

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 30.07.2024

+ **FAO (COMM) 73/2024, CMs Nos.23698/2024, 23699/2024,23700/2024 and 23701/2024**

DELHI SKILLS MISSION SOCIETYAppellant

versus

**SAMUEL FOUNDATION CHARITABLE
INDIA TRUST** Respondent

Advocates who appeared in this case:

For the Appellant : Ms Avni Singh, Advocate with Mr Goutam Panda, Assistant Director (Skill Development), DTTE, GNCTD.

For the Respondent : Mr Arjun Garg, Advocate.

**CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MSJUSTICE TARA VITASTA GANJU**

JUDGMENT**VIBHU BAKHRU, J****INTRODUCTION**

1. The appellant has filed the present appeal under Section 37(1)(c) of the Arbitration & Conciliation Act, 1996 (hereafter *the A&C Act*) impugning a judgment dated 25.01.2024 (hereafter *the impugned judgment*) passed by the learned Commercial Court in OMP (COMM) No.67/2022 captioned *Delhi Skills Mission Society v. Samuel Foundation Charitable India Trust*.



2. The appellant is a state level society registered under the Societies Registration Act, 1860 and functions under the aegis of the Directorate of Training and Technical Education (hereafter *DTTE*), Government of NCT of Delhi (hereafter *GNCTD*). The appellant was set up by the GNCTD to, *inter alia*, participate in the implementation of the Skill Development Initiative Scheme (hereafter *SDIS*) launched by the Ministry of Labour and Employment, Government of India in May, 2007. SDIS – which entails carrying on of training for skill development and capacity development – is to be implemented by the state governments in partnership with Vocational Training Partners (hereafter *VTPs*) and assessing bodies. SDIS is a Centrally Sponsored Scheme and is funded entirely by the Directorate General of Training, Ministry of Skill Development and Entrepreneurship, Government of India.

3. The respondent, a VTP duly registered with the GNCTD, was required to provide counseling and vocational guidance, impart quality training, and post training support for its trainees in securing employment. The dispute involved in the present case essentially relates to the respondent's claim for training costs in terms of the Agreement dated 18.01.2016 (hereafter *the Agreement*) entered into between the parties. The appellant has declined to pay the same on the ground that the respondent had not maintained proper biometric attendance of the trainers and trainees, which was mandatory. The appellant claims that, therefore, the respondent is not entitled to the training cost in terms of the Agreement.



4. In view of the disputes between the parties, the respondent invoked the arbitration agreement as embodied in Clause 5 of the Agreement. Since an arbitrator was not appointed, the respondent filed a petition under Section 11 of the A&C Act [ARB.P.862/2019 captioned *Samuel Foundation Charitable India Trust v. Delhi Skill Mission Society*]. The said petition was allowed by an order dated 25.02.2020 and a sole arbitrator (hereafter *the Arbitral Tribunal*) was appointed to adjudicate the disputes between the parties. This Court further directed that the arbitration shall be conducted under the Rules of the Delhi International Arbitration Centre (hereafter *DIAC*).

5. The Arbitral Tribunal delivered an arbitral award dated 05.11.2021 (hereafter *the impugned award*) awarding an amount of ₹15,50,200/- along with the simple interest at the rate of 7.5% per annum from 11.09.2019 till its realization in favour of the respondent. Additionally, the Arbitral Tribunal also awarded cost quantified at ₹2,98,005/- in favour of the respondent.

6. The appellant filed an application [being OMP (COMM) No.67/2022] for setting aside of the impugned award before the learned Commercial Court, which was dismissed by the impugned judgment.

7. The learned Commercial Court found no ground to interfere with the impugned award. The learned Commercial Court held that the view taken by the Arbitral Tribunal was a plausible one and therefore, the impugned award could not be set aside. Aggrieved by the impugned judgment, the appellant has preferred the present appeal.



FACTUAL CONTEXT

8. The Ministry of Labour and Employment, Government of India had launched SDIS to provide vocational training to persons by optimal utilization of available infrastructure for testing and certifying the existing skills of individuals and to build capacity in the area of developing standards for competency, course curricula, learning material and assessment standards in the country.

9. For implementation of the SDIS, State Governments had set up societies, such as the appellant as set up by GNCTD, for carrying on the following functions:

- “(i) Access labour market demand;
- (ii) Give wide publicity to the Scheme;
- (iii) Invite applications from VTPs and scrutinize the same;
- (iv) Ensure implementation of prescribed training fee in the VTPs;
- (v) Prepare annual training plan for the State and send the same to DGE&T atleast three months before the start of the financial year;
- (vi) Ensure implementation of the reservation policy for SC/ST, women and others in respect of training places in VTPs;
- (vii) Provide support to the Assessing Bodies in conducting tests;
- (viii) Monitor and evaluate the outcome of the Scheme;
- (ix) Prepare guidelines for inspecting VTPs;
- (x) Ensure proper utilization of the funds released to the VTPs”

10. Training under the SDIS, which is a Centrally Funded Scheme, is to be provided by various VTPs.



11. On 16.07.2015, the respondent applied to the Deputy Director (DTTE, GNCTD) for registration as a VTP. The said application was approved on the SDIS portal, on 14.12.2015. Thereafter, a Work Order dated 28.12.2015 was issued by the DTTE, GNCTD approving the respondent in respect of three Modular Employability Skill Modules – FAD 801 (Fashion Design), FAD 901 (Advanced Fashion Design) and SES (Soft & Entrepreneurship Skill), for two batches.

12. On 18.01.2016, the parties entered into the Agreement. In terms of the Agreement, the respondent agreed to run courses for which it was registered with the appellant and the concerned authorities. The appellant, *inter alia*, agreed to reimburse the training, boarding and lodging fee claims submitted by the respondent after verification within the time prescribed by Directorate General of Employment & Training (hereafter *DGE&T*). The respondent undertook to forward the batch of trainees for the purpose of assessment by an independent assessor to be allotted by the Regional Directorate of Apprentice Training (hereafter *RDAT*).

13. In terms of the Agreement, the respondent agreed to maintain biometric attendance for all the candidates under training as well as the trainers under the system set up by DGE&T and to maintain manual attendance of the candidates and trainers till the said system was set up. The respondent also undertook to abide by all instructions prescribed in the Implementation Manual as well as those issued by DGE&T from time to time.



14. On 19.01.2016, the respondent submitted list of fifty-two candidates (comprising of two batches) for undergoing the training under the approved modules.

15. On 06.10.2016, the respondent submitted its claim for training costs for both the batches being Claim No.00858701 for a sum of ₹7,70,700/- and Claim No.00857521 for a sum of ₹8,42,500/-. The appellant scrutinized the said claims by a communication dated 10.01.2017 pointed out the following defects / discrepancies:

- “Biometric attendance (Hard copy/soft copy) is not submitted for all claims.
- If biometric attendance is irregular or attendance of candidates is not marked properly in biometric for any/all batch(s) for whole duration of training, then give clarification regarding these irregularities.
- Candidate Attendance report of assessment day of main module and SES module for claim no.00857521 and 00858701 is not submitted.
- Portal generated training cost claim for claim no. 00857521 is not submitted.
- Result sheet for claim no. 858701 is not submitted.
- Same trainer named, Sunita Chawla, found in both bills having claim no.00857521 and 00858701.”

16. The respondent was called upon to provide details of all trainees in the given format as set out in the letter dated 10.01.2017 for processing the claims.



17. The respondent responded to the said communication by a letter dated 04.04.2017, whereby it provided certain details and also clarified the issue regarding the irregular biometric attendance.

18. The appellant raised further queries, which were responded to by the respondent.

19. The appellant states that it became aware of the difficulties faced by number of VTPs with regard to implementation of biometric attendance. It states that majority of VTPs had only partial or irregular biometric attendance on the SDIS portal. In view of the above, the appellant sought clarification from the Ministry of Skill Development and Entrepreneurship, and was advised to decide the final course of action.

20. Furthermore, VTPs forwarded certain concerns to the Ministry of Skill Development and Entrepreneurship by their respective letters dated 05.10.2016, 15.06.2017, 23.08.2017 and 28.09.2017, for clarification on the issues raised regarding the biometric attendance system.

21. On 20.12.2017, Pr. Secretary, DTTE approved a proposal stating that *"pro-rata payment for the period for which biometric attendance is available on the DGT web portal may only be made to the VTPs as full and final after taking an undertaking from the concerned VTPs that they will not claim any further payment where bio-metric attendance could not be recorded."*



22. On the same day, that is on 20.12.2017, the appellant decided to clear the pro-rata payment for the period for which biometric attendance was available on the Directorate General of Training (DGT) portal as full and final payment in regard to the claims made by various VTPs including the respondent. However, the respondent did not agree to accept the pro-rata payment in full and final settlement of its claims. And as stated above, on 07.09.2019, the respondent invoked the arbitration agreement for reference of the disputes to arbitration.

THE CONTROVERSY

23. The principal dispute between the parties is in respect of the claims made by the respondent for costs of training. The same have been denied by the appellant.

24. The dispute between the parties centred around two issues. First, relates to the irregular biometric attendance and the second pertains to the same trainer (Ms. Sunita Chawla), who was reflected as a trainer for both the batches and is included in claim Nos. 00857521 and 00858701.

25. The appellant states that in terms of the guidelines issued by DGE&T, every VTP was expected to install biometric attendance devices. Attendance of all trainees was required to be taken twice a day, once in the beginning and the other at the end of the training session. In terms of the Office Order dated 26.03.2014 issued by DGE&T, VTPs would not be allowed to conduct training under SDIS after 01.04.2014 if they failed to install prescribed devices and ensure their integration with the portal. It was further specified that the candidates who have



more than 80% biometric attendance would be assessed. The said deadline to install biometric attendance devices in all VTPs was extended upto 01.10.2014.

26. In the present case, the biometric attendance of the trainees was irregular.

27. In terms of the guidelines the respondent installed the biometric attendance system, however, it claimed that it faced certain defects. It stated that for a certain period the biometric attendance was recorded, however, it did not reflect the longitude and latitude. The impugned award sets out the relevant period and the status of attendance as under:

“Dates	Status of Attendance
19.01.2016 to 01.02.2016 (2 weeks)	No attendance at all
02.02.2016 to 20.06.2016 (3.5 weeks)	No issues with the attendance
27.02.2016 to 13.05.2016 (11 weeks)	‘In time’ & ‘out-time’ recorded, however, because of unavailability of Longitude and Latitude, marked absent.
14.05.2016 to 25.07.2016 (12 weeks)	No issues with the attendance.”

28. Whilst the respondent claims costs for the entire training period, SDIS has declined to pay the same for the period for which the complete biometric attendance reflecting the longitude and latitude of the point of attendance is irregular.

29. The second area of the dispute is regarding the same trainer assigned to train both the batches.



30. The appellant disputes the costs as claimed on the ground that the same trainer could not be assigned to two batches, which were being trained simultaneously. The respondent claims that the trainer in question was the head trainer and was assigned to both the batches. It also sets out the time table indicating that the classes for the same subject were not held at the same time. Additionally, the respondent claims that apart from the head trainer, there were ten other trainers as well imparting the training.

IMPUGNED AWARD

31. The Arbitral Tribunal, on the basis of the pleadings of the parties, framed the four issues, which in effect were whether the respondent was entitled to the amounts claimed, interest thereon and the costs. The onus to discharge the burden of proof rested on the respondent (claimant before the Arbitral Tribunal).

32. The respondent examined five witnesses including Mr. Rajiv Verma, its Administrative Incharge (CW-1); Ms. Sunita Chawla, its head trainer / Centre Incharge (CW-2); and three students – Mr. Faizy Khan, Ms. Madhu Kumar and Mr. Sharim Saifi [CW-3, 4 and 6 respectively]. The appellant also led evidence and examined Dr. Suman Dhawan, Deputy Director, Academic, DTTE (RW-1).

33. The Arbitral Tribunal noted the testimony of RW-1 and found that there was no dispute that the respondent had purchased and installed biometric attendance device from a vendor authorized by Directorate General of Training, Government of India and that the



biometric machine has captured the attendance of the trainees at the VTP centres in the SDIS-MES portal which was under the control of Directorate General of Training, Government of India.

34. The Arbitral Tribunal also found that the thumb impressions of the trainees were recorded in the biometric machine specifying the 'in-time' and 'out time'. However, for a certain period (that is from 27.02.2016 to 13.05.2016) the latitude/longitude could not be recorded. However, the respondent had also recorded the attendance manually. The Arbitral Tribunal held that the manual attendance as recorded along with the biometric attendance, was sufficient to establish that the respondent had imparted training to the trainees as claimed.

35. The Arbitral Tribunal found that there was no allegation of any wilful tampering of the biometric device or any challenge to the correctness of the manual attendance register. The Arbitral Tribunal accepted CW-1's testimony that he had personally reconciled the record of manual attendance and the attendance recorded in biometric attendance device.

36. The Arbitral Tribunal held that the respondent's claim for costs could not be denied on account of its failure to report the fault of unavailability of latitude and longitude in biometric attendance system, prior to raising the claims.

37. The Arbitral Tribunal also reasoned that the trainees had been duly assessed by the independent assessor and certificates evidencing their completion of training had been issued to them. In the



circumstances, the Arbitral Tribunal held that it is now not open for the appellant to reject the respondent's claim on account of irregular recording of attendance.

38. The Arbitral Tribunal also rejected the SDIS's objections on account of the same trainer being assigned to both the batches. The said trainer (Ms. Sunita Chawla) was examined as CW-2. She had deposed that there were ten trainers who were permanent employees of the respondent. In her cross-examination, she was also able to name her colleagues at the material time. She also explained that she had not attended the training of both the batches at the same time. She had produced the monthly time tables for both the batches and had testified that the training calendar was designed in such a manner so as to ensure that a class of one subject of one batch did not clash with the class of same subject of another batch. The Arbitral Tribunal also noted that the time tables as fixed by the respondent had been conveyed to SDIS by letters dated 03.05.2016 [Ex.CW-1/14 and CW-1/15], which were duly admitted by the appellant. The Arbitral Tribunal also accepted Ms. Sunita Chawla's [CW-2] testimony that there were ten trainers who were permanent employees of the respondent.

39. In view of the above, the Arbitral Tribunal awarded the claims made by the respondent.

SUBMISSIONS

40. Ms Avni Singh, learned counsel appearing for the appellant submitted that the impugned award is vitiated by patent illegality as the



Arbitral Tribunal had, in effect, rewritten the contract between the parties. She submitted that the Agreement between the parties provided for a specific method for performance of obligations on the part of the respondent. It was essential that the attendance of the trainees be recorded only through the biometric attendance device. She submitted that, admittedly, the attendance of the students was not recorded as required. Therefore, the respondent was not entitled to claim any amount for imparting training to the trainees in terms of the Agreement. She also referred to the letter dated 26.03.2014 and emphasised that VTPs were not permitted to conduct training courses under the SDIS after 01.04.2014 if they failed to install prescribed devices and ensure their integration with the portal. She submitted that the very purpose of providing the same was to ensure that the attendance of the trainees could be verified. She stated that the biometric devices are integrated with the SDIS portal and this ensures that the attendance of the students is captured in the system, which is under the control of the concerned authorities. She submitted that since the attendance was not recorded in the manner as provided, the Arbitral Tribunal was required to proceed on the basis that the trainees had not attended the training modules during the period their attendance was not marked in the biometric attendance system.

41. She also drew the attention of this Court to the passage from the impugned award where the Arbitral Tribunal had held that SDIS offer to disburse *pro rata* claim on the condition that the respondent abandons its claim for the remaining amount, was neither fair nor equitable. She



submitted that in terms of Section 28 of the A&C Act, an arbitrator could decide the dispute *ex aequo et bono* only if the parties had expressly authorized the Arbitral Tribunal to do so. She submitted that the Arbitral Tribunal had rendered the impugned award on the basis of what the Arbitral Tribunal considered equitable and not in accordance with the terms of the Agreement.

42. Next, she submitted that the Arbitral Tribunal had erred in accepting that the details of the trainees and the training schedules were available on the SDIS portal on the basis that the trainees had successfully completed their assessment. She submitted that the Certificates of Completion had been granted to the trainees on the basis of the examination conducted by an external agency monitored by the Government of India. Thus, the Certificates of Completion were not based on the details of the trainers or the training schedule but on the basis of an external examination.

43. Mr Arjun Garg, learned counsel appearing for the respondent countered the aforesaid submissions. He supported the findings of the Arbitral Tribunal.

REASONS & CONCLUSION

44. At the outset, it is relevant to note that, although, the appellant contested the claims raised by the respondent on the ground that there could not have been one common trainer for two batches of trainees, no such contention was advanced before this Court. The learned counsel has challenged the impugned award and the impugned judgment



principally on the ground that the respondent's claim was liable to be rejected on the basis of the express terms of the Agreement.

45. The appellant's case rested on Clause 2.2.8 of the Agreement which expressly obliged the respondent to maintain a biometric attendance of all candidates under training and the trainers. However, it would not be apposite to read a single clause in isolation. It is relevant to examine the obligations undertaken by the respondent. Clause 2.2 of the Agreement that sets out the obligations of the respondent as a VTP is set out below:

“2.2 VTP-

- 2.2.1 Shall issue admission notice, from time to time for the courses that are offered and may also circulate publicity materials such as pamphlets, brochures et, in order to create awareness about the courses, facilities etc.
- 2.2.2. Shall mobilize the candidates who are eligible for getting trained in a specific module for which approval has been granted by State Directorate.
- 2.2.3. Shall register and enroll candidate in the SDIS web portal by providing all mandatory information. Shall implement Central government / State Government's reservation policy, which is applicable for ITIs, as the case may be.
- 2.2.4. Shall run only those MES courses for which it is registered with State Directorate.
- 2.2.5. Shall submit training calendar for approval to State Directorate by indicating likely start date and end dates, batch wise / module wise.
- 2.2.6. Shall ensure the availability of infrastructure, tools and equipments as per the requirements for the modules as approved by NCVT.



- 2.2.7. Shall appoint qualified and trained instructional staff and ensure their presence throughout the duration of training.
- 2.2.8. Shall maintain biometric attendance for all candidates under training and trainers from the time DGE&T sets up the system and until then shall maintain the manual attendance for the candidates and trainers.
- 2.2.9. Shall provide good quality training to the candidates in the stipulated time and adequate hands-on experience.
- 2.2.10. Shall forward the batch for assessment to RDAT for allotting Assessing body Assessor.
- 2.2.11. Shall coordinate with the Assessor and Assessing body and ensure that assessment is carried out on the scheduled date for all the candidates who appeared for training and are eligible for assessment.
- 2.2.12. Shall ensure that trained candidates are present and infrastructure, tools & equipments are available for assessment.
- 2.2.13. Shall ensure that candidates appearing for assessment, pass the assessment as per the guidelines issued by DGE&T.
- 2.2.14. Shall ensure that the trained and assessed candidates are provided placements as per the guidelines issued by DGE&T. Shall ensure placement to the candidates after the end of training and assessment by partnering with potential employers.
- 2.2.15. Shall ensure that the NCVT certificates issued by RDAT are distributed to the candidates as soon as it is received. Shall distribute the certificates issued by RDAT in the candidates within the time limit as prescribed in guidelines.
- 2.2.16. Shall provide boarding and lodging to all candidates, if applicable.



- 2.2.17. Shall comply with all processes required to maintain information at the SDIS web portal and shall provide necessary IT infrastructure and manpower for the same.
- 2.2.18. Shall allow authorized officers of RDAT/DGE&T / State Directorate dealing to inspect the training infrastructure available in its premises for courses / modules under SDI scheme.
- 2.2.19. Shall not make State Directorate / RDAT / DGE&T / a party in any dispute arising in its premises.
- 2.2.20. Shall abide by all the instructions prescribed in the Implementation Manual and those issued by DGE&T from time to time.
- 2.2.21. Shall submit reimbursements claims for training cost and boarding and lodging to State Directorate with the bills and supporting documents as prescribed by DGE&T.
- 2.2.22. Shall apply for incentive or advance payment to State Directorate, if eligible.
- 2.2.23. Shall refer and follow the process guidelines as notified by the DGE&T and State Directorate from time to time for conduct of any of the training and assessment related activities.”

46. A plain reading of the obligations indicates that the respondent had agreed to conduct courses and duly publicise the same. The respondent had agreed to mobile candidates eligible for being trained in the approved modules and to enrol such candidates in the SDIS web portal. The respondent was required to submit the training calendar to the appellant (referred to as ‘State Directorate’ in the Agreement) and the start dates and end dates of the modules for its approval.

47. The respondent was also obliged to ensure sufficient infrastructure for conducting the approved training modules. It was



required to provide “*good quality training to candidates*” which included “*adequate hands-on experience*”.

48. The respondent was also obliged to coordinate with the Assessor and the Assessing Bodies to ensure that the candidates are assessed. It was also required to assist the candidates in securing placement at the end of the training period. In terms of Clause 2.2.17 of the Agreement, respondent was required to comply with all processes to maintain information at the SDIS portal and provide the necessary IT infrastructure and manpower for the same. The authorized officers of the appellant as well as the DGE&T and RDAT were entitled to inspect the training centres of the respondent.

49. It is apparent from the above that the essence of the respondent’s obligation was to impart good quality training to the trainees. The essential purpose of recording of attendance is to verify that the trainees have, in fact, undertaken the training course. It also serves to verify that the respondent had, in fact, imparted the training in terms of the Agreement. Whilst it is not disputed that recording of attendance is essential, it is difficult to accept that the manner in which the attendance is to be recorded is the essence of the Agreement.

50. In terms of Clause 2.2.8 of the Agreement, the respondent was entitled to maintain the biometric attendance of all candidates under training as well as the trainers, from the time DGE&T set up a system. However, prior to the system being implemented, the VTP was required to maintain manual attendance. The said system was implemented and



there is no dispute that the respondent had installed a biometric device acquired from the vendor approved by the government authorities. The respondent had no control over the biometric device, which was integrated with the SDIS portal. It is the respondent's case that it faced some problem with the biometric attendance recording system. The Arbitral Tribunal had recorded that the other VTPs had also faced certain problems with the biometric attendance system. According to the respondent, the problems had arisen for various reasons including irregular supply of electricity. As noted above, the appellant had flagged the issue regarding irregular recording of biometric attendance in its letter dated 10.01.2017. The respondent had clarified the same by its letter dated 04.04.2017. The respondent has set out the problems faced with the synchronization of the biometric attendance machines with the SDIS server. It is relevant to refer to the description of the problem as articulated by the respondent in the letter dated 04.04.2017 sent in response to the clarification sought by the appellant. The relevant extract of the same is set out below:

“Query02 If the biometric attendance is irregular or attendance of the candidates is not marked properly in the biometric for any/all batches for whole duration of training then give clarification regarding these irregularities.

Answer: We have noticed many discrepancies in the biometric attendance. The following are the reason for the same.

1. When the batch started we had problems of synchronization of the biometric machine with the SDI server. During that time we had taken manual attendance which is attached along as Annexure 02.



2. During few days we had problems of either internet or electricity due to which the attendance could be taken at a later time or the out time could not be taken.
3. There are instances when the attendance is registered but latitude and longitude is not showing. The only explanation for it could be some that of some software discrepancy.
4. There are instances where the student's in time and out time is registered same. This could be a problem of the students failing to do it correctly.

We have marked the individual cases from each training batch.”

51. It is apparent from the above that this is not a case where the respondent had not maintained the biometric attendance system as required under Clause 2.2.8 of the Agreement. The Arbitral Tribunal had rightly held that this was a case where the respondent had faced certain problems in regard to the biometric attendance system. The Arbitral Tribunal concluded that in the given facts where there were problems in respect of the biometric attendance system, it would not be impermissible to resort to recording the attendance manually. We are unable to accept that the said conclusion amounts to rewriting the Agreement between the parties as contended on behalf of the appellant. It is difficult to accept the contention that a problem in recording the attendance would set at naught the respondent's right to claim compensation for performance of its obligation to impart training to various persons.

52. It is relevant to note that the principal dispute is regarding recording of attendance during the period 27.02.2016 to 13.05.2016 (the period of eleven weeks). During the said period, the biometric



attendance of trainees / trainers was recorded including ‘in time’ and ‘out time’, however, recording of longitude and latitude was unavailable. According to the respondent, the same was beyond its control. The Arbitral Tribunal noted that Clause 2.2.8 of the Agreement required that a biometric attendance system be maintained and in the present case the respondent had installed the biometric attendance device and used the same. Thus, the respondent’s claim could not be denied on that ground. We are unable to accept that the said view is an implausible one and vitiates the impugned award on the ground of patent illegality.

53. It is material to note that the duration of the training modules spanned approximately over 28.5 weeks (from 19.01.2016 to 25.07.2016). Admittedly, there was no issue in regard to recording of the biometric attendance for majority of period – from 02.02.2016 to 26.02.2016 and from 14.05.2016 to 25.07.2016. The issue regarding attendance is confined to the period of 13 weeks (19.01.2016 to 01.02.2016 and 27.02.2016 to 13.05.2016). The respondent had explained that during the first two weeks – that is from 19.01.2016 to 01.02.2016 – the respondent had faced a number of issues with regard to synchronization of the biometric attendance system. Admittedly the respondent had procured the biometric attendance system from the vendor approved by the government and installed the same. However, there was an issue in synchronization of the biometric attendance system during the initial period of two weeks. It is necessary to bear in mind that this period is a small fraction of the term of the entire training



module. The system was thereafter synchronized and had worked satisfactorily for a considerable period from 02.02.2016 to 26.02.2016. The principal issue is only for the period 27.02.2016 to 13.05.2016. During this period, the biometric attendance was recorded but the longitude and latitude was not available in the system.

54. The respondent has also maintained the manual attendance records. Mr. Rajiv Verma (CW-1) had testified that he had personally reconciled the record of the manual attendance with the attendance that was recorded in the biometric attendance device.

55. The Arbitral Tribunal accepted that the fact that the trainees had attended the training course during the said period, was established. The said decision is based on evaluation of evidence and material on record and we find no ground to fault the same.

56. The contention that the Arbitral Tribunal has rendered a decision based on equity and by ignoring the contractual terms, is unmerited. The learned counsel has relied on the following passage from the impugned award in support of its contention.

“It is further important to note that Claimant could not have been forced to accept payments on pro-rata basis conditional to the undertaking giving up the other claims against the Respondent. It is one thing to say that the admitted amounts could have been disbursed by the Respondent in favour of the Claimant while rest of the claim was rejected and totally another thing to say that the admitted amounts shall only be paid if the remaining claim is abandoned by the Claimant. The second option as provided by the Respondent is not fair neither the same is equitable.”



57. A plain reading of the aforesaid passage indicates that the Arbitral Tribunal had faulted the appellant in not disbursing the amount admittedly due to the respondent. The appellant had insisted on the disbursement of the amount for the period during which the attendance was correctly recorded was conditional on the respondent accepting the same as full and final settlement of its claim. The Arbitral Tribunal had found that the said conduct was unfair. We find no infirmity with this conclusion. More importantly, the said conclusion does not form the basis of allowing the respondent's claim. The respondent's claim for training costs has not been allowed for the reason that the appellant's conduct in making a conditional offer, was unfair. The Arbitral Tribunal had considered the respondent's claim for training costs on its merits. Its decision to allow the claim is based on the conclusion that the respondent had, in fact, imparted the training to trainees under the Agreement and is thus, entitled to costs for the same.

58. Admittedly all candidates who had undergone the training conducted by the respondent and had appeared for their assessment, were successful in clearing the same. These candidates, on an independent evaluation, were found to be sufficiently proficient for being certified as having successfully completed their training. The Arbitral Tribunal had thus, rightly reasoned that the issuance of the Certificates of Completion did indicate that the object of training had been achieved as the trainees had emerged successful in the assessment. Whilst it is possible that a candidate who had not attended the training sessions could also be declared as successful, however, it would be



erroneous to state that the fact that a candidate was successfully assessed is wholly irrelevant or not germane, for the purpose of drawing an inference that he had participated in the training programme. We are unable to accept that the Arbitral Tribunal's reasoning vitiates the impugned award.

59. It is settled law that the scope of interference under Section 34 of the A&C Act is limited to the grounds as set out in Sub-sections (2) and (2A) of Section 34 of the A&C Act. The Court is not required to re-appreciate the evidence, adjudicate the disputes and supplant its opinion in place of that of the Arbitral Tribunal. The Court is merely to examine whether the impugned award is vitiated on the ground of patent illegality or is vulnerable on any of the grounds as set out in Section 34(2) of the A&C Act. The Arbitral Tribunal is the final adjudicator of all questions. Unless the Arbitral Tribunal's decision is found to be perverse and not a plausible view, the same would warrant no interference.

60. It is also settled that construction of a contract falls within the jurisdiction of an arbitrator¹.

61. In the present case, the impugned award rests on the Arbitral Tribunal's interpretation of the Agreement. The Arbitral Tribunal has not accepted the appellant's contention that the terms of the Agreement disentitle the respondent from claiming consideration for the training imparted on account of problems faced in synchronization of the

¹ MSK Projects India (JV) Ltd. v. State of Rajasthan and Anr.: (2011) 10 SCC 573



attendance system. The Arbitral Tribunal has read Clause 2.2.8 of the Agreement in a reasonable manner as enabling the respondent to establish attendance of candidates by manual attendance records in case of failure of the biometric attendance system for no fault on the part of the respondent. We are unable to accept that the decision of the Arbitral Tribunal in this regard is perverse and vitiates the impugned award on account of patent illegality.

62. In view of the above, we find no fault with the impugned judgment rejecting the appellant's application to set aside the impugned award. The present appeal is unmerited and is accordingly, dismissed. The pending applications are also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

JULY 30, 2024

'gsr'