



2025:DHC:2206



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

% Date of Decision: 10.03.2025

+ **ARB.P. 999/2024 and I.A. 2771/2025**

NATIONAL YOGASANA SPORTS FEDERATION & ORS.

.....Petitioners

Through: Mr. Amit Gupta, Mr. Prateek Mehta,
Mr. Kshitij Vaibhav and Ms. Muskan
Nagpal, Advocates.

versus

UDIT SHETH & ANR.

.....Respondents

Through: Mr. Sameer Rohatgi, Mr. Akhhil
Pradhan, Mr. Vishnu Sharma, Ms.
Sonika Tyagi, Mr. Aakrish Goyal and
Mr. Yogesh Verma, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The instant petition has been preferred under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the 'A&C Act'), seeking constitution of Arbitral Tribunal comprising of a Sole Arbitrator to adjudicate the disputes between the parties.
2. The dispute in the instant case revolves around two groups claiming to be the true management of petitioner No.1 society i.e. National Yogasana Sports Federation ("NYSF"). The society was registered on 21.08.2020. Petitioners No.2-4 claim to be the office bearers of the petitioner No.1, being the Vice President, patron and Joint Secretary respectively. On the other hand, while the respondent No. 1 was elected as one of the Vice Presidents



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in the first GC elections, respondent No.2 was elected as the Secretary General. The case of the petitioners is that the respondents conducted an “Extension of the 6th Executive Council Meeting” on 03.06.2021 which according to the petitioners was illegal and in contravention of the Memorandum of Association (“MoA”) . It is contended that the respondents have illegally removed 70% of the governing members and changed the name of the society to *Yogasana Bharat* as well as conducted elections without any authorisation, with respondent No.1 claiming to be the new President, and respondent No.2 the Secretary General.

3. The petitioner No.1 sent a notice of mediation dated 10.12.2021 followed by a notice invoking arbitration dated 14.01.2022 in terms of Clause 22 of the MoA and Rules & Regulations.

Notably, one *Rachit Kaushik*, claiming himself to be the treasurer of the society filed a civil suit bearing CS DJ ADJ/208/2022 wherein it was contended that the petitioner faction were imposters whose memberships had been terminated and yet they had conducted illegal elections. In this suit, petitioners herein filed an application under Section 8 of the A&C Act seeking reference to arbitration. Vide order dated 22.07.2023, this application came to be allowed.

In light of above clause, Writ Petition being W.P.(C) 7858/2022 filed by the petitioner No.1 was also withdrawn vide order dated 09.08.2023 with liberty to challenge the subsequently elected body. The petitioner No.1 had also filed W.P.(C) 14876/2023 challenging the recognition given by the Central Government to the respondents and seeking reference to arbitration pursuant to the order dated 22.07.2023. This petition was withdrawn vide order dated 16.11.2023 with liberty to invoke the alternate remedy of



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arbitration.

4. Learned counsel for the petitioner submits that a dispute has arisen between the parties as to who is the true management of the petitioner No.1 society. It is submitted that respondent No.1 and respondent No.2 nominated themselves as President and Secretary General of the petitioner No.1 society in the meeting dated 03.06.2021, without stating it in the agenda or getting the approval of the acting President. It is submitted that the arbitration clause is contained in Clause 22(b) of the MoA and Rules and Regulations dated 24.07.2020. It is contended that as per the said Clause, petitioner No.1 sent mediation notice as well as arbitration notice dated 10.12.2021 and 14.01.2022 respectively to both the respondents. Lastly, it is submitted that the order dated 22.07.2023 referring the parties to arbitration was never challenged by the respondents and they are bound by it.

5. Learned Counsel for the respondents has vehemently opposed the present petition. He submits that Mr. *DK Sharma*, is not currently the Secretary General of the society and cannot maintain this petition in the name of the society. It is further submitted that it is actually the respondents who are recognised by the Ministry of Youth Affairs and Sports. Reliance is placed on Government of India recognition letters and quasi-judicial order dated 19.01.2022, 22.04.2022 and 21.03.2023. Reliance is also placed on letters of World Yogasana and Indian Olympic Association dated 27.08.2021 and 21.10.2021 respectively. It is submitted that no challenge is pending against the said letters. It is stated that while the petitioner No.1 was expelled, petitioners no.2 and 4 were suspended from the society vide Executive Council Resolution dated 19.09.2021 and General Body Resolution dated 21.09.2021. However, they have not challenged the said



expulsion/suspension till date and hence cannot invoke arbitration.

It is next contended that petitioners No.2 to 4 have not sent any communications to the respondents, let alone the mandatory notice under Section 21 of the A&C Act. As per the respondents, these petitioners have not followed the procedure for invocation of arbitration as per clause 22 and thus the present petition is not maintainable. Reliance is placed on Florentine Estates of India Ltd. v. Lokesh Dahiya,¹ Amit Guglani v. L & T Housing Finance Ltd.² Lastly, it is contended that the respondents herein are not a party to the Civil Suit in which the order under Section 8 of the A&C Act was passed.

6. In rejoinder, it is submitted that the Civil Suit was filed by *Rachit Kaushik*, treasurer, under the instructions of the respondents. It is further submitted that the disputes stems from the meeting dated 03.06.2021 at which time, undisputedly, the petitioners were part of the society. It is submitted that it was not necessary for each petitioner to send an individual notice under Section 21 of the Act. Reliance is placed on Demerara Distilleries (P) Ltd. v. Demerara Distillers Ltd.³ In the alternative, it is prayed that only petitioner No.1 can be referred to arbitration.

7. I have heard learned counsel for the parties and gone through the records.

8. The parties have put forth contesting claims regarding who is the true representative of the society. Each party claims that the other side is not authorised to act on behalf of the society. Clause 22(b) of the MoU and rules and regulations dated 24.07.2020 contains the arbitration clause. It reads as

¹ 2022 SCC OnLine Del 3689

² 2023 SCC OnLine Del 5206



follows:-

b) All the unresolved disputes arising within the federation firstly be referred by the Federation for amicable settlement by a Mediator as selected by the EC. In case of non-settlement of the said dispute, thereafter, the same dispute will be referred to the Arbitration Tribunal under the Arbitration Act, 1996. For this purpose, the Federation shall elect a panel of Arbitrators to be decided by the General Body at their Annual General Meeting out of whom parties to the disputes in a Federation will elect one Arbitrator each and the third Arbitrator of the said panel will be mutually agreed upon by the two arbitrators. The arbitration proceedings shall be completed within the period specified under the Arbitration Act, 1996 or with the time extended by the Arbitrators with the consent of the parties.

As per the respondents, the MoA and rules and regulations were revised in 2021. The arbitration clause is now contained in Clause 23(c), however, it is similarly worded to the earlier clause. Pertinently, the respondents have not challenged the validity of the arbitration clause. In so far as the contentions regarding the validity of the meeting and subsequent elections as well as determination as to who is the actual representative of the society is concerned, the same would require detailed appreciation of evidence which the AT would be well suited to carry out. This Court is only concerned with examining the prima facie existence of the arbitration agreement. Reference may be made to landmark judgments of the Supreme Court in this regard, in Vidya Drolia v. Durga Trading Corporation reported as (2021) 2 SCC 1 as well as Cox & Kings Ltd. v. SAP India (P) Ltd., reported as (2024) 4 SCC 1. In the latter, it was observed, as reproduced hereunder:

“66. The above position of law leads us to the inevitable conclusion that at the referral stage, the Court only has to determine the prima facie existence of an arbitration agreement. If the referral court

³ (2015) 13 SCC 610



cannot decide the issue, it should leave it to be decided by the Arbitral Tribunal. The referral court should not unnecessarily interfere with arbitration proceedings, and rather allow the Arbitral Tribunal to exercise its primary jurisdiction. In *Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.* [*Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.*, (2005) 7 SCC 234], this Court observed that there are distinct advantages to leaving the final determination on matters pertaining to the validity of an arbitration agreement to the Tribunal...”

(Emphasis Supplied)

9. In so far as compliance of the arbitration clause is concerned, perusal of the notice of mediation dated 10.12.2021 would show that the same was given on behalf of the executive council of petitioner No.1 society by *D.K. Sharma*, in capacity of Secretary General and addressed to respondent No.2. A copy of the said notice was also sent to respondent No.1. This was followed by the notice under Section 21 of the A&C Act dated 14.01.2022. The same was addressed to both the respondents and was against sent by *D.K. Sharma* on behalf of the petitioner No.1 society. Though doubts have been raised as to his capacity to sue on behalf of the society, at this stage, the Court cannot venture into a fact-finding exercise as to whether *D.K. Sharma*, in capacity of Secretary General, could file the present petition on behalf of the petitioner No.1 society. The respondents could very well raise these grounds before the AT. Thus, it appears that petitioner No.1 has fulfilled both contractual and statutory obligations and there is no impediment for them to be referred to arbitration.

10. In so far as petitioners No.2 to 4 are concerned, they have admittedly not sent any notice under Section 21 of the A&C Act. They claim to be the office bearers of the petitioner No.1 society, being the Vice President, Patron and Joint Secretary respectively. All of them are signatories to the



MoA. Clause 22 of the MoA relates to reference to arbitration of unresolved disputes arising within the Federation. The dispute regarding the legality and propriety of their position as office bearers becomes one covered under Clause 22. Since a notice under Section 21 has been sent on behalf of the society already, it is not necessary for the petitioners No.2 and 4 to send individual notices.

11. Moreover, it is not the case of the respondents that no notice under Section 21 was sent at all. petitioner No.1 has already fulfilled the statutory obligations under the A&C Act, on behalf of the whole society. The respondents have been put to notice regarding the intent of the petitioners to seek reference to arbitration. The notice also contains the gist of the dispute and the claims put forth by the petitioner No.1 society. In view of the above discussion, this court deems it apposite to refer the matter to the Arbitral Tribunal comprising of a Sole Arbitrator.

12. Accordingly, the present petition is disposed of with the following directions:

- i) The disputes between the parties under the said agreement are referred to the Arbitral Tribunal comprising of a Sole Arbitrator.
- ii) Ms. Radhika Biswajit Dubey, Advocate (Mob: 9810982927) is appointed as the Sole Arbitrator to adjudicate upon the disputes between the parties uninfluenced by any observation made in this order.
- iii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018 or as the parties may agree.



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- iv) The learned Arbitrator shall furnish a declaration in terms of Section 12 of the A&C Act prior to entering into the reference.
- v) It is made clear that all the rights and contentions of the parties, including on the existence and validity of the Arbitration agreement, arbitrability of any of the claim/counter claim, any other preliminary objection, need and legality of interim relief, as well as contentions on merits of the dispute by either of the parties, are left open for adjudication by the learned arbitrator.
- vi) The parties shall approach the learned Arbitrator within four weeks from today.

MANOJ KUMAR OHRI
(JUDGE)

MARCH 10, 2025

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