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IN THE PRIVY COUNCIL

No. 30 of 1968

ON APPEAL FROM THE SUPREME COURT OF CEYLON

IN THE MATTER of a Rule under Section 47 of the
Courts Ordinance (Chapter 6)
against Rajah Ratnagopal

B E T W E E N :

RAJAH RATNAGOPAL Appellant

- and -

THE ATTORNEY-GENERAL OF CEYLON
Respondent

CASE FOR RESPONDENT

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
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25 RUSSELL SQUARE
LONDON, W.C.1.

HATCHETT JONES & CO.,
90, Fenchurch Street,
LONDON, E.C.3.

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CASE FOR RESPONDENT

Record

1. This is an Appeal by Special Leave from the Judgment and Decree of the Supreme Court of Ceylon (H.N.G. Fernando, C.J., T.S. Fernando and Tambiah J.J.) dated respectively the 9th day of April 1968 and the 15th day of April 1968 whereby the said Court considered and adjudged that the Appellant was guilty of the offence of contempt committed against and in disrespect of the authority of the Commission appointed by His Excellency the Governor-General by Warrant dated the 22nd October 1965 in that he did, after having been served with the requisite summons, appear before the said Commission on the 8th day of January 1968 but refused to be sworn or to give evidence, for which offence the said Court imposed a fine upon the Appellant of Rs.1,000/- with a sentence of one month's simple imprisonment to operate in default of payment.

p.201
pp.155, 199

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pp.1-7

2. The principal questions that arise in this Appeal are:

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Record

- (a) whether the appointment of the Commission was ultra vires the powers conferred by the Commissions of Enquiry Act (Chapter 393).
- (b) whether the matters which the Commissioner was appointed to inquire into and report upon fell within the scope of the provisions of that Act.
- (c) whether it was rightly found that the Appellant was a person residing in Ceylon, who could accordingly, by virtue of Section 7(c) of the Act, be summoned to appear before the Commission to give evidence. 10
- (d) whether the Appellant succeeded in establishing bias or the likelihood of bias in the Commissioner or that he (the Appellant) entertained a reasonable apprehension of this.
- (e) whether in any event this would justify the Appellant's refusal to be sworn or to give evidence before the Commission. 20

3. The following statutory provisions are relevant to this Appeal.

Commissions of Inquiry Act (Chapter 393)

Section 2(1)

Whenever it appears to the Governor-General to be necessary that an inquiry should be held and information obtained as to -

- (a) the administration of any department of Government or of any public or local authority or institution; or 30
- (b) the conduct of any member of the public service; or
- (c) any matter in respect of which an inquiry will, in his opinion, be in the interests of the public safety or welfare.

the Governor-General may, by warrant under the Public Seal of the Island, appoint a Commission of Inquiry consisting of one or more members to inquire into and report upon such administration, conduct or matter. 40

Section 7

A commissioner appointed under this Act shall have the following powers -

- 10 (c) to summon any person residing in Ceylon to attend any meeting of the commission to give evidence or produce any document or other thing in his possession, and to examine him as a witness or require him to produce any document or other thing in his possession;

Section 10

Every offence of contempt committed against or in disrespect of the authority of a commission appointed under this Act 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 authority of that court.

Section 12(1)

- 20 If any person upon whom a summons is served under this Act -

.....

- 30 (b) refuses to be sworn or, having been duly sworn, refuses or fails without cause, which in the opinion of the commission is reasonable, to answer any question put to him touching the matters directed to be inquired into by the commission;

.....

such person shall be guilty of the offence of contempt against or in disrespect of the authority of the commission.

- 40 (2) Where a commission determines that a person has committed any offence of contempt (referred to in sub-section (1)) against or in disrespect of its authority, the commission may cause its secretary to transmit to the Supreme Court a certificate setting out such determination;

Record

every such certificate shall be signed by the chairman of the commission, or where the commission consists of only one person by that person.

(3) In any proceedings for the punishment of an offence of contempt which the Supreme Court may think fit to take cognizance of as provided in section 10, any document purporting to be a certificate signed and transmitted to the court under sub-section (2) shall -

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- (a) be received in evidence, and be deemed to be such a certificate without further proof unless the contrary is proved; and
- (b) be conclusive evidence that the determination set out in the certificate was made by the commission and of the facts stated in the determination.

Courts Ordinance (Chapter 6)

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Section 47

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 court, 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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pp.1-7

4. By a Proclamation under the Seal of the Island and dated the 22nd October, 1965 the Governor-General, "in pursuance of Section 2 of

of the Commission of Inquiry Act", appointed Emil Guy Wikramanayake to be his Commissioner "for the purpose of -

- 10 (1) Inquiring into, and reporting on, whether, during the period commencing on the first day of June 1957, and ending on the thirty-first day of July, 1965, all or any of the following acts or things, hereafter referred to as 'abuses', occurred, directly or indirectly, in relation to, or in connection with, all such tenders (including quotations or other offers by whatsoever name or description called) made by persons or bodies of persons (other than any local authority or Government Department), hereafter referred to as 'contractors', for the performance of
- 20 contracts for the constructions of buildings or any other works (including contracts for the supply of services or equipment in connection with such first-mentioned contracts), by whatsoever name or designation called, for or on behalf of any Government department, and all such contracts of the description hereinbefore referred to given to
- 30 contractors whether in consequence of the making of tenders or otherwise, as you the said Commissioner may in your absolute discretion deem to be, by reason of their implications, financial or otherwise, to or on the Government, of sufficient importance in the public welfare to warrant such inquiry and report (hereafter referred to as 'relevant tenders' and 'relevant
- 40 contracts', respectively."

There then follows in the Proclamation a list of the various categories of 'abuses' referred to.

5. In the course of the inquiry evidence was given by the Appellant's wife. This was in connection with an enterprise referred to as the Kandy Water Supply Scheme, in relation to which

pp.47-80

Record

a company known as the Equipment and Construction Company had carried out certain work as sub-contractor. The Appellant was the overseas representative of this company, and his wife was the chairman of the Board of Directors.

p.58, 1.37
p.51, 1.24
p.47, 1.36

p.40, 1.3
p.8, 1.2
p.39, 1.23
p.85, 1.29
p.80, 1.30
p.86, 1.15
pp.90-97

6. In the opinion of the Commissioner, the evidence of the Appellant was material, and accordingly, after several unsuccessful efforts to serve him with a witness summons, he was on the 29th December 1967 duly served with a summons to appear before the Commissioner on the 8th January, 1968. This date was fixed at the invitation of the Appellant's proctor, who appeared before the Commissioner on the 28th December 1967 and stated that, if a date could be fixed, the Appellant was prepared to come to give evidence. 10

7. On the 8th January 1968 the Appellant appeared and said that he "would like to make submissions to Court because of various stories and reports in the Press and other circles where it was discussed". He then tendered an affidavit which he had affirmed that morning in which he stated "I am appearing before the Commission to place before the Commissioner my reasons as to why I should not be compelled to subject myself to interrogation before the Commission". The reasons why he was unwilling to be interrogated by the Commissioner were stated to be - 20

(a) that the Commissioner was a person who for a long time had been associated with various companies that had been interested in or had tendered for government contracts. In particular the companies with which the Commissioner had been actively associated "Would have been interested in tendering for some of the business which would become the subject matter" of his investigations. Also, there had been business competition between the companies with which the Commissioner was interested and Equipment and Construction Co. Ltd. Further, the Commissioner had formerly been retained to advise and act for a 40

10 firm called Messrs. Socomans who had been concerned in the Kandy Water Supply Scheme and for whom Equipment and Construction Co. Ltd. had been sub-contractors. The Appellant therefore thought that a fair and impartial inquiry could not be held on any matters on which the Commissioner might choose to question him and his wife, and their personal and business interests would be gravely prejudiced if he submitted himself to such questioning.

20 (b) that the Commissioner was a "turfite, racehorse owner, steward of the Ceylon Turf Club and a very close friend" of a Mr. S.R. de Silva who was a former Chairman of the board of directors of Equipment and Construction Co. Ltd. but had been compelled to resign from the board by the Appellant's wife and her co-directors for grave irregularities.

30 (c) that the Commissioner's terms of reference "would appear to be much wider than Section 2 would permit insofar as they require him to report whether the facts found by the Commissioner can give rise to certain presumptions of impropriety negligence, omission, misconduct, etc. of persons".

No other allegation of ultra vires was made.

40 (d) that the Commissioner had already "indicted" him, without giving him a chance to explain, for "attempting to evade summons" and had in consequence "made unlawful and illegal threats of bodily restraint". This conduct had taken away any confidence the Appellant may have had in the Commissioner and increased the Appellant's doubt as to whether he would receive justice and fair play.

(e) that the Appellant also had a doubt in his own mind as to whether the summons served on him by "substituted service" was valid and effective. This was

Record

because he was not a resident of Ceylon nor a citizen of Ceylon, but a British citizen resident and domiciled in the United Kingdom and had come to Ceylon on a British passport in order to visit his wife and children in Colombo.

- p.88, 1.20 8. Having read the affidavit, the Commissioner directed the Appellant to be sworn or affirmed. The Appellant thereupon said that he would "not proceed any further with the proceedings" and that he wished "to withdraw from further proceedings, to give evidence". He was then informed by the Commissioner that if he refused to be sworn, he would be reported to be dealt with for contempt, but when called upon to take the oath or affirmation and to testify, the Appellant replied that he was "not prepared to give evidence before this Commission". The Commissioner thereupon stated that he would report the matter to the Supreme Court for contempt proceedings to be taken. 10
- p.88, 1.30
- p.89, 1.4
- pp.97-98 9. On the 16th January 1968 the Commissioner issued a certificate setting out the facts and stating that the Appellant had been guilty of contempt against and in disrespect of the authority of the commission. 20
- The certificate concluded -
- "On the 8th of January, 1968 Mr. Rajah Ratnagopal appeared. When directed to be sworn or affirmed, he refused to proceed any further and refused either to be sworn or to give evidence. In doing so, he has been guilty in my view of contempt of this Commission. 30
- Under the provisions of the Commissions of Inquiry Act, I determine that he has been guilty of contempt against and in disrespect of the authority of this Commission, and I direct my Secretary to transmit to the Supreme Court a certificate of my said determination for such action as the Supreme Court may deem necessary." 40
- pp.98-100 10. On the 21st January 1968 the Supreme Court issued a Rule calling upon the Appellant to show cause why he should not be punished under

Section 47 of the Courts Ordinance read with Section 10 of the Commissions of Inquiry Act for the offence of contempt committed against and in disrespect of the authority of the Commission.

11. The Appellant duly appeared to show cause, putting in an affidavit dated the 7th March 1968 and calling oral evidence. p.100, 11.22
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10 The affidavit substantially repeated and enlarged upon the matters relied on in the affidavit which the Appellant had submitted to the Commissioner on the 8th January 1968. pp.104-131

20 The Appellant claimed that he was neither a citizen nor a resident of Ceylon and therefore was not liable to be summoned as a witness under Section 7 of the Commissions of Inquiry Act. Although his wife lived in Ceylon with some of the children, he himself lived in London. His wife was the largest shareholder and the chairman of Equipment and Construction Company Ltd. and he was its overseas representative. He visited Ceylon about twice a year on transit visas or holiday visas and stayed on each occasion with his wife at her home for about two or three months. Whenever he came to Ceylon he visited the company and studied its balance sheets and accounts and discussed its affairs with his wife and other officers.

30 In paragraph 6 of his affidavit he repeated the allegations made in his former affidavit as to the Commissioner being associated with companies which had been interested in or had tendered for government contracts, "which would have been interested in tendering for some of the business which would become the subject-matter of investigations" by him and which were in competition with Equipment and Construction Company Ltd. or other companies for which it acted. For these reasons he thought that a fair and impartial inquiry could not be held into any matters on which the Commissioner chose to question him and his wife and that their personal and business interests would be gravely prejudiced if he submitted himself to interrogation by the Commissioner. pp.109-122
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Record

The Appellant alleged also that bias and prejudice had been shown by the Commissioner in having ordered that a witness summons should be served on him at his London address through the Ceylon High Commissioner in the United Kingdom and in having requested the Ceylon immigration authorities through the C.I.D. to restrain the Appellant from leaving, if he should at any time arrive in the country.

With regard to the terms of reference of the Commission, the Appellant's sole complaint was thus stated - 10

p.129, 11.1-25

"It is submitted that the terms of reference of His Excellency to Mr. Wikramanayake appear to be much wider than the said section 2 would permit in so far as they require him to report whether the facts found by the Commissioner can give rise to certain presumptions of impropriety, negligence, omission, misconduct, etc. of persons. 20

It is further submitted that the Commissioner himself has extended the scope and objects of his inquiry into a much wider field than even the terms of reference issued to him permit and is seeking to elicit information which would be useful to Mr. Wikramanayake as Chairman or director of companies, which compete with the Company of which my wife is the Chairman or with foreign interests which are represented in Ceylon by the said company." 30

pp.136-138 12. Apart from one witness who spoke as to the Commissioner being a shareholder and former director of a company called Steel Products Ltd., all the oral evidence adduced by the Appellant related to the request made by the Commissioner to the immigration authorities that the Appellant should not be allowed to leave Ceylon. In consequence of this request, when the Appellant had arrived at Katunayake Airport on the 26th December 1967, he had been asked by a police sergeant to sit down, while a superior officer was contacted, his passport was kept for some minutes, and he was asked for various particulars relating to his visit before his 40

pp.132-136, 138-149, 151-154

p.140, 1.30
- p.149, 1.23

passport was handed back to him and he proceeded on his way.

13. At the hearing before the Supreme Court the Court indicated to Crown Counsel, who appeared on behalf of the Respondent, as amicus curiae, that it would be willing to receive any affidavit evidence that the Commissioner might be advised to submit. Accordingly, an affidavit sworn by the Commissioner on the 23rd March 1968 was submitted. In this he specifically denied the allegations which the Appellant had made in paragraph 6 of his affidavit.

p.185, l.47

pp.226-228

14. During the hearing the argument that the appointment of the Commission was ultra vires the powers conferred by the Act was put on a new ground as a result of observations which fell from the learned Chief Justice during the hearing. It was contended that in this case the appointment could only be under Section (2)(1)(c) of the Act but that the Governor-General had committed to the Commissioner the function of determining, in his absolute discretion, the particular tenders and contracts which were of sufficient importance in the Commissioner's opinion to warrant inquiry and report in the interest of the public welfare. Hence the actual subject-matter of the inquiry, namely whether abuses occurred in connection with "relevant tenders" and "relevant contracts", was not within the contemplation of the Governor-General and was not a matter "in respect of which an inquiry will, in his opinion, be in the interests of the public welfare."

p.171, l.12
p.170, l.28
-p.171, l.1

15. On the 9th April 1968 the Supreme Court delivered Judgment, holding that the Appellant was guilty of the offence of contempt committed against and in disrespect of the Commission and imposing on him a fine of Rs.1,000.00 or in default a sentence of simple imprisonment for a term of one month.

pp.155-199

The principal Judgment was delivered by H.N.G. Fernando C.J.. The learned Chief Justice held that the Appellant was a person "residing in Ceylon" within the meaning of Section 7 of the Commissions of Inquiry Act

pp.155-182

Record

and so liable to be summoned to give evidence before the Commission. There was no indication in the Commissions of Inquiry Act that an intention to continue residence permanently or indefinitely was necessary in order to constitute residence in Ceylon. The expression "residing in Ceylon" in Section 7 was to be construed in the same manner as the provisions regarding residence in the English revenue laws have been construed in England. The facts of the present case strongly established that the Appellant "resided in Ceylon".

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The learned Chief Justice considered the objection of ultra vires and held that this failed. The objection that the Governor-General had not formed the requisite intention under paragraph (c) of Section 2(1) of the Commissions of Inquiry Act was not tenable. Moreover the list of "abuses" mentioned in the terms of reference involved or could involve inquiry into matters referred to in paragraphs (a) and (b) of that sub-section. The matters that the Commissioner was appointed to inquire into and report upon were within the scope and authority of the Act.

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With regard to the Appellant's refusal to be sworn, the learned Chief Justice held that upon a proper construction of Section 12(1) of the Commissions of Inquiry Act, this constituted the offence of contempt, whatever the purpose or the reason for the refusal and that reasonable cause could not be shown for a general refusal to give evidence.

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In any event, as to the Appellant's contentions that he had cause to apprehend bias on the part of the Commissioner, and that this constituted a cause for the Appellant's refusal to be sworn or to give evidence, the learned Chief Justice adopted the reasons stated by T.S. Fernando J. in his concurring Judgment for rejecting both these contentions.

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pp.182-196

pp.196-199

Tambiah J. also delivered a concurring Judgment.

p.201

16. The Appellant was granted Special Leave to Appeal by Order in Council dated the 26th August 1968.

17. The Respondent respectfully submits that this Appeal should be dismissed and the aforesaid Judgment and Decree of the Supreme Court of Ceylon affirmed and the Appellant ordered to pay the Respondent's costs of the Appeal for the following amongst other

R E A S O N S

- 10 (1) BECAUSE the appointment of the Commission was not ultra vires the powers conferred by the Commissions of Inquiry Act.
- (2) BECAUSE the matters which the Commissioner was appointed to inquire into and report upon fell within the scope of the provisions of that Act.
- (3) BECAUSE it was rightly found that the Appellant was a person residing in Ceylon and amenable to the process issued by the Commission.
- 20 (4) BECAUSE the Appellant refused to be sworn or to give evidence, and he was not entitled to do either for any cause whatsoever.
- (5) BECAUSE the Appellant's refusal to be sworn or to give evidence was in any event without cause.
- 30 (6) BECAUSE the Commissioner was not in any way affected or likely to be affected by bias, and the Appellant did not entertain a reasonable apprehension that the Commissioner was so affected or likely to be affected.
- (7) BECAUSE the Appellant failed to show that the Commissioner was in any way

Record

affected or likely to be affected by bias, or that he (the Appellant) entertained a reasonable apprehension that the Commissioner was so affected or likely to be affected.

- (8) BECAUSE neither bias nor the likelihood of bias in the Commissioner nor a reasonable apprehension thereof on the part of the Appellant would have justified the Appellant's refusal to be sworn or to give evidence.
- (9) BECAUSE the Supreme Court rightly found that the Appellant was guilty of contempt against and in disrespect of the authority of the Commission.
- (10) BECAUSE the Judgments delivered in the Supreme Court were right for the reasons therein stated.

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E.F.W. GAATIEN.
MONTAGUE SOLOMON

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