

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Arb. Case No. 59 of 2018

Date of decision: 29.03.2019

M/s Om Hydropower Limited

.....Petitioner

Versus

The Himachal Pradesh Electricity Board Limited & another

...Respondents

Coram:

The Hon'ble Mr. Justice Surya Kant, Chief Justice

Whether approved for reporting?¹

For the petitioner :

Mr. Aman Sood, Advocate,

For the respondents:

**Mr. Vikrant Thakur, Advocate, for respondent
No. 1.**

**Mr. Ashok Sharma, Advocate General with
M/s Adarsh Sharma, Nand Lal Thakur and
Ashwani Sharma, Additional Advocate
Generals, for respondent No. 2.**

Surya Kant, Chief Justice *(Oral)*

The petitioner is a Power Generating Company to whom licence has been granted under the Electricity Act, 2003. A dispute has arisen between the petitioner and the Himachal Pradesh Electricity Board Limited. Though the Bilateral Agreement also contains Clause 19 which provides adjudication of such dispute through arbitration, but learned Counsel for the parties have referred to Section 86(1)(f) of the Electricity Act, 2003, whereunder one of the statutory function assigned to the State Commission is to “adjudicate upon the disputes between the licensees and the generating companies and to refer any dispute for arbitration.” The above stated clause has been interpreted by

¹ *Whether the reporters of Local Papers may be allowed to see the judgment?*

the Hon'ble Supreme Court in **Gujarat Urja Vikas Nigam Ltd. Versus Essar Power Ltd.**, reported in **(2008) 4 SCC 755** and as per the dictum, aforementioned provision shall prevail upon Section 11 of the Arbitration and Conciliation Act, 1996. Though, in the event of appointment of an Arbitrator by the Commission, the arbitration procedure as contemplated under the 1996 Act shall be followed.

2. Having heard learned Counsel for the parties and in the light of the above stated provision read with the cited decision, the instant petition is disposed of with liberty to the petitioner to approach the 'State Commission' within four weeks, whereupon the State Commission is directed to invoke its power under sub-Clause (f) of Section 86(1) of the Electricity Act, 2003 and refer the dispute for arbitration within four weeks from the date of receipt of reference from the petitioner. The Arbitrator, so appointed, is directed to decide the dispute expeditiously and preferably within three months from the date of entrustment.

3. The petition is accordingly disposed of alongwith pending application(s), if any.

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(Surya Kant)
Chief Justice.

March 29, 2019.

(hemlata)