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

% *Date of Judgment: 21st May, 2021*

+ **O.M.P.(I) 4/2021 and IA No. 5226/2021**

NATIONAL FEDERATION OF FISHERMEN

CO-OPERATIVE LTD.

..... Petitioner

Through: Ms Raavi Birbal and Ms Cauveri
Birbal, Advocates with Sh. Prakash
Marotrao Lonare, Sh. Rakesh Kumar
Nishad, Sh. K. Nabchandra Singh, Board
Directors and Sh. Bima Kumar Mishra. Mr
Ram Kumar, Advocates for FISHCOPFED.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr Manish Mohan, CGSC with
Ms Manisha Saroha, Advocate for R-1 & 2.

Mr Tushar Ranjan Mohanty and Ms Payal
Mohanty, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

21.05.2021

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[Hearing held through videoconferencing]

VIBHU BAKHRU, J. (ORAL)

1. National Federation of Fishermen Co-operative Ltd. (hereinafter 'FISHCOPFED') has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter the 'A&C Act'),

inter alia, praying that the order dated 12.03.2021 passed by respondent no.2 (Central Registrar of Co-operative Societies – hereinafter ‘the Registrar’) be set aside to the extent that he has appointed the Vice Chairman of the Board of FISHCOPFED to officiate as a Chairperson and In-charge MD of FISHCOPFED and restrained the President and Managing Director of FISHCOPFED for acting on its behalf of participating in any proceedings.

2. Essentially, FISHCOPFED impugns the order dated 12.03.2021 passed by the Registrar on a complaint filed by respondent no.3. Respondent no.3, *inter alia*, claims that Sh. B.K. Mishra (Managing Director of FISHCOPFED), attained superannuation on 30.06.2020 and had manipulated the Board of Directors of FISHCOPFED to pass a resolution for extension of his term for one year. He impugns the resolution to the aforesaid effect as invalid. In his complaint, he has further prayed that Sh. B.K. Mishra, MD, FISHCOPFED be immediately directed to handover the charge to the senior most official of FISHCOPFED.

3. The Registrar had considered the aforesaid complaint and in exercise of his powers under Section 84 of the Multi States Co-operative Societies Act, 2002 (hereafter ‘MSCS Act’) appointed Sh. Shlok Chandra, Advocate, as the Sole Arbitrator to adjudicate the disputes raised by the complainant (respondent no. 3). However, in addition, the Registrar also passed an order restraining the President and the In-charge MD from acting on behalf of FISHCOPFED, discharging any functions of FISHCOPFED, or from participating in

any of its board meetings or proceedings.

4. The operative part of the impugned order is set out below:

“10. In exercise of powers conferred under Section 84 of The Multi State Cooperative Societies Act, 2002, this authority appoints Shri Shlok Chandra, Advocate, A-22, Ground Floor, Defence Colony, New Delhi-110024 as an Arbitrator to adjudicate upon the aforementioned issues within 60 days of this order.

11. In the meantime, the President and In-charge MD are barred from acting on behalf of the federation, discharging any function of the federation or from participating in any Board meetings or proceedings of the federation. The Vice-Chairman of the Board shall officiate as Chairperson and nominee of the Central Government shall act as In-charge MD till the adjudication of dispute by the Arbitrator.”

5. FISHCOPFED is, essentially, aggrieved by certain findings as the said additional directions (as contained in paragraph 11 of the impugned order) issued by the Registrar while appointing an Arbitrator, is beyond the scope of his powers under Section 84 of the MSCS Act.

6. Ms. Birbal, learned counsel appearing for FISHCOPFED, submitted that the aforesaid directions are wholly without jurisdiction. It is submitted that the Registrar has referred the parties/disputes to arbitration and there is no dispute that he has acted within his jurisdiction to do so. But he has also passed interim directions and has exceeded his jurisdiction Therefore, the said directions are liable to be

set aside.

7. Mr. Mohanty, learned counsel appearing for respondent no.3 (the complainant before the Registrar) has opposed the present petition on two fronts: first, he challenges the maintainability of the present petition; and second, he submits that FISHCOPFED does not have any cause of action.

8. Mr. Mohanty pointed out that the present petition has been signed by Mr. Lahore, as an authorized representative of FISHCOPFED, on the basis of the authority from the Board of Directors. He contended that the same was impermissible as the Board of Directors has no authority to file any suit or proceedings in any other court and the same can be done only by the Managing Director. According to him, the Bye-Laws of FISHCOPFED proscribe any other person other than the Managing Director to institute proceedings. He referred to Bye-Laws 29 and 37 in support of his contention. He submitted that although there is a dispute regarding Mr. B.K. Mishra being appointed as a Managing Director of FISHCOPFED. However, he would not have any objections as to the maintainability of the petition if the petition had been filed by Mr. B.K. Mishra. But the present petition has been instituted by the Board of Directors of FISHCOPFED, which is beyond their authority.

9. Mr. Mohan, learned counsel appearing for the Registrar, fairly states that the only issue arising in the present case is whether the Registrar could pass an interim order while exercising his power to

appoint an Arbitrator.

10. Mr. Kumar, Advocate, has also joined the present proceedings. Apparently, he represents a rival faction, and claims that the election of the present Board of Directors of FISHCOPFED is under challenge and they cannot act as such.

11. The controversy in the present case arises in the context of disputes relating to the management of FISHCOPFED. The petitioner (FISHCOPFED) claims that on 04.01.2021, the notification for election of the Board of Directors of FISHCOPFED was issued as the tenure of the then existing Board had expired. It is asserted that elections were duly held and on 25.02.2021, the Directors constituting the present Board of Directors of FISHCOPFED were elected at 12:30 pm. The Registrar had on the same date – that is, 25.02.2021 – suspended the election of the Board of Directors of FISHCOPFED. However, that order was passed at 01:10 pm. The said order was passed on account of certain complaints, which were stated to have been received by the Registrar. The said decision was a subject matter of challenge in a writ petition filed in this Court – *W.P.(C)2878/2021* captioned “*National Federation of Fishers Co-operative Ltd. v. Union of India*”. The said petition was listed before a Coordinate Bench of this Court on 03.03.2021. The Court had noted the contention advanced on behalf of FISHCOPFED that the Board of Directors had been elected. It was also noted that the order dated 25.02.2021 was passed by the Registrar in proceedings instituted on a complaint filed by certain persons, *inter alia*, challenging the election of the Board of

Directors. The Registrar had also appointed an Arbitrator but in addition, it also passed directions for suspending the election/appointment of the members of the Board of Directors. After hearing the parties, the Court had, with the consent of the parties, disposed of the petition, *inter alia*, permitting the parties to approach the learned Arbitrator (appointed by the Registrar) under Section 17 of the A&C Act to seek appropriate interim measures of protection. The Court also directed that in the meanwhile, “*status quo regarding the process of elections would be maintained*”.

12. Ms. Birbal, learned counsel, who appeared for FISHCOPFED in the aforesaid petition, had contended that the election to the Board of Directors had been concluded, but election to certain office bearers, including the President and the Vice President, remain pending. After noting the aforesaid contention, the Court had clarified that *status quo* in this regard would be maintained until the learned Arbitrator decides the interim applications filed by any of the parties. The operative part of the said order is set out below:-

“5. After some hearing, learned counsel for the parties consent to the disposal of this petition in the following terms:-

a. The Registrar will serve a copy of the complaints made by respondent No. 4-Shri Sandhe and others on the basis of the which the Arbitrator has been appointed to the petitioner-federation by tomorrow, i.e., 04.03.2021. Mr. Mohan is also requested to forward a copy of the same to Ms. Birbal.

b. In the event the petitioner-federation disputes the jurisdiction of the Arbitrator on any permissible ground *inter alia* under Section 84(3) of the Act, or any permissible ground under the Arbitration and Conciliation Act, 1996 [“the 1996 Act”], the petitioner may make an appropriate application before the Arbitrator.

c. The direction of the Registrar in the impugned order that the election be suspended until the completion of the arbitration proceedings is modified, and the parties are at liberty to approach the Arbitrator under Section 17 of the 1996 Act for appropriate interim measures.

d. The Arbitrator will consider any application made under Section 17 in this regard expeditiously, and endeavour to dispose of the same within a period of three weeks from the date of filing, after giving all other parties an opportunity to submit their replies and to be heard.

e. Subject to any orders passed by the Arbitrator in this regard, *status quo* regarding the process of elections will be maintained. The contention of Ms. Birbal is that the election to the Board of directors has been concluded, but the elections of certain office bearers, including the President and the Vice President, remain pending. *Status quo* in this regard will be maintained until the Arbitrator decides the interim applications filed by any of the parties.”

13. Notwithstanding the order dated 03.03.2021 passed by this Court in *National Federation of Fishers Co-operative Ltd. v. Union of*

India: W.P.(C)2878/2021 directing that *status quo* be maintained, it does appear that the Registrar has sought to alter the same by passing the order dated 12.03.2021, which is impugned herein, inasmuch as the Registrar has now debarred the President and In-charge MD from acting on behalf of FISHCOPFED. Although, the order has been passed in a separate complaint received from respondent no.3, it does *prima facie* appear, that the Registrar has sought to overreach the orders passed by this Court. The Registrar was a party to W.P.(C) 2878/2021 and it was expected that he would ensure that the orders of *status quo*, as were agreed in the said petition, would be complied with; and at any rate, would not be altered without seeking recourse to the Court.

14. In the present petition, the limited question that needs to be addressed is whether the Registrar could pass an interim order while appointing an arbitrator in exercise of its powers under Section 84 of the MSCS Act. However, before proceeding further, it is necessary to address Mr. Mohanty's contention that in terms of the Bye-Laws of FISHCOPFED, the Board of Directors are proscribed from instituting any proceedings and therefore, the present petition is not maintainable.

15. The aforesaid contention is bereft of any merit. The Bye-Laws do not contain any provision to the aforesaid effect. The reliance placed by Mr. Mohanty on Bye-Law No.37 is misplaced. The relevant extract of the said Bye-Law as relied upon by Mr. Mohanty, is set out below:-

“37. The following shall be duties of the Managing Director:

(i) ***

(xii) to be officer of FISHCOPFED, to sue or to be used on behalf of the FISHCOPFED and sign and execute bonds, agreement and other documents by and on behalf of the FISHCOPFED;...”

16. The aforesaid Bye-Law sets out the duties of the Managing Director. Undoubtedly, he can sue or be sued on behalf of FISHCOPFED. However, that does not mean that the powers of the Board of Directors of FISHCOPFED have been curtailed or restricted in any manner. The provisions of Bye-Law 37 have to be read in an affirmative manner, *inter alia*, specifying the duties of the Managing Director and his powers; it cannot be read as a negative provision proscribing the Board of Directors from managing the affairs of FISHCOPFED.

17. Bye-Law 22 of the said Bye-Laws of FISHCOPFED provides for constitution of the Board of Directors of FISHCOPFED. Bye-Law 29 of the said Bye-Laws of FISHCOPFED expressly provides that the Board of Directors would have all powers of FISHCOPFED except those that are reserved for General Body. The opening sentence of Bye-Law 29 reads as under:

“29. The Board shall exercise all the power of the FISHCOPFED except those reserved for General Body, subject to any resolution or

restrictions laid down by the FISHCOPFED in a General Body Meeting or in bye-laws. In particular, the BOARD shall have the following powers and duties:”

18. It is clear from the aforesaid that except for certain matters, which are required to be done by the wider body of members (General Body), all other powers can be exercised by the Board of Directors of FISHCOPFED. This is also in consonance with the broad principles of functioning of incorporated entities. It is relevant to refer to the following observations made by the Supreme Court in *Life Insurance Corporation of India v. Escorts Ltd. And Ors.: (1986) 1 SCC 264:*

“95. A company is, in some respects, an institution like a State functioning under its “basic Constitution” consisting of the Companies Act and the Memorandum of Association. Carrying the analogy of constitutional law a little further, Gower describes “the members in general meeting” and the directorate as the two primary organs of a company and compares them with the legislative and the executive organs of a Parliamentary democracy where legislative sovereignty rests with Parliament, while administration is left to the Executive Government, subject to a measure of control by Parliament through its power to force a change of government. Like the government, the Directors will be answerable to the “Parliament” constituted by the general meeting. But in practice (again like the government), they will exercise as much control over the Parliament as that exercises over them. Although it would be constitutionally possible for the company in general meeting to exercise all the powers of the company, it clearly would not be practicable (except in the case of one or two-man companies) for day-to-day administration to be undertaken by such a cumbersome

piece of machinery. So the modern practice is to confer on the Directors the right to exercise all the company's powers except such as the general law expressly provides must be exercised in general meeting. [Gower's Principles of Modern Company Law] Of course, powers which are strictly legislative are not affected by the conferment of powers on the Directors as Section 31 of the Companies Act provides that an alteration of an article would require a special resolution of the company in general meeting. But a perusal of the provisions of the Companies Act itself makes it clear that in many ways the position of the directorate vis-a-vis the company is more powerful than that of the government vis-a-vis the Parliament. The strict theory of Parliamentary sovereignty would not apply by analogy to a company since under the Companies Act, there are many powers exercisable by the Directors with which the members in general meeting cannot interfere. The most they can do is to dismiss the Directorate and appoint others in their place, or alter the articles so as to restrict the powers of the Directors for the future. Gower himself recognises that the analogy of the legislature and the executive in relation to the members in general meeting and the Directors of a company is an oversimplification and states "to some extent a more exact analogy would be the division of powers between the Federal and the State Legislature under a Federal Constitution." As already noticed, the only effective way the members in general meeting can exercise their control over the directorate in a democratic manner is to alter the articles so as to restrict the powers of the Directors for the future or to dismiss the directorate and appoint others in their place. The holders of the majority of the stock of a corporation have the power to appoint, by election, Directors of their choice and the power to regulate them by a resolution for their removal. And, an injunction cannot be granted to restrain the holding of a

general meeting to remove a Director and appoint another.”

19. Although the said decision was rendered in the context of the companies incorporated under the Companies Act, 1956, the broad principles, as explained by the Supreme Court, would be, subject to its charter, equally applicable in the case of a society. The broad system is to confer, on the Board of Directors, all the powers to carry out the affairs of the incorporated entity, while reserving some powers to be exercised only by the members collectively (General Body). As is clear from the opening words of Bye-Law 29 of the Bye-Laws of FISHCOPFED, it does precisely that.

20. Thus, the contention that the present petition is not maintainable as it has been filed pursuant to the authority of the Board of Directors and not the Managing Director, is without merit and, is rejected as such. It is important to note that Mr. Mohanty has not contested that the Board of Directors of FISHCOPFED are not authorized for filing the present petition.

21. The principal question to be addressed is whether the Registrar could have passed the interim order while exercising powers under Section 84 of the MSCS Act.

22. Section 84 of the MSCS Act is set out below:

“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 multistate cooperative 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 cooperative society arises-

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

or

- (c) between the multi-state cooperative 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 cooperative society, or
- (d) between the multi-state cooperative society and any other multistate cooperative society, between a multistate cooperative society and liquidator of another multi-state cooperative society or between the liquidator of one multi-state cooperative

society and the liquidator of another multi-state cooperative 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 cooperative society, namely:-
 - (a) a claim by the multi-state cooperative 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 multistate cooperative 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 cooperative 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 cooperative 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.”

23. A plain reading of the aforesaid Section indicates that the Registrar has the power to refer certain disputes to arbitration. Sub-section (5) of Section 84 of the MSCS Act also expressly provides the provisions of A&C Act shall apply to arbitration under the MSCS Act as if the proceedings for arbitration were referred for settlement/decision under the A&C Act.

24. Under the A&C Act, the powers to grant interim orders or protection are either available with the Court under Section 9 of the A&C Act or with the Arbitrator under Section 17 of the A&C Act. However, it is clear that no powers are vested with the Registrar to pass any interim orders while exercising its powers under Section 84 of the MSCS Act to refer the disputes to Arbitration.

25. Mr. Mohanty contended on behalf of respondent no.3 that even though the MSCS Act does not expressly empower the Registrar to pass interim orders, since there is no provision to prohibit him from

doing so, such powers must be inferred. This Court also finds no merit in this contention. The Registrar is an authority under the statute and the existence of his office, his powers and functions are circumscribed by the provisions of the statute. Obviously, he cannot exercise powers that have not been expressly conferred. He can exercise only such powers that are statutorily conferred on him. The proposition that in the absence of any statutory provisions conferring the power to do a particular act, the Registrar would be unfettered to do so, is fundamentally flawed.

26. Mr. Mohanty, also states that FISHCOPFED does not have a cause of action. Given the nature of disputes between the parties, the said contention is also clearly without any merit.

27. This Court has some reservations as to whether the prayers as sought for in the present petition fall within the scope of Section 9 of the A&C Act. It would perhaps been apposite for the petitioner to have assailed the order of the Registrar by filing a petition under Article 226 of the Constitution of India. Ms. Birbal, learned counsel appearing for the petitioner, has contended that the petition would be maintainable in view of the decision of the Division Bench of this Court in *Mukesh Kumar v. The Administrator (NZRE): 2015 SCC OnLine Del 10460*.

28. Considering the restricted functioning of the Court and that none of the counsel appearing for the respondents have pressed the challenge to the maintainability of the present petition on the ground

that it falls outside the scope of Section 9 of the A&C Act, this Court does not consider it apposite to examine this question.

29. In view of the above, the direction issued by the Registrar in paragraph no.11 of the impugned order as quoted hereinbefore, are set aside.

30. Having stated the above, it is also necessary to clarify that nothing stated in this order shall preclude the parties from approaching the Arbitrator to seek such interim measures or protection as they may be advised. Needless to state that if any such application is filed, the Arbitrator shall consider the same on its own merits uninfluenced by any observations made by this Court or by the Registrar in the impugned order dated 12.03.2021.

31. It is also clarified that nothing stated in this order shall absolve the parties from fully complying with the order dated 03.03.2021 passed by a Coordinate Bench of this Court in W.P. (C) 2878/2021.

32. The petition is disposed of in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

MAY 21, 2021
RK/pkv