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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision : 15th December, 2015.

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W.P.(C) 1525/2015 and C.M.No.2715/2015

MECHANICAL DEPARTMENT PRIMARY CO-OPERATIVE
BANK

..... Petitioner

Through: Mr.V.K.Garg, Sr. Advocate with
Mr.Anurag Dubey and Meenesh
Dubey, Advocates.

versus

CENTRAL REGISTRAR OF CO-OPERATIVE SOCIETIES & ORS

..... Respondent

Through: Mr.Anil Soni, CGSC with Mr.Vinod
Kumar Tiwari, Advocate for R1/UOI.
Ms.Meenakshi Parihar, Adv. for R3

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

GITA MITTAL, J (ORAL)

1. The petitioner assails the order dated 5th January, 2015 passed whereby in purported exercise of the power vested in it under Section 84 of the Multistate Cooperative Societies Act, 2002 (hereinafter referred to as 'the Act'), the respondent No.1 has appointed an Arbitrator to go into the disputes raised by the respondent No.2 on a representation dated 14th

November, 2013 with regard to the elections of the representatives of the General Board & Members of the Board of Directors and its office bearers being President and Vice President of the petitioner-society.

2. The petitioner is admittedly a society registered under the Multistate Cooperative Societies Act, 2002 and governed by the provisions thereto. In terms of Section 45 of the statute governing elections of the members of the Board, an election officer was appointed to conduct elections. A notification dated 23rd July, 2013 was issued by the Election Officer notifying the schedule of the elections of the members of the representatives of the General Board (RGB hereafter); the Board of Directors and that of its office bearers, the President and the Vice President. These elections were conducted on the dates specified in the said notice.

3. The elections to the post of representatives of General Board were conducted and results declared on 23rd September, 2013. The results to the election for the Board of Directors were declared on 18th October, 2013, whereas elections to the post of President and Vice President were conducted and result declared on 19th October, 2013. In terms of the results of the elections, the new Board of Directors and its office bearers had taken over and are stated to be duly managing the affairs of the petitioner-society.

4. The petitioner points out that the respondents No.2 & 3 had contested election for the post of representatives of the General Board. While the respondent No.2 was unsuccessful, the respondent No.3 was declared elected in the conduct of these elections.

5. It appears that a representation dated 14th November, 2013 was received by the respondent No.1 purporting to having been made on behalf of respondent Nos.2 & 3. In fact, the respondent No.3 has filed an affidavit on this record stating that he had not submitted any representation or complaint. This representation came to be considered by the respondent No.1. We are informed that a request was personally made by the respondent No.1 vide letter dated 26th September, 2014 to send names for consideration for appointment of an Arbitrator in terms of Section 84 of the Act, but refusal to do so was communicated vide letter dated 16th December, 2014.

6. In view thereof, the respondent No.1 proceeded to pass an order dated 5th January, 2015 appointing Mr.Yogendra Krishna Gaiha as an Arbitrator to go into the disputes raised in the said complaint with regard to the elections of the representatives of the governing body.

7. This order dated 5th January, 2015 has been challenged by way of instant writ petition. It has firstly been submitted that there was no complaint on behalf of respondent No.3 before respondent No.1 and that the respondent No.2 could have challenged the elections only to the post of the representatives of the governing body and none other. The second objection pressed before us is that the challenge to the election by way of the representation made on 14th November, 2013 is beyond the statutory period of 30 days prescribed by Section 85 of the enactment. It is contended that the action of the respondent No.1 in referring the disputes was, therefore, contrary to the specific statutory provisions.

8. Mr.Vinay Garg, learned senior counsel appearing for the petitioner has submitted a third objection at length that on receipt of the representation, it was incumbent upon respondent No.1 to have issued a notice to show cause to the petitioner in compliance with principles of natural justice before passing the impugned order.

9. In support of this contention, reliance has been placed by him on the pronouncement of the Supreme Court reported at (2005) 8 SCC 618 SBP & Co. *vs. Patel Engineering Ltd. & Anr.* wherein the Court was concerned with the exercise of power under Section 11 of the Arbitration and Conciliation Act, 1996. In this regard, our attention is drawn to the following observations contained in para-37:

“37. It is fundamental to our procedural jurisprudence, that the right of no person shall be affected without he being heard. This necessarily imposes an obligation on the Chief Justice to issue notice to the opposite party when he is moved under Section 11 of the Act. The notice to the opposite party cannot be considered to be merely an intimation to that party of the filing of the arbitration application and the passing of an administrative order appointing an arbitrator or an Arbitral Tribunal. It is really the giving of an opportunity of being heard. There have been cases where claims for appointment of an arbitrator based on an arbitration agreement are made ten or twenty years after the period of the contract has come to an end. There have been cases where the appointment of an arbitrator has been sought, after the parties had settled the accounts and the party concerned had certified that he had no further claims against the other contracting party. In other words, there have been occasions when dead claims are sought to be resurrected. There have been cases where assertions are made of the existence of arbitration agreements when, in fact, such existence is strongly disputed by the other side who appears on issuance of notice. Controversies are also raised as to whether the claim that is sought to be put forward comes within the purview of the arbitration clause concerned at all. The Chief Justice has necessarily to apply his mind to these aspects before coming to a conclusion one way or the other and before proceeding to appoint an arbitrator or declining to appoint an

arbitrator. Obviously, this is an adjudicatory process. An opportunity of hearing to both parties is a must. Even in administrative functions if rights are affected, rules of natural justice step in. The principles settled by Ridge v. Baldwin are well known. Therefore, to the extent, Konkan Rly. States that no notice need be issued to the opposite party to give him an opportunity of being heard before appointing an arbitrator, with respect, the same has to be held to be not sustainable.”

10. We may note that Section 11 of the Arbitration and Conciliation Act, 1996 also does not provide specifically for grant of an opportunity to show cause to the person against whom the dispute has been raised. It has been held by the Supreme Court that the authority appointing the Arbitrator is required to apply its mind to several aspects which could be urged by the person against whom the dispute has been pressed. The aspects which would include the matter of delay have been specifically considered by the Court. It has been observed that consideration of these aspects leading to appointment of an Arbitrator would be in the nature of an adjudicatory process and that an opportunity of hearing to both parties is essential.

11. On the same aspect, the learned senior counsel for the petitioner has placed reliance on the pronouncement of the Supreme Court reported at **(2014) 9 SCC 105 Gorkha Security Services vs. Govt. (NCT of Delhi) and others**, relevant extracts whereof read thus:

“29. No doubt, rules of natural justice are not embodied rules nor can they be lifted to the position of fundamental rights. However, their aim is to secure justice and to prevent miscarriage of justice. It is now well-established proposition of law that unless a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice, in exercise of power prejudicially affecting another must be in conformity with the rules of natural justice”.

12. It is well settled principle that even in administrative function, if rights are imperilled or affected, rules of natural justice have step in and must be complied with. The mandate of the principles laid down by the Supreme Court above would squarely apply to the present case, inasmuch as the respondent No.1 was required to apply its mind including to the other issues pressed by the petitioner before reference of the disputes to the Arbitrator in terms of Section 84 of the Act.

13. We, therefore, have no hesitation in holding that in the present case the petitioner was entitled to a hearing especially in the given circumstances before the passing of the impugned order dated 5th January, 2015.

14. In view of the above discussion, the order dated 5th January, 2015 is not sustainable and is hereby set aside and quashed.

15. It is submitted on behalf of the petitioner that issuance of the order dated 5th January, 2015 may be treated as a notice to show cause to the petitioner. It is so directed.

16. The petitioner may place its representation before the respondent No.1 within two weeks from today with advance copy thereof to the respondent No.2 who may be at liberty to place any additional material before the respondent No.1 within a period of two weeks from the date of receipt of the petitioner's representation.

17. It is directed that the petitioner and respondent No.2 shall be afforded personal hearing by the respondent No.1 and a final view in the matter shall

be taken, in any case, within a period of three months from today. Needless to state that any observations made hereinabove shall not be treated as an expression of opinion on the merits of the case and the respondent No.1 shall be at liberty to take an independent view in the matter.

The writ petition and the application are allowed in the above terms.
Order *dasti* to the parties.

GITA MITTAL
(JUDGE)

I.S.MEHTA
(JUDGE)

DECEMBER 15, 2015
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