

(2013) 05 DEL CK 0139

In the Delhi High Court

Case No : Writ Petition (C) No. 36 of 2013

M/s. Ambuja Hotels and Real Estates (P) Ltd.

APPELLANT

Vs

Chief Commercial Manager, Northern Railway and Another

RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:

Citation : (2013) 05 DEL CK 0139

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Jayant Bhushan with Mr. Pradeep Ranjan, for the Appellant; Joydeep Mazumdar, Soumya Dutta, Ms. Samina Sheikh and Mr. Rohit Dutta, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—The petitioner before this Court was granted license by the respondent Indian Railway Catering and Tourism Corporation Ltd. (IRCTC), to manage onboard catering services on Train no. 12439-40, for a period of five years with effect from 7.10.2001 and an agreement in this regard was executed between the parties on 8.11.2001. The said license was renewed for a period of five years with effect from 17.10.2006, thereby permitting the petitioner to provide catering services till 16.10.2011. Vide letter dated 16.12.2011, the aforesaid contract was extended till 20.1.2012 or till finalization of new contract by the Northern Railway, whichever was to happen earlier. Subsequently, vide agreement dated 28.3.2012 executed between the Chief Commercial Manager, Northern Railway and Ms. Somia Singh, a license to manage onboard catering services in Train no. 12439-40 was granted for a period from 21.1.2012 to 20.1.2013.

Vide letter dated 18.12.2012, Northern Railway invited quotations from the existing catering service providers of New Delhi-Ranchi-New Delhi Rajdhani Express train for providing catering services in Train no. 12439-40 New Delhi-Ranchi-New Delhi Rajdhani Express, for a period of six months, which could be

further extended for another six months or till awarding of a new mobile catering licence by the Railways following Standard Bid Document (SBD), whichever was earlier. Being aggrieved from the decision of the Northern Railways to invite fresh quotations, the petitioner is before this Court seeking cancellation/withdrawal of the invitation dated 18.12.2012 and also seeking a direction that it can participate in future short-term tenders and should not be excluded only on account of not being an existing caterer on Rajdhani-Shatabdi Express Train.

In their counter affidavit, the respondents have stated that there was a serious incident of food poisoning in Train no. 12440 on 11.5.2012 when several passengers who had consumed food served on the aforesaid train fell seriously ill. By serving such food, the petitioner committed breach of the terms of the license requiring it to maintain high standards with regard to the quality, hygiene and presentation. A penalty of Rs. 2.50 lac was imposed upon the petitioner for committing breach of the terms by serving food which resulted in food poisoning to a number of passengers. The said penalty was recovered from the pending bills of the petitioner with its consent and without any objection being raised by it. A show cause notice dated 15.5.2012 was thereafter issued to the petitioner requiring it to show cause as to why the catering contract in respect of Train no. 12439-40 be not terminated. It is also stated in the counter affidavit that when a number of passengers traveling in Train no. 12440 complained of stomachache, vomiting and loose motions on account of food poisoning on 11.5.2012, a medical team comprising of five doctors, six nurses, two OT Assistants and four Assistants was deputed to attend the affected passengers at Mugal Sara Junction on 12.5.2012 and they were found suffering from acute gastric problems. On inspection of the pantry car of the train, a number of deficiencies were noticed. The deficiencies included lack of cleanliness and damage to the hot case. It was also found that the lights and electrical appliances were not properly switched off during night hours. On inspection of the base kitchen by the team of officers, the same was found to be in a very poor condition. It is further stated in the counter affidavit that the decision not to extend the contract of the petitioner and to invite fresh quotations was taken, considering the performance of the petitioner.

2. When this petition came up for hearing on 4.1.2013, it was pointed out by the learned counsel for the respondents that the petitioner had participated in the fresh bid and the tenders had been opened on 3.1.2012. During the course of arguments, the learned counsel for the respondents informed the Court that as against the earlier license fee of Rs. 20,69,899/-, the petitioner has submitted license fee of Rs. 38,35,000/- while submitting fresh bid in response to the letter inviting fresh quotations and in fact the bid submitted by the petitioner is the highest bid.

3. Admittedly the license granted to the petitioner expired by efflux of time on 20.1.2013 and therefore this is not a case of premature termination of the contract. To this extent, the petitioner can have no grievance on account of non-renewal of the said license.

4. During the course of arguments, the learned senior counsel for the petitioner drew my attention to the letter dated 31.12.2012 issued by the Railway Board to the Chief General Manager of all the Zonal Railways, informing them that since revised guidelines were yet to be issued and would take some time, it has been decided that the Zonal Railways may permit further extension to mobile catering contracts for a period of four months with effect from 21.1.2013 or until finalization of a new contracts based on revised SBD Guidelines issued by the Board, whichever is earlier, subject to fulfillment of the conditions mentioned in the said letter. This decision has been taken with a view to ensure uninterrupted catering services to the Railway passengers. The decision of the respondents to invite fresh quotations was assailed by the learned senior counsel for the petitioner on that ground that (i) the petitioner was discriminated against by not extending the license granted to it while extending the similar licenses granted to other caterers, (ii) no show cause notice or opportunity of hearing was given to the petitioner before deciding not to extend the licence, (iii) the decision alleged to have been taken by the respondents not to extend the license granted to the petitioner was not communicated to the petitioner, and (iv) the petitioner has been subjected to double jeopardy by firstly imposing penalty of Rs. 2.50 lac on it and then not extending the license granted to it while extending the license of the other caterers.

5. A perusal of the letter dated 31.12.2012 sent by the Railways to the Chief Commercial Managers of all the Zonal Railways would show that the said letter was issued in continuation of certain earlier letters dated 29/30.12.2010, 2.2.2011 and 1.7.2011 with respect to grant of extension to mobile and static contracts until finalization of SBD. It was stated in the said letter that such extension would be based upon the satisfactory performance, subject to payment of old dues and withdrawal of court cases, if any. The decision conveyed vide letter dated 31.12.2012 cannot be read in isolation and has to be read in continuation and with reference to the earlier letters mentioned therein, meaning thereby that extension of existing contracts was to be based upon satisfactory performance of the concerned caterer. In other words, in case services of a licensed caterer were not found to be satisfactory, the decision to extend the license was not to apply to such a caterer/licensee. Even otherwise, it would be difficult to even suggest that the decision conveyed vide letter dated 31.12.2012 envisaged across the board extension of all the existing licensees since irrespective of the performance of the licensees. No licensor in my view is expected to grant extension where the services rendered by the licensee are not found to be satisfactory or up to the mark and therefore the condition of performance to the satisfaction of the licensor would be deemed to be implicit in any such decision. A general decision to extend the licenses therefore shall not apply to a caterer/licensee whose performance is found to be unsatisfactory or below the expected standards of service.

6. The caterers are engaged by the Indian Railways for the purpose of providing wholesome hygienic and healthy meals to the passengers traveling on various

trains. If the caterer entrusted with providing catering services onboard train supplies food which is unhygienic and unhealthy resulting in a number of passengers developing serious stomach infection on account of consumption of such food, the Railways would be wholly justified in not extending the contract of a caterer guilty of supplying such food to the passengers. Besides bringing bad name to it and thereby tarnishing the reputation of Indian Railway such an act would be extremely prejudicial to the public interest since the passengers would continue to consume food supplied by a caterer who has been found to be guilty of supplying unhealthy and unhygienic food to them in the past. In my view, no exception at all can be taken to the decision of the Indian Railways not to extend the license of a caterer who has been found guilty of such a gross misconduct/negligence in the matter of rendering catering services to the passengers. Therefore, it cannot be said that the petitioner has been discriminated against by not extending the license granted to it, which otherwise has expired by efflux of time.

7. During the course of arguments, it was contended by the learned counsel for the petitioner that the license of some other caterers who were also found guilty of supplying unhygienic food to the passengers has been extended by the Indian Railway. This of course was disputed by the learned counsel for the respondents. Be that as it may, even if the Indian Railway has extended the license of any caterer who has been found guilty of providing unhygienic and unhealthy food to the passengers such an act cannot be defended or supported in any manner and the respondents cannot be directed to extend the license of the petitioner, despite the petitioner having been found guilty of providing unhygienic and unhealthy food to the passengers merely because it committed a mistake by extending licenses of some other caterers who were found guilty of similar malpractices.

8. As regards, want of show cause notice and opportunity of hearing, since the license of the petitioner expired by efflux of time, no such notice or opportunity of hearing was required to be given to it. The petitioner, in my view, was not entitled to any show cause notice or an opportunity of hearing before deciding not to extend its license, which otherwise had expired by efflux of time. Issue of a show cause notice or grant of opportunity of hearing would arise only some legal right is sought to be infringed or denied as the petitioner had no legal right to continue the catering after expiry of the license by efflux of time.

9. As regards alleged double jeopardy, I find no merit in the contention. The decision of the respondents not to extend the license of the petitioner cannot be construed as imposition of a penalty. In any case, the imposition and recovery of penalty on account of serving unhealthy and unhygienic food to the passengers does not preclude the respondents not to extend the license of the petitioner.

10. A perusal of the additional documents filed by the respondents would show that the Competent Authority i.e. Chief Commercial Manager (CCM), noted that the contract awarded to the petitioner was expiring on 20.1.2013 and short-term

quotations may be called so as to ensure timely finalization of the new contract. The decision to invite short-term quotations, after noticing that the contract of the petitioner was coming to an end on 20.1.2013, is nothing but a decision not to extend the contract which was awarded to the petitioner. Therefore, it cannot be said that no decision was taken by the respondents not to extend the contract which was awarded to the petitioner. Admittedly, the letter dated 18.12.2012 was sent to the petitioner asking it to submit quotations for providing catering services in Train no. 12439-40. When fresh quotations for the above referred catering services were invited from the petitioner, obviously it came to know that the respondents had decided not to extend its contract. Otherwise, there would be no occasion to invite fresh quotations for catering services which were being provided by the petitioner company. Therefore, there is no merit in the contention that the decision not to extend the license of the petitioner was not conveyed to it. In fact, the petitioner did submit fresh quotations in response to the letter dated 18.12.2012 and submitted a bid much higher than the bid on the basis of which the license was earlier granted to it.

The learned counsel for the petitioner relied upon the decision of the Supreme Court in Greater Mohali Area Development Authority and Another Vs. Manju Jain and Others, holding that an order passed but not communicated to the party concerned does not create any legal right capable of being enforced through Court of law and such an order does not become effective till it is communicated. This judgment does not apply to the facts of the present case since on receipt of the letter dated 18.12.2012 asking for fresh quotation, the petitioner came to know that the contract awarded to it was not being extended.

For the reasons stated hereinabove, I find no merit in the writ petition and the same is hereby dismissed. There shall be no orders as to costs.