

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Arb P No. 26/2023

Good Shepherd Mission School

...Petitioner(s)/appellant(s)

Through: Mr. Z.A. Qureshi, Sr. Advocate, with
Ms. Rehana Fayaz, Advocate

Vs.

M/S Fairdeal Motors and Workshop Pvt Ltd.

...Respondent(s)

Through: None

CORAM:

HON'BLE THE CHIEF JUSTICE

O R D E R (ORAL)

08.09.2023

01. Heard Mr. Z.A. Qureshi, learned Senior Counsel, assisted by Ms. Rehana Fayaz, learned counsel for the petitioner.
02. No one is present for the respondent in spite of service of notice and accordingly, this Court has decided to proceed in the matter without hearing the respondent and on the basis of pleadings on record.
03. The present application has been filed seeking appointment of an Arbitrator in order to resolve the dispute, which has arisen between the petitioner-school and the respondent.
04. The factual matrix leading to the filing of this petition can be briefly stated as follows: -
05. The petitioner-school had purchased 04 commercial vehicles, TATA City Ride 30+1, from the respondent for ferrying of the students under delivery Challan No. 444 dated 01.10.2018, which were financed by the Tata Motors Finance Limited, to be repaid as per the terms/agreement entered between the petitioner-school and the said Tate Motors Finance Limited.
06. The temporary registration certificates were issued for the vehicles which were valid from 26.10.2018 to 25.11.2018. Thereafter, the respondent-Fairdeal Motors & Workshop Pvt. Ltd., under the aforesaid terms/agreement was to provide the sale certificates immediately after the sale to the petitioner in order to enable the petitioner-school to get

necessary registration of the vehicles from the Regional Transport Office for plying the said vehicles.

07. Unfortunately, the respondent failed to provide the necessary sale certificates to the petitioner, which were provided only after two years, resulting in inability in plying the said vehicles for that period. In the meantime, the Hon'ble Supreme Court passed an order in "*M.C. Mehta V/s Union of India*" in WP(C) No. 13029 of 1985, wherein it was ordered that no motor vehicle not conforming to the emission standard Bharat State-IV shall be sold or registered in the entire country with effect from 04.04.2020.

08. Because of the aforesaid embargo on plying of the vehicles which do not conform to the permissible emission level fixed by the competent authority in terms of the order of the Hon'ble Supreme Court, the Regional Transport Officer declined to issue the registration certificates in respect of the said vehicles purchased by the petitioner-school. As a result, the said vehicles have been rendered obsolete, non-usable and literally reduced to junks. In the meantime, the Tata Motors Finance Ltd. which financed the said purchase of vehicles had started recovering the loan amount from the petitioner-school.

09. It has been submitted that because of the aforesaid delay on the part of the respondent in providing the sale certificates and the inability of the petitioner-school to operate and ply the said vehicles the petitioner-school suffered heavy financial loss.

10. In this regard, the petitioner-school had served a legal notice to the respondents on 18.12.2022 for payment of the Rs. 47,74,684/- amount along with the down payment of Rs. 10.00 Lacs deposited by the petitioner-school, thus, totaling an amount of Rs. 57,74,684/-.

11. However, the respondent did not respond to the said legal notice, compelling the petitioner to serve another legal notice on 01.03.2023 demanding payment of the aforesaid amount, failing the respondent was informed that the matter would be referred to arbitration in terms of the agreement/contract between the petitioner and the respondent as mentioned in the Tax Invoice issued by the respondent in which it has been clearly mentioned that all disputes arising between the parties thereto shall be referred to arbitration according to arbitration laws of the country.

12. Accordingly, it has been submitted that the said dispute which has arisen between the parties is required to be referred to arbitration for which

an Arbitrator requires to be appointed in this regard. On the query of this Court as to the issue of limitation, learned Senior Counsel for the petitioner has submitted that the cause of action arose on 01.04.2020 when the Hon'ble Supreme Court placed an embargo on sale or registration of any vehicle which did not conform to the emission standard Bharat Stage-IV.

Further, the respondent furnished the sale certificates in respect of the aforesaid vehicles only on 03.10.2020 after the said bar placed by the Hon'ble Supreme Court become operational and as such, it has been submitted that the claim of the petitioner is within time as per the law of limitation and as such, there is no legal impediment in the appointment of an Arbitrator to decide the matter by way of arbitration in terms of agreement referred to above.

13. This Court is also satisfied that the petitioner has been able to make out a case in the light of afore-stated facts and submissions so advanced for appointment of an Arbitrator. Accordingly, this Court proceeds to appoint Ms. Gous-ul-Nisa Jeelan, Retd. District and Sessions Judge, as the sole Arbitrator who shall proceed in the matter to decide the dispute between the parties and make the award in accordance with law after charging the prescribed fee along with incidental expenses to be shared by the parties.

14. Let the Ld. Arbitrator be informed of her appointment as Arbitrator by this Court.

15. With the above observations and direction, the petition is disposed of.

(N. KOTISWAR SINGH)
CHIEF JUSTICE

SRINAGAR

08.09.2023

Junaid