

(1993) 02 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : L. P. A. (Civil) No. 3 of 1993

General Manager J&K Co-operative Supply & Marketing
Federation

APPELLANT

Vs

Rama Rice & General Mills

RESPONDENT

Date of Decision : 26-02-1993

Acts Referred:

Jammu and Kashmir Arbitration and Conciliation Act, 2002 — Section 20, 34
Jammu and Kashmir Cooperative Societies Act, 1960 — Section 63

Citation : (1993) JKLR 135 : (1993) KashLJ 179 : (1993) SriLJ 157

Hon'ble Judges : B.A.Khan, J and R.P.Sethi, J

Bench : Division Bench

Advocate : S.P.Gupta, H.L.Bhagotra, Advocates appearing for the Parties

Judgement

1. The parties to the litigation are alleged to have entered into an agreement providing an arbitration in ease of disputes and difference arising out of or in any manner touching or concerning the agreement for adjudication by the Registrar, CoOperative Societies, J&X. After the expiry of the period of agreement, the respondent preferred a claim for the storage of paddy at the rate of Re 1/per bag per day and upon denial of the liability by the appellant, preferred a claim of Rs. 11,77, 600. As the claims were not settled, an application under Sec, 20 of the Arbitration Act, was filed in this Court for making of the reference to an independent arbitrator. The petition was resisted mainly on the grounds that in view of the provisions of Sec. 63 of the J&K. CoOperative Societies Act, no relief could be granted to be respondent herein and that in no case an independent arbitrator could be appointed. The learned Single Judge, while rejecting the pleas of the appellant herein appointed District Judge. Jammu, as the

arbitrator for adjudication of all the disputes vide the judgment impugned in this appeal which is stated to be against law and facts requiring to be set aside.

2. I have heard learned counsel for the parties and perused the record.

3. Mr. Gupta, Scarred counsel appearing for the appellant has submitted that as the disputes raised by the respondent herein were covered by

Sec. 63 of the J&K CoOperative Societies Act, this court had no jurisdiction to entertain an application under Sec 20 of the Arbitration Act and

grant relief as prayed, it is however, contended on behalf of the respondent that the disputes raised by the respondent were not covered by Sec.

63 in view of the provisions of subsec (2) of the said section specifying exhaustively the disputes which could be adjudicated under the J&K

CoOperative Societies Act,

4. The question as to whether the disputes raised by the respondent were covered by Sec, 63 of the J&K CoOperative Societies Act or nor, is

not relevant for the purposes of deciding this appeal in view of the fact that the parties had admittedly entered into an agreement wherein it was

provided :

All disputesand differences arising out of or in any manner touching or concerning this agreement whatsoever shall be referred to the sole

arbitration of REGISTRAR, COOPERATIVE SOCIETIES, J&K All points of law and facts will be exclusively decided by the arbitrator and it

shall not be open to the contractor and the surety to plead that the Registrar CoOperatives Societies, J&K, is the Head and the Officer of the

Party No. 1.

The arbitration is providedfor the potties to get their disputes settled through the intervention of a third person, as agreed to be appointed as a

judge of the parties, but without having recourse to a court of law. The underlying idea of arbitration is based upon the principle of withdrawing the

disputes from the ordinary courts and enabling the contending parties to substitute a domestic tribunal of their choice. The arbitration contemplated

under the Act may be contractual or statutory. It has to be ascertained from the agreement that the parties had intended to make a submission to

arbitrations i.e, there must exist animus arbitrandi. The essentials of an arbitration agreement within the meaning of Sec. 2 (a) of the Act are:

There should be an agreement between the parties;

Such agreement should be in writing; and

The agreement should be to refer the existing or future disputes to arbitration.

The statutory arbitrations are such arbitrations where there is no agreement or contract between the parties, but they are required to make a

reference to an arbitrator under the provisions of some statute covering them. In such cases the enactment under the provisions of which reference

is required to be made, shall be deemed to be the arbitration agreement and the consequent proceedings are required to be conducted as in the

case of any other arbitration agreement. However, in statutory arbitration the provisions of Sections 6 (1), 7, 12&37 would not apply as is

provided under Soc. 46 of the Arbitration Act.

5. Even if the parties are held to be bound by the provisions of Sec. 63 of the Cooperative Societies Act, yet, they are, not estopped from entering

into or agreeing for a contractual arbitration as has been done in the instant case. Sec. 34 of arbitration Act deals with the situations where one of

the party to the agreement, is entitled to get the legal proceedings stayed in a case governed by an arbitration agreement. The right conferred under

Sec. 34 of the Act can also be waived by the parties either specifically or by their conduct. It is true that Sec. 34 is not applicable to the statutory

arbitration, but, that does not debar the parties from contracting for a fresh arbitration agreement for the appointment of a person or authority as an

arbitrator under the provisions of the Act. No party is entitled to unilaterally repudiate or rescind the arbitration but no provision is made under the

Act forbidding the parties from entering into a fresh arbitration agreement or substituting a contractual arbitration in place of statutory arbitration.

6. In this case none of the parties have denied the execution of the arbitration agreement, nor have they challenged its validity under any provision

of law. Even if it is presumed that the parties were governed by the statutory arbitration in terms of Sec. 63 of the CoOperative Societies Act, Yet,

it is proved that they voluntarily substituted a contractual obligation by means of an arbitration agreement executed on 24.10.1991 providing

arbitration by Registrar, CoOperative Societies, which was neither illegal nor forbidden under any statute. The parties were therefore, governed by

the provisions of contractual agreement executed between them and the

appellant could have not insisted for statutory arbitration in terms of Sec. 63 of the Cooperative Societies Act.

7. Under the agreement executed between the parties all disputes were required to be referred to the arbitration of the Registrar, Co Operative

Societies, J&K and the mere apprehension of the petitioner that, the Registrar being head of the department is biased and judge of his own cause

was not sufficient for the appointment of any other person as an arbitrator. The parties with eyes open and knowing fully well that the Registrar,

CoOperative Societies was head of the department had agreed for adjudication of their disputes through him. The respondent, therefore, was not

justified in praying for the appointment of any other person as an arbitrator without permitting the agreed arbitrator to adjudicate upon the disputes.

The learned Single Judge, therefore, was not justified to substitute the District Judge as an arbitrator in place of the agreed arbitrator. It has been

held by the Supreme Court in U.P. CoOperative Federation v. Sunder Brothers, Delhi AIR 1967 SC 249 that It is, of course, the normal duty of

the Court to hold the parties to the contract and to make them present their disputes to the forum of their choice. The Supreme Court, was,

however of t view that if it was shown that there were good grounds for apprehending that the arbitrator will not act fairly, the proceedings may be

stayed. Similarly reliance of the learned counsel upon AIR 1971 J&K. 91 was irrelevant in the circumstances of the case. This Court had held that

where it can be shown that agreed arbitrator was likely to show bias or there existed sufficient reasons to suspect that he will act unfairly or that he

had been guilty of continued unreasonable conduct or that he is prejudiced or formed opinion about any matter likely to be referred to his

arbitration, a reference be made to a person other than the agreed arbitrator. Without referring to the unreasonable, bona fide or genuine

apprehension based upon any fact or circumstance the learned Single Judge opted to refer the disputes to the District Judge, Jammu which was not

warranted under law or the facts and circumstances of the case. Under similar circumstances this Court refused to make reference of disputes to

any other arbitrator except the Registrar, CoOperative Societies in Arbitration Application No : 142/82 and 239/86 decided on 22/4/1987.

Learned counsel for the respondent has also been very fair to concede that under

the normal circumstances, disputes should have, been referred to the arbitration of Registrar, CoOperative Societies in terms of the agreement executed between the parties.

8. Accordingly this appeal is partly allowed by upholding the order of the learned Single Judge referring the disputes to an arbitrator other than the

one provided under the statutory arbitration clause but set aside the same to the extent it appoints District Judge, Jammu, as arbitrator for

adjudication of the disputes between the parties. We direct that all the disputes between the parties shall be referred to the arbitration of the

Registrar, CoOperative Societies, J&K, for adjudication under law. The parties shall be at liberty to file their detailed claims and counter claims

before the agreed arbitrator, i.e the Registrar, CoOperative Societies, J&K, who shall enter upon the reference and file his award within the

statutory period of four months from the date he enters upon the reference.

9. Parties through their learned counsel have been directed to appear before the agreed arbitrator on 15th March, 1993.