THE AMALGAMATED ELECTRICITY CO., LTD. 1959

v. February 13.

N. S. BATHENA

(JAFER IMAM, A. K. SARKAR and K. SUBBA RAO, JJ.)

Arbitration—Arbitration clause in electricity licence—Whether binding on consumer of electricity—Electricity (Supply) Act, 1948 (54 of 1948), s. 57, cl. XVI of Sixth Schedule.

The arbitration clause incorporated by s. 57(1) of the Electricity (Supply) Act, 1948, in a licence granted by the Government for the supply of electrical energy to the consumers is not available for adjudicating upon a dispute between the licensee and the consumer, for the licence is an engagement between the licensee and the Government and the arbitration clause in it refers only to disputes between them. Section 57(1) does not make the arbitration clause a statutory provision by virtue of which disputes between any and every person may be referred to arbitration.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 361 of 1958.

Appeal by special leave from the judgment and order dated December 11, 1957, of the Mysore High Court in Civil Revision No. 702 of 1956, against the judgment and order dated August 10, 1956, of the Court of the Second-Extra Assistant Judge, Belgaum, in Misc. Appeal No. 36 of 1955, arising out of the order dated September 1, 1955, of the 1st Joint Civil Judge, Junior Division, Belgaum, in Regular Civil Suit No. 197 of 1955.

M. M. Gharekhan and *I. N. Shroff*, for the appellant.

D. D. Chawla and *G. Gopalakrishnan*, for the respondent.

B. Sen and *T. M. Sen*, for the intervener (Attorney-General of India).

1959. February 13. The Judgment of the Court was delivered by

SARKAR, J.—This is an appeal from the judgment passed by the High Court at Bangalore on a petition in revision. The question is whether a certain suit should be stayed under s. 34 of the Arbitration Act, 1940. *Sarkar J.*

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The appellant carries on business as a supplier of electrical energy in Belgaum. It obtained a licence from the Government under s. 3 of the Indian Electricity Act, 1910, authorising it to supply the energy in that area. The respondent, who is the plaintiff in the suit, obtained supply of electricity from the appellant. The respondent felt that he was being overcharged by the appellant for the electricity so supplied. He thereupon filed a suit in the Court of the Civil Judge, Belgaum, on or about the 8th of June, 1955, claiming a refund of the amount paid in excess of what he thought was the legitimate charge. The appellant then applied under s. 34 of the Arbitration Act for a stay of the suit on the ground that the matter was referable to arbitration under the provisions of the Electricity (Supply) Act, 1948. The application was dismissed by the Civil Judge and his decision was confirmed by the Extra Assistant Sessions Judge on appeal and lastly, by the High Court in revision. The appellant has now come to this Court.

The appellant contends that this matter is referable to arbitration under the provision contained in cl. XVI of the Sixth Schedule of the Act of 1948. A few of the provisions of these Acts will now have to be referred to. Under the Act of 1910 the business of supplying electrical energy can be carried on only with the sanction of the Government. Section 3 of that Act makes provision for the grant of a licence for supplying electrical energy. The appellant obtained a licence in 1932.

A form of the licence is set out in the rules framed under the Act of 1910 and that form prescribes the maximum limit which a licensee is entitled to charge a consumer for the electrical energy supplied. The Act of 1948 made a somewhat different provision with regard to these charges. It provided by s. 57 as follows :—

"*S. 57.* (1) The provisions of the Sixth Schedule and the Table appended to the Seventh Schedule shall be deemed to be incorporated in the licence of every licensee, not being a local authority, from the date of the commencement of the licensee's next succeeding

year of account, and from such date the licensee shall comply therewith accordingly and any provisions of such licence or of the Indian Electricity Act, 1910, or any other law, agreement or instrument applicable to the licensee shall, in relation to the licensee, be void and of no effect in so far as they are inconsistent with the provisions of this section and the said schedule and Table.

(2) ....."

This section had therefore the effect of incorporating in the licence the terms of these two Schedules and provided that they would prevail over the terms of any previously granted licence or the provisions of the Act of 1910, or any other law, agreement or instrument inconsistent with these Schedules. The Sixth Schedule made new provisions about the charges that a licensee was entitled to realise for the current supplied. Clause XVI of that Schedule contains a provision for arbitration and it is on that that the appellant relies. That clause is in these terms: "Any dispute or difference as to the interpretation or any matter arising out of the provisions of this Schedule shall be referred to the arbitration of the Authority." The appellant contends that the dispute covered by the respondent's suit is one of the kind mentioned in this clause and therefore must be referred to arbitration under its terms.

We will assume that the dispute is of the kind mentioned in cl. XVI of the Sixth Schedule. We are however unable to see that it is a dispute which is referable to arbitration under that clause. It is not the appellant's case that cl. XVI is a clause in any contract between it and the respondent. That being so, the only other way in which it is possible for the appellant to contend that the respondent is bound to refer the dispute to arbitration under this clause is by showing that it is a statutory provision for arbitration. No doubt if it were so, then in view of the provisions of s. 46 of the Arbitration Act the appellant would be entitled to apply for a stay of the suit under s. 34 of that Act. We are however wholly unable to agree that cl. XVI is such a statutory provision. The only

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statutory provision that we find on the subject is that contained in s. 57 and its effect is that the terms of cl. XVI and the other clauses in the Sixth Schedule are to be deemed incorporated in a licence granted by the Government under s. 3 of the Act of 1910 and the licensee is to comply with the terms of that Schedule. Therefore all that we get is that the licence which is granted by the Government to a supplier of electricity, like the appellant, is to contain a clause that certain disputes would be referred to arbitration. The licence is an engagement between the Government and the licensee, binding the parties to it to its provisions. It is unnecessary to decide whether this engagement is contractual or statutory, for, in either case it is between the two of them only. An arbitration clause in an instrument like this can only be in respect of disputes between the parties to it. Such an arbitration clause does not contemplate a dispute between a party to the instrument and one who is not such a party. We are unable to read s. 57 as making cl. XVI in the Sixth Schedule a statutory provision by which certain disputes between any and every person have to be referred to arbitration.

It was said on behalf of the appellant that the licence is a statutory document. That, in our view, is a loose way of putting the thing. By that the utmost that can be meant is that it is issued under the terms of a statutory provision and must comply with the provisions thereof. But that cannot convert it into a statutory provision for reference to arbitration of disputes irrespective of the parties between whom the disputes may exist.

In our view, therefore, cl. XVI of the Sixth Schedule of the Act of 1948 contains no provision for arbitration, statutory or otherwise, for reference of the dispute of the nature we have before us, between a licensed supplier of electricity and a consumer of it from him.

In the result, this appeal fails and is dismissed with costs.

Appeal dismissed.