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IN HER MAJESTY'S PRIVY COUNCIL	No.35 of 1961	UNIVERSITY OF LONDON
O N A P P E A L		INSTITUTE OF ADVANCED LEGAL STUDIES
FROM THE SUPREME COURT OF CEYLON		19 JUN 1964
B E T W E E N		25 RUSSELL SQUARE LONDON, W.C.1.

VIJAYA WICKRAMATUNGA VIDYASAGARA Appellant

74050

- and -

THE QUEEN Respondent

C A S E FOR THE APPELLANT

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- 10 1. This is an appeal by special leave granted on the 21st December, 1960 from the Judgment and Decree of the Supreme Court dated the 20th May, 1960, whereby the Appellant was found guilty under Section 40A(1) of the 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, (hereinafter called the Act), of the offence of contempt committed against or in disrespect of the authority of an Industrial Court established under the Act, at a proceeding thereof held on November 28th, 1959, p.55
- 20 by making a certain statement to the said Court in his capacity as an Advocate representing one of the parties to a dispute before the Court. p.53 L.43
- 30 2. The principal issue arising in this appeal is whether the statement held by the Supreme Court to constitute the offence, can in law amount to the offence of contempt against or in disrespect of the authority of the said Court, where it was made by the Appellant in pursuance of his duty or what he honestly believed to be his duty as Counsel representing a party to a proceeding in Court.
3. The rule nisi for contempt issued by the Supreme Court on the Appellant was in the following terms:- p.8 L.27 p.9 L.3

"....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

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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."

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

4. The events and circumstances leading to the proceedings on the 28th November, 1959, at which the Appellant made the said statement may be briefly summarized as follows:-

p.1 L.32-
2 L.

(a) On the 17th June, 1959, four workmen working at a Shell Petroleum Service Station in Mirigama all of whom were members of a lawfully constituted Trade Union named the Petroleum Service Stations' Workers' Union (hereinafter called the Union) were refused employment by one P.R.Perera the Petroleum Dealer, who on the said date took over the business of operating the said service station from the previous Dealer who had employed the aforesaid workers.

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(b) On the 2nd September, 1959, at the instance of the Union, the Minister of Labour in the exercise of his powers under Section 4(2) of the Act, referred the industrial dispute arising from the refusal of P.R.Perera to employ the said four workers to an Industrial Court constituted by him. The reference was in the following terms: "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."

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(c) Long before the said reference, another lawfully

constituted Trade Union namely, the All Ceylon Oil Companies' Workers' Union organised a sympathetic boycott by refusing to deliver petroleum products to P.R.Perera's Service Station at Mirigama and also to another station operated by him at Minuwangoda.

- 10 (d) The formal statement filed by P.R.Perera in the Industrial Court dated the 23rd September, 1959, raised the question whether the Court had jurisdiction to make an order under the Act in view of the employer's contention that the aforesaid workmen were at no time the employees of P.R.Perera. It also asked the Court to consider the merits of the action of the All Ceylon Oil Companies' Workers Union in refusing to deliver petrol to Mr.Perera so that he was unable to carry on business, and to make an order accordingly. In the answer of the Union dated 19th October, 1959, the Union joined issue on the question of the Courts' jurisdiction to hear and adjudicate upon the matter in dispute and submitted also that "whatever disputes Mr.P.R.Perera has, with other Unions, cannot be gone into, in this case, as they are matters foreign and irrelevant to the issues in this dispute."
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- 30 (e) On the first date fixed for the inquiry, namely the 30th October, 1959, the lawyer (not the Appellant) retained by the Union having suddenly taken ill (a fact of which the Union became aware only in the evening of the said date), the Industrial Court, H.S. Roberts Esquire, heard the case ex-parte, including evidence led on behalf of Mr.Perera, and fixed the 10th November, 1959, as the date for the making of the Award.
- 40 (f) On the 2nd November, 1959, the Union made an application for permission to place its case before the Court. The application was allowed on the Union paying Rs. 105- as costs of that day and the matter was fixed for hearing on the 21st November, 1959.
- (g) On the 15th November, 1959, the Union made an application that the inquiry be postponed by two weeks on the ground that Mr.Malcolm Perera the

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Advocate for the Union was in hospital and was medically unfit to appear on the 21st November, 1959. On this application, the Court made an order directing the Union's application for a postponement to be supported in Court on the 21st November, 1959, with notice to the other party.

- (h) Notice to the other party was duly given and on the 21st November, 1959, Alfred Perera, the General Secretary of the Union, appeared before the Court and renewed his application for a postponement. The counsel appearing for the employer opposed the application and a formal order was made thereon, the effective part of which is as follows: "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." 10 20
- (i) The Union being aggrieved by this order, by its letter dated 25th November, 1959, appealed to the Minister of Labour and asked that the Minister be pleased 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, upon the following grounds: 30
- "(1) 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. 40
- (2) 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.

- (3) 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.
- (4) 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."
- (j) The Union thereupon instructed its Proctor to retain counsel to appear before the Court on the 28th November, 1959 for the purpose of informing the Court that the Union had appealed to the Minister as aforesaid and that the Union had decided to withdraw from the Case. The Appellant was accordingly retained.
- (k) On the 28th November, 1959, the Appellant appeared before the Court and informed the Court of the Union's appeal to the Minister, by reading out before the Court a statement prepared by him for the purpose. The statement upon which the said rule nisi was issued on the Appellant by the Supreme Court formed part of the Appellant's statement to Court. The document from which the petitioner read out the statement was, at the request of the Court, handed over to the Court. The Appellant then thanked the Court and withdrew.
- (l) Upon a complaint made by Mr. H.S. Roberts that the Appellant's statement was calculated to bring into disrepute the Industrial Court and to insult him (Mr. Roberts) in the course of an inquiry by him as a constituted tribunal and was a contempt of court, the rule nisi quoted in paragraph 3 hereof was served on the Appellant.
5. The Appellant thereupon submitted to the Supreme Court an affidavit dated the 1st March 1960 containing facts substantially as stated in the paragraph 4 above and arranged to be represented by Counsel at the inquiry. The facts stated in the affidavit were not contested in the

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proceedings before the Supreme Court, nor was it suggested that the Appellant was, at any stage of the proceedings before the Industrial Court, disrespectful to that Court in his demeanour, deportment or tone of voice.

6. The Supreme Court (Basnayake C.J., H. N.G. Fernando and N.Sinnetamby JJ.), having heard counsel for the Appellant and the Attorney General who appeared as amicus curiae, made an order on the 20th May, 1960, finding the Appellant guilty of the offence of contempt and imposing a fine of Rs.500/- and in default six months rigorous imprisonment. 10

7. The grounds on which the finding of the Supreme Court were as follows:-

"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. 20

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. 40
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 50

Industrial Court into disrepute during the progress of its investigation and is punishable as if it were a contempt of Court."

8. The provisions of law relevant to the consideration of this Appeal are as follows:-

Section 4(2) of the Act: "The Minister may, by an order in writing refer any industrial dispute to an Industrial Court for settlement."

10 Section 22(3) of the Act: "For the purposes of constituting an Industrial Court to exercise any power, perform any duty, or discharge any function, under this Act, the Minister shall, according as he may in his discretion determine, select from the Panel either one person or three persons to constitute the Industrial Court."

Section 40A of the Act: "(1) Where any person -

20 (a) without sufficient reason publishes any statement or does any other act that brings any arbitrator, Industrial Court of 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.

30 (2) Every offence of contempt committed against or in disrespect of the authority of any arbitrator or Industrial Court or Labour Tribunal shall be punishable by the Supreme Court or any Judge thereof under section 47 of the Courts Ordinance as though it were an offence of contempt committed against or in disrespect of the Supreme Court.

40 (3) Every complaint of contempt committed against or in disrespect of the authority of any arbitrator or Industrial Court or Labour Tribunal shall be communicated to the Chief Justice by letter signed by

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the arbitrator, or by the President of the Industrial Court, or where such Court consists of one person, by such person, or by the person presiding over such Tribunal.

(4) The Chief Justice may, upon his receiving a communication under sub-section (3), issue a rule nisi for contempt of court on the person named in that communication as having committed the offence of contempt referred to in that communication.

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(5) A person on whom a rule nisi is issued under sub-section (4) shall be liable to be punished unless he shows cause to the satisfaction of the Supreme Court or a Judge thereof.

Section 47 of the Courts Ordinance (Chap. 6, Volume 1, 1938 Edition):

The Supreme Court or any Judge thereof, whether at Colombo or elsewhere, shall have full power and authority to take cognizance of and to try in a summary manner any offence of contempt committed against or in disrespect of the authority of itself or any offence of contempt committed against or in disrespect of the authority of any other courts, and which such court has not jurisdiction under section 57 to take cognizance of and punish, and on conviction to commit the offender to jail until he shall have purged his contempt or for such period as to the court or Judge shall seem meet; and such imprisonment shall be simple or rigorous as such court or Judge shall direct, and the offender may in addition thereto or in lieu thereof, in the discretion of such court or Judge, be sentenced to pay a fine not exceeding five thousand rupees.

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9. It is respectfully submitted that the Supreme Court erred in their judgment in that there cannot be a contempt of Court within the meaning of S40A of the Act where Counsel, acting on the instructions of his client, withdraws from the proceedings before the court without showing any disrespect in his demeanour, deportment or tone of voice and without intending to insult the Court or bring it into disrepute.

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10. The Appellant respectfully submits that this

Appeal should be allowed with costs and his conviction be quashed for the following amongst other

R E A S O N S

1. BECAUSE the Appellant acted in good faith on the instructions of his clients.
2. BECAUSE a withdrawal from the proceedings before a Court cannot of itself constitute the offence of contempt of that Court.
- 10 3. BECAUSE there was no proof or finding of any intention on the part of the Appellant to insult the Court or bring it into disrepute.

E.F.N.GRATIAEN

DICK TAVERNE

IN HER MAJESTY'S PRIVY COUNCIL

O N A P P E A L
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B E T W E E N:

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Appellant

- and -

THE QUEEN Respondent

C A S E FOR THE APPELLANT

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