

**BEFORE SHRI BIMAL JULKA, LD. SOLE ARBITRATOR,
NEW DELHI
D-419, LGF, D-Block, Defence Colony, New Delhi-110024**

Arbitration Case No. 01 of 2021

In the matter of Arbitration between:

1. A. P. Ansari

... CLAIMANT

Versus

1. Bimal Kumar Mishra

2. T Prasad Rao Dora

... RESPONDENTS

AWARD
(Date: 29.12.2021)

1. The captioned proceeding pertains to disputes amongst parties in reference to adjudicate upon the issues of the board of National Federation of Fishermen Cooperative Ltd. (hereinafter referred as '**FISHCOPFED**') as referred for Arbitration by Ld. Central Registrar of Cooperative Societies (hereinafter referred as '**CRCS**'). The Ld. CRCS vide order dated 12.03.2021, while exercising its powers under Section 84 of the Multi-State Cooperative Societies Act, 2002 (hereinafter referred as '**MSCS**' Act) appointed Shri Shlok Chandra, Advocate, A-22, Ground Floor, Defence Colony, New Delhi 110024 as the Arbitral Tribunal to adjudicate upon the following issues:

- a) *Whether the appointment of Sh. Bimal Kumar Mishra as Managing Director after superannuation vide a decision arrived at in a Board meeting dated 30.06.2020 is in violation of the Recruitment Rules as well as the bye-laws of the Federation;*

- b) *Whether presence of Sh. Bimal Kumar Mishra in the Board meeting having an agenda for reappointment or for appointment as in-charge MD affect the legality of such proceedings;*
- c) *Whether Sh. T. Prasad Rao Dora, incumbent President of FISHCOPFED became ineligible to hold the post of President on account of losing the chairmanship of the Society which he represented in FISHCOPFED as per provisions of the federation bye law No. 28(viii);*
- d) *Whether the decision taken by the Board of Directors chaired by Shri T. Prasad Rao Dora after he lost chairmanship of the society which he represented in FISHCOPFED are non-est in law;*
- e) *Whether the defiance of directions issued by Department of Fisheries, Ministry of Fisheries, Animal Husbandry and Dairying, Government of India render the decisions of Board illegal.*

2. At the inception of the said Arbitration proceedings before the Ld. Predecessor Tribunal, an application under Section 14 read with Section 12 of the Act was filed by Respondent No.1 along with Mr. Lonare seeking termination of the mandate of the Ld. Arbitral Tribunal on account that the Sole Arbitrator had been Senior Panel Counsel with Union of India. Accordingly, vide order dated 09.06.2021, in the interest of justice the Ld. Predecessor Tribunal recused itself and marked the case back to Ld. CRCS for appointment of substitute arbitrator.

3. Subsequently, Ld. CRCS vide order no. R-11017/52/2013-L&M dated 11.06.2021, appointed this Arbitral Tribunal while exercising its powers under Section 84 of the MSCS Act, to adjudicate upon the aforementioned issues in the period of 60 days. Since the proceedings could not be completed within 60 days due to various reasons as mentioned in various procedural orders of this Tribunal, the Ld. CRCS on the request of this Tribunal further extended the period of Arbitration up to 08.12.2021 vide order dated 20.10.2021. Since the final arguments were complete by the respective parties and the proceedings were at the stage of the drafting of Award, three weeks' time was again sought from Ld. Central Registrar of Cooperative Societies which was granted vide order dated 27.12.2021 and the term of the Arbitrator was extended up to 29.12.2021.
4. This Tribunal stood constituted on 16.06.2021, on 18.06.2021, the first procedural hearing was conducted virtually wherein, this Tribunal gave its declaration as per Section 12 of the Act. Mr. Tushar Ranjan Mohanty, Ld. Counsel for Claimant appeared along with the Claimant, Ms. Raavi Birbal, Ld. Counsel for all the Respondents appeared along with the Respondents, Mr. Manish Mohan, Ld. Counsel for UOI and Mr. Ram Kumar, Ld. Counsel for FISHCOPFED appeared before this Tribunal.
5. It was directed to the parties to file the statement of claim within 4 days; statement of defence and counter-claim within 10 days thereafter and; rejoinder to the statement of defence and reply to the counter-claim within 3 days thereafter. Further, the parties were directed to file documents in their power and possession along with their pleadings.



Mr. Manish Mohan, Ld. Counsel for UOI along with Mr. Ram Kumar appeared before this Tribunal seeking interim relief in their favor. However, this Tribunal directed them to file application for impleadment in order to, seek any interim relief(s) from this Tribunal.

6. On the 2nd procedural hearing, Mr. Mohanty, Ld. Counsel for the Claimant expressed his inability to file Statement of Claim within the prescribed time by this Tribunal, further seeking 2 more days to file the same. The said request was allowed by this Tribunal furthermore, directing the Respondents to file Statement of Defence on their behalf within 1 week thereafter. Also, this Tribunal had received an email dated 05.07.2021, from Mr. Naushad Khan requesting for impleadment of FISHCOPFED and a cheque bearing no. 3272923 drawn on Canara Bank dated 30.06.2021, of Rs. 25,000/- was sent to the office of this Tribunal by National Federation of Fishers Cooperatives Ltd. However, since no appropriate application for impleadment was filed on behalf of FISHCOPFED as directed in the 1st procedural order dated 18.06.2021, the said request for impleadment was declined and since no such direction with respect to any payment was made, Mr. Naushad Khan was directed to collect the aforesaid cheque from the office of this Tribunal. Mr. Ram Kumar, Ld. Counsel representing FISHCOPFED along with Mr. Manish Mohan, Ld. Counsel for UOI was again seeking interim relief in their favor. It was once again put to them by this Tribunal that only after an application for impleadment is filed and allowed only then this Tribunal would consider any claim/ interim relief with respect to their submissions.

7. That on the 3rd procedural hearing the Claimant had again failed to file his Statement of Claim Mr. Mohanty, Ld. Counsel for the Claimant assured this Tribunal that the same will be filed by the next day accordingly, the Tribunal granted last and final opportunity to the Claimant to file his Statement of Claim. Ms. Raavi Birbal, Ld. Counsel for the Respondents filed her vakalatnama and the same was taken on record. Further, Mr. Naushad Khan, Ld. Counsel for FISHCOPFED also failed to file impleadment application however, he had filed an Authority Letter dated 12.07.2021, signed by Mr. Rishikesh Kashyab, Managing Director, FISHCOPED without a Vakalatnama.
8. On 19.07.2021, the Statement of Claim was taken on record by this Tribunal. Ms. Raavi Birbal, Ld. Counsel for Respondents sought 10 days' time to file their Statement of Defence. Further application for impleadment was also filed by Mr. Naushad Khan, Ld. Counsel for FISHCOPFED the same was taken on record and the non-applicants were directed to file their respective replies of the impleadment application filed on behalf of FISHCOPFED.
9. On the 5th procedural hearing, the parties to this arbitration were given the liberty to propose/amend the issues framed by Ld. CRCS, vide order dated 12.03.2021 by the next date of hearing. Mr. Naushad Khan, Ld. Counsel for FISHCOPFED had filed another application under section 17 of the Act seeking interim direction for restraining Sh. T.P. Dora to act as President of FISHCOPFED, who had become functus officio since 06.07.2020 i.e. the date of expiry of Term of Committee of Management of FISHFED ODISHA represented by Sh. T.P. Dora in FISHCOPFED. Ld. Counsel for Claimant sought liberty to file



rejoinder to the Statement of Defence filed on behalf of the Respondents.

10. Reference was made to the order dated 18.06.2021 para 8 wherein, the learned counsel for the parties had submitted that they would be leading oral evidence for the respective parties. Accordingly, the parties were directed to file their respective list of witnesses as well as an affidavit for admission and denial of documents along with their evidence affidavits. It was again observed that vide order dated 11.06.2021, Ld. CRCS had directed that the proceeding sheet and documents filed before the former Tribunal in the present case be provided to this Tribunal. However, the same had not yet been provided to this Tribunal. The parties were directed to take necessary steps with respect to the above, in order to, avoid any unnecessary delay in the adjudication of the present proceedings. Whereby, the parties expressed to this Tribunal that since the Ld. Predecessor Tribunal had recused itself at the very inception of the arbitrator no relevant document(s) had been filed by the parties resulting which no relevant record is being left by this Tribunal.

11. On 7th procedural hearing dated 26.08.2021, this Tribunal was informed by the Respondents that their counsel had been changed and that Ms. Zehra Khan will now be representing Respondent No.1 and Mr. Harshawardhan Kotla will be appearing on behalf of Respondent No.2, both had filed their respective vakalatnama and the same were taken on record. Further, both the counsels for the Respondents had filed their written submissions to the pending applications filed by Mr. Naushad Khan, Ld. Counsel for FISHCOPFED the same were also

taken on record. Due to the non-availability of Mr. Naushad Khan, in the interest of justice, this Tribunal had granted last and final opportunity to Mr. Naushad Khan to argue his impleadment application. Mr. Mohanty, Ld. Counsel for Claimant submitted that he does not wish to file rejoinder to the Statement of Defence filed by the Respondents. Accordingly, the pleadings were concluded.

12. Ms. Zehra Khan, Ld Counsel for Respondent No.1, sought 1 weeks' time to receive proper instructions from her client regarding leading oral evidence. Further Mr. Kotla, Ld. Counsel for Respondent No.2 also sought time for receiving appropriate instructions from his client. Although, the parties had been granted ample opportunities however, since both the counsels were freshly engaged by the Respondents therefore, this Tribunal allowed their request and granted one (1) weeks' time to seek all necessary instructions and file any/all requisite documents for evidence in order to proceed with the present matter without causing any further delay.

13. Application for Impleadment along with an Application under Section 17 of the Arbitration and Conciliation Act, had been pending and Mr. Naushad Khan, Ld. Counsel for the Applicant/ Impleader had been granted final opportunity to appear before the Tribunal vide order dated 26.08.2021, however, he or any other authorised representative of the Applicant had failed to appear before the Tribunal. Accordingly, vide order dated 03.09.2021, of this Tribunal the said pending applications were dismissed for non-prosecution. Further an application under Section 23(2) read with Section 19 of the Act and Section 151 of CPC, seeking permission to place on record additional documents was filed

on behalf of Respondent No.1 and a similar application was filed on behalf of Respondent No.2. Since no object was taken by the counsel for the Claimant and that the counsels for the Respondents submitted that said additional documents were not filed along with the Statement of Defence and being relevant for the present proceedings hence, the same were allowed and taken on record.

14. At this stage, the Claimant was granted opportunity to lead oral evidence however, Ld. Counsel for Claimant submitted that the documentary evidence is sufficient to prove his claim therefore, he does not wish to lead oral evidence and that will rely upon the documents filed along with the Statement of Claim. On the other hand, the Respondents filed their respective Evidence Affidavit, the same were taken on record.

15. *Vide* email dated 24.09.2021, Mr. Manish Mohan, Ld. Counsel for UOI sent an Application for Impleadment of UOI in the present proceeding along with Application for placing on record certain additional facts and documents on behalf of the Applicant. The said application for impleadment was taken up on 05.10.2021, wherein, Ld. Counsel for Claimant submitted that he does not approve or disapprove the said applications. However, Ld. Counsel for Respondent No.1 strongly objected to the said impleadment application submitting that the same has been filed at a belated stage and the said application is based on subsequent events. Ld. Counsel for Respondent No.2, agreed with the objection raised by Ms. Zehra Khan, Ld. Counsel for Respondent No.1. Accordingly, the parties were granted 3 days' time to file their respective written response to the same.

16. On 07.10.2021, the Tribunal had received the reply filed by Ms. Khan, Ld. Counsel for Respondent No.1, following which on 08.10.2021, replies were filed by Mr. Kotla, Ld. Counsel for Respondent No.2 and Mr. Mohanty, Ld. Counsel for the Claimant respectively. The same were taken on record on 09.10.2021. Arguments were heard at length by this Tribunal on the said pending application filed by Mr. Manish Mohan, Ld. Counsel for UOI. Accordingly, the same was dismissed by this Tribunal vide separate speaking order dated 09.10.2021.

17. Thereafter, the Tribunal proceeded with the cross-examination of RW-1 i.e. Mr. B.K. Mishra, by Mr. Mohanty, Ld. Counsel for Claimant. The same was concluded on 09.10.2021. Accordingly, on 30.10.2021, the recording of evidence of RW-2 i.e. Mr. T.P Dora was also completed by the Ld. Counsel for Claimant. Further, hearing was fixed for final arguments and filing of written submission by all parties.

18. On 08.11.2021, after a lengthy hearing of 5 sessions final arguments by all parties were heard and concluded. This Tribunal granted last and final opportunity to the parties to file their respective written submissions on 15.11.2021. This Tribunal received the written submissions by all parties on the said date and the same were taken on record.

19. JURISDICTION

The instant dispute is not arbitrable under the provisions of the Multi-State Cooperative Societies Act, 2002



19.1. ARGUMENTS OF RESPONDENT NO. 1

The Respondent No. 1 has raised the preliminary issue of jurisdiction of this Tribunal for the adjudication of the instant dispute.

19.2. The counsel for Respondent no. 1 relying upon section 84 of the Multi-State Cooperative Societies Act, 2002 (hereinafter referred to as ‘MSCS Act’) submits that Chapter IX of the MSCS Act provides for “Settlement of Disputes”. Section 84 provides for reference of certain disputes to arbitration by the Ld. Central Registrar. Counsel for Respondent No. 1 submits that Section 84 places two restrictions on exercise of power by the Ld. Central Registrar to refer a dispute to arbitration under Section 84 – *first*, with respect to nature of dispute viz., “any dispute” “touching the constitution, management or business of a multi-State co-operative society” and *second*, with respect to the party(s) to the dispute, which is as follows:

84(1)(a)	<i>among</i>	members, past members and persons claiming through members, past members and deceased members	
84(1)(b)	<i>between</i>	a member, past members and persons claiming through a member, past member or deceased member, and	the multi-State co-operative society, its board or any officer, agent or employee of the multi-State co-operative society or liquidator, past or present



84(1)(c)	<i>between</i>	the multi-State co-operative society or its board	any past board, any officer, agent or employee, or any past officer, past agent or past employee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the multi-State co-operative society
84(1)(d)	<i>between</i>	the multi-State co-operative society	any other multi-State co-operative society
		a multi-State co-operative society	liquidator of another multi-State co-operative society
		the liquidator of one multi-State co-operative society	the liquidator of another multi-State cooperative society

19.3. Section 2(4) of the Arbitration and Conciliation Act, 1996 (“**A&C Act**”) further creates a deeming fiction to the extent that Section 84 operates as the arbitration agreement among the party(s) specified in Section 84(1)(a) to (d). Therefore, unless parties to a dispute falls under one of the classes of person(s) as specified under Section 84(1)(a) to (d), the Ld. Central Registrar cannot refer such parties to arbitration under Section 84 of the MSCS Act read with Rule 30(2) of the Multi State Co-operative Societies Rules, 2002.

- 19.4. Further, despite the Claimant given repeated opportunities failed to file any memo of parties in the instant matter along with his Statement of Claim as is evident from the Procedural orders. As per the Respondent No. 1 the dispute is inter se is only between the Claimant, Respondent No.1 and Respondent No. 2, in their individual capacities, who have participated in the instant arbitral proceedings.
- 19.5. It is the case of the Respondent No. 1 that the Claimant (a former employee of FISHCOPFED), Respondent No. 1 (the current Managing Director (In-charge)) and Respondent No. 2 (President of the Board of Directors of FISHCOPFED) do not fall under the class of person(s), as set out in Section 84(1)(a) to (d), to seek reference of a dispute to arbitration.
- 19.6. It was only during the course of arguments the Claimant made a reference that the parties before this Hon'ble Tribunal were 'members' and therefore were covered under Section 84(1)(a) of the MSCS Act. It is also submitted that as per Section 3(n) of the MSCS Act defines "member" to mean "*a person joining in the application for the registration of a multi-State co-operative society and includes a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the bye-laws*". Section 25(2) clearly stipulates no individual person shall be eligible for admission as a member of a national co- operative society like FISHCOPFED. "Member" as understood in Section 84 has the same meaning as defined under Section 3(n) read with Section 25(2).

19.7. Thus it was reiterated that none of the parties before this Hon'ble Tribunal fall under the class of persons set out in Section 84(1)(a) to (d) and therefore, the instant dispute should not have been referred to arbitration by the Ld. Central Registrar under Section 84 of the MSCS Act.

19.8. ARGUMENTS OF RESPONDENT NO. 2

The counsel for the Respondent No. 2 also submits that the issues as stipulated in the referral order, or those pressed by the Claimant in the Statement of Claim are non-arbitrable. The Respondent No. 2 on similar lines pressed his arguments in tandem with the Respondent No. 1.

19.9. He further submits that the disputes in the present proceedings are between Shri A.P. Ansari, a former employee/officer of FISHCOPFED on the one hand and Shri B.K. Mishra and Shri T. Prasad Rao Dora in their individual capacity on the other. Therefore, it is submitted that it does not fulfill the requirement under Section 84(1) of the MSCS Act.

19.10. He submits that the disputes in the present proceedings are non-arbitral under Section 84(1) of the Act. Apart from the fact that Clause 45 of the Bye-Laws does not provide for arbitration between an ex-employee on the one side, and MD / Board member / Office Bearer of FISHCOPFED on the other, it is submitted that even the Bye-Laws cannot expand the scope of the Section 84 of the MSCS Act.

19.11. ARGUMENTS OF CLAIMANT

In response to the issue of jurisdiction, the Counsel for Claimant relies upon the judgment dated 21.05.2021 passed by the Hon'ble High Court of Delhi in OMP (I) 4/2021 titled '*National Federation of Fishermen Co-Operative Ltd. v. Union of India & Ors.*' and has relied upon the following paras:

' ...

21. The principal question to be addressed is whether the Registrar could have passed the interim order while exercising powers under Section 84 of the MSCS Act.

22. Section 84 of the MSCS Act is set out below:

"84. Reference of disputes

(1) Notwithstanding anything contained in any other law for the time being in force, if any dispute [other than a dispute regarding disciplinary action taken by a multistate cooperative society against its paid employee or an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947)] touching the constitution, management or business of a multi-state cooperative society arises-

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past members and persons claiming through a member, past member or deceased member and the multi-state cooperative society, its board or any officer, agent or employee of the

multistate cooperative society or liquidator, past or present,

or

(c) between the multi-state cooperative society or its board and any past board, any officer, agent or employee, or any past officer, past agent or past employee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the multi-state cooperative society, or

(d) between the multi-state cooperative society and any other multistate cooperative society, between a multistate cooperative society and liquidator of another multi-state cooperative society or between the liquidator of one multi-state cooperative society and the liquidator of another multi-state cooperative society, such dispute shall be referred to arbitration.

(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or business of a multi-state cooperative society, namely:-

(a) a claim by the multi-state cooperative society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor where the multistate cooperative society has recovered from

the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not:

- (c) *any dispute arising in connection with the election of any officer of a multi-state cooperative society.*
- (3) *If any question arises whether a dispute referred to arbitration under this section is or is not a dispute touching the constitution, management or business of a multi-state cooperative society, the decision thereon of the arbitrator shall be final and shall not be called in question in any court.*
- (4) *Where a dispute has been referred to arbitration under sub-section (1), the same shall be settled or decided by the arbitrator to be appointed by the Central Registrar.*
- (5) *Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to all arbitration under this Act as if the proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996.*

23. *A plain reading of the aforesaid Section indicates that the Registrar has the power to refer certain disputes to arbitration. Subsection (5) of Section 84 of the MSCS Act also expressly provides the provisions of A&C Act shall apply to arbitration under the MSCS Act as if the proceedings for*

arbitration were referred for settlement/decision under the A&C Act.

24. Under the A&C Act, the powers to grant interim orders or protection are either available with the Court under Section 9 of the A&C Act or with the Arbitrator under Section 17 of the A&C Act. However, it is clear that no powers are vested with the Registrar to pass any interim orders while exercising its powers under Section 84 of the MSCS Act to refer the disputes to Arbitration.

25. Mr. Mohanty contended on behalf of respondent no.3 that even though the MSCS Act does not expressly empower the Registrar to pass interim orders, since there is no provision to prohibit him from doing so, such powers must be inferred. This Court also finds no merit in this contention. The Registrar is an authority under the statute and the existence of his office, his powers and functions are circumscribed by the provisions of the statute. Obviously, he cannot exercise powers that have not been expressly conferred. He can exercise only such powers that are statutorily conferred on him. The proposition that in the absence of any statutory provisions conferring the power to do a particular act, the Registrar would be unfettered to do so, is fundamentally flawed.

26. Mr. Mohanty, also states that FISHCOPFED does not have a cause of action. Given the nature of disputes between

the parties, the said contention is also clearly without any merit.

*27. This Court has some reservations as to whether the prayers as sought for in the present petition fall within the scope of Section 9 of the A&C Act. It would perhaps been apposite for the petitioner to have assailed the order of the Registrar by filing a petition under Article 226 of the Constitution of India. Ms. Birbal, learned counsel appearing for the petitioner, has contended that the petition would be maintainable in view of the decision of the Division Bench of this Court in *Mukesh Kumar v. The Administrator (NZRE)*: 2015 SCC OnLine Del 10460.*

28. Considering the restricted functioning of the Court and that none of the counsel appearing for the respondents have pressed the challenge to the maintainability of the present petition on the ground that it falls outside the scope of Section 9 of the A&C Act, this Court does not consider it apposite to examine this question.

29. In view of the above, the direction issued by the Registrar in paragraph no.11 of the impugned order as quoted hereinbefore, are set aside.

30. Having stated the above, it is also necessary to clarify that nothing stated in this order shall preclude the parties from approaching the Arbitrator to seek such interim measures or protection as they may be advised. Needless to state that if any such application is filed, the Arbitrator shall



consider the same on its own merits uninfluenced by any observations made by this Court or by the Registrar in the impugned order dated 12.03.2021.

...'

19.12. FINDINGS BY THE TRIBUNAL

After considering the submissions as made by the respective parties, and also the order dated 21.05.2021 passed by the Hon'ble High Court of Delhi which has been relied upon by the Claimant, it is thus clear that this Tribunal has the jurisdiction to adjudicate the present claim of the Claimant. However, it is apposite to observe that the Claimant despite given various opportunities has failed to file the memo of parties and further has based his arguments on limited pleading.

19.13. The Claimant through his Statement of Claimant has submitted as under:

1. *The following are the claims submitted by the Complainant :*
 - a) *The Extension of Service of Shri Bimal Kumar Mishra, Managing Director after 30.06.2020, the date of superannuation of Shri Bimal Kumar Mishra, is illegal and non-est in law, being devoid of any Statutory Backing.*
 - b) *The continuation of Shri T. Prasada Rao Dora as President after 06.07.2020 is void, as it falls foul of the Statutory Rules governing the Federation.*
2. *The necessary submissions in this regard have already been made, with supporting documents that have been delivered to the Learned Sole Arbitrator, with copies to the parties.*



3. Further oral Arguments shall be advanced before the Learned Sole Arbitrator.

19.14. It is the Claimant who has raised the issues by approaching before the Ld. Central Registrar however on the perusal of the pleading, it is unclear as to the reliefs as sought for by the Claimant since there is no such pleading and in fact the burden to establish the Claimant's case has been left upon this Tribunal. Even though strict rules of pleadings as comprised in the Civil Procedure Code would not apply with the same rigor as arbitration proceedings are not bound by the Code of Civil Procedure, 1908 in view of the Section 19(1) of the Arbitration & Conciliation Act, 1996. However, that does not give liberty to the Claimant to not file any pleading at all and in addition to the absence of the requisite pleading, the Claimant has also not sought for any relief. In fact the Claimant was also given repeated opportunities to file a Statement of Claim till 13.07.2021 vide 3rd Procedural Order dated 12.07.2021 on three different occasions however the Claimant did not file any appropriate statement of claim.

19.15. The Claimant in fact chose not to file any rejoinder. Even after completion of the pleading the Claimant never led evidence nor filed his evidence affidavit to substantiate his case with respect to the documents as filed on record and during the course of hearings has simply stated to rely upon the documents which runs into 657 pages.



19.16. On the other hand the Respondents have co-jointly filed their Reply/ Statement of Defence and further have filed their respective evidence affidavits by exhibiting documents and led evidence to counter the case of the Claimant.

19.17. Thus in the interest of justice the issues as has been referred by the Ld. CRCS vide its order dated 12.03.2021, this Tribunal has adjudicated the said issues in the following manner.

20. ISSUE NO.1:

Whether the appointment of Sh. Bimal Kumar Mishra as Managing Director after superannuation vide a decision arrived at in a Board meeting dated 30.06.2020 is in violation of the Recruitment Rules as well as the bye-laws of the Federation;

20.1. ARGUMENTS OF CLAIMANT

The Counsel for the Claimant, Mr. Mohanty relying upon the Minutes of Meeting dated 30.06.2020 (Pg. 31 of BK Mishra Evidence Affidavit) and Minutes of Meeting dated 30.09.2020 (Pg. 66 of SoD) submits that the extension of Mr. B.K. Mishra as Managing Director beyond superannuation is not factually correct.

20.2. The Counsel for Claimant, Mr. Mohanty also submits that the minutes of the meetings have been signed by both the Respondents herein only. The Counsel submits that as per law only the MD In Charge and the President have to sign. However, based on the situation as it is existing in the FISHCOPFED whether any approval has been there by the other Board members. As there are other Board Members who have filed

cases against the Respondents. Therefore it would be necessary for the Respondent No. 1 & 2 to prove that by way of affidavit of the Board members who are present and having the voting capacity, it has to come from the other members that the issue of Mr. B. K. Mishra's extension was actually taken up and the same has happened exactly as described in the Minutes of Meeting. The veracity of the minutes of the meeting has been challenged and further submitted that the Tribunal should lift the veil as to whether there is any connivance of the Respondent No. 1 & 2.

20.3. The Counsel for Claimant submits that whether there can be an appointment with retrospective effect and there is no rule either in the recruitment rule, Act or Bye Laws which gives anybody in power to make such appointment. Secondly, relying upon the Karnataka High Court Judgment at Pg. 40 of Statement of Claim wherein the issue was addressed as under and further prayed this Tribunal to consider the same on this basis:

'The question for consideration in this writ petition is whether an Officer, holding a post on in-charge basis, can exercise the substantive powers of the post?'

20.4. **ARGUMENTS OF RESPONDENTS**

The Counsel for Respondent No. 1 submits that the power to appoint a Managing Director is with the board of directors of a multi-State co-operative society. The counsels submit such after relying upon sections 49, 51 of the MSCS Act. It is submitted that as per Section 49(m) of the MSCS Act it gives the Board extensive powers to carry out all functions in the interest of the federation.

- 20.5. The Bye-Laws of FISHCOPFED recognize such powers of the board of FISHCOPFED. Clause 3(q) of the Bye-Laws states that 'Managing Director' "*means a person appointed by the Board of Directors as the Chief Executive Officer of FISHCOPFED in terms of these bye-laws.*" Further, Clause 29 of the Bye-Laws outlines the functions and powers of the Board of Directors while clause 36 does that of Managing Director.
- 20.6. The counsel for Respondent No. 1 also submits that Rule 14 of the Service & Recruitment Rules, framed by the board of FISHCOPFED pursuant to Section 49(e) of the MSCS Act and Bye-Law 29(m) ("Service & Recruitment Rules") which provides for superannuation.
- 20.7. Thus on this basis the Board has broad powers to appoint and thereafter, if so required, also extend the services of the Managing Director, even after the Managing Director attains the age of superannuation under the MSCS Act, Bye-Laws and the Service & Recruitment Rules. In fact there is nothing in the MSCS Act or in the Bye-Laws that prohibits the grant of extension of service to the Managing Director beyond the age of superannuation. Thus the counsel for Respondent No. 1 concludes the issue no. 1 by submitting that it is clear from these provisions that neither MSCS Act, the Bye-Laws nor the Service & Recruitment Rules of FISHCOPFED contemplate any such limitation on the tenure of the Managing Director and the Service & Recruitment Rules specifically empower the board to grant an extension to the Managing Director.



20.8. On the other hand the counsel for Respondent No. 2 submits that Board took a valid decision to continue the services of Respondent No.1 as the MD of FISHCOPFED after his superannuation. Since Respondent No.2 presided over the meetings in which the said decision was taken by virtue of being the President of the Federation, in addition to being a member of the Board, it is important to demonstrate the validity of the said decision. The counsel for Respondent No. 2 supports the case of Respondent No. 1 on this aspect as he submits that Respondent No.1's term as MD / Managing Director (in-charge) ["MD (i/C)"] was extended by the Board in exercise of its sizeable powers and functional autonomy granted to it by the MSCS Act, and in accordance with the provisions of the Bye-Laws and the Service & Recruitment Rules. The argument on behalf of Respondent No. 2 is the same when he submits that there is nothing in the MSCS Act that prohibits the grant of extension of service to the MD beyond the age of superannuation. In accordance with the MSCS Act, Bye-Laws and the Service & Recruitment Rules, the Board has broad powers to appoint and thereafter, if so required, also extend the services of the MD, even after the MD attains the age of superannuation. The counsel for Respondent No. 2 adds by submitting that it is a well-settled principle of administrative law that the power to frame or create, also includes the power to add, amend, vary, and rescind the same. Therefore, since the MSCS Act, Bye-Laws and Service & Recruitment Rules, give broad powers to the Board to frame necessary provisions to regulate the recruitment / appointment of the employees of the Federation, including the MD, it also possesses the requisite power to override the same, if the situation so demands.



20.9. In fact as per the Respondent No. 2 in the 171st Board meeting dated 30.06.2020, the Board members, apart from Respondent No.1, after due deliberation, unanimously voted / approved the extension of his tenure as MD for a period of 1 year w.e.f. 01.07.2020. No dissent note was filed by any Board member. Respondent No.1, specifically, did not participate in the discussions and deliberations that ensued in respect of the matter pertaining to his extension.

20.10. As stated by Respondent No.1 in his cross-examination, a dissent note was received by post 6-7 days after the 171st Board meeting held on 30.06.2020. However, none of the government nominees participated in the 171st Board meeting to voice their dissent. Subsequently, in the 172nd Board meeting was held on 30.09.2020 which was attended by 11 out of 14 members, including the Respondents herein, the government nominee Shri Mukesh Kumar, intimated the Board about the Government's views w.r.t. extension of service to Respondent No.1, the Board members, including the government nominee, but, excluding Respondent No.1, after due deliberation, unanimously voted / approved the extension of the tenure of Respondent No.1 as MD (i/C) of FISHCOPFED w.e.f. 01.07.2020 without any benefit like PF, gratuity and leave salary with full powers as prescribed in the MSCS Act and the Bye-Laws till the appointment of the new MD of FISHCOPFED. The Board, further directed the President to commence the process of recruitment of the new MD.

20.11. The 173rd Board meeting was conducted virtually on 11.12.2020. 12 Board members participated. Once again, Respondent No.1 did not participate in the discussions and deliberations during the meeting in the matter pertaining to his extension as MD. The minutes of the 172nd Board meeting were confirmed by a majority of the Board members, excluding only one of the government nominees, Shri Shankar L., who dissented to the extension of Respondent No.1's tenure as MD (i/C).

20.12. The extension of Respondent No.1 as MD / MD (i/C) was thus approved by the Board on 3 separate occasions. On all the 3 occasions the resolution for Respondent No.1's extension as MD / MD (i/c) was always adopted either unanimously or by a majority of the Board.

20.13. It is also submitted that In the 171st Board meeting held on 30.06.2020, the Board took a decision to continue the services of Respondent No.1 as the MD for a period of 1 year beyond 30.06.2020 given the unprecedented state of a national / local lockdowns from March 2020 until July 2020, and since the Federation was not in a position to take steps to appoint a new MD because the entire world was going through a once in a century pandemic, it was considered prudent by the Board for his continuation for correct administrative function. However, in the subsequent 172nd meeting held on 30.09.2020, after a detailed discussion, the Board resolved to award superannuation to Respondent No.1 and the Board further decided that he will be engaged as MD-In charge of the federation w.e.f. 1st July

2020 without any benefit like PF, Gratuity and Leave Salary with full powers as prescribed in the MSCS act, Bye-Laws and Staff Services Rules of the federation till the appointment of a new MD of FISHCOPFED. Further, in the 173rd Board meeting held on 11.12.2020, the said issue was resolved again as one of the Government nominee disagreed for the extension of Respondent No.1 but the majority of the Board members agreed to continue the services of Respondent No.1 till the completion of the process of AGM and election of FISHCOPFED.

20.14. The above position was also explained by Respondent No. 2 during his cross-examination when he stated that *“The Board had taken a decision for the appointment of new Managing Director, however, due to the onset of Covid-19, further necessary steps could not be undertaken”*, and specifically, that *“The appointment of Managing Director could have been possible in this one month’s time, however, due to onset of Covid-19, it could not happen.*

20.15. Thereafter, the Board has not been able to appoint a new MD in view of the fact that some of the disgruntled former Board members who did not get elected in the elections of the Federation conducted on 25.02.2021, have been acting in concert with the Claimant herein in an attempt to destabilize the functioning of the Federation by initiating a series of frivolous litigation. It is therefore submitted that the extension of service of Respondent No.1 as MD / MD (i/C) is not based on any *mala fide* or extraneous consideration but based on the prevailing situation as explained above. Apart from making certain

bald submissions, the Claimant has not shown any provision of the MSCS Act or the Bye-Laws which in any manner circumscribe or prevent the Board from extending Respondent No.1's services as the MD / MD (i/C).

20.16. It is further submitted that merely because there was a change in the nomenclature of the post from MD in the 171st meeting of the Board to MD (i/c) in the 172nd meeting, it would not render the appointment of Respondent No.1 as MD or MD(i/C) either irregular or illegal, as the resolution passed in the 171st meeting was not rejected, but, it was merely modified by the Board in exercise of its powers under the MSCS Act and the Bye-Laws.

20.17. While not borne out of pleadings, during his oral arguments at the time of final hearing, the Counsel for the Claimant in order to obfuscate issues, contended that since Section 51(1) of the MSCS Act prescribes that the Chief Executive shall be a full-time employee of the multi-State co-operative society, the Chief Executive of FISHCOPFED, who is known as the Managing Director under the Bye-Laws, should only be a full-time employee. As such, he argued that Respondent No.1 after attaining the age of superannuation, could not continue as the MD / MD (i/C).

20.18. It is submitted that the Counsel for the Claimant is misinterpreting the term "full-time employee" to mean a permanent employee. It is submitted that the meaning of "full-time employee" is that the employee, including the MD, will devote his entire time exclusively



for the benefit of the multi-State co-operative society. This is further buttressed by the fact that the MSCS Act does not stipulate any age of superannuation of the Chief Executive, nor does it restrict the number of terms to which a person may be appointed as the Chief Executive. It is submitted that superannuation of the MD in the Service & Recruitment Rules is provided for as a term and condition of his appointment by FISHCOPFED, and not as a statutory condition.

20.19. Therefore, it is submitted by the Respondent No. 2 that the Board has the complete power to alter the terms and conditions of the MD's appointment, which it did in the present case by extending Respondent No.1's term.

20.20. Moreover, without seeking any consequential relief, the Claimant has prayed that Respondent No.1's appointment as MD / MD (i/c) be held to be invalid. If the Claimant's submission is accepted, then the Federation will be left without a MD which is not countenanced by Section 84 of the MSCS Act as per which, this Hon'ble Tribunal is duty bound to ensure continuity of management.

20.21. The Respondent No. 1 submits that Extension was granted to Respondent No. 1 as Managing Director (i/c) of FISHCOPFED vide meetings of the Board of Directors of FISHCOPFED held on 30.06.2020, 30.09.2020 and 11.12.2020. It is submitted by the Respondent No. 1 that the Claimant has failed to plead any fact or lead any evidence on the said issue which would show that the board

meetings were incorrectly constituted or the necessary quorum was not available or that the majority of the members of the board of FISHCOPFED did not approve the extension of Respondent No. 1 as Managing Director (i/c) of FISHCOPFED vide meetings of the Board of Directors of FISHCOPFED held on 30.06.2020, 30.09.2020 and 11.12.2020. The counsel for Respondent No. 1 relies upon Clause 25 of the Bye Laws. She submits that in accordance with Clause 25(1)(ii) of the Bye-Laws, a Notice dated 15.06.2020 (Annexure J of R1 Evidence Affidavit) was issued to the Board of FISHCOPFED, informing it about the 171st Board meeting scheduled to be held on 30.06.2020 in the conference room of FISHCOPFED, New Delhi. It was specified in the said notice that one of the items on the agenda was the discussion on the “*Extension of Services of Shri B.K. Mishra, Managing Director, FISHCOPFED*”. It was also specified that those members who would be unable to attend the Board meeting physically due to lockdown /spread of COVID-19, may “... *send their approval through e-mail to prepare the proceedings in time.*” to FISHCOPFED.

20.22. Due to the prevailing peak of COVID-19 around that time, however, most of the Board members, expressed their inability to attend the meeting physically at New Delhi. Accordingly, after discussions with, and at the request of most of the Board members on 29.06.2020, a virtual meeting was held on 30.06.2020 which was chaired by Respondent No.2, for which, a link was circulated to all the Board members. The meeting was attended by 8 Board members.



20.23. The Board members after due deliberations by majority approved the extension of the tenure of the Respondent No. 1 as Managing Director for a period of one year w.e.f. 01.07.2020 in the following terms:

“The Board members approved to extend the services of Shri B.K. Mishra, Managing Director w.e.f. 01.07.2020 for a period of one year without CPF and GIS benefits to complete the work like implementation of PMSBY, audit of the federation and any other works etc. which are pending due spread of Covid-19. However, in the meeting Board member Shri Rishikesh Kashyap and Shri Mukesh Kumar, Nominee from NCDC suggested for the extension of service period of the MD and which was supported by all the Board of members but another member Shri Hukum Singh Bhati disagreed with the extension initially citing age factor and other grounds but later agreed after clarifications by the President and other Board members. The members namely Shri S. Madegowda from Karnataka and Shri V. K. Shukla from Chhattisgarh were not present in the meeting but they have sent their approval of the aforesaid proposal through e-mail. No other comment was received by any other member in the meeting. As such 9 members out of total strength of 12 Board members besides the MD have confirmed the extension of service of Shri B. K. Mishra. Therefore, the Board in full majority approved to extend the services of Shri B. K. Mishra as Managing Director as per Clause no. 14(ii) of the existing Staff Service Rules of FISHCOPFED.”

20.24. In the 172nd Board meeting held on 30.09.2020, the resolution confirming the minutes of the 171st Board meeting dated 30.06.2020, was passed by the Board members who were eligible to vote in the following terms:

“1. The proceedings of 171st Board meeting held on 30th June, 2020 through digital platform was approved by the board of directors except the extension of Shri B.K. Mishra as the Managing Director of FISHCOPFED beyond his date of superannuation that is 30th June, 2020. Shri Mukesh, Director, Department of Fisheries, Government of India and the Government Nominee informed the views of the Ministry pertaining to the above issue. After detailed discussions, the board resolved to award superannuation to Shri B.K. Mishra on 30th June 2020 and he will further be engaged as Managing Director (in-charge) of the federation w.e.f. 1st July 2020 without any benefit like PF, gratuity and leave salary with full powers as prescribed in the MSCS Act, bye-laws and Staff Services Rules of the federation till the appointment of the new managing director of FISHCOPFED.

President, FISHCOPFED informed to the board that an advertisement for the post of Director has been published in the national newspaper and also on the website of the federation. The President is authorized to form a

screening committee and nominate a committee for selection of the candidate as per recruitment rules of FISHCOPFED for appointment of the above post at the earliest or the interest of the federation within one month. Further, it was decided to follow the rules as prescribed for the appointment of the vacant post of the director in the federation.”

20.25. The 172nd Board meeting was attended by 11 out of 14 Board members. Though the government nominee Shri Mukesh intimated the Board about the Government's reservation in granting extension of service to Respondent No.1, the Board, however, by majority resolved to engage Respondent No. 1 as Managing Director (in-charge) of FISHCOPFED w.e.f. 01.07.2020, until the appointment of the new managing director. The Board, further directed the President to commence the process of recruitment of the new managing director.

20.26. It is submitted that there is no discrepancy as has been sought to be argued by the Claimant between the two resolutions passed in the 171st and the 172nd Board meetings, respectively, as the Board in its 171st meeting had approved the extension of Respondent No.1 as Managing Director for a period of one (1) year without any employment related benefits, whereas, the Board in its subsequent 172nd meeting resolved to extend Respondent No.1's tenure as Managing Director (in-charge) from 30.06.2020 until the appointment of the new MD without any employment related benefits. It is clear from the language that resolution passed in the 171st meeting was

merely modified by the Board during its 172nd meeting to the extent stated therein.

20.27. Thereafter, the 173rd Board meeting was conducted virtually on 11.12.2020. Board members participated. The minutes of the 172nd Board meeting were confirmed by a majority of the Board members who were eligible to vote in the following terms

“The Board Members approved the proceedings of the 172nd meeting of the Board of Directors held on 30th September 2020. However, Shri Shankar L one of the Government Nominee disagreed for the extension of the MD, Shri B.K. Mishra but the majority of the Board members agreed to continue the services of Shri B.K. Mishra till the completion of the process of AGM and elections of FISHCOPFED.”

20.28. It is submitted that the extension of Respondent No. 1 as Managing Director/Managing Director (in-charge) was approved by the majority of the Board of directors on three (3) separate occasions and accordingly, this Issue should be decided against the Claimant and in favour of Respondent No. 1.



20.29. FINDINGS BY THE TRIBUNAL

Based on the above submissions by the respective parties as also the provisions of the Multi State Co-operative Societies Act and the Bye Laws of FISHCOPFED even though there was one disagreement initially by one member of the Board namely Sh. Hukum Singh Bhati citing age factor and other grounds during the 171st Meeting of Board held on 30.06.2020 but was later in agreement after the clarifications by the President and the Board Members. The Board was empowered to extend the services of the Respondent No. 1 Mr. B. K. Mishra which was done with full majority by the Board. In fact this majority was besides the participation of the Respondent No. 1 himself which is evident from the minutes of meeting dated 30.06.2020 which has been recorded as under:

‘As such 9 members out of total strength of 12 Board members besides the MD have confirmed the extension of service of Shri B. K. Mishra. Therefore, the Board in full majority approved to extend the services of Sh. B. K. Mishra as Managing Director as per Clause 14(ii) of the existing Staff Service Rules of FISHCOPFED.’

20.30. Clause 14(ii) of FISHCOPFED Service & Recruitment Rules is reproduced as under:

‘The services of Managing Director may be extended, if required as approved by the Board.’

20.31. Even though contention was raised by the Claimant that there was opposition with respect to the extension of service of the Respondent No. 1 however the Claimant has failed to substantiate the same except

a letter dated 20.07.2020 (Page 11 of the Statement of Claim) which admittedly is after the date of meeting i.e. 30.06.2020. Even otherwise subsequently 172nd meeting was held on 30.09.2020 where the Claimant was himself present in the meeting but failed to raise any such opposition during such meeting when the proceedings of 171st Board Meeting was taken into consideration for approval.

20.32. The Tribunal also takes note that since the inception of the present arbitral proceedings the Tribunal had directed the Counsel appearing on behalf of Union of India to file an appropriate Impleadment Application in order to seek any interim relief or participate in the present proceedings. However, despite several opportunities being granted to the Ld. Counsel, no such application was filed. Further only at a belated stage an application for impleadment was filed by the Ld. Counsel on 24.09.2021. Surprisingly, the counsel for Union of India made no such submission or raised any such concern as alleged in the respective minutes of meetings mentioned above in their application. In fact, it was the submission on behalf of Union of India that they only wish to participate in the proceeding as an observer neutral party. Finding no merits in their application for impleadment, the same was dismissed vide this Tribunal's order dated 09.10.2021. Thus it is evident from the orders of this Tribunal that the position of the Government was not clarified vis-a-vis the provisions of the MSCS Act, 2002.

20.33. Therefore, this Tribunal is of the view that the Issue No. 1 is decided in favor of the Respondent No. 1. Moreover, this Tribunal is aware of

the unpredicted, challenging Covid – 19 pandemics being faced by the entire nation and keeping in view that the administrative machinery should not be derailed at any cost and for the smooth functioning of FISCHCOPFED, as there was no other alternative but to extend the services of Respondent No. 1 the decision was taken by the Board under the given circumstances was administratively correct.

21. ISSUE NO. 2:

Whether presence of Sh. Bimal Kumar Mishra in the Board meeting having an agenda for reappointment or for appointment as in-charge MD affect the legality of such proceedings

21.1. ARGUMENTS OF CLAIMANT

Counsel for Claimant referred to the letter dated 24.02.2020 (Pg. 190 of SOC) specific reference to para 28 (Pg. 199 of SoC) wherein he has relied upon the judgment '*Badri Nath v. Government of Tamil Nadu*' 2000 (8) SCC 395 which discusses on "*Bias and Reasonable likelihood of bias.*".

21.2. Counsel for Claimant submits that the Respondent No. 1 has been the MD approximately 13 plus years. The Board Members who have worked with him for the last 4 years did not shy away from the Respondent No. 1 by refusing the Respondent No. 1 to attend the meeting. The Counsel submits that the proper manner would have been that the Respondent No. 1 should have refrained himself from attending the meeting and after the decision was taken to retain the Respondent No. 1 as MD the Respondent No. 1 should have joined accordingly.

21.3. The Counsel for Claimant submits that along with the notice dated 15.06.2020 of meeting to be held on 30.06.2020, the Respondent No. 1 had sent an Annexure requesting confirmation of appointment of one-year extension of Mr. Mishra. Counsel for Claimant submits that such request in itself was bad.

21.4. Another factor that has come in the cross examination of the Respondent No. 2, in February it was decided for the advertisement of the post. It was the duty of the Respondent No. 1 to inform the officers to take appropriate actions for notifying, as required. It is alleged that the Respondent No. 1 did not do and on 24.03.2020, the National Lockdown commenced. On 22.03.2020, the Claimant was transferred from Delhi to Rajasthan that is during the period of pandemic. The Counsel for Claimant submits that whether person take the benefit of his own wrong. It was Respondent No. 1's duty to see in advance that his post is duly filled up as he has the knowledge of his date of superannuation. It was therefore contended that if Respondent No. 1 had made all the efforts to fill up the post and still the Board would have wanted for his extension then the issue of extension would not have arisen. The Respondent No. 1 has put the Board in such a position that there was no other option but to grant extension.

21.5. Another argument so raised by the Claimant is that the Government Nominees had specifically given a letter that they do not agree with the proposal. It is submitted that it has also come in the cross examination of the Respondent No. 1 that Mr. Hukum Singh Bhati who was present in the meeting did oppose to the extension of the Respondent No. 1 but

it was only later on agreed for extension. However, there is no such agreement on record except the minutes of meeting which has been signed by the Respondents herein.

21.6. It is submitted by the Claimant that the meeting was held in Delhi and only at the last moment the meeting was changed to virtual mode. Upon becoming of virtual mode of meeting, it becomes an emergency meeting since the mode was changed. It is in the rules it is mentioned that in such emergency meeting in case of any one dissent, that dissent has to be carried forward to the next meeting. Reference is made to Bye Law 25(2).

21.7. The Counsel for the Claimant draws a connection stating that the said letter from the Government opposing the extension is issued on 20.07.2020 which is addressed to Respondent No. 2. (Pg. 11 of the SoC) which opposes the extension granted to the Respondent No. 1 and further requested to give the charge to the next senior most officer which is the Claimant herein. However, the Claimant is transferred on 22.07.2020 which shows the biasness against the Claimant. Thus the Respondent No. 1 cannot take the benefit of his own wrong. On 15.05.2020, the flights started operation. From 15.05.2020 to 30.06.2020 there was a period of 45 days during which period, the Respondent No. 1 could have initiated necessary steps for filling up the post but he did not take any steps to initiate the process of filing up the post. Thus the Claimant submitted that it was a well- planned move for continuation of Respondent No. 1 in his post.



21.8. ARGUMENTS OF RESPONDENTS

The counsels for Respondent Nos. 1 & 2 submitted that MD is statutorily required to convene, attend and prepare records of the Board meetings. Reference was made to section 50 - 52 of the MSCS Act. They further rely upon Clause 22 & 37 of the Bye-Laws and submitted that on similar lines the Bye Laws convey the role of the MD in convening and attending the Board meetings. Thus it was submitted that The MD is thus, *inter alia*, required by the MSCS Act and the Bye-Laws to convene the meetings of the Board, participate in them, and also keep record of all the proceedings of the meetings of the Board.

21.9. It is submitted that apart from introducing the agenda in the aforementioned meetings which is statutorily required of him, Respondent No.1 did not vote or participate in the discussions or deliberations in connection with his extension as MD which was approved by the other members of the Board in those meetings.

21.10. Both the counsels for the Respondents No. 1 & 2 submit that the Claimant has failed to produce any rebuttal evidence or the Claimant has brought any facts or evidence in this regard to prove bias.


21.11. However, on the contrary the Claimant during the course of arguments has relied upon the letters dated 19.02.2021 purportedly written to the Ld. CRCS by Shri Ram Das Sandhe and Shri Jayantbhai Kewat and the letter dated 22.02.2021 written by Shri

Ram Das Sandhe, Shri Jayantbhai Kewat, Shri Rishikesh Kashyap and Shri P.N. Janardhan to demonstrate certain irregularities in the above meetings. It is alleged by the Respondent No. 2 that these letters were not exhibited nor have the authors of these letters stepped into the witness box. Moreover, these alleged letters also contain signatures of persons who were not even part of the aforementioned Board meetings. Shri Ram Das Sandhe, Shri Jayantbhai Kewat and Shri P.N. Janardhan were not part of the Board meeting held on 30.06.2020 and Shri Jayantbhai Kewat and Shri P.N. Janardhan were not part of the Board meetings held on 30.09.2020 and 11.12.2020. Moreover, the said letters were written to the Ld. CRCS much belatedly i.e. almost 8 months, 5 months, and 3 months after the Board meetings held on 30.06.2020, 30.09.2020 and 11.12.2020, respectively, and that too primarily seeking stay of the fresh election process of FISHCOPFED, which is not a subject matter of the present proceedings.

21.12. It is submitted that merely because Respondent No. 1 was present during the said meetings and executing his duties specified under the MSCS Act and Bye- Laws, he cannot be said to be a judge in his own cause in the instant case as he did not vote on the resolutions concerning him and mere suspicion of bias, in the absence of any proof, is not sufficient to set aside any proceedings.

21.13. FINDINGS BY THE TRIBUNAL

The present issue is with respect to the presence of Respondent No. 1 in the Board meetings having an agenda for reappointment or for appointment as in-charge MD affecting the legality of such



proceedings. It is noted by this Tribunal that there was no such agenda for reappointment or for appointment as in-charge MD in the 171st meeting dated 30.06.2020. The agenda for the 171st meeting dated 30.06.2020 was for the '*Extension of Sh. B. K. Mishra, Managing Director FISHCOPFED*'. During such meeting the Board approved and resolved to extend the services of Respondent No. 1, Managing Director w.e.f. 01.07.2020. It is categorically recorded in the same Minutes of Meeting that besides MD i.e. the Respondent No. 1, 9 members out of total strength of 12 Board members have confirmed the extension of services of Sh. B. K. Mishra as Managing Director.

21.14. Subsequently, in the following meetings, the agenda was with respect to the approval of the previous minutes of meetings which was duly done by the majority of Board members and despite the presence of the Respondent No. 1, there was always majority of the Board for the resolution of the Board meeting. This Tribunal cannot ignore the fact that since the Respondent No. 1 is the Managing Director, it is his statutory duty to convene, attend and prepare records of the Board meetings. Thus his presence is statutorily required for the meeting. It was for the Claimant to show that the presence of the Respondent No. 1 would affect the legality of the meeting and further this Tribunal upholds the submission as made by the counsel for the Respondent No. 1 that mere presence of the Respondent No. 1 during the said meetings and executing his duties specified under the MSCS Act and Bye- Laws, he cannot be said to be a judge in his own cause in the instant case on the resolutions concerning him and mere suspicion of bias, in the absence of any rebuttal evidence it would not be apposite to hold a meeting to be illegal especially when the dissent and views of

the Government was taken into consideration as recorded in the minutes of the meeting the 172nd & 173rd meeting. In fact, it was in the 172nd meeting the Respondent No. 1 was engaged as the Managing Director (in-charge) with the majority decision of the Board members as per Clause _____ of the Bye-Laws. Thus the Issue No. 2 is also decided in favor of the Respondent No. 1.

22. ISSUE NO. 3

Whether Sh. T. Prasad Rao Dora, incumbent President of FISHCOPFED became ineligible to hold the post of President on account of losing the chairmanship of the Society which he represented in FISHCOPFED as per provisions of the federation bye law No. 28(viii);

22.1. ARGUMENTS OF THE CLAIMANT

It is the case of the Claimant that it is admitted by Respondent No.2 himself, that Respondent No.2 did not inform the Board of Directors, FISHCOPFED that he was no longer the President of FISHFED, Odisha, further that an Administrator had also been appointed. Mr. Mohanty, Ld. Counsel for the Claimant submits that continuation of Respondent No.2 as President after 06.07.2020 is *de hors*, he further adds that the provision under Bye Law no. 28 (viii) is abundantly clear and the same has not been amended ever.

22.2. Ld. Counsel further submits that, Part IXB of the Constitution of India and Article 243ZJ were inserted by way of the 97th amendment to the Constitution wherein, the term of the board members was made 5 years.

However, the Hon'ble High Court of Gujrat vide its judgment dated 22.04.2013, quashed the aforesaid Constitutional amendment. Later on, the Hon'ble Supreme Court of India vide its judgment dated 20.06.2021 was pleased to extend the term of the board members to 5 years from 3 years. Ld. Counsel submits that the aforementioned judgment dated 20.06.2021 passed by the Hon'ble Supreme Court of India, is not applicable with retrospective effect inasmuch as on 06.07.2020, the law was against Respondent No.2, as the judgment dated 22.04.2013, passed by the Hon'ble High Court of Gujrat had not been stayed.

22.3. Lastly, Mr. Mohanty, Ld. Counsel for the Claimant submits that the concealment made on part of Respondent No.2 is nothing but fraud and therefore, Respondent No.2 cannot be allowed to take benefit of such concealment.

22.4. **ARGUMENTS OF RESPONDENT NO.2**

Mr. Kotla, Ld. Counsel for Respondent No.2, initiates his arguments by submitting that clause 28 of the Bye-Laws cannot be looked at in isolation. But, it will have to be looked at in the context of Part IXB of the Constitution of India and the provisions of the MSCS Act, along with the Bye-Laws. And, it is abundantly clear that Article 243ZJ of the Constitution intends the office bearers of a MSCS to complete a full term of 5 years and therefore, uses the word *shall* and not the phrase '*not exceeding five years*' as employed in Section 45(5) of the MSCS Act. He further submits that since, Article 243ZJ was inserted in the Constitution subsequent to the enactment of the MSCS Act, the phrase '*not exceeding five years*' should also be read as *shall*.

22.5. Furthermore, the proviso to Section 45(5) provides that the elected members shall continue to hold office till their successors are not elected. A logical meaning of the proviso would be that while the term of office of elected members cannot exceed 5 years, however, until the elected members on the Board of Directors of FISCHOPFED [“**Board**”] are replaced by their successors, they will continue to hold office. This ensures that there shall be continuity in the board of a society in line with Article 243ZJ as well as smooth transition until elections are conducted afresh and the successors of the board members are elected.

22.6. Ld. Counsel, further adds to his submission that such interpretation of the Bye-Laws of FISHCOPFED should be adopted that would give effect to the intention of the 97th Amendment/ Article 243ZJ of the Constitution, and not defeat the same. Such interpretation would also be in consonance with the law laid down by Hon’ble Supreme Court in its several decisions where the Bye-Laws were found not to be in conformity with the Constitution or the central legislation.

22.7. Ld. Counsel also relies on the following judgments:

“Rajkot Distt. Coop. Bank Ltd. V. State of Gujarat, (2015) 13 SCC 401, the Hon’ble Supreme Court held as follows:

“23. ... Thus, the bye-laws of a cooperative society, in order to achieve the constitutional object, must be brought on a par with the laws and statutory provisions of the Societies Act. They cannot override the provisions of the State or Central laws.”

Babaji Kondaji Garad v. Nasik Merchants Coop. Bank Ltd., (1984) 2 SCC 50, the Hon'ble Supreme Court observed that:

“15. ... Bye-law of a Cooperative society ... are neither statutory in character nor they have statutory flavour so as to be raised to the status of law. Now ... the bye-law if not in conformity with the statute in order to give effect to the statutory provision the rule or bye-law has to be ignored. The statutory provision has precedence and must be complied with.”

22.8. At this point, Mr. Kotla, Ld. Counsel for Respondent No.2 states that, it is in this background that the Bye-Laws of FISHCOPFED must be considered. Ld. Counsel further goes to submit that the elections are first conducted for terms of 5 years to the state/ regional/ district level member societies of FISHCOPFED. Then, these elections are followed by appointments to the General body of FISHCOPFED at the national level. Representatives in the General Body of FISHCOPFED are chosen from amongst those persons who were successfully elected in the state/ regional/ district level member societies. Ld. Counsel, emphasises on Clause 15 of the Bye-Laws of FISHCOPFED. He further draws attention of this Tribunal to Clause 21 (iii), (iv) and (vi) of the Bye-Laws of FISHCOPFED, the same is being reproduced herein under:

“21.

...

(iii) The election of the members of Board shall be held in the general meeting of the FISHCOPFED;

(iv) The term of office of the elected members of the board shall be such, not exceeding five years from the date of elections.

...

(vi) No person shall be eligible to be elected as a member of the board unless he a member of the general body of FISHCOPFED;

... ”

22.9. Ld. Counsel, at this draws attention of this Tribunal to Clause 22 of the Bye-Laws of FISHCOPFED:

“22. The Board of Directors of FISHCOPFED shall not exceed Twenty-One excluding functional directors and co-opted directors. It shall consist of:

(a) Two representatives to be elected by all the delegates of the general body of the member institutions from each of the following six zones. However only one representative can be elected from one State/Union Territory in a Zone.

1 North Zone: Haryana, Himachal Pradesh, Jammu & Kashmir, Punjab, Rajasthan, Chandigarh and Delhi

2 West Zone: Goa, Gujarat, Maharashtra, Daman & Diu And Nagar Haveli

3 Central Zone: Chhattisgarh, Madhya Pradesh. Uttar Pradesh and Uttarakhand

4 South Zone: Andhra Pradesh, Karnataka, Kerala, Tamil Nadu, Andaman & Nicobar, Lakshadweep and Puducherry

5 East Zone: Bihar, Jharkhand, Orissa and West Bengal

6 North-East Zone: Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Arunachal Pradesh

22.10. It is submitted by the Ld. Counsel for Respondent No.2 that, representation in the General Body is different from nomination for election to the Board of Directors in FISHCOPFED. The representation in the General Body is pursuant to Clause 15 of the Bye-Laws whereby 2 representatives are sent by each member society for every General Body meeting. On the contrary, as per Clause 22, at the time of the election to the Board, each member society has the right to nominate any individual for election to the Board but, if elected, the individual does not represent the said society on the Board, instead, he represents the zone under which the society falls.

22.11. After Odisha FISHFED was taken over by the Administrator on 06.07.2020, Respondent No.2 represented the Khorda-Nayagarh Central Fishery Cooperative Society Ltd., Bhubaneswar [**KN-CFCS**] which is also a member society of FISHCOPFED from the East Zone in the Annual General Meeting of FISHCOPFED held on 30.12.2020, but his name was also endorsed by Odisha FISHFED. Clause 15(b) of the Bye-Laws extracted above, in this regard, states *“Where, however, there is no board of the state federation, then one representative shall be the Administrator, by whatever name called, and the other shall be the Chairman/Chief Executive of the fishery cooperative society affiliated to the state fishermen/fisherwomen Cooperative federation.”*

22.12. Lastly, Ld. Counsel for Respondent No.2 submits that upon a holistic reading of the 97th Amendment / Article 243ZJ of the Constitution, MSCS Act and the Bye-Laws, the only conclusion that can be drawn is that Clause 28(viii) of the Bye-Laws does not apply to the present situation and Respondent No.2 continued to hold the position of President of FISCHOPFED even after the appointment of the Administrator in Odisha FISHFED with effect from 06.07.2020.

22.13. FINDING BY THE TRIBUNAL

After considering the arguments made by both the parties, this Tribunal is of the opinion that there arises no ambiguity in understanding the provisions laid down in either the MSCS Act or the Bye-Laws of FISHCOPFED. This Tribunal agrees with the submission made by the Ld. Counsel for Respondent No. 2 that, the term of office of elected members cannot exceed 5 years, however, until the elected members on the Board of Directors of FISCHOPFED, are replaced by their successors, they will continue to hold office as per Section 45 of MSCS Act. The relevant portion of Section 45 of MSCS Act is being reproduced herein under:

“45. Elections of members of board.—

.....

.....

(5) The term of office of the elected members of the board shall be such, not exceeding five years from the date of elections, as may be specified in the bye-laws of a multi-State co-operative society: Provided that elected members shall continue to hold office till their successors are elected or nominated under the provisions of

this Act or the rules or bye-laws and assume charge of their office.”

22.14. However, the fact of the case is that Respondent No.2 had been elected as the President of FISHCOPFED on 08.01.2016 for a term of 5 years and the said term would thus had expired on 08.01.2021. However, the term of Respondent No.2 as the Chairman of FISHFED, Odisha ended on 06.07.2020 and an Administrator was thus appointed on the said date. Even though, Respondent No. 2 had been confirmed as the Managing Director of KN-CFCS on 18.07.2021. Further, *vide* Resolution passed by the Managing Committee of the KN-CFCS on 24.12.2020, Respondent No.2 was authorized to represent KN-CFCS as its representative in the AGM of FISHCOPFED scheduled to be held on 30.12.2020. However, upon a plain reading of the Bye-laws of FISHCOPFED it is abundantly clear that when a member ceases to hold the office of a primary committee of the federation then, the said member automatically ceases to hold the office of the federation. Relevant portion of Clause 28 of the Bye-Laws of FISHCOPFED is being reproduced herein under:

“28. A member of the BOARD shall cease to hold the office if he;

.....

(viii) ceases to hold the office of the Chairman, Chief Executive or Administrator, by whatever name called, as the case may be, in the society which he represents on general body of FISHCOPFED.”

22.15. Mr. Kotla, Ld. Counsel of Respondent No.2 has also explained to this Tribunal that as per Clause 22, at the time of the election to the Board, each member society has the right to nominate any individual for election to the Board but, if elected, the individual does not represent the said society on the Board, instead, he represents the zone under which the society falls.

22.16. Accordingly, this Tribunal draws the conclusion that when the term of Respondent No.2 ended and an Administrator was appointed on 06.07.2020, the term of Respondent No.2 being the President of FISHCOPFED also came to an end even after him having 6 months for his term as President of FISHCOPFED to expire. Thus, Respondent No.2 now has to go through the entire process of nomination and election under Clause 22 of the Bye-Laws of FISHCOPFED in order to declare himself the representative of the East Zone. However, Respondent No.2 has failed to show any such document wherein Respondent No.2 had been elected as the representative of the east zone after the expiry of his term on 06.07.2020.

22.17. This Tribunal is thus, of the opinion that, Respondent No.2 was not a member of any Primary Committee or FISHCOPFED. Therefore, Respondent No.2 had no power whatsoever, to act as the President of FISHCOPFED post 06.07.2020. Further that, Respondent No.2 had become ineligible to hold the post of President on account of losing the chairmanship of the Society which he represented in FISHCOPFED as per provisions of the federation bye law No. 28(viii).

23. ISSUE NO. 4:

Whether the decision taken by the Board of Directors chaired by Shri T. Prasad Rao Dora after he lost chairmanship of the society which he represented in FISHCOPFED are non-est in law;

23.1. ARGUMENTS OF CLAIMANT

Ld. Counsel for the Claimant, begins his argument on this issue by submitting that, it is the case of the Claimant that Respondent No.2 had become ineligible to hold the post of President of FISHCOPFED, accordingly, any and all meetings wherein, Respondent No.2 had presided as the President must be declared null and void.

23.2. Ld. Counsel submits that the primary responsibility of the President is calling the meetings and presiding the same. Accordingly, when Respondent No.2 was no longer the President of FISHCOPFED, then all such meetings called and presided by Respondent No.2 are non-est. He further adds that; the President has influence upon his members thus the decision that they arrive at is also greatly influenced by the President. Therefore, the decisions rendered in the meetings presided by Respondent No.2 after his ineligibility to hold the post of President is wrong and bad in law.

23.3. At this stage, Ld. Counsel refers to the 42nd Annual General Meeting of FISHCOPFED dated 30.12.2020, and draws the attention of this Tribunal at the Item no. 37 wherein, Respondent No. 2 has not attended the same as the President of FISHCOPFED but only as the Managing Director of KN-CSFS.

23.4. ARGUMENTS OF RESPONDENT NO.2

Ld. Counsel begins his argument in regard to the said issue by submitting that it is not in dispute that Respondent No.2 was the duly elected Chairman of FISHCOPFED as on 30.06.2020 i.e. the day on which the 171st Board meeting was held. The above issue is therefore only w.r.t. decisions taken in the board meetings presided over by Respondent No.2 after 06.07.2020. However, as has already submitted Respondent No.2 did not cease to be either a Board member or the President w.e.f. 06.07.2020 and was entitled to complete his term of 5 years until 08.01.2021. Decisions taken by the Board under the presidency of Respondent No.2 in its 172nd and 173rd meetings held on 30.09.2020 and 11.12.2020 were therefore valid.

23.5. Ld. Counsel further adds that in *arguendo*, even if it is assumed that Respondent No.2 ceased to be President on 06.07.2020, even then, it is submitted that decisions taken by the Board in its 172nd and 173rd meetings held on 30.09.2020 and 11.12.2020 are valid. It is submitted by Mr. Dora, that the decisions are taken collectively by Board members of FISHCOPFED in accordance with the MSCS Act and Bye-Laws of FISHOPFED and not by the President in his individual capacity. In fact, the MSCS Act does not specifically provide any powers and functions of the President of a Multi-State Co-operative Society as opposed to the fact that the powers and functions of the Board and General Body are specified. The President plays a limited role such as calling for and chairing the Board meetings and meetings of the General Body. The most significant power that is vested by the MSCS Act on the President of a multi-State co-operative society is that

here he has a casting vote in the General Body meeting and the Board meeting in case equal number of votes are polled.

23.6. Ld. Counsel for Respondent No.2 further submits that, it is not even the Claimant's case that the decision taken in the aforementioned meetings, were a result of the President exercising a casting vote, or that there would not have been the necessary quorum without the President being present. Therefore, even if Respondent No.2 is assumed to have ceased office as President after 06.07.2020, the decisions taken in the aforementioned Board meetings were taken by a majority of the Board members in accordance with Clause 26 of the Bye-Laws, which states that "*... All questions at the meeting of the BOARD shall be decided by a majority of vote ...*", and with the requisite quorum in place, in accordance with Clause 25(ii) which states that "*The quorum for a meeting shall be 5 or one third of the Directors, whichever is less ...*", and cannot be called into question.

23.7. **FINDING BY THE TRIBUNAL**

Upon considering the arguments made by both the parties this Tribunal deems fit to first, determine the validity of a Board meeting. And, in order to do so, it is essential to see if the two criteria laid down in the Bye-Laws of FISHOPFED are met. Firstly, as per Clause 25 (iii), "*The quorum for a meeting shall be 5 or one third of the Directors, whichever is less.*" secondly, as per Clause 26 "*The meetings of the Board of Directors shall be presided over by the President/ Chairman or in his absence by the Vice President/ Vice-Chairman and in the*

absence of both President/ Chairman and Vice President/ Vice-Chairman, the Directors present in the Meeting shall elect a President/Chairman for the Meeting from among themselves.” Now, in the aforementioned Board meetings both the aforesaid criteria have been duly met since, it is wrong to say that, there would not have been the necessary quorum without the President being present. Thereby, making the said meetings valid.

23.8. Further in order to determine whether the decisions made in the said meetings are good in law once again, this Tribunal turns at Clause 26 of the Bye-Laws of FISHCOPFED, whereby, it clearly states that, “*All questions at the meeting of the BOARD shall be decided by a majority of vote and in case of equality of votes, the President/Chairman shall have a casting vote.*” Thus, making it abundantly clear that the decisions taken by the Board members in the aforementioned meeting have no bearing on the decision or vote of Respondent No.2 in all the questions at the aforesaid meetings. This Tribunal also takes note of the fact that in the 173rd meeting dated 11.12.2020 was attended by two Government Nominees.

23.9. Therefore, this Tribunal is of the view that although, the Respondent no. 2 was ineligible to preside the meetings as President of FISHCOPFED post 06.07.2020, the decision thus attained in the meetings dated 30.09.2020 and 11.12.2020 are valid. Since, the decisions arrived at, are taken collectively by Board members of FISHCOPFED in accordance with Clause 26 of the Bye-Laws of FISHCOPFED and not by Respondent No.2 in his individual capacity.



24. ISSUE NO. 5

Whether the defiance of directions issued by Department of Fisheries, Ministry of Fisheries, Animal Husbandry and Dairying, Government of India render the decisions of Board illegal.

24.1. ARGUMENT OF CLAIMANT

Pertaining to the last issue it is submitted by the Claimant that it was the contention of the Respondent No. 1 that when he was appointed as the Managing Director, the Government of India had more than 51% share in FISHCOPFED and therefore approval of Government of India was obtained. However, as of now the Government of India has around 27% share in FISHCOPFED and no approval of Government was required for appointment of Managing Director.

24.2. It is submitted by the Claimant that the appointment of Respondent No. 1 has been with the approval of the Government. Any extension or reemployment has to be after due approval of the Government only, lest the same be rendered non-est and illegal. The counsel for Claimant further submits that the documents on record includes letters signed by the Respondent No. 1 in the letter head of the Federation which makes it clear that FISHCOPFED is under the administrative control of the Ministry of Fisheries, Animal Husbandry and Dairying, Government of India. Once this admission is there on record, defiance of directions issued by Department of Fisheries, Ministry of Fisheries, Animal Husbandry and Dairying, Government of India, would anyway render the decision of Board illegal.

24.3. ARGUMENT OF THE RESPONDENTS

It is submitted by the counsel for the Respondent No. 1 that the Claimant has

(a) not raised the above issue in its Claim Statement filed before this Hon'ble Tribunal,

(b) not specified, by way of pleadings, which specific directions of the Department of Fisheries, Ministry of Fisheries, Animal Husbandry and Dairying, Government of India is being alluded to in Issue No. 5 and

(c) not pleaded any facts to show which actions of Respondents No. 1, 2 or FISHCOPFED constitutes "defiance" of the directions of the Department of Fisheries, Ministry of Fisheries, Animal Husbandry and Dairying, Government of India.

24.4. It is contended by the counsel for Respondent no. 1 that the proceedings under the A&C Act read with Section 84 of MSCS Act are purely adversarial. It is also submitted that this Tribunal is not exercising an inquisitorial role or required to conduct a fact-finding exercise or an enquiry in the matter. Parties before this Hon'ble Tribunal, as stated above, are required to plead and prove their respective case before this Hon'ble Tribunal. It is not the duty of this Hon'ble Tribunal to fish out facts relating to Issue No. 5 from Claimant's documents running into 657 pages for adjudicating.

24.5. The counsel for Respondent No. 2 supporting the submission of Respondent No. 1 submits that the Claimant has failed to identify in his pleadings as to which "*directions issues by the Department of*"

Fisheries, Ministry of Finance, Animal Husbandry and Dairying, Government of India” would render the decisions of the Board illegal.

24.6. As such, without identification of a particular direction, there cannot be a blanket contention that the ‘decisions of the Board’ were illegal, especially, given the fact that all decisions of the Board referred to above, were passed in compliance with the MSCS Act, the Bye-Laws and the Service & Recruitment Rules.

24.7. FINDING BY THE TRIBUNAL

Keeping in view, the submissions made by respective parties with respect to the present issue, it is rightly pointed out by the Respondents that the Claimant has failed to identify as to which directions were in defiance as the burden to prove the same was upon the Claimant.

It is also pertinent to point out that initially the Ld. Counsel for Union of India was present before this Tribunal for hearing dated 18.06.2021 and on 05.07.2021 seeking interim relief. However, since Union of India was not a party to the present proceeding according Ld. Counsel for Union of India was directed to file an application for impleadment and only if the same is allowed only then, this Tribunal will be able hear his submissions on interim relief. Ld. Counsel failed to file any such application further, discontinued from appearing before the Tribunal. Only 4 months later, Ld. Counsel filed the Application for Impleadment of Union of India on 24.09.2021. Ld. Counsels for the Respondents had raised certain objections to the said impleadment of the Applicant. Accordingly, this Tribunal had directed the counsels to file their reply/written response within three days’ time as agreed by the parties.

Accordingly, the arguments were heard on 09.10.2021. It was the case of Union of India represented through Mr. Manish Mohan, counsel for Union of India that he appeared before the Tribunal only to apprise the Tribunal that Respondent No. 1 had given his resignation vide letter dated 30.06.2021 and had stepped down from the post of MD in charge of FISHCOPFED and as such has ceased to exist as the MD of FISHCOPFED w.e.f. 01.07.2021. He further submitted that Union of India does not hold any interest in the contrary claims of the parties of the present proceedings and even if Union of India is impleaded as party it shall only participate as an observer neutral party. Consequently, finding no merits the Impleadment Application of Union of India which was admittedly filed at a belated stage was dismissed. It is also pertinent to observe that neither the Claimant nor the Union of India has been able to recognize as to which directions were in defiance that would render the decision of the Board illegal. Further, the pleading as filed by the Claimant is silent on this aspect therefore, this Tribunal deems appropriate to decide the present issue against the Claimant.

25. AWARD


25.1. In light of the above noted reasons and in the facts and circumstances, and considering the claim and issues as referred by the Ld. CRCS in its order dated 12.03.2021, the Award is passed as under:

- i) The Issues No. 1 & 2 as discussed above is decided in favor of the Respondent No. 1 Sh. Bimal Kumar Mishra and the extension of service of Shri Bimal Kumar, Managing Director after 30.06.2020, the date of superannuation is not illegal, non-est in law and further has statutory backing.

- ii) The Issue No. 3 is decided against the Respondent No. 2 Sh. T. Prasad Rao Dora whereby the continuation of Sh. T. Prasad Rao Dora as President after 06.07.2020 is void, as it falls out of the Statutory Rules governing the Federation. However, the Issue No. 4 is decided against the Claimant Sh. A. P. Ansari and as such the decisions as taken by the Board of Directors chaired by Shri T. Prasad Rao Dora after he lost chairmanship of the society which he represented in FISHCOPFED are not non-est in law.
- iii) As per the last Issue No. 5, even though there is no such pleading in the claim, for the reasons mentioned reasons above it is concluded that there was no defiance of directions as issued by the Department of Fisheries, Ministry of Fisheries, Animal Husbandry and Dairying, Government of India that would render the decisions of Board illegal.
- iv) Since none of the parties to the proceedings have claimed for cost of arbitration, I refrain from awarding the cost to either of the parties. Each party should bear the cost of arbitration themselves.

AWARD is made and pronounced on 29.12.2021 at New Delhi. Copy of this award keeping in mind the current COVID situation is being circulated to the respective parties through e-mail in accordance with law.

29.12.2021


(BIMAL JULKA)
SOLE ARBITRATOR