
(2009) 07 DEL CK 0396

In the Delhi High Court

Case No : Writ Petition (C) 10423 of 2009

R.D. Sharma and Sons

APPELLANT

Vs

IRTC Ltd. and Others

RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Citation : (2009) 07 DEL CK 0396

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : A.M. Singhvi, Jayant Bhushan and Nidhiram Sharma, for the Appellant; G.E. Vahanvati, Attorney General, Gourab Banerji, ASGI, Sunil Malhotra, Saurav Agrawal, Devdutt Kamat and Abhishek Puri, for the Respondent

Judgement

Sanjiv Khanna, J.—The petitioner firm was awarded a contract for serving meals/ providing catering service in the Ahmedabad-New Delhi, Rajdhani Express train for a period of 5 years starting from 20th August, 2005 to 19th August, 2010. By the impugned order dated 22nd July, 2009, the respondent No. 1, Indian Railway Catering and Tourism Corporation Limited has terminated the said contract for the detailed reasons set out therein.

2. It is admitted case of the parties that the written contract has an arbitration clause, which reads as under:

10 ARBITRATION

10.1 In the event of any dispute or difference arising under these conditions of Licence or in connection with this Licence (except as to any matters, the decision of which is specifically provided by these or the special conditions) the same will be resolved by Arbitration, as per the provisions of "The Arbitration and Conciliation Act-1996." The venue of the Arbitration shall be Delhi. All questions, disputes and or differences arising under or in connection with this agreement or in touching or relating to or concerning the construction, or affect of presents (excepts as to matters the decision whereof is other-wise herein before,

Specifically provided for) shall be referred to the sole arbitration of the officer/officers or persons nominated by the Managing Director/IRCTC whose decision in this regard shall be final and binding on the Licensee.

3. Counsel for the petitioner admits that the question of validity of the termination is arbitrable but contends that the present writ petition should be entertained in the exercise of discretionary power vested in this Court because the impugned order dated 22nd July, 2009 suffers from malice in law and is a result of a policy decision taken by the Railways to terminate the catering contracts of Rajdhani and Shatabdi trains. It is submitted that penalty of Rs. 20,000/- has already been imposed on the petitioners for supply of stale buns vide letter dated 9th May, 2009. It is contended that penalty of cancellation of the contract is highly disproportionate and some of the allegations referred to in the impugned order dated 22nd July, 2009 do not find any mention in the show cause notice dated 9th June, 2007. Counsel for the petitioner, in this regard, has relied upon Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, Bharat Filling Station and Another Vs. Indian Oil Corporation Ltd., and Naseem Ahmed v. State of Chattisgarh a Division Bench decision of the High Court of Chattisgarh.

4. The law on the question is well settled and has been lucidly set out in paragraph 7 of the judgment in the case of Harbanslal Sahnia (Supra), which reads as under:

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 in concerned, 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 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 is challenged. (Whirlpool Corpn. v. Registrar of Trade Marks (1998) 8 SCC)....

5. The question is whether the petitioners have been able to make out a case for exercise of the said discretionary power by the writ court, overlooking the arbitration clause. The principal and the main allegation against the petitioner is that on 8th May, 2009, buns served along with the soup to the passengers in first AC were more than one month old and were in a rotten condition. The defence of the petitioner to the said allegation is two-fold. Firstly, the date of packaging of buns was incorrect and secondly, the buns were not actually served but were available in the pantry car. The said contentions have been rejected in the impugned order dated 22nd July, 2009. The impugned order records that the buns were sent to the laboratory for test analysis and the report received establishes that the buns were not edible and of approved standard. In addition,

there are 24 written complaints against the petitioner during the period January to May, 2009 for supply of sub-standard or poor quality of meals. The contention of the counsel for the petitioner that supply of sub-standard meal or 24 written complaints did not form subject matter of the show cause notice dated 9th June, 2009, does not appear to be correct as the said show cause notice specifically refers to 24 complaints from various passengers. Some other deficiencies have also been pointed out. The petitioner in his reply dated 17th June, 2009 has stated that they were facing problems with the equipments placed in the pantry car due to malfunctioning or lack of accessories and therefore these complaints were made. Similarly, in the reply dated 17th July, 2009, the petitioner admitted that there were 24 complaints in writing during the last 5 months. It was stated that the petitioner had improved their services with up-gradation.

6. The allegations of supplying expired buns, which were more than one month old and in rotten condition are very serious. It is unpardonable. It is not a question of one lapse but the nature and type of lapse. The consequences of consuming such buns is intimidating. It is obvious that the buns found their way in the pantry car for being served. It is the case of the respondents that the stale buns were served. 24 complaints were received during the past 5 months are not insignificant to be ignored.

7. It has been explained by the learned Attorney General appearing for respondent No. 1 that it has been decided in principle that catering work in Rajdhani and Shatabdi trains should be undertaken departmentally but existing contracts are not being terminated. In the present case the contract has been terminated as the petitioner has failed to comply with the terms and conditions of the contract and the termination order is passed in terms of the contract itself and not because of the policy decisions. It is not the case of the petitioner that any other contract has been terminated.

8. Keeping in view the allegations made and the detailed order dated 22nd July, 2009 passed by respondent No. 1, I do not think that it will be appropriate for this Court to enter into and examine various disputed questions of facts and exercise discretion to entertain the present writ petition. The contract in question is a commercial contract for providing catering services. In normal course, any dispute regarding termination of a contract has to be adjudicated and decided by arbitration. In case of wrongful termination damages can be awarded. Termination order has been passed after due notice and by a reasoned order.

9. At the request of the counsel petitioner, there will be stay of the operation of the impugned order dated 22nd July, 2009 till 6th August, 2009 to enable the petitioner to file an appeal. I may note here that a Division Bench in LPA No. 311/2009 had directed that the termination order passed by the respondents will not be implemented for a period of one week. It is clarified that the observations made in this order are for the purpose of the disposal of the present writ petition and will not be binding on the civil court/in the arbitration proceedings.

Dasti to the counsel for the parties.