

(2007) 06 DEL CK 0013

In the Delhi High Court

Case No : F.A.O. (OS) No. 205 of 2007 and C.M. No. 8394 of 2007

R.C. Goel

APPELLANT

Vs

I.R.C.T.C. Limited and Others

RESPONDENT

Date of Decision : 12-06-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4, Order 43 Rule 1
High Court Act — Section 10

Citation : (2007) 96 DRJ 407

Hon'ble Judges : J.P. Singh, J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Harish Malhotra and Abhishek Atrey, for the Appellant;

Final Decision : Dismissed

Judgement

J.P. Singh, J.—This Appeal under Order XLIII Rule 1(r) of the CPC read with Sec 10 of the High Court Act is directed against the order dated 28.5.2007 passed by Single Bench allowing application under Order XXXIX Rule 4 in CPC and dismissing applications under Order XXXIX Rule 1 & 2 CPC, thereby vacating the interim stay orders.

2. We have heard Mr. Harish Malhotra, Sr. Advocate learned Counsel for the Appellant.

3. Briefly the facts are that the Appellant - plaintiff was granted a licence for management of on-board catering service on Paschim Express Train, vide letter dated 28.12.2001. The licence was initially for 5 years.

4. A show cause notice dated 12.1.2007 for termination of the licence was served upon the Appellant, on the ground that during inspection of the subject train on 13.10.2006 serious irregularities were found. The Appellant submitted reply dated 24.1.2007 denying the allegations. But licence was not renewed as communicated to the appellant by letter dated 13.2.2007.

5. Learned Counsel for the Appellant has laid emphasis on the letter dated 30.11.2006 in which it is written "it has been decided by the competent authority to consider renewal of your licence based on the past performance for another period of five years or as decided by IRCTC (Indian Railway Catering and Tourism Corporation)", Clause 8 of the terms and conditions is "the decision of IRCTC to consider your willingness to continue the service shall be final and binding".

6. The appellant almost immediately acknowledged the receipt of the said letter and replied that he was accepting the terms and conditions referred to in the said letter.

7. Learned Counsel for the Appellant has contended that respondents' letter dated 13.2.2007 (supra) refers to some complaints and inspection dated 13.10.2006 whereas vide letter dated 30.11.2006 (supra) an offer was made for renewal of licence on the basis of past performance of the appellant, which means that irregularities, if any were waived.

8. We are of the view that it is not so, because on the basis of complaints and resulting surprise inspection the investigation was in progress. Investigation report was yet to come. Meanwhile when the earlier licence was nearing its expiry, in office routine preliminary usual steps were taken either for renewal of Licence or for fresh Tendering. Since the letter dated 30.11.2006 was sent only for considering the renewal of the licence the said letter was not an offer of renewal but it was only a correspondence for considering the application, if any that was to be moved by the appellant for renewal of the licence.

9. The consent/willingness expressed of the appellant was yet to be considered and the mere expression of self serving willingness could not amount to renewal of the licence.

10. The investigation report was submitted in December, 2006 i.e., after the issuance of the letter dated 30.11.2006. Since the willingness given by the appellant was still to be considered, the vigilance report had to be taken note of and interpreted keeping in view the larger interest of the Public and only then IRCTC could decide as to whether licence of such a contractor should or should not be renewed. The letter informing the appellant that his licence could not be renewed gives all the main reasons for doing so.

11. The investigation report refers to some complaints which show that there was over charging and the quality was not up to the mark and there was short supply of almost every item. Beside there was lack of cleanliness and hygiene in the kitchen and pantry. Proper equipments were not available. Raw materials were kept loose. The vigilance report says that the appellant was indulging in undue financial advantage from passengers which was contrary to the agreement between IRCTC and the appellant.

12. We may reproduce hereunder the discrepancies found during the surprise checking on 13.10.2006 due to several complaints against the appellant:

- I. Rate List was not displayed by Licensee.
- II. Weight of Two bread Slice is found 50 gms instead of 70 gms, little Butter was spread on bread slice instead of butter chiplet.
- III. Tea was served to passengers in 150 ml capacity instead of 1 measurement the quantity of Tea was found 100 ml instead of 150 ml served by Deena Nath, Waiter.
- IV. 100 ml Tomato Soup instead of 150 ml was served to passengers @ Rs. 11/- and soup was not tasty.
- V. Weight of Veg Briyani + Raita is found 360 gms instead of 450 gms (Less 90 gms) Rs. 21/-.
- VI. Weight of Chicken Curry is found 220 gms instead of 300 gms (Less 80 gms) @ Rs. 37/-.
- VII. Weight of Egg Curry is found to be 210gms instead of 240 gms (Less 30 gms).
- VIII. Weight of Curd is found 80 gms instead of 100 gms in paper cup (Less 20 gms).
- IX. Weight of Mutter Paneer is found 150 gms instead of 200 gms (Less 50 gms).
- X. Pest Control was not done. Cockroaches were seen in Store and Pantry Car.
- XI. Floor of kitchen was dirty.
- XII. Two unserviceable Hot case was available in Pantry Car and used as Almirah.
- XIII. No Deep freezer was available.
- XIV. Rs. 32/- charged from inspecting officer by Pantry Vendor vide cash memo No.5665 dated 13.10.2006 on account of Veg Meal and Us.21/- charged for Veg Briyani vide cash memo No.5666 dated 13.10.2006.
- XV. Raw material was kept loose and in Gani/ploy bag.
- XVI. Dustbins kept in pantry car without top.
- XVII. No butter chiplet was served in breakfast (Less quantity of Butter was spread on bread).
- XVIII. Tomato soup was not tasty and served less in quantity. Tomato Soup was served 100 ml instead of 150 ml at the rate of Rs. 11/- in paper cup of capacity 150 ml instead of 170 ml.
- XIX. Mutter Paneer dish of a-la-carta item was combined with Veg Meal and served at rate of Rs. 18/- (Mutter Paneer) + Rs. 32/- (Veg Meal) = Rs. 50/- Less quantity of Mutter Paneer was served, 150 gm was served instead of 200 gms.
- XX. Chicken Curry dish of a-la-carta item was combined with Veg Meal and

served at rate of Rs. 37/- (Chicken Curry) +. Rs. 32A (Veg Meal) = Rs. 69/-. Less quantity of Chicken Curry was served, 220 gm was served instead of 300 gm.

XXI. Volga Packed Drinking water glass of 250 ml was served instead of 300 ml.

XXII. Pest Control - Pest Control was not done, cockroaches were seen in store and Pantry Car.

13. The irregularities and discrepancies mentioned above are very serious. In our view the learned Single Judge has appreciated all the contentions of both the parties, has dealt with the three requisites of interim injunctions and has passed a detailed and well reasoned order, which does not call for interference.

14. Considering all the facts and circumstances we do not find any merit in this appeal, the same is, therefore, dismissed.