

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

WEDNESDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND TWENTY

PRESENT

THE HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY

ARBITRATION APPLICATION NO: 82 OF 2020

Between:

ACE Engineering Academy, having registered office at H.No.4-1-1235, Flat No. 204,
Rahman Plaza, Opp. Methodist School, Abids, Hyderabad -500001 Represented by
sole proprietor, Mr. Y.V. Gopala Krishna Murthy Yadala. **...APPLICANT**

AND

Mr. Goutham, S/o A. Prasada Rao C/o OHM Institute Ground Floor, Maytri Heights, H.
No.16-11-741/B/10/A, Ikon Hospital Lane Dilsukhnagar, Hyderabad, Telangana-
500036. **...RESPONDENT**

Application Under Section 11 (5 & 6) of the Arbitration and conciliation Act, 1996 and Scheme of Appointment of Arbitrator praying that for the reasons stated in the affidavit filed therewith, the High Court may be pleased to appoint an Arbitrator Under Section 11 (5) and (6) of Arbitration and Conciliation Act, 1996, read with para 3 (1) (d) of Scheme of Appointment of Arbitrators, 1996, as framed by this Honourable Court and, as per clause 16 of the Service Agreement dated 16/02/2017 for adjudicating the dispute between the applicant and the respondents herein and pass further orders as are deemed fit and proper by this Hon'ble Court.

This Application coming on for hearing, upon perusing the Application and affidavit filed in support thereof, and upon hearing the arguments of Sri Vivek Jain, Advocate for the Applicant and None appearing for the Respondent.

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Arbitration Application No.82 of 2020

ORDER

This arbitration application is filed under Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996 (for short 'the Act'), read with para 3(1)(d) of Scheme of Appointment of Arbitrators, 1996, as framed by this Court, seeking to appoint an Arbitrator for resolving the disputes between the parties arising out of the service agreement dated 16.02.2017, and to pass an award in accordance with law.

The case of the applicant, as per the averments made in the affidavit filed in support of the arbitration application, is that the applicant – academy, engaged the services of the respondent as faculty member, and entered into service agreement dated 16.02.2017 with him. The further case of the applicant is that as the respondent left the academy abruptly without any resignation, and contrary to the service agreement, they suffered due to non-completion of syllabus. Hence, the applicant got issued legal notice dated 30.11.2019, and though the said notice was received by the respondent on 05.12.2019, he did not choose to issue any reply. As the service agreement provides for resolution of dispute through arbitration under clause 16 of the said agreement, the applicant got issued notice dated 20.01.2020 invoking the arbitration clause, and appointing an independent Arbitrator Mr. Sharad Sanghi, Advocate, and requiring the respondent to give his consent. The respondent, though received the said notice on 27.01.2020, failed to respond. Aggrieved by the same, the present application.

Notice sent to the respondent through court returned with postal endorsement 'absent'.

Learned counsel for the applicant submits that the respondent left the applicant – academy abruptly in the middle of the academic year, and this affected the completion of syllabus, and he has also started a rival institution and

is working in the said institution. As the applicant suffered, it got issued legal notice and also the arbitration notice, and though the said notices were received by the respondent, he failed to respond.

He further submits that this court ordered notice on 25.11.2020 and also permitted the applicant to serve personal notice, and accordingly, the applicant has taken personal notice to the address given by the respondent in the service agreement, but the same was returned with endorsement 'insufficient address' and that he has also taken notice to the organization i.e., OHM Institute Ground Floor, Mayatri Heights, H.No.16-11-741/B/10/A, Ikon Hospital Lane, Dilsukhnagar, Hyderabad – 36, where the respondent is working, but the same was returned with endorsement 'party absent'. Therefore, notice is deemed to have been served on the respondent.

He further submits that in view of the above circumstances, as there is no dispute with regard to existence of arbitration agreement, and issuance of notice invoking arbitration clause, this court may appoint an independent arbitrator.

As per the above averments made in the arbitration application, the parties have entered into service agreement dated 16.02.2017, and as disputes arose, the case of the applicant is that it got issued legal notice dated 30.11.2019, and also the notice dated 20.01.2020 invoking the arbitration clause, and though the same have been served, the respondent failed to respond. The applicant along with the arbitration application filed copies of acknowledges stated to have been signed by the respondent. Further, the notice sent by this court in this arbitration application, returned with postal endorsement 'absent'.

From a perusal of material on record it could be seen that the applicant sent legal notice and the arbitration notice to the address of the respondent mentioned in the service agreement and the same were served, but when it sent notice to the same address in this arbitration application, it was returned with postal endorsement 'insufficient address'.

In view of these facts and circumstance, I am of the considered view, that notice is deemed to have been served on the respondent.

As the respondent did not choose to make his appearance either in person, or through an advocate, and no counter affidavit is also filed, the assertions of the applicant with regard to existence of service agreement, dispute arising therefrom, and the invocation of arbitration clause contained in the said service agreement, by issuing notice, remained un-rebutted.

Clause 16 of the service agreement dated 16.02.2017 provides for resolution of dispute through arbitration. The said clause, for ready reference, is extracted as under:

"16. That, any dispute arose out of this service Agreement or under the relation of Employee and Employer, all such disputes and differences and claims if any, shall be resolved by way of Arbitration proceedings only, and the Arbitrator shall be the Managing Director of the Employer i.e., Mr. Y.V.Gopalakrishna Murthy, who will act as sole arbitrator and his decision shall be final and binding on both the parties hereto. The jurisdiction for resolving all sorts of disputes and difference arose out the present Service Agreement and other disputes between the Employee and the Employer shall be only and only at Hyderabad exclusively, and all other places are outside their jurisdiction expressly."

From the above clause, the parties have agreed for resolution of dispute through arbitration, and the Managing Director of the Employer is agreed to be appointed as sole Arbitrator.

In view of Clause (5) to the VII Schedule under sub-section (5) of Section 12 of the Arbitration and Conciliation Act, 1996, the Managing Director of the applicant, cannot act as Arbitrator for resolution of disputes between the parties arising out of the service agreement.

Learned counsel for the applicant submits that this court may appoint an independent arbitrator.

Having regard to the facts and circumstances of the case, the arbitration application needs to be allowed, and accordingly allowed.

Sri D.Narendar Naik, Advocate, is appointed as sole Arbitrator to resolve the disputes between the parties arising of the service agreement dated 16.02.2017, and to pass an award in accordance with law.

The learned Arbitrator is entitled to fees as per the rates specified in the Fourth Schedule to the Act of 1996, inserted by Act 3 of 2016 with effect from 23-10-2015, which shall be borne by both parties in equal shares.

Interlocutory applications pending, if any, shall stand closed. No order as to costs.

Before parting with the case it is made clear that all the issues are left open to both the parties to agitate before the learned Arbitrator, and the Arbitrator shall pass award on merits and in accordance with law, uninfluenced by any finding or observation, made in this order.

Sd/- K. GANGADHARA RAO,
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. Sri D. Narendar Naik , Advocate , Flat No. B-510, Jayabhari Orange County, Financial District, Nanakram guda, Hyderabad. – 500 008 (By special messenger) a copy of affidavit and order and material papers.
2. One CC to SRI. VIVEK JAIN Advocate [OPUC]
3. Two CD Copies

[Handwritten signature]

HIGH COURT

ARRJ

DATED:30/12/2020

ORDER

ARB.APPL.No.82 of 2020



ALLOWING THE ARBITRATION APPLICATION
WITHOUT COSTS

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9/2/21
HJH