
(2003) 09 OHC CK 0056
In the Orissa High Court
Case No : C.R. No. 172 of 2000

Chief Accounts Officer, Telecom District and Another	APPELLANT
Vs	
Satyananda Jena	RESPONDENT

Date of Decision : 05-09-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, 9
Telegraph Act, 1885 — Section 7B

Citation : AIR 2004 Ori 47 : (2004) 97 CLT 534 : (2003) OLR 695 Supp

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : P.R. Barik, Addl. S.C. Central, for the Appellant; S.P. Misra, S.S. Das, P.K. Nayak and K.C. Khuntia, for the Respondent

Judgement

P.K. Tripathy, J.—Opposite parties in Misc. Case No. 31 of 2000 of the Court of Civil Judge (Sr. Division), Angul have preferred this civil revision as against an order of mandatory injunction granted by the said Court and confirmed by learned Addl. District Judge, Angul on 9-5-2000 in Miscellaneous Appeal No. 6 of 2000.

2. Hearing of the case was completed and judgment was reserved on 24-1-2002. By this date Act 46 of 1999 which amended the provision in Section 115, C.P.C. had not come into force. Therefore, parties to the dispute did not raise any issue on the question of maintainability of the civil revision. Thus, this Court does not consider that aspect at present.

3. Opposite party in this revision is the plaintiff in Title Suit No. 17 of 2000 claiming the relief of permanent injunction with a direction to the defendants i.e. the petitioners in this revision, to not to disconnect his telephone line of the Telephone Number 32216 of Angul. It is stated In the plaint that there was demand of excessive amount and disconnection of the telephone line on the ground of non-payment and. therefore, plaintiff filed O.J.C. No. 106 of 1999 seeking indulgence of the High Court of Orissa under Article 226 of the

Constitution of India and the said O.J.C. was disposed of with a direction for adjudication of the dispute by an arbitrator in accordance with the provision in Section 7(B) of the Indian Telegraph Act, 1885 (in short, "the Act, 1885") and to reconnect the line on payment of the 50% of the dues claimed by the defendants. It is the further case of the plaintiff that on payment of the 50% of the dues telephone link was restored, but the arbitrator appointed to adjudicate the dispute affirmed to the correctness of the bill without affording opportunity of hearing to the plaintiff, and as a consequence of that award again telephone line was disconnected on 20-3-2000. Thus, in the aforesaid suit plaintiff filed Misc. Case No. 31 of 2000 under Order 39, C.P.C. for issue of temporary mandatory injunction to restore the telephone line.

4. Claim of the defendants, inter alia, is about correctness of the award and non-maintainability of the suit in view of the provision in Section 7(b) of the Act, 1885 and, therefore, non-maintainability of the application for temporary injunction,

5. Learned Civil Judge (Sr. Division) referred to the provision in Section 7-B of the Act, 1885, Section 30 of the Arbitration Act, 1940 and Section 34(2)(iii) and 85 of Arbitration and Conciliation Act, 1996 besides to the reported decisions viz., M.L. Jaggi Vs. Mahanagar Telephones Nigam Ltd. and others, ; Chairman-cum-Managing Director, New India Assurance Company Ltd. and Another Vs. Rabi Narayan Chhotrai, ; Smt. Makhani Devi Banka Vs. Union of India (UOI), ; S. Kanyalal Vs. Union of India and others, (all these decisions being relied on by the defendants); Divisional Engineer, Telephones, Cuttack and Another Vs. Beharilal Shyamsundar, ; Magulu Jal and Others Vs. Bhagaban Rai and Others, ; Satyabadi Naik Vs. The State of Orissa, ; Chaudhary Bhagat Ram v. Major P. T. James AIR 1945 Lah 81; Bhikari Majhi v. Baidyanath Barik 47(1979) CLT 433; and Orissa Vegetable Oil Complex Ltd. Vs. Union of India (UOI), and took the prima facie view that the arbitrator appointed u/s 7-B of the Act did not act by complying to the requirement of principle of natural justice while adjudicating the dispute and passing the award and, therefore, the jurisdiction of the Civil Court u/s 9 cannot be deemed to have been ousted to examine sustainability of such award passed by the arbitrator. In that respect, he also recorded findings that the provision for conducting an arbitration as in the Arbitration Act, 1940 and the Arbitration and Conciliation Act, 1996 were not followed by the arbitrator while arbitrating u/s 7-B of the Act, 1885. Taking that view in the matter learned Civil Judge (Sr. Division) also recorded the finding that children of the plaintiff being residing at Cuttack, disconnection of the telephone line shall cause irreparable loss and injury to the plaintiff for not being able to make contact with them. Accordingly, he passed the order to restore the telephone line by reconnection.

6. On analysis of the fact and law in the above manner learned Addl. District Judge as per the judgment delivered by him on 9-5-2000 in Misc. Appeal No. 6 of 2000 confirmed to the order of reconnection passed by learned Civil Judge (Sr. Division), learned Addl. District Judge also referred to some other reported

decisions. In that context, while referring to the case of M. L. Jaggi (supra) and Guru Prasad Mohanty and etc. Vs. Arbitrator-cum-Deputy General Manager and Others, etc., learned Addl. District Judge also referred to the case of Lala Ram Swarup and Others Vs. Shikar Chand and Another, and opined to follow the ratio of the Constitution Bench of the Apex Court in preference to any other decision and accordingly found that the jurisdiction of the Civil Court u/s 9 is not ousted.

7. In course of hearing the legal issue has been reiterated by the parties. While the defendants (revision-petitioners) challenge to the maintainability of the suit and, therefore, non-availability of the relief of temporary injunction, they also argued that reconnection of the telephone line being the relief claimed in the suit, such a relief cannot be granted is temporary mandatory injunction. Learned Addl. Standing Counsel (Central) argued that in that context the view of this Court in the case of Bhikari Majhi (supra) was not properly followed by the Courts below. He also argued that the requirement of law to satisfy the three legal requirements for grant of temporary injunction was neither discussed nor considered and, therefore, the orders passed by the Courts below are illegal due to improper exercise of jurisdiction vested on them.

8. The plaintiff/opposite party supported the impugned judgment in letter and spirit and contended that when the disconnection of the telephone line was made by the defendants after issue of show cause notice in the injunction misc. case therefore the impugned order is not illegal when the Courts below have directed for reconnection of the telephone line. Learned counsel for the opposite party also argued that threadbare discussion of the facts and the provision of law clearly goes to indicate that the factum of existence of prima facie case, balance of convenience and irreparable loss and injury was duly considered by the Courts below. He further argued that in the absence of any illegality or Jurisdictional error committed by the Courts below, the Revisional Court should not interfere with the impugned orders. In that respect, he has cited some authorities but that being the settled position of law, this judgment need not be burdened by noting such decisions.

9. Section 7-B of the Act, 1885 reads as hereunder :--

"7-B. Arbitration of disputes.-- (1) Except as otherwise expressly provided in this Act, if any dispute concerning any telegraph line, appliance or apparatus arises between the telegraph authority and the person for whose benefit the line, appliance or apparatus is, or has been provided, the dispute shall be determined by arbitration and shall, for the purpose 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 dispute 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."

10. In the case of Nityananda Sahu Vs. Postmaster General and Others, , this Court has recorded that (at page 50 of AIR) :

"xx xx xx As already noticed, Sub-section (2) of Section 7-B of the Act makes the award of the arbitrator conclusive between the parties to the dispute and makes it immune from challenge in any Court. This provision rules out the application of the Arbitration Act, Section 46 of the Arbitration Act clearly indicates that the Arbitration Act shall apply provided it is not inconsistent with the scheme of the statute providing statutory arbitration. Under the Arbitration Act, the Court has power to modify an award, to remit an award or to make the award a rule of the Court. It has also power to set aside an award. In view of the clear terms of Section 7-B of the Act, the general scheme of the Arbitration Act is not applicable to statutory arbitration under the Act."

His Lordship further held that:

"The mandate given by the Act is clear. It ousts the jurisdiction of the Civil Court and creates an alternate forum for determination of the disputes of the stated nature. As it is conceded before me that the dispute in question is covered by Section 7-B(1) of the Act, no suit in the Civil Court was maintainable and the matter could only be referred to arbitration. From this conclusion, it would follow that the plaintiff's suit was misconceived and the only remedy open to him was arbitration."

It may be noted here that the dispute in the said reported case is identical to one involved in the present case except the fact that in the reported case the matter was not under statutory arbitration before approaching the Civil Court.

11. In the case of Smt. Makhani Devi Banka (supra) the claim of recovery of money by the Telecom Department towards the arrear telephone charges was negated by this Court on the above quoted principle and this Court held that the Civil Court has no jurisdiction to entertain the dispute.

12. A Division Bench of this Court in the case of Orissa Vegetable Oil Complex Ltd. (supra) while confirming to the view of this Court in the preceding two decisions relating to non-maintainability of the suit, however, held that the award passed by the arbitrator appointed u/s 7-B of the Act is to be conclusive between the parties but the arbitrator should adopt the procedure as in the Arbitration Act if the same is not inconsistent with the provision of Section 7-B of the Act 1885. In the case of Divisional Engineer, Telephones (supra) this Court after referring to the concerned dispute, provision in S, 7-B of the Act, 1885 and the decision in the case of Mangulu Jal (supra) so also the above noted decision recorded the following conclusion :

"Applying the aforesaid principles to the facts and circumstances of the present case, I have no doubt in my mind that the jurisdiction of the Civil Court will be ousted only if the dispute would be covered by Section 7-B(1) of the Indian Telegraph Act, 1885. But if the dispute is not covered by Section 7-B(1) of the

Indian Telegraph Act, 1885 Civil Court's jurisdiction cannot be ousted. On the finding arrived at by the two Courts below to the effect that the plaintiff has no connection with Telephone Number CK-1995 and the further finding that so far as plaintiff's own telephone connection is concerned there has been no arrear, and on the admitted case that plaintiff's telephone connection Cuttack-21127 was sought to be disconnected for non-payment of arrear dues of telephone number CK-1995 and the plaintiffs case that he has no connection with the telephone number C-1995 having been established, it is difficult for me to hold that the dispute is one covered u/s 7-B(1) of the Indian Telegraph Act, 1885. In the Full Bench case of this Court Magulu Jal and Others Vs. Bhagaban Rai and Others, it was held that even if the jurisdiction is excluded yet Civil Court will have the jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure. In this view of the matter and in view of the conceded position as referred to earlier, in my considered opinion, the provisions of Section 7-B(1) of the Indian Telegraph Act having no application to the disputed question, jurisdiction of the Civil Court cannot be held to be ousted. The contention of the learned Senior Standing Counsel on the score accordingly is rejected."

It thus appears from the above quoted passage that Civil Court shall exercise jurisdiction only in cases where the provision of Section 7-B(1) of the Act, 1885 has no application to the dispute in question.

In the case of Guru Prasad Mohanty (supra) a Division Bench of this Court upheld the validity of Section 7-B of the Act, 1885. The Bench held that ;

"xx xx In view of the aforesaid legal position. Section 7-B of the Act, 1885 cannot be voided merely because no corrective machinery by way of appeal or revision against the award made thereunder is "provided under the Act."

Their Lordships further held that, award of an arbitrator is subject to the scrutiny of the High Court under Arts. 226 and 227 of the Constitution of India and the ratio laid down reads as hereunder :--

"9. Section 7-B of the Act requires the Central Government to refer the dispute to an arbitrator appointed by it. When the law vests such power in the Central Government, it cannot be imagined that it would appoint a petty or minor officer for the purpose of deciding the dispute by way of arbitration. Although there is no mention in Section 7-B of the Act regarding the procedure to be adopted by an arbitrator, it cannot be gain said that he is required to act fairly and justly. He may adopt his own procedure for disposal of the matter before him but while doing so the parties to the arbitration proceedings are entitled to reasonable notice of the time and place of hearing. The arbitrator must give the parties a fair hearing and opportunity to substantiate their respective claims. He must dispose of the matter strictly in accordance with law and by following the basic principles of natural justice. If an arbitrator decides a dispute in violation of the principle of

natural justice, it is always open to an aggrieved party to question the validity of the award in a petition under Article 226 of the Constitution. Similarly, if the appointment of arbitrator is made by a person not competent to do so if he exhibits bias or prejudice against a party, those would be valid grounds for an aggrieved party to move a writ Court. For all the aforesaid reasons, Section 7-B of the Act cannot be declared invalid on the grounds, urged by the learned counsel for the petitioners."

"10. Judicial review is held to be one of the basic features of the Constitution. We have already held that an award made u/s 7-B of the Act cannot escape the scrutiny of a writ Court on valid and cogent grounds being urged. Since the jurisdiction of the writ Court is not ousted u/s 7-B of the Act, we do not find any merit in the contention of Shri Das that the said provision destroys the basic feature of the Constitution. We may state here that in O.J.C. No. 6879 of 1995 the award made by the arbitrator has not been enclosed to the petition. We are, therefore, not in a position to scrutinise the validity of the award."

In the case of Ram Swarup (supra) the Constitution Bench of the Supreme Court while considering the ouster of jurisdiction of the Civil Court as provided in Section 3(4) of the U.P. (Temporary) Control of Rent and Eviction Act, 1947 (U.P. Act 3 of 1947), referred to relevant provisions in that Act relating to the provision of appeal and revisions and in that context found the judicial scrutiny in a suit was not always ousted. The provision in that statute is not *pari materia* to Section 7-B of the Act and in view of specific provision in Section 7-B of the Act, 1885 and the series of decisions already referred to a suit against an award cannot be maintainable.

13. In course of argument learned counsel for the plaintiff/opposite party argued that in the case of Guru Prasad Mohanty (supra) this Court had not considered if a suit is not maintainable and, therefore, that ratio cannot be regarded as the principle to oust the jurisdiction of the Civil Court. The aforesaid contention though appears to be attractive but does not bear any merit. The Jurisdiction of the Civil Court u/s 9 and the jurisdiction of the High Court under Article 226 and 227 of the Constitution of India stand in different footing. The supervisory jurisdiction of the High court under Arts. 226 and 227 of the Constitution is beyond the prohibition of any proceeding in any Court as provided in Sub-section (2) of Section 7-B of the Act, 1885. On the other hand, when this Court has consistently reiterated about non-maintainability of a suit or a dispute which is covered by Section 7-B of the Act, 1885, that question was not at all considered properly on the Courts below.

14. While considering an application for temporary injunction a Court has to be satisfied about co-existence of three factors i.e. existence of a strong *prima facie* case, balance of convenience being in favour of the petitioner and refusal of injunction will result in loss or damage which cannot be compensated in money value. So far as the present case is concerned, in view of the nature of the dispute and the clear provision of law in Section 7-B(ii) of the Act the suit may

not be maintainable. Therefore, it cannot be said that plaintiff has a strong prima facie case. On that score alone plaintiff is not entitled to the relief of temporary injunction. Be that as it may, in the case of Bhikari Majhi (supra) this Court after referring to a catena of decisions expressed the view that:

"10. From a conspectus of the cases referred to above, the principles that emerge are that under the provisions of Order 39, Rule 1 the Court can issue an injunction of a mandatory character, but such an injunction can only be issued to keep things in status quo during the pendency of the litigation. Before issuing a temporary mandatory Injunction the Court must be satisfied that the effect of the injunction would be to preserve the status quo during the pendency of the litigation and to prevent an irreparable injury to the plaintiff. If the effect of the injunction would be to alter the status quo during the pendency of the suit no such injunction can be issued, because that would result in granting to the plaintiff the remedy he seeks in the suit before the contentions of the contending parties are properly tried."

When the application for temporary mandatory injunction was considered by the Courts below the then status quo was that telephone line had already been disconnected a few months before. Apart from that, while directing for reconnection, no order was passed now to regulate the payment of the running bill. Therefore, the Courts below clearly exceeded the jurisdiction so vested in them relating to grant of interim relief of mandatory injunction.

15. Judging from any angle, the impugned order passed by the Courts below for temporary mandatory injunction is not sustainable in the eye of law, being contrary to the provision of law. Under such circumstance, while setting aside the impugned order, it is observed that if the petitioner feels aggrieved, it may be proper for him to approach the appropriate forum as against the award passed by the arbitrator. Accordingly, the impugned order is set aside and the civil revision is allowed. Keeping in view facts and circumstances involved in the case both the parties are directed to bear their respective cost of litigation so far as this forum is concerned.