

A REGISTRAR, CO-OPERATIVE SOCIETIES, WEST BENGAL

v  
KRISHNA KUMAR SINGHANIA AND ORS.

AUGUST 17, 1995

B [K. RAMASWAMY AND B.L. HANSARIA, JJ.]

*West Bengal Cooperative Societies Act, 1983 : Sections 95, 96(5) and (6).*

C *West Bengal Cooperative Societies Rules, 1987 : Rule 178.*

*Arbitrator—Appointment by Registrar—Failure to decide reference within one year—Effect of—After expiry of period of six months Registrar can extend period for further six months—But on failure to decide dispute within one year time cannot be extended for further period—In such a case Registrar does not become functus officio—Arbitration proceedings does not get abated on expiry of one year—Section 46 of the Arbitration Act held inapplicable.*

*Arbitration Act, 1940 :*

E *Section 46—Applicability to arbitration under a Special Act—Necessary conditions for.*

F The first respondent was appointed as a Transport and Handling contractor by the West Bengal State Consumers' Federation. Dispute having arisen between the parties the Registrar appointed an Arbitrator under the West Bengal Cooperative Societies Act, 1983 to decide the disputes. On Arbitrator's failure to decide the reference within one year, as envisaged under section 96 of the Act, the first respondent approached the High Court for termination of the arbitration and appointment of another arbitrator under the Arbitration Act, 1940. The High Court G revoked the appointment of the third respondent and appointed another arbitrator. It proceeded on the premises that since section 96 empowers the Registrar to extend time only upto one year to enable the arbitrator to make the award, and the arbitrator had failed to make the award within the extended one year period, the Registrar became *functus officio* to extend further time. Therefore, the arbitrator was left with no power to make the H award.

In appeal to this Court it was contended for the appellant that (i) the power of the Registrar under Sections 95 and 96 of the West Bengal Cooperative Societies Act read with rule 178 of the West Bengal Cooperative Societies Rules would indicate that on expiry of the period of one year prescribed under section 96 the power of Registrar is not exhausted; (ii) the provisions of the Arbitration Act would be applicable only when the parties have agreed for such a reference; since the agreement does not provide for such an option, appointment made under section 46 of the Arbitration Act was illegal; and (iii) Section 46 of the Arbitration Act was not applicable.

Allowing the appeal, this Court

**HELD : 1.** The scheme of the West Bengal Cooperative Societies Act is inconsistent with the provisions of the Arbitration Act. Section 46 of the Arbitration Act does not get attracted to the disputes arising under the Act. The Registrar under the Act, therefore, did not become *functus officio* nor he is denuded of the power to withdraw the dispute from the arbitrator and to decide himself or to appoint another arbitrator to decide the dispute between the parties. The High Court, therefore, was clearly in error in revoking the appointment of the third respondent as arbitrator and appoint as fresh arbitrator. However, since the third respondent had not made the award within one year and since the limitation of one year prescribed under section 96 had expired by efflux of time, he ceased to have power to proceed with the adjudication of the dispute and to make an award. It would be open to first respondent to make an application to the Registrar afresh either to decide the dispute himself or to appoint another arbitrator. [832-E-H]

**2.** A conjoint reading of sections 95 and 96 of the West Bengal Cooperative Societies Act and Rule 178 clearly indicates the gamut of the power of the Registrar. As soon as an application for reference is made, the Registrar may decide the dispute himself or may appoint an arbitrator or a panel of arbitrators to decide the dispute. Under sub-section (5) of section 96, the arbitrator so appointed should decide the dispute within six months from the date of the receipt of his appointment order from the Registrar. In case he cannot make the award within six months, he should submit a report to Registrar at least 15 days before its expiry for further extension giving reasons for his failure to make the award. Thereon, the Registrar is

A empowered to allow further time not exceeding six months for disposal of the dispute. But the Registrar is left with no power to extend time to make the award beyond one year. However, his power to deal with the situation is not totally denuded. Rule 178 fills the gap, which provides the power and procedure to deal with the situation. It envisages that on an application  
 B made by either party to an arbitration proceeding pending before an arbitrator or board of arbitrators, the Registrar may either withdraw the reference to himself for deciding the dispute or he may appoint another arbitrator or board of arbitrators to decide the dispute or make a fresh appointment of arbitrator or board of arbitrators for deciding the dispute.  
 C This scheme is consistent with the right of appeal provided against the award of the arbitrator under section 136 of the Act, read with Schedule 1 of the Act. If the Tribunal does not dispose of the appeal within time, by operation of the proviso to section 136, the State Government is empowered to extend the time for its disposal. [830-D-F; G-H; 831-A-B]

D 3. Arbitration agreement signed by the parties the foundation for reference under the Arbitration Act to an arbitrator appointed by the Court to decide dispute arising under the contract as per its terms. In case of failure of arbitration under any other enactment, Section 46 of the Arbitration Act seeks to step in and effectuates arbitration of the dispute referred under the statute. However, it would be subject to the provisions  
 E of the special law and the exceptions envisaged in section 46 itself. The condition precedent for applying section 46 is that there should not exist any inconsistency between the special law and the Arbitration Act. Thus for revocation of the appointment of an arbitrator made by the Registrar under section 95 of the Act, there must exist conditions like misconduct etc. as required by section 11 of the Arbitration Act and on proof thereof  
 F only the court gets power to remove the arbitrator and exercising power under section 12 of the Arbitration Act, the Court would appoint another arbitrator. [831-F-G; 832-A-C]

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8183 of 1995.

From the Judgment and Order dated 24.9.91 of the Calcutta High Court in Matter No. 686 of 1991.

H N.S. Hegde, D.N. Mukherjee, K.N. Tripathy, Sinha and Das for the Appellants.

G.S. Chatterjee and Janaranjan Das for the Respondents.

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The following Order of the Court was delivered :

Leave granted.

This appeal by special leave arises from the decision of a Single Judge of the High Court of Calcutta dated the September 24, 1991 in matter No.686/91. The first respondent was appointed as a Transport and Handling contractor by the West Bengal State Consumers' Federation. Certain differences and disputes arose between them. Consequently, when they approached the Registrar under the West Bengal Co-operative Societies Act, 1983 (for short, 'the Act'), the Registrar, by his proceedings dated October 8, 1989, appointed an arbitrator to decide the disputes. Since the arbitrator had not decided the reference within one year, as envisaged under s.96 of the Act, the first respondent approached the High Court under Sections 5, 11 and 12 of the Arbitration Act, 1940 for termination of the arbitration and appointment of another arbitrator. After revoking the appointment of the third respondent Devi Prasad Lehari as an arbitrator, the High Court appointed another arbitrator by the impugned order. The learned Single Judge proceeded on the premise that since s.96 empowers the Registrar to extend time only upto one year to enable an arbitrator to make the award, and the arbitrator had failed to make the award within the extended one year period, the Registrar became *functus officio* to extend further time. So, the arbitrator was left with no power to make the award. Resultantly, the first respondent was entitled to invoke the provisions of the Arbitration Act, 1940, by operation of s.46 thereof.

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The question is whether the view of the High Court is correct and the arbitration proceedings before the third respondent stood abated and whether the civil court has power to terminate his nomination and to appoint in his place another arbitrator?

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Shri Santosh Hegde, learned senior counsel for the appellant, contended that the power of the registrar under Ss. 95 and 96 of the Act should be read with the rules made under the Act. Rule 178 empowers the Registrar to withdraw the arbitration proceedings to decide himself or to appoint any other arbitrator, which would indicate that on expiry of the period of one year prescribed under s.96, the power of Registrar is not exhausted and the first respondent was not left without any remedy. The

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- A provisions of the Arbitration Act would be applicable only when the parties have agreed for such a reference. Since the agreement does not provide for such an option, appointment made under s.46 of Arbitration Act is illegal. The Act is a special law which provided a complete procedure including rights of appeal which is inconsistent with the arbitration Act. So, s.46 of the Arbitration Act does not apply.
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- It is contended for the respondent that the view of the High Court is sustainable from a reading of the provisions of the Act and the scheme under the Arbitration Act. Though the contract does not expressly empower the appointment of an arbitrator by the civil court under the Arbitration Act, by necessary implication and by operation of s.46 of the arbitration Act, the statutory arbitration became operational. The arbitrator appointed by the Registrar having failed to make the award within one year, he become non-functional. Since the limitation prescribed under s.96 is mandatory, Registrar is left with no power to extend further time. The Registrar, thereby, became *functus officio*. Consequently, the arbitration proceedings before the third respondent stood abated. The party cannot be left without a remedy. The only remedy is as provided under the Arbitration Act.
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- The diverse contentions gives rise to the question: (1) whether on expiry of the outer limit of one year prescribed under s.96(5) and (6) of the Act, the Registrar became *functus officio* to deal with the dispute and consequently the third respondent ceased to have any power to arbitrate the dispute or the said proceedings stood abated? (2) whether the party is left without a remedy? (3) whether civil court gets jurisdiction to terminate the appointment of third respondent and to appoint another arbitrator in his place to arbitrate the dispute?
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To satisfactorily resolve these questions, it is necessary to read the relevant provisions of the Act and the Rules vis-a-vis, the provisions of the Arbitration Act.

- G Section 95 of the Act is as follows :

- "(1) Any disputer concerning the business of a co-operative society capable of being the subject of civil litigation or any dispute relating to the affairs of a co-operative society (other than a dispute relating to the disciplinary action taken by a co-operative society or the
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terms and conditions of service of the paid employees of the co-operative society or the terms and conditions of the service of the paid employees of the co-operative Society) shall be referred in the prescribed manner to the Registrar, if the parties thereto are among the following :

(a) A co-operative society or its board or an officer (past or present) agent, employee or liquidator of a co-operative society; or

(b) A member of a past member or a person claiming through a member or a past member or on behalf of a deceased member of a co-operative society or a financing bank of a co-operative society; or

(c) A surety of a member or past member or deceased member of a co-operative society, whether such surety is or is not a member of the co-operative society; or

(d) Any other co-operative or any person including any financing bank having transaction with co-operative society or any liquidation of a co-operative society;

Sections 96(5) and (6) of the Act

(5) A dispute referred to the Registrar under sub-section (1) of s.95 or transferred or referred to any person or arbitrator or arbitrators or the Court of Arbitrators, as the case may be, under sub-section (1) of s.96 shall be decided within six months from the date of receipt thereof by the Registrar.

(6) If the Registrar or the person or the arbitrator or arbitrators or the court of Arbitrators fails to decide the dispute within the period specified in sub-section (5), he shall submit a report to his or its appointing authority stating reasons for such failure at least fifteen days before the expiry of the said period and such authority shall allow further time not exceeding six months for disposal of the dispute.

Rule 178 of the West Bengal Co-operative Societies Rule, 1987 states as under :

A "178 Withdrawl of reference by the Registrar—the Registrar may be :

(a) on the application by any party to an arbitrator proceeding pending before an arbitrator or arbitrators; or

B (b) on the application of an arbitrator, other than a Government officer; or

C (c) Where a Government officer is an arbitrator is case or resignation, transfer suspension or dismissal of the arbitrator or any of the arbitrators, withdraw the *reference from the arbitrator or board of arbitrators and may decide the dispute himself if by an award or may make fresh appointment of arbitrator or, arbitrators.*"

(Emphasis supplied)

D A conjoint reading of ss. 95, 96 and Rule 178 clearly indicates the gamut of the power of the Registrar. As soon as an application for reference is made, the Registrar may decide the dispute himself or may appoint an arbitrator or a panel of arbitrators to decide the dispute. Under sub-section (5) of s.96, the arbitrator so appointed should decide the dispute within six months from the date of the receipt of his appointment order from the Registrar. In case he cannot make the award within six months, he should submit a report to Registrar at least 15 days before its expiry for further extention gives reasons for his failure to make the award. Thereon, the Registrar is empowered to allow further time not exceeding six months for disposal of the dispute.

F In a situation like the facts in this case, the question would be whether the Registrar has any power to make further extension or can he withdraw the dispute for himself for decision or appoint a fresh arbitrator, when he finds that the arbitrator had not decided the dispute within one year prescribed under s. 96(5) and (6) read together. A conjoint reading of these provisions shows that the Registrar is left with no power to extend time to make the award beyond one year, However, his power to deal with the situation is not totally denuded. Rule 178 fills the gap, which provides the power and procedure to deal with the situation. It envisages that on an application made by either party to an arbitration proceeding pending

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withdraw the reference to himself for deciding the dispute or he may appoint another arbitrator or board of arbitrators to decide the dispute or make a fresh appointment of arbitrator or board of arbitrators for deciding the dispute. This scheme is consistent with the right of appeal provided against the award of the arbitrator under s.136 of the Act, read with the Schedule I of the Act. If the Tribunal does not dispose of the appeal within time, by operation of the proviso to s.136, the State Government is empowered to extend the time for its disposal. A B

It would thus be clear that the Act is a complete code in deciding the disputes by the arbitrator or board of arbitrators appointed by the Registrar under ss.95 and 96 of the Act. The arbitration proceeding does not get abated after the expiry of one year from the date of the appointment of arbitrator under s.95. The Registrar, on an application by either party to the proceedings, may withdraw the proceedings before himself and may decide the dispute or appoint another arbitrator or board of arbitrators, as the case may be. C D

The next question is whether the provisions of the Arbitration Act stand attracted by deeming fiction of s.46 of the Act. It reads thus :

*"46. Application of Act to statutory arbitrations. - The provisions of this Act except sub-section (1) of Section 6 and Sections 7, 12, 36 and 37, shall apply to every arbitration under any other enactment for the time being in force, as if the arbitrations were pursuant to an arbitration agreement and if that other enactment were an arbitration agreement, except in so far as this Act is inconsistent with that other enactment or with any rules made thereunder."* E

Arbitration agreement signed by the parties is the foundation for reference under the Arbitration Act to an arbitrator appointed by the court to decide dispute arising under the contract as per its terms. In case of failure of arbitration under any other enactment, Section 46 of the Arbitration Act seeks to step in and effectuates arbitration of the dispute referred under the statute. However, it would be subject to the provisions of the special law and the exceptions envisaged in s.46 itself. Section 46 clearly shows that when a statutory arbitration has become unworkable, introduces a fiction that the arbitration under the statute stands substituted by a deeming agreement between the parties, as if it is a bilateral agreement for reference under Arbitration Act. The provisions of the Arbitra- F G H

A tion Act would then apply, except those excluded by s. 46 itself. One of the excluded sections in s.12 of the Arbitration Act, which gives power to the Court, after removal of the arbitrators, to appoint an arbitrator or umpire. The condition precedent for applying s.46 is that there should not exist any inconsistency between the special law and the Arbitration Act. It would thus be seen that for revocation of the appointment of an arbitrator made by the Registrar under s.95 of the Act, there must exist conditions like misconduct etc. as required by s.11 of the Arbitration Act and on proof thereof only the court gets power to remove the arbitrator and exercising power under s.12 of the Arbitration Act, the Court would appoint another arbitrator.

C But then by operation of s.46, s.12 stands excluded. From where then the court gets power to appoint another arbitrator? There is no power under any other provision of the Arbitration Act to appoint an arbitrator by the court in place of arbitrator appointed under s.95 of the Act. The only other provision is one under s.21 of the Arbitration Act. Since there is no suit pending in a Civil Court, the question of appointment of an arbitrator under s.21 also does not arise. Would the party then be left without any remedy to have to dispute decided by an arbitration, except to go to a Civil Court? That would not be the intendment of either the Act or the Arbitration Act.

E Thus considered, the scheme of the Act is inconsistent with the provisions of the Arbitration Act. Section 46 of the Arbitration Act does not get attracted to the disputes arising under the Act. The Registrar under the Act, therefore, did not become *functus officio* nor he is denuded of the power to withdraw the dispute from the arbitrator and to decide himself or to appoint another arbitrator to decide the dispute between the parties. The High Court, therefore, was clearly in error in revoking the appointment of the third respondent as arbitrator and appoint a fresh arbitrator. However, since the third respondent had not made the award within the one year and since the limitation of one year prescribed under s.96 had expired by efflux of time, he ceased to have power to proceed with the adjudication of the dispute and to make an award.

H Under the aforesaid circumstances, it would be open to the first respondent to make an application to the Registrar afresh either to decide the dispute himself or to appoint another arbitrator. It is needless to

mention that since the dispute is pending for long, the Registrar or the arbitrator to be appointed would decide the dispute as expeditiously as possible preferably within a period of six months. The first respondent would file the application within one month from the date of the receipt of this order and the Registrar is directed to withdraw the dispute. In case he intends to decide the matter himself, it would be open to him to do so and he would do so within six months. If he considers appointment of an arbitrator afresh, then he should appoint arbitrator within one month from the date of the receipt of the application. The arbitrator, so appointed, shall decide the matter within six months of the receipt of the order of appointment from the Registrar.

The appeal is accordingly allowed but in the circumstances without costs.

T.N.A.

Appeal allowed.