

(1998) 03 DEL CK 0058

In the Delhi High Court

Case No : Suit No. 2182, 2224 of 1992

Ram Lal Aggarwal and Co.

APPELLANT

Vs

M.C.D.

RESPONDENT

Date of Decision : 01-03-1998

Acts Referred:

Arbitration Act, 1940 — Section 20

Delhi Municipal Corporation Act, 1957 — Section 283

Citation : (1998) 5 AD 893 : (1998) 2 ARBLR 319 : (1998) 74 DLT 641

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. S.P. Jain and Mr. P.R. Aggarwal, for the Appellant; Mr. Ajay Jha, for the Respondent

Judgement

Manmohan Sarin, J.—By this common judgment, I would be disposing of two petitions u/s 20 of the Arbitration Act, 1940, bearing Suit Nos.2182 of 1992 and 2224 of 1992, filed by the petitioner-firm.

2. The facts as averred by the petitioner in Suit No.2182 of 1992 may be briefly noted:-

(i) The petitioner is a partnership firm having its factory at A-77, Naraina Industrial Area, Phase-I. The petitioner was sanctioned an electric connection for carrying on its manufacturing business and had been regularly paying the electricity bills as raised. The petitioner in the year 1986 had applied for and was sanctioned extra additional load of 312 H.P. The petitioner deposited the requisite charges for this and the respondent No.2-DVB provided the extra load.

(ii) The petitioner states that all along till the year 1990, it was receiving average monthly bills in the range of Rs.16,000/- to Rs.18,000/-, which were paid in due course. However, in the year 1991, the petitioner received bills in the range between Rs.32,000/- to Rs.35,000/- per month. The petitioner claims that there was no change in the nature of its business and the petitioner did not install any

additional machinery or equipment. Accordingly, the petitioner claimed that the aforesaid bills were not correct and were excessive and unreasonable. The petitioner was entitled to refund from the year 1991. The petitioner on 29.4.1992, suddenly received the bill for the month of April, 1992 in the sum of Rs.99,978/-. In this bill the respondent had without any reason raised the bill demand from 309 KVA, which is the sanctioned load of the petitioner, to 1193 KVA, without any basis. The petitioner claims that the said bill had been raised without any inspection. The petitioner further assails the amount raised by the respondent as being arbitrary and illegal. The petitioner also questions the method of conversion of KW to KVA as amounting to change in the condition of tariff and supply, which cannot be done without the provision sanction of the State Government.

(iii) The petitioner has set out the disputes in paras 12 and 13 of the petition, which are as under:-

"That the petitioner is entitled to the refund of all the amounts paid by the petitioner for the period of 1st January, 1991 to 30th April, 1992 in excess of Rs.18,000/- which is a normal bill payable by the petitioner and the said bills are excessive the amounts have been claimed without any basis and the bills in excess of this amount are liable to be set aside and quashed."

"That the bill raised by the respondents for the month of April, 1992 is illegal, unjustified and is without any basis and the bill is liable to be set aside and the petitioner is not liable to pay any amount in excess of Rs.18,000/- and odd which was the normal electricity bill payable by the petitioner."

3. In the second petition being Suit No.2224/92, the petitioner reiterated the same averments as in Suit No.2182/92 and questioned the increase in KVA demand based on the low power factor. The petitioner specifically challenged the bill received for the month of May, 1992 in the sum of Rs.86,167/-, which had been raised on the basis of billing demand at 1094 KVA. The petitioner sought reference of the disputes under Clause 25 of the Arbitration Act to an Arbitrator.

4. The respondents have filed the written statement in the two petitions. It is claimed that the petitioner has a sanctioned load of 325 H.P. (IP) + 10KW (CP) for A.C and 10 KW (CP) for A.C x 1.1807. An objection has been raised to the maintainability of the petition. It is claimed that the bills raised on the petitioner are strictly in accordance with the tariff of the years 1990-91, 1991-92 and 1992-93, wherein the rates have been different for the years in question. The petition is said to be lacking in material particulars inasmuch as the bills are simply questioned as being excessive. It is not the petitioner's case that the bills are not in accordance with the meter readings. The respondents have explained that the billing demand increased since the meter at the respondent's place recorded low power factor. It is stated that the low power factor, which have been levied in the bills are on the basis of KWH and KVAH consumption and are not based on any inspection for which any notice was required to be sent. The

respondents have clarified that the bills based on 1193 KVA and 1094 KVA for the months April and May, 1992 has been computed as under:-

K.W.H.	K.V.A.H.	P.F.	D.C.	April,92	00007178	00031334	0.22	309	x	0.85	
										=	1193 KVA
				0.22 May, 92	00005364	00022140	0.24	309	x	0.85	
										=	1094 KVA
											0.24

5. It would be seen from the foregoing that the low power factor has been computed by dividing the KWH by KVAH reading and the demand charges are computed by multiplying sanctioned load by required power factor and dividing the same by actual power factor. In other words, a low power factor results in increased KVA. The respondents Therefore claimed that the impugned bills are based on direct meter reading coupled with the tariff terms whereby low power factor results in the increase in the bill demand and which gets reflected in the calculation of demand charges. It is stated that the agreement Clauses I (6 & 14) read with the provisions of the tariff are the basis for the said bills.

6. I find merit in the submission of the respondents. The impugned bills in question have been raised on the basis of low power factor, which resulted in a higher demand charges. The petitioner cannot assail the terms of the tariff in the arbitration proceedings. Reference in this connection is invited to the decision of a Division Bench of this Court in C.W.P.1315/91 titled Taxmaco Ltd. Vs. Chief Secretary, Delhi Administration, wherein it was held that by virtue of Clause 15 of the Agreement read with Section 283 of the D.M.C. Act, the petitioner cannot challenge the levy of tariff. Reference may also be invited to the decision of Supreme Court in Asian Art Printers Vs. M.C.D. reported at J.T. 1994 (5) S.C. 60, wherein the petitioner was held liable to pay the demand charges plus energy charges. As regards the increase in the billing demand, it may be noticed that even the Single Judge in Asian Art Printers Vs. M.C.D., held that increase in the bill demand from 250 KVA to 559 KVA was not referable to arbitration, which has been even confirmed in appeal.

7. As regards the petitioner's allegation of change in the method of billing, it is accepted that the mode of billing provided in Clause D is based on the KVA of the billing demand. The Arbitrator would have no jurisdiction to go into the legality of the tariff fixed in this account and the dispute sought to be raised by the petitioner with regard to the basis for calculating the minimum demand is not referable for arbitration and does not fall within its ambit.

8. I also find that the petitioner made payment of all the bills raised up to March, 1992 without any protest or objection. The petitioner has now sought refund, claiming the bills to be grossly excessive, without any particulars being pleaded in the petition as to which particular bill in the particular month was wrong and for what reason. In the absence of these particulars, it has to be assumed that the grievance of the petitioner with regard to the said bills is confined to the increased KVA resulting from low power factor. The respondents in my view has been successful in establishing that the impugned bills are the direct and

inevitable result of the meter readings and the application of the terms of the tariff thereto. The reasonableness of the rates as per tariff or the formula provided for computation in the tariff, which is statutory in nature, cannot be the subject matter for reference as per the arbitration agreement.

In view of the foregoing discussion, both the petitions u/s 20 of the Indian Arbitration Act are dismissed as the disputes sought to be raised in substance and reality question the terms of tariff and the same is not referable to arbitration.