
(1965) 09 BOM CK 0020

In the Bombay High Court

Case No : Civil Revision Application No. 295 of 1961 with A.O. No. 12 of 1961

Maharashtra State Electricity Board, Bombay

APPELLANT

Vs

Talegaon Dabhade Municipality

RESPONDENT

Date of Decision : 06-09-1965

Acts Referred:

Electricity (Supply) Act, 1948 — Section 76, 76(1)
Electricity Act, 1910 — Section 14(3), 19(2), 52

Citation : AIR 1967 Bom 75 : (1966) 68 BOMLR 169 : (1966) ILR (Bom) 471

Hon'ble Judges : Chainani, C.J;Kotval, J

Bench : Division Bench

Advocate : G.N. Joshi and Little and Co., instructed by Attorneys, for the Appellant; J.L. Nain and P.L. Nain, for the Respondent

Judgement

1. These two matters have been heard together as they raise a common question of law in regard to the meaning to be given to the words "other person" in sub-section (1) of Section 76 of the Electricity (Supply) Act, 1948 (hereinafter referred to as the Act). The facts of Civil Revision Application No. 295 briefly are that on 16th October 1957 the then Bombay Electricity Board entered into an agreement with the Respondent Municipality for providing, erecting and maintaining street lighting installation and supplying electrical energy on the roads within the Municipal limits. The petitioners, the Maharashtra Electricity Board, are the successors in title of the former, Bombay State Electricity Board. The Municipality subsequently raised a dispute in regard to the above agreement. On 29th/30th December 1958 the Municipality wrote to the Electricity Board that it wanted to refer the questions in dispute u/s 76 of the Electricity (Supply) Act to two arbitrators. The letter stated that the Municipality had appointed one Mr. M. B. Chitre, Advocate, as the arbitrator on its behalf. On 14th February 1961 the petitioners made an application to the Civil Court at Vadgaon under S. 33 of the Indian Arbitration Act and prayed for a declaration that the disputes raised by the Municipality could not be referred to arbitration u/s 76 of the Act. This application was resisted by the Municipality. The learned Judge, who heard the application,

came to the conclusion that four out of the seven disputes raised by the Municipality were referable to arbitration u/s 76 of the Act. He also held the appointment of Mr. Chitre arbitrator by the Municipality was valid. The petitioners were given time to appoint their own arbitrator. Against that order the above revision application has been filed.

(2) In Appeal No. 12 of 1961, the appellants, the Madhya Pradesh Electricity Board, had entered into a contract for the supply of some M. S. Plates with the Respondents. As disputes subsequently arose between the parties, the Respondents made an application u/s 20 of the Indian Arbitration Act to the City Civil Court at Bombay. The Respondents contended that Section 76 of the Electricity (Supply) Act constituted an arbitration agreement between the parties. They had nominated an Advocate Mr. Advani as their arbitrator and as the Appellants did not nominate their arbitrator in time, the Respondents contended that their arbitrator was entitled to act as the sole arbitrator. They prayed for a reference of the disputes to his sole arbitration. The Appellants contended that Section 76 of the Act had no application in the case, as the Respondents did not fall within the expression "other person" in sub-s. (1) of Section 76. This argument was negated and an order was made as prayed for by the Respondents.

(3) Mr. Joshi, the learned Counsel for the Appellants in the two matters, has contended that the words "other person" in sub-s (1) of Section 76 of the Act have reference only to persons connected with or engaged in the business of producing, distributing or supplying electricity. On the other hand, it has been urged by Mr. Chitale and Mr. Nain that there is no reason why a restricted meaning should be given to these words, which are of wide amplitude. They have contended that any dispute with any person, with which the government or the Electricity Board comes into contractual relations in discharge of its functions under the Act, is referable to arbitration under sub-s. (1) of Section 76 of the Act.

(4) In order to decide which of these rival contentions should be accepted, it is necessary to refer to the various provisions of the Act. This Act was enacted in 1948. Sub-section (1) of Section 70 states that no provision of the Indian Electricity Act, 1910, or of any rules made thereunder or of any instrument having effect by virtue of such law or rule shall, so far as it is inconsistent with any of the provisions of this Act, have any effect. Sub-section (2) provides that save as otherwise provided in this Act, the provisions of this Act shall be in addition to, and not in derogation of, the Indian electricity Act, 1910. where therefore, the provisions of the Act of 1910 are inconsistent with the provisions of the Act of 1948 they shall have no effect where, however, there is no conflict between the provisions of the two Acts, both the sets of provisions will prevail, and the provisions of the Act of 1948 shall have effect in addition to and not in derogation of those of the Act of 1910.

(5) Clause (2) in Section 2 defines "Board" as meaning a State Electricity Board constituted under S. 5. Clause (6) in the same section defines licensee as follows:

"Licensee means a person licensed under Part II of the Indian Electricity Act, 1910 to supply energy or a person who has obtained sanction u/s 28 of that Act to engage in the business of supplying energy but, the provisions of Section 26 of this Act notwithstanding, does not include the board."

This definition therefore, includes within the term "licensee" two classes of persons, (1) persons to whom a license has been granted to supply energy under Part II of the Act of 1910, and (2) persons to whom sanction has been granted u/s 28 of the Act of 1910, to engage in the business of supplying energy. Only the first category of persons were included in the definition of "licensee" in the Act of 1910. The present definition is therefore, wider and also covers persons who have obtained sanction to supply energy u/s 28 of the Act of 1910. Section 28 of the Act of 1910 provides that no person other than a licensee (that is a person licensed to supply energy) shall engage in the business of supplying energy to the public except with the previous sanction of the State Government. Section 4 of the Act provides:

"It shall be the duty of each State Electricity Board, State Government Electricity Department or other licensee or person supplying electricity for public or private purposes, or generating electricity for its or his own use, to furnish to the authority such accounts, statistics and returns relating to the generation, supply and use of electricity as it may require and at such times and in such form and manner as it may direct."

This section therefore, postulates a third class of persons, apart from the two included within the definition of "licensee," who supply electricity for public or private purposes or generate electricity for their own use.

(6) Section 18 provides inter alia that it shall be the duty of the Board-

(c) to supply electricity to any other licensees or person requiring such supply and whom the Board may be competent under this Act so to supply. Sub-section (1) of Section 19 states that the Board may, subject to the provisions of the Act, supply electricity to any licensee or person requiring such supply in any area in which a scheme sanctioned under chapter V is in force. Proviso (b) to this sub-section states that the Board shall not supply electricity for any purpose to any person not being a licensee for use in any part of the area of supply of a licensee without the consent of the licensee except in the cases mentioned in sub-cl. (i), (ii) and (iii) of this proviso. Section 49 states that the Board may supply electricity to any person not being a licensee upon such terms and conditions as the Board may from time to time fix having regard to the nature and geographical position of the supply and the purposes for which it is required. These sections make it clear that the Board is competent to supply energy not only to a licensee but to any other person. It can therefore supply energy directly to a consumer.

(7) There are several provisions in the Act which require matters to be determined by arbitration. Some of these provisions require that the matters

should be referred to the arbitration of the Central Electricity Authority referred to in the Act as the Authority. These Provisions are sub-section (3) of Section 44, sub-section (3) of Section 45, sub-section (2) of Section 78A and clause (2) of paragraph XV and paragraph XVI in the Sixth Schedule to the Act. The other sections which provide for arbitration do not specify the arbitrator. These provisions are sub-section (4) of Section 19. Section 40, paragraph XVII in the First Schedule and paragraph II in the Fourth Schedule to the Act.

(8) Sub-section (3) of Section 44 provides that any difference or dispute arising out of the provisions of this section shall be referred to arbitration. Sub-section (1) of Section 44 states that it shall not be lawful for a licensee or any other person to establish or acquire a new generating station or to extend or replace any major unit of plant or works pertaining to the generation of electricity in a generating station except with the previous consent in writing of the Board. The dispute under this section can therefore only be between the Board and a licensee or any other person who has established or wishes to establish or acquire a generating station. Sub-section (1) of Section 45 empowers the Board to authorise any of its officers to enter upon the premises of a generating station if any licensee fails to close it down pursuant to a declaration of the Board u/s 36 or if any person establishes or acquires a new generating station or extends or replaces any plant or works in contravention of section 44. Sub-section (3) states that any difference or dispute arising out of the provisions of this section shall be referred to arbitration. The dispute which under this section must be referred to arbitration can therefore only arise between the Board and the licensee or between the Board and any person who establishes or acquires a new generating station or extends or replaces any plant or works in any generating station in contravention of S. 44. Sub-section (2) of Section 78A provides for a dispute between the Board and the State Government in regard to the directions issued under sub-s. (1) of this section being referred to the Authority. Section 57 states that the provisions of the Sixth Schedule and the Seventh Schedule shall be deemed to be incorporated in the licence of every licensee not being a local authority. clause (20) paragraph XV in the Sixth Schedule gives a right to a licensee to refer his proposal to make capital expenditure in the circumstances mentioned in clause (1) to the arbitration of the Authority, if the Board or the State Government does not consent to such expenditure within one month from the receipt of the application of the licensee. Paragraph XVI states that any dispute or difference as to the interpretation or any matter arising out of the provisions of the Sixth Schedule shall be referred to the arbitration of the Authority.

(9) Sub-section (4) of section 19 states that if any question arises under sub-section (1) as to the reasonableness of the terms or conditions or time therein mentioned. It shall be determined as provided in Section 76. Sub-section (1) of Section 19 empowers the Board to supply electricity to any licensee or person requiring such supply. Proviso (a) to this sub-section states that the Board shall not supply electricity to any licensee for use in any part of the area of supply of a

bulk-licensee without the consent of the bulk-licensee, unless the bulk-licensee is unable or unwilling to supply electricity for such purpose in the said part of such area on reasonable terms and conditions and within a reasonable time. Sub-clause (iii) in clause (b) of the proviso states that the Board shall not supply electricity to any person but being a licensee for use in any part of the area of supply of a licensee without the consent of the licensee, unless the licensee is unable or unwilling to supply electricity for such purpose in the said part of such area on reasonable terms and conditions and within a reasonable time. A dispute under this section is regard to the reasonableness of the terms and conditions or time mentioned in sub-section (1) can therefore only arise between the Board and a bulk-licensee or a licensee. Section 40 provides for a dispute of the nature mentioned in this section between the Board and a licensee being determined by arbitration. Paragraph XVI in the First Schedule empowers the Board to give a notice to a licensee to close down a generating station. The proviso to paragraph XVII states that a licensee shall be entitled to demand in the circumstances mentioned in the proviso that the Board shall purchase the entire undertaking. The paragraph further states that any question arising under the proviso to this paragraph shall be referred to arbitration u/s 76. A dispute under this paragraph must therefore be between the Board and the licensee. Paragraph II in the Fourth Schedule provides for a dispute in regard to the sum certified by an auditor as the price to be paid for any undertaking, generating station or main transmission line purchased by the Board being determined as provided in section 76 in default of agreement between the Board and the licensee.

(10) These are all the provisions in the Act and the Schedules thereto, which provide for matters being resolved by arbitration. It will be seen that except a dispute between the State Government and the Board referred to in section 78A, all disputes for which the Act provides that they shall be the subject matter of arbitration are disputes between the Board and a licensee or between the Board and the person who is engaged or wished to engage in generating energy.

(11) Sub-section (1) of section 76 states that all questions arising between the State government or the Board and the licensee or other person shall be determined by arbitration. Sub-section (2) provides:

"Where any question or matter is, by this Act, required to be referred to arbitration, it shall be so referred-

(a) In cases where the Act so provides, to the Authority and on such reference the Authority shall be deemed to have been duly appointed as arbitrators, and the award of the Authority shall be final and conclusive; or

(b) in other cases to two arbitrators, one to be appointed by each party to the dispute." It will be noticed that sub-section (10) refers to all questions arising between the parties mentioned in it and not only those which are specified in the different provisions of the Act for being decided by arbitration. If only matters in respect of which a specific provision has been made in the Act for being referred

to arbitration are to be determined by arbitration,. sub-section (1) would not have been necessary and sub-section (2) would have been sufficient to achieve the object in view. Mr. Nain has therefore contended and we accept his argument that under sub-section (1) all questions, which arise between the State Government or the Board on one side and a licensee or other person on the other side are to be determined by arbitration. As pointed out by the Supreme Court in *The Mysore State Electricity Board Vs. Bangalore Woollen, Cotton and Silk Mills Ltd. and Others*, , it is however implicit in these provisions that the questions must be those which arise under or have relation to the Act. Any dispute between the parties unrelated to the Act cannot be the subject of an arbitration under this sub-section.

(12) One of the parties to arbitration proceedings must be a licensee or "other person." The words "other person" are also used in five other sections, Sections 38, 39, 41(2), 44 and 77. Section 38 provides that the Board may make arrangements with any licensee or other person for the establishment of a new generating station required by a sanctioned scheme. Section 39 states that the Board may make arrangements with any licensee or other person for the operation of a new generating station. the words "other person" in these two section refer to a person who is connected with the establishment or operation of a new generating station. Sub-section (2) in section 41 states that the Board may by agreement with any licensee or other person use any transmission line or main transmission line of tha licensee or person for such time and on such terms as may be agreed. The words "other person" here are used with reference to a person who owns a transmission line or a main transmission line. Such a person can be only one engaged in distributing or supplying energy. Similarly the words "any other person" in sub-section(1) of section 44 refer to a person who wants to establish or acquire a new generating station or to extend or replace any major unit or plant or works pertaining to the generation of electricity in a generating station. Sub-section (3) of section 75 states that the Board may require any licensee or person supplying electricity for public or private purposes of generating electricity for his own use to furnish it with information and accounts relating to such supply or generation. This provision against contemplates that there is a person other than a licenses who is engaged in supplying electricity for public or private purposes. Section 77, which is a penal section,states that if any licenses or other person, not being a Board, falls without reasonable excuse to comply with or give effect to any direction, order or requirement made under any of the provisions mentioned in clauses (a) to (f), he shall be punishable with the fine specified in the section. The section which are mentioned in clases (a) to (f), are section 4, section 55. clause (d) in sub-section (1) of section 57A, section 57B, section 58 and sub-section (30 of section 75. As pointed out above section 4 and sub-section (3) of section 75 refer to a licensee or other person supplying electricity for public or private purposes or generating electricity for his own use. Section 55, clause (d) in sub-section (1) of section 57A, Section 57B and section 58 relate to certain obligations which have to be discharged by a licensee.

Section 77 therefore, provides penalties for failure to comply with certain provisions of the Act by a licensee, or a person supplying electricity for public or private purposes or generating electricity for his own use.

(13) Having regard to these provisions, in which the expression "other person" has been used with reference to a person generating or supplying energy and to the fact that the word "person" has been used in the same sense in Section 75(3) which precedes and in Section 77 which follows section 76, Mr. Joshi has argued that a limited meaning should be given to this expression in sub-section (1) of section 76. He has urged that the expression means a person engaged in or in connection with the production, distribution or supply of electrical energy.

(14) Mr. Chitale has urged that apart from a licensee (as defined in the Act of 1948) there is no other person who can lawfully engage himself in the business of supplying energy. He has relied on section 28 of the Act of 1910, which provides that no person other than a licensee shall engage in the business or supplying energy except with the previous sanction of the State Government. Section 41 of that Act makes contravention of the provisions of section 28 an offence punishable as provided in that section. Section 4 and section 75(3) of that Act of 1948 however, postulate a person other than a licensee who supplies or generates electricity. Sub-section (1) of section 43 empowers the Board to purchase surplus electricity from any person producing it. Sub-section (1) of section 44 prohibits any person from establishing or acquiring a new generating station except with the previous consent in writing of the Board. The Act therefore contemplates persons other than licensee who may be engaged in generating or supplying electricity. We are, therefore, unable to accept the above argument of Mr. Chitale

(15) It has also been urged by Mr. Chitale that the words "other person" in the context only mean a person other than a licensee. The words "any person" could not appropriately have been used, because they would also have included a licensee. He has therefore argued that no significance should be attached to the use of the words "other person" instead of "any person". In sub-section (1) of section 44 the words used are "a licensee or any other person."

(16) Mr. Chitale has referred to section 18(c), sub-section (1) of section 19 and section 49, which empower the Board to supply electricity to a person other than a licensee. The word "person" used in these sections includes a consumer. This word is therefore not always used in the Act in the sense of one who generates or supplies electricity. It has therefore been contended that merely because in some sections such as sections 38, 39, 41, 44 and 77 the word "person" is used with reference to a person connected with the generation and supply of electricity, it cannot be said that the expression "other person" in sub-section (1) of section 76 is also used with reference to such person, this is a plausible argument, but for reasons, which I will presently indicate, there is no force in it.

(17) There has been some argument before us whether the rule of ejusdem

generis will apply in the present case. This rule is invoked when a general word follows particular and specific words of the same nature. A single word cannot generally constitute a genus, see Maxwell on Interpretation of Statutes, p. 327, 11th edition. Consequently it is doubtful whether the rule of ejusdem generis can be applied in the present case.

(18) The word "person" has been defined in the General Clauses Act. u/s 3 of that Act the meaning given in that Act has to be given to the word, unless there is anything repugnant in the subject or context. Mr. Nain has argued that there is nothing repugnant in sub-section (1) of section 76 and that the words "other person" should not therefore, be given a restricted meaning. The words "unless there is anything repugnant in the subject or context" in the General Clauses Act mean "unless the subject to context otherwise requires." If the scheme of the Act and the other provisions indicate that a limited meaning was intended to be given to the word "person" in sub-s. (1) of S. 76, that meaning will prevail over the definition in the General Clauses Act.

(19) Section 26 of the Act states that the Board shall, in respect of the whole State, have all the powers and obligations of a licensee under the Indian Electricity Act, 1910 and this Act shall be deemed to be the licence of the Board for the purposes of that Act. Some of the obligations of the licensee under the Act of 1910 are to get certain kinds of disputes such as those referred to in sub-section (3) of section 14 and section 19 settled by arbitration. Sub-section (3) of section 14 refers to a dispute in regard to the compensation payable by the licensee for any loss or damage caused by the licensee in carrying works of the kind referred to in this section. Sub-section (2) of section 19 states that where any difference or dispute arises as to the amount or the application of compensation payable by the licensee on account of any damage, detriment and inconvenience caused by him in exercise of the powers conferred by or under the Act, the matter shall be determined by arbitration. It has been urged that such disputes will also come within the scope of section 76 and that consequently the words "other person" in this section cannot be said to include only persons connected with the generation or supply of energy. u/s 70 of the Act of 1948, unless there is any repugnancy, the provisions of the Act of 1910 shall have effect in addition to those of the Act of 1948. the proviso to section 52 of the Act of 1910 states that where the Government or a Board is a party to a dispute, which under that Act, is to be determined by arbitration, it shall be referred to two arbitrators, one to be appointed by each party to the dispute. Similar provisions is made in sub-section (2) of section 76. There is therefore, no inconsistency or repugnancy between section 76 and the provisions of the Act of 1948 and the provisions of the Act of 1910 in regard to the above class of disputes. Such disputes can therefore, continue to be dealt with u/s 52 of the Act of 1910. The fact that such disputes are to be resolved by arbitration does not therefore necessitate a wider meaning being given to "other person" in Section 76(1)

(20) It was contended by Mr. Chitale that as a Municipality is required by law to

make adequate arrangements for lighting of streets and as it consequently arranges for the supply of electricity, its position is analogous to that of a licensee. There is no substance in this argument, for the Municipality does not itself generate or supply electricity. In order to discharge its statutory functions it has to purchase or secure supply of electricity. It is therefore, in the same position as a consumer.

(21) After careful consideration of the various arguments, which have been advanced before us, we are inclined to think that the question must be decided by having regard to the scheme of the Act and its different provisions. The various sections in which specific provision has been made for reference to arbitration, though not exhaustive, indicate generally the nature of matters which were intended to be resolved by arbitration. It does not appear that the Legislature intended that each and every dispute, however, insignificant, which the Board may have with any person, should be the subject of arbitration. If the arguments of the Respondents are accepted, every petty dispute, say, between the Board and one of its employees in regard to the amount of leave claimed by the latter, will have to be referred to arbitration. Another, consideration, which has to be borne in mind, is that a dispute between a licensee and a consumer cannot be the subject of arbitration under sub-section (1) of section 76. It would therefore, be anomalous to hold that a dispute between the Board and a consumer should be decided by arbitration.

(22) Having regard to these considerations, it seems to us that only a limited class of disputes were intended to be referred to arbitration. In our opinion, the words "other person" in sub-section (1) of section 76 mean a person engaged or likely to be engaged in activities similar to those of a licensee. These words will, therefore, include persons who generate or supply electricity or who intend to establish or acquire a generating station or with whom the Board has entered into arrangements for the generation, distribution or supply of electricity. But these words will not include a consumer or a person with whom the Board has entered into a contract for the purchase of some goods.

(23) The view which we are taking finds support in the observations of Hidayatullah, J. in *The Mysore State Electricity Board Vs. Bangalore Woollen, Cotton and Silk Mills Ltd. and Others*, , where the learned Judge observed:

"I am of opinion that the ejusdem genres rule invoked by the Appellant to interpret "other person" in the section is not required to limit the generality of the expression because a consumer disputing rates cannot come within the expression "other person" regard being had to the provisions of the Act."

At p. 1141 it has been observed, "if the whole Act is scanned it will be found that consumers have no place init. Wherever the Act uses the word "other persons" it invariably means persons who generate and supply electrical energy and not those who consume it."

(24) Our attention has also been invited to the decision of a single Judge of the

Mysore High Court in Amalgamated Electricity Co. Ltd. v. N. S. Bathena AIR 1958 Mys 148. That decision is not of much assistance, because in that case it was conceded that the arbitration contemplated in sub-section (1) of section 76 relates to arbitration between the State Government and the Board on one side and the licensee and the person discharging duties of a licensee on the other side.

(25) We, therefore, set aside the order made by the Civil Judge, Vadgaon, in regard to the disputes referred to in clauses (c) to (f) in para 5 of the application made by the Electricity Board and grant the petitioners a declaration that the disputes between them and the Respondents are not referable to arbitration under the Act of 1948. We also grant a declaration that the appointment by the Respondents of Mr. M. B. Chitre as their arbitrator is invalid.

(26) In Appeal No. 12 of 1961 we set aside the order made by the learned Judge of the City Civil Court and dismiss the application made by the Respondents in that Court.

(27) There will be no-orders as to costs.

(28) Petition allowed.