

(2009) 05 DEL CK 0052
In the Delhi High Court
Case No : FAO 37-38 of 2006

Surat Singh Virk and Another	Vs	APPELLANT
Fit Jee Franchise Networks Ltd.		RESPONDENT

Date of Decision : 04-05-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 13(5), 16, 17, 26, 34

Citation : (2009) 05 DEL CK 0052

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Navin Chawla and Sidhartha Sampath, for the Appellant; Anil K. Khaware, for the Respondent

Judgement

Shiv Narayan Dhingra, J.—This appeal has been preferred by the appellants against the orders of learned Arbitrator dated 19th December 2005 and 31st December 2005. By first order, the learned Arbitrator directed the appellants to submit a host of documents in support of the claim of claimant i.e. respondent herein viz i.e. details of data notes, details of students, copies of communications with franchise, details of reply received, copies of letters issued to students, proof of closure of Fit Jee etc etc. The list of documents sought by Arbitrator runs into 4 pages (foolscap) and by the second order, he dismissed the objections raised by the appellants u/s 16 of the Arbitration & Conciliation Act, 1996 stating that the objections were not tenable. The Arbitrator in this case is the Chartered Accountant of the Claimant company.

2. It is very interesting to note that the reference was made to the learned Arbitrator on 22nd August 2004 by the respondent. However, the Arbitrator did not ask the respondent to file its claim after entering the reference nor the claim was filed by the respondent suo motto. The learned Arbitrator and the respondent kept quite. After about one year, on 17th October 2005, the respondent filed an application u/s 17 and 26 of the Arbitration & Conciliation Act, 1996 asking the Arbitrator to appoint a Local Commissioner to visit the

premises of appellants to unrevealed the truth and to accord police protection to the Local Commissioner. The Claimant also made a prayer for appointment of a Chartered Accountant from the reputed agency in order to assist the Local Commissioner. A prayer was also made to appoint administrator in terms of the franchise agreement and allow the applicant to conduct class of students and to direct the respondent to deposit the security money of Rs. 1.5 crores and not to misuse the particulars of Fit Jee.

3. It is unknown to law that without filing the main claim, an application for interim relief is made by the party. An exception has been carved out in case of an emergent situation u/s 9 of the Arbitration & Conciliation Act only, where a party intends to invoke the arbitration proceedings but due to an urgent scenario or situation has to seek relief of an urgent nature which could not wait the appointment of an Arbitrator. But once the Arbitrator is appointed, a reference is made, there is no reason for a claimant not to file the claim before the Arbitrator and to file only an application for interim relief. Since the claimant herein did not file claim before the Arbitrator the Arbitrator could not have come to know what was the dispute raised. The Arbitrator without knowing what was the dispute raised entertained the application and passed an order for production of about more than 200 documents.

4. An Arbitrator is not an inquiry officer who is conducting an inquiry in respect of allegations made by a party or is to investigate charges leveled by a party. The Arbitrator is an adjudicating authority and he has to conduct proceedings following principles of natural justice, by asking the parties to file claim and response to the claim and the evidence which they have in support of claims and counter claims and adjudicate the matter. The parties can seek help of the Arbitrator or Court for summoning the witnesses and can also take necessary steps to bring out the truth. But the claimant or the respondent cannot ask the Arbitrator to pass interim orders in respect of claim before the claim being filed, for finding out truth and documents. This would be putting the cart before the horse. I consider that the order of the learned Arbitrator dated 19th December 2005 whereby the learned Arbitrator asked the appellants to place on record several documents, is without jurisdiction. The Arbitrator has jurisdiction to entertain the interim applications concerning claim after the claim is filed before him.

5. The other order passed by the Arbitrator is in respect of objections against his competence raised by the Appellants. The Arbitrator in this case is the one named, in the agreement. However, it is not in dispute that he is the Chartered Accountant of the Claimant. The appellants/ respondent alleged that the money from the bank account was withdrawn by the Claimant on the basis of certain back dated invoices procured from the Chartered Accountant. It is also alleged that he was biased and having financial interest in the Claimant Company. The Chartered Accountant dismissed these objections of the appellants observing inter alia that he was holding a post of statutory auditor of the Claimant

company and there was no reason that he shall not act fairly. Regarding debit notes he observed same were not vetted/ signed by the Arbitrator in person but they were vetted and signed on behalf of the firm of Arbitrator (the Chartered Accountant firm) by some other person, therefore, it cannot be said that he was a witness to the correctness of the debit notes.

6. The mandate of the Arbitrator can be terminated by the Court u/s 14 if the conditions mentioned therein are satisfied. If the appellant's plea before the Arbitrator of his being biased is dismissed, the appellant would be entitled to challenge the award in terms of Section 13(5) read with Section 34 of the Act. I consider that it would not be appropriate for this Court to arrive at a conclusion at this juncture that the Arbitrator was biased, since the Arbitrator has not even started with the proceedings on the claim. This part of the order passed by the Arbitrator is, therefore, not disturbed. However, the appellant will have the liberty to assail the award on this ground if the appellant is able to prove bias on the part of the Arbitrator.

7. With above order, this appeal stands disposed of