

1954

*Present : Swan, J., and Sansoni, J.*

D. M. G. UKKU BANDA, Appellant, and THE  
RAHATUNGODA CO-OPERATIVE STORES  
SOCIETY LTD., Respondent

*S. C. 123—D. C. Kandy, 1,592/X*

*Co-operative Societies Ordinance—Rule 29—Dispute between society and employee—  
Arbitration—Crucial date is date of reference—Second reference to arbitration—  
Validity—Section 45 (4).*

A second reference to arbitration of the same dispute between a co-operative society and an employee is illegal as long as the first award has not been declared to be invalid by a Court of law.

Where on the date a dispute is referred to arbitration the employee concerned is still in the employ of the society, the reference is regular.

**A**PPPEAL from a judgment of the District Court, Kandy.

*C. R. Gunaratne*, for the defendant appellant.

No appearance for the plaintiff respondent.

*Cur. adv. vult.*

December 2, 1954. SANSONI, J.—

This is an appeal by the defendant from an order made by the Additional District Judge, Kandy, allowing the application of the Rahatungoda Co-operative Stores Society to issue writ against him to recover a sum of Rs. 808·98. The appellant was the Manager of the Society from 1st February, 1945, to 20th July, 1947. On 17th July, 1947, acting under rule 29 of the rules made under section 37 of the Co-operative Societies Ordinance, No. 34 of 1921, the Assistant Registrar of Co-operative Societies referred to one H. M. W. Tennekoon a dispute which had arisen between the Society and the appellant over the value of goods entrusted to the appellant and not accounted for. The arbitrator made an award dated 27th December, 1947, directing the appellant to pay the Society a sum of Rs. 737·40. The appellant appealed against the award but his appeal was dismissed by the Registrar of Co-operative Societies.

Apparently the Registrar thereafter declared that award to be ultra vires on the ground that on the date of the award the appellant had ceased to be an employee of the Society. He is said to have taken that step in consequence of the decision of Gratiaen, J. in *Illangakoon v. Bogollagama*<sup>1</sup>. Another reference of the dispute was then made by an Assistant Registrar of Co-operative Societies to one M. B. Tennekoon on 11th October, 1950, and the latter made an award dated 21st November, 1950, directing the appellant to pay the Society a sum of Rs. 808·98. The order appealed from was made when the Society applied to issue writ to execute that award. Notice of that application was given to the appellant and two objections were taken on his behalf: (1) that after the first award was made the Assistant Registrar had no authority to refer the dispute again to an arbitrator; (2) that as the appellant was an officer of the Society when the first reference to arbitration was made the dispute was properly referable to arbitration even under the unamended section 45 of the Co-operative Societies Ordinance (Cap. 107), and the award made on such reference was valid. These objections among others were taken before us at the hearing of this appeal and as they are sufficient to dispose of the appeal I shall deal only with them.

To deal with the second objection first, I think the judgment of Dias, J. in *Canagasabai v. Kondavil Co-operative Stores*<sup>2</sup> concludes the matter; the learned Judge decided, and I respectfully agree with that decision, that the crucial date is the date of reference. If on that date the appellant was the manager, it matters not if the appellant ceased to be the manager thereafter. The vital difference between *Canagasabai v. Kondavil Co-operative Stores* (*supra*) and the present case on the one hand, and *Illangakoon v. Bogollagama* (*supra*) on the other, is that the manager in the last-mentioned case had ceased to be the manager before the matter was referred to arbitration. It seems to me that the second reference to arbitration was made because the Registrar of Co-operative Societies misunderstood the judgment of Gratiaen, J. The first award was in fact a valid award. Since there was a valid award made on 27th

<sup>1</sup> (1948) 49 N. L. R. 403.

<sup>2</sup> (1949) 50 N. L. R. 465.

December, 1947, the second reference of 11th October, 1950, was unwarranted. In saying this I do not mean to imply that a second reference would have been permissible if the first award was bad. Whether the award was good or bad I do not see how it is open to any authority except a Court of law to declare an award *ultra vires* or invalid. Such a declaration is a usurpation of the authority which is properly vested in a Court. If the Registrar can claim to make such a declaration, the appellant may also claim an equal right to make a declaration that the award is *intra vires*. The Registrar is empowered by section 45 (4) to make a decision in an appeal, and he did so ; but he has no statutory authority to make a declaration as to the validity or invalidity of an award. His decision on the appeal with respect to the first award is declared by section 45 (4) to be final and that would seem to be the end of the matter so far as he is concerned. It follows then that there was nothing to justify the second reference of the dispute, and the first objection is also sound.

In the result I would hold that the award dated 27th December, 1947, was final ; it had never been properly set aside ; the award dated 21st November, 1950, on which the application for writ was founded is invalid and the application to execute it should have been refused. For these reasons I would allow this appeal with costs.

SWAN, J.—I agree.

*Appeal allowed.*

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