Shri M.L. Jaggi vs Mahanagar Telephones Nigam Ltd. & Ors on 2 January, 1995

Author: K. Ramaswamy

Bench: K. Ramaswamy

PETITIONER:
SHRI M.L. JAGGI

Vs.

RESPONDENT:
MAHANAGAR TELEPHONES NIGAM LTD. & ORS.

DATE OF JUDGMENT02/01/1995

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Leave granted.

The respondents had issued bills for Rs.50,219/- from 16.11.1982 to January 15, 1983; for Rs.20873/- for January 16, 1983 to March 15, 1983; to November 15, 1982. When the appellant filed the suit, an objection was raised of the availability of the remedy under Section 7B of the Indian Telegraph Act, 1985 [for short, "the Act"]. The civil Court referred the matter to the arbitrator. The arbitrator after giving due consideration to the dispute made the award, Exh. P-3 dated December 19, 1989 giving some rebate on one bill only and confirmed the rest of the demand. When the appellant filed the writ petition, the High Court of Delhi in the impugned order affirmed the award of the arbitrator. Thus this appeal by special leave against the order dated March 13, 1991 made in W.P. No.800/91.

The only question raised in this appeal is whether the arbitrator is enjoined to assign reasons in support of his award. Section 7B of the Act reads thus:

> "7B. 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 purpose 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.
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> (2) 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".

It is a statutory remedy provided under the Act and, therefore, in a dispute as regards the amount claimed in the demand raised, the only remedy provided is by way of arbitration under Section 7B of the Act. By operation of sub-section (2) thereof, the award of the arbitrator made under sub-section (1) shall be conclusive between the parties to the dispute and shall not be questioned in any court. The statutory remedy under the Arbitration Act, 1940, thus, has been taken away.

The question, therefore, is: whether it is incumbent upon the arbitrator to give reasons in support of the award. In Raipur Development Authority & Ors. v. M/s. Chokhamal Contractors & Ors. [(1989) 2 SCC 721], in paragraph 38 at page 753 this Court had held that "having given our careful and anxious consideration to the contentions urged by the parties, we feel that law should be allowed to remain as it is until the competent legislature amends the law. In the result, we hold that an award passed under the Arbitration Act is not liable to be remitted or set aside merely on the ground that no reasons have been given in its support except where the arbitration agreement or the deed of submission or an order made by the court such as the one under Section 20 or Section 21 or Section 34 of the Act or the statute governing the arbitration requires that the arbitrator or the umpire should give reasons for the award. The award need not contain the reasons". It is seen that the decision in that case is based on award of the arbitrator under the Arbitration Act which itself is founded on an arbitration agreement. So this Court had held that when the agreement in non-statutory award between the parties voluntarily entered into did not contain a clause to make a speaking award, the need to make an award with reasons was not necessary. The Court explained the position in para 35 at pages 751-52 thus:

> "But at the same time it has to be borne in mind that what applies generally to settlement of disputes by authorities governed by public law need not be extended to all cases arising under private law such as those arising under the law of arbitration which is intended for settlement of private disputes."

In fact the observations have been made by this Court in regard to the arbitration of disputes concerning the claim against the Government and this Court has emphasised the need for recording reasons in the awards touching the public exchequer in para 37 at pages 752-53 as under:

> "But arbitral awards in dispute to which the State and its instrumentalities are parties affect public interest and the matter of the manner in which government and its

> instrumentalities allow their interes to be affected by such arbitral adjudications involve larger questions of policy and public interest. Government and its instrumentalities cannot simply allow large financial interests of the State to be prejudicially affected by non-review, non-speaking arbitral awards. Indeed, this branch of the system of dispute resolution has, of late, acquired a certain degree of notoriety by the manner in which in many cases the financial interests of government have come to suffer by awards which have raised eyebrows by doubts as to their rectitude and propriety. It will not be justifiable for governments or heir instrumentalities to enter into arbitration agreements which do not expressly stipulate the rendering of reasoned and speaking awards. Governments and their instrumentalities should, as a matter of policy and public interest - if not as a compulsion of law
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> - ensure that wherever they enter into agreements for resolution of disputes by resort to private arbitrations, the requirement of speaking awards is expressly stipulated and ensured. It is for governments and their instrumentalities to ensure in future this requirement as a matter of policy in the larger public interest. Any lapse in that behalf might lend itself to and perhaps justify, the legitimate criticism that government failed to provide against possible prejudice to public interest, in regard to the arbitration of disputes concerning the claim against the Government and this Court has emphasised the need for recording reasons in the awards touching the public exchequer. In other words, when the public law element is involved, in a public law remedy, public interest demands that reasons should be given even in the award."

It is well-settled law that in public law remedy when the order visits with civil consequences, natural justice requires recording the reasons as they are bridge between the order and its maker to indicate how his mind was applied to the facts presented and the decision reached. Another Constitution Bench of this Court in S.N. Mukherjee v. Union of India [(1990) Supp. 1 SCR 44] considered the entire controversy and held thus:

> "This appeal, by special leave, is directed against the order dated August 12, 1981, passed by the High Court of Delhi dismissing the writ petition filed by the appellant. In the writ petition the appellant had challenged the validity of the finding and the sentence recorded by the General Court Martial on November 29, 1978, the order dated May 11, 1979, passed by the Chief of Army Staff confirming the findings and the sentence recorded by the General Court Martial and the order dated May 6, 1980, passed by the Central Government dismissing the petition filed by the appellant under section 164(2) of the Army Act, 1950 (hereinafter referred to as `the Act').
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> The appellant held a permanent commission, as an officer, in the regular army and was holding the substantive rank of Captain. He was officiating as a Major. On December 27, 1974, the appellant took over as the Officer Commanding of 38 Coy. ASC (Sup) Type `A' attached to the Military Hospital, Jhansi. In August 1975, the

> appellant had gone to attend a training course and he returned in the first week of November 1975. In his absence Captain G.C. Chhabra was the officer commanding the unit of the appellant. During this period Captain Chhabra submitted a Contingent Bill dated September 25, 1975 for Rs.16,280 for winter liveries of the depot civilian chowkidars and sweepers. The said Contingent Bill was returned by the Controller of Defence Accounts (CDA) Meerut with certain objections. Thereupon the appellant submitted a fresh Contingent Bill dated December 25, 1975 for a sum of Rs.7029.57. In view of the difference in the amounts mentioned in the two Contingent Bills, the CDA reported the matter to the headquarters for investigation and a Court of Enquiry blamed the appellant for certain lapses. The said report of the Court of Enquiry was considered by the General Officer Commanding, M.P., Bihar and Orissa Area, who, on January 7, 1977 recommended that `severe displeasure' (to be recorded) of the General Officer Commanding-in-Chief of the Central Commandk be awarded to the appellant. The General Officer Commanding-in-Chief, Central Command did not agree with the said opinion and by order dated August 26, 1977, directed that disciplinary action taken against the appellant for the lapses.
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> In view of the aforesaid order passed by the General Officer Commanding-in-Chief, Central Command, a charge sheet dated July 20, 1978, containing three charges was served on the appellant and it was directed that he be tried by General Court Martial. The first charge was in respect of the offence under section 52(f) of the Act, i.e. doing a thing with intent to defraud, the second charge was alternative to the first charge and was in respect of offence under section 63 of the Act, i.e. committing an act prejudicial to good order and military discipline and the third charge was also in respect of offence under section 63 of the Act."

It is, thus, settled law that reasons are required to be recorded when it affects the public interest. It is seen that under Section 7B, the award is conclusive when the citizen complains that he was not correctly put to bill of the calls he had made and disputed the demand for payment. The statutory remedy opened to him is one provided under Section 7B of the Act. By necessary implication, when the arbitrator decides the dispute under Section 7B, he is enjoined to give reasons in support of his decision since it is final and cannot be questioned in a court of law. The only obvious remedy available to the aggrieved person against the award is judicial review under Article 226 of the Constitution. If the reasons are not given, it would be difficult for the High Court to adjudge as to under what circumstances the arbitrator came to his conclusion that the amount demanded by the Department is correct or the amount disputed by the citizen is unjustified. The reasons would indicate as to how the mind of the arbitrator was applied to the dispute and how he arrived at the decision. The High Court, though does not act in exercising judicial review as a court of appeal but within narrow limits of judicial review it would consider the correctness and legality of the award. No doubt, as rightly pointed out by Mr. V.R. Reddy, Additional Solicitor General that the questions are technical matters. But nonetheless, the reasons in support of his conclusion should be given. In this case, arbitrator has not given reasons. The award of the arbitrator is set aside and the matter is remitted to the arbitrator to make an award and give reasons in support thereof.

Since we have decided this question for the first time, it must be treated that any decision made prior to this day by any arbitrator under Section 7B of the Act is not liable to be reopened. In other words, the order is prospective in its operation.

The appeal is accordingly allowed but, in the circumstances, with no order as to costs.