(1996) 01 DEL CK 0001

In the Delhi High Court

Case No : Suit No. 1690 of 1994 and Interim Application No. 7634 of 1994

G.N. Mehra APPELLANT

Vs

International Airport Authority of India RESPONDENT

Date of Decision : 23-01-1996

Acts Referred:

Citation : (1996) 61 DLT 619 : (1996) 36 DRJ 342

Hon'ble Judges : Devinder Gupta, J

Bench : Single Bench

Advocate : R.K. Anand, Ashim Vachar, Mukul Rohatagi, Viplav Sharma, V.P. Singh and Ashok Sapra, for the Appellant;

Judgement

Devinder Gupta, J.

(1) plaintiffs case is that he is an allottee of a Travellers Requisite Shop (for short ''TRS'') at Airbus Departure for almost 46 years, which allotment has been renewed in his favor by the defendant No.1 from time to time. The plaintiff has been running the shop in terms of the policy laid down by defendant No.1 and the plaintiff has been carrying out/obeying all the directions of defendant No.l. On expiry of the each term of the licence, it is alleged by the plaintiff that as a matter of practice/policy the extension/ renewal of license is finalised by defendant No.1 in the manner as stated in para 19 of the plaint that though initial tenders are invited but in view of the long experience acquired by the plaintiff, negotiations are held with the plaintiff that whether the plaintiff is ready and willing to make payment of rent as determined by defendant No.l. license is thereafter renewed in the name of the plaintiff, if the plaintiff is ready and willing to make the payment of the rent as determined by defendant No.l.

(2) In the aforementioned background, it is alleged that on 28.1.1991 an agreement was executed between the plaintiff and defendant No.1 regarding extension of license in respect of the Shop which period came to an end on 25.2.1994. Defendant No.1 thereafter issued notice inviting tenders. As per

terms of the notice eligibility criteria for participants was three years'' experience of running similar business and being an income tax assessed for the last one year in similar trade for which experience has been claimed. Tendered documents, duly complete in all respects were required to be submitted on or before 11.3.1994. Two tender box meant for envelope A and envelope B, were required to be kept in the office of Senior Commercial Manager. Tenderers were required to put the envelopes separately. Envelope A containing basic documents, were required to be opened in the presence of the tenderers on 11.3.1994 at 1530 hrs., envelope B containing rates quoted were to be opened thereafter on 15.3.1994 at 1530 hours in the presence of tenderers. Envelope A, which was required to be opened was to contain basic documents specified therein and tenderers not submitting all documents, stated and required to be accompanied in envelope A were to be treated as disqualified and their tender was not stand rejected.

(3) It is the plaintiffs case that he and one M/s Goel Enterprises qualified since in their case envelopes A were found to be perfect and in order. Documents in case of defendant No.2 were not found to be in order. Accordingly, envelope A of defendant No.2 was rejected, being short of three documents; income tax clearance certificate, partnership deed and certificate/details of experience. Quotations of the plaintiff and M/s Goel Enterprises were duly opened on 15.3.1994. Quotation of defendant No.2 was rightly not opened on 15.3.1994 neither it had the requisite experience, nor did it qualify or fulfilled the mandatory qualifications contained in envelope A. During April, 1994 the plaintiff came to know that officials of defendant No. I were intending to bye-pass the standard norm regarding terms and conditions and were intending to open the tender of defendant No.2. Accordingly the plaintiff made representation on 26.4.1994 to the Chairman of defendant No.1 offering to pay a higher rent. Chairman of defendant No.l, considered the representation of the plaintiff and extended the license in respect of the shop through letter dated 7.7.1994. plaintiffs case is that the offer of defendant No.1 in granting extension in the period of license as contained in defendant No.l''s letter dated 7.7.1994 was accepted by the plaintiff on 15.7.1994. On 19.7.1994 it was conveyed to the plaintiff by defendant No.1 that the shop has been allotted in favor of defendant No.2 and the plaintiff was called upon to hand over the shop on or before 4.8.1994. This action of defendant No.l, in calling upon the plaintiff to hand over the possession of the shop on the ground that it has to be handed over to the fresh allottee, namely, defend., No.2 is under challenge in the suit. The challenge is on the ground that in the past also policy has been to negotiate with the plaintiff and in case the plaintiff was ready and willing, to grant extension and in terms of the said policy plaintiffs offer was duly considered and on 7.7.1994 defendant No.1 decided to extend the license of the plaintiff, which was accepted by the plaintiff on 15.7.1994, Therefore, defendant No.1 had no right to call upon the plaintiff to hand over possession of the shop to defendant No.2, In any case, the plaintiff has also questioned defendant No.l''s action in making allotment of

Trs to defendant No.2 on the ground that tender of defendant No.2 could not have been opened, namely, envelope B, containing rates quoted by defendant No.2, since in its case, envelope A contained documents, which were material regarding qualification. In the absence of qualifying the first round of envelope A, it was not permissible for defendant No.1 to have opened envelope B in case of defendant No.2. In this background, the plaintiff has claimed a decree in the suit for permanent injunction restraining defendant No.1 from taking possession of the shop on the basis of letter dated 19.7.1994, decree for declaration declaring that if license has been awarded in the name of defendant No.2, the same be declared as illegal and bad and further mandatory injunction directing defendant No.1 to withdraw letter dated 19.7.1994.

(4) Along with the suit, application under Order 39 Rules 1 & 2 of the CPC was filed. On 5.8.1994, ex parte ad interim order of injunction was granted till next date directing that the possession of the plaintiff of Trs at Airbus Departure Termination be not interfered with otherwise than in accordance with law. Interim order was continued to remain in operation. On 22.2.1995 the order was further clarified that before the controversy as regards the actual license fee payable by the plaintiff for the period during which suit has remained pending is decided, the plaintiff must clear all the arrears up-to-date and should continue to pay, till further orders, subject to the rights and contentions of the parties, the license fee at the earlier rate of Rs.42,590.00 p.m.

(5) After the arguments were heard, fresh application is 2663/95 was filed by the plaintiff in which additional prayer was made that defendant No.1 be restrained from allotting the space in the Airbus Departure Terminal and from allowing any party to transact the business of selling similar goods in the same Airbus Departure Terminal during the pendency of the case. This interim order, as prayed, was not granted and the application was rejected on 24.3.1995.

(6) The aforementioned application under Order 39 Rules 1 & 2 of CPC is vehemently contested by defendant No.l. Number of legal objections have been raised in the written statement as regards maintainability of the suit in the present form. Defendant No.1 has denied the fact that the plaintiff has been allotted shop for the last 46 years. This, according to defendant No.l, is not possible and is also not factually correct since Airbus Terminal was commissioned only in the year 1986. The allegation of the plaintiff that he has acquired extensive experience in Tr Shop, according to defendant No.l, is not relevant and does not vest any right in the plaintiff to continue to run Tr shop. Defendant No.1 has clarified its policy for allotment of shop that it is by inviting tenders for running the shop at Airbus Terminal in the Airport and the plaintiff is free to compete in the bids. Case is considered strictly on merits and commercial viability. Defendant No.1 has denied that there ever existed the alleged policy as is stated by the plaintiff in the plaint and has alleged that tenders have always been considered on merits and on earlier occasion since the party who had quoted higher license fee was disqualified, on account of non-compliance of

certain conditions, it was decided to give license to the plaintiff. It was the plaintiff, who offered license fee to. match the higher license fee quoted by the highest bidder and defendant No.1 accepted plaintiffs offer, keeping in mind the merits and commercial interest.

(7) On the merits of the case, defendant No.1 has alleged that although defendant No.2 did not submit certain documents in envelope A, which would have qualified it for opening envelope B, on an oral representation made by defendant No.2 that documents in question could not be produced as there was some income tax raid in their premises and all the documents had been seized and an assurance was given that all documents which were required would be submitted and as such their tender be also considered, that it was opened on 15.3.1994. Their quotation of the license fee was much higher than the two other bidders. Defendant No.1 has denied that only the quotations of the plaintiff and M/s Goel Enterprises were opened on 15.3.1994 or that Tender Opening Committee submitted its report. According to defendant No.l, defendant No.2 in accordance with the oral representations and assurance submitted the requisite documents on 15.3.1994 before opening of the bids and as such their quotation was also duly considered. It is not denied that documents had not been submitted by defendant No.2 on 11.3.1994, when envelope A was opened. It is also stated by defendant No.1 that through letter dated 7.7.1994 was sent by defendant No.1 to the plaintiff, it was clarified therein that defendant No.1 had decided to charge license fee at the rate of Rs.l,51,0(X).00 per month from the plaintiff with effect from 26.2.1994, till the plaintiff was allowed to operate the shop In question and till the tenders are finalised and that this would not confer any right, claim or title in seeking extension for required period or otherwise. It is also staled that lender of defendant No.2 was accepted, since defendant No.2 had duly complied with the requirements and because bid was highest, namely, Rs.l,7(),()(X).00 . Defendant No.l''s case is that the object of inviting tenders is to obtain highest license fee, while giving equal opportunity to all in lending bidders to compete. They are procuring highest license fee, the same undoubtedly is in public interest since the amount so collected comes to public fund. Commercial interest has also to be kept in mind while accepting or rejecting a tender. It is slated by defendant No.1 that letter dated 7.7.1994 does not confer any right on the plaintiff, nor in the said letter it was staled that license would stand extended for a regular period. Learned counsel for the parties were heard at length who made their submissions at length.

(8) During the course of arguments it was noticed that the offer of defendant No.2 for award of license was at the rate of Rs.l,70,000.00 p.m. whereas M/s Goel Enterprises offered at the rate of Rs.l,51,000.00 and the plaintiff had offered rate of Rs.74,311.00 p.m. Thus, the plaintiff is not the highest bidder. Highest bidder being defendant No.2

(9) It is the plaintiffs case that license fee was granted to him on the basis of an agreement dated 28th January, 1991 and the period of license admittedly

expired on 25.2.1994. Copy of the agreement is filed with the suit. The question would be whether the plaintiff is entitled to any injunction, as prayed for, restraining defendant No.1 from making allotment of the shop in question to any other person or from calling upon the plaintiff to surrender possession after the expiry of the period of licence. The plaintiff has not disputed his liability to be .hound by the terms and conditions of the agreement. The plaintiffs case in fact has been that on the basis of letter dated 7.7.1994, defendant No.1 offered to extend the period of license on payment of Rs.l,51,000.00 p.m., .which offer was acceptable to him and in fact he accepted the said offer. Accordingly it will be necessary to make a reference to the letter dated 7.7.1994 and find out whether the period of license stood extended, which fact is denied by the defendant. The letter reads:

"REFERENCE is invited to this office letter of even No-3836-40 dated 11/15.1.91 vide which the subject license was extended in your favor for a period of 3 years from 26.2.91 to 25.2.94 on payment of license fee as per following: 26.2.91 to 25.2.92 -Rs.35,200.00 p.m. 26.2.92 to 25.2.93 -Rs.38,720.00 p.m. 26.2.93 to 25.2.94 -Rs.42,590.00 p.m.

2.Though subject license expired on 25.2.94 but pending decision for award of subject contract for which tenders were invited and opened on 11/15.3.94 wherein your goodself also participated, you were/are allowed to continue to operate subject shop.

3.Vide your letter dated 26.4.94 addressed to Chairman, Iaai (Para 3) of your letter) you have volunteered to pay Rs.l,51,000.00 p.m.

4.In view of above, it has been decided to charge you license fee @ Rs.l,51.000.00 p.m. from 26.2.94 till you are allowed to operate subject shop. This will not confer any right, claim or title for seeking extension for regular period or otherwise.

5.OURAccounts Deptt. is being advised to raise bills, towards license fee accordingly i.e. @ Rs.1,51,000.00 from 26.2.94."

(10) A bare reading of the letter would show that defendant No.1 informed the plaintiff that its license expired on 25.2.94 and the question of award of contract for further period was under consideration. Pending decision for award of license for further period, in the light of the representation of the plaintiff, defendant No. 1 decided to charge license fee from the plaintiff at the rate of Rs.l,51,000.00 p.m. w.e.f. 26.2.94, till the plaintiff was allowed to operate the Tr shop. It was clarified that charging of license fee at the rate of Rs.l,51,000.00 p.m. which had been quoted by the plaintiff will not confer any right, claim or title for extension for the regular period or otherwise. Letter, thus, is clear that pending decision for award of licence, the plaintiff was asked to continue paying a sum of Rs.l,51,000.00 from 26.2.94 till the plaintiff was asked to hand over possession of the shop in question to a fresh allottee. Although defendant No.2 has been allotted the shop in question but no agreement has come into being so far. There

is also some dispute amongst the plaintiff and defendant No. 1, as regards the qualification of defendant No.2 whether the same were fulfilled on 11.3.1994 or whether any right was reserved by defendant No. 1 in granting extension to any tenderer to submit documents later on. During arguments it was pointed out that there is no prayer made by the plaintiff in the suit that tender is void or be declared as void. There is also no prayer made by the plaintiff that on the basis of his quotations license be granted in his favour. During the course of arguments, entire stress has been on the point that since in the past it has been the practice of defendant No. 1 to negotiate with the plaintiff and offer extension in the period of license at negotiated rates acceptable to the plaintiff, period of license stood extended, when in response to the plaintiffs representation, defendant No.1 on 7.7.1994 wrote the letter. Letter dated 7.7.1994 has been quoted above. It was in the clear terms stated by defendant No.1 to the plaintiff that pending decision of the award of licence, it has been decided to charge Rs.l,51,000.00 p.m. towards license fee from the plaintiff and this charging of license fee at the rate of Rs.l,51,000.00 would not confer any right on the plaintiff to seek extension in the period of licence. In fact no license as such was granted in favor of the plaintiff. He was permitted to continue to operate the shop till a final decision was taken and pursuant to the decision it was allotted to a fresh allottee. Final decision, according to defendant No.l, was taken when the plaintiff was conveyed through letter dated 19.7.1994 the fact that it has been decided to allot the shop to defendant No.2.

(11) plaintiff as a licencee was and is governed by the terms and conditions contained in the agreement dated 28.2.1991, which required the plaintiff to surrender the possession on the expiry of the period of licence. Period expired on 25th February 1994. The plaintiff was thus bound to surrender possession to defendant No. 1. On failure to do so the plaintiff cannot claim any injunction as regards his possession. The plaintiff has remained in occupation of the shop by virtue of an order passed by the court. Prima facie there is no right made out in plaintiffs favor that he has got a vested right or has acquired any vested right in getting the license renewed. Since in the agreement there is no clause, which has been brought to the notice of the court that defendant No.1 was bound to enter into negotiations with the plaintiff. The plaintiff was also not the highest bidder. Agreement required the licencee to deliver possession of the shop premises, furniture, fittings, equipments and other installations, if any, provided by defendant No.l, in good condition and if required with substantial repairs on the expiry of the licence. Since the plaintiff is not the next higher bidder, next higher bidder being Goel Enterprises, the plaintiff prima facie is also not entitled to challenge the action of defendant No.1 in having made allotment of the shop in favor of defendant No.2 for running Tr shop. Grant of license by defendant No.1 in favor of defendant No.2 or allotment of the shop in question by defendant No.1 in favor of defendant No.2 prima faces cannot be questioned by the plaintiff, who had already participated in the tender and is the lowest tenderer. For the grant of temporary injunction it is held that there is no prima

facie case in plaintiffs favour. Balance of convenience also does not lie in grant of the injunction prayed for since the plaintiff did not adhere to his so-called acceptance of making payment of Rs.l,51,000.00 p.m. as license fee in response to the letter dated 7.7.1994, which according the plaintiff, he accepted. Such decision was taken by defendant No.1 to allow the plaintiff to continue running the shop till it was allotted to a successful bidder. Otherwise the plaintiff was bound to surrender the shop on the expiry of the period of licence. There is also no question of any irreparable loss or injury being suffered by the plaintiff in this case. Injury, if any, likely to be suffered by the plaintiff, in the event of non-grant of injunction is such which can very well be compensated in terms of money. The dispute is of a commercial nature arising out of an agreement and even in such like case the plaintiff cannot seek specific enforcement of any agreement that he has got a right to remain in occupation of the premises since according to his own case he has been a licencee only.

(12) In view of the above, no case is made out for grant of injunction. The application is accordingly dismissed. Interim injunction is vacated.

SUIT No .1690/94

LIST on February 14, 1996 for direction.

