
(2014) 12 RAJ CK 0097

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) Nos. 1683, 1694 and 1701/2014

Gulab Rai and Co.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 15-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226(3)

Citation : (2015) 2 WLN 379

Hon'ble Judges : Sunil Ambwani, Acting. C.J.;Prakash Gupta, J.

Bench : Division Bench

Advocate : M.C. Bhoot, Sr. Advocate and O.P. Mehta, for the Appellant; Kamal Dave, for the Respondent

Judgement

1. These three intra-Court special appeals arise out of a judgment passed by learned Single Judge on an application to vacate the interim order. Learned Single Judge has directed as follows:-

"...Thus, having regard to the controversy involved and taking into consideration the totality of the facts and circumstances of the matter, this Court is not inclined to vacate the interim order passed in favour of the petitioner at this stage. But then, the petitioner cannot be permitted to occupy and operate the Refreshment Room at Jodhpur Railway Station even after expiry of the license issued in its favour without payment of any license fee. It is pertinent to note that pursuant to the tender process, the respondent No. 6 has been awarded the contract for operating the Refreshment Room at Jodhpur Railway Station on annual license fee a sum of Rs. 7,51,000/- and therefore, for balancing the equities, this Court considers it appropriate to modify the interim order in terms that the petitioner shall not be displaced from the location in question till further orders, subject to the condition that the petitioner deposits a sum of Rs. 7,51,000/- towards the annual license fee with the Railways within a period of one week. The amount to be deposited by the petitioner towards the annual license fee in terms of this order, shall be subject to the final order to be passed by this Court.

17. The applications (IA Nos. 3911/14 & 3929/14) preferred by the respondents under Article 226(3) of the Constitution of India stand disposed of accordingly.

18. The amended writ petition be filed within a period of one week. The respondents may file reply thereto within a period of two weeks thereafter. The rejoinder to the reply, if any, may be filed by the petitioner within two weeks thereafter.

Put up on 13.1.15."

It is submitted by learned counsels that the new Catering Policy-2010 is under challenge in the Hon"ble Supreme Court. The licence of M/s. Gulab Rai & Co., the appellant in SAW No. 1683/2014 has expired and has not been renewed so far. The appellant-M/s. Gulab Rai & Co. did not participate in the tender process under the new Catering Policy-2010 on the ground that he is a Member of National Federation of the Railway Venders which has filed S.B. Civil Writ Petition No. 9994/2013 in which finalisation of the tender process was made subject to the result of the writ petition.

2. M/s. Gulab Rai & Co. is running dining hall at Railway Station, Jodhpur since 1982. It is alleged that at present, a licence fee is payable by the firm at Rs. 2,31,000/- per year. Under the new Catering Policy, the appellant was disqualified as he does not have requisite turn over and thus did not participate in the tender process.

3. A S.B. Civil Writ Petition No. 5876/2014 was filed by M/s. Gulab Rai & Co. on 19.08.2014 challenging the settlement of the tender process of the canteen in an auction in favour of the respondent No. 6 Ashok Kumar Jaisal (Appellant in SAW No. 1694/2014) for an amount of Rs. 7,51,000/-. The writ petition was amended on 27.10.2014 challenging the Catering Policy 2010 as well as settlement of tender in favour of the respondent No. 6, Ashok Kumar Jaisal.

4. Reliance has been placed on an interim order passed by the Hon"ble Supreme Court on 17.10.2014 in M/s. Prabhdas & Co. & Anr. vs. Union of India in Special Leave to Appeal (C) No. 28259/2014 against an order dt. 07.10.2014 passed by this Court at Jaipur Bench in which the previous licensee had participated in the tender and did not succeed and in which this Court had passed an interim order in favour of the person who had given the highest bid. The Hon"ble Supreme Court while issuing notices, returnable on 03.11.2014 permitted the respondent to continue with the tender process with a clarification that the petitioner (old licensee) shall not be displaced from the present location. Further that continuance will be subject to further orders after finalizing the tender process.

5. It is submitted by learned counsel appearing for the Railways which has filed a separate SAW No. 1701/2014 that the subject matter of challenge in the Hon"ble Supreme Court relates to minor catering units whereas in the present case, the licence of major catering unit is the subject matter of the writ petition.

6. It is submitted by learned counsel appearing for respondent No. 6 that though

the writ-petitioner is old licensee but his licence has expired and his application for renewal has not been accepted. At present, he has no right whatsoever to occupy and run the canteen. He has not paid the licence fee of the year and has offered only cheque of Rs. 86,000/- to the Railways which was not accepted. The interim orders were passed by the Hon''ble Supreme Court on the ground that tender process has not been finalised as yet, whereas in the present case, the tender process started on 08.01.2014; and that the dining hall was settled in favour of the respondent No. 6 on 01.08.2014. It is only after tender process was finalised and the respondent No. 6 was found to be the highest bidder of Rs. 7,51,000/- per year and for which he also deposited Rs. 3,75,500/- as security, the writ petition was filed without challenging the settlement of the tender in favour of the respondent No. 6.

7. We do not find any justification for learned Single Judge to have passed an order giving an opportunity to the petitioner to deposit Rs. 7,51,000/- towards annual licence fee with the Railways within one week. The petitioner-M/s. Gulab Rai & Co. did not choose to participate in the auction. A statement has also been candidly made at the bar by the counsel that he is not in a position to deposit Rs. 7,51,000/- towards annual licence fee.

8. In the aforesaid facts and circumstances, we do not find that learned Single Judge was justified in passing the order impugned which has jeopardized the interest of all the parties including the petitioner, who is not in a position to deposit Rs. 7,51,000/-. Since, all the parties are represented, the reply may be filed within four weeks and, rejoinder, if any, may be filed within two weeks.

9. Put up on 04.03.2015.

10. Until further orders, the effect and operation of the impugned order dt. 01.12.2014 shall remain stayed. Learned counsel appearing for the appellant - M/s. Gulab Rai & Co. submits that since there are number of employees working in the canteen and that his goods are lying in the store, the appellant may be allowed seven days" time to vacate the premises. Having regard to the facts and circumstances, we allow the appellant-M/s. Gulab Rai & Co., short time upto 23.12.2014 to vacate and hand over the possession of the canteen to the Railways.

A copy of this order be placed in SAW Nos. 1694/2014 & 1701/2014.