
PUTTALAM CEMENT COMPANY LIMITED
vs.
MUTUKIMARANA AND ANOTHER

SUPREME COURT,
DHEERARATNE, J.
BANDARANAYAKE, J. AND
WEERASEKERA, J.
SC(AP) NO. 11/98
H.C. CHILAW NO. 8/97
L.T. CHILAW NO. 21/0277/88
7th JUNE AND 1st JULY, 1999

Incorporation of a Public Company under section 2(1)(ii) of the Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act, No. 23 of 1987, to take over the functions of a public corporation or part of the corporation, specified in the incorporation order - Whether in view of section 3(2)(e) of the Act, Labour Tribunal proceedings which were pending in the High Court on the date of the incorporation of the new company may be continued - Interpretation of statutes harmoniously for avoiding conflict between different parts.

The appellant company being a part of the 2nd respondent (Sri Lanka Cement Corporation) was registered as a company in terms of section 2(2)(ii) of the Conversion of Public Corporation or Government Owned Business Undertakings into Public Companies Act, No. 23 of 1987. What property, liabilities etc., of the corporation vest in the new company are set out in section 3(1)(a) to (c) and section 3(2)(a) to (g). Section 3(2)(e) refers to actions and proceedings instituted against the original corporation and pending on the relevant date (date of incorporation of the new company) and "specified in the order made under section 2(2)"

On the date of the order under section 2(2), there was pending before the Court of Appeal (thereafter referred to the High Court) an appeal made by the 1st respondent against the 2nd respondent Cement Corporation seeking to vary an order of the Labour Tribunal. The High Court noticed the new company to appear before the court to be added as the employer in place of the 3rd respondent Cement Corporation, to continue proceedings against the new company (the appellant).

Held :

1. The appellant should be substituted as the employer in proceedings before the High Court notwithstanding a preliminary objection by the

appellant company that it could not be added as a party since the Labour Tribunal proceedings had not been "specified" in the incorporation order under section 2(2) of the Act.

2. The words of a section of a statute should be interpreted harmoniously to avoid conflict between two provisions of an enactment on a proper construction thereof.
3. Section 2(2) which enables incorporation of a new company of a corporation or a part of a corporation and the relevant provision of section 3(1) and 3(2) do not necessarily require that proceedings pending on the date of incorporation must be specified in the incorporation order. The question is whether the words of section 3(2)(e) "and specified in the order made under section 2(2)" refer to action or proceeding or to the "corporation". That is not free from ambiguity.

Case referred to :

1. *Distilleries Company of Sri Lanka Ltd. vs. Fernando* SC (AP) 36/94 SCM 20.03.95 (not followed)

APPEAL against the Order of the High Court.

Tilak Marapana, P.C. with Anil Tittawela and A. Rodrigo for appellant.

Daya Guruge with Samantha Vithana for respondents

Cur. adv. vult.

July 24, 1999

JUDGMENT OF COURT

Special leave to Appeal was granted by this Court on the following questions :

* Whether an action instituted against a Public Corporation whose functions have been taken over by a company incorporated under the provisions of the Conversion of Public Corporations or Government owned Business Undertakings into Public Companies Act, No. 23 of 1987, which action is not specified in the order made under S. 2(2) of the said Act, could be deemed to be an action initiated against the Company.

The 1st Applicant-Respondent (1st Respondent) was an employee of the 2nd Employer-Respondent (2nd Respondent) until his services were terminated on 31.07.88. The 1st Respondent made an application to the Labour Tribunal dated 17.08.1988 seeking relief in terms of section 31(b) of the Industrial Disputes Act, No. 43 of 1950, against the 2nd Respondent. After inquiry, the Labour Tribunal, Negombo, dismissed the application of the 1st Respondent by order dated 15.03.1991. The 1st Respondent appealed to the Court of Appeal on or about 08.04.1991 against the order of the Labour Tribunal. On or about 09.01.1997, the Court of Appeal referred that appeal to the Provincial High Court of the North Western Province holden in Chilaw. When this matter came up before the Provincial High Court, Chilaw, it was submitted on behalf of the 2nd Respondent that by operation of the provisions of the Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act (Conversion Act) No. 23 of 1987, the Appellant should be substituted as Employer instead of the 2nd Respondent and the 2nd Respondent should be discharged from the proceedings, Pursuant to this application, the Provincial High Court Chilaw issued notice on the Appellant to appear before the High Court on 12.05.1997. The Appellant took a preliminary objection that it should not be substituted as the Employer because the schedule of the order made under Section 2 of the Conversion Act published in the Gazette Extraordinary No. 770/1 dated 07.06.1993, fails to refer to the Labour Tribunal case filed by the 1st Respondent. The objection was overruled and the appellant has now appealed to this Court from that order. The order made under Section 2 reads :

“J. C. de Alwis, Registrar of Companies, acting under paragraph (ii) of sub section (2) of Section 2 of the Conversion of Public Corporations of Government Owned Business Undertakings into Public Companies Act, No. 23 of 1987, do by this order declare that a Public Company is incorporated in the name of “Puttalam Cement Company Limited” to take over the functions of such part of the Public Corporation as specified in the Schedule hereto.

Schedule

The Puttalam Cement Works of the Sri Lanka Cement Corporation situated in Puttalam being a part of Sri Lanka Cement Corporation (having its registered office at 130, W. A. D. Ramanayake Mawatha, Colombo

2 established by the order made under Section 2 of the State Industrial Corporations Act, No. 49 of 1957 and published in Gazette Extraordinary No. 11,634 of January, 2 1959 as amended by order made under Section 2 of that Act, and published in the Gazette Extraordinary No. 75/5 of February, 11, 1980.

It is the submission of learned Counsel for the appellant Company, that the action filed by the 1st Respondent in the Labour Tribunal, cannot be deemed to be an action instituted against the appellant company in terms of sub section 3(2) of the Conversion Act. He submitted that for the deeming provisions to be applicable the action against the corporation must necessarily be pending immediately preceding the relevant date and specified in the order made under Section 2(2).

It would be convenient, in order to consider this submission, if we set down here so much of the wording of Sections 2 and 3 of the Conversion Act, omitting therefrom references to Government Owned Business Undertakings and other matters not relevant to our decision in this case. After such truncation those sections would read as follows :-

- 2(1) Where the Cabinet of Ministers considers it necessary that a company should be incorporated for the purpose of taking over the functions of any public corporation or part thereof, the Minister in charge of the subject of finance, forward a memorandum and articles of association to the Registrar of Companies, together with a direction to such Registrar to register such public Corporation, or any part thereof a public company under the Companies Act, No. 17 of 1982.
- (2) Notwithstanding any other provisions of the Companies Act, No. 17 of 1982, on receipt of a direction under sub section (1) the Registrar of Companies shall -
 - (i) (Re certificate of incorporation-omitted)
 - (ii) Publish an order in the Gazette declaring that a public company is incorporated in the name specified in the order to take over the functions of the Public Corporation specified in the order or such part of the corporation as specified therein.

(3) (Re allotment of shares - omitted)

(4) (Re stamp duty - omitted)

3 (1) with effect from the date of publication of the order under subsection (2) of section 2, in the Gazette (in this section referred to as "the relevant date") the corporation, or part thereof, as the case may be, to which the order relates shall vest absolutely in the company referred to in that order.

(definitions of "Corporations" and "business undertaking" omitted)

(2) Without prejudice to the generality of sub section (1)

(a) Re property - omitted

(b) Re liabilities - omitted

(c) Re officers and servants - omitted

(d) Re contracts and agreements - omitted

(e) all actions and proceedings instituted by or against -

a. the corporation; or

b.

and pending on the day immediately preceding the relevant date, and specified in the order made under Section 2(2) shall deemed to be actions and proceedings instituted by or against the company;

(f) (Re profits and income - omitted)

(g) (Re losses - omitted)

The words and pending on the date immediately preceding the relevant date "unambiguously refer to "all actions and proceedings." The question then is whether the words "and specified in the order made under Section 2(2) in (e) refer to actions or proceedings" or to " the corporation" That is not free from ambiguity. A plain reading of the sub section seems to suggest, that the words by their collocation, refer to actions and proceedings "That interpretation commended itself to Kulatunga, J. in the case of *Distilleries Company of Sri Lanka Ltd., v. Fernando*.⁽¹⁾ Words in a section of statute cannot be interpreted in isolation; they must be given an interpretation to read in harmony with other provisions of the statute. Obviously, there is no

provisions in subsection 2(2) to enable the Registrar of Companies to specify in the order made thereunder “action and proceedings” on the other hand, the sub-section mandates him to specify in the order “ the public corporation” either in whole or in part. Reference to a “part” of a corporation in sub-section 3(2) (a) would have been meaningless, as a part of a corporation is not a legal person by or against whom actions and proceedings could have possibly been instituted and pending as at the relevant date. It is to be noted that the words and specified in the order made under Section 2(2) appear in sub sections 3(2) (a), (b) and (d) as well. If we were to agree with the interpretation advanced by learned Counsel for the appellant Company, we will render those words superfluous and meaningless not only in sub-section 3(2) (e) but also in sub section (a) (b) and (d) as well.

Discussing the nature of conflicting provisions in a statute and how inconsistency is to be avoided, Bindra has stated that,

“A section of a statute should, if possible, be construed so that there may be no repugnancy or inconsistency between its different portions or members. If it is possible to avoid a conflict between the two provisions of an enactment on a proper construction thereof, then it is the duty of the court to so construe them, that they are in harmony with each other. A construction that involves reading two successive sentences as flatly contradicting each other must be avoided if possible; all parts of a statute, should if possible be construed so as to be consistent with the other “Bindra’s *Interpretation of Statutes*, Revised by Mahmood and Yudhishthira, 7th Edition, 1984, pg. 565)

On a consideration of the aforesaid matters, we hold that the Appellant should be substituted as the Employer in the proceedings before the High Court of the North Western Province holden in Chilaw, We affirm the order made by the High Court and dismiss the appeal. In all the circumstances we make no order as to costs.

DHEERARATNE. J., BANDARANAYAKA J., WEERASEKARA J.

Appeal dismissed.