

(1996) 07 DEL CK 0004

In the Delhi High Court

Case No : Civil Writ Appeal No. 3644 of 1995 and Civil Miscellaneous Appeal No. 6118 of 1995

Fly Wings Travels (P) Ltd.

APPELLANT

Vs

Mahanagar Telephone Nigam Ltd.

RESPONDENT

Date of Decision : 31-07-1996

Acts Referred:

Citation : (1996) 63 DLT 488 : (1996) 38 DRJ 400

Hon'ble Judges : S.N. Kapoor, J; R.C. Lahoti, J

Bench : Division Bench

Advocate : Vijay Kishan and A.K. Sikri, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) The petitioner seeks quashing of an award dated 19.7.95 given by an arbitrator appointed u/s 7B of the Indian Telegraph Act, 1885.

(2) The petitioner is a subscriber of telephone connection No-6875370 installed at the petitioner's office. It is aggrieved by 7 bills between 10th February, 1991 and 1st July, 1992 (both inclusive) which according to the petitioner contained false and highly exaggerated charges. Earlier an arbitrator had by his award dated 8.4.93 allowed relief of 40,000 calls to the petitioner. However, the award was set aside by a Division Bench of this Court in view of an illegality going to the root of the proceedings in as much as the arbitrator was appointed by Mtnl and not by Central Government which had vitiated the appointment itself. The Central Government appointed yet another arbitrator, Mr.K.L.Narula, Cao who has by award dated 19.7.95 dismissed the dispute raised by the petitioner.

(3) According to the petitioner, the award is vitiated for two reasons : firstly, it is an unreasoned award; and secondly, it has been given by the arbitrator on expiry of a period of four months from the date of the arbitrator having entered upon the reference.

(4) In support of the first contention, the learned counsel for the petitioner placed heavy reliance on the law laid down by the Supreme Court in *M.L.Jaggi VS. Mtnl & Ors.*, It 1996 (1) Sc 215. The Supreme Court has held :-

"WHEN the arbitrator decides the dispute u/s 7B of the Act, by necessary implication, 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 that 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. 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 u/s 7B of the Act is not liable to be reopened. In other words, the order is prospective in its operation."

It is very clear that the law laid down by the Supreme Court is expressly stated to be applicable w.e.f.2.1.96 i.e. the date of the decision. Its applicability has been expressly excluded to any decision made by an arbitrator u/s 7-B of the Act prior to 2.1.96.

(5) The learned counsel for the petitioner has submitted that in *M.L.Jaggi's* case (supra) the award was made 19.12.89 and that was set aside for the reason of being unreasoned and hence the law laid down by the Supreme Court must apply to the award impugned herein; though the award is dated 19.7.95, the challenge was laid to its validity on 22.9.95 by filing this petition much before came the decision in *M.L.Jaggi's* case (supra). There is no reason to deny the benefit of law laid down by the Supreme Court to the petitioner, submitted the learned counsel.

(6) We cannot agree with the learned counsel. Under Article 141 of the Constitution the law as declared by the Supreme Court is the law of the land. A declaratory judgment of the Supreme Court can be made prospective in its application so as to exclude its applicability to a set of events preceding the date of judgment, of the Supreme Court. What has been expressly stated by the Supreme Court cannot be, by passed and applicability of the law down by the Supreme Court extended to the events expressly excluded by the Supreme Court merely by reading something by implication.

(7) In Gopal Upadhyaya and Others Vs. Union of India (UOI) and Others, , their Lordships have held :-

"WHEN a question is answered expressly or by necessary implication we cannot ignore the answer by referring to the decisions appealed against and holding that the real question that must be considered to have been answered was something else. That is not our understanding of the law of precedents. What the judges expressly decided or what they must be considered to have decided by necessary implication by reference to the facts stated by the Judges themselves are what constitute precedents. We cannot traverse beyond the judgment, ignoring what has been said in the judgment."

(8) We are, Therefore, very clear in our mind that any decision made by an arbitrator u/s 7B of the Act prior to 2.1.96 cannot be reopened on the ground that it was unreasoned. The first challenge to the validity of the award fails.

(9) The learned counsel for the petitioner has then placed reliance on Sections 46 and 3 and Entry 3 of the First Schedule of the Arbitration Act, 1940. It is submitted that by virtue of Section 46 of the Arbitration Act, all the provisions of the Act except those contained in Sections 6(1), 7, 12, 36 and 37 are applicable to statutory arbitrations. Section 3 provides for the provisions set out in the First Schedule being read into every arbitration agreement. Entry 3 of the First Schedule provides for the award being made within four months. The provisions read as under :- 3. Provisions implied in arbitrations agreement.- An arbitration agreement, unless different intention is expressed therein, shall be deemed to include the provisions set out in the First Schedule in so far as they are applicable to the reference. The First Schedule (See Section 3) Implied conditions of arbitration agreements. xxxxxxxxxx 3. The arbitrators shall make their award within four months after entering on the reference or after having been died upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow. xxxxxxxxxx

(10) By virtue of Section 46 of the Arbitration Act all the provisions of the Arbitration Act excepting Sections 6(1), 7, 12, 36 and 37 are applicable to all the statutory arbitrations as if the provision of arbitration contained in any enactment where an arbitration agreement, unless there be something contained in the Act excluding applicability of any provisions of the Arbitration Act on account of inconsistency. The provisions of Section 3 would Therefore apply to an arbitration u/s 7B of the Telegraph Act also, there being nothing in the language of Section 7B of the Telegraph Act either expressly or by implication excluding the applicability of Section 3. Section 3 of the Arbitration Act read with Entry 3 of the First Schedule would then enjoin an arbitrator appointed u/s 7B of the Telegraph Act to make the award within four months after entering on the reference. In the case at hand, the arbitrator Mr.K.L.Narula entered upon the reference on 20.9.94 and gave the award on 19.7.95. No one competent in law to do so had extended the time for giving the award nor the parties had consented for extension of time. The arbitrator could not have given the award

and had become de functus officio on the expiry of a period of four months from 20.9.94. The award is Therefore vitiated.

(11) The petitioner must succeed on yet another ground. It is submitted that the arbitrator has done no arbitration and in view of his failing to discharge obligation cast on him by Section 7B of the Telegraph Act, his award and all the proceedings conducted by him deserve to be set aside.

(12) We have called for the record of the arbitration proceedings and perused the same. We find that the arbitrator entered upon the reference on 20.9.94. On 16.1.95, 2.2.95 and 13.2.95 the petitioner was represented before the arbitrator but none had appeared for the respondent and Therefore the hearings were simply adjourned. On 13.2.95 objection was raised on behalf of the petitioner that the arbitrator had become de functus officio on account of expiry of four months. However, on 20.2.1995 there was appearance on behalf of the respondent. No reply was filed. No proceedings took place. The proceedings were simply closed. About 5 months thereafter, on 19.3.95 the arbitrator gave the impugned award rejecting the dispute raised by the petitioner. (13) It is apparent that the respondent did not even file any pleadings disputing the claim of the petitioner. The arbitrator did not hold any enquiry. There was no hearing before the arbitrator. The arbitrator has rejected the dispute raised by the petitioner for no rhyme or reason. There is complete failure on the part of the arbitrator to act. His proceedings and award cannot, Therefore, withstand the scrutiny of principles of natural justice or of administrative law.

(14) The petition is allowed. The impugned award dated 19.7.95 is hereby quashed and set aside. The Central Government shall appoint some other arbitrator u/s 7B of the Telegraph Act to decide the dispute raised by the petitioner. Steps shall be taken by the respondent within four weeks from today soliciting such appointment. No order as to the costs.