

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

O.P.No.381 of 2013

1. Mr.Kiran Murali
2. Mr.Cavala Murali ... Petitioners

Vs.

1. Computer Sciences Corporation India Pvt. Ltd.,
(A Company incorporate under the Companies Act, 1956)
Having its Office at Softward Technology Park,
Electronics Complex, Pardeshipura,
Indore, Madhya Pradesh.

2. The Sole Arbitrator, Mr.S.N.Sharma,
District and Sessions Judge & Judicial Member,
State Arbitration Tribunal, Bhopal (Retd),
No.HA-4, Takshasila Colony,
Rajendra Nagar, A.B.Road, Indore,
Madhya Pradesh. .. Respondents

PRAYER: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the exparte arbitration Award dated 18.01.2013 passed in Case No.27 of 2011 by the Second Respondent with costs.

For Petitioners : Mr.R.Santhanam

For Respondents : Mr.M.Purushothaman – R1

ORDER

Challenge has been made in this petition as against the award passed by the Arbitrator dated 18.01.2013.

2. The brief facts leading to the filing of this Original Petition is as follows :

A claim has been preferred by the respondent for liquidated damages and other expenses on the basis of the breach of contract by the petitioner. The respondent is a company duly incorporated and registered under the Companies Act 1956. The respondent company offered a job vide offer letter dated 21.12.2007 to the first petitioner, wherein the first petitioner has accepted the offer and he was appointed as a 'Trainee' on a salary of Rs.1,44,000/- P.A. and as per claimant's policy, he was given extensive training enabling him to get better exposure of the claimant's working condition. The first petitioner was required to serve in the company of the respondent for a period of 36 months. In respect of which, an agreement came to be executed on 11.8.2008 binding himself to serve the company for a specific period. Besides, he has also agreed in the agreement that in the event of breach of the agreement he is liable to pay liquidated damages of Rs.one lakh. As the petitioner has breached the contract, the matter was referred to the Arbitrator as per the agreement. The Arbitrator by his award dated 18.01.2013 passed an award for a sum of Rs.98,698/- jointly on both the petitioners with interest at the rate of 9% with

effect from 09.08.2011 till the date of recovery and cost of the petition. As against which the present petition has been filed.

3. The main contention of the petitioner is that the award is an *exparte* award and the arbitration was conducted at Indore, whereas the petitioner was residing within the jurisdiction of this Court. Therefore, the *exparte* award is non est in law and cannot be enforced. The further contention of the learned counsel is that a contract was entered between the parties and as per the contract, training was not given to the petitioner. Therefore, it amounts to violation of public policy. Hence, the award requires to be set aside.

4. The learned counsel appearing for the respondent submitted that this Original Petition is not maintainable before this Court. Admittedly, the petitioner has entered into a contract agreeing to the jurisdiction of arbitration. When they agreed to have the jurisdiction at Indore, now they cannot contend that the arbitration conducted at Indore has no jurisdiction. It is his further contention that the award has been passed as against the breach of contract by the petitioner. At no stretch imagination, it can be said that it is violation of public policy. Hence, submitted that this petition is liable to be dismissed. In support of his contentions, he has also relied upon the judgment in **Indus Mobile Distribution Private Limited Vs. Datawind Innovations Private Limited and others** reported in **2017 (7) Supreme Court Cases 678**.

5. Heard the learned counsel for the petitioners and the learned counsel for the first respondent and perused the records.

6. It is an undisputed fact that the petitioner had entered into a service contract with the respondent on 11.08.2008, wherein, the petitioner has agreed to serve for a period of 36 months. The duration of 36 months would start from the date of joining service. Further, the covenant of the agreement makes it clear that the petitioner has agreed to serve in all places where he may be posted by the company. Similarly, it is also agreed by the petitioner that the venue of arbitration shall be at Indore and the language of the proceedings shall be English. Clause 12 of the agreement makes it clear that the Courts at Indore shall have an exclusive jurisdiction to hear matters pertaining to the arbitration or any matter related to the dispute. Further the documents clearly indicate that after joining in the company, the petitioner worked only for three months. Thereafter, he was posted at Noida. After his posting at Noida, he did not continue his employment and he left the job. The correspondence sent by the first petitioner clearly indicate that he has resigned due to the fact that there were no church available in the vicinity at the place of work. Besides, his father was also transferred to Chennai. Therefore, he has requested his employer to give him a post only at Chennai. I am at loss to understand how the petitioner would make such a demand when he has entered into an agreement agreeing specifically to work at any place wherever, he is posted, besides working for 36

months. Further, it is also specifically agreed that arbitration shall be at Indore Court and Indore Courts alone has jurisdiction.

7. In this regard, it is useful to refer to the judgment of the apex Court in **Indus Mobile Distribution Private Limited Vs. Datawind Innovations Private Limited and others** reported in **2017 (7) Supreme Court Cases 678**, wherein the Honourable Apex Court in para 15 has held as follows :

“15. In a recent judgment in **Eitzen Bulk A/S v. Ashapura Minechem Limited and Another**, (2016) 11 SCC 508, all the aforesaid authorities were referred to and followed. Paragraph 34 of the said judgment reads as follows:

“As a matter of fact the mere choosing of the juridical seat of arbitration attracts the law applicable to such location. In other words, it would not be necessary to specify which law would apply to the arbitration proceedings, since the law of the particular country would apply ipso jure. The following passage from Redfern and Hunter on International Arbitration contains the following explication of the issue:

“It is also sometimes said that parties have selected the procedural law that will govern their arbitration, by providing for arbitration in a particular country. This is too elliptical and, as an English court itself held more recently in *Breas of Doune Wind*

Farm it does not always hold true. What the parties have done is to choose a place of arbitration in a particular country. That choice brings with it submission to the laws of that country, including any mandatory provisions of its law on arbitration. To say that the parties have “chosen” that particular law to govern the arbitration is rather like saying that an English woman who takes her car to France has “chosen” French traffic law, which will oblige her to drive on the right-hand side of the road, to give priority to vehicles approaching from the right, and generally to obey traffic laws to which she may not be accustomed. But it would be an odd use of language to say this notional motorist had opted for “French traffic law”. What she has done is to choose to go to France. The applicability of French law then follows automatically. It is not a matter of choice.

Parties may well choose a particular place of arbitration precisely because its *lex arbitri* is one which they find attractive. Nevertheless, once a place of arbitration has been chosen, it brings with it its own law. If that law contains provisions that are mandatory so far as arbitration are concerned, those provisions must be obeyed. It is not a matter of choice any more than the

notional motorist is free to choose which local traffic laws to obey and which to disregard.” [para 34]

Further, in para 16 of the above judgment, it has been held as follows :

“16. It may be mentioned, in passing, that the Arbitration and Conciliation Act, 1996 has been amended in 2015 pursuant to a detailed Law Commission Report. The Law Commission specifically adverted to the difference between “seat” and “venue” as follows:

“40. The Supreme Court in BALCO decided that Parts I and II of the Act are mutually exclusive of each other. The intention of Parliament that the Act is territorial in nature and sections 9 and 34 will apply only when the seat of arbitration is in India. The seat is the “centre of gravity” of arbitration, and even where two foreign parties arbitrate in India, Part I would apply and, by 24 virtue of section 2(7), the award would be a “domestic award”. The Supreme Court recognized the “seat” of arbitration to be the juridical seat; however, in line with international practice, it was observed that the arbitral hearings may take place at a location other than the seat of arbitration. The distinction between “seat” and “venue” was, therefore, recognized. In such a scenario, only if the seat is determined to be India, Part I would be applicable. If the seat was foreign, Part I would be inapplicable. Even if Part I

was expressly included “it would only mean that the parties have contractually imported from the Arbitration Act, 1996, those provisions which are concerned with the internal conduct of their arbitration and which are not inconsistent with the mandatory provisions of the [foreign] Procedural Law/Curial Law.” The same cannot be used to confer jurisdiction on an Indian Court. However, the decision in BALCO was expressly given prospective effect and applied to arbitration agreements executed after the date of the judgment.”

and finally it has been held that if the seat of arbitration is agreed between the parties, all other Courts will not have jurisdiction. In view of the above judgment and that in the present case, as there is a clear agreement between the parties and as the petitioner has breached the covenant of the contract, I am of the view that the contentions of the petitioner has no legs to stand and none of the findings in the award of the arbitrator needs to be interfered.

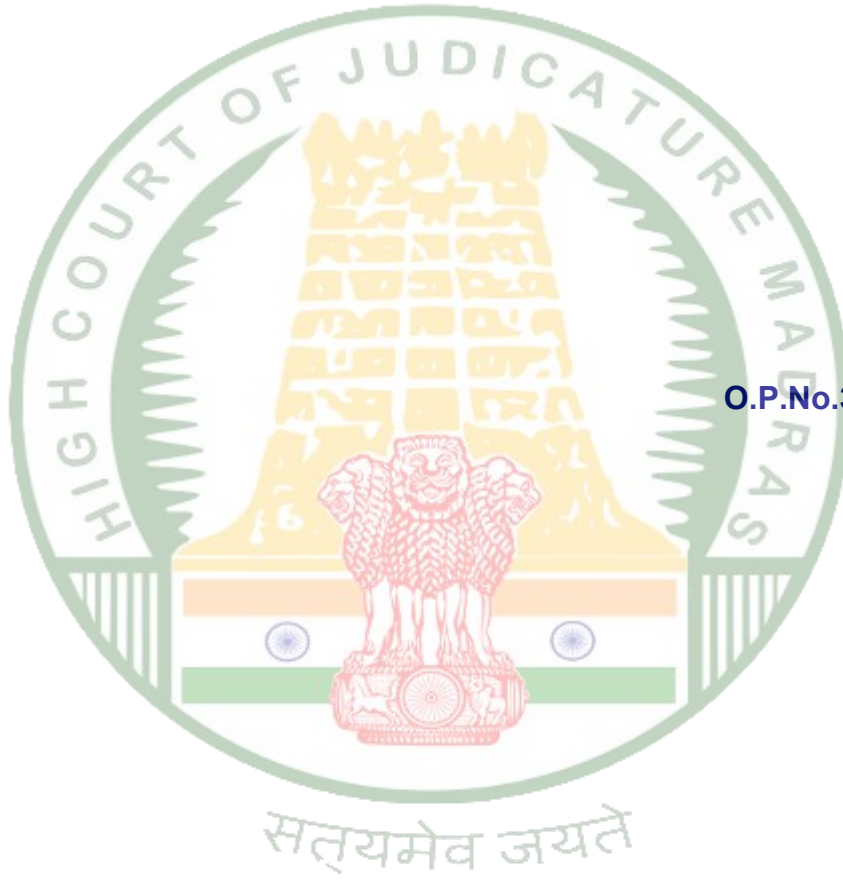
8. Accordingly, this Original Petition is dismissed.

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N.SATHISH KUMAR, J.

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