[IN THE PRIVY COUNCIL]

1963 *Present :* **The Lord Chancellor, Lord Evershed, Lord Jenkins, Lord Guest, and Sir Malcolm Hilbery**

V. W. VIDYASAGARA, Appellant, *and* THE QUEEN, Respondent

Privy Council Appeal No. 35 of 1961

In the matter of a Rule issued in terms of Section 40A (4) of the Industrial Disputes Act, No. 43 of 1950, as amended by Act No. 62 of 1957

Industrial Disputes (Amendment) Act, 1950–57—Section 40A (1)—Offence of contempt against an Industrial Court—Quantum of evidence.

The Minister of Labour had referred to an Industrial Court for settlement an industrial dispute between a trade union and an employer. At a hearing before the Industrial Court the appellant, who was appearing as Advocate representing the Union, read out from a typewritten document in the following terms :—

". . . In the circumstances, the Union having felt that this court by its order had indicated that an impartial inquiry could not be had before it, has appealed to the Minister to intervene in the matter. The Union is therefore compelled to withdraw from these proceedings and will not consider itself bound by any Order made *ex parte* which the Union submits would be contrary to the letter and spirit of the Industrial Disputes Act . . ."

He then withdrew from the case.

Held, that the appellant was guilty of contempt of Court under section 40A (1) of the Industrial Disputes (Amendment) Act.

APPEAL by special leave from a judgment of the Supreme Court reported in (*1960*) *62 N. L. R. 388.*

E. F. N. Gratiaen, Q.C., with *Dick Taverne* and *Q. A. Nonis*, for the appellant.

Kenneth Potter, with *T. O. Kellock*, for the Crown.

Cur. adv. vult.

April 1, 1963. [*Delivered by* LORD GUEST]—

This is an appeal by special leave from a judgment and decree of the Supreme Court of Ceylon whereby the appellant was found guilty of contempt against or in disrespect of the authority of the Industrial Court under Section 40A (1) of the Industrial Disputes (Amendment) Act, 1950–57 and whereby the appellant was ordered to pay a fine of 500 rupees and in default of payment to undergo 6 months rigorous imprisonment.

2—R 10531—(6/63)

The offence was alleged to have been committed by the appellant in making a statement to an Industrial Court before which he was appearing as Advocate representing the Petroleum Service Station Workers' Union.

It is necessary to refer briefly to the history of the case antecedent to the appellant receiving instructions to appear as counsel for the Union. On 2nd September, 1959, the Minister of Labour referred to the Industrial Court for settlement an industrial dispute between the Union and P. R. Perera. The matter in dispute related to the refusal by Perera to employ certain workmen who were members of the Union. Mr. H. S. Roberts was selected by the Minister of Labour from a panel to form the Industrial Court under the provisions of the Industrial Disputes Act, 1950. The Court fixed the hearing for 30th October 1959. At the hearing on that date the Union was not represented and no explanation was afforded for their non-appearance. The Court proceeded to hear the matter *ex parte* and fixed 10th November, 1959, as the date for the award. On 2nd November 1959 the Union applied to the Court for permission to place its case before the Court. The Court granted the application and the Court fixed 21st November 1959 for the hearing *inter partes*.

On 15th November 1959 the Union applied to the Registrar of the Court for a postponement of the hearing to a date three weeks from 15th November 1959 on the ground of the illness of their advocate. The Union was ordered to support the application for a postponement at the hearing on 21st November 1959. At the hearing before the Court on 21st November the General Secretary renewed the Union's application for an adjournment on the ground of the continued illness of their counsel. This application was opposed by Perera's counsel. In the meantime there had occurred a sympathetic boycott of Perera by the All Ceylon Oil Company Workers' Union. This boycott was alleged by Perera's counsel to have resulted in his being kept out of business for the last five months. He also stated that the Union had sufficient time to retain other counsel. The Court made an Order in the following terms :—

> "I am willing to allow another date provided the Union instructs the All Ceylon Oil Companies Workers' Union to lift the boycott immediately. I put the case off for the 28th instant. If the boycott is lifted before then the case shall proceed to inquiry ; if not, the *ex parte* trial shall stand."

Subsequent to this Order the Secretary of the Union wrote a letter, dated 25th November 1959, to the Minister of Labour in which he stated that the condition imposed on the Union of obtaining a release of the boycott could not be justified and that the Order reflected a positive degree of prejudice on the part of the Court against the two Unions. He further stated that the Union was of the view that an impartial inquiry could not be had into the matter at the hands of a tribunal which had made an order of this nature. He finally requested the Minister to have the Court reconstituted in order that the dispute might be heard *de novo* and determined by another member of the Panel.

A hearing took place before the Industrial Court on 28th November. At this date the sympathetic boycott by members of the All Ceylon Oil Companies Workers' Union had not been lifted. Mr. S. J. Kadirgamar appeared for Perera and the appellant appeared on the instructions of the Union. He read out from a typewritten document in the following terms :—

> " . . . In the circumstances, the Union having felt that this court by its order had indicated that an impartial inquiry could not be had before it, has appealed to the Minister to intervene in the matter. The Union is therefore compelled to withdraw from these proceedings and will not consider itself bound by any Order made *ex parte* which the Union submits would be contrary to the letter and spirit of the Industrial Disputes Act . . . "

He then withdrew from the case.

Following upon this hearing, Mr. Roberts submitted a complaint to the Chief Justice dated 3rd December 1959 in which he submitted that the words used by the appellant at the hearing before the Court on 28th November, quoted above constituted a contempt of the Court being calculated to bring the Industrial Court into disrepute. The Chief Justice acting under the provisions of section 40A (4) of the Act issued a rule *nisi* on the appellant to show cause why he should not be punished for contempt in respect of the remarks above quoted. The case was heard before the Supreme Court and on 20th May 1960 the Court found the appellant guilty of contempt. They made the rule absolute and imposed a fine of Rs. 500 and in default of payment six months rigorous imprisonment.

Section 40A (1) of the Act provides :—

> " Where any person—
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> (*a*) without sufficient reason publishes any statement or does any other act that brings any arbitrator, Industrial Court or Labour Tribunal or any member of such Court into disrepute during the progress or after the conclusion of any inquiry conducted by such arbitrator, Court or Tribunal ; or
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> (*b*) interferes with the lawful process of such arbitrator, Court or Tribunal,
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> such person shall be deemed to commit the offence of contempt against or in disrespect of the authority of such Arbitrator, Court or Tribunal."

The questions, therefore, which were before the Supreme Court were (1) whether the statement made by the appellant at the hearing before the Industrial Court on 28th November 1959 brought the Court into disrepute and (2) if so, whether the statement was made without sufficient reason. The Supreme Court held that the statement was an act calculated to bring the Industrial Court into disrepute. Counsel for the

appellant had difficulty in resisting the conclusion that such a finding was warranted. The words in the first sentence of the statement that the Union felt that the Court by its Order indicated that an impartial inquiry could not be had before it clearly suggested that the Court was prejudiced against the Union and could not be trusted to give impartial consideration to the inquiry. Their Lordships agree with the conclusion reached by the Supreme Court upon this matter. In regard to the second question whether the statement was made without sufficient reason, counsel for the appellant argued that as the appellant acted in good faith and in accordance with what he believed to be his professional duty in bringing to the notice of the Court that his client had applied to the Minister of Labour to have the Court reconstituted, the statement was made with sufficient reason. It was not and could not be contended that because the appellant was acting on instructions he was entitled to any special privilege. In reading from the typewritten document he accepted responsibility for its contents. While there might have been justification for informing the Court of the fact of the Union's application to the Minister and the fact of their withdrawal from the proceedings, there was really no call for any statement at all on behalf of the Union. The matter had been submitted by the Union to the Minister of Labour on 25th November. The Court Order of 21st November made it clear that if the boycott was not lifted before 28th November, the hearing would be *ex parte*. It was only if the boycott was lifted before that date that the inquiry would be *inter partes*. As the boycott had not been lifted, there was no necessity for any representation on behalf of the Union. But whether the appellant's appearance for the Union was in order or not, their Lordships consider that there was no justification at all for his statement that an impartial inquiry could not be expected before the Industrial Court. This was the sting in the contempt and it was deliberate and quite unnecessary in the circumstances. Counsel for the appellant argued that it could not be contempt for counsel to allege partiality of a Court as this would unduly restrict counsel's arguments on a hearing in *certiorari* proceedings. But different considerations apply when an attack is made in a Court of review on the impartiality of a lower Court. It may be necessary in certain cases for counsel in compliance with his duty to his client to allege partiality of the lower Court. But where the allegation of partiality is made in the circumstances under which the appellant's statement was made their Lordships consider that no adequate justification exists.

In their Lordships' opinion the Supreme Court were entitled to find the appellant guilty of contempt and they will humbly advise Her Majesty that the appeal be dismissed.

The respondent did not ask for costs. There will, therefore, be no order for costs.

Appeal dismissed.