

OP.No.466/2014 and
A.4887/2014

R.MAHADEVAN, J.

This Original Petition has been filed, against the award of the Arbitrator, dated 08.07.2014, in reference under L-11014/20/2013-L& M, dated 02.12.2013, wherein the Arbitrator has held that the dispute under reference is arbitrable. Aggrieved, the above application has been filed to stay all further proceedings before the Arbitral Tribunal.

2 . The case of the Petitioner, the President of the Tamil Nadu Circle Postal Co-operative Bank Limited is that the tenure of the earlier Board of Directors ended on 18.06.2012. To elect the new Directors, this Court had issued directions to the Central Registrar to conduct the elections and the Deputy Registrar of Co-operative Societies was appointed as the Returning Officer to convene a General Body Meeting to elect the Directors. In the General Body Meeting held on 08.02.2013, twelve persons including the Petitioner and the respondents 1 to 9 were elected as Directors and in the meeting held on 11.02.2013, the Petitioner was elected as the President and the 2nd respondent as the Vice-President for the period 2013-2018. Certain disputes arose between the elected members, regarding the functioning of the Bank and the conduct of the business, in the meeting. The 1st respondent claims to have been elected as the President in the meeting held on 08.07.2013. It is the case of the 1st respondent that the petitioner was removed from the post of the President on the very same day. But, according to the Petitioner, the 1st respondent did not even attend the meeting convened by the Petitioner on 08.07.2013 and any meeting conducted otherwise than in

accordance with the regulations of the bye-laws is illegal and invalid. Since the petitioner did not accept the election of the 1st respondent as the President and continued to act as the President, a dispute was raised before the Central Registrar, who in turn referred the matter to the Arbitrator vide L-11014/20/2013-L&M dated 02-12-2013. According to the Petitioner, since the confirmation of the removal of the Directors can be made only by the Central Registrar under Section 47 of the Multi State Co-operative Societies Act, the Petitioner filed a writ petition in W.P.No.1902/2014, which was dismissed, observing that the issue of maintainability of the arbitration proceedings can be raised before the Arbitrator and the writ appeal filed as against the same by the Petitioner was also dismissed. Under the above circumstances, the petitioner raised a preliminary objection under Section 84 (3) of the Act. The said contention was rejected by the order impugned. Aggrieved by the same, the Petitioner has filed this Original Petition under Section 37 of the Arbitration and Conciliation Act 1996. Subsequently, the Petitioner has also filed a writ petition in W.P.No.30469/14, challenging the proceedings of the Central Registrar, rejecting the demand of the Petitioner to disqualify the Directors, as the issue was already pending before the Arbitrator. The said writ petition was dismissed by this Court on 03/02/2015.

3. The learned counsel for the Petitioner, relying upon Section 47 of the Multi State Co-operative Societies Act, contended that the removal of an elected member of the Society cannot be decided in the arbitration proceedings and it is only the registrar, who has to decide the validity of election. The learned counsel further contended that the meeting dated 08.07.2013 is invalid,

as no proper notice was issued and no General Body Meeting was conducted. The learned counsel further contended that 9 out of 12 directors were disqualified for not attending three consecutive meetings and therefore, any resolution passed by them is invalid. The learned counsel also relied upon the judgement of the Honourable Supreme Court reported in **2012-5-SCC-214 (Kvaerner Cementation India Ltd. v. Bajranglal Agarwal)** and sought for intervention of this Court to terminate the arbitration proceedings.

4. Per Contra, the learned counsel for the Respondents contended that the present application under Section 37 is not maintainable. Any order passed under Section 84 (3) is like an order passed under Section 16 and therefore, the same can be challenged only along with the main award under Section 34. Only if an order is passed under Section 17, an application under Section 37 is maintainable. The learned counsel further contended that under one pretext or other, the Petitioner is attempting to stall the arbitration proceedings. The learned counsel also relied upon Section 84 (2) to contend that the dispute is arbitrable and that the Arbitrator had rightly decided the same. The learned counsel, pointing out to the instances of irregularities committed by the petitioner, contended that the Petitioner was removed by the majority of the Directors. The learned counsel has also relied upon the judgements reported in **2007 (1) ARBLR 327 Delhi (Triad India Vs. Tribal Cooperative Marketing)**, **2005 (8) SCC 618 (S.B.P. & Company vs Patel Engineering Ltd. & Anr)** and **2007 (1) SC (467) (Pandey & Co. Builders (P) Limited Vs. State of Bihar and another)** and sought for dismissal of the petition.

5. This court heard the learned counsel on either side and carefully

considered their contentions and also perused the materials on record.

6. Upon considering the arguments of the learned counsel on either side, at the outset, it is, first and foremost, necessary to decide the maintainability of the Petition under Section 37 of the Arbitration and Conciliation Act, before going into other aspects.

7. Section 37 of the Arbitration and Conciliation Act reads as follows:-

“37. Appealable orders.- (1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely,

(a) granting or refusing to grant any measure under Section 9:

(b) setting aside or refusing to set aside an arbitral award under Section 34.

(2) Appeal shall also lie to a court from an order of the arbitral tribunal:-

(a) accepting the plea referred to in sub-section (2) or Sub-section (3) of Section 16; or

(b) granting or refusing to grant an interim measure under Section 17.

(3) No second appeal shall lie from an order passed in appeal under this Section, but nothing in this section shall affect or taken away any right to appeal to the Supreme Court.”

8. The application, regarding the maintainability of the Arbitration proceedings, was filed under section 84 (3) of the Multi State Co-operative Societies Act, 2002 and the same has been rejected. Section 84 reads as under.

“84. Reference of disputes:-

(1) Notwithstanding anything contained in any other law for the

time being in force, if any dispute [other than a dispute regarding disciplinary action taken by a multi-state cooperative society against its paid employee or an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947)] touching the constitution, management or business of a multi-state cooperative society arises-

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past members and persons claiming through a member, past member or deceased member and the multi-state cooperative society, its board or any officer, agent or employee of the multi-state cooperative society or liquidator, past or present, or

(c) between the multi-state cooperative society or its board and any past board, any officer, agent or employee, or any past officer, past agent or past employee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the multi-state cooperative society, or

(d) between the multi-state cooperative society and any other multistate cooperative society, between a multi-state cooperative society and liquidator of another multi-state cooperative society or between the liquidator of one multi-state cooperative society and the liquidator of another multi-state cooperative society, such dispute shall be referred to arbitration.

(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or business of a multi-state cooperative society, namely:-

(a) a claim by the multi-state cooperative society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor where the multistate cooperative society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of any officer of a multi-state cooperative society.

(3) If any question arises whether a dispute referred to arbitration under this section is or is not a dispute touching the constitution, management or business of a multi-state cooperative society, the decision thereon of the arbitrator shall be final and shall not be called in question in any court.

(4) Where a dispute has been referred to arbitration under sub-section (1), the same shall be settled or decided by the arbitrator to be appointed by the Central Registrar.

(5) Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to all arbitration under this Act as if the proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996.”

9. Upon perusal of the above Sections, it is made clear that the provisions of the Arbitration and Conciliation Act shall be made applicable to the Arbitration proceedings under the Multi State Co-operative Societies Act.

10. It is also relevant to refer to Section 16 of the Arbitration and Conciliation Act, which reads as under:-

“16. Competence of arbitral tribunal to rule on its jurisdiction.-

(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,-----

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed , or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral

proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.”

11. In the decision of the Honourable Supreme Court reported in **2012-5-SCC-214**, relied upon by the learned counsel for the Petitioner, it is held in paragraph 4 as under:

“4. A bare reading of Section 16 makes it explicitly clear that the Arbitral Tribunal has the power to rule on its own jurisdiction even when any objection with respect to existence or validity of the arbitration agreement is raised, and a conjoint reading of sub sections (2), (4) and (6) of Section 16 would make it clear that such a decision would be amenable to be assailed within the ambit of Section 34 of the Act.”

12. Upon perusal of the above said decision, it is only in favour of the respondents, wherein the the Honourable Supreme Court has clearly held that the award under Section 16(2) or (3) must be challenged only under Section 34.

13. The learned counsel for the respondents has relied upon the following judgements in support of their contentions:-

(a) In **2007 (1) ARBLR 327**, it has been held as under:-

“11. On consideration of the submissions of the learned Counsel for the parties, I find force in the preliminary objection of the learned Counsel for the respondent. This is so on a plain reading of the provision of the said Act.

13. The position would be however different where the arbitral tribunal finds that it is competent to proceed with the arbitration. No appeal has been provided in such a case. The

consequences of such a decision are provided in Section 16(5) of the said Act is that the arbitral proceedings would continue resulting in an arbitral award. The remedy is provided in Section 16(6) of the said Act which is to challenge the ultimate award under Section 34 of the said Act. There is no segregated challenge permissible only on the question of the competency of the arbitral tribunal.

16. In Union of India and Anr. v. East Coast Boat Builders and Engineers Ltd. (1998) II Delhi 797, wherein an order ruling that the disputes raised are arbitrable was challenged, the learned Single Judge of this Court observed as under:-

19. If an Order on the point of jurisdiction of the arbitral tribunal was to be an interim award under the Act, Section 37 of the Act would not have provided for appeal against an order whereby the arbitral tribunal holds that it has no jurisdiction. While enacting Section 16 of the Act, the legislature was conscious that the arbitral tribunal could hold in its favour or against itself on the point of jurisdiction. If the legislature had to treat an order under Section 16 to be an interim award, it would not have provided for an appeal under Section 37 where the arbitral tribunal allows the plea that the arbitral tribunal does not have jurisdiction and the legislature would have left challenge to such order as well under Section 34 of the Act. It cannot be accepted that the order under Section 16 would change its nature upon two different contingencies, that is to say, where the order rejects the plea of no jurisdiction it becomes an interim award and where the arbitral tribunal allows the plea of no jurisdiction it is not an interim award and only appealable. Therefore, it can easily be interpreted that in either case it is only an interim order and not an interim award. Analogy of British Law on the subject cannot be pressed into service because under the British Arbitration Act such order has been specifically termed as award whereas in the Indian Arbitration act such order has not been so specifically termed.

20. From the scheme of the Act, it is apparent that the legislature did not provide appeal against the order under Section 16(5) where the arbitral tribunal takes a decision rejecting the plea that the arbitral tribunal has no jurisdiction. The intention appears to be that in such case, the arbitral

tribunal shall continue with the arbitral proceedings and make an award without delay and without being interfered in the arbitral process at that stage by any Court in their supervisory role.”

(b) In **2005 (8) SCC 618**, it has been held in paragraphs 108 and 142 as under:-

“108. As already indicated by me earlier, sub section (1) of Section 16 does not merely enable the Arbitral Tribunal to rule on its own jurisdiction, but require it to continue arbitral proceedings and pass an arbitral award. (Sub section (5)). It allows the aggrieved party to make an application for setting aside the award in accordance with Section 34. (Sub section (6)). Thus, in my judgement, Section 16 can be described as “self contained code” as regards the challenge to the jurisdiction of Arbitral Tribunal. As per the scheme envisaged by Parliament, once the Arbitral Tribunal rules that it has jurisdiction, it will proceed to decide the matter on merits and make an award. Parliament has also provided the remedy to the aggrieved party by enacting that he may make an application under Section 34 of the Act. In the circumstances, the proceedings cannot be allowed to be arrested or interference permitted during the pendency of arbitration proceedings.

142. On the basis of the above findings, my conclusions are as under:-

- (i) The function performed by the Chief Justice of the High Court or the Chief Justice of India under sub section (6) of Section 11 of the Act (i.e. the Arbitration and Conciliation Act, 1996) is administrative, pure and simple, and neither judicial nor quasi judicial.
- (ii) The function to be performed by the Chief Justice under sub section (6) of Section 11 of the Act may be performed by him or by “any person or institution designated by him”.
- (iii) While performing the function under sub section (6) of Section 11 of the Act, the Chief Justice should be prima facie satisfied that the conditions laid down in Section 11 are satisfied.
- (iv) The Arbitral Tribunal has power and jurisdiction to rule “on its own jurisdiction’ under sub section (1) of Section 16 of the Act.

- (v) Where the Arbitral Tribunal holds that it has jurisdiction, it shall continue with the arbitral proceedings and make an arbitral award.
- (vi) A remedy available to the party aggrieved is to challenge the award in accordance with Section 34 or Section 37 of the Act.
- (vii) Since the order passed by the Chief Justice under sub section (6) of Section 11 of the Act is administrative, a writ petition under Article 226 of the Constitution of India is maintainable. A letters patent appeal/intra court appeal is competent. A special leave petition under Article 136 of the Constitution also lies to this Court.
- (viii) While exercising extraordinary jurisdiction under Article 226 of the Constitution of India, however, the High Court will be conscious and mindful of the relevant provisions of the Act, including Sections 5, `6, 34 to 37 as also the object of the legislation and exercise its power with utmost care, caution and circumspection.
- (ix) The decision of the Constitution Bench in **Konkan Rly. Corporation Limited Vs. Rani Construction (P) Limited (2002-2-SCC-388)** to the extent that it held the function of the Chief Justice under sub section (6) of Section 11 of the act as administrative is in consonance with settled legal position and lays down correct law on the point.
- (x) The decision of the Constitution Bench in **Konkan Rly. Cp Limited Vs. Rani Construction (P) Limited** to the extent that it held clause 7 of “The appointment of Arbitrators by the Chief Justice of India Scheme, 1996” providing for issuance of notice to affected parties as “beyond the term of Section 11” and bad on that ground is not in accordance with law and does not state the legal position correctly.
- (xi) Since the Chief Justice is performing administrative function in appointing an arbitral Tribunal, there is no “duty to act judicially” on his part. The doctrine of “duty to act fairly”, however, applies and the Chief Justice must issue notice to the person or persons likely to be affected by the decision under sub section (6) of Section 11 of the Act.

(xii) All appointments of Arbitral Tribunals so far made without issuing notice to the parties affected are held legal and valid. Henceforth, however, every appointment will be made after issuing notice to such person or persons. In other words, this judgement will have prospective operation and it will not affect past appointments or concluded proceedings."

(c) In 2007 (1) SCC 467, it has been held in paragraphs 15 and 16 as under:-

"15. After the 1996 Act came into force, under Section 16 of the Act the party questioning the jurisdiction of the Arbitrator has an obligation to raise the said question before the Arbitrator. Such a question of jurisdiction could be raised if it is beyond the scope of his authority. Such a question was required to be raised during arbitration proceedings or soon after initiation thereof as a preliminary issue.

16. Unlike the 1940 Act, the Arbitrator is entitled to determine his own jurisdiction. In the event, the Arbitrator opines that he has jurisdiction in the matter, he may proceed therewith, which order can be challenged along with the award in terms of Section 34 of the 1996 Act. If the Arbitrator opines that he has no jurisdiction to hear the matter, an appeal lies before the court. 'Court' has been defined in Section 2(1)(e) of the 1996 Act in the following terms:-

"Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;"

14. The ratio laid down in the above said judgements, relied upon by the learned counsel for the respondents, is squarely applicable to the present facts of the case.

15. Similar to Section 84 (3) of the Multi State Co-operative Societies Act, the power to rule on his own jurisdiction has been vested with the Arbitrator under Section 16 of the Arbitration and Conciliation Act. A conjoint

reading of Sections 16(5) and 16(6) would lead to an indisputable conclusion that upon rejecting the plea of sustainability of arbitration proceedings, the Arbitrator shall continue to decide the dispute in arbitration and the award regarding maintainability can be challenged only along with the main award under Section 34. In view of Section 84(2)(5) of the Multi State Co-operative Societies Act, the Petitioner can resort only to the remedies as contemplated under the provisions of the Arbitration and Conciliation Act. Section 37 of the Arbitration Act will come into operation only when the application under Section 16 is allowed or when an award is passed under Section 17. In the present case, the plea of maintainability of the arbitration proceedings under Section 84, which is akin to Section 16, has been rejected. Therefore, the proper recourse is only to challenge the award under Section 84 along with the main award under Section 34. Therefore, the present petition is not maintainable. Keeping in mind the right of the parties to challenge the award, this court is not going into the scope of Section 84(2) of the Multi-State Co-operative Societies Act.

16. In the result, this OP.No.466/2014 is dismissed. Consequently, the Application No.4887/2014 is also dismissed. No costs.

30.04.2015

R.MAHADEVAN, J.

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Index:Yes/No
Web:Yes/No
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Pre-Delivery Order in
OP.No.466/2014 and
A.4887/2014

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