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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 8th April, 2024
 + **ARB.P. 1261/2023**

APPOLO HANDLOOM MANUFACTURING CO-OP. SOCIETY
 LTD. Petitioner

Through: Ms. Rashmi Singh, Advocate
 (M: 9810161505).

versus

ALL INDIA HANDLOOM FABRICS SOCIETY
 AND ORS. Respondents

Through: Ms. Monika Arora, CGSC with
 Mr. Subhrodeep Saha, Advocates for
 UOI (M: 9810246300).
 Mr. Sandeep Khurana, Mr. Shiven
 Khurana and Mr. Manjit Singh,
 Advocate for R-1 and 5 (M:
 9810118389).
 Mr. S. Kaushik Ramaswamy and
 Mr. Siva Krishnamurti, Advocates
 for R-2 to 4 (M: 9972814798).

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The Petitioner- Appolo Handloom Manufacturing Co-op. Society Limited has filed the present petition seeking appointment of an Arbitrator by Respondent No. 6- Central Registrar of Co-operative Societies, Ministry of Cooperation, Atal Akshay Urja Bhavan CGO Complex, Lodhi Road, Delhi (*'Central Registrar'*). The case of the Petitioner is that it is a Member



of Respondent No.1- All India Handloom Fabric Society and has been so for more than 30 years. Further, Respondent Nos. 2 and 3 are its office bearers i.e. the current President and the current Vice President. Respondent No. 4 is the Executive Member and Respondent No. 5 is Chief Accountant of Respondent No. 1

3. It is the stand of the Petitioner that the Petitioner being a Member of Respondent No. 1, it has various disputes in respect of the functioning of Respondent No. 1 including the fact that certain monetary dues to the Petitioner have not been paid. In addition, Id. Counsel also submits that the election of office bearers of Respondent No. 1 was conducted in an unlawful and an illegal manner. There are other disputes related to the constituent of the Respondent No. 1 for which it had invoked the Arbitration Clause in terms of Section 84 of the Multi State Cooperative Societies Act, 2002 (*hereinafter 'the Act'*) and filed a request dated 26th May, 2023 for appointment of Arbitrator with Respondent No.6, which was in the nature of a representation. Further, it is the claim of the Petitioner that it has also filed a request for appointment of an Arbitrator on the Website of the Respondent No.6 - Central Registrar.

4. It is the contention of the Petitioner that since, no Arbitrator was appointed by the Central Registrar, the present petition has been filed seeking appointment of an Arbitrator in terms of Section 84 of the Act invoking the jurisdiction of this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*hereinafter 'Arbitration Act'*).

5. On behalf of Respondent No. 1, it is firstly submitted that there is no clarity regarding the disputes and the claims which are to be referred to



arbitration. It is further contended the Id. Counsel for Respondent No. 1 that no notice under Section 21 of the Arbitration and Conciliation Act, 1996 was issued by the Petitioner to Respondent No. 1.

6. On behalf of Respondent Nos. 2 to 4, it is submitted that the election of any office bearer can only be challenged within a period of 30 days and not beyond that period. In addition, the maintainability of a petition under Section 11 of the Arbitration Act, is also challenged in view of Section 84(5) of the Act. Id. Counsel for Respondent Nos. 2 to 4 submits that the petition itself would not be maintainable in view of the decision of the Supreme Court in ***National Highways & Infrastructure Development Corpn. Limited v. Prakash Chand Pradhan, (2020) 15 SCC 533.***

7. On behalf of Respondent No. 6- Central Registrar, it is submitted that Registrar would appoint the Arbitrator expeditiously.

8. The Court has heard Id. Counsels for all the parties and perused the record. Insofar as maintainability under Section 84(5) of the Act is concerned, it is clear that the provisions of the Arbitration Act would only apply in case no provisions are separately made under the Act. For reference, Section 84 of the Act is set out below:

“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.

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. Section 11(6) of the Arbitration Act is set out below for reference:

(6) Where, under an appointment procedure agreed upon by the parties,—

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

the appointment shall be made on an application of the party, by the arbitral institution designated by the Supreme Court, in the case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

10. In **NHAI (Supra)**, the central issue under consideration was whether an application under Section 11 of the Arbitration Act, for the appointment of an arbitrator was maintainable in light of Section 3G(5) of the National Highways Act, 1956. Section 3G(5) of the National Highways Act provides for the appointment of an arbitrator by the Central Government for determining compensation related to land acquisition for national highways. Section 3G of the National Highways Act, 1956 is set out below:

3G. Determination of amount payable as compensation.—



(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—



- (a) the market value of the land on the date of publication of the notification under section 3A;*
- (b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;*
- (c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;*
- (d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.*

11. The Supreme Court held that the National Highways Act, 1956, being a special enactment, provided an inbuilt mechanism for the appointment of an Arbitrator by the Central Government. Therefore, in **NHAI (supra)** the application for the appointment of an arbitrator under Section 11 of the Arbitration Act was held as not being maintainable. However, the Supreme Court clarified that the provisions of the Arbitration Act, would apply to every arbitration under the National Highways Act, 1956, to the extent that the National Highways Act, 1956 was silent. In the context of the National Highways Act, 1956, the Supreme Court held that in respect of the action of appointment of an arbitrator, the power exclusively vested with the Central Government under Section 3G(5) of the National Highways Act, 1956. Consequently, the Supreme Court set aside the orders passed by the Calcutta High Court, which had appointed an arbitrator under Section 11 of the Arbitration Act. The Central Government was thereafter directed to consider



the application for appointment of Arbitrator and if found in order appoint an arbitrator under Section 3G(5) of the National Highways Act, 1956. The relevant extracts of the decision of the Supreme Court in **NHAI (Supra)** are set out below:

“1. The moot question which arises before us is whether the application under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter being referred to as “Act, 1996”) is maintainable in view of Section 3G(5) of the National Highways Act, 1956 (hereinafter being referred to as “Act, 1956”) which provides for appointment of an Arbitrator by the Central Government.

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3. The Act, 1956 is a comprehensive code in itself and a special legislation enacted by the Parliament for acquisition and for determining compensation and its disbursement where there are several claimants over the amount deposited towards compensation determined by the competent authority in accordance with the mechanism provided under Section 3G of the Act, 1956. If the amount so determined by the competent authority under sub-section(1) or sub-section (2) of Section 3G is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the Arbitrator to be appointed by the Central Government under Section 3G(5) of the Act. While determining the amount of compensation under sub-section(1) or sub-section(5), it is the duty of the Arbitrator to take into consideration the relevant pointers envisaged under sub-section(7) of Section 3G of the Act, 1956. Where the amount determined by the Arbitrator is in excess of the amount determined by the competent authority under Section 3G of the Act, 1956, the Arbitrator may, at its discretion, award interest at



nine per cent per annum on the excess amount under sub-section (5) of Section 3H from the date of taking possession under Section 3D till the date of actual deposit.

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5. In the instant case, the respondent--applicant being dissatisfied with the award of compensation determined by the competent authority under sub-section(1) of Section 3G of the Act, 1956 filed application for appointment of an Arbitrator in terms of Section 3G(5) to the Central Government on 8th December, 2006. As alleged, since the Central Government has not responded to his request for appointment of an Arbitrator in terms of letter dated 8th December, 2006 within a period of 30 days from receipt of the request, application was filed on 7th March, 2007 to the Chief Justice/his designate for appointment of an Arbitrator invoking Section 11(6) of the Act, 1996. It reveals that the Arbitrator was appointed by the Central Government sometime in April 2007.

6. The High Court of Calcutta taking note of the fact that the Arbitrator has been appointed by the Central Government under Section 3G(5) of the Act, 1956 after the respondent-applicant had moved an application to the Chief Justice/his Designate invoking its power under Section 11(6) of the Act, 1996 held that right of appointment of the Arbitrator by the Central Government stands forfeited as it failed to appoint the Arbitrator until filing of the application under Section 11(6) of the Act, 1996 before the High Court of Calcutta and appointment of Arbitrator during the pendency of proceedings, cannot be said to be a valid appointment and hence referred the matter to be placed before the Chief Justice for naming an Arbitrator vide its Order dated 6th July, 2007.

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15. At the very outset, we may notice that the two Judge Bench of this Court in the recent judgment in *General Manager (Project), National Highways and Infrastructure Development Corporation Ltd. case(supra)*, while dealing with the scope of sub-sections (5) and (6) of Section 3G of the Act 1956 with reference to Section 11 of the Act, 1996 has held that the Act 1956 being a special enactment and Section 3G in particular provides an inbuilt mechanism for appointment of an Arbitrator by the Central Government. Hence Section 11 of the Act, 1996 has no application and the power is exclusively vested with the Central Government under Section 3G(5) of the Act, 1956 for appointment of an Arbitrator and if the Central Government does not appoint an Arbitrator within a reasonable time, it is open for the party to avail the remedy either by filing a writ petition under Article 226 of the Constitution of India or a suit for the purpose but the remedy of Section 11 of Act 1996 is not available for appointment of an Arbitrator.

16. We are in full agreement with the legal position stated by a two Judge Bench of this Court in *General Manager (Project), National Highways and Infrastructure Development Corporation Ltd. case(supra)* but like to add further that the Act, 1956 has been enacted under Entry 23 of the Union List of the Seventh Schedule of the Constitution with the exclusive power to legislate with respect to highways, which are declared to be national highways by or under law by the Parliament. It is a comprehensive code and a special enactment which provides an inbuilt mechanism not only in initiating acquisition until culmination of the proceedings in determining the compensation and its adjudication by the Arbitrator to be appointed by the Central Government and if still remain dissatisfied, by the Court of law.



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19. It is settled principles of law that when the special law sets out a self-contained code, the application of general law would impliedly be excluded. In the instant case, the scheme of Act, 1956 being a special law enacted for the purpose and for appointment of an arbitrator by the Central Government under Section 3G(5) of Act, 1956 and sub-section (6) of Section 3G itself clarifies that subject to the provisions of the Act 1956, the provisions of Act 1996 shall apply to every arbitration obviously to the extent where the Act 1956 is silent, the Arbitrator may take recourse in adjudicating the dispute invoking the provisions of Act, 1996 for the limited purpose. But **so far as the appointment of an Arbitrator is concerned, the power being exclusively vested with the Central Government as envisaged under sub-section (5) of Section 3G of Act 1956, Section 11 of the Act 1996 has no application.**

20. The plea of the respondents that they have rightly taken recourse in the facts and circumstances of Section 11 of the Act, 1996 cannot be accepted for the reason that Section 3G(6) of the Act, 1956 clearly stipulates that the provisions of the Act, 1996 will apply subject to the provisions of the Act, 1956. **The usage of the expression "subject to" clearly indicates that the legislature intended to give overriding effect to the provisions of the Act, 1956 where it relates to the disputes pertaining to determination of the amount of compensation under the Act. The irresistible conclusion is that the legislature in its wisdom intended to abrogate the power for appointment of an Arbitrator under the provisions of the Act, 1996.**

21. In our considered view, the High Court of Calcutta was not holding its competence to appoint an Arbitrator invoking Section 11 of Act, 1996.

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23. We are also of the considered opinion that in view of the power being vested exclusively with the Central Government to appoint an Arbitrator under Section 3G(5) of the Act 1956, being a special enactment, the application filed under Section 11(6) of the Act 1996 for appointment of an Arbitrator was not maintainable and provisions of the Act, 1996 could not be invoked for the purpose.

12. In the above decision, two important facts deserve to be noted:

- First, that prior to the appointment by the High Court, the Central Government had appointed the Arbitrator;
- Secondly, that the High Court had gone ahead and appointed an arbitrator on its own.

The above course of action adopted, was held to be not tenable in view of the provisions of the National Highways Act.

13. Further, in **NHAI (Supra)**, a determination of compensation for land acquisition under the National Highways Act was the subject matter of the dispute for which arbitration was sought. However, in the present case, disputes relate to the election of officers, internal functioning and management of a cooperative society. It is crucial to note that Section 84 of the Multi State Cooperative Societies Act, 2002, specifically provides for the arbitration of disputes concerning either the constitution, management, or business of a multi-state cooperative society as also disputes relating to the election of office bearers of a society operating under the Act. Further Section 84 mandates the appointment of an arbitrator by the Central Registrar and provides that the provisions of the Arbitration and Conciliation Act, 1996, shall apply to all arbitrations under the Act,



provided there are no conflicting provisions in the Multi State Cooperative Societies Act, 2002.

14. A Coordinate Bench of this Court in ***D Narasimha Rao & Ors v. Revanta Multi State CGHS Ltd & Anr., 2023 LiveLaw (Del) 171*** has held that there is 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 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 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 cooperative 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.

15. Accordingly, from the above discussion, the clear position that emerges is that the fact situation in **NHAI (supra)** is distinguishable from the facts of the present case. This Court is not exercising jurisdiction to appoint an arbitrator on its own but is merely directing the Central Registrar to appoint an arbitrator, which the said authority has itself conceded to. Further, the factual matrix of **D Narasimha Rao (supra)** and the present case are similar. Both cases are Arbitration Petitions, seeking the appointment of an Arbitrator in respect of disputes over elections of office bearers of a multi-state cooperative society.

16. Insofar as the merits of the matter is concerned, i.e., challenge to the election and the recovery of any pending monetary dues are concerned, the question as to whether they can be raised in arbitration, if so, in what manner and whether any relief is to be granted or not would have to be adjudicated by the Id. Arbitrator and not by this Court.

17. Further, in the opinion of this Court, insofar as the Respondent Nos. 2 to 4 are concerned, they are individual office bearers of Respondent No. 1 which is a society. Therefore, the main *lis* is between the Petitioner and the Respondent No. 6. The said Respondent, which is the Central Registrar has not challenged the maintainability of the present petition and has simply submitted to the Court that it would be appointing an Arbitrator within two weeks.



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18. Accordingly, Respondent No. 6 is directed to appoint an Arbitrator within three weeks and inform all the parties. Upon being appointed, the Id. Arbitrator shall enter reference. The parties are free to avail of its remedies before the Id. Arbitrator in accordance with law. All contentions are left open.

19. Petition is disposed of with all pending applications, if any.

**PRATHIBA M. SINGH,
JUDGE**

APRIL 8, 2024

mr/am

[Corrected and released on 15th April, 2024]