

(2007) 02 DEL CK 0096

In the Delhi High Court

Case No : AA No. 302/06 and is No. 7122/06

Rotarian Sidheshwar Dayal and Others

APPELLANT

Vs

Rotarian U.N. Maira and Others

RESPONDENT

Date of Decision : 06-02-2007

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11(6), 6
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Constitution of India, 1950 — Article 14, 15, 17

Citation : (2007) 1 ARBLR 298 : (2007) 94 DRJ 155

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Lala Ram Gupta and Mamta Mehra, for the Appellant; Girdhar Govind and Noorun Nahar Firdausi, for the Respondent

Final Decision : Allowed

Judgement

Vipin Sanghi, J.—Petitioners are members of the Rotary Club of Delhi, Rotary District 3010, comprising of Rotary Clubs in Delhi, parts of

U.P and Haryana. Respondent No. 1 Shri U.N. Maira was, at the time of filing of the arbitration application the President and Respondent No. 2,

Shri Pulin Trivedi, was the Hon. Secretary of Rotary Club of Delhi.

2. Petitioners have filed the aforementioned Arbitration Application u/s 11(6) of the Arbitration and Conciliation Act, 1996 for the appointment of

an Arbitrator. Petitioners claim that their request for appointment of an arbitrator made on 25.4.2006 was rejected by the Secretary of the Rotary

Club Delhi, i.e., Respondent No. 2 herein, vide his letter dated 11th May 2006.

3. The dispute relates to the election to the office of President Elect of the Rotary Club of Delhi for the year 2006-07. The petitioners claim that

when the nomination process for the Elections to the office of President Elect of the club for 2006-2007 was afoot, Petitioner No. 11 submitted

her nomination proposal form on 8/12/05 at 1:55 P.M. to the Respondent No 2 herein before the meeting was called to order. The nominations,

as per the deadline prescribed by the Respondent No. 1 for the same, could be submitted by 2:00 P.M. However, no endorsement as to the time

of receipt was made on the same. It is further alleged that as per the norms the nomination form could have been validly submitted till the meeting

was called to order.

4. It is also alleged that no other nominations were submitted and Petitioner No. 11 was the sole candidate for the post. Even the club bulletin

dated 12/12/2005 containing the minutes of the meeting dated 8/12/2005 reflected the Petitioner No. 11's name in the list of nominations received.

It is alleged that on 14/12/2005 two ""scrutineers"" were appointed by the Respondent No. 1, in contravention of Section 6 of the club's Bye-laws,

to scrutinize the Petitioner's form. The scrutineers rejected the nomination form on grounds of it having been filed after 2:00 P.M. The General

Body met on 15/12/2005 and Respondent No. 2 announced that he had not seen his watch while receiving the form though the same was received

before the meeting was called to order. Thereafter, it is alleged that the decision of the scrutineers rejecting the nomination form on grounds of

having been filed after 2:00 P.M. was conveyed by the Respondent No 1 in the meeting held on 22.12.2005.

5. On 23rd December 2005 Petitioner No. 11 sent a letter to Respondent No. 1 appealing him to withdraw his decision but the same was not

received by him and subsequently it was couriered to the Respondent. Thereafter various other letters were written.

6. It is averred that on 29/12/2005 in the Annual General Meeting before the elections took place, the petitioner was humiliated by the Respondent

No. 1 and in protest the members of the club walked out and refrained from voting. Only 30 members voted in the election out of which 17 were

candidates. On 4.1.06 a letter was sent to the Respondents by several Rotarians demanding an urgent meeting of the club to resolve this issue.

However, no meeting was ever convened.

7. On 1.2.06, it is averred, the Respondent Nos. 1 & 2 sent a letter to the

petitioner No. 11 conveying to her the unanimous ratification given by the Board to the decision of the Presiding Officer as to rejection of her nomination form. To this also the Petitioners objected.

8. The petitioner claims that Article XIV of the Constitution of the Club contains an Arbitration Agreement in the following terms:

Article XIV Arbitration- Should any dispute arise between any member or members, or a former member or members and the club, or any officer

or the board of the club, relative to membership or to any alleged breach of the constitution or bylaws, or the expulsion of any member from the

club, or on any account whatsoever which cannot be satisfactorily settled under the procedure already provided for such purpose, the matters in

difference shall be settled by arbitration. Each party shall appoint an arbitrator and the arbitrators shall appoint an umpire. Only members of a

Rotary club may be appointed as umpire or as arbitrators. The decision arrived at by the arbitrators, or, in the event of their disagreement, by the

umpire, shall be final and binding on all parties.

9. Apparently, the Arbitration clause was invoked vide letter dated 25/4/06 written by Petitioner No. 1 to Rotarian and past District Governor,

Shri K.K. Gupta requesting him to act as the Arbitrator nominated by the petitioner. Shri K.K. Gupta vide his letter in reply dated 26/4/2006

accepted his nomination to act as an Arbitrator. It appears a letter invoking the Arbitration clause was sent on 26/4/06 to the Respondents which

was replied to vide letter dated 11/5/06. The respondents took the stand that a decision of the "Board" is not an arbitrable dispute. It was also

stated that, in any event, the nomination of Shri K.K. Gupta by the petitioners was not acceptable. The respondents also gave their own

interpretation to the arbitration agreement contained in clause XIV of the Constitution by claiming that there would be 18 arbitrators. The relevant

extract from the respondent's letter dated 11.5.2006 reads as follows:

In paragraph VII of your letter, you have stated that you are invoking the Arbitration Clause of the Constitution and By-laws of the Rotary Club of

Delhi. May we make it clear that there is no dispute which calls for Arbitration. There is no provision in the Constitution of the Club which declares

that the decision of the Board of Directors is 'a dispute'. Without prejudice to what has been stated above and without in any manner admitting

that there is any dispute, in any event your so-called nomination of Rtn PDG K. K. Gupta is not in accordance with the Constitution and By-laws

of the Club and the same is not acceptable. It may also be pointed out that PDG K. K. Gupta himself is currently involved in some disputes and

controversies in his own Club, where he was a PDG on earlier occasions and then become the President of the same Club. It may be noted that as

per your submission in the letter under reply, each and every member of the Board i.e. Office Bearers and Directors are entitled to nominate their

own Arbitrators which comes to 18(eighteen) or more arbitrators in the alleged 'dispute' in the letter.

10. Petitioners state that vide the bulletin dated 15/5/06 the name of Respondent No. 30 was published as the new President Elect and it is

averred that the same was done without resorting to elections, and it was allegedly done unanimously by the board. The petitioners claim that

disputes and differences arose between the parties after the nomination form of Petitioner No. 11 was subjected to scrutiny culminating in its

rejection and appointment of Respondent No. 30 as the President Elect. The contentious issues, that need consideration as per the petitioner, have

been formulated and laid out in para 60 of the arbitration application. It is averred that these disputes fall within the ambit of Article 14 (arbitration

agreement) of the club's constitution and are referable to arbitration.

11. The Respondents entered appearance and moved the instant Application under Order 7 Rule 11 of the CPC praying for the rejection of the

arbitration application. The main thrust of the Respondents objection is that the Arbitration Clause referred to by the Petitioner was of 1999

vintage which got obliterated and amended vide a "direction" of the Rotary International in the year 2004. According to the Respondents, the

amended arbitration agreement in Article 15 provides as follows:

Article 15 Arbitration and Mediation

Section 1 Disputes. Should any dispute, other than as to a decision of the board, arise between any current or former member(s) and this club, any

club officer or the board, on any account whatsoever which cannot be settled under the procedure already provided for such purpose, the dispute

shall, upon a request to the secretary by any of the disputants, either be resolved by mediation or settled by arbitration.

Section 2 Date for Mediation or Arbitration. In the event of mediation or arbitration, the board shall set a date for the mediation or arbitration, in consultation with disputants, to be held within twenty-one (21) days after receipt of the request for mediation or arbitration.

12. Respondents claim that the disputes sought to be raised are primarily to challenge the decisions of the Board of Rotary Club of Delhi and such a dispute is expressly excluded from the scope of arbitration. The disputes raised cannot be referred to Arbitration, and the petition is liable to be rejected.

13. Petitioners dispute that the arbitration agreement as contained in Article XIV of the Constitution has been amended as contended by the

Respondents. Vide order dated 9th November 2006 the respondents were directed to state, by way of an affidavit, whether the so called

amended provision was circulated or made known to the members of the club and whether the same was brought into force and made applicable

to the Rotary Club of Delhi, and if so, on which date. An affidavit was filed by the Respondents on 30th November, 2006. After examining the

same, this Court vide order dated 13th December 2006 recorded that the Affidavit though filed did not conform to the direction given by the

Court. The respondents were given one more opportunity to file the same or face consequences. Two affidavits has been filed on 2nd January

2007. They are of Mr. P.K. Verma, the President of Rotary Club of Delhi, Respondent No. 3 and Mr. U.N. Maira, Past President of Rotary

Club of Delhi, Respondent No. 1, and are substantially the same.

14. In these affidavits, the said Respondents state that the membership of Rotary International consists of Rotary Clubs organized and existing in

accordance with the Constitution and Bylaws of Rotary International. A club admitted to the membership of Rotary International is required to

function as per the ""Standard Rotary Club Constitution"" and the bye-laws of Rotary International and as per amendments carried out from time to

time. The deponents" state that it is not the practice or procedure that the manual of Rotary International is given to each member individually but

the same is available for reference to members as and when they require or need to update themselves. It is further stated that the deponents Mr.

P.K. Verma, the President of Rotary Club of Delhi and Mr. UN Maira, the past

President of Rotary Club of Delhi were not the Secretary of the club in 2004 and they are not aware whether the amendments were individually circulated or not.

15. The aforesaid is not a satisfactory answer to the specific query put by the Court. Even if Mr. P.K. Verma or Mr. UN Maira were not the

President in 2004, if the so called amendments had been circulated to the members, there would have been a record of it with the Rotary Club of

Delhi. The deponents Mr. P.K. Verma and Mr. UN Maira do not even claim that they, as members of Rotary Club of Delhi ever learnt of the so

called amendment due to its publication and circulation by the Rotary Club of Delhi. It can, Therefore, be safely inferred that the so called

amendment was in fact never circulated or made known to the members of Rotary Club of Delhi.

16. Now I proceed to deal with the submission of the respondents that a Rotary club which is a member of Rotary International is bound by the

directions issued by Rotary International such that the said directions automatically get incorporated in the constitution of the Member Rotary Club.

Respondents rely upon the condition imposed upon a club, when it is admitted to membership in Rotary International, which states that it must

adopt, as its constitution, the standard Rotary club constitution. This, according to him, means that a direction of Rotary International issued to the

member clubs, subsequent to their admittance to membership would automatically get incorporated in the constitution of the member clubs. He

refers to Article 1 contained in part-I (Administration) of what is claimed to be the Manual of Procedure of the year 2004 of Rotary International.

The said article, in so far it is relevant and relied upon by counsel for the Respondents Mr. Girdhar Govind reads as follows:

ADMINISTRATION OF CLUBS

Membership in Rotary International

The members of RI consists of Rotary clubs organized and existing in accordance with the RI constitution and bylaws. When a club is admitted to

membership in RI, it is required to adopt as its constitution the standard Rotary club constitution. (RIB 2.030.) The standard Rotary club

constitution and the recommended Rotary club bylaws are available in the yellow pages of the Manual of Procedure and on the RI Web site

(www.rotary.org). However, some clubs admitted to membership prior to 6 June 1922 and clubs participating in RI pilot projects are entitled to

operate under the standard Rotary club constitution and RI bylaws with variations. (RIB 2.030.2.)

17. Learned Senior Counsel for Petitioner, Mr. Lala Ram Gupta on the other hand refutes the stand taken by the respondent and relies upon

Article XVII of the Constitution of the Rotary club of Delhi, which prescribes the procedure for amending the constitution of the club. Article XVII

of the Constitution of Rotary Club of Delhi, in so far as it is relevant reads as follows:

Article XVII Amendments

Section 1- Time. Except as provided in Section 4 of this article, this constitution may be amended only by the Council on legislation in the same

manner as is established in the bylaws of RI for the amendment of its bylaws.

Section 2- Who May Propose. Amendments to this constitution except as provided in Section 4 of this article, may be proposed only by a club,

by a district conference, by the general council or the conference of RI in Great Britain and Ireland, by the council on legislation, or by the board of

directors of RI.

Section 3 - Procedure

1. Any proposal to amend this constitution shall be delivered to the general secretary of RI not later than 30 June in the year preceding that in

which the council on legislation is to meet.

2. The general secretary of RI shall mail five copies of all duly proposed amendments to each governor, one copy to all members of the council on

legislation and one copy to the secretary of any club that requests it, no later than 31 December in the year the council shall be convened. The

proposed amendments also will be made available via the Rotary World Wide Web home page. Resumes of all proposed enactments, with details

of the deletions and additions to the Manual of Procedure omitted, shall be sent to each club.

3. The council shall consider and act upon each duly proposed amendment transmitted to the council and any duly proffered amendment thereof.

Section 4- Article I (Name) and Article II (Territorial Limits) of this constitution shall be amended at any regular meeting of this club, a quorum

being present by the affirmative vote of a majority of members present and voting, provided that notice of such proposed amendment shall have been mailed to each member at least ten (10) days before such meeting, and provided further, that such amendment shall be submitted to the board of directors of RI for its approval and shall become effective only when so approved. In the event of reconsideration of a decision not to relinquish or share territory for the organization of an additional club, as directed by the board of directors of RI, as provided in subsection 2.020.4 of the bylaws of RI a two-thirds vote is required to sustain the previous negative decision.

18. Similarly, for amendment of the Bye Laws of Rotary Club of Delhi, he refers to Article XIV of the By Laws of Rotary Club of Delhi, which reads as follows:

These bylaws may be amended at any regular meeting a quorum being present, by a two thirds vote of all members present, provided that notice of such proposed amendment shall have been mailed to each member at least ten days before such meeting. No amendment or the addition to these bylaws can be made which is not in harmony with the club constitution and with the Constitution and bylaws of RI.

19. Petitioner contends that the procedure prescribed for amendment of the Constitution of Rotary Club of Delhi has to be resorted to before an amendment can take effect, and there is no Article in the Constitution of Rotary Club of Delhi, which gives any overriding effect to, what is claimed to be a direction of Rotary International. He submits that no such amendment has been made to the Constitution, and none is even claimed to have been made by the respondents.

20. The arguments of Mr. Girdhar Govind are, to my mind not well founded. Even a perusal of Article 1 of the Manual Procedure, 2004 as extracted above would show, that it is only at the time of admission to membership of Rotary International that the member club is required to adopt, as its Constitution, the standard Rotary Club Constitution. Unless a club seeking admission to membership of Rotary International frames its Constitution in accordance with the standard Rotary Club Constitution, Rotary International may refuse to grant membership to the club. That by itself does not mean that, as and when in future, Rotary International issues

""directions" in the Manual Procedures, the said ""directions"" would automatically get incorporated as amendments to the Constitution of every club that is a member of Rotary International. The Constitution of Rotary Club of Delhi lays down a specific procedure to be followed for amending the Constitution. It is not the case of the Respondents that any amendment to the Arbitration Agreement contained in Article XIV was made by following the procedure prescribed for amending the Constitution. Amendment of the Constitution of any organized body is a serious matter and the procedure prescribed Therefore has to be complied with before it can be claimed that an amendment to the Constitution has been brought into force. Consequently, in my view the so called amendments were never circulated, nor were the same incorporated into the Constitution of or became applicable to the Rotary Club of Delhi.

21. Learned Counsel for the petitioner, in the alternative also submitted that, in any event, even if it were to be assumed that the Arbitration agreement was the one contained in Article 15 as set up by the respondents, even so the disputes raised by the petitioner were referable to arbitration. He submits that the dispute in the present case was not a dispute in relation to a decision of the board of Rotary Club of Delhi. In fact the dispute is with regard to the rejection of the nomination paper of petitioner No. 11. The said rejection had taken place at the hands of the scrutineers. It is the decision to appoint scrutineers, and the decision of the scrutineers to reject the nomination of petitioner No. 11, which is the primary dispute raised by the petitioners. The dispute is between the petitioners on the one hand and the President and Secretary of Rotary Club of Delhi on the other hand. Merely because the board passes a resolution accepting the decision taken by the scrutineers, it would not cease to be a decision of the scrutineers, and would not cease to be an arbitral dispute. The right of the petitioner to raise the dispute in arbitration could not be taken away by taking the said matter to the board.

22. Since I am of the view that XIV of the Constitution of Rotary Club of Delhi as propounded by the petitioners is in force, I am not going into the alternate submission.

23. Consequently, Article 14 of the Constitution of the Rotary Club of Delhi which contains an Arbitration Agreement would govern the parties.

This arbitration agreement postulates the existence of disputes between member (s) or a former member (s) on the one hand, and the club, any officer or the board of the club on the other hand. The dispute should relate to the issue of membership, or where there is an allegation of breach of the Constitution, or by laws, or the expulsion of any member of the club or, on any account whatsoever which cannot be satisfactorily settled under the procedure already provided for such parties. In my view, the dispute with regard to the invalidation of the nomination of petitioner No. 11 for the post of President Elect for the year 2006-07 is a dispute which would be governed by the Arbitration agreement contained in Article 14 of the Constitution of Rotary Club of Delhi. The said Arbitration agreement is very wide in its scope, since it covers all disputes relating to breach of the Constitution or the bye-laws as well as to disputes that may arise "on any account whatsoever".

24. The objection of the respondents that there is non-joinder of a necessary party i.e. Rotary Club of Delhi in the arbitration application also does not appear to be correct. The arbitration agreement in Article XIV applies to disputes, inter alia, between member(s)/past member(s) and officers of the club. The petitioners have raised disputes with the officers i.e. Respondent Nos. 1 and 2, the then President and Secretary of Rotary Club of Delhi. Consequently the application being I.A. No. 7122/06 filed by the respondents under Order 7 Rule 11 C.P.C is rejected being devoid of merit.

25. It is settled law that in a case where Order 7 Rule 11 CPC is applicable, the issue of maintainability/bar of jurisdiction/lack of cause of action has to be decided by reference only to the plaint. In the present case, the Respondents have, in effect, pleaded their defense by producing and relying upon documents, and by making submissions in answer to the averments relevant to decide the question of reference of disputes to arbitration. What has been styled as an application under Order 7 Rule 11 CPC by the respondents, is in fact a reply to the petition itself.

26. While deciding an application u/s 11 of the Arbitration and Conciliation Act this Court has to determine primarily the existence of its own jurisdiction, the existence of an arbitration agreement between the parties before the Court, the existence of an arbitral dispute and the fulfillment of

the pre-conditions for exercise of jurisdiction. (Kindly see S.B.P. and Co. Vs. Patel Engineering Ltd. and Another,). In my view, there is a valid

and binding arbitration agreement contained in Article XIV of the Constitution of Rotary Club of Delhi, to which the parties before me are party.

The scope of this arbitration agreement is wide enough to cover the disputes sought to be raised by the petitioners. The existence of the dispute

itself cannot be questioned since the nomination of petitioner No. 11 for the post of President Elect for the year 2006-07 has been rejected by the

scrutineers, and the arbitration agreement is wide enough to cover the said disputes. The territorial jurisdiction is not disputed by the Respondents

and the disputes, in any event, relate to the Rotary Club of Delhi, operating in Delhi. Since a notice dated 26.4.2006 invoking the arbitration

agreement was evidently sent by the petitioners to the respondents and the respondents have taken the stand that there is no dispute which calls for

arbitration (in the letter dated 11.5.2006) and consequently failed to nominate the Second Arbitrator, the preconditions for the exercise of

jurisdiction u/s 11 of the Arbitration and Conciliation Act, 1996 are satisfied,

27. In view of the aforesaid, the present petition must succeed. According to Article XIV, the Arbitral Tribunal is to consist of three Arbitrators,

one to be nominated by the two disputant groups and the third to be appointed by the two nominated Arbitrators. The petitioners have already

nominated Rotarian K. K. Gupta, Past District Governor, as one of the Arbitrators. The respondents have failed to nominate the second

arbitrator. Consequently, they have lost their right to make the nomination. I accordingly appoint Rotarian, Dr. Jagdish Chandna, D-296, defense

Colony, New Delhi as the second arbitrator to adjudicate upon the disputes arising between the parties. The two arbitrators viz, Mr. K.K. Gupta

and Dr. Jagdish Chandna shall appoint the third arbitrator who shall act as the Chairman of the Arbitral Tribunal. The arbitral Tribunal shall be free

to fix its own fees, which shall be equally shared by both the parties.

28. Let a copy of this order be sent to the two Arbitrators Mr. K.K. Gupta and Dr. Jagdish Chandna by the Registry of the Court, who may

mutually proceed to appoint the third arbitrator within thirty days of the receipt of this order. The Arbitration Application No. 302/2006 is allowed

with costs of Rs. 10,000/- . dusty.