

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 2167/2008**

Date of decision : 27.07.2009

IN THE MATTER OF :

PRAKRITI RESTAURANT P.LTD. Petitioner
Through: Ms. Manisha Agarwal, Advocate

versus

INDIA TRADE PROMOTION ORGANIZATION Respondent
Through: Mr. Rajinder Wali, Advocate

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

1. Whether Reporters of Local papers may be allowed to see the Judgment? No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

HIMA KOHLI, J. (ORAL)

1. The present writ petition is directed against the order dated 31.10.2007 passed by the learned ADJ on an appeal preferred by the petitioner under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as '**the Act**'), against the order dated 17.08.2005 passed by the Estate Officer under Section 7 of the Act.

2. At the outset, counsel for the petitioner states that the present writ petition is confined to the grievance of the petitioner with respect to three issues alone, i.e., with regard to the findings pertaining to assessment of property tax dues, electricity dues and the interest imposed by the Estate Officer, and upheld in the impugned order.

3. Briefly stated, the facts of the case are that in the year 1999, the petitioner was allotted a premises on licence basis, at Pragati Maidan Complex by the respondent/ITPO to run a food and beverage outlet, on the terms and conditions of the license as contained in the agreement dated 08.11.2000. Differences and disputes arose between the parties on account of which, the respondent issued a show cause notice to the petitioner calling upon it to pay license fee charges, water charges, conservancy charges, green area charges, electricity charges and property tax charges. The petitioner made a representation before the respondent for rationalization of the licence fee, which was rejected by the respondent and hence, the petitioner paid the licence fee. The petitioner also did not dispute the green area charges and the conservancy charges and paid the same but it contested the claim of the respondent on account of demand raised in respect of property tax, electricity charges, water charges and interest claimed by the respondent on the arrears.

4. Counsel for the petitioner states that the appellate authority did not take into consideration the submissions made on behalf of the petitioner to the effect that not only was the assessment of property tax in respect of the premises in occupation of the petitioner required to be proved by the respondent, the respondent was also required to establish the fact that the property tax demands as raised in terms of the assessment order were paid by the respondent, for and on behalf of the petitioner. The aforesaid issue is purely a question of fact, which has been dealt with in para 4.3.3 of the impugned order wherein the Estate Officer's records have been discussed and it is noted that the respondent produced receipt of payment of property tax made to the MCD and the receipts of payment made on account of differential amount of property tax claimed by the MCD towards part of property given on rent to different licencees. The said documents were marked before the E.O. as Ex.PW3/2 (colly). Reference has been made to the respondent's witness, PW3, who proved the said documents.

5. It is not disputed by the petitioner that the terms and conditions of the agreement governing the parties required the petitioner to bear the incidence of property tax. Clause G of the Agreement deals with rates and taxes. Clause G.2 clearly states that "the licensee shall bear the incidence of the property tax of the structure of the allotted premises as demanded by the licensor". In this regard, reference has been made to the statement of

the Managing Director of the petitioner, which is reproduced in para 4.3.3 of the impugned order. This Court, sitting in appeal ought to accept the findings of facts returned by the Courts below as there appears no mis-appreciation of facts or material irregularity in the conclusion arrived at by the Estate Officer as also the Appellate Authority. Both the Courts below have arrived at an identical conclusion on the basis of the documents placed before them. i.e., the evidence adduced by the respondent and the receipts of payment of property tax made to the MCD by the respondent. Hence, the grievance of the petitioner with regard to the findings of the learned ADJ, pertaining to property tax dues, is found to be devoid of merits and is rejected.

6. The second grievance raised on behalf of the petitioner is with regard to the findings returned as to the electricity dues. Counsel for the petitioner states that the learned ADJ failed to take into consideration the fact that the power to determine the tariff of electricity vests in the Delhi Electricity Regulatory Commission (DERC) in terms of Section 11(1) of Delhi Electricity Reform Act, 2000 and that though the respondent can revise the tariff, it was bound to issue a notice to the petitioner. In this context, a reference to the terms and conditions of the Agreement are necessary. Clause F.14 of the Agreement is reproduced hereinbelow:

“F.14 It is recognized that the Licensor takes bulk

supply of electricity from high tension lines and water from main supply lines. Thereafter the licensor through an elaborate network of distribution regulates the supply of electricity and water. Therefore, the licensor has own independent system of billing and determining the rates payable by the licensee. The licensee would be charged according to the rates notified by Licensor from time to time.”

7. As per the aforesaid clause, it is apparent that the licensor having its own independent system of billing and determining the rates payable by the licensee, could charge the licensee according to the rates notified by the licensor from time to time. It is not disputed that electricity was supplied to the respondent at rates determined by the DERC. It was receiving bulk supply of electricity from high tension lines and in turn supplying it to the petitioner and to other similarly situated occupants at the Pragati Maidan Complex of ITPO. The petitioner having entered into an agreement with the respondent/ITPO and having accepted the clauses contained in the agreement which pertain to levy of electricity charges at rates notified by the respondent, cannot be permitted to seek to overturn the very same agreement at a later stage, as per its convenience.

8. The findings of the learned ADJ as contained in paras 5.1.1 and 5.1.2 in that regard are relevant. One of witnesses of respondent, PW2 also mentioned that a notice of increase in tariff was circulated by the F&B Unit of

the respondent to all the parties including the petitioner. The evidence of Shri Vinod Gulati, Managing Director of the petitioner, referred to by the learned ADJ in para 5.1.2, shows that he admitted that the payments were not being made as per invoices raised, but were being made on account, under protest. These abovesaid invoices reflect the rate of Rs.10/- per unit and the petitioner has not denied receipt of these invoices. This buttresses the findings in the impugned order that the petitioner was well aware of the rates at which payment with regard to the electricity tariff was to be made to the respondent/ITPO. The petitioner having conceded the knowledge of the fact that rates were revised, the formality of notice is deemed to have been completed. Hence, the contention of the counsel for the petitioner that notice of revised rates of electricity tariff had not been received by the petitioner from the respondent, is untenable and is rejected.

9. The plea of the petitioner that the demand of revision of electricity tariff was arbitrary and in the absence of any details furnished, the same was not justified, is rejected, as the terms and conditions of the agreement are clear. When the said terms and conditions of the agreement do not stipulate furnishing of any basis for revision, the Estate Officer could not have been called upon by the petitioner to furnish the said details to him, nor can the impugned order be faulted for upholding the order of the Estate Officer in that regard.

10. The last plea raised by the counsel for the petitioner to assail the impugned order is that the Estate Officer ought not to have awarded interest on the damages imposed on the petitioner and the learned ADJ ought to have set aside the order dated 17.8.2005 passed by the Estate Officer. Counsel for the petitioner states that the Interest Act, 1978, mandates that notice ought to be issued to a party before a demand for interest can be raised. She submits that as no demand was made by the respondent under the Interest Act, interest could not have been levied on the petitioner by the Estate Officer. In this regard, reference to sub- section (2A) of Section 7 of the Act is relevant. The aforesaid provision permits the Estate Officer to direct that the arrears of rent or damages shall be payable together with simple interest at the rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the Interest Act, 1978. It is pertinent to note that the aforesaid sub-section (2A) of the Act was inserted in Section 7, by way of amendment carried out in the year 1980. In view of the aforesaid provision which empowers the Estate Officer to impose simple interest on the arrears of rent and damages, he was competent to impose interest on the petitioner, even in the absence of any separate notice issued by the respondent under the Interest Act, 1978. Hence, the contention of the counsel for the petitioner that a notice was required to be served upon the petitioner prior to the respondent raising a demand of interest is not justified and therefore rejected.

11. There is no other ground taken to assail the impugned order dated 31.10.2007. For all the aforesaid reasons, this Court find no illegality, perversity or arbitrariness in the impugned order that deserves interference by this Court. The writ petition is dismissed.

JULY 27, 2009
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HIMA KOHLI,J