

## KANAGARATNA

v.

## RAJASUNDERAM

SUPREME COURT

SAMARAKOON C. J.,

SHARVANANDA J. AND

WANASUNDERA J.

S.C. APPEAL 23/79

S.C. APPLICATION NO. 133 OF 1976

D.C. MALLAKAM NO. 1097

LA/CA 21/78

SEPTEMBER 22, 1981.

*Writs of Certiorari and Prohibition — Interdiction of branch manager as newly appointed Director — Suit by interdicted Director for declaration that interdiction was illegal — Interim injunction — Writ to quash order issuing interim injunction — Co-operative Societies Law No. 5 of 1972 S. 58(1)(c) — Touching the business.*

The branch manager of a Multipurpose Co-operative Society was appointed Director by the Assistant Commissioner of Co-operative Development. The other Directors (save one) interdicted the newly appointed Director for bringing discredit to the Society, divulging its secrets and spreading false propaganda. The interdicted Director sued the Society challenging the interdiction and obtained an interim injunction on the ground of absence of jurisdiction.

**Held:**

The availability of an alternative remedy does not prevent a Court from issuing a Writ of Prohibition in cases of excess or absence of jurisdiction. The issue of a Writ of Prohibition makes a writ of *certiorari* superfluous. The appellate Court could, no doubt, decide the question of jurisdiction but it by no means follows that because there is an appeal, the power of the Court to issue a prohibition is taken away. There is no technical obstacle to the co-existence of a right of appeal and to a writ of prohibition.

The dispute was between the Society and its employee. Activities which are necessarily done to make the trade flourish and bring profits, hiring of labour and staff, their disciplinary control, their conduct in and of the business are all matters that are part and parcel of running the business and therefore touch the business. Suspension of an employee for conduct alleged to have been improper and harmful to the business and a dispute arising therefrom as to the employer's right to do so is a dispute touching the business within the meaning of section 58(1)(c) of the Co-operative Societies Law No. 5 of 1972.

**Cases referred to**

(1) *Sirisena v. Kotawera — Udagama Co-operative Stores Ltd.*, 51 NLR 262

(2) *Channel Coaling Company v. Ross* (1907) 1KB 145, 146

(3) *R. v. Comptroller-General of Patents* (1953) 1 All ER 862, 863

(4) *The Multipurpose Co-operative Society Ltd., v. Gunatilleke* 74 NLR 151

(5) *Harris v. Amery* (1866-66) 1 LRPC 148, 154

(6) *G.I.P. Railway Employees Co-op Bank v. Bhikhaji AIR 1943 Bombay 341*

(7) *Madhava Rao v. Surya Rao AIR 1954 Madras 103*

Appeal from judgment of the Court of Appeal

S. Mahenthiran for appellants.

Respondent absent and unrepresented.

*Cur. adv. vult.*

October 23, 1981

**SAMARAKOON, C. J.**

The 3rd Respondent was at all times relevant to this appeal employed by the Chankanai Multi Purpose Co-operative Society Ltd, (hereinafter referred to as the Society) as Manager of its Branch business. On 25.09.1975 the Assistant Commissioner of Co-operative Development for Jaffna acting under powers vested in him by By-Law 52(C) nominated the 3rd Respondent as an employee Director of the Society. (*Vide 3R1*). The 3rd Respondent alleges that this appointment did not meet with the approval of the other Directors of the Society. He further alleges that he was cold shouldered and not summoned for meetings of the Board of Directors. He states that he instituted action No. 1050/Misc. in the District Court of Mallakam to establish his rights. The Defendant in the case then filed answer disputing *inter alia* the jurisdiction of the Court to entertain the action and stating further that the dispute was one referable to arbitration. That action is pending in the District Court.

By letter dated 24.02.1976 (3R2) the Society interdicted the 3rd Respondent with effect from 27.02.1976 citing the following reasons,—

- "1. Conducting to bring discredit to the position of this Society."
- "2. Divulging secrets of the Society to those who are not connected with the Society."
- "3. Spreading false propaganda and unnecessary rumours about the Society."

All the Directors except the 4th Respondent approved of this interdiction. The 3rd Respondent then instituted this action praying *inter alia* for a declaration that the order of interdiction was illegal and also for an interim and permanent injunction restraining the Board of Directors from acting on the letter (3R2). The District Court granted the interim injunction prayed for in the plaint.

The Society and the 1st to 13th Petitioner-Respondents then filed application dated 25th March, 1976, in the then Supreme Court praying for a Writ of *Certiorari* quashing the order upon which the interim injunction issued and also for a Mandate in the nature of a Writ of Prohibition on the 1st Respondent. (Acting District Judge of District Court Mallakam who made the Order) on the 2nd Respondent (the permanent District Judge of the Court) "or any other Judge of the said Court from proceeding with the said action." This application was heard by the Court of Appeal which ordered both writs to issue for the reason that the District Court was not possessed of jurisdiction to entertain this action.

We are not here concerned with the dispute between the Society and the 3rd Respondent qua employee Director. This action is one that concerns the relationship of employer and employee upon a contract of service. The Court of Appeal was of the view that the provisions of section 58(1)(c) of the Co-operative Societies Law No. 5 of 1972 were applicable to this case. Before I deal with this provision I desire to deal with another submission. It was contended that the Society had an alternative remedy available, and therefore relief by way of Writ was not available. It is said that the Society and its Directors could have, and should have, gone before the District Court and obtained a dissolution of the interim injunction and also pleaded the total lack of jurisdiction. Counsel submitted that the provisions of section 666 of the Civil Procedure Code should have been resorted to and that Writs of *Certiorari* and Prohibition were therefore not available. Ranasinghe, J. has cited the case of *Sirisena v. Kotawera Udagama Co-operative Stores Ltd.* (1). There Gratiaen J. pointed out that there is "no doubt a well recognised principle of law that the Supreme Court will not as a rule make an order of Mandamus or *Certiorari* where there is an alternative and equally convenient remedy available to the aggrieved party. But the rule is not a rigid one". Here we are also concerned with a Writ of Prohibition. It has been prayed for and granted on the basis of a total absence of jurisdiction. The issue of a Writ of Prohibition makes the Writ of *Certiorari* superfluous. The availability of an alternative remedy does not prevent a Court from issuing a Writ of Prohibition in cases of excess or absence of jurisdiction. "On the broad principle that it is established that the Court is acting beyond its jurisdiction, I am of opinion that the case is one in which the Court ought not to refuse to issue a Writ of Prohibition," per Lord Alverstone, C.J. in *Channel Coaling Company v. Ross* (2). "Objection to jurisdiction can always be taken by plea, and, if an appeal lies from the Court or Tribunal in which such a plea is raised, the Appellate Court could, no doubt, decide the question of jurisdiction, but it by no

means follows, that, because there is an appeal, the power of this Court to issue a prohibition is taken away. There is no technical obstacle to the co-existence of a right to appeal and to a prohibition." per Lord Goddard, C.J. in *R. v. Comptroller-General of Patents* <sup>(3)</sup> I therefore reject the argument that these applications for Writ of *Certiorari* and Writ of Prohibition could not be maintained and therefore should not have been entertained by the Court of Appeal.

The Court of Appeal has sought to follow the principles laid down in the case of *The Multipurpose Co-operative Society Ltd. v. Gunatileke* <sup>(4)</sup>. That was a case in which the Plaintiff sued for damages for *injuria* in that the Defendant Society "wrongfully and maliciously and without any manner of reason" terminated his membership. Fernando, C.J. held that the words "touching the business of the Society" embraced "matters peculiar to association of persons". He therefore held that the dispute was referable to arbitration in terms of section 53(1)(b) of the Co-operative Societies Ordinance (Chapter 124). We are not here concerned with membership but with the status of a servant employed in the business. Chapter 124 was repealed by the Co-operative Societies Law No. 5 of 1972 (*Vide* Section 73(1)). Section 58(1)(c) of the Law reads thus—

"58(1) If any dispute touching the business of registered society arises -

- (c) between the Society or its Committee and any Officer or employee of the Society, whether past or present, or any heir or legal representative of any deceased officer or employee such dispute shall be referred to the Registrar for a decision."

We have in this case a dispute of a kind between the Society and its employee. But is it one touching the business of the Society? Business is synonymous with trade. But the word business "has a more extensive significance than trade" per Willes J. in *Harris v. Amery* <sup>(5)</sup>. It comprises all those activities which are necessarily done to make the trade flourish and bring profits. Hiring of labour and staff, their disciplinary control, their conduct in and of the business, are all matters that are part and parcel of running the business and therefore touch the business. I have no hesitation in holding that suspension of an employee for conduct alleged to have been improper and harmful to the business and a dispute arising therefrom as to the employer's right to do so is a dispute touching the business within the meaning of section 58(1)(c) of

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Law No. 5 of 1972. *Vide G. I. P. Railway Employees Co-op. Bank v. Bhikhaji* <sup>(6)</sup> (A. I. R. 1943 Bombay 341) and *Madhava Rao v. Surya Rao* (7). The District Court therefore had no jurisdiction to entertain the action and the Court of Appeal correctly issued the Writ of *Certiorari* and the Writ of Prohibition. The appeal is therefore dismissed.

Sharvananda, J. I agree.

Wanasundera, J. I agree.

*Appeal dismissed*