

**OFFICE OF THE DIRECTOR, SECONDARY EDUCATION, HARYANA,
PANCHKULA.**

Order No. 13/2-2013 CEC(3)

Dated: 22-03-2015

ORDER

The Department of Secondary Education Government of Haryana executed an agreement on 19.08.2013 with three Service Providers to impart Computer Education to the students enrolled in 2622 Govt. High/Sr. Sec. Schools in the state of Haryana for a period of three academic years @ Rs.14403/- per faculty per month inclusive of all duties and taxes as per terms and conditions of the agreement, out of which, Bhupindra Society was required to provide Computer Education Services in Rohtak Division in the state of Haryana.

After deployment of computer faculties by Bhupindra Society in the schools, dispute arose between the service provider and the computer faculties. Department received various complaints containing allegation of charging unjustified security of Rs. 24000/- from each Computer Faculty and charging of cost of training expenses amounting to Rs. 2250/-. Thereafter, Ms. Nalini Mimani, Deputy Director, Secondary Education Department was appointed as Inquiry Officer to conduct a fact finding enquiry into the allegations levelled by the Computer Faculties against the Service Provider. The Inquiry Officer in his report dated 5.3.2014 has concluded that illegalities and infirmities have been committed by the Service Provider. Accordingly, the Department vide letter dated 25.3.2014, has directed to the Service Provider - Bhupindra Society to refund the security of Rs.24000/- charged from the Computer Faculties. Besides, the service provider was also directed to abide by the other terms of the agreement dated 19.8.2013 as they have committed violation by deducting unjustified amount of ESI @ 6.5% entirely from the computer faculties. In response to the letter dated 25.03.2014, they tried to justify their stand by wrong footing which is not legally sustainable. Thereafter, the service provider was again reminded through notices dated 3.7.2014 and 4.8.2014 to refund the unjustified amount deducted from the computer faculties and rectify the default; failing which the Department will be left with no alternative, except to terminate the agreement.

Aggrieved from the above notices of the Department, the Service Provider filed a petition under section 9 of the Arbitration and Conciliation Act, 1996 by invoking the Arbitration clause in the agreement dated 19.8.2013 before District Judge, Panchkula which was dismissed as withdrawn vide order dated 22.09.2014. The same is reproduced as under: -

"Today, the case was fixed for further proceedings. However, none appeared on behalf of the petitioner and respondents no. 2 and 3 despite repeated calls made since morning. It is already 02.30 PM. No

further wait is justified. Two connected matters between similarly situated parties have been dismissed as withdrawn keeping in view the statement made by Ms. Sumedha Kataria, HCS, Additional Director (Administration), Secondary Education, Haryana on 17.09.2014 but in this case, nobody has turned up for withdrawal of this petition. It seems that petitioner have chosen not to appear before the Court for withdrawal of this petitioner obviously keeping in view the statement of respondent made before this Court on 17.09.2014, which ultimately goes in favour of petitioner. Above all, once it is admitted that arbitration proceedings have already been initiated, the petitioner has every right to approach the arbitrator to seek interim measures under the provision of Section 17 of the Arbitration and Conciliation Act as claimed in his petition, the present petition become infructuous and as such, no fruitful purpose would be served by keeping the matter pending further, especially, when two other cases have been withdrawn. In these facts and circumstances, the present petition is dismissed for want of prosecution as well as being infructuous. However, the petitioner is at liberty to approach the arbitrator to seek interim relief as permissible under section 17 of the Arbitration Act. However, as agreed till the time, the arbitrator pass an order on the interim measures on the basis of an application, if any, filed by the petitioner, respondents will not cancel the agreement except as per the terms and conditions of the contract. However, this order will be applicable only, if the application for interim measure is filed. Needless to say, nothing stated in this order shall be misconstrued as an opinion on the merits of the controversy. File be consigned to the record-room after due compliance”.

Thereafter, the service provider moved an application before the Principal Secretary to Government of Haryana, School Education Department-cum-Arbitrator. The Arbitration Award in the matter was passed on 16.2.2015. The relevant extract of the Award is given below:-

“The Department is advised to terminate this contract with immediate effect after following due process. At the same time it must ensure that the deductions illegally done by these service providers are refunded to the computer faculty as directed above from their pending payments and if need be, by invoking Bank Guarantees of the service providers which are still valid.”

That in response to the above award of the Arbitrator, a show cause notice of 30 days under clause 20 (i) of the agreement was issued to the service provider on 16.2.2015 stating therein as to why the contract should not be terminated on account of failure of the service provider to comply with the terms and conditions of the contract. The service provider submitted its reply to the show cause notice on 10.03.2015 through email.

Whereas the reply to the notice given by the Service Provider has been examined and found un-satisfactory to the extent that they have not shown even a good gesture to initiate necessary action in resolving the issues described in the award. They have failed to take following time bound actions:-

1. They have not returned the security amount of Rs.24000/- charged from the computer faculty within 30 days from the date of award.

2. They have not refunded the deductions done on account of employer share from the salary of the computer faculty which they are required to do within 30 days from the date of award. They were further directed, as per the award, to deposit deductions already done on this account in ESIC within 30 days from the date of award. No action in this respect has been taken by the service provider till date.

Now, after careful consideration and going through the reply submitted by the service provider, I have reached the conclusion that the Service Provider has miserably failed to discharge his duties and responsibilities so as to resolve the issues of the computer faculties and to act as per the terms & conditions of the agreement/award.

In view of the above circumstances, I am constrained to terminate the agreement dated 19.08.2013 executed between the Department and Bhupindra Society for default of not implementing the terms and conditions of the agreement. As consequence of the same the Bank Guarantee is also hereby forfeited under clause No. 16 of the agreement and the amount so received to be used to meet out the liquidated damages/penalty/pending liabilities as will be calculated separately. I pass an order accordingly.


M.L. KAUSHIK, IAS
Director Secondary Education,
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To

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