

(2008) 10 JH CK 0015
In the Jharkhand High Court
Case No : L.P.A. No. 353 of 2008

Utsav Flavours

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-10-2008

Acts Referred:

Citation : (2008) 10 JH CK 0015

Hon'ble Judges : Gyan Sudha Mishra, C.J; Dilip kumar sinha, J

Bench : Division Bench

Advocate : Rajiv Sinha, for the Appellant; Indrajit Sinha, for the Respondent

Judgement

1. This appeal has been preferred against the order dated 9.9.2008 passed by the learned Single Judge in W.P.(C) No. 5886 of 2007, who has been pleased to dismiss the writ petition holding therein that the termination of the lease deed in favour of the petitions-appellant herein to operate food plaza at Tatanagar Railway Station was justified, legal and sustainable.

2. Undisputed position in the matter is that the petitioner-appellant herein had entered into an agreement with the respondent No. 2 Indian Railway Catering and Tourism Corporation which had issued a licence in favour of the appellant to operate food plaza at Tatanagar Railway Station. Thus the petitioner/appellant is a licensee by virtue of a written agreement which had been executed between the petitioner-appellant and the respondent No. 2 and one of the specific conditions in the agreement was incorporated as Clause 20 which pertains to maintenance of hygiene and quality control of the food. Under Clause 21.1 it was specifically laid down that the licensee will provide sale of products of reputed brands only of the storage, handling of raw materials and finished products will have to be in extreme hygienic conditions. Besides this, another clause in the agreement was also incorporated as Clause 19 laying down therein that in the event of any dispute and difference arising under the conditions of licence or in connection with the licence except as to any matters, which was specifically provided by the specific condition, will be resolved by arbitration as per

provisions of the Arbitration and Conciliation Act, 1996.

3. Admittedly, a dispute arose between the appellant-licensee of food plaza and the respondent No. 2 (Indian Railway Catering and Tourism Corporation) since the respondent No. 2-Corporation alleged that the petitioner/appellant was not selling the food articles through the food plaza as per the terms and conditions of the agreement as it was not maintaining hygienic conditions in the food plaza. For this purpose, show-cause notices were issued to the petitioner-appellant on several occasions indicating that in spite of the notices which were issued to the respondents on 10.9.2003, 14.10.2003, 24.1.2004, 25.2.2006, 12.4.2007, 29.4.2007 and 11.5.2007 and also in spite of several opportunities granted to the petitioner-appellant to rectify the lapses on the part of the licensee, the petitioner-appellant failed to improve the conditions. Consequently, in terms of the clause in the agreement, the licence granted in favour of the petitioner-appellant was cancelled which was challenged by the petitioner-appellant by filing a writ petition.

4. But in our considered opinion, when the dispute arose as to whether the petitioner-appellant was maintaining proper hygiene in the food plaza and whether it was operating the plaza as per the terms of the agreement or not and there being also a clause in the agreement for appointment of an arbitrator in the event of any dispute arising between the parties, the petitioner-appellant had the remedy of taking recourse to the provisions in the agreement by taking steps for appointment of an arbitrator. The petitioner-appellant in spite of the clause in the agreement, filed a writ petition before the learned Single Judge, who by a reasoned judgment and order was pleased to hold that the petition was not fit to be entertained.

5. The learned Single Judge while examining the question as to whether the rules of natural justice were violated or not prior to canceling the licence, prima facie also examined the question as to whether hygienic conditions were maintained in the food plaza or not although the learned Single Judge was under no obligation to enter into the question of fact in this regard. The Petitioner-appellant herein, in our view, had entered into a contractual agreement with the respondent No. 2 Indian Railway Catering and Tourism Corporation and his entire right to operate the food plaza emerged from the agreement which had been executed between them. Once the petitioner-appellant submitted that in the event of existence of any dispute, the licensee will take recourse to the arbitration proceeding, his writ petition could have been dismissed on this ground alone but fortunately for him, the learned Single Judge dismissed the writ petition on the ground that he was granted sufficient opportunity to establish that he had not violated the terms and conditions of the agreement for which licence was issued and also took notice of the fact that he failed to operate the food plaza in terms of the agreement wherein a specific condition for maintaining hygiene in the food plaza was essential. Once the condition to maintain hygienic condition was laid down as one of the basic grounds to operate the food plaza, the same could not have been

ignored by the petitioner-appellant so as to contend that even if he had been granted sufficient time to improve the condition and he failed to improve, yet he had the right to continue with the same.

6. Hence, for the reasons which have been assigned by the learned Single Judge as also on the ground of the remedy already available to the petitioner-appellant under the agreement for referring the matter to the arbitrator, we see no ground to entertain this appeal and hence the same is dismissed.

Consequently, I.A. No. 2840 of 2008 and I.A. No. 2881 of 2008 also stand rejected.