
(2003) 09 MAD CK 0062

In the Madras High Court

Case No : Writ Petition No. 17504 of 2000

Universal Print Systems Ltd.

APPELLANT

Vs

G. Kuppusamy, Director (Transmission Planning), Deputy
General Manager (Central) and Sub-Divisional Engineer, Legal
Cell (Central)

RESPONDENT

Date of Decision : 16-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 09 MAD CK 0062

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : R. Krishnaswami, S.C. for K. Harishankar, for the Appellant; R. Madhanagopal Rao, SCGSC, for the Respondent

Final Decision : Allowed

Judgement

A.K. Rajan, J.—The petitioner has filed the writ petition seeking for issuance of a writ of Certiorarified Mandamus calling for the records of

the 1st respondent in his proceedings Dir.TX II/ARB/8554282/2000-2001 dated 22.9.2000 and quash the same.

2. The petitioner is a telephone subscriber. The dispute arose between the petitioner and the telephone Department and that dispute has been

referred to the arbitrator as per Section 7B of the Indian Telegraphic Act. While the first respondent was appointed as the arbitrator. It is stated in

the affidavit interalia that on the oral hearing on 22.9.2000, the telegraph authority was represented by the third respondent who is the Sub-

Divisional Engineer(Legal Cell (Central)). While hearing was held in the Chamber of the 1st respondent, apart from the 1st respondent/arbitrator,

the petitioner's counsel and the 3rd respondent, another person who stated that

he was also a Sub-Divisional Engineer of Chennai Telephones and working in the office of the 1st respondent was also present. When the petitioner's counsel was advancing his arguments on the point of jurisdiction, the said Sub-Divisional Engineer working in the office of the 1st respondent arbitrator intervened and began to state that such jurisdiction questions cannot be raised and the 1st respondent had the authority to entertain the dispute. The petitioner's counsel represented to the 1st respondent/arbitrator that such an intervention by a person neither authorised to represent the Telegraph Authority nor party to the dispute should not be permitted. The 1st respondent then stated that the said person is only an Officer employed in his Office and his intervention may be ignored and further assured that in future such intervention would not be made by the said person. Despite this, the 1st respondent/Arbitrator did not do anything to control the said person's further intervention during the course of the arguments by the petitioner's counsel and the 3rd respondent. The said Sub-Divisional Engineer, in the office of the 1st respondent/Arbitrator continued to intervene and exercise his authority and influence over the 1st respondent arbitrator.

The counsel for the petitioner relying upon this averment in the affidavit submitted that the arbitrator has no control over the proceedings of the Arbitration Act and therefore, it is bias against the petitioner. The petitioner's prayer is that they are ready to go on with the arbitration proceedings, if the arbitrator is changed. They have no objection for appointing any other person from the department as arbitrator.

3. No counter has been filed by the first respondent. The third respondent has filed counter denying the averments made by the petitioner.

4. In the absence of any specific rebuttal by the person who ought to deny the allegations made against him, the Court has to take that the averment is true and correct.

5. The learned counsel for the respondents submits that u/s 7B of the Indian Telegraphic Act the arbitrator once appointed cannot be changed except by the order of the Court or unless the arbitrator voluntarily resigns. The learned counsel for the respondents stated that the arbitrator has been transferred to a far off place and he is not working at Chennai.

6. Taking into account the fact that the first respondent has been transferred to a

far off place from Chennai and he is not working at Chennai

presently and the averments made in the affidavit is held to be proved, it is proved that the arbitrator has no control over his own proceedings. (He

permitted another person to interfere in his proceedings.) Such an action is not proper and it will not strengthen the legality of the arbitration

proceedings.

7. In spite of the fact that arbitration proceedings are similar to the Court proceedings, though the procedure under C.P.C. are not followed or

cannot be strictly followed, yet, the arbitrator shall act in such a manner, that he should not give any room to create an impression that he has no

control over the proceedings or that he is influenced by the others. If an arbitrator conducts the proceedings in such a manner that it creates a

genuine doubt in the minds of the parties that he permits interference from others or that he is susceptible for being influenced in the decision making

process, it is just and necessary to change the arbitrator in the interest of justice. It cannot be lost sight of, that an arbitral award is not appealable

and is final. The Courts also cannot interfere u/s 34 of the Arbitration Act except to a limited extent.

8. The learned counsel for the petitioner also relied upon the decision in S. Kanyalal Vs. Union of India and others, .

9. Hence, the first respondent arbitrator shall be replaced by any other arbitrator of the department. Appropriate order shall be passed by the

department within two weeks from the date of receipt of the copy of the order.

10. The writ petition is allowed accordingly. No costs.