
(2009) 12 OHC CK 0026
In the Orissa High Court

T. Dev Kumar Patra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 04-12-2009

Acts Referred:

Citation : (2010) 109 CLT 875 : (2010) 1 OLR 512

Hon'ble Judges : I.M. Quddusi, Acting C.J.;B.K. Nayak, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.K. Nayak, J.—In this writ application, the petitioner prays for quashing of the letter dated 26.08.2009 under Annexure-5 and the tender notice dated 31.08.2009 under Annexure-6 and for commanding the opposite parties to renew the licence/lease as per Annexure-1 for a further period of three years.

2. The petitioner's case is that pursuant to a tender call notice to run a multi cuisine food Court in the existing building near the Gate Complex of Nandankanan Zoological park, he offered his bid and having qualified as the highest bidder was awarded the contract by the opposite parties. While applying, the petitioner had proposed to spend Rs. 8,00,000/- to Rs. 15,00,000/- for construction of projection on both sides of the existing structure as there was stipulation in the tender notice that the intending lessee shall invest for such projection. The petitioner qualified as the highest bidder and agreement was executed between the parties vide Annexure-1. The case of the petitioner is that as per the agreement the licence fee was Rs. 1,21,100/- per annum which was payable monthly " Rs. 10,100/-. It is further the case of the petitioner that the license under the agreement though initially was for two years, it contains a term giving the petitioner a right of renewal for a further period of three years. It is also stated that in case of violation of the terms of the agreement, notice of 90 days shall be issued for termination of the contract. It is alleged by the petitioner that without issuing a notice of 90 days, as stipulated in the contract, and even though the petitioner went on paying the monthly licence fees regularly as per

Annexure-2 series, opposite party No. 3 has issued the notice on 26.8.2009 under Annexure-5 asking the petitioner to close the operation of the Food Court on completion of the tenure of the agreement on 7.9.2009 in order to facilitate the authorities to make alternative arrangement. Subsequent thereto, opposite party No. 3 has issued tender notice on 31.8.2009 vide Annexure-6 inviting tenders from interested persons for running the food Court.

3. It is the contention of the petitioner that he is duly abiding by all the terms and conditions of the agreement under Annexure-1 and there has been no default or violation on his part, but still then without renewing the contract for further three years, as stipulated under Clause-1 of the agreement, and without issuing any notice as required under Clause 11 of the agreement, the authority has issued letter as well as tender notice under Annexure-5 & 6 respectively which is arbitrary and wholly unreasonable.

4. The Deputy Director, Nandankanan Zoological Park (opposite party No. 3) has filed a counter affidavit. Referring to the agreement under Annexure-1, it is stated in. the affidavit that the petitioner has committed default in paying the monthly licence fees at the stipulated time, i.e., in advance within the first week of every month. Referring to Clause-14 of the agreement, it is also stated that the petitioner has violated the condition stipulated in that clause by not revealing 1% of sale proceeds during the previous calendar year. The petitioner has sublet the food Court to a third party without prior permission of opposite party No. 3 and his performance was found to be poor. The petitioner has also committed irregularity in payment of electricity charges of the food Court. The irregularities and defaults were pointed out to him by sending letters, which were not responded. It is, therefore, contended that in view of the violations of different terms and conditions, the petitioner was not entitled for renewal of the license for a further period of three years.

5. In order to appreciate the lis, it would be appropriate to quote the following clauses of the agreement under Annexure-1 which are relevant for the purpose:

(1) the licence shall be for two years from the date officially commencement of operation of food Court and execution of this agreement and to be renewed for three years further period/s depending upon the performance and payment of licence fee without any default.

(2) Payment of the licence fees of Rs. 1,21,200/- per annum quoted by the licensee and approved by the competent authority shall be made on monthly basis of Rs. 10,100/- per month shall be paid in advance in cash/demand draft to the Range Officer, Revenue in the 1st week of every month.

(11) the licensor reserves the right to terminate the license subject to issuing prior notice on particular violation of the rules mentioned herein this agreement at any point of time for breach of any of the terms and conditions of this agreement, after giving notice of 90 days in writing to comply the issues in writing to the satisfaction of the licensor, if there is no correction to the complain,

the licensor can issue the termination notice giving further 90 days to terminate the contract.

(14) The licensee shall also pay 1% of the total sale proceeds after the close of one Calendar Year over & above the Bid Value. All the taxes, levies in connection with the transactions made by the licensee to run the food Court would be his liability.

6. In effect, the petitioner raises a claim with regard to his right of renewal of license which flows from the contract of license. His assertion is that the opposite parties, who are state instrumentalities are depriving him of the right to renewal of license as per the terms of the contract. Essentially, therefore, the petitioner's prayer is for specific performance of the contract of license on the assertion of breach of terms and conditions by the opposite parties. There is no allegation of violation of any fundamental right or any statutory obligation. Law is well settled that writ petitions under Article 226 of the Constitution are not tenable only to enforce rights and obligations flowing from a contract, unless there is violation of any constitutional or statutory provision. Of course, at the very threshold or at the time of entry into the field of consideration of persons with whom the State Government can enter into a contract, the State is obliged to act in a manner so as to avoid discrimination, but after the State or its agents have entered into the field of ordinary contract, it is the contract itself which determines the rights and obligations of the parties inter se. Propounding such propositions, the apex Court in the case of Radhakrishna Agarwal and Others Vs. State of Bihar and Others, held as follows:

It is thus clear that the Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, involved discrimination at the very threshold or at the time of entry into the field of consideration of persons with whom the Government could contract at all. At this stage, no doubt the State Act purely in its executive capacity and is bound by the obligations which dealings of the State with the individual citizens import into every transaction entered into in exercise of its constitutional powers. But, after the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligations of the parties inter se. No question arises of violation of Article 14 or of any other constitutional provision when the State or its agents, purporting to act within this field, perform any act. In this sphere, they can only claim rights conferred upon them by contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the State in the contractual field which is apart from contract.

The Hon'ble apex Court in the aforesaid case also quoted the following declaration made in the case of Banchhanidhi Rath Vs. The State of Orissa and Others, .

If a right is claimed in terms of a contract such a right cannot be enforced in a writ petition.

7. In the case of the Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd., where the company tried to enforce through a writ petition the right to remove timber under a lease deed without the liability to pay royalty, which was a pure and simple contractual right, the Hon''ble apex Court held as under:

Ordinarily, where a breach of contract is complained of, a party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed, or the party may sue for damages. Such a suit would ordinarily be cognizable by the Civil Court. The High Court in its extraordinary, jurisdiction would entertain a petition either for specific performance of contract or for recovering damages. A right to relief flowing from a contract has to be claimed in a Civil Court where a suit for specific performance of contract or for damages could be filed. This is so well settled that no authority is needed.

8. As has been seen earlier the petitioner is claiming to enforce his rights flowing from a contract of license without there being violation of any constitutional right or statutory obligation. Therefore, the petitioner's claim cannot be enforced in this writ petition.

9. The writ petition is therefore dismissed. However, there shall be no order as to costs.

I.M. Quddusi, A.C.J.

10. I agree.