



2024: DHC: 1920



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on 05th March, 2024

+ O.M.P. 1/2021, CCP(O) 1/2022, CCP(O) 28/2023, I.As. 464/2022, 8166-8167/2022, 13073/2022, 7573/2023, 16437/2023, 1516/2024

MR. S. MADEGOWDA

..... Petitioner

Through: Mr. Kotla Harshvardhan, Mr. Raghav Kohli, Ms. Gayatri Gupta, Ms. Rishbha Arora & Mr. Ritikesh, Advocates.

versus

SHRI RAM DAS SANDHE & ORS.

..... Respondents

Through: Mr. Pravir Chowdhary & Mr. Reepak Kansal, Advocates for R-1 & 18.

Ms. Nazia Parveen & Mr. Sanjeev Sagar, Advocates for R-2 to 4.

Mr. Anand Venkatramani, Mr. J. Shivam Kumar & Ms. Pritha Banarjee, Advocates for R-5, 8 to 16 & 24.

Mr. Zahid Hanief, Advocate for Fish Co. Fed.

Ms. Zehra Khan, Advocate for R-7.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

1. The challenge in this petition, under Section 34 of the Arbitration

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and Conciliation Act, 1996 [“A&C Act”], is to an Arbitral Award dated 23.07.2021, passed by a Sole Arbitrator appointed by the Central Registrar of Cooperative Societies [“the Registrar”] in exercise of powers under Section 84 of the Multi-State Co-operative Societies Act, 2002 [“MSCS Act”].

2. The case has a somewhat chequered history, but the point presented for the decision of the Court is a relatively simple one. According to the petitioner, he along with other candidates, were elected to the board of directors of a multi-state cooperative society, National Federation of Fisheries Co-operative Limited [“the Society”], at an election held on 25.02.2021. That election has been set aside by the impugned Award, but the petitioner and other candidates (including those who claim to have been elected) were not party to the arbitral proceedings and were not heard. They, therefore, challenge the Award on the ground of natural justice.

3. The petitioner, respondent No. 5 and respondent Nos. 8 to 16 were all candidates elected at the said election dated 25.02.2021. Respondent Nos. 1 to 4 are members of the erstwhile board of directors of the Society, who filed a complaint before the Registrar, pursuant to which the arbitral proceedings were commenced. The Returning Officer has been arrayed as respondent No. 6 in this petition. The former Managing Director is respondent No. 7 and the present Managing Director is respondent No. 24. Respondent No. 17 and 18 are also members of the erstwhile board of directors.

4. The board of directors of the Society held a meeting on 30.09.2020, at which it decided *inter alia* to put in motion the process for



election of a new board of directors. A notice was issued thereafter, but was challenged before this Court in W.P.(C) 2691/2021 [*Hukum Singh Bhati vs. Union of India*] by respondent No. 18 herein, who was an erstwhile member of the board of directors. However, by an order of the Registrar dated 25.02.2021, passed on a complaint of respondent No. 1 to 4, the election process was suspended. The Registrar also appointed the Additional Managing Director of National Agricultural Cooperative Marketing Federation of India Ltd., as the Arbitrator to settle the disputes regarding election of the board of directors and officer bearers of the Society. The writ petition was therefore permitted to be withdrawn by an order dated 26.02.2021. The contention of the Society was noted that the election had been concluded prior to passing of the suspension order.

5. The Society thereafter challenged the order dated 25.02.2021 in W.P.(C) 2878/2021 [*National Federation of Fishers Co-operatives Ltd. vs. Union of India*]. In the said order, it was noted that the Registrar had appointed an arbitrator to adjudicate the disputes between the Society and respondent No. 1 herein. With the consent of learned counsel for the parties, the petition was disposed of by order dated 03.03.2021, with the following directions:

“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.”

6. The matter came back to this Court in a petition under Section 9 of the Act [O.M.P.(I) 4/2021], in view of a subsequent order dated 12.03.2021 passed by the Registrar, by which the President and the Managing Director of the Society, viz., Mr. T. P. Rao Dora and Mr. B. K. Mishra (respondent Nos. 5 and 7 herein, respectively) were suspended, and the disputes were referred to another arbitrator. By an order dated 21.05.2021, this Court set aside the direction of the Registrar, and it was reiterated that the *status quo* order dated 03.03.2021 would continue to bind the parties. Mr. Kotla Harshvardhan, learned counsel for the petitioner, states that the said arbitral proceedings were held under a different arbitrator in respect of the disputes referred to in the Registrar's order dated 12.03.2021, and have culminated in an award.

7. As far as the present disputes are concerned, the proceedings commenced with a complaint dated 19.02.2021 addressed by respondent Nos. 1 to 4 herein to the Registrar. The prayers in the said complaint were



as follows:

- “(A) Stay immediately the election process for electing the New Board of Directors of FISHCOPFED;*
(B) Appoint a suitable officer as Administrator of FISHCOPFED to manage the affairs of FISHCOPFED and conduct election of New Board of Directors FISHCOPFED in a time bound manner;
(C) Set aside any/all orders of extension/appointment of Shri B.K. Mishra issued by Shri T. Prasad Rao Dora w.e.f. 30/06/2020 and onwards;
(D) Set aside any/all orders related to FISHCOPFED issued by Shri T. Prasad Rao Dora in his capacity as President w.e.f. 06/07/2020 and onwards;
(E) Declare all expenses incurred by Shri B.K. Mishra w.e.f. 01/07/2020 as his personal expenses and recovery of same if paid;
(F) Declare all expenses incurred by Shri T. Prasad Rao Dora w.e.f. 06/07/2020 as his personal and expenses and recovery of same if paid;
(G) Order registration of FIR with Delhi Police against both Shri B.K. Mishra and Shri. T. Prasad Rao Dora in all relevant clauses of IPC.”

8. It is on this complaint dated 19.02.2021 that the Arbitrator was appointed by the order of the Registrar dated 25.02.2021. The Arbitrator first issued a notice dated 05.03.2021 which was addressed to the four complainants and to Mr. T. P. Rao Dora (described as the “former Chairman/President”), the Returning Officer, and to “Members of the Board of Directors” of the Society through its Managing Director. The notice was purported to inform them of commencement of the arbitral proceedings. Paragraph 4 of the notice stated that claims and counter claims alongwith relevant documentary evidence must be filed in the office of the Arbitrator within one week.

9. It is the admitted position that no claims or counter claims were filed before the Arbitrator. Mr. Pravir Chowdhary, learned counsel for respondent No. 1 and 18, and Ms. Nazia Parveen, learned counsel for



respondent Nos. 2 to 4, state that the complaint dated 19.02.2021 was itself treated as the statement of claim, and replies were filed thereto.

10. By a further order dated 17.06.2021, the Arbitrator noted a contention on behalf of the learned counsel representing respondent Nos. 1, 3 and 4 therein, i.e., Mr. T. P. Rao Dora, “Members of the Board of Directors”, and Mr. B.K. Mishra, respectively, to the effect that they were necessary parties. However, the Arbitrator accepted the submission of the complainants that the Society could not be represented by the learned counsel instructed by them as according to him, the election of the petitioner and others had been suspended.

11. By the impugned Award, the Arbitrator had directed as follows:

“21. In view of the above, *it is established beyond doubt that due legal process in terms of Bye-Laws of FISHCOPED read with relevant provisions of MSCS Act was not followed in conduct of the election to the Board of FISHCOPED and its Office bearers and accordingly the following Award is being passed:*

a. *The election of the Board of Directors of FISHCOPFED and its office bearers as conducted and declared on 25.02.2021 is adjudged as null and void.*

b. *The fresh election to the Board of FISHCOPFED and its office bearers may be conducted by Ld. CRCS in terms of Rule 21(v) of bye-laws of FISHCOPFED and Section 45(6) of the MSCS Act.*

c. *Parties to the proceedings shall bear their respective costs incurred in the Arbitration proceedings.*

[Emphasis supplied]

12. I have heard Mr. Kotla Harshvardhan, learned counsel for the petitioner, Mr. Chowdhary, learned counsel for respondent Nos. 1 and 18, Ms. Parveen, learned counsel for respondent Nos. 2 to 4, Mr. Anand Venkatramani, learned counsel for respondent Nos. 5, 8 to 16 and 24, Ms. Zehra Khan, learned counsel for respondent No. 7, and Mr. Zahid Hanief,



learned counsel, who states that he is appearing for the erstwhile board of directors of the Society.

13. The contention of the petitioner and respondent Nos. 5, 8 to 16 are that they were the candidates elected at the elections held on 25.02.2021. This is disputed by Ms. Parveen, who submits that the election was not concluded, and no candidates were declared to have been elected. The contention of Mr. Chowdhary is that the petitioner was not eligible to be elected to the board of directors.

14. These controversies are, in my view, not dispositive in the present proceedings as even on the contention of these parties, the petitioner and several other candidates would have been affected parties. It is clear from the course of proceedings before this Court, narrated above, that they claimed to have been elected at the election which was challenged in the arbitral proceedings. This was clear from the memo of parties in W.P.(C) 2878/2021 itself, which is reproduced below:

“ MEMO OF PARTIES

IN THE MATTER OF:

*1. National Federation of Fishers Co-operatives Ltd,
7, Sarita Vihar Institutional Area, New Delhi-110076
Through Mr. P.K. Choudhary, Assistant Director;*

Mr. Abdul Rahman Dar, Mr. Mohit Sonkar North Zone; Mr. Prakash Marotrao Lonare, West Zone; Mr. Dhani Ram Raikumar, Central Zone; Mr. Jahpoojan Sahani, Mr. Barri Chhnnappa, South Zone; Dr. S. Mandegowda, Mr. Rakesh Kumar Nishad, East Zone; Mr. T. Prasad Rao Dora, Mr. Konjengbam Nabachandra singh, North-East Zone; Mr. Rajulai Debarma (elected board members)”

[Emphasis supplied]

15. This Court, by order dated 03.03.2021, had directed that the



petitioner and supporting respondents be served with copies of the complaint on the basis of which the Arbitrator had been appointed. The Arbitrator however disabled their counsel from appearing on their behalf, on the ground that the newly elected board of directors had no authority to appoint a counsel to represent the Society, and thereafter proceeded to pass the Award setting aside the election altogether. This was done without hearing the candidates who claimed to be affected. The position which emerged before the Arbitrator was that the only parties to the arbitral proceedings were the complainants, the former President, the Managing Director, the Returning Officer, and an inchoate party described as “Members of the Board of Directors”, which could not be represented by the counsel appointed by the petitioner and supporting respondents. I am therefore of the view that the Award is unsustainable on the short ground that the election dated 25.02.2021 has been set aside, without the affected persons having been heard.

16. Quite apart from this, the prayer for setting aside the election is also not to be found in the complaint filed by respondent No. 1. The Arbitrator had called for a statement of claim, which would have clarified the exact position with regard to the necessary parties, the facts of the case and reliefs sought, but the entire arbitration was conducted without filing of a statement of claim. As it stood, the memo of parties and the up-to-date factual position remained ambiguous. Ms. Praveen, learned counsel for respondent Nos. 1 to 4, is also not in a position to point to any document filed before the Arbitrator, where the relief of setting aside of the election was sought. Had it been so, it would have been obvious that the candidates who claimed to be elected in the said election, would have



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had to be arrayed as parties to the arbitral proceedings.

17. While the grounds for setting aside of an arbitral award under Section 34 of the A&C Act are limited, conformity with the requirements of natural justice is a clear concomitant of the integrity of the arbitral proceedings. Sections 34(2)(a)(iii) of the A&C Act specifically provides for setting aside of an award if the party to the application was not given proper notice of the arbitral proceedings or was otherwise unable to present his case. The present case, in my view, falls clearly within this ground.

18. The petition is, therefore, allowed and the Award dated 23.07.2021 is set aside. All pending applications also stand disposed of.

19. It is open to any party to invoke arbitration afresh in accordance with the MSCS Act, if they are so advised and the arbitral proceedings will be conducted unaffected by the impugned Award.

PRATEEK JALAN, J

MARCH 5, 2024
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