(2020) 08 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 9875 Of 2020

M/S Proactive In And Out Advertising Pvt. Ltd. — APPELLANT

Vs

Airport Authority Of India — RESPONDENT

Date of Decision : 11-08-2020

Acts Referred:
Constitution Of India, 1950 — Article 226

Citation : (2020) 08 P&H CK 0028

Hon'ble Judges : S.Muralidhar, J;Avneesh Jhingan, J

Bench : Division Bench

Advocate : Varun Singh, Vivek Singla

Final Decision : Disposed Of

Judgement

Dr. S. Muralidhar, J

1. This is a writ petition questioning the demand of concession fee in the sum of Rs. 2,19,10,897/- sought from the Petitioner by the

Respondent/Airport Authority of India, initially through Minutes of Meeting dated 25th May, 2020 and later, through a letter dated 1st July, 2020.

2. When the petition was first listed on 15th July, 2020, the Court noted that the Respondent was already represented through counsel and had an

advance copy of the petition. The Court permitted the Respondent to file a short affidavit.

3. Pursuant thereto, an affidavit dated 20th July, 2020 has been filed by the Respondent, where INTER ALIA the attention of the Court has been

drawn to Article 22.1 of the Concessionaire Agreement (â??CAâ??) dated 11th December, 2019, executed between the Respondent and the

Petitioner, in terms of which the Petitioner was liable to pay the Respondent for the actual advertisement area made available to it at the Shri Guru

Ram Dass Ji International Airport, Amritsar. The said Clause 22.1 reads as under:-

â??22.1 â?" Dispute Resolution â?

Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Concession Agreement (including its

interpretation) between the parties, shall be governed and regulated in accordance with the provisions contained at Clause 5.16 of the RFP and in

accordance with the provisions of Arbitration and Conciliation Act, 1996 as amended from time to time.â??

4. It is further pointed out in the abovementioned affidavit that the said Clause 22.1 has to be read in conjunction with Clause 5.16 of the request for

proposal (â??RFPâ??), which also provided for â??Dispute Resolutionâ??. Clause 5.16 of the RFP envisages a two-tier mechanism, where the

concessionaire in the first place should try to resolve the dispute by mutual consent by raising it before a Dispute Resolution Committee

(â??DRCâ??) of the Respondent and, if the dispute remains unresolved for 45 days after date of the concessionaire having submitted a written

application, it is open to the concessionaire to seek arbitration under the Arbitration Conciliation Act, 1996.

5. It is pointed out that the Petitioner did invoke the dispute resolution mechanism by seeking the constitution of the DRC, but that on account of the

Covid-19 situation, the sitting of the meeting which was held to be on 18 th May, 2020 was postponed to 25th May, 2020. The minutes of the said

meeting of 25th May, 2020 have been annexed as Annexure P-15 to the petition and the decision taken at this meeting has been assailed in the

petition. It is the case of the Respondent that the Petitioner should avail all the further remedies in terms of the CA.

6. When a query was put to Mr. Varun Singh, learned Counsel for the Petitioner about maintainability of the present petition, in the light of the dispute

resolution clause as referred to above, he referred to three decisions of the Supreme Court, the first of which is Harbanslal Sahnia v. Indian Oil

Corporation Ltd., (2003) 2 SCC 107. The Supreme Court in this decision reversed the decision of the High Court declining to exercise its jurisdiction

under Article 226 of the Constitution of India in a case of termination of an oil dealership, since there was an arbitration clause in the dealership agreement. In para 7 of the said decision the Supreme Court observed as under:-

â??7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and

therefore the writ petition filed by the appellants was liable to be dismissed, suffice it to observe that the rule of exclusion of writ jurisdiction by

availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case in spite of availability of the alternative

remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the

Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or

the vires of an Act and is challenged [See Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors., (1998) 8 SCC 11. The present case

attracts applicability of first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter came to be terminated

for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself

instead of driving them to the need of initiating arbitration proceedings.â??

7. As noted in hereinbefore in para 7 of its decision, the reason for interference by the Supreme Court was the termination of the dealership

agreement itself â??for an irrelevant and non-existent causeâ??.

8. On the other hand, in the present case what is sought to be assailed is the demand raised for the concession fee in terms of the CA, which

admittedly subsists. Although, Mr. Varun Singh, learned Counsel for the Petitioner, wanted the Court to examine certain documents to demonstrate

that the demand was without basis, given the stand taken in the short affidavit filed by the Respondent, justifying the raising of such demand, it is plain

to the Court that the Petitioner in fact raises a disputed question of fact, which cannot be examined in a writ petition.

9. Reliance is next placed on the decision in Hindustan Petroleum Corporation Limited v. Super Highway Services (2010) 3 SCC 32,1 which again

was a case involving the termination of an oil dealership agreement. In para 35 of the said decision, it was observed as under:-

â??35. Although, Clause 68 of the Dealership Agreement refers to arbitration, it is unfortunate that the said question was not raised before the High

Court. It is now too late in the day for the petitioner Corporation to contend that in view of Clause 68 of the Dealership Agreement, the Respondent

No.1 was not entitled to seek its remedy before the writ Court. In any event, by filing appeal against the order of the learned Single Judge, the

Petitioner herein also submitted to the jurisdiction of the writ Court, without objecting to the same.â??

10. It appears that in this decision the only reason why the Supreme Court did not permit the Appellant before it to raise the objection of availability of

an alternative remedy was that such an objection was not raised before the High Court in the first instance. In the case on hand, as already noticed,

the Respondent has raised the objection at the outset.

11. The third decision referred to is Union of India v. Tantia Construction Pvt. Ltd. (2011) 5 SCC 697. A careful examination of the said decision

reveals that there was an alteration of the design of the rail over-bridge that was to be constructed by the Respondent, leading to a substantial

alteration of the plan itself and which amounted to converting the contractorâ??s project into â??a completely new projectâ??. It appears that it was

in those peculiar circumstances that the Supreme Court was of the view that it was a case of gross injustice, which would justify interference by the

High Court in its writ jurisdiction, notwithstanding the existence of alternative remedy. Therefore, this decision is also distinguishable from the case at

hand and is of no assistance to the Petitioner

12. The Court is unable to agree with Mr. Varun Singh, learned Counsel for the Petitioner, that in the present case this Court should exercise

jurisdiction under Article 226 of the Constitution.

13. The Court makes it clear that it is declining to exercise its jurisdiction because it is of the view that CA provides the Petitioner with an efficacious

and effective alternative remedy, which can be invoked by the Petitioner. It may be noted that under the Arbitration and Conciliation Act, 1996, even

interim relief can be efficaciously sought by the parties to the arbitration agreement and in relation to any dispute that may arise under the CA.

14. In the circumstances, the Court declines to examine the factual dispute that has been raised in the petition and leaves it open to the parties to avail

other remedies available to them in accordance with law.

15. The petition is dismissed in the above terms. The pending application is

disposed of.

