

OFFICE OF THE REGISTRAR COOPERATIVE SOCIETIES

GOVERNMENT OF NCT OF DELHI

OLD COURT BUILDING, PARLIAMENT STREET, NEW DELHI - 110 001

F.No.47/024/GH/Sec-06/2019/PF/2461-2465.

Dated: 13/04/2021.

In the matter of

D.S. Kundu

.....Applicant

VS

V.K. Aggarwal

(Ex-Arbitrator)

.....Respondent

ORDER U/s 61 of DCS Act 2003, (Fact Finding inquiry against Sh. V.K. Aggarwal(Ex-Arbitrator))

Vide order no. F.47/024/GH/Sec-6/2019/7087-7091 dated 18.02.2020 passed by Worthy RCS in compliance of direction of Hon'ble High Court in WP.(C) 12001/2019, a fact finding enquiry with suggested action in the matter was entrusted to the undersigned in complaints / representation against the Ex-Arbitrator namely Sh. V.K. Aggarwal.

Complainant has leveled allegations of misuse of office position and power, corrupt practice and misconduct while acting as arbitrator in case No. ARB 162/GH/DR/ARB/2015-16 assigned to him for arbitration.

Initially matter was assigned to Sh. Vivek Kumar, Joint Registrar. Who summoned both Sh. D.S. Kundu, Complainant and Sh. V.K. Aggarwal, Ex-Arbitrator to appear before his court on 02.03.2020. Sh. V.K. Aggarwal, requested that the related case file be provided to him and requested to adjourn the matter till 12.03.2020 as he was out of station. Accordingly arbitration branch was directed to supply the copy of case file to the respondent and on 05.03.2020 ARB Case no. 162/GH/DR/ARB/2015-16 was provided to him and matter was adjourned to 25.03.2020.

On 04.03.2020 Sh. V.K. Aggarwal alongwith Sh. Tarun, Advocate appeared to the O/o Joint Registrar. Further Joint Registrar requested to the Registrar to refer this matter to some other competent officer as Sh. V.K. Aggarwal has no faith on him. The same request was accepted by Registrar, and matter was transferred to Sh. Ranjeet Singh, Additional Registrar.

Thereafter hearing could not be conducted due to imposition of lock down because of Pandemic Covid-19 and after unlock hearing was fixed for 15.10.2020 but could not be taken up and again fixed on 19.10.2020, when Sh. D.S. Kundu complainant was present but none appeared for Sh. V.K. Aggarwal, Ex-Arbitrator/ Respondent, though a letter dated 09.10.2020 had been received in this office, wherein respondent requested to supply the copy of case file i.e 143/GH/DR/ARB/2015-16 and 145/GH/DR/ARB/2015-16 for submission of brief reply. Further a notice issued to the respondent with the direction that the complainant has filed the complaint particularly for case no.

162/GH/DR/ARB/2015-16 and copy of the same already been provided to the respondent and further more opportunities were provided to the respondent to file his reply on 19.11.2020, 23.11.2020 and last and final opportunity was provided on 04.12.2020 with direction that if the respondent could not attend the hearing then he may file his written submission through Email ID (addrcs2020@gmail.com) or to appear in person or through authorized representative and hearing through Video Conferencing was also offered to Sh. V.K. Aggarwal, respondent. It was already made clear that the hearing on 04.12.2020 shall be last and final opportunity failing which matter shall be decided Ex-parte on merits.

But Sh. V.K. Aggarwal, neither appeared personally nor through authorized representative on the date fixed for 04.12.2020 nor did he appear through video conferencing to answer allegations against him. He also did not file reply to the allegations against him nor submitted any document to counter the allegations against him.

Complainant in his complaint leveled serious allegation and supported those allegations by documentary evidence on case file. Complainant has alleged that Sh V K Aggarwal misused his office position, power and corrupt practice and maliciously miscondacted as arbitrator during hearing in case No ARB NO 162/GH/DR/ARB/2015-16 assigned to him for arbitration and demanded action against him. Complainant in support of his allegations relied and presented following records:

Copy of application dated 20-09-16 filed before arbitrator to summon original records of the opposite party.

Copy of letter dated 10-11-16 written to RCS for change of arbitrator on account of loss of faith and trust in Sh. V.K. Aggarwal and strong apprehension that complainant shall not get justice from him.

Copy of letter dated 26-11-16 written by arbitrator to RCS office asking extension of 3 months to complete proceedings and decide the case.

Copy of application dated 06-12-16 filed before arbitrator and e-mail print out of mail sent to RCS and special RCS sending copy of said application. Said application was filed before arbitrator during proceedings and it was requested not to conduct proceedings in the case as change of arbitrator is pending and duly consented by competent authority in office of RCS. Application dated 06-12-16 was filed before arbitrator but no further proceedings were held on the same. Complainant on 06-12-16 also requested the arbitrator to adjourn the case to 2nd week of January 2017 as complainant shall be out of Delhi due to his pre-fixed unavoidable schedule.

Copy of letter dated 14-12-2016 written to arbitrator and print of e-mail to special registrar and Dy registrar. Vide application arbitrator was requested to inform next day of hearing in the case.

Copy of award passed by arbitrator dated 12-12-16.

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Copy of letter dated 13-12-16 vide which arbitrator submitted the decided case file to RCS office

Copy of written synopsis of complainant

Complainant during arguments submitted that vide letter dated 19-10-16, he registered his objections before arbitrator during proceedings on 20-09-16 by filing application regarding coercive means of arbitrator to force the complainant to sign blank paper, misuse of his position, power and corrupt practice and misconduct as arbitrator. Refusal of complainant to sign blank

Paper as per demand of arbitrator, profusely annoyed the arbitrator who threatened the complainant in loud words to face the consequences. Complainant during proceedings also informed the arbitrator regarding his letter dated 10-11-16 pending in RCS office for change of arbitrator due to loss of faith in arbitrator and bias malicious misconduct of arbitrator against the complainant. Application dated 06-12-16 was filed by complainant and requested the arbitrator not to conduct proceedings and adjourn case to 2nd week of January 2017 as complainant will be out of Delhi for his pre-fixed unavoidable and compelling schedule.

Since, complaint is against inter-alia misuse of position and power and misconduct of arbitrator etc, merits of case is irrelevant but still without prejudice and no adverse inference, arbitrator maliciously closed proceedings on 12-12-16 inter-alia in absence of complainant, without conduct and completion of lawful proceedings, without completion of pleadings, without grant of an opportunity of evidence and without hearing final arguments knowing fully there was no urgency and arbitrator had applied extension of three months from RCS office vide letter dated 26-11-16 and application for change of arbitrator is pending before competent authority

At the end, complainant summarized his inference drawn from sequence of events, facts of the case and records on case file that unequivocally prove, arbitrator passed the award in utmost haste with malice and bias and at the back of complainant inter-alia without conduct of lawful proceedings, without completion of pleading, without production of summoned records, without grant of opportunity to produce evidence and without opportunity of hearing of final arguments. Thus, arbitrator misused his position and power, adopted corrupt practice and misconducted him as arbitrator and closed the proceeding with bias and malice conduct, thus, caused injury to complainant and miscarriage of justice.

Complainant demanded that Sh. V.K. Aggarwal be blacklisted and no assignments be allowed/entrusted to him, arbitrator must also refund the amount of case fee without conduct of proceedings and pending change of administrator. It is relevant to state here that case fee shall have to be paid to the new arbitrator who shall decide the case on merits and law afresh as per law. Complainant also demanded strict penal action against Sh. V K Aggarwal against his misuse of office position, power and malice and corrupt practice, misconduct and breach of trust as arbitrator.

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I have gone through the contents of the complaints dated 09-01-2019 and 09-08-2019, records on case file ARB No 162/GH/DR/ARB/2015-16, oral

submissions, written synopsis of complainant and arrived at conclusion that Sh. V K Aggarwal acted in undisclosed haste knowing fully that claimant had pending application for change of arbitrator due to loss of faith and trust in him and this fact was informed to arbitrator. Complainant had also demanded not to conduct proceedings in the case, arbitrator had applied for extension of three months to complete proceedings in the case. But Sh. V K Aggarwal closed the proceedings abruptly in utmost haste without evidence, without completion of pleadings and without affording opportunity of arguments in a manner no reasonable authority should act and breach judicial propriety and trust under similar facts and circumstances. Thus, I, as enquiry officer, find that Sh. V. K. Aggarwal misused his position and powers and misconducted as administrator, breached the trust and violated rule of law and standard prescribed procedure in case No. ARB No 162/GH/DR/ARB/2015-16 assigned to him for arbitration of dispute.

Therefore, In view of the observation under above Sh. V.K. Aggarwal(Ex-Arbitrator) is black listed from the arbitrators appointment of the panel of RCS office. Further Sh. V.K. Aggarwal is also directed to refund the remuneration to the appellant Sh. D.S. Kundu (R/o C-503, Philips Towers, Sec-23, Plot-3, Dwarka New Delhi-110075) as he did not perform his duties properly.

The complaint is disposed off, accordingly.

The file be sent to the concerned Assistant Registrar Cooperative Society / Section to keep the same on record.


(Ranjeet Singh)
Additional Registrar

To

1. Sh. D.S. Kundu, R/o C-503, Philips Towers, Sector-23, Plot-3, Dwarka, New Delhi-110075.
2. Sh. V.K. Aggarwal, Ex- Arbitrator, 232, Prabhavi Apartments, Plot No.29-B, Sector-10, Dwarka New Delhi-110075.
3. AR(Arbitration)
4. AR(Section-6)
5. Computer Cell.


(Ranjeet Singh)
Additional Registrar