A.Nos.4361 and 5995 of 2019

PUSHPA SATHYANARAYANA, J.

Seeking to stay the resolution passed at the Midyear Division Executive Committee Meeting which took place from May 28-May 30, 2019 and increased the retirement ages from 60 years-61 years, 62 years-65 years and 65 years-70 years pending disposal of the arbitration proceedings, the instant application in A.No.4361 of 2019 was instituted.

2. The respondent is a non-profit company managed at the top level by Division Executive Committee and it manages Seventh Day Adventist Church. The applicant, who is a Dentist by profession, is a member of that Committee from 2015 onwards and he is a third generation Seventh Day Adventist interested in protecting the said organization.

3. The applicant received notice regarding the Mid-year Division Executive Committee Meeting schedule at Ranchi during 28.05.2019-30.05.2019 without any agenda annexed with it. According to the applicant, as per the Rules, the agenda has to be shared with the Committee members 30 days prior to the meeting, but the agenda under challenge, which is to increase the retirement ages from 60 year to 61 years, 62 years to 65 years and 65 years to 70 years, was circulated only on the afternoon of 29.05.2019. It is his case that the matter of such importance having great magnitude requires deliberation by a Sub Committee before action, but no such study was conducted.

4. It is the allegation of the applicant that the resolution of this nature required two third majority. However, the resolution was passed by a simple majority of 22 votes in favour and 21 votes against it, while the applicant's vote, which was cast electronically owing to the reason that he had to left for a flight, was rejected. Though the applicant expressed his displeasure to the leadership of the Division qua the passing of the said resolution, there was no proper response. Since the resolution was kept pending for ratification during June, 2019, the applicant filed A.No.4361 of 2019 seeking the aforestated relief.

5. This Court on 01.07.2019, while ordering notice to the respondent in the said application, passed an ex-parte status quo order till 29.07.2019, which was extended periodically.

6. Seeking to accept the cause title including the office-bearers of the respondent, the applicant filed A.No.5995 of 2019.

7. The respondent filed counter-affidavits dated 01.09.2019 and 11.09.2019 in these applications respectively.

7.1. In the former, the respondent questioned the maintainability of the application, as the dispute qua the retirement age of the employees would not fall within the scope of the arbitration clause XVI of the Memorandum and Articles of Association. According to the respondent, as the applicant is neither an employee nor an aggrieved person, he has no *locus standi* to raise the dispute. Justifying the increase in retirement age of the employees, the respondent stated that being the non-profit organization, it has been paying paltry remuneration to the employees and as such, it could not mobilise the required workforce and facing acute shortage of manpower and in order to retain the workforce for a little more period, the said agenda was brought in the Committee Meeting following the established procedure and practice. It is its claim that a special committee met to discuss and deliberate upon the issue and after the study conducted by the Policy Revision Committee on the matter, it was recommended to revise the Retirement Policy Z 30 05, which was only accepted and adopted by the Division Executive Committee on 29.05.2019. Denying all the other allegations of the applicant and claiming that it followed the procedure contemplated under the bye-laws and its policies, the respondent sought for dismissal of A.No.4361 of 2019.

7.2. In the latter counter-affidavit, the respondent reiterating its stand contended that the resolution was implemented on 29.05.2019, i.e., much before the interim order of status quo passed by this Court on 01.07.2019 and the employees retired on 31.05.2019 and 31.06.2019 were given benefit of the extension. It is the claim of the respondent that knowing fully well about the implementation of the resolution, the application filed these applications, thereby abused the process of this Court.

8. Heard the learned counsel on either side and perused the materials available on record.

9. The learned counsel for the applicant relied on the Memorandum and Articles of Association, in which, Clause XVI provides for arbitration. There has also been Constitution, Bylaws and Working Policy of the Southern Asia Division. Clause 6 of the Constitution specifically states that any Working policies may be amended by a two-thirds vote of the members present at any duly called midyear, year-end or council meeting of the Division Executive Committee or at other times by issuing special notice at least 30 days prior to the date of the meeting. It is the case of the applicant that he, being the members of the Division Executive Committee, has invoked Section 9 of the Arbitration and Conciliation Act, 1996 (in short, "the Act") challenging the resolution passed on 29.05.2019 enhancing the retirement age, as stated supra.

10. When the Constitution, Bylaws and Working Policy specifically states that for amending any of the policies, there should be a two/thirds majority, it is pointed out that the impugned resolution was passed with a simply majority of 22 : 21. At the time of granting interim order of status quo, it was stated that the resolution, that was passed, has to be ratified before implementing the same. The resolution was passed on 29.05.2019, whereas, the interim order was granted on 01.07.2019.

11. Mr.R.Viduthalai, learned Senior Counsel appearing on behalf of the respondent, resisted the application stating that the applicant is not a member of the respondent Society and only a co-opted member of the Committee. Secondly, it is the submission of the learned Senior Counsel that any working policy relate to service matter cannot be brought under the Act. Thirdly, it is stated that the applicant had no intention in appointing an Arbitrator, as no steps have been taken till today for setting up the Arbitral Tribunal. Fourthly, it is submitted that the resolution was passed between 28.05.2019 and 30.05.2019 and the same does not require any ratification, as the same was implemented from the date, it was passed and those employees retired during the last four or five months have been given the extension of service as per the impugned resolution, which is also not adverted to by the applicant.

12. At this stage, after hearing the arguments of the both sides, it was agreed by both the parties that the dispute may be referred to arbitration and all the above said objections of the respective parties may be agitated before the Arbitral Tribunal to be constituted, as the same revolving around the services of employees, which include Teachers, Doctors and Nurses.

13. Having regard to the submissions of the learned Senior Counsel for the respondent and the learned counsel for the applicant, this Court appoints Hon'ble Mr.Justice D.Murugesan, Chief Justice (Retd.), Delhi High Court, residing at No.11-A, M.D. Sitaraman Avenue, 7th Cross Street, V.G.P. Layout, Injambakkam, Chennai-115, is appointed as the Sole Arbitrator to enter upon reference and adjudicate the disputes inter se the parties. The learned Arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses. The proceedings shall be conducted preferably in the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules. The appointment of the Arbitrators will be subject to the disclosure and declaration made, as per the Sixth Schedule to the Arbitration and Conciliation Act, 1996 coupled with the amendments made therein.

14. In the result, A.No.4361 of 2019 is disposed of, with the observations indicated above. Consequently, A.No.5595 of 2019 is closed.

17.10.2019

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PUSHPA SATHYANARAYANA, J.

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A.Nos.4361 and 5995 of 2019

17.10.2019