

Arbitration Barred In Respect Of Matters Within Exclusive Jurisdiction Of TDSAT Under TRAI Act: Kerala High Court

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

N. NAGARESH, J.

A.R. No. 23 of 2016; 18 November, 2022

A. SALIM versus ASIANET SATELLITE COMMUNICATION LTD.

Petitioner by Advs. M. Ramesh Chander (Sr.), Aneesh Joseph, Dennis Varghese.

Respondents by Adv Saji Varghese T.G.

ORDER

The petitioner, who is Managing Director of M/s. Mobile Star Satellite Communication India Limited, has filed this Arbitration Request invoking Section 11 of the Arbitration and Conciliation Act, 1996 seeking to appoint an Arbitrator pursuant to the request made by the petitioner.

2. The petitioner states that the petitioner entered into an agreement with the respondent-M/s. Asianet Satellite Communications Limited on 19.12.2013. The respondent violated the terms of agreement and therefore he sent Annexure-A4 letter to the respondent requiring to refer the matter for arbitration. The petitioner suggested the name of Advocate Francis Gomez. The respondent did not respond to the notice. Therefore, the petitioner approached this Court seeking to appoint an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.

3. The respondent entered appearance and resisted the writ petition. The respondent stated that the petitioner is a Broadcaster and the respondent is a Multi System Operator. The parties are governed by the Telecom Regulatory Authority of India Act, 1997. If the petitioner has any grievance against the respondent in connection with the agreement executed between the parties, the petitioner has to invoke the provisions of the Telecom Regulatory Authority of India Act, 1997.

4. Counsel for the respondent argued that Section 14 of the Act, 1997 provides for establishment of an Appellate Tribunal. The Tribunal is competent to adjudicate any dispute between a licensor and a licensee, between two or more service providers and between a service provider and a group of consumers. Dominant public policy demands that all disputes in Telecom Sector which includes broadcasting and cable TV, should be within the exclusive jurisdiction of the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) and arbitration agreement will not have any applicability. Arbitration is barred in respect of the matters which are within the exclusive jurisdiction of TDSAT.

5. The counsel for the respondent argued that the Telecom Regulatory Authority of India Act, 1997 being a special statute, it would prevail over the Arbitration and Conciliation Act, 1996. The counsel for the respondent relied on the judgement of the Hon'ble High Court of Delhi in Gaur Distributors v. Hathway Cable and Datacom Limited (ARB. P. 129/2016).

6. The counsel for the petitioner, on the other hand, argued that the respondent has admittedly entered into an agreement with the petitioner, under which all disputes, controversies, or differences arising out of or in connection with the agreement or for the breach thereof, shall be settled by arbitration in Trivandrum and the arbitration shall be governed by the Arbitration and Conciliation Act, 1996 and the Arbitration and Conciliation Rules, 1996 or any statutory amendment or re-enactment thereof. After entering into an

agreement agreeing to settle all disputes through the process of arbitration, the respondent cannot now turn around and question the arbitrability of the dispute, contended the counsel for the petitioner. The counsel for the petitioner further argued that the dispute between the petitioner and the respondent will not fall within the ambit of the Telecom Regulatory Authority of India Act, 1997.

7. The counsel for the petitioner further pointed out that the respondent has filed complaints under Section 138 of the Negotiable Instruments Act, 1881 against the petitioner. That itself would show that the parties are at liberty to approach competent courts / forums, other than the TDSAT.

8. I have heard the learned counsel for the petitioner and the learned counsel for the respondent.

9. Annexure-A1 is the agreement entered into between the petitioner and the respondent. The arbitration clause is contained in Clause 8 of the agreement governing law and dispute resolution. Clause 8 of Annexure-A1 agreement reads as follows:

8. GOVERNING LAW AND DISPUTE RESOLUTION :

The terms of this Agreement shall be construed and enforced in accordance with the laws of India.

All disputes, controversies, or differences arising out of or in connection with this Agreement, or for the breach thereof, shall be settled by arbitration in Trivandrum and the arbitration shall be governed by the Arbitration and Conciliation Act, 1996 and the Arbitration and Conciliation Rules, 1996 or any statutory amendment or re-enactment thereof. The arbitration proceedings shall be conducted in the English language.

The arbitration award will be final and binding on the Parties.

Therefore, it is evident that the parties have agreed for resolution of any disputes through arbitration.

10. The petitioner has issued Annexure-A4 notice of arbitration. The respondent has not responded to Annexure-A4. Therefore, ordinarily, an Arbitrator has to be appointed by this Court invoking Section 11 of the Arbitration and Conciliation Act, 1996. But, the respondent would urge that the provisions of the Arbitration and Conciliation Act, 1996 would not apply to the disputes in question, in view of the provisions contained in the Telecom Regulatory Authority of India Act, 1997.

11. Section 14 of the Telecom Regulatory Authority of India Act, 1997 reads as follows:

14. Establishment of Appellate Tribunal — The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal to—

(a) adjudicate any dispute—

(i) between a licensor and a licensee;

(ii) between two or more service providers;

(iii) between a service provider and a group of consumers:

Provided that nothing in this clause shall apply in respect of matters relating to-

(A) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969); (B) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or the

National Consumer Redressal Commission established under section 9 of the Consumer Protection Act, 1986 (68 of 1986);

(C) dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act, 1885 (13 of 1885);

(b) hear and dispose of appeal against any direction, decision or order of the Authority under this Act;

(c) exercise jurisdiction, powers and authority conferred on -

(i) the Appellate Tribunal under the

Information Technology Act, 2000 (21 of 2000); and

(ii) the Appellate Tribunal under the Airports Economic Regulatory Authority of India Act, 2008 (27 of 2008).

Section 14, in its proviso, states that nothing in Section 14 shall apply to matters relating to the Monopolies and Restrictive Trade Practices Act, 1969, the Consumer Protection Act, 1986 and Section 7B of the Indian Telegraph Act, 1885. The proviso does not speak of the Arbitration and Conciliation Act, 1996.

12. The counsel for the respondent relied on the judgment of the Hon'ble High Court of Delhi in *Gaur Distributors v. Hathway Cable and Datacom Limited* (Arb.P.129/2016) to argue that in view of the Telecom Regulatory Authority of India Act, 1997, resolution of the dispute through proceedings under the Arbitration and Conciliation Act, 1996, is not permissible.

13. The High Court of Delhi in *Gaur Distributors* (supra) has held that Sections 14 and 15 of the Telecom Regulatory Authority of India Act, 1997 makes it abundantly clear that TDSAT is empowered to adjudicate any dispute between two or more service providers and therefore arbitration proceedings in such disputes is not permissible. The Hon'ble High Court of Delhi held that the Telecom Regulatory Authority of India Act, 1997 being a special statute, it would prevail over the Arbitration and Conciliation Act, 1996. Consequently, arbitral proceedings under the Act, 1996 is not permissible under law.

14. In ***Maddada Chayanna v. Karnam Narayana and another*** [1979 3 SCC 42], the Hon'ble Apex Court quoted with approval the following observations of the Andhra Pradesh High Court in ***Appanna v. Sriramamurty*** [(1958) 1 Andh WR 420].

Where a Special Tribunal, out of the ordinary course is appointed by an Act to determine questions as to rights which are the creation of that Act, then except so far as is otherwise expressly provided or necessarily implied, that Tribunal's jurisdiction to determine those questions is exclusive.

In the matter of disputes in Telecom Sector, the Telecom Regulatory Authority of India Act has designated TDSAT as the Special Tribunal.

15. The Indian Arbitration Act being a general provision relating to settlement of disputes by arbitration and the Act having carved out certain matters only as available for determination by arbitration, on the principle of *generalia specialibus non derogant*, what has been provided in the Act would override the general provisions contained in the Indian Arbitration Act. So, the matters relating to which there is direction in the Act, 1997 cannot be the subject matter of arbitration. This is for the reason that the Telecom Regulatory Authority of India Act is a Special Act on the subject of which disputes covered by the Act could be decided by TDSAT. The Telecom Regulatory Authority of India Act, 1997 is a later Act than the Arbitration and Conciliation Act, 1996.

16. The Hon'ble Apex Court considered the question of special law vis a vis general law and special law vis-a-vis special law, in the judgment in **Allahabad Bank v. Canara Bank and another** [(2000) 4 SCC 406]. The issue before the Apex Court was whether permission of the Company Court where winding up proceedings were pending, was required for filing a petition for recovery of money before the Debt Recovery Tribunal constituted under the Recovery of Debts due to Banks and Financial Institutions Act, 1993. The Hon'ble Apex Court held that there can be a situation in law where the same statute is treated as a special statute vis a vis one legislation and again as a general statute vis a vis yet another legislation. The general law is that when there are two special laws, the principle that the latter will normally prevail over the former if there is provision in the latter Special Act giving it overriding effect.

17. The object of the Telecom Regulatory Authority of India Act, 1997 as stated in the preamble is to provide for the establishment of the Telecom Regulatory Authority and the Telecom Disputes Settlement and Appellate Tribunal to regulate the telecommunication services and adjudicate disputes. Section 15 of the Act, 1997 states that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Appellate Tribunal is empowered by or under the Act to determine. Section 14 of the Act which provides for establishment of Tribunal, excludes certain disputes / complaints from the purview of TDSAT. Arbitral proceedings under the Arbitration and Conciliation Act, 1996 have not been so excluded.

18. It is therefore clear that the Special Law i.e., the Telecom Regulatory Authority of India Act, 1997 will prevail over general law i.e., the Arbitration and Conciliation Act, 1996. Therefore, TDSAT has the exclusive jurisdiction to adjudicate upon all disputes that arise between the parties and those specified under the Act. The Telecom Regulatory Authority of India Act, 1997 being a later statute and having been specially enacted for the Telecom Sector, will certainly prevail over the Arbitration and Conciliation Act, 1996. The Telecom Regulatory Authority of India Act, 1997 was enacted in the year 1997 and the Arbitration and Conciliation Act was enacted in the year 1996. When the Telecom Regulatory Authority of India Act, 1997 was enacted, the Parliament was aware of the remedy of arbitration available under the Arbitration and Conciliation Act, 1996. Even then, the Parliament chose not to exclude the Arbitration and Conciliation Act, 1996 from the ambit of the Act, 1997.

19. The Telecom Regulatory Authority of India Act, 1997 is not only a later legislation, but is also a special legislation aiming to protect the interests of the service providers and consumers of the Telecom Sector and to promote and ensure the orderly group of Telecom Sector. Speedier adjudication of disputes by a specialised Tribunal having requisite knowledge and expertise of the Sector is necessary for the growth of the Telecom Sector in the long run. The Telecom Regulatory Authority of India Act, 1997 is a complete Code. TDSAT has exclusive jurisdiction to adjudicate any dispute between the parties.

Therefore, I hold that arbitration is barred in respect of the matters which are within the exclusive jurisdiction of TDSAT under the provisions of the Telecom Regulatory Authority of India Act, 1997. Therefore, the Arbitration Request is not maintainable. The Arbitration Request is therefore dismissed.