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

+ **O.M.P. 26/2016 & IA No.291/2017**

M.P.TYAGI

..... Petitioner

Through: Ms Seema Singh, Advocate alongwith
petitioner in person.

versus

MILITARY ENGINEER SERVICES & ORS Respondents

Through: Mr Pankaj Batra, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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24.03.2017

VIBHU BAKHRU, J

1. The petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, assailing the Minutes of the Meeting of the Dispute Redressal and Reconciliation Committee (hereafter 'DRRC') held on 30.12.2015 (signed on 09.02.2016). The said minutes are claimed to be the arbitral award disposing of the disputes referred to DRRC.

2. The principal ground urged by the petitioner is that the said award is unreasoned and non-speaking. Ms Seema Singh, the learned counsel for the petitioner claims that no statement of defence was filed; an appropriate hearing was not granted to the petitioner; that the claims raised by the petitioner were not considered or adjudicated; and the impugned award is cryptic and unreasonable. She also contends that the procedure and approach adopted by DRRC was not a judicial approach. She drew the attention of

this Court to the Minutes of the Meeting dated 30.12.2015 (hereafter ‘the impugned award’), which indicates that only three members of the DRRC were present on 30.12.2015. The minutes record that the views of the other members were taken on telephone. The said minutes are also not signed by all members of DRRC and, therefore, the impugned award cannot be considered as an arbitral award in the eyes of the law as it does not conform to Section 31 of the Act.

3. Mr Batra, the learned counsel for the respondents raised a preliminary objection as to the jurisdiction of this Court to entertain the present petition. He submitted that this Court did not have the jurisdiction as the subject matter is below the pecuniary jurisdiction of this Court. He submitted that the disputes related to the election of the office bearers of respondent no.1 association and, therefore, the value of the subject matter would be nil; thus, according to him, the present petition ought to have been filed before the District Court.

4. He also earnestly contended that provisions of Section 42 of the Act would not be applicable and merely because the petitioner had filed an application under Sections 15 and 11 of the Act would not necessarily mean that by virtue of Section 42 of the Act, the present petition would lie before this Court.

5. He pointed out that the petitioner had earlier filed a suit for similar reliefs, which was at the material time valued at ₹100/- and the same was below the pecuniary jurisdiction of this Court.

6. Insofar as the merits of the contentions are concerned, Mr Batra did

not seriously dispute that the impugned award is unreasoned. He stated that although the impugned award is short and cryptic, DRRC had considered all relevant facts and the Minutes of the Meeting dated 30.12.2015 (impugned award) clearly reflected the same.

7. I have heard the learned counsel for the parties.

8. This Court does not find any merit in the contention that this Court does not have jurisdiction to entertain the present petition. Plainly, the grievance of the petitioner was with regard to elections conducted for appointing office bearers of the respondent no.1 association. Thus, the claims made by the petitioner were not monetary claims or claim for real assets, which could be accurately quantified in monetary terms.

9. The question whether this Court would have the jurisdiction to entertain the present petition would necessarily have to be considered in the context of Section 2(1)(e)(i) of the Act, which is set out below:-

“(e) “Court” means –

- (i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.”

10. Thus, the material question to be addressed is whether the petitioner

would be competent to maintain the suit before this Court in respect of the claims made before DRRC, if there was no arbitration agreement between the parties. This Court also has original jurisdiction to decide suits. Thus, it is at once clear that since the disputes raised by the petitioner cannot be ascribed any monetary value, the petitioner would be at liberty to elect the Court - whether this Court or the District Court - subject to the valuing of the suit accordingly.

11. The learned counsel for the respondents had earnestly relied on the decision of the Coordinate Bench of this Court in *Arun Kumar Jain and Anr. v. Delhi Development Authority: (2009) 158 DLT 289* in support of his contention that this Court would not have jurisdiction to agitate the disputes. The said decision is wholly inapplicable to the facts of the present case. In that case, the Court was considering a challenge to an award where the subject matter of the disputes also related to a property. In that case, the petitioner had instituted a suit valuing it below ₹20 lacs. Whilst, the suit was pending, the jurisdiction of this Court was enhanced to above ₹20 lacs and the suit was transferred to the District Court. At the material time, an application under Section 34 of the Arbitration Act, 1940 for staying the suit on account of the arbitration agreement between the parties, was also pending before the Court. The learned Additional District Judge considered the said application and referred the disputes to arbitration.

12. The provisions of the Arbitration Act, 1940 are now inapplicable. There have been material changes in the provisions of the Arbitration Act, 1940 and the Arbitration and Conciliation Act, 1996; whereas under the Arbitration Act, 1940, the Court referred disputes to arbitrations, under the

provisions of Section 8 of the Act, this Court can only refer parties to arbitration. However, the said distinction may also not be relevant in the facts of the present case since in the present case neither the disputes nor parties were referred to arbitration.

13. It is correct that the petitioner had initially filed a suit. However, on the respondent pointing out the dispute resolution clause in the Memorandum of Association of respondent no.1 association, the petitioner had withdrawn the said suit and thereafter proceeded to make its claim before DRRC. The suit having been withdrawn, there is no question of referring to the value indicated in the withdrawn suit to determine the value of the subject matter of the claims made by the petitioner before DRRC. Concededly, no pecuniary value could be ascribed to the claims made by the petitioner and, therefore, it would be open for the petitioner to choose its forum to challenge the impugned award.

14. In the aforesaid circumstances, the reference made to Section 42 of the Act is also not relevant.

15. Insofar as the merits of the case are concerned, there can be no dispute that the impugned award is unsustainable. The impugned award, in fact, is a decision recorded in the Minutes of the Meeting held on 30.12.2015 and is also not styled as an arbitral award. The relevant portion of the minutes - which is stated to constitute the entire impugned award reads as under :-

“1. Matter of M. P. Tyagi : During the last DRRC meeting held on 30.11.2015, Sh M P Tyagi was summoned by DRRC to present his grievances in front of DRRC. After detailed discussion Sh. M.P. Tyagi was advised by

DRRC to sort out the matter amicably within the branch in the interest of Association and brotherhood, which Sh. M.P. Tyagi agreed and assured to do so after giving a serious thought to the advice. But till date nothing has been done from his side, neither to resolve the issue with the branch nor deposited the amount due against the legal expenses incurred by the HQ and Delhi branch, as per article 24 of MOA. The complaint of Sh. M.P. Tyagi and records/reports/views submitted by Sh. Anil Kapoor Election Chairman Delhi Branch and Sh. Bharat Bhasin Election chairman head Quarters was considered/ deliberated by the Committee point wise. After detailed discussion the Committee did not find any merit in the complaint of Sh. M.P. Tyagi.

The decision of the earlier DRRC held on 3rd Aug. 2015 holds good as such the complaint of Sh. M.P. Tyagi was rejected. Therefore, DRRC after proper deliberations amongst themselves including non attending members over telephone unanimously is in opinion that as per MOA Article 24 Sh M.P. Tyagi will automatically lose his membership of the MESBAI. However the matter be submitted to the council in its next meeting to be held at Kolkata for final decision. And hence the matter is disposed off from DRRC.”

16. It is apparent that there is neither any discussion as to the claims/dispute raised by the petitioner nor are any reasons indicated in the impugned award as to why claims or the contentions advanced by the plaintiff were rejected. Apart from the bald statement that all points were considered and DRRC took an unanimous view to reject the claims made by the petitioner, there is not even a remote reference to the reasons which persuaded DRRC to reject the petitioner’s claim.

17. Plainly, the minutes (impugned award) do not conform to the

provisions of Section 31 of the Act. First of all, it is not signed by all members of the arbitral tribunal and, therefore, falls foul of Section 31(1) of the Act. The award is, concededly, cryptic and unreasoned and, therefore, also falls foul of Section 31(3) of the Act. In view of the above, it is difficult for this Court to even accept the minutes as an arbitral award since it appears to be only a recording of the minutes of a meeting attended by three persons of DRRC.

18. In view of the above, the challenge of the petitioner to the impugned award must be sustained. The petition is, accordingly, allowed with cost quantified at ₹5,000/-. Pending application also stands disposed of. The cost shall be paid to the petitioner within a period of two weeks from today. The impugned award – the Minutes of the Meeting dated 30.12.2015 – insofar as it relates to the claims made by the petitioner is set aside. The petitioner is at liberty to re-agitate this issue in accordance with law.

19. Order *dasti*.

MARCH 24, 2017
MK

VIBHU BAKHRU, J