
(1951) 12 MAD CK 0029
In the Madras High Court

Madura Labour Union and Another

APPELLANT

Vs

Madura Mills Workers' Co-operative Stores, Ltd. and Others

RESPONDENT

Date of Decision : 06-12-1951

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 19, 226, 5

Citation : (1954) 1 LLJ 457

Hon'ble Judges : Panchapakesa Sastri, J; Govinda Menon, J

Bench : Division Bench

Judgement

Govinda Menon, J.—The Madura Mills Workers' Co-operative Stores, Ltd., is a society registered under the Madras Co-operative Societies Act (Act VI of 1932) on 23 December 1939 and it started work on 9 January 1940. Though originally the membership was about 300, all of whom were members of the Madura Labour Union, which was a union registered under the Trade Unions Act of the workers of the Madura Mills, at present according to the affidavit, the society has a membership nearing 12,000. Under by-law No. 5 of the Madura Mills Workers' Co-operative Stores, Ltd., the Madura Labour Union, as a registered body, was admitted as a member of the society and according to by-law No. 19 the executive management of the affairs of the society was to vest in a board of directors of not more than five of whom one should be the nominee of the Madura Mills Company, Ltd., and another a nominee of the Madura Labour Union. By-law No. 20 provides for the election of the directors by the general body of members excepting the two nominees specially mentioned in by-law No. 19. The allegations in support of the application for a writ of mandamus state that about three years ago a new union called the National Textile Workers' Union was formed in Madurai and was affiliated to the Indian National Trade Union Congress and this union has been working in a spirit of opposition to the Madura Labour Union. On account of the disputes between the two rival labour unions, the functioning of the co-operative stores became somewhat difficult and therefore the Registrar of Co-operative Societies, Madras, took action u/s 43 of the Act, superseded the board of directors and appointed a special officer for a period of

six months which appointment terminated on 26 December 1950. The special officer convened a general body meeting of the co-operative stores to take place on 29 October 1950 and the agenda for the meeting included amendments to the by-laws, and despite some attempt to have the meeting postponed, finally a meeting was held on 18 March 1951 wherein certain amendments to the by-laws were passed. According to the Madura Labour Union, there were irregularities committed in the convening and the procedure followed at the meeting and therefore the union wrote to the Registrar of Co-operative Societies pointing out the irregularities and requesting him to quash the proceedings. The Registrar, by his letter, dated 29 March 1951, suggested the filing of a dispute u/s 51 of the Madras Co-operative Societies Act before the Additional Joint Registrar, Madras, questioning the validity of the proceedings of the general body. This was not agreed to by the Madura Labour Union and therefore on 24 March 1951 the Registrar sent a telegram to the special officer, whose term had in the meanwhile been extended, to constitute a board consisting of the labour union and the mills' nominees. At the meeting held on 18 March 1951, the by-laws were amended, by which it was not made obligatory that the Madura Labour Union should be a member of the board of directors. In short the amendments that were carried out were that by-law No. 5 as recast omitted reference to the Madura Labour Union as entitled to admission as a member and there was a note added that the Madura Labour Union shall cease to be a member from the date of the registration of the amendments. By amendment to by-law No. 19 power was given to the general body to remove the nominee of the Madura Labour Union from the board of directors. The amendment to bylaw No. 20 gave power to the general body to elect directors other than the nominee of the Madura Mills whose right to remain as a member on the board of directors was not altered. Resolutions were also passed under by-law No. 35 by which the Madura Labour Union was expelled from the membership of the board of directors. Writ No. 317 is for mandamus and writ No. 318 is for certiorari. The petitioners urge that the resolutions passed on 18 March 1951 and the amendments to the constitution of the society affecting the status, rights and privileges of the petitioner-union are unconstitutional, ultra vires and illegal, and that they are entitled to a declaration of their continued right to all the privileges as member and their right to nominate their director to function in the board of directors, either by a writ of mandamus or by a writ of certiorari. The affidavit in support of the applications alleges that the resolutions passed by the general body of the co-operative stores transgress many provisions of the Indian Constitution and therefore the petitioners are entitled to relief by the issue of a writ of mandamus or certiorari. The articles of the Constitution that are alleged to have been infringed are Articles 13, 14, 19, etc. On 4 August 1951 it is alleged that the petitioner-union ceased to be a member of the co-operative stores and its nominee ceased to hold office with effect from that date.

2. The affidavit in support of the applications contains lengthy averments and statements of fact, giving a detailed account of what, according to the

petitioners, took place. In answer to this, counter-affidavits have been filed not only by the present acting secretary of the Madura Mills Workers' Co-operative Stores, Ltd., but also by the Deputy Registrar of Co-operative Societies, Madura, who appointed a special officer after the stores had been superseded, and which special officer was directed by the Registrar to convene the meeting as a result of which the resolutions were passed expelling the Madura Labour Union from the board of directors. Since a fresh body of the board of directors had been elected, the special officer ceased to function as such. These counter-affidavits repudiate many of the allegations contained in the affidavit in support of the petitions, but, in the main, the contentions are that the meeting held on 18 March 1951 was validly convened; that the resolutions were properly "passed" and that the amendment of by-laws was within the powers of the general body that the Madura Labour Union as such has no special rights to be on the board of directors and therefore the whole proceedings were perfectly legal and valid. The counter-affidavit of the Deputy Registrar goes on to add that the registration of the by-law by the Registrar of Co-operative Societies is purely an administrative act and cannot be quashed by a writ of certiorari. It is also alleged that the remedy of the petitioners is by way of a regular suit which will be quite adequate and efficacious.

3. Elaborate arguments have been advanced on either side, and the question that has to be decided is whether the amendment of the by-law is justified in the circumstances of the case, and whether it is within the competence of the general body to do so. The number of votes cast at the general body meeting suggests that the amendment was passed by a narrow majority, considering the number of members who took part in the voting. On 19 March 1951, the president of the Madura Labour Union wrote to the Registrar of Co-operative Societies stating that the proceedings of the meeting showed that the voting strength of the respective unions who participated in the proceedings as announced at the meeting was 3,817 for the National Textile Workers' Union and 3,723 for the Madura Labour Union, making total of 7,540; whereas the admission slips showed that the number of members admitted was only 7,396. Such being the case, it is alleged that it could not be that 7,540 members could have voted at the meeting. A recount asked for by the Madura Labour Union was refused by the chairman, the members of the Madura Labour Union left the meeting in a body in protest. On 27 March 1951, a further letter was written to the Registrar stating that it would not be fair and proper to initiate proceedings u/s 51 of the Act before the Deputy Registrar of Co-operative Societies, Madurai, as he himself presided at the meeting and by implication could be considered to be a party. To both of these, the reply of the Registrar, dated 29 March 1951, was to the effect that the Madura Labour Union might file a dispute u/s 51 of the Madras Co-operative Societies Act before the Additional Joint Registrar of Madras, questioning the validity of the proceedings of the general body meeting held on 18 March 1951. In the meanwhile, the board of directors had been reconstituted in accordance with the amendment of the by-

laws by which the Madura Labour Union was denied a place in the directorate and the result was a letter on 25 July 1951 by the secretary of the Madura Labour Union requesting the Registrar to restore the fundamental rights of the union to continue as a member of the stores and to take immediate steps to supersede the board of directors who, according to him, had taken the law into their own hands contrary to the specific provisions of the Co-operative Societies Act, and to appoint a special officer to discharge the duties of the board in the interests of efficient and lawful administration of the stores. This letter had to be written because of the letter, dated 24 July 1951, from the acting secretary of the co-operative stores to the president of the Madura Labour Union, informing the latter that as a result of the amendment of by-law No. 35 in terms of the resolutions No. 6(b)(i) passed by the general body of members of the Madura "Mills Workers" Co-operative Stores, Ltd., the Madura Labour Union was expelled from the membership of the stores from that day onwards. Further correspondence followed between the Registrar and the Madura Labour Union in one of which, dated 30 July 1951, the Registrar of Co-operative Societies was informed of the letter dated 24 July 1951 received by the Madura Labour Union expelling it from membership of the stores. It is alleged there that the expulsion was ultra vires the powers of the general body of the members for various reasons, among which are that according to by-law No. 5 the Madura Labour Union has to remain as a member and cannot be expelled from the same; it is not competent to the general body to amend by-law No. 5 as it should remain unchanged. It was further stated that the resolution was invalid and opposed to the principles of natural justice in that no charges were framed against the Madura Labour Union for expelling it. No explanation was called for and no opportunity was given to the Madura Labour Union for explaining any misconduct on its part. It was also contended that by by-laws Nos. 19, 20 and 30 it was mandatory that the Madura Labour Union shall be represented in the board of directors and that its removal by the general body was impossible. The Registrar did not take any action on it but on 7 August 1951, the secretary of the stores informed the Madura Labour Union that the amendments to the by-laws passed by the general body had been registered by the Deputy Registrar of Co-operative Societies, Madurai, with effect from 4 August 1951 and therefore the Madura Labour Union was not only expelled from the membership of the stores, as already intimated to it, but the right of the membership and representation on the board of directors also ceased with effect from 4 August 1951.

4. The chief argument of the learned Counsel for the petitioners is that the amendment so far as it effects the membership of the cooperative stores and the directorship of the same is not within the competence of the general body because the by-laws should be deemed to be contract entered into at the time of the formation and there was no intention that such a contract should be changed by the general body at any stage. That is, the power to amend the by-law was not intended to alter the basic structural scheme of the society which would change the terms of the bargain and the contract between the parties, and

therefore the whole proceeding were repugnant to the original intention of the parties. But for the initiative taken on behalf of the Madura Labour Union with the co-operation of the managing agents of the Madura Mills Company the society itself would not have been formed in 1940 as itself from the notices issued before the formation of the society; and further the administration report of the co-operative society from 19 January 1948 to 31 December 1948 shows that the president of the Madura Labour Union had exerted greatly in having the stores registered. What is therefore contended is that the Madura Labour Union, being founder-member of the society, cannot be removed from the membership of the directorate by the general body. The by-law which contemplates the expulsion of a director or a member which is by-law No. 35, can-apply only to the other directors elected from the general body. We are not inclined to accept this argument because by-law No. 43 says that no amendments to, or alteration, or cancellation of a by-law, nor the enactment of a new by law, shall be made except at a general meeting of the members or shall take effect until it shall have been approved by the Registrar. It therefore contemplates the amendment or alteration of a by-law. No special privilege is retained for any founder-member in the by-laws of the society. All that is mentioned there is that the two corporate directors, viz., the Madura Mills Company and the Madura Labour Union, can continue as directors without being re-elected from time to time as in the case of the other directors who held office for a particular period and have to be re-elected after the expiry of a certain term. Nowhere in the by-laws do we find any indication that a founder-member who is mentioned as a director cannot be removed from the directorate by means of a resolution of the general body. By-law No. 35 is as follows:

If a member deceives the society in any way, or if his general conduct is such as to render his removal necessary in the interests of the society, it shall be open to general body to expel such member. An expelled member shall be paid all monies due to him from the society, after deducting there from any money due from him to the society. A member who drives the society to court to recover the money due from him shall for that reason, be expelled from membership. An expelled member shall be liable as provided in by-law 3 for the debts due by the society as they stood on the date of his expulsion for a period of two years after such expulsion.

5. Therefore it is clear that any member of the society can be removed from the society if such removal is in the interests of the society. A minor point was raised as to whether a co-operative body, like a labour union, can run the society or that the general conduct of such a union is such as to render it a removal necessary in the interests of the society. What is urged is that it is only a human being, as a member, that can deceive the society, and that a body of individuals registered as a labour union cannot practise the art of deception. We do not think that there is any force in this contention. If a trade union is allowed the rights and privileges of membership, it necessarily follows that it should have the liabilities and disabilities attached to such membership. It does not necessarily

follow that a human being alone can deceive people. A society functioning by its president or secretary can do acts of deceit which can be done by an individual. It may be that an abstract body like a society cannot speak or act, but what is done is by its office-bearers; and such an act should be binding on the society as such. When by-law No. 35 contemplates deception by any member what is connoted is the practising of deception; if it were done by the society it will have to be done by its office-bearers. It does not seem reasonable or practicable to confine the scope of the contemplated deception only to human beings and leave the case of deceptions practised by corporate bodies through their office-bearers without being hit at by this by-law. If at the time of the formation of the society it was intended that throughout the period of its existence one of the members of the board of directors should be the Madura Labour Union, it could have been stated so in explicit terms in the by-laws, and the fact that the Madura Labour Union was treated just like any other director is sufficient for us to infer that no special treatment was intended to be accorded to the Madura Labour Union. If an elected director can practise deception, it stands to reason that a non-elected director who continued to be there could also practise deception. This argument therefore fails.

6. The other question as to whether a non-elected director can be removed by the general body is, as we have already stated, concluded by the by-laws themselves which do not make any distinction between the two classes of directors. That being so, what we have next to consider is whether the action of the majority in expelling a minority group from the directorate, though that, minority is of nearly the same proportions and dimensions as the majority, is in accordance with the general law or whether such an action has to be viewed with is favour as an oppression of a large minority by a majority which in point of numbers is not much in excess. We do not believe that more members voted than present, as alleged. The question as to how far a power vested in a majority to amend the rules of a society can be so utilized as to amend the rules against a dissenting member in order that the same might bind the dissenting member was the subject for consideration in *Hole v. Garnsey* 1930 A.C. 472 where the majority of the Law Lords held that an alteration in the rules of a society registered under the Industrial and Provident Societies Act, 1893, requiring members of the society to subscribe for additional shares is not binding on members who have neither voted for the alteration nor otherwise assented to it. Lord Tomlin, in his speech observes that a power enabling a majority to amend the rules does not justify as against a dissenting member any alteration whatever, where neither by the statute nor by the rules themselves, there is any rule expressed to be more fundamental and unalterable than any other. The learned Law Lord observed as follows at page 500:

There is however the second consideration. Does a power enabling a majority to amend the rules justify as against a dissenting member any alteration whatever, where, as here, neither by the statute nor by the rules themselves is any one rule expressed to be more fundamental and unalterable than any other?

The answer in my judgment must be in negative.

How far a majority of the shareholders of a company can pass an-article enabling them to purchase the minority shares compulsorily on certain terms came up for consideration in *Brown v. British Abrasive Wheel Co.* (1919) 1 Ch. 290 in which case Astbury, J., held that the enforcement of the alteration of the articles of a company on the minority, which is for the benefit of the majority, can not be permitted. Both these cases proceed upon the assumption that the proposed alteration was neither changing the basic structure of the society or altering the same to the benefit of a majority. It cannot be said that in this case the resolution by which the Madura Labour Union was expelled, thereby making it impossible for it to function on the board of directors, can be said to, be such a fundamental change as would not be within the competence of the general body.

7. Various decisions, English and Indian, were cited before us to show that in such associations and companies the power of the majority to alter the regulations and bylaws at a general body meeting, which is the exercise of the supremacy of the majority, is subject to the following exceptions, viz., (1) where the act complained of is ultra vires the company; (2) where the act complained of is a fraud on the minority; and (3) where there is absolute necessity to waive the rule in order that there may be no denial of justice. Where, therefore, the acts complained of fall within the exceptions abovenamed, the members of a registered society who are in a minority would be entitled to institute a suit on behalf of themselves and other members of the society for redress of the grievance. See *Satyavart Sidhantalankar Vs. The Arya Samaj, . Bhagwati, J.*, has relied in that case upon a large body of case law of the English courts for the above propositions some of which lay down the law in unequivocal terms. We do not think that for the decision of the present case it is obligatory to traverse at length the propositions of law enunciated in some of those English cases. Only a few of them need be referred to of which *Dominion Cotton Mills Co., Ltd. v. Amyot* (1912) A.C. 546 can be considered to be a model case. Lord Macmaghten, in delivering the judgment of the Judicial Committee, held that in an action by two shareholders in a cotton company to set aside a lease of the company's mills and also a resolution of the company in a general meeting approving the same, it was incumbent upon the plaintiff to show that the majority of the shareholders either acted ultra vires, or abused their powers, as to deprive the minority of their rights. Reliance was placed for this view on the dictum of Lord Davey in *Burland v. Karle* (1902) A.C. 83 . Where the majority of company proposed to benefit themselves at the expense of the minority the court may interfere to protect the minority and in such a case a suit filed by one shareholder on behalf of the others against the company would be a proper one. See *Menier v. Hooper's Telegraph Works* L.R. 9 Ch. A. 350. This decision was referred to by Lord Davey in *Burland v. Barle* (1902) A.C. 83 with approval. The position therefore is that where the action of the majority is by itself a tyrannical one, with the intention of oppressing the minority, then, where such action is ultra vires or not bona fide, the courts can interfere. What we have to consider is

whether the resolution of the general body, though passed by a small majority, by which the Madura Labour Union was deprived of the right of being on the directorate and thereafter by the amendment of by-law No. 35 expelled from the membership of the co-operative stores, is such an exercise of tyrannical power on the part of the majority in its self-interest and with the object of depriving the majority of its legitimate rights. It cannot be said that on the materials placed before us the conclusion is irresistible that the object with which the resolution was passed amounted to that. In the counter-affidavit of the acting secretary of the stores reference is made to rival labour unions and that the petitioner labour union had on its rolls only a minority of the members of the Madura Mills and such being the case, the majority of the workers of the mills had no opportunity of being represented in the labour union at all. It is not a matter of necessity for us to decide on these questions, but no evidence has been placed before us to show that there has been any exercise of tyranny on the part of the majority on a minority in this case. We do not think therefore that the principles enunciated in the cases cited above which have been adequately discussed in the judgment of Bhagawati J. in *Satyavart Sidhantalankar Vs. The Arya Samaj*, can be applied to the circumstances and facts of the present case.

7. Mr. Narasaraju then contended that the amendment of the by-law No. 35 amounted to a deprivation to the petitioners of their fundamental rights under Articles 14, 19(1)(c) and (f) of the Indian Constitution. According to him Article 19(1)(c), which contemplates the freedom of association and right to form associations implies the right to enjoy the benefits and privileges of the membership of the union and since such a right exists, freedom from expulsion is the necessary concomitant of the right to form an association, and, as such, the action of the majority in amending the by-law is repugnant to the Indian Constitution. We are not satisfied that the provisions of Part III regarding fundamental rights can apply to a matter like this. Part III of the Constitution refers to the fundamental rights inherent in all the citizens which cannot be taken away by legislation by the State or the Union, and it cannot be made applicable to registered societies or companies which are voluntary associations. It is difficult to say that a by-law passed by a registered society is a law within the meaning of Article 13(3) of the Constitution. Our attention was invited to the Madras Co-operative Societies Act, Sections 2(a), 4, 9(3) and 10, for the position that a by-law can be called a law within the meaning of Article 13(3) of Part III of the Indian Constitution. We do not think that the term "law" defined in Article 13(3)(a) includes a bylaw of a society like this. This argument therefore need not detain us much longer.

8. Articles 13(3) and 13(3)(a) in Part III deal with the fundamental right which a citizen has against the State and it cannot be said that any association of individuals making a bylaw or a rule for their own conduct and observance can be said to make laws against which fundamental rights are guaranteed under Part III of the Constitution. Moreover, a labour union is not a citizen though it may be a person. The fundamental rights part of the Constitution makes a

distinction between a person and a citizen, the latter term being defined in Article 5. A corporate body, like a labour union, may well have fundamental rights though they are not citizens and such rights are available to them as well. See Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, at 898 and 922 and 923 : (1951) S.C.J. 29 In this case it cannot be said that the State is infringing the rights of association of any individual, and therefore the principles laid down by one Supreme Court in Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, at 898 and 922 and 923 : (1951) S.C.J. 29 at 45 apply to the facts of this case. Mr. Narasaraju also" wanted to support his argument by reference to the decision of the United States Supreme Court Reports in *Truax v. Corrigan* 66 L. Ed, 254. We do not think that any of the observations contained therein can be usefully applied to the facts of the present case, because there is no contravention of any of the fundamental rights here at all. Reliance was later on placed on Article 14 of the Constitution which provides for equality before the law, and it is contended that a by-law which places the rights and privileges of a minority at the mercy of a majority is a denial of justice and therefore a denial of equal protection of the laws. Here also decision of the United States Supreme Court in *Yick Wo v. Hopkins* 30 L. Ed. 220 and the well-known Chinese Bookkeeping case in *Yu Cong Eng. v. Trinidad* 271 U.N. 500 were referred to. Reference was also made to *Rashid Ahmed v. Municipal Board, Kairana* (1950) AIR S.C. 163 relating to the licensing of a vegetable market and the holding of a by-law of a municipal corporation as invalid. These decisions would certainly have been of great help if there had been an infringement of any of the fundamental rights. But, as we have already stated, the resolution passed by a majority of the co-operative stores cannot be said to be an infringement of a fundamental right. In our opinion there are no special privileges for a founder-member given by the by-law, and unlike the Companies Act, in this case there is no necessity to provide for a two-third majority as it is open to the general body to amend from time to time the by-laws as seen from by-law No. 34 and by-law No. 43.

9. The validity of the expulsion of the Mudura Labour Union is therefore questioned on two grounds, viz, (1) that under bylaw No. 35 it is only a member who is a human being that can be expelled because it does not apply to a legal person like a union as the misconduct of deception contemplated cannot be committed by a legal person; and (2) even if such an expulsion is possible, the fundamental principle of natural justice that a party against whom an adverse order is to be passed should be given an opportunity of giving his explanation and of defending himself has not been observed in this case, or, in other words the well-known maxim *audi alteram partem* has been violated. It is admitted that except mentioning the fact of the amendment of the by-law and the proposed expulsion of the Madura Labour Union in the agenda of the meeting to be held on 18 March 1951, the labour union was not served with any notice of what the charges against it were and the union was not given an opportunity to explain. At the meeting a resolution was moved to the effect that the continuation of the membership right of the Madura Labour Union was proving detrimental to the

interests of the stores as its general conduct is such as to encourage deception of the stores and there, fore, the removal of the Madura Labour Union from the membership had become a necessity. Such being the case, in exercise of the powers conferred under by-law No. 35 the meeting of the general body resolved to expel the Madura Labour Union from the membership of the stores. No particulars were furnished to the labour union regarding its conduct which, according to the sponsors of the resolution, was detrimental to the interests of the stores. Nor was the union informed as to how it had deceived the stores in any way. Whether the general conduct of the union was such as to render its removal necessary in the interests of the stores is a matter on which the union should have been heard before a verdict against it is passed. In view of the admitted circumstance that the labour union was not informed previously of the details of the deception and misconduct levelled against it, and the fact that the particulars as to render its removal necessary in the interests of the stores were not given, we have to take it that the resolution whereby the union was expelled was illegal and has no effect whatever. In *Wood v. Wood* L.R. 9 Ex. 196 Chief Baron Kelly enunciated the rule thus:

The committee are bound in the exercise of their function by the rule expressed in the maxim *audi alteram partem*, that no man shall be condemned to consequence resulting from alleged misconduct unheard and without having the opportunity of making his defence.

9. In *Compertz v. Goldingham* ILR 9 Mad. 319 Collins, C.J., and Muthuswami Ayyar, J., observed that this rule is not confined strictly to legal tribunals but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals. They also refer to the dictum of Brett, L.J. in *Dawkins v. Antrobus* 17 Ch. D. 615, In *Compertz v. Goldingham* ILR 9 Mad. 319 since the person who was expelled was not given an opportunity of making his defence, the High Court held that his expulsion was illegal. At page 324 the learned Judges expressed it in the following words:

The learned Counsel for the respondents drew our attention to the fact that the appellant knew that his letter to Major Chard was laid before the committee, but that is not enough. Now, bearing in mind the rule of law so clearly laid down in *Innes v. Wylie* I.C. & K. 263 by Lord Denman, C.J., and in *Wood v. Wood* L.R. 9 Ex. 196 by Kelly, C.B., we have come to the conclusion that the appellant had no opportunity of defending¹ himself against this particular charge. Indeed as far as we can judge, he did not know that the writing¹ of this letter was a part of the charge against him. We believe that the committee were acting according to the best of their judgment, but they have made a mistake and they have expelled the appellant from the Bellary club partly on a charge which, if they had considered the matter, they would have found had never been brought to the appellant's notice. Upon this ground and this ground alone, we are of opinion that the appellant is entitled to succeed in his appeal.

10. This decision has been upheld in *Mohamed Kalimuddin v. Stewart* ILR 47 Cal. 623 where the matter has been discussed in very great detail in the judgment of Mookerjee, J. Quite a large number of English cases have been referred to and considered in this case. We may also refer to a recent judgment of *Gentle and Ormond, JJ., in Ezra v. Mahendra Nath Banerji* ILR (1946) 2 Cal. 88. The rules applicable to such cases are founded on the principle that the body empowered to expel a member must make a fair enquiry into the truth of the allegations against him after giving notice to the member concerned that his conduct is about to be enquired into and giving him an opportunity of stating his case to them. The leading cases on the subject are *Labouchere v. Wharncliffe* 13 Ch. D. 346, *Russell v. Russell* 14 Ch. D. 471, *Dawkins v. Anrobus* 17 Ch. D. 615 as well as *Wood v. Wood* L.R. 9 Ex. 196. It is unnecessary to multiply authorities on this subject because the principle is so well-settled and so widely known that a reiteration of the same will be mere redundancy. We therefore hold that the action of the society is illegal and ultra vires, the result being that the Madura Labour Union continues to be a member of the society.

11. What then is the remedy open to the petitioners for getting redress from the illegal and ultra vires order expelling the labour union from the society? Both the learned Advocate-General, who appeared for the Registrar of Co-operative Societies, as well as the learned Government Pleader, who followed him in his argument, strenuously contended that the petitioner should resort to an ordinary court of law by filing an original suit for redressing its grievances, and that this Court should not exercise the functions conferred upon it under Article 226 of the Constitution. This argument is based upon the assumption that the expulsion of a member of the co-operative stores is a matter which is not one touching the business of the society and as much is outside the purview of Section 51 of the Co-operative Societies Act. In his letter to the union, the Registrar has suggested the filing of an application for the setting up of an arbitrator to decide the dispute u/s 51, and the same attitude is now taken by the Advocate-General and the Government Pleader appearing for the Registrar of Co-operative Societies. In a recent case in C.M.P. No. 6730/1950 and C.M.P. 7779 of 1950 (*Vasu Nair v. the State of Madras*) the Hon'ble the Chief Justice and Viswanatha Sastri, J., have expressed the opinion, interpreting a by-law similar to by-law No. 35 in all terms, that the expulsion of a member from a co-operative society is a matter touching the business of the society, and, as such, the remedy that is open to the expelled individual is to seek redress by applying to the Registrar for appointment of an arbitrator to decide the dispute. The learned Judges have held that the remedy by way of suit would not lie in the circumstances. A contrary view was taken earlier by one of us in *Savithri Bai v. Thotappa* ILR 1951 Mad. 883 before the decision of the Bench referred to above. Both the learned Advocate-General and the learned Government Pleader contest the correctness of the decision arrived at by the Bench and have referred us to earlier cases on the subject; viz. *Velayuda Mudali v. the Co-operative Rural Credit Society* 66 M.L.J. 90, *Gopinath v. Ramnath* ILR 47 All. 374 and *Ramendranath Mukherji v. Balurghat Central Co-*

operative Bank, Ltd. ILR 59 Cal. 1165. Having considered the decision of the Hon^{ble} the Chief Justice and Viswanatha Sastri, J., carefully, it seems to us that the sounder view is the one set forth in Savithri Bai v. Thotappa ILR 1951 Mad. 883, we adhere to the view taken by one of us in that case. In both the decisions the judgment of Mukherjee, J., of the Calcutta High Court in Hara Dayal Nag v. Chandpur Central Co-operative Bank, Ltd. ILR (1938) Cal. 144 has been discussed and considered. Mr. Narasaraju is not prepared to contend that the expulsion of a member is a matter touching the business of the society because the petitioner has already taken up the attitude that an enquiry by an arbitrator is not the proper remedy for deciding this dispute. It comes to this both the petitioners and the respondents' counsel are agreed that Section 51 cannot apply to the controversy here. The view taken in Savithri Bai v. Thotappa ILR 1951 Mad. 883 is somewhat strengthened by the observations of the House of Lords in *Me Ellistrim v. Ballymacelligott Co-operative Agricultural and Dairy Society* (1919) A.C. 548 where it was held that in a case where a co-operative society amended its rules whereby certain changes were made in its original constitution and an action was brought by a member impeaching the validity of the rules, the dispute as to whether the rules of the society are ultra vires was not a dispute between the society and its members within Section 49 of the Industrial and Provident Societies Act, 1893, and that an action was competent. At page 561 Lord Birkenhead, L.C., says thus:

The question here is whether certain rules were illegal and ultra vires. Such a dispute is not a dispute between a member and the society within the meaning of the statute. The appellant in this case professes that he has not quarrelled with the society as lawfully constituted, but complains that the constitution of the society has been illegally altered. The dispute, therefore, rightly viewed, is a dispute between the persons as to the true constitution of the society.

12. Similar observations are also found in the speech of Lord Atkinson. It therefore follows that a remedy by way of a suit is open to the parties.

13. But is that a convenient, speedy, beneficial and effectual remedy, is the question. The learned Counsel for the co-operative society-referred us to two recent decisions of this Court where it has been held that an application under Article 226 of the Constitution will not lie where there are other remedies open: In *Re: Gadea Nagabhushana Reddi and Another*, and In *Re: Kallumattam Thippaswami by next friend and father Rudrayya*, . He also contended, relying on Halsbury's Laws of England, Volume IX, page 765, paragraph 1304, that a mandamus will not lie against a private corporation: Of course, certiorari will not lie in the circumstances. Writ petition No. 318 has to be and is hereby dismissed without costs Various authorities, English and Indian, have been cited before us to show that even though there is another remedy, if the issue of a writ of mandamus is more convenient, speedy, beneficial and effectual, then that should be resorted to rather than the more protracted form of litigation. In this connexion we may refer to the decision of a Bench of this Court in *G.A. Natesan*,

In re 31 M.L.J. 634. At page 674, Kumara-swami Sastri, J, observed as follows:

It is well-settled by a series of decisions that where a corporation or a public body has statutory duty of a public nature towards another person a mandamus will lie to compel its performance at the suit of any person aggrieved by the refusal to perform the duty unless there is another remedy "equally convenient, speedy beneficial and, effectual" as the mandamus and that by-remedy is meant, not a remedy by act of the party but *remedium juris* or "some specific legal remedy or a legal right"

14. When there is no equally convenient, beneficial and effectual remedy open to the applicant, a writ of mandamus will lie. The remedy by way of a suit is not as beneficial and effectual as a mandamus. See *Rex v. Christ's Hospital Governors*. Dunn Ex. Parte (1917) I.K.B. 19.

15. We are clearly of opinion that the remedy by way of suit is not convenient, speedy, beneficial, or effectual and that since we are convinced that the resolution expelling the union from the society is illegal and void, a writ of mandamus should be issued. Then the question arises as to whether a writ of mandamus can be issued against a body like a co-operative society which is not a public body. A writ of mandamus may issue in cases where although there is an alternative legal remedy such mode of redress is less convenient, beneficial and effectual. Vide Halsbury's Laws of England, Volume IX, page 744, paragraph 1269, and the cases quoted in footnote (p) therein. In England it is common practice to issue a writ of mandamus to such individuals as to the clerk of a trade corporation, to deliver up the corporation books on his removal. Vide Halsbury, page 749, Volume IX. It will also issue for the purpose of permitting the inspection of particular entries in the records of a city company. See *In re Burton and the Saddlers Co.* 31 L.J. (Q.B.) 62. Paragraph 1279 at page 751 of Volume IX, Halsbury's Laws of England, enumerates cases regarding the enforcement of statutory rights and duties, and there in it is stated that it is not necessary that the party or corporation on whom the duty is imposed should be a public official or an official body. That a writ of mandamus can be issued against a company compelling it to proceed in a certain manner is evident from the decision in *Leominster Canal Navigation Company v. Sharewsbury and Jareford Railway Co.* 69 E.R. 1272 at 1279. In *the King v. Merchant Tailors' Co.* 1831 2 T. & A.D. 115 the court held that it has power to issue a mandamus against an ordinary company. That such a writ can be issued against a private charity is evident from *the Queen v. Abrahams* 114 E.R 857.

16. In view of the authorities discussed above, we are clearly of opinion that this is an eminently fit case in which a writ of mandamus should issue and accordingly we direct in writ petition No. 317 of 1951 that a writ be issued directing the first respondent society to forbear from enforcing the resolutions passed on 18 March 1951 by which the petitioner union was expelled from the society. This petition is allowed with costs. Advocate's fee fixed at Rs. 250 in each writ petition.