

1949

*Present: Gunasekara J.*SOYZA, Petitioner, and DE SILVA *et al.*, Respondents*S. C. 479—In the Matter of an Application for a Writ of Certiorari**Writ of Certiorari—Necessary parties—Dispute between Committee of Co-operative Society and past officer—Arbitration—Jurisdiction—Co-operative Societies Ordinance, No. 34 of 1921—Rule 29.*

In a dispute between the Committee of a Co-operative Society and the petitioner, who was at one time the treasurer of the Society, what purported to be an award was made under Rule 29 of the Rules framed under section 37 of the Co-operative Societies Ordinance.

Held, that in the absence of any allegation that the petitioner was at any material time a member or past member of the Society or a person claiming through a member or past member, the award was made without jurisdiction.

Held further, that the person who purported to make the award was a necessary party to the application for *certiorari*.

THIS was an application for a Mandate in the nature of a writ of *Certiorari* to quash what purported to be an award made under the Co-operative Societies Ordinance.

A. H. C. de Silva, for the petitioner.

A. C. Nadarajah, for the 1st respondent.

Cur. adv. vult.

May 9, 1949. GUNASEKARA J.—

The petitioner D. S. Soyza applies for a Mandate in the nature of a writ of *Certiorari* to quash what purports to be an award made by the 1st respondent under Rule 29 of the Rules framed under the Co-operative Societies Ordinance, No. 34 of 1921. The allegations of fact made in his affidavit have not been challenged by the respondents.

The petitioner was the treasurer of the Kanatta Co-operative Stores Society, Ltd., (who is the 2nd respondent) from August 1, 1944, to March 2, 1946. About March 24, 1946, he received a document dated March 23, 1946, purporting to be a summons from the 1st respondent. The 1st respondent there stated that he had been appointed by the Registrar of Co-operative Societies as Arbitrator in a certain dispute between the Committee of Management of the Society and "the ex-treasurer, Mr. D. S. Soyza," and that he was proceeding under Rule 29 of the Rules framed under section 37 of the Co-operative Societies Ordinance, No. 34 of 1921, to decide the dispute, and he went on to summon the petitioner to appear before him on April 9, 1946, for inquiry into the dispute. The dispute was described as one "regarding the cash shortage of Rs. 6,000 in handing over." On April 9, 1946, the 1st respondent purported to make an award directing the petitioner who is described in the award as the "ex-treasurer of the society", to pay to the 2nd respondent the sum of Rs. 6,000 with interest thereon and Rs. 25 as costs. The "Award" states that it was given in the presence of the President of the Society and the petitioner. (It was admitted at the Bar that the petitioner took part in the inquiry without protest.)

The "Award" is now filed in the District Court of Colombo in Case No. 364/X and application has been made to that Court by the 2nd respondent for a writ of execution.

Ordinance No. 34 of 1921 has been repealed but it has been assumed for the present purpose that notwithstanding its repeal Rule 29 has been continued in force by the operation of section 52 of Cap. 107. This Rule provides that any dispute concerning the business of a Co-operative Society between members or past members of the Society or persons claiming through them, or between a member or past member or person so claiming and the Committee or any officer shall be referred to the Registrar of Co-operative Societies. It is only such a dispute that the Registrar is empowered by Rule 29 to refer to an arbitrator.

In the present case one of the parties to the alleged dispute was the Committee of the Society. Therefore Rule 29 could apply to the dispute only if the other party was a member or past member or a person claiming through a member or past member. It is not alleged that the petitioner was at any material time a person who came within this class. The case is indistinguishable from that of *Illangakoon v. Bogollagama*¹ and I hold that the 1st respondent acted without jurisdiction when he purported to hold the inquiry and make the award in question.

The 2nd respondent who has been served with notice of the present application has not appeared. Mr. A. C. Nadarajah, who appeared for the 1st respondent, had no objection to the award being quashed but maintained that the 1st respondent had been wrongly joined as a party and that he should be discharged from these proceedings and awarded his costs. This contention he based on the ground that an arbitrator becomes *functus officio* as soon as he has made his award and the 1st respondent is therefore no longer an arbitrator but appears in these proceedings in his personal capacity.

¹ (1948) 49 N. L. R. 403.

I am unable to agree that the 1st respondent has been wrongly made a party. He is the person who purported to make the award that is in question, and the award cannot be quashed in a proceeding to which he is not a party: of *Jamila Umma v. Mohammed et al.*¹.

I quash the award which the 1st respondent purported to make on April 9, 1946, and which is now filed in Case No. 364/X of the District Court of Colombo. As the petitioner himself participated without protest in the proceedings which the 1st respondent purported to take under Rule 29, I direct that each party will bear his own costs.

Application allowed.
