

(2015) 05 DEL CK 0305
In the Delhi High Court
Case No : OMP (I) 211 of 2015

Mukesh Kumar

APPELLANT

Vs

The Administrator

RESPONDENT

Date of Decision : 21-05-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2, 3(t), 36, 9
Industrial Disputes Act, 1947 — Section 2
Multi-State Cooperative Societies Act, 2002 — Section 123, 45(5), 84, 84(1)(b), 84(1)(c)

Citation : (2015) 6 AD 210 : (2015) 221 DLT 276

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Milind M. Bhardwaj, and Deepali Dwivedi, for the Appellant; Avinash Sharma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.—In this petition under Section 9 of the Arbitration and Conciliation Act, 1996 ("Act", in short), the petitioner has sought a restraint order against the respondent from enforcing second part of clause (VIII) of the notice dated April 6, 2015 as amended vide notice dated April 13, 2015 published for scheduled election to Smaller Representative General Body of the Society ("SRGB", in short) prohibiting a "member" to contest the election if his remaining membership in the society is less than five years with a further direction to the respondent to allow the petitioner to file nomination.

2. The brief facts are, on January 29, 2012, elections were held to SRGB and Board of Directors. The election of Board of Directors was challenged on the ground that the elections of delegates to the General Body has not been held. In a writ petition i.e. W.P. (C) 571/2012, this Court vide its order dated January 30, 2012 had stayed the declaration and giving effect to the election results. The case of the respondent therein was that the election result had been declared on January 29, 2012 itself and the new Board of Directors have taken over on the

same date. Subsequently in another writ petition, election of delegates was stayed on the ground that electoral roll was not proper. As a consequence, two parallel organizations are claiming to run the Northern Zone Railway Employees Cooperative Thrift and Credit Society Ltd. This effected the working of the society. This Court with the consent of the parties, had appointed Justice S.N. Dhingra, a Retd. Judge of this Court as the learned Administrator to administer the affairs of the society. The Court has also empowered the learned Administrator, within two months to declare schedule of elections and appoint a Returning "Officer" to conduct the elections for all the constituencies of the society.

3. The learned Administrator was also empowered to determine the number of constituencies of the society on the basis of the society membership as on the date of appointment. The Court had also observed that the learned Administrator shall endeavour to complete the elections within six months from the date of communication of the order.

4. Pursuant thereto, the Administrator has issued the notice dated April 6, 2015, whereby, the Administrator has fixed a schedule which includes, (1) issue and filing of nomination paper till May 11, 2015 (5 PM); (2) scrutiny of nomination paper-May 14, 2014 to May 15, 2015; (3) displaying the list of eligible candidates on the notice board-May 19, 2015; (4) date of withdrawal of nomination papers-May 20, 2015 to May 22, 2015; (5) display on the notice board of the society and on the website of the society the final list of candidates-May 26, 2015.

5. It is noted that representations dated April 16, 2015 were made by four members of the society who were ex-delegates against the condition imposed in the election notification that the "member" contesting should have remaining membership of at least 5 years, as not fair and should be waived. The said representations were considered by the Administrator and rejected vide order dated April 23, 2015, on a reasoning that in case the members elected, do not have full tenure, the work of society is likely to become standstill in the event of delegates having one or two years of their membership left being elected. There is no guarantee that in the General Body elections, the candidates returned/elected shall have tenure of five years and not one or two years, if this condition is removed. According to the Administrator, if all the delegates elected have only partial term after the expiry of their partial term, which may be even six months, there will be no general body in the society, after say two years or three years. Similar would be the position with regard to the Directors elected by the delegates so also the Chairman elected by the Directors.

6. The respondent has filed a short reply in the Court on May 11, 2015 and the same has been taken on record. In the reply, it is the case of the respondent that the scope of the election of delegates is beyond the scope of arbitration as envisaged under Section 84 of the Multi-State Cooperative Societies Act, 2002. According to the respondent, it is only a dispute touching the constitution,

management of a business of a Multi State Cooperative Society shall be referred to arbitration. In support of this contention, it is the case that Section 84(2)(c) of Multi-State Cooperative Societies Act, 2002 contemplates any dispute arising in connection with the election of an "officer" of a Multi State Cooperative Society is only referable to the arbitration which is not the case here. In fact, according to the respondent, a delegate is not an "officer" as envisaged under Section 3(t) of the Act. That apart, it is their case that the learned Administrator was appointed by this Court on November 19, 2014 with the clear mandate to conduct the elections within six months and in order to comply with the directions of the Court that the election notice dated April 6, 2015 (and April 13, 2015) has been issued. According to the respondent, the General Body of the Society shall consist of 120 delegates to be elected for five years, for which, electorate comprising of approximately 70,000 voters requiring substantial preparation viz. finalization and issuance of election notification and publication of the same, publication of voter list to receive objection on the voter list/constituencies etc. Elaborate arrangements have to be made at 10 different locations in 4 different States for the aforesaid elections. The respondent would justify the underlying rationale for having the stipulation debarring members having remaining membership of less than five years on the date of nomination i.e. his retirement from Railways should be after April, 2020, by referring to clause 28(e) of the Bye-laws of the respondent society, which inter alia state, that the term of delegate shall be five years from the date of elections. In other words, the said bye-law clearly envisage that the delegates are going to have fixed tenure of five years unlike the Directors, Chairman, etc. which can be of a lesser duration. The respondent would justify the said stipulation on the ground that the delegates were required to meet every year for consideration of audited statement of accounts, audit report and annual report and if the tenure is not of five years, then the work of the society is bound to suffer and the functioning of the society would become standstill if the tenure of the delegate is less than five years. It is also their stand that once election process has been set in motion, the Court must adopt hands off approach in the election process.

7. Mr. Milind M. Bhardwaj, learned counsel for the petitioner would draw my attention to Section 84(1)(c) and 84(2)(c) of Multi-State Cooperative Societies Act, 2002 ("Act of 2002", in short) to submit that the dispute in question is referable to the arbitration in view of Section 84(1)(c). According to him, the election of a delegate to SRGB would touch upon the constitution and the management of the society. He would state that the petitioner herein was a past delegate and as such, the dispute is referable. He would also state that any dispute arising in connection with the election of any "officer" of Multi-State Cooperative Society shall also be referred to arbitration. That apart, he has drawn my attention to Section 45(5) to submit that even if a "member" retires before completing the five years" tenural period, the elected "member" shall continue to hold office till their successor are elected or nominated under the provisions of the Act or rules or bye-laws and assume charge of their office. He

would state that the coram of SRGB would still be achieved even if some of the delegates retire. According to him, when there is a power to expel a delegate, then, retirement before the expiry of tenure cannot be a justifiable ground for debarring a "member" from contesting the election.

8. On the other hand, Mr. Avinash Sharma, learned counsel for the respondent would reiterate the stand taken by the respondent in their reply and would state that the past statistics shows that on an average 1500 employees retire from service. In five years, around 6000 employees retire. If the SRGB constitutes, delegates who would retire before the completion of five years" tenure, the very purpose of election would be defeated. That apart, he would highlight the large scale preparations being made for the conduct of elections in the month of June 2015. He would rely upon the following judgments in support of his submissions:

"1. Ashok Kumar and Another Vs. SBI Officers Association and Another, (2013) 10 AD 512 : (2013) 3 ARBLR 246 : (2013) 201 DLT 433

2. O.A. No. 461 of 2010, decided on 28th April, 2010 (Madras High Court)

3. Javed Rahat and Others Vs. Bar Council of India and Others, AIR 2006 Delhi 200 : (2006) 129 DLT 104 : (2006) 87 DRJ 175

4. Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, (2001) 8 AD 84 : AIR 2001 SC 3982 : (2001) 8 JT 287 : (2001) 6 SCALE 585 : (2001) 8 SCC 509 : (2001) AIRSCW 3959 : (2001) 7 Supreme 362

5. Umesh Shivappa Ambi and Others Vs. Angadi Shekara Basappa and Others, AIR 1999 SC 1566 : (1998) 5 JT 347 : (1998) 4 SCC 529 : (1998) AIRSCW 3950 : (1998) 9 Supreme 175

9. Having considered the submissions of the learned counsel for the parties, the first and foremost question which arises for consideration in this petition under Section 9 of the Act is whether the dispute is an arbitrable one. If it is not, the petition per-se would not be maintainable.

10. In this regard, as noted above, Section 84, which forms part of Chapter (IX) of the Act of 2002 relating to settlement of disputes Sub- section 1(c) and 2(c) thereof reads as under:

"84. Reference of disputes.-

(1) Notwithstanding anything contained in any other law for the time being in force, if any dispute [other than a dispute regarding disciplinary action taken by a multi-State co-operative society against its paid employee or an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947)] touching the constitution, management or business of a multi-State co- operative society arises-

(c) between the multi-State co-operative society or its board and any past board,

any officer, agent or employee, or any past officer, past agent or past employee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the multi-State co-operative society, or

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84. Reference of disputes.-

(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or business of a multi-State co-operative society, namely:-

(c) any dispute arising in connection with the election of any officer of a multi-State co-operative society".

11. A perusal of the aforesaid provisions of the Act would show that dispute touching the constitution, management or business of a Multi- State Cooperative Society must be between the society or its board on one hand, and any past board, any officer, agent or employee or any past officer, past agent or past employee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the Multi- State Cooperative Society. The word "member" or "past delegate" are not referred to. Assuming the dispute between "member" and the multi state co-operative society is covered under Section 84(1)(b) of the Act of 2002, then also, in terms of Section 84(2)(c) of the Act of 2002, a dispute should be in connection with election of an "officer" of a Multi-State Cooperative Society. Further Section 3(t) defines "officer" to means a President, Vice-President, Chairperson, Vice Chairperson, Managing Director, Secretary, Manager, Member of a Board, Treasurer, Liquidator, an Administrator appointed under section 123 and includes any other person empowered under this Act or the rules or the bye-laws to give directions in regard to the business of a multi-state cooperative society.

12. It is noted, an "officer" does not include a "member" or a "past delegate" and also from a reading of Section 84(2)(c) of the Act of 2002, it is clear that only dispute relating to "election of an officer", which is a position after election, which can be referred to arbitration, and not any process undertaken before actual election takes place. The dispute raised is not arbitrable. The impugned notice cannot be a subject matter of a petition under Section 9 of the Act and the same per-se is not maintainable. I note, for benefit the judgment of the Supreme Court in the case of Firm Ashok Traders and Another etc. Vs. Gurumukh Das Saluja and Others etc., AIR 2004 SC 1433 : (2004) 1 ARBLR 141 : (2004) 2 CompLJ 419 : (2004) 2 CTC 208 : (2004) 2 JT 352 : (2004) 137 PLR 526 : (2004) 1 SCALE 297 : (2004) 3 SCC 155 : (2004) 50 SCL 224 : (2004) 1 SCR 404 : (2004) AIRSCW 366 : (2004) 1 Supreme 754 .

"Section 9 of the Arbitration and Conciliation Act, 1996 provides that a party may file an application for interim measures before or during arbitral proceedings, or at any time after the making of the arbitral award, but before it is enforced under

Section 36. The application to initiate civil proceedings can be made only by a party, as defined in clause (h) of sub-section (1) of Section 2 i.e. a party to the arbitration agreement. The right is conferred on a party to the arbitration agreement, within the time-frame as indicated by the Section. A person who is not a party to an arbitration agreement, cannot invoke Section 9 for measures of interim protection."

13. In view of my conclusion above on maintainability, the other submissions need not be gone into.

14. The petition is accordingly dismissed.