

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

Browns & Company PLC,
No. 481, T. B. Jayah Mawatha,
Colombo 10.

PETITIONER-PETITIONER-APPELLANT

SC Appeal No. 108/08
SC (Spl) LA No. 12/2008
CA Application No. 2056/2003

VS.

1. Minister of Labour,
Ministry of Labour,
Labour Secretariat,
Department of Labour,
Narahenpita.
2. The Commissioner General of Labour,
Labour Secretariat,
Department of Labour,
Narahenpita.
3. D. A. Wijewardhane,
No. 267/02, Polhengoda Road,
Kirulapone,
Colombo 05.
4. S. N. Wickramasinghe,
No. 285/15, Sri Devananda Mawatha,
Thumbowila,
Piliyandala.
5. P. A. Q. Fernando,
No. 483/1, Galle Road,
Wadduwa.
6. S. T. N. Perera,
No. 37/A, Nalandarama Road,
Nugegoda.
7. Browns Engineering (Pvt) Ltd.,
No. 23, Alfred Place,
Colombo 03.

RESPONDENT-RESPONDENT-RESPONDENTS

BEFORE : Hon. J. A. N. de Silva, Chief Justice,
Hon. Saleem Marsoof, P.C., J., &
Hon. P. A. Ratnayake, P.C., J.

COUNSEL : A. R. Surendran, P.C., Nadarajar Kandeepan and K.
Tharshini for Petitioner-Petitioner-Appellant.

Yuresha de Silva, S.C., for 1st and 2nd Respondent-
Respondent-Respondents.

Rohan Sahabandu with Dulani Warsawewa for 4th - 6th
Respondent-Respondent-Respondents.

ARGUED ON : 1.11.10 & 26.1.11

DECIDED ON : 17.3.11

SALEEM MARSOOF, J.

The Petitioner-Petitioner-Appellant (hereinafter referred to as “Brown & Co.”), is a Company incorporated in Sri Lanka with the corporate name of Brown & Company (Pvt.) Ltd., which name has since been changed to Brown & Company PLC. The 4th to 6th Respondent-Respondent-Respondents (hereinafter referred to as the “relevant employees”) were originally employed as Engineering Executives in the Engineering Division of Brown & Co. They were transferred to the 7th Respondent-Respondent-Respondent Browns Engineering (Pvt.) Ltd. (hereinafter referred to as the Browns Engineering) with effect from 1st January 1992, and their services were subsequently terminated by the letters dated 23rd November 1994 consequent to a decision taken by the management of Browns Engineering to close its business.

Even prior to the said closure of business and termination of the services of the relevant employees, they had apprised the management of Browns Engineering as well as the Board of Directors of Brown & Co. of some of their grievances and sought redress. One of their grievances was related to the expenses they had to incur personally as a result of the withdrawal of the facility of a company maintained vehicle with fuel, made available to them for their official and personal travel by Brown & Co., prior to their transfer to Browns Engineering. This facility had been continued even thereafter, up to and inclusive of the month of May 1992. It is common ground that the official vehicles used by them while working for Brown & Co. were sold to them in May 1992, at prices determined on valuations by the Automobile Association of Sri Lanka, and the relevant employees had been provided with soft loans by Browns Engineering to finance their purchases. As a result of the decision not to continue the facility of a company maintained car after the said sale of vehicles after 1st June 1992, the relevant employees were compelled to utilize the vehicles purchased by them even for their official travel, sans the facility of a company driver or provision for fuel. They agitated for redress of this and other grievances, claiming *inter alia*, a sum of Rs. 15,000 per month in lieu of the company maintained vehicle, a sum of Rs. 3,000 per month as driver’s salary and an additional allowance of Rs. 5,250 for fuel computed on the basis of 150 litres per month at the rate of Rs. 35 per litre. It was alleged by the relevant employees that the payment of such

allowances were necessary to ensure that they will not be worse off working for Browns Engineering than when they worked for Brown & Co.

Since the appeals made by the relevant employees to the management of Browns Engineering and later to the Board of Directors of Brown & Co., did not bring any favourable results, the dispute was referred to the 2nd Respondent-Respondent-Respondent Commissioner of Labour for conciliation in or about January 1995. However, since this too was unsuccessful, the 1st Respondent-Respondent-Respondent Minister of Labour, having been satisfied that a industrial dispute was in existence, by an order dated 30th May 1997, referred the dispute to the 3rd Respondent-Respondent-Respondent Arbitrator for settlement by arbitration under Section 4(1) of the Industrial Disputes Act of 1956. The statement of matters in dispute, which formed part of the said order, set out several disputes involved primarily the alleged withholding of official transport facilities, non-payment of salaries and other ex-gratia payments and professional fees, and the alleged non reimbursement of certain medical bills, all of which arose after 1st June, 1992.

The Arbitrator commenced his inquiry into the matters in dispute between the relevant employees, Brown & Co. and Browns Engineering on 18th September 1997 and concluded the inquiry on 25th October 2002. It is significant to note that when the matter was inquired into by the Arbitrator, despite notice being issued on Browns Engineering, it deliberately refrained from participating in the said inquiry. On the other hand, Brown & Co., which participated in the inquiry, took up the position that the grievances had arisen after the relevant employees commenced working for Browns Engineering, which it was submitted, was on a fresh contract of employment, and that their contracts of services with Brown & Co., had come to an end in January 1992.

At the conclusion of the inquiry, the Arbitrator concluded that the relevant employees had continued to serve as employees of Brown & Co. even after the transfer to Browns Engineering, and that the original letters of appointment issued to them had contemplated the possibility of such transfers to or from "any of the company's departments or branches or associate or subsidiary companies, whether such department, branch, or associate or subsidiary is or is not in existence at the time of the commencement of this contract of employment". He specifically determined that they had not been issued with any letters of appointment by Browns Engineering, and the letter of transfer dated 17th January 1992 served on them, did not in fact or in law, effect any change in their status as employees of Brown & Co. He also found that they were engaged in the work of Browns Engineering for and on behalf of Brown & Co., and that they had reasonable grounds to expect that the official transport facilities provided to them by the latter will be continued even after they were so transferred to Browns Engineering, which expectation was strengthened by the fact that the said facilities had been continued even after the date of the transfer for five more months.

The Arbitrator, taking all relevant evidence into consideration, by his award dated 31st January 1996, which was published in the Government Gazette bearing No. 1299/18 dated 1st August 2003, determined that the relevant employees are each entitled to receive a sum of Rs. 270,000.00 as travel expenses from 1st June 1992 up to the termination of their services with effect from 23rd November 1994. He also found that when the said amounts were added to the other claims that the 4th, 5th and 6th Respondents had made, they were entitled to receive respectively sums of Rs. 349,095.37, Rs. 346,907.00 and Rs. 366,219.00 as total dues, and further directed Brown & Co. to pay the said sums.

Being aggrieved by the said award of the Arbitrator, Brown & Co. filed the writ application from which this appeal arises, seeking a mandate in the nature of a writ of *certiorari* quashing the said award and a writ of prohibition to prevent the Commissioner of Labour from taking

steps to enforce the said award. Upon the conclusion of arguments, the Court of Appeal by its judgement dated 30th November 2007, dismissed the application of Brown & Co. and refused the relief prayed for in the petition, without costs. This Court has granted special leave to appeal, at the instance of Brown & Co. against the said judgement of the Court of Appeal dated 30th November 2007 on the several substantive questions set out in paragraph 29 of the Petition of Appeal. These included several questions as to the legality of the award against Brown & Co. raised on the basis that the transfer from Brown & Co. to Browns Engineering in effect constituted the termination of the services of the relevant employees with the former and the offer of employment by the latter with new and better conditions of service, and the proper party against whom any claim could be made, if at all, was Browns Engineering.

However, at the hearing before this Court, learned President's Counsel for the Appellant Brown & Co. indicated that he would not press any of those grounds, and confined his submissions to the issue relating to the withholding of official transport facilities, raised in paragraph 29(vi) of the petition of appeal, which is quoted below in full:-

(vi) Did the Court of Appeal totally fail to take into consideration that-

(a) the claim for cost of travelling was admittedly not in the terms of the contract;

(b) the 4th to 6th Respondents (relevant employees) did not claim that they were entitled to a company maintained vehicle, but only claimed that the 7th Respondent (Brown Engineering) did not provide a loan facility to purchase;

(c) the Arbitrator himself has stated in his award that the provision of a vehicle by the company has not been included as a term of the Letter of Appointment which is the Contract of Employment, and therefore the provision of this facility cannot be considered as obligatory on the employer; and

(d) in any event, the Arbitrator's award granting the cost of travelling for all 30 days of the month for the entire period of 30 months is arbitrary and capricious.

It is material to note that this particular dispute involving the withholding of official transport facilities was set out in the statement of matters in dispute, which formed part of the order made by the Minister of Labour dated 30th May 1997 by which the reference to arbitration was made in terms of Section 4(1) of the Industrial Disputes Act No. 43 of 1950, as subsequently amended, in the following manner:-

"1 (a) whether the withholding of the transport facilities of these three officers (relevant employees), that is vehicle maintained by the company and fuel from the month of June 1992; and

(b) the withdrawal of the services of a driver to Mr. S. N. Wickramasinghe (4th Respondent-Respondent-Respondent) from the said date, is justified and if not, to what relief each of them is entitled?"

The reasoning of the 3rd-Respondent-Respondent-Respondent Arbitrator contained in his Award dated 20th June 2003 relating to the allowance of Rs. 270,000.00 for travelling expenses incurred by the relevant employees after 1st June 1992 was as follows:-

"It is to be mentioned here that provision of a vehicle by the company has not been included by the Company as a term in the letter of appointment, which is the contract of employment. Therefore the provision of this facility cannot be considered as obligatory

of the Employer. *It could rather be considered as a concession that had been provided to the applicants.* Therefore I would consider the payment of Rs. 300/- as transport expenses per day for the 30 days in question as a fair rate of calculation I would award Rs. 30x30x30 = Rs. 270,000/- as being a fair claim in this regard to each Applicant.”(emphasis added)

Learned President’s Counsel for the Appellant Brown & Co. submitted that the Arbitrator’s award was perverse, insofar as the relevant employees had no legal entitlement to official transport in terms of their letter of appointment. He also complained that the Arbitrator had awarded Rs. 270,000.00 to each of the relevant employees on the basis that they had incurred an expense of Rs. 300 per day on all 30 days of the month for the entire period of two and half years (30 months), even though certain days included therein may have been public holidays and Saturdays and Sundays, which he submitted were non-working days. He submitted that on an average, there were only 20 working days in each of the months that fell within the relevant period, and that the Arbitrator’s award was fundamentally flawed as it was founded on the fallacious basis that the relevant employees reported for work on all 30 days during the entire period of 30 months. He also contended that the Arbitrator had relied upon the documents marked A, B and C which had been tendered with the written submissions of the relevant employees after the conclusion of evidence, and to that extent, the said award is irrational and was extraneous material.

Learned President’s Counsel for Brown & Co. submitted that for all these reasons, the part of the award of the Arbitrator relating to the official transport facilities ought to be quashed on the ground of “Wednesbury Unreasonableness”, which has acquired the well known tag from the recognition Green MR accorded to irrationality as a major ground for judicial review of administrative action in the now famous decision in *Associated Provincial Picturehouses v. Wednesbury Corporation* [1948] 1 KB 223. Lord Diplock in the later case of *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 identified illegality, irrationality and procedural impropriety as the three grounds for such review, and went on to describe Wednesbury unreasonableness at page 410 thus:-

"It applies to a decision which is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

In my opinion, these words are applicable with equal force to the discretionary powers exercised by an arbitrator, such as the 3rd Respondent-Respondent-Respondent in an industrial arbitration under Section 4(1) of the Industrial Disputes Act. It is noteworthy that the said Act provides for the resolution of industrial disputes in various ways. Such disputes may be settled through collective agreements in terms of Sections 5 to 10 of the said Act, and may also be referred under Section 4(2) of the Act to an Industrial Court for settlement. Industrial disputes may also be settled by the Commissioner of Labour (which term includes a Labour Officer) by conciliation or any other means under Section 2 read with Section 3(1)(b) of the Act, or may be referred by the Commissioner to an authorized officer for settlement by conciliation under Section 3(1)(c) read with Sections 11 to 15 of the Act. An industrial dispute, irrespective of whether it is a minor or major dispute, may be referred for arbitration by the Commissioner with the consent of the parties to the dispute as contemplated by Section 3(1)(d) read with Sections 15A to 21 of the Industrial Disputes Act. In terms of Section 4(1) read with Sections 15A to 21 of the said Act, the Minister may also refer a minor industrial dispute for arbitration to a Labour Tribunal or to an Arbitrator nominated by the Minister “notwithstanding that the parties to such dispute or their representatives do not consent to such reference”. The dispute that arose between the relevant employees with Brown & Co. and Browns Engineering, has been referred for settlement by arbitration in terms of Section 4(1) of the Industrial Disputes

Act, and the parameters of judicial review of such arbitration has been explored by this Court in decisions such as *Thirunavakarasu v. Siriwardena and others* [1986] 1 Sri LR 185, and *Brown & Co. Ltd., and Another v Ratnayake, Arbitrator and Others* [1994] 3 Sri LR 91. As this Court noted in *Thirunavakarasu v. Siriwardena and others (supra)*, the Arbitrator in such an industrial arbitration “has much wider powers both as regards the scope of the inquiry and the kind of orders he can make than an arbitrator in the civil law” (*per* Wanasundera, J. at page 191).

Arbitration under the Industrial Disputes Act is intended to be even more liberal, informal and flexible than commercial arbitration, primarily because the Arbitrator is empowered to make an award which is “just and equitable”. When an industrial dispute has been referred under Section 3 (1)(d) or Section 4(1) of the Industrial Disputes Act to an Arbitrator for settlement by arbitration, Section 17(1) of the said Act requires such Arbitrator to “make all such inquiries into the dispute as he may consider necessary, hear such evidence as may be tendered by the parties to the dispute, and thereafter make such award as may appear to him just and equitable”. In my view, the word “make” as used in the said provision, has the effect of throwing the ball in to the Arbitrator’s court, so to speak, and requires him to initiate what inquiries he considers are necessary. The Arbitrator is not simply called upon “to hold an inquiry”, where the ball would be in the court of the parties to the dispute and, it would be left to them to tender what evidence they consider necessary requiring the arbitrator to be just a judge presiding over the inquiry, the control and progress of which will be in the hands of the parties themselves or their Counsel. What the Industrial Disputes Act has done appears to me to be to substitute in place of the rigid procedures of the law envisaged by the “adversarial system”, a new and more flexible procedure, which is in keeping with the fashion in which equity in English law gave relief to the litigants from the rigidity of the common law. The function of the arbitral power in relation to industrial disputes is to ascertain and declare what in the opinion of the Arbitrator ought to be the respective rights and liabilities of the parties as they exist at the moment the proceedings are instituted. His role is more inquisitorial, and he has a duty to go in search for the evidence, and he is not strictly required to follow the provisions of the Evidence Ordinance in doing so. Just as much as the procedure before the arbitrator is not governed by the rigid provisions of the Evidence Ordinance, the procedure followed by him need not be fettered by the rigidity of the law.

It is in this light that I proceed to examine the submissions made by learned President’s Counsel for Brown & Co., learned State Counsel who appeared for the Minister of Labour and Commissioner General of Labour, and learned Counsel for the relevant employees in the light of the evidence produced in the course of the arbitration proceedings. As already noted, the task of the Arbitrator was no doubt hindered by the fact that Browns Engineering, which was presumably aware of the material facts and circumstances, chose not to participate in the inquiry and to present its case. Although, Brown & Co. took up the position that it was not aware of the material facts and circumstances relating to the dispute as it had arisen after the transfer of the relevant employees to Browns Engineering, a position which is not too convincing in the light of the relationship between Browns & Co. and Browns Engineering, the relevant employees have testified before the Arbitrator with respect to the material facts and circumstances and they have been subjected to cross-examination by learned President’s Counsel for Brown & Co.

Learned President’s Counsel for Brown & Co. has submitted that the relevant employees had no legal entitlement to official transport in terms of their letters of appointment, which did not expressly provide that they were entitled to the facility of a company vehicle for their official and / or personal transportation. However, this submission completely overlooks the fact that the jurisdiction of the Arbitrator is an equitable one, and he is not constrained by the provisions of the contract of employment. Furthermore, the Arbitrator had in his award viewed the provision of a company vehicle as a “concession” rather than a legal obligation, and the Court

of Appeal has in its impugned judgement, endorsed this view and concluded that there was no error of law in the award to justify the exercise of its supervisory jurisdiction. I see no reason to differ from the approach of the Arbitrator and the Court of Appeal.

It is clear from the testimony of the relevant employees before the Arbitrator that they were each provided by Brown & Co. with a company vehicle for not only official but also personal travel, and that the vehicles so provided were in fact sold to them within five months of the transfer to Browns Engineering. The 4th Respondent-Respondent-Respondent, S.N. Wickramasinghe, who was the Assistant Works Manager at the Ratmalana workshop has testified that during the period prior to 1st January 1992, he was provided with a company owned petrol vehicle with a driver and 150 litres of petrol (vide page 196 of the brief). He also produced in the course of his testimony, a copy of the circular letter on the subject of consumption of fuel dated 24th August 1989 marked AB 19 signed by the Administration Manager of Brown & Co (vide proceedings at page 207 and the document AB 19 at page 613 of the brief), which is clear evidence of the fact that a company vehicle had been provided to him and other senior engineers in service for official and personal use. He further testified that just after the transfer to Browns Engineering, the Management of that company “agreed to provide us with better vehicles with the same facilities, but they did not keep up the promise.” The testimony of this respondent as well as the other two relevant employees clearly show that the facility of a company vehicle had been extended to them even after their transfer to Brown’s Engineering for five more months till the end of May 1992, which no doubt created a legitimate expectation in their minds that the facility will be continued throughout their service. It also appears from the testimony of the 4th Respondent-Respondent-Respondent that in May 1992 Brown & Co. sold to them the official vehicles that had been used by them, and the facility of providing a company vehicle with a driver and fuel, was discontinued with effect from June 1992. (page 196 of the brief).

The testimony of 6th Respondent-Respondent-Respondent, S.T.N. Perera was substantially to the same effect, and at pages 391 to 392 of the brief, he has stated that he too was provided with a petrol vehicle for official and personal use. He was specifically questioned about the quantity of fuel he was entitled to, and he responded in the following manner:-

Q- Who paid for the fuel?

A- The Company.

Q- Was there a limit on the fuel?

A- 150 Litres per month.

Q- Were there any restrictive conditions attached to the use of vehicles? Were you allowed to use for your personal travelling?

A- Yes.

Q- If you use more than 150 Litres, then what will happen?

A- I will have to pay for that.

It appears from the evidence of the 5th Respondent-Respondent-Respondent, P.A.Q. Fernando, that unlike in the case of the 4th and 6th Respondent-Respondent-Respondents, he was provided with a diesel vehicle, and he has testified at page 418 of the brief that he was give Rs. 3000 worth of diesel fuel per month, and that whenever he had to travel to distant outstations like Nuwara Eliya, he was given an extra fuel allowance.

It is also apparent from the evidence recorded by the Arbitrator that the facility of a company driver was provided only to S. N. Wickramasinghe, the 4th Respondent-Respondent-Respondent, and the other two relevant employees have been agitating that they too should be

provided with company drivers, or in the alternative an allowance sufficient to hire a driver of their own. The divergence in the manner in which the company vehicle was provided to each of the relevant employees, is in fact reflected in the different amounts (set out in the table below) claimed by them as travelling expense on account of the said facility being discontinued with effect from June, 1992. The amounts set out in the table that appears below have been extracted from the claims of the relevant employees which were tendered to the Arbitrator along with their written submission marked A, B and C.

Respondent- Respondent- Respondent	Monthly rental for the vehicle (Rs)	Monthly expense incurred for fuel for official travel (Rs)	Driver's Salary (Rs)	Total claimed per month (Rs)
4 th	15,000	5,250	3,000	23,250
5 th	15,000	3,000	-	18,000
6 th	10,000	3,500	-	13,500

Learned President's Counsel has strongly objected to the reliance placed by the Arbitrator on the documents marked A, B and C, which were not marked in evidence and tendered only with the written submissions of the relevant employees to the Arbitrator. However, it is clear that these documents were not intended to be evidence in the case, as learned President's Counsel for Brown & Co. seems to contend, but were merely summaries of their respective claims under different heads which were helpful not only to the Arbitrator, but also to the Court of Appeal and this Court in understanding their case.

Learned President's Counsel has also submitted that the Arbitrator's award was perverse, as a uniform sum of Rs. 270,000.00 has been awarded to each of the relevant employees on the basis that they had incurred an expense of Rs. 300 per day on all 30 days of the month for the entire period of two and half years (30 months), despite the differences in the facts and circumstances relating to the claims of each relevant employee, and the fact that on an average, there were only 20 working days in each of the months that fell within the relevant period. There is no doubt that there was some disparity in the nature of the transport facility extended by Brown & Co. and Browns Engineering to the relevant employees, and it would appear that the Arbitrator has made an award on the lower side, based on the comparatively lower claim of the 6th Respondent-Respondent-Respondent, whose total claim amounted to only Rs. 13,500.00 per month. What has been awarded by the Arbitrator to all the relevant employees was Rs. 9,000.00 per month (Rs. 300 x 30 = 9,000), which is substantially lower than what has been claimed by the relevant employees. In fact, the award at first sight appears to be grossly inadequate from the perspective of the 4th Respondent-Respondent-Respondent, who was the relevant employee who was actually provided with a company driver, but he has chosen not to invoke the writ jurisdiction of the Court of Appeal in this regard, and has suffered most by reason of the long period of time taken to resolve the dispute.

I do not consider that there is any merit in the other submission of learned President's Counsel that any redress afforded by the Arbitrator by his award should have been on the basis of 20 working days per month. In the first place, there is clear evidence to the effect that the relevant employees had to report for work or travel on duty even on non-working days, and in any event, the relevant employees have all testified that they were permitted to utilize the company vehicles for their personal use as well, which is now the norm in the private sector.

It is abundantly clear that the Arbitrator has relied on the testimony of the said employees and the documents marked in the course of their testimony, in arriving at his findings. The 4th

Respondent-Respondent-Respondent, has produced in evidence a copy of the circular letter on the subject of consumption of fuel dated 24th August 1989 marked AB 19, wherein it is specifically stated that "it has been decided to allocate a fixed quantity of fuel to each vehicle per month to be used by the engineers" (vide proceedings at page 207 and the document AB 19 at page 613 of the brief). He has testified that in his case the allocation was 150 litres of petrol per month, which at the then prevailing price of petrol, which learned President's Counsel conceded was Rs. 35.00 per litre, justified the award of Rs. 5,250 per month or Rs. 175 per day as petrol allowance alone. I find that the rate of Rs. 300 per day allowed by the arbitrator as travelling expenses was a composite sum intended to cover three heads of expenditure, namely, the rental value of the vehicles belonging to the relevant employees which they had graciously made available for their official travel from 1st June 1992, driver's salary and cost of fuel. It is relevant to note that with respect to each of these heads the relevant employees had claimed much higher sums in the documents tendered with the written submissions marked A, B and C. Of course, it is in evidence that the 4th Respondent-Respondent-Respondent, who used a diesel vehicle, was paid only Rs. 3000.00 by Brown & Co. as the monthly fuel allowance, which works out to only Rs. 100 per month, and what the Arbitrator has endeavored to do was to arrive at a reasonable and uniform figure for the cost of fuel, car rental and driver's salary. In my considered opinion, even if one takes Rs. 100 to be the daily cost of fuel, the award of Rs. 300.00 per day as the travelling allowance, appears to be very reasonable, as they had to use their own personal vehicles and fuel for their official travel from 1st June 1992 and allowing an additional sum of Rs. 200 per day to cover the car rental and driver's salary is not excessive. The award is certainly supported by evidence, and is very reasonable.

It is important not to lose sight of the fact that this appeal arises from an application for the writ of *certiorari* to quash the award of the Arbitrator in an industrial arbitration, and the Court of Appeal which refused the application in the circumstances of this case did so in the exercise of its supervisory jurisdiction and not in its capacity as an appellate court. In this context, it is important to recall the following words of Green MR in *Provincial Picturehouses v. Wednesbury Corporation* [1948] 1 KB 223, at pages 228 to 230:-

"As I have said, it must always be remembered that the court is not a court of appeal. When discretion of this kind is granted the law recognizes certain principles upon which that discretion must be exercised, but within the four corners of those principles the discretion, in my opinion, is an absolute one and cannot be questioned in any court of law. What then are those principles? They are well understood. They are principles which the court looks to in considering any question of discretion of this kind. The exercise of such a discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters. Conversely, if the nature of the subject matter and the general interpretation of the act make it clear that certain matters would not be germane to the matter in question, the authority must disregard those irrelevant collateral matters.....

It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably".....

It is true to say that, *if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere*. That, I think, is quite right; but to prove a case of that kind would require something overwhelming, and, in this case, the facts do not come anywhere near anything of that kind. I think Mr. Gallop in the end agreed that his proposition that the decision of the local authority can be upset if it is proved to be unreasonable, really meant that it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body could have come to....." (*emphasis added*)

In all the circumstances of this case, I am of the considered opinion that the award is not vitiated by a failure to consider relevant facts or taking into consideration irrelevant facts and in particular does not suffer from what has been termed "Wednesbury unreasonableness" and is certainly not "outrageous" in the sense of the term used by Lord Diplock in his *dictum* in *Council of Civil Service Unions v Minister for the Civil Service (supra)* which has been quoted earlier in this judgement.

For the aforesaid reasons, I hold that -

- (a) the Court of Appeal did not err in affirming the finding of the Arbitrator that although reimbursement of the cost of travelling was not expressly provided for in the letter of appointment issued to the relevant employees by Brown & Co., it was just and equitable to award them an allowance to meet the official travelling expenses, specially considering the fact that they had been provided with a company vehicle for their official and personal travel in the past and the withholding of this facility had given rise to an industrial dispute;
- (b) the 4th to 6th Respondent-Respondent-Respondents had in fact, claimed that they were entitled to a company maintained vehicle, and not merely a loan facility to purchase a vehicle;
- (c) the Court of Appeal has affirmed the finding of the Arbitrator that the provision of a company vehicle was not obligatory but was a concession granted to the relevant employees with respect to the continuation of which they had a reasonable expectation; and
- (d) the Arbitrator's award granting the cost of travelling for all 30 days of the month for the entire period of 30 months was justified and supported by evidence and was not arbitrary or capricious.

I am of the opinion that the impugned award of the Arbitrator is just and equitable, and there are no errors on the face of the record to justify intervention by way of writ of *certiorari*. However, before parting with this judgement, I also wish to observe that the inquiry before the Arbitrator which commenced on 18th September 1997 concluded on 25th October 2002, and the lengthy proceedings and the consequent delay has defeated the objective of the reference for arbitration made by the relevant Minister in terms of Section 4(1) of the Industrial Disputes Act. In particular, it is observed that the proceedings before the Arbitrator very much resembled court proceedings, and demonstrated a failure on the part of the Arbitrator to take advantage of the equitable jurisdiction conferred, and the flexibility in proceedings envisaged, by the said Act, which has expressly provided in Section 36(4) that the provisions of even the Evidence Ordinance will not apply thereto. It is a great pity that due to the delay resulting from the protracted arbitration proceedings and the subsequent judicial proceedings, a minor dispute that arose in 1992 is still unresolved after the lapse of nearly two decades.

I affirm the judgement of the Court of Appeal dated 30th November 2007, and dismiss the appeal. In all the circumstances of this case, I award the 4th, 5th, and 6th Respondent-Respondent-Respondents a sum of Rs. 35,000.00 each as cost of this appeal.

JUDGE OF THE SUPREME COURT

J. A. N. DE SILVA, C.J.

I agree.

CHIEF JUSTICE

RATNAYAKE, J.

I agree.

JUDGE OF THE SUPREME COURT