

(1957) 12 KAR CK 0008

In the Karnataka High Court

Case No : Civil Revision Petition No. 702 of 1956

The Amalgamated Electricity Co. Ltd.

APPELLANT

Vs

N.S. Bathena

RESPONDENT

Date of Decision : 11-12-1957

Acts Referred:

Arbitration Act, 1940 — Section 20, 34
Electricity Act, 1910 — Section 16 (3), 21, 21 (2)

Citation : AIR 1958 Kar 148 : (1958) ILR (Kar) 62 : (1958) 36 MysLJ 131

Hon'ble Judges : K.S. Hegde, J

Bench : Single Bench

Advocate : M.M. Ghare Khan and H.B. Datar, for the Appellant; N.C. Malkani, for the Respondent

Judgement

1. The revision petitioner before me is the defendant in Regular Suit No. 197 of 1953 on the file of the First Joint Civil Judge, J.D. Belgaum. The plaintiff is running an industrial concern in Belgaum. The defendant is a firm supplying electricity to the town of Belgaum. The suit was for injunction (1) restraining the defendant from making the minimum charges (2) recovery of Rs. 362-5-0 and (3) restraining the defendant from disconnecting the electric connections to the plaintiff's concern.

The plaintiff contends that the standing charges imposed on him by the defendant are illegal and ultra vires. The defendant-petitioner apart from controverting the plaintiff's allegations, applied to the trial Court u/s 34 of the Arbitration Act to refer the disputes to arbitration. He insisted that under Clause 16 of the VIth Schedule to the Electricity (Supply) Act, 1948 which shall be hereinafter called "the Act" read with Section 76 of the said Act the dispute in question is required to be referred to arbitration of the "Authority" mentioned in Section 3 of the Act. The plaintiff denies that there is any arbitration agreement statutory or otherwise between the parties. According to him Section 34 or Section 20 of the Arbitration Act does not come into play.

2. Hence the question for consideration is as to whether there is any arbitration agreement. The arbitration agreement pleaded is one based on the interpretation of the relevant provisions of the Indian Electricity Act, 1910 and the Act. It was contended before the trial Court that in view of Section 76(1) of the Act, arbitration is compulsory. Section 76(1) provides thus :

"All questions "arising between the State Government or the Board and a licensee or other person" shall be determined by arbitration."

(underlining (here into " ") is mine). The case for the defendant in the trial Court was that plaintiff who is a consumer fell within the category of "other person" mentioned in Section 76(1). This contention was rejected by the trial Court. According to that Court Section 76(1) of the Act provided for compulsory "arbitration" in all disputes between the Government and the Board on the one side and the licensee on the other.

The word "other person" in Section 76(1) must be construed on the principle of ejusdem generis as a person who discharges the duties of a licensee. According to that Court the word "other person" in that Section refers to persons mentioned in Section 28 of the Indian Electricity Act, 1910. At this stage it may be stated that the Electricity (Supply) Act, 1948 and the Indian Electricity Act, 1910 operate simultaneously; one supplements the other excepting to the extent that the provisions of the Indian Electricity Act, 1910 or Rules made thereunder are inconsistent with any of the provisions of the later Act.

In case of inconsistency the later Act shall prevail. (Section 70 of the Act). So in examining the contentions of the parties in this case reference will have to be made to both the Acts. The second contention of the defendant is that dispute in question fell under Clause 1 of Schedule 6 of the Act for which arbitration is provided for in Clause 16 of the said schedule. His last contention is that on a true reading of the several sections of the two Acts it will be seen that all disputes arising between the Government and the Board on the one side and the licensee on the other, as well as all disputes between the licensee and the consumer are required to be referred to arbitration. The trial Court in an exceedingly well written order rejected all these contentions. The first contention was not pressed before the appellate Court. The other two were pressed but rejected.

3. In this Court the petitioner takes the same contentions which he took before the appellate Court. Reliance is placed upon Clause 16 of Schedule 6 of the Act as well as on Section 76(2) of the Act. Sri Ghare Khan, tile learned Advocate for the petitioner conceded that the arbitration contemplated in Section 76(1) of the Act relates to arbitration between the State Government and the Board on one side and the licensee and the person discharging the duties of the licensee on the other side.

But according to him his client's case falls u/s 76(2) of the Act which provides that where any question or matter is by that Act, required to be referred to the

arbitration it shall be so referred. He further urged that disputes between the licensee and the consumer are required to be referred to arbitration as per the Act. He invited my attention to Sections 16(3), 21, 21(2), 21(4), proviso to Sections 22, 24(2) of the Indian Electricity Act, 1910; Clauses 5(2), 6(3) and 12 of the Schedule to the Indian Electricity Act, 1910. He also invited my attention to Clauses 1 and 16 of the Sixth Schedule of the Act, to reinforce his argument that disputes between the consumer and the licensee is not outside the scope of the arbitration provided for in the two Acts. Let me first take up the contention based on Clause 16 of Schedule 6 of the Act. The said clause reads :

"Any dispute or difference as to the interpretation of any matter arising out of the provisions of this Schedule shall be referred to the arbitration of the Authority."

According to the petitioner, the dispute in hand, falls within Clause 1 of Schedule 6 of the Act. The said clause is as follows :

"The licensee shall so adjust his rates for the sale of electricity by periodical revision that his clear profit in any year shall not as far as possible extend the amount of reasonable return;

Provided that the licensee shall not be considered to have failed so to adjust his rates if the clear profit in any year of account has not exceeded the amount of the reasonable return by more than thirty per centum of the amount of the reasonable return."

4. The argument on behalf of the petitioner is that the dispute in question relates to fixation of rates. As such it falls under Clause 1. It is difficult to accept this argument. Clause 1 provides the basis on which the licensee should adjust his rates. The Government can compel him to abide by the requirement of this rule. But the consumer does not come into the picture excepting probably by agitating the matter before the Government and by exercising his rights as a citizen. But the plaintiffs complaint in this case is that the defendant has no legal authority to collect any standing charges.

It is not a dispute as regards the adjustment of rates but a complaint about an unauthorised levy. Again the aforesaid Clauses 1 and 16 regulate the relationship between the licensee and the Government.

Only the Government or the Board can raise a dispute as regards the adjusted rates. The consumer cannot raise any dispute about it. The act of the licensee unilaterally imposing standing charges are beyond his powers and opposed to the terms of his licensee and as such can be challenged before a Court of law. See Babulal Chhaganlal Gujarathi Vs. Chopda Electric Supply Co. Ltd., . It was so done in that case.

5. It is next contended that the amending Act of 1956 makes it clear, by the incorporation of the new Clause 1 to Schedule 6 of the Act that the legislature intended Clause 1 and Clause 16 of Sch. 6 of the Act to apply to the disputes

between the licensee and the consumer. The learned Counsel for the petitioner wants me to read the new clause as one interpreting the previous clause.

I am unable to accept this contention. It purports to be an amendment and clearly it is one such. The wording of the clause makes it abundantly clear. Nor am I able to construe the amended Clause 1 as making arbitration compulsory.

6. I shall now turn my attention to the arguments based on Section 76(2) of the Act. It clearly speaks of arbitration to which provisions have been made in the Act or in the Indian Electricity Act, 1910. In this connection reference may be made to Sections 16(3), 21(2), 21(4) proviso to Sections 22, 24(2), Clauses 6 and 12 of the Schedule of the Indian Electricity Act, 1910. These are cases for which the statute provides for arbitration.

But the dispute which is the subject of the suit with which we are now concerned is clearly outside the scope of all or any of the sections herein above mentioned. No provision of the Indian Electricity Act, 1910 or the Act was brought to my notice under which the present dispute is required to be submitted to arbitration. The arguments hovered round the so called spirit of the two statutes, but there was no substance in that.

My attention was invited to the case reported in *Municipal Committee, Fazilka v. Fazilka Electric Supply Co., Ltd.* AIR 1947 Lab 309 (B). But that case considered the interpretation of Clause 6(3) of the Schedule of the Indian Electricity Act, 1910. The clause in question provided for arbitration. It is of no assistance to the petitioner.

7. Section 76(2) of the Act speaks of disputes for which arbitration has been provided for. By implication it means that there are disputes for which arbitration has not been provided for. Otherwise the section could have been so worded to bring in all disputes. Again, the very fact that arbitration is provided for disputes falling under Sections 16, 21, 22 and 24 and for disputes falling under the several clauses of the schedules clearly militates against the contention of the petitioner that all disputes are required to be referred to arbitration. If that be so the reference to arbitration in those sections and clauses are superfluous and is a clear waste of legislative time and labour. Such a construction is opposed to well accepted principles of construction of statutes.

8. The presumption of the law is that every citizen can approach the ordinary civil Court for the adjudication of his rights. It is for those who plead that he is excluded to establish it by clear and cogent authority. Arbitration cannot be forced down the throats of unwilling litigants. The compulsion of the law if any must be clear and unambiguous. Courts will not lean for a construction ousting the jurisdiction of the civil Courts. In this case nothing explicit or for that matter even implicit has been brought to my notice to deny the plaintiff the protection of the civil Court.

9. In the light of my above findings it is unnecessary for me to examine the

preliminary objection raised on behalf of the respondent, as regards the maintainability of the revision. But in passing I might say that the dispute relates to the jurisdiction of the trial Court to try the case --though the lack of jurisdiction contended for is for a temporary period. To such a case S. 115 is clearly applicable. See Ramrichpal Singh Vs. Dayanand Sarup minor through Bhagwat Sarup, .

10. In the result this revision petition fails and is hereby dismissed with costs.

11. Revision dismissed.