

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 16.07.2015

+ **FAO(OS) 318/2015 and CM No. 11218/2015**

MUKESH KUMAR

... Appellant

versus

THE ADMINISTRATOR (NZRE)

... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Milind M. Bhardwaj and Mr S.R. Singh

For the Respondent : Mr Avinash Sharma

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE RAJIV SHAKDHER

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This appeal is directed against the judgment dated 21.05.2015 passed by a learned Single Judge of this court in OMP(I) 211/2015 which was a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the said Act"). The appellant / petitioner had sought a restraint order against the Administrator / respondent from enforcing the second part of clause (VIII) of the notice dated 06.04.2015 as amended by the notice dated 13.04.2015 which was published for the

scheduled election to the Smaller Representative General Body of the Society. The second part of the clause (VIII) prohibited a Member from contesting the election if his remaining membership in the society was less than five years. A further direction had been sought in the Section 9 petition that the respondent ought to allow the appellant / petitioner to file his nomination.

2. It is the case of the appellant that the constitution of the society does not provide for any such restriction as indicated in the second part of clause VIII of the notice. Therefore, that part was *ultra vires* the constitution of the society and the rules as also the Multi-State Co-operative Societies Act, 2002. The argument given by the learned counsel for the respondent for introduction of the second part of clause VIII in the said notice was that bye-law 28(e) stipulated that “the term of the delegate shall be five years from the date of election”. From this, it was inferred that a person who contemplates on contesting the election must have at least five years of membership remaining and that is why the said condition was put in the second part of clause (VIII) of the election notice. We are not going into this controversy inasmuch as this has not been addressed by the learned Single Judge. This is so because the learned Single Judge rejected the

Section 9 petition filed by the appellant / petitioner on the ground of maintainability. This was done on the basis of an interpretation of Section 84 of the Multi-State Co-operative Societies Act, 2002 (hereinafter referred to as “the 2002 Act”). Section 84 of the 2002 Act 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 co-operative 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 co-operative society arises—

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

- (d) between the multi-State co-operative society and any other multi-State co-operative society, between a multi-State co-operative society and liquidator of another multi-State co-operative society or between the liquidator of one multi-State co-operative society and the liquidator of another multi-State co-operative 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 co-operative society, namely:—

- (a) a claim by the multi-State co-operative 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 multi-State co-operative 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 co-operative 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 co-operative 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.”

While dealing with the said provision, we find that the learned Single Judge failed to take notice of Section 84(1)(c). The learned Single Judge only concentrated on Section 84(1)(b). The present appellant is admittedly a past officer of the society. As such, in the description of parties given in Section 84(1)(c), the appellant would be included. The appellant is raising a dispute with the Multi-State Co-operative Society or its Board and the appellant / petitioner is a past officer. Therefore, the appellant / petitioner's case would be covered under Section 84(1)(c). The learned Single Judge failed to examine this aspect of the matter.

3. Furthermore, Section 84(1) clearly stipulates that notwithstanding anything contained in any other law for the time being in force, if any dispute touches upon the constitution, management or business of a multi-State co-operative society, the same can be referred to arbitration. Sub-Section (2) of Section 84 is a deeming provision which indicates certain instances which are deemed to be disputes touching upon the constitution, management or business of a multi-State co-operative society. It does not mean that a dispute which would otherwise touch upon the constitution, management or business of a multi-State Co-operative society but does not find mention in the clauses (a), (b) or (c) of sub-section 2 would not be a dispute referable to arbitration. In any event, the learned counsel for the appellant submitted that the dispute that he seeks to raise would be covered under Section 84(2)(c) inasmuch as it is a dispute in connection with the election of any officer of a multi-state co-operative society. His argument is that in the first place the delegates have to be elected and it is from the delegates that officers would be elected. If a person is shut out from being elected as a delegate, it is obvious that he would be shut out from being elected as an officer and, therefore, if there is a dispute with regard to

election of an delegate, it would be covered under the expression given in Section 84(2)(c).

4. We may also point out sub-section (3) of Section 84 which clearly stipulates that 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 co-operative society, the decision thereon of the arbitrator shall be final and shall not be called in question in any court. In other words, whether a dispute is arbitrable or not in the sense as to whether it is covered by the expression 'dispute' touching upon the constitution, management or business of a multi-State co-operative society, is also to be decided by the arbitrator.

5. It is then obvious that the matter in any event has to be determined by the arbitrator. If that be the case, then a petition under Section 9 would, in our view, be maintainable. We may also point out sub-section (5) of Section 84 which we have extracted above, which clearly stipulates that save as otherwise provided in the Act of 2002, the provisions of the Arbitration and Conciliation Act, 1996 will apply to all arbitrations under the 2002 Act as if the proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and

Conciliation Act, 1996. This is one more reason as to why we find that the petition under Section 9 was maintainable before the learned Single Judge.

6. For all these reasons, we feel that the impugned order cannot be sustained and the same is set aside. As a result, the matter is remitted to the learned Single Judge to decide the application under Section 9 on merits. The appeal is allowed as above. The petition may be listed before the learned Single Judge on 22.07.2015 in the first instance for directions.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

JULY 16, 2015
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