
(2003) 07 DEL CK 0094
In the Delhi High Court
Case No : S. No. 1948 of 2001

Kwality Restaurant

APPELLANT

Vs

Mr. Jagdish and Others

RESPONDENT

Date of Decision : 24-07-2003

Acts Referred:

Constitution of India, 1950 — Article 19

Citation : (2004) 1 AD 102 : (2003) 107 DLT 541 : (2003) 71 DRJ 421 : (2004) 1 LLJ 562 : (2004) 2 SLJ 296

Hon'ble Judges : H.R. Malhotra, J

Bench : Single Bench

Advocate : Amit Bhasin, for the Appellant; Ex Parte, for the Respondent

Judgement

H.R. Malhotra, J.—This is a suit brought by the plaintiff seeking decree of permanent injunction against the defendants restraining them from holding any demonstration, dharna within a radius of 500 metres from the boundary walls and entrances of the Restaurant at Connaught Place, known as "Kwality Restaurant" situated at 7, Regal Building, Connaught Place, New Delhi. Further injunction is sought restraining the defendants from holding demonstration at the residence of the Managing Partner, Mr.Sunil Lamba at N-23, Panchsheel Park, New Delhi.

2. Facts giving rise to the filing of the present suit are as under:-

3. Defendants No.1 to 5 are the workmen of the plaintiff as also the office bearers of the Union affiliated to Hotel Mazdoor Union and defendants No.6 and 7 are stated to be the President and General Secretary of that Union.

4. It is averred in the plaint that defendant No.6 gave charter of demands dated 15th April, 2000 to the plaintiff seeking various financial demands including special increment to the workmen with employment of ten years, enhancement in leave travel concessions, demand of house rent allowance and few other demands as indicated in Annexure P-1 attached with the plaint.

5. The plaintiff held meeting with the office bearers on 25th August, 2001 where it was explained to the defendants that the demands were highly exorbitant and unreasonable and Therefore, defendants No.6 and 7 were advised to reconsider their proposal, management being not in a capacity to bear any more financial load.

6. Defendants, without paying any heed to the request of the plaintiff, insisted on the approval of the proposal to which the plaintiff showed their inability on which the defendants No.6 and 7 and other persons present in the meeting threatening that unless the demands raised by the defendants were not accepted immediately, the workmen of the plaintiff would resort to agitation, dharna picketing and demonstrations in front of the restaurants of the plaintiff.

7. Defendant No.6 wrote a letter to the plaintiff on 27th August, 2001 giving an ultimatum that the defendants had decided to go on agitation w.e.f. 12th September, 2001.

8. Immediately thereafter, the workmen led by defendants No.1 to 5 started holding demonstrations at the plaintiff-Restaurant w.e.f.3.8.2001 onwards raising derogatory and offensive slogans as a result of which, the business in the Restaurant was adversely affected. It is further stated in the plaint that workmen have been holding demonstration and indulging in other illegal activities disrupting the operations and blocking the ingress and egress to and from the restaurant despite repeated advice of the management. It is further stated in the plaint that defendants No.6 and 7 being led by other members are openly instigating the workmen of plaintiff to resort to stoppage of work and also directing the workmen of the plaintiff to hold regular demonstration, dharna in front of the plaintiff restaurant. They are also being instigated to resort to picketing and not to allow the patrons to the restaurant. According to the plaintiff open threats have been issued that if any employee acted against the mandate issued by the Union, he would be physically beaten up.

9. It is further stated in the plaint that restaurant of the plaintiff is highly reputed and speciality restaurant which have frequently very large number of foreigners besides diplomats and other high dignitaries. If the defendants are allowed to hold demonstrations and indulge in other illegal activities and stopping the ingress and egress to and from the restaurant, it would not only adversely affect the business but also adversely affect the reputation of the restaurant which the plaintiff has been able to build over the years.

10. Decree for permanent injunction is thus sought in this regard.

11. Summons of the suit were sent to the defendants. They appeared through their counsel and stated that though there was a memorandum of settlement which had arrived at between the plaintiff and defendants yet the management of the plaintiff was not talking to the defendants. This court directed both, plaintiff and the defendants to sit together and to sort out the matter on the basis of memorandum of settlement dated 7th August, 1997. The matter was thus

posted for hearing on 28th February, 2002. On the said date, learned counsel for the defendants submitted that the defendants proposed to file some undertaking for the consideration of the Court. Matter again stood adjourned to 23rd April, 2003. No undertaking was, however, filed for quite some time and, Therefore, the Court finally ordered the defendants to file written statement. Since no written statement was filed despite opportunity afforded to the defendant nor did any one appeared on behalf of the defendants on 30th September, 2002 as such defendants were proceeded ex parte. However, during the continuation of the proceedings, the defendants filed undertaking which find place on record. No written statement was filed by them.

12. True, the right to freedom of speech and expression is guaranteed under the Constitution of India but the same is subject to reasonable restrictions as enshrined under article 19 of the Constitution of India. The Trade Unions or their office bearers can resort to demonstration/dharma but in peaceful manner and not in the manner as alleged by the plaintiff in their plaint. Legitimate rights of the Unions can be preserved by permitting them to hold demonstration at a reasonable distance from the premises of the plaintiff or the residence of their managing partners as plaintiff to have a right granted under the Constitution of India to carry on their trade which right is being threatened by the defendants by sending various letters to the plaintiff putting them in fear of carrying on their business legitimately.

13. Similar question came up before Hon"ble Mr.Jusitce J.D.Kapoor where too the plaintiff received a letter from defendant No.1, Union threatening a massive demonstration before the plaintiff bank situated at Parliament Street. While relying on another judgment rendered by Hon"ble Mr.Justice Anil Dev Singh, reported in 1991, 2nd 792, justice J.D.Kapoor held that " what was relevant as to the right to freedom of speech and expression for the purposes of holding demonstration and what was the nature and extent of right to hold demonstration and whether such right was an absolute right in terms of article 19 of the Constitution of India, it was held that the legitimate right of the Unions could be preserved and protected only by allowing them to hold demonstration at a distance of 50 or 100 metres from the premises of the defendants".

14. Similar judgment of like nature is also reported in Apex decision Vol-7, 2001, Delhi where too while placing reliance on the judgment, it was held that the defendants be restrained from holding demonstration/dharmas within a distance of 100 metres from the office premises of the Director subject to the condition that they would choose a time when no classes are held in the vicinity nor would create such situation that may vitiate the atmosphere of the educational institutions. In the instant case also, the defendants threatened the plaintiff to hold demonstration/dharmas in front of the restaurant of the plaintiff. Although, they have a right to redress their grievances by such means but they cannot prevent the plaintiff or their customers from gaining entry to the Restaurant and if it is allowed to be done, it shall also violate the right of the plaintiff to carry on

their business smoothly.

15. Having perused the affidavit filed by the plaintiff by way of evidence and also having gone through the undertakings given by the defendants and also taking into consideration that no written statement was filed by the defendants, the suit of the plaintiff deserves to be decreed, defendants being ex parte.

16. The plaintiff has been able to establish their case by filing various documents including undertakings and the affidavit whereas there is no contest from the side of the defendant.

17. Consequently decree for permanent injunction is passed in favor of the plaintiff and against the defendants restraining the defendants, their agents, their officers, their members, or anybody acting for and on their behalf, from holding any demonstration, dharna etc. within a radius of 200 metres from the boundary walls and entrances of the Restaurant at Connaught Place, New Delhi, and at the residence of the Managing Partner, Mr.Sunil Lamba at N-23, Panchsheel Park, New Delhi" and further restraining them from instigating and abetting other employees for holding demonstrations, shouting slogans using loudspeakers and microphones resorting to gherao and picketing and from interfering in any manner, whatsoever, in the ingress and egress of the officers, employees staff members, patrons, guests, raw material, vehicles etc. to and from the plaintiff Restaurant.

18. Decree sheet be drawn up accordingly.