

(1915) 02 AHC CK 0050
In the Allahabad High Court

The Ganges Sugar Works Ltd.

APPELLANT

Vs

Nuri Miah

RESPONDENT

Date of Decision : 17-02-1915

Acts Referred:

Companies Act, 1956 — Section 96

Citation : 28 Ind. Cas. 384

Hon'ble Judges : Henry Richards, C.J.; P.C. Banerji, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The facts connected with the case out of which this appeal arises are shortly as follow. The plaintiff Company entered into a contract with the defendant in connection with the working of a certain portion of the Company's property or business. One clause of this contract was that in the event of disputes or differences arising, they should be referred to the arbitration of a gentleman named Hazari Lal, and that his decision should be binding and conclusive between the parties. This contract was not under seal. Disputes having arisen the Company made an application under Schedule 11, Rule 17, of the CPC to file the contract as a submission to arbitration in order that the matter should be settled in accordance with the provisions of the Code. This application was refused by the Court below on the sole ground that the contract which contained the submission to arbitration was not under the seal of the Company. At present we have nothing to do with the merits of the dispute between the parties. We have only to decide whether or not the Court below was wrong in refusing the application on the ground mentioned above. Section 67 of the Indian Companies Act, VI of 1882, (which was in force at the time), provides for the manner in which contracts can be entered into by Companies. It is admitted by both sides that the present contract, save the particular clause which refers to arbitration), was a contract which the Company was entitled to enter into without its being under seal. It quite clear that if Section 67 stood alone, the contract to refer to arbitration also did not require, to be under seal. It is contended, however, that it

necessarily follows from the provisions contained in Section 96 and the subsequent sections down to Section 123 that an agreement to refer disputes to arbitration by a Company to be legal must necessarily be under seal. Section 96 See Section 119 of the Companies (Consolidation) Act, 1908.--Ed. is as follows: "Any Company under this Act may from time to time, by writing under its common seal, agree to refer, and may refer, to arbitration any matter whatsoever in dispute between itself and any other Company or person; and the Companies, parties to the arbitration, may delegate to the person or persons, to whom the reference is made, power to settle any terms or to determine any matter capable of being lawfully settled or determined by the Companies themselves, or by the Directors or other managing body of such Companies".

2. This Section (96) is largely taken from the English Companies Act (25 and 20 Victoria, Chapter 89), Section 72 See Section 119 of the Companies (Consolidation) Act, 1908.--Ed. of which is as follows "Any Company under this Act may from time to time, by writing under its common seal, agree to refer and may refer to arbitration, in accordance with the Railway Companies Arbitration Act, 1859, any existing or future difference, question or other matter whatsoever in dispute between itself and any other Company or person, and the Companies parties to the arbitration may delegate to the person or persons to whom the reference is made power to settle any terms or to determine any matter capable of being lawfully settled or determined by the Companies themselves or by the Directors or other managing body of such Companies."

3. Section 73 See Section 119 of the Companies (Consolidation) Act, 1908.--Ed. is as follows: "All the provisions of the Rail way Companies Arbitration Act, 1859, shall be deemed to apply to arbitrations between Companies and persons in pursuance of this Act and in the construction of such provisions the Companies shall be deemed to include Companies authorised, by this Act to refer disputes to arbitration".

4. The Railway Companies Arbitration Act, 1859, was an Act providing for the settlement of disputes between Railway Companies inter se. It contains more or less elaborate provisions for the manner in which such arbitrations should be carried, out. The provisions, to which we have referred, of the English Companies Act incorporated these provisions and made them applicable not only to disputes between different Companies, but also to disputes between a Company and an Individual. It was evidently the intention of the Indian Legislature to do much the same thing by the Indian Companies Act of 1882. Sections 97-122 are for the most part adaptations of the Railway Companies Arbitration Act to which we have already referred. It was neglected, however, to expressly make these sections applicable to disputes between Companies and individuals. It seems as if there was an example of clumsy drafting, but the matter is no longer of any very great importance because under the present Indian Companies Act, VII of 1918, provision is made for Companies entering into arbitration in accordance with the Indian Arbitration Act. It seems to us that the question resolves itself into the

proposition, do the provisions of Section 90 necessarily imply that a Company cannot, save under seal, enter into a contract to refer, a contract which but for the provisions of the section it could have entered into, namely, to submit its possible future disputes to the arbitration of a named arbitrator seems to us that there is no such necessary implication. The words are that the Company may from time to time" etc. It was probably the intention of the Legislature when providing for the method in which a particular arbitration should be carried out to give the parties the option of having the arbitration in accordance with the Act, if they thought fit. His, however, unnecessary, now to speculate as to what, was the real intention from the change that has been made in the law; the provisions of the Act of 1882 evidently were found to be inapplicable to the conditions of this country. We think that the contract in the present case to refer to arbitration any future disputes which might arise between the Company and the defendant was not an illegal contract but a contract which can be given effect to in the ordinary way. It is quite clear that Section 123 only applies to submissions to arbitration which have been made in accordance with the provisions of the Act.

5. We accordingly allow the appeal, set aside the decree of the Court below and remand the case to that Court with directions to re-admit it upon its original number in the file and to proceed to hear and determine the Hume according to law, having regard to what we have said above. Costs here and heretofore will be costs in the cause and will include fees on the higher scale. The record may be sent down so that the Court below may dispose of the case as soon as possible.