

(1999) 07 AP CK 0060

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14035 of 1999

VST Industries Ltd., Hyd.

APPELLANT

Vs

Arbitrator-cum-Divisional Engineer (Arbitrations), Hyd. and
others

RESPONDENT

Date of Decision : 14-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Telegraph Act, 1885 — Section 7B

Citation : (1999) 4 ALD 207 : (1999) 4 ALT 258

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Advocate : Mr. D.S. Murthy, for the Appellant; Mr. M. Ratna Reddy, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

1. The petitioner is a subscriber of the Telephone Department. He has two telephones bearing Nos.238709 and 215449 with regard to which a dispute had arisen. The petitioner was asked to pay the bill amount by or before 15-12-1998. He filed a writ petition against that notice being WP No.34480 of 1998 which was decided by this Court on 15th December. 1998. While disposing of the writ petition this Court directed the petitioner Company to deposit one third of the disputed amount and also directed that a reference be made to an arbitrator. The following five directions were given by the Court :

"(i) the petitioner-Company shall file an application before the General Manager, Hyderabad Telephones to refer the matter to arbitration;

(ii) On receiving such application, the respondent shall address the Central Government for appointment of an arbitrator, preferably an Officer not belonging to the department as justice is not only to be done but should appear to be done.

(iii) on receiving the requisition, the Central Government shall appoint an arbitrator within two weeks thereafter.

(iv) The arbitrator so appointed shall immediately enter upon arbitration and adjudicate the dispute as expeditiously as possible.

(v) In the light of the orders passed now, the department shall not act upon the proceedings dated 4-12-1998 and restore the two telephone connections to the petitioner-Company. The petitioner shall pay the bills regularly."

After this order is passed, it appears that the petitioner deposited one third of the bill amount and the arbitration proceedings started. Sri G. Parameswara Reddy, Deputy General Manager (Administration), who is first respondent was appointed as Arbitrator. He has given an award rejecting the claim of the petitioner on 23rd June, 1999 and in consequence of the award a demand notice has been issued on 28th June, 1999.

2. The foremost question in these proceedings would be as to how far this Court can go into scrutinising the award passed by an arbitrator. There is a judgment of Supreme Court being *M.L. Jaggi Vs. Mahanagar Telephones Nigam Ltd. and others*, , in which the Supreme Court found that, awards passed in terms of Section 7-B of the Telegraph Act can only be challenged by way of writ petition under Article 226 of the Constitution. Therefore, this writ petition is maintainable and awards passed u/s 7-B of the Telegraph Act can be challenged in the writ proceedings under Article 226. But, the nature of the power exercised by the Court under Article 226 would not undergo any material change. Still, the Court would not be in a position to re-appreciate the evidence which has been collected by the Arbitrator. Although the judgment of the Supreme Court lays down that the Arbitrators must pass reasoned order, yet, that reasoned order may not be scrutinised by this Court as is scrutinised by an appellate Court.

3. The impugned award gives reasons under the title "Findings". The Arbitrator is an expert and it will be difficult for this Court not to agree with his views pertaining to a field in which he is a specialist. He observed that the telephone connected to electronic exchange and having dynamic locking facility can in no circumstances be tampered with. He also observed that such a telephone can never be misused except by the subscriber or the persons to whom he has disclosed the secret password. This Court is not in a position nor this Court has expertise to come to a conclusion contrary to the conclusion of an expert. These are highly technical matters and in these matters the Courts have to depend upon the opinion of the experts. Besides, the Arbitrator has also given other reasons in the award. Therefore, this Court would not be within its power to scrutinise the technical reasons given for making the award.

4. Two other grounds have been agitated in this petition, one that an application has been moved by the petitioner expressing his lack of faith in the arbitrator which was not decided therefore, the award is vitiated. Another ground which was taken is that the Court while disposing of earlier petition had directed that Arbitrator should be preferably a man outside the department, since the departmental man had been appointed as Arbitrator therefore the award is

vitiated.

5. Coming to the first argument, I do not find any basis laid down in the petition which would suggest that the respondent No.1 was biased. He had given ample opportunities to the petitioner to produce his evidence and documents on which he would rely. On one occasion he adjourned the hearing for the reason that the petitioner had gone for a vacation and on another occasion he got an adjournment for the reason that a witness i.e., Senior Vice-President of M/s. VST Industries who was to be examined had resigned from his post. In any case, in my view there was no question of producing evidence which would defeat the recordings of an electronic exchange, which according to the expert opinion, cannot be tampered with. Therefore, this argument is rejected.

6. Coming to the second argument that the respondents did appoint a person from the Telephones Department as Arbitrator although there was a direction that preference should be given to a person who is not from the department, while giving this direction the Court was conscious of its limitations. It is well settled that, Courts cannot give directions which are contrary to the statutes. Section 7-B of the Telegraph Act provides that the Arbitrator shall be appointed by the Central Government, so, this power vests with the Central Government and this power could not be exercised by the Court by appointing an arbitrator on its own. Therefore, the Court while disposing of the earlier petition expressed a wish and did not direct the respondents to necessarily appoint an Arbitrator who did not belong to the Department of Telecommunications. Therefore, appointment of Arbitrator by the Central Government who was an Officer of the Telecommunications Department would not in any way vitiate the award passed by him.

7. For these reasons, I do not find any merit in this petition which is accordingly dismissed.