Generous Aid to BASL from The Asia Foundation

Agreement for funding signed on 30th May 1991

The Asia Foundation has agreed to provide a grant totalling Rs. 1.980 Million to the Bar Association of Sri Lanka to conduct its Continuing Legal Education programme and for its publications - the BASL News & the Bar Association Law Journal.

The Agreement was signed on 30th May, 1991, by Mr. Nick Langton, Representative in Sri Lanka of the Asia Foundation, and by Mr. Ranjit Abeyesuriya, P.C., President on behalf of the BASL. The office-bearers of the BASL, including Secretary Mr. Upul Jayasuriya, and Treasurer Mr. Rohan Sahabandu, were also present.

The activities under the grant will cover the period 1st June 1991 to 31st May 1992. If the programmes are successfully executed, the Asia Foundation is expected to provide on-going support for the Continuing Legal Education programme for a total of 3 years.

The Foundation makes this grant in keeping with its goal to improve competence within the legal profession, to promote the timely and effective administration of justice, to enhance public awareness of legal rights and equal access to the Legal System, and to strengthen the rule of law in Sri Lanka.

During the one-year period BASL will conduct a multifaceted Continuing Legal Education program designed to improve the competence and professional standards of members of the Bar and the judiciary. The emphasis will be on the needs of lawyers practising in the outstations. The following activities will be supported under the grant:

The Seminar Series is intended to enable lawyers practising in Colombo and the outstations to keep abreast of new developments in the law, including recent judicial decisions, newly-enacted legislation, and current trends in specialized areas of practice. The B.A.S.L. will conduct eight seminars in Colombo and six seminars in each of seven outstations, making a total of 50 seminars during the term of the grant. Each outstation seminar will be planned to meet the specific needs of lawyers practising in that area. Some seminar programmes will be repeated in several outstations by the same seminar leader and utilizing the same support-material. It may also be possible to engage the services of senior members of the outstation Bars as seminar leaders for specific topics.

BAR - BENCH CONFERENCES

The seminars will focus on the development of practical legal skills. As far as possible, the Asia Foundation would welcome a departure from the traditional format of previous B.A.S.L. Continuing Legal Education programmes where speakers simply read their papers verbatim. The support-material prepared for distribution at the seminars should also contain practical information quoting precedent which participants can utilize in their day-to-day practice. The preparation of such support-material was recommended by Continuing Legal Education Consultant Mr. Curtis Kaplan in his report to the B.A.S.L. C.L.E Committee during his September consultancy.

A Bar-Bench conference will be held in each of the Judicial Districts during the term of the grant. The security situation in the North and East may preclude holding conferences in those two areas. The conferences are intended to provide an opportunity for members of the judiciary and the local Bar to meet informally to discuss the administrative and procedural hurdles that contribute to delay in the administration of justice in each District.

The conference organizers will arrange for the preparation of "concept papers" in which issues will be analysed by judges and lawyers - to stimulate dialogue and debate in the conferences. Appropriate steps will be taken to organize study groups and local working committees to follow up on the issues and suggestions raised in the conferences.

The research and reference material presently available in the majority of B.A.S.L. branch libraries are inadequate and outdated. To address this situation, the grant will include funds for the acquisition of case reporter series, revised Legislative enactments, textbooks, monographs, practice guides, journal subscriptions and other research and reference material. The budget is based on a projected figure of Rs. 25,000 for each of the 24 libraries.

STOP PRESS!

CPC Amendments operational from June 27?

Some sections of the Amendments to the Civil Procedure Code introduced by the Act No. 79 of 1988 are expected to be brought into operation on June 27, 1991. They include the revisions in respect of date of trial (Sec. 83), amendments of pleadings (Sec. 93), adjournment of trial (Sec. 143), affidavits (Sections 183, 185A and 185B, 437 and 438), substitution of legal representative (Sections 338, 341 and 394), interim injunction and enjoining order (Sections 663 to 667), appeals (Sections 754 to 760A). The amendments in respect of insolvency procedure and small claims are not expected to be brought into operation on June 27.

President: RANJIT ABEYESURIYA
Treasurer: ROHAN SAHABANDU
Editor: KANDIJAH NEELAKANDAN
Secretary: UPUL JAYASURIYA
Asst. Secretary: AJANTHA COORAY

Asst. Editors: A. A. M. ILLIYA* and KALINGA INDAFISSA
OBITUARIES

We report with regret the death of the following member and offer our sympathies to his family:

Mr. S. Pochabaranay
Mr. Percy S. Tambiah
Mr. L. T. Andradi

ANNOUNCEMENTS

From Overseas Relations Committee

LAWASIA 1991

The 12th LawAsia Conference will be held in Perth, Australia this year from 15th to 19th September. The conference topics cover Human Rights, Trade in Asia, Asian Money Markets, The Family, Environment Law and Alternate Dispute Resolution. Brief details relating to the Conference are given below:

Venue: Hyatt Regency Hotel, Perth, Western Australia.


Registration Fees: $325/=- up to 10th August 1991 and $375/=- thereafter.

The Overseas Relations Committee has been offered a special fare of Rs. 27,700/=- which includes:
- Return air ticket on Signapore Airlines - Colombo - Singapore - Perth - Singapore - Colombo.
- Transport - airport/hotel/airport.
- Additional baggage allowance of 10 kgs.
- One night's hotel accommodation in Singapore.

The Overseas Relations Committee is making arrangements to obtain approval from the Controller of Exchange for the grant of exchange to cover air fare, subsis
tence, accommodation and conference registration and a direction from the Commissioner of Inland Revenue to make the costs a qualifying payment.

The Overseas Relations Committee advises all those who are interested in participating at this conference to Register their names addresses and contact telephone numbers with the Administrative Secretary (Tel. 447134) and collect a copy of the conference brochure on or before 20th June 1991. This will enable the Committee to correspond with you regarding Exchange Control Approval, Inland Revenue Direction, Registration for the Conference, Australian visa etcetera.

The Overseas Relations Committee chaired by Mr. Nimal Weeraratne is determined to make your trip to Lawasia 1991 a pleasant and useful one. The BASL is expected to have one of the largest delegations. Mr. Ranjit Abeyasurya, P.C. (President) and Mr. Upul Jayasuriya (Secretary) are hopeful that BASL will succeed in its bid to hold Lawasia 1993 in Colombo.

STANDING COMMITTEES OF BASL FOR 1991/92

The following Standing Committees have been appointed for 1991/92 by the BASL Executive Committee and these appointments have been ratified by the Bar Council.

(1) Professional Purposes Committee: Mr. J.W. Subasinghe, P.C. (Chairman), Mr. George Gandappa, P.C., Mr. Ashley T. Herat, Mr. M.J.M. Jastier, Mr. R.H.S. Phillips, Mr. Hemal Senaratne, Mr. S.D.P. Valentine, P.C., Mr. D.A.D. Z. Wijesekera, Mr. D.P. Mendis, Mr. M.T.M. Bafiq, Mr. U.R. Wijetunga, Mr. M.A.A.E. Berera, Mr. Jayantha Gunasekera, P.C., Mr. T.G. Goonaranthe, Mr. Mervyn CanagaRatna.

(2) Professional Affairs Committee: Mr. S. Sivaras (Chairman), Mr. V.W. Wijayatilleke (Convenor), Mr. C. Galappath, Mr. Eric J. Gunasekera, Ms. C.C. Jayatil
eke, Mr. Lal Kularatne, Mr. Lal Matarage, Mr. M.A.W.J. Serasinge, Mr. M.J.A.F. Tissera, Mr. W.M.S. Wijeshinghe, Mr. S.D. Yogendra, Mr. G.H.I. De Zoysa, Mr. Sumathipala Edirwewa.

(3) Finance Committee: Mr. B.M. Amarasekera (Chairman), Mr. Anjatha, J. Cooray (Convenor), Mr. Desmond Fernando, P.C., Mr. Siri A. Perera, Mr. T.G. Goonaranthe, Mr. Y. Karunasasekha, Mr. Ashley T. Herat.

(4) House & Library Committee: Mr. Hemantha Warnakulasuriya (Chairman), Mr. Sarath Cooray (Convenor), Mr. Nihal B. Peiris, Mr. Hemal Senaratne, Mr. W.M.S. Wijeshinghe, Mr. R.C.B. Joseph, Ms. K. Swarnachampi.

(5) Publications Committee: Mr. Kandiah Neelakandan (Chairman) Mr. A.A.M. Illyias (Convenor), Mr. Jayantha de Silva, Mr. Hemantha Gamage, Mr. M.S.M. Hussain, Mr. Anil Paramiththa, Mr. Ronald Perera, Mr. Dinal Philips, Mr. Yasantha Kodegoda, Mr. Nigel Hatch.

(6) Overseas Relations Committee: Mr. Nimal Weeraratne (Chairman), Mr. C.P. Kirthisinghe (Convenor), Mr. Meththirii Cooray, Mr. K.L. Dharmaswardena, Mr. S.A.E. Ehanathan, Mr. M.A.R. Mankar, Mr. Lal Matarage, Mr. F.A.M.W. Perera, Mr. J.A.N. De Silva, Mr. Ranjith K. Devapura, Mr. A. Bharatha W. Abeynanyake, Mr. M.T.S. Fernando, Mr. Ismail M. Adamleebbo, Mr. Upali A. Goonaranthe, Mr. Ranjith de Silva, Mr. Ronald Perera, Miss Pearl Korale.

(7) O.P.A. Committee: Mr. Gamani Jayasinghe (Chairman), Mr. L.C.M. Swarnadhipathi (Convenor), Mr. K.M.P.R. Karunarathne, Mr. S. Bagirathan, Mr. K.I. Gunasekera, Mr. A.C.S. Hameed, Mr. A.L.M. Hashim Mr. J.R. Karunarathne, Mr. P.S.M. Korale, Mr. Saliya Mathew, Mr. S.C. Ratnayake, Mr. S. Suntheralingam, Mr. U.L.M. Farook, Ms. L.C. Fernando, Mr. M. Wilfre Perera, Mr. Nihal B. Peiris.

(8) Junior Bar Committee: Mr. Dinal Philips (Chairman), Mr. Upula G. Kalagualwin
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ty, Mr. Mahinda Lokuge, Mr. Suren Peiris, Mr. Nandasiri Yapa, Ms. K. Skopahasanthurer.

(9) Diploma Course Committee: Mr. Rohan Happegalle (Chairman), Mr. J.M. Swaminathan (Convenor), Mr. Varuna Basnayake, Mr. Y. Karunasanghe.

(10) Law Practice Committee: Mr. N.R.M. Daluwattha, P.C. (Chairman), Mr. J.M. Karunarasinghe (Convenor), Mr. K. Balapatabendi, Mr. Nihal Jayamanne, Mr. R.C.B. Joseph, Mr. Y. Karunasanghe, Mr. Ronald Perera, Mr. L.C. Seneviratne, P.C., R. Surendran, Mr. E.R.K. De Soysa, Mr. M.T.M. Bafiq, Mr. K. Neelakandhan, Mr. V.C. Mutilah Nehru, P.C, Mr. K. Kanag-Iswaran, P.C., Mr. Faiz Mustapha, P.C., Mr. H. Amarasekera, Ms. Snehathata Perera, Mr. J. Mervyn CanagagamaRatna.

(11) Notarial Practice Committee: Mr. Elmo Perera (Chairman), Mr. Nihal B. Peiris (Convenor), Mr. T.G. Goonaranthe, Mr. Eric J. Gunasekera, Mr. J.W.D. Perera, Mr. M.J.A.F. Tissera, Mr. S.D. Yogendra, Mr. G.H.I. De Soysa, Mr. M. Nagarathan.

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tetuwegama, Mr. Lakdas R.J.W. Serasinge, Mr. H.G.T. Ratnayake.

(13) Human Rights Committee: Mr. D.W. Abeykoen (Chairman), Mr. M.T.S. Fernando (Convenor), Mr. Meththirii Cooray, Mr. Shirley M. Fernando, Mr. C. Galappathi, Mr. V.S. Gunawardena, Mr. A.L.M. Hashim, Mr. N. Srikantha, Mr. Nandasari Yapa, Mr. J.A.N. de Silva, Mr. U.L.M. Farook, Mr. Parakrama Tennakoon, Mr. M. Nagarathanam, Mr. Ranjith de Silva, Mr. Sanath Jayatilleke, Mr. R.K.W. Goonaseseka, Mr. G.G. Pennambalam, Mr. Javid Yosuf.

(14) Continuing Legal Education Committee: Mr. L.C. Seneviratne, PC. (Chairman), Mr. Kandiah Neelakandan (Convenor), Mr. L.C.M. Swarnadhipathi, Mr. Neville Abeyratne, Mr. Kalinga N. Indatissa, Mr. U.G. Kalagualwana, Mr. M.P.P. De Silva, Mr. Lakdas J.A.W. Serasinge, Mr. K.H.P. Wijayawardena, Mr. C.L. Wickremasinghe, Mr. Hemantha Warnakulasuriya, Mr. Prins Rajasekora, Mr. Harsha Soza.

continued on Page 7
JUDGEMENTS TO BE CITED

1. E.P.F. ACT (Ref. 1/5/91)
Sec. 38 (3) does not preclude the Magistrate from examining whether the Court has territorial jurisdiction in terms of Sec. 38 (2).
C.A. Revision Application No. 1061/82
M.C. Trincomalee No. 545/79
Decided on 19.3.1991.
The petitioners have filed this application in revision against the order made by the learned Magistrate of Trincomalee.
The respondent filed a certificate in terms of Section 38 of the Employees Provident Fund Act to recover a sum of Rs. 3,339.89 as arrears of E.P.F. due from two persons. They are: (1) M.Z.A. Uduman (the petitioner) and V. Thankasilam.
On 05.11.80 the said Thankasilam was discharged from the proceedings on the basis of the submission made by counsel. Thereupon submissions were made that the petitioner should also be discharged on certain grounds. The learned Magistrate by the impugned order held against these submissions and directed the petitioner to show cause.
One of the grounds relied upon by Counsel for petitioner was, that the petitioner according to the certificate filed, is residing in Wattala being a place outside the territorial jurisdiction of the Magistrate’s Court of Trincomalee.
S. N. Silva, J. before whom this Revision Application was argued decided the matter as follows :-
"In terms of Section 38 (2) of the Employees Provident Fund Act a certificate can be filed, in a Magistrate’s Court that has jurisdiction in respect of the place of residence of the defaulting employer. The learned Magistrate has held that he cannot go into this matter in view of the provisions of Section 38 (3) which provides that the correctness of statement contained in a certificate cannot be called in question before the Magistrate’s Court. In my view the provisions of Section 38 (3) do not preclude the Magistrate from examining whether the Court has territorial jurisdiction in terms of Section 38 (2) of the Act. As the certificate stands, the petitioner is the only defaulting employer. In the circumstances the Magistrate’s Court of Trincomalee does not have territorial jurisdiction to proceed with this certificate. Accordingly, I uphold the ground urged by learned President’s Counsel, I act in revision and set aside the order."
(A copy of this judgment can be obtained on payment of Rs. 14.00, quoting ref: 1/5/91).

2. EXTRADITION (Ref. 2/5/91)
Writ of Habeas Corpus under Sec. 11 of the Extradition Law with Article 141 of the Constitution. The judge hearing the committal proceedings has to be satisfied in terms of section 10 (4) (a) of the Extradition Law that the evidence is sufficient to warrant the trial of the person sought to be extradited if the offence had been committed within the jurisdiction of his Court - the interpretation of the expression "sufficient" in the said Sec. 10 (4) (a).
N. P. Butani v. Attorney-General
C.A. Habeas Corpus Application No. 22/90
H.C. Colombo Extradition Case No. 1865/85
Decided on 3.5.1991.
This was an application for a mandate in the nature of a writ of habeas corpus under section 11 of the Extradition Law No. 8 of 1977 read with Article 141 of the Constitution of the Democratic Socialist Republic of Sri Lanka in respect of the body of Naresh Parsanam Butani then detained at the Walikada prison.
Ameer Ismail, J. (with P. R. P. Perera, J. (P/CA) agreeing) held :-
"... The Counsel for the petitioner submitted, firstly, that the offences to which the "authority to proceed" relate are not extraditable offences as they are not punishable by a mandatory term of imprisonment only of not less than twelve months. He contended that a strict interpretation should be placed on the words "punishable under that law with imprisonment of not less than twelve months" in section 6 (1) (b) of the Extradition Law No. 8 of 1977.
... The Counsel for the petitioner conceded that the said offences fall within item 26 in the Schedule to the Extradition Law No. 8 of 1977, being offences against the law relating to dangerous drugs and narcotics and that if similar offences were committed within Sri Lanka they would be offences against the Poisons, Opium and Dangerous Drugs Act and that thereby the requirements of section 6 (1) (c) would be satisfied. He submitted, however, that the said offences do not attract a mandatory term of imprisonment only of not less than twelve months and that therefore they do not meet the requirements in section 6 (1) (b) so as to classify the said offences as being extraditable offences. He contended that a strict interpretation should be placed on the words in section 6 (1) (b) and argued that these offences are not extraditable as these offences which, though are punishable with imprisonment for a term not less than twelve months, can also be punished with a fine in the alternative or with both. It is also to be observed that the penalty applicable to these offences under the provisions of the Customs Act, 1901 of Australia, is a fine not exceeding $100,000 or a term of imprisonment not exceeding 25 years or both. The words "punishable under that law with imprisonment for a term not less than twelve months" are not indicative of a mandatory term of imprisonment only. A rule of strict construction does not allow the imposition of a restrictive meaning on the words so as to withdraw the operation of the law those offences which fall both within its scope and the fair sense of its language. Maxwell in Interpretation of Statutes (11th ed.) at page 254 states, "A Court is not at liberty to put a limitation on general words which is not called for by the sense or the objects, of the mischief or the enactment, and no construction is admissible which would sanction a fraudulent evasion of an Act." Stanbrook and Stanbrook on Extradition, Law and Practice (1980) at page 40 refer to a judgement of Shaw, L.J. in which a restrictive and narrow interpretation was not favoured in construing the words "A term of 12 months or greater punishment" in section 3 (1) (a) and (b) of the Fugitive Offenders Act, 1957, where it was held that it did not mean a specified minimum of 12 months. I therefore reject the interpretation sought to be placed by the counsel for the petitioner that extraditable offences for the purposes of section 6 (1) (b) of Extradition Law No. 8 of 1977 are those offences which are punishable by the law of the designated Commonwealth country only with a mandatory term of imprisonment for a period not less than 12 months. Thus the offences to which the "authority to proceed" relate are extraditable offences within the meaning of section 6 of the Extradition Law No. 8 of 1977..."
... The Judge hearing the committal proceedings has to be satisfied in terms of section 10 (4) (a) of the Extradition Law that the evidence is sufficient to warrant the trial of the person sought to be extradited if the offence had been committed within the jurisdiction of his Court. In Bennwell v. Republic of Sri Lanka (1976-78) 2 Sri LR 194 at page 205, Colin-Thome, J. observed that under section 10 (4) of the Extradition Law No. 8 of 1977, which is the same provision as section 7 (9) (a) of the Fugitive Offenders Act, 1967, of England, the Judge hearing the committal proceedings had to decide whether the evidence was sufficient to warrant trial if the offence had been committed within his jurisdiction and that the judge is not required to have regard to whether the trial would lead to a conviction in the Commonwealth country. He proceeded to state, "The interpretation of the expression "sufficient" with reference to English
JUDGEMENTS TO BE CITED

authorities suggests that the standard of proof required is nothing less than a prima facie case." . . .

. . . The Extradition Law provides for the review of the order of the committal on an application being made to the Court of Appeal for a mandate in the nature of a writ of habeas corpus rather than by way of a regular appeal. Lord Diplock observed in "R. v. Governor of Pentonville Prison ex parte Sotiriadis (1975) AC 1 at page 90, that an appellate court exercised wide powers in habeas corpus applications brought in extradition cases not by any express provisions in the Act but by long established practice. He stated, "under this practice, the Court will entertain the question whether there was any evidence before the Magistrate to justify the committal and, if it finds none, will order the prisoner to be discharged."

He continued, "But if there is some evidence to justify the prisoner in substituting your own appreciation of its weight or cogency for that of the Magistrate upon whom jurisdiction to determine whether the evidence is sufficient to justify committal is conferred by section 10 of the Act."

. . . On a careful review of the entirety of the depositions and the documentary evidence placed before the Court of Committal and which has been summarised above I am of the view that there was sufficient evidence to establish the identity of the corpus and to implicate him in his commission of the offences alleged against him. The High Court Judge has therefore acted within his jurisdiction in ordering the committal of the corpus so as to compel him to plead to the charges and face trial thereon.

The Counsel for the petitioner submitted, lastly, that in terms of section 11 (3) (c) of the Extradition Law No. 8 of 1977 that it would be unfair or oppressive to extradite the corpus due to the passage of time, as the offences relevant to these proceedings have been committed ten years ago. The length of time that has elapsed will be a relevant consideration, for example, in assessing the evidence but there is nothing in the material furnished to show that due to the passage of time that it would be impossible for the corpus to obtain justice.

The Court could also take into account the reasons for the delay and consider whether the corpus was in any way responsible for the delay or whether it was due to the dilatoriness on the part of the requesting State. The delay in the case has not been due to either of these reasons. What matters is not so much the cause of the delay but its effect like the risk of prejudice to the corpus in the conduct of the trial itself or whether it is "oppressive" as directed to the hardships to the corpus resulting from the changed circumstances since the date of the alleged commission of the offences.

It was submitted on behalf of the corpus that he is a prominent businessman and a Director of several business establishments and that should he be extradited to Australia, he would be gravely prejudiced and hampered in defending himself as he would be a total stranger there and would be completely disoriented and isolated. Considering the offences that are alleged to have been committed by the corpus it does not seem to me that they are complex or complicated to the extent that the passage of time has rendered it difficult to defend himself adequately at the trial.

The position take by the defence at the committal proceedings was a complete denial of guilt and he further took up the position that he has never visited Australia or any of its cities.

. . . The personal circumstances urged by the petitioner in this case are unrelated to the passage of time and are not appropriate to be taken into consideration. Having given to the appraisal of the evidence and the available material the best consideration that I can, I have come to the conclusion that it would not be unjust or oppressive by reason of the passage of time and his personal circumstances to extradite him to face trial in respect of the alleged offences.

For these reasons I hold that no ground has been made out for the issue of a writ of habeas corpus and accordingly I dismiss the appeal.

(A copy of this judgment can be obtained on payment of Rs. 42.00, quoting ref: 2/591).

3. INDUSTRIAL LAW (Ref: 3/5/91)

In his approach to the evidence the President of a L.T. must act judicially - It is only after he ascertains the facts he makes a fair and equitable order - suspension of work for failure to carry out a lawful order - application cannot be maintained under Sec. 31 B (1) of the I.D. Act.
Si Lanka Plantation Corporation and another v. National Union of Workers
C.A. Appeal No. 875/83
L.T. No. 10/1486/83
Decided on 5.4.1991
An application was made by the applicant respondent Trade Union that the services of its member S. Sebastian who was employed in St. Heliers State Plan
tation Watawala was terminated on 18.6.1983 and an order for reinstatement with backwages by way of relief.

The employer appellants in their answer denied the termination of the services of the worker on whose behalf the application had been made and averred that since the worker was using the residence given to him for purposes other than residential purposes that his services were suspended until he commenced to use the residence solely for residential purposes and moved that the application be dismissed.

After inquiry the learned President by his order dated 18.11.1983 held that the services of the worker had been terminated by the employer and ordered that he be reinstated with the payment of a sum of Rs. 2,400/- as backwages.

It is against this order that the employer respondents appealed.

Learned counsel for the respondent appellant submitted that the learned President erred in law in holding that there has been a termination of the services of the worker on whose behalf the application was made and that the principal issue for determination by the learned President was whether there was a termination of the service of the worker concerned by the employer as alleged in the application or whether there was only a suspension of his services as alleged by the respondent appellants and that in answering the issue the learned President has totally failed to consider the evidence led before him.

Learned counsel submitted that the Labour Tribunal is vested with jurisdiction under section 31 (B) 1 of the Industrial Disputes Act only and if there is a termination of the services of a worker by the employer D. P. S. Gunasekera, J. who heard this appeal held:-

". . . In short in his approach to the evidence he must act judicially. It is only after he has so ascertained the facts that he enters upon the next stage of his function which is to make an order that is fair and equitable having regard to the facts so found". Thus I agree with the contention of the learned counsel for the appellant that the Tribunal has shut its eyes to the positive evidence in the case in holding that there was a termination of the services of the worker . . .

. . . Learned counsel for the appellant also complained that the learned President has come to a finding that there was a constructive termination of the services by the worker on 2 grounds. Firstly, that the suspension was indefinite and secondly that the suspension was for insufficed reasons. On the question of indefinite suspension counsel submitted that the evidence of the worker himself at page 16 was that he would be given work after he closes down the boutique and as for the reasons for suspension it has the

Continued on next page
Superintendent's evidence that the
workman was running a boutique in the
line room meant for residence without
authority from the management and thus
the finding that the workman's services
has been constructively terminated in
my view is untenable.

Learned counsel for the respondent fur-
ther submitted that the learned President
was in error when in his order he made
this observation that it appears that the
Superintendent had all of a sudden
decided to take steps in 1983 to request
the workman to close down the boutique
which he has been running it for a long
period of time. He contended that in
doing so the learned President had
failed to take into account the evidence
of the Superintendent that after he came
to this estate as its Superintendent in
November 1981 finding that the
workman concerned was running a boutique in his line room that he had
warned the workman to close it down
several times from May 1982 to June
1983 and has disregarded R1 dated May
1983 addressed to the workman on
30.5.1983 referring to the previous warn-
ings to close the boutique and therefore
this finding has been arrived at without
consideration of relevant and positive
evidence. I am inclined to agree with this
submission of learned counsel.

Lastly learned counsel contended that the
employer was justified in suspending the
services of the worker for failure to
carry out a lawful order made by the
management and relied on the case of
Ceylon Workers Congress v. JEDB and
another 1987 2 SLR 73 where a
workman continued in forcible occupa-
tion of a line room in defiance of the
orders of the Superintendent to get back
to the line room earlier occupied by him and
thereupon the Superintendent suspended his work until he vacated the
line room forcibly occupied by him. It was
held that the suspension of work did not
amount to a constructive termination.

Thus having regard to the evidence led
at the inquiry I am of the view that there was
only a suspension of the work of the
workman concerned, and therefore the
application made under section 31 (B) 1
was not maintainable . . .

(A copy of this judgment can be obtained on
payment of Rs. 22.00, quoting ref. : 3/5/91).

5. PRIMARY COURTS PROCEDURE
ACT (Ref. 5/5/31)

In order to make a direction under Sec.
68 (3) of the Primary Courts Procedure
the Court should be satisfied that the
person to be restored had been forcibly
dispossessed within a period of two
months immediately before the date on
which the information was filed.

C.A: Revision Application No. 1646/84

P.C. Eliptiya No. 7261/P

Decided on 8.3.1991.

The petitioner filed this application in
revisions against the order dated
29.11.84 made by the learned
Magistrate of Eliptiya. The said order
was made by the learned Magistrate in
the exercise of his jurisdiction as a
Judge of the Primary Court.

The Officer-in-Charge of the Pitigala
Police filed an information dated 23.2.84
under Sec. 66 of the Administration of
Justice Law No. 44 of 1973. (The refer-
ence to the Administration of Justice
Law was amended as a reference to the
Primary Courts Procedure Act. Counsel
had no objection to the matter being
considered on that basis).

S. N. Silva, J. held :

"... I am inclined to agree with the
submission of learned counsel for the
petitioner that the order for the restora-
tion of possession can be made only in
terms of Sec. 68 (3) of the Primary
Courts Procedure Act. In order to make
such a direction, the learned Judge
should be satisfied that the person to be
restored had been forcibly dispossessed
within a period of two months immedi-
ately before the date on which informa-
tion was filed. In this case the learned
Judge has not come to a finding that the
respondent Cyril Silva had been forcibly
dispossessed. Therefore, I hold that the
order directing the fiscal to place Cyril
Silva in possession of lot 3a has been
made without jurisdiction. I accordingly
am in revision and set aside that portion of
the order".

(A copy of this judgment can be obtained on
payment of Rs. 14.00, quoting ref. 5/5/91).

For the reasons stated above the
petition is granted as prayed for.

6. RENT & EJECTMENT (Ref.
6/5/31)

If notice to quit sent by Registered Post
is properly addressed, Presumption
arises that it was duly given - Sec. 16
and 114 (e) of the Evidence Ordinance -
Decision of the Rent Board of Review (or
Decision of the Rent board not appealed
from to the Board of Review) is final and
it is not open to be canvassed in the
course of an ejectment proceedings in a
Court.

Death of the landlord does not terminate
the tenancy and his rights, obligations
pass to his heirs.

W. K. Premadasa v. M. M. Ibrahim
and others

C.A. Appeal No. 368/80

D.C. Galle No. 8847/L


The original plaintiff sued the Defendant-
Appellant in the District Court for eject-
ment and for recovery of arrears of rent
damages. While the trial was pending
the original plaintiff died and the
Respondents (Substituted Plaintiffs) succeeded in the District Court

Continued on next page
and the defendant's appeal was argued before and decided by Anandacomasarwamy and W. N. D. Perera, J. J. The first issue that was to be decided was whether the notice to quit had been duly given to the defendant. Having considered the two authorities cited - Podisingho v. Perera 75 NLR 533 and Saverimuthu v. Edwin Silva 75 NLR 594 which cases dealt with the necessity to prove not only the posting of the notice but also that it was properly addressed and the presumption under Sections 16 and 114 (e) of the Evidence Ordinance - Anandacomasarwamy, J. (with W. N. D. Perera, J. agreeing) held that the notice had been duly served on the defendant.

The Court of Appeal (following the decision of the Supreme Court in Ponniath Ramnath Kadar v. D. M. Appuhamy 68 NLR (P) 88) held that the defendant had failed to challenge the order of the Rent Control Board of Review as the decision of the Rent Board of Review was final and conclusive and cannot be challenged in these proceedings.

The third question to be decided by the Court of Appeal was whether the plaintiff's cause of action, if any, was extinguished with the death of the plaintiff. Following the decision of the Supreme Court in Fernando v. De Silva 69 NLR 164 ("The death of the landlord does not terminate a contract of tenancy; his rights and obligations pass then to his heirs"), the Court of Appeal held that after the death of the original plaintiff the substituted-plaintiffs were entitled to maintain this action.

The defendant's appeal was dismissed.

A copy of this judgment can be obtained on payment of Rs. 24.00, quoting ref: 6/59/1).

7. TORTS (Ref: 7/5/91)
Quantum of general damages for permanent disfigurement and for pain, suffering and shock.
Linga Satchithananda v. Colombo North Transport Board
C.A. Appeals Nos. 582-583/83 (F)
D.C. Colombo No. 83679/M
Decided on 3.4.1991
This was an appeal from the judgment of the learned District Judge of Colombo entering judgment for the Plaintiff in a sum of Rs. 25,000/- with Legal interest from the date of action till payment in full from the Defendant, with costs, for damages sustained by the Plaintiff, due to the motor accident that occurred near Anuradhapura on the Puttalam - Anuradhapura Road on 10th June, 1979.

Both parties appealed from the said judgment. The Defendant prayed that the judgment be set aside and the action dismissed.

The Plaintiff was dissatisfied with the judgment as the amount of damages awarded was clearly inadequate, as the amount claimed by her was Rs. 300,000/- and the amount awarded was Rs. 32,500/-. She prayed for an enhanced amount.

Wijetunga, J. (with Anandacomasarwamy, J. agreeing) held as follows:

"...we find that the District Judge had come to the conclusion that the Defendant's driver drove his vehicle negligently and collided with the car in which the Plaintiff was travelling, on the oral evidence supported by the sketch. We have perused the proceedings in the judgment of the learned District Judge and we find no reason to interfere with his finding of fact that the Defendant's vehicle was driven negligently..."

"...The learned counsel for the Plaintiff did not canvass that the special damages of Rs. 7,500/- should be increased, as he rightly conceded that there was insufficient evidence to increase that amount, but he submitted that the amount of damages of Rs. 2,50,000/- was grossly inadequate, as the Plaintiff had suffered permanent disfiguration of the face resulting in severe hardship, handicap and embarrassment to the Plaintiff in the society and circle in which she moved..."

"...The learned District Judge failed to consider the fact that in the present case there was permanent disfiguration of the Plaintiff's face. As rightly pointed out by the learned counsel for the Plaintiff, the fortuneteller was a woman, and such disfiguration even alters the personality and to that extent face is the fortune not only for a woman but even to any human being of some social standing. In the present case there is evidence that she had suffered even permanent disability by reason of and in consequence of the accident that took place on 10th June, 1979. We are therefore of opinion that the amount ordered by the learned District Judge is grossly inadequate..."

"...there is no doctrine of precedent in fixing the quantum of damages. Every case has to be considered on its own merit and the Court cannot look for precedent but for a general guide to the current range of damages. It is impossible to standardise damages but the Court ought to arrive at a sum which is in accordance with the general trend of assessment made over the years in comparable cases. There is no general principles that can be applied to assess damages, and the only guiding factor is that damages must be fair and reasonable and proportionate to the nature and seriousness of the injuries caused.

"In the present case the learned District Judge awarded Rs. 7,500/- as special damages for the pecuniary loss suffered by the Plaintiff. This loss is for the expenses such as medical treatment, for the cost of hiring a motor car and other incidental expenses. The Plaintiff failed to prove her expenses and therefore the learned District Judge awarded a sum of Rs. 7,500/- as special damages. We find no reason to interfere with this award. But the learned District Judge failed to consider the loss of earnings or other profits. There is evidence to show that the Plaintiff used to organise dances especially for charitable purposes and took part in organising social functions and charities. After the accident she did not participate in such functions and to that degree as she did earlier."

"As regards non-pecuniary loss she should be compensated for the pain, suffering and shock she suffered as a result of the accident. There is evidence that she still has the pain.

"Having regard to this evidence the amount ordered by the learned District Judge is grossly inadequate and we are of opinion that it is fair just and reasonable to award a sum of Rs. 100,000/- as general damages; in addition to the sum of Rs. 7,500/- awarded as special damages.

"For the foregoing reasons we dismiss the Defendant-Appellant's appeal with costs and allow the Plaintiff-Appellant's appeal. The judgment of the learned District Judge dated 30.6.1983 in respect of the quantum of damages is set aside. The decree shall be amended to read as Rs. 107,500/- and not Rs. 32,500/-.

A copy of this judgment can be obtained on payment of Rs. 20.00, quoting ref: 7/5/91.

NOTE: The purpose of this column is to assist BASL members with information on useful unreported judgements available to those who require them. Those wishing to have copies by post should send a self-addressed stamped envelope with payments by cheque crossed "As Payee Only" and made out to the Bar Association of Sri Lanka. Requests for copies must state the reference number indicated for each judgment. Members are also invited to send copies of unreported judgements to the Editor."
MISSING PERSONS

Response to the advertisement by the BASL in the daily papers on 4th November 1990 calling for details of missing persons on and after 1st January 1993, we have received 3,683 applications up to 1st May 1991. On receipt of these applications, they were numbered and acknowledged. Among the petitions where incomplete particulars were furnished we had to call for more particulars by way of a questionnaire. On receipt of further Information, the documents were examined and classified under the respective provinces. The classification is as follows:-

Western Province 623; Central Province 770; Sabragamuwa Province 321; Southern Province 548; Eastern Province 1,076; North Central Province 445; Northern Province -Total - 3,683

BOOSA PROJECT AND ALLIED MATTERS

850 Fundamental Rights Cases have been referred by the Supreme Court of Sri Lanka to the BASL Legal Aid Centre. 600 more cases are likely to be referred to the centre by the Supreme Court.

Of the Fundamental Rights Applications the details are as follows:- Boosa Detention Camp 1,400 Cases; Pelwatta Detention Camp 200; Pallekele 23; Badulla 72; Ratmalana 38; Magazine 14; Poonari 98; Others (Miscellaneous) 100; Total : 1,942Cases

Of these cases the Boosa Project was the prime matter. Cases numbering 850 have been received the Centre. Out of this 700 Cases have been distributed among the Lawyers and 100 Cases are being handled by the Legal Aid Centres. Cases numbering 400 have been filed in the Supreme Court. Another 200 Cases are to be filed. Rest are in the stages of interview and inquiry.

70 Cases have been decided by the Supreme Court out of the 400 cases that have been filed. Of the decided cases ten applications have been refused. In 45 applications the detenus have been released and fifteen cases have been concluded with order for payment of compensation. Rest of the cases are pending before the Supreme Court.

LIST OF ACTS PASSED IN 1990

We publish for the convenience of our members a list, in alphabetical order, of the Acts passed in 1990:

Agrarian Services (Amendment) Act No. 9
Appropriation Act No. 48
Appropriation (Amendment) Act No. 31
Archaeological Sites of National Importance Act No. 16
Army (Amendment) Act No. 38
Banking (Amendment) Act No. 39
Buddha Sasana Fund Act No. 35
Civil Procedure Code (Amendment) Act No. 6
Code of Criminal Procedure (Amendment) Act No. 12
Code of Intellectual Property (Amendment) Act No. 17
Consumer Credit (Amendment) Act No. 7
Credit Information Bureau of Sri Lanka Act No. 18
Debt Recovery (Special Provisions) Act No. 2
Excise (Amendment) Act No. 37
Excise (Special Provisions) (Amendment) Act No. 40
Fishermen’s Pension and Social Security Benefit Scheme Act No. 23
General Sir John Kotelawala Defence Academy (Amendment) Act No. 30
High Court of the Provinces (Special Provisions) Act No. 19
Industrial Disputes (Amendment) Act No. 32
Industrial Promotion Act No. 46
Inland Revenue (Amendment) Act No. 22
Inland Revenue (Amendment) Act No. 42
Inland Trust Receipts Act No. 14
Irrigation (Amendment) Act No. 34
Local Authorities Elections (Amendment) Act No. 25
Local Authorities (Special Provisions) Act No. 34
Medical Wants (Amendment) Act No. 33
Mortgage (Amendment) Act No. 3
Motor Traffic (Amendment) Act No. 8
National Dangerous Drugs Control Board (Amendment) Act No. 21
National Development Bank of Sri Lanka (Amendment) Act No. 10
Parliamentary Pensions (Amendment) Act No. 47
Payment of Gratuity (Amendment) Act No. 41
Police Commission Act No. 1
Provincial Councils (Amendment) Act No. 27
Provincial Councils (Amendment) Act No. 28
Provincial Councils (Amendment) Act No. 29
Public Servants (Liabilities) (Amendment) Act No. 1
Recovery of Loans by Banks (Special Provisions) Act No. 4
Registration of Documents (Amendment) Act No. 5
Specified Certificate of Deposits (Tax and other Concessions) Act No. 45
Sri Lanka Eye Foundation (Incorporation) Act No. 26
Sri Lanka Ports Authority (Special Provisions) Act No. 36
Sri Lanka Tea Board (Amendment) Act No. 44
Tertiary and Vocational Education Act No. 20
Trust Receipts (Amendment) Act No. 13
Turnover Tax (Amendment) Act No. 43
Workmen’s Compensation (Amendment) Act No. 15
APPELLATE JURISDICTION OF PROVINCIAL HIGH COURTS.

(The text below is a paper read by Dr. R.B. Ranaraja, High Court Judge, at a recent Seminar in Kandy)

The thirteenth Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka was certified on the 14th November 1997. The Amendment came into operation on 26th January 1998, by order of the President published in the Gazette (Extraordinary) 491/10 of 5.2.98. The chief Justice, in terms of the provisions of Article 154P (2) of the Constitution, nominated twenty High Court Judges to the Provincial High Courts on 10th March 1998. The Ministry of Justice reorganized the administration of the courts on a provincial basis with effect from 1st July 1998. However, it was with the passage of the High Court of the Provinces (Special Provisions) Act No. 19 of 1998 that the High Courts commenced exercising the appellate and writ jurisdiction as granted under the 13th Amendment. Decentralization of Appellate Jurisdiction in this country being a novel concept there have been different interpretations of Article 154P of the Constitution and Act No: 19 of 1990.

Article 154P (3) (b) and (c) of the Constitution conferred on the High Courts appellate and revisory jurisdiction in respect of convictions, sentences and orders entered by the Magistrates’ Court and Primary Courts in the Province and such other jurisdiction as Parliament may provide, notwithstanding anything in Article 138 of the Constitution and subject to any law, Parliament by section 3 of the Act of No: 19 of 1990 extended the appellate and revisory jurisdiction to include orders made by the Labour Tribunals within the province and orders made under sections 5 and 9 of the Agrarian Services Act No: 58 of 1970 in respect of land situated within the province.  

The Parliament has in effect created an appellate court within each province having concurrent jurisdiction with the Court of Appeal having the authority to receive or entertain appeals and applications for revision in respect of matters specified in Article 154P (3) (b) and (c), and section 3 of Act of No: 19 of 1990, and no more. It is a limited jurisdiction. Even where the legislature has granted any party aggrieved any order of a court of first instance, tribunal or institution the right to appeal against or move for revision of such order, the High Court will not have the jurisdiction to entertain such appeal or revision application.

Section 4 of Act No: 19 of 1990 gives the right to any aggrieved party subject to provisions of any written law applicable to the procedure and manner for appealing and the time for preferring such appeals, to appeal to the High Court. This section in effect specifies the individuals entitled to appeal and also deals with matters as the format of the petition of appeal, stamps, time limits for filing appeals, security to be deposited as provided for in the relevant codes or Acts.

While section 4 deals with the procedure and manner for appealing from orders, section 5 deals with the procedural law applicable to appeals and revision applications once they reached the High Court. This section spelt out the steps to be followed by the High Court from the time it accepts the petition of appeal or revision application until such appeal or application is finally disposed of. Section 5 unambiguously states that whether the appeal or revision application is from convictions, sentences or orders entered by a magistrate’s court, Primary Court, Labour Tribunal or the Commissioner of Agrarian Services, the provisions of written law applicable to appeals from orders of the Magistrates Court to the Court of Appeal shall mutate mutandis apply to appeals or revision applications to the High Court. The written law applicable will be the provisions in chapters 20 and 29 of the Criminal Procedure Code and the rules framed by the Supreme Court under Article 136 of the Constitution published in the Gazette (Extraordinary) 81/0 of 8.11.1976.

The High Court is empowered in the exercise of ANY appellate jurisdiction vested in it under Article 154P or section 3 of Act No: 19 of 1990 or any other law, to affirm, reverse, correct or modify any order, judgment, decree, or sentence according to law or give directions to the court of first instance, tribunal or institution, or order a new trial or further hearing upon such terms as the court may think fit. It may further receive and admit new evidence additional to or supplementary of the evidence already taken in the court of first instance as justice of the case may require. *Any appellate jurisdiction* in this section denotes both appellate and revisionary jurisdiction.

Article 154P (4) confers jurisdiction on the High Court to issue writs as specified in the two sub articles. The procedure in invoking the jurisdiction so conferred is spelt out in section 7. The High Court has the power to issue writs only against any person exercising any power under any law or statute of the provincial council in respect of any matter set out in the provincial council list, in the ninth schedule to the Constitution. Where the High Court during the course of hearing a writ application finds there is a prima facie evidence of an infringement of a fundamental or language right, it is bound to refer the matter forthwith for determination by the Supreme Court.

Although Article 154P (6) gives the right to a person aggrieved by an order of the High Court in exercising its appellate or writ jurisdiction to appeal therefrom to the Court of Appeal, the legislature has not provided the corresponding procedure for the Court of Appeal to entertain such appeal, either by Act No: 19 of 1990 or any other law except in the case of an order made by the High Court in the exercise of its Writ jurisdiction. Such person however has the right to appeal to the Supreme Court. But such appeal to the Supreme Court should involve a substantial question of law or be in the opinion of the Supreme Court a case or matter for review by the Supreme Court or satisfy the Supreme Court that the question to be decided is of public or general importance.

FOOT NOTES:

(1) Compare the wider powers of the Court of Appeal-Article 138(1) & (2) of the Constitution.

(2) Even the appellate and revisory jurisdiction in respect of orders under Act No: 58/79 is limited to those falling under section 6 and 9 only. The proposed amendment to this Act seeks to repeal section 6 (8) & (7).


(5) See 334-348 of the Criminal Procedure Code, Part IV of the Supreme Court Rules. Also see sec: 31 (2) (3) of Act 32/1950.


(7) Article 133 of the Constitution empowers the term “Appellate Jurisdiction” in a similar context.

(5) Wambre Would Iam 9 read with item 18 of the Provincial Council list being an office exercising any power given to such officer by Act No: 89/79 come within the definition of Article 154P (4) (b). See also sec: 31D (4) (6) of Act No: 32/90.

(9) See sections 9 (a) (b), 10, 11 of Act No: 19/90.

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