

ITEM NO. 13

COURT NO. 4

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s). 464/2009

(From the judgement and order dated 03/12/2008 in WP No. 2550/2007
of the HIGH COURT OF BOMBAY)

VODAFONE INTERNATIONAL HOLDINGS B.V.

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned
judgment and with prayer for interim relief)

Date: 23/01/2009 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA
HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA

For Petitioner(s)

Mr. F.S. Nariman, Sr. Adv.
Mr. Iqbal Chagla, Sr. Adv.
Mr. S. Ganesh, Sr. Adv.
Mr. Percy Pardiwalla, Sr. Adv.
Ms. Anuradha Dutt, Adv.
Ms. S. Vijayalakshmi Menon, Adv.
Mr. S.C. Sharma, Adv.
Ms. Ekta Kapil, Adv.
Mr. Pawan Sharma, Adv.
Mr. Anish Kapur, Adv.
Mr. Kuber Dewan, Adv.
Ms. Swetha Richhori, Adv.
Mr. Gaurav Dua, Adv.

For Respondent(s)

Mr. Mohan Parasrarn, ASG
Mr. D.L. Ghidhananda, Adv.
Mr. H.R. Raghvendra Rao, Adv.
Mr. Rahul Kaushik, Adv.
Mr. Gaurav Dhiogra, Adv.
Mr. B.V. Balaram Das, Adv.

UPON hearing counsel the Court made the following
O R D E R

At the outset, Mr. Nariman, learned senior counsel appearing on behalf of the petitioner submits that despite the fact that the agreements in question had not been filed before the High Court as also before this Court, copies thereof have been served upon the learned Additional Solicitor General.

It is stated by the learned Additional Solicitor General that the department has sought for some particular documents.

In the facts and circumstances of this case, thus, we are of the opinion that the question in regard to the jurisdictional issue, may be determined by the authority concerned as a preliminary issue, in terms of the decision of this Court in Management of Express Newspapers (Private) Ltd., Madras vs. The Workers and Ors. (AIR 1963 SC 569), wherein this Court has held as under:

"(15) The High Court undoubtedly has jurisdiction to ask the Industrial Tribunal to stay its hands and to embark upon the preliminary enquiry itself. The jurisdiction of the High Court to adopt this course cannot be, and is indeed not disputed. But would it be proper for the High Court to adopt such a course unless the ends of justice seem to make it necessary to do so? Normally, the questions of fact, though they may be jurisdictional facts the decision of which depends upon the appreciation of evidence, should be left to be tried by the Special Tribunals constituted for that purpose. If and after the Special Tribunals

try the preliminary issue in respect of such jurisdictional facts, it would be open to the aggrieved party to take that matter before the High Court by a writ petition and ask for an appropriate writ. Speaking generally, it would not be proper or appropriate that the initial jurisdiction of the Special Tribunal to deal with these jurisdictional facts should be circumvented and the decision of such a preliminary issue brought before a High Court in its writ jurisdiction. We wish to point out that in making these observations, we do not propose to lay down any fixed or inflexible rule; whether or not even the preliminary facts should be tried by a High Court in a writ petition, must naturally depend upon the circumstances of each case and upon the nature of the preliminary issue raised between the parties. Having regard to the circumstances of the present dispute, we think the Court of Appeal was right in taking the view that the preliminary issue should more appropriately be dealt with by the Tribunal. The Appeal Court has made it clear that any party who feels aggrieved by the finding of the Tribunal on this preliminary issue may move the High Court in accordance with law. Therefore, we are not prepared to accept Mr. Sastri's argument that the Appeal Court was wrong in reversing the conclusion of the Trial Judge in so far as the Trial Judge proceeded to deal with the question as to whether the action of the appellant was a closure or a lockout."

See also State of Uttar Pradesh vs. Shri Brahm Datt Sharma & Anr., (AIR 1987 SC 943 (para 9)).

It is made clear that the petitioner shall be entitled to question the decision of the authority on the preliminary issue before the High Court, in the event the same is decided against it. The question of law to that extent shall remain open. We are sure that the decision of the authority shall be based on the interpretation of the agreement in question and in accordance with law.

The special leave petition is dismissed with the aforementioned observation.

Asht
(A.S. BISHT) 27/11
COURT MASTER

ON LEAVE
(PUSHAP LATA BHARDWAJ)
COURT MASTER

Pm
27/11