

CASE NO.:
Appeal (civil) 10014 of 1995

PETITIONER:
U.P. STATE ELECTRICITY BOARD

Vs.

RESPONDENT:
M/S SEARSOLE CHEMICALS LIMITED

DATE OF JUDGMENT: 21/02/2001

BENCH:
S. Rajendra Babu & S.N. Phukan.

JUDGMENT:

J U D G M E N T
RAJENDRA BABU, J. :
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An agreement was entered into between the appellant and the respondent for supply of electrical energy and by virtue of clause 1 of the agreement, the supply of electrical energy shall be in form of a three-phase alternating current at a pressure of approximately 400 Volts between phases, a frequency of approximately 80 cycles per second and a power not exceeding 744.12 KVA and the supply shall be available continuously during the 24 hours of each day and throughout the whole period of this agreement, provided always that the supplier shall not be responsible for damages or otherwise on account of accidental interruption of supply or stoppage or deficiency of energy caused by any order or direction issued by the Government of Uttar Pradesh or resulting from fire, flood, tempest or any accident or from any strike or lock out of workman or from any other cause beyond the control of the supplier, but the supplier shall make every effort to restore the supply as soon as possible. On the ground that disputes arose between the appellant and the respondent, the matter was referred to the arbitration as provided in the agreement. The respondent in the claim statement made various claims for refund of the amounts paid under various bills and for various losses suffered on account of various acts of commission and omission of the appellant, details of which are set out therein. By their written statement the appellant refuted the various claims of the respondent.

On April 6, 1990 the arbitrators made an award for a sum of Rs. 1,74,338.98 by way of refund, while in regard to losses suffered on account of interruption in the power supply as a result of the negligence and acts of omission and commission by the appellant a sum of Rs. 24,00,000 was awarded with interest at 12% with effect from 12.11.1986 up to the date of the award and interest @ 6% per annum from the date of the award till the date of payment. In the Court of the Civil Judge the award was filed. Over-ruling the objections of the appellant, the Civil Judge made a decree in terms of the award against which an appeal was

preferred to the High Court and which appeal having been dismissed, this appeal by special leave is filed.

Shri Ranjit Kumar, the learned Senior Advocate appearing for the appellant, submitted that the award made by the arbitrators is not within the scope of the agreement entered into between the parties inasmuch as the claim for damages would arise except in the circumstances arising in the proviso to clause 1 of the terms of agreement, to which we have adverted to at the very outset. Damages would not arise on account of interruptions, stoppage and deficiency caused by (i) accident, or (ii) by any order or direction issued by the Government of Uttar Pradesh, or (iii) resulting from fire, flood, tempest or any accident or from any strike or lock out of workman or from any other cause beyond the control of the supplier. Thus the principal contention addressed before us is that there is a guarantee of supply of electricity for 24 hours of a day but under the circumstances set out in the proviso supply could be interrupted without liability of paying damages and this aspect was not considered by the arbitrators. When this point was raised before the High Court, the High Court noticed the finding of the arbitrators that all log books were not made available and even where they were made available by the appellant were not complete and even did not give any reasons and, where they contained reasons, the same were not tenable. While recording findings in respect of issues Nos. 1 and 2 after assessing the evidence, the arbitrators came to this conclusion. Before us the extracts of the logbooks have been produced and the reasons noted therein, for instance, are Tripping, Shut down, Grid failure, Break down. The respondent wrote to the appellant seeking for clarification regarding the interruption in the power supply and there was no response to such correspondence at all. Taking this circumstance into consideration and after going through the documents produced by the parties, it was noticed by the arbitrators as follows :-

The opposite party failed to produce log books for the period 6.12.1978 to 3.12.1980 and also admitted vide their letter dated 4.7.1987 that these log books were not traceable. In these circumstances we are of the opinion that had the opposite party filed the said log books it would have gone against them. The opposite party has not filed the best evidence available. Besides, the log books which the opposite party produced, did not give any reasons or where reasons were given, they were untenable.

Shri Ranjit Kumar very strenuously contended that the relevant documents have been placed before the arbitrators and stated that except in regard to one station for some period, rest of the documents of the log books had been made available. However, as noticed by us, there were reasons set out in the log books or, as noticed earlier, those reasons, in the opinion of the arbitrators, were either not relevant or where they were relevant, they were untenable. Therefore, the view taken by the arbitrators cannot be characterised as not emanating from the agreement and falls squarely within the excepted part of the proviso to clause 1 of the agreement. When the arbitrators have applied their mind to the pleadings, the evidence adduced before them and the terms of the contract, we do not think, it is within our scope to re-appraise the matter as if this were an appeal, and it is clear that where two views are possible in this

case there is no such scope the view taken by the arbitrators would prevail.

Shri Ranjit Kumar further pointed out that the interruptions in the power supply, if any, were on account of the Uttar Pradesh Electricity (Regulation of Supply Distribution, Consumption and Use) Order issued from time to time and, therefore, if there is any power cut effect at any time or staggering of the power supply, it was the result of such order which falls within the scope of the proviso to clause 1 of the agreement. Clause 6 of the Order, which regulated the supply, reads as follows :-

6. (i) In respect of electrical energy consumer by all large and heavy power industrial consumers receiving power at 33 KV and above from Uttar Pradesh State Electricity Board, a cut of 33-1/3 per cent in their highest maximum demand recorded in any month during the twelve months from August, 1978 to July, 1979 shall be exercised :

Provided that where any such industrial consumer has his own source of generation of energy which alone enables him to obtain 66-2/3 per cent or more of his aforesaid highest maximum demand then a cut of 100 per cent in the power supplied by the Board shall be exercised.

(ii) All Arc Furnaces, Induction Furnaces, Rolling and Re-Rolling mills receiving power below 33 KV from U.P. State Electricity Board shall use energy for 10 hours only every day during such hours as may be specified by the Board from time to time anything contained in Clause 8(a) notwithstanding.

(iii) All other continuous process industrial power consumers (listed in Annexure 2) as well as Textile Mills and non-continuous industrial power consumers having loads above 110 BHP/100KVA/75 KW billed on large and heavy power tariffs receiving power from the U.P. State Electricity Board shall exercise 33.1/3 per cent cut in their highest maximum demand recorded in any month during the twelve months from August, 1978 to July, 1979:

Provided that any such consumer or Mill may for reasons of technical difficulty instead of observing the aforesaid cut avail supply for such 20 days in a month as may be determined with the approval of the Executive Engineer concerned and may observe block closure during the remaining days of the month so, however, that consumption up to 5 per cent of such highest maximum demand shall be allowed during the block closure to meet the requirements of light, fan, tube-well and repair workshops."

The log books should have indicated or other materials should have been placed before the arbitrators to indicate that the heavy power tariffs received from the U.P. State Electricity Board should exercise 33.1/3 per cent cut in the highest maximum demand recorded in any month during the 12 months from August 1978 to July 1979 and the manner in which the same should be regulated. Whether that amount of electricity was supplied to the respondent or not is also not clear from the records. In the absence of such material placed before the arbitrators, we cannot embark upon an investigation on the basis of this order of the U.P. Government.

Therefore, we think, the High Court is justified in having dismissed the appeal filed by the appellant, and we do not think that there is any justification for us to interfere with the award which was made the decree of the civil court and in appeal affirmed by the High Court.

The appeal, therefore, stands dismissed. However, in the circumstances of the case, the parties shall bear their respective costs.

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S. RAJENDRA BABU]

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S. N. PHUKAN]

FEBRUARY 21, 2001.

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