

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**FAO No. 1997 of 2017 (O&M)
Date of Decision: 17.01.2019**

Rakesh Kumar Singla

..... Appellant

VERSUS

Shri Gautam Lal, Additional GM-cum-Arbitrator and others

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Pardeep Goyal, Advocate,
for the appellant.

Mr. Anil Rathee, Advocate,
for respondent Nos. 2 & 3.

JAISHREE THAKUR, J.(Oral)

1. The appellant seeks to challenge the award of the Arbitrator dated 30.05.2012 and judgment dated 19.02.2016 passed by Additional District Judge, Sangrur dismissing objections filed under Section 34 of the Arbitration and Conciliation Act, 1996.

2. The appellant herein is consumer of BSNL telephone connection installed at Lehragaga in District Sangrur. He was presented a bill amounting to ₹ 3,56,588/- on account of usage. Aggrieved against the bill being highly inflated, the appellant herein, filed a civil suit which was dismissed as not maintainable. Against the said dismissal, Civil Revision No. 1546 of 2001 was filed before the High Court, wherein it was held that the suit was not maintainable as the matter should be referred to the Arbitrator. Thereafter, respondent No.1, Sh. Gautam Lal, Additional GM, was appointed as Arbitrator before whom the appellant appeared and submitted his objections to the

telephone bill received by him. It was contended that the bill was inflated and highly excessive, and only issued on account of the fact that he was a Press Reporter and had reported against BSNL on several occasions. It was submitted that the STD facility could always be misused, while contending that foreign calls are made to telephone members which are unknown to him. The Arbitrator gave his award dated 30.05.2012 upholding the disputed bill. Aggrieved against the award, appellant filed objections under Section 34 of the Arbitration and Conciliation Act, 1996 ('the Act of 1996' for short) claiming it to be a non-speaking award. The District Judge dismissed the objections holding that the award of the Arbitrator cannot be challenged under Section 34 of the Act of 1996 and can be challenged only under Article 226 of the Constitution of India. Thereafter, the appellant herein filed a writ petition under Article 226 of the Constitution of India challenging the said award which came to be registered as Civil Writ Petition No. 24328 of 2016 titled 'Rakesh Kumar Singla Versus Bharat Sanchar Limited Sangrur and others'. The writ petition was dismissed as withdrawn on a request made vide order dated 09.12.2016. Having got the writ petition dismissed, the instant First Appeal has been preferred against the order of the District Judge dismissing the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996.

3. Mr. Pardeep Goyal, learned counsel appearing on behalf of the appellant would submit that the award is non-speaking and has not taken into consideration any of the arguments as raised by the appellant. In this fashion the Arbitrator has mis-conducted himself.

4. Per contra, Mr. Anil Rathee, learned counsel appearing on behalf of respondent Nos. 2 & 3 submits that the appeal itself is not maintainable, as the remedy to challenge the award of the Arbitrator is by way of filing the writ

petition under Article 226 of the Constitution of India and that remedy had already been availed of. Reliance is placed upon a judgement rendered in ***Francis Mukkanical Vs. The General Manager BSNL, 2013 AIR (Kerala) 12*** wherein it has been held that the provisions of the Telegraph Act makes an award passed under the Act, final and conclusive between the parties. It has further been held that the provisions of Arbitration and Conciliation Act would not apply to arbitration under the Telegraph Act.

5. I have heard learned counsel for the parties and have also perused the case law as cited.

6. Section 7B of the Indian Telegraph Act, 1885 pertains to settlement of disputes between the consumer and the department:-

“S. 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 purposes 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.

(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.”

7. Section 7B(2) in specific terms stipulates that the award of the Arbitrator will be conclusive and shall not be questioned in any Court. Since the Arbitrator has to act in fairness and has to give reasons in his award based on the pleadings and the evidence, he cannot be permitted to act arbitrarily. Since Section 7B(2) of the Telegraph Act, 1885 make the award of the Arbitrator conclusive and there is no statutory remedy as available under the Act, the consumer cannot be left remediless. The only recourse would be to approach the High Court in Writ jurisdiction to challenge the award under Article 226 of the Constitution of India, who in judicial review can consider the correctness of the award. This issue is no longer *res intergra* having been dealt with in ***M.L. Jaggi vs. MTNL & Ors., AIR 1996 SC 2476*** where it has been held as under:

*“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.**” (emphasis supplied).*

8. This view has been reiterated in [Telecom District Manager, Goa & Ors. Vs. V.S. Dempo & co. & ors. AIR 1996 SC 1545.](#)

9. The appellant herein has already approached this High Court in

writ jurisdiction seeking to challenge the award of the Arbitrator and for reasons best known to him, withdrew the writ petition. Having availed of the remedy, the High Court has been approached again by way of the instant First Appeal against the award. The appellant having availed of his remedy under Article 226 of the Constitution of India sought to withdraw it and therefore will not be permitted to sustain this appeal.

10. This appeal is dismissed.

17.01.2019

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned : Yes.
Whether reportable : No.