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SKYPAK COURIERS LTD. ETC. ETC.

v

TATA CHEMICALS LTD. ETC. ETC.

MAY 12, 2000

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[G.B. PATTANAIK, DORAISWAMY RAJU AND S.N. VARIAVA, JJ.]

Consumer protection Act, 1986:

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National Consumer Disputes Redressal Commission—Referring matters to third person for consensual adjudication dehors the Arbitration Act—Then making the awards given by such third person rule of the court by passing orders based on the awards—Held, reference to a third person is not supposed to be an arbitration but a consensual adjudication—Commission is not applying its own mind or adjudication on disputes—It is merely putting its imprimature on decisions given by third parties—By doing this it is abdicating its own functions and duties—Such a procedure is unwarranted and unjustified—Commission directed to forthwith discontinue such a practice—As regards the present cases disposed by Commission on the basis of the award by third person, reference being by consent to be treated reference to arbitrator under Arbitration Act—Awards to be treated as awards by arbitrators—It will be open to parties to challenge the awards on such grounds as are available under Arbitration Act, 1940 and/or the Arbitration and Conciliation Act, 1996—final orders passed by Commission set aside—Matters remitted to Commission for decision accordingly.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2500 of

1994.

From the judgment and Order dated 7.2.94 of the National Consumer Disputes Redressal Commission, New Delhi in O.P. No. 66 of 1992.

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WITH

Civil Appeal No. 4029 of 1994

WITH

Civil Appeal No. 2339 of 1996

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WITH

Civil Appeal No. 4049 of 1996

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WITH

Civil Appeal No. 171 of 1997

F.S. Nariman, R.F. Nariman, Harish N. Salve, Jitendra Sharma, R. Sundaravaradan, N.N. Goswami, Raju Ramachandran, Bhimrao N. Naik, M.N. Krishnamani, Sr. Advs., N. Ganpathy, R.C. Mishra, Dr. Meera Agarwal, Ramesh Chandra Mohra, G. Venkatesh Rao, K.V. Mohan, M.K. Dua, Sunil Kapoor, Santhosh K. Sethi, R.D. Upadhyay, Krishan Venugopal, Ms. Bina Madhawan, P.H. Parekh, S.C. Sharda, K.C. Dua, Tarun Dua, Y.P. Mahajan, L.N. Rao, Roy Abraham, Ms. Baby Krishnan, Tara Chandra Sharma, Ms. Sushma Suri and S. Uday Kumar Sagar for the appearing parties.

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The following Order of the Court was delivered :

All these Civil Appeals are being disposed of by this common Order. It is clarified that at this stage this Court is not going into the facts of any case but is only dealing with the propriety of the procedure. Followed by the National Consumer Disputes Redressal Commission (hereinafter for sake of convenience called the 'Commission') in all these matters.

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With the Industrial Revolution and development in the International Trade & Commerce, there has been a substantial increase of business and trade, which resulted in a variety of consumer goods appearing in the market to cater to the needs of the consumers. The modern method of advertisement in media, influence the mind of the consumers and notwithstanding the manufacturing defect or imperfection in the quality, a consumer is tempted to purchase the goods. There has been possibility of deficiency in the services rendered. For the welfare of such consumer and to protect the consumers from the exploitation to provide protection of the interest of the consumers, the Parliament enacted the Consumer Protection Act, and the Act itself makes provision for the establishment of Commissions for settlement of the consumer disputes and matters connected therewith. The Commissions under the Act, are quasi judicial bodies and they are supposed to provide speedy and simple redressal to consumer disputes and for that purpose, they have been empowered to give relief of a specified nature and in an appropriate way, to award compensation. On a detailed scrutiny of the different provisions of the Act and bearing in mind the powers conferred on the Commissions it is indeed difficult to conceive that such Commissions would be authorised to refer the disputes for a consensual adjudication, merely because to arrive at

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A a decision, it would be necessary to take evidence in the proceedings. In the absence of any provision in the Act itself, authorising the Commission to refer a pending proceeding before it, on receipt of a complaint from a consumer, for being settled through a consensual adjudication, the conclusion is irresistible that the Commissions under the Consumer Protection Act do not have the jurisdiction to refer the dispute for a consensual adjudication and then make the said decision of the so-called consensual arbitrator, an order of the Commission itself. Even if there exists an arbitration clause in an agreement and a complaint is made by the consumer, in relation to certain deficiency of service, then the existence of an arbitration clause will not be a bar to the entertainment of the complaint by the Redressal Agency, constituted under the Consumer Protection Act, since the remedy provided under the Act is in addition to the provisions of any other law for the time being in force. Now let us see what procedure has been adopted by the Commission.

D In all these matters the Commission has passed Orders referring the concerned matter to consensual adjudication by a retired Judge. For sake of convenience a typical Order (as passed in Civil Appeal No. 2500 of 1994) is reproduced below:-

ORDER

E After hearing both sides we suggested to parties that since evidence will have to be taken and the questions of facts determined after scrutiny of various documents and the oral evidence, it is best that both sides agree to the matter being adjudicated upon consensually by a retired Judge of the Supreme Court. Both parties have submitted before us that they are agreeable to the course suggested by us.

F Accordingly both sides consented before us that the dispute forming the subject matter of this Original Petition may be referred to Mr. Justice V.D. Tulzapurkar, retired judge of the Supreme Court of India who is residing in Bombay. Both parties to this dispute have their offices in Bombay and so it would be convenient to have the adjudication conducted by a retired Judge who is in Bombay.

G The records of the case will be transmitted by the Registry to Mr. Justice V.D. Tulzapurkar at his address in Bombay in Samta Building, General Bhonsale Marg, Near Sachivalaya, Bombay. Mr. Justice Tulzapurkar may stipulate the terms and conditions to be completed by the parties as to his remuneration and expenses of the adjudication proceedings.

H We make it clear that this is not an arbitration under the Arbitration

Act, but only a consensual adjudication which will be binding on both parties. The award of Mr. Justice Tulzapurkar will be sent to this Commission after the arbitration proceedings are completed so that final orders in the matter may be passed by this Commission in accordance with the terms of the said award. A

We request Mr. Justice Tulzapurkar to enter on the reference at his earliest convenience and to complete the proceedings of adjudication preferable within a period of three months from the date of his entering on the reference. Both the parties will be at liberty to adduce all their oral and documentary evidence in the course of the adjudication proceedings. Post this case after receipt of the original award from Mr. Justice Tulzapurkar.” B C

In some of these matters, it has been contended before us that such Orders were passed even though the parties did not consent. We, however, for the purposes of this decision, are proceeding on the basis that all such Orders were consent Orders and had been agreed to by the parties. To be noted that the reference to a third person is not supposed to be an arbitration but a consensual adjudication. D

Section 22 of the Consumer Protection act provides that the Commission shall have the powers of a Court. These powers would include the power to call for documents and take evidence either by itself or on Commission. However, the final adjudication has to be by the Commission. For purposes of this Order we will presume, without laying down any law in this behalf, that the Commission may even refer disputes to Arbitration/Conciliation. However, such reference to Arbitration could only be under the provisions of the Arbitration Act, 1940 or the Arbitration and Conciliation Act, 1996. There is no provision in law and we consider it an unhealthy practice for Courts/ Commission/Tribunal to abdicate their duties and functions and to delegate adjudication of disputes before them to third parties. The adjudication can only be by the concerned Court/Commission/Tribunal. For an effective adjudication the Commission/Court must address itself to the evidence, documents., respective case of the parties, including submission on their behalf and then give a finding on that basis. Facts set out hereafter shows/ suggests that that has not happened. E F G

In all these matters awards have been given by the persons to whom the matters were referred. In some of these matters one or other of the parties filed objections to the award. In some cases objections were not filed and/ H

A or were not allowed to be filed. In all these cases the objections have not been considered and the Commission has proceeded to pass orders based on the Award. For sake of convenience the Order passed in Civil Appeal No. 2500 of 1994, Which is typical of Orders passed, is reproduced hereinbelow:-

B “The dispute between the parties forming the subject matter of this complaint petition was referred for consensual adjudication to Justice Sri V.D. Tulzapurkar, former Judge of the Supreme Court of India with the stipulation that the award passed by the adjudicator will be final and binding as between the parties. The award has been passed by Justice Sri Tulzapurkar and it has been forwarded to this Commission in accordance with the terms of our order wherein it was stated that after the completion of the adjudication proceedings the award may be forwarded to this Commission for its being incorporated into the Order of this Commission. We direct that there will be an order in the original petition in terms of the directions contained in the award.”

D Mr. Venugopal, for the Respondent in Civil Appeal No. 2500 of 1994, sought to support this practice. He relied upon certain English authorities (which need not be reproduced) wherein it is held that parties could agree to abide by the decision/adjudication of a third person and that the opinion of the third person would then be final and binding on the parties. There can be no dispute with such a proposition. However, if a party does not abide by the decision then the only remedy would be to file a suit to enforce the agreement of the parties and the decision. There is no provision in law nor could any authority be shown to us, that adjudication of matters before a Court/Commission/Tribunal can be entrusted to a third party/individual and the decision of the third person then made a decree or Order of a Court/Commission/Tribunal. Of course, an Award made by an Arbitrator can be and is made a decree of a Court. But that is under the provisions of the Arbitration Act and not de hors the Act. As seen above the Commission is referring matters to third persons for consensual adjudication de hors the Arbitration Act. It is then making those awards the rule of the Court by passing Orders based on the award. The Commission is not applying its own mind or adjudication on the disputes. It is merely putting its imprimatur on decisions given by third parties. By doing this it is abdication its own functions and duties. Such a procedure is unwarranted and unjustified. It cannot be allowed to continue. Accordingly the Commission is directed to forthwith discontinue with such a practice.

H The question then arises as to what is to happen in all these cases. As

The question then arises as to what is to happen in all these cases. As stated above, we have proceeded on the basis that all parties had consented to their matters being referred to third persons. All parties have participated in the proceedings before the third persons. Awards have been passed. In our view, it would be inequitable to now set at naught all the awards and relegate the parties back to the original proceedings. In our view, the reference being by consent, must now be treated as reference to Arbitration under the Arbitration Act. The awards must be treated as awards of Arbitrators. A B

In such a situation, it will be open for parties to challenge the awards on such grounds as are available under the Arbitration Act, 1940 and/or the Arbitration and Conciliation Act, 1996. Thus, in our view, it would not be correct for the Commission not to allow parties to file objections and/or not to consider objections which had been filed. C

As stated above, in all these cases, the Commission has not considered the objections to the award or not allowed the parties to file objections. We, therefore, set aside the final orders of the Commission in all these matters and remit all these matters back to the Commission. We direct that the Commission shall permit the parties, who have not filed their objections, to file their objection to the award within a period of 4 weeks from today. Replies, if any, to the objections to be filed within 4 weeks thereafter. The Commission shall then consider the submissions/objections of the respective parties and then give a decision. With this direction all these Appeals stand disposed of. D E

It is clarified that this order will not act as a precedent to reopen matters where parties have accepted or acted upon the final decision of the Commission and/or in cases where parties have not challenged the final order of the Commission. F

R.P.

Appeals disposed of.