

[VASSILIADES, J.]

IOANNIS V. HJI PAPAYIANNIS,

*Applicant,*

v.

THE REGISTRAR OF CO-OPERATIVE CREDIT  
SOCIETIES OF THE GREEK COMMUNAL  
CHAMBER,

*Respondent.*

(Civil Application No. 12/63)

*Prerogative Writs—Certiorari—Co-operative Societies Law, Cap. 114, sections 53 (2) (a) (4), 54 (1) (2) (r) and the Co-operative Societies Rules, 98, 99, 100, 100 (1) and 102—Arbitration proceedings under section 53 of the Law—Application for certiorari to move into this Court and quash arbitration decision—Irregularity of proceedings—Control by prerogative orders.*

This is an application for an order of *certiorari*, based on Article 155.4 of the Constitution, on section 19 of the Courts of Justice Law, 1960, on Order 59, rule 3 of the English Rules of Civil Procedure, on section 53 (5) (6) of the Co-operative Societies Law, Cap. 114, and on "the general law and practice of the Courts, to move into this Court and quash a decision made by the Registrar of the Co-operative Credit Societies under the Greek Communal Chamber, on the 14.12.1962 in arbitration proceedings, under section 53 of the Co-operative Societies Law, Cap. 114".

The application was opposed on the ground that, in making the order complained of, the respondent was acting within his powers under section 53 of the Co-operative Societies Law, Cap. 114 ; and that no sufficient cause for *certiorari* has been shown by the applicant on the face of the record.

*Held, (1) as regards jurisdiction :*

(a) The competence of this Court to grant the remedy sought by the present proceeding has not been questioned here. It emanates from section 9 of the Administration of Justice (Miscellaneous Provisions) Law, No. 33 of 1964. And it originates in Article 155.4 of the Constitution and section 19 of the Courts of Justice Law, No. 14 of 1960.

(b) The principles guiding the exercise of such jurisdiction have been considered in numerous cases in England (where proceedings of this nature originated) and in some cases in

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Cyprus dealing with prerogative writs. I shall only refer to the *General Council of Medical Education and Registration of the United Kingdom v. Spackman* (1943) 2 All E.R. p. 337 ; *Hussein Shefik v. The First Limassol Co-operative Savings Bank Ltd.*, (1953) 19, C.L.R. p. 244 ; *Lambrianides v. Mavrides* (1958) 23, C.L.R. p. 49 ; and the *Application by the Attorney-General of the Republic in the matter of an order for maintenance made in the District Court of Larnaca, and Panayiotis Christou*, 1962 C.L.R. 129 where *certiorari* proceedings were discussed and applied in the "exercise of (the High Court's) "supervisory jurisdiction and controlling powers over inferior courts"; and over persons having "legal authority to determine questions affecting the rights of citizens and having the duty to act judicially". In Hussein Shefik's case (referred to by both sides) an arbitration-decision under section 53 of the Co-operative Societies Law (Cap. 114) was the main subject-matter before the Court.

(c) Here, there is no doubt that the dispute between the applicant and the Co-operative Society was a matter which properly fell within the statutory arbitration provided in section 53. And, as said in Shefik's case (p. 246 top) such arbitration is subject to control by prerogative orders.

(II) *on the merits* :

(a) This application for *certiorari* is based on the contention that the record of the arbitration-proceedings which resulted in the Registrar's decision complained of (14.12.62) amply shows that the arbitration was not carried out as required by the statute and the rules applicable thereto: The assessment of the value of the goods, does not appear to have been done as provided in bye-law 19 and rule 102 ; the arbitration purporting to decide the dispute, does not appear to have been carried out as required by rules 98-100 inclusive : and the procedure followed by the Registrar in dealing with applicant's appeal under sub-section (4) of section 53, does not appear to have been the procedure prescribed in rule 101.

(b) The application, therefore, must succeed; and order for *certiorari* be made, to bring up and quash the arbitration proceedings complained of, including the decision of the 14th December, 1962. With an order for costs to be taxed in favour of the applicant at the top of the scale applicable to claims not exceeding the amount of the Registrar's award.

*Order in terms.*

Cases referred to :

*General Council of Medical Education and Registration of the United Kingdom v. Spackman* (1943) 2 All E.R. p. 337 ;

*Hussein Shefik v. The First Limassol Co-operative Savings Bank Ltd.* (1953) 19, C.L.R. p. 244 ;

*Lambrianides v. Mavrides* (1958) 23, C.L.R. p. 49 ;

Application by the Attorney-General of the Republic in the matter of an order for maintenance made in the District Court of Larnaca, and Panayiotis Christou, 1962 C.L.R. 129.

#### Application for Certiorari.

Application for an order of *certiorari* to move into the Supreme Court and quash a decision made on the 14th December, 1962, by the Registrar of the Co-operative Credit Societies of the Greek Communal Chamber, under section 53 of the Co-operative Societies Law, Cap. 114.

*C. Myrianthis*, for Ph. Clerides, for applicant.

*M. Spanos*, Counsel of the Republic, for respondent.

*Cur. adv. vult.*

The facts of the case sufficiently appear in the following judgment delivered by :

VASSILIADES, J.: This is an application for an order of *certiorari* "to move into this Court and quash a decision made by the Registrar of the Co-operative Credit Societies under the Greek Communal Chamber, on the 18.1.1963, in arbitration proceedings", under section 53 of the Co-operative Societies Law, Cap. 114, whereby the applicant was adjudged to pay to a co-operative society in his village, £100 damages for failing to deliver to them his carrots, as required by their bye-laws. The date of the decision complained of is given as the 18.1.63, while according to exhibit 2, the decision was made on 14.12.62.

The application is based on Article 155.4 of the Constitution ; on section 19 of the Courts of Justice Law, 1960 ; on Order 59, rule 3 of the English Rules of Civil Procedure ; on section 53 (5) (6) of the Co-operative Societies Law, Cap. 114 ; and on "the general law and practice of the Courts"—as learned counsel who prepared the application has put it—whatever that may mean as reference to the law on which the application is based.

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The proceeding is opposed on the ground that, in making the order complained of, the respondent was acting within his powers under section 53 of the Co-operative Societies Law, Cap. 114 ; and no sufficient cause for *certiorari* has been shown by the applicant on the face of the record.

The material facts leading to the dispute may be summarised as follows :

A Co-operative Society, formed at Katokopia village under the name Συνεργατική Έταιρεία Διαθέσεως Φθαρτών Κατωκοπιᾶς Λτδ., was duly registered in June, 1961, under the Co-operative Societies Law, Cap. 114. A photostatic copy of the document under which it was registered, containing, as usual, its objects and bye-laws, as well as the signatures of the persons who formed it, was put on the record by consent, as exhibit 1. This exhibit shows that one of the 163 original signatories was the applicant, whose signed name appears opposite number 161 (*exhibit 1*, p. 7).

The first object of this society was :

(α) «Ἡ ὁμαδική πώλησις ὀσπρίων, λαχανικῶν φρούτων, πατατῶν καὶ ἄλλων φθαρτῶν προϊόντων τῶν μελῶν, ἐν τοῖς κατωτέρω ἀναφερομένων ὡς τῶν 'προϊόντων'».

Article 18 exhibit 1, on page 2, under the heading «Παράδοσις Προϊόντων», provides :—

«18. Ἐκαστον μέλος ὑποχρεοῦται νὰ παραδώσῃ εἰς τὴν ἑταιρείαν δι' ὁμαδικὴν πώλησιν ἢ κατεργασίαν ὄλην τὴν ποσότητα προϊόντων τῶν παραγομένων ὑπ' αὐτοῦ ἢ τῆς συζύγου του καὶ τῶν ἀγάμων τέκνων του, πλην ὡς ἀναφέρεται εἰς τὸ ἄρθρον 22 τῶν παρόντων κανονισμῶν καὶ μικρᾶς ποσότητος διὰ τὰς οἰκιακάς του ἀνάγκας, ὀριζομένης ὑπὸ τῆς ἐπιτροπείας».

Inserted in this article in a rather strange manner, in handwriting at the end of page 2, is this :—

«καθὼς καὶ ὄλην τὴν παραγωγὴν του ἀνήκουσαν εἰς αὐτὸν καὶ ἐν συνεταρισμῷ μετ' ἄλλων».

The next article 19, on page 2, reads :—

«19. Μέλος τι ἀπολείπον νὰ παραδώσῃ τὴν ἐλαχίστην τοῦλάχιστον ποσότητα προϊόντων του συμφώνως πρὸς τὸ ἄρθρον 18 τῶν παρόντων κανονισμῶν ὑποχρεοῦται νὰ πληρώνη εἰς τὴν ἑταιρείαν διὰ τὸ ἀποθεματικὸν κεφάλαιον αὐτῆς 50% ἐπὶ τῆς ἀξίας τῶν προϊόντων τὰ ὁποῖα ἀπέλειπε νὰ παραδώσῃ, τῆς τριαύτης ἀξίας ὀριζομένης ὑπὸ τῆς ἐπιτροπείας καὶ τοῦ ἐμποτικῆ συμβουλίου συμφώνως πρὸς τὴν τρέχουσαν τιμὴν τῆς ἀγορᾶς κατὰ τὴν περίοδον ποῦ τὸ μέλος παρέλειψε νὰ παραδώσῃ τὰ προϊόντα του».

In the spring of the following year, 1962, a dispute arose between the applicant and the co-operative society in question, under the provisions of these articles 18 and 19. The society claimed that the applicant produced a considerable quantity of carrots which he failed to declare and deliver to the society for sale, and so rendered himself liable as provided in Article 19. The appellant rejected the claim, apparently on the allegation that he was not one of their members.

The dispute was referred to arbitration, presumably under section 53 of the Co-operative Societies Law (Cap. 114) which, as far as material, provides that—

“(1) If any dispute touching the business of a registered society arises—

(b) between a member, past member or person claiming through a member and the society

such dispute shall be referred to the Registrar for decision.

(2) The Registrar may, on receipt of a reference under sub-section (1)—

(a) decide the dispute himself ; or

(b) refer it for disposal to an arbitrator or arbitrators.

(4) Any party aggrieved by the award of the arbitrator may appeal therefrom to the Registrar as may be prescribed by the Rules.

(5) A decision of the Registrar under sub-section (2) or an appeal under sub-section (4) shall be final and shall not be called in question in any civil Court.

[The printed text in this last part of sub-section (5) refers to sub-section (3) but apparently that is a printing error]

In the course of the hearing before me, counsel for the respondent based his argument on the contention that the respondent derived the power to make the order complained of, on section 53 of Cap. 114. It is common ground that he purported to act under that section.

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It is likewise common ground that the record of proceedings which resulted in the order complained of, may be seen in the copies produced at the hearing and put in by consent, as exhibits 2 and 2a. The latter shows that on the 3rd of September, 1962, the applicant herein, appeared before "G. Ierides" at Morphou, in the course of matters concerning the co-operative society in question, and rejected the claim against him on the ground that he was not one of the co-operative's members.

The document (exhibit 2a purporting to be a full copy of the record) then reads :

«Ιωάννης Β Χατζηπαπαγιάννη £510 Ούτος ισχυρίσθη ότι επειδή κατά την γνώμη του δέν ήτο μέλος τής ως άνω εταιρείας, δέν έπραξε συμφώνως τού καταστατικού τής εταιρείας και συνεπώς δέν παρέδωσε καρόττα εις την Έταιρείαν

‘Ο Γραμματεύς δηλοϊ ότι ό έναγόμενος είναι μέλος συμφώνως τού Νόμου, τών θεσμών και τών Ειδικών Κανονισμών τής εταιρείας Εϊς έρώτησίν μου εάν ό έναγομενος έδωσε γραπτώς πρός την έπιτροπείαν τής εταιρείας την παύσιν του, ό έναγόμενος άπηντησεν άρνητικως ‘Αφού έξήγησα εις τόν έναγόμενον τι άναφέρει ό Νεμος σχετικώς με την παύσιν μέλους τινός από μίαν συνεργατικήν εταιρείαν, έξέδωσα άποφασιν εναντίον του δια το ποσόν τών £510

(‘Υπογρ) Γ. ‘Ιερειδης».

Μόρφου, 3 9 62

This exhibit 2a is the record of what purports to have been the arbitration proceeding under section 53 (2) (b) of the Co-operative Societies Law.

The other document, exhibit 2, apparently purports to be the proceeding on appeal before the Registrar, under section 53 (4). This was in Nicosia on the 14th December, 1962. The Registrar was dealing with applicant's appeal from the above award of £510 against the applicant, for failing to deliver his carrots to the co-operative.

Here the applicant is recorded to have stated that on the 7th Nov. 1962 (four months prior to the arbitration proceeding in exhibit 2a) : «με εκάλεσαν εις διαιτησίαν επί τω ότι δέν έδηλωσα την παραγωγήν μου, έγω τότε τούς ειπα ότι δέν είμαι μέλος ό:αν ενεγράφην δέν είχα διαβάσει το καταστατικόν και τότε ό κ. Έρωγοκρίτου μου ειπεν έ: ταζει άν θελης μπορείς να παραιτηθής από τώρα»

The Registrar thereupon, asked whether after his «καταδίκη» (apparently referring to the proceeding of 7th May) the applicant handed to the committee of the co-operative, his withdrawal in writing. And to a negative reply, the Registrar «τοῦ ὑποδεικνύει τὰς ὑπογραφάς του, καὶ ὁ ἐφεισίων παραδέχεται ὅτι ὑπέγραψε τὴν αἴτησιν δι' ἐγγραφὴν τῆς Συνεργατικῆς Ἑταιρείας Διαθέσεως Φθαρτῶν Κατωκοπιᾶς καὶ ἀναγνωρίζει τὴν ὑπογραφὴν του, δι' ἐγγραφὴν τῆς Ἑταιρείας».

There is, however, a statement on this record (*exhibit 2*) that after the proceeding on 7.5.62, the applicant was condemned by the arbitrator to £5 fine (πρόστιμον) for failing to declare his produce. Was this an «arbitration» in connection with the same case? The record does not show. It would seem to have been the penalty provided in article 21, at page 3 of exhibit 1. If so, did that confirm applicant's membership? Or, did it confirm his intention to withdraw from membership? The question, I think, does not call for an answer in this proceeding. But it tends to show the way matters were being handled in the co-operative in question.

Be that as it may, the record shows that the Registrar finding that the applicant «οὐδεμίαν γραπτὴν δῆλωσιν ἔκαμε πρὸς τὴν Ἑταιρείαν διὰ τὴν διαγραφὴν ἀπὸ μέλος αὐτῆς», and that «οἱ ἐπιτροποὶ δηλοῦν ὅτι ἐκαλλιέργησε καρόττα καὶ ὅτι ὁ ἴδιος εἶχε δηλώσει παραγωγὴν καρότων», came to his decision, which he put it in one word and a figure :— «ΑΠΟΦΑΣΙΣ £100».

There is nothing on the record to show that the Registrar exercising his powers under section 53 (4) went into the question whether the award of the arbitrator for the payment of £510 was made in accordance with article 19 of exhibit 1 (*supra*) ; or, whether it was made in accordance with the rules governing such arbitrations ; or, to show that in reaching his decision he (the Registrar) had any regard to the provisions in article 19, that applicant's obligation to the co-operative, for the benefit of its reserved capital, was «50% ἐπὶ τῆς ἀξίας τῶν προϊόντων τὰ ὁποῖα ἀπέλειπε νὰ παραδώσῃ, τῆς τοιαύτης ἀξίας ὀριζομένης ὑπὸ τῆς ἐπιτροπείας καὶ τοῦ ἐποπτικοῦ συμβουλίου συμφώνως πρὸς τὴν τρέχουσαν τιμὴν τῆς ἀγορᾶς κατὰ τὴν περίοδον πού τὸ μέλος παρέλειπε νὰ παραδώσῃ τὰ προϊόντα του».

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The main issues arising in the dispute in question, were three :—

- (a) whether the applicant herein, was a member of the co-operative ;
- (b) whether he cultivated carrots which he failed to deliver ; and
- (c) whether the amount payable for such failure, was properly found.

The answer to the first question may, I think, be found in the last page of exhibit 1 where the applicant signed as a member against number 161. And must be in the affirmative. The applicant was a member of this Co-operative. And had not duly withdrawn at the material time. As regards questions (b) and (c) the record does not show the necessary connection between these questions and the Registrar's decision under consideration.

Section 54 (1) of the Co-operative Societies Law provides for the making of Rules " for the purpose of carrying out or giving effect to the principles and provisions of this Law ". And section 54 (2) (r) for rules to " prescribe the mode of appointing an arbitrator and the procedure to be followed in proceedings before the Registrar or such arbitrator ". The Co-operative Societies Rules were published in 1940 ; and are now found in Volume I of the Subsidiary Legislation of Cyprus at p. 426.

Rule 102 (at p. 443) provides for the disposal of produce through a registered society. And rules 98, 99 and 100 cover proceedings on a reference of a dispute to the Registrar for decision ; arbitration by the Registrar ; and proceedings before the arbitrator or arbitrators. Rule 100 (1) provides that " the proceedings before the arbitrator or arbitrators shall, as nearly as possible be conducted in the same way as proceedings before a Court of Law ". And rule 101 (1) provides that " the procedure to be followed by the Registrar in deciding a dispute under the provisions of section 53 (2) (a) of the Law or an appeal under the provisions of sub-section (4) of the same section shall be, as nearly as possible, similar to that followed by a Court of Law in trying a civil case and the provisions of rule 100 shall apply *mutatis mutandis* ".

The case for the applicant in the present application for *certiorari*, is that the proceedings before the arbitrator as well as those before the Registrar, which resulted in



the decision complained of (for the payment of £100 damages) are irregular on the face of them, to the extent of showing that both the arbitrator and the Registrar went beyond their statutory powers in dealing with the matter. Their powers were to deal with the claim of the Co-operative for 50% of the value, of applicant's produce, as provided in article 19 of the bye-laws of this particular Co-operative Society ; and rule 102 of the Co-operative Societies Rules. And in dealing with such claim they (the arbitrator and the Registrar) should act in the manner prescribed in section 53 of the statute and in rules 98—101 inclusive. While their records (*exhibit 2 and 2a*) show that the said arbitrator and Registrar purported to deal with the claim in question and the dispute thereon, in utter disregard of the requirements of the rules applicable to such matters.

The case for the respondent is that section 53 of the statute gives power to the Registrar to deal with the matter. And having acted within such powers, the Registrar made a decision which cannot be questioned in *certiorari* proceedings. As put by learned counsel for the respondent, the matter turns solely on the question whether the Registrar had jurisdiction or not.

I cannot accept this proposition. The powers of the Registrar are derived exclusively from the statute ; and, in my opinion, they can only be exercised as provided in the relative rules. Purporting to exercise such powers, regardless of the requirements of the rules, is, in my view, beyond the power conferred by the statute. The statutory powers of the Registrar can only be exercised within the fence of the rules. He cannot carry them outside that fence.

The competence of this Court to grant the remedy sought by the present proceeding has not been questioned here. It emanates from section 9 of the Administration of Justice (Miscellaneous Provisions) Law, No. 33 of 1964. And it originates in Article 155.4 of the Constitution and section 19 of the Courts of Justice Law, No. 14 of 1960.

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This application for *certiorari* is based on the contention that the record of the arbitration-proceedings which resulted in the Registrar’s decision complained of (14.12.62) amply shows that the arbitration was not carried out as required by the statute and the rules applicable thereto : The assessment of the value of the goods, does not appear to have been done as provided in bye-law 19 and rule 102 ; the arbitration purporting to decide the dispute, does not appear to have been carried out as required by rules 98–100 inclusive ; and the procedure followed by the Registrar in dealing with applicant’s appeal under sub-section (4) of section 53, does not appear to have been the procedure prescribed in rule 101.

The application, therefore, must succeed ; and order for *certiorari* be made, to bring up and quash the arbitration proceedings complained of, including the decision of the 14th December, 1962. With an order for costs to be taxed in favour of the applicant at the top of the scale applicable to claims not exceeding the amount of the Registrar’s award.

*Orders in terms.*