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(1).

Date of Decision: February 25, 2022

.... Petitioner(s)

Punjab State Power Corporation Ltd. (PSPCL) and another

..... Respondent(s)

(2).

M/s. Globus Projects Pvt. Ltd.

.... Petitioner(s)

Punjab State Power Corporation Ltd. (PSPCL) and another

..... Respondent(s)

(3).

M/s. Globus Projects Pvt. Ltd.

.... Petitioner(s)

Punjab State Power Corporation Ltd. (PSPCL) and another

..... Respondent(s)

Present: Mr. Aditya Grover, Advocate
for the petitioner.

Mr. D.S. Patwalia, Senior Advocate, with
Mr. Sehajbir Singh, Advocate
for the respondent-PSPCL.

SUNIL
2022.03.09 14:32
I attest to the accuracy
and integrity of this order

LISA GILL, J.

This order shall dispose of all the above mentioned three revision petitions as an identical question arises for consideration in all of them. Accordingly, all these petitions were taken up together for hearing and adjudication at request and with the consent of learned counsel for the parties.

The petitioner in all these petitions is stated to be a company incorporated under the provisions of the Companies Act, 1956, *inter alia* engaged in the business of development of real estate projects, I.T. parks, residential houses and multiplexes. The present dispute is stated to have arisen out of three projects of the petitioner i.e. Bestech Parkview Residence (subject matter of CR-3334-2021), Bestech Business Tower (subject matter of CR-3335-2021) and Bestech Square Mall (subject matter of CR-3336-2021) all situated at Plot no.1, Phase 9, Industrial Area, SAS Nagar (Mohali). Facts are being extracted from CR-3334-2021 for the sake of convenience as they are admittedly similar in all the three petitions.

The petitioner is aggrieved of order dated 01.10.2021 and consequential order dated 06.12.2021, passed by the learned sole Arbitrator wherein the petitioner has been directed to file its claim petition while observing that it was erroneously observed by the Arbitrator in its earlier order dated 10th August 2021 and 10th September, 2021 that it is the Punjab State Power Corporation Ltd. (hereinafter referred to as 'PSPCL') which has to file the claim petition before the Arbitrator. It was observed by the

learned Arbitrator that it is the petitioner who is the claimant, therefore, the claim petition has to be filed by it. Aggrieved therefrom present petitions have been filed.

Brief facts necessary for adjudication of these petitions are that the petitioner is stated to have initiated the process for carrying out the three projects as mentioned above. It is submitted that initially 10 acres of land was allotted to the petitioner-company by Punjab Small Industries Export Corporation, Chandigarh (for short PSIEC) by way of deed of conveyance on 26.02.2008 for development of an I.T. Megapark under the Punjab Industrial Policy. Petitioner was to develop an I.T. Park of 60% of the land, 30% of the land would consist of a residential colony and 10% was for commercial development. The petitioner sought different single point connections for all the three projects from PSPCL. Ultimately, petitioner submitted a proposal to PSPCL to become a distribution franchisee of PSPCL for the purpose of distribution and retail supply of electricity to the consumers, falling within the area specified. It is submitted that a franchisee agreement dated 03.05.2018 was executed between the petitioner and PSPCL, whereby the petitioner became a distribution franchisee for getting single point supply for distribution in its area of supply. It is contended that the petitioner was making good all the compliances for maintaining the single point connection under the franchisee model to the extent required/possible and had been duly supplying electricity to the occupants at the project site. However, communication dated 06.11.2020 was received by

the petitioner from PSPCL stating that the single point rebate being given to the petitioner is required to be charged and voltage surcharge is also required to be charged in the bills. A demand of Rs.44,16,349/- was raised. Petitioner, it is stated replied to the same requesting PSPCL to withdraw the purported demand. The demand was thereafter revised by the PSPCL to Rs.42,05,126/-. This demand is also contended to be illegal and unsustainable.

The petitioner admittedly filed a petition under Regulation 45, 46 and 47 of the Supply Code, 2014 and Regulation 6 of Punjab State Electricity Regulatory Commission (Single Point Supply to Co-operative Group Housing Societies/Employers) Regulations (for short Regulations) and other relevant provisions before the Punjab State Electricity Regulation Commission at Chandigarh (for short the PSERC). The said demand was challenged before the Commission claiming that as per the prevailing Regulations, PSPCL is not authorized to raise the demand in question.

The PSERC vide order dated 11.02.2021 while noting that the petitioner is a franchisee of PSPCL under Regulation 6.6.2 of the Supply Code, 2014, read with 7th Proviso to Section 14 of the Electricity Act, 2003 (for short the Electricity Act) and not a deemed licensee under Section 14 of the Act and there being a specific provision in the franchisee agreement for settlement of dispute through arbitration, directed the parties to proceed as per Clause 19 of the franchisee agreement, which provided for resolution of the dispute through arbitration. In the meanwhile, respondent-PSPCL was

restrained from taking any coercive action on account of the impugned demand raised by it for the period of 45 days granted to the parties to resort to Arbitration. The interim order was further extended vide order dated 07.05.2021.

Admittedly, Er. Rajesh Kumar Bhardwaj was appointed as the sole Arbitrator and the petitioner has submitted to arbitration and filed its 'No Objection' before the Arbitrator as is reflected in order 06.11.2021 (Annexure P-13). When the parties appeared before the Arbitrator on 10.08.2021, it is observed that the claimant is directed to file its claim on or before the next date of hearing and it is PSPCL which is reflected as the claimant in the matter. Similarly, on the next date of hearing, it is PSPCL which is mentioned as the claimant and it is observed by the learned Arbitrator that PSPCL has not filed the claim petition as directed and the matter was again adjourned for 01.10.2021. In the meanwhile, having realized the discrepancy, which had arisen, it was brought to the notice of the learned Arbitrator by the representative of PSPCL that the claim petition in fact has to be filed by the petitioner and not by PSPCL. Accordingly, vide order dated 01.10.2021, learned Arbitrator observed that the error which had occurred in orders dated 10.05.2021 and 10.09.2021, stood corrected, while noting that it was the petitioner which is liable to file the claim petition and that it was never brought to the notice of the learned Arbitrator that it was the petitioner who had earlier filed the petition before the PSERC and it was only due to non availability of the copy of the petition

filed before the PSERC and the orders passed by the PSERC that earlier orders had been passed, asking PSPCL to file the claim petition. The present petitioner was thus asked to file the claim petition. In the meanwhile, application under Section 17 of the Arbitration and Conciliation Act, 1996 filed by the petitioner was also decided by the learned Arbitrator on 06.12.2021 with a direction being issued to the respondent-PSPCL to not take the punitive measure of disconnecting electricity supply of the claimant, subject to the petitioner filing its claim petition without any further delay on or before the next date of hearing and the petitioner was also directed to deposit 30% of the disputed amount with the respondent-PSPCL before the next date of hearing. Aggrieved therefrom these revision petitions have been filed.

Learned counsel for the petitioner vehemently argued that it was not open for the learned Arbitrator to have reviewed its earlier orders dated 10.08.2021 and 10.09.2021 and direct the petitioner to file a claim petition. It was urged that review is a creature of statute and unless and until it is specifically provided, it cannot be resorted to. In the present case it is submitted that there is no provision for review of an order passed by an Arbitrator. Therefore, the impugned orders are per se illegal and liable to be set aside on this ground itself. Learned counsel for the petitioner had further argued that even otherwise it is the respondent-PSPCL, which is the claimant as demand in question has been raised by the PSPCL vide memo dated 06.11.2020 and not by the petitioner. The claim if any has to be raised

by PSPCL, therefore, learned Arbitrator had rightly asked PSPCL to file its claim. The Arbitrator, it was stated cannot in this manner, take a U-turn and ask the petitioner to file a claim petition. It is thus prayed that these revision petitions be allowed and orders passed by the learned sole Arbitrator in all the revision petitions be set aside.

Learned counsel for PSPCL, per contra while refuting the arguments raised on behalf of the petitioner contends that the present revision petitions deserve to be dismissed on the ground of maintainability itself. It is submitted that these petitions challenging the orders passed by the Arbitrator in any case are not subject to revisional jurisdiction under Article 227 of the Constitution of India. It is further submitted that the sole object of the petitioner appears to be to delay the proceedings. As far as the respondent-PSPCL is concerned, there is no dispute whatsoever regarding the demand which has been raised by it in terms of the applicable Regulations/Provisions and the franchisee agreement and it is the petitioner who had raised a dispute regarding the same.

Learned Senior counsel submits that he has specific instructions to state before this Court that the respondent-PSPCL having no dispute whatsoever regarding the amount which it has demanded from the petitioner in terms of the provisions of law and the agreement with the petitioner, it does not have any objection in case the arbitration proceedings are closed. It was submitted that PSPCL would proceed in accordance with the applicable Regulations & law in respect to the demand raised by it from the petitioner.

Learned counsel further submits that there is no question of the learned Arbitrator being handicapped in not being able to correct the error of procedure, which has occurred due to an inadvertent mistake partly due to the fault of the respondent-PSPCL as well. It was submitted that the learned Arbitrator has clearly explained that the mistake has occurred as the order of PSERC or even the petition filed by the petitioner before PSERC was not placed before it. Learned Senior counsel submitted that there being a bona-fide lapse on the part of respondent-PSPCL, the same was immediately rectified when it came to notice and the petitioner is not entitled to any benefit thereof in such a situation. It is thus prayed that the present petitions be dismissed with exemplary cost.

I have heard learned counsel for the parties and have gone through the files with their able assistance.

The sequence of events as narrated in the foregoing paras regarding the execution of the franchisee agreement, raising of the demand by PSPCL, PSERC being approached by the petitioner and passing of the orders by PSERC relegating the parties to arbitration as well as the parties submitting to arbitration, is not in dispute. It is to be noted at this stage that in all the three separate projects/franchisee agreements, three separate proceedings were carried out, out of which the present three revision petitions arise. In respect to maintainability of these revision petitions, it is gainful to refer to the observations of the Hon'ble Supreme Court in ***M/s. Deep Industries Vs. Oil and Natural Gas Corporation Limited and another***, 2020(15) SCC 706, which read as under:-

“13) This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non-obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us herein above so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.”

The Hon'ble Supreme Court in ***Bhaven Construction through Authorised signatory Premjibhai K. Shah Vs. Executive Engineer Sardar Sarovar Narmada Nigam Ltd. and another, 2022(1) SCC 75***, while observing that a legislative enactment cannot curtail a constitutional right held, it is only in exceptional circumstances that interference should be there in the arbitral process. It was observed that

“it is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear 'bad faith' shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient.”

Therefore, it has to be seen whether a case of exceptional circumstance or bad faith is made out before exercising jurisdiction under Article 227 of the Constitution of India. In the present case demand for deposit of Voltage Surcharge and single point rebate has been raised by PSPCL vide notice dated 06.11.2020 purportedly in terms of the applicable Regulations/Instructions/franchisee agreement/relevant provisions. Said demand was subsequently revised. Admittedly, the demand raised by respondent-PSPCL was resisted by the petitioner, who approached PSERC challenging the same, raising various grounds in its petition under Regulation 45, 46 and 47 of the Supply Code, 2014 and Regulation 6 of Punjab State Electricity Regulatory Commission (Single Point Supply to Co-operative Group Housing Societies/Employers) Regulations and other relevant provisions, which is attached as Annexure P-6 with the petition. Parties were admittedly relegated to their remedy of arbitration. Petitioner has duly submitted to arbitration and has tendered its documents of 'No Objection' for appointment of the sole Arbitrator.

Much stress has been laid by learned counsel for the petitioner on the point that once having asked PSPCL to file a statement of claim, it was not open to the learned sole Arbitrator to direct the present petitioner to file a claim petition and that impugned orders dated 10.08.2021 and 10.09.2021 are not sustainable as it amounts to review of the earlier orders which is impermissible. However, I do not find any merit in this argument. This is so, for the reason that there is no bar for the Arbitrator to correct an

error of procedure which was absolutely apparent and which necessarily goes to the root of the matter. At this stage, it is gainful to refer to the judgment of the Hon'ble Supreme Court in ***SREI Infrastructure Finance Ltd. Vs. TUFF Drilling Pvt. Ltd., (2018) 11 SCC 470***, wherein it was held by the Hon'ble Supreme Court that an Arbitral Tribunal even after termination of proceedings under Section 25(a) of the Arbitration and Conciliation Act, 1996, on sufficient cause being shown can recall the order and recommence proceedings. While referring to an earlier judgment rendered by it, the Hon'ble Supreme Court observed as under:-

24. In *Kapra Mazdoor Ekta Union Vs. Birla Cotton Spinning and Weaving Mills Ltd. & Anr., (2005) 13 SCC 777*, this Court again held that a quasi-judicial authority is vested with the power to invoke procedural review. In Paragraph 19 of the judgment, following was laid down:-

“19. Applying these principles it is apparent that where a court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits (sic ascertains whether it has committed) a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing

and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. [In Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal](#) it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be reheard and decided again.”

25. There cannot be a dispute that the power exercised by the arbitral tribunal is a quasi-judicial. In view of the provisions of the 1996 Act, which confers various statutory powers and obligations on the arbitral tribunal, we do not find any such distinction between the statutory tribunal constituted under the statutory provisions or Constitution in so far as the power of procedural review is concerned. We have already noticed that [Section 19](#) provides that arbitral tribunal shall not be bound by the rules of procedure as contained in Civil [Procedure Code](#). [Section 19](#) cannot be read to mean that arbitral tribunal is incapacitated in drawing sustenance from any provisions of [Code of Civil Procedure](#). This was clearly laid down in *Nahar Industrial Enterprises Limited Vs. Hong Kong and Shanghai Banking*

Corporation, (2009) 8 SCC 646. In Paragraph 98(n), following was stated:-

“(n) It is not bound by the procedure laid down under the Code. It may however be noticed in this regard that just because the Tribunal is not bound by the Code, it does not mean that it would not have jurisdiction to exercise powers of a court as contained in the Code. “Rather, the Tribunal can travel beyond the Code of Civil Procedure and the only fetter that is put on its powers is to observe the principles of natural justice.” (See [Industrial Credit and Investment Corpn. of India Ltd. v. Grapco Industries Ltd.](#))”

While referring to its earlier decision in ***Grindlays Bank Ltd vs Central Government Industrial Tribunal and others***, 1981 AIR 606, 1981 SCR (2) 341, para 6 thereof was quoted as under:-

“We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary.”

Therefore, keeping in view the facts and circumstances, it is crystal clear that the Arbitrator was entitled to rectify the error, which had crept in the orders dated 10.08.2021 and 10.09.2021. It is specifically observed by the learned sole Arbitrator in order dated 01.10.2021, as under:-

“As per the available factual matrix and from arguments tendered by both the sides, it is crystal clear that actually Globus Projects Pvt. Ltd. had filed the Petition before the Hon'ble PSERC and had prayed for the stay of the demand notice issued by the PSPCL. The Hon'ble PSERC while disposing of the said Petition has directed the parties to appear before the Arbitrator and has issued interim directions to PSPCL not to take punitive action for a period of 45 days vide order Dated 11.02.2021, the interim direction was further extended for 2 weeks from the date of Order dated 07.05.2021 in IA No.11 of 2021 in Petition No. 04 of 2021. Even the Globus Projects Pvt. Ltd never brought to my notice that it is they who earlier filed the Petition before the Hon'ble PSERC. Due to non-availability of the copy of the Petition filed before the Hon'ble PSERC and Orders padded by the Hon'ble PSERC, Arbitrator was unable to find as to who had filed the Petition earlier. The factum of earlier Petition being filed by the Globus Projects Pvt. Ltd has been brought to the notice of the Sole Arbitrator by the Counsel for the PSPCL. The copy of said Petition alongwith IA filed by Globus Projects Pvt. Ltd. before the Hon'ble PSERC and the Orders passed by the Hon'ble PSERC are taken on record, which clearly reflect that the earlier Petition was filed by the Globus Projects Pvt. Ltd. It is further noticed that while appearing before the Sole Arbitrator on 10.08.2021 the Counsel of Globus Projects Pvt. Ltd has tendered his Vakalatname which clearly states Globus Projects Pvt. Ltd as Petitioner. So, now again directions can be passed only to Globus Projects Pvt. Ltd for filing the Claim Petition. Thus, the said Orders got passed erroneously due to non-availability of actual factual matrix and relevant documents on record. Said Order being passed erroneously, is hereby corrected and accordingly, present Order is hereby passed that the Claim Petition before the Arbitrator shall be filed by Globus Projects Pvt. Ltd. on or before 23.10.2021.”

No other argument has been addressed.

(Lisa Gill)
Judge

Sunil

Yes/No
Yes/No