

1949

Present : Gratiaen J.

SIRISENA, Petitioner, and KOTAWERA-UDAGAMA CO-OPERATIVE STORES LTD., et al., Respondents

S. C. 215—IN THE MATTER OF AN APPLICATION FOR A WRIT OF CERTIORARI ON KOTAWERA-UDAGAMA CO-OPERATIVE STORES LTD. AND OTHERS

Writ of certiorari—Alternative remedy available—Circumstances when writ will nevertheless lie—Co-operative Societies Ordinance (Cap. 107)—Illegal reference to Arbitrator.

In an application for a writ of *certiorari* to quash the award of an arbitrator to whom a dispute had been illegally referred under the Co-operative Societies Ordinance—

Held, that even though an alternative remedy was also available, a writ of *certiorari* would lie to quash the proceedings of a tribunal which flagrantly exceeded the limited statutory powers conferred on it.

THIS was an application for a writ of *certiorari* to quash an award of an arbitrator to whom a dispute had been illegally referred under the Co-operative Societies Ordinance.

C. R. Gunaratne, for the petitioner.

M. Tiruchelvam, Crown Counsel, for the 2nd and 3rd respondents.

Cur. adv. vult.

September 7, 1949. GRATIAEN J.—

The petitioner was at one time the duly appointed manager of the Kotawera-Udagama Co-operative Stores Limited of Welimade, which Society is the first respondent in these proceedings. After he had ceased to hold that office the Society claimed from the petitioner a sum of Rs. 911·09 in respect of monies alleged to have been received by him during the period when he was manager. The claim was disputed, and was referred by the Society to the Registrar of Co-operative Societies. The Registrar purported under Rule 29 framed under the Rules of the Co-operative Societies Ordinance (Chapter 107) to refer the dispute to the second respondent as arbitrator. In due course the second respondent made an award ordering the petitioner to pay to the Society a sum of Rs. 911·09 and costs.

The petitioner challenges the legality of the second respondent's award. He claims that as he had ceased to be an officer of the Society at the relevant date, the purported reference to arbitration was *ultra vires* of the powers vested in the Registrar under Rule 29, and that the purported award of the second respondent in favour of the Society was therefore made without jurisdiction. He accordingly applies for a mandate in the nature of a writ of *certiorari* quashing the award against him. A rule *nisi* has already been issued to this effect from this Court.

The present case is on all fours with the facts in *Ilungakoon v. Bogalgame*¹ where it was decided, in accordance with earlier decisions of the Court, that Rule 29 does not empower the compulsory reference to arbitration of a dispute between a registered Co-operative Society and a person who had ceased before the date of the purported reference to be an officer of the Society. It follows that the award which is challenged by the petitioner was one which was made in excess of the statutory jurisdiction which the second respondent purported to possess. This is conceded by learned Crown Counsel who appeared for the second respondent and for the Registrar.

The Society has not attempted to show cause why the relief asked for by the petitioner should not be quashed. It has been argued however on behalf of the second respondent and the Registrar that, although the award is admittedly illegal and of no force or avail in law, *certiorari* does not lie in the present case. Their contention is that discretionary writs of this nature should not issue where another and equally effectual remedy was and is available to the petitioner. Learned Crown Counsel points out that, in accordance with the procedure laid down in the relevant rules for the enforcement of awards made under the Co-operative Societies Ordinance, the Society has already taken steps in the District Court of Badulla for the enforcement of the purported award in its favour. In *Ekanayake v. Prince of Wales Co-operative Society Limited*² my brother Windham, with whom Nagalingam J. agreed, held that where an application is made to execute an award which is bad for want of jurisdiction it is open to the Court to refuse to execute it. It is submitted that in the circumstances the petitioner is not without an appropriate remedy if he desires to challenge the illegal award made against him, and that this Court should therefore refuse to exercise in his favour the extra-ordinary powers vested in it under section 42 of the Courts Ordinance.

It is no doubt a well recognised principle of law that a Superior Court will not as a rule make an order of *mandamus* or *certiorari* where there is an alternative and equally convenient remedy available to the aggrieved party. But the rule is not a rigid one. In *R. v. Wandswoth Justices-ex parte Reid*³ an application was made for an order of *certiorari* quashing a conviction made by the justices in excess of their jurisdiction. Objection was taken, *inter alia*, that as the accused had a right of appeal to quarter sessions, *certiorari* did not lie. Caldecote L. J., in over-ruling the objection, said "as to the right of appeal to quarter sessions, it may be that the applicant could have had his remedy if he had pursued that course, but I am not aware of any reason why, in such circumstances as these, if the applicant prefers to ask for an order of *certiorari* to quash the conviction obtained in the manner I have described, the Court should be debarred from making an order. In this case it has been admitted that a mistake has occurred. This Court is in a position to remedy that mistake by making an order of *certiorari* to quash the conviction, and that it is the proper order which I think this Court should make". Humphreys J. in a separate judgment expressed the view that "if a

¹ (1948) 49 N. L. R. 403.

² (1949) 50 N. L. R. 295.

³ (1942) 1 A. E. R. 56.

person can satisfy this Court that he has been convicted of a criminal offence as the result of a complete disregard by the tribunal of the laws of natural justice, he is entitled to the protection of this Court " even though an alternative remedy was also available. I think that these observations are appropriate to the present proceedings. It is not in dispute that a public officer and an extra judicial tribunal, acting no doubt through ignorance, have flagrantly exceeded the limited statutory powers conferred on them by the provisions of the Co-operative Stores Ordinance. In the result there is on record an illegal award condemning a man to pay to a public institution the amount of a disputed claim upon which only a Court of law is normally competent to adjudicate. I consider that there is no compelling principle of law which fetters this Court's discretion to quash the illegal award, and I now make order accordingly. It is but right and proper that I should accede to the request that the stigma attaching to an award made in excess of the second respondent's jurisdiction in the matter should be speedily wiped out. The first respondent will pay the petitioner's costs in these proceedings.

Application allowed.

