

1978 Present : Thamotheram, J., Malcolm Perera, J.  
and Walpita, J.

TISSA BANDARA RANDENIYA

and

THE BOARD OF DIRECTORS OF THE CO-OPERATIVE  
WHOLESALE ESTABLISHMENT, and ANOTHER

S. C. Application No. 42/78

*Writs of Mandamus and Prohibition—Application by employee of Co-operative Wholesale Establishment—Disciplinary proceedings pending against such employee—Whether dispute within the meaning of section 26 of Co-operative Wholesale Establishment Act.*

Section 26 of the Co-operative Wholesale Establishment Act (Cap. 126) which requires a dispute, *inter alia*, between the Board and an employee to be referred to arbitration has no application where a charge sheet has been served on an employee and a domestic inquiry commenced with a view to taking disciplinary action.

**A**pplication for Writs of Mandamus and Prohibition.

*Nimal Senanayake*, for the petitioner.

*F. M. Mustapha*, Deputy Director of Public Prosecutions, for the 1st respondent.

*Cur. adv. vult*

July 17, 1978. THAMOTHERAM, J.

This is an application for the issue of a mandate in the nature of a writ of mandamus and for a writ of prohibition.

The petitioner is one T. B. Randeniya who was the Regional Manager, Co-operative Wholesale Establishment, Kurunegala Region.

The respondents are (1) The Board of Directors of the Co-operative Wholesale Establishment, Union Place, Colombo, and (2) M. A. R. Cooray, Inquiring Officer.

The 1st respondent served on the petitioner a letter of interdiction dated 27.6.77. This was done in pursuance of an audit report dated 25th day of April, 1977, relating to the functioning of the Co-operative Wholesale Establishment of which the petitioner was the Regional Manager. The Government Audit Superintendent said in the concluding paragraphs of his report ;

“It will be observed from the above mentioned report that Mr. T. B. Randeniya, Regional Manager, Kurunegala, had committed several irregularities some of which are of a criminal nature involving fraud and forgery. The only inference that can be drawn from the fraudulent claims that cowpeas had been purchased at very much less cost than what had been claimed. These irregularities are of a serious nature and would warrant Mr. Randeniya's immediate interdiction.

In view of the seriousness of these irregularities I would suggest that this matter be handed over to the C.I.D. for further investigation.”

The 1st respondent served a charge sheet on the petitioner. An inquiry headed by one Mr. W. M. A. Warnasuriya was commenced on 17.11.77. It was terminated on the orders of the Chairman of the Board of Directors of the Co-operative Wholesale Establishment. According to the statements of objections of the 1st respondent this was done as he was not satisfied that the inquiry was properly conducted in that no proper record was kept of the proceedings.

The petitioner by his letter through his Proctor called upon the 1st respondent to refer the matter in dispute to Arbitration in terms of section 26 of the Co-operative Wholesale Establishment Act. The petitioner nominated his Arbitrator and called upon the 1st respondent to nominate an Arbitrator in terms of section 27 of the C.W.E. Act.

The 1st respondent directed a fresh inquiry on the same charge sheet on 25th January, 1978. On that date the petitioner found that the Officer entrusted with the inquiry was the 2nd respondent.

The petitioner prayed that (a) a writ of prohibition be issued on the 1st and 2nd respondents to refrain from proceeding with the inquiry into the charges set out in the charge sheet dated 7th October, 1977, or making any determination or taking any further action thereon.

(b) That a writ of Mandamus be issued on the respondent to refer the matters in dispute to Arbitration and to appoint an Arbitrator in terms of sections 26 and 27 of the C.W.E. Act.

Mr. Mustapha, D. D. P. P., took many preliminary objections which are not without substance. The application however can be disposed of on what seems to be an obvious point. The employer had served a charge sheet on an employee with the view to taking disciplinary proceedings. The two inquiries he ordered were in the nature of domestic inquiries with a view to taking disciplinary action against him. Any action by the employee could be taken before a Labour Tribunal if there was a just cause for complaint.

It seems singularly inappropriate to style such a situation as a dispute between an employer and employee which could be resolved by Arbitration by two nominees of either side.

Section 26 of the C.W.E. Act (Cap. 126) says :

“ Where any dispute arises between (a) The Board and any Co-operative Society ; or (b) The Board and any of its employees whether past or present, such dispute shall be referred to Arbitration. ”

There is provision for nomination of Arbitrators, selection of Umpire and a declaration and that the award shall be final. How can one fit in a contemplated disciplinary action into this set up. In my view there is no dispute as contemplated by section 26. Therefore the application must fail. The application is dismissed with costs.

MALCOLM PERERA, J.—I agree.

WALPITA, J.—I agree.

*Application dismissed.*

