

(2001) 12 DEL CK 0096

Delhi High Court

Case No: OMP No. 281 of 2001 and is No. 9852 of 2001

Awasiya Samajik Sudhar Samiti

APPELLANT

Vs

Delhi Vidyut Board

RESPONDENT

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**Date of Decision:** Dec. 20, 2001**Acts Referred:**

- Arbitration and Conciliation Act, 1996 - Section 9

**Hon'ble Judges:** Vinod Sagar Aggarwal, J**Bench:** Single Bench**Advocate:** Sandeep Sethi, for the Appellant; Avnish Ahlawat and Vaishalee Mehra, for the Respondent**Final Decision:** Dismissed

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### Judgement

V.S. Aggarwal, J.

The present petition has been filed u/s 9 of the Arbitration and Conciliation Act by Awasiya Samajik Sudhar Samiti, hereinafter described as the petitioner seeking that during the pendency of the arbitration proceedings an order should be passed staying the recovery of the amount demanded in the provisional bill sent by the respondent (Delhi Vidyut Board) and restrain the respondent from taking any coercive steps for recovery for the said amount. It further seeks a direction to direct the respondent to forthwith turn on the electric supply to the petitioner society and maintain uninterrupted supply of electricity.

2. The fact alleged are that the respondent was desirous of getting the job of revenue realisation from persons using electricity from its source in designated pocket-1, Block-L, Badhu Bazar, Sangam Vihar, New Delhi. The petitioner society had agreed to carry on the said job. An agreement dated 29th October, 1999 was entered into between the petitioner society through its General Secretary and the respondent. Under the said agreement, the petitioner/society was to receive electricity in bulk at one point from DVB and distribute the electricity so received to

the residents of the area, collect the electricity charges and made payment to DVB. The DVB's scope of work was supply in bulk supply of electricity at one or more points, providing metering arrangement for measuring the consumption of electricity to be delivered to the society.

3. On 16th November, 2000 a fresh agreement was entered into for period ending 15th November, 2001 on similar terms and conditions. The petitioner was entitled to get a commission of 25% of the revenue paid to DVB for the bulk supply. The agreement also contemplates the petitioner depositing a security equivalent to two months receivables. It contemplates a minimum revenue of 75% of the electricity recorded in the meters. As per the petitioner, it has been performing its duties in accordance with the agreement and terms and conditions. The petitioner society through its General Secretary Sohan Lal Kashyap is in occupation and possession of a separate office. The employees of DVB in the absence of Sohan Lal Kashyap had broken open the lock and put their own lock on the premises. They tampered with the electric fittings and disconnected the power supply. Certain other allegations that some cash was removed and they took away the broken logs. The whole locality was plunged into darkness, because the supply of electricity was stopped.

4. The petitioner was awaiting action on the said complaints purported to have been made but a provisional bill was received for Rs. 93,18,540/- stating that if the amount is not paid by due date the petitioner would be liable to pay Rs. 1,39,77,810/-. It is claimed that there was an arbitration clause in the agreement and the matter is to be referred for arbitration. During the pendency of such proceedings, petitioner claims that since demand is illegal and improper, the interim order referred to above is prayed.

5. In the reply filed DVB has contested the application. It has been alleged that large number of unauthorised colonies and jhuggies clusters have come up in Delhi. They have been found indulging in theft of energy either through direct tapping from the wires or otherwise as a result DVB was suffering losses. In order to provide basic civil amenities and that the unauthorised colonies have come up without any planning, the agreement with the petitioner was entered into with respect to the colony mentioned in the petition. A scheme was formulated. It is not in dispute that the said agreement between the parties had been entered into. The scheme formulated for providing electricity i.e. single point electricity supply scheme. Under this scheme groups of jhuggies/jhopries dwellers formed a welfare association, they can join together and make an association. The person so identified enters the agreement with DVB. Thereupon the agreement is entered into which in the present case had been entered into between the parties.

6. According to the respondent a complaint was received by the Chairman, DVB on 23rd August, 2001 which was signed by large number of residents of the area against Sohan Lal Kashyap, the General Secretary. It had been alleged that in connivance

with some officials he is stealing electricity directly from the HT lines. The enforcement department of DVB conducted a joint inspection in 14/15th September, 2001. In this inspection officer of the enforcement department and the meter testing department were present. The partner of the petitioner B.D. Joshi was called from the nearby house. On inspection of the sub-station it was observed that CT points were by-passed and DVB supply was found directly connected to the out-going side of CT point with the help of naked copper wire. The photographs were taken at the site. A direct theft bill was also raised on the petitioner which was payable by 20th September, 2001. An FIR has also been filed against the petitioner. It is denied that the matter in question is covered by the arbitration agreement between the parties.

7. On the strength of these facts, the learned counsel for the petitioner had urged that there was an agreement between the parties which provided that disputes would be referred to for arbitration. The bill in question is a disputed one and Therefore it was prayed that the matter has to be referred for arbitration. It was contended that the bill in question is totally exaggerated and without any basis and Therefore till the arbitration proceedings continue payment of the same should be stayed and no action or coercive action should be taken in this regard.

8. On the contrary plea as already referred to above was that it is a case of theft of electricity and is not covered by the disputes contemplated under the agreement.

9. In order to appreciate the said controversy reference can well be made to the agreement between the parties that had been entered into. The same has not in fact been disputed during the course of arguments.

10. It is not in dispute that to overcome the menace of theft of electricity of unauthorised colonies that had come up around Delhi and also to overcome the tapping of the wires directly by the unauthorised persons, the scheme had been formulated known as single point electric supply scheme. Under the said scheme petitioner society was to receive electricity in bulk at one point from DVB and distribute the same to the residents of the locality and make payment to DVB subject to the terms of the agreement. The scope of the work of the agency was contemplated in Clause 3 of the said agreement and reads:-

### "3. SCOPE OF WORK OF AGENCY

To perform the following jobs in the area:

i) Initially to prepare a statement of all the houses of the Area, name and address of the head of the family drawing electricity and submit to DVB and shall not extend the supply to other occupants/residents without obtaining prior permission of DVB and fulfilling the required formalities, including payment of applicable charges.

ii) To lay insulated low voltage wires of appropriate capacity on poles for distribution of electricity taking into account the safety aspects as per Indian Electricity Rules, 1956.

iii) To receive electricity in bulk from one or more point from DVB in or adjacent to the Area.

iv) Distribute the electricity as received to the residents of the area to only for which the list has been submitted.

v) Collect revenue from the residents of the Area and make payment to DVB for the bulk supply on monthly basis as per applicable and approved tariff."

11. It has further been granted that petitioner shall have to pay the minimum revenue of 75% of the electric energy as recorded in the meter provided by DVB for measurement of the bulk energy. The meters were to be jointly read on monthly basis. The agreement also provided with respect to the street lightings. For the service rendered the petitioner was to be paid 20% after the billed amount. Annexure A to the agreement provided additional terms and conditions of the contract between the parties. It provided that minimum connected load admissible shall be 1 KW. It also provided that in the event of default DVB would be entitled to terminate the agreement. If the agreement is terminated earlier by one party the party in default will pay suitable liquidated damages to compensate for the loss.

12. Paragraph 11 of the same pertains to disputes and the arbitration and reads:-

#### "DISPUTES AND ARBITRATION

Disputes under the Agreement shall be settled by mutual discussions. Failing this, the disputes will be referred to sole arbitration by the owner or his nominee as sole arbitration. The agency shall have no objection if the nominee is an employee of DVB.

The arbitration shall be carried out as per Indian Arbitration and Conciliation Act, 1996 and the arbitration award shall be binding on both the parties.

The parties to the agreement shall continue to fulfill their obligations under the Agreement during arbitration proceedings and no payment shall be withheld on this account unless it is a subject matter of the dispute."

13. The brief resume of the agreement and additional terms and conditions referred to above clearly show that disputes that have to be referred to arbitration have to be the disputes under the agreement. In other words, if there is any dispute not covered under the agreement it cannot be referred for arbitration.

14. u/s 9 of the Arbitration and Conciliation Act during the pendency of the arbitration proceedings before or after that in case the need arises a party indeed besides other reliefs can approach the court for an injunction to be issued so as to protect and preserve the property or any such event that may arise. Necessarily before any such injunction can be granted it has to be found as on fact as to whether the dispute is under the agreement or not. The court ordinarily will not go into the merits of the matter but since it is a basic fact as to whether the dispute is

covered by the arbitration or not necessarily same as to be decided.

15. Reverting back to the facts in question as already referred to above it is the dispute between the parties as to whether the petitioner was committing theft of electricity or not. Respondent's specific plea is that on the surprise inspection it was found that the petitioner was stealing electricity and therefore the bill in this regard had been raised which is the bill in dispute. The agreement between the parties referred to disputes under the agreement. Theft of electricity is not a part of the agreement contemplated as a dispute that could be referred for arbitration. If such a dispute arises it would be independent of the agreement and the arbitration agreement patently does not cover the said dispute. Therefore when such is the dispute between the parties the same necessarily cannot be raised and as a necessary corollary it would follow that petition under Section 9 of the Arbitration and Conciliation Act will not be maintainable.

16. For these reasons petition is dismissed to be not maintainable. However, by way of abundant caution it is added that nothing said herein can be taken as an expression of opinion on merits of the matter.