

1948

*Present : Gratiaen J.*

ILLANGAKOON, Petitioner, and BOGOLLAGAMA *et al.*, Respondents.

*S. C. 403—Application for a Writ of Certiorari*

*Writ of Certiorari—Manager of Co-operative Store—Claim for value of goods entrusted—Claim made after resignation of manager—Arbitration—Jurisdiction of arbitrator—Co-operative Societies Ordinance—Chapter 107—Rule 29—Section 45.*

Petitioner was employed as manager of a Co-operative Store. After his resignation he received a summons to appear before the first respondent who claimed to be appointed by the Registrar of Co-operative Societies under rule 29 of the rules framed under section 37 of Ordinance No. 34 of 1921, to arbitrate upon an alleged dispute between the Society and the petitioner in respect of the Society's claim for a sum of money being the value of certain goods entrusted to him as manager. On an application for Writ of Certiorari to quash the proceedings before the arbitrator as being in excess of jurisdiction—

*Held*, (i) that rule 29 of the rules framed under section 37 of Ordinance No. 34 of 1921 did not permit the reference to arbitration of a dispute between a Co-operative Society and one of its ex-officers; (ii) that even if the petitioner was a member the dispute in question was not one resulting from his membership; (iii) that the word *officer* in section 45 (i) (c) of Chapter 107 did not include an *ex-officer* and that the dispute could not have been referred to arbitration even under that provision of the Ordinance.

**A**PPPLICATION for a writ of *certiorari*.

*H. W. Jayewardene*, for the petitioner.

*E. B. Wikramanayake*, for the 1st and 2nd respondents.

*V. Tennekoon, Crown Counsel*, for the 3rd respondent.

*Cur. adv. vult.*

May 27, 1948. GRATIAEN J.—

The petitioner was employed as Manager of the Kurunegala Co-operative Stores Society Limited (a society duly registered under the Co-operative Societies Ordinance, Chapter 107) for a period of four months until he resigned his post with effect from September 30, 1944. Over a year later, on November 15, 1945, he received what purported to be a summons to appear before the 1st respondent, C. R. Bogollagama, who claimed to have been appointed by the Registrar of Co-operative Societies to arbitrate upon an alleged dispute between the Society and the petitioner in respect of the Society's claim to receive from the petitioner "a sum of Rs. 2,207.15 being the value of goods entrusted to him as manager between June 1, 1944, and September 30, 1944, and not accounted for." It is not denied that this was the first intimation which the petitioner had of the Society's claim.

It was stated in the summons that the 1st respondent would function as arbitrator "under Rule 29 of the rules framed under section 37 of the Co-operative Societies Ordinance, No. 34 of 1921". This Ordinance was not in operation at the relevant date except in so far as it was kept alive for certain purposes under the provisions of the later Ordinance No. 16 of 1936 (Chapter 107) which provided, *inter alia*, by section 52 (2) that all rules made under the earlier Ordinance should continue in force until new rules were made under the new Ordinance in substitution for them. I will assume for the purposes of this application that Rule 29 under which the 1st respondent claimed jurisdiction to function as an arbitrator was in operation at the relevant date. The effect of this rule was that any dispute concerning the business of a Co-operative Society between "members or past members of the Society . . . or between a member or past member and the committee (I quote only the relevant words) shall be referred to the Registrar of Co-operative Societies." The Registrar was further empowered, if he thought fit, to appoint an arbitrator to decide the dispute, in which event an appeal from the arbitrator's award would lie to the Registrar within one month of the date of the award. It will be observed that a condition precedent to the applicability of Rule 29 was that one of the parties to the dispute concerning the business of the society should be a *member or past member* of the Society. It is not suggested by the respondents that the petitioner had ever been a member of the Society, and it is therefore clear that the 1st respondent had no jurisdiction whatsoever under this Rule to officiate as arbitrator or to make any award in respect of the Society's claim against the petitioner.

Immediately on receipt of the 1st respondent's summons the petitioner replied pointing out that he was not a member of the Society and challenging the 1st respondent's right to assume jurisdiction under Rule 29. The 1st respondent ignored this letter, and proceeded to adjudicate upon the Society's claim against the petitioner *ex parte* on January 25, 1946. He purported to award the Society the full amount of its claim of Rs. 2,207.15 together with a sum of Rs. 50 as costs of the inquiry. For some quite inexplicable reason the terms of this "award" were not in point of fact communicated to the petitioner for very nearly six months, with the result that, assuming that the 1st respondent had jurisdiction to make an award regarding the dispute, the petitioner's right of appeal "within one month of the date of the award" under Rule 29 was withheld from him.

I earnestly hope that this deplorable state of affairs is not typical of the manner in which arbitration proceedings under the very salutary provisions of the Co-operative Societies Ordinance are conducted.

On receiving intimation of the 1st respondent's *ex parte* award against him, the petitioner once more protested that it had been made without jurisdiction. He appealed to the Registrar against the award under protest, and made an application to this Court for a writ of Certiorari quashing the 1st respondent's purported award against him. Pending the final hearing of this application the Registrar has purported, in the exercise of his appellate jurisdiction under the Ordinance, to set aside the award and to order the 1st respondent to reopen the arbitration proceedings in order to give the petitioner "another chance of appearing in person and stating whatever he has to say".

In my opinion the petitioner's contention that the earlier arbitration proceedings before the 1st respondent under Rule 29 framed under section 37 of the Co-operative Societies Ordinance, No. 34 of 1921, were illegal is entitled to succeed. The rule does not authorise a dispute between a co-operative society and one of its ex-officers to be referred to arbitration. The award of the 1st respondent was made without jurisdiction. Even if the petitioner had been a member of the society, rule 29 would not have been applicable, because the dispute between him and the society did not arise from a transaction *resulting from his membership*. (*Mohideen v. Lanka Matha Co-operative Stores Society, Ltd.*<sup>1</sup>.)

The clear absence of jurisdiction in the 1st respondent to adjudicate upon the dispute under Rule 29 was tacitly conceded by Counsel who represented the Registrar of Co-operative Societies before me. It was contended, however, that the 1st respondent was vested with jurisdiction to make an award under a different provision of the law, namely, sections 45 (1) (c) and 45 (2) of the present Co-operative Societies Ordinance, Chapter 107. Even if this position was tenable, I fail to see how any person who purported to exercise extraordinary powers under one provision of the law can subsequently be heard to claim that he had some alternative jurisdiction (which was not notified to the party who challenged his powers) to act in terms of a different provision of the law. Apart from that consideration I am satisfied that section 45 (1) (c) was equally inapplicable to the dispute

<sup>1</sup> (1947) 48 N. L. R. 177.

which arose between the Society and the petitioner. Section 45 (1) (c) provides for an investigation of any dispute "between the Society or its committee and any officer of the Society". In this present case the petitioner had ceased to be an officer of the Society many months before the dispute arose. The word "officer" in section 45 (1) (c) cannot be construed so as to include an ex-officer of a co-operative society. *Wasudeo v. Registrar*.<sup>1</sup> It is significant that the section earlier provides expressly for a dispute between members "and past members". A statute which restricts a person's right to have his dispute investigated in a regular action must be strictly construed.

I make order quashing the proceedings before the 1st respondent and hold that his purported award against the petitioner dated January 25, 1946, was made without jurisdiction. In my opinion the 3rd respondent, the Registrar of Co-operative Societies, was primarily responsible for the illegal proceedings held against the petitioner and I order him to pay the costs of the petitioner which I fix at Rs. 157.50.

*Proceedings quashed.*

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