

PUNJAB STATE ELECTRICITY BOARD AND OTHERS

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v.

LUDHIANA STEELS PRIVATE LTD.

DECEMBER 1, 1992

[B.P. JEEVAN REDDY AND G.N. RAY, JJ.]

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Constitution of India, 1950—Article 136—Appeal by special leave—Supreme Court referring dispute to Arbitrator—Participation by parties in arbitration—Award made on merit—Whether party can question.

The respondent - plaintiff entered into an agreement with the Electricity Board for supply of energy and was availing it. On 6.4.1987, when the meter installed at the respondent's premises was checked, it was found that it was recording lower consumption than what was actually being consumed.

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On 16.5.1988 a check meter was installed. The respondent paid the charges on the basis of the readings recorded by the check-meter. For the period commencing 6.10.1986 upto 16.5.1988 the Board sent a bill dated 16.8.1988 for Rs.28,56,854 towards the energy said to have been consumed by the respondent, though not recorded by the meter.

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The respondent instituted a suit disputing the bill and asked for a permanent injunction restraining the Board and its officials from recovering the amount or any part thereof on the basis of the bill.

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A Temporary injunction was granted initially on his application and later it was vacated.

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Meanwhile, the respondent applied to the Electrical Inspector under sub-section (6) of Section 26 of the Indian Electricity Act requesting him to decide whether the meter was correct and whether he was liable to pay any amount over and above that paid by him already with respect to the said period.

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The Electrical Inspector refused to proceed with the application on the ground of pendency of the suit.

Against the order vacating the temporary injunction, the respondent

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A filed a revision before the High Court.

The High Court disposed of the revision petition directing the Electrical Inspector to decide the matter referred to him in accordance with law within four months.

B The respondent filed a review petition which was dismissed on 29th August 1991, against which the present appeal was preferred by special leave.

C When the Special Leave Petition came up for orders this Court directed to refer the dispute to the arbitration of a retired Judge of this Court.

In accordance with this Court's order, the Arbitrator entered upon the reference.

D The Arbitrator held that the suit in which reference to arbitration was made pertained only to the period from 6.10.1986 to 16.5.1988. He refused to pronounce upon the respondent's claim with respect to the periods, 17.5.1988 to 10.8.1990 and 10.8.1990 onwards. He held that the Board was not entitled to any amount for supply of electrical energy to the company over and above that computed in accordance with the readings recorded by the first meter except in so far as an Electrical Inspector might allow it in a decision given in conformity with the provisions of sub-section (6).

E The Board filed objections in this Court to the award. The Board urged that the award be sent to the trial court which would consider and decide whether it should be made the Rule of the Court; that what could have been referred to the Arbitrator was only the dispute which was involved in the Special Leave Petition; that the main dispute pending in the suit was never intended to be nor was it actually referred to the Arbitrator; that the Arbitrator had not decided the question which he was asked to decide, inasmuch as he had relegated the dispute over again to the Electrical Inspector; that sub-section (6) of Section 26 empowered the Electrical Inspector to estimate the amount of energy supplied to the consumer for a period six months prior to the check; that the agreement between the parties provided to the contrary, as contemplated by sub-section (1) of Section 26 and for that reason the agreement prevailed over

the provisions of the statute.

Disposing of the case, this Court

HELD: 1.1. The very dispute between the parties pending in the suit was referred by this Court. At no stage before the Arbitrator did the Board raise the objection that he had no authority to go into the main dispute and that he must confine himself to the correctness of the High Court's order directing the Electrical Inspector to proceed with the application under Section 26(6). Having consented to the order dated November 14, 1991 and having participated in the proceedings before the Arbitrator on the merits of the main dispute, it is not now open to the Board to raise the said objection merely because the award has gone against it. [281-D]

1.2. The order referring the dispute to the Arbitrator expressly states that "the award may be sent to the Registry of this Court." There is nothing in the order to show that this Court contemplated transmitting the award to the trial court for consideration. It is evident from a reading of the order that the acceptance or rejection of the award lies with this Court and this Court alone. [280-H], 281-A]

1.3. There is no warrant for remitting the award under Section 16 nor does the award suffer, from any error apparent on the face of the record. [282-A]

1.4. This Court never intended that the Arbitrator should substitute himself for the Electrical Inspector and render a decision under Section 26(6). [281-G]

1.5. The Arbitrator has proceeded to consider the Board's claim for the disputed period. The reference to Electrical Inspector too is for the very same period i.e. 6.10.1986 to 16.5.1988, the date on which the check-meter was installed. [282-C]

1.6. The Arbitrator has decided that the Board is not entitled to recover any amount for supply of electrical energy to the plaintiff over and above that computed in accordance with the readings recorded by the first meter except in so far as an Electrical Inspector may allow it in a decision given under sub-section (6) of Section 26. He has further clarified that if and when Electrical Inspector renders his decision, it shall prevail over his award subject, of course, to any appeal therefrom. [281-G-H]

A 1.7. The award made by the Arbitrator on February 18, 1992 is made the Rule of the Court. It is to be treated as the decree in the Suit. The Suit is disposed of in terms of the said award. The Electrical Inspector is directed to decide the dispute referred to him expeditiously in accordance with law. [283-A]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5137 of 1992.

From the Judgment and Order dated 29.8.91 of the Punjab and Haryana High Court in R.A. No.40 C-II/91 in Civil Revision No.1206 of 1991.

C S.P. Goel and R.S. Sodhi for the Appellants.

A.K. Goel for Ms. Sheela Goel for Respondents.

D The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. Leave granted.

E The respondent, Ludhiana Steel Private Limited is a consumer of electricity. It had entered into an agreement with the Punjab State Electricity Board for supply of energy and was availing it. The meter installed at the respondent's premises was checked on 6.4.1987. It was found that it was recording lower consumption than what was actually being consumed. Sometime later, a check meter was installed (on 16.5.1988) and, we are told, the petitioner has been paying the charges on the basis of the readings recorded by the check-meter. For the period commencing 6.10.1986 (Six months prior to the date of check) upto 16.5.1988 (the date on which the check-meter was installed) the Board sent a bill dated 16.8.1988 in a sum of Rs.28,56,854 towards the energy said to have been consumed by the plaintiff but not recorded by the meter. Contesting the said bill, the plaintiff instituted a suit asking for a permanent injunction restraining the Board and its officials from recovering the said amount or any part thereof on the basis of the said bill. In that suit, he applied for a temporary injunction which was granted initially but vacated later. Meanwhile, the respondent applied to the Electrical Inspector under sub-section (6) of Section 26 of the Indian Electricity Act requesting him to decide whether the meter was not correct and whether he is liable to pay any amount over and above that paid by him already with respect to

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the said period. The Electrical Inspector refused to proceed with the said application on the ground of pendency of the suit aforementioned. A

Against the order vacating the temporary injunction, the respondent filed a revision before the High Court of Punjab and Haryana. The High Court disposed of the revision petition directing the Electrical Inspector to decide the matter referred to him in accordance with law as expeditiously as possible, preferably within four months. It clarified that the pendency of the suit is no ground for him not to proceed with the said application. B
The plaintiff/respondent filed a review petition which was dismissed on 29th August, 1991. The present appeal is preferred against the order in the review petition. C

When the Special Leave Petition came up for orders before a Bench comprising of Ranganath Misra, C.J. and one of us, G.N. Ray, J., the following order was passed:

"By the consent of parties we direct that the dispute be referred to the arbitration of Mr. Justice A.D. Koshal, a retired Judge of this Court. He may take the assistance of a technical assessor and may consult the Chief Inspector. We would suggest that the Arbitrator may fix his terms and would try to make his award within four months from now. The award may be sent to the Registry of this Court. Expenses shall be apportioned fifty-fifty." D
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In accordance with this order, Sri Justice A.D. Koshal entered upon the reference and passed his award on February 18, 1992. Before the Arbitrator, the plaintiff/respondent split up its claim into three parts, each relating to a specific period as stated in the table below: (extracted from the award). F

Designation of part	Period	Claim	
Part A	6.10.1986 to 16.5.1988	The Boards demand contained in Bill dated 16.8.88 for Rs.28,56,854 and surcharge for non-payment of that amount must be rejected in full, subject only to the decision of C.E.I. regarding the accuracy of the first meter under sub-section (6) of Section 26 of the 1910 Act.	G H

A	Part B	17.5.1988 to 10.8.1990	The Board has charged the Company in accordance with readings recorded by the second meter which is a very defective and wholly unreliable instrument.
B	Part C	10.8.1990 onwards	The Board claims that second meter is also running slow. This the Company denies and the dispute has been referred to C.E.I. The Board can charge only in accordance with readings recorded by the first meter or, in any case, those by the second meter.

C The learned Arbitrator held that the suit in which reference to arbitration has been made pertains only to period mentioned under Part-A i.e., from 6.10.1986 to 16.5.1988. He, therefore, refused to pronounce upon the plaintiff's claim with respect to periods mentioned under Parts-B and C. So far as Part-A is concerned, he rendered the following decision:

D "14. In the result, the claim of the Company relating to period A succeeds in full and it is held that the Board is not entitled to any amount for supply of electrical energy to the Company over and above that computed in accordance with the readings recorded by the first meter except in so far as an Electrical Inspector may allow it in a decision given in conformity with the provisions of sub-section (6) above extracted. If and when such a decision is announced, it shall prevail subject to the result of any appeal therefrom."

F The Board has filed objections to the said award. We have heard both the counsel for the appellant-Board as well as counsel for the respondent/plaintiff.

G The first objection urged by Sri Goel, learned counsel for the Board is that the award must be sent to the trial court which will consider and decide whether it should be made the Rule of the Court. He submitted that it is not for this court to consider whether the said award should be made the Rule of the Court. We are not prepared to agree. The order referring the dispute to the Arbitrator expressly states that "the award may be sent to the Registry of this Court." There is nothing in the order to show

that this court contemplated transmitting the award to the trial court for consideration. It is evident from a reading of the order that the acceptance or rejection of the award lies with this court and this court alone.

The second objection of the learned counsel for the appellant is that what could have been referred to the Arbitrator was only the dispute which was involved in the Special Leave Petition. The main dispute pending in the suit was never intended to be nor was it actually referred to the Arbitrator. This again is an objection which we cannot countenance. It is rather ridiculous to suggest that what was referred to the Arbitrator was whether the Electrical Inspector should be asked to proceed with the application under Section 26(6) pending the suit. It is evident from the order that the very dispute between the parties pending in the suit was referred and that is how the Arbitrator and the parties understood it. At no stage before the Arbitrator did the Board raise the objection that he had no authority to go into the main dispute and that he must confine himself to the correctness of the High Court's order directing the Electrical Inspector to proceed with the application under Section 26(6). Having consented to the order dated November 14, 1991 and having participated in the proceedings before the Arbitrator on the merits of the main dispute, it is not now open to the Board to raise the said objection merely because the award has gone against it.

Sri Goel then submitted that the Arbitrator has not decided the question which he was asked to decide, inasmuch as he has relegated the dispute over again to the Electrical Inspector. We cannot agree with this contention either. The case of the Board was that it is entitled to recover the said sum of Rs.28,56,854 straight-away even before the Electrical Inspector decides upon the correctness of the meter and the liability of the plaintiff to pay additional amount. And that dispute the Arbitrator has now decided. This court never intended that the Arbitrator should substitute himself for the Electrical Inspector and render a decision under Section 26(6). The Arbitrator has decided that the Board is not entitled to recover any amount for supply of electrical energy to the plaintiff over and above that computed in accordance with the readings recorded by the first meter except in so far as an Electrical Inspector may allow it in a decision given under sub-section (6) of Section 26. He has further clarified that if and when Electrical inspector renders his decision, it shall prevail over his award subject, of course, to any appeal therefrom. We, therefore, see no

A warrant for remitting the award under Section 16 nor are we satisfied that the award suffers from any error apparent on the face of the record. The error apparent, according to the Board, is the very same failure to decide the issue of the plaintiff's liability fully and finally.

B Yet another argument urged by Sri Goel pertains to the interpretation of sub-section (6) of Section 26. According to him, the said sub-section empowers the Electrical inspector to estimate the amount of energy supplied to the consumer for a period six months prior to the check in addition to the period subsequent to the check. We need not pronounce upon this submission inasmuch as the Arbitrator has proceeded to consider the Board's claim for the very same period. The reference to Electrical Inspector too is for the very same period i.e., 6.10.1986 to 16.5.1988, the date on which the check-meter was installed.

D Lastly, it was submitted by Sri Goel that the agreement between the parties provides to the contrary, as contemplated by sub-section (1) of Section 26 and that for that reason the agreement prevails over the provisions of the statute. He relies upon the opening words in sub-section (1) of Section 26 which reads as follows:

E "(i) *In the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumers, cause the consumer to be supplied with such a meter;*

F Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter."

G It is not brought to our notice that the agreement contains any provision inconsistent with the one contained in sub-section (6) of Section 26. It is not even show that the agreement provides for a method (for ascertaining the amount of energy consumed by the respondent) different than the one provided in sub-section (1) of Section 26. In such a situation, the contention urged by the learned counsel must be held to be a misplaced
H one.

Accordingly, we make the award made by Sri Justice A.D. Koshal A (retired) on February 18, 1992, the Rule of the Court. It shall be treated as the decree in the suit. The suit is disposed of in terms of the said award. The Electrical Inspector shall decide the dispute referred to him expeditiously in accordance with law. There shall be no order as to costs.

V.P.R.

Appeal disposed of.