

M/S. UPTRON INDIA LTD.  
v.  
UNION OF INDIA AND ANR.

FEBRUARY 5, 2004

[V.N. KHARE, CJ., S.B. SINHA AND S.H. KAPADIA, JJ.]

*Arbitration Act, 1940:*

*Arbitration—Award—Set aside by appellate authority—Effect of—Company filing award before High Court for being made rule of the Court—Simultaneously Government challenging the award before appellate authority which set aside the award—Consequently, High Court rejecting Company's application for making the award as rule of Court—Company challenging order of High Court on the ground that it failed to take into consideration that if order of appellate authority was without jurisdiction, the same being a nullity, award could be made rule of the Court—Held, order of the appellate authority could not have been challenged collaterally in the proceedings pending before High Court—It was obligatory on the appellant-company to question validity or otherwise of the order of appellate authority before an appropriate forum by filing an appropriate application in this behalf—As the award had been set aside, High Court was correct in holding that the prayer for making the award a rule of Court could not be granted—Since the award has already been remitted to the arbitrator, he is directed to make a fresh award.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1712 of 1999.

From the Judgment and Order dated 20.7.1998 of the Delhi High Court in F.A.O. (OS) No. 311 of 1995.

Manoj Swarup, Ms. Lalita Kohli and Anubhav Kumar for M/s. Manoj Swarup & Co. for the Appellant.

Ex. Joseph, Ms. Nidhi Ravindra and M.M. Kashyap for the Respondents.

The following Order of the Court was delivered :

The appellant herein is a company registered under the Indian Companies

- A** Act. In the year 1988, the appellant herein entered into an agreement with respondent No.2, wherein it was, *inter alia*, agreed that the appellant shall maintain the community viewing sets in the seven States of North Eastern region, i.e. Assam, Meghalaya, Arunachal Pradesh, Nagaland, Manipur, Mizoram and Tripura. The agreement was for maintenance of 5000 VHF and DR sets for a period of five years. As per the contract, it is alleged that the respondent agreed to pay Rs. 66,20,040 annually, which was payable to the appellant at the beginning of each calendar year and also to raise infrastructure. The appellant alleges that they have performed the work on their part, but the respondent did not pay to the appellant for the work done by them. It is under such circumstances, the dispute was referred to the Arbitrator for resolution.
- B**
- C** The Arbitrator gave an Award dated 18th June, 1990. The appellant filed the said Award before the High Court of Delhi on its original side, for being made Rule of the Court. Simultaneously, the respondent preferred an appeal before the Secretary to the Government, Ministry, of Broadcasting and Information. The Secretary, Ministry of Broadcasting and Information set aside the Award and remitted the same to the Arbitrator for fresh resolution.
- D** After the aforesaid order was passed by the Appellate Authority, the High Court on its original side rejected the application of the appellant for making the Award as Rule of the Court on the ground that the Award itself has been set aside. The appeal preferred before the Division Bench against the judgment of the learned Single Judge was also dismissed. It is against the said judgment,
- E** the appellant is in appeal before us by way of special leave petition.

Learned counsel appearing for the appellant would submit that the High Court went wrong in passing the impugned judgment insofar as it failed to take into consideration that if the order of the Appellate Authority was without jurisdiction, the same being a nullity, the Award could be made a

**F** Rule of the Court. The learned counsel would contend that even if the jurisdiction of the appellate forum is not challenged, as no power was conferred upon it to remit the Award to the Arbitrator purported to be in terms of Section 16 of the Indian Arbitration Act, 1940, such order would be without jurisdiction.

- G** We find no merit in this submission. The order of the Appellate Authority could not have been challenged collaterally in the proceedings pending before the High Court. It was obligatory on the appellant herein to question the validity or otherwise of the order of the Appellate Authority before an appropriate forum by filing an appropriate application in this behalf. As the
- H** Award had been set aside, in our opinion, the learned Single Judge and

consequently, the Division Bench of the High Court were correct in holding that the prayer for making the Award a Rule of Court could not be granted. Under such circumstances, we do not find any error in the judgment under challenge. However, since the Award has already been remitted to the Arbitrator, we direct the Arbitrator to make a fresh Award within a period of six months from the date of service of the certified copy of this order upon him, if not already made.

With the aforesaid observations, the appeal is dismissed. There shall be no order as to costs.

R.P.

Appeal dismissed.