INDUSTRIAL DISPUTE

BASL Ref: 01/03/2003

Termination of Employment of Workmen (Special Provisions) Act, No.45 of 1971 – Interpretation of Sections 2 and 6 – Circumstances in which employer could terminate services of workmen, discussed – Discretionary powers of Commissioner, analysed – Termination Act and Industrial Disputes Act, compared – Necessity to give reasons for decisions, stressed.

Lanka Multi Moulds (Pvt) Ltd.
Vs
Towler, *et al*

SC Appeal No. 60/2001 – CA/20/96

Decided by **Fernando, J., Edussuriya, J. and Wigneswaran, J.** on 29th January, 2003.

The services of a British national, who was employed by the Petitioner Company on a monthly salary of Stg. 2,500/-, in spite of the employee's objections, was terminated in terms of an Agreement between the two parties entered into at the time of appointment of the said employee. The employee complained to the Commissioner of Labour under the Termination Act and, after inquiry, the Commissioner held that the employee was a "workman" within the meaning of the said Act, and as the employer had not obtained the "prior permission in writing" of either the employee or the Commissioner to the termination of services, the Commissioner held that the said termination was illegal, and gave relief to the employee by way of reinstatement, back wages etc. In the Writ of Certiorari application by the Company the Court of Appeal confirmed the Order that the termination was illegal, quashed the Order for reinstatement and held that the employee was entitled to the monetary benefits. The employee did not appeal against the Order refusing reinstatement. The Petitioner Company's appeal to the Supreme Court was dismissed without costs. Justice Mark Fernando, apart from touching on the salient features of the Termination Act held that the statutory conferment of a right of appeal against the decision of a Tribunal has the effect of imposing a duty on that tribunal to give reasons for its decisions. If the citizen is not made aware of the reason for a decision he cannot tell whether it is reviewable, and thereby be deprived of one of the protections of the common law – which is now guaranteed under Article 12(1) of the Constitution.

Subject to variation, Appeal dismissed without costs.

FUNDAMENTAL RIGHTS

BASL Ref: 02/03/2003

Article 12(1 of the Constitution – Awarding of tenders – The word 'arbitrary", defined – Principle of reasonableness in the element of non arbitrariness, discussed.

Sam Samarasekera & Co., Ltd.
Vs
Kandy Municipal Council

S.C.Application No. 53/2000

Decided by **SILVA, C.J., BANDARANAYAKE, J and YAPA, J.** on 16th September, 2002

The Petitioner, a contractor, who claimed to be carrying on business of civil engineering for over 40 years, complained of the infringement of its fundamental rights in respect of the awarding of a tender pertaining to a water scheme project in Kandy. The Petitioner insisted that it was entitled to be awarded the tender on the basis that it was the lowest bidder. Though the TEC recommended the Petitioner's tender, the Finance Committee, which had no authority to consider technical matters had rejected the Petitioner's tender. Thereafter the tender was awarded to another bidder. Their Lordships held that the Petitioner's fundamental rights had not been violated and commented that the principle of reasonableness, which is an essential element of non-arbitrariness, has been accepted within the meaning of Article 12(1) of our Constitution and the Article itself embodies a guarantee against arbitrariness.

Application dismissed without costs.

BASL Ref: 03/03/2003

Articles 12(1) and 14(1)(g) of the Constitution – Complete disclosure – Uberrima fides – Concept of fundamental rights – Manner of filing FR Applications, discussed.

Gas Conversions (Pvt) Ltd. *et al*
Vs
Ceylon Petroleum Corporation, *et al*

S.C.Application No. 91/2002

Decided by **BANDARANAYAKE, J., ISMAIL, J. and DE SILVA, J.** on 13th January, 2003.

The Petitioners moved the Supreme Court to quash the decision of the 1st Respondent Ceylon Petroleum Corp. to sell LPG to the 3rd Respondent without any restrictions attached to the resale thereof. The Respondents' position was that the Petitioners had entered into a Retailer Agreement with Shell Gas Lanka Ltd., and in terms of the said Agreement the Petitioners were prohibited from purchasing LPG from any organization other than Shell Gas Lanka Ltd., and this Agreement had not been filed with the Petition. The Respondents' preliminary objection that the Petitioners' failure to file the said Agreement amounted to misrepresentation of relevant facts or non disclosure of material facts was upheld by their Lordships, and the FR Application was dismissed *in limine.* In this case several useful judgments were cited and the application of this principle in cases for injunctive relief too was discussed.

Application dismissed without costs.

ARBITRATION

BASL Ref: 04/03/2003

Arbitration Act, No.11 of 1995 – Award made in London – Necessity to file the original or duly certified copy of Agreement, discussed- Whether admission of document by one party entitles that party to raise objections under Section 31(2) of the Arbitration Act, examined.

Celweera S.A.
Vs
Malship Bulkfert (Pvt) Ltd.

S.C.Appeal No. 16/2001 – HC/ARB/448/2000

Decided by **SILVA, C.J., ISMAIL, J. and DE SILVA, J.** on 22nd November, 2002

An arbitral Award was made in London in respect of a dispute arising out of a bagging contract. The Claimant made an application to the High Court in Colombo to register the Award and enforce for judgment and decree accordingly. The Claimant, along with his Application filed several documents, one of which was a copy of the Bagging contract which was not duly certified as required by law. The Respondent's preliminary objection that the original or a duly certified copy of the said contract had not been filed in terms of Section 31(2)(b) of the Arbitration Act, was upheld by the learned High Court Judge, and the said Application for enforcement was dismissed with costs. In appeal to the Supreme Court, their Lordships held that as there was an admission in the Statement of Objections and affidavit filed by the Respondent of the specific document, the Respondent was not entitled to raise such objections.

Appeal allowed with costs.

CIVIL PROCEDURE

BASL Ref: 05/03/2003

Civil Procedure Code – Section 149 – Framing of additional issues – Raising of issues after conclusion of evidence of witness - Discretion of trial Judge – Changing character of the action.

Balasunderampulle
Vs
Kelsey Development Ltd. *et al*

CA/LA/428/2001-DC/Negombo/4617/L

Decided by **UDALAGAMA, J. and NANAYAKKARA, J.** on 23rd May, 2002

After having closed his case, the learned Counsel for the Plaintiff moved to raise additional issues when the Plaintiff was being cross examined. The learned District Judge, exercising his discretion, refused the Plaintiff's motion to raise additional issues, which was upheld by the Court of Appeal. Their Lordships stressed on the provisions of Section 150 of the CPC, whereby no party would be allowed to make at a trial a case materially different from that which is placed on record and, importantly, which the opponent is prepared to meet. Their Lordships observed that in the instant case, if the additional issues are accepted it was apparent that the opponents would necessarily be prejudiced as they would now be made to meet a case not made out by the Plaintiff at the beginning.

Leave refused with costs.