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(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

۷s

Delhi Vidyut Board

RESPONDENT

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

Judgement

V.S. Aggarwal, J.

The present petition has been filed u/s 9 of the Arbitration and Conciliation Act byAwasiya Samajik Sudhar Samiti, hereinafter describedas the petitioner seeking that during the pendency ofthe arbitration proceedings an order should be passedstaying the recovery of the amount demanded in theprovisional bill sent by the respondent (Delhi VidyutBoard) and restrain the respondent from taking anycoercive steps for recovery for the said amount. Itfurther seeks a direction to direct the respondent toforthwith turn on the electric supply to the petitioner society and maintain uninterrupted supplyof electricity.

2. The fact alleged are that the respondent wasdesirous of getting the job of revenue realisationfrom persons using electricity from its source indesignated pocket-1, Block-L, Badhu Bazar, SangamVihar, New Delhi. The petitioner society had agreed to carry on the said job. An agreement dated 29thOctober, 1999 was entered into between the petitionersociety through its General Secretary and therespondent. Under the said agreement, thepetitioner/society was to receive electricity in bulkat one point from DVB and distribute the electricityso received to

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

- 3. On 16th November, 2000 a fresh agreement wasentered into for period ending 15th November, 2001 onsimilar terms and conditions. The petitioner wasentitled to get a commission of 25% of the revenuepaid to DVB for the bulk supply. The agreement alsocontemplates the petitioner depositing a securityequivalent to two months receivables. It contemplates minimum revenue of 75% of the electricity recorded the meters. As per the petitioner, it has beenperforming its duties in accordance with the agreementand terms and conditions. The petitioner societythrough its General Secretary Sohan Lal Kashyap is inoccupation and possession of a separate office. The employees of DVB in the absence of Sohan Lal Kashyaphad broken open the lock and put their own lock on thepremises. They tempered with the electric fittingsand disconnected the power supply. Certain otherallegations that some cash was removed and they tookaway the broken logs. The whole locality was plungedint darkness, because the supply of electricity wasstopped.
- 4. The petitioner was awaiting action on the saidcomplaints purported to have been made but aprovisional 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 theapplication. It has been alleged that large number ofunauthorised colonies and jhuggies clusters have comeup in Delhi. They have been found indulging in theftof energy either through direct taping from the wiresor otherwise as a result DVB was suffering losses. Inorder to provide basic civil amenities and that theunauthorised colonies have come up without anyplanning, the agreement with the petitioner wasentered into with respect to the colony mentioned inthe petition. A scheme was formulated. It is not in dispute that the said agreement between the partieshad been entered into. The scheme formulated forproviding electricity i.e. single point electricsupply scheme. Under this scheme groups of jhuggiesjhopries dwellers formed a welfare association, theycan join together and make an association. The personso identified enters the agreement with DVB.Thereupon the agreement is entered into which in thepresent case had been entered into between theparties.
- 6. According to the respondent a complaint wasreceived by the Chairman, DVB on 23rd August, 2001which was signed by large number of residents of thearea against Sohan Lal Kashyap, the General Secretary.It had been alleged that in connivance

with someofficials he is stealing electricity directly from theHT lines. The enforcement department of DVB conducteda joint inspection in 14/15th September, 2001. In this inspection officer of the enforcement departmentand the meter testing department were present. Thepartner of the petitioner B.D. Joshi was called fromthe nearby house. On inspection of the sub-station itwas observed that CT points were bye-passed and DVBsupply was found directly connected to the out-goingside of CT point with the help of naked copper wire. The photographs were taken at the site. A directtheft bill was also raised on the petitioner which waspayable by 20th September, 2001. An FIR has also beenfiled against the petitioner. It is denied that thematter in question is covered by the arbitrationagreement between the parties.

- 7. On the strength of these facts, the learnedcounsel 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 itwas prayed that the matter has to be referred for arbitration. It was contended that the bill inquestion 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 toabove was that it is a case of theft of electricity and is not covered by the disputes contemplated underthe agreement.
- 9. In order to appreciate the said controversyreference can well be made to the agreement betweenthe parties that had been entered into. The same hasnot in fact been disputed during the course of arguments.
- 10. It is not in dispute that to over the menace oftheft of electricity of unauthorised colonies that hadcome up around Delhi and also to overcome the tappingof the wires directly by the unauthorised persons, thescheme had been formulated known as single pointelectric supply scheme. Under the said schemepetitioner society was to receive electricity in bulkat one point from DVB and distribute the same to theresidents of the locality and make payment to DVBsubject to the terms of the agreement. The scope ofthe work of the agency was contemplated in Clause 3 ofthe 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 allthe houses of the Area, name and address ofthe 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 oneor more point from DVB in or adjacent to the Area.
- iv) Distribute the electricity as received to the residents of the area to only forwhich the list has been submitted.
- v) Collect revenue from the residents of the Area and make payment to DVB for the bulksupply on monthly basis as per applicable and approved tariff."
- 11. It has further been granted that petitionershall have to pay the minimum revenue of 75% of theelectric energy as recorded in the meter provided byDVB for measurement of the bulk energy. The meterswere to be jointly read on monthly basis. Theagreement also provided with respect to the streetlightings. For the service rendered the petitionerwas to be paid 20% after the billed amount. AnnexureA to the agreement provided additional terms and conditions of the contract between the parties. It provided that minimum connected load admissible shallbe 1 KW. It also provided that in the event of default DVB would be entitled to terminate theagreement. 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 disputesand the arbitration and reads:-

"DISPUTES AND ARBITRATION

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

The arbitration shall be carried out as perIndian Arbitration and Conciliation Act, 1996and the arbitration award shall be binding onboth the parties.

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

- 13. The brief resume of the agreement and additional terms and conditions referred to aboveclearly 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 disputenot covered under the agreement it cannot be referred arbitration.
- 14. u/s 9 of the Arbitration andConciliation Act during the pendency of thearbitration proceedings before or after that in casethe need arises a party indeed besides other reliefscan approach the court for an injunction to be issuedso as to protect and preserve the property or any suchevent that may arise. Necessarily before any suchinjunction can be granted it has to be found as onfact as to whether the dispute is under the agreementor not. The court ordinarily will not go into themerits of the matter but since it is a basic fact asto whether the dispute is

covered by the arbitrationor not necessarily same as to be decided.

- 15. Reverting back to the facts in question asalready referred to above it is the dispute betweenthe parties as to whether the petitioner wascommitting theft of electricity or not. Respondentsspecific plea is that on the surprise inspection itwas found that the petitioner was stealing electricity and Therefore the bill in this regard had been raisedwhich is the bill in dispute. The agreement betweenthe parties referred to disputes under the agreement. Theft of electricity is not a part of the agreementcontemplated as a dispute that could be referred forarbitration. If such a beindependent of the arises it would agreement arbitrationagreement patently does not cover the said dispute. Therefore when such is the dispute between the partiesthe same necessarily cannot be raised and as anecessary corollary it would follow that petitionunder Section 9 of the Arbitration and ConciliationAct will not be maintainable.
- 16. For these reasons petition is dismissed to benot maintainable. However, by way of abundant cautionit is added that nothing said herein can be taken as an expression of opinion on merits of the matter.