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ARTICLES

ARBITRATION IN COOPERATIVES — A CRITICAL STUDY

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1. Arbitration as a method of settlement of disputes has almost become recognized and being adopted in many transactions between the parties. This system was prevalent in ancient India and the decisions by Panchayats i.e., puga, sreni and kula were accepted as binding. This system continued to exist till the British Government established regular Courts. The Regulating Act of 1781 imported the idea of "tribunal of the parties choice" and the decisions given were binding, except in cases where the decisions were contrary to law or on grounds of corruption or partiality of the arbitrator.
2. The Arbitration and Conciliation Act, 1996¹ presently in force deals with 'arbitration' and principles applicable in this method. Statutory and Compulsory arbitrations to be governed by special statutes² and the Act to be applied to matters not provided for under the statutes. Thus, Arbitration is a substitution by the consent of the parties of another tribunal in the place of the one set up by ordinary process of law. In view of this, it would be a misnomer to call the proceedings before the Registrar of Cooperatives or his nominee in the cooperative dispute as 'arbitration', as the consent of the parties is not taken to the appointment of person or persons to decide the dispute. Statutory arbitration, as provided in the cooperative laws, violate the spirit and essence of arbitration jurisprudence, as the arbitrator is one, not chosen by the parties or enjoying their confidence. It is therefore, suggested that the parties may be asked to submit a wide panel of arbitrations and the choice to be made of a person who has the consensus of both the parties i.e., a name commonly acceptable to both the parties. The existing rules require a suitable amendment to give effect to this new procedure.
3. Disputes in cooperatives can broadly be divided into two categories namely (a) monetary and (b) non-monetary. In non-monetary disputes, it necessarily requires that the person deciding the dispute should correctly know the applications of laws and their interpretation. Factually, in many cases, the adjudicator does not possess the

1 Referred to as 'Act' through this study

2 such as the Coop. Societies Act, etc.

judicial skill and the issues are treated departmentally, purely from an administrative angle, lacking the touch of judicial methods of adjudication. Even in monetary matters, when the claim made by one of the parties is admitted by the other party, resort is made to 'arbitration' to enforce the claim, resulting in considerable delay, which runs contrary to the objectives of arbitration, to bring about an expeditious decision. In such cases, where the claims are admitted, it can be well within the jurisdiction of departmental officials to pass the order and recover the amounts. Thus, it logically follows that both in monetary and non-monetary disputes, the system of arbitration has not worked out in the manner designed by the legislature.

4. Arbitration in cooperatives is designed keeping in view the principles of cooperation, as well as the crucial aspect that members of cooperatives should not drag the cooperatives to Civil Courts, which is expensive, resulting in enormous delay. Further, the Civil Courts may not possess the requisite expertise on the cooperative principles and practices and thus, decisions rendered by them may not be in accord with the spirit of cooperative justice. This amply justifies, the arbitration method to have a strong foundation in the cooperative system.
5. Cooperative movement has developed in many directions and there has been a tremendous increase in cooperative activities. This has resulted in many persons who are 'non-members' such as merchants, traders, manufacturers, dealing with cooperatives. The moot question that arises for consideration is, whether the cooperatives can transact with non-members, when they are formed for their members' interest and concern? The ICA Commission on "cooperative principles" which examined this, recommended that the

dealings with non-members cannot exceed 25% of the total transactions, subject to the condition that the profits arising out of such income shall not be distributed as 'dividends' to members, but used for the development of the cooperative institution to offer better services to their members. However, the question of business with non-members, give rise to technicalities attended with complication, when disputes arise between cooperatives and such non-members. There have been cases, where the non-members refuse to become 'members' of cooperatives, resulting in cooperatives being dragged to Civil Courts, which frustrates the very object to keeping cooperatives away from the jurisdiction of Civil Courts. There is an emergent need to bring about an amendment to Cooperative Acts, wherever, it is necessary to do so, that the "scope of arbitration" in cooperatives be widened to cover a dispute between a society and a non-member, so that the arbitration system works effectively.

6. Adjudicators in a cooperative dispute stand in a less favourable position when compared with others in the matter of approaching with an independent mind to the issues involved, Judicial officers enjoy independence in the exercise of judicial functions to withstand and overcome both internal as well as external pressures. Cooperative officials may easily succumb to pressures from higher officials, Government and political pressures, at the risk of losing their jobs or getting subjected to unwarranted disciplinary actions. This lack of independence - a quality predominant to the essential judicial process - goes to the very root of cooperative adjudication making it more formal rather than judicial in character. If cooperative adjudicators are drawn from judicial cadre with a combination of skill and knowledge of cooperative principles and practices,

cooperative adjudication may fall in line with the spirit and essence of cooperative justice. In fact, it is suggested that special recruitment may be made of cooperative officials with the specialisation in cooperation, law and practical training in this vital subject, it may well suit the cooperative system.

7. The cooperative officials, while discharging their adjudicatory functions act quasi-judicially and not in the strict judicial sense. However, they are clothed with the powers of a civil court and treated as a 'Civil Court' when conducting the proceedings. This requires that these officials should be invariably called upon to bear judicial attitude of mind, in the realm of cooperative justice. Judicial attitude of mind guarantees that the decisions are not to depend on individual caprice and totally free from all types of personal prejudices and provides the guideline to exclude irrelevances, conjectures, surmises, imaginary and fanciful thoughts or ideas. As things stand today, the cooperative officials, in some cases atleast, in non-monetary disputes acted on legally impermissible pieces of evidence or irrelevant material resulting in miscarriage of justice. This is being perpetuated, on the plea that the Evidence Act, Civil Procedure Codes and other law does not apply to cooperatives/quasi-judicial bodies. In the result, many cooperative adjudications par-take the character of purely administrative in nature and thus, falls short of quasi-judicial standards. There is an emergent need to apply these laws where the provisions in such laws are based on principles of natural justice. This is now available through judicial decisions and the need to replace them by statutory provisions may be more desirable.
8. The system of cooperative adjudication needs judicialisation at least to some extent in order to free it from all types of internal or external pressures. Adjudicatory powers should be taken away from cooperative officials, which might be a cause to prejudice the issues. Impartiality in the adjudications must be ensured.
9. Delay in adjudications must be avoided. Arbitrators may be asked to increasingly make use of 'affidavit' and 'interrogatives' method to expedite the proceedings. This eliminates the delay in recording the statements. Specific provision is required to be made, wherever necessary to enable arbitrators in cooperatives to administer oath and willful disobedience of the orders of the adjudicators be treated as 'contempt of court' and the power to arrest and punish, be conferred for such proved disobedience.
10. In many of the States, the arbitration fee to be deposited by the parties is too meagre and cannot meet the actual cost. There is a good case for increasing the fees, and a small part of the fees, be given to arbitrators by way of reimbursement or for the special tasks undertaken by them.
11. In the computer age, it is now possible to furnish all the copies of recent decisions touching cooperative arbitration to all arbitrators for their guidance, so that the decisions rendered by them become in conformity with law.
12. The following is the summary of the recommendations made in this brief study:
 - (i) The parties to a cooperative dispute may be asked to submit a wide list of panel of arbitrators and the names found as common in both the lists be considered for appointment as "arbitrators" and suitable amendment be made for this purpose;

- (ii) When a claim is made and admitted by the other party in a monetary dispute, the matter be taken up by the administrative officers to pass the order and recover the amount, instead of subjecting it to arbitration;
- (iii) In non-monetary disputes, arbitrators may be chosen of persons who know the application of laws their interpretation; and of cooperative principles;
- (iv) In view of increasing activities of cooperatives, non- members figure as litigants in many cases. The Act may be amended to enable adjudicators to decide disputes between cooperatives and non-members.
- (v) The ICA principles Commission's recommendations that the trade with non-members shall not exceed 25% of total business, subject to the additional condition that the profits derived from such business shall be utilized for development of cooperative institutions. In no case, it shall be distributed as 'dividends' to members. An amendment to the existing Acts, may be necessary for this purpose;
- (vi) In order to free the cooperative adjudicators from all kinds of pressures and to give independence to them, a special recruitment process be made, so that adjudicators possess judicial attitude of mind and unique knowledge of cooperative laws and procedures;
- (vii) The Indian Evidence Act and other procedural laws may be applied and such provisions which are based on natural justice be made applicable to cooperative adjudications.
- (viii) Adjudicatory powers may be taken away from cooperative officials, who are in daily contact with the disputants. Impartially must be ensured;
- (ix) Cooperative adjudicators may be required to adopt "affidavit" and "interrogatory" procedure to avoid delay in deciding the cases;
- (x) Contempt of court actions be instituted for disobedience to the orders of adjudicators. They may be given the power to arrest and prosecute the persons concerned;
- (xi) The arbitrators fee may be statutorily enhanced to make it more realistic to cover the "costs". A small percentage of the fees be paid to arbitrators towards reimbursement and technical or specialized services rendered.
- (xii) In the computer age, it is now possible to furnish all the copies of recent decisions touching cooperative adjudications to all arbitrators for their guidance, so that the decisions given them become in conformity in law.

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