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M/S. Cycom Technologies Vs. the Cheif General Manager, B.S.N.L

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Court : Kolkata

Decided On : Jan-04-2013

Judge : Sanjib Banerjee

Appellant : M/S. Cycom Technologies

Respondent : The Cheif General Manager, B.S.N.L

Judgement :

AP No.257 of 2005 IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction ORIGINAL SIDE M/S.CYCo.TECHNOLOGIES Versus THE CHEIF GENERAL MANAGER, B.S.N.L BEFORE: The Hon'ble JUSTICE SANJIB BANERJEE Date :

4. h January, 2013.

Appearance: Ms.Dipti Bhattacharyya, Adv..For the petitioner The Court : The respondent is not represented even at the second call.

The petitioner challenges an award passed by a departmental arbitrator on the ground that it is opposed to public policy and the arbitrator failed to take into account the petitioners grievance that the action of BSNL was contrary to the principles of natural justice.

The award of June 15, 2005 is short but covers the vital areas of dispute.

BSNL had appointed the petitioner as an authorised agent for promoting several services introduced by BSNL.

Clause 8 of the agreement of June 15, 2001 provided that the petitioner would be eligible for renewal of the agency at the end of each financial year subject to the satisfactory fulfilment of other operative conditions.

The agreement was renewed after the initial year and remained valid till June 30, 2003.

The agreement was not renewed thereafter.

The petitioner complained before the arbitrator that the refusal on the part of BSNL to renew the agency beyond June 30, 2003 without assigning any reasons therefor was violative of, inter alia, Articles 14 and 19 of the Constitution of India.

The petitioner contended that unless the petitioners performance had been unsatisfactory, the petitioner was entitled to renewal of the agency.

The arbitrator noticed several clauses in the agreement including one that gave a right to BSNL to cancel the agency at any time without assigning any reason and held that the petitioner had no entrenched right to obtain renewal of the agency and that the claim on such count was of no merit.

The petitioner has referred to a judgment reported at AIR 199.SC 353.and has placed a passage therefrom quoting the famous case of Ramana Dayaram Shetty v.

International Airport Authority of India reported at (1979) 3 SCC 489.

The passage that the petitioner has placed deals with the need for an element of transparency and lack of arbitrariness in the governments dealings with the public, whether in entering into contracts or granting any form of largesse.

The principle is of no application in the present case since the agreement in question gave an unfettered right to BSNL to terminate the agency at any time without assigning any reason therefor.

The failure on the part of the BSNL to not renew the agreement beyond June 30, 2003 did not, in the circumstances, call for any written explanation and the arbitrator cannot be faulted for the conclusion on such count.

However, the arbitrator abdicated the authority under the arbitration agreement by not deciding the monetary claim made by the petitioner herein on account of outstanding bills (not on account of damages for failure to renew the agency) and the arbitrator only required BSNL to go through the letters and bills and make payment to the petitioner.

Since the arbitrator was the sole adjudicator of all claims covered by the arbitration agreement, it was imperative for the arbitrator to decide the quantum of money that the petitioner was entitled to on account of outstanding bills and the like and make a award for the relevant sum.

The award is upheld in so far as it finds that the petitioner herein was not entitled to have the agreement of June 15, 2001 renewed beyond June 30, 2003.

The award is upheld on all counts in so far as it dismisses the alternative claim of damages for non-renewal of the agreement.

However, the award is set aside inasmuch as it fails to decide on the amount due from BSNL to the petitioner on account of outstanding bills and the like.

Accordingly and in accordance with the arbitration clause contained in the agreement of June 15, 2001, the Chief General Manager, Calcutta Telephones is requested to ensure that an arbitrator is appointed for the purpose of adjudicating whether any amount is due and owing from BSNL to the petitioner herein.

The arbitrator should be appointed as expeditiously as possible and the reference should be concluded without undue delay.

AP No.257 of 2005 is disposed of without any order as to costs.

Urgent certified photocopies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(SANJIB BANERJEE, J.) bp./kc.

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