

**(1987) 10 P&H CK 0017**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : C.R. No. 1529 of 1987**

|                                         |    |            |
|-----------------------------------------|----|------------|
| Punjab State Electricity Board, Patiala | Vs | APPELLANT  |
| M/s J.K. Cable Industries, Jammu        |    | RESPONDENT |

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**Date of Decision :** 09-10-1987

**Acts Referred:**

Arbitration Act, 1940 — Section 33

**Citation :** (1987) 10 P&H CK 0017

**Hon'ble Judges :** J.V. Gupta, J

**Bench :** Single Bench

**Advocate :** A.S. Khaira, for the Appellant; P.S. Patwalia, for the Respondent

**Final Decision :** Allowed

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## Judgement

J.V. Gupta, J.—This petition is directed against the order of Senior Sub Judge, Patiala dated 30.1 1987, whereby the application u/s 33 of the Arbitration Act filed by Respondent M/s. J.K. Cable Industries has been accepted.

2. The Punjab State Electricity Board (hereinafter referred to as "the Board") had floated a tender enquiry for the supply of 5000 Kms. of A C.S.R. conductors of certain specification. In response to this tender enquiry, M/s. J.K. Cables (Respondent) purchased the specifications under the rules and sent its quotation on 16.4.1984 for the supply of 300 Kms of the demanded material at its own terms and conditions. Subsequently, there was a dispute between the parties with regard to this contract as the firm wanted increase in the quoted rates on account of hike in the price of aluminum by the Government of India. The Board did not agree to the hike in the price and insisted on the supply of the material at the agreed rate. When the firm failed to supply the material, the Board referred the case for the sole arbitration of the Chief Engineer. The arbitrator sent a notice on 6.2.1986 to the firm for filing its reply to the claim of the Board. Therein, the firm denied the existence of any valid agreement between the parties and objected to the jurisdiction of the arbitrator to go into any such dispute. The arbitrator advised the firm to get this matter settled by the Civil Court.

Consequently, an application u/s 33 of the Arbitration Act was filed on behalf of M/s. J.K. Cables seeking a declaration that no valid arbitration agreement exists between the parties in this case and that the reference to the arbitrator by the Board is without jurisdiction and he could not proceed with the reference. According to the Respondent-firm, there was no term about arbitration in the contract between the parties as after receiving quotations from the firm the Board had placed a telegraphic order dated 16.6.1984, Exhibit R 6. which was confirmed by post vide endorsement dated 16.6.1984 asking the firm to supply the material at the quoted rates on the terms and conditions of the firm. Thus, according to the firm, there was no arbitration agreement ever in existence between the parties. The claim of damages, if any, made by the Board before the arbitrator could not be determined through arbitration and it is only the Civil Court which can decide such a question between the parties.

3. In reply filed on behalf of the Board, it was pleaded that the tendered documents containing technical specifications, general instructions on arbitration clause and terms and conditions for submission of tenders were obtained by the firm. It was after purchasing those documents that the offer was made by the firm which was accepted by the Board. Thereafter a letter of intent and purchase order dated 20/21 6.1984 was issued. There was an arbitration clause in the purchase order also. Since the firm committed breach of contract, hence the matter was referred to the arbitrator, in view of the arbitration clause.

4. The learned Senior Sub Judge framed the following issues:

1. Whether there is no valid arbitration agreement between the parties ? OPA

2. Relief.

The learned Senior Sub Judge came to the conclusion that since the terms and conditions of the firm were accepted by the Board in its telegram dated 19.6.1984 without insistence on the acceptance by the firm of the general terms and conditions containing the arbitration clause, the firm never accepted the terms and conditions of the Board as such. In view of this finding, the application u/s 33 of the Arbitration Act was allowed.

5. The learned Counsel for the Petitioner-Board submitted that the firm vide its letter dated 16.2.1984 Exhibit R. 5 (which is equivalent to Exhibit A 2) submitted their offer as detailed therein. There was no mention that the firm did not accept the arbitration clause as contained in the general instructions to be observed by the tenderer which were sent along with the tender. The said offer made by the firm was accepted by the Board vide its telegram dated 16 6.1984 (copy Exhibit R 6). Therein the Board only accepted the offer at their quoted rates and terms and conditions given in letter Exhibit R. 5. The Board also confirmed the said telegram vide its letter Exhibit R. 7 dated 21 6.1984. Therein also the Board made it clear that "the rates, terms and conditions of your offer No. 37/JKC/84 dated 16.4.1984 and additional terms and condition of tender specification No. Q-2614 where your offer is silent forms the purchase order cum-contract

agreement." The firm sent a letter (copy Exhibit A.3) dated 3.7.1984. Thus, argued the learned Counsel, the general instructions which contained the arbitration clause was always there and will be deemed to have been accepted by the firm. On the other hand, learned Counsel for the Respondent submitted that they accepted the tender only subject to the terms and conditions given in their letter Exhibit R. 5 dated 16.4.1984 and since there was no mention of the arbitration clause therein, the same will be deemed to have not been accepted by the firm.

6. I have heard the learned Counsel for the parties and have gone through the relevant documentary evidence on the record. The Respondent-firm never stated in its letter Exhibit R. 5 that the arbitration clause as such given in the general instructions was not acceptable to them. In the said letter they only gave certain terms and condition relating to the rates et cetera but did not make any mention of the arbitration clause which is generally there in such like agreements. This being the situation, the firm could not take shelter behind the letter (Exhibit R. 5) in which certain terms were given by them and were accepted by the Board vide its telegram dated 16.6.1984 That being so, the approach of the learned Senior Sub Judge in this behalf was wholly wrong and misconceived. In the letter Exhibit R. 5, only the counter terms given therein by the firm were accepted by the Board vide its telegram Exhibit R. 6. The other terms which were there in the general instructions cannot be said to have been taken away by the letter Exhibit R. 5. Moreover, the arbitration clause is ordinarily there in such like contracts because these are matters of special knowledge which could be determined by technical hands and, therefore, there was nothing wrong if there was an arbitration clause in the general instructions. The firm gave the tender subject to all the terms and conditions given in the general instructions sent along with the tender and only those terms which were not agreed by the firm and were specifically given in Exhibit R. 4, will be deemed to have been accepted by the Board vide its telegram Exhibit R. 6. In these circumstances, it could not be held that there was no valid arbitration agreement between the parties, as held by the trial Court.

7. Consequently, this petition succeeds, the impugned order is set aside and the application u/s 33 of the Arbitration Act is dismissed with costs.

8. The Arbitrator will now proceed with the matter and give his award within four months of this Court.