



W.P. No. 28719 of 2018
and W.M.P.Nos.33551 & 33555 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2022

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P. No.28719 of 2018
and
W.M.P.Nos.33551 & 33555 of 2018

Air Corporation Employees Co-operative Credit
Society Ltd.,
Rep. by President
AIR Lines House, Meenambakkam,
Chennai - 600 027.

... Petitioner

Vs

1.The Registrar of Co-operative Societies,
170, EVR Road,
Dr.Radhakrishnan Nagar,
Razaak Garden, SBI Officers Colony,
Arumbakkam, Chennai - 600 106.

2.Sundaramoorthy

... Respondents

(R2 impleaded as per order dated 02.03.2020 made in
W.M.P.No.33257/2019 in W.P.No.28719/2018)

Prayer: Petition filed under Article 226 of the Constitution of India to
issue a Writ of Certiorari, to call for the records of the respondent order
dated 30.08.2018 vide Rc.No.6654/2018/SF2 and to quash the same.



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For Petitioner : Mr.L.Manoharan
for Mr.A.Jenasenan

For R1 : Ms.C.Meera Arumugam
Additional Government Pleader

For R2 : Mr.R.Arunkumar
for M/s.V.V.Srinivasan

ORDER

The petitioner has challenged the impugned order of the first respondent, dated 30.08.2018 by which, one Thiru.G.Annamalai, learned Advocate has been appointed as an Arbitrator, based on the representation of the 2nd respondent.

2. It appears that the 2nd respondent herein has raised an Arbitration claim under Section 84 of the Multi State Co-operative Societies Act, 2002 against the Chief Executive/Manager of the Society before the State Registrar and requested for appointment of an Arbitrator. Pursuant to the same, since the claim relates to organizational and legal matters, the 1st respondent herein, had initially appointed one Thiru Y.Bhuvaneshkumar, Advocate as an Arbitrator to deal with the arbitration claim, who in turn, expressed his unwillingness to act as



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Arbitrator, which prompted the 1st respondent to appoint one Thiru G.Annamalai, Advocate as an Arbitrator.

3. The learned counsel for the petitioner would contend that the 1st respondent has no jurisdiction to appoint an Arbitrator inasmuch as under Section 84 of Multi State Co-operative Societies Act, 2002, when a dispute is referred to arbitration, only the Central Registrar is empowered to appoint an Arbitrator, whereas, the 1st respondent herein being State Officer, has appointed an Arbitrator, and therefore, the impugned order cannot be sustained.

4. During the course of argument, the learned counsel for the petitioner fairly conceded that the impugned order dated 30.08.2018 has been issued in the light of the Notification dated 24.2.2003 issued under Section 4 (2) of the Multi State Co-operative Societies Act, 2002, by the Government of India, vide Notification DO. No.216(E) bearing F.No.L11012/3/2002 L & M dated 24.02.2003. By the said notification, it has been clarified that the powers exercisable by the Central Registrar under Section 84 of the Multi State Cooperative Societies Act, 2002 shall



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also be exercisable by the Registrar of Cooperative Societies of the States/Union Territories in respect of the societies located in their respective jurisdiction.

5. However, it is submitted that the first respondent has committed an error in fixing a responsibility to pay reasonable fee and expenses for the Arbitration on the petitioner, which is contrary to Section 84 of the Multi State Co-operative Societies Act, 2002 as well as Rule 30 of the Multi State Co-operative Societies Rules, 2002 and Section 31 (8) of the Arbitration and Conciliation Act, 1996 and 31 (A) of the Arbitration and Conciliation Act, 1996. It is submitted that the Central Registrar who has given power to appoint an Arbitrator has no jurisdiction to fix the fee of the Arbitrator. It is submitted that the said exercise is contrary to the Provisions of the Multi State Co-operative Societies Act, 2002.

6. On the other hand, learned counsel for the second respondent submitted that a method for resolution of dispute is under Section 38 of the Arbitration Act, 1940. It is submitted that the Arbitral Tribunal may fix the amount of the deposit or supplementary deposit, as the case may



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be, as an advance for the costs referred to in sub-section (8) of Section 31, which it expects will be incurred in respect of the claim submitted to it. It is further submitted that as per aforesaid provisions, the deposit shall be payable in equal shares by the parties and where one of the party fails to pay his share of deposit, the other party may pay that share. It is further submitted that where the other party also does not pay the aforesaid share in respect of the claim or the counter-claim, the Arbitral Tribunal may suspend or terminate the Arbitral proceedings in respect of such claim or counter-claim, as the case may be. It is submitted that upon termination of the arbitral proceedings, the Arbitral Tribunal shall render an account to the parties of the deposits received and shall return any unexpended balance to the party or parties, as the case may be.

7. Therefore, it is submitted that there is no ground to interfere with the impugned order directing the petitioner to pay the fees. The official respondents have referred to Section 31 (8) of the Arbitration and Conciliation Act, 1996. It is stated that the payment of cost of Arbitration by the petitioner society will actually depend upon the orders that may be passed by the Arbitrator in this behalf.



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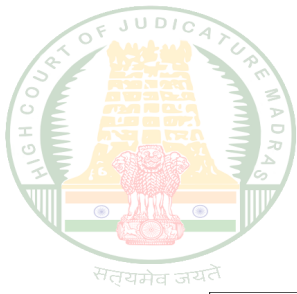
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8.Learned counsel for the 2nd respondent and petitioner referred to Section 31 (8) of the Arbitration Conciliation Act, 1996. In the counter, Section 31(8) of the Act as it stood prior to amendment in 2015 has been extracted. The impugned order of the first respondent is dated 30.08.2018. The amended provisions of the Arbitration and Conciliation Act, 1996 will apply as far as the fee and the costs is payable for the Arbitration. This is evident from a reading of Section 84(5) of the Multi State Co-operative Societies Act, 2002 which reads ad under:

"Section 84 (5) in The Multi- State Co- Operative Societies Act, 2002

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 (26 of 1996)."

Section 31 (8) and Section 31-A of the Arbitration and Conciliation Act, 1996 are reproduced herein below which are self-explanatory.



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Section 31(8)	Section 31-A
The costs of an arbitration shall be fixed by the arbitral tribunal in accordance with Section 31-A	Regime for costs - (1) In relation to any arbitration proceeding or a proceeding under any of the provisions of this Act pertaining to the arbitration, the Court or arbitral tribunal, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), shall have the discretion to determine - (a) whether costs are payable by one party to another; (b) the amount of such costs; and (c) when such costs are to be paid."

9. Section 38 of the Arbitration Conciliation Act, 1996 makes it clear that the amount may be fixed by the Arbitral Tribunal, is to be equally borne by both the parties. It also makes it clear that where either party or both the parties fail to pay the deposits in respect of the claim or the counter-claim, the arbitral Tribunal may suspend or terminate the arbitral proceedings in respect of such claim or counter-claim as the case may be. Rule 30 (2) of the Multi State Co-operative Societies Rules, 2002, which has been provided to implement Section 84 (4) of the said



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Act, states that 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 (26 of 1996). There is no provisions under the Multi State Co-operative Societies Act, 2002 or Multi State Co-operative Societies Act, 2002, whereby the exemption has been provided as regards Section 38 of the Arbitration and Conciliation Act, 1996. Power is vested with the Central Registrar to not only appoint an arbitrator but also to fix the fees of the arbitrator subject to the provisions of the Arbitration and Conciliation Act, 1996. Consequently, this Court is of the view that the arbitrator appointed under Section 84 (4) of the Multi State Co-operative Societies Act, 2002 inasmuch as power to fix the fee/ costs paid by the parties to dispute. Once the amount is fixed by the arbitrator, the Provisions of Arbitration and Conciliation Act, 1996 will follow.

10. In light of the above, this Writ Petition is partly dismissed insofar as the appointment of arbitrator is concerned. Insofar as the



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impugned order directing the petitioner to pay reasonable fees and expenses to the arbitrator by the petitioner, the arbitrator appointed is directed to exercise discretion to fix the fees to be paid by applying Section 31(8), Section 31-A, Section 38 of the Arbitration and Conciliation Act, 1996 and Section 34 of the Multi State Co-operative Societies Act, 2002 and Rule 30 of the Multi State Co-operative Societies Rules, 2002.

11. Rule 30 (1) of the Multi State Co-operative Societies Act, 2002, makes it clear for that the Central Registrar may appoint Arbitrar and fix the fee of the arbitrator subject to the provisions of the Arbitration and Conciliation Act, 1996. Thus the method for appointment and fixation of the arbitrator under the provisions of the Arbitration and Conciliation Act, has to be followed. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

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Index : Yes/ No

Internet : Yes/No



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C. SARAVANAN, J.

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To

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