Privy Council Appeal No. 26 of 1967

Learie Collymore and another – – – – – – *Appellants*

v.

The Attorney General – – – – – – – *Respondent*

FROM

THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 5TH MAY 1969

Present at the Hearing:
LORD PEARCE
LORD DONOVAN
LORD PEARSON
SIR RICHARD WILD
[Delivered by LORD DONOVAN*]*

This appeal raises the question whether The Industrial Stabilisation Act 1965 is *ultra vires* the Constitution of Trinidad and Tobago and therefore void and of no effect.

The two appellants, Collymore and Abraham, were in 1965 employees of an oil company in Trinidad called Texaco Trinidad Inc., and they and other fellow employees in this company were members of a Trade Union registered under the local Trade Union Ordinance and known as the Oilfield Workers' Trade Union.

This Union bargained on behalf of its members with Texaco Trinidad Inc. on questions of pay and conditions. In March 1965, being desirous of altering the then current collective agreement on these matters, the trade union in question submitted to the company a statement of the changes required. Negotiations followed but without any agreement resulting: and in July 1965 the Company by letter broke them off.

In the ordinary way it would no doubt have been expected that industrial action would follow, and that the union would have called its members out on strike for the purpose of enforcing their demands. This apparently did not happen, the reason being the existence of the Industrial Stabilisation Act which received the Royal Assent on 20th March 1965 and repealed a previously existing enactment called "The Trade Disputes (Arbitration and Enquiry) Ordinance".

Before quoting the relevant provisions of the Act it is necessary to refer to certain of the terms of the Trinidad and Tobago Constitution. It is embodied in Statutory Instrument No. 1875 of 1962 and so far as concerns the provisions relevant to the present issue came into force immediately before 31st August 1962.

Section 1 of the Constitution provides as follows:

> "1. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist without discrimination by reason of race, origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,
>
> (*a*) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;

(*b*) the right of the individual to equality before the law and the protection of the law;

(*c*) the right of the individual to respect for his private and family life;

(*d*) the right of the individual to equality of treatment from any public authority in the exercise of any functions;

(*e*) the right to join political parties and to express political views;

(*f*) the right of a parent or guardian to provide a school of his own choice for the education of his child or ward;

(*g*) freedom of movement;

(*h*) freedom of conscience and religious belief and observance;

(*i*) freedom of thought and expression;

(*j*) freedom of association and assembly; and

(*k*) freedom of the press."

Section 2 is in these terms, so far as immediately relevant:

> "2. Subject to the provisions of sections 3, 4 and 5 of this Constitution, no law shall abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognised and declared . . ."

Section 4 of the Constitution preserves the right of Parliament to pass special laws for the period of any public emergency, notwithstanding sections 1 and 2: and section 5 prescribes a special procedure for the enactment of laws which may conflict with sections 1 and 2, subject to certain specified safeguards.

Section 6 allows a person to apply to the High Court for redress if he considers that any of the foregoing provisions of the Constitution have been or are likely to be contravened in relation to him.

Section 36 enacts that "Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Trinidad and Tobago".

It will be noted that section 1 (*j*) of the Constitution preserves, as one of the "human rights and fundamental freedoms" the freedom of association and assembly. It is the appellants' main contention that the Industrial Stabilisation Act 1965 abrogates, abridges or infringes this right or freedom, contrary to the terms of section 2 of the Constitution.

The long title of the Industrial Stabilisation Act is as follows:

> "An Act to provide for the compulsory recognition by employers of trade unions and organisations representative of a majority of workers, for the establishment of an expeditious system for the settlement of trade disputes, for the regulation of prices of commodities, for the constitution of a court to regulate matters relating to the foregoing and incidental thereto."

So far as industrial disputes are concerned the Act virtually imposes upon employers and employees alike a system of compulsory arbitration for the settlement of such disputes instead of industrial action such as lockouts and strikes. The arbitration is to be by an Industrial Court which is established by the Act.

Thus if any trade dispute exists or is apprehended it may, if not otherwise determined, be reported to the Minister having responsibility for labour matters, either by the employer or his representative or by an organisation or trade union representing the workers.

If in the Minister's opinion suitable means already exist for settling the dispute by virtue of some agreement to which the organisations representative of employers and workers are parties, the Minister is to refer the matter for settlement accordingly. If this produces no settlement within 7 days, the parties are to inform the Minister who may then cancel

the reference, and either take such steps as seem expedient to him to promote a settlement, or alternatively refer the dispute to the Industrial Court " for settlement ". He may also take either of these last two steps where there is no agreement such as is referred to at the commencement of this paragraph.

If the Minister takes steps himself to promote a settlement, but these fail, the Minister must refer the dispute " for settlement " to the Industrial Court and is to do so within 21 days from the date on which the trade dispute was first reported to him.

A settlement effected by any of the foregoing means is to bind both the employers and workers to whom it relates, and the rate of wages to be paid and the conditions of employment to be observed are to become implied terms of such workers' contracts until varied by a subsequent agreement.

The foregoing provisions are to be found in section 16 of the Act under the heading of " Trade Dispute Procedure ": and while it is true that there is no compulsion upon either side to report a trade dispute which exists or is apprehended, it is not very likely that both sides will fail to do so, particularly in view of the provisions of the Act with regard to lock-outs and strikes which are to be found in sections 34–38 inclusive.

Section 34 enacts that no employer shall declare or take part in a lock-out and no worker shall take part in a strike in connection with any trade dispute unless, the dispute having been reported to the Minister, he has not referred it to the Industrial Court within 28 days from the date the report was made to him. Furthermore 14 days' notice of any such lock-out or strike must be given to the Minister and the lock-out or strike may not take place until after the last day on which the Minister may refer the dispute to the Industrial Court.

Penalties for any breach of section 34 are imposed upon employers, trade unions, any individual who calls workers out on strike in contravention of the section, and on any workers who take part in such a strike. The penalty in each case may be a fine or imprisonment or both. Furthermore an offending trade union is to be de-registered: and this, under the Trade Unions Ordinance involves its dissolution.

The Act does not contemplate that proceedings before the Industrial Court will result in anything other than a determination of the trade dispute. The Court consists of a judge of the Supreme Court of Judicature and four other members. Its duty *inter alia*, is " to hear and determine trade disputes ", and it decides by a majority: there is a right of appeal on a point of law to the Court of Appeal, and section 35 of the Act prohibits lock-outs and strikes during the pendency of the appeal.

Section 36 of the Act deals with employers and workers engaged in essential services. These are defined as Electricity, Fire, Health, Hospital Sanitary (including scavenging) and Water Services. Lock-outs and strikes in these services are completely prohibited upon pain of a fine or imprisonment or both. The provisions of the Act already recited for the settlement of trade disputes will of course apply in the case of these occupations.

Save with regard to essential services it is the case that lock-outs and strikes are not completely prohibited, since the starting point of the procedure which results in a ban on industrial action is a report to the Minister which neither side is compelled to make. But this contingency of no report may reasonably be supposed to be remote: and the effect of the Act in that event is, as has already been said, virtually to impose a system of compulsory arbitration for the settlement of trade disputes.

The appellants now claim that the Act is void since it infringes their freedom of association which section 1 of the Constitution declares has existed " and shall continue to exist ": and any abrogation abridgment or infringement of which is forbidden by section 2, save in circumstances which admittedly do not exist in the present case.

The argument runs thus: " Freedom of Association " must be construed in such a way that it confers rights of substance and is not merely an empty phrase. So far as trade unions are concerned, the freedom means more than the mere right of individuals to form them: it embraces the right to pursue that object which is the main *raison d'être* of trade unions, namely collective bargaining on behalf of its members over wages and conditions of employment. Collective bargaining in its turn is ineffective unless backed by the right to strike in the last resort. It is this which gives reality to collective bargaining. Accordingly to take away or curtail the right to strike is in effect to abrogate or abridge that freedom of association which the Constitution confers.

The argument of the respondent is that " freedom of association " in section 1 (*j*) of the Constitution means no more than it says, that persons are free to associate. It does not mean that the purposes for which they associate, and the objects which, in association they pursue, are sacrosanct under the Constitution and cannot be altered or abridged save by the special procedure provided by section 5.

The question thus posed is therefore simply a question of construction. But the arguments presented for the appellants, based on the assertion that the right to free collective bargaining and the right to strike are essential elements in freedom of association in trade unions, led to a prolonged examination in the Courts below as to whether there is in law any " right " to strike. The question does not really arise if the respondent's contention as above summarised is right: for if " freedom of association " does not of itself import freedom to bargain collectively and to do so effectively by means of a strike, it is immaterial whether strike action is or is not the exercise of a " right " or a " freedom " or the enjoyment of " an immunity ". Since however the matter was exhaustively canvassed in the Courts below their Lordships may say that they are in substantial agreement with the analysis of the situation which emerged. It was agreed before their Lordships that trade union law in Trinidad and Tobago was the same as trade union law in Great Britain as at the date when the Trade Disputes Act 1906 took effect. Neither before that date nor since has there been in Great Britain any express enactment by Statute of any right to strike, although in certain quarters such an enactment is still advocated. At Common Law before the enactment of the Trade Union Act 1871, the Conspiracy and Protection of Property Act 1875, and the amendment to section 3 thereof effected by section 1 of the Trade Disputes Act 1906, combinations of workmen to improve their wages and conditions were certainly in peril if in combination they withheld their labour or threatened to do so: but (subject to certain esoteric questions arising out of the decision in *Rookes v. Barnard* [1964] A.C. 1129 and still unresolved by the Trade Disputes Act 1965) it is now well recognised that by reason of the Statutes cited, as well as by decisions such as the *Crofters'* case [1942] A.C. 435 employees may lawfully withhold their labour in combination free from the restrictions and penalties which the Common Law formerly imposed. In this sense there is " freedom to strike ".

There is no doubt that the freedom to bargain collectively has been abridged by the Industrial Stabilisation Act. Thus Part IV of the Act, embodying sections 18–26 provides for the making of " industrial agreements " between trade unions and employers, subject to the examination of the same by the Minister who is to submit the agreement to the Industrial Court for registration, together with a notice containing the ground of any objection to the agreement which he has. The Court then hears and deals with such objection. It may register the agreement without amendment: or with agreed amendments: or it may refer the agreement back to the parties for further negotiation. The agreement takes effect only if it is registered by the Court.

There is also no doubt that the Act abridges the freedom to strike. Indeed in the case of the essential services already mentioned it appears to abrogate it altogether.

It makes no difference to the foregoing situation that the Act in section 3 strengthens the position of trade unions in relation to collective bargaining by imposing on employers an obligation to recognise and negotiate with a union representing 51 per cent or more of his workers. The question is

whether the abridgement of the rights of free collective bargaining and of the freedom to strike are abridgments of the right of freedom of association.

Both Courts below answered the question in the negative; and did so by refusing to equate freedom to associate with freedom to pursue without restriction the objects of the association.

Wooding C. J. put the matter thus:

> "In my judgment, then, freedom of association means no more than freedom to enter into consensual arrangements to promote the common interest objects of the associating group. The objects may be any of many. They may be religious or social, political or philosophical, economic or professional, educational or cultural, sporting or charitable. But the freedom to associate confers neither right nor licence for a course of conduct or for the commission of acts which in the view of Parliament are inimical to the peace, order and good government of the country."

It is, of course, true that the main purpose of most trade unions of employees is the improvement of wages and conditions. But these are not the only purposes which trade unionists as such pursue. They have in addition in many cases objects which are social, benevolent, charitable and political. The last named may be at times of paramount importance since the efforts of trade unions have more than once succeeded in securing alterations in the law to their advantage. It is also of interest to note what the framers of Convention 87 of the International Labour Organisation considered to be comprised in "Freedom of Association". Under that sub-heading the Convention Articles 1–5 inclusive read as follows:

> "Article 1
>
> Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.
>
> Article 2
>
> Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.
>
> Article 3
>
> 1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
>
> 2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.
>
> Article 4
>
> Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.
>
> Article 5
>
> Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers."

All these rights are left untouched by the Industrial Stabilisation Act. It therefore seems to their Lordships inaccurate to contend that the abridgment of the right to free collective bargaining and of the freedom to strike leaves the assurance of "freedom of association" empty of worthwhile content.

Moreover, trade unions need more than "freedom of association". They need to establish an organisation. This involves setting up some kind of headquarters, and appointing officers to man it. Branches may also have

to be set up either in districts where the union has sufficient members, or in particular plants or offices. Arrangements must be made for the due collection, usually weekly, of subscriptions. Recognition by the employer must be obtained as a prelude to collective bargaining. Arrangements have to be made for industrial action in the event of collective bargaining failing either wholly or partly. All this is something over and above freedom of association. It involves a union having freedom also to organise and to bargain collectively: and it is not surprising therefore to find this right the subject of a separate Convention (No. 98) of the International Labour Organisation.

Their Lordships accordingly agree with the Courts below in their rejection of the appellants' main argument.

Certain other objections to particular sections of the Industrial Stabilisation Act were taken by the appellants who alleged that these also infringed the Constitution. By comparison with the main objection, these were subsidiary; and it was conceded that even if all or any of these objections were upheld they could not invalidate the whole Act, but would simply require its amendment. With one exception their Lordships do not think it necessary to deal with these matters in detail. It is sufficient to say that they were examined and rejected by the Chief Justice in the Court of Appeal for reasons upon which their Lordships could not improve and to which they do not desire to add.

The one exception concerns sections 10 and 11 of the Act.

Section 10 deals with the representation of the People of Trinidad before the Industrial Court when it is engaged in hearing a trade dispute; and subsection (2) of the section originally empowered the Attorney General for the purpose of collecting evidence required in order to present the case on behalf of such People, to authorise a public officer to enter upon the business premises of any "employer, trade union or other organisation" and to require the production of any books, documents, accounts or returns relevant to any trade dispute whether existing or anticipated. The learned Chief Justice in his judgment said that he found this power alarming. He added:

> "In exercising the authority which he may be given by the Attorney General thereunder a public officer may uncover vital commercial secrets or gather valuable information about manufacturing processes all or any of which, if so disposed, he may thereafter use or abuse."

Section 10 has now however been amended by Act No. 6 of 1967 and the Attorney General no longer has the power to authorise a public officer to enter upon premises for the foregoing purposes. He may simply authorise the officer to require the production of books, documents, accounts, etc., "relevant to any trade dispute". This must mean an existing trade dispute and not, as specifically provided before, "any trade dispute existing or anticipated".

The appellants asserted that in its original form section 10(2) contravened section 1 (*c*) of the Constitution which assured the right of the individual to respect for his private and family life. The learned Chief Justice rejected this contention as not being open to the appellants. They could complain, under section 6 of the Constitution only if any contravention "*in relation to them*" and neither appellant was "an employer trade union or other organisation". Their Lordships, with respect, think this may be too narrow a ground upon which to base a rejection of the appellants' argument. For a trade union in Trinidad appears to be, as in Great Britain, simply an unincorporated society, and each individual member may be said therefore to be affected by the power which section 10(2) originally gave to the Attorney General in respect of a trade union. But since the power to enter the premises of any trade union has now been taken away, no further discussion of the point seems to be called for.

Section 11 (2) of the Act in its original form empowered the Industrial Court to require the Commissioner of Inland Revenue or any other person who could give information to provide such information as the Court might require from time to time. It gave the Court a discretion whether to disclose information so obtained to the parties on their application, and discretion also to prohibit the publication thereof.

This subsection has now been repealed by the same Act No. 6 of 1967 and the following words substituted:

> "For the purpose of dealing with any matter before it, the Court may on its own motion summon any person who in the opinion of the Court is able to give such information as it may consider necessary, and may, notwithstanding anything contained in the Income Tax Ordinance or in any law, require the Board of Inland Revenue or any member thereof to produce or make available any information which the Court may consider necessary, and the Court may, in its discretion, disclose so much as it thinks fit of the information so produced or made available and may also prohibit the publication of any portion thereof."

The criticism made of section 11 (2) in its original form was that it contravened section 2 (*e*) of the Constitution which declared that no Act of Parliament should "deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations". Under section 11 (2) in its original form, and also indeed in what has been substituted for it, it is possible for the Industrial Court to come to a conclusion on the basis of information which it keeps secret to itself: and this it is said is a violation of the principles of fundamental justice.

This problem is not new. There are exceptional circumstances when a Court finds itself in this dilemma: if it is known that the information it obtains will be disclosed to the parties before it and also perhaps to the world at large, then those persons who have the information may, despite their legal obligation, resort to one device or another to avoid giving it, or will give information which is not the truth or the whole truth. Justice may not therefore be done. On the other hand the knowledge that the Court will treat the information in strict confidence greatly increases the probability that it will be forthcoming. Yet in this case the parties themselves will understandably feel aggrieved that they have not had the chance of verifying or testing the information which the Court has secured, and which in some cases may be decisive.

A case raising a similar issue is *Official Solicitor to the Supreme Court v. K. and another* heard by the House of Lords in 1963 and reported in [1965] A.C. at p. 201. There the mother of two wards of Court asked to see two confidential reports on the infants which the Official Solicitor had made to the judge. The judge refused to disclose them to her. The Court of Appeal reversed the judgment. The House of Lords restored it. There are, of course, certain special features about cases concerning infants, since the welfare of an infant has to be treated as the first and paramount consideration. But the mother in her appeal to the House of Lords insisted that the principles of natural justice required the disclosure of the reports to her, she being a party to the wardship proceedings. In the course of dealing with this claim pronouncements were made in the House of Lords of a general character which may be usefully quoted.

At page 218 of the report Lord Evershed quoted and adopted the following observation of Lord Justice Tucker (afterwards Lord Tucker) in *Russell v. Duke of Norfolk* (1949) 65 T.L.R. at p. 231:

> "There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter under consideration, and so forth."

Lord Devlin said at p. 238 of the Report:

> " But a principle of judicial inquiry, whether fundamental or not, is only a means to an end. If it can be shown in any particular class of case that the observance of a principle of this sort does not serve the ends of justice, it must be dismissed; otherwise it would become the master instead of the servant of justice. Obviously, the ordinary principles of judicial inquiry are requirements for all ordinary cases and it can only be in an extraordinary class of case that any one of them can be discarded."

And again at p. 240:

> " Where the judge sits as an arbiter between two parties, he need consider only what they put before him. If one or other omits something material and suffers from the omission, he must blame himself and not the judge. Where the judge sits purely as an arbiter and relies on the parties for his information, the parties have a correlative right that he should act only on information which they have had the opportunity of testing. Where the judge is not sitting purely, or even primarily, as an arbiter but is charged with the paramount duty of protecting the interests of one outside the conflict, a rule that is designed for just arbitrament cannot in all circumstances prevail."

In cases before the Industrial Court the issue is not solely between employers and employed. The People of Trinidad may also be parties: and the Court is directed by section 9 of the Industrial Stabilisation Act in addition to taking into account the evidence presented on behalf of all the parties to be guided by a number of other specified considerations, *e.g.*, " the need to maintain and expand the level of employment ": " the need to maintain for Trinidad and Tobago a favourable balance of trade and balance of payments ": " the need to ensure the continued ability of the Government of Trinidad and Tobago to finance development programmes in the public sector " and so on. In discharging this duty the Court may well have to seek information which it feels cannot be disclosed to the parties before it. This is a matter in its discretion, and as the learned Chief Justice indicated in his judgment any alleged wrongful exercise of its discretion might be tested on appeal as a matter of law. In these circumstances their Lordships do not feel that they can uphold the contention that section 11 (2) of the Act either in its original or altered form infringes the Constitution.

They will accordingly humbly advise Her Majesty that the appeal should be dismissed. The appellants must pay the costs of the appeal.

In the Privy Council

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THE ATTORNEY-GENERAL

DELIVERED BY
LORD DONOVAN

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