1962 *Present:* **T. S. Fernando, J.**

THE SOUTH CEYLON DEMOCRATIC WORKERS' UNION, Applicant, *and* R. R. SELVADURAI and another, Respondents

S. C. 328 of 1961—Application for a Mandate in the nature of a Writ of Mandamus *and/or Certiorari under section 42 of the Courts Ordinance*

*Industrial dispute—Dispute between a registered co-operative society and an officer of the society represented by a trade union—Reference to arbitration under the Industrial Disputes Act—Jurisdiction of the arbitrator—Industrial Disputes Act (Cap. 131), as amended by Act No. 62 of 1957, ss. 4 (1), 16, 20—Co-operative Societies Ordinance (Cap. 124), s. 53—*Certiorari*—Duty of the arbitrator to act judicially—"Error on the face of the record".*

In a reference under section 4 (1) of the Industrial Disputes Act for the settlement of an industrial dispute by an arbitrator, the dispute was between a trade union and a registered co-operative society as to whether one H, who was a member of the trade union and the administrative secretary of the co-operative society, was entitled to relief by reason of a wrongful termination of his services by the society. The arbitrator held that he had no jurisdiction "to make a just and equitable order under the Industrial Disputes Act" by reason of section 53 of the Co-operative Societies Ordinance creating an exclusive jurisdiction in the arbitrator and/or registrar specified therein. He further stated in his order that if he had jurisdiction he would not have refused to make an award, and indeed would have made quite a different order.

Held, (i) that when a trade union has taken up as its own the cause of one of its workmen, the cause, for all purposes of the Industrial Disputes Act, must be regarded as that of the union and not that of the individual workman.

(ii) that the arbitrator erred in law when he stated that section 53 of the Co-operative Societies Ordinance deprived him of jurisdiction "to make a just and equitable order under the Industrial Disputes Act".

(iii) that it is the duty of an arbitrator to whom a reference has been made in terms of section 4 (1) of the Industrial Disputes Act to act judicially. Inasmuch as the arbitrator's order contained an "error on its face", the remedy of *certiorari* was available to the union.

APPLICATION for a writ of *certiorari* and/or *mandamus*.

C. Ranganathan, Q.C., with *M. T. M. Sivardeen*, for the applicant.

H. W. Jayewardene, Q.C., with *S. Nandalochani* and *C. P. Fernando*, for the 2nd respondent.

Cur. adv. vult

May 14, 1962. T. S. FERNANDO, J.—

The applicant Union seeks a quashing of an order refusing to make an award made by an arbitrator to whom the Minister of Labour referred in terms of section 4 (1) of the Industrial Disputes Act (Cap. 131), as amended by Act No. 62 of 1957, for settlement by arbitration an industrial dispute within the meaning of the said Act. The parties to the dispute were the applicant and the 2nd respondent. The statement prepared by the Commissioner of Labour in terms of section 16 of the Act specified that the matter in dispute between the South Ceylon Democratic Workers' Union (the applicant), and the Galle Co-operative Stores Union Limited, (the 2nd respondent), was " whether the non-employment of one D. S. Hettiarachchi was justified and to what relief he is entitled ".

Hettiarachchi referred to in the above paragraph, a member of the applicant Union, was employed from 10th October 1954 as administrative secretary of the 2nd respondent, a society registered under the Co-operative Societies Ordinance (Cap. 124). His services were discontinued by the Board of Management of the 2nd respondent society on 14th February 1959. The society claimed that the services of Hettiarachchi were discontinued after inquiry held on charges framed in respect of certain irregularities. In the proceedings before the arbitrator, the 1st respondent to this application, the society raised as a matter of law that section 45 of the Co-operative Societies Ordinance (now section 53) operated as a bar to the assumption by the arbitrator of jurisdiction to make an award under the Industrial Disputes Act notwithstanding the reference made by the Minister. In an order made on 25th February 1961 the arbitrator, while expressing his view that " the dismissal of Hettiarachchi is entirely unjustifiable ", stated that he was unable to distinguish the case of *Sanmugam v. Badulla Co-operative Stores Union Ltd.*[1] as being inapplicable to the dispute before him, and held that he had no jurisdiction to make an award. He went on to add that " if he had jurisdiction to do so he would unhesitatingly hold that the dismissal is unjustifiable and either direct reinstatement with back pay or order reasonable compensation." In *Sanmugam's case* (*supra*) this Court held that section 53 of the Co-operative Societies Ordinance ousts the jurisdiction of the ordinary courts over a dispute between a registered co-operative society and any officer of the society when the dispute touches the business of the society.

[1] *(1952) 54 N. L. R. 16.*

On behalf of the applicant Union it was contended that the order should be quashed on the ground of error on its face. The error pointed to by learned counsel was claimed to be two-fold :—(i) that inasmuch as the dispute referred to the arbitrator was one between the applicant Union and the society, section 52 of the Co-operative Societies Ordinance had no application whatsoever as the Union was not a member of the society or any officer or employee thereof, and (ii) that, in any event, the arbitrator was wrong in law in holding that he had no jurisdiction to make an award under the Industrial Disputes Act by reason of section 53 of the Co-operative Societies Ordinance creating an exclusive jurisdiction in the arbitrator and/or registrar specified therein.

In respect of the first of the errors alleged, counsel referred me to the distinction between a dispute such as is specified in section 53 of the aforesaid Ordinance and an "industrial dispute" as defined in the Industrial Disputes Act (Cap. 131), as amended by Act No. 62 of 1957, and stressed that in the definition of an "industrial dispute" the expression "workmen" includes a trade union consisting of workmen. On a comparison of the relevant provisions of the two statutes concerned it is plain that the applicant Union was bereft of any status to have invoked the power of the Registrar in respect of the dispute we are here concerned with, while its status under the provisions of the Industrial Disputes Act cannot be doubted. In that view of the matter, the question of the provision of the Co-operative Societies Ordinance prevailing does not arise, and *Sanmugam's case* (*supra*) itself has no application. The applicant Union could have come in as a party to the dispute only through the provisions of the Industrial Disputes Act and the arbitrator was wrong in law in holding that he had no jurisdiction to make an award. Mr. Jayewardene, on behalf of the society, submitted that the Union was merely an agent of He tiarachchi who remained the principal on one side of the dispute, and that the circumstance that the Union had chosen to take up the cause of the workman did not make the dispute any the less a dispute between He tiarachchi as the workman on the one hand and the society as the employer on the other. I am unable to agree with the submission thus made. The definition of "industrial dispute" in the Act appears to have been framed with the deliberate purpose of providing for trade unions to take up as their own the cause of workmen belonging to their unions, and when a union has so taken up as its own the cause of one of its workmen, the cause for all formal purposes of the Act must be regarded as that of the Union and not that of the individual workman.

Even if I had reached a different conclusion in regard to the first of the errors complained of, I would have been in no doubt that the order of the arbitrator calls to be quashed by way of *certiorari* as he, in my opinion, erred in law when he stated therein that the Co-operative Societies Ordinance operated to deprive him of jurisdiction " to make a just and equitable order under the Industrial Disputes Act ". I do not think it necessary to give my reasons for my opinion here at any length as I have

set them out sufficiently in my judgment in another case delivered today where the same question arose—see *Ceylon Coconut Producers' Co-operative Societies Union Ltd. v. Jayakody*[1]. I might however add that Mr. Ranganathan brought to my notice certain decisions of the High Courts of India which appear to support the view which has commended itself to me. Reference to one of these decisions might usefully be made in this connection. In *South Arcot Co-operative Motor Transport Society Ltd. v. Syed Batcha*[2], Ramachandra Iyer, J. in the Madras High Court, dealing with a case where the question arose whether a dispute which had arisen fell to be dealt with under the Madras Co-operative Societies Act (which contained provision on the lines of section 53 of our Ordinance) or the Industrial Disputes Act of 1947, after referring to the circumstance that the Industrial Disputes Act enabled workmen to make claims not available to them at common law, followed the observations in an earlier case (*Nagaratnammal v. Ibrahim Sahib* (1955) I. L. R. Mad. 460 at 474)—reproduced below :—

> " Where a statute takes over and occupies a field previously not regulated by legislation, the rights and power conferred and the obligations imposed by the statute must be worked out within the statutory framework. If a statute confers a particular right and prescribes a particular mode for its enforcement, the enforcement of the right must be sought in that mode. "

Mr. Jayewardene attempted to counter the force of the arguments that the arbitrator was wrong in reaching the decision he did that he was without jurisdiction in the matter by submitting that, as the arbitrator had jurisdiction to decide the question whether or not he had jurisdiction to make an award, i.e., as he had jurisdiction to decide that question rightly as well as wrongly, even a wrong decision on his part could not be challenged by way of *certiorari*. This submission would have been entitled to prevail had the arbitrator's order complained of contained no error on its face. If I may use the picturesque language of Lord Sumner in *R. v. Nat Bell Liquors Ltd.*[3], if the face of the record in the particular case is not " the inscrutable face of a sphinx ", or, in other words, if the order made of record is a speaking order, this Court is entitled to examine it, and, if there be error on the face of it, to quash it. The jurisdiction to quash, according to the law of England, the decision of a statutory tribunal on the ground of error on the face of the record was considered not so very long ago, both by the King's Bench Division and by the Court of Appeal, in the notable case of *R. v. Northumberland Compensation Appeal Tribunal, Ex parte Shaw*[4], where *certiorari* is said to have been restored to its rightful position to supervise within limits the observance of the law by inferior tribunals, and I think it must be taken as well settled that error appearing on the face of the record of a decision of a statutory tribunal renders that decision liable to be quashed. It is hardly necessary to emphasize that our law on this point follows that of England.

[1] *(1962) 64 N. L. R. 175.* [2] *(1960) 19 Indian Factories Journal Reports. p. 178.*
[3] *(1922) A. C. at 159.* [4] *(1951) 1 A. E. R. 268 ; (1952) 1 A. E. R. 122.*

Mr. Jayewardene next attempted to limit the power to quash to cases of " manifest error ' , as he called it ; but if what he meant to convey was that gross error must be shown, I must with due respect disagree for, in my opinion, what is contemplated by "manifest error" in this context is no more than error which must be manifest or plain on the face of the admissible record, not error which can be discovered only after assiduous search beyond its face. In the instant case, the arbitrator has expressly stated in so many words in the very order canvassed that had he jurisdiction he would not have refused to make an award, and indeed would have made quite a different order.

It remains for me to consider certain other arguments put forward by Mr. Jayewardene against the rule *nisi* issued in this matter being made absolute. He contended (*a*) that the functions of an arbitrator to whom a reference has been made in terms of section 4 (1) of the Industrial Disputes Act are administrative and not judicial, and (*b*) that if they are judicial, the arbitrator has not been appointed as contemplated in the Constitution to perform such judicial functions. In regard to contention (*a*), I do not think I can uphold the argument that section 20 of the Industrial Disputes Act which enables a party to repudiate an award of an arbitrator has the effect of rendering the act of the arbitrator an administrative function ; moreover, it is plain that, if the principle so precisely stated by Atkin, L.J. in *R. v. Electricity Commissioners*[1] is kept in mind, the arbitrator had both legal authority to determine questions affecting the rights of subjects and also the duty to act judicially. In regard to contention (*b*), Mr. Jayewardene was obviously seeking to bring the case of this arbitrator too within the ruling of the Court in the recent decision of *Senadhira v. The Bribery Commissioner*[2]. The distinction between arbitral and judicial power was referred to in that very case, and I need but reproduce one observation contained in the judgment pronounced in the Privy Council by Lord Simonds in *Attorney-General of Australia v. Reginam*[3]:—

> " Before turning to a consideration of the vital question in this case, it is desirable to repeat that (as was said in the majority judgment) the function of an industrial arbitrator is completely outside the realm of judicial power and is of a different order. "

Both contentions (*a*) and (*b*) must in my opinion fail.

For the reasons which I have indicated above the applicant has established his claim that the order of the arbitrator made on 25th February 1961 calls to be quashed, and it is accordingly quashed. As the decision in law which led to the order now quashed has been shown to be wrong, it follows that it is now open to the arbitrator to make an award. The applicant is, in my opinion, entitled also to the consequential

[1] *(1924) 1 K. B. at 204.* [2] *(1961) 63 N. L. R. 313.*

[3] *(1957) 2 A. E. R. at 49.*

order by way of *mandamus*, and I would accordingly direct that the proceedings be remitted to the arbitrator so that he may now make his award giving, if he considers such a course necessary, a further opportunity to the parties to make any submissions on the matter in dispute.

I order the 2nd respondent to pay to the applicant the costs of this application.

Application allowed.