

1959

Present : Basnayake, C.J., and Pulle, J.

AZIZ and others, Appellants, *and* THONDAMAN and others, Respondents

S. G. 9—D. C. (Inty.) Colombo, 683/Spl.

Actions—Trade Union—Provision in rules for a domestic appellate tribunal—Jurisdiction, in such a case, of a court of law—Right of a person to ask for a declaratory decree—Amendment of pleadings—Procedure—Civil Procedure Code, ss. 5, 93, 184, 217.

Where the rules of a Trade Union or a club provide for a right of appeal to a domestic tribunal, but the composition and powers of the appellate body are not defined, it is open to a member or office-bearer, who has been wrongly expelled, to invoke the aid, in the first instance, of a court of law.

Held further, that a declaratory decree under section 217 of the Civil Procedure Code cannot be refused by a court if the plaintiff has established his right to it. The right of a citizen to invoke the aid of the courts is one that cannot be taken away by the rules of any association or body of persons. It is so fundamental that it cannot be taken away even by the legislature itself.

When pleadings are amended, the provisions of section 93 of the Civil Procedure Code should be scrupulously observed.

APPPEAL from a judgment of the District Court, Colombo.

C. G. Weeramantry, for Plaintiffs-Appellants.

E. B. Wikramanayake, Q.C., with *R. L. N. de Zoysa*, for Defendants-Respondents.

Cur. adv. vult.

October 26, 1959. BASNAYAKE, C.J.—

The five plaintiffs claim to be members of the Executive Council of the Ceylon Workers' Congress, a Trade Union registered under the Trade Unions Ordinance. In this action which they have instituted against the forty-four defendants who were at the material time members of the Executive Committee of the same Trade Union they pray a declaration—

- (a) that the meeting of the defendants on 18th December 1955 was irregularly held and that its proceedings are null and void ;
- (b) that the resolutions passed at the said meeting were wrongfully passed ;
- (c) that the plaintiffs are entitled to have those proceedings expunged from the minutes ;
- (d) that the expulsion of the plaintiffs from the Ceylon Workers' Congress and its Executive Council is illegal and invalid ;

- (e) that the election of K. Rajalingam the 3rd defendant as President and of M. Periasamy, V. R. Velu, V. Annamalay, N. Vellayan and M. Ettiyapan as members of the Executive Council is illegal and invalid ;
- (f) that the declaration submitted to the Registrar of Trade Unions on the authority of the said meeting of 18th December 1955 is illegal and invalid ;
- (g) that the changes caused to be made in the Register of Trade Unions are illegal and invalid ;
- (h) that the plaintiffs are members and office-bearers of the Trade Union known as the Ceylon Workers' Congress ;
- (i) that the defendants acted illegally when they purported to exercise the functions of the Executive Council with persons or members who were illegally elected ;
- (j) that the meetings held by the defendants subsequent to 18th December 1955 were bad for want of notice to the plaintiffs and others who are members of the Executive Council and that the proceedings at such meeting are null and void.

Twenty-two of the defendants filed a joint answer on 27th August 1956. On 29th October 1956 the 19th, 25th and 41st defendants filed answer. On 26th November 1956 the 21st and 35th defendants indicated to the court that they had no objection to the plaintiffs' prayer being granted. On 12th March 1957 the trial was commenced and counsel for the respective parties suggested in the form of issues the questions of fact and law which they invited the court to decide ; but as counsel for the defendants based his issues on what he called " an amended answer " which was not before the court the trial was adjourned.

I must pause to point out that the Judge and counsel all proceeded on the basis that the defendants were at complete liberty to amend the answer as they liked. Filing of fresh pleadings under the guise of amended pleadings has now become the rule and Judges of first instance do not appear in the majority of appeals that have come before me to exercise the discretion vested in them by section 93 of the Civil Procedure Code. It is essential that in the exercise of their functions trial Judges should scrupulously observe the provisions of the Code. Section 93 provides—

" At any hearing of the action, or any time in the presence of, or after reasonable notice to, all the parties to the action before final judgment, the court shall have full power of amending in its discretion, and upon such terms as to costs and postponement of day for filing answer or replication, or for hearing of cause, or otherwise, as it may think fit, all pleadings and processes in the action, by way of addition, or of alteration, or of omission. And the amendments or additions shall be clearly written on the face of the pleading or process affected by the order ; or if this cannot conveniently be done, a fair draft of the document as altered shall be appended to the document intended to be amended, and every such amendment or alteration shall be initialled by the Judge."

In the instant case the defendants were allowed to file a second answer called "an amended answer" without first submitting to the Judge the amendments they invited the court to make and obtaining his order thereon. The Judge himself did not give his mind to the alterations that were made in the original answer and acted in complete disregard of the provisions of section 93.

The following issues were suggested by counsel for the plaintiffs :—

- " 1. Was notice of the meeting of the Executive Council of the Ceylon Workers' Congress that was purported to have been held on 18.12.55 not duly given—
 - (a) to the plaintiffs ?
 - (b) to the other members of the Executive Council ?
- " 2. Was the failure to give notice deliberate with a view to a keeping away the said members ?
- " 3. If issues 1 and/or 2 are answered in the affirmative—
 - (a) were the resolutions passed at the said meeting void and of no effect ?
 - (b) are the plaintiffs entitled to have the proceedings of the said meeting expunged from the said minutes ?
- " 4. Was the expulsion of the plaintiffs from the membership which is purported to have taken place on the resolution of 18.12.55—
 - (a) ultra vires on (*sic*) the body that purported to expel ?
 - (b) irregular and illegal in that the said members were not given any opportunity to defend themselves ?
- " 5. Was the expulsion of the plaintiffs from holding office in the Ceylon Workers' Congress which is purported to have taken place on a resolution of 18.12.55—
 - (a) ultra vires on (*sic*) the body that purported to expel ?
 - (b) irregular and illegal in that the said members were not given any opportunity to defend themselves ?
- " 6. If issues 4 and/or 5 are answered in the affirmative—
 - (a) were the said expulsions irregular and invalid ?
 - (b) were the elections of the persons named in paragraph 9 to fill those places illegal and irregular ?
 - (c) was the declaration submitted to the Registrar of Trade Unions on the authority of the said meeting irregular and illegal ?
 - (d) were the changes caused to be made in the Register of Trade Unions irregular and illegal ?
 - (e) are the plaintiffs entitled to a declaration that they are still the office bearers and members of the Ceylon Workers' Congress ?

Counsel for the defendants agreed to the above issues and suggested the following further issues :—

- “ 7. Is this court debarred from entertaining this action by the Rules of the Ceylon Workers’ Congress ?
- “ 8. If so, can the plaintiffs have and maintain this action ?
- “ 9. Was the alleged election of the plaintiffs and the various officers null and void for non compliance with Rule 16 of the Congress ?
- “ 10. On and before 18.12.55 and during dates material to this action did the following persons hold the respective offices :

Mr. Thondaman	..	President
Mr. Somasunderam	..	Secretary
Mr. Kumaravel	..	Treasurer? ”

When the hearing was resumed on 3rd October 1957 counsel for the defendants who was not the counsel who appeared for them on 12th March 1957, the first date of trial, withdrew issues 9 and 10. It is not clear under what provision learned counsel or the court acted because if those matters dealt with in the issues arose on the pleadings and were in dispute it was the duty of the Judge to decide them.

Learned counsel for the defendants next invited the court to decide issues 6 (e) and 7 before the other issues were decided. Counsel for the plaintiffs objected to issue 6 (e) being decided first but had no objection to issue 7 being so decided. Thereupon counsel for the defendants suggested the following issue as issue 9—

“ Even if all the averments of fact in the plaint are held to be true, are the plaintiffs or any of them entitled to the relief prayed for in the plaint or any part thereof? ”

Counsel for the plaintiffs having no objection to this issue the Judge proceeded to try and determine issues 7 and 9 first.

The learned District Judge has come to the conclusion that the plaintiffs were not given notice of the meeting at which they were expelled and that in consequence they were denied an opportunity of being heard before they were expelled and that there has been a violation of the *audi alteram partem* rule of natural justice. He also went on to hold—

“ It follows then that the principles of natural justice have been violated in their expulsion and they would ordinarily have the remedy open to members irregularly or improperly expelled namely the right to bring an action against the Committee for a declaration that the expulsion is void and the plaintiffs are still members of the association and for an injunction to restrain the Committee and their servants and the servants of the club from excluding them from the association or exercising their rights as members.”

But in view of Rule 12 (5) of the Rules of the Ceylon Workers’ Congress which gave a right of appeal to the Working Committee of the Ceylon Workers’ Congress to any member, office-bearer, trustee, District Council,

Branch or Agency or its or their office-bearers, against any disciplinary action taken by the Executive Council under the power conferred by that Rule, he held that the plaintiffs who had admittedly come into court without appealing to the domestic appellate body should have appealed to the Working Committee of the Ceylon Workers' Congress and that they must exhaust their domestic remedies before invoking the aid of the courts. He concluded his judgment thus—

“ It appears to me that this is not a fit case for the exercise of my discretion in favour of the plaintiffs to grant them the declaratory decree they ask for.

“ I hold (A) that the plaintiffs are not entitled to come into court until they have exhausted the remedies open to them in the domestic tribunal in terms of the rules which show their contract, (B) that in any event this is not a fit case for the granting of a declaratory decree in that it would be a decree without consequential relief in terms of the relief sought for in the pleadings.

“ In the result I dismiss plaintiffs' action with costs.”

The learned Judge and even learned counsel do not appear to have examined the rules of the Ceylon Workers' Congress (marked X1) filed with the plaint. Those rules do not provide for the composition of the appellate body. They do not state—

- (a) by whom the Working Committee of the Ceylon Workers' Congress is to be constituted ;
- (b) whether they are to be elected or nominated and by what procedure ;
- (c) how many shall be members of that Committee ;
- (d) how long that body is to hold office ;
- (e) how appeals are to be taken to that body ;
- (f) how many members shall hear an appeal.

Now it is impossible for an aggrieved person to appeal to a body whose composition is not defined and which exists only in name. Even the following agreement recorded in the course of the argument does not provide a solution: “ It is agreed that Rule 12 (5) should now read ‘ Ceylon Democratic Congress ’. ” We are not informed how this body is constituted or what its powers are, and whether it can entertain an appeal by the plaintiffs. The foundation of the Judge's judgment is wrong and for this reason alone it must be reversed. But as the learned Judge has also proceeded to express his views as to the powers of the court in an action in which it is sought to obtain a declaratory decree, which I am of opinion are wrong, I think I must deal with the question, which is one of considerable importance.

The learned Judge seems to think that the granting of a declaratory decree is a matter in his discretion. He seems to have derived this view from certain English decisions cited to him by learned counsel for the defendants. The Civil Procedure Code makes provision for declaratory actions. In modern society in which the state is constantly

encroaching on the subjects' rights it is becoming increasingly necessary for the subject to seek this remedy. A person is free to institute an action if he has a cause of action, which is the wrong for the prevention or redress of which an action may be brought, and includes the denial of a right, the refusal to fulfil an obligation, the neglect to perform a duty, and the infliction of an affirmative injury (s. 5). An action may be brought—

- (a) for the prevention or redress of a wrong ;
- (b) to assert a right which is denied ;
- (c) to enforce an obligation the fulfilment of which is refused ;
- (d) to enforce the performance of a duty the performance of which is neglected ;
- (e) to obtain redress for the infliction of an affirmative injury ;
- (f) to have a right or status declared ;

and the court is empowered (s. 217) to grant a decree or order commanding any person—

- (A) to pay money ;
- (B) to deliver movable property ;
- (C) to yield up possession of immovable property ;
- (D) to grant, convey, or otherwise pass from himself any right to, or interest in, any property ;
- (E) to do any act not falling under any one of the foregoing heads ;

or it may enjoin that person—

- (F) not to do a specified act, or to abstain from specified conduct or behaviour ;

or it may, without affording any substantive relief or remedy—

- (G) declare a right or status.

Once a plaint is presented and the court does not refuse under section 46 (2) to entertain it on any of the grounds prescribed therein or does not reject it thereunder the action must be decided by the court in the manner provided in the Civil Procedure Code, and the Judge has no right to refuse to grant a decree in favour of the plaintiff if he holds that he has established his right to relief. In the instant case the learned Judge was clearly mistaken in thinking that he was free to refuse to grant the plaintiffs a decree in their favour although they had established their case. Once an action reaches the stage of trial the Judge must give judgment for the party in whose favour he has found (s. 184). He has no discretion to deny judgment to the successful party, as the learned District Judge has done in the instant case. The right of a citizen to invoke the aid of the courts is one that cannot be taken away by the rules of any association or body of persons. It is so fundamental that it cannot, in my view, be taken away even by our legislature itself. It

is unnecessary for the purpose of this judgment to elaborate this view ; it is sufficient to say that a power to legislate for peace, order and good government, does not include a power to deny access to the courts which are the living symbols of peace, order and good government, for the denial of such right would be a negation of the very purpose for which legislative power is conferred on the legislature. Not only cannot such a right be taken away but it also cannot be denied by any court whose jurisdiction is invoked in proper proceedings.

For the above reasons the order of the District Judge is set aside and the case is sent back for trial on the remaining issues.

The appellants are declared entitled to costs both here and below.

PULLE, J.—I agree.

Order set aside.

