

(2020) 07 DEL CK 0219

In the Delhi High Court

Case No : Original Miscellaneous Petition No. 4 Of 2020, Civil Miscellaneous
Application No. 6324, 6325, 6326 Of 2020

Narender Singh

APPELLANT

Vs

V.V. Pankajakshan & Ors

RESPONDENT

Date of Decision : 31-07-2020

Acts Referred:

Multi -State Cooperative Societies Act, 2002 — Section 38, 38(3), 43, 43(1), 43(1)
(m), 43(1)(n)
Arbitration And Conciliation Act, 1996 — Section 34

Citation : (2020) 07 DEL CK 0219

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Ramit Malhotra, Rakesh Munjal, Ankur Arora, Nitisha Goyal

Final Decision : Dismissed

Judgement

C .Hari Shankar, J

I.A. 6324/2020

1. Subject to notarized affidavit being filed, and deficient court fees being paid within 72 hours of resumption of normal court work, exemption, as sought, is granted for the present.

2. The application stands allowed accordingly.

I.A. 6325/2020

Allowed, subject to all just exceptions. The application is disposed of.

O.M.P. 4/2020

1. The dispute, in the present case, relates to the election of representatives to the Board of Directors (BOD) of National Labour Cooperative

Federation of India Limited (NLCFIL). The respondents had challenged the election of various persons to the BOD, on the ground, inter alia, they were violative of the provisions of the Multi - State Cooperative Societies Act, 2002 (hereinafter referred to as "the MSCS Act") and Multi-State Cooperative Societies Rules, 2002.

2. The dispute was referred to the sole arbitration of an advocate, practising in this Court.

3. The present petition is concerned only with the disqualification, by the impugned award of the learned sole arbitrator, of the election of the petitioner

Mr. Narender Singh.

4. The main ground on which the election of the petitioner has been set aside by the learned sole arbitrator is that, by operation of clauses (m) and (n)

of Section 43(1) of MSCS Act, the petitioner was not eligible to contest elections to the BOD of the NLCFIL. Section 43 of MSCS Act is reproduced,

in extenso, thus,

"43. Disqualifications for being a member of board

(1) No member of any multi-state cooperative society or nominee of a member, society or a national cooperative society shall be eligible for being

chosen as, or for being, a member of the board of such multi-state cooperative society or a national cooperative society, or of any other cooperative

society to which the multi-state cooperatives society is affiliated, if such member-

(a) has been adjudged by a competent court to be insolvent or of unsound mind;

(b) is concerned or participates in the profits of any contract with the society;

(c) has been convicted for an offence involving moral turpitude;

(d) holds any office or place of profit under the society:

Provided that the Chief Executive or such full time employee of the society as may be notified by the Central Government from time to time or a

person elected by the employees of such society to represent them on the board of such society shall be eligible for being chosen as, or for being, a

member of such board;

(e) has been a member of the society for less than twelve months immediately preceding the date of such election or appointment;

(f) has interest in any business of the kind carried on by the society of which he is a member;

(g) has taken loan or goods on credit from the society of which he is a member, or is otherwise indebted to such society and after the receipt of a

notice of default issued to him by such society, has defaulted -

(i) in repayment of such loan or debt or in payment of the price of the goods taken on credit, as the case may be, within the date fixed for such

repayment or payment or where such date is extended, which in no case shall exceed six months, within the date so extended, or

(ii) when such loan or debt or the price of goods taken on credit is to be paid in instalments, in payment of any instalment, and the amount in default or

any part thereof has remained unpaid on the expiry of six months from the date of such default:

Provided that a member of the board who has ceased to hold office as such under this clause shall not be eligible, for a period of one year, from the

date on which he ceased to hold office, for re-election as a member of the board of the multi-state cooperative society of which he was a member or

for the election to the board of any other multi-state cooperative society;

(h) is a person against whom any amount due under a decree, decision or order is pending recovery under this Act;

(i) is retained or employed as a legal practitioner on behalf of or against the multi-state cooperative society, or on behalf of or against any other multi-

state cooperative society which is a member of the former society.

Explanation - "For the purposes of this clause, 'legal practitioner' has the same meaning as in clause (i) of sub-section (1) of section 2 of the

Advocates Act, 1961 (25 of 1961):

(j) has been convicted for any offence under this Act;

(k) is disqualified for being a member under section 29;

(l) has been expelled as a member under section 30;

(m) absents himself from three consecutive board meetings and such absence has not been condoned to by the board;

(n) absents himself from three consecutive general body meetings and such absence has not been condoned by the members in the general body.

(2) A person shall not be eligible for being elected as member of board of a multi-state cooperative society for a period of five years if the board of

such multi-state cooperative society fails -

- (a) to conduct elections of the board under section 45; or
- (b) to call the annual general meeting under section 39; or
- (c) to prepare the financial statement and present the same in the annual general meeting.â??

5. It is not in dispute that the petitioner, personally, did not attend the 40th, 41st and 42nd meetings of the Annual General Meeting (AGM) of the

Board of the NLCFIL though, Mr. Ramit Malhotra, learned counsel for the petitioner would seek to submit that he had been duly authorised, by the

NLCFIL, to do so. These three meetings were attended by the Chairperson of the Sonapat District Cooperative Labour & Construction Federation

Ltd. (hereinafter referred to as â??the Sonapat Societyâ??), of which the petitioner was a member.

6. In sum and substance, the controversy narrows down to the issue of whether the absence of the petitioner, during the 40th, 41st and 42nd AGMs of

the NLCFIL, disqualified him from contesting the elections to the BOD of the NLCFIL, in view of clauses (m) and (n) of Section 43(1) of MSCS Act,

despite the Sonapat Society having been represented, in the said meetings, by its Chairperson.

7. The learned sole arbitrator has relied on Section 38(3) of MSCS Act and Clauses (m) and (n) of Section 43(1) of MSCS Act.

8. Section 38 of MSCS Act reads thus:

â??38. Constitution, powers and functions of general body

(1) The general body of a multi-state cooperative society shall consist of all the members of such society:

Provided that where the bye-laws of a multi-state cooperative society provide for the constitution of a smaller body consisting of delegates of

members of the society elected or selected in accordance with such bye-laws, that smaller body shall exercise such powers of the general body as

may be prescribed or as may be specified in the bye-laws of the society.

(2) Subject to the provisions of this Act, the rules and the bye-laws, the ultimate authority of a multi-state cooperative society shall vest in the general

body of its members:

Provided that nothing contained in this sub-section shall affect the exercise by the board or any officer of a multi-state cooperative society of any

power conferred on such board or such officer by this Act or the rules or the bye-laws.

(3) Where in any meeting of the general body or the board of a multistate cooperative society, a cooperative society or another multistate cooperative

society is to be represented, such cooperative society or other multi-state cooperative society shall be represented in such meeting only through the

Chairperson or the president or the Chief Executive or a member of the board of such cooperative society or other multi-state cooperative society, as

the case may be, if such member is so authorised by the board and where there is no board of such cooperative society or other multi-state

cooperative society, for whatever reasons, through the administrator, by whatever name called, of such cooperative society or other multistate

cooperative society:

Provided that where the bye-laws of a multi-state cooperative society provide for representation of other institutions in any meeting of general body or

the board of such multi-state cooperative society, such institutions shall be represented through its nominee.â??

9. The learned sole arbitrator has held that the attendance, in the AGM of the NLCFIL, of any member of a Multi State Cooperative Society, would

have meaning only if such member was authorized, by the said society, to attend the meeting. The specific finding, of the learned sole arbitrator, in this

regard, as contained in para 22 of the impugned award, reads thus:

â??22. The combined reading of both the provisions would lead to the conclusion that for the purposes of attending the Annual General Body meeting

of a Multi-state Cooperative Society, the member of the society who he/she maybe representing would require a resolution in the nature of an

authorization from his/her board and in the absence of such authorization the member would be ineligible to attend the Annual General Body meeting.

The argument of the Claimants is to the extent that mere attendance would not be sufficient until the same is backed by a resolution in terms of

Section 38(3) of the Act. This Tribunal is in agreement with the argument raised by the Claimants that merely attending a General Body Meeting

would be of no consequence in case the same is not backed by a resolution of the competent authority. The requirement of a resolution in terms of

section 38(3) of the Act is a mandatory requirement and the same cannot be

skirted or circumvented. The attendance at an Annual General Body

Meeting of a Multi-State Cooperative Society would be meaningless, if the same is done without the authority of law i.e. in absence of a resolution as

mandated by law. The attendance of any person/delegate at an Annual General Body Meeting is as good as "no attendance" in absence of a valid

authorization. Resolution in terms of Section 38(3) of the Act is a "sine qua non" for attending an Annual General Body Meeting of a Multi-state

Cooperative Society.

10. It is not in dispute that the 40th, 41st and 42nd AGMs of the NLCFIL were attended by the Chairperson of the Sonapat Society. Equally, however,

it is not in dispute, either, that there was no authorisation, authorizing the Chairperson to attend the said meetings and that the authorization, by the

NLCFIL, was in the name of the petitioner. The petitioner, for his part, did not attend any of the said meetings.

11. The jurisdiction of this Court, to interfere with an arbitral award, under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter

referred to as "the 1996 Act"), is heavily circumscribed and stands, by now, elevated almost to the status of an aphorism, enunciated in judgment

after judgment of the Supreme Court, including Mahanagar Telephone Nigam Ltd. v. Finolex Cables Ltd 2017 (166) DRJ 1, Delhi Development

Authority v. R.S. Sharma & Co. (2008) 13 SCC 80 ,McDermott International Inc. v. Burn Standard Co. Ltd (2006) 11 SCC 18,1 National Highways

Authority of India v. JSC Centrodorstroy (2016) 12 SCC 592 M, . Anasuya Devi v. M. Manik Reddy (2003) 8 SCC 565, National Highways Authority

of India v. ITD Cementation India Limited (2015) 14 SCC 2,1 Swan Gold Mining Limited v. Hindustan Copper Limited (2015) 5 SCC 73,9 Navodaya

Mass Entertainment Limited v. J.M. Combines (2015) 5 SCC 698 and Associate Builders v. Delhi Development Authority (2015) 3 SCC 49.

12. This Court has also culled out the principles, from the aforesaid decisions, the principles relating to the scope of interference, with arbitral award,

under Section 34 of the 1996 Act, as they emanate from the aforesaid decisions in its judgment in NHA v. Hindustan Construction Co. Ltd 2017 (5)

ARBLR 258 (Delhi), as under:

(i) The four reasons motivating the legislation of the Act, in 1996, were

(a) to provide for a fair and efficient arbitral procedure,

- (b) to provide for the passing of reasoned awards,
 - (c) to ensure that the arbitrator does not transgress his jurisdiction, and
 - (d) to minimize supervision, by courts, in the arbitral process.
- (ii) The merits of the award are required to be examined only in certain specified circumstances, for examining whether the award is in conflict with the public policy of India.
- (iii) An award would be regarded as conflicting with the public policy of India if
- (a) it is contrary to the fundamental policy of Indian law, or
 - (b) it is contrary to the interests of India,
 - (c) it is contrary to justice or morality,
 - (d) it is patently illegal, or
 - (e) it is so perverse, irrational, unfair or unreasonable that it shocks the conscience of the court.
- (iv) An award would be liable to be regarded as contrary to the fundamental policy of Indian law, for example, if
- (a) it disregards orders passed by superior courts, or the binding effect thereof, or
 - (b) it is patently violative of statutory provisions, or
 - (c) it is not in public interest, or
 - (d) the arbitrator has not adopted a "judicial approach", i.e. has not acted a fair, reasonable and objective approach, or has acted arbitrarily, capriciously or whimsically, or
 - (e) the arbitrator has failed to draw an inference which, on the face of the facts, ought to have been drawn, or
 - (f) the arbitrator has drawn an inference, from the facts, which, on the face of it, is unreasonable, or
 - (g) the principles of natural justice have been violated.
- (v) The "patent illegality" had to go to the root of the matter. Trivial illegality was inconsequential.
- (vi) Additionally, an award could be set aside if
- (a) either party was under some incapacity, or
 - (b) the arbitration agreement is invalid under the law, or
 - (c) the applicant was not given proper notice of appointment of the arbitrator, or

of the arbitral proceedings, or was otherwise unable to present his case, or

(d) the award deals with a dispute not submitted to arbitration, or decides issues outside the scope of the dispute submitted to arbitration, or

(e) the composition of the Arbitral Tribunal was not in accordance with the agreement of the parties, or in accordance with Part I of the Act, or

(f) the arbitral procedure was not in accordance with the agreement of the parties, or in accordance with Part I of the Act, or

(g) the award contravenes the Act, or

(h) the award is contrary to the contract between the parties.

(vii) "Perversity", as a ground for setting aside an arbitral award, has to be examined on the touchstone of the Wednesbury principle of reasonableness. It would include a case in which

(a) the findings, in the award, are based on no evidence, or

(b) the Arbitral Tribunal takes into account something irrelevant to the decision arrived at, or

(c) the Arbitral Tribunal ignores vital evidence in arriving at its decision.

(viii) At the same time,

(a) a decision which is founded on some evidence, which could be relied upon, howsoever compendious, cannot be treated as "perverse",

(b) if the view adopted by the arbitrator is a possible view, it has to pass muster,

(c) neither quantity, nor quality, of evidence is open to re-assessment in judicial review over the award.

(ix) "Morality" would imply enforceability, of the agreement, given the prevailing mores of the day. "Immorality", however, can constitute a ground for interfering with an arbitral award only if it shocks the judicial conscience.

(x) For examining the above aspects, the pleadings of the parties and materials brought on record would be relevant.

(x) The court cannot sit in appeal over an arbitral award. Errors of fact cannot be corrected under Section 34. The arbitrator is the last word on

facts.

13. Having examined the impugned award from the standpoint of the aforesaid principles, I am of the opinion that no case, meriting interference,

therewith, under Section 34 of the 1996 Act, can be said to exist.

14. The interpretation placed, by the learned sole arbitrator, on Section 38(3) of MSCS Act is, at the very least, a possible interpretation. The Court, in

exercise of its jurisdiction, while examining the interpretation, by an arbitrator, in exercise of its jurisdiction under Section 34 of the 1996 Act, is

concerned not with the plausibility of the interpretation but with the possibility thereof. Once the interpretation placed by the learned sole arbitrator, on

any provision that comes to her or his notice, is not an impossible interpretation, or perverse, as understood in law, interference therewith, by this Court

under Section 34 of the 1996 Act, is to be pursued.

15. The learned sole arbitrator has held that the words "if such member is so authorised by the board" as implied in Section 38(3) of MSCS Act,

would apply to the Chairperson and President of the Multi State Cooperative Society concerned, as much as to any other member. In other words,

according to the learned sole arbitrator, any member, in order to be eligible to attend the meeting at the AGM of the Board of the NLCFIL, has to

possess a specific authorization, authorizing her or him to do so. Mr. Ramit Malhotra seeks to submit that this requirement, as envisaged under Section

38(3) of MSCS Act, refers only to members other than the Chairperson and President of the Society, as, despite the Chairperson and President of the

Society, being also members thereof, they are, so to speak, sui generis. In order to bring home the submission, he has pointed out that Section 38(3) of

MSCS Act parenthesizes, with the Chairperson and President, the Chief Executive of the Society, who is not a member of the Board of the Society.

As such, Mr. Ramit Malhotra would seek to submit that words "if such member is so authorized by the Board", applies only to members, other

than the President and Chief Executive.

15. In my view, at best, the interpretation advanced by Mr. Malhotra may be one of the interpretations, to which Section 38(3) of MSCS Act would

lend itself. At the same time, accepting the submission of Mr. Malhotra may amount to rewriting Section 38(3) of MSCS Act by replacing the words

"if such member is so authorised by the board" by the words "if such member, other than the Chairperson or the President is so authorised by

the board". Casus omissus in a statute, even if were deemed to exist, cannot be provided by the Court, save in rare and exceptional circumstances.

The learned Sole Arbitrator cannot be faulted in not having chosen to do so. It cannot, therefore, be said that the interpretation of Section 38(3) of the MSCS Act, as advanced by Mr. Malhotra, is the only possible interpretation of the said provision and that the interpretation placed on the said provision by the learned sole arbitrator, is so perverse or unsustainable or, â?? patently illegalâ? , as would merit interference under Section 34 of the 1996 Act.

16. Proceeding to Section 43 of the MSCS Act, there is no dispute, whatsoever, about the fact that the petitioner, had, in fact, absented himself from the 40th, 41st and 42nd AGMs of the NLCFIL. This, the learned sole arbitrator has held, disqualified the petitioner, ipso facto, from being elected as the member of the Board of the NLCFIL, in view of the afore-extracted sub-clauses (m) and (n) of Section 43(1) of MSCS Act, and I am inclined to agree therewith. A holistic and juxtaposed reading of the main body of Section 43(1) along with clauses (m) and (n) thereunder â?" especially the use of the word â??himselfâ? , as implied in the said two clauses â?" clearly indicates that the person, who seeks to contest the elections for being elected as member of the Board of the NLCFIL, cannot absent himself from three consecutive AGMs of the Board of the NLCFIL and that, if he does so, he stands disqualified from contesting such elections. In the present case, the petitioner, admittedly, did not attend the 40th, 41st and 42nd AGM of the Board of the NLCFIL. It is not necessary, therefore, for me to examine, whether he was authorised, or not authorised to do so; suffice it to reiterate that he did not attend said meetings. These meetings, admits Mr. Malhotra, were attended, instead, by the Chairperson of the Society. The Chairperson of the Sonapat Society, however, was not authorised to attend the aforesaid three meetings of the NLCFIL. It is not the case of Mr. Malhotra that any such authorization exists. He, however, would seek to interpret Section 43(1) read with clauses (m) and (n) thereunder, as applying not to the individual member in person, but to the member-society. In other words, what Mr. Malhotra seeks to submit is that if any particular member, of a member society of the NLCFIL, was authorised to attend the AGM, any other member of that society, including the Chairperson thereof, could attend the meetings in her or his place. I am unable to accede to this submission, which according to me, flies in the teeth of the word â??himselfâ? ,

as specifically used in clauses (m) and (n) of Section 43(1) of the MSCS Act. Even otherwise, if one were to read Section 43(1) of MSCS Act

holistically, it is clear that it refers to a member of a Multi State Cooperative Society, a nominee of a member society and refers to the conditions to be

fulfilled by â??such memberâ?, for being eligible to be chosen as a member of the Board of the Multi State Cooperative Society or of the NLCFIL.

The various clauses of Section 43(1), such as being adjudged by a competent Court to be insolvent or of unsound mind, participating in the profits of

any contract with the society, conviction of an offence involving moral turpitude, holding of an office of a place of profits under the society etc.,

obviously, apply to the individual members in person and not to the member societies.

17. To reiterate, as the petitioner did not attend three consecutive AGMs of the NLCFIL, he stood disqualified, ipso facto, from contesting the elections to the BOD of the NLCFIL.

18. In view thereof and especially keeping the restrictions on the exercise, by this Court of its jurisdiction, under Section 34 of the 1996 Act, in the

matter of interference with arbitral awards, in mind, I am of the opinion that no occasion arises, for this Court to interfere with the impugned award,

insofar as it holds the election of the petitioner, as a member of the BOD of the NLCFIL, to be illegal, and quashes the same.

19. Resultantly, the petition is dismissed in limine with no orders as to costs.

I.A. 6326/2020

In view of the order passed in the petition, this application is disposed of.