

1948

*Present : Nagalingam J.*

PIYADASA, Petitioner, and BOGALLEGAMA *et al.*,  
Respondents.

*S. C. 184—Application for a writ of certiorari on C. R. Bogallegama  
and Penituduwa Co-operative Society, Ltd.*

*Co-operative Societies Ordinance—Dispute—Society and past office bearer—  
Reference to arbitration—Jurisdiction of Registrar—Chapter 107,  
Section 45 (1) (c).*

The term "officer" in section 45 (1) (c) of the Co-operative Societies Ordinance does not include a past office bearer, and a dispute between the Society and a past office bearer cannot be referred to arbitration under the section.

*Illagakoon v. Bogallegama (1948) 49 N. L. R. 403 followed.*

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

*E. B. Wikramanayake, K.C.*, with *H. Wanigatunga*, for the petitioner.

*H. W. Jayewardene*, for 2nd respondent.

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

*Cur. adv. vult.*

November 19, 1948. NAGALINGAM J.—

This is an application by the petitioner for a writ of Certiorari on the respondents for the purpose of quashing certain arbitration proceedings.

<sup>1</sup> 31st Edition at p. 377.

<sup>2</sup> Evidence, 8th Edition pp. 253-254.

had before the 1st respondent in his capacity as arbitrator appointed by the 3rd respondent, the Registrar of Co-operative Societies, in regard to a dispute alleged to have arisen between the petitioner and the second respondent, the Co-operative Society.

The petitioner was the President of the Co-operative Society prior to August 13, 1946, on which date new office-bearers were elected displacing the previous office-bearers and committee members; the outgoing office-bearers handed over all books, documents and papers relating to the society to the new office-bearers barring the minute book and cash book which were at the date of handing over of the other books and papers in the custody of the petitioner. Normally the petitioner as President would not be the proper person to have had the custody of either the minute book or the cash book. But, it appears that the petitioner advanced to the society by way of loan a sum of Rs. 350 and as entries in regard to this transaction had been made both in the minute book and cash book, he declined to part with them excepting in the presence of an inspector or on repayment of the loan. From the evidence placed before the arbitrator, it would seem that when the inspector made a request to the petitioner for the return of the books, the latter denied that he had possession of them. Thereafter the Co-operative Society applied to the Assistant Registrar to make an award in its favour against all the members of the previous committee, for a sum of Rs. 5,000 "for failure to deliver the books of this society although request was made on several occasions as damages", and the Assistant Registrar purporting to act under section 45 of the Co-operative Societies Ordinance, Chapter 107, referred the dispute to the first respondent nominating him as arbitrator in that behalf.

It is unnecessary to consider all the points urged on behalf of the petitioner as in my opinion the case can be disposed of on one of them and I shall therefore only deal with it. The point has been taken on behalf of the petitioner that the dispute in question is not one which properly could have formed the subject of reference under Section 145 of the Ordinance. It is urged in the first place that the dispute is not one touching the business of the society and in the second place that assuming that it does, the dispute is not one that arises among the persons or class of persons enumerated in that section, in regard to whom alone proceedings under that section would be available.

It is conceded that neither sub-clauses (a) nor (b) of Section 45 (1) can apply as the dispute has not arisen between the Society and the petitioner in his capacity as member: *Mohideen v. Lanka Matha Co-operative Stores Society Limited*<sup>1</sup>. It was however suggested on behalf of the respondents that the dispute between the petitioner and the Society falls under sub-clause (c) which refers to a dispute between the society or its committee and any officer of the society. Assuming for the moment that the books were withheld by the petitioner in his capacity as President of the society the further question does arise whether the term "any officer of the society" in this sub-clause includes a past or ex-officer of the society. When one contrasts the provisions of sub-clauses (a) and (b) with those of (c) one cannot fail to be struck by

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

the reference expressly made to past members in contradistinction to present members, of the society, while there is a total absence of any reference whatsoever to past officers as distinct from present officers. It is not possible to take the view that the omission was other than deliberate. If deliberate as it must necessarily be so deemed, it is obvious that the legislature did not empower the Registrar to decide a dispute between a past office-bearer and the society. My brother Gratiaen J. came to a similar conclusion in regard to this question, in the case of *Ilangakoon v. Bogallegama*<sup>1</sup>. The purported reference of the dispute by the society to the Assistant Registrar was therefore without legal sanction and when the Assistant Registrar entertained the dispute he did so without jurisdiction and the reference by him of the dispute to an arbitrator was a nullity. This conclusion effectually disposes of the application before me. It is needless therefore to consider the question whether the dispute is one touching the business of the society or whether assuming that the dispute was one which was properly referable by the society to the Assistant Registrar, the latter could in any event have referred the dispute to an arbitrator in view of the limitation on his powers in this respect contained in rule 29 framed under Section 37 of the Ordinance (Volume 1, Subsidiary Legislation 561).

I would therefore hold that the Assistant Registrar was in error in assuming jurisdiction to act under Section 45 of the Ordinance in regard to the dispute reported to him by the 2nd respondent and that the 1st respondent also acted without jurisdiction in holding the inquiry and making the award. I therefore quash all the proceedings including the award made by the 1st respondent.

In regard to the execution proceedings commenced by the society against the petitioner to enforce the award in its favour, I do not think it possible to make any specific order in regard to it as those proceedings are not before me. But, I think, it will be sufficient if I indicate what must now be obvious to the parties that the foundation upon which the application for execution was made having crumbled, those proceedings are void and of no legal validity and must in the fitness of things be withdrawn.

There remains for consideration the question of costs. That the petitioner must be awarded his costs no one gainsays. I am also quite clear in my mind that the 1st respondent, the arbitrator, should not be and cannot be condemned in costs. Counsel for the society and the Registrar were greatly concerned as to which of them should properly be made liable to pay the costs of these proceedings. Having regard to the consideration that the co-opeative society is managed by lay people who are advised by officers of the Registrar and that it was the action of the Assistant Registrar which started in its trail the proceedings complained of, I think the proper order to make is that the Registrar should pay the costs of the petitioner. The other respondents will bear their own costs.

*Application allowed.*

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