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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P. (COMM.) 461/2017**

Date of Decision : 22.05.2019

GOVT. OF NCT OF DELHI & ORS. Petitioners
Through: Mr.Anuj Aggarwal, ASC with
Mr.Atul Goyal, Mr.Chituan Singhal, Advs.

versus

JAIDEEP SINGH Respondent
Through: Ms.Rashmi B.Singh, Mr.Mohinder
Kumar Madan, Mr.Vipul Shukla,
Mr.Shobhit Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
NAVIN CHAWLA, J. (Oral)

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioners challenging the Arbitral Award dated 24.08.2017 passed by the Sole Arbitrator adjudicating the disputes that have arisen between the parties in relation to the Agreement dated 05.05.2010 executed between the Lt. Governor, Government of NCT of Delhi, through Director, Directorate of Health Services, that is the petitioner no. 1 herein and M/s Security Solutions & Manpower Services, through its Sole Proprietor, Jai Deep Singh, that is the respondent herein, for providing Nursing Orderlies to the

Dispensaries/Offices/Schemes under the Directorate of Health Services.

2. Counsel for the petitioners submits that the Agreement was only for supply of 169 Nursing Orderlies. However, the respondent on its own supplied 13 additional Nursing Orderlies. The respondent claimed that these additional Nursing Orderlies were also supplied on the instructions of the Chief District Medical Officer (CDMO) under the terms of the Contract. On the other hand, the petitioners had contended that no such orders for making supplies had been issued to the respondent. He submits that the orders produced by the respondent were fabricated and could not have been relied upon by the Arbitrator.

3. The Arbitrator has discussed this issue at length and in paragraph 26 of his Award, held as under:

“ADDITIONAL MANPOWER DEPLOYED

26. The additional manpower deployed by the contractor was 9+4 nursing orderlies. The attendance record and other requisite documents have been furnished along with the bills by the contractor who has brought on record Ex.CW-1/27, Volume 5 pages 1 to 345 with the claim petition, the veracity of which has not been questioned. As mentioned above, the official respondent admits that all bills were checked and audited. Ex, CW-1/8, page 15 of Volume 1 is a sanctioned order in support of the additional four

nursing orderlies which clearly mentions that financial sanction of competent authority is conveyed for incurring an expenditure amounting to Rs.6,55,829/- + S. Tax as applicable towards four nursing orderlies. This sanction was till 30th June 2010. For the later period, the matter has been taken up for financial sanction and nursing orderlies continued to be deployed as would be made out from Ex. CW-1/16 and Ex. CW-1/17 at pages 13 and 14 of Volume 1. The sanction was asked for but has not been received as is the case set up in the claim petition. Both the documents are similarly worded and are of the same date i.e.14.6.2010. Available on record is Ex. CW-1/11 at page 18 of Volume 1 dated 26.7.2010 which accords approval for additional nine nursing orderlies. This letter has been issued by Director of Health Services to CDMO North West, Sector 13, Rohini. The noting file of this document would also reveal that 9 nursing orderlies were deployed after administration approval of DHS on 21.7.2009 and the same approval was also conveyed by Dr. Shiv Raj Singh vide letter dated 6.10.2010. The fact as regards additional hands being deployed is admitted by Dr. Shiv Raj Singh. It is not in dispute that wages as regards these extra hands was never made over to the contractor, may be for the reason that the department was lax in finally approving the sanction. The claimant who did deploy extra hands whose services were admittedly available cannot be denied his claim because of laxity on the part of the respondents.”

4. The above being a finding of fact recorded by the Arbitrator, which is not been shown to be perverse or unreasonable in any manner, cannot be interfered with by this Court in exercise of its power under Section 34 of the Act.

5. The next contention raised by the counsel for the petitioners is that the Agreement between the parties was confined to the supply of Nursing Orderlies only to the dispensaries maintained by the petitioner no. 1. Certain Nursing Orderlies were supplied by the respondent to the Integrated District Health Societies (IDHS). These Societies were autonomous and independent Societies, established under the National Health Programme falling under the supervision of the Central Government and the Delhi State Health Mission (DSHM) was merely a disbursing Authority or an intermediary between the Central Government and the IDHS. He submits that the petitioner no.1 could not have been made liable for any Nursing Orderlies supplied by the respondent to such IDHS.

6. This issue has again been dealt with in detail by the Arbitrator.

7. The Arbitrator has found that the CDMO is also the Mission Director for the IDHS. CDMO is an officer of the petitioner no. 1. The Arbitrator, further found that the duties of Nursing Orderlies were assigned by the officers of the petitioners and further the records with regard to their attendance were also maintained and checked by these officers.

The funds are released by the Central Government to the DSHM and such funds are thereafter released by the DSHM to Districts/IDHS. The Controlling Authority of IDHS is an Officer who is under the Directorate of the Health Services, that is the petitioner no. 1. The Arbitrator has further relied upon certain Circulars which show that the IDHS are being controlled by the Directorate of Health Services, that is petitioner no. 1.

8. Based on the evidence adduced, the Arbitrator has further held as under:

“In view of the discussion made above, the Tribunal is of the firm view that the contract is between contractor and NCT Delhi and, therefore, all the departments of Delhi Government directly under it or controlled by it may utilize the services of contractor pursuant to agreement dated 5.5.2010 and are liable to pay. The main responsibility to pay is that of the State. In the facts and circumstances detailed above, it will be safe to foist liability on all the respondents jointly and severally. Ordered accordingly.”

9. It is not disputed that the orders for supply of the Nursing Orderlies were being placed by the CDMO on the respondent. The said orders clearly show that the DSHM and IDHS were merely programmes of the Government of NCT of Delhi, that is petitioner no.1. The ultimate funding of this programme is of no concern to the respondent. That would be a matter to be agitated between the petitioner no.1 and the Central

Government, but cannot be a ground to deny the claim of the respondent for the work done.

10. In view of the above, I find no merit in the objections raised by the counsel for the petitioners.

11. The last contention of the learned counsel for the petitioners is that, though admittedly, there had been revisions in the minimum wages, the respondent had been raising its invoices on the basis of the pre-revised wages and the same had been duly paid. When the respondent raised its claim for payment of revised minimum wages, the petitioners disputed the same for lack of proof of the source from where the respondent made such payment to the Nursing Orderlies. In support of such payment, the respondent produced service wage registers, which in the submission of the petitioner were forged and fabricated. The Arbitrator, however, has placed reliance on such registers and awarded the claim of the respondent towards revised minimum wages.

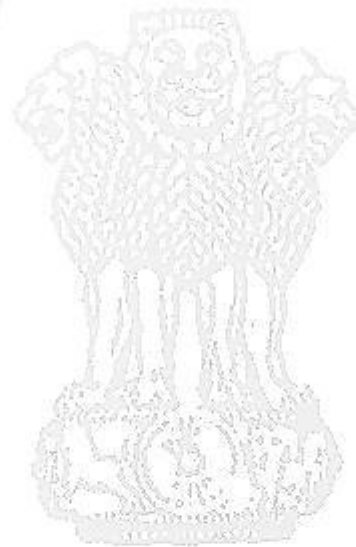
12. I find no merit in the contention raised by the learned counsel for the petitioners. The Arbitrator in awarding this claim in favour of the respondent has held that the respondent had raised invoices based on the revised rates of minimum wages. It was on the insistence of the petitioner that the revised rates could not be paid for want of financial approval, that the respondent submitted bills on the old rates. It is of some significance to note that though the petitioners had tried to

contend before the Arbitrator that there were complaints made by the Nursing Orderlies against the respondent for non-payment of minimum wages and deduction of ESI and EPF dues, these complaints were found to be unreliable and hence rejected by the Arbitrator.

13. In view of the above, I find no merit in the present petition and the same is dismissed with no order as to costs.

NAVIN CHAWLA, J

**MAY 22, 2019
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