



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **15.09.2023**

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Arb.O.P.No.62 of 2023

M/s.Cherran Institute of Health Sciences,
Rep by its Authorised Signatory,
Mr.K.Anand
No.78, Cheran Towers, Arts College Road,
Coimbatore 641 018.

... Petitioner

Vs.

Mr.Santhosh.J.

... Respondent

PRAYER: Petition filed under Section 11(6) of the Arbitration and Conciliation act, prays to appoint an arbitrator to adjudicate the disputes between the petitioner and the respondent in terms of the Letter of Employment Agreement dated 05.03.2020.

For Petitioner : Mr.T.Thiageswaran

For Respondent : Mr.Niranjana.R.S

ORDER

This Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act seeking to appoint an arbitrator to adjudicate the disputes between the petitioner and the respondent in terms



of the Letter of Employment Agreement dated 05.03.2020.

2. The learned counsel for the petitioner submitted that the petitioner by name M/s.Cherran Institute of Health Sciences is conducting a three years Nursing course and for which the respondent has been appointed as an “Admission Co-ordinator”; the petitioner and the respondent had entered into an agreement on 05.03.2020 and it contains an arbitration clause; the respondent while acting as the Admission Co-ordinator had collected all the three years' fees from the students and remitted one year fee alone to the petitioner; this caused commotion in the Institute and the students and their parents blamed the petitioner's Institute and that had resulted in a police complaint given by the petitioner against the respondent; even though the Employment Agreement contains an arbitration clause and the respondent had accepted to make good the loss, caused due to any lapse on his part, he did not shoulder the responsibility and evaded to make payments; notice given by the petitioner for appointment of an Arbitrator was also not received by the respondent and he did not come forward to co-operate with the petitioner for appointment of an Arbitrator; hence the present petition has been filed.

3. The learned counsel for the respondent submitted that the



arbitrable dispute is not made out by the petitioner; the allegations of fraud made against the respondent is criminal in nature and for which, arbitration cannot be held. He relied on the decision of the Hon'ble Supreme Court in the case of *A.Ayyasamy Vs. A.Paramasivam and Others, reported in (2016) 10 SCC 386*. It is further submitted that the complex issues are involved in this matter and hence the issue cannot be arbitrated; the dispute touches upon public by involving the students and the parents who are third parties to the Letter of Employment.

DISCUSSION :

4. The fact that the respondent was appointed as Admission Co-ordinator is not in dispute. Further fact that the petitioner and the respondent had entered into an employment agreement is also not denied. The petitioner had alleged that the respondent while discharging his functions as Admission Co-ordinator had collected three years' fees from several students and remitted only one year fee to the petitioner and due to which, many students got aggrieved and the fees due to be paid to the petitioner also remains unpaid. Even though a criminal complaint on the allegation of fraud has been made against the respondent that will not bar



the petitioner from claiming the amount that was retained in the hands of the respondent. So far as the claim for the money alleged to have been collected by the respondent is concerned, there is no doubt that an arbitrable dispute has arisen apart from the aspect of fraud for which a complaint has been given. Even in the judgment of the Hon'ble Supreme Court in the case of ***A.Ayyasamy Vs. A.Paramasivam and Others, reported in (2016) 10 SCC 386***, the Hon'ble Supreme Court has held in paragraph No.25 as under:

*"25. In view of our aforesaid discussions, we are of the opinion that mere allegation of fraud simplicitor may not be a ground to nullify the effect of arbitration agreement between the parties. It is only in those cases where the Court, while dealing with **Section 8** of the Act, finds that there are very serious allegations of fraud which make a virtual case of criminal offence or where allegations of fraud are so complicated that it becomes absolutely essential that such complex issues can be decided only by civil court on the appreciation of the voluminous evidence that needs to be produced, the Court can sidetrack the agreement by dismissing application under **Section 8** and proceed with the suit on merits. It can be so done also in those cases where there are serious*



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allegations of forgery/fabrication of documents in support of the plea of fraud or where fraud is alleged against the arbitration provision itself or is of such a nature that permeates the entire contract, including the agreement to arbitrate, meaning thereby in those cases where fraud goes to the validity of the contract itself of the entire contract which contains the arbitration clause or the validity of the arbitration clause itself. Reverse position thereof would be that where there are simple allegations of fraud touching upon the internal affairs of the party inter se and it has no implication in the public domain, the arbitration clause need not be avoided and the parties can be relegated to arbitration. While dealing with such an issue in an application under [Section 8](#) of the Act, the focus of the Court has to be on the question as to whether jurisdiction of the Court has been ousted instead of focusing on the issue as to whether the Court has jurisdiction or not. It has to be kept in mind that insofar as the statutory scheme of the Act is concerned, it does not specifically exclude any category of cases as non-arbitrable. Such categories of non- arbitrable subjects are carved out by the Courts, keeping in mind the principle of common law that certain disputes which are of public nature, etc. are not capable of adjudication and settlement by arbitration and for resolution of such disputes, Courts, i.e. public for a, are



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better suited than a private forum of arbitration. Therefore, the inquiry of the Court, while dealing with an application under [Section 8](#) of the Act, should be on the aforesaid aspect, viz. whether the nature of dispute is such that it cannot be referred to arbitration, even if there is an arbitration agreement between the parties. When the case of fraud is set up by one of the parties and on that basis that party wants to wriggle out of that arbitration agreement, a strict and meticulous inquiry into the allegations of fraud is needed and only when the Court is satisfied that the allegations are of serious and complicated nature that it would be more appropriate for the Court to deal with the subject matter rather than relegating the parties to arbitration, then alone such an application under [Section 8](#) should be rejected."

5. The fraud alleged to have been committed by the respondent is not very complex in nature. The amount withheld by him is not something which cannot be determined. It is submitted by the respondent that the claim also involves the interest of the third party students and they cannot be examined before the Arbitrator and hence a regular suit mechanism should be invoked to handle the issue. No doubt the proceedings before the



Arbitrator is summary in nature. Hence, the claim of payment by students can be proved by producing the receipts and hence, it does not require examination of students. The dispute involves money claim and the same is also computable. There is a valid arbitration agreement between the parties. Hence I feel the petitioner has made out a case for appointment of Arbitrator.

6. In view of the above stated reasons, this Court appoints **Mr.V.Ramasamy, Retired District Judge, having office at No.87, Rani Garden, 1st Street, S.I.H.S.Colony Road, Singanallur, Coimbatore - 641 005, Mobile Number : 9443669997**, as the Sole Arbitrator to enter upon the reference and adjudicate the disputes *inter se* the parties. The learned Arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses as per the schedule to the Arbitration & Conciliation Act, 1996. The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules. The



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disclosure and declaration may be made by the learned Arbitrator in the form specified in the Sixth Schedule to the Arbitration and Conciliation Act, 1996.

7. This Original Petition is **allowed** accordingly and the parties are liable to bear their own costs.

15.09.2023

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Copy to:

Mr.V.Ramasamy,
Retired District Judge,
No.87, Rani Garden, 1st Street,
S.I.H.S.Colony Road,
Singanallur, Coimbatore - 641 005



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R.N.MANJULA, J.

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