

Before Anil Kshetarpal, J.

BALWINDER SINGH AND ANOTHER—Petitioners

versus

**THE LUDHIANA DISTRICT COOPERATIVE MILK
PRODUCERS UNION LIMITED—Respondent**

ARB No.105 of 2018

December 16, 2020

A) *Arbitration and Conciliation Act, 1996—Ss. 9, 11, 12 and VII Schedule—Punjab Cooperative Societies Act, 1961—Ss.55 and 56—Being successful bidder the applicant firm was issued allotment letter—An agreement dated 09.03.2015 was signed between the parties for lease of VERKA Express Milk Bar-cum-Fast Food Joint— Arbitration clause that the dispute will be referred to the sole arbitration of Managing Director of the Punjab State Co-operative Milk Producers Federation Ltd. or his Nominee under the 1961 Act—Dispute arose—The firm invoked jurisdiction of the District Judge under S. 9, and of the High Court under S.11 of the 1996 Act—The issue adjudicated is whether the arbitration is to be held under the 1996 Act or the 1961 Act—And whether the dispute falls within the purview of S.55 of the 1961 Act, and thereby authorizes Registrar Co-operative Societies to arbitrate or nominate an Arbitrator—Held, S.55 starts with a non obstante clause and specifies the disputes that can be referred to the Registrar for decision—In the instant case the relevant words for the dispute are “business of the co-operative society”—Whether lease of the premises is covered by these words—Since the business of Milk Union is to procure, process and market milk and its products, lease of immovable property cannot be said to be related to the business of the society—The Milk Union is not in the business of leasing properties—Therefore, the dispute would not fall within S.55 of the 1961 Act— Further held, under provisions of S.55 (2) (a) of the 1961 Act, the debt or demand due to the society from a member or the nominee should be connected to business of a co-operative society—The words “debt or demand” cannot be read in isolation to the words “business of a co-operative society”—S.56 (1) makes it apparent that only those disputes shall be arbitrated by the Registrar or his nominee which fall within S.55 of the 1996 Act.*

Held that, Section 55 starts with a non Obstante Clause. However, the disputes which may be referred to arbitration, under the Act, have been defined and explained therein. Sub-Section 1 of Section 55, uses three different combination of words; “Touching the Constitution”, “Management” or “The Business of a Cooperative Society”. Sub-Section 2 defines and explains what does the three combination of words, used in Sub-Section 1, connote. In the present case, the effort, of learned counsel for the respondent, is to bring the dispute within the four corners of the word “business of the cooperative society” as explained in Clause-(a) of Sub- Section 2 of Section 55. On careful reading of Sub-Section (a), it becomes apparent that if the society has a claim with respect to any debt or demand against a member or the nominee, heirs or legal representative of the deceased member, the dispute would fall within the four corners of Section 55 of the Act of 1961 and therefore, could be referred to the Registrar or to his nominee, for arbitration.

(Para 17)

Further held that, neither there is any dispute touching the constitution nor the management. Now, we are left with the phrase “the business of a cooperative society”. The question is “Whether the lease of the premises is covered by the word “business of a cooperative society”? In the considered opinion of the Court, the answer, to the aforesaid question, has to be in negative. The business, of the Milk Union, is to procure, process and market the milk and its products. By extending the scope, one can at the most take related activities within its sweep. However, the lease, of the immovable property, is not related to the business of the society. There is a milk booth and an open space, available for running a Fast Food Joint cum Restaurant, located in a Milk Plant. It is also not in dispute that the Milk Union is not in the business of leasing the properties. Since, it is not the usual business of the society, therefore, the dispute would not fall within gamut of Section 55, of the Act of 1961.

(Para 18)

Further held that, the next issue which arises is “Whether in the present case, the dispute would fall within the language of Section 55(2)(a)?” In the considered opinion of this Court, the dispute with respect to business of a cooperative society for debt or demand due to it, from a member or a nominee, has its origin from the fact that such debt or demand should be connected to the business of a cooperative society. The words “any debt or demand” cannot be read in isolation to

the words “the business of a cooperative society”. In other words, if the debt or demand due, is against a member or the nominee, heirs or legal representative of the deceased member, is arising from the business of a cooperative society, then only, the case would fall within the four corners of Section 55 and hence, referable to arbitration under Section 56. Further, Section 56 is wholly dependent upon Section 55, of the Act. For facility, Section 56 of the Act of 1961, is extracted as under:-

“56. Reference of disputes to arbitration.- (1) The Registrar may, on receipt of the reference of dispute under Section 55,-

- (a) decide the dispute himself; or
- (b) transfer it for disposal to any person who has been invested by the Government with powers in that behalf; or

(c) refer it for disposal to one arbitrator.

(2) The Registrar may withdraw any reference transferred under clause (b) of sub-section (1) or referred under clause (c) of that sub-section and decide it himself or refer the same to another arbitrator for decision.

(3) The Registrar or any other person to whom a dispute is referred for decision under this section may, pending the decision of the dispute, make such interlocutory orders as he may deem necessary in the interest of justice.”

(Para 20)

Further held that, on careful reading of Sub-Section 1 of Section 56, it is apparent that only those disputes shall be arbitrated, by the Registrar or his nominee, which fall within the gamut of Section 55 of the Act of 1961. The attention of this Court has not been drawn that there is no other provision for holding arbitration apart from the disputes falling within the purview of Section 55.

(Para 21)

B) *Arbitration and Conciliation Act, 1996—Ss. 9, 11, 12 and VII Schedule— Punjab Cooperative Societies Act, 1961—S.55 and 56— Being successful bidder the applicant firm was issued allotment letter—An agreement dated 09.03.2015 was signed between the parties for lease of VERKA Express Milk Bar-cum-Fast Food Joint— Arbitration clause—Dispute arose—The firm invoked jurisdiction of the District Judge under S.9, and of the High Court under S.11 of the 1996, Act—The High Court holds the dispute not covered by provisions of S.55 of the 1961, Act—In that case how the*

Court is required to proceed?—Held, once it is found that arbitration cannot take place under the Act of 1961, one has to fall back upon the 1996, Act—On facts, parties had agreed to refer the dispute to the sole arbitration of Managing Director of the Punjab State Co-operative Milk Producers Federation Ltd. or his nominee under the 1961, Act —He was held to be an interested party since the Federation is an umbrella organization of Co-operative Milk Producers Unions of various districts—The Federation includes one of the parties to the agreement in question, i.e., the Co-operative Milk Producers Union, also—And the products of Milk Plants run by these District Unions are marketed by the Federation under the brand name VERKA— therefore, Federation MD has an interest in one of the parties to the agreement—As per Clause 5 of the VII Schedule an arbitrator cannot be the one having controlling influence in an affiliate of one of the parties—Consequently, the petition for appointment of arbitrator filed under S.11 was allowed by appointing an arbitrator.

Held that, the question arises that if the dispute does not fall within the scope of Section 55, can the Arbitration take place under the provisions of the Act of 1961. For that purpose, we will have to re-examine the relevant Clause in the agreement, which has been extracted above. On careful reading of the Clause (b), it is apparent that the parties had agreed to refer the dispute to the sole arbitrator of the Managing Director of the Punjab State Cooperative Milk Producers Federation Limited or his nominee, as required under the Act of 1961 and the Rules framed thereunder. At this stage, it is significant to note the difference between the Punjab Cooperative Milk Producers Federation Limited and the Ludhiana District Cooperative Producers Union Limited. The parties by agreement had agreed to get the dispute adjudicated from the Managing Director of the Federation or his nominee. M/s Divjot Enterprises and the Ludhiana District Cooperative Milk Producers Union Limited, Ludhiana, are the two parties to the agreement. The Punjab State Cooperative Milk Producers Federation is an Umbrella Organization of Cooperative Milk Producers Union, of various Districts. In fact, the Federation is marketing the dairy products under the brand “VERKA”. Milk Plants have been established in various Districts, in the State of Punjab. These Milk Plants are run by different District Cooperative Milk Producers Union. The products of these Milk Plants are marketed under the brand name “VERKA”. Thus, the Managing Director of the Federation has an interest in one of the party i.e. the Ludhiana District Cooperative Milk Producers Union. (Para 22)

Further held that, since, the Act of 1961 is not applicable, therefore, one is left with no other option but to fall back upon the Act of 1996. However, the reference of dispute to the arbitration of the Managing Director of the Federation under the Act of 1996, would not have posed any problem if the reference had been sought before the amendment brought in by Act No.3 of 2016 (The Arbitration and Conciliation (Amendment) Act, 2015), enforced w.e.f. 23.10.2015. By the amendment, Sub-Section 5 of Section 12, has been added which supersedes any prior agreement to the contrary and it has been provided that any person whose relationship with the parties or counsel or the subject matter of dispute falls under any of the category specified in VII Schedule, shall be ineligible to be appointed as an Arbitrator.

(Para 24)

Further held that, now let we further examine VII Schedule. On careful perusal of Clause 5, it becomes apparent that the Arbitrator cannot be a Manager, Director or part of the Management or has a similar controlling influence in an affiliate of one of the parties, if the affiliate is directly involved in the matters in dispute, in the arbitration.

(Para 25)

Akshay Bhan, Sr. Advocate with
Rohit Nagpal, Advocate and
Vaibhav Sehgal, Advocate
for the petitioner in CWP-19753-2019
for the appellants in FAO-5681-2018)
for respondents in FAO-8497-2018

Vishal Sharma, Advocate
for the petitioners in ARB-105-2018
B.S. Patwalia, Advocate
for the respondent(s) in CWP-19753-2019, in FAO-5681-2018
and in ARB-105-2018
for the appellant in FAO-8497-2018

ANIL KSHETARPAL, J.

(1) By this judgment, ARB No.105 of 2018, FAOs No.5681 and 8497 of 2018 and CWP No.19753 of 2019, shall stand disposed of.

(2) Learned counsels, appearing for the parties, are ad idem that all these petitions can conveniently be disposed of by a common judgment as the pivotal issues, which require adjudication, are common and are stemming from an agreement dated 09.03.2015.

(3) In the considered view of this Court, the following questions require adjudication:-

- 1) Whether, in the facts and circumstances of the present case, Section 55 of the Punjab Cooperative Societies Act 1961, is applicable?
- 2) Whether arbitration can be directed to be held under a particular State Act, even after finding that the dispute which requires resolution does not fall within its purview, merely because there was an initial/previous agreement to the contrary, between the parties?

FACTS:-

(4) The Ludhiana District Cooperative Milk Producers Union Limited (for short “the Milk Union”) invited bids for giving on lease- The VERKA Express Milk Bar-cum-Fast Food Joint, measuring 6500 square feet, situated in the premises of a Milk Plant, at Ludhiana. M/s DivjotEnterprises (hereinafter to be referred as “the firm”) submitted a bid. The firm’s bid was declared successful and the firm was issued an allotment letter on 23.02.2015. Subsequently, an agreement was signed between the parties on 09.03.2015. It was agreed that M/s Divjot Enterprises shall be entitled to bring an Aircraft Hull, in the leased premises and convert it into a Restaurant.

(5) For the purpose of arriving at the decision in this case, it is important to extract the relevant terms of the “Technical Bid”, “Allotment Letter” and “Agreement”:-

“TECHNICAL BID”

b) In case of any dispute or difference arising between both parties during the period of the Lease Agreement, the matter will be referred to the sole Arbitration of the Managing Director, The Punjab State Cooperative Milk Producers' Federation Limited, or his nominee, as required under The Punjab State Cooperative Societies Act 1961 and the rules framed thereafter and as amended from time to time (as the case may be/whichever is applicable). The proceedings shall be held at Chandigarh and the Civil Courts of Ludhiana only shall have the territorial jurisdiction. The award of the Arbitrator will be final and binding on both the parties. Performance of this Lease Agreement shall continue during and upto the settlement of any dispute.

“ALLOTMENT LETTER”

12. Arbitration:

In case of any dispute/question or controversy arising out of this order the same shall be referred to the sole arbitration of the Managing Director, The Punjab State Co-operative Milk Producers Federation, Chandigarh or his nominee whose decision shall be firm and binding on both the parties. The provision of Arbitration and Conciliation/The Punjab Co-operative Societies Act, 1961 and as amended up to date (as the case may be/whichever applicable) shall also apply to Arbitration Proceeding which shall be held at Chandigarh or Ludhiana.

“AGREEMENT”:-

In case any dispute or difference arising between both the parties during the period of the Lease Agreement, the matter will be referred to the sole Arbitration of the Managing Director, the Punjab State Cooperative Milk Producers' Federation Chandigarh or his nominee, as required under the Punjab State Cooperative Societies Act, 1961 and the rules framed thereafter and as amended from time to time (as the case may be/whichever is applicable). The proceedings shall be held at Chandigarh. The award of the Arbitrator will be final and binding on both the parties. Performance of this Lease Agreement shall continue during and upto the settlement of any dispute.

(6) The fundamental dispute in these petitions is whether in the facts and circumstances of the present case, the Arbitration is required to be held under the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as “the Act of 1996”) or the Punjab Cooperative Societies Act, 1961 (hereinafter to be referred as “the Act of 1961”). An ancillary question is whether the dispute, between the parties, falls within the purview of Section 55 of the Act of 1996, and thereby, authorizes the Registrar, Cooperative Societies, to arbitrate or nominate the arbitrator. Section 55 reads as under:-

“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 co-operative society arises-

(a) among members, past member and persons claiming through members, past members and deceased member; or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present; or

(c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society; or

(d) between the society and any other co-operative society between a society and liquidator of another society or between the liquidator of 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.

(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely-

(a) a claim by the 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 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.

(3) If any question arises whether a dispute referred to the Registrar under this section is or is not a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.”

(7) The lease was for a period of three years, ending on 31.03.2018, which could be extended by mutual agreement. The parties could not arrive at mutual agreement to extend the period of lease. On the one hand, the Milk Union filed an application under Section 55 of the Act of 1961, before the Registrar, to arbitrate the dispute, whereas the firm invoked the jurisdiction of Additional District Judge, Ludhiana under Section 9 of the Act of 1996 and also, of this Court, under Section 11 of the Act of 1996, with a prayer to nominate an independent arbitrator. While examining the petition under Section 9 of the Act of 1996, learned Additional District Judge, Ludhiana, found it to be maintainable. It has further been ordered that the firm shall be liable to pay Rs.5,20,000/- per month, as use and occupation charges while restraining the Milk Union from forcibly dispossessing the firm, from the disputed premises, till a decision is made by the Arbitrator, either during the proceedings of the Arbitration proceedings or in the award w.e.f. 01.04.2018. Two appeals, one by the firm and second by the Milk Union, have been filed, assailing the correctness of aforesaid order, passed by the Additional District Judge, Ludhiana.

(8) The Registrar nominated the Additional Registrar-1 to act as the Arbitrator. The firm filed an application under Order 14 Rule 2, read with Section 151 of the Civil Procedure Code, contending that the dispute, between the parties, do not fall within the scope of Section 55 of the Act of 1961 and consequently, the Registrar had no power to nominate the Arbitrator. The Additional Registrar dismissed the application on 30.07.2018. A revision petition, filed under Section 69 of the Act of 1961, challenging the aforesaid order, has also, been dismissed. A writ petition, has been filed, challenging the orders passed by the Additional Registrar as well as the Financial Commissioner.

(9) Initially, only the writ petition was listed before the Court on 02.12.2020. The arguments were heard at length and the judgment was reserved. However, while examining the file, before dictating the judgment, it came to notice that three more connected petitions are pending and the decision, in the writ petition, would have a bearing on the decision of the other petitions, as well. Therefore, it was considered appropriate to request Hon'ble The Chief Justice, to examine the feasibility of listing all the cases together. Thus, on 07.12.2020, the case was directed to be re-listed for further arguments. Learned counsels, for the parties, consented to address further

arguments in all the cases and hence on 11.12.2020, the arguments were heard and the judgment was reserved. Now, it is being released.

(10) Learned Senior Counsel, appearing on behalf of the firm, contends that the dispute in the present case does not fall within the scope of Section 55 of the Act of 1961. He submits that the Registrar gets jurisdiction to act as the Arbitrator, only if the dispute falls within the scope of Section 55. He further drew the attention of the court, to the allotment letter dated 23.02.2015, to contend that the arbitration should take place under the Act of 1996. He contends that when the lease deed was executed, the firm was not a member of the society/union. No doubt, as per the agreement, the petitioner was required to become a member, which it did on 10.03.2015, however, that itself would not be sufficient to hold that the dispute falls within the scope of Section 55. Learned counsel, in support of his submissions, has relied upon a judgment passed in *Panipat Co-operative Sugar Mills Limited* versus *State of Haryana*¹, which has been affirmed by the Division Bench in *Gaje Singh* versus *Panipat Cooperative Sugar Mills Limited*².

(11) Learned counsel, appearing for the petitioner firm, in the application under Section 11(6) of the Act of 1996, has submitted that since as per Section 12(5) and the Schedule-VII, introduced by amending Act No.3 of 2016, w.e.f. 23.10.2015, now, it is not permissible for a party to appoint his own manager or employee or nominate another person, to be the sole arbitrator, therefore, the court should appoint the arbitrator. He, in support thereof, relies upon the judgments passed by the Supreme Court in *TRF Limited* versus *EnergO Engineering Projects Limited*³ and *Perkins Eastman Architects DPC and another* versus *HSCC (India) Limited*⁴. Learned counsel further contends that the learned Additional District Judge, while passing the order granting interim protection, erred in directing that the firm has to pay Rs.5,20,000/- per month, although Rs.1,20,000/- per month, was the amount of lease money payable as per the contract, between the parties.

(12) On the other hand, learned counsel, appearing for the Milk Union, has contended that as per the agreement (Annexure P-4) dated

¹ 1986(1) PLR 393

² 1997(3) RCR (Civil) 484

³ (2017)8 SCC 377

⁴ 2020 AIR (SC) 59

09.03.2015, the arbitration is required to take place under the Act of 1961 and therefore, the Registrar has correctly nominated Additional Registrar to arbitrate. He contends that the petitioner became nominal member of the society on 10.03.2015, which was the pre-condition for grant of lease and therefore, covered by Section 55. In support of his argument, he relies upon judgment passed by the Supreme Court, in *Central Organization for Railway Electrification* versus *ECI-SPIC-SMO-MCML*⁵. He has submitted that in view of the aforesaid judgment, the request was correctly made to the Registrar, who in turn nominated Additional Registrar as the Arbitrator. He further contended that the amount of Rs.5,20,000/-, has been arrived at, on the basis of the highest bid received by the Milk Union, when the property was sought to be given on lease after the period of lease, in favour of the firm, came to an end. He submits that the firm had no right to stay in the premises after 31.08.2018. He also prayed for dismissal of the petition under Section 11 of the Act of 1996.

(13) This Court has carefully analyzed the arguments of learned counsel for the parties and perused the paper books.

(14) Before I proceed further, it is important to note that the firm is stated to have surrendered the possession of the leased premises. On 11.12.2020, learned Senior Counsel, on receiving instructions, made a statement that the firm has left the possession and removed its belongings. He further stated that he has no objection if the Milk Union takes over the possession. Thus, the controversy now narrows down to determination of the amount of use and occupation, payable by the firm, post the period of lease.

(15) On careful perusal of the Technical Bid, Allotment Letter and the Agreement, it is apparent that there is no agreement that the arbitration would take place under the Act of 1996. No doubt, in the allotment letter, the words “arbitration and conciliation” have been used, however, there is no reference to the Act of 1996. Still further, it is recited that the parties have agreed to get their disputes adjudicated from the sole Arbitrator- the Managing Director of the Federation or his nominee, as provided under the Act of 1961 and the Rules, framed thereunder. It may be noted here that the resolution of the dispute, through the Arbitration, is not only confined to the Act of 1996. Under the National Highways Act, 1956, the parties have been given option to get the matter resolved through arbitration, if the amount determined

⁵ 2019 SCC Online Supreme Court 1635

by the competent authority for compulsory acquisition of the land, is not acceptable. It is provided in Section 3-G(5), that the Arbitrator would be appointed by the Central Government. Sub-Section 6 provides that the provisions of the Act of 1996, shall apply to the arbitration under the National Highways Act, 1956. Similarly, there is a provision for arbitration under Section 18 of The Micro, Small and Medium Enterprises Development Act, 2006, which provides that if the enterprise falls within the ambit of the Act and it has a dispute with regard to the amount due under Section 17, it may make a reference to Micro, Small Enterprises Facilitation Council. If the Council is unable to resolve the dispute through conciliation, then under Sub-Section 3, the Council can either itself take up to arbitrate the dispute or refer it to any Institution or Centre, providing Alternate Dispute Resolution Services. Sub-Section 3 also makes a reference to the provisions of the Act of 1996.

(16) Now, let the Court analyze Section 55, of the Act of 1961.

(17) Section 55 starts with a Non Obstante Clause. However, the disputes which may be referred to arbitration, under the Act, have been defined and explained therein. Sub-Section 1 of Section 55, uses three different combination of words; “Touching the Constitution”, “Management” or “The Business of a Cooperative Society”. Sub-Section 2 defines and explains what does the three combination of words, used in Sub-Section 1, connote. In the present case, the effort, of learned counsel for the respondent, is to bring the dispute within the four corners of the word “business of the cooperative society” as explained in Clause-(a) of Sub-Section 2 of Section 55. On careful reading of Sub-Section (a), it becomes apparent that if the society has a claim with respect to any debt or demand against a member or the nominee, heirs or legal representative of the deceased member, the dispute would fall within the four corners of Section 55 of the Act of 1961 and therefore, could be referred to the Registrar or to his nominee, for arbitration.

(18) In the present case, neither there is any dispute touching the constitution nor the management. Now, we are left with the phrase “the business of a cooperative society”. The question is “Whether the lease of the premises is covered by the word “business of a cooperative society”? In the considered opinion of the Court, the answer, to the aforesaid question, has to be in negative. The business, of the Milk Union, is to procure, process and market the milk and its products. By extending the scope, one can at the most take related activities within

its sweep. However, the lease, of the immovable property, is not related to the business of the society. There is a milk booth and an open space, available for running a Fast Food Joint cum Restaurant, located in a Milk Plant. It is also not in dispute that the Milk Union is not in the business of leasing the properties. Since, it is not the usual business of the society, therefore, the dispute would not fall within gamut of Section 55, of the Act of 1961. In Panipat Cooperative's case (Supra), Section 55 of the Act of 1961, came up for interpretation. A Cane-grower, who was also a member of the cooperative society, raised a dispute on the ground that in a particular crushing season, despite the bond (agreement) between him and the Sugar Mill, the entire quantity of sugarcane was not taken by the Sugar Mill. The Registrar referred the dispute under Section 55 of the Act of 1961, to the Arbitrator, who gave an award in favour of the farmer. The High Court, while interpreting Section 55, held as under:-

“4. Having heard the learned counsel for the parties at some length, I find that the submissions of the learned counsel for the respondents are devoid of any merit. It is no doubt true that a dispute between a Society and its members touching the business of the Co-operative Society is justiciable under the provisions of the Co-operative Societies Act but it does not imply that every dispute between a person who happens to be a member of the Co-operative Society and the said Society is cognizable by the authorities under the Act. The dispute essentially has to be a dispute which arises between the Co-operative Society and its member in his capacity as a member and not as an individual. The learned counsel for the respondent No. 2 is not in a position to show me any provision of law which obliged him to supply his sugarcane to the petitioner Mill on account of his being a member of that Co-operative Society. When a similar argument was raised before the Deputy Secretary on behalf of the petitioner, he disposed of the same in the following manner:- "Secondly, the learned counsel for the Sugar Mill failed to show me any law whereby the proceedings under the Punjab Co-operative Societies Act, was barred under the Act. In fact the provisions of the Punjab Co-operative Societies Act as well as other Act both available to members of the Co-operative Societies but those who are not members of the Society can only take

recourse to the provision of Punjab Sugarcane (Regulation of Purchase and Supply) Act and not the Punjab Co-operative Societies Act. There is thus no force in the argument put forth by the learned counsel for the Sugar Mill."

According to the Deputy Secretary, two different remedies are available to two similarly situated cane growers. If one happens to be a member of the Co-operative Society which is running the Mill, then he can seek his remedies under the Act and the other who is not a member of the Co-operative Society, has to seek his remedies under the provisions of the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953. This approach and conclusion of the Deputy Secretary is obviously untenable. The latter mentioned Act is the only Act which regulates the purchase and supply of sugarcane required for use in sugar factories ;whether the factory is run by a Co-operative Society or a private individual does not make any difference so far as the applicability of this Act is concerned. Similarly the fact as to whether the cane grower or supplier is a member of the Co-operative Society which is running the Mill or is not such a member does not make any difference for the applicability of this statute."

(19) It may be significant to note that Letters Patent Appeal, against the aforesaid judgment, was dismissed by a Division Bench, upholding the interpretation of learned Single Bench.

(20) Now, the next issue which arises is "Whether in the present case, the dispute would fall within the language of Section 55(2)(a)". In the considered opinion of this Court, the dispute with respect to business of a cooperative society for debt or demand due to it, from a member or a nominee, has its origin from the fact that such debt or demand should be connected to the business of a cooperative society. The words "any debt or demand" cannot be read in isolation to the words "the business of a cooperative society". In other words, if the debt or demand due, is against a member or the nominee, heirs or legal representative of the deceased member, is arising from the business of a cooperative society, then only, the case would fall within the four corners of Section 55 and hence, referable to arbitration under Section 56. Further, Section 56 is wholly dependent upon

Section 55, of the Act. For facility, Section 56 of the Act of 1961, is extracted as under:-

“56. Reference of disputes to arbitration.- (1) The Registrar may, on receipt of the reference of dispute under Section 55,-

- (a) decide the dispute himself; or
- (b) transfer it for disposal to any person who has been invested by the Government with powers in that behalf; or
- (c) refer it for disposal to one arbitrator.

(2) The Registrar may withdraw any reference transferred under clause (b) of sub-section (1) or referred under clause

(c) of that sub-section and decide it himself or refer the same to another arbitrator for decision.

(3) The Registrar or any other person to whom a dispute is referred for decision under this section may, pending the decision of the dispute, make such interlocutory orders as he may deem necessary in the interest of justice.”

(21) On careful reading of Sub-Section 1 of Section 56, it is apparent that only those disputes shall be arbitrated, by the Registrar or his nominee, which fall within the gamut of Section 55 of the Act of 1961. The attention of this Court has not been drawn that there is no other provision for holding arbitration apart from the disputes falling within the purview of Section 55.

(22) Now the question arises that if the dispute does not fall within the scope of Section 55, can the Arbitration take place under the provisions of the Act of 1961. For that purpose, we will have to re-examine the relevant Clause in the agreement, which has been extracted above. On careful reading of the Clause (b), it is apparent that the parties had agreed to refer the dispute to the sole arbitrator of the Managing Director of the Punjab State Cooperative Milk Producers Federation Limited or his nominee, as required under the Act of 1961 and the Rules framed thereunder. At this stage, it is significant to note the difference between the Punjab Cooperative Milk Producers Federation Limited and the Ludhiana District Cooperative Producers Union Limited. The parties by agreement had agreed to get the dispute adjudicated from the Managing Director of the Federation

or his nominee. M/s Divjot Enterprises and the Ludhiana District Cooperative Milk Producers Union Limited, Ludhiana, are the two parties to the agreement. The Punjab State Cooperative Milk Producers Federation is an Umbrella Organization of Cooperative Milk Producers Union, of various Districts. In fact, the Federation is marketing the dairy products under the brand "VERKA". Milk Plants have been established in various Districts, in the State of Punjab. These Milk Plants are run by different District Cooperative Milk Producers Union. The products of these Milk Plants are marketed under the brand name "VERKA". Thus, the Managing Director of the Federation has an interest in one of the party i.e. the Ludhiana District Cooperative Milk Producers Union.

(23) On reading of the Bid Document, Allotment Letter and Agreement between the parties, there is no doubt that the parties agreed to resolve their disputes/differences through arbitration. Once, it has been found that the arbitration cannot take place under the Act of 1961, then the Court is required to now decide how to proceed. When they entered into the agreement, both the parties appear to be under a mistake of law with regard to the applicability of the Act of 1961. They did not appreciate that the nature of dispute, which is likely to arise from the agreement, may not fall within the scope of Section 55 and therefore, it would not be permissible to hold arbitration under the Act of 1961.

(24) Since, the Act of 1961 is not applicable, therefore, one is left with no other option but to fall back upon the Act of 1996. However, the reference of dispute to the arbitration of the Managing Director of the Federation under the Act of 1996, would not have posed any problem if the reference had been sought before the amendment brought in by Act No.3 of 2016 (The Arbitration and Conciliation (Amendment) Act, 2015), enforced w.e.f. 23.10.2015. By the amendment, Sub-Section 5 of Section 12, has been added which supersedes any prior agreement to the contrary and it has been provided that any person whose relationship with the parties or counsel or the subject matter of dispute falls under any of the category specified in VIIth Schedule, shall be ineligible to be appointed as an Arbitrator.

(25) Now let we further examine VIIth Schedule. On careful perusal of Clause 5, it becomes apparent that the Arbitrator cannot be a Manager, Director or part of the Management or has a similar controlling influence in an affiliate of one of the parties, if the affiliate

is directly involved in the matters in dispute, in the arbitration.

(26) In these circumstances, neither the Managing Director of the Federation can act as an Arbitrator nor he can be permitted to nominate an Arbitrator. This aspect has been conclusively laid down in two recent Hon'ble The Supreme Court judgments, in TRF Limited (Supra) and Perkins Eastman (Supra). In these circumstances, this Court has come to a conclusion that if the Act of 1996 is applicable, then the Managing Director cannot act as an Arbitrator.

(27) This Court has also carefully examined the judgment passed by the Supreme Court in the case of Central Organization of Railway Electrification (Supra). In the aforesaid judgment, their Lordships have, while reversing the judgment of the High Court, held that once the Arbitrator was permitted to be nominated out of the panel maintained by the Railways, as per the general conditions of the contract (GCC) then the Court should not nominate, as the same would be against the agreement. In the present case, attention of the Court has not been drawn to a panel of Arbitrators, maintained by the Milk Union or the Federation. Hence, the aforesaid judgment, with greatest respect, has no application in the facts of the present case.

(28) Although, this Court has not come across a direct judgment on the aforesaid issue, however, a clue can be taken from judgment of the Supreme Court in *Harshad Chiman Lal Modi versus DLF Universal and another*⁶. In that case, the Supreme Court was examining the issue whether by an agreement, the parties can confer jurisdiction on a Court which does not have territorial jurisdiction. After examining the issue with reference to Sections 15 to 20 of the Code of Civil Procedure, 1908, it was held that the parties by an agreement cannot confer jurisdiction on a Court contrary to the provisions of the Code.

(29) Keeping in view the aforesaid discussion, this Court has come to a conclusion that CWP-19753-2019, deserves to be allowed and the order passed on 30.07.2008, by the Additional Registrar, which has been confirmed in revision by the Principal Secretary on 22.07.2019, are liable to be set aside and hence, are set aside. Consequently, the petition for appointment of Arbitrator filed under Section 11 of the Act of 1961 i.e. ARB-105-2018, also deserves to be allowed and hence, is allowed.

⁶ (2005) 7 SCC 791

(30) Now the Court comes to FAO Nos.5681 and 8497 of 2018. In both the appeals, the correctness of judgment passed by Additional District Judge, Ludhiana, on 28.08.2018, while deciding application under Section 9 of the Act of 1996, has been questioned. Learned Additional District Judge, Ludhiana, has restrained the Milk Union, from forcibly dispossessing the firm from disputed premises till the direction is made by the Arbitrator, either during the pendency of the arbitration proceedings or in the award, subject to the payment of a sum of Rs.5,20,000/- per month, along-with taxes w.e.f. 01.04.2018, till the date of order of the Arbitrator or competent authority. As noticed in the beginning, the firm has already surrendered/offered to surrender the possession. Hence, the appeal filed by the firm loses its substance because the injunction granted has become infructuous on surrender/offer to surrender the possession. Other appeal has been filed by the Union challenging that the application under Section 9 of the Act of 1996, was not applicable. This Court has come to a conclusion that the Act of 1996, is applicable. Therefore, the appeals, filed by the Union as also by the firm, are liable to be dismissed. It may be noted here that learned Additional District Judge, Ludhiana, had arrived at a figure of Rs.5,20,000/- per month, on the basis of bid invited by the Milk Producers Union, in April, 2018, after the term of lease, in favour of the firm, came to an end. Thus, there is no scope for interference with regard to quantum of the amount.

(31) It is significant to note here that the Clause in the agreement for reference of the dispute to the Arbitrator uses the phrase “during the period of lease agreement”. However, learned counsel for the parties have not contended that since the period of lease agreement has come to an end, therefore, the Clause is not applicable. Hence, this Court refrains from adjudicating upon the aforesaid fact.

(32) Keeping in view the aforesaid facts, there is no doubt that the amended Act, would be applicable. Hence, this Court is required to exercise its power under Section 11 and make an appointment of the sole arbitrator, to decide the disputes and differences between the parties.

(a) **Appointment of Arbitrator:** Mr. Justice Rajive Bhalla, a Former Judge of this Court, is hereby nominated to act as a Sole Arbitrator, to decide the disputes and differences between the parties.

(b) Communication to Arbitrator of this order:

(i) A copy of this order will be communicated to the learned Sole Arbitrator, by the learned counsel for the petitioner, within one week from today i.e. the date of the order being uploaded.

(ii) In addition, within one week of this order being uploaded, the Registry will forward an ordinary copy of this order to the learned Sole Arbitrator, at the following postal address:

Arbitrator : Mr. Justice Rajiv Bhalla, Former Judge, Punjab and Haryana High Court.

Address : #257, Sector 10-A, Chandigarh Mobile No.:09780008111

(c) **Disclosure:** The learned Sole Arbitrator is requested to forward his statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act, to the Registrar General, of this Court, referencing this arbitration petition, as soon as possible, and in any case sufficiently in advance of his entering upon the reference to his arbitration. That statement will be retained by the Registrar General, on the file of this application. Copies will be given to both sides.

(d) **Appearance before the Arbitrator:** The parties will appear before the learned Sole Arbitrator, physically or through video conferencing, on such date and at such place, as he nominates, to obtain appropriate directions in regard to fixing a schedule for completing the pleadings, etc.

(e) **Contact/communication information of the parties:** Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator, within one week of this order being uploaded. The information is to include a valid and functional e-mail address.

(f) **Application under Section 16:** Liberty, to either side, to file an application before the learned Sole Arbitrator, under Section 16, in regard to any matter or claim and its arbitrability, jurisdiction and competence of the arbitral tribunal.

(g) **Interim Application(s):**

(i) Liberty, to parties on both sides, to make an interim

application or interim application including (but not limited to) interim applications under Section 17 of the Arbitration & Conciliation Act, 1996, before the learned Sole Arbitrator.

(ii) Any such application will be decided in such manner and within such time as the learned Sole Arbitrator, deems fit.

(h) **Fees:** The fees of Arbitral Tribunal shall be governed by the Punjab, Haryana and Union Territory, Chandigarh Arbitration and Conciliation Rules, 2003.

(i) **Sharing of costs and fees:** The parties agree that all arbitral costs and the fees, of the arbitrator, will be borne by the two sides in equal shares, in the first instance.

(j) **Venue and seat of arbitration:** The venue of the arbitration shall be such place or places in the State of Punjab or Chandigarh, as may be fixed by the Sole Arbitrator, in his sole discretion.

(k) **Contentions kept open.** All contentions, before the learned Sole Arbitrator, are specifically kept open.

(33) Consequently, CWP-19753-2019 and ARB-105-2018, are allowed whereas FAO Nos.5681 & 8497 of 2018, are dismissed.

(34) All the pending miscellaneous applications, if any, are disposed of, in view of the aforesaid judgment.

Tribhuvan Dahiya