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

+ O.M.P. 2/2022

NATIONAL LABOUR COOPERATIVE FEDERATION OF
INDIA LIMITED Petitioner

Through: Mr. Ankur Arora, Adv.

versus

N SATYANARAYANA Respondent

Through: Mr. Vasantha Kumar K. and
Mr. Apurv, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGEMENT (ORAL)

% **11.03.2022**

O.M.P. 2/2022 and I.A.3988/2022 (stay), I.A.3989/2022 (Section 151 CPC for exemption), I.A.3990/2022 (Section 151 CPC for exemption) and I.A.4023/2022 (Section 151 CPC for exemption)

1. The 141st meeting of the Board of Directors of the National Labour Cooperative Federation of India Limited (NLCF, hereinafter), convened pursuant to an agenda notice dated 20th November, 2021, was called into question by the respondent in arbitral proceedings, as the respondent's services were discontinued pursuant to a decision taken at the said meeting. The impugned award holds the 141st board meeting dated 3rd December, 2021 not to have been convened in accordance with law and, consequently, declares the business transacted at the said meeting, including the decision to discontinue the services of the respondent as null and void. The respondent has, therefore, been held to be continuing as Managing Director of the



petitioner society, and has also been awarded arrears of salary.

2. The NLCF, aggrieved thereby, has sought to challenge the award under Section 34 of the Arbitration and Conciliation Act, 1996 (“the 1996 Act”).

3. The respondent was appointed Managing Director of the NLCF on 10th April, 2021. It is not in dispute that the Managing Director of the NLCF is its Chief Executive.

4. On 1st December, 2021, the respondent came to know that an agenda notice dated 20th November, 2021 had been issued by the Vice Chairman of the NLCF (“the VC”, hereinafter), for conducting a meeting of the Board of the NLCF on 3rd December, 2021. The respondent objected to this proposed board meeting *vide* representation dated 2nd December, 2021, in which it was pointed out, *inter alia*, that the VC did not have any authority to convene a board meeting. On 4th December, 2021, the respondent was informed by the Chairman (I-C) of the NLCF that his services stood discontinued w.e.f. 4th December, 2021.

5. The respondent, in the circumstances, sought reference of the disputes to arbitration under Section 84(1) of the Multi-State Cooperative Societies Act, 2002 (“the MSCS Act”). Arbitral proceedings that ensued have culminated in the award impugned in the present petition.



6. A preliminary objection was taken by NLCF, before the learned arbitrator, regarding the arbitrability of the dispute. Placing reliance on Section 84(1) of the MSCS Act, it was contended that the dispute, being between the NLCF and one of its employees, was not arbitrable. This contention has also been advanced, before me, by Mr. Ankur Arora, learned counsel for the petitioner-NLCF, who relied, for the said purpose, on the judgment of the Supreme Court in *The Maharashtra State Cooperative Housing Finance Corporation Ltd. v. Prabhakar Sitaram Bhadange*¹.

7. The objection thus raised was rejected by the learned arbitrator and, in my opinion, rightly. Section 84(1) excludes disputes between a multi state cooperative society and its paid employee “regarding disciplinary action taken by” the society against the employee. Disciplinary action, it has been settled times without number, commences with the issuance of a charge sheet to an employee. Reference may be made in this context to *UoI v. K. V. Jankiraman*² and *UCO Bank v. Rajinder Lal Capoor*³.

8. Mr. Arora does not dispute the fact that no charge sheet was ever issued to the respondent and he was never even placed under suspension. Clearly, therefore, the present case is not one of disciplinary action being taken by the multi state cooperative society against its employee.

¹ (2017) 5 SCC 623

² (1991) 4 SCC 109

³ (2007) 6 SCC 694



9. Maharashtra State Cooperative Housing Finance Corporation Ltd¹, on which Mr. Arora relies, is entirely distinguishable. That case did not involve any multi state cooperative society under the MSCS Act. The statute in question was the Maharashtra Cooperative Societies Act, 1960 (“the MCS Act”), and the issue before the Supreme Court was regarding the jurisdiction of the Cooperative Court, in the backdrop of Section 91 of the MCS Act. Section 91 of the MCS Act read thus:

“91. Disputes – (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the committee or its officers other than elections of committees of the specified societies including its officer, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated or by a creditor of the society, to the Cooperative Court if both the parties thereto are one or the other of the following –

- (a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the liquidator of the society or the official assignee of a deregistered society;
- (b) a member, past member of a person claiming through a member, past member of a deceased member of society, or a society which is a member of the society or a person who claims to be a member of the society;
- (c) a person other than a member of the society, with whom the society, has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed under Section 43, 44 or 45, and any person claiming through such person;



(d) a surety of a member, past member or deceased member, or surety of a person other than a member with whom the society has any transaction in respect of which restrictions have been prescribed under Section 45, whether such surety or person is or is not a member of the society;

(e) any other society, or the liquidator of such a society or deregistered society or the official assignee of such a deregistered society.”

10. Clearly, Section 91 did not contain any stipulation excluding disciplinary proceedings from the scope of arbitration, as in the present case. As such, the judgment of the Supreme Court in *The Maharashtra State Cooperative Housing Finance Corporation Ltd¹* can be of no assistance whatsoever to the petitioner.

11. Reliance was placed, before the learned arbitrator, on Section 52 of the MSCS Act which, to the extent it is relevant, reads thus:

“**52.** Powers and functions of Chief Executive.

The Chief Executive shall under the general superintendence, direction and control of the board, exercise the powers and discharge the functions specified below, namely: -

(e) convening meetings of the general body of the multi-State cooperative society the board and the Executive Committee and other committees or sub-committees constituted under sub-section (1) of section 53 and maintaining proper records for such meetings;

12. Predicated on the afore-extracted clause, it was sought to be contended by the NLCF before the learned arbitrator that the power of



the Chief Executive to convene meetings was subject to the supervision and control of the Board of Directors (BOD). Sections 50 and 52, it was sought to be contended by Mr. Arora were required to be read in tandem. Read thus, it was contended that the essential power to convene board meetings vested with the BOD, and that the Chief Executive acted only at the instance and under the instructions of the BOD. The BOD having ratified the constitution of the convening of the 141st board meeting in the present case, Mr. Arora would seek to submit that the decision of the learned arbitrator that the convening of the board meeting was illegal, suffers from “patent illegality” within the meaning of Section 34 of the 1996 Act.

13. The learned arbitrator has held that Section 50 quite, clearly, confers absolute authority to convene the meeting of the board of NLCF on the Chief Executive. Indeed, the use of the word “shall” in Section 50(1) indicates the mandatory nature of the stipulation, as has been rightly held by the learned arbitrator. For ready reference, Sections 50 and 51 of the MSCS Act may be reproduced thus:

“50. Meetings of board—

(1) The Chief Executive shall convene the meetings of the board at the instance of the chairperson or president of the multi-State co-operative society.

(2) The total number of meetings of the board in a year and the venue of meetings as may be specified in the bye-laws: Provided that the board shall meet at least once in every quarter: Provided further that not more than two persons may be invited by the board in its meetings.



(3) The Chairperson, or if for any reason, he is unable to attend a meeting of the board, any other member of the board chosen by the members of the board present from amongst themselves at the meeting, shall preside at the meeting.

51. Chief Executive—

(1) There shall be a Chief Executive, by whatever designation called, of every multi-State co-operative society to be appointed by the board and he shall be a full-time employee of such multi-State co-operative society.

(2) The Chief Executive shall be a member of the board and of the Executive Committee and such other committees or sub-committees as may be constituted under sub-section (1) of section 53.

(3) Where the Central Government or the State Government holds fifty-one per cent. or more of the equity share capital or of total shares of the multi-State co-operative society, the salary and allowances payable to and other terms and conditions of service including pension, gratuity and other retirement benefits of the Chief Executive shall be such as may be prescribed.”

14. It is not in dispute that the VC is not the Chief Executive of the NLCF. From the times of *Nazir Ahmed v. King Emperor*⁴, through a plethora of judgments of the Supreme Court including *State of UP v. Singhara Singh*⁵ it is well settled that where the law ordains that a particular act has to be done in a particular manner, and that act should be done in that manner or not done at all. There is no ambiguity whatsoever regarding the mandate of Section 50 of the MSCS Act. As the learned arbitrator has correctly held, Section 50 was not statutorily

⁴(1936) 38 Bom LR 987

⁵ AIR 1964 SC 358



made subject to Section 52 or to any other provisions of the MSCS Act. It was self contained in its amplitude and operation. Section 50 specifies that *the Chief Executive* shall convene the meetings of the board of the NLCF. Its mandate is non-negotiable. The VC is undisputedly not the chief of the NCLF. The 141st board meeting having been convened by the VC, who was not the Chief Executive of the NLCF, no exception whatsoever can be taken to the finding of the learned arbitrator that the convening of the meeting was illegal and the decisions taken in the meeting had no legal sanctity whatsoever.

15. The scope of interference by Courts with the decisions of the learned Arbitral Tribunal under Section 34 of the 1996 Act is, as is well known, circumscribed. The Courts cannot interfere with arbitral decisions unless they suffer from patent illegality and perversity. The interpretation of contractual or statutory provisions by learned arbitrators are ordinarily not open to interference under Section 34 even if the Courts were to find that the interpretation was not correct. Nor the Courts interfere with the interpretation by the learned arbitrator on the ground that he files another interpretation more acceptable. The Court cannot substitute its subjective view for the view of the arbitrator. Any such attempt would throw into complete jeopardy the 1996 Act and its entire ethos and purpose. One may refer, to advantage, to the following passages from the judgment in ***Delhi Metro Express Private Ltd. v. Delhi Metro Rail Corporation Ltd.***⁶

46.....Construction of the contract is within the jurisdiction of the Tribunal and merely because another view is possible, the

⁶ (2022) 1 SCC 131



Court cannot interfere with such construction and substitute its own view.”

(Underscoring and italics Supplied)

49. Even assuming the view taken by the High Court is not incorrect, we are afraid that a possible view expressed by the Tribunal on construction of the terms of the Concession Agreement cannot be substituted by the High Court. This view is in line with the understanding of Section 28(3) of the 1996 Act as a ground for setting aside the arbitral award, as held in Associate Builders [**Associate Builders v. DDA, (2015) 3 SCC 49: (2015) 2 SCC (Civ) 204**] and thereafter upheld in Ssangyong [**Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131: (2020) 2 SCC (Civ) 213**]. No case has been made out by the High Court to establish violation of Section 28(3). Having carefully examined the Concession Agreement, the findings recorded by the Tribunal and the findings recorded by the Division Bench, we are not in a position to hold that the opinion of the Tribunal on inclusion of Rs 611.95 crores under “equity” is a perverse view. It cannot be said that the Tribunal did not consider the evidence on record, especially the resolution dated 16-3-2011 passed by DDA's Board of Directors. We also do not find fault with the approach of the Tribunal that the understanding of the term equity as per the Companies Act, 2013 is not relevant for the purposes of determining “adjusted equity” in light of the express definition of the term in the Concession Agreement. As has been held in Ssangyong [**Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131: (2020) 2 SCC (Civ) 213**], mere contravention of substantive law as elucidated in Associate Builders [**Associate Builders v. DDA, (2015) 3 SCC 49: (2015) 2 SCC (Civ) 204**] is no longer a ground available to set aside an arbitral award. The support placed by the Division Bench on the interpretation of Section 28(1)(a) of the 1996 Act as adopted in Associate Builders [**Associate Builders v. DDA, (2015) 3 SCC 49: (2015) 2 SCC (Civ) 204**] is, therefore, no longer good law. In view of the foregoing, we set aside the findings of the High Court and uphold the award passed by the Tribunal in respect of the computation of termination payment under Clause 29.5.2.”

(Underscoring and italics Supplied)



16. In the present case, one need not etch the law that far. The interpretation, by the learned arbitrator, of Section 50 of the MSCS Act and the consequent decision of the learned arbitrator to hold the convening of the 141st meeting of the BOD of the NLCF to be illegal and, consequently, to strike down the decisions taken in the said meeting, entirely commend themselves to judicial acceptance.

17. There is no illegality, much less patent illegality or perversity in the impugned award.

18. This, in fact, is a typical instance of the case in which the arbitral award ought to have been gracefully accepted. Dragging such awards to Courts unnecessarily clogs the system and results in complete disservice to the 1996 Act and its very intent and purpose.

19. I would have been inclined to award punitive costs in this matter. However, keeping in the mind the fact that the petitioner is the National Labour Cooperative Federation of India, I refrain from doing so.

20. The petition is, accordingly, dismissed. All miscellaneous applications stand disposed of.

C.HARI SHANKAR, J

MARCH 11, 2022

r.bararia