

Supreme Court of India

M/S. Fair Air Engineers Pvt. Ltd.& ... vs N.K.Modi on 20 August, 1996

Author: K Ramaswamy

Bench: Ramaswamy, K.

PETITIONER:

M/S. FAIR AIR ENGINEERS PVT. LTD.& ANR.

Vs.

RESPONDENT:

N.K.MODI

DATE OF JUDGMENT: 20/08/1996

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

G.B. PATTANAIAK (J)

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Leave granted.

We have heard learned counsel on both sides. This appeal by special leave arises from the order dated November 13, 1992 of the National Consumer Disputes Redressal Commission, New Delhi [the "Commission", for short] passed in First Appeal No.62/1991.

The admitted facts are that the appellant had entered into a contract with the respondent to carry out installation of a centrally air-conditioned plant in the residential house of the respondent in New Delhi. Since he has committed breach of the contract, seeking to recover a sum of Rs.3,75,000/- as compensation for alleged deficiency in service on the part of the appellant in carrying out the work of installation of the centrally air-conditioned plant, the respondent laid the complaint before the State Commission which in its order dated October 30, 1990 had stayed the proceedings and relegated the parties to arbitration for seeking the remedy. The appellant carried the matter in appeal. By the impugned order the Commission has held that the proceedings before the forums created under the Consumer Protection Act, 1986 [Act 68 of 1986] [for short the Act"] is not a legal proceedings nor is the Commission a judicial authority; therefore, Section 34 of the Arbitration Act,

1940 is not available to stay the proceedings. Thus this appeal by special leave.

Shri R.S. Suri, learned counsel for the appellant contended that the scheme of the Act, in particular Sections 3, 10, 16 and 20 provides for constitution of District Forum, State Commission and National Commission which conduct proceedings as per the procedure prescribed in Section 13; finality is attached to the order or the forums under Section 24. The orders are enforceable at law by operation of Section 25 and the penalties for contravention get sanctions under Section 27. The hierarchy of appeals provided under Section 19 et al does indicate that the proceedings before the authorities under the Act are legal proceedings and the authorities are judicial authorities within the meaning of Section 34 of the Arbitration Act, 1940. The Commission, therefore, was in error in its conclusion that proceedings before the authorities are not legal proceedings nor is the Tribunal a judicial authority. Ms. Binu Tamta learned counsel appearing for the respondent contended that there is no consensus ad idem between the parties on the point of reference to an arbitration; pursuant to a quotation given by the appellant, the respondent agreed only on the conditions enumerated and communicated by the respondent to which the appellant had agreed thereunder. No arbitration clause emerged by consensus ad idem. Therefore, there is no arbitration agreement for reference of the dispute for arbitration. It is also contended that the respondent., after issuance of the notice by the State Commission, had appeared and taken five adjournments to file the counter; thereby, it had acquiesced to the jurisdiction of the State Commission. Thereby, the appellant, having participated in the proceedings before the State Commission, is not entitled to avail of the remedy of stay of stay of further proceedings under Section 34, pending reference to an arbitration. It is also contended that the Tribunals constituted under the Act are Special Tribunals. Though they are invested with the powers of the civil Court in a limited way it is not conferred with trappings of the Court. Therefore, it is neither legal proceedings nor is the Tribunal a Judicial authority under Section 34. Thereby, the remedy of Section 34 is not available to the available to the appellant. It is further contended that Act being a special statute having given exclusive jurisdiction to the forums created under the Act to provide inexpensive and expeditious remedy. Relegating the parties to the arbitration defeats the purpose of the remedy through summary trial which is provided under the Act. Therefore, the Court would be slow to relegate the parties to the process of arbitration under the Arbitration Act.

Having regard to the respective contentions, the first question that arises for consideration is: whether there is an arbitration agreement between the parties? It is true that respondent had raised before the Commission the dispute and in the grounds of appeal about the non-existence of the arbitration agreement and want of consensus ad idem in that behalf but from a reading of the order of the National Commission it would appear that the question was not argued. The State Commission expressly has gone into the question and held that by operation of clause [12] of the quotation there is an arbitration agreement brought into vogue between the parties. It envisages reference to arbitration and the question was offered with the consensus ad idem. It is seen that when the quotation was offered with the conditions enumerated thereunder, the respondent merely made a counter- offer giving technical details to a part of the offer as counter offer and when it was accepted by the appellant, the parties agreed for that. offer and the counter-offer. In other words they became an integral part of the contract of the parties. Thereby, clause [12] of the agreement became an integral part of the contract . Thus, there is an arbitration agreement between the parties.

The question then is: whether the appellant has disabled itself by acquiescence to the jurisdiction of the State Commission in seeking adjournment to file the counter. It is true that in the counter-affidavit filed in this Court the respondent has stated that the appellant had taken five adjournments to file the counter. On the fifth occasion the counter came to be filed with the petition for stay of the proceedings. But, unfortunately, this question was not argued before the National Commission and, therefore, we cannot go into the question whether the appellant acquiesced to the jurisdiction of the State Commission before proceeding further in the matter.

The crucial question is: whether the proceedings of the forums created under the Act are legal proceedings and the authorities have the trappings of judicial authorities or a court within the meaning of Section 34 of the Arbitration Act? Before going into the decisions of this Court it is necessary to read the provisions of the Act so that we can have a clear picture of the conspectus of its operation. Section 3 envisages that "the provisions of the Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force". Section 10 speaks of constitution and composition of District Forums so as to consist of persons specified in clauses (a) and (b). They shall include a person who is, or who has been, or is qualified to be a District Judge, as its President, apart from other members envisaged under clause (b) of sub-section [1] thereof. Similarly, section 16 of the Act speaks about composition of the State Commission. It provides that each State Commission shall consist of a person who is, or has been, a Judge of a High Court, appointed by the State Government, who shall be the President of the Commission, apart from other members envisaged under clause (b) of sub-section [1] thereof. Section 20 of the Act, similarly, envisages the composition of the National Commission and a person who is, or has been, a Judge of the Supreme Court, to be appointed by the Central Government, shall be its President, apart from other members envisaged in clause (b) of sub-section [1] thereof. Thus the presiding officers of the forums are judicial officers and in the case of commissions they are sitting or retired Judges of the High Court or the Supreme Court, as the case may be. A remedy of complaint has been provided to the aggrieved consumer defined under Section 2 (d) of the Act. The expression 'complaint' has been defined under section 2

(b) of the Act. Section 12 prescribes the manner in which the complaint shall be made. Section 24-A provides for the period of limitation within which the complaint shall be laid, namely within 2 years from the date on which the cause of action has arisen.

Section 13 provides for the procedure after receipt of complaint and for disposal thereof. The details thereof are not material except sub-sections (4), (5) and (6) thereof which have cutting edge as material in this behalf. Sub-section (4) postulates that for the purposes of that section, the District Forum shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit in respect of the enumerated matters, namely, [i] summoning and enforcing the attendance of any defendant or witness and examining the witness and oath, [ii] discovery and production of any document or other material object producible as evidence, [iii] the reception of evidence on affidavits, [iv] the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source, [v] issuing of any commission for the examination of any witness, and [vi] any other matter which may be prescribed. Under the Rules framed under the Act, District Forums have got power to prescribe the procedure of

collecting and discovering evidence. Under sub-section (5), every proceedings before the District Forum shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code and shall be deemed to be a Civil Court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. Sub-section (6) provides that where the complainant is a consumer referred to in sub-clause (iv) of Clause (b) of sub-section (1) of Section 2, the provisions of Rule 8 of Order 1 of the First Schedule to the Code of Civil Procedure, 1908 shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaints or the order of the District Forum thereon. The finding of the District Forum is envisaged under Section 14 of the Act. If any person feels aggrieved by the order of the District Forum there is a right of appeal provided under Section 15 to the State Commission. The State Commission, in addition to the remedy of appeal against the order of District Forum, has original jurisdiction to entertain complaints if the matter is covered under its specified pecuniary jurisdiction. Under Section 18 of the Act, the procedure for the disposal of complaints provided in Section 12, 13 and 14 of the Act and the rules made thereunder, is made available for the disposal of the complaint or the appeals by the State Commission. Similarly, the National Commission under Section 21, has been given, in addition to original jurisdiction power to entertain an appeal against the order of the State Commission or to call for the records and pass appropriate orders, in circumstances enumerated under clause [b] thereof, in are consumer dispute pending before or decided by any State Commission, By operation of Section 22, the power of a civil court as specified in sub-sections (4), (5) and (6) of Section 13 of the Act are vested in the National Commission for disposal of any complaint or proceedings before it the procedure to be followed by it shall be such as may be prescribed by the Central Government. Under Section 23 of the Act, remedy of appeal to this Court is made available to any person aggrieved by an order of the National Commission. Section 24 attaches finality to every order of the District Forum, State Commission or of the National Commission if no appeal is preferred within specified time. However, that is subject to any judicial review under Article 226 or 32 of the Constitution, Section 25 gives teeth to the orders passed by the District Forum, State Commission and National Commission; every order can be enforced in the same manner as if it were a decree or an order made by a court in a civil suit pending therein; it shall be lawful for the District Forum, State Commission or National Commission to send its orders, in case of it inability to execute it, for execution to the appropriate executing court. It is obligatory for the executing court to execute the order treating it to be a decree or order of a court sent to it for execution. For specific enforcement of the Act, Section 27 gives sanction of the State for imposing penalties against the traders or persons against whom a complaint is made if fails to comply the order passed by the aforesaid District Forums, National Commission or State Commission, as the case may be.

Thus, it would be seen that the District Forums, State Commission and National Commission have all the trappings of a civil court and judicial authority. The proceedings before them are legal proceedings. Similar controversy was considered by this Court in *The Bharat Bank Ltd. Delhi vs. The employees of the Bharat Bank* [(1950)] 1 SCR 459 and in *Associated Cement Companies Ltd. vs P.N.Sharma & Anr.* [(1965) 2 SCR 366]. In *Sarojini Ramaswami vs. Union of India* [(1992)] 4 SCC 501, one of us, K. Ramaswamy, J. had dealt with this aspect of the matter and held thus:

"The Parliament while considering the motion for removal of the Judge for deciding whether to adopt the motion or not takes into consideration the report as well as the dissenting opinion, if any, of the third member of the Inquiry Committee in case the majority opinion is that the Judge is guilty. along with the entire evidence received by the Inquiry Committee on which the finding of guilt of the Inquiry Committee is based. No doubt, the Parliament does not substitute its finding for that of the Inquiry Committee or supersede it in case it decides not to adopt the motion by the requisite majority so that the motion for removal of the Judge fails and the proceedings terminate but in doing so it does take the decision to not adopt the motion because it declines to accept and act on the finding of guilty recorded in the report of the Committee after debating the issue on the basis of the material before it".

This Court in recent decision in *Canara Bank vs. Nuclear Power Corporation of India Ltd. & Ors.* [J.T. 1995 (3) SC 42] considered the controversy and held that the word 'court' must be read in the context in which it is used in the statute. It is permissible, in given the context, to read it as comprehending the courts of civil judicature and courts or some tribunals exercising curial, or judicial powers. In the context in which the word "court" is used in Section 9A of the Special Courts Act, it is intended to encompass all curial or judicial bodies which have the jurisdiction to decide matter or claim, inter alia, arising out of transactions in securities entered into between the stated dates in which a securities entered into between the stated dates in which a person notified was involved. Therein, the Company Law Board has been held to be a court exercising the function of the court; therefore, it is possessed of the trappings of a Court. thus, we have no hesitation to hold that the proceedings before the District Forum, State Commission and the National Commission are legal proceedings. The District Forum, National Commission and the State Commission are judicial authorities falling under Section 34 of the Arbitration Act.

The question then is: whether the case shall be stayed by operation of Section 34 of the Arbitration Act? Section 34 envisages that where any party to an arbitration agreement or any person claiming under him commences any legal proceedings against any other party to the agreement or any person claiming under him in respect of the matter agreed to be referred, any party to such legal proceedings, before filing a written statement at any time or before taking any other steps in the proceedings, shall apply to the judicial authority before which the proceedings are pending to stay the proceedings; and such authority, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

It would thus be clear that, by invocation of Section 34, the party to the proceedings does not get an automatic right to have the proceedings pending before the judicial authorities stayed. The said section gives discretion to the authorities to stay the proceedings on their satisfying that there was no sufficient reason why the matter should not be referred in accordance with the agreement between the parties for arbitration when the party seeking stay of the proceedings was and still remains ready and willing to do all things necessary to the proper conduct of the arbitration. In other words, on judicial satisfaction as to the contract between the parties and subject matter of the

dispute as to the nature of the dispute, the judicial authority has been invested with a discretion to stay the proceeding or proceed with the matter pending before it. Similar power is available under Section 8 of the Arbitration and Conciliation Third Ordinance, 1996. The Act was enacted to provide for protection of the interests of consumers and for that purpose the Act has made provision for the establishment of Consumer Councils and other authorities, viz., District Forums, State Commissions and National Commission for the settlement of consumers' disputes and for matters connected therewith.

This Court in Lucknow Development Authority M.K. Gupta [(1994) 1 SCC 243] elaborately considered the scheme and object of the Act. It was held that the object was to secure social purpose to promote the facilities in a comprehending manner for settlement of issues involved in the consumer complaints and to assess the damage. In construing the object of the Act, the interests of the consumers which the Act seeks to protect are given predominance. The Act has departed from the settled legal forums provided under the Code of Civil Procedure. The importance of the Act is to promote the welfare of the society by enabling the consumers to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as a 'network of rackets' or a society in which 'producers have secured power' to rob the rest or as right of public bodies which are degenerating into storerooms of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society, instead of bothering, complaining and fighting against it is accepting it as a part of life. The Act, therefore, intends to secure inexpensive and expeditious consumer service.

Accordingly, it must be held that the provisions of the Act are to be construed widely to live effect to the object and purpose of the Act. It is seen that Section 3 envisages that the provisions of the Act are in addition to and are not in derogation of any other law in force. It is true, as rightly contended by Shri, that the words "in derogation of the provisions of any other law for the time being in force" would be given proper meaning and effect and if the complaint is not stayed and the parties are not relegated to the arbitration, the Act purports to operate in derogation of the provisions of the Arbitration Act. Prima facie, the contention appears to be plausible but on construction and conspectus of the provisions of the Act we think that the contention is not well-founded. The Parliament is aware of the provisions of the Arbitration Act and the Contract Act and the consequential remedy available under Section 9 of the Code of Civil Procedure, i.e., to avail of right of civil action in a competent court of civil jurisdiction. Nonetheless, the Act provides the additional remedy.

It would, therefore, be clear that the Legislature intended to provide a remedy in addition to the consensual arbitration which could be enforced under the Arbitration Act or the civil action in a suit under the provisions of the Code of Civil Procedure. Thereby, as seen, Section 34 of the Act does not confer an automatic right nor create an automatic embargo on the exercise of the power by the judicial authority under the Act. It is a matter of discretion. Considered from this perspective, we hold that though the District Forum, State Commission and National Commission are judicial authorities, for the purpose of Section 34 of the Arbitration Act, in view of the object of the Act and

by operation of Section 3 thereof, we are of the considered view that it would be appropriate that these forums created under the Act are at liberty to proceed with the matters in accordance with the provisions of the Act rather than relegating the parties to an arbitration proceedings pursuant to a contract entered into between the parties. The reason is that the Act intends to relieve the consumers of the cumbersome arbitration proceedings or civil action unless the forums on their own and on the peculiar facts and circumstances of particular case, come to the conclusion that the appropriate forum for adjudication of the disputes would be otherwise those given in the Act.

Considered from this perspective, we hold that this dispute need not be referred to arbitration under clause [12] of the agreement and the matter could be decided on merits by the State Commission itself.

The appeal is, therefore, allowed to the above extent but, in the circumstances, without cost. The order of the State Commission stands set aside and the matter is remitted to the State Commission for decision on merits according to law.