
(1997) 09 MP CK 0015
In the Madhya Pradesh High Court
Case No : C.R. No. 1990 of 1996

S.K. Sahni

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-09-1997

Acts Referred:

Arbitration Act, 1940 — Section 20, 41

Citation : (1998) 2 MPJR 380

Hon'ble Judges : Ramesh Surajmal Garg, J

Bench : Single Bench

Advocate : P.K. Jaiswal, for the Appellant; Rajesh Pancholi, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Garg, J.

The applicant / plaintiff being dis-satisfied by the order dated 10.10.96, passed in Misc. appeal No. 56/96 by the learned 1st Addl. District Judge, Murwara, Katni, District-Jabalpur, vacating the order granted by the Court below in favour of the present applicant on 19.8.96 by the learned Civil Judge, has preferred this petition.

Brief facts necessary for disposal of the present matter are that an agreement was executed between the parties under which the plaintiff was awarded Stall No. 2 for providing catering facility to the railway passengers. As the respondent / railway cancelled the said agreement and was trying to interfere with the rights of the plaintiff and as the matter/ dispute was referable to an Arbitrator, the present applicant moved an application u/s 20 of Indian Arbitration Act. With the said petition, and application u/s 41 of the Act read with Second Schedule of the Act was also filed, seeking the relief that during the pendency of the petition and arbitration proceedings, the respondents be restrained from interfering with the possession of the applicant. In the petition, it was contended that the applicant had engaged sufficient number of waiters, vendors, but because of the political

interference and illegal strike made by the Union, he was not permitted to work properly. He submits that he made various complaints to police and brought this fact to the notice of the railway authorities, but none helped him. He submits that after some time he could come out of the problem and was regularly providing the services to the passengers, therefore, and as the railway authorities had no authority to cancel the agreement unilaterally, the railway authorities be restrained from interfering with his working and possession.

The non-applicants appeared before the Court after receiving the notice and inter alia pleaded that the applicant was unable to provide regular services to the passengers, various complaints were received by the railway authorities; passengers satisfaction and providing services to them was of paramount consideration for railway authorities and as the applicant was not in a position to provide proper services and catering facilities to the passengers, they were forced to cancel the agreement. It was also contended that there was no political interference in the matter and if the strike was called by the vendors or the Trade Union, the respondents could not be blamed for it. According to them, they had provided all possible helps to the applicant, but as he could not manage the show properly, the authorities were justified in cancelling the agreement. They also submitted that before the petition u/s 20 was filed, possession of the property was already taken by them, therefore, and as the applicant has no prima-facie case, his application was liable to be rejected.

The trial Court after hearing the parties, came to the conclusion that the plaintiff has a prima-facie case; the balance of convenience lies in his favour and if the injunction prayed for was not granted in favour of the applicant, he would suffer irreparable injury. By its order dated 19.8.96, an injunction was granted in favour of the plaintiff.

It appears that on 5.8.96, an application u/s 151 CPC was filed by the applicant stating that goods belonging to the applicant were seized by the non-applicants the goods were returned on 23.7.96 and on 24.7.96 a lock was put by the non-applicants on the premises in dispute, therefore, the non-applicants be directed to open the said lock. The application was opposed, but the Court below by its order dated 30.8.96 directed that they should remove their lock from the premises and should not cause any interference in the working of the applicant. The order dated 19.8.96 was challenged before the appellate Court in h No. 56/96 and order dated. 30.8.96 was challenged before this Court in C.R. No. 1595/96.

In C.R. No. 1995/96, on 2.9.96 this Court ordered that operation of the order dated 30.8.96 shall remain stayed till final disposal of M.A. No. 56/96. This Court also directed that the parties shall maintain status-quo without any attempt on the part of non-applicant (present applicant) to remove the lock put up by the applicants (present non-applicants) on Stall No. 2. This Court also made it clear that in case the appeal filed by the applicants (present non-applicants) is dismissed, then the applicants (present non-applicants) cannot take advantage

of the order in any manner and the proceedings of the trial Court shall be governed by the order passed in appeal.

Misc. appeal No. 56/96 was disposed of by order dated 10.10.96. Against the said order, the present revision petition has been filed. On 11.10.96, this Court ordered that the non-applicants shall not obstruct the applicant in performing his work as per terms of agreement dated 1.4.93 until further orders of this Court. The matter came up for hearing before this Court on various occasions, but could not be heard. Ultimately final arguments were heard on 16.9.1997.

Shri Pankaj Jaiswal, learned counsel for the applicants states that so long as the arbitration proceedings or petition u/s 20 of the Arbitration Act are pending, the applicant is entitled to an injunction. He submits that the non-applicants had no authority to cancel the agreement. He also states that the prostitution was beyond the control of the applicant and as there were no lapses on his part, the agreement could not be cancelled. He further states that the possession was not taken from the applicant on 22.7.96, therefore, he must be deemed to be in possession and the Court below should not have interfered with the discretion exercised by the trial Court. Various questions regarding various clauses of the agreement were raised; the correspondence exchanged between the parties was also referred to. It was contended that various complaints were made and reports were lodged by the applicant therefore, it cannot be held that the applicants was negligent, was not providing facilities to the passengers or was not in a position to manage the show.

On the other hand, Shri Pancholi, learned counsel for the non-applicants states that public convenience and the facility were of wide consideration, when the applicants was not in a position to manage the affairs and repeated complaints were made against his working, the non-applicants granted sufficient opportunity and time to the applicant to extend proper services and provide facilities to the passengers, but as the applicant was unable to manage his own affairs and failed in his duties to provide the catering services to the passengers, the non-applicants were required to cancel the contract. He submits that right from April, 96 to July, 96. i. e. a period of more than three months the applicant could not show any improvement therefore, the non-applicants were justified in cancelling the contract. He submits that the appellate Court was justified in reversing the order. He also submits that as possession of the premises were already taken on 22.7.96, no injunction could be granted against them. He submits that the order dated 30.8.96 clearly shows that the applicant was dis-posessed and the trial Court without taking into consideration the application dated 5.8.96 filed by the applicant had passed the order dated 19.8.96. I have heard the parties at length.

Order dated 30.8.96, passed by the trial Court clearly shows that on 5.8.96 an application was filed by the present applicant u/s 151 CPC, interalia stating that the goods were seized; were returned on 23.7.96 and the premises were put under a lock on 24.7.96. The petition u/s 20 of Arbitration Act was submitted on 22.7.96. If the goods were seized on 23.7.96 or a lock was put on the premises

on 24.7.96, then it was expected of the applicant that he would bring this fact to the notice of the Court immediately either on 24th July, 96 or immediately thereafter. The non-applicants were submitting before the trial Court that they had already taken the possession of the premises on 22.7.96. If possession was already taken by the non-applicants on 22.7.96 either before the order was passed by the trial Court or before the interim order was served upon the non-applicants, it cannot be held at this stage that the non-applicants acted illegally. If the possession was taken after the order was passed, then the trial Court was required to make an enquiry into the fact that the status-quo was disturbed by the other side before the order could be served on the other side. In the instant case, the complaint was made on 5.8.96 i. e. before the application for grant of injunction was finally heard, that the non-applicants have put their lock on the premises. The order dated 19.8.96 refers to the defence of the non-applicants that possession was taken by them on 22.7.96, but it does not consider the matter further and does not take into consideration that what was the effect of dis-possession of the present applicant. By its order, the trial Court ordered that the applicants shall not be dis-possessioned from the premises in dispute. In paragraph 12, the Court has recorded a cursory finding that the applicant is in possession. The Court has simply said that as the applicant was stating that possession was not taken from him, he was in possession. While recording this finding, the Court did not take into consideration the application filed by the applicant on 5.8.96 in which it was clearly stated that a lock was put on the premises. In view of the above narrated facts, I have no hesitation in holding that the applicant was dis-possessioned from the premises on 22.7.96.

The question for consideration still is that can a mandatory injunction be granted in favour of the applicant. Shri Jaiswal submits that in view of the order dated 30.8.96 the applicant is entitled to an injunction and the non-applicants be directed to remove the lock put by them. Shri Pancholi submits that status-quo ante can be ordered if a very strong case is made out or projected by the applicant. I have heard the parties on this point also.

The defendants had been contending before the trial Court that they had already taken possession of the premises on 22.7.96. The trial Court in its order paragraph 12 found that though the non-applicants state that they have taken the possession on 22.7.96, but the plaintiff denies the said fact, therefore, it was proved on the record that the plaintiff was in possession of the property. Contrary to its own findings, the trial Court in its order dated 30.8.96 ordered that the defendants should remove the lock from the premises in dispute. These observations made by the trial Court cannot be conciled; either the plaintiff was in possession or he was dispossessed and the defendants had put their lock. On the facts of the case, it has to be held that on 22.7.96 the plaintiff was dis-possessioned from the premises.

It is to be seen from the documents available on record that right from 10.3.96, the strike was going on; sometimes the Union and sometimes the vendors were

proceeding on strike. The strike was a matter personal between the Contractor / applicant and its staff; the railway had nothing to do with the said strike. The applicant was given the license so that he could provide services and facilities to the passengers. If from 10.3.96 up to 22.7.96 he could not provide proper services, could not solve his own problems, then it cannot be held that the railway authorities were unjustified in cancelling the contract. Canteen / the Stall and the services are not meant for the Contractor nor the same are his personal properties. These are the properties of railway who represent the larger public interest. If the public suffers unnecessarily or the services are not provided to the public at large, specially the passengers, who travel on long route, then by no stretch of imagination it can be said that the act of plaintiff was in accordance with the terms of the license. It was for the plaintiff to provide the service. At this, strange for the purpose of this revision alone, I have no hesitation in holding that the railways / non-applicants were justified in revoking the agreement and cancelling the contract.

14, Shri Jaiswal, learned counsel for the applicant submits that since 11.10.96 i.e. when the interim order was passed by this Court in this revision petition, the applicant is running the Canteen / Stall properly and there are no complaints against him, therefore, an injunction must be granted in his favour. The present revision was filed on 11.10.96 without a copy of the appellate Court's order. In the revision various questions have been raised. It is contended that the order dated 2.9.96, passed by this Court in C.R. No. 1595/96 was later on reviewed by order dated 23.9.96 I have perused the order, dated 23.9.96. Order dated 23.9.96 reads " The grievance of the applicants (S. K. Sahni) is that, taking the advantage of the order of this Court, passed on 2.9.96, the non-applicants (railway authorities) are not allowing the applicant to vend the food-articles, under the license given to them. Even though, the lower appellate Court has not stayed the operation of the temporary injunction, granted by the trial Court. It is directed that it is in the interest of justice that the order passed by this Court on 2.9.96, shall not be read to the effect that the non-applicants shall not be permitted to vend food-articles under the license provided in Stall No. 2." The order passed on 23.9.96 simply says that the applicant shall be permitted to vend the food-articles. It does not say that he shall be given possession of the property. The order dated 11.10.96 passed in this revision further orders that the non-applicants are directed not to obstruct the applicant in performing his work as per terms of agreement dated 1st April, 1995 until further orders of this Court. This Court has nowhere stated that the possession of the property be restored. This Court has also nowhere said that the applicant would be deemed to be in possession of the property. When the agreement has already been cancelled and possession of the property has been taken, then it cannot be held that on the date of the suit the applicant was in possession or he was in actual physical possession and was in a position to cook and vend the articles on the platforms. The appellate Court in its order has found that because of the strike, the services were adversely affected. Various complaints were made and the

applicant was also lodging complaints. The appellate Court was of the opinion that because of the strike, the services were adversely affected. The appellate Court also found that from the letter dated 14.6.96 and 27.6.96, written by the plaintiff, it was clear that the vendors /workers employed by the present applicant were also on strike. The fact remains that the services were adversely affected. The plaintiff /applicant was required to serve the public cause. The public was not required to suffer for some dispute between the plaintiff and its employees.

It does not appear from the pleadings that the strike was in connivance of the railway authorities. In fact railway authorities were extending a helping hand to the plaintiff so that he could come out of blue, but the plaintiff despite the help and assistance offered to him by the railway could not manage the show.

The question still is whether the personal interest of a party should be given preference over the public interest. In the opinion of this Court, the public interest cannot be sacrificed to vindicate the private interest. In any case, if the application of the applicant is rejected, he would be entitled to claim damages, if the law permits, from the railway authorities, but an injunction in his favour cannot be granted. The Court below as a fact has found that on 22.7.96 possession of the property was taken by the defendants. The Court has disbelieved the affidavits of the plaintiff and his witnesses that the lock was put on 24.7.96. In the opinion of this Court, the lower Court was justified in observing that if the goods were removed and returned to the plaintiff on 23.7.96 and signatures of the plaintiff were obtained on the list, then no lock could be put on 24.7.96. The Court below was justified in vacating the injunction.

I do not find any force in this revision petition. It deserves to and is accordingly dismissed. No costs.