

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: March 8, 2016

+ **O.M.P. 12/2016 & IAs 3080-3081/2016**

R.N. SAMAL & ORS. Petitioner

Through: Mr.Sudhir Nandrajog, Sr.
Adv. with Mr.S.Kumar,
Mr.Barun Sinha, Adv.

Versus

SHREE SACHIDANANDA SAMAL & ORS. Respondents

Through: Mr.Chetan Sharma, Sr. Adv.
with Mr. S.K.Rout, Adv. for
R1 to R19.
Mr.Counsel (appearance not
supplied) for R-20
Mr.Sanjay Poddar, Sr. Adv.
with Ms.Pavni Poddar, Adv.
appearing for some Members
of the Executive Committee

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.(Oral)

IA 3081/2016

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

O.M.P. 12/2016

1. The challenge in this petition is to the award dated January 21, 2016 of the learned Sole Arbitrator.
2. Suffice to state that the reference to the learned Sole Arbitrator

was made by the Division Bench of this Court dated August 28, 2015 in FAO (OS) 411/2012. The relevant directions in the order dated August 28, 2015 are as under:

“(1)Mr. Justice A.K. Patnaik (Retired) is hereby appointed as Arbitrator to decide the 'disputes which are the subject matter of the CS(OS)803/2012. The Id. Arbitrator's fee is fixed at Rs.3,00,000/-(Rs.Three lakhs). Although, all counsel for the parties have agreed to this course of action, it would be essential that all the parties to the suit, i.e., the plaintiffs and the defendants file a common document agreeing to arbitration of the disputes. The said documents shall be placed on the record and a copy thereof shall be forwarded directly to the learned Arbitrator.

(2)It is agreed by all the parties that the learned Arbitrator will decide only one issue referred for this purpose:

"Do the claimants/plaintiffs prove that the 81 persons whose names are mentioned in the letter of Shri S.C.Nanda, Advocate, Returning Officer dated 14.03.2012 were validly enrolled as members of the Sangha/first respondent/defendant Society."

(3)Since the controversy pertains to the elections and its possible outcome, the Sangha is hereby restrained from holding the elections scheduled originally in August, 2015 till 31.12.2015.

(4) Parties are hereby directed to cooperate in the arbitration proceedings and ensure that the final Award with regard to the above point of reference is made at the earliest. Learned Arbitrator is requested to render the final Award within three months.

(5) Since the parties have so agreed, the Sangha is hereby restrained from enrolling any fresh members henceforth. This direction will operate with immediate effect.

3. The issue before the learned Arbitrator was primarily with regard to the enrolment of 81 persons as Member of the Sangh/the respondent No. 20 herein. The break up of 81 persons are; 19 as donor members and 62 as life members. The challenge made in the petition and so also the contention of Mr.Sudhir Nandrajog, learned Senior Counsel appearing for the petitioners, is that the learned Arbitrator has overlooked the Rule 16(f) of the Rules and Regulations of the respondent No. 20, which inter alia, stipulate that the minutes of the previous meetings shall be read and confirmed. According to him, the meeting held on November 3, 2011, wherein the Executive Committee decided to hold the General Body Meeting of Elections on March 3, 2012, had approved and accepted the applications of 19 persons as Donor members; which decision was later withdrawn on December 17, 2011.

4. According to him, the learned Arbitrator, even after, holding that the decision of the Election Officer, restraining the 19 persons from casting vote, as not proper and correct in law, had not allowed the Minutes of the Meeting dated December 17, 2011 to be placed before the Executive Committee, for confirmation. Having not done that, even assuming, the finding of the learned Arbitrator with regard to the enrolment of 19 persons as donor members is justified, but, still, the final outcome, cannot be upheld as the said 19 members cannot be said to be

validly enrolled in the absence of confirmation in a subsequent meeting.

5. Mr.Chetan Sharma, learned Senior Counsel appearing for the respondent Nos. 1 to 19 has raised an issue on the affidavit filed in support of the petition, so also the maintainability of the petition in this Court on pecuniary jurisdiction. He would argue that the issue of enrolment of 19 persons was never an issue raised by the petitioners herein before the learned Arbitrator. In that regard, he has drawn my attention to the submission made by Mr. Nandrajog before the learned Arbitrator. He also states that the issue of Rule 16(f) was made with regard to the enrolment of 62 persons, not with regard to the 19 persons as donor members. He has also drawn my attention to an order passed by the Division Bench in C.M. 7720/2016 filed in FAO(OS) 411/2012, wherein, this Court had noted the issuance of the Notification of the Election of the respondent No. 20-Sangh, which aspect, has been concealed by the petitioners in these proceedings.

Mr.Chetan Sharma also states that no case has been made out by the petitioners for interference by this Court under Section 34 of the Arbitration and Conciliation Act, 1996 (Act, in short).

6. Mr.Sanjay Poddar, learned Senior Counsel appearing for certain Executive Members, who were parties before the learned Arbitrator, but, not made party in these proceedings, would make similar submission.

7. Learned counsel appearing for the respondent No. 20-Sangh would primarily make submission similar to the one, advance by Mr. Sudhir Nandrajog, learned Senior Counsel for the petitioners.

8. Having heard the learned counsel for the parties, before I deal with the submission made by Mr. Nandrajog, the Rule 16(f) reads as under:

“Rule 16- Executive Committee:

XXX

XXX

XXX

(f) Meeting: The Committee shall meet at least once in three months or as often as may be considered necessary by the Secretary or shall be convened on a requisition signed by seven of its members for consideration of any specific matter or matters. At such meetings, the minutes of the previous meetings shall be read and confirmed. The Treasurer shall submit the statement of accounts. Decisions will be by a majority of members present and voting. In case of a tie, the Chairman of the meeting shall have a casting vote. A minimum 24 hours' notice will be necessary for convening the meeting of the Executive Committee. The President or, in his absence, one of the Vice-Presidents shall preside over the meeting of the Committee, but in the absence of the-President and the Vice-President (s) the meeting may be presided over by any member of the Committee, not being the Secretary or the Treasurer. The quorum for an Executive Committee meeting shall be eight of which at least four shall be non-office-bearer”.

The issue which has been urged by Mr.Sudhir Nandrajog in these proceedings, was never raised by the petitioners before the learned Arbitrator. In fact, the learned Senior Counsel for the petitioners

concedes to the fact that the issue related to Rule 16 (f) was a non-issue before the learned Arbitrator. Hence, was not raised. I note, the submission of Mr.Nandrajog with respect to 19 persons was, that they were enrolled as donor members. It was his submission that no person was enrolled as life member. This submission was with regard to the 62 persons, who were enrolled as life members. No doubt, he had stated before the learned Arbitrator that the decision of the Executive Committee dated November 3, 2011 with regard to the 19 donor members, was recalled in the meeting dated December 17, 2011, and would justify the decision of the Election Officer, not to allow 19 members to vote in the election, but the submission was not with regard to 16 (f) of the rules and regulations of the respondent No. 20. On the limited submission made before the learned Arbitrator, the learned Arbitrator rightly held that the enrolment of the 19 persons, as justified. Learned Arbitrator has held that the decision of the Election Officer in not allowing 19 donor members to vote, is not correct in law.

9. Given the submission made by Mr.Nandrajog, the conclusion of the learned Arbitrator is justified. In the absence of any plea with regard to the Rule 16(f) of the rules and regulations, there was no occasion for the learned Arbitrator to give an opinion in that regard. The challenge to the award being to that limited extent, which was not an issue, surely,

does not make this case, to fall within the parameters of Section 34 of the Act. It is not a view which is perverse, as such a plea was not urged and it is not the case of the petitioners that the award is contrary to the public policy, which is one of the grounds for challenge under Section 34 of the Act, I do not see any merit in the petition. The petition is dismissed. Since the petition is dismissed on the only ground urged, it is not necessary for this Court to go into the other submissions made by other counsel for the parties.

IA 3080/2016 (for stay)

10. In view of the order passed in the petition, the application is dismissed as infructuous.

**(V.KAMESWAR RAO)
JUDGE**

MARCH 8, 2016

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