

**THE KISAN SANGH (FARMERS) INDUSTRIAL
ASSOCIATION *v.* THE REGISTRAR OF
INDUSTRIAL ASSOCIATIONS**

[Appellate Jurisdiction (Seton, C.J.) October 27th, 1948]

Industrial Associations Ordinance—Ss. 9 and 16—definition of industrial association.

The Kisan Sangh (Farmers) Industrial Association applied to the Registrar of Industrial Associations for registration. The Registrar refused, his reason being that the association in question carried on both the business of an industrial association and that of a co-operative society.

The Association appealed.

HELD.—That as the Kisan Sangh was operating in both the above capacities, the Registrar's decision was correct.

N. S. Chalmers for the appellant.

B. A. Doyle, Solicitor-General, for the respondent.

SETON, C.J.—Mr. Chalmers on behalf of the appellants relies on the definition of the word "association" which is contained in section 2 of the Ordinance and reads as follows:—

" 'association' means any number of employers or employees or other persons in any particular industry associated together primarily for the purpose of regulating relations *inter se* or with other persons or associations and for protecting or furthering their interests and those of their associations."

An industrial association is another name for a trade union and it is natural to turn to the English law on this subject in order to understand what is meant by the above definition which does not err on the side of clarity. The Fiji Ordinance was modelled on a similar one in Mauritius (see the speech of the Industrial Relations Officer in the Legislative Council Debates for the year 1941, page 227), but it is safe to assume that the draftsman of the original Ordinance (whether its source was Mauritius or elsewhere) used English law as a basis.

The following is taken from *Sophian's Trade Union Law and Practice* (1937), p. 61:—

"The expression 'trade union' for the purposes of the Trade Union Acts 1871-1906, means any combination, whether temporary or permanent, the principal objects of which are under its constitution—

(1) to regulate the relations between—

- (a) workmen and masters ; or
- (b) workmen and workmen ; or
- (c) masters and masters ; or

(2) to impose restrictive conditions on the conduct of any trade or business ; or

(3) to provide benefits for members:

Provided that the Acts shall not affect—

- (1) any agreement between partners as to their own business ;
- (2) any agreement between an employer and those employed by him as to such employment ;
- (3) any agreement in consideration of the sale of the goodwill of a business, or of instruction in any profession, trade or handicraft."

It must be confessed that the resemblance of the above to the definition of "association" in the Fiji Ordinance is not very striking but there is this similarity, namely, that in each case it is made clear what are to be the principal objects of a trade union or an industrial association, as the case may be. The principal objects of an industrial association must be the regulation of relations between employers, employees or other persons in a particular industry either *inter se* or with other persons or associations, and also the protection and furtherance of the interests of the members of the association itself and roughly speaking these must also be the principal objects of an English trade union except that the latter has an additional choice, namely, the provision of benefits for its members. As to what have been held to be "benefits" within the meaning of section 4 (3) (a) of the Trade Union Act, 1871, see *Sophian (supra)*, p. 233.

It would not be profitable to pursue the English law on the subject of trade unions farther than this because the differences between its provisions and those contained in the Industrial Associations Ordinance are too numerous. The latter states what the primary objects of an industrial association must be but gives no indication of what other objects it may have in addition, although presumably it may have other objects—albeit ancillary—otherwise, instead of the word "primarily" in the definition of "association" one would expect to find the word "solely" or some other similar expression.

The appellant association operates both as an individual association and as a co-operative society. There is no evidence to show what proportion of its activities is engaged in the one capacity and what proportion is engaged in the other, but I think that it may be assumed from the record of the previous litigation in which this association was concerned, to which Mr. Chalmers has called attention that its activities as a co-operative society are not less than its activities as an industrial association. If this be the case, it follows that its primary object is not that of an industrial association, nor can its activities as a co-operative society be described as ancillary. Apart from this, however, trade unions occupy a particularly privileged position under the law in that they and their members and officials cannot be sued in respect of any tort committed by them on behalf of the union (see section 4 of the Trades Disputes Act, 1906), and this privilege has been conferred on industrial associations in Fiji by section 26 of Cap. 79; moreover, they stand in a special position in other respects also—see, for example, sections 3, 4 and 25 of Cap. 79. This is solely because they are industrial associations; no such benefits are conferred on co-operative societies. Further, section 57 of the Co-operative Societies Ordinance, 1947 provides expressly that a registered co-operative society shall be deemed not to be an industrial association. Co-operative societies have their privileges too (see Part III of the Ordinance) but they differ from those of industrial associations.

From the foregoing I deduce that it is not the intention of the legislature that an industrial association shall operate at one and the same time both as an industrial association and as a co-operative society, and therefore in my opinion the Registrar was right in refusing to register the amended constitution and rules of the appellant association.

Appeal dismissed.