

(2009) 11 DEL CK 0207
In the Delhi High Court
Case No : OMP No. 638 of 2009

Naresh Maheshwari

APPELLANT

Vs

Commissioner, Transport Department and Others

RESPONDENT

Date of Decision : 03-11-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2009) 11 DEL CK 0207

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Narveer Dabbas, for the Appellant; Elign Matt John, for Anju Bhattacharya, for respondents No. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The present petition u/s 34 of the Arbitration and Conciliation Act, 1996 seeks to challenge the award dated 15.7.2009 passed by the sole Arbitrator whereby the petitioner has been refused remission of the license fee which was payable for a parking site contract and his claims for alleged losses caused to him have also been dismissed.

2. The counsel for the petitioner has urged two basic contentions before this Court. The first contention urged by him is that a wall was constructed whereby entrance to the parking was changed and the second contention is that a free parking site was allotted for the staff of the respondent and in which private vehicles were allowed to be parked besides government vehicles and both of which reasons caused losses to the petitioner entitling it to claim remission of 50% of the licence fee and also succeed in its claim of damages.

3. The scope of a hearing in petition u/s 34 of the Act is now well settled. Unless the reasons are wholly perverse which no reasonable man could have arrived at or unless the Award is illegal or against the provisions of the contract, a Court cannot interfere with the Award in a petition u/s 34.

4. I note that the Arbitrator has dealt with in detail both the contentions as were raised by the present petitioner for seeking remission of the license fee and claim of damages, and the Arbitrator in this regard has held as under:

7.1.2 The Estate Manager of the Respondent vide letter dated 24.4.2008, a copy of which has been produced by the Claimant with his rejoinder on 27.3.2009, inter-alia, indicated that the vehicles parked in the staff parking are of various Govt. staff working in Tower Block of ISBT and different state roadways corporations etc. It has also been clarified that car parking allotted to the Contractor/Claimant remain full all the time and the attendants of the Claimant allow the extra cars on the road, for which they have been warned and challaned many times. To this aspect, the Claimant has not been commented upon, although he has been representing through various complaints lodged with the Respondent that the vehicles other than of Transport Department are being parking in free parking zone. The Respondent in his counter reply has stated that free parking zone has never been put to tender process.

7.1.4 While considering the list of vehicles parked in the free parking site maintained by the Respondent, the Claimant did not specifically indicate the vehicles which were not of the Govt. Departments or without free parking stickers. Except two individual incidents of complaint against the Security Guards, no documentary evidence has been brought to my notice. The Respondent in his counter-reply has clarified that the free parking site had not been put to tender process and therefore, objection of the Claimant does not seem to be valid in view of the prevalent circumstances.

7.1.5 During proceedings, the Claimant did not indicate that there had been any reduction in the area of parking site so allotted under the contract. However, copies of complaints dated 09.9.2008 and 23.9.2008 against Shri Rajinder Singh and Shri Jitender Singh; Security Guards respectively regarding acceptance of fee for unauthorized parking of vehicles have been filed. The claimant also filed list of vehicles parking at the free parking zone during the period from 26.9.2008 to 6.10.2008. On perusal of 26-page list of vehicles filed by the Claimant with his affidavit as part of Ex.CW1/31 having been allowed by the Respondent for parking in the free parking site, it transpires that bunch of vehicles has been copied in the same repeat order on the same or other pages, just to reflect exaggerated figure of vehicles in a delicate manner and therefore, no reliance of the same can be laid on this unsigned/unauthentic list. Moreover, the Claimant did not produce any documentary evidence that the Security Guards were allowing parking of unauthorized vehicles in the free parking zone by charging fees on monthly or daily basis, except two individual incidents.

7.2 As for the claim for 20% remission in the license fee due to blockage of Main Entry Road by constructing a brick wall since 11.3.2008 is concerned, as stated above, the Respondent has clarified that the Claimant was allotted a specific site for running of his parking contract and there has not been any alteration or reduction in area. The main reason as argued by the Respondent is that with a

view to restricting entry of private vehicles encroaching upon the free parking sites, it was considered necessary to put a wall and it did not affect any terms of the contract. The Respondent was within his right to manage the free parking sites meant for Govt. and other vehicles in the best manner he considered necessary, keeping in view the smooth flow of vehicular traffic passing through and adjoining to ISBT. The Estate Manager of the Respondent vide letter dated 24.4.2008 clarified that boundary wall so constructed is to enhance the security arrangements and in no way affects the movement/passage of vehicles or parking. Further, the respondent in his counter-reply stated that the area of parking site in possession of the Claimant has not been reduced by the construction of wall at the entry gate. Had there been loss to the extent of 50% of the contractual amount i.e. Rs. 1.44 lac approx. per month; he would not have continued the parking site even for a single day beyond 09.8.2008. The claim of the Claimant for further 20% remission in the license fee on this account, in view of intentions in his own letters dated 30.6.2008, 06.8.2008, 06.2.2009 and 09.2.2009 is not considered justified and is, therefore, disallowed.

7.3 The Claimant has not produced any tangible documentary evidence in support of his contention that he suffered business loss to the tune of Rs. 10,00,000/-. As stated in the foregoing paras, had there been any loss to his business, he would not have, of his own volition, deposited four months' license fee, in advance, calculated at the existing rates stipulated in the original contract after the expiry of the contractual period and simultaneously made a submission even before the Hon'ble High Court of Delhi for restraining the Respondent from allotting the parking site to a third party or termination of his contract. The contract entered upon 10.9.2007 initially expired on 09.8.2008 but the Claimant was, however allowed extension, in the first instance, for two months i.e. upto 09.10.2008 by the Respondent vide letter dated 01.9.2008 at the same rate and the terms and conditions contained in the contract originally. As per information on record, the Claimant is still in occupation of the parking site. There is a common phenomenon that when a contractor/businessman suffers losses from his business, he would either take appropriate steps to overcome these losses (which according to the Claimant are estimated at Rs. 1.44 lac approx. per month) or shut down his business rather than to continue it beyond the date of expiry of the contractual period. In view of the facts and circumstances brought before me, the claim of the Claimant for Rs. 10,00,000/-towards business losses does not merit any consideration and is, therefore, dis-allowed.

(Emphasis added)

5. A reference to the aforesaid finding of facts arrived at by the Arbitrator show that no evidence has been led by the petitioner to show how any loss has been caused to him. In fact, the stand of the respondent before the Arbitrator was that the parking site used to remain to its full capacity at all time. I find that this stand of the respondent was justified because if the petitioner was suffering any losses, then, there was no question of the petitioner seeking a further extension

of the parking contract which was granted to him. In fact, not only extension was granted, the petitioner filed in this Court a petition (O.M.P. No. 374/2008) seeking to prevent allotment of the parking site to anybody else or prevent the respondent from terminating his contract, but which petition was dismissed. I note from the Award that though the contract expired way back after extension on 9.10.2008, the Award records that the parking site continues to remain in occupation of the petitioner, which now I am informed after the Award the petitioner/parking contractor has vacated. As regards the issue of claim of remission of license fee on the ground that free parking was allowed to the private vehicles in the free parking area, the Arbitrator has again by detailed reasoning found that this is not correct. In this regard, the Arbitrator has held that except two complaints, there is no evidence that the Security Guards allowed parking of the unauthorized vehicles in the free parking zone by charging monthly fees or fees on daily basis, except two individual incidents. Again the Arbitrator notes that if the parking contractor would have suffered losses, surely, he would not have continued with the contract and of which he not only got an extension but sought to prevent further allotment to other persons when the respondent by inviting tenders sought to allot the site to another person.

6. No fault can thus be found with Award that the petitioner is not entitled to reliefs as prayed because neither any loss has been caused to the contractor and nor has he proved the same.

7. In view of the aforesaid observations, I do not find any merit in the petition which is dismissed with costs quantified at Rs. 1,00,000/-especially, keeping in view the fact that the petitioner without any contractual right continued right from October, 2008 till after passing of the Award on 15.7.2009 remained in possession of the parking site and earned revenue therefrom. The costs shall be payable within a period of two weeks from today failing which it shall carry interest @ 18% per annum.

8. With these observations, the petition is disposed of.