

Punjab State Electricity Board vs Bassi Cold Storage, Khara And Another on 16 March, 1994

Equivalent citations: AIR1994SC2544, JT1994(2)SC682, 1994(2)SCALE332, 1994SUPP(2)SCC124, [1994]3SCR33, AIR 1994 SUPREME COURT 2544, 1994 (6) SCC 68, 1994 AIR SCW 3590, 1994 AIR SCW 3796, 1994 SCFBRC 368, (1994) 5 JT 277 (SC), 1994 (2) SCC(SUPP) 124, (1995) 1 IJR 49 (SC), (1994) 2 JT 682 (SC), 1995 (1) BOM CJ 438, 1994 (5) JT 277, 1995 (1) IJR 49, (1994) 2 CIVILCOURTC 686, (1994) 2 CIVILCOURTC 689, 1994 (2) JT 682, (1994) 3 SCR 33 (SC), (1994) 2 KER LT 607, (1994) 2 RRR 402, (1994) 3 CURCC 140, (1995) 1 LANDLR 65, (1995) 1 MAH LJ 1, (1995) MPLJ 1, (1994) 2 CURCC 18, (1994) 2 CIVLJ 864, (1994) 3 SCJ 448, (1995) 1 ANDH LT 21, (1995) 1 BLJ 8

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Bench: K. Ramaswamy, B.L. Hansaria

ORDER

B.L. Hansaria, J.

1. Leave granted. Heard learned Counsel of the parties.

2. Bassi Cold Storage, respondent No. 1, is a consumer of electric energy supplied by the appellant Punjab State Electricity Board (hereinafter the Board), who is a licensee under the Indian Electricity Act, 1910 (for short, the Act). The consumer aforesaid had some dispute with the Board (the details of which are not relevant for the present appeal) which ultimately came to be resolved by an Undertaking given by one Ved Bassi. Who is the proprietor of the above named cold storage. This Undertaking is dated 31.7.1979. One of the conditions of the Undertaking given by Bassi was that he would pay the current bill for electricity becoming due for consumption from August, 1979 onwards by way of a nominal sum of Rs. 2500 per month pending final settlement of dispute in view of the financial crises. This is contained in para 5 of the Undertaking. Respondent's case is that it started paying as per this Undertaking from the month of August, 1979 and did so till January, 1980. The power supply was, however, disconnected on 4.2.80. It is of the view that resort to disconnection had been taken to feed fat the grudge which the certain officers of the Board had against its proprietor. It, therefore, thought that present is a fit case where it can claim damages for disconnection of the electricity and to decide about the quantum of damage, it called upon the Board

to appoint its arbitrator within a period of 15 days from the receipt of its letter dated 4.12.80. This was not done. Not only this, the Board approached the Court of Senior Sub-Judge, Patiala by filing an application under Section 33 of the Arbitration Act, 1940 to quash the arbitration proceedings initiated by the respondent. Its case was that the dispute in question could not be the subject matter of arbitration.

3. The Senior Sub-Judge rejected the contention. Feeling aggrieved, the Board carried the matter in revision to the High Court of Punjab & Haryana, who dismissed the petition by a short order reading as below :

Mr. Sibal, learned Senior Advocate, appearing for the respondents states that finding on issues Nos. 1 and 4 may be set aside on his concession, but otherwise the impugned order deserves to be maintained.

Having heard the learned Counsel for the parties, I find no infirmity in the findings recorded by the lower court on other issues. Therefore, this petition is dismissed, but the findings on issues Nos. 1 and 4 are nullified in view of the concession given by Mr. Sibal.

(Emphasis supplied) Feeling aggrieved, this Court has been approached under Article 136 of the Constitution.

4. Before examining the main contention advanced by Shri Rao on behalf of the Board, we have to clear the decks. The need for the same is because Shri Sibal, learned Counsel for the respondent, has urged that the question raised in this appeal does not really arise for our determination inasmuch as while issuing notice in the revision application the High Court had done so relating to Issues 1 and 4 which were "Whether application has been filed by a competent person" and "Whether the application is not maintainable"; and a concession having been made qua those issues before the High Court, we may not examine what had been held by the Subordinate Judge on other issues. Shri Rao contends that though it is correct that notice had been issued relating to Issues 1 and 4 but the counsel for the parties had been heard by the High Court on other issues also as to which the learned Single Judge simply stated he found "no infirmity"; and so, the correctness of the view taken on "other issues" do call for our consideration.

5. From the order as quoted above it would appear that in the second paragraph it was specifically stated that no infirmity was found in the findings recorded by the lower Court "on other issues". This would show that the counsel for the parties were heard by the High Court on all issues; and the matter was not confined to Issues 1 and 4 only. The two other issues, which were numbered as 2 and 3, do relate to the point urged by Shri Rao inasmuch as these two issues were:

2. Whether there is no arbitration agreement between the parties OPA.

3. Whether the provisions of Abridged Conditions of Supply, statutory provisions of Sections 21, 52 of Indian Electricity Act, 1910 are not applicable in the instant case as

alleged by PSEB OPA.

(Acronym OPA was explained to us to mean : "Onus on Party Alleging". What an acronym?) So, we have to express our views on the aforesaid two issues because of the importance of the same not only for the case at hand but for such other disputes which might arise between the parties like the ones in this appeal.

6. The respondent sought to rely on Condition No. 29 of Abridged Conditions of Supply applicable to the consumers of the Board in the State of Punjab (to be referred as Conditions, hereinafter) in support of its case that the present dispute is an arbitral dispute. According to Shri Rao, however, the aforesaid Condition cannot be read in isolation and has to be so done alongwith relevant provisions of the Act. The same being Sections 24(1), 26(6) and 52, according to the learned Counsel. Our attention has also been invited to Condition No. 30 on the subject of "Interpretation" stating that the Conditions shall be "subject to the Act". It is, therefore, urged that what has been provided in the Act would prevail over the Conditions and, in any case, Condition No. 29 has to be read alongwith relevant provisions of the Act.

7. There is enough force in these submissions. The Conditions at hand being akin to subordinate legislation, the same cannot override what has been provided by the legislature. Let us, note the provisions of the Act relied on by Shri Rao. These are Sections 24(1), 26(6) and 52 which read as below :

24(1) : Discontinuance of supply to consumer neglecting to pay any charge;

Where any person neglects to pay any charge for energy or any sum other than a charge, for energy, due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit cut off the supply and for that purpose cut or disconnect any electric supply line or other works, being the property of the licensee, through which energy may be supplied, and may disconnect the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer.

26: Meters XXX XXX XXX (6) Where any difference or dispute arises as to whether any meter referred to in Sub-section (1) is or is not correct, the matter shall be decided upon the application of either party, by an Electrical Inspector, and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct, but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity;

Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days' notice of his intention so to do.

52 : Arbitration Where any matter is, by or under this Act, directed to be determined by arbitration, the matter shall, unless it is otherwise expressly provided in the licence of a licensee, be determined by such person or persons as the State Government may nominate in that behalf on the application of either party; but in all other respects the arbitration shall be subject to the provisions of the Arbitration Act, 1940.

Provided that where the Government or a State Electricity Board is a party to a dispute, the dispute shall be referred to two arbitrators, one to be appointed by each party to the dispute.

(Emphasis supplied)

8. The thrust of Shri Rao's submission is that the only those matters can be determined by arbitration relating to which there is a direction in the Act as stated by Section 52. The counter submission of Shri Sibal is that Section 52 has laid down is that in the matters relating to which there is a direction in the Act, those would be determined only by arbitration and no other remedy known to law could be availed of. Shri Sibal contends that Section 52 has left the choice of arbitration to the State Government, except where the proviso is attracted. This is the only purpose of this section. This power would not take away the right conferred by Condition No. 29.

9. Let us examine the soundness of the rival contentions. To do this it would be appropriate to first apprise ourselves which are the matters relating to which the Act has directed that the same would be determined by arbitration. These matters are contained in Sections 13(2), 16(3), 19(2), 21(4) and 22A(2).

10. We have to know as to why the Act has specifically mentioned that the difference or dispute relating to the matters enumerated in the aforesaid sections are required to be determined by arbitration. The need for this examination has been felt because a general law relating to arbitration was holding the field when the Act was enacted-that law being the Indian Arbitration Act of 1899 (Though this Act when enacted had restricted application as would appear from its Section 2; but the same was extended to various local areas by issuing notifications as permitted by the proviso to the aforesaid section). If the legislature while putting the Act in the statute book would have required that all the disputes between the parties should be subject matter of arbitration, there would have been no necessity to mention about some disputes or difference specifically in the aforesaid section as being remediable by arbitration. This clearly shows, according to us, that the legislature did require that the matters enumerated in the Act alone should go for arbitration, and no others.

11. The Indian Arbitration Act of 1899 being a general provision relating to settlement of disputes by arbitration and the Act having carved out certain matters only as available for determination by arbitration we are of the view that on the principle of general specialibus non derogant, what has been provided in the Act would over-ride the general provision contained in the Indian Arbitration

Act of 1899 (which subsequently) came to be repealed by Arbitration Act of 1940 because of which in Section 52 as it stood at the relevant time reference has been made to arbitration Act of 1940). So, the matters relating to which there is no direction in the Act required to be determined by arbitration cannot be the subject matter of arbitration. This is for the reason of the Act being not only a special Act on the subject of which disputes covered by the Act could be decided by arbitration, but also because it is a later Act than the Indian Arbitration Act, 1899. Because of the existence of these two facets, doubt that the aforesaid principle would apply on all fours in view of what has been stated qua this principle in *Ajay Kumar v. Union of India*, AIR (1984) SC 1130; *Commissioner Sales Tax v. Agra Belting Works*; *Usman Bhai Dawood Bhai v. State of Gujarat*; *Vijay Kumar Sharma v. State of Karnataka*; *Ashoka Marketing Ltd. v. Punjab National Bank* and *R.S. Raghunath v. State of Karnataka*.

12. In this context, Shri Rao has contended that Section 24(1) of the Act would also show that arbitration provision is not available in a dispute of the present nature and the only remedy to be taken recourse is filing of a suit. We have not felt impressed with this submission, because that section having left it open to the Board to recover the charges or sum mentioned therein by filing a suit, cannot be held to mean that for the consumer also for redressal of any of his grievance the only remedy is filing of a suit. But then, remedy of approach to the civil court would definitely be available to a consumer, if he would seek to recover damages for disconnection due to wrongful manner.

13. Having held as above, let the import of Condition No. 29 be now noted as to which too Shri Rao submits that the same cannot come to the assistance of the respondent. That condition reads as below :

In the event of any difference or dispute arising between the Board and the consumer in respect of any matter connected with the supply which cannot be determined by these Conditions, or by the terms of any agreement between the Board and the consumer, and in the event of any difference or dispute arising as to the interpretation of these Conditions or of the terms of any agreement between the Board and the consumer, the matter shall be determined in accordance with provisions of the Act or by reference to the Chief Electrical Inspector. And in the event of any difference or dispute arising that cannot be determined as aforesaid the provisions of the Indian Arbitration Act as amended from time to time shall apply.

(Emphasis ours)

14. A close reading of the aforesaid Condition shows that two types of difference or disputes come within its hold. These are : (i) difference or dispute arising between the Board and the consumer in respect of any matter connected with the supply; and (ii) difference or dispute arising as to the interpretation of the Conditions or the terms of any agreement between the Board and the consumer. If the dispute or difference be of the first nature, what has been stated in the operative part would come in to play, if the same cannot be determined by the Conditions or the terms of any agreement between the Board and the consumer. In such a case, the first difference or dispute, and

the second difference or dispute in any case shall be determined in accordance with the provisions of the Act or by reference to the Chief Electrical Inspector. In the event the aforesaid two disputes or differences cannot be determined in the manner indicated in the main part of Condition 29, the provisions of the Indian Arbitration Act shall apply qua that difference or dispute.

15. The Senior Subordinate Judge, while examining the matter, held that the dispute at hand would come within the purview of Condition No. 29 because the dispute relates to "any matter connected with the supply", as the dispute is about damage in respect of disconnection of supply in a wrongful manner. Shri Rao has disputed this proposition. We do not think if the learned Counsel is right, as the dispute has relation with supply of energy. In any case, Shri Rao himself has submitted that the dispute is one which concerns the interpretation of "terms of any agreement between the Board and the consumer" inasmuch as interpretation of aforesaid para 5 of the Undertaking is involved. Though Shri Sibal does not agree with Shri Rao in this regard, it is apparent that unless the dispute be one visualised by Condition 29 that condition would not come into play. As stated earlier, the dispute should come within "any matter connected with the supply" and as such, the applicability of Condition 29 cannot be ruled out on the ground that the dispute is not encompassed by it.

16. The aforesaid, however, is not conclusive of the matter, because it has to be first seen whether the dispute at hand can be determined in accordance with the provisions of the Act or by reference to Chief Electrical Inspector - the same being apparently and admittedly not determinable by reference to the Conditions or "terms of the agreement". A reference to the Act shows that apart from it having provided that some difference or dispute would be determined by arbitration, to which reference has already been made, some other sections, to wit Sections 28(2), 30(2) and 32(2), deal with the question as to who shall determine those differences or disputes. It is not in controversy that none of the aforesaid provisions deal with the dispute at hand. Insofar as reference to Chief Electrical Inspector (or Electrical Inspector) is concerned, we find that Sections 26(6) and paragraphs V(2) and VI(3) of the Schedule to the Act have mentioned about resolution of some differences or disputes by such an officer. Shri Sibal has urged that in such matters Section 52 of the Act would permit the State Government to nominate who among the Electrical Inspectors, whose appointment has been dealt with by Section 36(1) of the Act, should decide the dispute. It is again not in dispute that the dispute at hand is not one that can be referred to the Electrical Inspector or Chief Electrical Inspector.

17. It is because of the above that Shri Sibal contends that as the difference or dispute at hand cannot be determined as provided in the main part of Condition 29, the provisions of the Indian Arbitration Act would come into play and the dispute can be subject matter of arbitration. We would have had no hesitation in accepting this contention of Shri Sibal but for the fact that what has been provided in Condition 29 has to be read alongwith provisions of the Act and, in case provisions of the Act would not permit reference of the dispute at hand to arbitration, what has been laid down in the Act has to prevail over the remedy provided by Condition 29. Having found that the dispute of the present nature cannot be subject matter of arbitration being not covered by any of the sections of the Act dealing with arbitration; and having held that the provisions of the Act have to override what has been mentioned in the Condition, and having further held that the Act would prevail over the general law of arbitration now contained in the Arbitration Act of 1940, we would hold that though

the present dispute would have been referable to arbitration because of what has been provided in Condition 29, it cannot be done, in view of the provisions in the Act which would override the stipulation contained in the aforesaid Condition.

18. The appeal is, therefore, allowed. The impugned Judgment is set aside insofar as the views taken in it on aforesaid issues 2 and 3 is concerned. It would, however, be open to respondent No. 1 even now despite delay to approach appropriate civil court seeking the relief in question, if so advised. On the facts and circumstances of the case, we make no order as to costs.