

GAHC010184412022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/440/2023

ASSAM POWER DISTRIBUTION COMPANY LIMITED .
REPRESENTED BY ITS CHIEF GENERAL MANAGER (COM REV) APDCL,
BIJULEE BHAWAN, GUWAHATI 781001

VERSUS

POWER GRID ASSOCIATE . E
NEAR SATSANG VIHAR DULIAJAN, PO DULIAJAN, DIST DIBRUGARH,
ASSAM 786602 REPRESENTED BY ITS PROPRIETOR SRI SANJIB GOGOI.

Advocate for the Petitioner : MR. P N GOSWAMI

Advocate for the Respondent : MR. T DAS

Linked Case : I.A.(Civil)/1083/2024

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Advocate for : MR. P N GOSWAMI

Advocate for : MR. T DAS appearing for POWER GRID ASSOCIATE

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 09/04/2024

Suman Shyam, J

1. Heard Mr. S. P. Sharma, learned counsel appearing for the writ appellant. We have also heard Mr. T.Das learned counsel appearing for the sole respondent.
2. The writ appellant viz. Assam Power Distribution Company Limited (APDCL) has preferred this intra-court appeal, registered as Writ Appeal No. 440/2023, assailing the judgement and order dated 22/12/2021 passed by the learned Single Judge in WP(C) 2765/2015, instituted by the respondent viz. Power Grid Associate, thus issuing a Writ of Mandamus directing the appellant to pay to the respondent, an amount of Rs. 23,20,835/- lying in the custody of the appellant as security deposit, within 6 (six) weeks from the date of the order.
3. The facts of the case, in a nutshell, are that the appellant had entered into 3 (three) agreements, all dated 30/01/2010, with the respondent for deployment of Input Based Distribution Franchise (IBDF) for Jagun, Deohal and Ketetang feeders of Tinsukia Electrical Circle. The respondent/writ petitioner had apparently deposited an amount of Rs. 23,20,835/- in total as security deposit under the 3(three) contract agreements so as to secure its performance obligation. However, according to the appellant, the respondent / writ petitioner could not perform its contractual obligations, as a result of which the contracts were terminated. However, the security deposit of Rs. 23,20,835/- was withheld thereby prompting the respondent to approach this Court by filing WP(C) 2765/2015, which was disposed of by the learned Single Judge by the impugned judgement and order dated 22/12/2021.
4. During the course of hearing of the writ appeal, the learned counsel for the appellant had argued that there is a serious contractual dispute by and between the parties involving several

disputed questions of facts and, therefore, the learned Single Judge was not correct in invoking jurisdiction under Article 226 of the Constitution of India and issuing a writ of Mandamus directing the release of the security deposit claimed by the respondent while keeping the claim of the appellant against the respondent company for recovery its dues to be decided at a later point of time. It appears from the records that according to the appellant, due to the failure on the part of the respondent/writ petitioner to perform its contractual obligation, the APDCL has claimed to be entitled to recover a sum of Rs. 1,38,77,358/- (Rupees one crore thirty eight lakhs seventy seven thousand three hundred fifty eight) only from the respondent after adjusting the security deposit lying in its custody.

5. After hearing the arguments of learned counsel for the parties, it is apparent that there are claims and counter claims on the part of both the parties which would have to be adjudicated by a competent forum. The learned Single Judge had allowed the prayer of the respondent/writ petitioner but did not adjudicate the claim of the appellant. Since there was claim and counter-claim involved in the proceeding, it was incumbent upon the learned Single Judge to consider the entitlement of both the parties before passing any effective order in the proceeding, which was not done in this case. It also appears that there are several disputed questions of facts in this case which cannot be adjudicated in a writ proceeding. This Court is, therefore, of the opinion that the learned Single Judge was not justified in passing the impugned order dated 22/12/2021 in its present form.

6. We also find from the materials on record that clause 14.3 of the Contract Agreement contains an arbitration clause, which reads as under :-

“14.3 In the event of dispute remaining unresolved, between the Franchisee and Managing Director of DISCOM within the period stipulated above it shall be settled by a mutually agreed Arbitrator, whose decision shall be final and binding on both the parties. The venue of the arbitration proceeding should be conducted in Guwahati, Assam.”

If that be so, there can be no doubt about the fact that the dispute arising by and between the parties would have to be referred to the Arbitral Tribunal in terms of clause 14.3 of the Contract Agreement.

7. The appellant and the respondent have jointly filed IA(C) No. 1083/2024, bringing on record their consent to refer the dispute to the Arbitral Tribunal. A joint request has also been made before this Court to set aside the impugned judgement and order dated 22/12/2021 and grant liberty to both the sides to raise all claims and issues before the Arbitral Tribunal. Learned counsel for both the sides have also submitted on instruction that they are agreeable to appointment of Hon'ble Mr. Justice (Retd) C.R. Sarma, a former Judge of this High Court, as the sole Arbitrator, so as to enter into

reference with regard to the dispute arising by and between the parties.

8. After going through the IA, the Arbitration Agreement contained in the contract and also upon considering the submissions made by learned counsel for both the sides, we are of the opinion that this is a fit case where this Court ought to invoke jurisdiction under section 11(2) of the Arbitration and Conciliation Act, 1996 and appoint Justice (Retd) Shri C. R. Sarma, who is one of the penal Arbitrators as notified vide notification no. 99 dated 04/08/2023, issued by the Registrar General of this High Court, to act as the Sole Arbitrator in this case.

9. Ordered accordingly.

10. Registry to seek consent of the learned Arbitrator appointed by this order and thereafter, transmit the necessary records for further proceeding in the matter.

With the above observation, the writ appeal as well as the IA stand disposed of.

JUDGE

CHIEF JUSTICE

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Comparing Assistant