M/s. Brahma Tours and Travels Coop. Society Ltd. Vs Lieutenant Governor and Others

Court: Calcutta High Court

Date of Decision: April 6, 2009

Acts Referred: Andaman and Nicobar Islands Co-operative Societies Regulations, 1973 â€" Regulation 55

Hon'ble Judges: Sanjib Banerjee, J

Bench: Single Bench

Advocate: K.M.B. Jayapal and Ms. G. Mini, for the Appellant; Hemraj Bahadur, for the Respondent

Final Decision: Dismissed

Judgement

Sanjib Banerjee, J.
The writ petitioners question the validity of the proceedings under the Andaman and Nicobar Islands Cooperative

Societies Regulation, 1973 and the rules framed thereunder.

2. The petitioner No.1 obtained a loan from the respondent cooperative bank and, apparently, defaulted in making payment of the amount due to

the cooperative bank. The cooperative bank invoked the provisions of the Andaman and Nicobar Islands Cooperative Societies Regulation, 1973

(hereinafter referred to as the said Regulation) and applied before the Registrar of Cooperative Societies for adjudication of the matter between the

first petitioner and cooperative bank by way of arbitration. An arbitral award was made and, in accordance with the procedure under the said

Regulation and the rules framed thereunder, the arbitral award was carried to the Lieutenant Governor. The two vehicles that were purchased by

the writ petitioner society with the loan obtained, were disposed of by the bank and a part of the dues was satisfied. The appellate authority under

the said Regulation directed attachment of the property of the surety by an order dated May 24, 2007. In the present proceedings, the petitioners

challenge the basis of the assumption of jurisdiction by the several authorities under the said Regulation.

3. The petitioners have restricted their argument at the hearing to this solitary point that the authorities who have made orders following the

invocation of arbitration by the respondent cooperative bank, have all acted without jurisdiction.

4. The petitioners say that regulation 55 of the said Regulation has two parts, the first covering the parties to the dispute that may be referred to the

Registrar and over which no Court had jurisdiction; and the second part relating to the nature of the disputes that can be put up for adjudication

under regulation 55. According to the petitioners, the first petitioner is neither a member nor a past member nor even a person claiming through a

member or past member or deceased member of the cooperative society bank. The petitioners say that the petitioners are not covered by the first

limb of regulation 55(1) of the said Regulation. The petitioners are obviously not covered by the second limb or even the third limb of regulation

55(1) of the said Regulation.

Clause (d) of regulation 55(1) of the said Regulation provides as follows:

55. Disputes which may be referred to arbitration: (1). Notwithstanding anything contained in any law for the time being in force, if any dispute

touching the constitution, management or the business of a cooperative society arisesÃ¯Â¿Â½

(a) ...

(b) ...

(c) ...

(d) between the society and any other cooperative society, between a society and liquidator of another society or between the liquidator or one

society and the liquidator of another society,

such dispute shall be referred to the Registrar for decision and no Court shall have jurisdiction to entertain any suit or other proceedings in respect

of such dispute.

5. Notwithstanding the curious name of the first petitioner it is not in dispute that the first petitioner is a cooperative society amenable to the said

Regulation of 1973. Though it is not appreciated as to how an entity can be both a cooperative society and a liability company, it is not necessary

to go into such aspect of the matter in the present context.

6. Since the first petitioner is a cooperative society and the respondent cooperative bank is also a cooperative society, both being covered by the

said Regulation of 1973, any dispute between the two would be covered by regulation 55(1)(d) of the said Regulation.

7. It is the petitioners'' case that even if the first limb of regulation 55 is complied with in the present case, the nature of the dispute was such that it

would not be covered by section 55(2) of the said regulation. Section 55(2) of the said regulation provides as follows:

55(2). For the purposes of sub-section(1), the following shall be deemed to include disputes touching the constitution, management or the

business of a cooperative society, namely:

(a) a claim by the society for any debt or demand due to it from a member, past member, or the nominee, heir or legal representative 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 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 the society.

8. The expression, ""the following shall be deemed to include disputes"" appearing in regulation 55(2) of the said regulation would imply that the

disputes enumerated would be disputes covered by regulation 55(1) of the said Regulation. The said expression is illustrative and not exhaustive

and does not provide that disputes not enumerated under regulation 55(2) would not be disputes covered by regulation 55(1).

9. It is possible for special bodies being members of a nodal body to agree that inter se disputes between such bodies would be resolved in the

manner provided in the contract governing such bodies as members of the nodal body. Such an agreement would oblige the special bodies who

are members of the nodal body to resolve their disputes in accordance with the charter of nodal body, unless there is any special law prohibiting

such disputes from being adjudicated other than by any designated forum.

10. There is no law, at least none is shown immediately, that would prohibit a cooperative bank from providing for an arbitration agreement in the

loan agreement or from agreeing to have the disputes adjudicated with its constituent before a specified forum. In both the cooperative bank and

the first petitioner being cooperative societies, both are governed by the said Regulation of 1973 and the respondent cooperative bank invoked

regulation 55 thereof to seek arbitration. There was nothing remiss on the part of the respondent cooperative bank in having chosen to go to

arbitration and there is no law that bars the respondent cooperative bank"s action.

11. The entire argument of the writ petitioners is based on regulation 55(2) being exhaustive and the adjudication by arbitration under regulation

55(1) not being possible in cases of disputes not covered by the disputes enumerated in regulation 55(2). This argument appears to be fallacious

on a reading of the opening words of regulation 55(2).

12. Since the only ground urged by the writ petitioners is that the respondent authorities who have entertained the parent arbitration proceedings or

proceedings arising therefrom have all acted without jurisdiction; there is nothing else that requires to be looked into.

13. W.P.No.260 of 2008 is dismissed. There will be no order as to costs.

It is submitted on behalf of the respondent cooperative bank that the bank"s claim against the petitioner is in excess of Rs. 3,42,845/-.

Urgent certified photostat copies of this order be made available to the parties, if applied for, subject to compliance with requisite formalities.