

(2012) 04 CAL CK 0117
In the Calcutta High Court
Case No : Writ Petition No. 23647 (W) of 2008

M/s. Anamika Farm

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 25-04-2012

Acts Referred:

Citation : (2012) 04 CAL CK 0117

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Bratindra Narayan Roy and Mr. L.C. Mian, for the Appellant; Joydeep Kar, Dipayan Choudhury and Mr. S. Bhattacharya For the Respondent No. 2, Mr. Subrata Talukdar and Mrs. Sucharita Chatterjee For the State, for the Respondent

Judgement

Tapen Sen, J.—In this Writ Petition, the Petitioner prays for an Order commanding upon the Respondents to withdraw the Notice pertaining to termination of the agreement dated 21.2.2007 which was executed by and between the Petitioner and the West Bengal Live Stock Development Corporation Ltd.;

The Petitioner further prays for an Order commanding upon the Respondents to remove the padlock put by the said Corporation on the business premises of the Petitioner and allow him free access to the premises for purposes of operating the business. The Petitioner also prays for a direction directing the authorities to restore electricity and water supply to the premises.

The Petitioner also makes a prayer for damages caused by the corporation by forcibly entering into the premises and disconnecting power supply.

The Petitioner has stated that it is a Proprietorship Firm which is involved in the business of poultry, production of chicken with the help of modern equipment and sale through different units and allied business.

On 21.1.2006, a Tender Notice was circulated by the said Corporation in the

newspaper (Aajkal Patrika) inviting tenders from interested persons/concerns for operating a marketing centre at Belgachia (Raja Manindra Road, Gariahat, and Jodhpur Park).

2. Pursuant to such Notice, the Petitioner participated and his tender was accepted. A work Order was issued and although the Petitioner's offer was in respect of marketing stalls at Belgachia, Gariahat and Jodhpur Park and although the same were accepted, he was however allowed to carry on business at 37, Belgachia Road as a Chicken Semi-automatic Processing Plant,

Fast Food Counter, Garden and Air-conditioned Restaurant. Thereafter, in the year 2006, an agreement was entered upon by and between the Petitioner and the Corporation and thereafter, the Petitioner started a Chicken Processing Unit on and from 22.2.2006. Subsequently, the second phase being the Garden Restaurant was also started.

The Petitioner has stated that for purposes of running such a business, the Petitioner had to make substantial investment for renovating the Unit and for purchasing costly equipment. It took loan from the Indian Overseas Bank, Tegharia Branch. Thereafter, one registered Agreement dated 21.2.2007 was executed by and between the Corporation and the Petitioner. It was agreed that the Petitioner being a Franchisee, shall pay to the Corporation a sum of Rs. 20,000/- (Rupees twenty thousand) as royalty for every quarter, payable in advance with the current quarter for the first phase and then Rs. 30,000/- (Rupees thirty thousand) for operation of the fast food restaurant quarterly as royalty, in advance before the beginning of the quarter. In the Agreement, it was also stipulated that the Petitioner shall deposit a sum of Rs. 40,000/- (Rupees forty thousand) for the first phase i.e. for the operation of the processing counter and Rs. 60,000/- (Rupees sixty thousand) at the time of opening of the second phase i.e. the Restaurant, as security deposit, to be refunded on the expiry/termination of the agreement after deducting any sum that may be due and payable to the Corporation by the said Franchisee.

3. The Petitioner has stated that he also paid a sum of Rs. 1,00,000/- (Rupees One lakh) towards security deposit for carrying on the chicken processing unit and the Restaurant and the said amount is still lying with the Corporation.

4. While the Petitioner was carrying on business, the Avian Flu (Bird Flu) struck in many parts of India as a result of which, the chicken and chicken related business suffered. The said flu caused intensive damage to the poultry industries. The Petitioner has stated that since the outbreak of bird flu, its business suffered and a Representation was sent to the Principal Secretary, Government of West Bengal (who is also Chairman of the Corporation) for extending relief. Similar request was made to the Managing Director also.

The Petitioner has stated that due to the impact of the bird flu, the Petitioner was not in a position to make payment of royalty. On 11.3.2008, a Meeting was held in the Chamber of the Managing Director of the Corporation in which, the

Petitioner expressed its difficulties. The Representatives of the Petitioner were assured that the authorities will consider the prayer of the Petitioner sympathetically which included grant of time to pay the outstanding dues.

5. On 11.6.2008, however, the Managing Director issued a Memo demanding payment of royalty in respect of the Belgachia Stall and Restaurant being a total sum of Rs. 80,000/- (Rupees eighty thousand) towards royalty and Rs. 90,000/- (Rupees ninety thousand) towards the Restaurant. The total claim was for Rs. 1,70,000/- (Rupees One lakh seventy thousand). The Petitioner filed Representation before the authorities informing them about the financial crisis and the difficulties being faced and prayed for time and also prayed for some exemption. It also made part payment of Rs. 20,000/- (Rupees twenty thousand) towards royalty for the period 16.8.2007 to 15.11.2007 towards Belgachia Stall thereby bringing down the total outstanding dues to Rs. 1,50,000/-. The Petitioner has stated that out of this, Rs. 1 lakh is already lying in deposit in the Corporation towards security deposit which the Petitioner had earlier paid.

6. Thereafter, on 2.9.2008, another Memo was issued by the Corporation. The Petitioner sent its representatives to the Office of the Managing Director for a meeting on 4.9.2008. A proposal was submitted on behalf of the Petitioner wherein they submitted a proposal and also wanted to hand over a Cheque of Rs. 50,000/- (Rupees fifty thousand). The Managing Director however refused to take the Cheque. On the said day i.e. on 4.9.2008, the Petitioner however offered to pay 5 post-dated Cheques towards different heads and submitted a letter to that effect vide Annexure-P/7.

7. However, without any further Notice, some representatives of the Managing Director of the Corporation entered into the Office of the Petitioner on 5.9.2008 and disconnected the water line as well as the electricity connection although the Petitioner was enjoying electricity on the basis of a sub-meter provided by the Corporation. The matter was reported to the local officer-in-charge but he refused to accept the Complaint and therefore, the same was sent by registered post vide Annexure-P/8 at Pages 53 to 54.

8. It is stated on the same day in the evening, the Managing Director and his associates forcibly entered into the premises and drove out the employees of the Petitioner threatening them with dire consequences. They locked the gates of the premises and therefore on 6.9.2008, the matter was reported to the Officer-in-charge of Tala Police Station vide Annexure-P/9.

9. The Petitioner has stated that the Office and the business premises have been locked forcibly at the instance of the Managing Director of the Corporation and therefore, it is not able to enter nor is it able to carry on business. The Petitioner has stated that a number of equipment and machinery are lying in the premises, the value of which, would be not less than Rs. 10 lakh and if they are left uncared for, they will be destroyed. The Petitioner has stated that perishable goods like chicken meat, ice-cream, ready food products and grocery articles

including green vegetables are kept in the refrigerator worth Rs. 50,000/- Rupees fifty thousand) but since the electricity has been disconnected, these goods are getting damaged.

10. An Affidavit-in-opposition has been filed by the Corporation which has been duly sworn by its managing Director. In the said opposition, while accepting the fact that the Petitioner was awarded a contract for chicken retail outlets at a consideration of Rs. 20,000/- (Rupees twenty thousand) per quarter and fast food counter, garden and air-conditioned restaurant at a consideration of Rs. 30,000/- (Rupees thrity thousand) per quarter, both, payable in advance, it was obliged to pay water tax on proportionate basis including maintenance charges of the water line. It was also obliged to pay electricity charges. According to them, the Agreement of 2007 was in substitution of an earlier agreement of January 2006 which was at the instance of the Petitioner which wanted a fresh Agreement to be executed after the bird flu of 2006 was over. However, according to them, the Petitioner failed to pay quarterly royalty and water tax as well as electricity charges in violation of the Agreement of 2007. According to them, the bird flu was in 2006 and it was controlled in 2006 itself. It was not in 2007 and in any event, the Petitioner was obliged to comply with the Agreement and pay the dues regularly. The authorities had granted moratorium for one year in respect of the payment of the principal amount as well as on the interest payable to the Bank/financial institutions, rescheduling the term loan and also reducing the interest at the rate of 4%. According to them, the Petitioner has enjoyed such benefits but in spite thereof, failed and neglected to pay the nominal quarterly payments to the Corporation. These Respondents have stated that the Petitioner committed default in payment of the dues to the Corporation and it tried to obtain a waiver for payment of the dues on the pretext of bird flu of 2006. They have disputed and denied the contention of the Petitioner that on 4.9.2008 it had wanted to hand over a Cheque for Rs. 50,000 (Rupees fifty thousand) or that the Corporation refused to take such Cheques.

11. They have also denied the allegations of forcible entry into the premises and with regard to the letter written to the Police Station on 5.9.2008, these Respondents have stated that it is an afterthought. According to them, the Agreement was already terminated on 21.2.2007 whereafter the Petitioner itself locked up the Belgachia unit and abandoned the same. They have brought out a further allegations in paras 15 and 16 of the said Affidavit-in opposition, which read as follows:-

"15. Save what appears from record the allegations made in paragraphs 24 and 25 of the petition are denied and disputed. Whatever machineries of the petitioner were kept at the subject property was locked by them. I say that I have been informed that the petitioner caused removal of goods such as Chicken, Ice creams, ready made Food products and grocery articles from the said unit few days prior to abandoning the said unit and that there were hardly any perishable goods at the said unit thereafter. In any event in terms of the

order dated 29th January, 2009 passed by the Hon"ble Justice Sanjib Banerjee the Special Officers have been directed to make an inventory of the articles lying there at. A copy of the said order dated 29th January, 2009 is annexed hereto and marked "R-1".

16. The allegations made in paragraphs 26 and 27 of the petition are denied and disputed. It is denied that the entire action on the part of the authority was forcible entering into the business premises of the petitioner and closing of business without adopting due process of law as alleged or at all. It is denied that without issuing notice of termination of the agreement and without adopting the due process of law the respondent authority stopped the business of the petitioner by exercising of marshal power and exercising of arbitrary force as alleged. I say that the petitioner accepted the termination inter alia by a letter dated 10th September, 2008 received on 15th September, 2008 surrendering two Franchisee shops at Kasba and Haltu. A copy of the said letter is annexed hereto and marked "R-2". In spite of such surrender, the petitioner in the name of its associate, Anamika Hygenic Chicken has been wrongfully carrying on its business using the logo "Suravi" of the Corporation inter alia at 36A, K.N. Sen Road, Kasba, Kolkata- 700042 even after such surrender."

(Quoted)

12. The Petitioners, in their Affidavit-in-opposition have disputed the contentions raised by the Respondents and have stated that electricity and water tax to the extent of its share has been paid up-to-date and that the dues with regard to the payment of royalty is unavailable at the moment under compelling circumstances namely bird flu. They have stated that the impact of the bird flu continued upto 2008 and it is not correct to say that it was controlled in 2006 itself. They have also repeated and reiterated the statements made in the Writ Petition.

13. It appears that on 29.1.2009, Hon"ble Mr. Justice Sanjib Banerjee had directed the appointment of a Special Officer to make an inventory of the equipment and machinery lying with the Petitioner's farm at Belgachia. Mr. Om Narayan Rai, an Advocate of this Court was appointed. Thereafter, on 30.11.2011 Mr. Om Narayan Rai filed his report in a sealed cover and the Office was directed to make three sets of photocopies of the said report and serve them upon the learned Counsel appearing for the Petitioner, Mr. Joydeep Kar appearing for the learned Counsel for the Respondent No. 2 as well as Mr. Subrata Talukdar appearing for the State. He (Mr. Om Narayan Rai) is therefore now discharged. Page 36 of the Writ Petition is a copy of the Agreement for Royalty, which contains, inter alia, Clause 20 which stipulates that any disputes, differences or questions which may arise at any time after the signing of the Agreement between the Corporation and the Franchisee shall be referred to the sole Arbitration of the Chairman of the Corporation and his decision shall be final and binding upon both the parties. In para 13 of the Writ Petition, the Petitioner has categorically stated that the Principal Secretary, Government of West Bengal, Department of Animal Resources Development, is also the Chairman of the West

Bengal Live Stock Development Corporation Ltd. Specific allegation has been made that on 5.9.2008, the Managing Director of the Corporation and his associates forcibly entered into the business premises and by using force, drove out the employees from the business premises. These statements have been denied in para-14 of the Affidavit-in-opposition wherein the Respondents have made an allegation that the Petitioner itself locked up the Belgachia Unit and abandoned the same and therefore, in order to secure the property of the Petitioner as also of the Corporation, another lock was put by Corporation. Thus, whether the Managing Director and his associates made a forcible entry into the premises and put their lock or whether the Petitioner had abandoned the Unit, become disputed questions of fact. Under these circumstances, the submissions that the impugned action is unconstitutional inasmuch as the eviction has been sought to be resorted to without following the due process of law also becomes a question that cannot be decided in a Writ Petition as disputed questions of fact are involved. However, it is evident that there is an Arbitration Clause and there is no reason why the Petitioner should not avail such a remedy. The Chairman, before whom the arbitration has to be invoked, will consider all aspects of the matter if the matter is referred to his Arbitration.

With the aforesaid observations and directions, the Writ Petition is disposed of.

Upon appropriate Application(s) being made, urgent photostat Certified copy of this Judgment, be given/issued expeditiously subject to usual terms and conditions.