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**(2021) 06 GAU CK 0135**

**In the Gauhati High Court**

**Case No : Writ Petition (Civil) No. 2980 Of 2021**

Anshuman Bhattacharjee

APPELLANT

Vs

State Of Assam And 2 Ors.

RESPONDENT

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**Date of Decision : 23-06-2021**

**Acts Referred:**

Constitution Of India, 1950 — Article 226  
Evidence Act, 1872 — Section 114  
Specific Relief Act, 1963 — Section 14, 14(d)

**Citation : (2021) 06 GAU CK 0135**

**Hon'ble Judges : Kalyan Rai Surana, J**

**Bench : Single Bench**

**Advocate : D K Medhi**

**Final Decision : Dismissed**

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## **Judgement**

1) Heard Mr. M. Biswas, learned counsel for the petitioner and Mr. D. Nath, learned Senior Govt. Advocate appearing for all the respondents.

2) At the insistence of the learned Senior Government Advocate, the matter has been heard at the admission stage with consent of both sides.

3) The petitioner has projected that on being selected in a tender process, he was engaged as the canteen contractor in respect of the Circuit House,

Silchar under an Agreement of Circuit House Canteen Contract dated 31.08.2019 for a period from 01.09.2019 to 31.08.2020. As per clause 1 of the

agreement, it was provided that on successful performance of the contract, the lease may be extended for a further term of three years. As the tenure

of the agreement was coming to an end, by a letter dated 29.08.2020, the petitioner had expressed his desire to hand over the said canteen. However,

the respondent authorities did not take over the said canteen and ultimately, by an order dated 31.08.2020 by the Addl. Deputy Commissioner, Cachar

(respondent no.3), the engagement of the petitioner was extended till the finalization of the tender or till the canteen was taken over by the authorities.

The grievance of the petitioner is that the subordinate officer of the respondent no. 2 had falsely projected that the quality of the food served in the

canteen was bad and accordingly, the respondent no. 3 had issued the impugned order dated 25.05.2021, gave 7 days notice to the petitioner, thereby

terminating the arrangement. Accordingly, the aggrieved petitioner has approached this Court by filing the present writ petition under Article 226 of

the Constitution of India. This Court, by order dated 03.06.2021, while issuing notice of motion had passed an interim order to the following effect:-

“5. In that view of the matter, this Court is of the opinion that in the absence of any further instructions as to how the aforesaid Pinak

Chakraborty has been allowed to take possession of the Canteen, the petitioner may be allowed to continue to manage the Canteen till

appropriate order is passed on the next date on receipt of instructions from the authorities. The petitioner had been managing the canteen

as per rules and if he has to be replaced, temporarily or otherwise, by any other person, it should be based on certain valid government

order. Any replacement of the petitioner by any other person without valid Government order will be prima facie illegal. Since, no such

instruction as regards existence of any such valid government order is forthcoming, which the petitioner claims to be not in existence, the

petitioner is allowed to continue to manage the canteen till the next date.”

4) The learned counsel for the petitioner has submitted that the complaint dated 20.05.2021, which is annexed to the affidavit-in-opposition by the

respondents was by the Circle Officer (Sadar), Silchar who is an officer subordinate to the respondent no. 2, which is not supported by any written

communication to the petitioner. It is also submitted that after the expiry of the tenure of the petitioner’s agreement, the respondent no. 2 had

issued two tender notices dated 26.08.2020 and 30.09.2020, and although the petitioner had participated in the tender process, the respondent did not

finalize the tender and one supply contractor was sought to be engaged as canteen contractor without following due process of law on pick and

choose basis. It is also submitted that in spite of Clauses 28 and 29 of the Contract Agreement, contemplating one month notice before termination, the

respondent no. 3 had disregarded the said clauses and issued the impugned letter dated 25.05.2021 to relieve the petitioner from the responsibility of caterer of Circuit House Canteen, Silchar. It is submitted that the said termination order dated 25.05.2021 was on extraneous consideration, bereft of any reasons or ostensible reasons. It is also submitted that as per the agreement, the agreement was terminable only by the respondent no. 2 and that only the said respondent no.2 had the competence to take over the possession of the canteen, but in this case the canteen was taken over by the private contractor sought to be engaged by communication dated 01.06.2021, which showed high-handedness on part of the respondents. In support of his submissions, the learned counsel for the petitioner has relied on the following cases, viz., Food Corporation of India Vs. Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71 (para 7 & 10) and Kishansing Tomar Vs. Municipal Corporation of the City of Ahmadabad & Ors., (2006) 8 SCC 352 (para-21).

5) The learned Senior Government Advocate has submitted that there were allegations of bad and stale food being served and complaint was also received from the P.A. to a particular Minister about the bad quality of food served, which had lead to the formal written complaint being filed by the Circle Officer (Sadar), Silchar. It is submitted that the complaints in respect of food served by the petitioner in the Circuit House was a source of embarrassment to the District Administration. It is also submitted that the period of lease had expired on 31.08.2020, and by letter dated 29.08.2020, the petitioner had expressed his readiness to hand over the canteen to the respondent no.2, as such, no inalienable right had accrued in favour of the petitioner. An alternative submission has been made to the effect that from the date of the letter dated 25.05.2021, the 30 days period would be over on 25.06.2021. It is submitted that on 25.05.2021, the canteen of the Circuit House has been handed over to another person on temporary basis. It is also submitted that both tenders could not be finalized as there was no participation by sufficient number of tenders, for which the tenders could not be finalized.

6) Perused the writ petition, affidavit-in-opposition and affidavit-in-reply and considered the submissions of both sides.

7) At the outset, the plea of the respondents as well as the submissions made by

the learned Senior Government Advocate on the complaint made against the quality of food served in the canteen run by the petitioner deserves to be out-rightly rejected. The reason is that according to the complaint dated 20.05.2021 by the Circle Officer (Sadar), the P.A. to the Minister of the Government of Assam had complained about the quality of food. The original complaint has not been annexed and moreover, there is nothing on record to show that any enquiry was made as to the quality of food. Thus, the complaint dated 20.05.2021 cannot stand in the footing of "evidence" before the writ Court. In this regard, the Court is reminded of the herein below extracted observations made by the Supreme Court of India in the case of Bharat Singh Vs. State of Haryana, AIR 1988 SC 2181: (1988) 4 SCC 534, which is extracted below:-

"In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit."

8) Therefore, when except for the complaint in writing by the Circle Officer (Sadar), Silchar stating that "a particular person had submitted a complaint", but such complaint is withheld from the Court, the Court has no option but to invoke Section 114 Illustration (g) of the Evidence Act, 1872 that "the evidence which could be and is not produced would, if produced, be unfavorable to the person who holds it." Accordingly, the plea that food quality was bad as a justification for termination of existing arrangement

with the petitioner is not tenable.

9) It may be mentioned that the learned Senior Government Advocate had justified the termination of the arrangement one of the reasons for the

petitioner took selective feed-back and did not take feed-back from all guests is also not an acceptable ground because the statement made in this

regard is also unsubstantiated as no document of any enquiry being conducted therefor has been annexed to the affidavit-in- opposition.

10) The learned counsel for the petitioner had made elaborate submissions to impress upon the Court that the new canteen contractor engaged by the

respondent authorities was not having any experience and/or existing business of catering and house-keeping and in this regard, reference has been

made to the document purported to be GST registration document of the said contractor. The said plea appears to be irrelevant and need not be gone

into because after the learned Addl. Senior Government Advocate for the State had informed the Court on 01.06.2021 that the respondent no. 3 had

engaged the said contractor and produced the communication dated 01.06.2021, which the petitioner has annexed as Annexure-B to his affidavit-in-

reply, but the petitioner has made no attempt to amend the writ petition, or to implead the newly engaged contractor or to challenge the award of work

to the said contractor. Moreover, the competence of the newly engaged contractor to take over the possession of the canteen at Circuit House at

Silchar has not been questioned. Therefore, in the absence of such contractor in this writ petition, the Court is not inclined to make any enquiry or

order adverse to the interest of such non-party to the writ petition.

11) From the documents annexed to the writ petition, affidavit-in-opposition and affidavit-in-reply, it is seen that the tenure of agreement dated

31.08.2019 had lapsed on 31.08.2020 with the efflux of time. Clause no. 1 of the said agreement provides that on satisfactory completion, the term

may be extended for three years. However, notwithstanding that the arrangement with the petitioner was extended by order dated 31.08.2020 issued

by the respondent no.3, neither the petitioner has not come forward for enforcement of the said clause, nor this writ Court is the appropriate forum for

ordering specific performance of contract.

12) Moreover, it is an admitted case of the petitioner that the agreement was valid upto 31.08.2020 and that as per the extension order dated

31.08.2020, the arrangement was to continue till the tender was settled or till the respondent authorities took over the canteen, as such, there remains no doubt that the agreement and/or arrangement between the petitioner and respondent no. 2 was terminable in nature. Under such circumstances, assuming that the writ Court can order extension of the agreement/arrangement, the Court is required to take into consideration the provisions of Section 14(d) of the Specific Relief Act, 1963. The provision of Section 14 of the said 1963 Act is quoted below:-

14. Contracts not specifically enforceable.

The following contracts cannot be specifically enforced, namely:â?

(a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20;

(b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;

(c) a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and

(d) a contract which is in its nature determinable.

13) Another issue which is required to be addressed relates to point raised by the learned counsel for the petitioner that 30 daysâ?? notice was

mandatory before ousting the petitioner. In this regard, notwithstanding that the order of extension was issued on 31.08.2020, the parties had not

entered into an agreement for extension of lease. In this context the Court is inclined to observe that there is no pleading by the petitioner as to how

the Clause nos. 28 and 29 of agreement dated 31.08.2019 would survive when the tenure of said agreement itself had lapsed by efflux of time on

31.08.2020. Thus, the cases cited by the learned counsel for the petitioner does not help the petitioner in any way under the distinguishable facts of this case.

14) Therefore, in view of the discussions above, this writ petition fails and is hereby dismissed. It is needless to mention that resultantly the interim order dated 03.06.2021 stands vacated.Â Â

15) Before parting with the records, it is clarified that the observations made herein was only for the purpose of deciding this writ petition and as such

none of the observations made herein would prejudice any of the parties in the event they take recourse to civil Court to seek any relief/ remedy and/or take any defence as may be available in accordance with law.