
(2001) 07 CAL CK 0003
In the Calcutta High Court
Case No : Matter No. 2492 of 1990

Paramanand Churiwal

APPELLANT

Vs

The General Manager (Optional) Calcutta Telephones and
Others

RESPONDENT

Date of Decision : 24-07-2001

Acts Referred:

Arbitration Act, 1940 — Section 34
Constitution of India, 1950 — Article 226
Telegraph Act, 1885 — Section 30, 7B, 7B(2)

Citation : 106 CWN 207

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Samit Talukdar and Pradip Sarangi, for the Appellant; Tapas Kr. Chatterjee and Anil Kr. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Amitava Lala, J.—This writ petition is made challenging the statutory award passed by this statutory Arbitrator in respect of determination of dispute about the then telephone no. 264590 between Paramanand Churiwal and Telegraph Authority. The matter was referred before the Arbitrator under an order of the court. The jurisdiction of the arbitrator was invoked u/s 7B of the Indian Telegraph Act, 1885. The contention of the writ petitioner in the statutory arbitration is amenable under the writ jurisdiction irrespective of having any alternative remedy because an administrator was directed to discharge quasi-judicial action. It has been further contended before this court that Section 7B ousts the jurisdiction of the Civil Court. It appears from Section 7B(2) 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 Mr. Samit Talukdar. Learned Counsel appearing in favour of the petitioner contended before this court that the award given by the Arbitrator is not a reasoned award. The authority concerned is bound to pass a reasoned order unlike the award

passed in private arbitration under Arbitration Act, 1940 or Arbitration and Conciliation Act, 1996 where an Arbitrator may or may not pass any award with reasons. Since it is a statutory arbitration, it is as good as a departmental order passed by administrator in connection with the quasi-judicial proceedings which has to be reflected with reasons. The power, if entrusted by the court to an authority to perform quasi judicial function, the same cannot be equated with the above acts.

2. By citing a judgment reported in *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, Learned Counsel appearing in support of the petitioner contended that it is now well-settled law that where an authority makes an order in exercise of quasi-judicial function, it must record the reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. The rule requiring reasons to be given in support of an order is like the principle of *audi alterem partem*, a basic principle of natural justice which must inform every quasi-judicial process and the rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.

3. He has also cited a judgment reported in *THE APPROPRIATE AUTHORITY and Another Vs. SMT. SUDHA PATIL and Another*,) and wanted to establish before this court that power of the High Court under Article 226 of the Constitution of India being supervisory in nature, in exercise of such power the finding/conclusion of an inferior tribunal can be interfered with if the High Court finds that in arriving at the conclusion, the tribunal has failed to consider some relevant materials or has considered some extraneous and irrelevant materials or that the finding is based on no evidence or the finding is such that no reasonable man could come to such a conclusion on the basis of which the finding has been arrived at. Therefore, unless and until reason exists it is practically impossible for the court to come to a definite finding in this respect.

4. As against such submission, teamed Counsel appearing for the authority cited a judgment reported in *Tamil Nadu Electricity Board Vs. M/s. Bridge Tunnel Constructions and others*, in its paragraph 34 by saying that the law on the award, as governed by the new Act. mandates that the award should state the reasons upon which it is based. In other words, unless (a) the parties have agreed that no reasons are to be given, or (b) the award is an arbitral award on agreed terms u/s 30 of the new Act. the award should state the reasons in support of determination of the liability/non-liability. Thereby legislature has not accepted the ratio of the Constitution Bench in AIR 1990 1426 (SC) that the award being in the private law field, need not be a speaking award.

5. It is necessary to incorporate herein that in such case the Supreme Court has considered this scope and ambit of giving reasons or not giving reasons in the old Act. i.e. Arbitration Act, 1940 and not under the new Act. i.e. Arbitration and Conciliation Act, 1996, which has been considered in *Tamil Nadu Electricity Board Vs. M/s. Bridge Tunnel Constructions and others*, Since the new Act is now

prevailing, Court has to proceed on the basis of the changed scenario.

6. Again he has cited a decision reported in Jainarain Singh and Another Vs. The State of Bihar and Others, whereunder a Single Bench of the Patna High Court was pleased to hold in paragraph 14 of the judgment that where, however, the dispute is generally referred to an Arbitrator's decision, it is not necessary for the Arbitrator to give Ms specific finding separately on all questions whether of facts or of law arising in the case. It would be enough if he decides substantially the dispute between the parties. It is well-settled that an Arbitrator may decide a dispute without recording separate findings are not bound to give a reasoned judicial decision. They are merely bound to give an intelligible decision which determines the rights of the parties in relation to the subject matter referred.

7. I am sorry to say that the Learned Counsel appearing in support of the authority has missed the link of the intelligible part of the argument made by Mr. Talukdar, Learned Counsel appearing in support of the Petitioner and in effect supported the petitioner's case. Mr. Talukdar. at the threshold segregated two types of arbitrations i.e. arbitration governed by the Arbitration Act or Acts and the arbitration governed by the statute. According to me, although any award under the Arbitration Act or Acts is as good as a judicial order because parties by their consent taken out the jurisdiction of the Court to invoke a private forum for the purpose of redressal and disposal of their respective grievances unlike the statutory arbitration. In the statutory arbitration one has to proceed with the same under the statute itself but not by the contract However, before coming to an appropriate conclusion I have to go through the award first which is Annexure "J" to the writ petition. It has been contended in the award that oral hearings in the above disputed matter were held on numerous dates. Parties have reported their case. After careful examination of the statement of facts submitted by the subscriber for whose benefit the telephone number has been provided and the counter statement submitted by the Telegraph Authority and also after careful consideration of the submissions of the Telegraph Authority during oral hearings, undersigned hereby, determines that the telephone bills for the circle in respect of the telephone number is in order. Therefore, the subscriber shall settle all these bills in full.

8. According to me. it is expected that an award will be based on reasons irrespective of the fact whether it is governed by the Arbitration Act to perform the contractual obligations between two parties or under the statutory arbitration. Simultaneously, it is also needed to be described hereunder that the probe is the mental process of the arbitration which cannot be interfered with by the Court where it is challenged. Such principle was governing the field of old Act i.e. Arbitration Act, 1940. Now, it appears that in the new Act, the desire of the Court of Law is that there should be reason in coming to a conclusion. Such reason may not be lengthy giving the issue wise answers and following each and every provision of Evidence Act but the reason will be there saying why the Arbitrator has come to a conclusion. Under the Arbitration Act. 1940 several

Courts faced lot of difficulties when the Arbitrators have passed non-speaking award. It is a logical conclusion that Court under an application of setting aside the award cannot sit over the appeal from the award nor enter upon the mental process of Arbitrator but when the scope of the amenability is limited like Section 34 of the Arbitration and Conciliation Act, 1996 or the statutory, arbitration, a discipline should be maintained by such Arbitrator to give reasons because the reasons make the award much more transparent before the Court of Law in coming to a conclusion in this respect.

9. Therefore, after going through the judgments as cited by Mr. Talukdar in respect of exercising the quasi-judicial function by an administrative authority vis-a-vis the judgment as cited by the Learned Counsel appearing for the respondent as reported Tamil Nadu Electricity Board Vs. M/s. Bridge Tunnel Constructions and others, and when under both the need of the judiciary is that the award should come forward with the reasons for the purpose of better acceptability and when I find that the award, has not prescribed any reason I cannot accept the award under the writ petition.

10. Therefore, the award stands set aside. The matter is remanded back before the Arbitrator. Deputy General Manager, (J.N.W.). Calcutta Telephones or at present who is holding equivalent post for the purpose of determination of the issue afresh on the basis of the available records hereunder and the award will be passed with reasons which may or may not be the reasons in the nature of reasoned judicial decision but at least with intelligible decision which determines the rights of the parties in relation to the said matter referred before him.

11. Thus, the writ petition stands allowed and disposed of. However, no order is passed as to costs. Prayer for stay is made considered and refused. Xerox certified copies of this judgment will be supplied to the parties within seven days from the date of putting requisites for drawing up and completion of the order and for certified copy of the same. All parties are to act on a signed copy minute of the operative part of this judgment on the usual undertaking and subject to satisfaction of the officer of the Court in respect as above.