

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2017

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition No.23814 of 2003

Tamil Nadu Telecommunication Limited
rep. by its Managing Director,
Plot No.E-18B-E24,
C.M.D.A. Industrial Complex,
Maraimalai Nagar,
Chengalpet District-603 209.

... Petitioner

Vs.

1. Joint Commissioner of Labour (Chennai),
D.M.S. Compound,
Teynampet, Chennai-6.

2. Tamil Nadu Telecommunications Employees Union
rep. by its General Secretary,,
Thiruvallur Road, Shaw Nagar,
Arakkonam-631 004.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records from the 1st respondent, quash the award passed by the 1st respondent dated 27.02.2003 bearing No.D/1864/2001.

For petitioner : Mr.Balan Haridas

For respondent

No.1

: Mr.A.Zakkir Hussain,
Government Advocate

O R D E R

Challenging the award passed by the 1st respondent in No.D/1864/2001 dated 27.02.2003 and to set aside the same, the present Writ Petition has been filed.

2. The brief facts of the case are as follows:

(a) The Petitioner Company is registered under Companies Act, 1956. The petitioner company is promoted by Telecommunications Consultants India Limited, a Government of India Enterprises under the Ministry of Communication and Information Technology. The Central and State Governments are

the major shareholders of the petitioner company and commenced its commercial production of Telecom Polyethylene Insulated Jelly Filled Copper Cables at its Arakonam Factory during the year 1991. As on the date of filing of the Writ Petition, there are 220 employees on the rolls of the petitioner.

(b) The 2nd respondent Union is a recognized Union. For the sake of convenience, the petitioner is referred as employer and the 2nd respondent is referred as employee. The 2nd respondent Union raised some pay anomaly in the year 1996. Accordingly, 12 (3) Settlement was entered into on 08.02.1996 and as per the terms of settlement, the period of its operation was from 01.04.1995 to 31.03.1997. In the above settlement, various issues were settled and one of the main issues settled is in respect of the revision of pay scale and fitment benefit. As per the said settlement, the benefit had to be extended to all the employees who were on the rolls of the petitioner as on 31.03.1995. Since some portions of the settlement are not implemented and the earlier settlement was expired, subsequently, another 12(3) Settlement was entered into between the 2nd respondent employee and the petitioner employer on 15.02.2001.

© At the time of Settlement dated 15.02.2001, the 2nd respondent raised pay anomaly for fitment of the employees in the year 1992. It was not properly implemented. But the defence taken by them was due to the financial condition of the petitioner company that pay fitment was not properly extended to the employees as per the Settlement dated 08.02.1996. However, the new settlement arrived at between the employer and the employees dated 15.02.2001 was properly implemented.

(d) In the Settlement dated 15.02.2001, there is a clause for referring any dispute for arbitration. As per the said clause, the matter was referred to the Sole Arbitrator dated 01.05.2001. According to the petitioner, though the parties agreed for appointment of arbitrator for removal of pay anomaly of the 2nd respondent employees, however, that such appointment of arbitrator was not published as required under Section 10-A (3) of the Industrial Disputes Act. Hence the present Writ Petition.

3. The learned Counsel for the petitioner would submit that the Government should publish the appointment of arbitrator in the official Gazette as required under Section 10-A(3) of the Industrial Disputes Act. The non-publication of the appointment of the Arbitrator in this matter in the Government Gazette vitiates the entire award passed by the arbitrator and therefore, the same cannot be implemented. In order to substantiate his contention, the learned Counsel for the

petitioner relied on a decision of this Court in RAP MFRS' Employees' Welfare Union rep. by General Secretary Mr.Muthusamy, Plot No.3, Barathi Nagar, Arasanetti, Hosur-635 109 vs. The Deputy Commissioner of Labour, Salem and others reported in 2006 (3) CTC 399.

4. Heard the learned Government Advocate appearing for the 1st respondent and I have also carefully gone through the typed set filed in support of the writ petition and the judgment relied on by the learned Counsel for the petitioner.

5. It is useful to extract para Nos.5, 10 and 13 of the decision reported in 2006 (3) CTC 399 hereunder:

''5. ...It is clear from the above provision that copy of the arbitration agreement shall be published in the Official Gazette. The order of the reference shows that there was no publication of the agreement as required under Section 10-A(3) of the I.D. Act and this is not disputed by the respondent Management.

....

10. When an arbitrator was appointed and parties are permitted to solve the dispute under the statutory provisions, unless it is fully complied with all the provisions, including the publication in the Official Gazette, as mandated by sub-section (3) of Section 10-A of I.D. Act, the ultimate award becomes unenforceable. In such circumstances, it is not enforceable and the same cannot be treated as an award even under private arbitration. As rightly pointed out by Mr.V.Prakash, learned Senior Counsel for the petitioner Union, the award has to stand or fall on its own validity, being an award under the I.D. Act and when it become unenforceable due to non-publication of the same in the Official Gazette, there is no scope for enforcing it as an award under private arbitration. The arbitration agreement, as entered into between the parties, is traceable only under Section 10-A of the I.D. Act and the agreement being a statutory agreement, passed in pursuance of the provisions of the Act, whether it is enforceable or not is to be decided only under the provisions of the I.D. Act. We reiterate that if the award fails to satisfy the requirements under the I.D. Act, then the same becomes invalid and unenforceable. To put it clear that non-publication of the arbitration agreement in terms of Section 10-A(3) of the I.D. Act vitiates the award and it could not be enforced by one of the parties, as an award in private arbitration under provisions of Arbitration Act, 1996.

...

13. Though Nani Gopal Sarkar and 151 others v. HEC Ltd. & Others, 1990 (2) LLJ 289, is pressed into service, factual details show that the question whether the award is void or it is not enforceable has not been canvassed before the Supreme Court. In such circumstances, the said decision is also not helpful to the stand of the Management. In the light of the above discussion, we hold that an award under Section 10-A of the I.D. Act, which is rendered invalid due to non-compliance of the requirement under Section 10-A (3) of the I.D. Act cannot be enforced by the parties as an award in private arbitration under the provisions of Arbitration Act, 1996. The Reference is answered accordingly."

6. Further, 10-A(3) of the Industrial Disputes Act reads as follows:

"A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer and the appropriate Government shall, within (one month) from the date of the receipt of such copy, publish the same in the Official Gazette"

7. In view of all the above, it is clear that in the instant case, the appointment of arbitrator itself is invalid for non-publication of the same in the Government Gazette by appropriate Government. Consequently, the award passed by the 1st respondent is not enforceable. Accordingly, I hold that the award passed by the 1st respondent lacks jurisdiction and not sustainable.

8. In the result, the Writ Petition is allowed and the award passed by the 1st respondent in No.D/1864/2001 dated 27.02.2003 is hereby set aside. No costs.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. Joint Commissioner of Labour (Chennai),
D.M.S. Compound,
Teynampet, Chennai-6.

2.General Secretary,
Tamil Nadu Telecommunications Employees Union,
Thiruvallur Road, Shaw Nagar,
Arakkonam-631 004.

+ 1 cc to Mr.Balan Haridas, Advocate,SR.64445
+ 1 cc to The Govt.Pleader, SR.64147

W.P.No.23814 of 2003

VD(CO)
NR 11/10/2017



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