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

Reserved on:- 27.01.2021

Date of Decision:- 02.03.2021.

+ **FAO(OS) 57/2020 & CM No.27957/2020**

NARENDER SINGH

..... Appellant

Through Mr. Ramit Malhotra, Adv.

versus

V.V. PANKAJAKSHAN & ORS.

..... Respondent

Through Mr. Ankur Arora with Ms. Srishti Sharma, Advs for R-1.

Mr. Manoj Kumar Gupta, Adv for R-2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

JUDGMENT

1. The present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Arbitration Act') assails the order dated 31.07.2020 passed by the learned Single Judge rejecting the appellant's challenge under Section 34 of the Arbitration Act to the arbitral award dated 06.02.2020. Under the said award, the appellant's election to the Board of Directors of respondent no.2/society was set aside.

2. The appellant is a member of the Sonapat District Cooperative Labour & Construction Federation (hereinafter referred to as the 'Sonapat Society') whereas the respondent No. 2/National Labour Cooperative Federation of India Limited (NLCFIL) is a multi-State cooperative society governed by the provisions of the Multi-State Cooperative Society Act, 2002 (hereinafter

referred to as the 'MSCS Act'). The Sonapat Society is a member of the NLCFIL.

3. On 29.05.2019, the respondent no. 3, who was appointed as the Returning Officer by the NLCFIL for conducting elections to its board of directors, issued a notice under Section 19 of the MSCS Act notifying the election program for conducting the said elections. The notice also directed eligible cooperative/multi-state cooperative societies, who were a part of the NLCFIL, to send in the names of the delegates whom they had nominated to represent them in the election, which was slated to be held on 12.07.2019. Subsequently, on 21.06.2019, NLCFIL released another list bearing the names of all its members under the Forest Labour Constituency and the Labour Contract/Constructions Constituency. The respondent no.1, who is the Chairperson of a cooperative society named Shree Sai Labour Contract Cooperative Society Limited - which is also a member of NLCFIL, raised various objections on 05.07.2019 and 11.07.2019 to the: (i) inclusion of certain societies in the member list of Forest Labour Constituency, and; (ii) the nomination of certain candidates/societies, including the appellant, for the election on the ground of ineligibility by virtue of Section 43(1)(m) and (n) of the MSCS Act. Although the objections of the respondent no.1 were received by the Ministry of Agriculture, Department of Agriculture & Cooperative Societies on 12.07.2019, *i.e.*, the date on which the election was scheduled to be held, in which the appellant was duly elected, these objections were disposed of by the respondent no.2 Returning Officer on 12.07.2019 itself. As a result, the election was permitted to carry on as per the program.

4. On 18.07.2019, in the light of its objections being dismissed, the respondent no.1 moved NLCFIL seeking *inter alia* a copy of the resolution passed by the Sonapat Society condoning the absence of the appellant in the Annual General Body meeting of NLCFIL held during the years 2015-2016, 2016-2017 and 2017-2018, in response where to NLCFIL categorically stated that no such resolution had ever been passed. In the meanwhile, considering that the clock was running out on the period of limitation to challenge the election, the respondent no.1 invoked arbitration on 05.08.2019 before the Central Registrar of Cooperative Societies by way of a claim petition under Section 84, MSCS Act whereby it challenged the participation of a few of the member-societies in NLCFIL election held on 12.07.2019. Pertinently, in the original claim petition, the respondent no.1 did not challenge the appellant's election; rather, his election was impugned subsequently in the amended claim petition filed on 25.09.2019, after obtaining the permission of the learned sole Arbitrator.

5. For the purpose of this decision, only the facts pertaining to the case of the appellant have been recorded. The primary contention of respondent no.1 before the learned Arbitrator was that the appellant was disqualified from contesting/participating in the election for the Board of Directors of NLCFIL, on account of being ineligible under Sections 38(3), 43(1)(m) & 43(1)(n) of the MCSC Act, read with the Bye-Laws of NLCFIL. In its award dated 06.02.2020, the learned Arbitrator found merit in the case of respondent no.1 and held that the appellant was necessarily disqualified from the election since he neither obtained the requisite resolution from the Sonapat Society before standing for the elections as its nominee, nor had he attended the last three meetings of NLCFIL which rendered him unfit in

terms of Section 43(1)(m) and (n) of the MSCS Act. The learned Arbitrator also held that the resolution of Sonepat Society dated 18.06.2019 authorising the appellant to participate in the election as its delegate was also defective as the said society had also selected one Mr. Karan Singh as its delegate, which was not permissible as the Sonepat Society could nominate only one delegate. The learned Arbitrator further observed that the resolution dated 18.06.2019 - based on which the appellant contested the election, was the same which authorized him to participate in the election of National Cooperative Union of India and not NLCFIL/respondent No.2. One more important finding given by the learned Arbitrator was that Section 38(3) of the MSCS Act mandated that the attendance of any person from a cooperative society had to be duly authorised by the Board of the Society, irrespective of whether they were Chairperson, President, Chief Executive or Member. On the heels of these findings, the learned Arbitrator set aside the election of the appellant. The relevant extracts from the arbitral award read as under:-

“27. This Tribunal has gone through the submissions as well as oral arguments raised by the parties and This Tribunal has further perused the election record to effectively adjudicate upon the objections raised by the Claimants to the election of Respondent No.9. This Tribunal has seen the resolution dated 11.06.2014 placed on record by the Respondent No.9 and has perused the contents of the same, the said resolution authorized Respondent No.9 specifically for attending the 38th Annual General Body meeting of the Respondent No.1 Society. It cannot be considered as a resolution in favour of Respondent No.9 for attending the 40th, 41st and 42nd Annual General Body meetings of Respondent No.1 Society. The fact that there was no resolution issued by Sonepat District Cooperative Labour and Construction Federation Limited in favour of its delegate for the purposes of attending the

40", 41st and 42nd Annual General Body Meetings of the Respondent No.1 Society is also substantiated by the Respondent No.1 Society vide their reply dated 01.08.2019 and further in their written response filed in the present arbitration proceedings. In view of the same, this Tribunal holds that Respondent No.9 was disqualified to participate in the elections of the Respondent No.1 Society. The Tribunal must also point out that even otherwise the Respondent No.9 could not have participated in the elections of the Respondent No.1 Society as the Resolution dated 18.06.2019 submitted by the Respondent No.9 in terms of Rule 1 of the Schedule is defective as the same authorizes the Respondent No.9 for participating in the elections of the National Cooperative Union of India and not Respondent No.1 Society. While perusing the election record, the Tribunal has found another resolution dated 19.06.2019 submitted by delegate namely Karan Singh of Sonapat District Cooperative Labour and Construction Federation Limited, however this delegate did not contest the election and rather it was the Respondent No.9 who contested the election as representative of Sonapat District Cooperative Labour and Construction Federation Limited. Moreover, in terms of section 38(3) of the Act, a Society is entitled to send one delegate only. It is not been explained how the Society could have sent two delegates namely Mr. Karan Singh and the Respondent No. 9. The Respondent No. 9 was therefore, disqualified from contesting/participating in the election held on 12.7.2019 under section 38(3) as well as 43(1)(m)&(n) of the Act read with Byelaw No. 4(iv). Accordingly, the election of the Respondent No.9 to the Board of Directors of Respondent No.1 Society is liable to be set-aside.

6. This award was assailed by the appellant before the learned Single Judge by way of a petition under Section 34 of the Arbitration Act, being OMP No. 4/2020, which has been rejected under the impugned order. The learned Single Judge, after considering Section 38(3) of the MSCS Act, held that the Arbitrator could not be faulted in coming to the conclusion that even a chairperson, or a president of a society, while attending the annual general

meeting (AGM) or board meeting of a multi-State cooperative society, was required to have the backing of the resolution from the society since the said conclusion was based on a possible interpretation of the said provision, with which no interference was warranted under Section 34 of the Arbitration Act. The learned Single Judge further held that even in terms of Section 43 of MSCS Act, it was incumbent upon the individual member who sought to participate in the election of the multi-State cooperative society (in the present case, the respondent No.2) to have attended the last three AGMs held by the board of the said society. The relevant findings of the learned Single Judge read as under:-

“14. The interpretation placed, by the learned sole arbitrator, on Section 38(3) of MSCS Act is, at the very least, a possible interpretation. The Court, in exercise of its jurisdiction, while examining the interpretation, by an arbitrator, in exercise of its jurisdiction under Section 34 of the 1996 Act, is concerned not with the plausibility of the interpretation but with the possibility thereof. Once the interpretation placed by the learned sole arbitrator, on any provision that comes to her or his notice, is not an impossible interpretation, or perverse, as understood in law, interference therewith, by this Court under Section 34 of the 1996 Act, is to be pursued.

15. The learned sole arbitrator has held that the words “if such member if so authorised by the board” as implied in Section 38(3) of MSCS Act, would apply to the Chairperson and President of the Multi State Cooperative Society concerned, as much as to any other member. In other words, according to the learned sole arbitrator, any member, in order to be eligible to attend the meeting at the AGM of the Board of the NLCFIL, has to possess a specific authorization, authorizing her or him to do so. Mr. Ramit Malhotra seeks to submit that this requirement, as envisaged under Section 38(3) of MSCS Act, refers only to members other than the Chairperson and President of the Society, as, despite the

Chairperson and President of the Society, being also members thereof, they are, so to speak, sui generis. In order to bring home the submission, he has pointed out that Section 38(3) of MSCS Act parenthesizes, with the Chairperson and President, the Chief Executive of the Society, who is not a member of the Board of the Society. As such, Mr. Ramit Malhotra would seek to submit that words “if such member is so authorized by the Board”, applies only to members, other than the President and Chief Executive.

15. In my view, at best, the interpretation advanced by Mr. Malhotra may be one of the interpretations, to which Section 38(3) of MSCS Act would lend itself. At the same time, accepting the submission of Mr. Malhotra may amount to rewriting Section 38(3) of MSCS Act by replacing the words “if such member is so authorised by the board” by the words “if such member, other than the Chairperson or the President is so authorised by the board”. Casus omissus in a statute, even if were deemed to exist, cannot be provided by the Court, save in rare and exceptional circumstances. The learned Sole Arbitrator cannot be faulted in not having chosen to so do. It cannot, therefore, be said that the interpretation of Section 38(3) of the MSCS Act, as advanced by Mr. Malhotra, is the only possible interpretation of the said provision and that the interpretation placed on the said provision by the learned sole arbitrator, is so perverse or unsustainable or, “patently illegal”, as would merit interference under Section 34 of the 1996 Act.

16. Proceeding to Section 43 of the MSCS Act, there is no dispute, whatsoever, about the fact that the petitioner, had, in fact, absented himself from the 40th, 41st and 42nd AGMs of the NLCFIL. This, the learned sole arbitrator has held, disqualified the petitioner, ipso facto, from being elected as the member of the Board of the NLCFIL, in view of the afore-extracted sub-clauses (m) and (n) of Section 43(1) of MSCS Act, and I am inclined to agree therewith. A holistic and juxtaposed reading of the main body of Section 43(1) along with clauses (m) and (n) thereunder – especially the use of the word “himself”, as implied in the said two clauses – clearly indicates that the person, who seeks to contest the elections for being elected as member of the Board of the NLCFIL, cannot

absent himself from three consecutive AGMs of the Board of the NLCFIL and that, if he does so, he stands disqualified from contesting such elections. In the present case, the petitioner, admittedly, did not attend the 40th, 41st and 42nd AGM of the Board of the NLCFIL. It is not necessary, therefore, for me to examine, whether he was authorised, or not authorised to do so; suffice it to reiterate that he did not attend said meetings. These meetings, admits Mr. Malhotra, were attended, instead, by the Chairperson of the Society. The Chairperson of the Sonapat Society, however, was not authorised to attend the aforesaid three meetings of the NLCFIL. It is not the case of Mr. Malhotra that any such authorization exists. He, however, would seek to interpret Section 43(1) read with clauses (m) and (n) thereunder, as applying not to the individual member in person, but to the member-society. In other words, what Mr. Malhotra seeks to submit is that if any particular member, of a member society of the NLCFIL, was authorised to attend the AGM, any other member of that society, including the Chairperson thereof, could attend the meetings in her or his place. I am unable to accede to this submission, which according to me, flies in the teeth of the word "himself", as specifically used in clauses (m) and (n) of Section 43(1) of the MSCS Act. Even otherwise, if one were to read Section 43(1) of MSCS Act holistically, it is clear that it refers to a member of a Multi State Cooperative Society, a nominee of a member society and refers to the conditions to be fulfilled by "such member", for being eligible to be chosen as a member of the Board of the Multi State Cooperative Society or of the NLCFIL. The various clauses of Section 43(1), such as being adjudged by a competent Court to be insolvent or of unsound mind, participating in the profits of any contract with the society, conviction of an offence involving moral turpitude, holding of an office of a place of profits under the society etc., obviously, apply to the individual members in person and not to the member societies.

17. To reiterate, as the petitioner did not attend three consecutive AGMs of the NLCFIL, he stood disqualified, ipso facto, from contesting the elections to the BOD of the NLCFIL."

7. In support of the present appeal, learned counsel for the appellant submitted that the learned Single Judge had failed to appreciate that, notwithstanding the legal position that a Court has limited scope of powers while exercising its jurisdiction under Section 34 of the Arbitration Act thereby implying that it is not open for it to interfere with the interpretation of a contractual clause adopted by an Arbitrator as long as the same is a plausible view, there was no question of upholding the findings returned in the impugned award, since the interpretation of Section 38(3) of the MSCS Act taken therein was wholly perverse and had to be set aside. He submitted that both the learned Single Judge and the learned Arbitrator failed to appreciate that Section 38(3) of the MSCS Act authorised the Chairperson, the President and the Chief Executive of a cooperative society, in their own respective right, and by virtue of their office, were entitled to represent the society in any AGM or Board Meeting of the multi-State cooperative society of which such cooperative society was a member, which - in this case, was NLCFIL. He submitted that only when a member of the cooperative society, who did not hold one of the above positions/offices, wished to attend a meeting of the multi-State cooperative society, i.e., NLCFIL, the member was required to obtain a specific board resolution from the society he desired to represent, in his favour, authorising his attendance. He further submitted that Section 38(3) of the MSCS Act treated the three designations in the cooperative society, viz., the Chairperson, the President and the Chief Executive, on an entirely different footing than an ordinary member of the society. Considering the fact that the Chairperson of the Sonapat Society was present in the 40th, 41st and 42nd Board Meetings of NLCFIL, the learned Single Judge and the learned Arbitrator had erred in holding that the

Sonepat Society was not properly represented in those meetings in terms of Section 38 of the MSCS Act. He finally submitted that, even otherwise, the appellant's election was challenged by respondent no.1 before the learned Arbitrator much after the period of limitation of 30 days - to challenge the election, had already expired. Thus, when the election of the appellant - which took place on 12.07.2019, was challenged by the respondent no.1 only sometime after 16.09.2019, the same was barred by limitation under Section 85 of the MSCS Act. He submitted that in these circumstances, not only was the challenge to the appellant's election statutorily barred, even the award passed by the learned Arbitrator quashing the same was invalid on that ground.

8. On the other hand, Mr. Ankur Arora, learned counsel appearing on behalf of respondent no.1 sought to defend the impugned order as also the impugned award by contending that both the learned Single Judge and the learned Arbitrator had correctly interpreted the provisions of Section 38(3) of the MSCS Act to quash the appellant's election as being barred under the provisions of the MSCS Act. He submitted that the NLCFIL is a national-level multi-state cooperative society, and its members are other cooperative and multi-cooperative societies. Thus, any meeting held by the NLCFIL was bound to have a large number of attendees. He further submitted that for this reason, if the Chairperson, President or Chief Executive of any society were permitted to attend the General Board meetings without a specific resolution in their favour, the same would lead to a situation where any person could attend the meeting and claim to represent the society, leaving the respondent no.2 unable to verify the said claim. To avoid this situation, Section 38(3) specifically provides that any member desirous of representing a cooperative

society in a meeting held by the multi-state cooperative society, must have a specific resolution in his favour. In the present case, the Chairperson of the Sonapat Society, admittedly, did not have any resolution in his favour and therefore, the mere fact of his having attended the meetings would not be sufficient compliance with Section 38(3). He further submitted that even otherwise, the appellant is now trying to change his stand, as his only plea before the Arbitrator was that he was eligible to participate in the election as a delegate of the Sonapat Society by virtue of a specific resolution in his favour, and was similarly also authorised to attend the AGMs by virtue of another resolution in his favour. He, thus, contended that there is no infirmity in the arbitral award, or the impugned judgment passed by the Id. Single Judge and, therefore, prayed that the present petition be dismissed.

9. We have heard learned counsel for the parties and with their assistance perused the record.

10. To begin with, the parties are *ad idem* on the aspect that the 40th, 41st and 42nd AGMs of NLCFIL were duly attended by the Chairperson of the Sonapat Society, of which the appellant is a member. They are also *ad idem* in respect of the position that the appellant could contest the election as a member of Sonapat Society, only if he was nominated by the Sonapat society for that purpose. At this point, it is pertinent to note the undisputed position that on 18.06.2019, by way of a resolution passed by the Sonapat Society, the appellant was nominated to contest the elections on behalf of the society. It is also undisputed that a delegate of the member-cooperative society would be eligible to contest the election of a multi-state cooperative society (MSCS) under the MSCS Act, only subject to fulfilling the rigours of Sections 38 and 43 thereof.

11. Now, both the learned Single Judge and the learned Arbitrator have held that the appellant's election was vitiated on account of having violated Sections 38(3) and 43(1) of the MSCS Act. The appellant has contended that no such infraction has taken place, and that the interpretation lent to these provisions by the learned Arbitrator - and upheld by the learned Single Judge, was wholly perverse. The court would interfere with an arbitral award which is founded upon an interpretation given by the learned Arbitrator, if the interpretation adopted is not a plausible one. If it is perverse, the award would be liable to be set aside. In order to determine this limited issue, i.e., whether the interpretation of the relevant legal provision is a plausible interpretation, or whether it can be called perverse, it would be necessary to first note the relevant extracts of Sections 38(3) and 43(1)(m) and 43(1)(n) of the MSCS Act, which read as under:-

“38. Constitution, powers and functions of general body

(3) Where in any meeting of the general body or the board of a multistate cooperative society, a cooperative society or another multistate cooperative society is to be represented, such cooperative society or other multi-state cooperative society shall be represented in such meeting only through the Chairperson or the president or the Chief Executive or a member of the board of such cooperative society or other multi-state cooperative society, as the case may be, if such member is so authorized by the board and where there is no board of such cooperative society or other multi-state cooperative society, for whatever reasons, through the administrator, by whatever name called, of such cooperative society or other multistate cooperative society:

Provided that where the bye-laws of a multi-state cooperative society provide for representation of other institutions in any meeting of general body or the board of such multi-state cooperative society, such

institutions shall be represented through its nominee as also under Section 43(1)(m)(n) of the Act

12. The effect of Section 38(3) of the MSCS Act is to enable all cooperative societies or multi-state cooperative societies, who are members of a MSCS, to attend a general body meeting or a board meeting of the MSCS in question. However, this right of representation is vested in them through any of the four different officers/persons in such member-societies, viz., Chairperson, or President, or Chief Executive, or Member. The Chairperson and President of a member-Society would, of necessity, be members of the Board of that member-Society. Thus, such members – by their very designation, would be entitled to represent their society in the meeting of the MSCS. The Chief Executive of the member–Society would also be a designated person, and he too has to have been specifically authorised to represent his Society in the meeting of the MSCS. The facility granted by law to a member-Society to be represented in the meeting of an MSCS is also provided, to be represented through an ordinary member of the Board of such member-Society. This provision provides that in case such representation is taking place through a member, such a member has to be duly authorised in that respect by a resolution passed by the Board of the cooperative society/multi-state cooperative society of which he is a member, and seeks to represent. Thus, the question of authorisation only arises in the case of a member and not in respect of the Chairperson, President or Chief Executive of the member-cooperative/multi-state cooperative society.

13. It is against this background that one has to consider the judgment impugned before us. The learned Single Judge extracted paragraph 22 of the impugned award in its decision to express its agreement with the finding of

the learned Arbitrator that the words ‘*if such member is so authorised by the board*’ used in Section 38(3) of the MSCS Act has to be read to include even a Chairman, President or Chief Executive of the member-society. As per the learned Single Judge, the learned Arbitrator’s interpretation of Section 38(3) - which required the three designated positions, other than the member, to also obtain authorisations from the Board of their respective societies before participating in the meetings of the multi-state cooperative society, was a plausible one. For this reason, the learned Single Judge held that this finding could not be termed as being perverse in a manner warranting any interference under Section 34 of the Arbitration Act.

14. We are, however, unable to agree with this position. The plain language of Section 38(3) of the MSCS Act shows that the prerequisite of an authorisation from the Board is only expected from a member. If, even the Chairperson, President, and Chief Executive were to require authorisation, then there was no purpose of specifically mentioning those designations in the Section. The Legislature would have only used the words “officer of Board member”, or the like. In our view, if the necessity of obtaining authorisations was uniformly applicable to all persons who formed a part of the member-cooperative society, or to its officers, and, thus, even to a Chairperson, President or Chief Executive thereof, then the language of Section 38(3) would certainly not have gone to the extent of separately and specifically referring to the designations of Chairperson, President or Chief Executive.

15. In this regard, as a matter of general legal principle, there is a presumption that the Legislature has not used any superfluous word at the time of drafting a statute. Therefore, the endeavour of the Court is to

interpret all statutory provisions in such a manner, that every word used by the legislature is given its full meaning and effect in the context of the statute, and no word is rendered insignificant or superfluous. On this aspect, reference may be made to the decisions in ***Manik Lal Majumdar & Ors. Vs. Gouranga Chandra Dey & Ors.*** (2004) 12 SCC 448 and ***JSW Infrastructure Limited & Anr. Vs. Kakinada Seaports Limited & Ors.*** 2017 (4) SCC 170. In this light, when we consider the interpretation lent to Section 38(3) of the MSCS Act by the learned Arbitrator, and upheld by the learned Single Judge, it would essentially imply that every time a Chairperson, President or Chief Executive of the member-Society attends a MSCS meeting without a Board resolution, their attendance would be meaningless, and shall tantamount to ‘not attending’ the meeting of the MSCS. Were this interpretation to be accepted, the usage of the three expressions ‘Chairperson’, ‘President’ or ‘Chief Executive’ in Section 38(3) would be rendered nugatory and otiose. We are of the view that this cannot be permitted. Rather the only correct interpretation of this provision is that the requirement of obtaining a resolution is a *sine qua non* for the ordinary board members of a member-cooperative/multi-state cooperative society in order to attend a meeting of the MSCS. In fact, the three designation mentioned in Section 38(3), viz., Chairman, President or Chief Executive, have to be necessarily treated as a class apart, who, by virtue of their designation, are *ipso facto* authorised to attend any meetings of the MSCS, which in this case is the NLCFIL, thereby doing away with any requirement of obtaining authorisations in their favour. Thus, the attendance of the Chairman of the Sonapat Society in the 40th, 41st and 42nd Annual General

Body Meetings of NLCFIL was authorised, completely valid in law and, therefore, fulfilled the mandate of section 38(3) of the MSCS Act.

16. Now coming to Section 43(1)(m) and (n) of the MSCS Act, infraction whereof has been held to be an additional ground for disqualifying the appellant from contesting the elections to the board of NLCFIL. These provisions read as under:

“43. Disqualifications for being a member of board

(1) No member of any multi-state cooperative society or nominee of a member, society or a national cooperative society shall be eligible for being chosen as, or for being, a member of the board of such multistate cooperative society or a national cooperative society, or of any other cooperative society to which the multi-state cooperatives society is affiliated, if such member-

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(m) absents himself from three consecutive board meetings and such absence has not been condoned to by the board;

(n) absents himself from three consecutive general body meetings and such absence has not been condoned by the members in the general body.”

17. Although a lot has been said by the learned Arbitrator and the learned Single Judge in respect of the appellant's attendance in the 40th, 41st and 42nd Annual General Body Meetings of NLCFIL, we find that this question has no relevance at all in the context of Section 43(1) of the MSCS Act. On a simple application of Section 43(1) of the MSCS Act to the facts of the present case, we find that in the expression '*member of any multi-state cooperative society*', the term '*member*' refers to the Sonapat Society and

the expression '*multi-state cooperative society*' refers to the NLCFIL. In other words, the term '*member*' employed in this provision is in respect of a member society, and not an individual member who is a part of such a society. Further, the term '*nominee*' refers to the appellant - who was nominated by the Sonapat Society to contest elections on its behalf for the Board of Directors of NLCFIL. A necessary corollary thereof is that the application of clauses (m) and (n) of Section 43(1), which has been made specifically apropos '*members*', has to be in respect of the Sonapat Society, and not the appellant. If the term '*member*' were permitted to be interpreted to mean an individual person, it would not only create a discord between the remaining provisions of the statute, it would also trigger an absurd situation where any individual - who is a member of the cooperative society affiliated to NLCFIL, could participate in the election of NLCFIL without even being nominated for that purpose by the society of which he is a member. This cannot possibly be the actual spirit of the provision. Ultimately, the true intent of Section 43(1)(m) and (n) is to secure the attendance of the societies forming a part of the general body of a multi-state cooperative, not the individual persons who are the members of such member-Societies. In these circumstances, the interpretation of this provision - to the effect that it required the appellant to attend the meetings of NLCFIL, was completely unsustainable.

18. Our interpretation is supported by the language of the bye-laws of NLCFIL as well, which provides membership to cooperative societies/multi-state cooperative societies, not individuals. Thus, even though the entities which contest elections to the board of the MSCS, and constitute the general body of NLCFIL are individuals who are nominated by the societies, they

ultimately represent the societies and not themselves in their individual capacity. As a consequence, what is material is the eligibility of the cooperative/multi-state cooperative society, not the individuals nominated by them.

19. In the light of the aforesaid, we are of the considered opinion that, irrespective of the appellant not having attended the 40th, 41st and 42nd Annual General Body Meetings of the NLCFIL, the fact remains that the Chairman of the Sonapat Society had attended them and, therefore, the Sonapat Society could not get disqualified from contesting the elections under Section 43(1)(m) and (n) of the MSCS Act. To put it in another way, the Sonapat Society fulfilled the criteria to nominate an individual member from its ranks for the purpose of contesting the NLCFIL election. Further, in the absence of any valid reason, the nominee - the appellant in this case, could not be held as being disqualified from standing in the election.

20. There was an ancillary reason as to why the learned Arbitrator set aside the appellant's election, in that no proper resolution had been passed by the Sonapat Society in favour of the appellant, nominating him to contest the election. Rather, the Society had passed the same in favour of one Mr. Karan Singh. Although the learned Single Judge has not recorded any findings in the impugned judgment on this aspect, we are of the view that once it is an admitted position that barring the appellant, no other nominee of the Sonapat Society had stood for the election on its behalf, nothing much turned on this ground. Not to mention the submission of the learned counsel for the appellant before us that there was no member by the name of Karan Singh in the Sonapat Society, thereby indicating that the findings of the learned Arbitrator in this regard arose from a misreading of the record.

21. While the learned Single Judge has rightly recorded the prevailing position of law with regard to the extent of power wielded by the Court under Section 34 of the Arbitration Act to interfere with the findings of an arbitrator, but this legal position has to be read in conjunction with the ratio of the Supreme Court in paragraph 30 of its decision in **ONGC Ltd. vs. Garware Shipping Corpn. Ltd.** (2007) 13 SCC 434 which reads as under:

“30. There is no proposition that the courts could be slow to interfere with the arbitrator's award, even if the conclusions are perverse, and even when the very basis of the arbitrator's award is wrong. In any case this is a case where interference is warranted and we set aside the norms prescribed by the arbitrator as upheld by the learned Single Judge and the Division Bench.”

22. Our discussion so far already shows that the learned Arbitrator erred in its interpretation of Sections 38(3) and 43(1)(m) and (n) of the MSCS Act, which also compromised the manner in which these provisions were applied to the facts of the present case. In **Oil and Natural Gas Corporation Ltd. Vs. Western Geco International Ltd.** (2014) 9 SCC 263, the Supreme Court had observed the following:

“39. No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a court of law. Perversity or irrationality of decisions is tested on the touchstone of Wednesbury principle [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223:(1947)2All ER 680 (CA)] of reasonableness. Decisions that fall short of the standards of reasonableness are open to challenge in a court of law often in writ jurisdiction of the superior courts but no less in statutory processes wherever the same are available.”

23. The only reasonable and plausible interpretation of Section 38(3) was that the requirement of obtaining authorisation from the Board of the cooperative society was only binding on the individual persons who were members of the Board thereof, and not holders of office i.e. Chairperson, President or Chief Executive, whereas the only possible and correct interpretation of Section 43(1) of the MSCS Act was that it determined the eligibility of the member society. In the absence of this interpretation, the findings of the learned Arbitrator were not only impossible, they were also against the scheme of MSCS Act. For these reasons, the award of the learned arbitrator, as also the decision of the learned Single Judge, are wholly perverse and are required to be set aside even on the touchstone of Sections 34 and 37 of the Arbitration Act respectively.

24. The appeal is, accordingly, allowed by setting aside the impugned judgment passed by the learned Single Judge on 31.07.2020 as also the arbitral award dated 06.02.2020, insofar as it relates to the appellant. Parties are left to bear their respective costs

(REKHA PALLI)
JUDGE

(VIPIN SANGHI)
JUDGE

MARCH 02, 2021

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