

1960 Present : Basnayake, C.J., H. N. G. Fernando, J., and Sinnetamby, J.

IN RE V. W. VIDYASAGARA

In the matter of a Rule Nisi issued on Vijaya Wickramatunga Vidyasagara, Advocate of the Supreme Court, in terms of Section 40 A (4) of the Industrial Disputes Act, No. 43 of 1950 as amended by Act No. 62 of 1957

Industrial Disputes Act, No. 43 of 1950, as amended by Act No. 25 of 1956, Act No. 14 of 1957, and Act No. 62 of 1957, ss. 4 (2), 40A—Offence of contempt against an Industrial Court—Duty of Counsel to be respectful to Court.

In proceedings under the Industrial Disputes Act the respondent, who was retained as Counsel for one of the parties ("the Union"), withdrew abruptly from the proceedings after reading out to the Court, on instructions given to him by his client, the following statement from a document which he handed to the Court:—

"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."

Held, that the respondent was guilty of the offence of contempt of Court under section 40A of the Industrial Disputes Act, No. 43 of 1950, as amended by Act No. 62 of 1957.

Held further, that a rule nisi issued under section 40A (4) need not be signed by the Chief Justice.

RULE nisi issued in terms of Section 40 A (4) of the Industrial Disputes Act.

Colvin R. de Silva, with H. Wanigatunga, E. R. S. R. Coomaraswamy, M. L. de Silva, K. Shinya and Nimal Senanayake, for Respondent.

D. St. C. B. Jansze, Q.C., Attorney-General, with V. S. A. Pullenayegum, Crown Counsel, as amicus curiae (on notice).

Cur. adv. vult.

May 20, 1960. BASNAYAKE, C.J.—⁶

The respondent appeared before this Court on the service of the following Rule :—

“ Upon reading a complaint communicated in terms of Section 40A (3) of the Industrial Disputes Act, No. 43 of 1950, as amended by the Industrial (Amendment) Act No. 62 of 1957, by Herbert Spencer Roberts Esquire, duly appointed by the Minister of Labour to constitute an Industrial Court to which a dispute between Mr. P. R. Perera, Petrol Dealer of Mirigama, and the Petroleum Service Station Workers’ Union had been referred, it is ordered that Vijaya Wickramatunga Vidyasagara, Advocate, residing at 139 St. Sebastian Hill, Colombo 12, do appear in person before the Supreme Court at Hulftsdorp on the 1st day of March 1960 at 11 o’clock in the forenoon and show cause why he should not be punished for the offence of contempt committed against or in disrespect of the authority of the said Industrial Court in that he, as Advocate representing the Petroleum Service Station Workers’ Union, did at a proceeding held on November 28, 1959, read out from a document the following statement contained therein :—

“ 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.”

and did abruptly withdraw from the said proceeding after handing in the document to the said Court.”

He showed cause by filing an affidavit in which he stated :—

“ 2. I represented the Petroleum Service Stations’ Workers’ Union as Advocate duly instructed at a proceeding held on 28th November 1959 referred to in the Rule issued on me. The circumstances in which I came to appear for the said Union are set out hereinafter.

“ 3. By a letter dated 2nd September 1959 a copy of which is annexed hereunto marked A1, the Permanent Secretary to the Ministry of Labour informed the General Secretary of the Petroleum Service Stations' Workers' Union that the Hon. Minister of Labour had referred the industrial dispute between the said Union and one Mr. P. R. Perera for settlement by an Industrial Court. The statement of the matter in dispute forwarded with the said letter is annexed hereunto marked A2.

“ 4. In due course, as required by the Registrar of the Industrial Court, the Union submitted its statement dated 22nd September 1959. A copy of the said statement is annexed hereunto marked A/3.

“ 5. Messrs Julius and Creasy filed a statement dated 23rd September 1959 for and on behalf of Mr. P. R. Perera, a copy of which statement is annexed hereunto marked A4. Copies of the answers of Messrs Julius & Creasy and the Union dated 14th and 19th October 1959 respectively are annexed hereunto marked A5 and A6.

“ 6. At an inquiry fixed for 30th October 1959 the Union failed to appear as the lawyer who was to have represented the Union had suddenly taken ill and the Union had come to know of this fact only in the evening of the said day. On the said date, H. S. Roberts Esquire heard the case *ex-parte*. A copy of the proceeding of the said date is annexed hereunto marked B1.

“ 7. On 2nd November 1959 the Union made an application that the Court be pleased to permit the Union to place its case before the Court. The application was allowed on the Union paying Rs. 105/- as cost of that day and the matter was fixed for hearing on 21st November 1959.

“ 8. On 15th November 1959 the Union made an application for reasons given that a date “ three weeks hence ” be fixed for hearing. A copy of the said application and of the Court's direction thereon dated 18th November 1959 are annexed hereunto marked C1 and C2 respectively.

“ 9. The Union gave notice to both Messrs Julius & Creasy and Mr. P.R. Perera, and the General Secretary of the Union duly appeared on 21st November 1959 and supported the said application. A copy of the proceedings of 21st November 1959 including the order made by Court are annexed hereunto marked D1.

“ 10. On 25th November 1959 the Union addressed to the Hon. Minister of Labour a letter of which a copy is hereunto annexed marked D2.

“ 11. When I was retained to appear on behalf of the Union on 28th November 1959 a copy of the aforesaid letter D2 was placed before me and I was instructed to make to Court the statement which will be found in the annexed copy of the proceedings of 28th November 1959 marked E.

“ 12. The passage set out in the Rule served on me is an extract from the said statement and was intended to inform the Court of the fact of the appeal to the Minister and of the reason therefor so that the Court would be in a position to understand the course of action adopted by the Union.

“ 13. On this occasion I was acting in my capacity as Counsel for the Union seeking both to represent my client's interests and to do my duty to Court. I handed the document from which I read to Court at the request of the Court and having thanked the Court, withdrew.

“ 14. At no stage did I intend any manner of disrespect towards the Court.”

Learned counsel for the respondent argued that the Rule Nisi issued on him was not a valid Rule in that

- (a) it was not signed by the Chief Justice, and
- (b) it did not contain sufficient particulars to indicate that it was issued in conformity with the provisions of section 40A of the Industrial Disputes Act, No. 43 of 1950, as amended by Industrial Disputes Amendment Act, No. 62 of 1957.

We are unable to uphold the contention of respondent's counsel that a Rule Nisi issued under section 40A sub-section (4) should be signed by the Chief Justice or should refer to the nature of the communication made or contain other particulars than those contained in the Rule that has been issued in this case.

Counsel also submitted that the Rule failed to specify the acts of the respondent which bring him within the ambit of section 40A. He submitted that it should have specified whether he published any statement or did any act or interfered with the lawful process of the court or the arbitrator, and that for want of particulars the Rule Nisi was bad. This contention too we are unable to uphold.

Learned counsel further submitted that the act of the respondent was not an act committed against or in disrespect of the authority of the Industrial Court, that he merely communicated to that Court what his client felt and that it was within the scope of his duty to communicate to the Court the instructions given to him by his client.

It will be useful before we express our views on this submission if the facts are briefly set out.

By virtue of the powers vested in him by section 4 (2) of the Industrial Disputes Act, No. 43 of 1950, as amended by the Industrial Disputes Amendment Act, No. 25 of 1956, No. 14 of 1957, and No. 62 of 1957, the Minister of Labour referred to Mr. H. S. Roberts, a member of the panel of the Industrial Court, the dispute between the Petroleum Service Station Workers' Union and Mr. P. R. Perera, Dealer, Shell Petroleum Service Station at Mirigama. This fact was communicated to the General

Secretary of the Petroleum Service Station Workers' Union by letter of 2nd September 1959 by the Permanent Secretary to the Ministry of Labour. The statement of the matter in dispute attached to that letter reads as follows :

“ THE INDUSTRIAL DISPUTES ACT, NO. 43 OF 1950

In the matter of an industrial dispute

between

The Petroleum Service Station Workers' Union

No. 16, Albion Place, Colombo 9,

and

Mr. P. R. Perera, Dealer, Shell Petroleum Station

at Mirigama, Asgiriya, Gampaha.

Statement of Matter in Dispute

The matter in dispute between the Petroleum Service Station Workers' Union and Mr. P. R. Perera, Dealer, Shell Petroleum Station at Mirigama, is whether the refusal by the said Mr. P. R. Perera to employ the following persons is justified and to what relief each of the said persons is entitled :—

1. J. R. Bastian Perera,
2. J. A. Piyasena,
3. J. P. Gunadasa, and
4. K. P. Jinadasa.

Dated at Colombo, this 27th day of July, 1959.”

The Petrol Service Station Workers' Union filed a statement on 22nd September 1959 in which they stated that the matter in dispute arose over the refusal of Mr. P. R. Perera, Dealer, Shell Petroleum Station at Mirigama, to employ as from 17th June 1959 the persons named above and that they were workers at the said station for several years and demanded that Mr. Perera should continue the services of the said workers.

Mr. P. R. Perera became the dealer at the Shell Petrol Service Station at Mirigama in June 1959. The previous dealer was one Mrs. de Saram who employed the four persons who are the subject matter of the reference. She gave them due notice of termination of contract. At no time were they employed by Mr. P. R. Perera, nor were they ever offered employment by him. The services of the four persons referred to were terminated by Mrs. de Saram and it was submitted by the employer that as he never employed the four persons in question and as their services were terminated not by him but by Mrs. de Saram no question of an industrial dispute arises as between him and them. Since the beginning of the dispute between the Petroleum Service Station Workers' Union and Mr. P. R. Perera, the All-Ceylon Oil Company Workers'

Union instructed its members, who *inter alia* are amongst the employees of the Shell Company, to refuse to deliver petrol to Mr. P. R. Perera, and he was unable to carry on his business as a result of this refusal.

On 30th October 1959 the matter came up for investigation and the Union was absent. Neither the representative of the Petroleum Service Station Workers' Union nor the persons mentioned above appeared before the Industrial Court. The Judge waited till 10.05 a.m. although the parties were required to attend at 9.15 a.m. and as the Union did not appear even at that hour he proceeded to investigate the dispute. After having recorded the fact that the Union had not attended, he said "I therefore propose to hear the case *ex parte*."

Mr. Kadirgamar, counsel for Mr. Perera, briefly stated the facts and pointed out that Mrs. de Saram it was who had terminated the services of the persons mentioned after due notice and that Mr. Perera had no contract with them.

Mr. Perera was then called to give evidence and was examined by Mr. Kadirgamar and the proceedings terminated after his evidence. On 15th November 1959 the General Secretary of the Petroleum Service Station Workers' Union filed a motion in which he moved that the Court be pleased to postpone the date of hearing of the above dispute on the ground that Mr. Advocate Malcolm Perera who had been retained for the Union was ill and in hospital and was unfit to conduct the Union's case on Saturday the 21st November 1959. The Registrar of the Court informed the Petroleum Service Workers' Union that the dispute was investigated on 30th October 1959 and directed the Union to support the application for a postponement in Court on 21st November at 9.15 a.m. with notice to the other side and stated that their application would be considered on that date. On that date Mr. Alfred Perera, the Secretary of the Petroleum Service Station Workers' Union, appeared in Court and stated that Mr. Malcolm Perera was still ill and was unable to be present in Court and asked for another date. Mr. Kadirgamar opposed the application and stated that he had no alternative because he was so instructed by his Proctor to oppose it, unless the boycott was lifted. The Court enquired from the representative why they did not lift the boycott and to that he answered that the Executive Committee had to take it up with the All-Ceylon Oil Company Workers' Union. The Court informed the representative "I will give you another date, provided you instruct the All-Ceylon Oil Company Workers' Union to lift the boycott" and the representative answered "I will tell the Committee". The representative also stated that he would put it to the Committee and that they will have to decide it. Thereupon the Judge made his order in the course of which he stated "I am willing to allow another date provided the Union instructs the All-Ceylon Oil Company 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 trial shall stand. Adjourned for 9.15 a.m. on 28.11.59."

On 25th November 1959 the Union addressed a communication to the Minister of Labour in which they set out the following facts :

“The Union wishes to place the following facts and submissions before you in regard to the above dispute :

1. This dispute which concerns the non-employment of four workers at the Mirigama Shell Petroleum Station by Mr. P. R. Perera the Dealer of the said Station, was referred to the Industrial Court for adjudication before H. S. Roberts Esquire, and the inquiry was fixed for the 30th of October 1959.

2. Due to causes over which the Union had no control, the Union was not represented in Court on the said date and the Court proceeded to hear the case *ex parte* and fixed the 10th of November as the date for the award.

3. The Union immediately after the said *ex parte* proceedings, made an application that it be allowed to intervene and furnished the Court with the reasons for its absence on the date fixed for the inquiry. This application was allowed by Court on the Union paying Rs. 105 as costs of that date, and the 21st of November, 1959, was then fixed as the date for the inquiry into the dispute.

4. On the 15th of November 1959 the Union moved that the Court be pleased to postpone the inquiry on the ground that its representative, Mr. Advocate Malcolm Perera who was to appear for the Union, had suddenly entered hospital and was medically advised that he would not be in a fit physical condition to conduct the Union's case on the said date. The Union was directed by a letter sent to it from the Industrial Court that this application should be supported on the date fixed for inquiry, and this was accordingly done after notice to all parties.

5. The Court thereupon made an order, a copy of which is annexed hereto. The Union is compelled to protest against this order on the following grounds :—

- (a) The condition imposed on the Union in the said order is wrong and cannot be justified. It is not correct to impose as a condition precedent to the grant of a postponement on the ground of the illness of a Union representative, a condition that one of the parties to the dispute should influence a third party in regard to some matter affecting the third party and over which the party to the dispute had no control.
- (b) The Court by means of the said order has sought to compel this Union to bring its pressure to bear upon and to influence the All-Ceylon Oil Companies' Workers' Union who is not a party to this dispute, on a matter which pertains to the activities of that Union.
- (c) The said order makes it evident that the Court was not acting in the spirit and manner in which an Industrial Court should, for the maintenance and furtherance of industrial peace in the country.

(d) The said order reflects a positive degree of prejudice on the part of the Court against this Union and the All-Ceylon Oil Companies' Workers' Union who have sympathised with this Union in the dispute now before Court.

6. For the reasons aforesaid, the Union states that the purposes of justice would be defeated if the Court as presently constituted was to inquire into and adjudicate upon the dispute now before it. The Union further is of the view that an impartial inquiry into the matter cannot be had at the hands of a tribunal which has made an order of this nature.

Accordingly, the Union states that it will be unable to consider itself bound by any order made by this Court, and requests you as the Minister of Labour to intervene in the interests of justice and industrial peace, and to take necessary steps to have the Court re-constituted in order that the dispute may be heard *de novo* and determined by another member of the Industrial Court Panel."

On 28th November 1959 Mr. Kadirgamar appeared for Mr. Perera and the respondent instructed by Mr. R. Saravanabagvan appeared for the Union. The proceedings of that day read as follows :

" Mr. Vidyasagara—reads from document :

'The Union states that the condition imposed on it by the order of this Court dated the 21st November 1959 is a condition which it is unable to fulfil inasmuch as it amounts to a condition that it should influence another Union in a matter affecting that Union and over which it has no control.

'The said condition, the Union submits, is ultra vires to this Court and is not a consideration which ought to have been made a condition precedent to the grant of a postponement on the ground of the illness of a Union representative.

'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 this 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. I therefore withdraw from this case. (Document handed and Mr. Vidyasagara retires.)"

Thereafter Mr. Kadirgamar made his submissions and apologised to the Court for the conduct of the Union through its representative, the respondent.

It was argued for learned counsel that the respondent did not commit any of the acts which are deemed to be contempt of court under section 40A subsection (1) of the Industrial Disputes Act as amended by Act No. 25 of 1956, Act No. 14 of 1957, and Act No. 62 of 1957, and that counsel enjoyed a certain latitude to make representations to the Court

as to why a particular party before it did not desire to proceed with the matter in dispute. He also stated that the respondent was merely a channel of communication of the Union's views.

Section 40A (1) reads—

Where any person—

- (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
- (b) interferes with the lawful process of such Arbitrator, Court or Tribunal, such person shall be deemed to commit the offence of contempt against or in disrespect of the authority of such Arbitrator, Court or Tribunal.

We are unable to agree that counsel is a mere mouthpiece of the person who retains his services. Counsel has a responsibility which requires him to conduct himself deferentially and respectfully before the Tribunal before which he appears. If the person who retains his services wishes to take a certain course of action which would amount to an offence, it is his clear duty to point that out to his client and advise him that that course is a perilous one which he as counsel could have nothing to do with.

In the instant case the respondent did not do so. On the contrary he committed the very act penalised by the section and he did so deliberately. The proceedings show that the Union was from the very outset on the ground of illness of the counsel they had originally retained delaying the performance of its duty by the court. The Tribunal was considerate and gave the Union every opportunity of presenting their case. Prolonged illness of counsel does not confer on a party a right to have the proceedings postponed till he recovers. If a counsel retained by a party is not able on ground of illness or otherwise to appear on the day fixed for the hearing of a matter, the party should either retain another counsel or be prepared to present his case in person.

It is not necessary to refer to the cases cited by learned counsel as they are not relevant to the question that arises for decision. The act of the respondent is clearly an act calculated to bring the Industrial Court into disrepute during the progress of its investigation and is punishable as if it were a contempt of Court.

We accordingly make the Rule absolute and impose the punishment of a fine of Rs. 500 on the respondent. If he does not pay the fine he will undergo six months' rigorous imprisonment. As the offence is a very serious one and seeing that the respondent is an Advocate of five years' standing he should have known the gravity of the act which he committed with deliberation.

H. N. G. FERNANDO, J.—I agree.

SINNETAMBY, J.—I agree.

Rule made absolute.