
(2009) 04 DEL CK 0393
In the Delhi High Court
Case No : OMP 177 of 2009

Harpal Singh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 09-04-2009

Acts Referred:

Arbitration Act, 1940 — Section 9

Citation : (2009) 3 SLR 417

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : S.K. Sharma, Mayank Bansal and Anoop Sharma, for the Appellant;
None, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—The petitioner was having a lease contract with the respondent in respect of space in the parcel wagons in several trains. This leasing contract in respect the space was cancelled by the respondent vide letter dated 24th February, 2009. The relevant portion of the letter reads as under:

Your existing leasing contracts in train No. 2015 (AGC), 2190 (FSLR II), 2304/82 (AGC), 2708 (FSLR), 2722 (AGC), 2461 (AGC) & 2461 (FSLR I) were terminated including cancellation of Registration, Forfeiture of Registration fee & debarred from fresh registration for 5 years vide this office termination notice No. CHD/AGC/TN/2722/08. On appeal, you were allowed to continue for three months w.e.f. 15/02/2008 to 14/05/2008 & performance was kept under watch upto 14.05.2008.

The following incidents have been come to notice during watch period.

1. Overloading detected in train No. 2304 by E.Rly./Vig. on 31.3.2008
2. Detention due to non-stacking/adjusting the packages in AGC of train No. 2304 on 29.03.08.

In view of above it has been decided by the competent authority to initiate action as under:

1. Termination of existing contracts operated by you.
2. Cancellation of registration.
3. Forfeiture of Registration fee.
4. Debarred from for 5 years.

Accordingly your existing leasing contract of 01/04 tons space of AGC/FSLR listed below have been terminated w.e.f. 25/03/2009 and security money forfeited listed below.

S. No. Train Compartment S. No. Train Compartment No. No. A 9264 AGC E 2190 FSLR II B 2015 AGC F 2304/82 AGC C 2122 FSLR-I G 2438 AGC D 2122 FSLR-II H 2461 FSLR-I

2. The contract contained an Arbitration Clause which has been re-produced by the petitioner in this application u/s 9. The petitioner by this application u/s 9 has made a prayer that the Court should stay the operation of the order/letter dated 24th February, 2009 till finalization of proceedings before the Arbitrator. The contention of the petitioner is that the cancelation of the contract by the respondent was on trivial grounds and the violations of the agreement as stated by the respondent were so minor that the contract should not have been cancelled and only a penalty could have been imposed. It is submitted by counsel for the petitioner that on the basis of lease of the parcel space under the contract, the petitioner had in turn further done bookings from different clients and the petitioner shall suffer irreparable loss due to this cancellation of the contract. The contract was illegally cancelled and the petitioner had a good prima facie case that the cancellation was not as per law. He prays that this Court should issue an injunction against cancellation of contract by order dated 24th February, 2009.

3. A perusal of the terms of lease agreement would show that the respondent had reserved a right of cancellation of lease in case of overloading where 4th default takes place. This cancellation of lease is in addition to the penalty which may be imposed by the respondent.

4. Clause II(16) [13.8] provides that in cancellation of lease agreement on account of overloading for 2 separate contracts (minimum of 8 violations) registration of the leaseholder would also be cancelled.

5. Clause K-16 provides that in case of cancellation of registration as a punitive measure, the petitioner had a right to appeal to CCM.

6. Whenever a contract is unlawfully cancelled by one of the parties to contract, the other party has a right to claim damages if the contract is ultimately found to have been cancelled unlawfully or contrary to the terms of contract or with

malafide intention. Damages in such cases can be quantified with ease since the party can always calculate and present the losses suffered by it due to cancellation of the contract.

7. Section 9 under the Arbitration Act can be resorted to by a party for interim relief on following counts:

9(ii)(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) Securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorizing for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorizing any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

8. No doubt the Court u/s 9 has same power for making orders as it has for the purpose of, and in relation to, any other proceedings before it, however the order passed by the Court for interim protection must be such as falls under one of the above categories. In a case where contract is cancelled, the Court u/s 9 cannot give directions to restore the contract. In order to give this direction, the Court will have to come to conclusion that the contract was cancelled illegally. In fact that would amount to preempt the entire issue. The Court, u/s 9 cannot give a finding whether the contract was cancelled illegally or otherwise. If the Court u/s 9 gives such a finding, not much is left to be decided by the Arbitrator and the proceedings before the Arbitrator would in fact be ineffective. The Court can only give orders to preserve a property which is involved in the dispute or can pass orders in respect of those properties which are of perishable nature and if no order is passed, the property shall get wasted or can allow inspection of the property or things, appoint receiver etc. But the Court cannot u/s 9 direct the parties to revert back to the situation before cancellation of the contract. Either of the two parties to a contract have a right to cancel the contract. Whether the cancellation of the contract was lawful or wrong can be subject matter of the Arbitration. The only relief which the party can claim before the Arbitrator, is damages suffered due to cancellation of the contract. One party cannot force the other party to continue the contract against its wishes. No interim in such cases can be issued u/s 9 of the Act for continuing the contract. I take support from the judgment of Hon'ble Supreme Court in the matter of Adhunik Steels Ltd. Vs.

Orissa Manganese and Minerals Pvt. Ltd., .

9. I therefore find no force in the application. The application is hereby dismissed.