

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

AR.No. 5 of 2015

PETITIONER(S) :

**D.RAJKUMAR,
KOCHUVILAYIL, PALACE NAGAR, THEVALLY,
KOLLAM.**

**BY ADVS.SRI.A.SUDHI VASUDEVAN
SMT.K.PUSHPAVATHI
SRI.R.SYLESHWAREN NAIR
SRI.JOSE JONES JOSEPH**

RESPONDENT(S) :

- 1. ARUVIPURAM SREE NARAYANA DHARMA PARIPALANA YOGAM,
REPRESENTED BY IT'S GENERAL SECRETARY,
V.K.NATESAN, P.B.NO.512, KOLLAM, KERALA.**
- 2. THE GENERAL SECRETARY,
S.N.D.P. YOGAM, P.B.NO.512, KOLLAM.**

**BY ADVS. SRI.A.N.RAJAN BABU
SRI.P.GOPALAKRISHNAN (MVA)**

**THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION
ON 03-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE A:** TRUE COPY OF THE DECISION DATED 30.08.2013 BEARING NO.A/4/2089/2013 TAKEN BY THE BOARD OF DIRECTORS OF THE S.N.D.P YOGAM.
- ANNEXURE B:** A TRUE COPY OF THE NOTICE DATED 06.01.2014 ISSUED BY ME TO THE 2ND RESPONDENT UNDER SECTION 21 OF THE ARBITRATION AND CONCILIATION ACT.
- ANNEXURE C:** A TRUE COPY OF THE REPLY NOTICE SENT BY THE 2ND RESPONDENT TO THE PETITIONER.
- ANNEXURE D:** A TRUE COPY OF THE ARTICLES OF THE ASSOCIATION OF THE 1ST RESPONDENT.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

P.BHAVADASAN, J.

Arbitration Request No. 5 of 2015

Dated this the 03rd day of March, 2015

ORDER

This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 for the appointment of an Arbitrator.

2. It is unnecessary to go into the facts in detail for the simple reason that the facts alleged are not seriously disputed. It is admitted that there is a dispute regarding disciplinary action taken against the petitioner by the Yogam. The petitioner would point out that he had filed an appeal against the order, which was dismissed by the Board of Directors. That was also dismissed. Going by the provision contained in the bylaws, if any dispute arises between the member and Yogam, that is to be referred for arbitration. It is alleged in the petition that in the notice issued to the respondent, the second respondent refused to refer the dispute to the sole arbitrator citing untenable

grounds. Left with no remedy, the petitioner has approached this Court for appropriate reliefs.

3. Sri. A.N.Rajan Babu, the learned counsel appearing for the respondents did not seriously dispute the arbitration clause contained in Clause 71 of the bylaw. The only contention of Sri. Rajan Babu was that bylaw is the contract between members and the Union and they are bound by the terms of the bylaw. As per Clause 71 of the bylaw, each party is entitled to appoint an arbitrator of their choice and if there is any difference of opinion between the arbitrators so appointed, the matter is to be referred to a third person who is to be nominated by the Yogam and his decision shall be final. Relying on the said Clause, it is contended that the plea for appointment of a sole arbitrator made by the petitioner cannot be sustained as going by procedure for arbitration contained in the bylaw, each party is entitled to nominate his or her arbitrator. The yogam is therefore entitled to nominate its arbitrator.

4. Replying to the above contention, the learned counsel appearing for the petitioner pointed out that the clause cannot be given effect to since that contemplates appointment of even number of arbitrators which is tabooed by Section 10 of the Arbitration and Conciliation Act (hereinafter referred to as “the Act”) and if that be so, the appointment has to be under Section 11(6).

5. There seems to be considerable force in the above submission. It might be noticed that the existence of a dispute and the arbitrability are not disputed. The sole contention taken is on the basis of Clause 71 of the bylaw which reads as follows:

“71. കൂട്ടു നിബന്ധനകളെ സ്വീകരിക്കുന്നതും, ശാഖാംഗങ്ങൾ തമ്മിലോ ശാഖാംഗങ്ങളും ശാഖകളും തമ്മിലോ ശാഖാംഗങ്ങളും യൂണിയനുകളും തമ്മിലോ ശാഖാംഗങ്ങളും യോഗവും തമ്മിലോ ശാഖകൾ തമ്മിലോ, ശാഖകളും യൂണിയനുകളും തമ്മിലോ ശാഖകളും യോഗവും തമ്മിലോ, യൂണിയനുകൾ തമ്മിലോ യൂണിയനുകളും യോഗവും തമ്മിലോ ഉണ്ടാകുന്ന തർക്കങ്ങൾ യോഗം കൗൺസിലോ

ബോർഡോ നിയമിക്കുന്ന ഒരു ആർബിട്രേഷൻ സ്കീമിന്റെ തീരുമാനത്തിന് വിധേയമാകുന്നു. യോഗം കക്ഷിയായിട്ടുള്ള തർക്കങ്ങളിൽ ഓരോ കക്ഷിക്കും ഒരു ആർബിട്രേറ്ററെ നിർദ്ദേശിക്കുവാൻ അവകാശമുണ്ടായിരിക്കുന്നതും അങ്ങനെ നിയമിക്കപ്പെടുന്ന ആർബിട്രേറ്ററന്മാർ തമ്മിൽ അഭിപ്രായ വ്യത്യാസം ഉണ്ടായാൽ പ്രസ്തുത അഭിപ്രായവ്യത്യാസം യോഗം കൗൺസിൽ നിർദ്ദേശിക്കുന്ന ഒരു മധ്യസ്ഥന്റെ തീരുമാനത്തിനു വിധേയമായിരിക്കേണ്ടതും, ആ തീരുമാനം അവസാന തീരുമാനം ആയിരിക്കുന്നതാകുന്നു.”

6. Going by the bylaw, each of the parties to the dispute is entitled to appoint an arbitrator. It is this Clause, that is relied on by the respondents in support of their case and they are entitled to have an arbitrator appointed of their choice.

7. Section 2(d) of the Act defines an 'Arbitral Tribunal' as follows:

“2(d): “arbitral tribunal” means a sole arbitrator or a panel of arbitrators”.

8. It is evident from the above definition that the

tribunal constitute under the Act contemplates the sole arbitrator or panel of arbitrators. Then comes Section 10 of the Act which reads as follows:

“10. Number of arbitrators.-(1) The parties are free to determine the number of arbitrators, provided that such number shall not be an even number.

(2) Failing the determination referred to in sub-section (1), the arbitral tribunal shall consist of a sole arbitrator.”

9. That gives freedom to the parties to determine the number of arbitrators. But the provision says that the number so determined shall not be an even number. It also stipulates that in case the parties did not specify the number of arbitrators as mentioned in clause (1) of Section 10, arbitration shall be conducted by the sole arbitrator.

10. Section 11 of the Act deals with the appointment of arbitrators. Sections 11(1) and 11(2) of the Act may not be very much relevance. Section 11(3) of the Act says that if the number of arbitrators chosen by the parties is three,

each party shall appoint one arbitrator and those two arbitrators so appointed shall appoint the third arbitrator who in fact shall act as umpire. As far as clause 5 of Section 11 of the Act is concerned, it deals with the case in which arbitration is conducted by sole arbitrator. The provision provides that in case arbitration is to be conducted by sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party, the former party may approach the High Court for appointment of sole arbitrator.

11. In the case on hand, the question that arises for consideration is whether Clause 71 of the bylaw can be given effect to.

12. Section 10 of the Act is clear to the effect that even though the parties are at liberty to choose their own arbitrators, that shall not be of even number. That is a total prohibition. If that is the provision, the situation is covered by Section 12(2) of the Act. It mentions that in the light of

the fact that if Section 10(1) of the Act cannot be given effect to, the arbitration shall be conducted by a sole arbitrator.

13. In view of Section 10 of the Act, the respondents cannot be heard to say that each party is entitled to appoint an arbitrator of their own constituting even number of arbitrators. Further contention that Clause 71 of the bylaw also contemplates a third arbitrator, cannot improve the case of the respondents since Clause 71 of the bylaw says that in case of difference of opinion between the two arbitrators, the matter shall be considered by a person chosen by the Yogam. That is not equal to what is contemplated under Section 11(3). Had it been a case where the parties had initially agreed to have three arbitrators and each of them appointing one arbitrator of their choice and those two arbitrators choosing a third person, the position would have been different. But that is not the case on hand.

14. In the light of the above fact, the contention that Clause 71 of the bylaw enables each of the parties to appoint an arbitrator cannot be given effect to in the light of Section 10 of the Act.

For the above reasons, this petition is allowed as follows:

- i) Sri. Y. Thajudeen Koya, Retired District and Sessions Judge is appointed as Arbitrator.
- ii) Arbitrator shall enter into the arbitration proceedings as early as possible.
- iii) The remuneration of the Arbitrator will be fixed by the Arbitrator in consultation with both parties.
- iv) Award shall be passed as early as possible, at any rate, within a period of six months from entering into Arbitration.

Sd/-
P.BHAVADASAN
JUDGE

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