

(1994) 10 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16155 of 1994

A.P. State Wakf Board

APPELLANT

Vs

The General Manager, Telecommunications and Others

RESPONDENT

Date of Decision : 07-10-1994

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 21, 226
Telegraph Act, 1885 — Section 7B, 7B(2)

Citation : (1994) 3 ALT 536

Hon'ble Judges : B. Subhashan Reddy, J

Bench : Single Bench

Advocate : Mirza Nisar Ahmed Baig, for the Appellant; P. Innayya Reddy, S.C. for Central Govt., for the Respondent

Final Decision : Dismissed

Judgement

B. Subhashan Reddy, J.—This writ petition challenges the constitutional validity of Sections 7-B and 7-B(2) of Indian Telegraph Act, 1885. The attack is made on the ground that they are violative of Articles 13,14 and 21 of the Constitution of India.

2. The learned Counsel for the petitioner submits that Arbitrator, who is to be appointed under the above provisions of Indian Telegraph Act, 1885 is none other than a Subordinate Officer to the General Manager, Telecommunications and as such he will be partisan and no justice can be expected from the said Arbitrator. His further argument is, even if the arbitration can be held to be valid, as no appeal is provided against the arbitration Award, the same is arbitrary and violative of fundamental rights. He also argues, as no procedure has been prescribed to be followed by the said Arbitrator, it is violative of Article 14 of the Indian Constitution. Insofar as the last argument of the procedure being not prescribed, it was already held in series of judgments including that of mine rendered in Ramesh Kumar Khurana Vs. The General Manager, Telephones, that the enquiry should be akin to Civil Court enquiry where principles of fair play

have got to be followed. The Department should lead the evidence and afford a chance of cross-examination to the petitioner, who may represent in person or through counsel and then the petitioner should be given a chance to adduce rebuttal evidence and then only arguments can be heard and by a reasoned order, it can be disposed of. As such, the third argument fails.

3. Insofar as the first argument is concerned, merely because the Arbitrator is a Subordinate Officer to the General Manager, Telecommunications, it cannot be presumed that he will act with bias or prejudice. In fact, similar contentions have been rejected by my learned Brother M.Jagannatha Rao, J. (as he then was) in Writ Petitions Nos. 1295 and 1432 of 1989 by his Judgment dated 23-3-1989. As such, that contention fails.

4. Insofar as the contention that since no appeal has been provided, the provision is unconstitutional, the same cannot be countenanced. The statute does not become void or unconstitutional merely because appeal remedy is not provided. Appeal remedy is not a fundamental right. It is the creature of a statute. If a statute creates an appeal remedy, it can be availed of and if the statute does not provide an appeal remedy, then the petitioner has to invoke whatever further remedy is available either under common law or under the Constitution. If the petitioner feels that the common law remedy is not available, then the extraordinary power under Article 226 of the Indian Constitution can always be availed.

5. In the above circumstances, I do not find any merit in the contentions of the learned Counsel for the petitioner. However, the arbitration proceedings shall be initiated by the 1st respondent within a period of one month from the date of receipt of a copy of this letter as the bill amount is disputed. The bill amount is Rs. 1,08,584/-. The petitioner shall deposit Rs. 35,000/- within one month from today with the 1st respondent. If the said amount is deposited, then an Arbitrator should be appointed by the 1st respondent and the Arbitrator, so appointed, shall dispose of the Arbitration proceedings by following the guidelines prescribed in the judgment referred to above.

6. The writ petition is accordingly disposed of at the stage of admission. No order as to costs.