

Union of India

Vs

Jagajit Industries

Civil Appeal No. 362 of 1994

(V. N. Khare U. C. Banerjee JJ)

06.05.1999

JUDGMENT

V.N. Khare, J.

1. Respondent herein has a telephone connection. It appears that certain dispute arose in respect of the bills submitted by the appellants towards telephone charges. Consequently, the matter was referred to an arbitrator under Section 7-B of the Indian Telegraph Act, 1885 (hereinafter referred to as "the Act"). On 20.8.1992, the arbitrator entered into the reference and on 18th December, 1992, he gave a non-speaking award. This award was challenged by the respondents by means of a writ petition under Article 226 of the Constitution before the Punjab & Haryana High Court. A Division Bench of the High Court having found that the award does not contain any reason, set aside the award and remitted the matter back to the arbitrator for giving a speaking award. It is against the judgment, the Union of India is in appeal.

2. Learned counsel appearing for the appellants urged that in view of the decision in the case of *Gurbachan Singh and another v. Union of India and another, 1996(3) SCC 119 : 1996(2) RRR 324 (SC)*; the requirement of giving reasons in the award by the arbitrator has to be applied prospectively and for that reason judgment under appeal deserves to be set aside. In brief, the argument is that a non-speaking award given prior to decision in *Gurbachan Singh's* case (supra) has to be upheld.

3. After giving gone through the judgment, we find that the argument of the learned counsel is not based on the correct interpretation of paragraphs 8 and 9 of the said decision. Paragraphs 8 and 9 are reproduced below :

"8. It is thus, settled law that reasons are required to be recorded when it effects the public interest. It is seen that under Section 7-B, the award his conclusive when the citizen complains that he was not correctly put to bill for the calls he had made and disputed the demand for payment. The statutory remedy open to him is one provided under Section 7-B of the Act. By necessary implication, when the arbitrator decides the dispute under Section 7-B, he is enjoined to give reasons in support of his decision since it is final and cannot be questioned in a court of law. The only obvious remedy available to the aggrieved person against the award is judicial review under Article 226 of the Constitution. If the reasons are not given, it would be difficult for the High Court to adjudge as to under what circumstances the arbitrator came to his conclusion that the amount demanded by the Department is correct or the amount disputed by the citizen is unjustified. The reasons would indicate as to how the mind

of the arbitrator was applied to the dispute and how he arrived at the decision. The High Court, though does not act in exercising judicial review as a court of appeal but within narrow limits of judicial review it would consider the correctness and legality of the award. No doubt, as rightly pointed out by Mr. V.R. Reddy, Additional Solicitor General, the questions are technical matters. But nonetheless, the reasons in support of his conclusion should be given. In this case, arbitrator has not given reasons. The award of the arbitrator is set aside and the matter is remitted to the arbitrator to make an award and give reasons in support thereof.

9. Since we have decided this question for the first time, it must be treated that any decision made prior to this day by any arbitrator under Section 7-B of the Act is not liable to be reopened. In other words, the order is prospective in its operation."

4. A combined reading of paragraphs 8 and 9 shows that what has been prohibited by the aforesaid decision is only regarding reopening of the awards which have already attained finality. The injunction contained in paragraph 9 of the decision is not applicable to cases where decisions given under Section 7-B of the Act were challenged on account of absence of reason in the award prior to the said decision. This view of our finds support from the fact that this Court in Gurbachan Singh's case (supra) has set aside the decision of the arbitrator which was found lacking in reasons. So far as the present case is concerned, the award was challenged before the High Court and the same was set aside on 20.3.93. Therefore, what has been observed in paragraph 9 is not applicable to the present case. We, therefore, do not find any merit in this appeal and the same is accordingly dismissed. There shall be no order as to costs.

Appeal dismissed.