

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 798 OF 2014

Government of Jharkhand & Another **Petitioners**

VERSUS

Institute of Aviation & Aviation Safety **Respondents**

Mr. Anil Singh, Senior Advocate, i/b. Mr. Anil Yadav for the Petitioners.

Mr. Ajay Jajodia, Authorised representative of the Respondent present.

CORAM : **R.D. DHANUKA, J.**

DATED : **15th JANUARY, 2015**

P.C.

By this petition filed under section 34 of the Arbitration and Conciliation Act, 1996 the petitioners impugned the arbitral award dated 17th February, 2014 allowing the claims made by the respondents. The petitioners have impugned the said arbitral award in this petition.

2. Pursuant to the public advertisement issued by the petitioners on or about 9th September, 2007, the parties entered into a Memorandum of Understanding dated 31st October, 2008. Under the said Memorandum of Understanding, the petitioners agreed to pay the respondents the training cost at the mutually agreed tuition fees of Rs.63,500/- per student. Clause 10 of the said Memorandum of Understanding provided that the tuition fees as well as boarding charges was offered and agreed for sponsor number of 100 students. It was provided that it would not be increased in any case during the period of training. Clause 12 of the said agreement provided that if any student sponsored by the petitioners leaves the training for any

reason, the respondents will advise the petitioners immediately alongwith the recommendation. The petitioners will decide to send a replacement.

3. Pursuant to the said Memorandum of Understanding, the petitioners sent 87 students for training. It is the case of the petitioners that out of 87 students, 15 students though reported for training did not complete their training as they found that all the facilities provided by the respondents were not in order. The training of the remaining students was completed on 31st August, 2009.

4. Dispute arose between the parties. The respondents invoked arbitration agreement. The learned designate of the Chief Justice appointed an arbitrator. The Prothonotary and Senior Master of this court communicated the said order passed by the learned designate to the petitioner by notice dated 17th and 19th September, 2013. It is the case of the petitioners that the petitioners rejected the claim of the respondent vide notice dated 29th October, 2013.

5. The learned arbitrator passed an ex-parte award recording that the petitioners were served and none appeared before the learned arbitrator on behalf of the petitioners.

6. The learned senior counsel for the petitioners submits that at no point of time, the petitioners received any notice from the learned arbitrator. The petitioners therefore could not appear before the learned arbitrator and defend the claims made by the respondents. It is submitted that in any event, there was no minimum guarantee of 100 students provided under the Memorandum of Understanding entered into between the parties. Since only 72 students ultimately took training from the respondents, the petitioners already having made payment in respect of those 72 students, the petitioners were not liable to make any further

payment to the respondents. In support of this submission, learned senior counsel invited my attention to clauses 8 and 10 of the Memorandum of Understanding and would submit that Rs.63,500/- agreed to be paid to the respondents was per student. The petitioners had already paid at the rate of Rs.63,500/- per student in respect of the students who actually took training.

7. Mr.Ajay Jajodia, learned representative of the respondents on the other hand submits that before entering into this Memorandum of Understanding between the parties, the parties had negotiated the terms and conditions. Since the petitioners had agreed to sent 100 students for training, the training cost at Rs.63,500/- per student was fixed considering the minimum training to be provided to 100 students. The respondents had accordingly made all arrangements in respect of 100 students pursuant to such agreement. Whether the petitioners would send 100 students or less, the petitioners were liable to pay to the respondents for 100 students. He also invited my attention to the fact that two installments were already paid by the petitioners in accordance with the terms mentioned in clause 9 of the MOU considering the number of students as 100 and not 72. It is submitted that the only the last installment was not paid though training was completed as far back as on 31st August, 2009.

8. In so far as submission of the learned senior counsel that the petitioners were not served with the notice by the learned arbitrator is concerned, my attention is invited to the copies of the two notices annexed to the affidavit in reply sent on 23rd September, 2013 and on 22nd November, 2013 alongwith the track result issued by Indian Post and would submit that both the notices issued by the learned arbitrator were delivered as its clear from the track result. It is submitted that the learned arbitrator rightly considered the track result and held that the petitioners

were duly served.

9. A perusal of the record produced by the respondents clearly indicates that petitioners were duly served with copies of the notices issued by the learned arbitrator. The learned arbitrator has rightly taken cognizance of the track result issued by the Indian Post which clearly proves that the petitioners were duly served with the copy of the notices. The petitioners however have chosen to remain absent. Learned senior counsel does not dispute that the petitioners were served with the copy of the notice by the Prothonotary and Senior Master of this court about appointment of the arbitrator. The submission however before this court is that since according to the petitioners nothing was due and payable, the petitioners did not keep track of the arbitration proceedings. In my view since the petitioners were duly served with the notice by the Prothonotary and Senior Master for appointment of the arbitrator and by the learned arbitrator himself twice, the petitioners have chosen to remain absent, the petitioners cannot be allowed to urge that the learned arbitrator illegally rendered an ex-parte award. There is thus no merit in this submission of the learned senior counsel.

10. In so far as second submission of the learned senior counsel that the petitioners under the terms of Memorandum of Understanding were liable to pay only for actual number of students who had training from the respondent i.e. 72 students and not 100 students is concerned, a perusal of the record indicates that the learned arbitrator has interpreted the terms of the Memorandum of Understanding. The facts produced on record also clearly indicates that the earlier two installments were made by the petitioners considering the number of students as 100 and not 72 as canvassed by the learned senior counsel. The petitioners itself had suggested to provide separate invoices considering the number of students as 100 and based on such suggestions, the respondents had raised such invoices and

which were paid in accordance with the schedule mentioned in clause 9 of the MOU. In my view there is no substance in the submission of the learned senior counsel that under the MOU, the petitioners were liable to pay the respondents only for actual number of students who were given training by the respondents and not for 100 students.

11. The learned arbitrator has considered all these facts in detail and has rendered the findings of fact which in my view are not perverse and thus no interference with the findings is thus warranted under section 34 of the Arbitration and Conciliation Act, 1996. Interpretation of MOU by the learned arbitrator in my view is not only the possible interpretation but is the correct interpretation and cannot be substituted by another interpretation.

12. In my view the petition is devoid of merits and is accordingly rejected. Petitioners are directed to pay cost of Rs.10,000/- to the respondents within two weeks from today.

[R.D. DHANUKA, J.]