

\$~4 & 25

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

+ **ARB.P. 92/2022**

D NARASIMHA RAO & ORS. Petitioners

Through: **Mr. Davesh Bhatia, Adv.**

versus

REVANTA MULTI STATE CGHS LTD. & ANR.

..... Respondents

Through: **Mr. Mukesh Kumar, Mr.
Nilofar Khan, Advs. for
Revanta Society.
Ms. Anjum Parvez, Adv. for
Registrar
Mr. Kirtiman Singh, Ms.
Kunjala Bhardwaj, Ms. Vidhi
Jain, Mr. Madhav Bajaj, Ms.
Shreya Mehra, Mr. Yash
Upadhyay, Adv. for R-2.**

\$~25

+ **O.M.P.(I) (COMM.) 381/2021**

**ASSOCIATION OF REVANTA CGHS MEMBERS
THROUGH D. NARASIMHA RAO & ORS. Petitioners**

Through: **Mr. Davesh Bhatia, Adv.**

versus

REVANTA MULTI STATE CGHS LTD. & ANR.

..... Respondents

Through: **Mr. Mukesh Kumar, Mr.
Nilofar Khan, Advs. for
Revanta Society.
Ms. Anjum Parvez, Adv. for
Registrar
Mr. Kirtiman Singh, Ms.
Kunjala Bhardwaj, Ms. Vidhi
Jain, Mr. Madhav Bajaj, Ms.
Shreya Mehra, Mr. Yash
Upadhyay, Adv. for R-2.**

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER
01.02.2023

%

ARB.P. 92/2022

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”].

2. Section 84 which contemplates reference of disputes between parties to be resolved by way of arbitration is extracted hereinbelow:-

“Chapter IX
Settlement of Disputes

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 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 multi-state 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 multi-state 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”

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.

4. Pursuant to notices having been issued on this petition, the Central Registrar has filed a short affidavit and refers to a notification dated 24 February 2003 to contend that the petitioner should have approached the Registrar of Co-operative Societies of the State in terms of the powers conferred under Section 84 having been delegated. The notification of 24 February 2003 reads as under:-

“MINISTRY OF AGRICULTURE
(Department of Agriculture and Co-operation)

NOTIFICATION

New Delhi, the 24th February, 2003

S.O.216(E).— In exercise of the powers conferred by Sub-section (2) of Section 4 of the Multi-State Co-operative Societies Act, 2002 (39 of 2002), the Central Government hereby directs that the powers exercisable by the Central Registrar under Section 84 of the Act shall also be exercisable by Registrar of Co-operative Societies of the States/UTs in respect of the societies located in their respective jurisdiction, subject to the following guidelines and conditions, that-

1. Such powers in relation to a National Co-operative Society shall not be exercisable by these officers.
2. The officers shall comply with the directions (other than court cases) as may be given by the Central Registrar, appointed under Sub-section (1) of Section 4 of this Act, from time to time.
3. Appointment of arbitrators by the State Registrar of co-operative societies shall be subject to following guidelines:-
 - (a) In case of disputes relating to organizational and legal matters, arbitrators should either be a practicing Advocate or retired member of Judicial/Civil services or officers at least of the level of Deputy Registrar and above of co-operative department retired not more than two years prior to the date of appointment.
 - (b) In case of disputes relating to financial and banking matters including recovery disputes, persons having financial and accounting background like Chartered Accountants/ICWAs/retired bank officers (retired not earlier than two years) may also be considered

for appointment in addition to the persons listed in clause 3(a).

4. The list of approved arbitrators shall be submitted to the Central Registrar within 15 days of approval. The updated list of all the approved arbitrators should be sent to the Central Registrar on quarterly basis.

(F. No. L-11012/3/2002-L&M)
K. S. BHORIA, Jt. Secy.”

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 Co-operative 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.

6. Ms. Parvez, learned counsel who has appeared for the respondent has additionally raised the issue of the claim not being liable to be referred in light of the provisions contained in Section 85 of the 2002 Act. Section 85 prescribes the limitation in case of disputes which are to be referred to arbitration. Learned counsel has specifically referred to clause (1) (c) thereof which provides that when the dispute is in respect of an election of an officer of a multi-state co-operative society, the same would have to be raised within one month from the date of the declaration of the result of the election.

7. That is an issue which can clearly be decided by the arbitrator and thus the Court refrains from entering any definitive findings in

respect of that issue.

8. Accordingly and for all the aforesaid reasons, the instant petition is allowed. The aforesaid dispute, raised by the petitioner, is referred to the Delhi International Arbitration Centre, who would proceed to appoint a suitable Arbitrator to arbitrate on the dispute/disputes.

9. The parties are directed to appear before the learned arbitrator, as and when notified. This is subject to the learned arbitrator making the necessary disclosure under Section 12(1) of the Act and not being ineligible under Section 12(5) of the Act.

10. The Arbitrator would arbitrate on the dispute in accordance with the rules and regulations of the Delhi International Arbitration Centre and the fees of the learned Arbitrator would also be fixed according to the Schedule of Fees of the Delhi International Arbitration Centre.

O.M.P.(I) (COMM.) 381/2021

11. In light of the Court having referred the disputes to arbitration, learned counsel does not press O.M.P.(I) (COMM.) 381/2021, subject to rights being reserved to approach the Arbitral Tribunal in terms of Section 17 of the Arbitration and Conciliation Act, 1996.

YASHWANT VARMA, J.

FEBRUARY 01, 2023

neha