
(1990) 09 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : F.A.O. No. 49 of 1982

Hira Singh Thakur

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-09-1990

Acts Referred:

Arbitration Act, 1940 — Section 12, 30, 33, 46, 6(1)
Telegraph Act, 1885 — Section 7B

Citation : (1990) 2 ILR HP 1393

Hon'ble Judges : Davinder Gupta, J

Bench : Single Bench

Advocate : Prem Goel, for the Appellant; P.A. Sharma, Central Government Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Devinder Gupta, J.—This appeal has arisen out of an order passed by the Senior Sub Judge, Shimla, on September 21, 1981, rejecting the objections filed by the Appellant and refusing to set aside the award made by the Arbitrator on August 6, 1980.

2. Briefly stated the facts are like this. A telephone No. 203, from Mashobra Exchange in Shimla district, was installed in the month of September 1967 in the residential house of the Appellant situate in his orchard within Gram- Panchayat Darbhog. On June 4, 1973, a request was made by the Appellant to shift the said telephone to another building located on the road side curtailing the distance by 2 kms. from the Exchange. After shifting the telephone to another building, on October 1, 1973, rental bill at enhanced rate of Rs. 410/- instead of original rental of Rs. 230/- per quarter, for the period from October 16, 1973 to January 15, 1974, was sent to the Appellant for payment. The Appellant on receipt of this rental bill raised a dispute by sending communications to the Respondents. As the Appellant failed to make the payment of the bill, the telephone was disconnected on November 1, 1974. It may be mentioned here that the Appellant

had two other telephone connections at Shimla and when a grievance was made by him to the Respondents, he was threatened that these telephones would also be disconnected. At this stage, a civil suit was filed by the Appellant on October 7, 1974 against the Respondents for recovery of Rs. 10,200/- as damages and for issuance of mandatory injunction directing the Respondents to restore the telephone connection of telephone No. 203 (Mashobra Exchange) on payment of charges deducting the distance of 2 kms. From the previous bills and further prayed for grant of prohibitory injunction restraining the Respondents from disconnecting the two telephone connections located in Shimla town.

3. The suit was resisted by the Respondents by taking a plea that it was not maintainable and that the remedy of the Appellant, if any, was to resort to arbitration, as provided in Section 7B of the Indian Telegraph Act, 1885 (Act No. 13 of 1885) (briefly the Act). During the tendency of the suit, on July 24, 1976, a statement was made by the Plaintiff that he had no objection in case the dispute is referred to the Arbitrator. In view of this statement, the proceedings in the civil suit were stayed on the basis of an order made by the Senior Sub Judge on July 24, 1976 and a dispute in terms of Section 7B of the act was referred by the Respondents for arbitration. On October 28, 1978, award was made by the arbitrator, which was set aside by the Senior Sub Judge, Shimla, on August 20, 1979, and the same was remitted with a direction to resubmit the same. Fresh award was made on August 6, 1980 by Shri K.L. Malhotra, Director Postal Services, North West Circle, Shimla, in the following terms:

I award that an amount of Rs. 344.60 (Rs. Three hundred forty four and paise sixty only) is payable by Shri Hira Singh Thakur to the Telegraph Authority as charges in respect of telephone No. M BA-203. this is without adjustment of any security which he might have deposited with the telephone department. On payment of these charges Shri Hira Singh Thakur will be entitled to restoration of the telephone connection on the same terms and conditions which applied to it at the time of disconnection.

The Appellant filed objections to the award alleging that the arbitrator misconduct himself in the proceedings and the award was invalid and not warranted under the law. Award was also challenged on its merits. Various other objections were also raised. No objections were filed by the Respondents. However, a plea was raised by the Respondent in reply that the objections filed by the Appellant were not maintainable in view of provisions of Section 7B of the Act. Objections of the Appellant were not found to be maintainable and while rejecting the same the award was made rule of court.

4. During the course of hearing of the appeal, learned Counsel for the Appellant has strenuously argued that it being a statutory arbitration, provisions of the Arbitration Act, 1940 are fully applicable and since the award was filed in the court, therefore, the court had got jurisdiction to entertain objections u/s 30 and 33 of the Arbitration Act. To appreciate the arguments of the learned Counsel for the Appellant, it will be necessary to refer to Section 7B of the Act, which reads

as under:

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

(2) The award of the arbitrator appointed under Sub-section (1) shall be conclusive between the parties to the disputes and shall not be questioned in any court.

Statutory arbitration was introduced in the Telegraph Act by Section 3 of Central Act No. 47 of 1957. It is not agitated that the dispute in question falls within the ambit of Section 7B(1) of the act referred to above. The learned Counsel for the Appellant contents that the provisions of Arbitration Act, 1940 would apply to the arbitration proceedings contemplated u/s 7B of the Act and in support of this argument he has made reference to Section 46 of the Arbitration Act. Section 46 of the Act is as under:

46. Application of Act to statutory arbitrations:

The provisions of this Act except Sub-section (1) of Section 6 and Sections 7, 12, 36 and 37, 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 in so far as this Act is inconsistent with that other enactment or with any rules made there under.

On the strength of provisions of this section, it has been urged that all the provisions of the Arbitration Act, except those mentioned in this Section, will apply and consequently the objections filed under Sections 30 and 33 of the Arbitration Act would be maintainable. This contention of the learned Counsel has no force in view of Sub-section (2) of Section 7B of the Act, which makes the award of the arbitrator conclusive between the parties and not liable to be questioned in any court. This provision rules out the application of the Arbitration Act, inasmuch as, Section 46 of the Arbitration Act clearly mentions that this 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 the award, to remit or to make it the rule of court. It has also the power to set aside the same but in view of the clear statutory provisions contained in Sub-section (2) of Section 7B of the Act the award of the arbitrator is not liable to be questioned and is conclusive between the parties. The scheme of Telegraph Act, do point out that objections as contemplated u/s 30 or 33 of the Arbitration Act are inconsistent with the provisions of the Act. As such, the general

provisions of Arbitration Act with regard to raising of objection to the award are not applicable to the statutory arbitration provided for in Section 7B of the Act of 1885. The mandate given by the Act is clear. It ousts the jurisdiction of the civil court and creates an alternative forum for determination of the disputes referred to u/s 7B of the Act. Accordingly, the learned Senior Sub Judge was right in holding that the objections filed by the Appellant for setting aside the award of the arbitrator were not maintainable.

5. In so far as the claim of the Appellant for recovery of damages against the Respondents is concerned, the same is not covered by the provisions of Section 7B of the act. It is the subject matter of civil suit, the proceedings whereof have been stayed by the Senior Sub Judge, Shimla, vide his order dated July 24, 1976. Need less to add that it will be open for the Appellant to apply to the concerned court to proceed with the disposal of the suit on its merits in so far as the claim for damages is concerned.

6. In view of the above, the appeal has no force and the same is accordingly dismissed with no order as to costs.