

LIQUIDATORS OF KARAVAHUPATTU MULTI-PURPOSE
CO-OPERATIVE STORES UNION LTD., KALMUNAI

v.

MEERA SAIBU

COURT OF APPEAL.

T. D. G. De ALWIS, J. AND R. N. M. DHEERARATNE, J.

C. A. 266/76 (F) D. C. KALMUNAI 1207/M.

JUNE 10 AND 11, 1985.

Liquidator of Multi-purpose Co-operative Stores Union appointed under Co-operative Societies (Special Provisions) Act No. 35 of 1970 – Section 53 of the Co-operative Societies Ordinance – Is jurisdiction of Court ousted ?

When a dispute arises between an employee of a Co-operative Society after the Society is dissolved and its registration cancelled, and the liquidator appointed in terms of the Co-operative Societies (Special Provisions) Act No. 35 of 1970, section 53 of the Co-operative Societies Ordinance does not enable an employee to refer such dispute to the Registrar of Co-operative Societies. The jurisdiction of the Court is not ousted.

APPEAL from judgment of the District Court of Kalmunai.

A. Mahendrarajah, P. C. with R. Suwendran for the 3rd defendant-appellant.

Dr. H. W. Jayewardena, Q. C. with Dr. N. Tiruchelvam and Miss. K. Keenawinna for plaintiff-respondent.

July 19, 1985.

DHEERARATNE, J.

The plaintiff-respondent an employee of Karavahupattu Multi-purpose Co-operative Stores Union Ltd., filed this action in the District Court of Kalmunai, claiming arrears of salary from the liquidators of the said society. The events which culminated in filing this action are briefly as follows :-

The plaintiff-respondent had been employed by the said Union as a manager, in one of its retail shops until 30.08.1968, when he received an appointment from the said Union as a storekeeper. While serving as a storekeeper, he was interdicted on 30.12.1970 after being served with a charge sheet, containing five charges, all of which related to certain acts of maldistribution and misappropriation of a quantity of chillies, said to have been committed between 4.12.1970 to 9.12.1970. An inquiry was held into the charges, but on 13.08.1971, the Assistant Commissioner of Co-operative Development wrote to the plaintiff-respondent to say that he had been exonerated of all charges. Meanwhile, on 7.04.1971, the Union had been dissolved for the purpose of reorganisation and liquidators had been appointed to carry on the affairs of the Union, in terms of the Co-operative Societies (Special Provisions) Act No. 35 of 1970. On 13.08.1971, the plaintiff-respondent wrote to the liquidators asking for back wages, due to him from the time of interdiction and for reinstatement. On 27.08.1971, the liquidators wrote to the plaintiff-respondent, stating that the payment of arrears of salary, would be considered when the auditing of the Union's accounts was completed. On 30.09.1971, as the law at that time permitted, the plaintiff-respondent filed an application in the Labour Tribunal against the liquidators, seeking back wages and reinstatement. The liquidators filed answer stating that the audit of accounts of the Union revealed shortages amounting to Rs. 17,082.21 for certain periods ranging from 29.02.1964 to 16.04.1968, and as arbitration proceedings were pending in respect of those shortages, the application should be dismissed. The Labour Tribunal made order on 8.09.1971, laying by the application, until the conclusion of the arbitration proceedings.

On 23.12.1971, the plaintiff-respondent filed the present action in District Court against the liquidators, praying for arrears of salary from 1.1.1971 to the date of the plaint, amounting to Rs. 2700, and for Rs. 225 per month thereafter. The liquidators in their answer stated *inter alia* that an audit had revealed a shortage of Rs. 43,231.83 in the Union and that the matter had been referred to arbitration. No period during which the alleged shortage had occurred, was mentioned. Further, a number of legal defences were taken in the answer, the principal defence being that in terms of section 53 (1) of the Co-operative Societies Ordinance (Chap. 124), the dispute of the plaintiff was one exclusively referable to the Registrar of Co-operative Societies, and therefore, the District Court had no jurisdiction to grant relief to the plaintiff-respondent.

At the time the plaintiff-respondent filed this action, the relevant portions of section 53 (1) of the Co-operative Societies Ordinance, Chap. 124 (since repealed by Law No. 5 of 1972) read as follows : -

"53 (1) If any dispute touching the business of a registered society arises-

(a)

(b)

(c) between the society or its committee and any officer or employee of the society, whether past or present, or any heir or legal representative of any deceased officer or employee or

(d)

such disputes shall be referred to the Registrar for decision. A claim by a Registered Society for any debt demand or damages due to it from a member, officer or employee whether past or present whether such debt demand or damages be admitted or not, shall be deemed to be a dispute touching the business of the Society within the meaning of this sub-section."

The learned District Judge, giving judgment for plaintiff-respondent as prayed for, held against the liquidators on this question of jurisdiction. It is this point that was strenuously canvassed before us by the learned Counsel for the 3rd defendant-appellant. It is not

disputed that if the plaintiff-respondent's claim fell within section 53, the jurisdiction of the District Court is ousted in terms of the Ordinance.

In reaching the conclusion which he did, the learned Trial Judge reasoned as follows:

"In 68 New Law Reports 503 in *Karunatileke v. Abeywira*, the Divisional Bench held that the Registrar or his arbitrator has no jurisdiction to determine a dispute between the Co-operative Society and an officer of the Society in respect of a liability arising upon a contract or an implied contract. The reasons seem to be that would be a clear encroachment of the judicial power exclusively vested in the Court. In this case the claim is based on a contract of employment. The liability to pay wages arises from that contract. Therefore I am bound by that decision. The dispute that is allowed is specifically defined as a matter touching the business of the Society, that is, a claim by a Society against an officer for any debt, demand or damage. But a claim of an officer against the Society is not provided for. The rules ousting the jurisdiction of this Court must be jealously construed."

It is obvious that the learned trial Judge's attention had not been invited to the Co-operative Societies (Special Provisions) Act No. 34 of 1970, by which Act, after the decision of the said Divisional Bench case, the legislature had hastened to "remove and resolve certain difficulties and doubts" in regard to the administration of the Co-operative Societies Ordinance. This Act provided, that the power, duty and functions conferred and imposed on and assigned to the Registrar under the Co-operative Societies Ordinance, shall be deemed to have been and to be validly conferred, imposed or assigned. Further this Act provided that its provisions were to be considered as an Act for the amendment of the Ceylon (Constitution) Order-in-Council 1946, enacted by Parliament, after compliance with the requirements imposed by the proviso to the sub-section (4) of section 29 of that Order-in-Council. Learned Counsel for the plaintiff-respondent, quite correctly did not seek to justify that part of the trial Judge's reasoning based on encroachment of judicial power exclusively vested in the Courts. It would not be inappropriate to mention here, that, the present action too was filed by the plaintiff-respondent at a time when the Ceylon (Constitution) Order-in-Council 1946 was yet in force.

The 2nd part of the learned trial Judge's reasoning was also based on the assumption that the plaintiff-respondent's dispute arose with the Society. I do not think I should address my mind to that part of the reasoning as learned Counsel for the plaintiff-respondent raised a more fundamental matter regarding the applicability of section 53.

As could be seen from the facts, the dispute of the plaintiff-respondent clearly arose after the Society was dissolved. The liquidators were admittedly appointed in terms of the Co-operative Societies (Special Provisions) Act No. 35 of 1970 after cancellation of the registration of the Society. Consequent upon the dissolution in terms of section 3(3) of that Act the Society ceased to be a corporate body. Section 53 of the Co-operative Societies Ordinance does not enable an employee to refer to the Registrar a dispute which has arisen between him and the liquidators. Learned Counsel for the plaintiff-respondent is correct in his submission that the plaintiff-respondent could not have referred his dispute to the Registrar.

The appeal is therefore dismissed with costs fixed at Rs. 525.

T. D. G. DE ALWIS, J. – I agree.

Appeal dismissed.
