

probabilities that they had approved of the decision taken . In that case there was sufficient data of a numerical nature to enable the Court to come to a decision; here we have no numerical data at all.

In all the circumstances, and bearing in mind the first respondent's refusal to admit the correctness of the facts alleged, I am of opinion that applicant has failed to establish on affidavit that the Communist Party was in fact legally dissolved as claimed by him and had therefore ceased to exist by the 17th July, 1950. The first and main submission therefore fails. It is therefore unnecessary to deal with the second submission by first respondent based on the nomenclature of the Bill.

Paragraph 12 of the applicant's affidavit contains his alternative submission to the effect that even if the designation of the liquidator is valid in law, i.e. that he was validly appointed under the Act, the first respondent has no power or jurisdiction to place his name on the aforesaid list, by reason of the fact that prior to the passing by Parliament of Act 44 of 1950 he had accepted the passing of the resolution earlier referred to, had severed all connection with the Communist Party, ceased to be a member or office bearer/...

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bearer thereof and at no time since 20th June was or  
has been a member, office bearer or supporter thereof.  
He says that if the first respondent is allowed to  
continue to act as liquidator, he will suffer grave  
prejudice if his name is placed upon the list by the  
first respondent "which would be his next immediate step  
if the first respondent is allowed to carry out his  
purported duties in terms of the Act." The alternative  
submission admittedly involves the admission that the  
first respondent has validly been appointed and is en-  
titled therefore, to discharge the duties laid upon him  
by the Act. The suggested result of his performance  
of his duties is an anticipation of a somewhat pessi-  
mistic nature, namely that the first respondent would  
immediately proceed to place the applicant's name upon  
this list. His name has not yet been placed on any  
such list, and presumably this will only be done if  
the first respondent is satisfied, as a result of his  
investigations, that he should do so. In view of the  
fact that the first respondent has refused to admit the  
factual accuracy of the allegation upon which the alter-  
native submission is based, the applicant is placed in  
a position of considerable difficulty, for he assumes  
that the finding of the first respondent will be adverse  
to/...

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to him, and that therefore, his name will be placed upon such a list. This, however, is the very point that the first respondent will have to decide after having completed his investigations. If he is satisfied that the applicant's name should not be put upon the list, presumably it will not be. If he is so satisfied, it doubtless will be. The placing of any name upon the list is a function laid upon the liquidator in the first place. If he does place a particular name upon the list, any such person aggrieved by his decision doubtless will have the right to bring his decision on review before this Court, which would then have the right - and the duty - to give a decision upon the validity of the liquidator's action in placing the name of the person concerned upon the list. He has, however, not done so as yet, and the alternative submission of the applicant means that this Court is asked to say in advance, without any knowledge of the facts that may be established by the liquidator's investigations, that he has no power or jurisdiction to put his name upon such a list. The submission involves the right in this Court at this stage, before the matter has been finally determined by the liquidator, to declare, on the allegation made by the applicant - but not admitted by the first/...

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first respondent - that he had ceased on the 20th June to be a member of the Communist Party, that the liquidator has no power to consider his case.

This submission is also of a far-reaching character, and in supporting it, Mr. Duncan contended that at this stage the Court ought to be satisfied of the truth of the factual allegations made by the applicant in regard to his cessation of membership of the Communist Party, he having admittedly been a member until the 20th June. I am not prepared, at this stage, to deny to the liquidator the right to investigate this allegation, for that is what the submission amounts to. He is, in terms of the Act, specifically appointed to discharge certain functions and duties and this Court can only function, so far as the allegation of the Applicant is concerned, as a Court of Review, subject to any relevant provisions of the Act. It was suggested by Mr. Duncan that if the Court had any doubt as to the correctness of the allegation in issue, it could order the applicant to submit himself to cross-examination before it. In view of the fact, however, that I am satisfied that the Court would have no jurisdiction to deal with this factual allegation prior to its decision by the liquidator/...

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ator, no purpose could at this stage be served by such cross-examination, for the initial decision as to placing any name upon a list is entrusted to the liquidator and to him alone. Mr. Duncan developed this argument by saying that the section in question, section 4(10), refers to persons "who are or have been office bearers, officers, members or active supporters of the organisation which has been declared an unlawful organisation." He contended that "are" or "have been" refers to any time after the 17th July, the date of the promulgation of the Act in question. He says the phrase "have been" could mean either (a) at the date of the promulgation of the Act, i.e. 17th July, 1950, or (b) at any time; but that in view of the strong presumption against retrospective operation the former would be the true meaning of the phrase. Mr. van Wyk on this point argued that "have been" means "at any time". He contended strongly that at this stage this matter of interpretation was not before the Court, and that any judgment on this point would be obiter because the factual accuracy of applicant's resignation was a matter for determination by the first respondent. I am in agreement with him on this point, and am not prepared at this stage to decide this question of interpretation/...

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pretation, any judgment at this stage on this point being premature and obiter. Without expressing any opinion upon the true interpretation, I may be permitted to say that if Mr. Duncan's submission is correct, the portion of the Act dealing with the naming of persons would, for practical purposes, be rendered entirely nugatory. It would, in effect, mean that the only persons the liquidator could deal with would be such persons, as after the 17th July remained, albeit illegally and subject to criminal penalties, members of an organisation which had on that date been declared by the Act to be defunct. Be that as it may, this question of interpretation does not at this stage fall for determination by this Court. If a decision adverse to the applicant is given by the liquidator, and his name is eventually put upon a list, this Court will presumably on review be required to give a decision thereon.

For these reasons, therefore, I am satisfied that the alternative submission also fails. In the result the Rule Nisi is discharged, with costs.

Newton Thompson, J.: I concur.

van Zijl, J.: I agree.

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