
(1974) 03 MAD CK 0037
In the Madras High Court

The State Electricity Board		APPELLANT
	Vs	
The Sree Meenakshi Mills Limited and Another		RESPONDENT

Date of Decision : 21-03-1974

Acts Referred:

Citation : (1975) 88 LW 269 : (1974) 2 MLJ 195

Hon'ble Judges : S. Maharajan, J

Bench : Division Bench

Judgement

S. Maharajan, J.—This appeal is preferred against the order of the learned First Additional Subordinate Judge, Madurai, setting aside the

award of the Arbitrator dated 20th January, 1970. The award itself was made under the following circumstances: Sree Meenakshi Mills Limited,

Madurai, instituted a suit in O.S. No. 4 of 1964 on the file of the Sub-Court, Madurai, for referring a dispute between the Sree Meenakshi Mills

Limited and the State Electricity Board, Madras to an arbitrator for decision. The Electricity Board opposed the reference. But the Subordinate

Judge directed the reference to be made to the Arbitrator for decision on two questions:

(1) Whether the plaintiff's mill at Paravai is a new industrial unit within the meaning of the GO. Ms. No. 3059 P.W.D., dated 9th July, 1956 and

marked as Exhibit B-22 in the case? and

(2) Whether the plaintiff is entitled to the exemption from levy of additional surcharge of 30 per cent, under the G.O. referred to above ?

The Electricity Board tools the matter on appeal to this Court, but this Court confirmed the judgment of the learned Subordinate Judge and

directed the Arbitrator to decide the question of limitation raised by the defence

in addition to the two questions framed by the Sub-Judge, Mr. H.

Devadoss, a Retired District Judge was appointed as the Arbitrator and he made an award holding that the claim was not barred by limitation, and

that the plaintiff Mill at Paravai, not being a "new industrial unit" within the meaning of the above-mentioned G.O. was not entitled to exemption

from levy of surcharge of 30 per cent under the G.O. Thereupon Sree Meenakshi Mills Limited filed an objection under Sections 30 to 33 of the

Arbitration Act praying that the award be set aside on the ground that it was vitiated (1) by an error apparent on the face of the record and (2) by

legal misconduct on the part of the Arbitrator in so far as he relied upon the subsequent communications of the Government elucidating the G.O.

The learned Subordinate Judge set aside the award in to on the ground that the award was vitiated by an error apparent on the face of the record

amounting to legal misconduct u/s 30 of the Arbitration Act. It is against this order that the Electricity Board has preferred this appeal.

2. The question that fell for consideration by the Arbitrator turned upon the interpretation of G.O. Ms. No. 3069 P.W.D., dated 9th July, 1956,

whereby the Governor of Madras in exercise of the powers conferred by Section 3 of the Madras Essential Articles Control and Requisitioning

(Temporary Powers) Act, 1949 (Madras Act XXIX of 1949; as re-enacted by Madras Act VI of 1956, made an amendment to the Madras

Electricity Supply (Government and Licensees Areas) Surcharge Order, 1954. According to this amendment, the surcharge, referred to in clause 3

of the Surcharge Order, shall be levied on the overall charges referred to in clause (4) at the following rates:

Per cent.

I. Consumers served by the Madras Electricity Department

direct (other than distributing licensees receiving bulk

supply from the Department).

A. Consumers in Pykara. Mettur and Papanasam Systems:

(a) Railways 20

(b) High Tension Consumers:

(i) New Industrial Units which have been in production for

less than three years. 30

(ii) Others 50

(c) Low Tension consumers. 20

B. Consumers in Madras Electricity System 20

II. Distributing Licensees receiving bulk supply from the department 40

III. Consumers in areas fed with bulk supply of power purchased from Mysore and Travancore Cochin 10

(a) Railway 10

(b) High Tension Consumers

(i) New Industrial Units which have been in production for less than three years. 10

(ii) Others. 20

(c) Low Tension consumers. 10

IV. Consumers in areas of distributing licensees receiving bulk supply from the department.

3. Provided that the State Government may from time to time order revision of the rates fixed in this clause.

4. The question is whether the S pinning Mill established at Paravai by the Sree Meenakshi Mills Limited in 1956 would be a new industrial unit

within the meaning of the amended clause 6 of the rules. Two opposing constructions have been put before us upon this expression. The one is that

inasmuch as the intention of the Government was to encourage production, the expression "" New Industrial Unit"" must be construed to embrace

any new unit established even by a preexisting venture or concern. The other construction is that as the intention of the Government was only to

encourage nascent industries, the expression ""New Industrial Unit"" would cover only new industrial concerns and not re-w industrial units

established by old concerns. In the view that we take of this matter, it is unnecessary to consider which of these two interpretations is correct.

5. The learned Arbitrator has by writing a long order rendered it vulnerable to attack on the ground it is contrary to law. If after referring to the

terms of reference he had, without any discussion, merely answered the same against Sree Meenakshi Mills, there could have been no scope for

criticism against his award. But the learned Arbitrator chose to refer elaborately to the evidence and to express the process of ratiocination by

which he arrived at a conclusion against Sree Meenakshi Mills. As has been held by the Supreme Court in Bungo Steel Furniture Pvt. Ltd. Vs.

Union of India (UOI),

It is now a well-settled principle that if an arbitrator, in deciding a dispute before him, does not record his reasons and does not indicate the

principles of law on which he has proceeded, the award is not on that account vitiated. It is only when the arbitrator proceeds to give his reasons

or to lay down principles or which he has arrived at his decisions that the Court is competent to examine whether he has proceeded contrary to

law and is entitled to interfere if such error in law is apparent on the face of the award itself.

In Seth Thawardas Pherumal Vs. The Union of India (UOI), , the Supreme Court, while setting aside the award of the arbitrator on the ground that

his construction of the terms of a contract was faulty, observed as follows:

The question now arises whether his decision on this point is final despite its being wrong in law. In India this question is governed by Section 16

(1) (c) of the Arbitration Act of 1940 which empowers a Court to remit an award for reconsideration

"where an objection to the legality of the award is apparent upon the face of it". This covers cases in which an error of law appears on the face of

the award. But in determining what such an error is, a distinction must be drawn between cases in which a question of law is specifically referred

and those in which a decision on a question of law is incidentally material (however necessary) in order to decide the question actually referred. If a

question of law, is specifically be referred and it is evident that the parties desire to have a decision from the arbitrator about that rather (than) one

from the Courts then the Courts will not interfere, though even there, there is authority for the view that the Courts will interfere if it is apparent that

the arbitrator has acted illegally in reaching his decision-that is to say, if he has decided on in, admissible evidence or on principles of construction

that the law does not countenance or something of that nature.

It is therefore clear that if a mixed question of law and fact has been referred to the Arbitrator, as has been done in this case, it is open to the Court

to interfere with the award of the Arbitrator if it is apparent on the face of the award that the Arbitrator had decided the questions referred to him upon principles of construction which the law does not countenance. In this case the learned Arbitrator has devoted the major part of his order to make out that the Spinning Mill at Paravai is only a branch of Sree Meenakshi Mills Limited at Madurai. After coming to the conclusion that it is only a branch, he jumps to the further conclusion that it cannot be regarded as a new industrial unit within the meaning of the G.O. The Arbitrator has nowhere considered the question whether the expression "New Industrial Unit" was intended to embrace only new industrial concerns or also new industrial units established by preexisting concerns. Nor did he consider what was the intention of the Government in conferring a concession upon new industrial units. Was it because the Government wished to encourage production or because it wished to put nascent industries on their feet? By examining the object and purpose of the amendment, he could have come to the conclusion as to the proper meaning of the expression "New Industrial Unit". As the matter is one of interpretation of the words used by the rule-making authority, it is clearly a question of law. After perusing the order of the Arbitrator, we are convinced that he has not interpreted the G.O.'s having in mind the relevant considerations which ought to govern the interpretation thereof. We therefore think it right u/s 16 (1) (c) of the Arbitration Act that we should remit the award of the Arbitrator for fresh consideration after taking into account the relevant factors pointed out by us. We may also say that we are not confirming the finding of the Sub-Court that the Arbitrator has in any manner legally misconducted himself. We do not think that the subsequent communications from the Government have in any manner influenced him in coming to the conclusion that he did. We therefore think that the award cannot be set aside u/s 30 of the Arbitration Act on the ground of legal misconduct. We understand that the Arbitrator is since dead. The First Additional Subordinate Judge, Madurai, will, therefore, appoint a fresh Arbitrator and remit the award to him for the purpose indicated in this order. In the circumstances of the case, we pass no order as to costs.