

KARNATAKA HIGH COURT

Mysore Manufacturers and Traders

Vs.

State, (Karnataka)

Writ Petition no. 5862 of 1978

(G.N. Sabhahit, J.)

27.03.1981

ORDER

G.N. Sabhahit, J.

1.The material facts are these: The petitioner, a Partnership firm engaged in the manufacture of plastic tops and laminations imported and installed a Dixon Pilot Quoting Machine and an Air Dryer in the year 1973. The respondent Karnataka State Electricity Board sanctioned energy to the said installation subject to an authorized load of 98 HP and serviced the same with effect from 15-9-1973. It also fixed the monthly minimum charges payable on that basis. The petitioner has also averred that the respondent-2 never provided the required 200A fuses at their pole.

2. It is further averred in the writ petition that the 2nd respondent In the writ petition arbitrarily disconnected the power to the petitioner on false and trumped up charges on 6-6-74 and the petitioner immediately appealed to the Chairman on 7-6-1974 and the Chairman appointed the Chief Engineer (South) to inspect and give his findings. The Chief Engineer, by his report dt. 30-8-1974 gave his findings exonerating the petitioner and recommended re-connection. But, the Board for the reasons best known to it did not give the re-connection. The petitioner was forced to file writ petition No.1442/75, on the file of this Court, but the same was dismissed. But in appeal W.A. 353/1976 which was allowed on 1-6-1977.*it was held that the disconnection was illegal and issued a writ of mandamus directing reconnection.

3. According to the petitioner, he has invested huge amounts borrowing from banks and financial institutions at heavy rates of interest and on account of the illegal and arbitrary disconnection of the energy for a period of three years, the machinery could not be worked and the petitioner has thus suffered heavy losses on account of the interference by the licensee and the petitioner is entitled to claim compensation for the inconvenience, as a result of an undue and illegal interference by resposdent-2. In spite of the reliefs Granted to the petitioner in W.A. 353/76, the

petitioner avers, that it was not possible to restart or rejuvenate the industry unless a fair compensation for this arbitrary and prolonged disconnection was received.

4. So, according to the petitioner, the petitioner approached the Chairman for the relief. The Chairman directed the petitioner to submit his claim and he submitted his claim on 24-10-1977, a true copy of the same is filed along with the writ petition at Exhibit-A. No reply was received and no action was taken by the Board. Thereafter, the present writ petitioner gave a notice to respondent-2 demanding, inter alia, arbitration under Section 52 of the Indian Electricity Act, 1910. r/w. Section 19 (2) and Section 21 (4) of the Act and naming an Arbitrator from the petitioner's side. A true copy of the said notice is filed along with the writ petition at Exhibit-B. The reply received to it dated 13-12-1977 by respondent-2 was beside the point and a true copy of that reply is filed along with the writ petition at Exhibit-C. The petitioner again sent a letter dated 25-12-77 to the Government requesting the appointment of Arbitrator as required under Section 52 of the Electricity Act, 1910. A true copy of the said letter is filed along with the writ petition at Exhibit-D. The 1st respondent refuted the claim of the petitioner. A true copy of the letter turning down the request of the petitioner is filed along with the writ petition at Exhibit-E. Thus, the petitioner, according to him, is forced to approach this Court with the following prayer:-

"Wherefore the petitioner prays that the Hon'ble Court be pleased to call for records and:
(i) issue a writ of mandamus or such other writ, order or direction directing the respondents to name an arbitrator as provided under Section 52 of the Electricity Act, 1910, for enquiry and assessment of the compensation due to the losses sustained on account of the illegal disconnection."

This prayer was opposed by the other side. They contended that the matter is not covered either by Section 19 (2) or by Section 21 (4) of the Electricity Act. No arbitration was provided for to settle the damages as on the facts of the present case. The point, therefore, that arises for my consideration in this writ petition is: Whether there is justification in the prayer made in the writ petition that an arbitrator should be appointed under Section 19 (2) Or under Section 21 (4) of the Electricity Act, 1910.

5. At the very outset, my attention was invited to the earlier decision of this Court referred to above which is reported in (1978) 1 Kant LJ 389. Therein a Division Bench of this Court has no doubt held that the back-billing was not legal, but the present writ petitioner was bound to pay all the monthly minimum charges. This is what the Court has observed:

"In these circumstances, we are clearly of the view that the appellant would be liable to pay the monthly minimum charges that had accrued during the period the installation had stood connected to power supply, pursuant to the said interim order. We are, therefore, of the view that any mandamus that may have to issue regarding restoration of connection

could only be conditional upon payment of the monthly minimum charges and such other dues, if any, if the same have not been paid.

In the light of the foregoing, we are unable to uphold the judgment in appeal. The appeal is accordingly allowed and in reversal of the order of the learned single Judge W.P.1442 of 1975 is also allowed to the extent indicated above.....

In the result the demands comprised in Exts-D.J and B-1 in so far as they relate to back-billing charges and other dues arising therefrom are hereby quashed. A direction in the nature of mandamus will also issue to the respondent-Board to restore the electric supply to the installation of the appellant, provided he pays up all the monthly minimum charges and other dues of a like nature during the period the power supply had stood restored pursuant to the interim orders passed during the pendency of the writ petition."

The learned Counsel appearing for the Board no doubt submitted that the monthly minimum charges are not yet paid; be that as it may, the direct question that arises for my consideration in this writ petition is: Whether the case for damages as made out should be referred to Arbitration?

6. I would first take for consideration Section 19 (2) of the Electricity Act which is relied upon by the writ petitioner. Section 19 reads thus:

"19 Compensation for damage.- (1) A licensee shall, in exercise of any of the powers conferred by or under this Act, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.

(2) Save in the case provided for in Section 12. sub-section (3), where any difference or dispute arises as to the amount or the application of such compensation, the matter shall be determined by arbitration."

7. It is necessary to recall that Section 19 occurs in the Chapter under the rubric 'Works'. That Chapter consists of Sections 12 to 19. Section 12 contemplates 'Provisions as to the opening and breaking up of streets, railways and tramway andapos, Section 13 contemplates 'Notice of new works' : Section 14 contemplates 'Alteration of pipes or wires', Section 15 speaks of 'Laying of electric supply-lines or other works near sewers, pipes or other electric supply-lines or works': Section 16 speaks of 'Streets, railways, tramways, sewers, drains or tunnels broken up to be reinstated without delay : Section 17 contemplates 'Notice to telegraph authority when their property is to be interfered with' : Section 18 speaks of 'Overhead lines', and then comes Section 19 as the last section of the Chapter which speaks of 'Compensation for damage'. Thus, it is obvious that Section 19 has to be understood under the scheme of Chapter 'Works' and not in a general way. If, in the doing of work contemplated under the said Chapter, the Electricity Board, shall cause as little damage, detriment and inconvenience as may be and for such inconvenience, interference or detriment, damages are to be awarded and if there is dispute with regard to the amount of damages or the cause of action, the matter has to be referred under section 19(2) to

arbitration. The section does not speak in a general way. It is controlled by the provisions of the Chapter under the rubric "Works' and hence, Section 19 (2) does not apply to the facts of the present case which speaks of a different situation altogether. What is claimed in the present writ petition is that the petitioner is entitled for damages as the electricity supply was cut off and not because there was inconvenience, damage or detriment by the Electricity Board in laying supply lines etc. as contemplated under the Chapter 'works'.

8. However, if an authority is needed on the proposition, it is to be found in the case of *State v. Shantiial R. Desai*¹, The construction of Section 19 came up for consideration

¹ AIR 1958 Bom 510

before a Division Bench of Bombay High Court. Justice Mudholkar who delivered the judgment for the Bench has pointed out in para-8 of the judgment thus:

"Sections 12 and 19 of the Electricity Act are grouped together in part-II of the Act under the heading "Works". These sections must be read together, and not in isolation from one another, as if they covered separate topics. Considering these provisions as a whole, it is clear that the general powers of a licensee in executing the works necessary for the supply of electricity are mentioned in Sub-section (1) of Section 12, that the remaining sub-sections of Section 12, limit or qualify some of these powers, and that further limitations and qualifications on the same powers are stated in Sections 13 to 19 of the Act."

Thus, I am satisfied that Section 19(2) has no application to the facts of the present case

9. I will next advert to Section 21(4) of the Act, Section 21 is regarding 'restrictions on licensees' controlling or interfering with use of energy. That section occurs under the Chapter 'Supply'. The Chapter consists of Sections 19A to Section 27, all concerning supply. Section 21 of the Act reads thus:

"(1) A licensee shall not be entitled to prescribe any special form of appliance for utilizing energy supplied by him, or save as provided in any conditions made under sub-section (2) or.....by Section 26, sub-section (7), in any way to control or interfere with the use of such energy."

Then comes sub-section (4) which reads:

"(4) Where any difference or dispute arises as to whether a licensee has prescribed by appliance or controlled or interfered with the use of energy in contravention of sub-section (1), the matter shall be either referred to an Electrical Inspector and decided by him, or, if the licensee or consumer so desires, determined by arbitration."

Thus, reading sub-section (1) and sub-section (4) of Section 21 of the Act, it becomes clear that

the scope of sub-section (4) of Section 21 is controlled and restricted by what is stated in sub-section (1) of Section 21. Sub-section (1) of Section 21 clearly contemplates that a licensee shall not be entitled to prescribe any special form of appliance for utilising energy supplied by him and it is only in that connection, if any damages are (alleged, sub-section (4) of Section 21 comes into Play.

10. This is illustrated in the decision of the Calcutta High Court in the case of *Mahabir Prosad Lilha v. Purulia Electric Supply Corporation Ltd.*, reported in² Therein the respondent electric company issued orders from time to time restricting the use of energy by consumers although such power of restriction was not provided for in the license granted to the company. Further it was observed that the license required the licensee to maintain generating plant of such capacity as to make at all times possible to lay off the largest unit for repairs and to overhaul it without affecting the continuity of supply. The licensee could not impose a condition without the previous sanction of the Government to

² AIR 1958 Cal 661

the effect that the consumer would not be allowed to use energy on Sunday on the ground that it was necessary to do so for overhauling the generating unit. Such a condition imposed would be unlawful being in breach of the Act and license. It is under these circumstances Section 21(4) of the Act comes into play. It was his case in that decision that the Board had no authority to interfere with the use of electricity by imposing a condition and prescribing any special form of appliance for utilizing energy supplied by it. Hence. Section 21(1) read with Section 21(4) was made applicable to the facts of the case. It is thus obvious that Section 21(1) read with Section 21(4) would not be applicable to the facts of the present case.

11. Learned counsel for the petitioner no doubt argued that the word 'interference' as used in Section 19(2) shall be interpreted in a broad and wide way. But, I have already pointed out above that the scope of Section 19(2) is controlled and restricted. The learned counsel while pressing into service Section 21(4) of the Act obviously has not taken into consideration that Section 21(4) comes into play only with reference to Section 21(1) as rightly pointed out by the learned counsel for the Board. Hence, I am constrained to hold that Section 21(4) also would not be attracted to the facts of the present case.

12. It is no doubt true that the learned counsel appearing for the Board further invited my attention to Section 79(j) of the Electricity (Supply) Act, 1948, which enables the Board to make regulations governing the supply of electricity by the Board to persons other than licensees under section 49. He further invited my attention to Section 76 of the said Act which speaks of arbitration, it states that where any question or matter is by this Act, required to be referred to arbitration, it shall be so referred. In this connection, he invited my attention to a decision of this Court in the case of *Amalgamated Electricity Co. Ltd. v. N.S. Bathena* reported in³ In that case, his Lordship Justice Hegde, as he then, was of this High Court has pointed out; in para-5 of the judgment thus:

"It is next contended that the amendment Act of 1956 makes it clear, by the incorporation of the new Clause 1 to Sch.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 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 Electricity Act, 1910. These are cases for which the statute provides for arbitration."

Again in Para-7 of the judgment his Lordship has observed:

"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

³ AIR 1958 Mys 148

has not been provided for. Otherwise the section could have been so worded to bring in all disputes."

His Lordship has further pointed in para-8 Of the Judgment thus:

"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."

The view taken by this Court in the aforesaid decision finds full support in the case of *The Mysore State Electricity Board v. Bangalore Woollen Cotton and Silk Mills Ltd. reported in*⁴

13. Thus, it becomes clear that though the Electricity (Supply) Act, 1948, would make applicable the provisions of Sections 19 and 21 of the Electricity Act, 1910, in terms. I have pointed out above that the provisions of these sections are not applicable to the facts of the present case. That being so, I am satisfied that there is no substance in the present writ petition and there is no justification in law for me to hold that the dispute regarding damages, on the facts of the present case, is amenable for adjudication by an Arbitrator under section 19 (2) or Section 21(4) of the Electricity Act, 1910.

14. In the result, the writ petition is liable to be dismissed and I dismiss the same. No costs.

Petition dismissed,

⁴ AIR 1963 SC 1128