

(2014) 10 DEL CK 0145

In the Delhi High Court

Case No : Arb. A. 16/2013

Primordial Systems Pvt. Ltd.

APPELLANT

Vs

India Tourism Development Corporation Ltd.

RESPONDENT

Date of Decision : 10-10-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 17, 9

Citation : (2014) 10 DEL CK 0145

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

**Advocate : N.N. Aggarwal and Rohit Gandhi, Advocate for the Appellant;
Gitanshu Rustagi, Neelesh Sinha and Vineet Dwivedi, Advocate for the
Respondent**

Judgement

Rajiv Shakdher, J.—This is an appeal filed against an interim order dated 30.05.2013 passed by the learned arbitrator. It is important to note that, in a petition filed under Section 9 of the Arbitration & Conciliation Act, 1996 (in short the 1996 Act), this court had passed an order on 20.01.2012. By that order this court had granted a limited interim relief. The operative part of the order dated 20.01.2012 as contained in paragraphs 3 to 5 of the said order, are extracted hereinbelow:

"....3. Considering that it involves the future of the students who have undergone training, this Court considers it appropriate to direct that the Respondent and the Petitioner will jointly issue Post-Graduate Diploma certifications to these students who have successfully completed the education programs upto 31st December, 2011. The certificates will be issued in the proforma approved by the Respondent by its letter dated 7th February, 2011 to the petitioner. The Respondent will also issue Training Certificates to those students who were trained at the Respondent's Hotel(s) at New Delhi. The issue of issuance of certificates to those students enrolled prior to 31st December 2011 and have yet to complete the course will be considered by the learned Arbitrator.

4. This order is without prejudice to the rights and contentions of either parties as regards their respective claims and counter claims.

5. For any other interim relief, the parties are at liberty to approach the learned Arbitrator...."

2. I am informed by counsels for the parties that the arbitration proceedings are on. Before the learned arbitrator the petitioner filed an application dated 27.04.2013 under Section 17 of the 1996 Act. By this application the petitioner sought two prayers. First, for issuance of a direction to the respondents to jointly issue Post-Graduate Diploma certificates to students of batches pertaining to January, 2012 and April, 2012. Second, for issuance of a direction to the respondents to co-operate with the petitioner in the joint issuance of Post-Graduate Diploma certificates to all applicants and students who had been admitted with respondent no. 2 and had completed their programme in January, 2013 and April, 2013.

3. During the course of the arguments, however, the petitioner admittedly confined its prayer to only the batch of students pertaining to January, 2012.

4. It is important to note that prior to the aforementioned application, an application dated 24.08.2012 had been filed by the petitioner also under Section 17 of the 1996 Act. By this application directions have been sought for issuance of post-graduate and diploma certificates to students who had successfully completed their course in respect of batches pertaining to January 2011, April 2011, July 2011 and October 2011. The learned arbitrator, undisputedly, by an interim order dated 08.09.2012 directed the respondents and the petitioner to jointly sign the certificates in the proforma approved by the respondents vide letter dated 07.02.2011. In pursuance of the said direction of the learned arbitrator 298 students were issued certificates which were jointly signed by the petitioner and the respondents.

5. The impugned order of the learned arbitrator which emerges out of, as indicated above, the application dated 27.04.2013, was confined to 18 students belonging to January 2012 batch.

5.1 The learned arbitrator, however, while dealing with application, seems to have misconstrued the direction of the court contained in the order dated 20.01.2012 by underscoring the fact that his jurisdiction to consider the petitioner's application for issuance of joint certificates to students was confined to those enrolled before 31.12.2011. In my view, a holistic view of the order of this court dated 20.01.2012, clearly points to the fact that this court had not restricted the jurisdiction of the learned arbitrator, as indicated in the impugned order, to issuance of joint certificates to students who were enrolled before 31.12.2011. This is clear from a bare reading of paragraph 5 of the order dated 20.01.2012, which enabled the learned arbitrator to consider any other interim relief, for which, parties may approach him.

5.2 This is not to say that the learned arbitrator was bound to issue a direction as prayed for in the application. All that I wish to emphasize is that the jurisdiction of the learned arbitrator was not restricted, as is erroneously, construed by him.

6. During the course of the argument, I had asked the learned counsel for the petitioner as to whether the 18 students (of January, 2012 batch), in respect of which, interim relief was sought, were enrolled prior to 31.12.2011.

6.1 Learned counsel for the petitioner referred me to a tabulation which is appended at page 104 of the documents file to support his contention that 13 out of the 18 students were enrolled prior to 31.12.2011. Learned counsel for the petitioner says that this aspect was not noticed by the learned arbitrator. He has, in fact, drawn my attention to averments made in paragraph 8(xxix) of the petition.

6.2 It is also the submission of the learned counsel for the petitioner that the said compilation has been marked as Exhibit CW1/29 and is, therefore, part of the arbitration proceedings.

6.3 This submission of the learned counsel for the petitioner has to be seen in the light of the record of submissions made by the learned arbitrator in paragraph 10 of the impugned order. The relevant part of the order is extracted below:

"10..... Further the contention of the respondent was that the claimant never supplied the details with their present application regarding the students of Jan and April-2012 batches who were to complete their course in Jan-2013 and April-2013, as to when did the process of admission begin, last date of filling in forms, when interviews were conducted and when final selection was made. In other words the respondents argued that they were not taken into confidence by the claimants with reference to the admission process of the students of those batches and since they were not associated with the process before admissions were made, the action of the claimants in putting up the present application is without merits. The claimants have not filed with their present application any details in regard to these points, argued by the respondents and since the respondents were not taken into confidence before the admission process of the Jan-2012 batch started, it would not be reasonable to thrust (sic) upon the respondents the responsibility of jointly signing the certificates....."

6.4 I must also note the submission of the counsel for the respondents, at this stage, which is that the said document, according to the learned counsel, was filed after the issuance of the impugned order.

6.5 Therefore, logically, this would become a matter for the learned arbitrator to inquire into and, thereafter, based on submission of parties, to pronounce with regard to the tenability of the relief sought for in the application.

6.6 While doing so, the learned arbitrator may also like to take into account the

submission made before me by the respondents that the 18 students, even according to the petitioner, were initiated into the course only in January, 2012, and that, they were neither taken into confidence while enrolling the students nor were they paid 20% of the fee component pertaining to the said 18 students.

6.7 It is also the submission of the learned counsel for the respondents, which is an aspect which the learned arbitrator may like to take into account, which is that, the course for the January, 2012 batch commenced after the effective date of termination of contract, which was 31.12.2011 and, therefore, they could not be called upon to sign the certificates for the course jointly, as prayed for, by the petitioner. These are aspects which the learned arbitrator may like to take into account.

7. I am, however, persuaded to set aside the impugned order on the sole ground that the learned arbitrator appears to have misconstrued the scope and effect of the order dated 20.01.2012. The learned arbitrator is free to consider all prayers for interim relief that are made in the application dated 27.04.2013, albeit on merits.

8. Accordingly, the impugned order dated 30.05.2013 is set aside. The learned arbitrator will consider the application dated 27.04.2013, on merits.

9. The petition is, accordingly, disposed of.