

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 12985 of 1997

Date of decision: 07.01.2015

Haryana State Cooperative Labour and Construction Federation Limited.
... Petitioner

versus

Commissioner & Secretary to the Government, Haryana and others
.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.Vishal Singh Chauhan, Advocate, for the petitioner.

Mr. S.S. Dalal, Advocate, for respondent No.4.

K.Kannan, J.

1. The writ petition challenges the order passed by the Secretary to Government, Haryana Cooperative Department purporting to exercise jurisdiction under Section 115 of The Haryana Cooperative Societies Act, 1984, (hereinafter referred to as the 'Act 1984') which set aside the award passed by the Arbitrator appointed to resolve the dispute between the petitioner and respondent Nos. 3 & 4. The dispute related to the payments claimed by the petitioner for the work done and the claim put in by the respondent Nos. 4 was that there had been a delay in completion of works that resulted in escalation of cost and that far from the petitioner being entitled to any amount, respondent No.4 was entitled to assessment of damages on various claims. An Arbitrator was appointed in terms of the contract of work on 01.05.1995 and he had entered upon reference on 06.05.1995. He proceeded to announce the award on 31.07.1996. Out of 19 heads of claims, 17 of them were declined. Claim No. 2 & 6 that referred respectively to alleged repair works to sugar godown due to heavy rains and a claim on account of installation of tubewell alone had been found in favour of the petitioner. The award dealt with the claims made by respondent No.4 as well and declined out of 12 heads of claim, all heads except claim Nos. 1,11 &12. On an overall consideration after giving credit to the claims awarded in favour of respondent No.4, the arbitrator awarded ₹ 86,65,157/- as the amount due and payable by respondent No.4. This was brought in challenge by means of an appeal under Section 114 of the

Haryana Cooperative Societies Act for setting aside the award on several grounds including that the award was a non-speaking one and that the Arbitrator had misconducted himself by undertaking spot inspection and becoming a witness in the adjudication which was bound to be rendered impartially.

2. The specific contention of challenge was as regards the fact that the award was non-speaking in the sense that Rule 85 under the Rules of 1989 required that the parties were heard and the award to be given in accordance with justice, equity and conscience but the order was totally a non-speaking one. The appellate authority held that there was no specific requirement that award was required to be a reasoned and speaking one. The appellate authority held that it had no power to go into the matter as to how the evidence of the parties were appreciated and there could be no interference unless the Arbitrator had misconducted himself. Taking the objections regarding the several aspects that led to the delay in completion of the works and clearance of the sites, the appellate authority held that the Arbitrator was a judge of both the questions of fact and law and finality attached to his judgment, no matter that reasons have not been set forth. The appellate authority observed that he had gone through the entire proceedings running to 1926 pages and the objections. The Arbitrator took more than a year to complete the enquiry and the proceedings of the Arbitrator which formed part of the judgment revealed that the Arbitrator had taken site inspections and had seen also Measurement Book Statements (MBS). He also observed that the Arbitrator had taken into consideration the contentions of the respondents that respondent No.4 had not made the payment for certain unmeasured work also and the assessment under each of the claims had been made on the basis of evidence which he had collected. He proceeded to confirm the award passed, holding that there was no merit for an interference. Against this order, revision had been filed under Section 115 of the Cooperative Societies Act, where after recording three objections taken by the appellant, namely; that the award had been passed without taking the extension from the competent authority, that the Arbitrator had accepted some claims which were not “agreed into by the parties” and that the petitioner had failed to complete the works within the stipulated period, and after setting out the objections taken in the revision, the revisional authority observed that the Arbitrator had misconducted himself by

awarding the claims not agreed to between the parties and not taking extension after the expiry of six months. He was, therefore, of the view that the award given by the Arbitrator was null and void.

3. Before the arguments got underway, the learned counsel appearing on behalf of the respondent pointed out that the writ petition itself is not maintainable since the resolution authorising the filing of the writ petition has authorized only the Executive Engineer to prefer the writ petition and has not authorized the Managing Director of the petitioner-Federation to file the writ petition. The counsel Mr. S. S. Dalal would refer the the decisions of this Court in Haryana State Coop. Supply and Marketing Federation Limited Vs. State of Haryana, 2001 (1) *PLJ* 204, stating that the appeal filed by the Secretary of the Cooperative Society, when he was not authorized by the Managing Director, was not maintainable. In another judgment, The Uddat Bhagat Ram Nazool Land Cooperative Society Vs. Leekal and others, 1981 *PLJ* 79, stating that the Court observed that unless resolution of the Cooperative Society authorising somebody to file an appeal on its behalf, the appeal cannot be presented on behalf of the Cooperative Society. The court was considering absence of any resolution authorising the President who had filed the appeal as fetter to the maintainability of the appeal. I wanted to examine the contention if the respondent has ever objected to this maintainability of the writ petition at any time especially when the writ petition had been admitted on 03.09.1997 and the case has been pending all along. The cause title reads that the writ petition has been filed by the Haryana State Cooperative Labour and Construction Federation Limited, Chandigarh, through its Managing Director, SCO No. 819, 2nd floor, Manimajra, Chandigarh and the abstract of the proceedings of the meeting which has been filed along with the writ petition suggests that the Executive Engineer was authorized to sign all documents and take further necessary action in the matter. The reply of respondent No.4 is to the effect that the petitioner-Society is a body corporate as envisaged under Section 39 of the Act 1984 and such a body could invoke the jurisdiction under Article 226 and 227 of the Constitution of India only if somebody had been authorized to act on behalf of the society.

4. The contention was that in the present case, as per the

information furnished to the answering respondent, no resolution had been passed by the Society to challenge the award. I must observe that there is no contention at all that the Managing Director was not competent to represent the Society. If the contention is that there is no resolution passed to challenge the award, it was surely incorrect and not a correct position of fact. The abstract of proceedings of the meeting of the Board of Directors shows that the meeting held on 12.08.1997 shows that there were 8 persons present including the Managing Director and the Executive Engineer. The Chairman, Director, Registrar PWD and Under Secretary were also present in the meeting and the resolution was to challenge the decision contained in the impugned order. After the Executive Engineer was authorized to sign the document, it should have been possible for the Executing Officer to sign that necessary papers. However, if there was a decision to file a writ petition before this Court on behalf of the Society, the Managing Director as a person who is competent to represent the affairs at all times would require no specific authorization. The decision cited by the learned counsel appearing on behalf of the respondent referred to the situation of a Secretary filing the appeal with the sanction of the Managing Director in the judgment in Haryana State Coop. Supply and Marketing Federation Limited case (supra). The Court held that in the absence of the authorization of the Managing Director, the Secretary would not be competent. The Division Bench was not considering the case in the situation where the Managing Director was representing the Society. In the same manner in The Uddat Bhagat Ram Nazool Land Cooperative Society case (supra) the appeal had been preferred by the President of the Society and not the Managing Director. Again there was nothing to show that there was any resolution passed to bring the challenge in the Court. It was the absence of resolution that was found in both the cases as relevant. I find in this case, there is indeed a resolution authorising the Society to bring a challenge through a writ petition. Therefore, there is nothing inherently wrong about the maintainability of the writ petition.

5. Assuming that in the absence of specific authority to the Managing Director, he could not have filed this petition, I will still hold that it is merely an irregularity and will not go to impinge on the validity of the petition itself and the verification made by the Managing Director. If there

was a resolution to file in the writ petition by the Society, the fact that the Society is a body corporate under Section 39 will enable the Society to file the case in its own name. If there was a human agency that was necessary to verify and sign the papers that agency of a person in the rank of the Managing Director offers legitimacy to the entire proceedings. The appointment of the Managing Director and the powers and functions are delineated under Section 31 of the Act of 1984. Section 31 (2) reads as:-

31. Appointment, powers, functions of Managing Director

(2) The Managing Director appointed under sub-section (1) shall exercise such powers as are assigned to him under the bye-laws or delegated to him by the committee. He shall also discharge all such functions consistent with the byelaws as are assigned to him by the Government or the Registrar. He shall work under the superintendence and control of the committee.

The Section empowers the Managing Director to discharge all the functions which are assigned to him by the Government or the Registrar and he shall work under the superintendence and control of the Committee. Section 31 (3) reads as:-

(3) The Managing Director of a co-operative society shall be its principal executive officer. All employees of the society shall function and perform their duties under his superintendence and control.

The Managing Director is the Chief Principal Executive Officer and all the employees of the Society carry out their functions under its superintendence and control. His pre-eminent position as the Chief Principal Executive Officer will also entrust to him the power to represent the Society which is a corporate body. I will, therefore, find no error in the Managing Director signing and verifying the petition filed by the Society. The objection in that regard taken by respondent No.4 is, therefore, rejected.

6. Learned counsel appearing on behalf of the petitioner points out that the power exercised by the Secretary of the Government to pass the impugned order itself was unavailable to him and the order was without jurisdiction. The counsel would refer me to the fact that the award which was passed under Section 102 is appealable. According to him, there is no

power which could be invoked under Section 115, which read as: -

115. Revision

The Government may suo-motu or on an application of *[an aggrieved party,] call for and examine the record of any proceedings *[under this Act and the rules framed there under] in which no appeal lies to the Government under section 114 for the purpose of satisfying itself as to the legality or propriety of any decision or order passed and if in any case it shall appear to the Government that any such decision or order should be modified, annulled or revised, the Government may, after giving the persons affected thereby an opportunity of being heard, pass such order thereon as it may deem fit.

7. The argument is that only in matters where no appeal is provided under Section 114, the revisional powers could be exercised. If there was an appeal possible under Section 114, Section 115 itself cannot be attracted. Counsel would refer to the decision of the Hon'ble Supreme Court in The Shahabad Cooperative Sugar Mills Limited Vs. Special Secretary to Government of Haryana Corporation and others, 2007 (1) RSJ 368, that dealt with the Provisions of Section 102, 114 and 115 of the Act 1984. It was a case of the Board of Directors dismissing an employee from service which was a subject of dispute referable under Section 102 of the Act 1984. Dealing with the very same provisions, the Hon'ble Supreme Court held in paragraphs No. 13 and 14 as follows:-

13. Section 102 thereof contains a *non obstante* clause in terms whereof if any dispute touching the constitution, establishment management or the business of a cooperative society between the society or its committee and any past committee, any officer, agent or employee or any past officer, agent or employee or the nominee, heirs or legal representatives of any deceased officer, agent or employee of the society arises, the same shall be referred to the arbitration of the Registrar for decision and no court shall have any jurisdiction to entertain any suit or other proceedings in respect of such dispute. In terms of Section 103 of the said Act, the Registrar is empowered to either decide the matter himself or transfer the

same to any person who has been vested by the Government with the power in that behalf.

14. Chapter XVIII of the Act provides for appeals and revision. Section 114 provides for appeal in relation to a decision or award made under Section 103 of the Act. Admittedly, the appeal preferred by the 3rd respondent was determined by an Additional Registrar. Clause (c) of Sub-Section (2) of Section 114 provides that an appeal against any decision or order made by the Additional Registrar or Registrar under Sub-Section (1) shall lie to the Government.
27. The State cannot exercise its revisional jurisdiction if an appeal lies before it. If an appeal lies, a revision would not lie. Admittedly, the 3rd respondent preferred an appeal before the Registrar. Such an appeal was purported to have been filed from an order passed by the Board. The 3rd respondent did not invoke the provision for arbitration. We have noticed hereinbefore that the disputes and differences between the society and an employee is referable to arbitration in terms of Section 102 of the Haryana Act. An appeal is maintainable against an award of the Arbitrator before the State. On this ground alone the revision petition was not maintainable.
28. If the revision application was not maintainable, *a fortiori suo motu* power could not also be exercised.
8. The argument is that the appeal was not maintainable in the manner in which the Hon'ble Supreme Court had held in the The Shahabad Cooperative Sugar Mills Limited case (supra). I find decision of the Hon'ble Supreme Court to be squarely applicable to this case and find that the revisional jurisdiction exercised by the Secretary to the Government was incompetent. He had no power to pass the impugned order, the order lacks jurisdiction and is *void ab initio*. The writ petition is bound to be allowed on this ground.
9. I have also examined the other ground urged, i.e., the finding of the Secretary that the Arbitrator had misconducted himself by awarding the claims not agreed to between the parties. In my view, it is meaningless. The award sets out the respective claims made at serial number 1 to 13 for the

petitioner and 1 to 12 for the respondent. It defies comprehension as to what the Secretary meant by saying that the claims had not been agreed to. If the claims had been agreed, there is not even a scope for the adjudication. It is only in the case of disputed claims that any adjudication becomes necessary. The reasoning of the Secretary is, therefore, absurd and cannot stand any judicial scrutiny. The other ground taken is that the Arbitrator had not taken extension after the expiry of six months. This observation of the Arbitrator is supported by the learned counsel appearing on behalf of the respondent. He points out that endorsement of extension by the Registrar was given on 31.07.1996 and the award could not have been passed on the same day without putting the parties to notice of such an extension being given. I find the reasoning of the Secretary to be factually incorrect and the submissions made by the counsel to be legally untenable. The Secretary was in error in stating that there had been no extension of time. On the other hand, the office order of the Registrar which is filed as AnnexureP1 shows that he had actually entertained a request from the Arbitrator with reference to Clause 7 of the contract agreement. The order issued by the Registrar on 24.07.1996 records the fact that the terms of appointment of the Arbitrator was originally extended upto 30.06.1996 by order dated 17.05.1996 and when the Arbitrator had reported that both the parties could close their evidence and arguments were advanced only on 15.06.1996, they had mutually agreed to the extension of time for signing and announcing the award on 31.07.1996. If the parties to the agreement had given concurrence for an extension, that itself concluded the issue. It did not even require an express order from the Registrar to extend the same. The Registrar had specifically exercised the powers under Section 102 and 103 of the Act of 1984 and extended the arbitral powers upto 31.07.1996. If the order was issued on 24.07.1996 but the endorsement thereon was only on 31.07.1996 to forward the same to the Arbitrator and the respective two parties, there is simply no scope for an argument that the Arbitrator's award would be null and void in the manner reasoned by the Secretary in the impugned order. The order passed cannot, therefore, be assailed on the ground of want of authority.

10. The forcible argument placed before me on behalf of the respondent is that the order passed by the Arbitrator was a non-speaking one and hence not an order in the eyes of law. This argument had been placed

before the appellate authority as well and he has made reference to the fact that the assessment of various amounts under the claims have been on the basis of records totaling upto more 1000 pages. Sure reckoning has gone into the ultimate figures arrived at by the Arbitrator and unless the reference to arbitration or the contract itself required that a reasoned decision must be given, there is no warrant for demanding reasoned order. Even a reference to Rule 85 cannot come to support such a plea for it merely contemplated the manner of hearing of disputes. It is nobody's case that the principles of natural justice as regards the conduct of enquiry itself were violated. On the other hand, there is material to show that the enquiry went over more than a year and there have been several hearings where both the parties had participated in the personal hearing conducted before the Arbitrator. The requirement of the award to be in accordance with justice, equity and good conscience cannot be stretched to expect also pointed reasonings for his ultimate conclusion. This issue has been specifically taken and considered by the Hon'ble Supreme Court in Markfed Vanaspati and Allied Industries Vs. Union of India, 2007 (5) RAJ 152, which was also a case of a decision of the Arbitrator under Cooperative Societies Act. Referring to the several decisions of the Hon'ble Supreme Court on the same subject of whether a non-speaking award could be assailed, the court held in para 15 as follows:

15. The decided cases of this Court demonstrate that this Court has consistently taken the view that scope of interference in a non-speaking award is extremely limited. The court cannot probe into the mental process of the Arbitrator. The court should endeavour to support a non-speaking arbitration award provided it adhered to the parties' agreement and was not invalidated due to arbitrator's misconduct.

The particular observations of the Hon'ble Supreme Court that the court should lend support to the non-speaking award is the complete answer to the objection which is now taken by the respondents. In M/s Continental Construction Limited Vs. State of U.P., 2004 (1) All WC 23, the Hon'ble Supreme Court held that where the award was non-speaking one and the Arbitrator had not disclosed his mind acknowledging as to why he had done what he had done or how he had done, the Court still cannot interfere with the award merely on objection taken by a party under Section

30 of the Arbitration Act of 1940. In the light of the decisions of the Hon'ble Supreme Court, the citation made by the counsel appearing on behalf of the respondent has no value. I will state that that the judgment referred to above in Jagir Singh Vs. State of Punjab PLJ 279, held that in the absence of a notice as contemplated under Section 55 and 56 in the Act 1984, Arbitrator's award cannot be sustained. This Court was actually considering the situation of absence of notice as relevant. I have already pointed out that there is no case before me that the enquiry before the Arbitrator was in any way flawed by lack of opportunities to the parties to adduce evidence. This judgment has no application at all to this case.

11. There is also a contention raised that the Arbitrator had misconducted himself by undertaking a personal inspection at the spot. It will be a travesty of justice if we must believe that judges or even the Arbitrator cannot visit the site of works. It is contemplated in both civil and criminal jurisprudence which are more structured and formal than an informal formulation such as arbitral process. The provisions relating to examination of Commissions in both the civil and criminal jurisprudence contemplate that the Courts either exercise the power to make the local inspection themselves or may obtain an extended arm through Court appointed Commissioners. A Judge or an Arbitrator who visits the site for a spot inspection before a judgment brings himself no odium by such an activity; on the other hand, it should evoke greater sense of reliability that the Arbitrator understands what he is doing and also knows what really gave rise to the disputes between the parties. If it all, such an activity shall be taken only as subserving cause of justice than it is abnegation.

12. There is no legal ground to sustain the impugned order. The impugned order is quashed for all the reasons referred to above with the costs assessed at Rs. 25,000/- payable by the 4th respondent.

13. The writ petition is allowed, with above observations.

07.01.2015
Kumud

(K.KANNAN)
JUDGE