphasis added*)

I wish to have it on record that indeed the order as published in the Gazette is extremely lengthy, and too cumbersome to reproduce in full. I have thoroughly examined it fully, and did not find any other provision which sought to confer immunity on the Institute from legal process. In fact the Annexure to the Memorandum was divided into five parts, each dealing with respectively the immunities and privileges of (I) the Institute, (II) the Director General of the Institute and (III) the officials of the Institute, with the remaining two parts dealing with (IV) Waivers of Privileges and Immunities and (V) Privileges and Immunities with respect of Customs and Import Duties and Taxes.

Mr. Parathalingam, PC., has simply relied on the aforesaid order of the Minister made under Section 4(2) of the Diplomatic Privileges Act, and contended that it came into force on the date of publication of the said order in the Gazette. I am in agreement with this submission, and am of the view that it is clear from section 4(2) of the Diplomatic Privileges Act that any valid order made by the Minister shall come into force on the date of publication of such Order, or on such later date as may be specified in the order, and since no other date is so specified in the order in question, subject to its *vires*, it would have come into force on the date of the Gazette, namely in this case on 12th December 1997.

However, Mr. Mustapha, PC., has sought to attack the validity of the order purportedly made under Section 4 of the Diplomatic Privileges Act, on the following grounds:-

- a) There was no agreement between the State and *the Appellant International Water Management Institute or its predecessor, the International Irrigation Management Institute which had been incorporated by Act No. 6 of 1985*, as amended by Act No. 50 of 2000 as the only relevant agreement was the one entered into between the Government of Sri Lanka with the Ford Foundation, which purportedly acted on behalf of the International Irrigation Management Institute Support Group.
- b) In any event, the order made under Section 4 is *ultra vires* in view of the fact that –
- (i) The Diplomatic Immunity Act does not empower the Minister to confer immunity *on an entity incorporated in Sri Lanka and which does not bear an international character*; and
 - (ii) The order made by the Minister *does not specify therein the provisions of the agreement* between the Government of Sri Lanka with the International Irrigation Management Institute which has been incorporated by the Charter, with respect to which, immunity is sought to be conferred.

It was argued by the learned President’s Counsel for the Respondents that the order made by the Minister purportedly under section 4(1) of the Act only refers to the Memorandum of Agreement entered into between the Ford Foundation acting on behalf of the International Irrigation Management Institute Support Group and the Government of the Democratic Socialist Republic of Sri Lanka for the establishment of an International Institute for Research and Training in Irrigation Management on 1st of September 1983, and that *there was no agreement between the Sri Lankan government and the Appellant or its predecessor the IIMI which was incorporated by International Irrigation Management Institute Act No. 6 of 1985, as amended.*

It is necessary for fully dealing with this submission to refer to the said Memorandum of Agreement from which it appears that the Support Group referred to consisted of several nations such as Australia, France, Netherlands, the United Kingdom, the United States of America, which participated with international organizations such as the Ford Foundation, the Asian Development Bank, the United States Development Programme, the World Bank amongst others as funding partners and India, Pakistan, Philippines and Sri Lanka as participating nations. It is also manifest that the main objective of the said Memorandum of Agreement was the establishment in Sri Lanka of a research and training Institute to be known as the “International Irrigation Management Institute” (IIMI) with its headquarters in Digana, in the Kandy District of Sri Lanka, with a liaison office in Colombo, if found to be necessary, and that the parties to the Memorandum will ensure that the said Institute will have legal personality and capacity to contract, to acquire and to dispose of immovable property, and to institute legal proceedings in that name with the view to achieving the objectives elaborately set out in the Memorandum.

Admittedly, the International Irrigation Management Institute (IIMI) was incorporated by Act No. 6 of 1985 as envisaged by the said Memorandum, and that the Act was amended in 2000 to change its name to the International Water Management Institute (IWMI) with its headquarters

in Battaramulla, Sri Lanka. It is material to note that the preamble to Act No. 6 of 1985, as amended by Act No. 50 of 2000, narrates that “the Government of Sri Lanka and the Ford Foundation acting on behalf of the International Water Management Institute Support Group entered into an agreement for the establishment of the International Water Management Institute” which made it necessary and expedient to make legislative provisions to enable such Institute to effectively operate within Sri Lanka in accordance with the Charter of the Institute, which has been ratified by the Government of Sri Lanka. It is also relevant to note that in terms of section 9 to 15 of the Act, which provide for the composition of the first and subsequent Board of Directors of IWMI, ensure that the International Water Management Institute Support Group is adequately represented in the said Board, and that in terms of section 31, the annual budget of IWMI has to be submitted to the said Support Group for consideration. It is significant that section 34 of the Act provides that “no member of the International Water Management Institute Support Group or of the Board shall be liable, by reason only of such membership, for the debts and obligations of the Institute.” It is clear from all this that although autonomous and independent both from the said Support Group and the Government of Sri Lanka, IWMA was intended by the said Memorandum of Agreement as well as the International Water Management Institute Act, No. 6 of 1985 as amended by Act No. 50 of 2000, to be the vehicle or agency through which the objectives of both the said Memorandum of and the Act were to be carried to fruition.

I therefore see no merit in the submission of Mr. Mustapha, PC., that there was no agreement between the State and the IWMI which was incorporated by Act No. 6 of 1985 as amended by Act No. 50 of 2000, as the Memorandum of Agreement entered into between the Government of Sri Lanka with the Ford Foundation, which purportedly acted on behalf of the International Irrigation Management Institute Support Group, envisaged the establishment of IIMI now renamed IWMI as *the vehicle or agency* which would carry forward the objectives of the said Memorandum of Agreement. I also see no merit in learned President’s further argument that the wording of section 4(1) of the Diplomatic Privileges and Immunities Act of 1996 specifically omits the institution itself from immunity and refers only to “the officers or agents or property of such organization”. In my opinion, the inclusion of the word ‘agents’ is sufficiently wide enough to include the Appellant, as it is clearly the “International Institute for Research and Training” contemplated by the aforesaid Memorandum of Agreement between the Government of Sri Lanka and the Ford Foundation acting on behalf of the IIMI Support Group, and referred to in the order made by the Minister under section 4(1) of the said. Equally lacking in merit is the other submission of Mr. Mustapha that the Diplomatic Immunity Act does not empower the Minister to confer immunity *on an entity incorporated in Sri Lanka and which does not bear an international character*, as the said Memorandum of Agreement envisaged the incorporation of a body, which was international character, which objective was achieved by *inter alia* by section 2 of the International Water Management Institute Act of 1985, which provided that the said Institute “shall operate as an *autonomous organization, International in character*”.

The next submission of Mr. Mustapha, PC., was that the order made by the Minister in terms of section 4(1) of the Act did not *specify therein the provisions of the agreement* between the Government of Sri Lanka with the International Irrigation Management Institute which has been

incorporated by the Charter, with respect to which, immunity is sought to be conferred. I fail to understand this submission, as it is clear from the order itself that the Memorandum of Agreement between the Government and the Ford Foundation on behalf of the aforesaid Support Group, very clearly spells out the rights, privileges and immunities that are to apply to the Appellant institution, its Director General and other staff. It is also manifest from Part I item 1 of the Annexure to the said Memorandum reproduced in the said order that the IWMI, its property and assets wherever located and by whomsoever held, was sought to be conferred immunity from *every form of legal process* except, insofar as in any particular case it has *expressly waived immunity*. Since, there is no evidence that IIMI or its successor IWMI had at any stage waived its immunity, I hold that the Appellant is entitled in law to succeed in its plea of immunity in terms of section 4 of the Diplomatic Privileges Act.

Of course, I must advert to the fact that there is absolutely no evidence that the order made by the Minister was ever placed before Parliament, and there is no certificate under the hand of the Secretary to the Ministry of the Minister in charge of the subject of Foreign Affairs (currently External Affairs) which would have been in terms of section 6 of the Diplomatic Privileges Act which would have amounted to conclusive proof of the fact that the Appellant enjoyed diplomatic immunity. However, in my opinion, the order under section 4(1) of the Act, if made validly, would come into force when published in the Gazette, and would remain in force until and unless it is disapproved by Parliament. The failure to place the order before Parliament does not affect its coming into force. It is also my opinion that a certificate under section 6, which would have facilitated proof of immunity, is not indispensable to proving the existence of immunity, if it can be established by other evidence, as the Appellant has succeeded in doing in this appeal.

Accordingly, I answer substantive question (a) above in the affirmative, and hold that the High Court has misdirected itself in rejecting the plea of immunity raised by the Appellant based on the order 10th December 1997 made by the Minister in terms of Section 4 of the Diplomatic Privileges Act No. 9 of 1996, and published in the Gazette Extraordinary dated 12th December 1997 (X7).

(b) Immunity under the IIMI Act

In view of the fact that question (a) above has been answered in the affirmative, and the plea of immunity based on section 4 of the Diplomatic Privileges Act No. 9 of 1996 upheld, it is unnecessary for me to consider at length question (b) on which leave was granted by this Court, namely whether the High Court erred in not coming to the finding that the International Irrigation Management Institute Act No. 6 of 1985, as amended by Act No. 50 of 2000, displayed the legislature's unambiguous intention to grant the said immunity.

It would suffice for me to observe that the step taken by the Minister of Foreign Affairs in 1997 to make an order in terms of section 4(1) of the Diplomatic Privileges Act of 1996 was a positive step to comply with the obligation of the Government of Sri Lanka under section 33 of the International Water Management Institute Act No. 6 of 1985, which expressly provided that "the Government shall take all such steps as are necessary to ensure that (a)the Institute; and (b) the

Director General, Consultants and officers and servants of the Institute, are accorded *subject to the provisions of the Constitution* all such rights, privileges and immunities as the Government has agreed to, accord to such Institute, the Director-General, consultants and officers and servants of the Institute, by the Memorandum of Agreement between the Government of the Democratic Socialist Republic of Sri Lanka and the Ford Foundation, acting on behalf of the International Water Management Institute Support Group, for the establishment of an International Institute for Research and Training in Irrigation Management, signed on 1st September, 1983.”

In considering the question raised in (b) above, section 33 of the International Irrigation Management Act 1985 Act must be read together with section 2 of the Act, section 3 and other provisions of the Amending Act No. 50 of 2000 and the Memorandum of Agreement between the Ford Foundation and the Government of Sri Lanka.

Section 2 of the 1985 Act states as follows:

There shall be established in accordance with the provisions of this Act, an Institute which shall be called the “International Irrigation Management Institute” (amended to read as the International Water Management Institute in 2000) which shall operate as an autonomous organization, international in character.

Section 3 of the Amending Act of 2000 provided for renaming the Institute and relocating its headquarters, as already noted, but section 33 of the original Act was not touched except for the change of name.

I have serious doubts as to whether the obligation cast on the Government of Sri Lanka by section 33 of the International Irrigation Management Act 1985, was by itself, sufficient to support a plea of immunity from suit in the Labour Tribunal or any other court or tribunal. In my view, it was only a provision that imposed on the government a legal obligation in the municipal sphere which a Court of law, tribunal or other institution in Sri Lanka could take cognizance of which is into accord with an obligation the government had incurred in the international plain by entering to the Memorandum of Agreement with the Ford Foundation on behalf of the International Irrigation (Water) Management Institute Support Group.

Having said that, I answer question (b) in the affirmative, and hold that the High Court did err in not coming to the finding that the International Irrigation Management Institute Act No. 6 of 1985, as amended by Act No. 50 of 2000, displayed the legislature’s unambiguous intention to grant the said immunity, but add the rider that that does not mean that section 33 of the International Irrigation Management Institute Act, by itself, had the effect of conferring the Appellant immunity from suit.

Conclusions

For the forgoing reasons, I would hold that the learned High Court Judge erred in his decision to uphold the order of the Labour Tribunal dated 18th December 2009 to overrule the preliminary objection taken up by the Appellant in the said Tribunal on the basis of the order of the Minister of Foreign Affairs under section 4 of the Diplomatic Privileges Act No. 9 of 1996.

Accordingly, I allow the appeal, set aside the impugned judgment of the High Court of the Western Province holden in Avissawella dated 1st September 2010 as well as the order of the Labour Tribunal Kaduwela dated 18th December 2009.

The application filed by the respondent in the Labour Tribunal will stand dismissed for lack of jurisdiction.

In all the circumstances of this case, I do not make any order for costs.

JUDGE OF THE SUPREME COURT

Sathya Hettige, PC., J.
I agree.

JUDGE OF THE SUPREME COURT

Priyasath Dep, PC., J.
I agree.

JUDGE OF THE SUPREME COURT