
(1994) 04 DEL CK 0013

In the Delhi High Court

Case No : Civil Writ Petition No. 1721 of 1993

M/s. Fly Wings Travels (P) Ltd.

APPELLANT

Vs

Mahanagar Telephone Nigam Ltd. and another

RESPONDENT

Date of Decision : 04-04-1994

Acts Referred:

Citation : AIR 1995 Delhi 71

Hon'ble Judges : R.L. Gupta, J;P.N. Nag, J

Bench : Division Bench

Advocate : Keshav Dayal and Shiv Raj Mathur, for the Appellant; Arun Jaitley, A.K. Sikri and Vikram Dholakia, for the Respondent

Judgement

P. N. Nag, J.—(Oral) Rule. D.B.

2. By this petition the petitioner has challenged the Award dated 13-2-1993 (Annexure-21) given by respondent No. 2 as an Arbitrator appointed under S. 7-B of the Indian Telegraph Act, 1885 (as amended) (hereinafter referred to as the "Act") by respondent No. 1 vide letter No. MTNL/ SECTT/793 dated 14-10-1992 to adjudicate the dispute arisen in respect of telephone bill dated 1-3-1990 for an amount of Rs. 61,788/-concerning the telephone No. 5732519, subsequently changed into 5752807.

3. The main grounds of challenge in this writ petition are that the arbitrator has been appointed by M.T.N.L., respondent No. 1 under S. 7-B of the Act and not by the Central Government. Secondly S. 7-B under which the arbitrator is appointed is itself ultra virus of the Constitution.

4. We have heard the learned counsel for the parties. We are of opinion that it is not necessary to decide the question whether Sec. 7-B of the Act is ultra virus of Constitution as the petitioner succeeds on the ground that the arbitrator has to be appointed by the Central Government under S. 7-B of the Act and not by the Chairman-cum-Managing Director of the M.T.N.L. by whom in the present case the arbitrator in fact has been admittedly appointed.

5. Section 7-B of the Act reads as under :

"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 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)"

It is apparent from S. 7-B of the Act that if any dispute arises between a subscriber and the telegraph authority in regard to payment of telephone bills that shall be referred to an arbitrator to be appointed by the Central Government. In the present cases, admittedly the arbitrator has not been appointed by the Central Government, with the result, that the very appointment of the arbitrator is void and the award given by him cannot be legally sustained being void ab initio.

6. Mr. Arun Jaitley has not been able to show and substantiate before the Court that the arbitrator has been appointed by the Central Government, which is the authority u/s 7-B of the Act, which could have appointed the arbitrator. In these circumstances, the appointment of the arbitrator and consequently the award (Annexure-21) passed by the arbitrator are set aside.

7. Mr. Jaitley, however, on the basis of the judgment of the Supreme Court reported as Managing Director, ECIL, Hyderabad v. B. Karunakar JT 1993 6 SC 10 : AIR 1974 SC 1074, particularly paras 34 and 45, has submitted that the cases which have already been decided and closed should not be reopened on the basis of the appointment of the arbitrators by the M.T.N.L. and no! by the Central Government as it will cause grave prejudice to the administration which will far outweigh the benefit which has accrued to the subscribers. Without expressing any opinion on this submission, we merely observe that we are only disposing of the matters which are pending before us and have no intention to unsettle the matters which already stand settled and decided long back,

8. In the light of what is discussed above, the appointment of the arbitrator, respondent No. 2 and the award (Annexure-21) passed by him are quashed and set aside and the Central Government is directed to appoint an arbitrator under S. 7B to adjudicate the abovementioned dispute in accordance with law. The respondent No. 1 is further directed not to recover the amount of any remaining disputed bill or disconnect the telephone connection for want of such payment till the matter is finally adjudicated upon by the arbitrator to be appointed by the Central Government.

9. The writ petition is accordingly disposed of. The petitioner shall be entitled to

costs of Rs. 1,000/-.

C.W. 3341/91

This matter is not connected with CW 1721/93 which is listed today for final disposal.

Let this matter be processed further by the registry.

10. Order accordingly.