

1968 *Present* : Samerawickrame, J., and Wijayatilake, J.

KALUTARA CO-OPERATIVE DISTILLERIES SOCIETY LTD.,
Appellant, and **S. D. J. B. ARSAKULARATNE,** Respondent

S. C. 89/67 (Inty.)—D. C. Kalutara, 1182/MR

Co-operative Societies Ordinance—Sections 53 and 54—Meaning of expression “ any dispute touching the business of a registered society ”.

A dispute between a registered co-operative society and one of its members as to whether the member has acted in breach of the rules of the Society must, assuming that the dispute does not arise upon a transaction involving ordinary contractual or delictual rights and obligations, be decided by the Registrar in the exercise of his supervisory functions, or by arbitrators appointed by him. Section 53 of the Co-operative Societies Ordinance debars the ordinary Courts from exercising jurisdiction over such a dispute.

Plaintiff was a member and shareholder of a registered co-operative society, one of the objects of which was to carry on the business of an Arrack Distilling Plant for the economic advancement of its members. When a General Meeting of the Society was about to be held for the purpose of suspending the membership of the plaintiff on the ground that he had contravened certain rules of the Society in regard to the mode of supply of toddy to the distillery by members, the plaintiff instituted the present action for declaratory relief. He prayed also for an interim injunction restraining the defendant Society from moving, discussing or passing certain resolutions concerning the dispute which had arisen.

Held, that the dispute between the plaintiff and the Society touched the business of the Society within the meaning of section 53 of the Co-operative Societies Ordinance and that the District Court had no jurisdiction to entertain the action and the application for interim injunction. There is no justification for confining Section 53 to disputes in terms of rupees and cents.

APPEAL from an order of the District Court, Kalutara.

E. R. S. R. Coomaraswamy, with *Hannan Ismail*, for the defendant-appellant.

L. T. Andradi, with *N. S. A. Goonetilleke*, for the plaintiff-respondent.

Cur. adv. vult.

September 27, 1968. WIJAYATILAKE, J.—

In this case the plaintiff who is a founder member and shareholder of the defendant Society has sued the said Society, for declaratory relief in regard to certain action taken by the Society consequent on a dispute which had arisen between him and the Society.

The plaintiff also prayed for an interim injunction restraining the defendant Society, its members, officers and the Committee, from moving, discussing or passing certain resolutions in regard to the dispute which had arisen till the final determination of this action.

The application for an injunction came up for inquiry before the Additional District Judge, Kalutara on 7.11.66. when the following issues were framed on objection being taken by Mr. N. E. Weerasooria, Queen's Counsel appearing for the defence that the Court had no jurisdiction to entertain this application :

1. Has this Court the *jurisdiction* to entertain this application in view of the provision of the Co-operative Societies Ordinance which excludes the jurisdiction of the Courts ?
2. Are the matters and disputes which the plaintiff has sought to have determined in this action excluded from the jurisdiction of these Courts ?
3. Are the alleged disputes in regard to the business of the Society ?
4. If so, should the same be referred to the Registrar of Co-operative Societies ?
5. Has the Registrar of Co-operative Societies exclusive jurisdiction to deal with and decide the disputes raised in this case ?

This objection was overruled and the present appeal is from this order.

The plaintiff avers that he has been a member and shareholder of this Society from 13.6.48. Among the objects of the Society was the founding of an Arrack Distilling Plant for the economic advancement of the members and the plaintiff as a member and owner of coconut trees was entitled to supply toddy to the said distillery on a contract basis and he had done so from the inception up to the end of 1965. The plaintiff also

avers that he is entitled to the profits of such distillery. He alleges that on various occasions he had questioned the irregularities and unfair practices in the said distillery and its management. He further states that in view of the exposures made by him of these malpractices and the political rivalry of the managing committee, the President, two vice-presidents, the secretary, the treasurer and certain other members were hostile and prejudiced against him. He states that when an inquiry was pending, in regard to certain malpractices in the managing committee on a complaint made by another member, at which he was the chief witness, the defendant Society had informed him that the managing committee proposed to hold an inquiry into certain allegations made against him by one W. D. Michael, that he had done his (the plaintiff's) contract. It may be noted that according to the conditions in the agreement (D/C) between the plaintiff and the defendant company it is strictly prohibited to supply toddy from trees only from an outsider and it is a gross violation of all regulations besides an insult to the Society for members to get outsiders to supply toddy from trees assigned to them. The plaintiff also had bound himself to get his licence cancelled by the Excise Department and not to claim any damages when the committee or a sub-committee appointed by a committee finds him guilty after an inquiry for breach of those conditions. He further bound himself to accept the punishment inflicted and not claim any damages if he is found guilty of violating these conditions.

When the plaintiff was informed of the inquiry due to be held he had written to the Society to send him a true copy of the letter sent by W. D. Michael alleging that he did his contract. In reply the Society had sent him copies of letters from W. D. Michael and a copy of a letter from the plaintiff's tapper Lionel and the plaintiff has been informed that the inquiry would be held on 9.1.66 and requesting him to be present. By his letter of 7.1.66 the plaintiff has requested the Society to inform him immediately under what section of the Co-operative Societies Ordinance and by-laws of the Society the committee has requested him to appear on 9.1.66 for an inquiry in connection with the complaint made by a non-member, an outsider. Thereupon on 15.1.66 the Society had written to the plaintiff that as he had failed to offer an explanation the committee had to accept the evidence of the complainants and the committee had held that he had committed an offence under by-law 12 (4) of the Society and the committee has decided to call for an explanation as to why his membership should not be suspended and why he should not be expelled, and his explanation, if any, should be forwarded in writing before 25.1.66. The committee by its letter of 10.3.66 had informed the Assistant Commissioner of Co-operative Development, Kalutara, in regard to the situation which had arisen. In the last paragraph it is set out that in terms of by-law 12 (4) the committee has decided to suspend the membership of the plaintiff. Thereafter by its letter of 22.3.66 the Society has informed the plaintiff that his disregard of the decision of the committee will result in his membership being suspended. This letter sets out 7 charges. The plaintiff by his letter of 23.3.66 has purported to reply to these charges.

Inter alia he states that he is not prepared to appear before the committee and offers an explanation as this committee which has also received allegations 'parallel' to those that are made against him has already decided on the charges. Thereafter on 4.4.66 the committee has purported to suspend his membership and report to the Assistant Commissioner of Co-operative Development. After this it would appear that the 17th Annual General Meeting of this Society was due to be held on 11.5.66 and item 7 in the agenda was for the approval of the suspension of membership of the plaintiff by the committee as per by-law 7 (6).

In the context of what has transpired in the transactions of this Society in regard to the matter in dispute the principal question which has now arisen is whether the District Court has jurisdiction to entertain this Application notwithstanding the provisions of the Co-operative Societies Ordinance. The learned Additional District Judge has answered this question in the affirmative.

Section 53 of the Co-operative Societies Ordinance provides for the settlement of disputes *inter alia* between a member and the Society or its committee *touching the business of a registered Society*. It categorically provides that such disputes *shall* be referred to the Registrar for decision. When it is so referred the Registrar may decide the dispute himself or refer it for disposal to an arbitrator or arbitrators, and any party aggrieved by the award of the arbitrator or arbitrators *may* appeal to the Registrar therefrom. The decision of the Registrar shall be final and shall not be called in question in any Civil Court. The award of the arbitrator or arbitrators if no appeal is preferred to the Registrar or if any such appeal is abandoned or withdrawn shall be final and shall not be called in question in any Civil Court. Section 54 provides for the Minister to make rules as may be necessary for the purpose of carrying out or giving effect to the principles and provisions of this Ordinance. The by-laws of the defendant Society are at (P/F). The objects are set out at clause 2 which point to the promotion of the economic conditions of the members of the Society. Clause 7 (vi) provides that membership will terminate on a member being expelled from the Society by a 2/3rd majority at a meeting attended by half the number of members of the Society. Clause 12 provides *inter alia* that a member could be expelled from the Society for any action done, which could be held to be dishonest or adverse to the objects of the Society or to the interests of the Co-operative movement by a committee so appointed by a general meeting. By-law 29 provides that the committee shall exercise all powers of the Society in terms of the by-laws and decisions taken at general meetings except in regard to such matters reserved for a general meeting. By-law 29 (xx) has vested the committee with powers generally to carry on the business of the Society. By-law 43 provides for the Registrar to be informed of any dispute arising from these by-laws or any dispute concerning the business of the Society.

The learned Additional District Judge has taken the view that the expulsion of a member does not touch the *business of the Society*. He appears to have come to this conclusion on the basis that the entirety of Section 53 contemplates a dispute in terms of rupees and cents. No doubt this section provides that a claim by the registered Society for any debt, demand or damage due to it from a member whether past or present shall be deemed to be a dispute touching the business of the Society within the meaning of this section. The District Judge appears to have treated this clause as a definition of the words "any dispute touching the business of a registered Society". In my view the words "shall be deemed to be a dispute touching the business of the Society", in the aforesaid clause clearly point to the fact that this clause merely sets out that such a claim too shall be recognised as a dispute within the meaning of Section 53. The District Judge has sought to distinguish the case of *Karunatileke v. Abeywira*¹. It is correct that the matter in issue was different but the judgment of the Divisional Bench has sought to interpret and clarify the purport of this section. In the circumstances, the judgment of H. N. G. Fernando (then S.P.J.) although it may not be binding on this Court merits very careful scrutiny and consideration. In that case the Registrar of Co-operative Societies appointed an arbitrator to determine a claim made by a Co-operative Society against its Manager on the basis that he was liable to account for goods or the value of goods shown by the books of the Society said to have been under his control as manager. It was held that the claim involved the exercise of judicial power. The following passage in the judgment is apposite: "An 'officer' of a Co-operative Society is not necessarily in a contractual relationship with the Society. The duties and responsibilities of the Chairman or the President or Secretary of a Society may be such as not to involve contractual rights or obligations on either side. But if in addition an officer has custody or control of goods or funds of the Society, or has power to negotiate contracts on behalf of the Society, then contractual relationships, such as that between principal and agent, can exist between a Society and its manager. In this way, disputes can arise as to the due performance of contractual rights and obligations The liability of the manager arises at least upon an implied contract in the nature of agency. The dispute concerning the existence of this liability and the duty to perform it is an ordinary civil dispute within the traditional jurisdiction of the Courts". This passage sets out the *ratio decidendi* in that case. But before H. N. G. Fernando (S.P.J.) reaches his decision he considers the objects which were plainly intended to be achieved by the former Section 45 of the Ordinance before the amending Act No. 21 of 1949. I might state that so far as the instant dispute is concerned this amendment is of little import but the observations would well apply to our present Section 53. As for disputes between a Society and its members in regard to the rules governing relations between a Society and its members, as to whether a Society or a member had acted in breach of the rules the judgment puts it beyond doubt that it was

¹ (1966) 68 N. L. R. 503. o

clearly the intention of the Legislature that such disputes should be finally decided by the Registrar; in the exercise of his supervisory functions, or by arbitrators appointed by him. Disputed claims by a Society against its members, *in their capacity as such*, were also in contemplation, although it is arguable whether section 45 applied also to other claims against members, not arising by reason of their membership of a Society, but arising instead upon transactions involving ordinary contractual rights and obligations, or else arising in delict. Except in regard to claims of this nature the judgment holds that there is no doubt that the determination by the Registrar or an arbitrator of a dispute affecting any of the matters aforementioned does not involve the exercise of the judicial power of the State.

At this stage it would be well to examine the agreement to supply toddy which is the subject of the instant dispute. The plaintiff is a party to it as a member, his membership number being 114. The second party is the Administrative Secretary of the defendant Society for and on behalf of the said Society. Under Clause 12 of this agreement both parties bind themselves to settle any dispute arising out of these conditions or agreement in accordance with section 45 of the Co-operative Societies Ordinance. The conditions strictly prohibit the supply of toddy from trees only from an outsider and those who break these conditions do so only on their responsibility and it is a gross violation of all *regulations* besides an insult to the Society *for members to get outsiders* to supply toddy from trees assigned to them. The first party further binds himself to get his licence cancelled by the Excise Department and not to claim any damages when the committee or a sub-committee appointed by the committee finds him guilty after an inquiry in regard to a breach of these conditions. In my opinion, having regard to the judgment of the Divisional Bench, it is quite clear that the instant dispute is one which touches the business of the Society within the meaning of section 53 and it therefore falls within the purview of the Registrar. The dispute which has arisen would therefore not involve the exercise of the judicial power of the State. Mr. Coomaraswamy also relied on the judgment of Gunasekara J., in *Sanmugam v. Badulla Co-operative Stores Union Ltd.*¹—with Gratiaen J. agreeing—where it was held that section 45 (1) (before the amending Act) ousts the jurisdiction of the ordinary Courts over a dispute between a registered co-operative Society and any other officer of the Society when the dispute touches the business of the Society. The case of *Hendrick Appuhamy v. John Appuhamy*² was under the Paddy Lands Act No. 1 of 1958. Sansoni C.J. in the course of his judgment refers to the case of *Wilkinson v. Barking Corporation*³ where Asquith L. J. said—“It is undoubtedly good law that where a statute creates a right and, in plain language, gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that remedy or that tribunal and not to others.” See also the case of *Pasmore v. Oswaldtwistle U. D. C.*⁴ Sansoni C.J. further observed that if the landlord of every paddy field

¹ (1952) 54 N. L. R. 16.

² (1966) 69 N. L. R. 29.

³ (1948) 1 K. B. 721.

⁴ (1898) A. C. 387.

were to continue to enjoy rights he had prior to this Act, and that includes the right to ask for a decree of ejectment against every tenant, this Act may well be torn up! I am inclined to make a similar observation in this case. However, Mr. Andradi has strenuously submitted that the instant action being one for declaratory relief the jurisdiction of the Courts has not been ousted by Section 53 even on the assumption that the dispute in question touches the business of a registered Society. He has relied on a series of judgments of which I might refer to the case of *Fernandopulle v. Perera Appuhamy*¹ where it was held that Section 56 (a) (ii) of the Debt Conciliation Ordinance could not prevent a proceeding held before the Debt Conciliation Board from being declared by a Court of Law as invalid for want of jurisdiction. It may be noted that Nagalingam J. observed that Section 56 does not say that the validity of the proceedings before the Board cannot be canvassed in a Court of Law. What it does say is that a Court cannot entertain an action in respect of the validity of any procedure before the Board, which is entirely a different matter. In the case of *Aziz v. Thondaman*² it was held that 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 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. Basnayake C.J. observed that the right of a citizen to invoke the aid of a Court is one that cannot be taken away by rules of any association or body of persons. It is so fundamental that it cannot be taken away by the Legislature itself. I might mention that in that case although an appeal was provided to a domestic tribunal its composition was not defined and existed only in name. The instant case can be clearly distinguished. Mr. Andradi relies very strongly on the well-known case of *Cooper v. Wilson*³ where it was held that where a statutory body is alleged to have acted without jurisdiction, its decision can properly be questioned in an action for a declaration that the decision is null and void. In that case the Watch Committee purported to dismiss the appeal of a Sergeant in the Liverpool Police Force from the Chief Constable's sentence of dismissal. This case too can be clearly distinguished as in the instant case the procedure adopted was quite different, and the matter in dispute had not even come up for consideration before the Registrar. Mr. Andradi has further submitted that in the case of *Cooper v. Wilson* the appellant was not limited to the right of appeal to the Secretary of State given by the Police Appeals Act 1927 and therefore the appellant was entitled to the declaration claimed. Here again when we refer to the instant dispute it would appear that the plaintiff's prayer for declaratory relief is in any event premature as the stage for an appeal to the Registrar had not arisen. The significance of 'may' as against 'shall' in Section 53 also merits consideration. See Zamir, page 89.

¹ (1950) 52 N. L. R. 204.

² (1959) 61 N. L. R. 217.

³ (1937) 2 K. B. 300.

Mr. Andradi has further submitted that a body which has to perform a duty in the nature of judicial duty is disqualified from performing it if it has a bias or if it has so conducted itself as to create in the mind of a reasonable man a suspicion that it may have such a bias. He has accordingly invoked the principles of natural justice and prayed for the intervention of the Courts to prevent any injustice to his client. In regard to this particular transaction he has referred to the alleged hasty and reckless action taken by the committee to suspend him when it had no power to do so and thereafter the irregular steps taken to get covering sanction at a General Meeting for the order of suspension by the committee. He further submits that the Assistant Registrar had a hand in preparing the charges framed against him. In my opinion it is evident that all these matters in dispute touch the business of the Society within the meaning of Section 53 and therefore it was the Registrar who had the jurisdiction to inquire into them. I am inclined to take the view that the committee has the power to suspend a member pending action at a General Meeting by virtue of by-law 29 (xx). Mr. Andradi has also mentioned that when his client called for an authenticated copy of the allegations made against him for the first time this request was ignored. However, on a perusal of the correspondence it is apparent that the plaintiff was not in any way prejudiced by the absence of a *certified* copy as such as he had received a communication and refused to shew cause and treated the committee with contempt. This is obviously an afterthought of little consequence. The Additional District Judge in concluding his judgment has referred to Zamir on "The Declaratory Judgment" and he refers to the observations of Denning L.J. at page 164 that the Courts will always be prepared to examine the decision of a domestic tribunal to see that the tribunal has observed the law. I might mention that in the instant case, in view of the statutory provision at Section 53, the present action is premature. One has only to read through the chapters of Zamir where under different heads he discusses the various facets of the judgment in *Cooper v. Wilson* to realise the essence of the principles set out therein. If one reads his observations critically it would appear that they can be cited in support of the appellant's submissions too with equal force. See Zamir at pages 31, 89, 98 and 232.

In a welfare State such as Ceylon the Co-operative Societies Ordinance has been enacted by the Legislature with a view to promoting *inter alia* particular industries for the benefit of the public and special machinery has been provided for the settlement of disputes touching the business of Registered Societies for the smooth working of such Societies and therefore a dispute such as the instant one, in my opinion, does not at the present stage involve the exercise of the Judicial power of the State. As Mr. Coomaraswamy posed the question if these are not matters that can be settled by a domestic committee what are the matters which can be settled by such committees? In my view as I have already observed there is no justification whatever for confining Section 53 to disputes in terms of rupees and cents.

I would accordingly hold that the District Court had no jurisdiction to entertain this Action and Application for an interim injunction. I set aside the order of the Additional District Judge. The Appellant shall be entitled to the costs of appeal and the costs of inquiry.

SAMERAWICKRAME, J.—I agree.

Appeal allowed.
