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

JUDGMENT RESERVED ON: 24.04.2024

% ***JUDGEMENT PRONOUNCED ON: 08.05.2024***

+ ARB.P. 75/2024

PURVANCHAL HATHKARGHA SAHAKARI SANGH LTD.

..... Petitioner

Through: Ms. Rashmi Singh, Ms. Nabeela
Jamil, Advs.

versus

ALL INDIA HANDLOOM FABRICS SOCIETY AND ANR

... Respondents

Through: Mr. Sandeep Khurana, Mr. Shiven
Khurana, Mr. Manjit Singh, Advs.
for R-1.

Ms. Nidhi Raman, CGSC with Mr.
Zubin Singh, Adv. for R-2/ UOI.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

JUDGMENT

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DINESH KUMAR SHARMA, J.:

ARB.P. 75/2024

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking the appointment of an arbitrator in terms of Section 84 of the Multi-State Cooperative Societies Act, 2002 to adjudicate the dispute between the parties.



2. The case as stated is that the Petitioner herein is the PurvanchalHathkarghaSahakariSangh Ltd. registered under the U.P. Co-op Society Act, 1965 on 29.03.1985. The Petitioner has been a member of the All India Handloom Fabrics Marketing Coop. Society Ltd., New Delhi, for more than 30 years and has been in the business of weaving traditional Banarasi Sarees and dress materials. Since 2019 a total amount of Rs. Rs.1,83,32,731.22/- is due to the Petitioner from the Respondent No.1. The Respondent No.1 has allegedly withheld payments for the supplies made by the Petitioner, most of which date back three years, citing trivial excuses and grounds. Meanwhile, the President, Vice President, and a select few directors and their favorites receive prompt payments for their supplies, including non-handloom goods sourced from mills and corporations.
3. The Petitioner filed representation dated 26.05.2023 requesting the Central Registrar (Respondent No.2 herein) to appoint an Arbitrator in terms of Section 84 of the Multi-State Cooperative Societies Act. Further, the Petitioner sent a Corrigendum dated 26.06.2023 correcting an inadvertent error in representation dated 26.05.2023 wherein Section 74 had been mentioned instead of Section 84 of the Act. However, no reply has been received by the Petitioner from the Central Registrar and the process of arbitration has not been initiated. Resultantly, the Petitioner has approached this court seeking directions to respondent no. 2 for the appointment of an Arbitrator.
4. Learned counsel for the petitioner submitted that according to



Section 84 of the 2002 Act, the Central Registrar has the authority to designate the Arbitrator. The commencement of proceedings under Section 21 of the A&CAct, would thus be from the date of delivery of the request for appointment of an arbitrator made to the Central Registrar under Section 84 of the 2002 Act. Where an Arbitrator is to be appointed by someone other than a party to the arbitration proceedings, such as an arbitration institution, the arbitration is considered to have begun when that person is given written notice requesting an appointment.

5. Learned counsel for the petitioner while relying upon ***D.Narsimha Rao &Ors. vs. Revanta Multi State CGHS Ltd. &Anr.***[Arb.P.No.92/2022] further submitted that the Petitioner therein invoked arbitration by addressing notice to the Central Registrar and approached this Hon'ble Court under Section 11(6) of the A&C Act when the Central Registrar failed to act in terms of the appointment procedure as contemplated. In the aforementioned case, a co-ordinate bench of this Court held that there was no manifest illegality when a dispute related to a multi-state cooperative society is sought to be referred to arbitration under Section 84 of the Act, following the initiation of proceedings for appointment of an Arbitrator by the Petitioner under Section 11(6) of the A&C Act, after issuing notice to the Central Registrar.
6. Learned counsel further submitted that, in light of Section 11(6) of the A&C Act, this Court's jurisdiction is restricted to the prima facie examination of facts in order to ascertain whether a claim is arbitrable. As such, the arbitrator must thoroughly review the



evidence to deem the current dispute arbitrable.

Reliance in this regard is placed upon *VidyaDrolia&Ors. v. Durga Trading Corporation*¹

7. Learned counsel for the petitioner also submitted that a bare perusal of Section 84 of the 2002 Act shows that under Section 84(1)(b) any dispute touching upon the constitution, management or business of a multi-state co-operative society that arises between a member and the multi-state co-operative society, its board or any officer, agent or employee, shall be referred to arbitration. The instant dispute also relates to the constitution, management as well as the business of Respondent No.1 and arises between the Petitioner and all the Respondents.
8. *Per-contra*, learned counsel for Respondent no. 1 submitted that the present petition is not maintainable as admittedly no notice under Section 21 of the A&C Act, has been issued by the Petitioner to Respondent No. 1. The only notice raising dispute as per the petitioner was admittedly sent to Respondent No. 2 without any copy thereof or intimation thereto to Respondent No. 1. Furthermore, it was submitted that in the aforementioned notice to Respondent No.2, there is no averment of a notice under Section 21 of the A&C Act, to the Respondent No. 1.
9. Learned counsel further submitted that compliance with Section 21 is an essential pre-requisite for initiation of arbitration which has not been complied with. It was also submitted that the subject petition is

¹(2021) 2 SCC 1



liable to be dismissed as the requirement of notice invoking arbitration contained in Section 21 of the A&C Act has not been fulfilled which is mandatory. It is also submitted that Section 21 comes into play as a part of the arbitration procedure. A reading of the Section 21 Arbitration and Conciliation Act, 1996 makes it clear that the crucial words in the provision are “the date on which a request for that dispute to be referred to arbitration” and thus unless a notice under Section 21 of the A&C act is received by the answering respondent, the matter cannot be referred to arbitration.

10. Learned counsel submitted that the arbitration process can only begin when a party seeking arbitration against another party raises a specific dispute by issuance of a notice under Section 21 of the A&C Act, which has not been done. Merely asking for the appointment of an arbitrator to the appointing authority would not *ipso facto* fill in the fatal gap left open by not sending notice under Section 21 of the Arbitration Act, 1996.
11. This case primarily involves two questions that are required to be answered i.e., (1) Whether section 84 of the 2002 act provides any power to the Central Registrar i.e., respondent no. 2 to appoint an arbitrator or not. (2) What would be the other remedy or process of appointment in case the Central Registrar fails to appoint an Arbitrator.
12. It would be appropriate to refer to section 84 of the 2002 act which reads as under:

“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 multi-State co-operative 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 co-operative society arises—

- (a) among members, past members and persons claiming through members, past members and deceased members, or*
- (b) between a member, past member and persons claiming through a member, past member or deceased member and the multi-State co-operative society, its board or any officer, agent or employee of the multi-State co-operative society or liquidator, past or present, or*
- (c) between the multi-State co-operative 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 co-operative society, or*
- (d) between the multi-State co-operative society and any other multi-State co-operative society, between a multi-State co-operative society and liquidator of another multi-State co-operative society or between the liquidator of one multi-State co-operative society and the liquidator of another multi-State co-operative 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 co-operative society, namely:—

- (a) a claim by the multi-State co-operative 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*



multi-State co-operative 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 co-operative 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 co-operative 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.”

13. A cursory reading of Section 84 of the 2002 Act reveals that arbitration is to settle any disagreement between a member and the multi-state cooperative society, its board, or any officer, agent, or employee that relates to the organization's management, operations, or constitution. The current disagreement, which involves the Petitioner and all Respondents, also has to do with Respondent No. 1's management, charter, and operations. The Petitioner's submissions center on the Board of Directors of Respondent No. 1's multiple instances of alleged corruption, poor management, and non-



payment of dues, which have caused the Petitioner and other member societies of Respondent No. 1 to suffer significant financial losses. Therefore, respondent no. 2 has the power to appoint an arbitral tribunal to resolve the dispute between the parties.

14. A co-ordinate bench of this in *Appolo Handloom Manufacturing Co-op Society Ltd. v. All India Handloom Fabrics Society & Ors.*² has dealt in depth with the second question i.e., the available remedy to the petitioner in case the respondent (Central Registrar) fails to appoint an arbitrator. This case was an arbitration petition and in-fact had an identical factual matrix. The co-ordinate bench held that:

“9. As per Section 84(4) of the Act, an Arbitrator is to be appointed by the Central Registrar of Co-operative Societies, Ministry of Cooperation, there can be no doubt about that. However, in case the Central Registrar fails to appoint an Arbitrator, the question is whether the Petitioner can be left remedy-less. In such cases, the Court cannot be held to be powerless to refer the matter to the Central Registrar for appointment of an Arbitrator. There being a clear Arbitration Clause in terms of Section 84(5) of the Act, the argument that a petition under Section 11(6) of the Arbitration Act is not maintainable is rejected. Under Section 11(6) of the Arbitration Act, the High Court is empowered to undertake necessary measures for securing the appointment of an Arbitrator, especially when a person or institution, which in the present case is the Central Registrar, has failed to act as required under the procedure specified in Section 84 of the Act.

14. A Coordinate Bench of this Court in D Narasimha Rao v. Revanta Multi State CGHS Ltd., 2023 Livelaw (Del) 171 has held that there is nomanifest illegality when a dispute related to a multi-state cooperativesociety is sought to be

²2024 SCC Online Del 2723



referred to arbitration under Section 84 of the Act, following the initiation of proceedings for appointment of an Arbitrator by the Petitioner under Section 11(6) of the Arbitration Act, after issuing notice to the Central Registrar. The relevant extracts of the said decision are set out below:

1. This petition under Section 11 of the Arbitration and Conciliation Act, 1996 ["the Act"] seeks to invoke jurisdiction of the Court for appointment of an arbitrator in light of the disputes which have arisen. The dispute itself relates to elections which were held in respect of a Multi-State Cooperative Society and would be governed by Sections 84 and 85 of the Multi-State Cooperative Societies Act, 2002 ["the 2002 Act"].

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3. In terms of Section 84(3), if any, question arises in relation to a dispute and whether the same is liable to be referred to arbitration, the provision mandates that the decision of the arbitrator in that respect shall be final. The power of constitution of the Arbitral Tribunal stands vested in the Central Registrar. The petitioner invoked arbitration by addressing a notice dated 06 January 2021 to the Central Registrar. However, the said authority failed to act in terms of the appointment procedure as contemplated.

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5. However, and as would be manifest from a reading of the contents of that notification, all that the Union Government has provided is that the powers which are exercisable by the Central Registrar under Section 84 of the 2002 Act could also be exercised by the Registrar of Co-operative Societies of the States. Viewed in that light, it is evident that the Central Registrar did not stand divested of authority to initiate the appointment



process nor does it stand denuded of jurisdiction to act in terms of Section 84. All that the notification purports to achieve is to contemporaneously empower the Registrar of Cooperative Societies of States to refer matters to arbitration. The Court thus finds itself unable to hold that the initiation of proceedings for constitution of an Arbitral Tribunal suffered from a manifest illegality.”

15. In light of the foregoing conclusions of the Coordinate Bench of this Court, there are similarities between the factual matrix of the current case and that in Appolo Handloom Manufacturing (Supra) & D. Narasimha Rao (supra). In each of these cases, an arbitrator is being appointed in response to a dispute involving the election of office bearers in a cooperative multi-state society. It is evident that, while this Court retains the authority to exercise its jurisdiction and name an arbitrator on its own, it may also order the Central Registrar to do so, a power to which the Central Registrar has been explicitly granted by the 2002 Act.
16. However, before parting, it is necessary to deal with the issue raised by the respondent regarding the service of notice under Section 21 of the Arbitration and Conciliation Act, 1996.
17. Learned counsel for the respondent submits that since no notice under Section 21 of the Arbitration and Conciliation Act has been served in the present case, the petition itself is not maintainable and liable to be dismissed.
18. Learned counsel for the respondent has relied upon ***Alupro Building Systems Pvt. Ltd v. Ozone Overseass Pvt. Ltd*** in OMP 3/2015 decided on 28.02.2021, ***Amit Guglani & Anr. Vs. L and T Housing***



Finance Ltd. through Managing Director & Anr. in

ARB.P. 1317/2022 dated 22.08.2023, *Florentine Estates of India Ltd. & Anr. V. Lokesh Dahiya & Anr.* in ARB. P. 861/2021 dated 11.11.2022, *M/s D. P. Construction V. M/s Vishvaraj Environment Pvt. Ltd.* in Misc. Civil. Appln. (Arbn.) No.31/2021 and *West Bengal Power Development Corporation Limited V. Sical Mining Limited* in A.P. No. 555/2022 dated 30.09.2022.

19. Per contra, the plea of the petitioner is that since the notice under Section 84 has been served upon Respondent No.2, the requirement of notice under Section 21 of the Arbitration and Conciliation Act stands fulfilled. In Alupuro Building Systems Pvt. Ltd (Supra) it was held that notice under Section 21 of the Arbitration and Conciliation Act it is a pre-requisite for initiation proceedings under the Arbitration and Conciliation Act and arbitration proceedings commenced without the same would be unsustainable. This judgment was followed by the Coordinate Bench of this Court in Amit Guglani & Anr (supra).
20. In Florentine Estates of India Ltd. & Anr (supra) also the Coordinate Bench of this Court followed the same proposition of law and inter alia held that the service of the notice under Section 21 of the Arbitration and Conciliation Act is pre-essential for the commencement of the proceedings. Section 84 (5) of the Multi-State Cooperative Societies Act, 2002 provides as under:

“84(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.”

21. Rule-30 (2) of the Multi-State Cooperative Societies Act, 2002 provides as under:

“30. Disputes (1) For the purposes of sub-section (4) of section 84 of the Act, the Central Registrar may appoint and fix the fee of the arbitrators subject to the provisions of Arbitration and Conciliation Act, 1996. (2) Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 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.”

22. Thus, it is clear that the except power conferred to the Central Registrar for appointment of an Arbitrator, the other provisions of the Arbitration and Conciliation Act, 1996 shall remain in operation. However, the question is that whether the notice issued in the present case to respondent No.2 dated 26.05.2023 which was followed by a reminder dated 12.06.2023 and corrigendum dated 26.06.2023 can be considered under Section 21 of the Arbitration and Conciliation Act. The Multi-State Cooperative Societies Act, 2002 has been enacted to serve the interest of the members and to facilitate the voluntary formation and democratic functioning of co-operatives as people's institutions based on self help and mutual aid and to enable them to promote their economic and social betterment and to provide functional autonomy and for matters connected therewith or incidental thereto.



23. Thus, the statement of objection and reasons, makes it clear that this is a beneficial piece of legislation that has been enacted for the benefit of the cooperative societies. The procedure is the handmaid of justice. The purpose of Section 21 of the Arbitration and Conciliation Act is to put on notice the party regarding the commencing the arbitration proceedings and making the party aware of the dispute involved. There is no particular proforma prescribed under the law for the service of the notice under Section 21 of the Arbitration and Conciliation Act. Though, this Court is of firm view that the notice as required under the Section 21 of the Arbitration and Conciliation Act would be pre-requisite even for initiation of proceedings under Section 84 of the Multi State Cooperative Societies Act, 2002. However, in absence of any specific proforma, it would be sufficient if the petitioner in case of dispute having being arisen as envisaged under Section 84 of the Multi State Cooperative Societies Act, 2002 informs the Central Registrar for appointment of an Arbitrator and discloses the disputes.
24. Furthermore, *lis* in between the parties which is stated to be monetary dues and illegal appointment of the president, vice president, etc. of respondent no.1 is an issue that is to be looked into by the arbitrator and not meant for this court.
25. In view of the above observation, the present petition is allowed and disposed of with the following directions:
- A. The respondent no. 2 is directed to appoint an arbitrator within three weeks and shall also inform all the parties. Upon being appointed, the learned Arbitrator shall enter the reference.



- B. The parties are free to avail of its remedies before the Id. Arbitrator in accordance with law.
- C. All contentions are left open.

DINESH KUMAR SHARMA, J

MAY 08, 2024

Pallavi/HT