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Judgments
20/1964

Appeal No. 20 of 1963

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT OF CEYLON

B E T W E E N :-

THE BRIBERY COMMISSIONER Appellant

- and -

PEDRICK RANASINGHE Respondent

CASE FOR THE RESPONDENT

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
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10 1. This is an appeal, by special leave, by the
Bribery Commissioner of Ceylon from a Judgment and
Order of the Supreme Court of Ceylon dated the 20th
December, 1962 quashing an Order made on the 18th
October, 1961 by a Bribery Tribunal which had
purported to convict the Respondent on two charges
of bribery and to pass sentence on him in respect
thereof. pp.115 to
122
pp.104 to
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20 2. For the purposes of this Case the Bribery
Act, No. 11 of 1954 of Ceylon (Cap. 26, hereinafter
called "the original Act") as amended by Acts Nos.
17 of 1956 and 40 of 1958 will be referred to as
"the amended Act". The relevant provisions of the
amended Act have been correctly summarised as
follows by Sansoni J. in Senadhira Et al v. Bribery
Commissioner (1961) 63 Ceylon N.L.R. 313 at page
316 :-

30 We were taken through the Bribery Act as
originally enacted, and as amended in 1958.
The former section 5 empowered the Attorney-
General, if he was satisfied that there was a
prima facie case of bribery, to indict the

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offender, if he was not a public servant, before the Supreme Court or the District Court. Where the offender was a public servant, he could be so indicted, or he could be arraigned before a Board of Inquiry. The amended section 5 empowers the Bribery Commissioner, an officer brought into being by the amending Act, to prosecute any person, if he is satisfied that there is a prima facie case of the commission of an offence specified in Part 2 of the Act, before a Bribery Tribunal. Sweeping amendments were introduced in 1958 which abolished trials before the District Court or the Supreme Court and inquiries before Boards of Inquiry. Boards of Inquiry were abolished, and Bribery Tribunals came into existence: the former had the power to inquire into charges of bribery against public servants brought before them by the Attorney - General, and to decide whether or not the accused person was guilty; that decision would be communicated to the authority that had appointed the accused person, and certain statutory penalties automatically supervened. The Board also had certain powers of punishment, which it is not necessary to detail here; nor do I consider it necessary to discuss whether, or to what extent, the establishment of such Boards was in accord with the Constitution. Bribery Tribunals were constituted under amended section 42 "for the trial of persons prosecuted for bribery", with power to "hear, try and determine any prosecution for bribery made against any person before the Tribunal". All the offences of bribery specified in Part 2 of the Act, all of them punishable with rigorous imprisonment for a term not exceeding seven years or a fine not exceeding Rs. 5,000, or both, became triable by the newly constituted Bribery Tribunals and were no longer triable by the Courts. Section 28, as amended, provides that a sentence of imprisonment passed by a Bribery Tribunal, on a person convicted by the Tribunal of bribery, shall be executed in the same manner as if the Tribunal were a Court; and that a fine or penalty

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imposed by a Bribery Tribunal may be recovered on an application made to a District Court by the Attorney-General. Section 68 empowers a Tribunal to enforce its authority and obedience to its orders by punishing, as for contempt, any disregard of or disobedience to its authority committed in its presence or in the course of any proceedings before it. For this purpose it has been given all the powers conferred on a Court by Section 57 of the Courts Ordinance and Chapter 65 of the Civil Procedure Code.

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3. The principal question for determination upon this appeal is whether a Bribery Tribunal composed of members of the Panel appointed by the Governor-General on the advice of the Minister of Justice under the provisions of Section 41 of the amended Act is qualified to try or to convict or to pass sentence upon accused persons charged with offences of bribery punishable under the Act.

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4. On the 7th June, 1961 the acting Bribery Commissioner charged the Respondent, a public servant, before a Bribery Tribunal "constituted" under the amended Act with the commission of two offences of bribery punishable under the said amended Act.

p.1 1.10 to
p.2 1.5

5. The purported trial of the Respondent was held before a Tribunal consisting of three gentlemen all of whom had been appointed not by the Judicial Service Commission but by the Governor-General on the advice of the Minister of Justice to be members of "the Panel" under the provisions of Section 41. The Tribunal consisted of the Chairman of the Panel (as President) and two others selected by him from the Panel under Section 42 (1) (a). At the conclusion of the proceedings the Tribunal on the 18th October, 1961 pronounced its decision purporting to convict the Respondent on both counts and to sentence him to a term of six weeks rigorous imprisonment on each count, the sentences to run concurrently. In addition the Tribunal ordered the Respondent under Section 26 to pay a penalty of Rs. 50/-.

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pp.104 to
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6. The President of the said Tribunal thereupon issued a warrant of Commitment directing the Fiscal

pp.111 to
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of the Western Province to deliver the Respondent to the Superintendent of the Welikade Prison in Colombo who was required to carry the sentence passed on the Respondent into execution.

p.112 1.15 to 7. On the same day the respondent appealed to
p.115 1.5 the Supreme Court of Ceylon against his conviction.

pp.115 to 8. On the 20th December, 1962 the Supreme Court,
122 for the reasons pronounced by H.N.G. Fernando J. (L.B. de Silva J. concurring) upheld a preliminary objection as to the constitution of the Bribery Tribunal and accordingly quashed the conviction of the Respondent and the sentences passed on him. The Court's decision was to the effect that the Order made by the Bribery Tribunal was null and inoperative because the members of the said Tribunal were not duly qualified to try or to convict or to sentence persons accused of offences of bribery punishable under the Act. In view of the decision of the Supreme Court on this preliminary question of law, it did not become necessary for the Respondent's Grounds of Appeal to set out in paragraph 3 (2) to 3 (10) inclusive to be argued before or considered by the Supreme Court. 10 20

p.113 1.20 to
p.114 1.46

pp.123 to 9. By an Order in Council dated the 26th June,
124 1963 the Appellant was granted special leave to appeal from the aforesaid judgment and order of the Supreme Court. The Respondent was unable, owing to lack of funds, to be represented at the hearing of the Petition. 30

10. The provisions of the Ceylon (Constitution) Order in Council, 1946 (hereinafter called "The Order in Council") which are especially relevant to this appeal are included in an annexure hereto.

11. It is submitted that the Judgment and Order of the Supreme Court under appeal was right for the following among other reasons :-

(a) Under the original Act concurrent jurisdiction to try offences of bribery punishable under the Act and to pass sentence upon conviction had been vested in the Judges of the Supreme Court duly appointed under Section 52 of the Order in 40

Council and in District Judges duly appointed by the Judicial Service Commission under Section 55 of the Order in Council. The powers conferred on Boards of Inquiry appointed under Part 4 of the original Act (but abolished by the amended Act) do not call for special consideration in this appeal.

10 (b) The amended Act divested the Supreme Court and the District Courts of their original criminal jurisdiction in respect of offences punishable under the Act and instead conferred such jurisdiction exclusively upon Bribery Tribunals. In addition, the amended Act purported to empower the Governor-General, acting on the advice of the Minister of Justice, to appoint a Panel from whose number the Chairman and/or members selected under Section 42 would exercise the jurisdiction of a Bribery Tribunal in particular cases.

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(c) The amended Act conferred strictly judicial functions on the members of a Bribery Tribunal who were required to be paid remuneration under Section 45. They were therefore "judicial officers" within the meaning of Section 55 read with Section 3 of the Order in Council. Accordingly, the amended Act, insofar as it purported to qualify members of a Tribunal to exercise judicial powers although appointed by methods other than those prescribed by Section 55 of the Order in Council, was ultra vires. Section 55 of the Order in Council has not been validly amended or repealed so as to divest the Judicial Service Commission of its exclusive power to appoint "judicial officers" vested with jurisdiction to try and convict accused persons and pass sentence upon conviction for offences punishable under the amended Act. The provisions of Section 2 of the amended Act cannot effectively validate legislation which is ultra vires. No person was competent to perform the judicial functions of a member of a Bribery Tribunal unless he was appointed for that purpose by the Judicial Service Commission.

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(d) It was at no time suggested at the

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hearing of the Respondent's appeal or of similar appeals before the Supreme Court that the requirements of the proviso to Section 29 (4) of the Order in Council had in fact been complied with in regard to the relevant provisions of the amended Act. On the contrary, the submissions made on behalf of the Appellant before the Supreme Court seem to assume that no certificate under the proviso to Section 29 (4) had been endorsed by the Speaker of the House of Representatives on the Bill containing those sections which purported to prescribe the qualifications for membership of a Board of Tribunal under the amended Act. These submissions were rightly rejected by the Supreme Court. The granting of the Royal Assent to an invalid legislative instrument is clearly incompetent to cure non-compliance with the imperative requirements of the Order in Council as to the appointment of "judicial officers".

(e) It is respectfully submitted that in any event the exceptional appellate jurisdiction of the Judicial Committee to interfere with a Judgment quashing the conviction of an accused person in a criminal case ought not to be exercised against the Respondent for the following reasons :-

(i) On the 27th November, 1961 the Supreme Court in Senadhira's case (ibid) had decided that the power given to a Bribery Tribunal to convict, fine and imprison persons charged with bribery within the meaning of the Act can only be exercised by persons appointed by the Judicial Service Commission. The Appellant did not apply for special leave to Appeal to the Judicial Committee against the aforesaid decision of the Supreme Court, nor has he in subsequent criminal appeals, where the same question arose for consideration, invoked the jurisdiction of the Chief Justice to give a direction under Section 51 of the Courts Ordinance (Ch. 6) in order

to have the question authoritatively determined by a Full Court or a Collective Court of the Supreme Court. (The provisions of Section 51 of the Courts Ordinance are also included in the annexure hereto).

10 (ii) Thereafter on the 5th April, 1962 the Supreme Court in Don Anthony v. The Bribery Commissioner (1962) 64 Ceylon N.L.R. 93 once again quashed a conviction for bribery on the same grounds as those which form the basis of the earlier decision in Senadhira's case (ibid). The Judgement in Don Anthony's case (ibid) indicates that Counsel appearing for the Appellant did not challenge the ratio decidendi of the Judgment in Senadhira's case (ibid). On the other hand, the Court was merely invited to
20 decide, and did decide (wrongly, it is submitted), that the Judgment of the Bribery Tribunal was not invalid except insofar as it purported to record a conviction and pass sentence upon conviction for bribery. Here again the Appellant did not apply for special leave to appeal to the Judicial Committee against the Order quashing the conviction for bribery.

30 (iii) On the 31st October, 1962 in Piyadasa v. Bribery Commissioner (1962) 64 Ceylon N.L.R. 385 the Supreme Court once again quashed a conviction for bribery because, among other grounds, the Court reaffirmed that a Bribery Tribunal whose members had not been duly appointed by the Judicial Service Commission had no power to record a
40 conviction for bribery or to pass sentence in respect thereof. The Appellant did not appeal against the Judgment and Order in Piyadasa's case (ibid).

(iv) An additional and subsidiary issue was raised before the Supreme Court in the present case as to whether the

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Respondent's proper remedy was, instead of appealing under the amended Act, to invoke the supervisory jurisdiction of the Court in appropriate proceedings of a different nature. This issue does not by itself raise a question of sufficient public importance to justify interference with the Order quashing the Respondent's conviction.

pp.115 to
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(v) If the Order of the Supreme Court made in favour of the Respondent on the 20th December, 1962 should, in the Opinion of the Board, be set aside, the case will have to be remitted to the Supreme Court for consideration of the Respondent's other Grounds of Appeal. Having regard to the fact that the charges against the Respondent had been framed on the 27th June, 1961 in respect of offences alleged to have been committed as long ago as in June and July 1960, justice requires that the Respondent should not be left any longer in suspense and anxiety as to the final result of his case. 10 20

(vi) The Respondent finally submits that if it had been considered necessary and desirable by the Crown in Ceylon to obtain an authoritative ruling as to the competence of the members of a Bribery Tribunal appointed under the amended Act, the more appropriate remedy would have been to have that question referred to the Judicial Committee for consideration under the provisions of Section 4 of the Privy Council Appeals Act, 1833 (3 to 4 WILL 4, c. 41). 30 40

12. The Respondent respectfully submits that this appeal should be dismissed for the following among other 40

R E A S O N S

1. BECAUSE the Supreme Court of Ceylon has correctly decided, following its earlier decision in Piyadasa's case that the trial and the conviction of the Respondent and the

sentences passed on him by a Bribery Tribunal whose members had not been appointed by the Judicial Service Commission were wholly inoperative.

2. BECAUSE the legislative power of the Parliament of Ceylon to establish new tribunals invested with purely judicial powers is limited by the provisions of Section 55 of the Order in Council.
- 10 3. BECAUSE Section 41 read with Section 45 of the amended Act is inconsistent with Section 55 of the Order in Council and is therefore invalid and ineffective notwithstanding the provisions of Section 2 of the amended Act.
4. BECAUSE the language of the amended Act does not purport to, and does not in fact, amend or repeal Section 55 of the Order in Council in respect of the exclusive power of the Judicial Service Commission to appoint
20 persons qualified and remunerated to serve as members of a Bribery Tribunal.
5. BECAUSE in any event the absence of a certificate under the hand of the Speaker in terms of the proviso to Section 29 (4) of the Order in Council precludes a Court of law from deciding that Section 55 of the Order in Council has been validly superseded by Section 41 of the amended Act in respect of the said exclusive power of the Judicial
30 Service Commission. The grant of the Royal Assent to the amended Act does not by itself validate Section 41.
6. BECAUSE the Respondent had a statutory right of appeal to the Supreme Court from the conviction and sentences passed on him, and the objection to the validity of his appeal was rightly rejected.
7. BECAUSE this is not an exceptional case in which the jurisdiction of the Judicial
40 Committee to set aside an Order quashing the conviction of an accused person ought to be

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exercised.

E.F.N. GRATIAEN

MONTAGUE

SOLOMON

A N N E X U R E

Ceylon (Constitution) Order in Council, 1946 (Cap
379)

Section 3.

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"judicial office" means any paid judicial
office.
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Section 29 (4).

10 (4) In the exercise of its powers under
this section, Parliament may amend or repeal
any of the provisions of this Order, or of
any other Order of Her Majesty in Council in
its application to the Island:

20 Provided that no Bill for the amendment
or repeal of any of the provisions of this
Order shall be presented for the Royal
Assent unless it has endorsed on it a
certificate under the hand of the Speaker
that the number of votes cast in favour
thereof in the House of Representatives
amounted to not less than two-thirds of the
whole number of Members of the House
(including those not present).

Every certificate of the Speaker under
this subsection shall be conclusive for all
purposes and shall not be questioned in any
court of law.

Section 55.

30 55. (1) The appointment, transfer,
dismissal and disciplinary control of
judicial officers is hereby vested in the
Judicial Service Commission.

(2) Any judicial officer may resign

his office by writing under his hand addressed to the Governor-General.

(3) Every judicial officer appointed before the date on which this Part of this Order comes into operation and in office on that date shall continue in office as if he had been appointed under this Part of this Order.

(4) The Judicial Service Commission may, by Order published in the Gazette, delegate to the Secretary to the Commission the power to authorize all transfers, other than transfers involving increase of salary, or to make acting appointments in such cases and subject to such limitations as may be specified in the Order. 10

(5) In this section "appointment" includes an acting or temporary appointment and "judicial officer" means the holder of any judicial office but does not include a Judge of the Supreme Court or a Commissioner of Assize. 20

Courts Ordinance (Cap. 6)

Section 51.

51. (1) It shall be lawful for the Chief Justice to make order in writing in respect of any case brought before the Supreme Court by way of appeal review, or revision, that it shall be heard by and before all the Judges of such Court or by and before any five or more of such Judges named in the order, but so that the Chief Justice shall always be one of such five or more Judges. The decision of such Judges when unanimous, or of the majority of them in case of any difference of opinion, shall in all cases be deemed and taken to be the judgment of the Supreme Court. 30

(2) Where an order has been made under subsection (1) that any case shall be heard by and before an even number of Judges and where such Judges are equally divided in their opinions, the decision of the Chief Justice or the decision of any Judge with whom the Chief Justice concurs shall be deemed and taken to be the judgment of the Supreme Court.

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