

G.S. Mander and ors. Vs. Indian Olympic Association and ors.

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Court : Delhi

Decided On : Jan-20-1995

Reported in : 1995IAD(Delhi)738; 1995(1)ARBLR312(Delhi); 1995(32)DRJ527

Judge : R.C. Lahoti, J.

Acts : [Arbitration Act, 1940](#) - Sections 2

Appeal No. : Interim Application No. 7142 of 1993 and Suit No. 77 of 1993

Appellant : G.S. Mander and ors.

Respondent : Indian Olympic Association and ors.

Advocate for Pet/Ap. : K.K. Venugopal,; P.P. Tripathi,; A. Dipankar,;

Judgement :

R.C. Lahoti, J.

(1) The plaintiffs have filed this suit challenging the legality and validity of, and the mode and manner in which, the elections of the Execution Council of the Indian Olympic Association (hereinafter loa, for short) were held' in the Annual General Meeting dated 15th November, 1992. They are also aggrieved by the amendments made in the constitution of loa in .the meeting dated 30th November, 1991 in so far as they relate to passing of no-confidence motion against the office bearers of loa and also in so far as they relate to relaxation of requirement as to majority for

reelection to certain posts. Plaintiffs No.1 & 2 were candidates respectively for the posts of Secretary General and Treasurer. Plaintiffs No.3 to 6 are Associations/Federations, who are member-units of IOA. The IOA is a Society registered under the Societies Registration Act. It is also a national member of Inter National Olympic Committee. It has a Memorandum of Association, Constitution and Rules and Regulations, the relevant parts whereof shall be referred to hereinafter.

(2) According to the plaintiffs, Mr. B.P. Aditayan (defendant No.3) was elected President of IOA in the year 1987 and ever since then he has been able to manipulate retention of presidency with him.

2.1 There has been an earlier round of long drawn litigation leading up to Madras High Court, resulting in a Full Bench order on 3.1.91 appointing a retired judge of the Supreme Court of India as one-member-executive council. In appeal the Supreme Court by its order dated 22.2.91 directed convening of general assembly of IOA wherein conduct of election was left in the hands of another retired Judge of the Supreme Court. Election was held on 28.4.91, but the terms of the office were to expire in November, 1991, the election being a bye-election.

2.2 Thereafter the Constitution has been amended subverting democratic functioning of the IOA by its having been so manipulated to their own advantage by the defendants No.3 to 5. The details thereof are set out in the plaint. The provisions as to passing of no - confidence motion and as to eligibility for re-election have been so amended as would result in defendants No. 3 and 4 in power retaining the offices with them in perpetuity. Such amendments are mala fide, illegal and opposed to public policy, (see- paras 18 to 23 of the plaint).

2.3 Vide paragraphs 24 to 26, serious illegalities/irregularities in holding and conducting the elections at the instance of defendants No.3 to 5 have been alleged. Votes have been alleged to have been cast illegally. There were bogus votes as well. Election was held only for the post of President and elections to other posts, though required to be held simultaneously, were not held. To enable continuance in office, the defendants No.3 and 4 have manoeuvred illegal membership being granted so as to muster voting strength. Serious violation of

fundamental rules of fair play has taken place.

2.4 In the background of the above said allegations, the plaintiffs have sought for a decree of declaration annulling the amendments in the constitution, a decree of declaration annulling the election held on 15.11.92 and a decree of perpetual injunction restraining the defendant No.3 to 39 from acting as office bearers/members of the executive council of IOA.

2.5 The plaintiffs had also sought for an ad- interim injunction, which was not allowed ex-parte.

(3) On 12.8.93 is No.7142/93 has been filed by Mr.B.S. Adityan, the defendant No.3 under Section 34 of the Arbitration Act, whereby it is submitted that there is an arbitration clause No.XIX in the Rules and Regulations of IOA, the parties are bound whereby and though the plaintiffs have deliberately concealed the existence of the arbitration clause the defendant No.3 was at all relevant times' and in particular at the time when these proceedings were commenced, in continuance ready and willing to have the disputes raised in the suit determined by arbitration and hence the suit deserves to be stayed. The application has been vehemently opposed on behalf of the plaintiffs. It is this application which calls for decision.

(4) At the very outset let a few provisions and scheme of the IOA Rules and Regulations be noticed.

4.1 Clause Xix of the Rules and Regulations of the IOA reads as under :-

(I) All National Federations/Associations/State Olympic Associations affiliated to IOA shall include in their Constitution a provision that the Federations/Associations would have all unresolved disputes settled by the IOA, and their Members shall voluntarily surrender 'their right of seeking redress in any Court of Law.

(II) Every Member shall be deemed to continue its members of the IOA on the specific condition that it voluntarily surrenders its right of seeking redress in any Court of Law.

(III) All unresolved disputes arising within the National Sports Federations/Associations/State Olympic Associations affiliated to the IOA shall be referred by the Federation/Associations to the IOA for settlement by the IOA. For this purpose, the IOA Executive Council, on the recommendation of the President IOA, shall recommend 9 names to the disputing parties, to select one name, in consultation with the President of IOA, which is acceptable to both the parties. The Arbitration proceedings shall be completed within the period specified by the IOA Executive Council. President IOA, based on the circumstances of the case, has the authority to extend, or vary, the period.

(IV) In the event of an unresolved dispute within an affiliated unit of the IOA, which is referred to the IOA by a member, and which affects normal working of the Unit, or prevents preparation and training of the sport/team under the charge of the Unit for purposes of International representation/competition, the IOA Executive Council will constitute an ad-hoc body from within the members of the General Assembly, as may be necessary until the dispute within the Unit is resolved.

(V) All disputes between National Sports Federations/Associations and the IOA, or within the IOA itself, will be dealt with in the same manner as laid down in (iii) above.

4.2. The Rules and Regulations show that the membership of the IOA is open to certain federations and associations, service sports control board and Indian citizens who are members of the International Olympic Committee. No other individual may be a member of the IOA. Elections shall be held once in four years from amongst the representatives of the members present. Nominations are to be forwarded by the Federations/Associations 30 days prior to the date of AGM. The nominations must indicate the name of the candidate, the position held by him in the concerned federation/association. The federations/associations represented in the Executive Council and General Assembly constitute the voting majority. Right to vote vests in the accredited representatives deputed by the member Federations/associations who only can attend the meeting subject to production of a certificate signed by both the President and the Secretary of the concerned federations/associations. No individual can be accredited to represent at the

meeting unless he is a regular member of that federation/association. The number of representatives which a federation/association may send is specified. One representative is entitled to one vote. Right to vote vests in accredited representative only deputed by the member federations/associations.

(5) Now the rival contentions raised by the learned counsel for the parties may be noticed. In substance the following questions arise for determination :-

(1) Whether there is an 'arbitration agreement' between the parties?

(2) Whether the defendant No.3 can be said to have taken steps in the proceedings so as to disentitle him from invoking Section 34 above said ?

(3) Whether the suit deserves to be stayed under Section 34 of the [Arbitration Act, 1940](#) ?

(6) Question No.1 Section 2(a) of the Arbitration Act defines 'arbitration agreement' to mean a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not. The definition is wide in its scope. Though it contemplates a written agreement, but does not require the same to be signed by the parties to be effective and binding. The essentials of an arbitration agreement are :-

(I) A valid and binding agreement between the parties;

(II) an intention to submit present or future differences/disputes for decision by an arbitrator and to be bound by it;

(III) the agreement must be in writing though not necessarily signed by the parties.

(7) Clause Xix of the Rules and Regulations of Ioa has been extracted and reproduced hereinabove. It is very wide and sweeping. All unresolved disputes of any nature whatsoever to which the member associations/ federation or the members are parties and all disputes if they be within the Ioa itself are required, to be referred and adjudicated upon by means of arbitration (sic./read arbitrator) to be appointed in the manner contemplated by sub-Clause (iii).

(8) This Court had an occasion to deal with this very Clause in the case of All India Womens Hockey Federation Vs . Indian Olympic Association & Ors. : 55(1994)DLT607 . This Court had observed:-

'MEMBERS of a voluntary sports organisation bound by the commands of the creator constitution must settle their scores not in a Court of law, but before the Judge of their own choosing, i.e. an Arbitrator. Disputes arising among the persons who have associated themselves to form a club, society or federation are not ordinarily open to judicial interference. Their disputes must be settled not with legal subtleties but in a homely atmosphere before a domestic tribunal, if there be one provided and available. The Court may interfere if the Association or the members thereof may act illegally in a manner not authorised by their constitution or in 'violation of principles of natural justice. Even in such a case, if the constitution governing them provides them a forum for adjudication of disputes, the court of law would ordinarily stay its hands, drive the parties to their own chosen forum and compel them to abide by its decision.'

(9) In the opinion of this Court Clause Xix of the Rules and Regulations satisfies the requirements of an arbitration agreement. There is an intention to refer the disputes to arbitration. There is also an intention to be bound by the decision of the arbitrator. No federation/ association can continue to be a member of the loa so long as it does not submit to the arbitration clause. Every member of loa is obliged to incorporate a similar provision in its own constitution as a condition precedent to its membership/affiliation. The clause is in writing. It is not necessary that it should have been signed by the members or those seeking affiliation.

(10) MR.KAPIL Sibal, the learned senior advocate appearing for the plaintiffs has only unsuccessfully tried an ingenious escape from Clause XIX. He contended that plaintiffs No.1 and 3 are individuals, not federations or associations, and not individually member of the IOA. So also there are a few individual-defendants similarly placed. Right to contest an election is an individual right and in as much as the plaintiff Nos.1 and 2 who were candidates at the election have not in their individual capacity submitted to the arbitration clause, they cannot be held bound by it. Suffice it to observe that the alleged. right of the plaintiffs 1 and 2 is not their

individual or own right. As discussed in para 5 (supra) no individual may become a member of loa, excepting Indian citizens who are members of the International Olympic Committee, which the plaintiffs are not. The individuals physically present at the meeting of the loa are so present only in the capacity of representatives of the federations/associations. Their candidatures are also in that capacity. They exist in the meeting of the loa so long as they represent there own federation/association. In other words, it is the federation/association present, participating and acting at the meeting, also contesting he elections though through a representative as the federation/association being an inanimate person cannot itself act and must have someone to act for it. In the plaint the plaintiff No. 1 and 2 might have chosen to be joined as plaintiffs projecting themselves as individuals but in reality they are propagating the cause of the respective federations/associations to which they belong.

(11) The plaintiffs are all held bound by the arbitration clause.

(12) Question No.2 Section 34 of the Arbitration Act, provides as under:-

'34.Power to stay legal proceedings where there is an arbitration agreement.- Where any party to an arbitration agreement or any person claiming under him commences any legal proceedings against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred, any party 'to such legal proceedings may at any time before filing a written statement or taking any other steps in the proceedings, apply to the judicial authority before which the proceedings are pending to stay the proceedings; and if satisfied that there is no sufficient reason why the I matter should not be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to 'the proper conduct of the arbitration, such authority may make an order staying the proceedings.'

(13) Plea under Section 34 is available only before the party raising it has filed a written statement or taken any other steps in the proceedings.

(14) Admittedly, the defendant No.3 has not filed any written statement so far. I have not come across a single proceeding in the Court recording the defendant No.3 having sought for an adjournment for filing the written statement. The learned counsel for the plaintiff has relied which is as under :-

'9.2.93 Present: Mr. Pradeep Dewan with Mr. Rakesh

C. Aggarwal for the plaintiff.

MR. Ashok Bhasin with Mr. Harsh Patni for defendants 12, 5, 8, 10, 12, 16, 18, 19, 25 and 30.

MR. PRAVEEN Kumar for the defendant No.6.

MR. Vineet Kumar with Mr. T. Ray for the defendant No.29.

MR. K. K. Venugopal with Mr. P. Tripathi for dfdt. No.3.

S.NO.77 & IAs.237-38/93

FRESH summons and notice be issued to the remaining defendants by ordinary and registered Ad post, returnable before the Court on 10.3.1993.

WRITTEN statement and replies may be filed within three weeks. Replication/rejoinders within a week thereafter.

IA1709/93

ON request, adjourned to 10.3.1993.

FEBRUARY 9, 1993

SD/-Judge

TILL the date of filing of application under Section 34 of Arbitration Act, the matter was being adjourned either for contesting interlocutory applications or for service on the defendants who are 39 in number. So was it done on 9.2.93 in routine. It cannot be said that the defendant No.3 has 'either expressly or by necessary

implication acquiesced in the jurisdiction of the Court waiving his right to have the suit stayed under Section 34 of the Arbitration Act.

(15) In General Electric Company VS . Renu Sagar power Company, : [1987]3SCR858 , their Lordships of the Supreme Court have held:-

'A step in the proceeding which would disentitle the defendant from invoking Section 34 of the Arbitration Act should be a step in aid of the progress of the suit or submission to the jurisdiction of the Court for the purpose of adjudication of the merits of the controversy in the suit. The step must be such as to manifest the intention of the party unequivocally to abandon the right under the arbitration agreement and instead to opt to have the dispute resolved on merits in the suit. The step must be such as to indicate an election or affirmation in favor of the suit in the place of the arbitration. The election or affirmation may be by express choice or by necessary implication by acquiescence. The broad and general right of a person to seek redressal of his grievances in a Court of law is subject to the right of the parties to have the disputes settled by a forum of mutual choice. Neither right is in substantial and neither right can be allowed to be defeated by any manner of technicality. The right to have the dispute adjudicated by a civil court cannot be allowed to be defeated by vague or amorphous mis-called agreements to refer to 'arbitration'. On the other hand, if the agreement to refer to arbitration is established, the right to have the dispute settled by arbitration cannot be allowed to be defeated on technical grounds.'

(16) Reference may also be made to Sadha Singh Vs . Food Corporation of India, : [1990]1SCR353 and Food Corporation of India v. Yadav Engineer and Contractor. Any step in the proceeding is not every step in the proceeding. Contesting interlocutory application or incidental matters does no amount to taking steps in the proceedings.

(17) It is held that the defendant No.3 has not taken any such step in the proceedings as would defeat his right to seek stay under Section 34 of the Act.

(18) Question No.3 Under Section 34 of the Arbitration Act if an application for stay is filed by a party, it is in the discretion of the Court to stay the suit. (See - Ramji

Dayawala & Sons VS . Invest Imports, : [1981]1SCR899). In the Printer (Mysore) Pvt.Ltd. VS . Pothan Joseph, : [1960]3SCR713 , the law has been so stated :-

'THE power to stay legal proceedings under Section 34 is discretionary and so a party to an arbitration agreement against- whom legal proceedings have been commenced cannot by relying on the arbitration agreement claim the stay of legal proceedings instituted in a Court, as a matter of right. However, the discretion vested in the Court must be properly and judicially exercise. Ordinarily the Court would direct the parties to go before the tribunal of their choice and stay the legal proceedings instituted before it by one of them. It would be difficult and it is indeed inexpedient to lay down any inflexible rules which should govern the exercise of the said discretion.'

VIDE para 8, their Lordships have laid down a few illustrative guiding principles for refusing stay. Long delay in making an application for stay indicating an intention to abandon the arbitration agreement, existence of complicated questions of law or constitutional issues persuading the Court to form an opinion of inexpediency in leaving the decision of such complex issues to the arbitrator, allegations of fraud or dishonesty against a party-are some such situations.

(19) In reply to the application filed by the defendant No.3, the plaintiffs have set-out the gist of the nature of their averments made in the plaint. According to the plaintiffs they have made serious allegations in the plaint relating to (i) the complained acts of the contesting defendants of throwing into winds the entire democratic process of election; (ii) serious breaches committed by them in adhering to the constitution of the first defendant; (iii) making grossly illegal amendments in the Constitution with the sole motive to perpetuate their hold on the Executive Council of the first defendant; (iv) deliberate misreading and mis-interpretation.of the orders passed by various courts. On these premises the plaintiffs pray that the interest of justice demands the suit being heard by the Court and not being relegated to the arbitrator.

(20) The Indian Olympic Association is a national body of great public importance. the pleadings of the parties do indicate politics having percolated in sports. Though unfortunate it is but the fact remains that the game of power is being

played in the field of sports too. Big shots are exploiting the forum of IOA for projecting their own personalities. There are serious allegations of violation of principles of natural justice and fraud having been played upon the constitution of IOA. Those in office are faced with serious charges laid by the plaintiffs of having tampered with the constitution to their own advantage.

(21) It cannot also be lost sight of that the disputes have behind them a history of litigation before Courts of law. At Madras a Full Bench had to be constituted. Nomination of an Hon'ble retired Judge of the Supreme Court did not satisfy the parties and the litigation rose ladder up to the apex court of the Country leading to appointment of yet another Hon'ble retired Judge of the Supreme Court to facilitate holding of elections.

(22) It may also be mentioned that in the process of appointment of arbitrator primacy in recommending the names of the proposed arbitrators lies with the President IOA who himself is a party to the dispute. Merely because a party to the dispute is involved in the process of appointment of arbitrator that does not by itself be a reason for not referring the dispute to arbitration for a party to the dispute is invariably involved in appointment of arbitrator whenever the reference is without intervention of the Court. In the peculiar facts of this case it can be anticipated and apprehended that the parties would not be ad idem in choosing a common name in view of the nature of the disputes. That would spark of another round of litigation.

(23) In All India Women's Hockey Federation's case (supra), this Court has followed the law laid down in Batokristo Nandy VS. Ranadeb Chowdhury 1972 (2) Cal 480 wherein the Calcutta High Court has held inter alias :-

'IF the impugned act is tainted with fraud and the evil doers are themselves in a majority so that the wrong done to the association cannot be brought to the Court at the instance of the association or the breach of rule is not a mere irregularity but is of substance and cuts at the very root of the impugned act and vitiates the act itself or if the impugned act is done in a colourable exercise of power with dishonest and capricious motive so as to invade the personal or the corporate rights of the members or the act complained of amounts to a breach of a

fundamental obligation or amounts to an oppression on the minority or the ratification of the act complained of will be ultra virus the powers of the association, the bar imposed on the jurisdiction of the Court is automatically removed and the court at the instance of any member is entitled to enter into the arena of the association to strike down the impugned acts. The jurisdiction of the Court to interfere with the internal affairs and management of the association is based on the well settled principle of doing justice and whenever the facts are such that the intervention by the court is the only remedy open to the members, it is within the exception to the general rule and the Court retains its jurisdiction.'

(24) Considering all the facts and circumstances of the case, I am of the opinion that the present one is one of the exceptional cases where this Court would not be inclined to keep the plaintiffs tied down with the provisions of the loa Constitution excluding the jurisdiction of the Court. It will not be a sound exercise of discretion under Section 34 of the Arbitration Act to stay the suit. The disputes between the parties must be settled by the Court fully and finally.

(25) La 1742/93 under Section 34 of the Arbitration Act filed by defendant No.3 and seeking stay of the suit is, therefore, rejected.

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