

Civil Revision
PRESENT:
The Hon'ble Justice Jyotirmay Bhattacharya
C.O. No. 1441 of 2010

EAST BENGAL CLUB & ORS.
VERSUS
SEKHAR GHOSH & ORS.

JUDGMENT ON: 23.07.2010

Point:

CLUB RULES, REFERENCE : Club rules whether an agreement between the club and its member- Whether can be construed as an agreement as contemplated under Section 7 of the Arbitration and Conciliation Act, 1996 -Arbitration and Conciliation Act, 1996, Ss. 7, 8

Fact: The petitioner / defendant filed the instant application under Article 227 of the Constitution of India challenging an order passed by the Ld. Judge, Sixth Bench, City Civil Court at Calcutta in a Title Suit, whereby his application for reference under Section 8 of the Arbitration and Conciliation Act of 1996 was rejected on contest. It was held by the Ld. Trial Judge that the dispute which is involved in the suit is not covered by the arbitration agreement which is contained in clause 11(e) of the Club Rules and as such no reference can be made to arbitrator for arbitration of the dispute involved in the suit as per the provision of the Arbitration and Conciliation Act, 1996.

Held:

The machinery which is prescribed in clause 11(e) of the Club Rules is in the form of a Domestic Appellate Tribunal which was formed for deciding any appeal arising out of an act or decision of the club or any matter relating thereto or otherwise. The proceeding before the Domestic Appellate Tribunal cannot be regulated by the provision of the Arbitration and Conciliation Act of 1996.

(Paragraph – 16)

That the club rules is not a product of an agreement between the club and its member. In fact, the club rules were framed for smooth functioning of the club and any person who accepts his membership in the club is bound by the club rules as it has bind effect on its member who accepts his membership knowing the binding effect of such club rules upon him. Thus the club rules which were framed by the club cannot be regarded as a product of an agreement between the plaintiff and the club. As such the club rules cannot be construed as an agreement as contemplated under Section 7 of the said Act and no reference can be made for arbitration under Section 8 of the said Act. (Paragraph – 17)

The machineries which are prescribed under different provisions of the club rules for resolution of different types of dispute between the club and its member, are in the nature of Domestic Tribunal where its business can be regulated as per its own rules and by observing the principles of natural justice. The order which is passed by such Tribunal cannot be regarded as a decree and such order cannot be enforced through Court unlike the award passed by the Arbitrator under the Arbitration and Conciliation Act, 1996 which provides that the award which will be passed by Arbitrator under the said Act will have a binding effect as a decree of the Court under Section 35 of the said Act and its decision is capable of execution as per Section 36 of the said Act. (Paragraph – 18)

Cases cited: i) Cott UK Ltd. vs. F E Barber Ltd. reported in (1997) 3 AII ER 540

ii) M/s. Ram Lal Jagan Nath vs. Punjab State through collector, reported in AIR 1966 Punjab 436 (FB);

iii) In the case of M. Dayand Reddy vs. A.P. Industrial Infrastructure Corporation Ltd. and ors., reported in (1993) 3 SCC 137;

iv) In the case of State of U.P. vs. Tipper Chand, reported in AIR 1980 Supreme Court 1522.

For the Petitioner : Mr. Ajoy Krishna Chatterjee
Mr. Somnath Saha
Mr. Dipak Khatua

For the Opposite Parties : Mr. Aniruddha Chatterjee
Mr. Rahul Karmakar
Mr. Kushal Chatterjee
Mr. Srinath Ganguly

The Court: 1. By the impugned order being No.16 dated 17th April, 2010 passed by the learned Judge, Sixth Bench, City Civil Court at Calcutta in Title Suit No. 4442 of 2008, the defendant's application for reference under Section 8 of the Arbitration and Conciliation Act of 1996 was rejected on contest. The defendant is aggrieved by the said order. Hence the defendant has come before this court with this application under Article 227 of the Constitution of India. The learned Trial Judge held that the dispute which is involved in the suit is not covered by the arbitration agreement which is contained in clause 11(e) of the Club Rules and as such no reference can be made to arbitrator for arbitration of the dispute involved in the suit as per the provision of the Arbitration and Conciliation Act, 1996.

2. Let me now consider as to how far the learned Trial Judge was justified in rejecting the defendant's said application in the facts of the instant case.

3. Heard Mr. Ajoy Krishna Chatterjee, learned Senior Counsel, appearing for the petitioner and Mr. Aniruddha Chatterjee, learned Counsel, appearing for the opposite party. Considered the materials of record including the order impugned. The plaintiffs who are members of the defendant

No.1 viz. East Bengal Club, an unregistered club, filed a suit against the club and its office bearers claiming following reliefs:

- “a) A decree for declaration that the entire election process of the Executive Committee members of the East Bengal Club including the process of counting of Ballots are bad, illegal and has not been done in accordance with the procedures and norms laid down in the CLUB RULES for conducting such election as mentioned in the Constitution of East Bengal Club and accordingly the entire election of the Executive Committee members of the East Bengal Club is vitiated one and as such not binding on any of the plaintiffs and it may be declared as void ab-initio;*
- b) A decree for declaration that since the plaintiffs has got every right to obtain necessary details pertaining to this election to know the details about (i) Booth wise number of ballot polled, (ii) Booth wise number of ballot cancelled, (iii) Booth wise number of ballot valid, (iv) Booth wise, on valid ballot, number of vote casted in favour of the individual candidate, (v) Booth wise, on valid ballot, number of vote cancelled in favour of the individual candidate, the defendants are under legal obligation to provide detail information as claimed by the plaintiffs;*
- c) A decree of perpetual injunction restraining the defendant nos. 2 to 31 from in any way or manner representing themselves and/or holding themselves out as the members of the Executive Committee of the East Bengal Club;*
- d) A decree for permanent injunction restraining the defendants from giving any effect and/or further effect and/or to act in furtherance thereof and/or to take any decisions and/or steps by them in aid of the results of the election of the Executive Committee members of the East Bengal Club and to proceed and/or take further steps on the basis*

of the said results and/or to cancel and deliver up at the proceedings in the meetings subsequent to the appointment of the new committee;

- e) A decree for perpetual injunction restraining the defendant nos. 2 to 31 from in any way, holding themselves out as office bearers and/or executive committee members of the East Bengal Club from participating in the Management and administration of the club or interfering with the management and administration of the said club or creating any hindrance to the smooth and efficacious management and administration thereof in any manner whatsoever;*
- f) For the interests of justice an Administrator(s)/Special Officer/be appointed over and/or in respect the affairs of the East Bengal Club with a direction to take charge of the management and administration of the said club including control over the finances of the said club with immediate effect;*
- g) A neutral independent observer/Special Officer be appointed as the Learned Court may deem fit and proper and a scheme may be framed to ensure and conduct a free and fair elections of the Executive Committee of the East Bengal Club;*
- h) Receiver;*
- i) Injunction;*
- j) Costs of suit;*
- k) Any other relief or reliefs as the plaintiffs are entitled to law and equity.*

And your petitioner as in duty bound shall ever pray.”

4. The defendants entered appearance in the said suit but before filing their defence, they filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter

referred to as the said Act) for referring the dispute involved in the said suit to arbitrator for its arbitration in terms of clause 11(e) of the Club Rules.

5. Since reference was claimed on the basis of Rule 11(e) of the said Club Rules, this Court feels that the said rules should be reproduced hereunder for proper understanding of the dispute between the parties involved in the said proceeding:

“Any member aggrieved by any act or decision of the club or any matter, issue or dispute in relation thereto or otherwise may appeal to the President of the club who upon receipt of such appeal, shall constitute a 3 (three) members other than executive committee members of the club and the same committee shall adjudicate upon such grievances, disputes and differences and give its decision which shall be final and binding upon the parties. the appeal shall be lodged with a non-refundable fee of Rs.1,000/-.”

6. Mr. Aniruddha Chatterjee, learned Advocate, appearing for the opposite party, submits that clause 11(e) which is placed under the heading Termination and Suspension of Membership has no attraction in the present suit as the present suit is not a suit where the termination or suspension of any member of the club has been challenged. By referring to the entire pleadings in the plaint as well as the reliefs claimed therein he contended that, in fact, the election dispute was raised in the said suit and incidentally the authority of the elected members of the Executive Committee to act and/or represent themselves as members of the Executive Committee of the club, was questioned. Thus the reliefs which were claimed pertaining to the status and/or authority of these members to act by representing themselves as executive members of the said club, is an incidental relief which is dependent upon the fate of the plaintiff's primary challenge with regard to

the validity and/or legality of the election. Mr. Chatterjee thus contended that such a dispute cannot be resolved by any authority as per clause 11(e) of the Club Rules.

7. Mr. Chatterjee referred to clause 38(s) of the Club Rules which provides that any dispute in the matter of election of office bearer of the Executive Committee shall be referred to election board and its decision shall be final and binding on the members of the club. He further submits that such disputes relating to election could have been resolved by the Election Board as per the said Rule, before publication of the election result. He further submits that the dispute which is raised in this suit cannot now be resolved by the said board in terms of the clause 38(s) of the Club Rules as the said board has now become defunct after publication of the election result. Thus Mr. Chatterjee submits that it is only the Civil Court which can resolve the dispute involved in the suit and as such his client approached the Civil Court for resolution of their dispute.

8. Mr. Chatterjee also contended that even if it is assumed that Rule 11(e) of the Club Rules was misplaced under wrong caption and/or heading namely Termination and Suspension of Membership and same was, in fact, a machinery prescribed under the Club Rules for resolution of any dispute of every description but still then it cannot be held that the machinery prescribed therein was authorised to act as a trying authority to resolve any original dispute between the parties. By reading the provision contained in Rule 11(e) of the said Club Rules, Mr. Chatterjee submitted that, in fact, the said mechanism was prescribed for consideration of an appeal to be filed by the aggrieved party, as an appellate authority. Mr. Chatterjee thus contended that there is no provision in the Arbitration and Conciliation Act which provides that the hearing of an appeal or any proceeding in connection thereto before the appellate authority will be governed by the provision of the Arbitration and Conciliation Act of 1996. Accordingly he supported the impugned order and prayed for disposal of the same.

9. Mr. Ajoy Krishna Chatterjee, learned Senior Counsel, appearing for the petitioner tried to impress upon this Court that though Rule 11(e) was placed under the heading Termination and Suspension of Membership but in fact, the said rule was framed for providing a mechanism for resolution of dispute of every description between the club and its members. Mr. Chatterjee referred to clause 11(a), 11(b) and 11(c) of the said rules to show that the mechanism for disposal of the dispute relating to termination and suspension of members of the club is comprehensively dealt with in clause 11(c) of the said rules. Mr. Chatterjee thus contended that clause 11(e) is mismatched under the said heading.

10. Mr. Chatterjee further contended that misplacement of a provision under the wrong heading cannot destroy the intrinsic value of the mechanism and/or modalities prescribed therein. According to him, the said mechanism was prescribed for resolution of dispute of every description between a member and the club. To support such submission Mr. Chatterjee cited a decision in the case of Cott UK Ltd. vs. F E Barber Ltd. reported in (1997) 3 All ER 540 wherein it was held that when construing a clause in an agreement, the heading of the clause, which has a catchword or form of identification inserted for convenience of reference, could not prevail over the express wording of the clause or create ambiguity where no ambiguity was present.

11. Mr. Chatterjee further contended that if the reliefs claimed in the suit and the pleadings made out in the plaint are considered carefully then there will be no doubt that not only the election dispute was raised therein but also dispute relating to the status of the members of the executive club and their authority to represent themselves as Executive Committee members and their functioning as such, were raised in the said suit. Mr. Chatterjee thus submitted that such a dispute cannot be resolved by resorting to clause 38(s) of the Club Rules as submitted by Mr. Aniruddha

Chatterjee. According to him, it is only clause 11(e) which is the appropriate provision for resolution of such dispute between the parties by following the provision of the Arbitration and Conciliation Act of 1996. Mr. Chatterjee further contended that the learned Trial Judge was not justified in holding that clause 11(e) cannot be construed as an arbitration agreement simply because of the fact that expression 'arbitration', 'arbitrator' or similar other familiar expression used under the said Act were not mentioned in clause 11(e) of the Club Rules. Mr. Chatterjee thus submitted that for ascertainment as to whether the particular dispute is capable of resolution by way of arbitration or not, intention of the parties expressed in the agreement is required to be ascertained and if it is ultimately found that even without using familiar expression like 'arbitration' and 'arbitrator' in the said agreement, the parties really intended to resolve their dispute outside the court, by any person and/or authority of their choice, then, the applicability of the provisions contained in the Arbitration and Conciliation Act, 1996 cannot be denied. In support of such submission Mr. Chatterjee referred to the following decisions:

- i) In the case of M/s. Ram Lal Jagan Nath vs. Punjab State through collector, reported in AIR 1966 Punjab 436 (FB);
- ii) In the case of M. Dayand Reddy vs. A.P. Industrial Infrastructure Corporation Ltd. and ors., reported in (1993) 3 SCC 137;
- iii) In the case of State of U.P. vs. Tipper Chand, reported in AIR 1980 Supreme Court 1522.

12. Relying upon the aforesaid decisions Mr. Chatterjee contended that the learned Trial Judge acted illegally by rejecting the petitioner's prayer for reference, as according to him, it is a fit case where such reference ought to have been made in view of clause 11(e) of the said Club Rules.

13. Let me now consider the respective submission of the counsel of the parties in the facts of the instant case.

14. On perusal of the reliefs claimed in the suit as well as the pleadings made in the plaint, this court finds that though primarily an election dispute was raised in the said suit and reliefs were claimed therein accordingly but it is equally true that the election of the members of the Executive Committee of the club and their authority to act by representing them as members of the Executive committee of the club was also challenged in the said suit and reliefs were also claimed accordingly. If the entire pleadings of the plaint as well as the reliefs claimed therein are considered carefully, this court has no hesitation to hold that reliefs which were claimed against the Executive Committee members of the said club are incidental reliefs which are dependent upon the principal relief pertaining to election dispute. As a matter of fact, these two sets of reliefs cannot be segregated from each other. The reliefs claimed against the Executive Committee members are dependent upon the fate of the challenge regarding election dispute. As such even if it is ultimately found that the part of the dispute pertaining to election can be resolved by accepting the modalities prescribed under Section 38(s) but still then the dispute relating to the election of executive members of the said club and/or their authority to act as such members cannot be segregated from the other part of the dispute involved in the said suit. Furthermore the Election Board has also been defunct after publication of the election result. As such Rule 38(s) cannot be resorted to for resolution of such dispute. In this context this court has to examine as to whether the entire dispute involved in the suit can be resolved by an arbitration as per clause 11(e) of the said rules, even if it

is found that part of the dispute is capable of resolution as per the modalities prescribed in Rule 11(e).

15. Clause 11(e) of the said rules has already been incorporated above. If the said rule is analyzed properly, this court finds that the said rule provides that an appeal which an aggrieved party may prefer for challenging any act or decision of the club or any matter, issue or dispute in relation thereto or otherwise to the President of the club will be decided by a three-member committee which will be constituted by the President upon receipt of the notice of the appeal, by including two club members other than executive committee members of the club and Advocate therein, and its decision will be final and binding upon the parties. When the said Rule provides for a mechanism for resolving a challenge against an act or decision, it necessarily means that there must be a pre-existing decision of the club which can be challenged in appeal. Thus when the said Rule refers to an appeal for challenging an act or a decision of the club, it cannot be held that the said forum was created to decide the original dispute by a trying authority.

16. The said Rule makes it clear that the mechanism provided in the said Rule is for deciding an appeal for testing the correctness of any act and/or the decision of the club. Thus even assuming that clause 11(e) was misplaced under the heading of termination and suspension of membership and the said clause was really incorporated in the club rules with an intention to resolve of an appeal, still then this court cannot hold that the provision under the Arbitration and Conciliation Act can be resorted to for regulating the proceeding in the appeal under Rule 11(e) of the Club Rules before the appellate forum. In my view, the machinery which is prescribed in clause 11(e) of the Club Rules is in the form of a Domestic Appellate Tribunal which was formed for deciding any appeal arising out of an act or decision of the club or any matter relating thereto or

otherwise. The proceeding before the Domestic Appellate Tribunal, in my view, cannot be regulated by the provision of the Arbitration and Conciliation Act of 1996.

17. That apart this court also holds that the club rules is not a product of an agreement between the club and its member. In fact, the club rules were framed for smooth functioning of the club and any person who accepts his membership in the club is bound by the club rules as it has bind effect on its member who accepts his membership knowing the binding effect of such club rules upon him. Thus the club rules which were framed by the club cannot be regarded as a product of an agreement between the plaintiff and the club. As such the club rules cannot be construed as an agreement as contemplated under Section 7 of the said Act and no reference can be made for arbitration under Section 8 of the said Act.

18. The machineries which are prescribed under different provisions of the club rules for resolution of different types of dispute between the club and its member, in my opinion, are in the nature of Domestic Tribunal where its business can be regulated as per its own rules and by observing the principles of natural justice. The order which is passed by such Tribunal cannot be regarded as a decree and such order cannot be enforced through Court unlike the award passed by the Arbitrator under the Arbitration and Conciliation Act, 1996 which provides that the award which will be passed by Arbitrator under the said Act will have a binding effect as a decree of the Court under Section 35 of the said Act and its decision is capable of execution as per Section 36 of the said Act.

19. Thus this Court holds that the learned Trial Judge did not commit any illegality in rejecting the petitioner's application under Section 8 of the Arbitration and Conciliation Act.

20. This revisional application is thus stand rejected.

21. Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.

(Jyotirmay Bhattacharya, J.)