

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: September 11, 2009

Date of Order: September 18, 2009

+Arb. P. 149/2009

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18.09.2009

Delhi Table Tennis Association (regd.)

...Petitioner

Through: Mr. M.C. Dhingra, Advocate

Versus

Table Tennis Federation of India

...Respondent

Through: Nemo

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. This application/petition under Section 11(4) and 11(5) of the Arbitration & Conciliation Act, 1996 ("the Act", for short) has been preferred by the applicant with a prayer that this Court should mandate /appoint Justice R.L. Khurana (Retd.) or any person as the Court may deem fit as the sole arbitrator to adjudicate upon the disputes between the parties.

2. The application was taken up on 24th April 2009 and it was directed that a notice of the petition be served upon respondent. Respondent was duly served for 15th May, 2009. On 15th May, 2009 none appeared for the respondent despite service and the matter was again listed on 21st August, 2009. On 21st August 2009 again none appeared for the respondent and the

matter was listed on 11th September 2009. On 11th September 2009 again none turned up for respondent and respondent was proceeded ex parte and ex parte arguments on behalf of petitioner were heard and the order was reserved. Soon after the order was reserved, respondent appeared and sought permission to file written arguments alleging that counsel for respondent who was junior advocate waited before the Court of Chief Justice where this matter was to be listed and was to be taken up at 2 pm. However, at 1 pm on 11th September 2009, counsel learnt that the matter had been transferred and after that by the time she reached to this Court, the matter had already been heard and respondent was proceeded ex parte. Respondent's counsel asked the staff to allow her to mention the matter before the Judge but the staff did not allow the counsel to mention the same and she was informed on instructions that if she wanted to file written arguments, she may file the same by Monday i.e. 14th September 2009. Thus, in these circumstances, she has filed written arguments. The written arguments so filed by respondent contained several documents. One of the contentions taken by respondent in written arguments is that the arbitrator appointed by respondent has already passed an award and this petition under Section 11 of the Act has become infructuous.

3. It may be noted that as per the averments of respondent, the arbitrator who passed the award was appointed on 30th March 2009, however, no documents in this regard has been placed on record showing appointment of arbitrator on 30th March, 2009.

4. From above facts, it becomes quite clear that the intention of respondent from the very beginning has been to evade the proceedings and

not to attend the Court. Several excuses are given in the written arguments for non appearance. However, fact remains that the notice of this petition was served upon respondent on 5th May, 2009 and thereafter respondent put appearance only when this Court proceeded ex parte and reserved the order.

5. A petition was earlier moved before this Court being OMP 594 of 2008 wherein this Court made the following order:

“ This petition under Section 9 of the Arbitration and Conciliation Act has been made by the petitioner Association, relying on the arbitration clause in Rules and Byelaws of the Table Tennis Federation of India, the respondent herein. The grievance of the petitioner is that a news item was published on 7th November 2008 wherein it was revealed that the management committee of the petitioner has been superseded by an ad hoc committee and the office of the petitioner’s association was being shifted from Karol Bagh to Panchkuian Road. The copy of the news clip has been placed on record. No intimation was received by the petitioner from the respondent regarding supersession of the management committee of the petitioner association. However, it is stated by the counsel for the petitioner that the players who were being sent by the management committee of the petitioner for participating in tournaments were not allowed to participate on the ground that the petitioner’s association has been superseded. It is submitted by counsel for the respondent that the petitioner association has not been superseded and only it was de-affiliated because of complaints received against the petitioner association by a large number of players. Copies of those complaints have been placed on record. The petitioner has already invoked arbitration clause and has named Hon’ble Mr. Justice

R.L. Khurana (retd.) as an Arbitrator from his side to be the sole arbitrator. This request of the petitioner has not been responded to by the respondent. Let respondent either accedes to this request of the petitioner or it shall appoint an independent arbitrator within a week from today. The petitioner would be at liberty to make an application for interim relief before the Arbitrator so appointed. Till the Arbitrator decides the application of the petitioner for interim relief, the petitioner's management committee shall continue to function and shall discharge its obligations as per the constitution of the petitioner's association. As far as its de-affiliation is concerned, the petitioner would be at liberty to raise a dispute before the Arbitrator.

With above directions this petition stands disposed of."

6. It is contended by the petitioner that after passing of this order, the respondent did not appoint an independent arbitrator within a week and the petitioner requested Justice R.L. Khurana (retired) to proceed with the arbitral proceedings as sole arbitrator. Justice R.L. Khurana (retd.) issued a letter dated 4th April 2009 for giving the next date of hearing as 13th April 2009 at 4.30 pm. The issuance of this letter by Justice R.L. Khurana prompted respondent to initiate arbitral proceedings in counterblast and on 4th April, 2009 itself counsel for petitioner received a letter dated 30th March 2009 from counsel of respondent stating that in terms of arbitration clause as amended in the annual general body meeting on 21st February, 2009 it had appointed Mr. K.R. Vajpai as sole arbitrator. It is submitted that Mr. K.R. Bajpai could not have acted as an arbitrator as he was one of the parties to the disputes. It is also submitted that appointment of Mr. K.R. Bajpai as an arbitrator under an alleged amendment made to the arbitration clause by

respondent in alleged annual general body meeting dated 21st February 2009 was illegal and not sustainable.

7. A perusal of rules of association would show that Rule No.46 provides for alterations in the Rules. Rule 46 of the Association reads as under:

"46. Alteration in Rules:

- (a) No alteration in the rules shall be made except at a General Meeting by resolution carried by two-third of the votes properly recorded at the meeting. Any alteration so made shall take effect as and from the beginning of the following year unless the Meeting shall decide otherwise.*
- (b) Proposals for any change in the rules must reach the Federation 15 days preceding the date of the Annual General Meeting at which they are to be considered. All such proposals shall be circulated to all those who have a right to attend a General Meeting as part of the Agenda for such Meeting. The Executive Committee, however, may bring in any proposal for the alteration in rules which according to the committee is of emergent nature and requiring immediate consideration."*

As per these rules, no alteration in the rules can be made except in a general body meeting by resolution carried out by 2/3rd majority of votes and even if such change in the rule is made, this alteration takes effect from the beginning of the following year unless meeting decides otherwise.

8. The other condition is that the proposal for any change in the rule has to reach members of Federation 15 days preceding the date of annual

general body meeting and these proposals are to be circulated to all those members who have a right to attend the annual general body meeting, as a part of agenda.

9. The respondent has failed to place on record the documents showing whether change of rules regarding arbitration clause was in the agenda, who sent the proposal for changing the arbitration clause, whether this proposal was circulated among the members and whether the annual general body meeting passed this rule by 2/3rd majority and if the general body meeting passed the resolution that the rule shall not become effective from the following year.

10. The respondent also failed to file along with the written arguments any document showing that it was the prerogative of respondent to appoint the arbitrator. The original arbitration clause reads as under:

“Arbitration:

All disputes between the National Federation and its constituents, and among the constituents themselves, shall always be referred to arbitration for settlement on any issue and members shall on no account take recourse in a court of law.”

11. It is obvious that this arbitration clause does not give prerogative to respondent to appoint the arbitrator. Respondent had in fact had failed to act in accordance with the above arbitration clause and the order of the Court. The new arbitration was not brought to the notice of this Court even when the earlier order dated 24th March, 2009 was passed by this Court. If the new rule had come into force, the respondent would have brought it to

the notice of the Court.

12. I consider that respondent tried to play over-smart and once the petitioner had appointed the arbitrator to take up the proceedings, respondent immediately created some documents and asked one of the interested parties to act as an arbitrator. It is well settled law that fraud vitiates all proceedings including the judicial orders, if they are obtained by fraud. The arbitration proceedings conducted by Mr. K.R. Bajpai apparently were a fraud. It is also not understood as to how the award could have been passed by Mr. K.R. Bajpai without specifying as to what was the dispute referred to him and without there being a claim before him. I, therefore, consider that the plea taken by respondent that award has been passed is baseless plea.

13. In view of foregoing facts, I consider that it would be appropriate that an independent arbitrator is appointed to adjudicate the disputes between the parties.

14. I, therefore, appoint Justice M.A. Khan (retired) as an arbitrator to adjudicate the disputes between the parties. He shall fix his own fee. Parties are directed to appear before him within 30 days from today along with their claims and counterclaims.

15. The petition stands disposed of.

September 18, 2009
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SHIV NARAYAN DHINGRA J.