
(2013) 05 BOM CK 0096

In the Bombay High Court

Case No : Arbitration Petition No. 217 of 2013 and Notice of Motion No. 591 of 2013 in Arbitration Petition No. 217 of 2013

Dr. Dalvi Ali Abdul Quadar

APPELLANT

Vs

Kokan Mercantile Co-op. Bank Ltd. and Others

RESPONDENT

Date of Decision : 03-05-2013

Acts Referred:

Citation : (2013) 6 BomCR 186 : (2013) 4 MhLj 437

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anoop V. Mohta, J.—Rule, returnable forthwith. Heard finally by consent of the parties. The Petitioner has invoked Section 34 of Arbitration and conciliation Act, 1996 (for short "Arbitration Act") and thereby challenge Award/order dated 22nd January, 2013 passed by the Arbitrator appointed by the Central Registrar, Co-operative Societies u/s 84 of the Multi-State Co-operative Societies Act, 2002 (the Act). The operative part of the above is as under:

The dispute application is dismissed with arbitration costs payable to the respondents in one set i.e. Rs. 40,000/-. The disputant to bear his own.

2. Respondent No. 1, a multi-state co-operative Bank (the Bank) by letter dated 1st October, 2012 terminated the membership of the Bank and communicated to the Petitioner in following words:

This is to inform you that you were a Director of M/s Ratna Drugs Ltd. and had stood surety for obtaining the loan granted by the Bank to the said company. The said loan was thereafter settled under compromise settlement by waiving off an interest amount of Rs. 74.87 lacs.

The Board of Directors of our Bank in their meeting held on 27th September, 2012 has decided to forfeit your shares and adjust the amount against the

settlement of loan account of M/s Ratna Drugs Ltd, in the capacity of you being a Director and Surety to the said loan account.

Therefore please note that your Membership No. BR/6893 amounting to Rs. 3,125/- has been forfeited and the amount is adjusted against the interest and other charges receivable on account of M/s Ratna Drugs Ltd.

3. The Petitioner being aggrieved by the same, raised a dispute. The learned Arbitrator, after framing issues by the impugned order, dismissed the dispute application filed by the Petitioner with costs.

4. The Petitioner was admittedly a Member of the respondent- Bank, since 1981 and had been actively participated in the affairs of the Bank. The Petitioner was, at the relevant time, one of the Director of M/s Ratna Drugs Ltd. (the Company) and had stood surety for obtaining the loan from the Bank. There were defaults. It was settled by a compromise by waiving off interest of Rs. 74.87 Lacs. The Bank issued no dues certificate dated 15th January, 2009 certifying that Dr. Ali Abdul Quadir (the Petitioner) has no dues payable in personal capacity and also in respect of the Company. By another letter dated 3rd February, 2009, the Bank informed to the Registrar of Companies, Mumbai, that as all dues were recovered, cancel/restore the charge on the Company's factory premises. By another letter dated 4th February, 2009, the Bank certified that "the accounts have been closed on 26th March, 2006 and 22nd January, 2009 respectively and there are no dues pending". It is also certified that "And Personal Guarantees given by all Directors of M/s Ratna Drugs Ltd. has been released".

5. The Petitioner, on 1st November, 2012, asked for the details of newly admitted Members of the Bank. He raised various objection to an enhancement of requirement of minimum shares for new membership, from 4 shares to 200 shares. Instead of replying it, the respondent's issued impugned letter dated 1st October, 2012. The legal notice was issued on 15th December, 2012 by the Petitioner to withdraw the action. Ultimately, filed the arbitration case.

6. Before the learned Arbitrator, both the parties filed their reply and made submissions in support of their contentions. There was no denial to the documents, so placed and filed by the parties, including the documents/certificates as referred above. No evidence was lead by the bank and therefore no cross examination also.

7. The learned Arbitrator held that the disputant failed to prove that the decision of the respondents to verify membership and adjust share amount for recovery of loan advanced to the Company is illegal and unwarranted. He further held that the respondents proved that the decision of adjustment of dispute of share was taken as per policy of the Bank and due to inadvertence, it was not timely acted upon. It is further observed that the respondents proved that the decision of adjustment of share amount to disputant towards the recovery of dues was validly forfeited the membership of the disputant and lastly held that the adjustment of share amount towards recovery of the settlement amount is not

barred by provisions of Limitation Act and thereby passed the final order. The effect of this Award is that the petitioner is debarred permanently and disqualified from membership of the Bank. In the result, he would not in a position to take part in any election of the Bank, from the date of order itself, though, he was active member of Director of the Bank for many years

8. Section 30 of Multi-State Co-operative Societies Act, 2002 is reproduced below:

30. Expulsion of members.-- (1) A multi-state cooperative society may, by resolution passed by a majority of not less than two-thirds of the members present and voting at a general meeting of members held for the purpose, expel a member for acts which are detrimental to the proper working of the society:

Provided that the member concerned shall not be expelled unless he has been given a reasonable opportunity of making representation in the matter. (2) No member of the multi-state co-operative society who has been expelled under subsection(1), shall be eligible for re-admission as a member of that society, for a period of one year from the date of such expulsion.

9. The Bye-Laws of the Bank provides for disqualifications of membership, expulsion of member, Cessation of membership and lien of shares, dividend and deposits. The relevant clauses/portion are as under:

13. Disqualification of Membership:

No person shall be eligible for being or continuing as a member of the Bank if:

.....

(b) has defaulted in payment of any dues including contributions, subscriptions, if any, as may be decided by the board of the bank from time to time.

15. Expulsion of Member:

Bank may by a resolution passed by a majority of not less than two thirds of the members present and voting at a general meeting held for the purpose, expel a member for acts which are detrimental to the proper working of the Bank.

a) on expulsion from the bank, in accordance with the provisions of the Acts and the Rules, a person will cease to be a member. Such expulsion may involve forfeiture of shares at the sole discretion of the Bank. Provided that the member concerned shall not be expelled unless he has been given a reasonable opportunity of making representation in the matter.

b) No member of the bank who has been expelled shall be eligible for re-admission as a member of the Bank for a period of one year from the date of such expulsion.

16. Cessation of membership:

The membership of the Bank may cease in case of:

.....

(v) incurring any of the disqualification's of membership.

10. Admittedly, there was no show cause notice and/or any opportunity was given by the respondent- Bank to the Petitioner, before taking impugned action. There is no mentioned about no dues certificates and other documents certifying that the petitioner's dues have been settled and all directors are absolved from the liabilities/dues in the year 2009 itself and no reason to overlook it. Having once issued these certificates, the abrupt action so initiated by the Bank, without due notice and/or hearing, this itself in my view is contrary to the law. As by the letter, they have disqualified the petitioner permanently. Such disqualification no way can be stated to be just a cessation of membership as sought to be contended by the learned counsel appearing for the Bank.

11. There were no dues payable by the Company and/or it's directors including the petitioner and as certified by the Bank itself in the year 2009. There was no question of taking this action for the alleged recovery of balance amount, pursuant to the settlement. I am inclined to observe that the petitioner cannot be termed as "defaulter in payment of any dues" as contemplated in R.13. This is not the case of non payment of other dues of the Bank. The respondents case is that as the dues of the year 2009 though settled, the balance amount of Rs. 3,125/- not paid by the Company and the petitioner, the bank, inadvertently could not be recovered it earlier, therefore, they took this action of forfeiting the share amount and that resulted into the cessation of member. The other submission that the petitioner is entitled and/or eligible to apply for the membership of the Bank after expiry of one year from the date of such expulsion. This itself means that the action is taken by the bank, which falls definitely within the ambit of Section 30 of the Multi-State Co-operative Societies Act, 2002 read with Bye-Law 15.

12. Considering the reasons so given and the effect of impugned letter as well as the order passed by the learned Arbitrator, is that the petitioner is expelled from the membership of the Bank.

13. Both these provisions provide the majority resolution and the hearing before taking such action of expulsion. Admittedly, no such procedure whatsoever followed by the bank. No show cause notice was issued; and no opportunity whatsoever was given to the petitioner before taking such action, which resulted into the termination of membership. The whole action in my view is contrary to the provisions of law.

14. The submission made by the learned counsel appearing for the Bank that the action so taken was well within the purview and policy of the Bank. The learned Arbitrator has also accepted this submission and pass the award. The policy of the Bank even if any, in no way means and/or permit the board members and/or

Bank not to follow the basic principle of natural justice. Such drastic action of disqualifying the member in such fashion, on the basis of closed action of the year 2009 on the foundation that though there were balance dues, which the Bank inadvertently could not recover earlier, is impermissible.

15. Whatever nomenclature they want to give to this alleged action to the cessation of the membership "and/or" temporarily disqualification of the membership is irrelevant. The admitted effect and result of this action is expulsion of membership without following the due procedure of law apart from principle of natural justice. Any policy decision, therefore, of the Bank cannot be against the provisions of law.

16. The learned Arbitrator ought to have considered the aspect of principle of natural justice fair-play and equality as contemplated under the Arbitration Act. I have already observed in Prakash Kumar Sinha Vs. Konkan Mercantile Cooperative Bank Ltd. and Others, , that the learned Arbitrator as appointed by the Central Registrar under the Act, cannot overlook the basic principle of laws. The petitioner and/or respondents have no role to play to appoint the Arbitrator in view of the specific provisions of the Act. The learned Arbitral Tribunal, passed the Award by overlooking the provisions of the Act and the Bye-Laws. The decision given by the learned Arbitrator based on the alleged policy of the Bank, which is contrary to the provisions of the Act and their own Bye-Laws, in my view, is unsustainable.

17. The learned Arbitrator has just overlooked the aspect of limitation not only because Multi-State Co-operative Societies Act provides specific provisions for limitation, but for the reason that the Bank itself on 12th January, 1999 gave those no dues certificates and closed the account; the demand so made based upon the Board of Directors' meeting on 27th September, 2012, in my view, was itself beyond the limitation. The alleged inadvertency even if any, in no way extend the period of limitation, in view of above admitted position on record. There was no such acknowledgement and/or any case of pendency of any proceedings referring to the alleged balance amount.

18. I am inclined to observe that the learned Arbitrator erred in law by holding that "it is the case of removal of membership as a consequence of adjustment of share amount to the loan account of a defaulter loanee more so settlement with its known consequence are proposed by the loanee himself". The petitioner being the member and/or director of the Company that itself cannot be the reason that the Board of Directors/members are permitted to take this action without following due procedure of law. This action is nothing but a giving premium to the respondents for their own wrong, which resulted into the termination of membership of the petitioner.

19. Therefore, taking overall view of the matter, I am inclined to observe that the action of removal of membership of the Petitioner is against the provisions of law. The whole award is therefore illegal and contrary to law and so also the

action of the respondents. Resultantly,

1. Impugned Award dated 22nd January, 2013 is quashed and set aside.

2. The application as filed by the Petitioner No. RCJ 383 of 2012 is allowed in terms of following prayer clauses (a) and (b), on condition that the Petitioner shall deposit an amount of Rs. 3,125/- with the Bank, by Tuesday i.e. 7th May, 2013.

(a) This Hon"ble Authority be pleased to declare and pass Award declaring therein that the decision dated 27/9/2012 of Respondent No. 1- Bank is illegal, unlawful, null and void and further declare that the Disputant continues to be a member and shareholder of Respondent No. 1.

(b) This Hon"ble Court be pleased to pass an Award declaring therein that Respondent No. 1 was not entitled to forfeit the membership No. BR/6893 and share amount of Rs. 3,125/- and be further pleased to direct Respondent No. 1 to restore the said membership to BR/6893 and share amounting to Rs. 3,125/- to the share account of the Disputant with Respondent No. 1-Bank.

3. The Petition is accordingly allowed in terms of prayer clauses (a).

4. Parties to act on the basis of authenticated copy including operative part of the order.

5. Certified copy is expedited.

6. There shall be no order as to costs.

7. The learned counsel appearing for the respondents seeks stay of the judgment/ order passed today. The learned counsel appearing for the Petitioner resisted the same. Considering the reasons so given and in view of the fact that the elections of the Bank is already announced, the prayer for stay is rejected.

20. The main Arbitration Petition is allowed by separate order, therefore, the Notice of Motion is disposed of. No costs.