

THE COMMISSIONER OF CO-OPERATIVE DEVELOPMENT
v.
JAYARATNE PEIRIS AND OTHERS

SUPREME COURT

SHARVANANDA, J., WANASUNDERA, J., WIMALARATNE, J., COLIN-THOME, J.
AND ABDUL CADER, J.

S.C. APPEAL No. 63/82 – C.A. APPLICATION No. 1656/79. WITH S.C. APPEAL
No. 12/83 – C.A. APPLICATION No. 1656/79.

FEBRUARY 14, 1984.

Co-operative Societies Law, No. 5 of 1972, Section 58 – Rule 49 (1) of the Co-operative Societies Rules, 1973 – Reference of dispute between the Co-operative Society and its employee to the Commissioner of Co-operative Development by Committee of Management – Commissioner's reference of the dispute to an arbitrator – Whether references valid.

The petitioner P. Jayaratne Peiris (1st respondent in both appeals) was employed as Manager by the Moratuwa Multi-Purpose Co-operative Society Ltd. (3rd respondent in S.C. No. 63/82 and appellant in S.C. No. 12/83) in four of its branches from 22.8.73 until his interdiction on 28.4.78. On a shortage of goods being discovered which the petitioner-1st respondent failed to make good the Committee of Management under section 58 (1) of the Co-operative Societies Law, No. 5 of 1972, referred the matter to the Commissioner of Co-operative Development (appellant in S.C. No. 63/82 and 3rd respondent in S.C. No. 12/83) who under section 58 (2) of the same law referred the dispute for disposal to an arbitrator (second respondent in both appeals). The petitioner-1st respondent moved the Court of Appeal for a writ of prohibition on the ground that there had been no reference by him or by the Co-operative Society of any matter in dispute to the Registrar (the Commissioner exercises the powers of the Registrar) and therefore the arbitrator had no jurisdiction to hear the dispute. The Court of Appeal issued a writ of prohibition on the ground that the dispute being between the society and one of its employees the reference of the dispute to the Registrar by the Committee of Management was not a valid reference. The Court drew a distinction between disputes by the employee with the Society and disputes with the Committee and took the view that the Committee was empowered to refer only disputes between itself and the employee. From this decision the Commissioner of Co-operative Development lodged appeal No. S.C. 63/82 and the Moratuwa Multi-Purpose Co-operative Society Ltd. appeal No. S.C. 12/83 to the Supreme Court. Leave to appeal was granted in respect of both appeals.

Held—

The reference to the Registrar may be made in any one of the modes set out in Rule 49 (1) of the Co-operative Societies Rules, 1973. A Co-operative Society by resolution at a general meeting or its Committee of Management is empowered to refer a dispute between the Society and any of its employees to the Registrar. Hence the reference by the Committee of Management was valid.

Cases referred to

Ranaweera v. Muddanayake (C.A. (S.C.) No. 506/73 – C.A. Minutes of 21.2.1980) not followed.

APPEALS from the Court of Appeal.

Douglas Premaratne, Deputy Solicitor-General, with K. C. Kamalabayson, Senior State Counsel, for appellant in S.C. No. 63/82 and for 3rd respondent in S.C. No. 12/83.

Nimal Senanayake, Senior Attorney, with L. V. P. Wettasinghe, Kithsiri P. Gunaratne, Miss S. M. Senaratne, Karunatileke de Silva and Saliya Mathew for the petitioner—1st respondent in both appeals.

Chula de Silva with Miss S. Mivanapalana for 3rd respondent in S.C. No. 63/82 and appellant in S.C. No. 12/83.

Cur. adv. vult.

March 2, 1984.

WIMALARATNE, J.

The petitioner—respondent, P. Jayaratne Peiris, was employed as manager by the Moratuwa Multi-Purpose Co-operative Society Ltd. (hereinafter referred to as the Society) in four of its branches from 22.8.73 up to the date of his interdiction on 28.4.78. The Committee of Management of the Society recorded at a meeting held on 4.12.78 that there was a shortage of goods to the value of Rs. 32,471.26 during the petitioner's tenure as manager, and resolved to demand from the petitioner payment of this sum ; and that on failure to make payment, to take steps in terms of section 58 of the Co-operative Societies Law, No. 5 of 1972. Accordingly the Society wrote to the petitioner on 11.12.78 giving the details of the shortage at each branch, and requested him to make good the loss. The petitioner failed to do so, and the Society made a reference to the Commissioner of Co-operative Development seeking a decision of the dispute in terms of section 58 (1) of the Law, which provides that—

“If any dispute touching the business of the Society arises—

- (a)
- (b)
- (c) between the society or its committee and any officer or employee of the society
- (d)
- (e)

such dispute shall be referred to the Registrar for decision ”

The Commissioner of Co-operative Development (who exercises the powers of the Registrar) by virtue of powers vested in him under section 58 (2) referred this dispute for disposal to an arbitrator, who is the 1st respondent—respondent in both appeals. The arbitrator summoned the petitioner for inquiry into this reference. A request by the petitioner for legal representation was turned down by the arbitrator who fixed the inquiry for 20.8.79, but before inquiry could commence the petitioner instituted these proceedings in the Court of Appeal seeking a writ of prohibition against the arbitrator, pleading, inter alia, that " there had been no reference of a dispute by the petitioner or by the Rawattawatte Multi-Purpose Co-operative Society of any matter in dispute to the Registrar, and hence the arbitrator had no jurisdiction to proceed to inquiry under the provisions of the Co-operative Societies Law". As the petitioner's employer was the Moratuwa Multi-Purpose Co-operative Society Ltd. it is difficult to understand the reference to Rawattawatte, which was only a branch society and the alleged shortages were in four branches of the main society.

The Court of Appeal has allowed the petitioner's application and has issued a writ of prohibition on the ground that as the dispute was between the Society and one of its employees, the reference of the dispute to the Registrar by the committee of management was not a valid reference. A valid reference could only have been made by the Society on a resolution passed at a general meeting of the Society. The Court drew a distinction between disputes by an employee with the Society and disputes with the committee and thought that the committee was empowered to refer only disputes between itself and the employee. For this view the Court relied upon Rule 49 (1) of the Co-operative Societies Rules, 1973, made by the Minister by virtue of powers vested in him under section 61 of the Law, which is in these terms :—

" Rule 49 (1) Where a dispute has to be referred to the Registrar for decision under section 58 of the Co-operative Societies Law such reference may be made by—

- (a) the committee of management of the registered society ;
or
- (b) the registered society by a resolution passed at a general meeting of the society ; or
- (c) any party to the dispute ; or

- (d) any member of the registered society if the dispute concerns a sum due from a member of the committee of management or other officer of the registered society " .

This same interpretation had been placed by that Court in the earlier decision in *K. K. F. B. Ranaweera v. P. B. Muddanayake et. al* in Application No. C.A. (S.C.) No. 506/73 (C.A. Minutes of 21.2.80). That was an application by an employee of the Kurunegala District Co-operative Textile Societies Union Ltd. for a writ of certiorari seeking to quash the award of the arbitrator to whom a similar reference had been made by the Registrar, acting in pursuance of a reference made to him by the committee of management of the society in terms of section 53 (1) (c) of the repealed Co-operative Societies Ordinance (Cap. 124) which section is in almost identical terms as section 58 (1) (c) of the Law under which the present reference had been made. The Rule corresponding to the present Rule 49 (1) was Rule 38 (1) of the Co-operative Societies Rules 1950. Ratwatte, J. in that case expressed the view of the Court thus : " Section 53 (1) (c) of the Ordinance clearly provides for disputes where the Committee is one of the disputants, or for a case where the society is one of the disputants, the other disputant being an officer or employee of the society. Therefore if the dispute is one between the society and one of its employees the reference must be made in terms of Rule 38 (1) (b), by the Society by a resolution passed at a general meeting of the Society " : The reason given for taking this view is that if the committee is empowered to refer even disputes between a Society and an employee to the Registrar, then there is no necessity for Rule 38 (1) (b) and the legislature could not have intended to enact provisions which are redundant.

The Court of Appeal in the instant case has relied mainly on the decision in *Ranaweera's case*. Both the Commissioner of Co-operative Development and the Society have obtained leave to appeal to this Court on the following ground as appearing in the order of the Court of Appeal dated 19.11.82 :-

" Whether the Court of Appeal erred in holding that there was no valid reference to arbitration by the 3rd respondent Society in terms of the Co-operative Societies Law, No. 5 of 1972, read with the regulations framed thereunder, in that a dispute between the society and an employee of the society should have been referred to arbitration by the society itself "

It has been argued before us by the learned Deputy Solicitor-General, as well as by learned Counsel for the Society, that on a plain construction of Rule 49 (1) it is clear that not only the Society by resolution at a general meeting, but also the committee of management, is empowered to refer a dispute between the Society and any of its employees to the Registrar for decision under section 58 (1) of the Law. There are no limitations or restrictions in respect of such a reference either in section 58 (1) of the Law or in Rule 49 of the Rules, and in the absence of such limitations or restrictions it is not open for the Court to read into the sections or rules, limitations or restrictions which are not in the Statute. Furthermore, the words " may " and " or " appearing in Rule 49 (1) clearly denote that the reference can be made in any one of the modes set out in that Rule.

Learned Counsel for the petitioner on the other hand referred us to the difference in the functions of the Committee as distinct from the Society, and stressed the fact that section 58 of the Law envisages two types of disputes – one between the Society and an employee, and the other between the committee and an employee; and that it would be wrong to treat the two types of disputes as being synonymous.

There could be no doubt that the committee of management of a registered Co-operative Society is vested with wide powers by the Co-operative Societies Law, by the Co-operative Societies Rules, and by the by-laws of the Society. The Committee is the governing body of the Society to whom the management of the affairs of the society is entrusted. The committee may be likened to the Board of Directors of a company. This position has been recognised in section 75 of the Law which defines " Committee " to mean " the governing body of a registered society to whom the management of its affairs is entrusted " Then again Rule 23 provides that " The committee of management of a registered society shall, subject to any regulations or restrictions duly laid down by the society at any general meeting or in its by-laws exercise all the powers of that society, except such powers as are reserved for the general meeting of that society ". The duties and liabilities of the Committee are set out in Rules 24, 25, 26, 27 ; whilst the responsibility for the maintenance of accounts and submitting balance sheets is stipulated in Rules 37 and 39. When we look at the by-laws (which were marked before the Court of Appeal as

document 3R4) we see that by-law 60 (x) gives the committee the authority to institute and defend actions in the name of the Society and to compromise and withdraw suits.

All these powers have been vested in the committee for the obvious reason that the general membership is an unwieldy body and the work of the society would be extremely difficult if before any administrative action, however trivial it be, is taken the Society has to meet to authorise it. I am unable to see how if the committee has the power to refer a dispute, even in cases where the Society is a party, Rule 49 (1) (b) becomes redundant because there may arise situations where the committee refuses to act for some ulterior motive. Or a situation can arise when the Registrar, by virtue of the powers vested in him under section 48 (1), dissolves the committee and appoints a suitable person to manage and administer the affairs of the Society ; the person so appointed will not have the power, under Rule 49 (1) to refer the dispute, and that would be an occasion for the Society to act.

In the instant case Ranasinghe, J. has also taken the view that as Rule 23 only empowers the committee to exercise the powers of the Society except such powers as are reserved for the general meeting of that Society, and as the power to make a reference of a dispute to the Registrar is a power vested by Rule 49 (1) (b) in the Society at a general meeting, the committee has therefore no power to refer a dispute between the Society and an employee to the Registrar for decision. It seems to me that " the powers reserved for the general meeting of the Society " in Rule 23 are those powers stipulated in Rule 17 ; they are the powers *provided in the by-laws of the society* for the disposal of the necessary business of the society including the several matters specified in that Rule. The power to refer disputes between the Society and an employee is not " a power reserved for the general meeting of the Society " by the by-laws ; hence that power is not a " reserved power " within the meaning of Rule 23.

For these reasons I am of the opinion that the committee of management of the Moratuwa Multi Purpose Co-operative Society Ltd. had the power to refer the dispute between the Society and the petitioner to the Registrar for decision under section 58 of the Co-operative Societies Law. The Court of Appeal has thus erred in holding that the committee had no such power. The writ of prohibition should not, therefore, have been issued.

The judgment of the Court of Appeal in Application No. 1656/79 is accordingly set aside, and Appeals Nos. S.C. 63/82 and 12/83 are allowed, with costs in a sum of Rs. 525 payable by the petitioner-respondent to each of the appellants.

SHARVANANDA, J.—I agree.

WANASUNDERA, J.—I agree.

COLIN-THOMÉ J.—I agree.

ABDUL CADER, J.—I agree.

Appeal allowed.