



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: November 26, 2012*

+ **FAO(OS) 398/2012**

BWL LTD. ... Appellant
Represented by: Mr.D.K.Malhotra and Mr.Rajesh Kr.
Malhotra, Advocates.

versus

UOI & ANR. Respondents
Represented by: Mr.Sukumar Pattjoshi, Advocate.

AND

FAO(OS) 399/2012

BWL LTD. ... Appellant
Represented by: Mr.D.K.Malhotra and Mr.Rajesh Kr.
Malhotra, Advocates.

versus

UOI & ANR. Respondents
Represented by: Mr.Sukumar Pattjoshi, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MANMOHAN SINGH

PRADEEP NANDRAJOG, J. (Oral)

FAO(OS)s No.398/2012 and 399/2012

1. With respect to the pleadings in the OMPs and the reply filed, the position which emerges is that the learned Arbitrator appointed by the Competent Authority of BSNL concluded arguments in the two



Claim Petitions filed by the appellant on October 06, 2004 and reserved the matter to pronounce the award.

2. The award was not pronounced by the learned Arbitrator Shri A.K.Jain, and on September 14, 2007, he called the parties for some clarifications and kept on deferring the matter till February 16, 2008 when he once again reserved the matter to pronounce the awards.

3. The awards were finally pronounced on September 21, 2010 and September 23, 2010 i.e. nearly 5 years after original hearing was concluded on October 06, 2004 and after two years and seven months of the last clarificatory hearing held on February 16, 2008.

4. Challenge to the two awards, vide OMP No.771/2010 and OMP No.772/2010 has been decided by the learned Single Judge vide composite order dated July 04, 2012.

5. Learned Single Judge has held that delay was not fatal. Whereas OMP No.772/2010 has been dismissed, OMP No.771/2010 has been partially allowed with respect to a claim in sum of ₹22,02,730/- requiring the learned Arbitrator to decide said claim afresh.

6. Now, the learned Arbitrator Shri A.K.Jain has evinced his supine negligence and indifference to the matter evidenced by the fact that after concluding hearing on October 06, 2004, he sat over the matter for nearly three years. On September 14, 2007, he listed the matter for clarification and after deferring the matter on various dates, reclosed the matter after obtaining clarifications on February 16, 2008, and pronounced the award after nearly two years and seven months thereafter on September 21, 2010 and September 23, 2010.

7. What faith would one have in such an arbitrator? What would be the use to remit a part of the award to the same arbitrator whose past conduct does not inspire confidence of doing speedy justice?



8. Human memory is short. We are doubtful whether substantive hearings which were concluded on October 06, 2004 and the meagre clarificatory hearings which were concluded on February 16, 2008 left sufficient imprints on the minds of the learned Arbitrator to have remembered the arguments and pronounce the award(s) on September 21, 2010 and September 23, 2010.

9. Justice should not only be done but should also appear to have been done. Justice delayed is justice denied.

10. This was so observed by the Supreme Court in various decisions. Even when Judges have pronounced judgments after reserving them for more than six months the same have been set aside by the Supreme Court requiring the matter to be heard afresh and re-decided. The decisions are:-

- a. Anil Rai v. State of Bihar (2001) 7 SCC 318;
- b. Kanhaiyalal & Ors. v. Anupkumar & Ors. (2003) 1 SCC 430;
- c. Bhagwandas Fatechand Daswani & Ors. v. HPA International & Ors. (2000) 2 SCC 13; and
- d. Kunwar Singh & Ors. v. Sri Thakurji Maharaj 1995 Supp (4) SCC 125.

11. With respect to arbitration, a learned Single Judge of this Court, in the decision reported as 153 (2008) DLT 489 Harji Engineering Works Pvt. Ltd. v. BHEL, set aside an award which was pronounced after three years of the last hearing holding that such an award would be against the public policy of India.

12. We agree.

13. The appeals are allowed.



14. OMPs No.771/2010 and 772/2010 are allowed. Both impugned awards dated September 21, 2010 and September 23, 2010 are accordingly set aside.

15. As per the contract between the parties the authority named to appoint an arbitrator is directed to appoint an arbitrator within four weeks of receipt of this order and other than Mr.A.K.Jain presently worked as Director (HR), BSNL. The arbitrator appointed would hear arguments with reference to the existing pleadings and evidence led before Mr.A.K.Jain and would pronounce the award within six months of entering upon reference.

16. Impugned order dated July 04, 2012 disposing of OMP No.771/2010 and OMP No.772/2010 is set aside.

17. No costs.

CM No.14517/2012 (Stay) in FAO(OS) 398/2012

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MANMOHAN SINGH)
JUDGE

NOVEMBER 26, 2012
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