
(1977) 05 DEL CK 0020

In the Delhi High Court

Case No : Civil Writ Appeal No. 413 of 1970

The Refugees Co-operative Housing Society Ltd.

APPELLANT

Vs

Harbans Singh Bhasin and Others

RESPONDENT

Date of Decision : 19-05-1977

Acts Referred:

Citation : (1977) 13 DLT 237 : (1977) 2 ILR Delhi 632

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

Bench : Single Bench

Advocate : S.S. Dalal, D.K. Kapur and Y.K. Kapoor, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) (ORAL)-THE petitioner in the present and the two connected writ petitions, namely, C.W. 484/1970 and C.W. 485/1970, is a house building co-operative society while the respondents therein are members of the said society. The society avers that in 1957 it called upon the respondents to make payments towards the cost of the plots of lands to be allotted to them by the society informing them that if the payments were not made within the prescribed time their names will be liable to be removed from the list of the members. As the respondents failed to pay the money within time, reminders were issued but to no effect. The respondents' names were accordingly removed from the list of membership. The respondents raised disputes u/s 54 of the Bombay Cooperative Societies Act, 1925, as extended to Delhi. The disputes were referred by the Registrar for adjudication to his nominee Shri Ram Gopal. After a lapse of over a year the Registrar withdrew the arbitration proceedings from Shri Ram Gopal and appointed Shri Jyoti Prasad as a fresh nominee. While the disputes of the respondents in C.W. 413/1970 and 484/1970 were decided by Shri Jyoti Prasad as the sole nominee, the dispute between the society and the respondents raised in C.W. 485/1970 was decided by him and the nominee of the respondents and the nominee of the petitioner gave a dissenting award. All the three decisions were in favor of the respondents.

(2) The petitioner-society filed appeals u/s 56 of the said Act to the Appellate Tribunal but the said Tribunal upheld the awards and dismissed the appeals.

(3) In the present writ petitions the awards and the orders of the Tribunal upholding the said awards are challenged by the petitioner on the following grounds, namely, (1) that the withdrawal of the arbitration proceedings by the Assistant Registrar from the first nominee of the Registrar, namely Shri Ram Gopal and transferring them to the second nominee Shri Jyoti Prasad was illegal. Shri Jyoti Prasad, Therefore, had no jurisdiction to adjudicate the disputes; (2) that the action of Shri Jyoti Prasad deciding the disputes between the petitioner and the respondents in C.W. 413/1970 and 484/1970 as the sole arbitrator was illegal; and (3) that on merits the awards as also the orders of the Appellate Tribunal disclosed errors of law on the face of the record. The writ petitions were resisted by the respondents who controverted all the grounds of attack raised above by the petitioner. The detailed discussion of the grounds of attack and of defense will be apparent when I discuss the grounds of attack below.

(4) Ground No. 1. It is true that as a rule when a case is entrusted by the Registrar, u/s 54, to a nominee, it has to continue with him and cannot be withdrawn by him. Shri Dalal relies for this proposition on the decision of this court reported in *The Government Servants Co-operative House Building Society Ltd. v. S.L. Katyal and others*, 1967 111 D.L.T. 657, upholding the single Bench decision of the court of which a short note appears at page 10 of the Notes section of the same report. Learned counsel for the respondents, however, points out that the last paragraph of rule 35 of the Rules framed under the Act is as follows :-

""When any dispute is referred to the Registrar's nominee or to three arbitrators for decision and is not decided by them within two months or such further period as the Registrar may allow, the Registrar may decide the dispute himself or refer again to his nominee for decision."

Learned counsel emphasises the word "again" to show that the second reference has to be to a fresh nominee. Had it been to the same nominee as before the word "again" could have been unnecessary. Only a further extension of time would have been sufficient. Shri Dalal for the petitioner has pointed out that the first nominee Shri Ram Gopal was unable to complete the arbitration proceedings because of no fault of his inasmuch as the respondents in C.W. 413/1970 and C.W. 484/1970 had failed to nominate their arbitrators and the Registrar did not cure the defect by nominating his own arbitrators in place of the arbitrators of the respondents. This may be so. "The fact, however, remains that the Registrar had the power after the expiry of two months after the nominee had entered on the reference to appoint a second nominee for the adjudication of the same dispute. This power was exercised under the last paragraph of rule 35. The second nominee Shri Jyoti Prasad, Therefore, had the jurisdiction to decide the disputes so referred to him.

(5) Assuming, for the sake of argument, that there was any illegality or irregularity attached to the appointment of the second nominee by the Assistant Registrar, such defect did not go to the essential jurisdiction of the nominee. It was an irregularity or an illegality which could have been waived by the party who was aggrieved by it. The distinction between the essence of jurisdiction objection to which cannot be waived and an irregularity or an illegality which can be waived has been considered by this Court in *Mazda Theatres Pvt. Ltd. and Another Vs. New Bank of India Ltd. and Others*, onwards in the light of the relevant Supreme Court judgments. The failure of the petitioner-society to object to the proceedings before Shri Jyoti Prasad on the ground that the proceedings before Shri Ram Gopal had been illegally withdrawn and the submission of the petitioner to the jurisdiction of Shri Jyoti Prasad amounted to a waiver (*N. Chellappan Vs. Secretary, Kerala State Electricity Board and Another*, of any objection that the petitioner may have had. The essential jurisdiction was possessed by Shri Jyoti Prasad. Shri Dalal argued that there can be no waiver of an objection to jurisdiction and such objection can be raised at any time as has been held by the Supreme Court in *Kiran Singh and Others Vs. Chaman Paswan and Others*, but this observation relates to the essential jurisdiction such as jurisdiction over subject matter or over a person. The first contention of the petitioner, Therefore, fails.

(6) Ground No. II. The learned counsel for the petitioner has not been able to show any error apparent on the face of the award or in the appellate decision. The complaint of the petitioner was that the respondents were sent notices to pay the money but they did not pay the same within time and, Therefore, the petitioner-society had to remove their names from the list of members. The defense of the respondents was that the notices were not proved to have been sent to them at their proper addresses. The sole arbitrator as well as the appellate Tribunal have shown that the petitioner-society did not adduce proper proof to show that notices of demand have been sent to the respondents at their proper addresses and, Therefore, they have held that the respondents did not have an opportunity to comply with the demand of the petitioner-society and consequently the removal of their names from the list of members was illegal. This finding is mainly of fact and has not been shown to be perverse. The petitioner has not been able, Therefore, to successfully attack this finding. Ground No. II. In the arbitration file at page 147 is a copy of the letter of 26th July 1968 by the Registrar's nominee to the Registrar in respect of the four cases including those which are the subject matter of the present three writ petitions. The nominee says that the arbitrator nominated by the petitioner-society was not co-operating with him and seeks instructions from the Registrar as to what he should do. He also says that the evidence is practically completed and the parties have also right to appeal to the Tribunal. In reply to this letter the Assistant Registrar wrote the letter dated 2nd August 1968, annexure "M" to the writ petition, asking the nominee to proceed as the sole arbitrator if the arbitrators of the parties adopt delaying tactics and also says that the

proceedings should be finalised before 31st August, 1968. Thereafter the award at annexure "N" was delivered on 28-8-1968 in Smt. Jai Wanti Sahni v. the Petitioner-society by Shri Jyoti Prasad as the sole arbitrator. This award has been challenged in civil writ No. 484 of 1970. On 30-8-1968 Shri Jyoti Prasad acting as the sole arbitrator delivered award in the case of Harbans Singh v. the petitioner-society. This award has been attacked in civil writ 413 of 1970.

(7) The question for decision is two-fold: firstly whether the last paragraph of rule 35 authorises the Registrar to refer the dispute "again to his nominee for decision" in the sense that such decision has to be only by the nominee acting as the sole arbitrator. Secondly, the question is whether on such reference the nominee has to hear the parties again afresh inasmuch as the dispute has been referred to the nominee afresh for the second time, it being immaterial whether the second reference is to the previous nominee or a fresh nominee.

(8) The contention of the petitioner is that Shri Jyoti Prasad had no jurisdiction to act as the sole arbitrator. Shri Dalal, counsel for the petitioner, argues that the concept of a sole arbitrator is absent from rule 35. He says that if rule 35 is interpreted to allow the reference of the dispute to a sole arbitrator such interpretation will be contrary to section 54. He argues that u/s 71 the power to frame rules is given only to give effect to the provisions of the Act and to prescribe the procedure to be followed in the proceedings before the arbitrator. The rule can, Therefore, be only procedural and not substantive.

(9) On a careful consideration of section 54 it appears that the proceedings there under are in the nature of an arbitration. This is shown by the heading of the section as "arbitration". Nevertheless if the dispute is referred to the Registrar or to his nominee and if none of the parties desires it to be referred to three arbitrators, the Registrar or his nominee is not called an arbitrator. The reason seems to be to avoid calling the same person by two different names. The Registrar is already a statutory authority under the Act as the Registrar and it would be confusing to call him either merely an arbitrator or a Registrar-arbitrator. Similarly, the chief characteristic of the nominee is that he is nominated by the Registrar and he is also not, Therefore, called an arbitrator in addition to his designation as the nominee. Contrasted with this is "the arbitration of three arbitrators, one of whom is to be the Registrar or his nominee. Here the arbitrators nominated by the parties do not have any other name except arbitrators and, Therefore, the Registrar or the nominee also is called an arbitrator.

(10) It is well known that multiplicity of arbitrators makes a proceeding more dilatory than a proceeding before a sole arbitrator. The object of the last part of rule 35 is to provide procedure after the expiry of two months' time during which the Registrar's nominee or the 3 arbitrators have to finish the proceedings. It has to be noted that no such time limit is imposed on the Registrar. The reason is that the Registrar has the power to extend time and it would have been superfluous to say that a dispute which is referred to the Registrar should be

finished within two months unless the Registrar himself extends time to himself for finishing the proceedings. This distinction has an important bearing on the interpretation of the last words of the last paragraph of rule. 35.

(11) These words are "the Registrar may decide the dispute himself or refer again to his nominee for decision". Here again the Registrar does not have any time limit for deciding the dispute. The question is whether the Registrar's nominee would have such a time limit. Reading the rule as a whole it would appear that the effect of the expiry of the time limit under rule 35 is to terminate the proceedings before the Registrar's nominee or the three arbitrators unless the time is extended by the Registrar. This brings to an end an arbitration proceeding which started u/s 54 with due compliance with the desire of either of the parties that the case be decided by three arbitrators. Section 54 does not contemplate more than one such proceedings. The last part of rule 35 deals with the contingencies when such proceedings come to an end. Even though rule 35 is concerned with procedure and not substance, this does not require that after the expiry of the proceedings taken u/s 54 the procedure must provide that a second proceeding must again begin anew exactly in accordance with section 54. On the contrary the object of the last portion of the rule 35 appears to provide a remedy for the disposal of the dispute after the proceedings "under section 54 have come to an end. This remedy is by providing the procedure to be followed after the termination of the proceedings u/s 54. This procedure is that the dispute would then be decided either by the Registrar or by his nominee. The reason why the Registrar is given the power to decide the dispute is that no time limit is imposed on him for doing so. It would appear that the same reason would apply to the second reference of the dispute to his nominee by the Registrar.

(12) The argument that as soon as the Registrar or his nominee takes up the dispute for decision after the expiry of the time of two months, the parties again get the right u/s 54 to have the dispute decided by three arbitrators is not supported by the language of the last paragraph of Me 35. While the opening words of the last paragraph of rule 35 speak of a dispute referred to the Registrar's nominee or to three arbitrators for decision the concluding words refer to the decision by the Registrar himself or by his nominee. While at the beginning of the paragraph the Registrar is absent at the end of the paragraph the three arbitrators are absent. The beginning words and the ending words were obviously not intended to mean the same thing. If the reference by the Registrar to his nominee were to inevitably import the right of the parties to have their own arbitrators joined with the nominee then the provisions for the Registrar to refer the dispute to his nominee would be redundant. The previous provision that the Registrar would extend the time to the nominee or the three arbitrators to decide the dispute would have been sufficient. For, the interpretation that the second reference of the dispute to the nominee means a reference to the nominee and to two arbitrators would, Therefore, make the draftsman guilty of repeating the provision for extension of time in different words and thus expressing the same meaning in totally two different ways. Such inconsistency is

not to be attributed to the draftsman. I am of the view, Therefore, that the second reference to the nominee dispenses with the provision for extension of time and also for the association with him of the arbitrators of the parties. The very purpose of this provision is to see that the proceedings are not delayed any longer. This is how the Assistant Registrar understood rule 35 when he wrote the letter to Shri Jyoti Prasad to proceed as the sole arbitrator.

(13) It is well settled that a reasonable view of the meaning of a legal provision taken by an administrative authority or Tribunal is not to be quashed by this Court under Article 226 of the Constitution merely because the Court is inclined to take a different view of the said provision. The view taken by the administrative authority should either be wrong on the face of it or should be perverse. Since I am myself inclined to understand the words of rule 35 in the way that the Assistant Registrar understood it, I cannot say that his view is either wrong on the face of it or perverse.

(14) The decision of Shri Jyoti Prasad is challenged on the ground that he did not have jurisdiction to give the award. On the meaning given by me to rule 35 he had the jurisdiction to do so. There is no challenge to his decision on the ground that he did not hear the part's afresh. On the contrary, in the award in the case of Smt. Jai Wanti Sahni v. the petitioner-society Shri Jyoti Prasad has observed that after he was appointed the sole arbitrator, Shri Sadbu Ram, Secretary, represented the Society and Smt. Krishna Sethi represented Smt. Jai Wanti Sahni. For these reasons I am unable to find any such defect in the award as can give a cause of action for complaint to the petitioner under Article 226 of the Constitution.

(15) As for the case between Smt. Savitri Devi v. the petitioner society, the award dated 29-8-1968 is signed by Shri Jyoti Prasad and Shri R. L. Dhingra, arbitrators, while Shri R. D. Sondhi, another arbitrator, has written a dissenting award. No complaint can be made, Therefore about this award at all.

(16) In view of the above findings all the three writ petitions are dismissed without any order as to costs.