

(1991) 01 CAL CK 0006
In the Calcutta High Court
Case No : Matter No. 2613 of 1989

Trass Engineering Co-operative Society Ltd.	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision : 25-01-1991

Acts Referred:

Constitution of India, 1950 — Article 226
West Bengal Co-operative Societies Act, 1983 — Section 137

Citation : 95 CWN 899

Hon'ble Judges : Kalyanmoy Ganguli, J

Bench : Single Bench

Advocate : Bikash Ranjan Bhattacharjee and Shanti Das Bhowmik, for the Appellant; Milan Chandra Bhattacharjee, for the Respondent

Judgement

Kalyanmoy Ganguli, J.—In the instant application the petitioner challenges an order passed by the Registrar of Co-operative Societies on August 9, 1989 which is annexure "L" to the petition in exercise of the power conferred upon him u/s 137 of the West Bengal Co-operative Societies Act, recalling Order No. 20496 dated December 8, 1983 passed by himself appointing one Sri P.P. Ghosh, Deputy Registrar of Co-operative Societies (Indus), West Bengal to hear and arbitrate the dispute between the parties on his behalf in terms of Clause 15 of the agreement between the parties. By the said order impugned in the petition the said Registrar further recalled the proceedings undertaken in terms of the aforesaid order dated December 12, 1983 and the award passed on May 15, 1985. The matter was contested by the respondents.

The petitioner is a Co-operative Society composed mainly of unemployed engineers registered under the provisions of the West Bengal Co-operative Societies Act, 1940 hereinafter referred to as the 1940 Act. The respondent no. 3 is also a Co-operative Society registered Co-oper Societies Act, 1973, hereinafter referred to as the 1973 Act. Ultimately, the petitioner was selected in an open bid call for execution of the construction and commissioning of 4,000 M.T. Capacity

Cold Storage of Amarjyoti Samabay Himghar Ltd., Kalara, P.O. Jamalpur, Dist. Burdwan. Ultimately, however, the said project was abandoned by the Transfer committee but the petitioner was offered to execute the work of construction and commissioning of 4,000 M.T. Capacity Cold Storage at Gram Salika, murshidabad.

2. Therafter an agreement was entered into by and between the petitioner, the respondent no. 3 and the Benfed on June 12, 1979 under certain terms and conditions and the work order for construction and commissioning of the said cold storage was issued by the respondent no. 3 by their letter dated June 12, 1979. A copy of the said agreement has been annexed to the petitioner marked with the letter "A"

3. It is stated in paragraph 17 of the petition that the petitioner Society duly executed the work of construction and commissioning of the cold storage strictly in conformity with the drawing and designs approved by the Benfed as the authorised representative of the respondent no. 3. On the completion of the aforesaid construction the petitioner submitted the "Final Bill" to the respondent society.

4. It is asserted in paragraph 19 of the petition that the said cold storage is functioning satisfactorily. The petitioner society further asserts that it is entitled to get payment from the respondent no. 3 in terms of the agreement mentioned hereinbefore. In course of negotiations for finalization of the bill a dispute arose between the petitioner and the respondent no. 3.

5. Clause 15 of the agreement referred to above provides as follows

That if any dispute arises between the parties in regard to execution of the work and/or any matter connected therewith as per terms hereinabove and the terms contained in the tender, fee dispute shall be referred to the Registrar of Co-operative Societies, West Bengal for in arbitration and the decision of the Registrar of Co-operative Societies shall be final and binding upon the parties.

The petitioner society filed a dispute case allegedly in terms of Clause 15 of the agreement referred to above, referring a claim of Rs. 31,59,796.40.

6. The respondent no. 2 the Registrar of Co-operative Societies by an order dated December 8/9, 1983 purported to appoint the Deputy Registrar of Co-operative Societies (Industries), West Bengal to hear and arbitrate the dispute on behalf of the respondent no. 2. A copy of the said order dated December 8/9, 1983 has "been annexed to the petition marked with the letter "B"

In the arbitration proceeding claims and counter-claims were filed by the petitioner and the respondent no. 3 respectively and after hearing both the parties and on a perusal of all documents the learned Arbitrator made an award in favour of the petitioner on May 15, 1985 a copy of which has been annexed to the petition marked with the letter "E".

7. Before proceeding further it may be mentioned that various proceedings were

initiated before the High Court under relevant provisions of Arbitration Act, 1940 and orders passed therein in connection with the Award referred to above. It may further be mentioned that an application under Article 226 of the Constitution of India was also moved before the High Court which was ultimately dismissed on the ground that no writ lies in a case where elaborate proceedings for the enforcement of the rights of the parties have been provided for in the Arbitration Act, 1940 itself. It is not necessary to refer all those proceedings here as in my opinion they are wholly irrelevant for the purpose of a decision on the real issues.

8. Ultimately the petitioner took initiative to execute the award u/s 14(2) of the Arbitration Act, 1940 and accordingly a notice u/s 14(2) of the said Act had been issued upon parties by the Registrar of Original Side, High Court on June 24, 1989 for pronouncement of judgment on such award on August 11, 1989.

9. In the meantime the petitioner received a notice being no. 4667(Z) dated May 6, 1989 issued by the Registrar of Co-operative Societies along with the copy of an application for review of the order dated December 8, 1983 issued by the said Registrar.

The Registrar disposed of the said application for review filed by the respondent no. 3 by an order dated August 9, 1989. A copy of the said order impugned in the writ petition has been annexed to the writ petition marked with the letter "L".

10. The petitioner is aggrieved by the aforesaid order passed by respondent no. 2 on the application for review filed by the respondent no. 3 on various grounds.

The respondent no. 3 vehemently opposes the said prayer for quashing the order impugned in the writ petition.

11. For the reasons stated hereinafter it may not be necessary to advert to all the arguments advanced by the parties on the question of validity or otherwise of the order impugned in the petition.

12. The admitted position seems to be as follows :-

(I) That both the petitioner and the respondent no. 3 are Co-operative Societies;

(II) That in case of dispute between two Co-operative Societies, concerning the business of a Co-operative Society and/or relating to the affairs of a Co-operative Society the said dispute shall have to be referred to the Registrar both under the provisions of Section 86 of the 1973 Act and section 95 of the 1987 Act.

(III) That a dispute did actually arise regarding the business of the Co-operative Society and/or relating to its affairs between the petitioner and the respondent no. 3;

(IV) That the Registrar being respondent no. 2 by an order dated December 8/9, 1963 appointed the Deputy Registrar of Co-operative Societies (Industries), West Bengal to hear and arbitrate the dispute referred to the respondent no. 2.

It is true that Clause 15 of the agreement between the petitioner and the respondent, no. 3 provides for reference of any dispute to the arbitration of the Registrar of Co-operative Societies.

13. The question arises as to whether Clause 15 should be read in isolation to refer any dispute between the parties to the arbitration of a named Arbitrator in accordance with the provisions of Arbitration Act, 1940 or whether the said term, namely, Clause 15 merely incorporates what is already provided for u/s 86 of the 1973 Act and/or section 95 of the 1987 Act.

14. In view of the mandatory nature of the provision of section 86 of the 1973 Act and/or section 95 of the 1985 Act, the parties are bound by the provisions of the Statute and the private agreement between the parties cannot override the statutory provisions. u/s 87 of the 1973 Act and Section 96 of the 1983 Act the Registrar has the power to transfer the dispute for disposal to any person authorised by the State Government to exercise the powers of the Registrar in this behalf.

15. In the instant case the Registrar merely exercised the powers conferred upon him under the provisions quoted above by asking the Deputy Registrar to arbitrate on the dispute referred to him.

16. Looking from that point of view it cannot be said by any stretch of imagination that the mention of the reference of a dispute to the arbitration in terms of Clause 15 of the agreement should be treated as a reference of a "dispute to the arbitration of a person within the meaning of the provisions of the Arbitration Act, 1940. Clause 15 of the agreement makes explicit what is already implicit under the provisions of law as stated hereinbefore. Reference of the dispute to the arbitration of the Registrar is governed by the provisions of the statute and not by the voluntary and overt act of the parties in dispute. If that is so then all the proceedings initiated by the parties either under Article 226 or under the provisions of the Arbitration Act, 1940 are redundant and not have the sanction of law. The entire procedure is governed by the mandatory provisions of the respective Acts of 1973 and 1987.

17. In that view of the matter the question of review, which has taken recourse to by the respondent no. 3 of the order passed by respondent no. 2 in 1983 does not arise. If no review lies then passing an order on an application for such review does not also receive the sanction of law and the whole act is an exercise in futility.

18. It may be noted here that arbitration proceedings were continued before the Deputy Registrar of Co-operative Societies, the respondent no. 3 never raised any objection to the continuance of such proceeding because they knew although that was the only procedure sanctioned by law and the provisions of the Arbitration Act has no manner of application to the facts and circumstances of the case.

19. It is also an admitted fact that the application for review was grossly time barred and no explanation could be given for making such an application for review at that belated stage. Further for the reasons stated hereinbefore the grounds for review is totally honest.

For reasons stated above the order impugned cannot be sustained in law and has to be set aside.

20. The Rule is made absolute and the order impugned which is annexure "L" to the petition is hereby set aside and/or quashed.

21. Let writs in the nature of mandamus and certiorari issue accordingly.

22. The respondent no. 3 has a right of appeal or rather had a right of appeal from the award to which they have not taken recourse to the appeal has become barred by limitation in the meantime. However, if the respondent now choose to prefer an appeal from the award made they may do so subject to their satisfying the appellate authority as to the reason for condonation of delay in preferring such appeal. In the facts and circumstances of the case there will be no order as to costs.

All parties are to act on a signed copy of the operative portion of this judgment on the usual undertaking.