

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 26.07.2017

Pronounced on: 29.08.2017

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

O.P. Nos.239 and 240 of 2017

A. Nos.1754 and 1755 of 2017

1.Karnataka Volleyball Association
rep. by its General Secretary
K.Nandhakumar
Room No.2, Sri Kanterava Indoor Stadium
Kashurba Road, Bangalore - 2

2.Tamilnadu Volleyball Association
rep. by its General Secretary
A.K.Chithraipandian
46/1010, Gengu Street,
Egmore, Chennai - 600 008.

.. Petitioners in O.P.No.239 of 2017

Chaudhary Avadhesh Kumar

.. Petitioner in O.P. No.240 of 2017

Versus

1.Volleyball Federation of India
rep. by its Secretary
General Ramavtar Singh Jakhar
No.72, Jawaharlal Nehru Stadium,
Chennai - 600 003.

2.Ramavtar Singh Jakhar
3.Rajkumar
4.J.Nadarajan
5.Chaudhary Avadhesh Kumar
6.K.Chandru
Retired Judge, Madras High Court,
NO.3 Justice Sundaram Street,
Mylapore, Chennai-4.

.. Respondents in O.P. No.239 of 2017

1.Volleyball Federation of India
rep. by its Secretary
General Ramavtar Singh Jakhar
No.72, Jawaharlal Nehru Stadium,

Chennai - 600 003.

2.Ramavtar Singh Jakhar

3.Rajkumar

4.J.Nadarajan

5.K.Chandru, Retired Judge,
Madras High Court,
No.3 Justice Sundaram Street,
Mylapore, Chennai-4.

.. Respondents in O.P. No.240 of 2017

Prayer in O.P. No.239 of 2017: Original Petition filed under Sections 11, 14 and 15 of the Arbitration and Conciliation Act, 1996 to terminate the mandate of Justice K.Chandru Retired and appoint three Arbitrators as per Article XVIII of the byelaw of the Volley Ball Federation of India and adjudicate the disputes that had arisen between the members in the Volleyball Federation of India.

Prayer in O.P. No.240 of 2017: Original Petition filed under Sections 11 r/w. 13, 14 and 15 of the Arbitration and Conciliation Act, 1996 to terminate the sole Arbitrator Justice K.Chandru Retired appointed by this Court by order dated 23.09.2016 and appoint the three Arbitrators as per the byelaw of the Volley Ball Federation of India provided in Article XVIII to adjudicate the dispute between the members of the Volleyball Federation of India.

For petitioners in O.P. No.239 of 2017: Ms.Vasudha Thiagarajan

For petitioner in O.P. No.240 of 2017: Mr.A.Swaminathan

For Respondents in O.P. No.239 of 2017 : Mr.J.Sivanantharaj for

Mr.V.Sankaranarayanan
Adeesh Anto for R1 and R4

For Respondents in O.P. No.240 of 2017 : Mr.J.Sivanantharaj for
Mr.V.Sankaranarayanan

COMMON ORDER

Heard Ms.Vasudha Thiagarajan, learned counsel for the petitioners and Mr.J.Sivanantharaj, learned counsel appearing for Mr.V.Sankaranarayanan for R1 and R4 in O.P. No.239 of 2017 and Mr.A.Swaminathan, learned counsel for the petitioner and Mr.J.Sivanantharaj, learned counsel appearing for Mr.V.Sankaranarayanan for respondents in O.P.No.240 of 2017.

2. The adjudication of these petitions can well commence from the order passed in O.A Nos.123 and 480 of 2016 dated 23.9.2016 wherein Applications in terms of Section 9 of the Arbitration and Concilliation Act 1996 (in short 'Act') filed by the the Volleyball Federation of India (VFI) and praying for various reliefs against the Indian Olympic Association, Mr.Chaudhary Avadhesh Kumar, the petitioner in OP 240 of 2017, and Indian Bank were disposed of.

3. The Applications were filed in the background of disputes between the parties and pending reference to arbitration in terms of clause XVIII of the Constitution and Bye-laws of the VFI.

4. The petitioner in O.P. No.240 of 2017, Mr.Chaudhary Avadhesh Kumar (for brevity, referred to as Mr.Kumar) was elected President of the Volley Ball Federation of India from 2013-14 for four years. The Volley Ball Federation of India in or above that time proceeded to conduct the Indian Volley Ball League (IVL) and disputes arose between the petitioner and the respondents in this regard. Fresh elections were proposed resulting in Mr.Kumar moving the Patiala House Court, for interim relief under section 9 of the Act in Arbitration Petition No.33 of 2016 that was granted. In appeal, the Delhi High Court, in FAO 146 of 2016, by order dated

08.04.2016 permitted the election to be conducted but stayed the publication of the results.

5. Thereafter, the Delhi High Court, vide order dated 27.4.17, permitted the publication of the results for all posts barring the President. Though the petitioner would aver in the affidavit filed in support of the petition that the order of the High Court is in further appeal, nothing is placed before me in this regard. As of today, thus the management of the VFI is in the hands of duly elected representatives (excepting the president in whose case alone the results are pending publication) that constitute a functioning and democratic body.

6. The applications filed by VFI u/s 9 of the Act were disposed of on 23.09.2017 in terms of the following order:

6. In view of the fact that all parties are represented by counsels, I have put to them whether the matter could be referred to an Arbitrator, appointed by this Court and, consequently, have the applications placed before the Court appointed Arbitrator for disposal under Section 17 of the Arbitration and Conciliation Act, 1996 (in short 'the 1996 Act').

6.1. Counsel for parties are agreed that in order to bring the main dispute to a quick resolution, this Court should proceed to appoint an Arbitrator, as it would be in the interest of all parties. Counsels are also agreed that the captioned applications can be placed before the Court appointed Arbitrator, who could then, proceed to dispose of the captioned application by exercising power under Section 17 of the 1996 Act.

Accordingly, Hon'ble Mr. Justice K. Chandru, former Judge of this Court, is appointed as an Arbitrator. "

7. This Court recording the agreement of all parties, referred the disputes inter se in their common interest, to arbitration by Mr. Justice K. Chandru, Former Judge of this Court for resolution. Proceedings for arbitration are on-going presently before the learned Arbitrator. Interim orders were passed by the learned Arbitrator on 19.10.2016 that were challenged by Mr. Kumar by way of Civil Miscellaneous Appeals before this Court. The CMAs challenged the decisions of the Arbitrator to restrain the petitioner from interfering with the conduct of Volley Ball Tournaments and to permit the respondents to operate Bank account as well as conduct tournaments under the banner of the Volley Ball Federation of India. The CMAs, after detailed hearing by this Court, were dismissed by order dated 06.04.2017 and the said order has attained finality.

8. Not content with this, the petitioner is now again before this Court raising various challenges to the proceedings for arbitration and seeking relief in terms of Sections 11, 13, 14 and 15 of the Act.

9. I deal with each prayer in seriatim. The first prayer is in terms of section 11 (6) of the Act praying for a substitution of the sole Arbitrator by a three member Tribunal in accordance with the provisions of the agreement between parties.

Article XVIII (b) of the Rules of the VFI states as follows:

(b) Disputes/conflict within the Federation

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All unresolved disputes arising between the Federation

and its constituent members or between the office bearers of the Federation and the Federation or between the constituent members inter-se or between the office bearers of the Federation inter-se, subject to the provisions of the by-laws of the Federation shall be referred to the IOA for settlement under the Arbitration and Conciliation Act, 1996. For this purpose the IOA shall elect a panel of arbitrators to be decided by the IOA General Assembly at their Annual General Meeting, out of whom parties to the disputes in the Federation will select one arbitrator each and third arbitrator, out of the said panel will be mutually agreed upon by the two arbitrators. The arbitration proceedings should be completed within the period specified in the Arbitration Act, or within the time extended by the arbitrators with the consent of the parties.

The constituent members shall be deemed to continue its membership in the Federation on the specific condition that it voluntarily surrenders its right of seeking redress in any Court of law and undertake to accept the decision of the arbitrator subject to the provisions of Arbitration Act.

10. Courts have consistently been of the view that in matters of appointment of an Arbitrator, the views and concurrence of the parties are paramount. Thus, it is always permissible for the parties to agree upon a sole arbitrator in place of a Tribunal or vice versa. This is what has transpired in the present case. The orders of this court dated 23.9.2016 and 6.4.2017 record the position that the appointment of sole Arbitrator was unanimous.

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Moreover this very submission was earlier advanced in the CMA's

challenging the interim orders of the Learned Arbitrator and have been repelled by this Court by way of a detailed order dated 6.4.2017 that has become final and has not been challenged by the petitioner herein. There is thus, no justification in either law or fact to put forth the identical contention yet again and I have no hesitation in rejecting the same.

11. Further, letter dated 30.9.2016 from the Indian Olympic Association, while acceding to the appointment of the sole arbitrator as per order of this Court dated 23.9.2016, records the request of Mr.Kumar in March 2016 invoking the clause for Arbitration. A copy of this letter has been marked to Mr.Kumar who does not dispute the same. If at all Mr.Kumar was really aggrieved with the appointment of the sole Arbitrator, the time for challenge was immediately upon his appointment in September 2016. The plea, at this juncture, is thus clearly an afterthought.

12. The petitioner would rely on the following judgements in support of his challenge to the appointment of a sole arbitrator.

(i) Union of India vs. Bright Power Projects (India) Private Limited - (2015) 9 SCC 695

18. Section 31(7)(a) of the Act ought to have been read and interpreted by the Arbitral Tribunal before taking any decision with regard to awarding interest. The said section, which has been reproduced hereinabove, gives more respect to the agreement entered into between the parties. If the parties to the agreement agree not to pay interest to each other, the Arbitral Tribunal has no right to award interest pendente lite.

This case cited supports the proposition that the agreement between parties is what counts. In the present case, the appointment of Arbitrator is upon consent of parties as recorded by orders of this court dated 23.9.2016 and 06.04.2017. The petitioner has also participated in the proceedings from October, 2016. The rationale of the case cited would not be applicable in a situation such as the present one.

(ii) Container Corporation of India vs. D.R.Sood of Sood and Sood
MANU/DE/2787/2005

2.The petitioner's case is that under the arbitration clause three arbitrators were required to be appointed. As per the impugned order, the designated authority has appointed one arbitrator only. It is submitted by learned counsel for the petitioner that one of the two additionally appointed arbitrators be appointed from the petitioner corporation.

3.This petition is contested by the respondent and its counsel Mr.Sharma contends by placing reliance on State of Orissa v. Gokulananda Jena, MANU/SC/0510/2003 : AIR 2003 SC 4207, that it is open to the petitioner to raise the issue of the constitution of the arbitral tribunal before the already appointed arbitrator under Section 16 of the Arbitration and Conciliation Act. It is also submitted that since the petitioner has not raised this issue before the designated authority, the corporation cannot be allowed to raise it in this petition.

4.Both contentions raised by learned counsel for the respondent are liable to be rejected. Firstly, because arbitration clause admittedly provides for the appointment of three arbitrators. Secondly, the appointment of an arbitral tribunal under Section 11(6) of the Act is not an issue which can be raised before the arbitrator.

5.The relevant arbitration clause reads thus:

"64(3) (a) (ii) In cases not covered by Clause 64(3) (a) (i), the arbitral tribunal shall consist of a panel of three gazetted Pky. Officers not below JA grade, as the arbitrators."

6. This clause provides for the appointment of three arbitrators and, therefore, any adjudication of claims and disputes will have to be conducted by three arbitrators as per this clause. If the designated authority has inadvertently or otherwise missed out on the appointment of the other two arbitrators, it has not acted in conformity with the arbitration clause.

(iii) Municipal Corporation, Jabalpur and Ors. V. Rajesh Construction Co. - AIR 2007 SC 2069

10. Having heard the learned counsel for the parties and after considering the rival submissions made on their behalf and examining Clause 29 of the contract in detail, we are of the view that the High Court was not justified in appointing a retired Chief Justice of a High Court to act as sole arbitrator as the same is contrary to Clause 29 of the contract. As noted earlier, the High Court, by its earlier order dated 7th May 2003 directed the parties to invoke the arbitration clause and to appoint an arbitrator in compliance with Clause 29 of the contract entered into between the parties.

Both cases cited and extracted above revolve around facts that are different and distinguishable from the one at hand. At the risk of repetition, I must point out that the petitioner, along with the other parties, had not only consented for the appointment of the sole Arbitrator in the course of the proceedings under section 9 of the Act and but has been participating in the same. Having so accepted the jurisdiction of the sole arbitrator, he cannot now seek the present prayer simply for the asking. The rationale of the case-law cited are thus not applicable in the present case.

(iv) The Indian Performing Right Society Ltd. vs. Entertainment Network (India) Ltd. MANU/MH/1597/2016 (paras 25 and 26)

The above case relates to the arbitrability of rights in rem in <https://hcservices.ecourts.gov.in/hcservices/>

the process of Arbitration. The issues in the present matter,

however, are clearly arbitrable and this case, therefore, is of no assistance to the petitioner.

(v) Tim Boyd, International President, vs. Kesiraju Krishna Phani and others CDJ 2015 MHC 5184 (para 29)

This matter relates to the validity of elections that is not an issue before me. As such, the case law has no relevance to the present matter.

13. In fine, the argument stands rejected.

14. The next allegation made is to the effect that the learned Arbitrator appears to be biased in favour of the respondents. The term 'Bias' denotes an inclination or prejudice for or against one thing or person and there has to be a basis on which the allegation is made. In the present matter however, the allegation is wholly unfounded and no material is placed on record to establish bias as alleged. It would appear to have been made solely to thwart a proper resolution of the matter based upon an apprehension that the matter may ultimately be decided against the petitioner.

15. Adverting to the prayer in terms of Section 13, the provision is extracted below:

13.Challenge procedure - (1)Subject to sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator.

(2) Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (3) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.

(3) Unless the arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(4) If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.

(5) Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34.

(6) Where an arbitral award is set aside on an application made under sub-section (5), the court may decide as to whether the arbitrator who is challenged is entitled to any fees.

16. The provisions of section 13 constitute a composite scheme and provide for various stages for a challenge to the appointment of an arbitrator. Section 13(1) permits the aggrieved party to raise a challenge to the appointment of an Arbitrator in relation to violation of the conditions set out under section 12 (3) being the impartiality or independence of the Arbitrator. Such a challenge has to be raised within fifteen days from such appointment. In the present case, the order recording consent of the parties, including Mr.Kumar, was passed on 23.09.2016 and in the absence of any challenge in this regard by Mr.Kumar under section 13(2), the present prayer has no merit whatsoever and stands rejected.

17. Coming next to the challenge under section 14, the

14. Failure or impossibility to act - (1) The mandate of an arbitrator shall terminate if -

(a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and

(b) he withdraws from his office or the parties agree to the termination of his mandate.

(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the court to decide on the termination of the mandate.

(3) If, under this section or sub-section (3) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of section 12.

18. In the present case, the conditions set out in sub-sections 1 (a) and (b) have not been shown to be satisfied. Nothing has been brought on record to indicate inability to discharge functions or delay in doing so. There is also no agreement of parties to terminate the mandate of the Arbitrator and the prayer to do so is unilateral. Accordingly, the prayer in terms of section 14 is rejected.

19. With respect to section 15 of the Act, the provisions are extracted below:

15. Termination of mandate and substitution of arbitrator - (1) In addition to the circumstances referred to in section 13 or section 14, the mandate of an arbitrator shall terminate -

(a) where he withdraws from office for any reason; or

(b) by or pursuant to agreement of the parties.

(2)Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(3)Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (2), any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(4)Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal.

20. Again, the provisions of section 15 are attracted only in the situations enumerated in clauses (a) and (b) of section 15(1). In the present case, there is neither withdrawal by the Arbitrator from office nor is there termination of the same by agreement of parties. Hence the provisions of section 15 are also inapplicable.

21. The prayers sought in terms of sections 11, 13, 14 and 15 of the Act are rejected.

22. Before concluding, I must express my anguish at the filing of the present petitions. Prima facie, the petitioner in O.P. No.240 of 2017 does not seem to be acting in the best interests of the game. While on the one hand the petitioner has consented to the appointment of the sole Arbitrator as recorded by this Court in orders dated 23.09.2016 as well as 06.04.2017 he would now go back on the same and seek a change in the constitution of the Tribunal. The justification offered is that the counsel had not obtained his consent for the appointment. This accusation does not fly in the face of the participation of the

petitioner through counsel in the proceedings for arbitration from October 2016 regularly. The allegation is thus clearly an afterthought.

23. It is quite apparent that the petitioner is merely trying to protract and delay the proceedings without allowing it to reach a logical and proper conclusion. In fact disputes inter se the parties as well as the precipitative action taken by the petitioner by way of challenging the elections before the Delhi High Court as well as filing the Civil Miscellaneous Appeals before this Court has had domestic and international repercussions that do not auger well for the sport.

24. The sequence of events are as follows:

(i) The recognition of the Volley Ball Federation of India was revoked by the Ministry of Youth Affairs and Sports, Government of India.

(ii) The order of suspension was revoked by the Ministry of Youth Affairs and Sports, Government of India, on 20.07.17 granting annual recognition for the year 2017 only subsequent to the orders of the High Courts.

(iii) The disputes between the VFI and the petitioner caught the attention of the FIVB that suspended recognition to the VFI.

(iv) An adhoc commission had been appointed by the Fédération Internationale de Volleyball (in short 'FIVB') to investigate the governance of the sport of volley ball in India and file a report. Based on the report of the commission, the FIVB Board of

Administration directed, vide letter dated 11.5.2017, the conduct of elections to the VFI in July 2017 to determine the office

bearers of the VFI for the term 2017 to 2021. The aforesaid communication is also categorical to the effect that the provisional suspension of the VFI shall not be disturbed until after the conduct of elections in July 2017.

(v) Pursuant to the above letter, there is exchange of communication between the parties including letter dated 27.6.2017 from the FIVB calling for various information and details for the election proposed in July 2017.

(vi) Mr.Kumar appears to have accepted the above direction of the FIVB Board and has communicated as such to the FIVB vide letters dated 17.7.17 and 20.7.17 (not circulated but referred to in letter of the FIVB dated 21.7.17).

(vii) However, the present team of the VFI (barring the presidential candidate) appear to be persuading the FIVB to adopt the results of the elections as already declared. The VFI, vide letter dated 21.7.2017 to the FIVB, points out that the election results have been accepted both by the concerned Ministry vide order in Fno.48-16/2009-SP-I (Vol.II) dated 20.7.17 as well as the Indian Olympic Association vide communication dated 24.5.17. The VFI also urges the FIVB to ignore all communications from Mr.Kumar in so far as his term as President of the VFI has come to a close and he does not have the authority to communicate on behalf of the VFI any longer. A request has been made to the FIVB to revoke the suspension of the VFI from international volley ball.

(viii) Simultaneously, a communication of the FIVB dated 21.7.17 appears to have crossed the letter of the VFI of even date, where the FIVB makes further recommendations and suggestions

for the conduct of the elections in July 2017. The letter of the VFI dated 21.7.17 thus awaits response from the FIVB as no communication post the said date has been placed before me. There the matter stands.

25. It is a matter of shame that the internal affairs and rampant politicking in National and State level sports bodies should result in the banning of our sportspersons from participation in the International arena under the flag of the country. The efforts and priority of national sports associations should be to identify and hone the wealth of sporting talent available in this country and the present situation is a clarion call to the concerned Ministry as well as the association and individuals to bring their house to order quickly and effectively. The proceedings for arbitration are solely to ensure this result.

26. As noticed by me earlier, I find no reason to interfere with the proceedings before the learned Arbitrator and no case has been made out to persuade me to do so.

27. The learned Arbitrator may also consider the concerns of the FIVB as expressed by its communications dated 11.05.2017, 27.06.2016 and 21.07.2017 and arrive at a wholistic resolution of the disputes in the course of the proceedings before him. Technology today would allow the representatives of the FIVB to be heard and their views to be taken into consideration in the course of the proceedings should the learned Arbitrator think fit and parties consent to the same.

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28. With respect to O.P. No.239 of 2017, nothing substantial

has been made out and the petition appears to be filed merely in support of O.P. No.240 of 2017. The main contention of the two State Associations in O.P. No.239 of 2017 to the effect that the concerns and the interest of the states are being ignored at the national level is baseless in view of the fact that the State Volley Ball Associations are duly represented in the Executive committee of the National Association and all decisions taken at the National level would thus necessarily take into account the interests and the view points of the State Associations as well.

29. Both petitions are dismissed. Consequently, connected Applications are closed. No costs.

Sd./-A.S.M.J
26.07.2017

//Certified to be true copy//
Dated at Madras this the day of 2017.

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