

(2012) 08 KL CK 0179
In the High Court Of Kerala
Case No : Arbitration A. No. 1 of 2012

Francis Mukkanical

APPELLANT

Vs

General Manager, BSNL, Pulimoodu

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2, 2(4), 34, 40, 41
Telegraph Act, 1885 — Section 7B, 7B(2)

Citation : AIR 2013 Ker 12 : (2013) 1 ARBLR 231 : (2012) 3 KLJ 830

Hon'ble Judges : Thottathil B. Radhakrishnan, J; C.T. Ravi Kumar, J

Bench : Division Bench

Advocate : M.V. Bose, Vinod Madhavan and Smt. Nisha Bose, for the Appellant;
Mathews K. Philip, SC, BSNL, for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—Appellant is a consumer of BSNL, governed by the provisions of the Indian Telegraph Act, 1885. Disputes raised by him were determined by arbitration in terms of Section 7B of that Act. He challenged that award invoking Section 34 of the Arbitration and Conciliation Act, 1996, for short, the "A & C Act". The Court below held, inter alia, that under sub-section (2) of Section 7B of the Telegraph Act, the award passed under that Act is final and conclusive between the parties and cannot be called in question in any Court and therefore, the appellant's application u/s 34 of the A & C Act is not maintainable. Hence this appeal. Heard the learned counsel for the appellant, the learned standing counsel for BSNL and the learned Senior Government Pleader.

2. Sub-section (5) of Section 2 of the A & C Act provides that subject to the provisions of sub-section (4), and save insofar as is otherwise provided by. inter alia, any law for the time being in force. Part I of the A & C Act shall apply to all arbitrations and to all proceedings relating thereto. Section 2(4) of that Act enjoins that Part I, except sub-section (1) of Section 40 and Sections 41 and 43, 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 as if that other enactment were an arbitration agreement, except insofar as the provisions of that Part are inconsistent with that other enactment or with any rules made thereunder. If the provisions of that other enactment or rules thereunder are consistent with the provisions of the A & C Act, despite absence of an arbitration agreement, rest of the provisions of A & C Act would apply, as if there was an arbitration agreement between the parties and the dispute becomes arbitrable under the A & C Act, as if there was an arbitration agreement between the parties. If there is any inconsistency, then the provisions of the A & C Act do not get attracted. Section 34 of the A & C Act provides for recourse to a Court against an arbitral award by an application for setting aside the award in accordance with subsection (2) and sub-section (3) thereof.

3. Section 7-B of the Telegraph Act provides for arbitration of disputes. Sub-section (1) thereof enjoins that the disputes stated therein shall be determined by arbitration in terms of the regulatory finer provisions contained in that provision. Sub-section (2) provides that 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.

4. Now, it is apposite to refer to the decision of the Hon^{ble} Supreme Court of India in *Aundal Ammal Vs. Sadasivan Pillai*, . Dilating on a provision which used the legislative tools "shall be final" and "shall not be liable to be called in question in any Court of law", it was laid down that the expression "shall be final" means what it says. To hold so, the precedent in *Kydd v. Watch Committee of City of Liverpool*, (1907) 2 KB 591 was noted to the effect that when a decision is stipulated to be final, it is to be final and it means that there is to be an end of the business in that regard. Considering the phrase "shall be final" and "shall not be called in question", the Hon^{ble} Supreme Court of India in *South Asia Industries Private Ltd. Vs. S.B. Sarup Singh and Others*, held that such provision puts an end to a further appeal and bars other proceedings, including collateral.

5. As already noted, the prescription in Section 7-B(2) of the Telegraph Act is that the award of the arbitrator appointed under sub-section (1) shall be conclusive between the parties in dispute and that it shall not be questioned in any Court. Where the term "conclusive" is used in a statute with reference to decisions of an authority, it cannot be questioned by appeal or otherwise, unless, of course, it is given in disregard to jurisdiction and therefore a nullity. For support see *Waterhouse v. Gilbert*, (1885) 15 QBD 569, *Bryant v. Reading*, (1886) 19 QBD 128 and *Lyon v. Morris*, (1887) 19 QBD 139.

6. If the legislature states that the decision or order shall be final and conclusive, that would not fetter the remedies available under the Constitution. But, it definitely inhibits recourse to jurisdiction which gets excluded by that provision. Therefore, excepting to the extent of remedies that may be available under the Constitution, that is to say, in writ jurisdiction, the award would be conclusive. It cannot be questioned through an application under A & C Act.

7. When the A & C Act clearly says that it would operate in relation to arbitrations under other statutes, only insofar as the provisions of Part I of the A & C Act are not inconsistent with that other enactment, it contains the legislative recognition of the existence of provisions like sub-section (2) of Section 7-B Of the Telegraph Act, which curtail recourse to any remedy by calling in question the award in any Court. When a statute says that a decision thereunder shall be conclusive between the parties and shall not be questioned in any Court, it is trite that such decision shall not be liable to be so questioned. Such prohibition is a complete inhibition against recourse to, or, remedy under, any other statute law. So much so, the provision in sub-section (2) of Section 7-B of the Telegraph Act which gives the award under that Act such finality that would remain conclusive between the parties and that it shall not be questioned in any Court is a provision in that enactment inconsistent with the provisions of Part I of A & C Act. For the aforesaid reasons, the provisions of A & C Act would not apply to arbitration under the Telegraph Act. Hence the impugned order dismissing the appellant's application u/s 34 of the A & C Act does not warrant interference.

In the result, this appeal is dismissed. No costs.