

Eastern Steam Ships Pvt. Ltd. Vs Mr. S. Ramaswamy Vigilance Officer and Arbitrator Department of Telecommunications, Madras and The Deputy General Manager (North) Madras-1

Court: Madras High Court

Date of Decision: Sept. 17, 1996

Acts Referred: Arbitration Act, 1940 " Section 12, 14, 14(1), 14(2), 15
Telegraph Act, 1885 " Section 14, 14(2), 7B(1), 7B(2)

Hon'ble Judges: Jayasimha Babu, J

Bench: Single Bench

Advocate: G. Anbumani and A.L. Rajah, for the Appellant; R. Santhanam, Counsel, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Jayasimha Babu, J.

The petitioner has filed this petition u/s 14(2) of the Arbitration Act. The prayer is for direction to the respondents-

Vigilance Officer and Arbitrator, Department of Telecommunications and the Deputy General Manager (North) Madras, to file the award made by

the 1st respondent on 18-4-1991 in respect of the petitioner's Telephone Connection bearing Nos. 20394, 20940 and 29976 into Court. The

averments made in the petition show that the petitioner is aggrieved by that award and the object of seeking direction is to enable the petitioner to

have that award set aside by challenging the same after it is filed into Court, if a direction were to be issued to file that award into Court.

2. A preliminary objection has been taken on behalf of the respondents as regards the maintainability of this petition. The respondents contended

that in any event the provisions relating to the filing of the award into Court and making a decree in terms thereof or for setting aside the award,

have no application to the statutory arbitration under Section- 7(B) of the Telegraph Act.

2. Section 7(B) of the said Act reads as under :-

7-B Arbitration of disputes -

(1) Except as otherwise expressly provided in this Act, if any dispute concerning any telegraph line, appliance or apparatus line, arises between the

telegraph authority and the person for whose benefit the appliance or apparatus is, or has been, provided, the dispute shall be determined by

arbitration and shall, for the purposes of such determination, be referred to an arbitrator appointed by the Central Government either specially for

the determination of that dispute or generally for the determination of disputes under this Section.

(2) The award of the arbitrator appointed under sub-section (1) shall be conclusive between the parties to the dispute and shall not be questioned

in any Court".

2. Section 46 of the Arbitration Act 1940 sets out the extent to which Arbitration Act is applicable to the statutory arbitration. Section 46 reads as

under:-

Application of Act to statutory arbitrations

The provisions of this Act except sub-section (1) of Section 6 and Section 7, 12, 36 and 37 shall apply to every arbitration under any other

enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and if that other enactment were an arbitration

agreement, except in so far as this Act is inconsistent with that other enactment or with any rules made there under.

3. Learned Counsel for the petitioner submitted that in view of Section 46 of the Arbitration Act, statutory arbitrations merely on account of the

fact that such arbitrations are statutory, are not excluded from the purview of the Arbitration Act and therefore, the award made by the Arbitrator

u/s 7(B) of the Telegraph Act is required to be made into a rule of the Court and it also liable for being challenged in an application u/s 14(2). It

was further contended by the counsel that the award made by the Arbitrator u/s 7(B) of the Act cannot of its own force be executed unless a

decree in terms thereof is made by the Court.

4. Learned counsel relied upon a judgment of the Apex Court in the case of Dhanrajamal Gobindram Vs. Shamji Kalidas and Co., . The Court

there was concerned with Section 20(4) of the Arbitration Act as the parties to the arbitration agreement both of whom are private parties, had

placed their power of selecting an arbitrator in that hands of the Chairman of the Board of Directors of the East India Cotton Association Ltd. The

Court held that in such situation, the Court can certainly perform the ministerial act of sending the agreement to him to be dealt with by him.

5. The Court also referred to Section 46 of the Act at paras 24 and 25 of the judgment. The contention him in the context of which reference to S.

46 came to be made, is set out in para-24, The relevant part of it reads as under:-

The contention is that arbitrations under the Arbitration Act, like those under Sch. II of the Code of Civil Procedure, are of three kinds described

by Lord Macnaghten in *Ghulam Jilani v. Muhammad Hassan*, 29 IInd App 51 at pp.56, 57(PC) and that this belongs to the second category there

described, in which "all further proceedings are under the supervision of the Court". It is argued that by the application of the Bye-laws, the Court

is left no power under Sec. 20 which is being invoked, and that Section 20 cannot thus apply".

6. The Court thereafter sets out Sections 20, 47 and 46 of the Act and observed thus:

Section 46 makes the provisions of any other enactment or any rules made thereunder to prevail over the Arbitration Act, if inconsistent with the

latter. In view of these several provisions, it is clear that the Arbitration Act applies to all arbitrations and Chap. III makes it applicable also to

arbitrations, in which the arbitration agreement is asked to be filed in Court under Sec. 20, subject, however, to this that the provisions of any other

enactment or rules made thereunder, if inconsistent with the Arbitration Act, are to prevail".

7. In para-25 of the Judgment the Court observed that so long as something is saved, it cannot be said that the Court after receiving the agreement

and ordering that it be filed, becomes completely functus officio.

8. It is clear that the question that arose for consideration in that case, was not similar to the question that arises for consideration here.

9. Counsel also referred to a decision of the Himachal Pradesh High Court in the case of *H.P. State Co-operative Bank Ltd. Vs. Smt. Naroo Devi*

and Others, . The Learned single Judge held that the Award made under the Co-operative Societies Act, was not required to be made a rule of

the Court and that the award itself as such was executable. This decision is clearly not of any assistance to the petitioner.

10. Counsel next relied on the decision the learned single Judge of Jammu and Kashmir High Court in the case of *Prithvi Raj Kohli v. Union of*

India (A.I.R.1988 J.and K. 17) Learned Judge at para-4 of the Judgment expressed his dissent from the decision of the Orissa High Court in the

case of *Nitayananda Sahu v. Postmaster General, Orissa* reported in AIR 1997 Orissa 48.

In para-4 the learned Judge observed thus:

With great respect, I disagree with the findings arrived at by the learned single Judge in that case. Section 7(B) of the Telegraph Act does not in

any manner oust the jurisdiction of the Civil Court. The only bar contained in this provision is regarding Court's jurisdiction to modify, remit and set

aside the award or make it rule of the Court in accordance with the provisions of the Arbitration Act. But so far referring the matter in dispute

between the parties to the Central Government for appointment of an arbitrator is concerned Civil Court has jurisdiction".

10.1 Even this judgment does not support the stand of the learned counsel for the petitioner. That the petitioner is entitled to make an application

u/s 14(1) of the Act and thereafter make a further application u/s 14(2) to have the award set aside.

11. Section 14 of the Arbitration Act which has to be read along with other Sections 15 to 19, 29 and 30 is inconsistent with Section 7(B) of the

Telegraph Act.

12. The award passed by a statutory arbitrator appointed by the Central Government under Sec.7-B(1) of the Act is made conclusive and is not

to be questioned in any Court by reason of the provision to that effect made in Sec. 7B(2).

13. The filing of the award contemplated in Sec.14 of the Act, is to enable the Court to take further steps after it is filed in the manner and to the

extent required to be taken under Sections 15 to 19, 29 and 30 of the Act. Under Sec.15 after the award is filed into Court, the Court may modify

or correct the award if any of the conditions set out in sub clauses (a) to (c) are satisfied Under Sec.16, the Court may remit the award for

reconsideration on such term of the Court may consider fit if any of the requirement in sub clauses (a) to (c) are satisfied.

Under Section 17, if the Court does not see any cause for exercising the powers under Sections 15 and 16, the Court shall, after the time for

making an application to set aside the award has expired or such application having been made, after refusing it, the Court may proceed to

pronounce judgment according to the award and upon the judgment so pronounced, a decree shall follow.

14. Section 18 of the Act empowers the Court to pass interim orders after the award is filed into Court and before a decree is made. Section 19

of the Act empowers the Court to supersede the reference / award which was set aside.

15. Sections 14 to 19 of the Act together with sections 29 and 30 constitute a part of integrated scheme concerning the nature and extent of the

Court's jurisdiction in relation to the award if it is filed into Court. The object of filing the award into Court is to enable the Court to decide on the

extent to which the powers conferred on it under the other provisions already referred to, should be exercised.

16. By reason of the prohibition contained in Sec. 7B(2) of the Telegraph Act, the Court under the Arbitration Act is disabled from exercising any

of the powers S 15-19,29,30 in relation to the Award even if the were to be filed into Court. The filing of the award into Court would therefore be

wholly inconsistent with Section 7-B(2) of the Telegraph Act.

17. The Court cannot pass a judgment on the basis of the award which is passed under Sec.7 (B) merely because an award has been passed by a

statutory arbitrator unless the Court is free to apply its mind as to whether the award should be modified, remitted or set aside. In view of the

Court's power to modify or remit or aside under the Arbitration Act being wholly inconsistent with Sec.7B(2) of the Telegraph Act, the filing of the

award under Sec. 14 would serve no purpose whatsoever and therefore it must be held that Sec. 14 is also inconsistent with Section 7-B(2) of the

Telegraph Act.

17.1 Though the Arbitration Act is a special law in relation to arbitration, while the Telegraph Act is not a special law regarding arbitration,

nevertheless by reason of section 46 of the Arbitration Act, primacy has been conferred on the Act providing for statutory arbitration.

18. Learned counsel for the petitioner contended that unless the award made by the statutory arbitrator culminates into a decree of the Court, the

award cannot be executed. The award made under the Telegraph Act is binding on the parties to the arbitration. The award being one in relation to

service provided under the Act, it is open to the authority who provide service to withhold or discontinue service and recover the amount awarded

by the arbitrator from out of the amount that may be available with the authority to the credit of the person against whom the award has been

made.

19. The withholding of the service on account of non- payment or non-compliance with the terms of the award, if any adjustment, that may be

made by the authority on the basis of the award, would be lawful and binding on the person against whom the award is made. Hence if the

authority seeks the assistance of the Court in recovering any sum that may have been awarded by the arbitrator, the authority cannot regard the

award as a decree of the. Court and seek execution of the same. The Telegraph Act does not confer on the award made by the arbitrator under

Sec.7-B, the status of a decree made by a Civil Court. The authority would therefore have to bring a proper action in a Civil Court if it wishes to

seek the assistance of the Court in recovering the amount that may have been awarded by the arbitrator under Sec.7-B of the Act. Such action has

to be independent of the Arbitration Act as the authority cannot also invoke the provisions contained in Sections 14 and 17 and seek a judgment in

terms of the Award. This petition under Sec.14 is not maintainable and is therefore dismissed.