

(1995) 04 DEL CK 0030

In the Delhi High Court

Case No : I.A. 7929 of 94 and 1040 of 1995 in Suit No. 1994 of 1994

Szechwan Foods Pvt. Ltd.

APPELLANT

Vs

Coal India Limited

RESPONDENT

Date of Decision : 07-04-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (1995) 2 AD 99 : (1995) 58 DLT 525

Hon'ble Judges : N.G. Nandi, J

Bench : Single Bench

Advocate : Y.P. Narula and Anu Narula, for the Appellant; Altaf Ahmad, Addl. Solicitor General of India, Jaideepa Gupta and I. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

N.G. Nandi, J.—In the suit on the basis of offer dated 15.7.1993 by the plaintiff and the writing dated 23.8.1993 by the defendant the plaintiff prays for the relief of permanent injunction seeking to restrain the defendant from terminating the management contract of the plaintiff with regard to the guest house at A-59, New Friends Colony, New Delhi and also perpetually seeking to restrain the defendant from accepting any tender or offer for the management contract of the said guest house contending that the plaintiff's offer dated 15.7.1993 has been accepted by the defendant vide its communication dated 23.8.1993 and that the same is the binding contract which is for the period of five years; that the defendant has not terminated the plaintiff contract and that before impliedly terminating the plaintiff's contract the plaintiff has not been heard and the principles of natural justice have been violated by the defendant and the defendant cannot accept the tender of any other person with regard to the management contract of the guest house in question. By this LA. ad interim injunction is sought in identical terms pending the hearing and disposal of the suit.

2. As against this it is contended by the defendant that the defendant was

looking for caterer for their guest house in New Friends Colony to manage on a provisional, temporary and on ad hoc basis till the defendant invited tender for the said guest house. The plaintiff came to know about this and wrote a letter to defendant on 15.7.1993 expressing its willingness to take up the management of the said guest house. The letter dated 15.7.1993 by the plaintiff specified the nature of work and its charges for the said work; that the plaintiff was clearly told by the defendant that the plaintiff can manage the said guest house on temporary, and on ad hoc basis, only till the defendant floated tender for the management of the said guesthouse. Thereafter, Mr. J.K. Vij, Deputy Chief Personnel Manager purportedly wrote a letter dated 23.8.1993 asking the plaintiff to take over the management of the said guest house from 25.9.1993; that Mr. J.K. Vij, Deputy Chief Personnel Manager was not authorised to write on behalf of the management of the said guest house; that the power to confirm lay with the Director (Marketing and Administration), the letter further purported to state that a formal letter of contract will be issued to the plaintiff separately. On 30.8.1994 the defendant invited the plaintiff to participate in the tenders being floated for the management of the guest houses in Hailey Road and in New Friends Colony. The plaintiff has already fully unconditionally and unqualifiedly participated in the tenders for New Friends Colony. The tenders were opened on 9.9.1994 and the rates of the other caterers who participated were found to be much lower than those quoted by the plaintiff and even lower than what the plaintiff was charging. That there is no contract between the defendant and the plaintiff, as alleged in the plaint. No contract exists, neither there is any privity or binding contract nor any enforceable right exists between the parties. That the plaintiff has waived its rights to challenge the defendant's right for inviting fresh tenders for the guest house at A-59, New Friends Colony, New Delhi and the plaintiff is thus estopped and bound by acquiescence and waiver; that the suit is not maintainable, as prayed, particularly u/s 41(e) of Specific Relief Act and also by other provisions of the Contract Act; that the suit contract is a contract for personal service and the same cannot be specifically enforced and so there is no question of granting any injunction; that the agreement does not specify the period of the agreement which is also admitted by the plaintiff and the agreement is uncertain, vague and void; that such a contract even if breached would result in damages; that there is no question of violating the principles of natural justice as this is a case of contract; that the defendant is a State and cannot act in violation of Article 14 of the Constitution of India i.e. in an arbitrary and discriminatory manner not in conformity with standard or rule even in the matter of relationship contractual or otherwise with a third party.

3. It is not in dispute that the plaintiff offered vide letter dated 15.7.1993 to render the services on terms and conditions shown therein (Annexure-A). It is pertinent to note that in this offer the plaintiff has not specified the period for which it was offering its services as regards the management of guest house. Along with the said offer the plaintiff has given the rates of snacks, cold drinks, vegetarian and non-vegetarian lunch and dinner. Vide Annexure-B dated

23.8.1993 the Deputy Chief Personnel Manager of the defendant intimated to the plaintiff that the defendant has decided to give management contract to the plaintiff, of their guest houses at A-59, New Friends Colony, New Delhi with reference to the plaintiff's letter dated 15.7.1993 and subsequent discussion. It is also suggested that formal letter of contract would be issued to the plaintiff separately and the plaintiff was further requested to take immediate steps for starting the guest house latest by 25.9.1993. It is also admitted that no formal letter of contract was issued as stated in Annexure-B. It is also not disputed that the defendant invited tender for the management of the said guest houses vide Annexure-F without giving the addresses.

The plaintiff has not averred/disclosed in the plaint that he participated in the tender by filing in his tender giving his rates. Thus the fact of plaintiff having participated in the tender floated by the defendant vide Annexure-F has been suppressed in the plaint. It may be seen that the plaintiff, after filing in the tender in response to Annexure-F and the defendant's letter dated 1.9.1994 has filed the present suit before the opening of the tender i.e. on 9.9.1994, Thus the plaintiff having suppressed the fact of having participated in the tender, that alone, in my opinion, would disentitle the plaintiff to the equitable relief of injunction.

4. One of the arguments advanced on behalf of the plaintiff is that he has not been heard before inviting the tender by the defendant. In other words the principles of natural justice have been violated inasmuch as the plaintiff has not been heard before floating the tender thereby impliedly terminating the plaintiff's contract. It may be appreciated that this is a matter of contract and not a quasi judicial or administrative matter. The defendant has placed reliance on the decision reported in *State of Gujarat and Others Vs. Meghji Pethraj Shah Charitable Trust and Others*, wherein it is held that "the termination of the arrangement does not attract the rule of audi alteram partem". In para 22 of the said judgment it is observed by the Supreme Court that "the Court was unable to see any substance in the argument that the termination of arrangement without observing the principle of natural justice (audi alteram partem) is void. The termination is not a quasi-judicial act by any stretch of imagination; hence it was not necessary to observe the principles of natural justice. It is not also an executive or administrative act to attract the duty to act fairly. It was as has been repeatedly urged by Shri Ramaswamy a matter governed by a contract/agreement between the parties. If the matter is governed by a contract, the writ petition is not maintainable since it is a public law remedy and is not available in private law field, e.g., where the matter is governed by a non-statutory contract....."

Reliance is next placed on the decision reported in *National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others*, wherein it is held by the Supreme Court that "there is a peculiar and surprising misconception of natural justice, in some quarters, that it is, exclusively, a principle of administrative law.

It is not. It is first a universal principle and, Therefore, a rule of administrative law. It is that part of the judicial procedure which is imported into the administrative process because of the universality. Courts even more than administrators must observe natural justice.

5. Reliance is also placed on the decision reported in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, . by the Supreme Court that it must, Therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licenses or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary but was based on some valid principle which in itself was not irrational unreasonable or discriminatory. It is further observed that this rule also flows directly from the doctrine of equality embodied in Article 14, which strikes at arbitrariness in State action and ensures fairness and equality of treatment. The State cannot, Therefore, act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory". It will be seen in the instant case that the offer dated 15.7.1993 of the plaintiff has been just accepted by the Deputy Chief Personnel Manager Mr. Vij by letter dated 23.8.19.93. In law the action of the defendant in awarding contract to the plaintiff in such a manner would be against Article 14 of the Constitution and would smack of arbitrariness and not in conformity with some standard or norms and the defendant cannot act arbitrarily in entering into the relationship, contractual or otherwise with a third party by giving contract in such a manner so as to deprive other person who would be dealing in the same type of business, offer equal opportunity and thus giving go bye to doctrine of fairness.

6. Thus it will be seen from the above that the non-compliance with the principle of natural justice has no relevance. Following the principle laid-down in the aforesaid judgments of the Supreme Court the defendant, could not have awarded the contract to the plaintiff, being a State in violation of Article 14 of the Constitution. In fact the defendant ought to have invited the tender and awarded the contract rather than making it a private affair vis a vis the plaintiff when the defendant being a State. That apart, even assuming every thing in favor of the plaintiff the breach of contract would at the most enable the plaintiff to claim damages and its remedy would lie in damages rather than suit for injunction. It is pertinent to note that neither offer Annexure-A nor acceptance Annexure-B specify the period for which the same would be operative. The plaintiff has not, prima facie, suggested that the contract was to be operative for a period of 5 years as contended by him. Under the circumstances, it can not be said even prima facie that the plaintiff's offer Annexure-A was accepted vide Annexure-B

for a particular period and the very fact that the plaintiff has participated in the tender in response to Annexure-F would be suggestive of the fact that the plaintiff's contract is impliedly terminated vide Annexure-F and the same has been accepted by the plaintiff and thereby waived the right to challenge the floating of the tender by the defendant.

Under the circumstances, the plaintiff, in my opinion, would not be entitled to the discretionary relief of injunction and the applications being devoid of merits are liable to be dismissed. In the result the applications fail. Ordered accordingly.

S. No. 1994/94

List the matter before the Joint Registrar 2.8.1995.