

(2009) 08 DEL CK 0020

In the Delhi High Court

Case No : Writ Petition (C) 17530-31 of 2004

Poorvanchal Caterers

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-08-2009

Acts Referred:

Citation : (2009) 08 DEL CK 0020

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Brajesh Kumar, for the Appellant; Geetanjali Mohan, for UOI-Ministry of Railways/Railway Board, Ajit Kumar and S.K. Pabbi, for the Respondent

Judgement

Sanjiv Khanna, J.—Learned Counsel for the petitioner states that he is not receiving instructions from his client and therefore, cannot make any statement whether the petitioner is willing for arbitration.

2. Order dated 7th July, 2009 records that Rs. 3,53,500/- paid towards security was refunded to the petitioner by a cheque, which was dispatched on 18th August, 2008 by Chief Commercial Manager, Hajipur, Eastern Central Railway. Learned Counsel for the petitioner has not been able to controvert and deny the said averment till today.

3. The other disputes and claims raised by the petitioner are disputed commercial disputes.

4. The petitioner was awarded a catering contract for service in the Shramjeevi Express in the year 1992. The petitioner was liable to pay licence fee to the Railways for operating catering services in the aforesaid train. The aforesaid agreement expired in July, 1997. However, under an ad-hoc arrangement, they continued till 6th October, 1999.

5. In July, 2001, the petitioner filed a writ petition before the Patna High Court relying upon new catering policy announced by the Railways vide Commercial

Circular No. 58/2000. The petitioner had claimed right to renewal under the said policy. It appears that certain directions were issued by the Patna High Court in the writ petition. Copy of the decision/judgment of the Patna High Court has not been filed by the petitioner.

6. By letter dated 16th October, 2001, Chief Commercial Manager, Catering informed the petitioner that the contract/catering licence had been renewed for a period of one year. The petitioner was also informed that licence fee/security money would be fixed in terms of the Railway Board New Catering Policy of 2000 and the petitioner would be liable to pay the same. The petitioner was also required to execute an agreement but no written agreement was in fact executed. Thereafter vide letter dated 22nd October, 2001 the Railways fixed the new licence fee at Rs. 7,88,400/- per annum. The petitioner expressed his willingness to run catering services with effect from 1st November, 2001 and continued to provide services for a period of one year. He also paid the licence fee as demanded by the Railways. The renewal contract period expired after one year on 31st October, 2002 and was extended upto 31st October, 2004. The licence fee payable was enhanced on each occasion after one year. The petitioner, however, claims that the enhanced licence fee were paid under protest and objection.

7. The petitioner had again approached Patna High Court in CWJC No. 9549/2002 titled Poorvanchal Caterers v. Union of India and others claiming that the initial renewal for one year was wrong and the petitioners licence for providing catering services/pantry car services should have been renewed for five years. The writ petition filed by the petitioner was dismissed, inter alia, observing as under:

However, having regard to the decision of this Court in the earlier writ petition filed by the petitioner (Annexure R/2), which has been upheld by the Division Bench, vide Annexure R/3, holding that the petitioner has no indefeasible or absolute right in his favour and the respondents are not obliged or duty bound either to renew the licence or consider the case of the petitioner for renewal of the licence, this Court does not find any reason to go into any other question.

The writ petition is thus dismissed. The interim order dated 3.10.2002 is thus vacated and the respondents shall be free to proceed in the matter.

8. The petitioner had also filed a contempt application for disobedience of the earlier order passed in CWJC No. 1469/2001. Contempt application was also dismissed by the High Court of Patna vide order dated 27th June, 2004, which reads as under:

Heard the parties.

In the facts of the case, this Court does not find any good ground to take action against the opposite parties for alleged violation of order contained in Annexure-1. Hence, the contempt application is dismissed. Petitioner is aggrieved by having a shorter term by way of renewal than what has been given

to some other contractors. This grievance of the petitioner, if valid, may be pursued by him in accordance with law through appropriate proceeding.

9. In the CWJC No. 9549/2002, the petitioner did not specifically question and challenge the licence fee demanded by the Railways. Admittedly, the petitioner continued to make payment of the licence fee. By the present writ petition, which was filed in 2004, the petitioner now seeks refund of the licence fee paid during the period of 1st November, 2001 to 31st October, 2004. He also challenges the fixation of licence fee as per the new catering policy of the Railway Board dated 20th October, 2000.

10. The said policy was challenged before the Kerala High Court but was upheld by the judgment dated 3rd December, 2001. The said judgment has been upheld by the Supreme Court.

11. Learned Counsel for the petitioner relies upon Clause 14.6.4 of the Catering Policy-2000, which reads as under:

14.6.4 The enhancement of licence fee at the time of renewal should be based on actual sales turnover subject to a minimum of 10% increase of the prevailing licence fee at the time of renewal.

12. The respondents, however, rightly submit that the aforesaid clause is not applicable to the case of the petitioner as the licence of the petitioner had expired in 1997 and he was granted ad hoc extensions. The petitioner continued to provide catering/pantry car services under an ad hoc arrangement till these were terminated on 16th October, 1999. The petitioner was thereafter granted renewal for a period of one year vide letter dated 16th October, 2001 for the period 1st November, 2001 onwards. While granting renewal, the respondents had also fixed their licence fee at Rs. 7,88,400/- per annum, though the earlier fee being paid by the petitioner till 1997 was only Rs. 53,000/-. The said licence fee was communicated to the petitioner on 22nd October, 2001. The petitioner should have challenged the said order communicating the licence fee immediately after it was received by filing a writ petition in case he wanted to rely upon Clause 14.6.4 of the Catering Policy-2000. As already stated above, the petitioner did challenge and question of one year renewal before the Patna High Court in WCJC No. 9549/2002 but he did not question and challenge the licence fee fixed by letter dated 22nd October, 2001.

13. The contention of the petitioner is that his actual sales turnover was much lower and he relies upon letter dated 22nd March, 2004, Annexure P- 13, a tabulation chart of sales assessment. The question of licence fee payable and question of refund is essentially a question of fact, which requires oral evidence. It will not be appropriate for this Court to go into the said disputed factual questions in a commercial contract while exercising writ jurisdiction.

14. The writ petition is accordingly disposed of with liberty to the petitioner to raise the question of refund of alleged excess licence fee paid before the civil

court or in arbitration proceedings if there is an arbitration clause. No further orders can be passed in this writ petition.