1987 May 5

[LORIS J]

IN THE MATTER OF AN APPLICATION BY ELBEE LIMITED FOR AN ORDER OF MANDAMUS

(Application No 34/87)

Industrial Disputes Court — Appeal by way of case stated on questions of law — What constitutes a question of law — If question requested to be stated is a question of law, it should be stated as it was submitted by the appellant — Questions stated entirely different from questions of law submitted by appellant — Application by appellant for an Order of Mandamus granted

Point of Law — What constitutes a point of law

The applicant was the respondent in application 6/85 before the Industrial Disputes Court Feeling aggrieved by the decision of the aforesaid Court, the applicant filed an appeal by way of case stated, requesting such Court to state certain questions for determination by the Supreme Court

As a result the President of the Industrial Disputes Court stated three questions for consideration by the Supreme Court The applicant, however, alleging that the questions stated are totally different from those requested to be stated and having obtained the necessary leave (see *Re Elbee Ltd* (1987) 1 C L R 20), applied for an Order of Mandamus directing the President to state the questions actually requested

Counsel for the applicant stated clearly that the findings of fact made by the Industrial Disputes Court are not disputed, what are really disputed are the inferences drawn therefrom in that they are unreasonable and wrong in law Counsel further submitted that the questions as formulated are totally different from those requested to be stated and that question (1) as formulated is of a purely academic nature

Counsel for respondent 1 maintained that questions 1(γ), 1(δ) and 1(η) are questions of fact, but agreed that the remaining questions are questions of law

Counsel for respondent 2 submitted that the questions submitted by the applicant are questions of fact or, at the most, of mixed law and fact Counsel, however, conceded that the questions as drafted are different from those requested by the applicant to be stated

Held, *granting the application* (1) «Whenever an issue revolves round the application of the law to given facts, it raises a question of law So long as the facts to which the Court is requested to apply the law are not called in

question, the point is a legal one It merely raised questions bearing on the interpretation and the scope of the law Explanation of the ambit of the law is always a question of law» *(Stylianides v Paschalides* (1985) 1 C L R 49 reiterating what was stated in *Re HadjiCostas* (1984) 1 C L R 513 at p 519)

(2) In the light of the material before the Court, this Court reached the conclusion that the questions requested by the applicant to be stated are questions of law and, as such, ought to have been stated as submitted

Though question (i) was not happily drafted, it conveys a complaint that the trial Court ignored its own findings contained in paras (α) to (η) of the question It follows that it is not correct to say that questions 1(γ), 1(δ), and 1(η) relate to pure questions of fact

(3) The questions as formulated are entirely different from those submitted by the appellant

Application granted Nor order as to costs

Cases referred to

Stylianides v Paschalides (1985) 1 C L R 49,

Bracegirdle v Oxley [1947] 1 K B 349,

Re HjiCostas (1984) 1 C L R 513

Application.

Application for an order of mandamus directing the Industrial Disputes Court to state the questions actually requested by the applicant for determination by the Supreme Court.

K. Michaelides, for the applicant.

M. Tsiappa (Mrs.), for respondent 1.

A. Skordis, for respondent 2.

Cur. adv. vult

LORIS J. read the following decision. By means of the present application, the above-named applicant, who has already obtained the required leave of this Court on 14.2.1987, seeks an Order of mandamus, directing the Industrial Disputes Court to state the questions appearing in the Appendix attached to the present application for determination by the Supreme Court.

The history of these proceedings is very briefly as follows:

The applicant in the present application is the respondent in Application No. 6/85 filed with the Industrial Disputes Court, who after hearing same delivered his judgment on 29 11 1986 The respondent feeling aggrieved filed on 10 12 1986 an appeal, by way of case stated, whereby the Industrial Disputes Court was requested to state the questions appearing in the Appendix attached to the present application, for determination by the Supreme Court

The appeal by way of case stated was submitted pursuant to the provisions of Rule 17(2) of the Rules of Procedure 1968 appearing in the Appendix of the Arbitration Tribunal Regulations 1968, which has been retained and it is still applicable in virtue of the provisions of s 7 of Law 5/73

On 24 12 1986, the President of the Industrial Disputes Court stated for consideration by the Supreme Court three questions appearing at page 7 of the case stated, appended to the present application, under the Heading «Note by the President», the applicant in the present application alleging that the said questions stated by the President are totally different from those the Court was requested to state, filed initially an ex parte application (Appl No 10/87) for leave to move the Court for the issue of an Order of Mandamus, directing the Industrial Disputes Court to state the questions actually requested, for determination by the Supreme Court

Upon obtaining such leave on 14 2 1987 the applicant filed the present application within the time specified in the Order granting leave, praying for an Order of Mandamus directing the Industrial Disputes Court to state the questions appearing in the Appendix attached to the present application, for determination by the Supreme Court

The present summons was addressed (1) to the Honourable President of the Industrial Disputes Court, who will be referred hereinafter as Respondent No 1, and 2) to advocates for the applicant in Application No 6/85 before the Industrial Disputes Court, who will be referred hereinafter as Respondent No. 2.

On 8.4.1987 an opposition was filed on behalf of Respondent No. 1 by the learned Attorney-General of the Republic supported by an affidavit of even date sworn by Robertos Bishiaras, the Registrar of the Industrial Disputes Court.

On 9 4 87 counsel acting on behalf of Respondent No. 2 filed opposition as well adopting the contents of the affidavit already filed in support of Respondent's No 1 opposition

On 11 4 87 at the hearing of the present application learned counsel appearing for the applicant stated clearly before me that the findings of fact made by the Industrial Disputes Court are not disputed what are actually in dispute are the inferences drawn therefrom by the Court, inferences which according to the submission are unreasonable and wrong in law Counsel further pointed out that the questions formulated by the learned President of the Industrial Disputes Court are entirely different from those submitted on behalf of the applicant Question No 1 as formulated by the Court - it was argued by counsel - is an entirely academic question unconnected with the facts of the case as found by the Court himself, such an academic question - it was submitted - does not require consideration by the Supreme Court

Counsel for applicant further complained that questions 2 and 3 sought to be stated by Respondent No 1 are entirely different from the ones the applicant was seeking to be considered by the Supreme Court

Learned Counsel appearing for the Attorney-General of the Republic on behalf of Respondent No 1 maintained that questions 1(γ) 1(δ) and 1(η) submitted on behalf of the applicant are questions of fact She conceded though that the remaining paragraphs of question 1 submitted by the applicant, as well as questions 2 & 3 were questions of law and as such ought to have been transmitted by Respondent No 1 in the form they were submitted by the applicant, for determination by the Supreme Court.

Learned Counsel appearing for Respondent No 2 conceded inter alia (a) that the questions framed by Respondent No 1 do not really represent what the applicant was seeking to be stated for determination by the Supreme Court,

(b) that there was a better way for the precise presentation of the 3 questions formulated by Respondent No 1;

but went on to argue that the three questions submitted on behalf of the applicant were not questions of law, but either pure questions of fact or at the most questions of mixed law and fact which could not be submitted in virtue of case stated for the

determination by the Supreme Court as the relevant legislation (s. 12(13)(b)(ii) of Law 5/73) confines an appeal by way of case stated to «points of law only». In support of his argument learned counsel for respondent No. 2 made extensive reference to the case of *Stylianides v. Paschalides* (1985) 1 C.L.R. 49 and invited me to hold that in any event the questions stated on behalf of the applicant were not questions of law and therefore the present application should be refused.

In examining the ex-parte application (Appl. No. 10/87) and in dealing in my said decision with the issue of «what is a question of law» I have referred to the cases of *Bracegirdle v. Oxley* [1947] 1 K.B. 349 and *In Re HjiCostas* (1984) 1 C.L.R. 513 at p. 519, which I adopted. In *Stylianides v. Paschalides (supra)* our Court of Appeal adopted fully the exposition of the law in the case of *In Re HjiCostas (Supra),* in connection with the notion of «question of law» and reiterated that: «... Whenever an issue revolves round the application of the law to given facts, it raises a pure question of law. So long as the facts to which the Court is required to apply the law are not called in question, the point is a legal one. It merely raises questions bearing on the interpretation and the scope of the law. Exploration of the ambit of the law is always a question of law».

In the case under consideration it is crystal clear that the findings of the learned President of the Industrial Disputes Court on the facts, are not disputed. What the appeal by way of case stated seeks to impugn, are the inferences to be drawn from the facts as found by the trial Court.

Having gone though the material before me in the light of the able addresses of counsel on all sides I hold the view that all three questions applicant has requested the trial Court to state are questions of law, and as such ought to have been stated for determination by the Supreme Court, as submitted on his behalf.

Perhaps one may say the Question No. 1 (vide Appendix attached to the application) was not very happily drafted; the fact remains though, that it conveys a complaint to the effect that the trial Court reached its conclusion on that particular issue *ignoring* (the underlining is mine) its own findings contained in paragraphs (a) to (n) of question 1. It is not correct therefore to maintain that paragraphs (γ) (δ) and (n), of Question 1, relate to pure questions of fact, whilst all the remaining paragraphs of the same question relate to questions of law, as submitted by learned counsel for Respondent No. 1.

I find myself unable to agree with learned counsel for Respondent No. 2 that all 3 questions stated by applicant are pure questions of fact or at the most, questions of mixed law and fact, although I fully agree with him that the three questions formulated by Respondent No. 1, do not really represent what the applicant was seeking to be stated for determination by the Supreme Court; on this latter issue I would even go further and say that the questions formulated by Respondent No. 1 are entirely different from those submitted by the applicant.

For the reasons I have endeavoured to explain above, I hold the view that the Order for Mandamus as applied should be, and it is hereby, granted.

Having given the matter my best consideration I have decided to make no order as to the costs of the present application.

Application granted.
No order as to costs.