IN THE PRIVY COUNCIL — Appeal No. 20 of 1963

ON APPEAL FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

THE BRIBERY COMMISSIONER — Appellant

- and -

PEDRICK RANASINGHE — Respondent

CASE FOR THE APPELLANT

/Note: "S.C.R." = Soulbury Commission Report/

Record

1. This is an appeal, by Special Leave, from a Judgment and Order of the Supreme Court of Ceylon, dated the 20th December, 1962, allowing the Respondent's appeal against the Decision of the Bribery Tribunal (constituted under the Bribery Act No. 11 of 1954 as amended by Act No. 17 of 1956 and Act No. 40 of 1958), dated the 18th October, 1961, whereby the Respondent, after being duly tried before the said Tribunal on two counts relating to a charge of bribery made against him under the said Bribery Acts, was found guilty on both counts and sentenced, on each count, to rigorous imprisonment for a term of six weeks, the sentences to run concurrently, and, in addition, to pay a penalty of Rs.50/-.

pp.115-122.

pp.104-110.

In allowing the appeal, the Supreme Court, purporting to follow its previous decisions, held that the Respondent's conviction and the Orders made against him were null and inoperative on the sole ground that in trying and sentencing the Respondent for the said offence of bribery, Members of the said Bribery Tribunal, not having been appointed by the Judicial Service Commission in accordance with Article 55 of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947, (hereinafter referred to as "the Constitution") had unlawfully exercised judicial powers.

p.115, ll.24-29.
p.116, ll.9-18.
p.117, l.46 to p.118, l.19.
p.122, ll.11-16.

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2. The main questions which arise for determination upon this appeal are the following:-

(A) Whether the Parliament of the Island of Ceylon, under the power which it enjoys by virtue of Section 29 of the Constitution to make laws for "the peace, order and good government" of the Island, has power to set up Bribery Tribunals as constituted by the Bribery Act No. 11 of 1954 as amended, outside the Courts established by law for the ordinary administration of justice.

(B) What, having regard to the general and constitutional laws of Ceylon, is the true interpretation of the term "Judicial Officer" as used in Article 55 of the Constitution?

(C) Having regard to the said laws, is the said term "Judicial Officer" properly applicable to Members of a Bribery Tribunal appointed under the Bribery Act No. 11 of 1954, as amended, and exercising powers of a judicial character in the performance of their statutory functions?

(D) Can the validity of any of the provisions of the Bribery Act No. 11 of 1954, as amended, or, in particular, those provisions of the said Act under which Members of a Bribery Tribunal exercise, or purport to exercise, powers of a judicial character, be challenged, directly or indirectly, in an appeal against a conviction by the said Tribunal to the Supreme Court which appeal itself is brought under a Section of the impugned Act; or is such a challenge more properly the subject of other independent and more appropriate proceedings?

(E) Whether, the Bribery Act No. 11 of 1954, the Act No. 17 of 1956 and the Act No. 40 of 1958 having been passed by Parliament and received the Royal Assent, it is open to any Court to pronounce any of the provisions of the said enactments invalid.

3. In order to assist in the interpretation of the relevant provisions of the Constitution it is,

in the Appellant's submission, useful and convenient to refer now to the historical sequence of certain of the constitutional events in Ceylon which preceded its present Constitution.

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4. Prior to the Donoughmore Constitution of 1931, Ceylon was governed by a Governor and Executive and Legislative Councils which were set up by Order-in-Council of the 28th September, 1833. The Executive Council (five Members who functioned under the Governor's chairmanship) consisted of: The Commander of the Forces, the Colonial Secretary, the Queen's Advocate, the Colonial Treasurer, and the Government Agent. The Legislative Council consisted of fifteen Members - nine Official and six Unofficial, and all of them nominated. In 1889 the number of Unofficial Members was increased to eight.

5. The principle of territorial representation in the Legislative Council by election was introduced in Ceylon for the first time by Royal Instructions, dated the 24th November, 1910. At that date there were ten Unofficial members of the Legislative Council as against eleven Official Members. Four of the said ten Members were in future to be elected, the remaining six Members continuing to be nominated. S.C.R. para.24.

The new Legislative Council met for the first time on the 16th January, 1912, and continued to function as such until 1920. S.C.R. paras. 24, 26.

6. By Order-in-Council, promulgated on the 13th August, 1920, the Membership of the Legislative Council was increased to thirty-seven of which fourteen were Official Members and twenty-three Unofficial Members (sixteen elected). S.C.R. para.26.

A further change occurred in 1923 when, by the Ceylon (Legislative Council) Order-in-Council, 1923, the Legislative Council was re-constituted to consist now of forty-nine Members, twelve Official and thirty-seven Unofficial (twenty-nine elected). The Official Members consisted of five ex-officio Members (among them the Attorney-General) and seven others, all of them being Nominated Official Members and holders of public offices under the Crown. S.C.R. para.28.

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S.C.R. para.28. The Governor was empowered to make laws "for the peace, order and good Government of the Island" with the advice and consent of the Council.

S.C.R. para.29. The new Council, as re-constituted, met on the 15th October, 1924.

S.C.R. para.29. 7. The next important constitutional event was the appointment in 1927 of a Special Commission under the Earl of Donoughmore, its terms of reference being as follows:-

> "To visit Ceylon and report on the working of the existing Constitution and on any difficulties of administration which may have arisen in connection with it; to consider any proposals for the revision of the Constitution that may be put forward, and to report what, if any, amendments of the Order in Council now in force should be made."

S.C.R. para.30. 8. The Donoughmore Commission found that the relations in Ceylon between the Legislature and Executive were unsatisfactory and recommended the
S.C.R. para.31. promulgation of an Order in Council which would "transfer to the elected representatives of the people complete control over the internal affairs of the Island, subject only to provisions which will ensure that they are helped by the advice of experienced officials and to the exercise by the Governor of certain safeguarding powers". The Commission suggested that a State Council, with both legislative and executive functions, consisting of sixty-five Elected Members, three Ex-Officio Members and Nominated Members up to a maximum of twelve, should replace the Legislative Council and that the Executive Council and communal representation should be abolished. Further, that the suggested State Council should divide itself into seven Executive Committees, each to function under its own elected Chairman and that the seven Chairmen, together with the Chief Secretary, the Treasurer and the Attorney-General (i.e. the Officers of State) should form a Board of Ministers who would be responsible for the general conduct of the business of government.

9. The Constitution which followed, based on the Donoughmore Commission's recommendations contained
S.C.R. para.35. in its Report which was presented to Parliament in

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July, 1928, was found to be inadequate and to remedy its inadequacies the Board of Ministers put forward a Scheme which was formulated in accordance with His Majesty's Government's Declaration of the 26th May, 1943, and which, in accordance with the principles of responsible government, recommended that the Governor-General's powers in matters of internal administration should be limited, responsible Ministers should take over the functions of Officers of State, and that appointments to: the Public Services Commission, a Judicial Services Commission to be constituted, the post of Chief Justice and to the Supreme Court Bench should be in the hands of the Governor-General, acting in his discretion after consulting the Prime Minister whose advice, however, he would not be bound to take. S.C.R. paras. 84, 85. S.C.R. paras. 95, 98.

The Scheme was withdrawn by the Ministers in August, 1944, but was carefully considered by the Soulbury Commission in the following year. S.C.R. para.99.

10. The Soulbury Commission was appointed in 1944 to examine and discuss proposals for constitutional reform in Ceylon and advise His Majesty's Government on measures necessary to attain that object. In its Report, which was presented to Parliament in London in September, 1945, the Commission recommended, inter alia, that the Executive Committees and the then Officers of State - the Chief Secretary, the Legal Secretary and the Financial Secretary - should be abolished and that the Legal Secretary should be replaced by a Minister of Justice whose functions should be concerned with (i) the administration of justice, (ii) the institution of criminal prosecutions and civil proceedings on behalf of the Crown, (iii) the drafting of legislation, (iv) the functions of the Public Trustee, and (v) control of the Fiscals' Department. S.C.R. para.1. S.C.R. paras. 393, 394, Summary, para. 54.

As to the Public Services, the Commission recommended that a Public Services Commission consisting of three persons should be appointed one of whom should act as Chairman; that the Chairman and members of the Commission should be appointed by the Governor-General in his discretion; and that the powers of appointment, dismissal, etc., of all Officers in the Public Services should be vested in the Governor-General who would act on the advice tendered to him by the Public Services Commission. S.C.R. para.392.

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S.C.R. para.395. 11. The Soulbury Commission recommended the establishment of a Ministry of Justice, after it had fully considered the objection that a Ministry so designated would blur the line of demarcation prescribed under English practice between the Judiciary and the Executive. In making their

S.C.R. para.396. recommendation the Commission said that it intended to do no more than to secure that a Minister should be responsible for: (1) the administration of legal business, (2) obtaining from the Legislature financial provision for the administration of justice, and (3) for answering in the Legislature questions related to such matters. It disclaimed any intention to empower the Minister of Justice to interfere in, or control, the performance of any judicial or non-judicial function or the institution or supervision of prosecutions.

S.C.R. para.397. 12. As to the appointment of persons to judicial offices the Soulbury Commission agreed with the recommendations of the Ministers in their said Scheme (see Article 36(3) of Sessional Paper XIV and paragraph 9 hereof) that the appointment of the Chief Justice and of the Supreme Court Bench should be made by the Governor-General acting in his discretion, i.e. after consultation with the Prime Minister whose advice, however, he was not bound to accept. The Commission recommended also that -

S.C.R. para.397. "....the appointment, promotion, transfer and discipline of all District Judges, Magistrates, Commissioners of Requests and Presidents of Village Tribunals (shortly to be renamed Rural Courts) should be dealt with by a Judicial Services Commission which, like the Public Service Commission, should consist of three members".

S.C.R. para.398. It recommended further that the said Judicial Services Commission should be presided over by the Chief Justice and that of the two other Members, one should be a present Member and the other a retired Member of the Supreme Court Bench or both of such Members could be present Members of that Bench, appointed by the Governor-General in his discretion.

13. It is convenient and important to note here that while the Soulbury Commission in its Report

disclaimed any intention to confer upon the Minister of Justice powers which would enable him to interfere with, or control, judicial functions, it did not hesitate to recommend the establishment of a Ministry of Justice controlled by the Executive, for, inter alia, the administration of legal business, notwithstanding the objection that it might thus "blur" the English line of demarcation between the Judiciary and the Executive (see paragraph 11 hereof) which, it is submitted, does not now, and never did, apply in Ceylon; that the power of appointment to Membership of the Judicial Services Commission was recommended by the Commission to be vested in the hands of the Executive; and that the Judicial Services Commission was to be concerned only with the appointment, etc., of specified Members of the established Subordinate Judiciary, the power of appointment of the Chief Justice, the Supreme Court Bench and Commissioner of Assize being vested again in the Executive. The Soulbury Commission, upon whose recommendations the present Constitution is based, did not, directly or indirectly, recommend that the Judicial Services Commission should deal with the appointment, etc., of Members of ad hoc or similar tribunals who are statutorily empowered to exercise powers of a judicial character by a Parliament empowered to legislate for the peace, order and good government of Ceylon.

14. The Constitution itself contains no provisions setting up a Judiciary as a separate institution. Part VI, entitled "The Judicature", merely regulates the appointment and tenure of office of Judges of the Supreme Court and sets up a Judicial Service Commission for the appointment, transfer, dismissal and disciplinary control of judicial officers. It is not concerned with the structure or jurisdiction of Courts, which are dealt with by the ordinary laws of the Island.

This is in accord with the previous legislative pattern in Ceylon. The Judiciary for the Island of Ceylon was established by the Charter of Justice of 1833. Thereafter, it has never been dealt with by the constitutional instruments, and, in its modern form, is to be found in a number of Ordinances, principally the Courts Ordinance (Cap.6) and other Ordinances in Title II of the Legislative Enactments (1956), the Appeals (Privy Council)

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Ordinance (Cap. 100) and the Criminal and Civil Procedure Codes (Cap. 20 and 101).

15. Prior to the 4th day of February, 1948, on which date the present Constitution came into force, the legislature of Ceylon from time to time enacted laws conferring upon tribunals, operating in particular spheres, powers of a judicial character. These laws continued to subsist after the said date and subsequently appeared in the 1956 Revised Edition of the Legislative Enactments (as to which, see below, paragraph 16). The following are instances of such tribunals:-

(i) Registrars of Kandyan Marriages, under the Kandyan Marriage and Divorce Act (Cap.133).

(ii) Quazis and Boards of Quazis, under the Muslim Marriage and Divorce Act (Cap.115).

(iii) Commissioners for Workmen's Compensation, under the Workmen's Compensation Ordinance (Cap.139).

(iv) Debt Conciliation Boards, under the Debt Conciliation Ordinance (Cap.81).

(v) Boards of Review, under the Income Tax Ordinance (Cap.242).

16. To return now to the events which have led directly to the present appeal.

On the 26th February, 1954, there was duly enacted by Parliament in Ceylon, the Bribery Act No. 11 of 1954, described in its long title as "An Act to provide for the prevention and punishment of Bribery and to make consequential provisions relating to the operation of other written laws". The Act was amended by Act No. 17 of 1956, and further substantially amended by Act No. 40 of 1958.

It is to be observed that the principal Act, as amended by Act No. 17 of 1956 appears as Chapter 26 in the Revised Edition of the Legislative Enactments of 1956. The Revised Edition of the Legislative Enactments Act, No. 2 of 1956, which is Chapter 1 in the said Revised Edition, provides inter alia as follows:-

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(a) Section 12(2) makes provision for the revised edition to come into force by proclamation, following approval by the Legislature.

(b) Section 12(3) provides as follows:-

"(3) The revised edition shall, on and after the date on which it comes into force, be deemed to be and be without any question whatsoever in all courts of justice and for all purposes whatsoever the sole authentic edition of the legislative enactments of Ceylon therein printed".

17. Relevant portions of the Bribery Act, as amended, were thus described by Sansoni J. in Senadhira v. The Bribery Commissioner (1961) 63 N.L.R.313 at p.314, a Supreme Court decision which is hereinafter referred to again:-

"We were taken through the Bribery Act, as originally enacted and as amended in 1958. The former Section 5 empowered the Attorney-General, if he was satisfied that there was a prima facie case of bribery, to indict the offender, if he was not a public servant, before the Supreme Court or the District Court. Where the offender was a public servant, he could be so indicted, or he could be arraigned before a Board of Inquiry. The amended Section 5 empowers the Bribery Commissioner, an Officer brought into being by the amending Act, to prosecute any person, if he is satisfied that there is a prima facie case of the commission of an offence specified in Part II of the Act, before a Bribery Tribunal. Sweeping amendments were introduced in 1958 which abolished trials before the District Court or the Supreme Court and inquiries before Boards of Inquiry. Boards of Inquiry were abolished and Bribery Tribunals came into existence: the former had the power to inquire into charges of bribery against public servants brought before them by the Attorney-General, and to decide whether or not the accused person was guilty; that decision would be communicated to the authority that had appointed the accused person, and certain statutory penalties automatically supervened. The Board also had certain powers of punish-

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ment, which it is not necessary to detail here; nor do I consider it necessary to discuss whether, or to what extent, the establishment of such Boards was in accord with the Constitution. Bribery Tribunals were constituted under the amended Section 42 'for the trial of persons prosecuted for bribery', with power to 'hear, try and determine any prosecution for bribery made against any person before the Tribunal'. All the offences of bribery specified in Part II of the Act, all of them punishable with rigorous imprisonment for a term not exceeding seven years or a fine not exceeding Rs.5,000/-, or both, became triable by the newly constituted Bribery Tribunals and were no longer triable by the Courts. Section 28, as amended, provides that a sentence of imprisonment passed by a Bribery Tribunal, on a person convicted by the Tribunal of bribery, shall be executed in the same manner as if the Tribunal were a Court; and that a fine or penalty imposed by a Bribery Tribunal may be recovered on an application made to a District Court by the Attorney-General. Section 68 empowers a Tribunal to enforce its authority and obedience to its Orders by punishing, as for contempt, any disregard of, or disobedience to, its authority, committed in its presence or in the course of proceedings before it. For this purpose it has been given all the powers conferred on a Court by Section 57 of the Courts Ordinance and Chapter 65 of the Civil Procedure Code."

18. To complete the brief summary of the changes brought about by the amendments in 1958, as set out in the preceding paragraph, it is necessary to refer also to Section 69A of the Bribery Act, which was added in 1958 by Section 52 of Act 40 of 1948. Sub-section (1) of Section 69A enables a person convicted by a Bribery Tribunal of any offence specified in Part II of the Act to appeal to the Supreme Court against such conviction for any error in law or in fact. An appeal so brought must be heard by two Judges of the Supreme Court and be given priority over other business of the Court.

19. Bribery Boards of Inquiries and Tribunals, constituted under the original Bribery Act of 1954, and that Act as amended in 1958, appear to have functioned from 1954 until 1961 without any question being seriously raised to their constitutional validity or to the validity of the statutory provisions enabling the Members thereof to exercise judicial powers until one Senadhira and another were prosecuted before a Bribery Tribunal, constituted under the Bribery Act, as amended, on bribery charges which were preferred against both. After being duly tried both accused were, by the Bribery Tribunal, found guilty of the offence of bribery and sentenced to terms of imprisonment. Both appealed to the Supreme Court under the said Section 69A of the Bribery Act, as amended. The Supreme Court held* that while the Bribery Tribunal could validly find a person charged before it guilty or not guilty of the offence of bribery - this being the exercise of arbitral functions - it could not, without contravening Article 55(1) of the Constitution, convict, fine and imprison a person found guilty as aforesaid, for this would be the exercise of judicial powers which were lawfully exercisable only by judicial officers appointed by the Judicial Service Commission in accordance with the said Article 55(1).

*Senadhira v. The Bribery Commissioner (1961) 63 N.L.R.313.

In the result the Supreme Court, on the sole ground referred to above, quashed the convictions and sentences of both Appellants.

20. The Supreme Court's decision in Senadhira's case led, not unnaturally, to similar appeals in other cases.

In Don Anthony v. The Bribery Commissioner (1962) 64 N.L.R.93, the arguments advanced on behalf of the Appellant (who had similarly been tried for and convicted of, the offence of bribery, by a Bribery Tribunal and fined Rs.1,000/-) sought to take the matter further by the submission that even at the stage of ascertaining and declaring the liability of a person charged before them, Members of a Bribery Tribunal purport to exercise judicial powers and thus contravene the said Article 55(1) of the Constitution. The Supreme Court, however, did not decide the point. On the authority of The King Emperor v. Benoari Lal Sarma [1945] A.C.14, 20, P.C. it upheld Crown Counsel's

objection that it was not competent for the Appellant to attack as invalid the very Act which alone conferred upon him the right of appeal to the Supreme Court. Nevertheless the Court applied its decision in Senadhira's case and set aside the sentence of Rs.1,000/- which had been imposed on the Appellant (Don Anthony).

21. The Supreme Court's decision in Don Anthony's case - that in an appeal to the Supreme Court under the said Section 69A of the Bribery Act, as amended, it is not competent for the Appellant to argue that the Bribery Act itself is invalid - was not followed by the same Court in the later case of Piyadasa v. The Bribery Commissioner (1962) 64 N.L.R. 385, in which, contrary to its decision in Don Anthony's case, the Supreme Court held that in an appeal to it under Section 69A the Appellant could advance the said argument as to the invalidity of the Bribery Act. On the main point in Piyadasa's Case the Supreme Court, going further than it had previously done, held that a Bribery Tribunal, the Members of which have not been appointed by the Judicial Service Commission, is incompetent either to impose a sentence on the person charged before it with a bribery offence or to even investigate and pronounce judgment in respect of the charge. Delivering the main Judgment of the Court in Piyadasa's Case, Thambiah J. (with whom Sri Skanda Rajah J. agreed) said, contrary, it is respectfully submitted, to reason and to law, that the "precise question for decision in this case is whether the Legislature could take away the 'judicial power' vested by our Constitution in the Supreme Court and officers appointed by the Judicial Service Commission and formerly exercised by the Civil Courts, and confer the same on tribunals otherwise appointed, without amending the Constitution. We are of the opinion that the Legislature cannot do so, or, for that matter, even create tribunals presided /over/ by persons not appointed by the Judicial Service Commission which have concurrent jurisdiction with the Supreme Court or Courts presided over by judicial officers appointed by the Judicial Service Commission. Indeed, if such a course was open to the Legislature, then it would venture to create tribunals with greater powers and jurisdiction than those of the above-mentioned Courts. If judicial power could be conferred on persons other than judicial

officers appointed by the Judicial Service Commission then the provisions in the Order in Council relating to the Judicial Service Commission would be rendered nugatory. Any departure from these salutary provisions of the Order in Council, ensuring to the citizen the independence of the Judiciary, will no doubt lead to malpractices."

In the Appellant's respectful submission the Legislature, by enacting the Bribery Act, as amended, as a necessary measure in the maintenance of peace, order and good government, cannot, by any reasonable interpretation of the said Act, be said to have "taken away" any judicial power in whomsoever previously vested even if it did, by the said Act, confer judicial power on the Bribery Tribunal, newly created for a specific purpose.

22. Following the Supreme Court's decision in Piyadasa's Case (see paragraph 21 hereof) came its decision in Jailabdeen v. Danina Umma (1962) 64 N.L.R. 419, which was not a bribery case. By this last-mentioned decision the Supreme Court held (applying its decision in Piyadasa's Case and, on the competency of the appeal, departing from its decision in Don Anthony's Case, see paragraph 20 hereof) that the office of Quazi (the holder of which is authorized to make Maintenance Orders under Section 47 of the Muslim Marriage and Divorce Act (Cap.115)) is a "Judicial Office" the authority to appoint to which is, by virtue of Article 55(1) of the Constitution, vested exclusively in the Judicial Service Commission and not, as provided by Sections 12(1) and 14 of the said Muslim Act, in the Minister; and that, therefore, an Order for maintenance made under Section 47 of the said Act is invalid being made by a "Judicial Officer" not appointed by the Judicial Service Commission.

In delivering the main Judgment of the Court in the said Muslim case, H.N.G. Fernando J. (with whom L.B. de Silva J. agreed) expressed the view that as there is nothing in the Constitution which restricts the establishment of Judicial Offices, a new Judicial Tribunal, such as a Bribery Tribunal, to which persons are lawfully appointed can exercise the statutory powers conferred upon it, but that the statutory power of the Governor-General to appoint to the panel from which Members of a Bribery Tribunal have to be selected to constitute a Bench

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contravenes the provisions of the said Article 55(1) of the Constitution and the Orders of a Tribunal so nominated and constituted would, therefore, be invalid and ineffective.

Contrary to the view he had previously expressed in Don Anthony's Case, the learned Supreme Court Judge (H.N.G. Fernando J.), for reasons that he gave, held that on appeal to the Supreme Court, under Section 62 of the said Muslim Marriage and Divorce Act (Cap.115), an appellant can validly object to the invalid appointment of Members of the Tribunal (the Board of Quazis) from whose decision he has appealed.

23. In this uncertain state of the law in Ceylon the

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of the Respondent was instituted. He was charged
pp. 1, 2. before the Bribery Tribunal, under Section 19 of the Bribery Act, as amended, on two counts of a bribery charge, viz., that he, as a public servant, (1) had solicited and (2) accepted, a gratification, which he was not authorised by law, or by reason of his employment, to receive. After a
pp. 5-104. trial which commenced on the 7th August, 1961, and ended on the 12th October, 1961, he was, by the
pp.104-110. Decision of the Tribunal, dated the 18th October, 1961, found guilty on both counts and sentenced as stated in paragraph 1 hereof.

24. Against the said decision of the Tribunal, the Respondent appealed to the Supreme Court of Ceylon
pp.112-115. on the several grounds set out in his Petition of Appeal, dated the 18th October, 1961. None of the said grounds related to the unlawful conferment of judicial powers on Members of the said Tribunal and to its consequent lack of jurisdiction - grounds upon which the appeal (on an application of the earlier Supreme Court decisions already referred to, see paragraphs 14 and 19 to 22 hereof) was subsequently allowed.

25. The appeal came up for hearing in the Supreme Court before a Bench consisting of H.N.G.Fernando
pp.115-122. and L.B. de Silva JJ. who, by their Judgment, dated the 20th December, 1962, allowed the appeal, with consequential Orders as is stated in paragraph 1 hereof.

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26. Delivering the main Judgment of the Supreme Court, H.N.G. Fernando J. (with whom L.B. de Silva J. agreed) said at the very commencement:-

> "The recent decision of the Court in Piyadasa's Case" /see paragraph 21 hereof/ "if followed, would compel us to hold on the present appeal that 'a Bribery Tribunal has no jurisdiction to try and find the Accused guilty of the offence of bribery' (per Tambiah J.) and accordingly to quash the conviction of the appellant" /present Respondent/ "and the sentence passed against him. But learned Crown Counsel argued that the question should be re-considered ....."

Continuing, the learned Judge referred to some of the arguments of Crown Counsel which, as he understood them, he did not accept. One of these arguments, which the present Appellant proposes to rely on at the hearing of this appeal, was based on the following proposition:- p.116, ll.9-11.

> "A challenge of the jurisdiction to convict is fundamental, and amounts to a challenge of the validity of the entire Act, and cannot, therefore, be made in the exercise of a right of appeal conferred by the Act itself." p.116, ll.4-8.

In rejecting this proposition the learned Judge referred to the views he had previously expressed in his Judgment in Jailabdeen v. Danina Umma (1962) 64 N.L.R. 419 (see paragraph 22 hereof), "that there is no question of a wholesale challenge of the entire Act, that the Legislature can validly confer judicial power on specially created tribunals, and that the objection which lies against a conviction by a particular Bribery Tribunal is that the judicial power validly vested in the special tribunals cannot be lawfully exercised by persons who are appointed to the Tribunal by the Governor-General and not by the Judicial Service Commission." p.116, ll.21-30.

In the Appellant's respectful submission these views are contrary to reason and to law.

27. The learned Supreme Court Judge (H.N.G. Fernando J.) referred also to the fact that he had, in the said case of Jailabdeen v. Danina Umma, supra, stated that he no longer adhered to the p.116, ll.9-18.

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previous opinion which he had expressed in Don Anthony's Case (see paragraph 20 hereof) and which was in accordance with Senadhira's Case (see paragraph 19 hereof), that a Bribery Tribunal, when trying and convicting a person charged with bribery before it, exercised an arbitral (and not judicial) power and that it only exercises a judicial power when it imposes a sentence on the person convicted. He said that in Jailabdeen v. Danina Umma, supra, he had expressed his agreement with the other members of the Bench who had held that the said Tribunal purports to exercise judicial power whenever it tries a person on a charge of bribery.

28. The learned Supreme Court Judge (H.N.G. Fernando J.) rejected also (it is respectfully submitted, without sufficient reason) the argument advanced on behalf of the present Appellant in answer to the objection that the Bribery Act, as amended in 1958, conflicted with or amended the said Article 55(1) of the Constitution and, not having been passed in the House of Representatives by a two-thirds majority in accordance with Article 29(4) of the Constitution, was invalid.

p.117, l.46 to p.120, l.45.

Crown Counsel had pointed to the fact that the said Article 29(4) does not contain any express provision declaring that the condition as to a two-thirds majority applied also to an amending or repealing Act. He had drawn the Court's attention to the fact that whereas Article 29(3) expressly enacts that any law made in contravention of Article 29(2) (four specific restrictions on the plenary power in Article 29(1) to make laws for the peace, order and good government of Ceylon) is, to the extent of the contravention, void, no such provision has been enacted as to Acts which have not complied with the two-thirds majority condition - an omission which should be regarded as deliberate and decisive. In support of his arguments Crown Counsel had referred to the decision of the Board in McCawley v. The King [1920] A.C. 691, P.C. and to the South African cases of Krause v. Commissioner of Inland Revenue (1929) A.D. 286 and Harris v. Minister of the Interior (1952) 2 S.A.L.R. 428. The learned Judge accepted the principle as stated by the Board in McCawley v. The King, supra, that in the absence of any special provision to the contrary in a written Constitution, the Legislature

p.118, l.23-28.

p.118, l.34-40.

is master in its own house and fully entitled to enact laws such as those which vary the tenure of judicial office. He said however that that principle which was applied by the Board to the Constitution of Queensland was not applicable to the Constitution of Ceylon which, unlike the uncontrolled Queensland Constitution, contained, in Articles 29(3) and (4), special and general controls.

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p.119, 11.35-44.

And, for reasons that he gave, he held that the South African decisions did not support the arguments of Crown Counsel.

p.119, 1.45 to p.120, 1.45.

29. Further, the learned Supreme Court Judge (H.N.G. Fernando J.) referred to, but, for reasons that he gave, rejected, the argument advanced on behalf of the present Appellant, that, under the Constitution of Ceylon, once a Bill has received the Royal Assent a Court is bound to hold that it was duly enacted and cannot enquire into the question whether or not the Act had been passed by a two-thirds majority.

p.120, 1.46 to p.121, 1.49.

p.121, 11.2-9.

30. The Bribery Act No. 11 of 1954, when presented as a Bill for the Royal Assent, bore a Certificate under the hand of the Speaker of the House of Representatives in terms as follows:-

"I HEREBY CERTIFY IN TERMS OF SECTION 29(4) OF THE CEYLON (CONSTITUTION AND INDEPENDENCE) ORDERS IN COUNCIL 1946 AND 1947, THAT THE NUMBER OF VOTES CAST IN FAVOUR OF THIS BILL IN THE HOUSE OF REPRESENTATIVES AMOUNTED TO NOT LESS THAN TWO THIRDS OF THE WHOLE NUMBER OF MEMBERS OF THE HOUSE (INCLUDING THOSE NOT PRESENT)

ALBERT PEIRIES
SPEAKER. "

It is therefore submitted that, if the Bribery Act No. 11 of 1954, as amended, contains any provisions which amend or purport to amend the Constitution, the requirements of the proviso to Section 29(4) of the Constitution have been complied with, in view of the said Certificate, the character of the amendments introduced by the Acts of 1956 and 1958, and the express provisions of the Interpretation Ordinance (Cap.2) Section 5(4) which

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reads as follows:-

"(4) Every amending Ordinance or Act shall be read as one with the principal Ordinance, enactment or Act, to which it relates."

31. Against the said Judgment and Order of the Supreme Court, dated the 20th December, 1962, this appeal to Her Majesty in Council is now preferred, the Appellant having been granted Special Leave to appeal by Order-in-Council, dated the 26th June, 1963.

pp.123-124.

In the Appellant's respectful submission the appeal ought to be allowed for the following, among other, 10

R E A S O N S

1. BECAUSE the Members of the said Bribery Tribunal were lawfully appointed by statute to exercise functions in accordance with the terms of their appointment which, in trying, convicting and sentencing the Respondent, they correctly did.

2. BECAUSE Membership of the said Tribunal is not an "Office" and its Members, who are entitled only to "fees" and not to a salary, cannot reasonably be said to be "Judicial Officers" i.e. the holders of paid "Judicial Offices" within the meaning of Articles 55 and 3 of the Constitution. 20

3. BECAUSE the appointment, transfer, dismissal and disciplinary control of Members of the said Tribunal is lawfully vested in the Executive and not in the Judicial Service Commission which body itself is, on any reasonable interpretation of the Constitution, controlled by the Executive. 30

4. BECAUSE Article 55(1) of the Constitution, providing for the appointment, transfer, dismissal and disciplinary control of "Judicial Officers" is, on a true interpretation thereof, applicable only to Members of the Subordinate Judiciary of Ceylon as set out in the Courts Ordinance, such as District Judges, Commissioners of Requests and 40

Magistrates (including Municipal Magistrates) as distinct from the Chief Justice, Judges of the Supreme Court and Commissioners of Assize for whom separate and express provision is made in the Constitution.

5. BECAUSE the said interpretation is the only interpretation which (so far as the provisions of both enactments relate, or are relevant, to the appointment, transfer, dismissal etc. of Members of the permanent Judiciary, Senior and Subordinate) is in accord with the scheme of the Constitution of Ceylon and the Courts Ordinance read together.

6. BECAUSE the creation from time to time, as and when necessity demands, of ad hoc and other tribunals of justice (supplementing the established Courts) is an inherent right of any Government and in the case of the Government of Ceylon that inherent right derives added force from the terms of Article 29 of the Constitution which confer upon Ceylon's Parliament power to legislate for "peace, order and good government of the Island".

7. BECAUSE any new law creating any such additional ad hoc or other tribunal cannot reasonably be said to so amend or repeal any provision of the Constitution as to require a Speaker's Certificate showing that it was passed by at least two-thirds of the whole number of Members of the House of Representatives in accordance with Article 29(4) Proviso.

8. BECAUSE the Bribery Act is not, in any event, an Act which can reasonably be said to repeal or amend any of the provisions of the Constitution.

9. BECAUSE if, as was held by the Supreme Court in Jailabdeen v. Danina Umma (1962) 64 N.L.R.419, the Parliament of Ceylon can validly establish by legislation new judicial tribunals with jurisdiction (whether exclusive or otherwise) over particular charges or causes without contravening any provisions of the Constitution or any other law, then it is not reasonable to suppose that it cannot, without contravening Article 55(1) of the Constitution, provide for the Membership of the said tribunals independently

of the Judicial Service Commission.

10. BECAUSE even assuming (without conceding) that certain provisions of the Bribery Act, as amended, amend, or purport to amend, the Constitution, still the Parliament of Ceylon being empowered by Article 29(4) of the Constitution to pass such legislation and the Royal Assent having been given thereto, validity and effectiveness attach to the whole of the Act.

11. BECAUSE the Proviso to the said Article 29(4) is no more than a procedural step prior to the enactment of the statute in question, any irregularity in the step being cured by the Royal Assent.

12. BECAUSE upon an appeal to the Supreme Court brought under Section 69A of the Bribery Act, as amended in 1958, it is not competent for the appellant to object and/or for the Supreme Court to entertain, or suo motu, raise the objection, that the provisions of the said Act under which Members of the Bribery Tribunal have purported to exercise judicial powers are unlawful, being in contravention of Article 55(1) of the Constitution, and the conviction therefore void; for the statutory right of appeal given exclusively by the said Section 69A is concerned only with the correctness or otherwise of the conviction by a Tribunal constituted under the Bribery Act and cannot be extended to include the competency of its Members to adjudicate.

NEIL LAWSON.

V. TENNEKOON.

R.K. HANDOO.

RALPH MILLNER.

No. 20 of 1963

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

THE BRIBERY COMMISSIONER
Appellant

- and -

PEDRICK RANASINGHE
Respondent

CASE FOR THE APPELLANT

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