1951 *Present:* **Nagalingam J.**

MURUGESU, Petitioner, *and* AMERASINGHE *et al.*, Respondents

S. C. 451—In the Matter of an Application for a Writ of Prohibition

Writ of Prohibition—Dispute between Co-operative Society and employee—Reference to arbitration—Co-operative Societies Ordinance, No. 16 of 1936, s. 45 (2)—Jurisdiction of arbitrators challenged—Necessary parties to application for writ.

A dispute between the petitioner and a Co-operative Society was referred to arbitration by the Registrar of Co-operative Societies. In an application made by the petitioner for a Writ of Prohibition alleging that the dispute between him and the Co-operative Society was not such as could have been referred to arbitration under section 45 (2) of the Co-operative Societies Ordinance and that the Board of Arbitrators were usurping to themselves powers which had not been legally vested in them—

Held, that the Co-operative Society was a necessary party to the application and that the failure to make the Society a party was a fatal irregularity.

THIS was a Writ of Prohibition against a Board of Arbitrators appointed by the Registrar of Co-operative Societies under section 45 (2) of the Co-operative Societies Ordinance.

H. V. Perera, K.C., with *C. Shanmuganayagam*, for the petitioner.

C. Thiagalingam, K.C., with *E. R. S. R. Coomaraswamy*, for the party noticed.

H. W. R. Weerasooriya, Acting Solicitor-General, with *E. H. C. Jayetileke*, Crown Counsel, for the Registrar of Co-operative Societies.

Cur. adv. vult.

February 27, 1951. NAGALINGAM J.—

This is an application for a Writ of Prohibition. A preliminary objection has been taken to the application on the ground that the party whose interests would be affected if the application were granted has not been made a party and that the application must therefore fail.

[1] *Commissioner of Stamps, St. Settlements v. Oei Tjong Swan, (1933) A. C. 387.*

The facts, so far as they are material for a consideration of the preliminary point, are: The petitioner who is the applicant for the writ was in the service of the Northern Division Agricultural Producers' Co-operative Union, Ltd., a Society registered under the Co-operative Societies Ordinance, No. 16 of 1936, and hereinafter referred to as the Union. Certain disputes arose between the petitioner and the Union in regard to a claim amounting to a sum of Rs. 42,593.12 made by the Union against the petitioner. Pursuant to the provisions of section 45 of the Ordinance the Union referred the dispute to the Registrar of Co-operative Societies, who by virtue of the powers vested in him by sub-section 2 of the same section referred it for disposal to a Board of Arbitrators, the composition of which suffered a change and at the dates relevant to the present application the first three respondents constituted the Board of Arbitrators.

The petitioner's case for the Writ is based upon the allegation that the disputes between him and the Union are not such as could have formed the subject of proceedings under section 45 of the Ordinance and that the Board of Arbitrators in entering upon the arbitration proceedings were usurping to themselves powers which had not been legally vested in them. To his application the petitioner named four respondents, the first three being, as remarked earlier, the three arbitrators and the fourth being the Registrar of Co-operative Societies. The Union has not been made a party respondent.

At the hearing of this application the arbitrators did not enter appearance. The 4th respondent, however, was represented by the learned Acting Solicitor-General, who put forward the contention that neither the 4th respondent nor the arbitrators were interested in the result of the application but the party who would be affected by the grant of the application would be the Union and that as the Union had not been made a party the application could not be entertained by Court. The learned Acting Solicitor-General also submitted that it was one of the fundamental principles of the administration of justice that no order prejudicial to or affecting the right of a party should be made without that party being first given an opportunity of showing cause against the making of such an order.

Learned Counsel for the petitioner strenuously argued that the Union was not a necessary party and that the writ could issue if no cause was shown by the respondents named in the petition. No authority was cited at the Bar by Counsel. It seems to me, however, that the party who invoked the machinery provided by section 45 of the Ordinance, namely, the Union, would be the party that would vitally be interested in demonstrating that the procedure adopted by it has the sanction of law and that no occasion for the issue of a Writ of Prohibition has arisen.

I think it is quite correct to say that the Registrar is not interested in the application made by the petitioner. The Registrar has exercised the powers which he considered were vested in him by law and is *functus*. The application of the petitioner is in fact for a Writ of Prohibition against the 1st, 2nd and 3rd respondents and not against the 4th respondent. The Registrar, therefore, is not only unconcerned but it seems to me is wholly an unnecessary party to these proceedings. I do not see the object of giving notice to him of this application because any notice he

may have at this stage cannot have the effect of enabling him to undo what he has done. In so far as the first three respondents, the arbitrators, are concerned, they are not a statutory body with statutory powers, nor are they even persons versed in the law. They are three gentlemen of eminence and standing in the community who have been selected by the Registrar for their integrity and impartiality to arbitrate between the Union on the one hand and the petitioner on the other. One can understand their attitude in not putting in an appearance. They would be ignorant of irregularities, if any, in the proceedings that took place prior to their appointment as arbitrators. In these circumstances, if they are indifferent to the consequences of the petitioner's application, one need not be surprised.

The Union, however, stands on a different footing. It was the Union that invoked the provisions of section 45 of the Ordinance, and applied to the Registrar to settle the dispute in pursuance thereof. If, as the petitioner contends, section 45 of the Ordinance has no application to the disputes between him and the Union it is for the Union to establish the contrary but the Union is not given an opportunity of doing so and, as stated by the learned Acting Solicitor-General, there can be no question but that if a Writ does issue it will be to the detriment of the Union and would have issued without the Union having been given an opportunity of contesting the propriety of such an issue.

Should it be held that section 45 of the Ordinance has no application and that the disputes cannot be submitted to the Registrar for settlement, the Union would have no alternative but to sue the petitioner in a regular action in the ordinary Courts of law; but then questions of prescription would arise which it may not be possible for the Union to surmount at the present time.

The Union not having been made a party, I am of opinion that the application as constituted is bad.

The only other question that had to be considered was whether the Union should be added a party to these proceedings even at this stage. In fact the Proctor for the petitioner did file papers on 25th October, 1950, praying that after notice the Union be made a party respondent to the application. The notice of the filing of these papers was given to the Union and Counsel on behalf of the Union entered appearance at the hearing and stated that he opposed the application to have the Union added a party.

Learned Counsel for the petitioner, however, took up the position that as this Court had made no order directing the issue of notice on the application to add the Union as a party, no Counsel had a right to appear for the Union or to be heard on its behalf. He further stated that he was making no application to add and did not support the application filed to add the Union as a party respondent. In these circumstances no question arises of adding the Union as a party at this stage.

There remains for consideration the question of costs. That the respondents are entitled to their costs there can be no doubt; whether the Union which did enter appearance by Counsel is entitled to costs has, however, to be determined. In paragraph 6 of the affidavit filed with his papers on 25th October, 1950, the petitioner expressly states that he has already notified the Union direct regarding his application to add the

Union as a party and had furnished it with copies of all documents filed up to that date by the various parties to the application. In view of the service of the notice on the Union, I think it is idle to contend that Counsel should not have appeared on behalf of the Union. Had Counsel not appeared on behalf of the Union, it may properly have been assumed that as after due notice the Union too had not put in an appearance it was not contesting the application. The appearance on behalf of the Union was therefore proper and the Union is also entitled to its costs.

In the result, I refuse the application with costs payable by the petitioner to the respondents and to the Union.

I much regret the delay occasioned by my illness in delivering this order.

Application refused.