
(2008) 01 AP CK 0046
In the Andhra Pradesh High Court
Case No : AA No. 26 of 2007

Ganta Jermaiah

APPELLANT

Vs

V. Paul Himamsu and Others

RESPONDENT

Date of Decision : 23-01-2008

Acts Referred:

Andhra Pradesh and Telangana Societies Registration Act, 2001 — Section 23
Andhra Pradesh Arbitration Rules, 2000 — Rule 8
Arbitration and Conciliation Act, 1996 — Section 11, 11(6), 9

Citation : (2008) 2 ALD 464 : (2008) 3 ALT 655 : (2008) 3 ARBLR 433

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : C. Kodanda Ram, for the Appellant; J.C. Francis, for Respondent
Nos. 1 to 3 and Srinivas Mantha, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—This application is filed praying for appointment of arbitrator u/s 11(6)(c) of Arbitration and Conciliation Act, 1996 (Arbitration Act, for brevity) and u/s 23 of A.P. Societies Registration Act, 2001 (2001 Societies Act, for brevity).

2. M/s. G.R.K. Ratnam Memorial Educational Society is registered under the Societies Registration Act, 1860 (1860 Societies Act, for brevity). The applicant and respondents 2, 5, 6, 7 and 8 are founder members of the said society and they established educational institutions in Telugu and English Mediums mainly for the welfare of minorities and weaker sections, which is the main objective of the society. An executive committee (EC) comprising Rudrapati Samuel John as President; V. Sahu as Vice-President; fifth respondent as Secretary-cum-Correspondent; R. Vijayamani as Joint Secretary; second respondent as Treasurer and respondents 6, 7 and 8 as members was constituted. By 2001, statedly significant progress was made in work of society. The applicant alleges that election was held on 4.5.2001 and first respondent was elected as President

and respondents 4 and 5 were allegedly elected as Vice-President and Secretary-cum-Correspondent respectively. Mr. Vijayamani was chosen as Joint Secretary and second respondent as treasurer and Respondents 6, 7 and 8 were re-elected as members of executive committee.

3. The applicant is closely related to respondents. Respondents 5, 6 and 8 are his sons and respondents 2 and 4 are daughters. First respondent is son-in-law and third respondent is grand daughter. He alleges that the respondents submitted copies of forged resolutions to the effect that in EC meeting held on 29.6.2003 resignation of applicant herein was accepted. This was done to take over the control of society. Thus, a dispute arose between applicant and respondents with regard to meeting on 29.6.2003.

4. In the background as above, the applicant filed A.O.P. No. 426 of 2003 on the file of the Court of the District Judge, Vizianagaram. The application was filed u/s 9(d) and (c) of the Arbitration Act for grant of ad interim injunction restraining respondents 1, 2 and 3 herein from functioning or claiming to be the Secretary-cum-correspondent, President and Treasurer respectively of ninth respondent society. By an order, dated 28.8.2003, in I.A. No. 1845 of 2003, the learned District Judge granted injunction as prayed by applicant herein, till November, 2003. The applicant then filed A.O.P. No.669 of 2003 purportedly u/s 11 of the Arbitration Act read with Rule 8 of A.P. Arbitration Rules, 2000 for appointment of arbitrator for adjudication of disputes regarding validity of resolution, dated 29.6.2003. The maintainability and pecuniary jurisdiction were also the points urged in opposing the application. Be that as it is, by order, dated 19.1.2004, learned District Judge appointed Sri J. Janaki Rama Rao, Advocate, Vizianagaram as arbitrator for adjudication of disputes between applicant and respondents. In the meanwhile, respondents 1 to 3 filed A.O.P. No. 668 of 2003 for appointment of Receiver to take care of the affairs of ninth respondent, pending arbitration. The arbitrator Sri Janaki Rama Rao himself was appointed as Receiver to manage the affairs of the society. Against this order, two civil miscellaneous appeals being C.M.A. Nos. 564 and 565 of 2004 were filed in this Court. This Court disposed of the matters observing that learned District Judge should appoint a separate arbitrator whereupon former passed orders on 26.2.2005 appointing Sri D.B.V. Shastry as Receiver.

5. The arbitrator appointed by the District Court filed memo on 2.8.2004 expressing his inability to continue as arbitrator. Therefore, by order, dated 17.1.2005, learned District Judge discharged the arbitrator and appointed Sri Suryanarayana, Retired District Judge, Visakhapatnam as arbitrator. He also could not proceed with the matter. On his request, learned District Judge, by order, dated 13.7.2006 appointed Sri M.V.S.R. Sharma as arbitrator. In the meanwhile, first respondent filed C.R.P. No. 4460 of 2006 challenging appointment of Sri Suryanarayana as Arbitrator. The same was disposed of on 26.10.2006 confirming the order of learned District Judge. The applicant alleges that respondents are delaying arbitral proceedings as they are in illegal

possession of management of the society. In spite of giving opportunity by Arbitrator, they did not proceed with the matter and ultimately by letter, dated 3.2.2007, the arbitrator returned all the records and informed that he is not inclined to continue the proceedings. Therefore, the present application is filed u/s 11(6)(c) of the Act for appointment of arbitrator.

6. Respondents 4, 5, 7, 8 and 9 filed counter-affidavit. Curiously respondent No. 5 filed a separate counter also. Sixth respondent who is served has not chosen to file his counter-affidavit. Respondents 1 to 3 filed separate counters.

7. In the counter, respondents 1 to 3 allege that the applicant herein never appeared before the arbitration proceedings. According to them, when once arbitrator is already appointed, another application for appointment of arbitrator is not maintainable and such application is barred by limitation.

8. Learned Counsel for applicant and the learned Counsel appearing for contesting respondents reiterated their position as disclosed in the pleadings. After hearing them, this Court having regard to Section 23 of 2001 Societies Act entertained a doubt as to whether the District Court can appoint an arbitrator u/s 11(6)(c) of Arbitration Act to resolve the dispute among the committee or the members of the Society in respect of any matter relating to affairs of the society.

9. All the parties to the proceedings herein admit that after the decision of Supreme Court in Vemulapalli Rama Krishna Prasad Vs. Vemulapalli Venkata Narayana Das and Others, S.B.P. and Co. Vs. Patel Engineering Ltd. and Another, whatever be pecuniary value of subject-matter of the dispute, learned District Judge has no competence to appoint an arbitrator. Learned Counsel for applicant, however, submits that 2001 Societies Act is a special enactment conferring power on District Judge to appoint an arbitrator for resolution of dispute among the members of the society and therefore, such an order can be passed. He relies on Section 23 of 2001 Societies Act.

10. Societies Act, 1860 is a Central enactment and it does not contain any provision providing for a special forum or procedure for adjudicating the disputes among members of a society. Any dispute arising in relation to society is to be resolved by way of a suit. A.P. Societies Act 2001, however, contains Chapter IV. It deals with "Disputes, Resolution and Winding up". Section 23 is relevant in the context reads as below.

23. Dispute regarding management:--In the event of any dispute arising among the Committee or the members of the society, in respect of any matter relating to the affairs of the society, any member of the society may proceed with the dispute under the provisions of the Arbitration and Conciliation Act, 1996, (Central Act 26 of 1996) or may file an application in the District Court concerned and the said Court shall after necessary inquiry pass such order as it may deem fit.

11. An analysis of the above provision would show that the section is in two

parts. The first part is to the effect that in the event of any dispute among the committee or the members, any member may proceed with the dispute under the Arbitration Act. Second part is to the effect that in the event of any dispute, any member may file an application in the District Court concerned, and said Court shall, after necessary enquiry, pass such order as it may deem fit.

12. Learned Counsel for applicant lays emphasis on second part and submits that when an application is presented to District Court by any member complaining a dispute among the members of the committee or the members of the society, the District Court can pass any order including appointment of arbitrator. This submission cannot be accepted. The first part gives a remedy of an aggrieved member to invoke the provisions of Arbitration Act. The second part does not refer to Arbitration Act nor confers any powers on the District Court to refer the matter to arbitration to be proceeded with as per the provisions of the Arbitration Act. Indeed if the interpretation suggested by learned Counsel for applicant is accepted, it would violate the provisions of Arbitration Act as well as goes against the ratio laid down by Supreme Court in S.B.P. & Co's case (supra). As Section 23 of 2001 Societies Act enables the member to proceed with the dispute under the provisions of Arbitration Act, an application has to be moved before Hon'ble the Chief Justice or Hon'ble Judge nominated by him for appointment of arbitrator u/s 11(6) of the Arbitration Act. Even when an application is moved u/s 11(6)(c) of Arbitration Act before District Court, learned District Judge cannot appoint an arbitrator. When such an application is moved by any member for resolution of a dispute among the members of the society or members of the committee, learned District Judge himself has to conduct enquiry and pass orders as he deemed fit and proper. He cannot suo motu or on a request refer the matter to an arbitrator for dispute resolution. Therefore, this Court cannot view order passed by learned District Judge appointing arbitrator from time to time as valid one.

13. Insofar as prayer for appointment of arbitrator is concerned, for non-compliance with pre-arbitral procedure, the application cannot be accepted. This is settled principle. Section 11 of the Arbitration Act contemplates the applicant to issue notice of arbitration requesting for arbitration and in the event of there being no response from the other side, can he himself appoint an arbitrator and inform the other side. Even then if there is no response, an application can be moved before this Court u/s 11(6)(c) of Arbitration Act. In this case, on the ground that arbitrator appointed by learned District Judge, Vizianagaram, could not complete the arbitration, an application is moved without even approaching the opposite parties. Therefore, the company application cannot be accepted.

The application, for the above reasons, is accordingly dismissed. No costs.