

The Patna Electric Supply Co. Ltd.

Vs

The Patna Municipal Corporation and Others

Civil Appeal No. 418 of 1969

(J.C. Shah, K.S. Hegde JJ)

09.10.1969

JUDGMENT

HEGDE, J. -

1. This appeal has been brought on the strength of the certificate granted by the High Court of Patna. The appellant moved the High Court under Article 226 of the Constitution to issue a writ in the nature of writ of Mandamus calling upon the respondents to show cause why the demands made on behalf of the 1st respondent Corporation and the notices issued on its behalf Annexures (H) and (K) be not quashed and cancelled and the respondents restrained from making similar demands in future. The High Court did not enter into the merits of the application. It rejected the application on the sole ground that the proper remedy available to the petitioner was to move the Central Government under Section 15 of the Indian Telegraph Act, 1885.

2. The petitioner is a company incorporated under the Indian Companies Act. It holds a licence to supply electricity within the limits of Patna Municipal Corporation. For the purpose of transmission of electric energy, it had to place overhead lines. In that connection it erected several electric poles over the lands belonging to the Municipal Corporation. On December 8, 1967, the Administrator of the Municipal Corporation demanded from the appellant petitioner fee for the lands occupied by its for fixing electric poles in the Corporation area. In that connection is called upon the petitioner to intimate the total number of electric poles erected within the limits of the Corporation and also the are occupied by each pole. The petitioner protested against that demand as per its letter dated December 26, 1967. It denied any liability to pay rent in respect of the poles fixed. On the same day namely December 26, 1967, the Administrator issued an order imposing a ground rent of Rs. 1.50 paise per pole per month and forwarded a bill for Rs. 51,300/- in respect of the rent alleged to be due for the month of December 1967. Therein it held out a threat that if the rent demanded is not paid, coercive processes under Section 205 and 206 of the Patna Municipal Corporation Act would be taken against the petitioner. The petitioner against repudiated its liability to pay any rent as per its letter of December 30, 1967 and requested the Administrator to let the petitioner know the legal basis on which the rent is demanded. As per its letter of January 24, 1968 the Deputy Administrator of the Corporation informed the petitioner that the levy was made in presence of the power conferred on the Corporation under Section 262 of the Patna Municipal Corporation Act. By the letter dated January 1, 1968, the Resident Engineer of the petitioner-Company informed the Corporation that it had no power to levy the rent in question under the aforementioned Section 262. But the Administrator against asserted the Corporation's right to act under that provision as per his letter dated January 30, 1968. On February 5, 1968, the Assistant Administrator claimed a sum of Rs. 1,53,900/- as arrears of rent. On March 7, 1968, another bill for Rs. 51,300/- as arrears of rent for the month of March, 1968, was forwarded to the petitioner-Company by the Administrator.

Being apprehensive the coercive steps will be taken against the petitioner-Company, It moved the High Court under Article 226 of the Constitution of the relief mentioned earlier.

3. The petitioner was opposed by the Corporation on various grounds but the High Court did to examine any one of those grounds. On the other hand it rejected the application on the sole ground that the only method prescribed by law for resolving the controversy between the petitioner-Company and the Corporation was that provided by Section 15 of the Indian Telegraph Act, 1885.

4. In our opinion the High Court has misread the provision of the Indian Electricity Act, 1910 and the Indian Telegraph Act, 1885. The High Court purported to have based its decision on Section 51 of the Indian Electricity Act. That section reads thus :

"Notwithstanding anything in Section 12 to 16 (both inclusive) and Sections 18 and 19, the (State Government) may, by order in writing, for the placing of (electric supply-line, appliance and apparatus for the transmission of energy or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying energy to the public under this Act), subject to such conditions and restrictions (if any) as the (State Government) may think fit to impose, and to the provisions of the Indian Telegraph Act, 1885, any of the powers which the telegraph authority possesses under that Act, with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained by the Government or to be so established or maintained."

5. Under notification No. 64/Elec., dated 11th August, 1966, the State Government conferred upon the petitioner powers for placing of electric supply-lines, appliances and apparatus for the transmission and distribution of the energy by it within the area of its supply which the telegraph authority possesses under Section 10 to 18 and 19-A of the Indian Telegraph Act with respect to placing of telegraph lines and posts. Section 51 merely empowers the State Government to confer on the licensee certain powers which can be exercised by a telegraph authority under the Indian Telegraph Act. It does not by reference incorporate into the Indian Electricity Act all the provisions of the Indian Telegraph Act.

6. Merely because some of the powers conferred under the Indian Telegraph Act on the telegraph authority could be conferred on a licensee under the Indian Electricity Act, it does not follow that all the rights and liabilities of a licensee under the Indian Electricity Act are governed by the provisions of the Indian Telegraph Act.

7. Section 15 of the Indian Telegraph Act reads thus :

"(1) If any dispute arise between the telegraph authority and a local authority in consequence of the local authority refusing the permission referred to in Section 10, clause (c), or prescribing any condition under Section 12, or in consequence of the telegraph authority omitting to comply with a requisition made under Section 13, or otherwise to comply with a requisition made under Section 13, or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by such officer as the (Central Government) may appoint either generally or specifically in this behalf.

(2) An appeal from the determination of the officer so appointed shall lie to the (Central Government) and the order of the (Central Government) shall be final."

8. Before this provision can be called into aid for the determination of any dispute, the dispute must arise between the telegraph authority and a local authority. A licensee under the Indian Electricity Act cannot be considered as a Telegraph Authority an expression defined in Section 3(6) of the Telegraph Act. Further that the disputes that can be referred to arbitration under that provision are only those referred to in that section and no other.

9. In our opinion the High Court erred in rejecting the petitioner on the ground that the dispute in question should be referred to arbitration under Section 15 of the Indian Telegraph Act.

10. Mr. S. V. Gupte, learned counsel for the Corporation did not support the reasons given by the High Court in support of its judgment. On the other hand he contended that on the basis of the averments made in the application, the relief asked for by the petitioner could not have been granted and therefore the High Court was right in rejecting the same. The High Court has not considered this question. Hence we do not propose to go into the same.

11. In the result this appeal is allowed, the order of the High Court is set aside and the case remitted to the High Court for disposal according to law. The petitioner-appellant is entitled to his costs of this appeal from the first respondent.

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