

Southern Gas Ltd.

Vs

Visveswaraya Iron & Steel Ltd.

(CJI M. M. Punchhi, M. Srinivasan JJ)

24.10.97

JUDGEMENT

M. SRINIVASAN, J.

1. Leave granted.

2. This is an appeal against the judgment and order of the High Court of Karnataka at Bangalore passed in Miscellaneous First Appeal No.478 of 1992.

3. An agreement was entered into between the appellant and the respondent towards delivering, taking, using etc. of oxygen on certain terms and conditions. Clause 7 of the agreement is the 'Force Majeure'. This clause provides that to the extent and during the period either of the parties is prevented from delivering or taking oxygen or using it in accordance with the agreement due to the operation of one or more of the force majeure events such as but not limited to Acts of God, war, revolution, floods, drought, earthquakes, strikes, lockouts, conflagration, epidemics riots, civil commotions etc., they shall be relieved of their respective obligations of delivering or taking and paying for such oxygen. The claim of the respondent was that during a certain period, it was unable to take oxygen as per the agreement because there were more than 70 per cent power cuts due to which it could not run its LD Plant which in turn depended upon the Electric Pig Iron Furnace, which was highly power-oriented. On this premise, a dispute arose and an Arbitrator was sought to be appointed. The appellant herein therefore moved the Court under Section 20 of the Indian Arbitration Act, 1940 successfully. An Arbitrator was appointed. The respondent/company took the matter in appeal before the High Court who reversed the judgment of the trial Court to some extent pertaining to some items in dispute.

4. The orders of the High Court have been challenged herein on the ground that whether or not it was a case of 'force majeure', was a preliminary question determinable by the Arbitrator. In other words, if the respondent could successfully plead and prove to the satisfaction of the Arbitrator that 'force majeure' clause was attracted, it would preclude other disputes being raised before and determined by the Arbitrator. In any event, the matter initially had to go to the Arbitrator to be stopped or continued after the decision on the question of 'force majeure'. We think that the appellant is on sound ground in contending this way towards interpretation of the agreement contained in Clause (7) above referred to read with Clause (22) providing for arbitration. Even learned counsel for the respondent appreciated the logic of the argument and has in the manner submitted to it before us. Let the Arbitrator, therefore, first go into the question whether the dispute falls within the ambit of the arbitration agreement dependent on the determination whether the breach could invoke the 'force majeure' clause or not, and if not then to proceed further within his domain to determine all questions as raised by the parties.

5. For the foregoing reasons, we allow this appeal, set aside the impugned judgment and order of the High Court putting the matter back on the file of the trial Court to suitably modify the reference to the Arbitrator in the light of the decision aforesaid. Ordered accordingly. No costs.