

In the High Court of Judicature at Madras

Dated: 22.08.2016

Coram

The Honourable **Mr.JUSTICE RAJIV SHAKDHER**

**Original Petition No.431 of 2016**

A.Dhamodharan

..... Petitioner

Vs.

1. C.Govindarajulu

2. A.Rajathilagaram

..... Respondents

PETITION under Section 34 of the Arbitration and Conciliation Act, 1996 against the award dated 29.04.2016.

For Petitioner : Mr.Balan Haridas

**O R D E R**

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (in short '1996 Act'), whereby, challenge is laid to the award dated 29.04.2016 passed by a sole Arbitrator.

1.1. The Arbitrator is a former Judge of this Court, who was appointed as an Arbitrator on 28.01.2016 by the Joint Secretary to the Government of India and the Central

Registrar of Cooperative Societies, in exercise of his powers under Section 84(4) of the Multi State Cooperative Societies Act, 2002 (in short '2002 Act').

1.2. The remit of the Arbitrator was to adjudicate upon the disputes pertaining to the post of chairperson obtaining in the Simpson and Group Companies Employees Societies Limited (in short 'Society').

1.3. The petitioner before this Court was also the original claimant before the learned Arbitrator. The petitioner had thus, in the context of the reference made to the learned Arbitrator, sought the following reliefs:

*"It is prayed that this Hon'ble Arbitrator may be pleased to pass an Award holding that the petitioner is the legally elected Chairman of the Simpson and Group of Companies Employees Co-operative Society Limited, by the Resolution dated 2.9.2015 and that the 2nd Respondent is no longer the Chairman of the Simpson and Group of Companies Employees Co-operative Society Limited and consequently direct the 2nd respondents to hand over all the charges to the petitioner and further forbear 1st and 2nd Respondent from interfering with the functioning of the Simpson and Group of Companies Employees Co-operative Society Limited in any manner by making a claim as if the 2nd Respondent is the Chairman and further, by not preventing the petitioner from*

*the smooth functioning of the Simpson and Group of Companies Employee Co-operative Society Limited."*

1.4. As would be evident, the prayer was directed against the 2nd respondent, ie., A.Rajathilagaram, who is the Chairperson and Director of the aforementioned society.

**Prefatory facts:**

2. Before I proceed further, it may be relevant to, broadly, set out the background, in which, the instant petition has been filed.

2.1. It appears that on 11.11.2013 elections were held to put in place the Board of Directors of the Society. In the election, 11 Directors were elected, which included the petitioner and the 2nd respondent.

2.2. It is the case of the petitioner that out of the 11 Directors, two Directors were nominated, namely, Tmt.P.Ravanammal and Tmt.J.Mariamammal. The petitioner claims that the said two Directors, having been nominated, they had no power to vote at the meetings. On the other hand, the case of the respondents before the learned Arbitrator was that the two (2) so called nominated Directors, were elected unopposed, and therefore, were vested with all rights and powers, which inhered in the remaining Directors.

3. Apart from the above, the record shows that out of the Directors elected, one Director, namely, Thiru.C.Pandu, has retired.

3.1. Evidently, out of the 10 Directors, which included 8 male Directors and 2 women Directors, 6 convened a meeting by a notice dated 30.07.2015. This meeting was convened and held on 02.09.2015, which was attended by 6 out of the 10 Directors. The 2nd Respondent, who is admittedly, one of the Directors of the aforementioned society was not served with the notice of the meeting held on 02.09.2015.

4. The record shows that at the meeting held on 02.09.2015, the petitioner along with 5 other Directors, apparently, passed a resolution removing the 2nd respondent from the post of the Chairperson and electing the petitioner in his place as the Chairperson of the Society.

4.1. Consequently, a complaint was filed, apparently, by the petitioner along with the elected office bearers with the Central Registrar of Cooperative Societies (in short Central Registrar), on 03.09.2015. The petitioner, claims that a communication dated 16.10.2015 was also sent to the 2nd respondent informing, him about the resolution passed, removing him, from the post of the Chairperson. By

this communication, the petitioner claims that the 2nd respondent was asked to handover the charge of the Society.

5. It is the case of the petitioner that 1st and 2nd respondent are acting in tandem and thereby, preventing the petitioner from acting as the Chairperson of the society.

5.1. To be noted, the 1st respondent is positioned as the Managing Director/Chief Executive Officer of the society.

5.2. It appears that two Writ Petitions were filed in this Court. The 1st writ petition was numbered as : W.P.No.23033 of 2006, while the 2nd Writ Petition was registered as W.P.No.36959 of 2015.

5.3. The 1st writ petition was filed by a member of the society. Broadly, the relief sought for in the 1st writ petition was : that the action taken by the society in appointing the 1st respondent as the Managing Director/Chief Executive Officer was not lawful, and that, the society, should forbear from appointing any person to that post, who was over the age of 35 years or, had attained the age of superannuation.

5.4. Pertinently, it is the case of the petitioner that the 1st respondent reached the age of superannuation, i.e., 60 years on 30.06.2006, and therefore, should have

demitted office as the President of the Society, on that date, as per Bye Law No.10 framed by the society.

5.5. To be noted, this Writ Petition is still pending adjudication before this Court.

5.6. Insofar as the 2nd Writ Petition is concerned, this was filed by the petitioner along with 4 other Directors. By this writ petition, a direction in the nature of mandamus was sought against the Central Registrar. The mandamus sought was that the Central Registrar should forbear 1st and 2nd respondent from causing impediment in the functioning of the society, and also, to act in a manner, which would not prevent the writ petitioners from managing the affairs of the society.

6. This Writ Petition was disposed of on 20.11.2015 with a direction that the Central Registrar should consider the allegations made in the Writ Petition within a period of 3 months from the date of receipt of a copy of the said order.

6.1. It is in the light of the aforementioned order that the Central Registrar considered the representation dated 27.10.2015, which formed a subject matter of W.P.No.36959 of 2015, and thereafter, passed the order dated 28.01.2016, to which, I have made a reference right

at the beginning.

7. As indicated above, by order dated 28.1.2016, passed by the Central Registrar, the Arbitrator came to be appointed qua the disputes obtaining between the parties.

7.1. The learned Arbitrator, accordingly, allowed parties to complete the pleadings in the matter. Upon pleadings being completed, the learned Arbitrator gave suitable opportunity to the parties herein to advance their submissions in the matter.

7.2. The learned Arbitrator upon consideration of the matter, came to the conclusion, that the petitioner could not have issued the notice dated 30.7.2015 for convening the meeting of the Board of Directors on 02.09.2015 and, consequently, the resolutions passed at the said meeting were invalid. Furthermore, the Arbitrator also held that all resolutions including the resolution removing the 2nd respondent from the post of chairperson and electing the petitioner in his place was also illegal and invalid for the reason that no notice of the meeting was given to the 2nd respondent.

8. Aggrieved by the award, the petitioner has filed the instant petition.

**Contentions:**

9. Mr. Balan Haridas, who appears for the petitioner, submitted that the award is erroneous for the reason that the majority on the Board of Directors had passed the resolution dated 02.09.2015. It is, thus, submitted before me, that since, the majority on the Board of Directors had passed the resolution, the doctrine of "useless formality" should apply, and, therefore, the fact that no notice of the meeting dated 02.09.2015 was given to the 2nd respondent, would not, by itself, vitiate the decision taken at the said meeting. In support of this submission, learned counsel has relied upon the judgment of the Supreme Court in the case of **Canara Bank V. V.K. Awasthy (2005) 6 SCC 321**.

9.1. Furthermore, learned counsel for the petitioner submitted that the 2nd respondent could be removed by the same procedure by which he was appointed, and therefore, the decision taken at the meeting held on 02.09.2015 was valid. In support of this submission, reliance was placed on the judgment of the Supreme Court in the case of : **Vipulbhai M. Chaudhary V. Gujarat Cooperative Bank Marketing Federation Limited and others (2015) 8 SCC 1**.

**Reasons:**

10. I have heard the learned counsel for the

petitioner and perused the records.

10.1. Quite clearly, what emerges from the record is as follows:

10.2. That notice of the meeting of the Board of Directors, which was convened on 02.09.2015 was not served on the 2nd respondent.

10.3. The decision to convene the meeting was taken by 6 out of the 10 Directors. This decision was reflected in a notice dated 30.7.2015, which, in turn, alluded to the fact that the meeting would be held at Hotel Saravana Bhavan. One of the agenda items in the said notice was to remove the 2nd respondent from the post of chairperson as he was acting allegedly against the interests of the Society and, consequently, to elect another person in his place.

10.4. The notice dated 30.7.2015 was addressed to 6 Directors, namely, a) A.Raman b) M.Ramu C) S.Ponnambalam d) A. Ramesh e) D.Udhayakumar and f) K.Venkatesan.

10.5. Out of the 6 Directors, only 5 Directors were served with the notice.

10.6. In so far as two women Directors were concerned, a finding of fact was returned by the learned Arbitrator that they were declared elected, albeit,

unopposed. This fact is established by referring to the Returning Officer's proceedings of 11.11.2013, which pertained to elections conducted for the post of Chairman and Vice Chairman. At this election, the 2nd respondent along with one Sri.C.Pandu was elected unanimously. These proceedings of the Returning Officer were signed by the petitioner along with the aforementioned women candidates.

10.7. The Arbitrator, thus, returned a finding of fact that there were 11 Directors on Board, when, election was held on 11.11.2013, and not, 9 Directors as was contended by the petitioner.

10.8. That the Arbitrator also found that the meeting of the Board of Directors, was neither be convened by the 1st respondent, i.e., CEO/MD or, by 2nd respondent, i.e., the Chairman as provided in Section 52(e) and 50(1) of the 2002 Act. The Arbitrator further found that, since, the proposed resolution was against the interest of 2nd respondent and given the fact that the 1st respondent was allegedly acting in cahoots with the 2nd respondent, the meeting of the Board of Directors could only have been convened, if at all by a fair majority on the Board and not by the petitioner alone.

10.9. In this context, the Arbitrator, also observed

that no material was placed on record to show that the petitioner had approached the 1st respondent to convene the meeting of Board of Directors for removal of the 2nd respondent as the chairperson. The sub-text being, that to show collusion between the 1st and 2nd respondents, an attempt in the first instance had to be made by the petitioner, to convene the Board of Directors meeting by making an appropriate request in that behalf to 1st respondent.

11. The Arbitrator further found that the notice dated 30.07.2015 was triggered by the petitioner alone and, as indicated above, was addressed to only 6 Directors. The Arbitrator found that out of 6 Directors, one Director, i.e., Thiru A.Ramesh had not signed the notice.

11.1. The Arbitrator, thus, came to the conclusion that the petitioner could not have alone issued a notice dated 30.7.2015 for convening the meeting of the Board of Directors on 02.09.2015.

11.2. The Arbitrator, in this context, returned a finding that as a matter of fact, notice of the meeting dated 02.09.2015 was not received by 4 Directors. These being: the two women Directors, the 2nd respondent and

Thiru A.Ramesh.

12. Given the aforesaid findings, I am inclined to agree with the learned Arbitrator that the failure on the part of the petitioner to serve notice was fatal. The 4 Directors, whom I have made a reference to above, were otherwise entitled to receive notice, ended up not voting, since they were not served with the notice dated 30.7.2015. Clearly, the 2nd respondent, who was the affected party, against whom, one of the resolutions was directed, i.e., the resolution seeking his removal from the post of chairperson, was certainly entitled to receive notice of the meeting dated 02.09.2015. The failure to serve the notice, clearly, rendered the decision arrived at, the said meeting illegal, being in breach of Principles of natural justice.

12.1. The argument advanced by Mr.Haridas, that, since, a majority from amongst the members elected to the Board, had taken a decision to remove the 2nd respondent from his post of Chairperson, the failure to serve notice would not impact the decision taken at the meeting held on 02.09.2015, is completely untenable.

12.1. The aforesaid submission was pivoted on the logic that even if the remaining four (4) Directors were

served, and, they had voted together the resolution would still have carried.

12.2. This submission, as indicated above, was sought to be supported by the decision of the Supreme Court in the case of **Canara Bank V. V.K.Awasthy (2005) 6 SCC 321**.

13. Let me, therefore, first deal with the judgement of the Supreme Court in **V.K.Awasthy's case**. A close perusal of the Judgement would show that the facts of the said case are clearly distinguishable from the facts obtaining in the present case. In that case, the facts which obtained were as follows:

13.1. The delinquent employee, in that case, was served with the show cause notice, dated 02.07.1992, on 06.08.1992. Though, the delinquent employee, via the said notice, was given 15 days time to give his response, the impugned order dismissing him from service was passed on 17.8.1992.

13.2. One of the arguments raised in the Writ Petition before the single Judge was that there was a breach of the principles of natural justice, inasmuch as the impugned decision was taken prior to the time accorded to the delinquent employee to respond to the accusations levelled against him.

13.3. Learned single Judge, however, declined to interfere with the order passed by the authorities below on the ground that no prejudice was caused to the delinquent employee. The record revealed that the delinquent employee had not raised any ground pertaining to breach of the principles of natural justice, and that, he had been given a personal hearing by the Appellate Authority. The record also revealed that no plea regarding prejudice caused, was raised before the Appellate Authority. The single Judge, however, held that the quantum of punishment, i.e., dismissal from service, meted out was disproportionate to the misconduct, which had been proved qua the delinquent employee.

13.4. In the appeal, carried to the Division Bench, the Division Bench held that the order of dismissal from service passed against the delinquent employee was in breach of the principles of natural justice. The Division Bench further held that the orders were passed without proper application of mind qua findings recorded by the disciplinary authority, on the basis of the report of the enquiry officer and, in respect of matters relating to imposition of punishment.

13.5. It is in the context of these facts that the

Supreme Court allowed the appeal of the employer, ie., Canara Bank and held that there were no violation of principles of natural justice. Furthermore, the Supreme Court also set aside the decision of the single Judge qua the quantum of punishment. In arriving at this decision, in particular with respect to the aspect of breach of the principles of natural justice, the Supreme Court noted that the delinquent employee had not been able to show what prejudice was caused to him. As a matter of fact, the Supreme court clearly noted that it not delve, in detail, on the doctrine of "useless formality", in view of the fact, that the delinquent employee had failed to show prejudice. The observations made by the Supreme Court in that behalf are contained in paragraph 18, which are, for the sake convenience, extracted hereafter :

"..... 18. As was observed by this Court we need not to go into 'useless formality theory' in detail; in view of the fact that no prejudice has been shown. As is rightly pointed out by learned counsel for the appellant unless failure of justice is occasioned or that it would not be in public interest to do so in particular case, this Court may refuse to grant relief to the concerned employee. (see *Gadde Venkateswara Rao v. Govt. of A.P. and Ors.*, AIR (1966) SC 828). It is to be noted that legal formulations cannot be divorced

*from the fact situation of the case. Personal hearing was granted by the Appellate Authority, though not statutorily prescribed. In a given case post-decisional hearing can obliterate the procedural deficiency of a pre-decisional hearing. (See Charan Lal Sahu v. Union of India, AIR (1990) SC 1480. ...."*

14. In the present case, clearly the prejudice is writ large, in as much as the resolution 02.09.2015 was directed against the 2nd respondent, because of which he had squarely taken the ground, that he had not been served with the notice of the meeting at which a decision was taken to remove him from the post of Chairperson. The first rule of the principles of natural justice is, fairness in action; which, simply put, would mean, that, no action should be taken against a person, which has civil consequences, unless he is given an opportunity of being heard in the matter. The second rule of Principles of natural justice, with which we are not, presently, concerned, is that, no man should be a judge in his own cause. In other words, "no one can be at once be a suitor and a Judge".

14.1. I must make it clear that the first rule which encapsulates the principle that no person must be condemned without hearing, would not, invariably mean that in all

circumstance oral hearing would have to be given.

14.2. The right to an oral hearing can be excluded by a Statute either by incorporating an explicit provision in that behalf or by necessary implication. Sans this circumstance, wherever civil consequences follow, oral hearing would have to be given to an aggrieved party. (See **Moser Baer India Limited and Others V. Additional Commissioner of Income Tax**, [(2009) 316 ITR 1] and **Union Of India & Anr vs M/s.Jesus Sales Corporation**, [(1996) 4 SCC 69].

14.3. Therefore, the argument of the petitioner that even if the 4 Directors, who had not been issued notice qua the meeting held on 02.09.2015, had been noticed, would have not changed the course of events, is an argument, which is not sustainable, for the reason that it cannot be anticipated, with precision, as to what would have been the final decision had the 2nd respondent and the other 3 Directors decided to attend the meeting.

14.4. Life's experiences show us that what appears to be a lost cause to begin with, is often saved, when persons accused of misdemeanour present their version of events and offer a defence to the accusations levelled against them. Many a case, which appear to be open and shut, when finally

adjudicated upon, after hearing the defendant, persuade an adjudicator to come to a contrary conclusion.

14.5. The observations of **Megarry J.**, in **John V. Rees [(1969) 2 All E.R. 274]**, being apposite qua the point in issue, for the sake of convenience are extracted hereinbelow :

"It may be that there are some who would decry the importance which the courts attach to the observance of the rules of natural justice. "When something is obvious," they may say, "why force everybody to go through the tiresome waste of time involved in framing charges and giving an opportunity to be heard?" The result is obvious from the start." Those who take this view do not, I think, do themselves justice. As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the end, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without

their being afforded any opportunity to influence the course of events."

15. Having regard to the aforesaid, I am in agreement with the learned Arbitrator that the decision reached at the meeting held on 02.09.2015, was flawed. Therefore, I have no hesitation in dismissing the petition and sustaining the award. Accordingly, the Petition is dismissed.

16. Needless to say that the dismissal of the petition would not come in the way of the petitioner, or any other Director in convening a fresh meeting in accordance with the extant provisions of the law, in particular, the provisions of the 2002 Act, to seek removal of the 2nd respondent. There shall be, however, no order as to cost.

Sd/.R.S.A.J

22.08.2016

//Certified to be a true copy//

Dated this the        day of        2016

S.s/07.11.2016

COURT OFFICER

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