

(2008) 08 DEL CK 0222

In the Delhi High Court

Case No : Writ Petition (C) No. 1791 of 2008

J.D.C. Caterers

APPELLANT

Vs

Indian Railway Catering and Tourism Corporation Ltd.

RESPONDENT

Date of Decision : 01-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) ILR Delhi 80 Supp

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Amit S. Chaddha and Surinder Mehra, for the Appellant; Gaurab Banerjee Sunil Malhotra, Saurav Agrawal and Anshu Tonk, for the Respondent

Judgement

G.S. Sistani, J.

W.P. (C) No. 1791/2008

1. The present writ petition is, inter alia, directed against the communication by the Indian Railway Catering and Tourism Corporation (hereinafter, "IRCTC"), dated 20.2.2008, cancelling the license of the petitioner to operate and maintain a catering stall on the purported ground that the petitioner had filed forged certificates for fulfilling his eligibility criteria to obtain the license.

2. During the pendency of the present petition, the petitioner had moved in an application seeking interim relief. This Court vide order dated 5.3.2008 stayed the effect and operation of the impugned communication dated 20.2.2008, which stay continues till date.

3. Pleadings are complete. With the consent of the parties, the writ petition is taken up for final hearing.

4. Facts, necessary for the disposal of the present petition, may first be noticed:

In pursuance of a technical and financial bid opened on 30.1.2006, the respondent vide letter dated 29.5.2006 granted license to the petitioner for

management of a catering stall at Yashwantpur Railway Station. The eligibility criteria for grant of the license required, inter alia, the applicant to have a minimum of two years experience in catering. The petitioner accepted the license and deposited the requisite security amount and the annual license fee along with his certificates as proof of his eligibility for obtaining the license. The respondent vide letter dated 13.7.2006 acknowledged the remittance of the security amount and annual license fee deposited by the petitioner. The respondent vide the said letter also informed the petitioner that the verification of the certificates submitted by him had been completed. Thereafter, both parties executed an agreement which came into force on 24.4.2007. However, on 24.10.2007, the respondent issued a show cause notice, seeking therein an explanation from the petitioner as to why his license ought not be cancelled on account of forged certificates submitted by him as proof of his eligibility for obtaining the license. The petitioner vide replies dated 5.11.2007, 4.12.2007, 26.12.2007 and 19.2.2008 clarified that the certificates submitted by him were genuine, and in support thereof, further furnished a certificate dated 14.2.2008 as proof of his eligibility. However, the respondent vide communication dated 20.2.2008 informed the petitioner that his license had been cancelled and that he had been debarred and banned from participating in future projects of the IRCTC. Aggrieved, the petitioner has knocked the doors of this Court, seeking, inter alia, that the communication dated 20.8.2008 be quashed.

5. For felicity of reference, the impugned communication dated 20.8.2008, filed at page 70 of the writ petition, is reproduced below:

No. 2007/IRCTC/Catg./Confidential Matters Dated: 20.8.2008

M/s. Jay Dee Caterers,

H.O., A-1/299-A, Sector-VI

Rohini,

Delhi-110085

Sub: Submission of forged documents for obtaining license for catering stall at Yeshwantpur Railway Station

Ref: Your letters No. NIL dated 05.11.07, 04.12.07 & 26.12.07

On perusal of your letter referred above, explaining the details, competent authority has not accepted your submission/representation. It has been clearly established that you have given misleading information and submitted bogus/forged certificates as part of technical bid (Packet-A) to IRCTC in support of experience criteria so as to comply with the tender conditions fraudulently.

It has been decided to terminate the license for catering stall at Yeshwantpur Railway Station as per clauses of the Tender document including Clause 4 (Submission of bids) - Sub-clause 4.7 and Clause 8 (Events of default) - Sub-clause 8.1. You (M/s Jay Dee Caterers) are hereby banned and debarred from

participating in future projects of IRCTC. Therefore, you are requested to terminate your operations at the catering stall and hand over vacant possession of the premises to IRCTC as per Clause 4 - (Obligation and rights of the licensee) - Sub-clause 4.6 of the Tender document within 15 days from the date of issue of this letter.

Catering Stall has been commissioned on 24.3.2007. You have remitted security deposit amount and first year annual licence fee amount as detailed below:

(i) Security Deposit amount - Rs. 1, 36,875/-

(ii) First year annual licence fee - Rs. 5,47,500/-

As per the above clauses of the Tender document, it has been decided to forfeit

a) Security deposit amount of Rs. 1,36,875/-

b) Annual licence fee of first year for the remaining number of days on pro-rata basis from the date of handing over the stall to IRCTC upto 23.03.2008

sd/-

Ashok Chowdhry

GGM/LCS

6. Mr. Amit Chaddha, learned senior Counsel for the petitioner, whilst assailing the impugned communication dated 20.2.2008, has vehemently denied the allegation that the petitioner submitted forged certificates at the time of obtaining the license from the respondent. It is adduced that the petitioner, at the time of accepting the license, had submitted two certificates as proofs of eligibility - one from the office of the Divisional Forest Officer, Bilaspur Forest Division, Bilaspur, Chattisgarh and the other from Guru Nanak Higher Secondary School, Tundla, Firozabad. It is contended that the genuineness of these certificates submitted by the petitioner is evident from the letter dated 13.7.2006 whereby respondent, whilst acknowledging the remittance of the security amount and annual license fee deposited by the petitioner, also informed the latter that the verification of the certificates submitted by him had been completed. It is also contended that the respondent in its impugned communication dated 20.8.2008 has failed to take into consideration the replies of the petitioner to the show cause notice dated 24.10.2007, especially the reply dated 19.2.2008 vide which the petitioner placed on the record of the respondent the certificate dated 14.2.2008 issued by the DFO, Bilaspar certifying the genuineness of the certificate issued to him. In view thereof, it is contended by learned senior Counsel for the petitioner that the impugned communication dated 20.8.2008 is bad for want of compliance with the principles of natural justice inasmuch there was neither any misrepresentation nor any fraudulent practice adopted by the petitioner in obtaining the license from the respondent.

7. Per contra, the respondent, in its reply to the present petition, has stoutly

resisted the case of the petitioner. Mr. Gaurab Banerjee, learned Counsel for the petitioner has adduced that the initial verification conducted by the respondents was merely based on the documents enclosed by the petitioner at the time of grant of licence, and that it was only in the subsequent investigation carried out by the respondent on 6.4.2008 that it was revealed that the petitioner had submitted forged certificates as proof of his eligibility. To buttress his point, learned senior Counsel has drawn the attention of this Court to the letter dated 10.3.2008, filed at page 88 of the present writ petition, wherein the Principal, Guru Nanak Inter College, Tundla, Firozabad has categorically denied having issued any experience certificate to the petitioner.

8. I have heard learned Counsel for both parties and perused the documents on record.

9. The constricted scope of the jurisdiction of this Court under Article 226 of the Constitution of India does not countenance me to delve into the merits of the lis raised by the present petition. Whilst it is beyond the jurisdiction of this Court to question the veracity of the respondent's decision to cancel the license of the petitioner per se; nevertheless, what this Court can certainly do is examine the manner in which such decision was arrived at by the respondent.

10. Prima facie perusal of the impugned communication dated 20.8.2008 reveals that the respondent has not explained the reasons for its decision to terminate the license of the petitioner. It also appears that the petitioner was not afforded a personal hearing by the respondent inasmuch as the impugned communication dated 20.8.2008 is conspicuously silent on this aspect. The canons of natural justice and fair hearing, embodied in the maxim *audi alteram partem*, warrant that any adverse administrative action should be qualified with an opportunity of personal hearing and reasons in respect thereof to the person against whom such action is taken. There is no gainsay that every person, natural or juristic, who has been proceeded against by a public authority has a vested right to be heard and explained before any adverse action is taken against him. Moreover, mere cognizance or acknowledgement of replies to show cause notice in the course of an administrative action cannot be treated as a substitute of personal hearing which is indispensable to dispense natural justice. Thus, mere acknowledgment of the petitioner's replies dated 5.11.07, 4.12.07 and 26.12.07 to the show cause notice dated 24.10.2007 was not sufficient; the respondent ought to have heard the petitioner and made good the reasons for dismissing the explanation put forth by him in his replies to the show cause notice. I am further assured in my view by the second show cause notice dated 30.5.2008, issued after the filing of the present petition, whereby the respondent has called upon the petitioner to give proper explanation qua the certificates submitted by him. Moreover, the necessary implication of the issuance of the second show cause notice dated 30.5.2008 would be that the respondent has acceded to re-consider the case of the petitioner before it finally takes any action against him.

11. For the reasons stated above, I find the impugned communication by the

respondent, dated 20.8.2008, cancelling the license of the petitioner to be manifestly non-speaking in character, vitiated by procedural impropriety, and thus, liable to be quashed. However, taking into consideration the facts and circumstances that have transpired prior and pursuant to the institution of the present petition, viz., the certificate dated 14.2.2008, the factum of the second show cause notice dated 30.5.2008 by the respondent and acceptance thereof by the petitioner, etc., interests of justice and equity warrant that the present petition be allowed in the following terms:

(i) The impugned communication dated 20.2.2008 is quashed.

(ii) The petitioner shall file his reply to the second show cause notice dated 30.5.2008 within two weeks from today. As agreed, the petitioner will, however, in the reply also show cause as to why the petitioner should not be banned and debarred from participating in future projects and no fresh show cause will be issued.

(iii) The respondent will fix a date of hearing on the show cause notices dated 24.10.2007 and 30.5.2008.

(iv) It is only after hearing the petitioner and after taking into consideration the replies by him to the show cause notices dated 24.10.2007 and 30.5.2008 as well as such other documents which the petitioner wishes to rely upon, viz., the letter dated 19.2.2008, the certificate dated 14.2.2008, etc. that the respondent will pass a speaking order explaining the reasons for its decision.

12. Needless to say that the findings and observations of this Court in the present order shall be without prejudice to final decision that the respondent takes after due compliance with the principles of natural justice and fair hearing.

13. The present petition stands disposed off subject to the aforesaid terms.