IN THE SUPREME COURT OF DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

SC APPEAL No. 50/2016

SC (Special) LA 75/2015 &76/2015)

CA WRIT APPLICATION No. 652/2009

Ceylon Petroleum Corporation
109, Rotunda Tower, Galle Road,
Colombo 03
Presently;
609,
Dr. Danister De Silva Mawatha,
Colombo 09

Petitioner- Petitioner-Appellant

-Vs-

1. Athauda Seneviratne
   Minister of Labour Relations and Manpower
   Minister of Labour Relations and Manpower, Labour Secretariat,
   Colombo 05

2. D.S Edirisinghe
   Commissioner of Labour
   Department of Labour
   Colombo 05

3. M. S. B. Ralapanawa
   Attorney – at- Law (Arbitrator)
   No.194SriJayawardenapura
   Mawatha
   Welikada, Rajagiriya

4. Inter Company Employees Union
   No.158/18, E.D Dabare Mawatha
   Colombo 05

5. Lanka IOC Private Ltd
   Trincomalee Oil Terminal
   Chinabay, Trincomalee

6. Hon. Attorney General
   Attorney General's Department
   Colombo 12

Respondent-Respondent-Respondents

Before	:	Hon. Priyasath Dep PC, CJ
		Hon. B.P. Aluwihare PC, J and
		Hon. L.T.B. Dehideniya, J
Counsel	:	P. Radhakrishnana for the Petitioner- Appellant
		Ms. Chaya Sri Nammuni for the 1st, 2nd, 3rd and 6th Respondents
Argued on	:	23rd March 2018
Decided on	:	19th July 2018

Priyasath Dep PC, CJ

This is an appeal preferred against the judgment of the Court of Appeal dated 20th March 2015 which refused the Writ of Certiorari Applications filed by the Petitioner- Petitioner-Appellant, Ceylon Petroleum Corporation (Hereinafter referred to as the 'CPC' or 'Appellant') to quash the reference to Arbitration made by the Minister (1st Respondent) under Sec. 4 (1) of the Industrial Disputes Act and also to quash the award of the Arbitrator.

The Appellant is a State owned Statutory body established under and by virtue of the Ceylon Petroleum Corporation Act No.28 of 1961. By virtue of a policy decision of the Government, on 7th of February 2003, the China Bay Oil Storage Installation situated in Trincomalee which was then under the management of the Appellant Corporation was leased out by Agreement marked P1 to the 5th Respondent, namely the Lanka Indian Oil Company (Private) Limited (hereinafter referred to as the LIOC). It was a tri- party Agreement entered and signed between the Secretary to the Treasury (on behalf of the Government of Sri Lanka), the Appellant Corporation and the said LIOC. Clause 5 of the said Agreement regulates the employment of the employees attached to the Appellant Corporation which is as follows;

Clause 5 – Employees

5.1. LIOC shall offer to employ through new appointments, all employees attached to the CPC China Bay Installation on no less favourable terms than those enjoyed by them as at present with the CPC. Identification for such appointments shall be as per the connected CPC payroll for January 2003. In the event any of such employees opt to remain as an employee of the CPC, the CPC shall take suitable steps to ensure continuity of employment of such employees with the CPC.

5.2. CPC and LIOC hereby agree that despite the arrangement set out in Clause 5.1 to recruit such employees as employees of LIOC, their service with the

CPC shall be taken into account as continuous service for the purpose of computation of Gratuity. The liability of the CPC shall be based on the salary drawn by such employees pertaining to their period of service with the CPC up to end January 2003 shall be the liability of the CPC.

5.3. The LIOC shall pay according to law all terminal benefits to employees employed by the LIOC as and when such payments fall due and claim reimbursement of such sums from the CPC as per Clause 5.2.

5.4. Any liability which may have accrued to the CPC prior to the date of this agreement in relation to the China Bay Installation shall remain to be a liability of the CPC.

In addition, in order to settle matters pertaining to employment of employees then attached to the Appellant Corporation a Memorandum of Understanding (MOU) marked P2 was entered and signed between the Appellant Corporation, the Lanka Indian Oil Company and two Trade Unions representing the employees of the Corporation namely Jathika Sevaka Sangamaya and Sri Lanka Nidahas Sevaka Sangamaya.

By virtue of Clause 5.1 of P1 Agreement and Clause 2 of the said MOU, the employees were given the option either to join the employment of the LIOC or remain with the Appellant Corporation. Thereafter, 26 employees of the Appellant Corporation who were employed on annually renewable contract basis opted to join the employment of the LIOC. The said employees accepted fresh letters of appointment and joined the employment of LIOC with effect from 8th of May 2003**.**

By virtue of a Cabinet Memorandum dated 4th June 2004 marked P3, and the Cabinet decision dated 18-06-2004 marked P4, the existing employees of the Appellant Corporation who were serving on annually renewable contract basis were made permanent employees of the Appellant Corporation. In view of this decision the employees who remained in the Appellant Corporation received salary arrears and other allowances. Twenty Six (26) employees of the Appellant Corporation who joined LIOC with effect from 8th of May 2003did not receive salary arrears and other allowances. These employees claimed salary arrears and allowances for the period they served in the CPC. CPC rejected the claims on the basis that they are no longer employees of CPC.

The 4th Respondent Trade Union acting on behalf of the said 26 employees by its letter dated 4th of June 2006 marked 2R1 complained to the Commissioner of Labour that they should also be granted the benefit of the Cabinet decision and be considered as permanent employees of the Appellant Corporation and should be paid arrears of salary paid to the present employees of the Appellant Corporation. The Commissioner of Labour had recommended to the Minister of Labour that the said dispute should be referred to arbitration. The Minister of Labour had thereafter referred the dispute for settlement by arbitration under Section 4 (1) of the Industrial Dispute Act on the basis that an "Industrial Dispute" exists between the Appellant Corporation and the 4th Respondent Trade Union which represented 26 former employees.

The matter in dispute is stated by the Commissioner of Labour as " whether the Ceylon Petroleum Corporation is obliged to grant arrears of salary and other allowances to the twenty six (26) employees referred to in the attached schedule as so paid to other employees by treating the 26 employees as being in the permanent service of the Corporation with effect from 01.09.2001 – 14.02.2003 as provided in the aforesaid Cabinet paper and if so obliged to what relief each of the employees is entitled".

The Arbitrator held the inquiry and made an award. The CPC (Appellant) which is a party to the dispute participated at the inquiry.

The CPC filed a Writ of Certiorari Application to quash the reference to Arbitration made under Sec. 4 (1) of the Industrial Disputes Act and also to quash the award of the Arbitrator.

The Court of Appeal by its judgment dated 20th March 2015 refused to issue a Writ of Certiorari to quash both the reference to arbitration and the arbitral award. Being aggrieved by the judgment of the Court of Appeal, CPC the Petitioner- -Petitioner- Appellant filed a Special Leave to Appeal Application and obtained leave on following question of law:

" Has the Court of Appeal substantially erred by misinterpreting the provisions of the Industrial Dispute Act and its amendments and the specific definitions contained therein as to what is an Industrial dispute?"

It was the contention of the Appellant that an "Industrial Dispute" cannot arise between the Appellant Corporation and the 4th Respondent Trade Union given that there was no existing employer-employee relationship between the two parties at the time of reference to Arbitration was made. The 26 employees represented by the 4th Respondent Trade Union ceased to be employees of the Appellant Corporation on the 8th of May 2003, whereas the reference to Arbitration was on the 7th of October 2008.

The Appellant submitted that in terms of Section 4 (1) of the Industrial Dispute Act, the Minister is vested with the power to refer only an Industrial Dispute for settlement by arbitration and not any other dispute.

It is at this stage relevant to refer to the definition of an "Industrial Dispute' as set out in Section 48 of the Industrial Disputes Act in order to ascertain whether industrial dispute exist between the parties or not. Section 48 of the Industrial Dispute read as follows:

> " 'industrial dispute' means any dispute or difference between an employer and workman or between employers and workmen or between workmen and workmen connected with the employment or non-employment or the terms of employment, or with the conditions of labour or the termination of the services, or the reinstatement in service of any person and for the purpose of this definition "workmen" includes a trade union consisting of workmen".

In the case of *Ceylon Printers Limited and Another Vs Goonawardena and another (*1990) 2 SLR 310 cited by the Appellant, it was held that the definition in the said Section comprises of three ingredients which are namely;

1. Any dispute or difference
2. Between parties of the following description

- An employer and workman
- Employers and workmen
- Workmen and workmen

3. The dispute or difference should be connected with
   - The employment or non-employment of any person
   - The terms of employment of any person
   - The conditions of labour of any person
   - The reinstatement in service of any person.

I will refer to the main submissions of the Appellant. The Appellant submitted that since the 26 employees ceased to be employees of the Appellant Corporation with effect from 8th of May 2003 the said employees do not come under item (2) mentioned above. Therefore, no "Industrial Dispute" has arisen in terms of Section 48 and the Minister has acted in excess of the powers lawfully vested on him under Section 4 (1) by referring a dispute between an ex-employer and ex-employees for arbitration. To support the same line of argument, the Appellant has cited the judgment in the case of *State Bank of India V. Sundaralingam* (73 NLR 514) where Alles J held that:

" An Arbitrator appointed by the Minister under section 4(1) of the Industrial Disputes Act has no jurisdiction to entertain an alleged industrial dispute between an employer and an ex-employee who has already retired from the services of the employer and thus ceased to be an employee. Such a case is one of the cessation of employment and not one of termination or re-instatement, and therefore, is not an "industrial dispute".

This judgment was followed in *ANZ Grindlays Bank Vs Minister of Labour and* Others (1995) 2 SLR 5*3* where court held that a dispute can be referred for settlement only if the dispute arose while the relationship of employer – workman subsists.

Appellant has further submitted that in Section 16,17,18,19 of the Industrial Disputes Act which provides for settlement by arbitration has incorporated the term 'Industrial Dispute'as such by implication the existence of an employer- employee relationship is imperative. Moreover Section 19 goes on to state regarding the award of an arbitrator that "*…the terms of the award shall be implied terms in the contract of employment between the employers and workmen bound by the award*." indicating that there should be an existing contract between the employer and the workmen. Therefore the Appellant submits that the reference to arbitration is bad in law and needs to be quashed.

The Appellant has further submitted that by giving validity to Clause 14 of the MOU (P2) Court of Appeal has erred in law. Clause 14 reads as follows;

"පාර්ශවයන් අතර පැන නැගිය හැකි රැකියා හා සම්බන්ධ ආරවුල් සාකච්ඡා මගින් විසඳා ගැනීමට එම පාර්ශවයන් උත්සාහ දැරිය යුතු වේ. සාකච්ඡා මගින් යම් ආරවුලක් නිරාකරණය කර ගැනීමට අපොහොසත් වුවහොත් කාර්මික ආරවුල් පනත හෝ වෙනත් අදාල නීති සහ රෙගුලාසි යටතේ සුදුසු ක්‍රියාමාර්ගයක් ගැනීම සඳහා ඕනෑම පාර්ශවයක් විසින් අදාළ කරුණ කම්කරු කොමසාරිස්තුමා හෝ අදාළ විනිශ්චය මණ්ඩලයක් වෙත ඉදිරිපත් කල යුතු වේ."

As per Clause 14 of P2 parties can resolve their disputes under the Industrial Disputes Act or under any other applicable law or Regulation and may complain to the Labour Commissioner if necessary. However it is the contention of the Appellant that extending the statutory and judicial interpretation of the term "Industrial Dispute" is contrary to general principles of law that private

persons cannot contract outside statutory provisions and thereby import terms in a private contract to the interpretation of the Industrial Disputes Act.

It is true that at the time the dispute was referred to arbitration the 26 employees have joined LIOC and became employees of the LIOC. The question that arise is whether they have severed employer-employee relationship completely or not. For that purpose it is necessary to consider the tri party agreement entered between Government of Sri Lanka Ceylon Petroleum Corporation (Appellant) Lanka Indian Oil Company (LIOC the 5th Respondent) dated 7th February 2003. Clause 5.2, 5.3 and 5.4 of the agreement is relevant for this purpose. It reads thus :

> 5.2. CPC and LIOC hereby agree that despite the arrangement set out in Clause 5.1 to recruit such employees as employees of LIOC, their service with the CPC shall be taken into account as continuous service for the purpose of computation of Gratuity. The liability of the CPC shall be based on the salary drawn by such employees pertaining to their period of service with the CPC up to end January 2003 shall be the liability of the CPC.
>
> 5.3. The LIOC shall pay according to law all terminal benefits to employees employed by the LIOC as and when such payments fall due and claim reimbursement of such sums from the CPC as per Clause 5.2.
>
> 5.4. Any liability which may have accrued to the CPC prior to the date of this agreement in relation to the China Bay Installation shall remain to be a liability of the CPC.

The memorandum of understanding entered into by LIOC, CPC and two Trade Unions representing the employees are relevant. In view of this agreement and MOU there is no complete severance of employer-workmen ties between the Appellant and the employees. The agreement and the MOU deals with provisions regarding employment and non-employment, terms of employment and conditions of labour and comes within section 48 of the Industrial Disputes Act. In view of the Cabinet decision dated 18.06 2004 these 26 employees are entitled to relief during the period there were employed by the Appellant. The 26 employees are entitled to arrears of salary, allowances, statutory dues and gratuity in terms of the agreement marked P1, MOU marked P2 during the period they served in the Appellant Corporation like any other employee who remained in the Appellant Corporation . Their entitlement could not be denied. The Appellant Corporation being a state entity is required to comply with the decision of the Cabinet.

As the Appellant Corporation refused to pay the amount, a dispute arose between 26 employees and the CPC (Appellant). The 4th Respondent Union in terms of the Memorandum of Understanding made a complaint to the Commissioner of Labour. who referred this dispute to the 1st Respondent who acting under section 4 (1) of the Industrial Dispute Act referred the dispute to arbitration. It is the submission of the Appellant Corporation that at the time of the reference to arbitration there was no industrial dispute between employer and employees and the dispute if at all is between ex- employer and ex employees and due to that reason Minister has no power to act under section 4 (1) of the Industrial Dispute Act. Therefore reference to

arbitration and arbitral award both are a nullity. It is the contention of the Appellant that the proper remedy is an action for breach of contract or to file an application in the Labour Tribunal.

I have considered clause 5 of the tri party agreement between Government of Sri Lanka ,CPC(Appellant) and LIOC (5th Respondent) and clause 14 of the Memorandum of Understanding and I am of the view that the reference to arbitration and Arbitral award is in accordance with the law. There was no complete severance of Employer - Employee relationship between the Appellant and the 26 employees and continue to exist in terms of Clause 5 of the Agreement and under the Memorandum of Understanding in relation to matters specified in the Agreement. Therefore, I agree with the findings of the Court of Appeal and I dismiss the Appeal.

The Appellant to pay Rs. 25,000/= each to twenty six employees whose names are referred to in the annexure to the reference made under section 4(1) of the Industrial Disputes Act by the Minister (1st Respondent) to the Arbitrator (3rd Respondent).

Chief Justice

B.P.Aluvihare, P.C. J.

I agree.

Judge of the Supreme Court

L.T.B.Dehideniya, J.

I agree.

Judge of the Supreme Court