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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: July 28, 2009
Date of Order: September 04, 2009

+OMP 247/2009

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Food Plaza Restaurant

Through: Mr. P.S Bindra, Advocate

04.09.2009

...Petitioner

Versus

India Trade Promotion Organization

...Respondent

Through: Mr. Parag P. Tripathi, Sr. Adv. with Mr. Rishi Maheshwari, Mr. Akhil Anand and Mr. Amey Nargolkar, Advocates

AND

+OMP 248/2009

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M/s Singla Cuisine

Through: Mr. P.S Bindra, Advocate

...Petitioner

Versus

India Trade Promotion Organization

...Respondent

Through: Mr. Parag P. Tripathi, Sr. Adv. with Mr. Rishi Maheshwari, Mr. Akhil Anand and Mr. Amey Nargolkar, Advocates

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. By these petitions under Section 9 of the Arbitration & Conciliation Act, 1996 ("the Act" for short) the petitioners made a prayer that the respondent should be restrained from creating any hindrance or obstructing entry/ exit of petitioners' customers, visitors, guests, servants etc. in any manner to the licensed premises between 11 am to 11 pm from Gate 1 and 7 of the Pragati Maidan and interfering with the conduct of business of petitioners.
2. Brief facts relevant for the purpose of deciding these petitions are that

the petitioners are running Food and Beverage outlets in Pragati Maidan under license from respondent. The license is valid for a period of 10 years and is currently valid. It is the contention of petitioners that the working hours of the outlets are from 11 am to 11 pm in terms of license agreement between the parties. In February, 2008, respondent passed an order prohibiting the entry to the petitioners' outlets after 8 pm with the result that a petition was filed by the petitioners before this Court and ultimately the matter was referred to the arbitrator and the arbitrator by consent of parties passed an award to the following effect:

"The Claimants, their representatives, guests, servants and assigns etc., shall be permitted entry/ exit through Gates No.1 and 7 of Pragati Maidan, New Delhi till 11 pm on all days subject to the terms and conditions of the License Agreement signed between the parties during the subsistence of the License Agreement signed between the Parties."

3. It is submitted that after this award was made, the entry of vehicles of the guests/clients of the petitioner was being allowed from Gate No.1 and 7 upto the petitioners' outlets. However, in March, 2009, a new Security Officer Mr. Vivek Sehgal came up to be appointed and he sought to obstruct the entry/ exit of the vehicles of the petitioners and their guests/ customers upto the licensed premises without any justification. A notice was sent to respondent to this effect. Finding that there was an arbitral award in favour of petitioners, a joint meeting of petitioners' and respondent's official was held on 1st April, 2009. Since then though the vehicles of petitioners are permitted to go through gate no.1 & 7 but are not permitted to go upto the concerned outlet but are required to be parked at the parking lot at gate no.7 between Hall No.14 and Defence Pavilion. It is submitted by petitioners that since the

gate no.7 is locked most of the times, the guests are directed entry only through gate no.1. There was no justification for not permitting the vehicles right upto the licensed premises as was being allowed in past. It is stated that not permitting the vehicles right up to the petitioners' outlets would make the guests and visitors including children and aged persons and sometime persons who are handicapped walk upto one/ one and a half kilometer to reach the outlet and if the vehicles are not permitted till the licensed premises people would not like to book the parties and would go to other destinations.

4. In response to this petition, it is submitted by respondent that the terms and conditions of the license agreement were being adhered by respondent in this case. The licensor /respondent has absolute discretion to earmark the parking areas and not to permit the parking of the vehicles belonging to employees/ visitors of the petitioners at places not earmarked. The respondent was responsible for overall security of the area and visiting public and was within its right to allow parking only at an earmarked area. No parking could be allowed at places other than the areas specifically earmarked in Pragati Maidan.

5. The counsel for respondent referred to the terms of license deed to assert that the respondent was perfectly justified in not allowing the vehicles to go right up to outlets of the petitioners and in asking for parking of vehicles only on at the parking lots, for security reasons. It is also submitted that these parking lots were hardly 300/400 meters away from the outlets of petitioners and petitioners' contention that the guests/ customers would have to walk one or one and a half kilometer was false. The right of the petitioner to park the vehicles right near the food and beverage outlets was denied. The

security officer Mr. Sehgal was doing his duty as a senior officer of ITPO to ensure security of each and every person present in the premises and the relief sought by the petitioners would amount to compromising with the security of the persons visiting Pragati Maidan including the guests of petitioners.

6. The relevant clause of the agreement between the parties reads as under:

“B.20 The licensor reserves the right to prohibit the use of the specific areas of the licensed premises for security reasons.

Xxxxx

C1. The Licensee shall abide by all the instructions /regulations issued by the Licensor with respect to entry and exit of the material / servants / representatives / visitors /customers and vehicles from time to time.

C2. The Licensee shall have the absolute discretion to permit or not to permit the entry and parking of vehicles belonging to employees and/ or visitors to the Licensed premises and without specific permission, no such entry shall be allowed.”

7. Clause B.20 would not be applicable in this case because it is not the case of petitioners that they were being prohibited from use of any part of the licensed premises. Clause C1 is also not applicable in this case since the dispute regarding timings of food and beverages outlets of the petitioners has been already resolved through arbitration and a consent award has been passed allowing use of Gates No.1 and 7 between 11 am and 11 pm by the petitioners' guests, servants, customers etc.

8. Clause C2 above is relied upon by the counsel for respondent to argue that it is within the discretion of respondent to permit or not to permit the parking of vehicles belonging to employees/ guests/ customers of the petitioners near F&B and the petitioner has to park the vehicles only in the parking lots earmarked for the petitioners' guests, customers etc.

9. I consider that the dispute regarding interpretation of this clause can be resolved by way of arbitration. However, the agreement prima facie does not prohibit taking of vehicles to the gate of the food and beverages outlets, dropping the guests, customers there and then taking the vehicles back to the parking lot. The agreement does not specify that the vehicles of guests of petitioners would not be allowed upto the gate of food and beverages outlets. If the agreement is interpreted prima facie in that manner, then the petitioners would not be able to even bring the material, food items, beverages etc to the outlets and all the delivery vehicles will have to stop at the parking lots and the delivery will have to be lifted from the parking lot to the food and beverage outlets either by hand or in carts. In my view, this does not seem to be the intention of the parties to the agreement /license deed. It is also a fact that even if the distance is 300/400 meters, in travelling of this distance from parking lot to food outlets, a person with disability may face difficulty. The guests do include aged and handicapped persons and if they are dropped at the parking lots, may find it difficult to reach the food outlets.

10. I consider that in terms of the agreement, respondent has a right to regulate the parking of vehicles and can earmark the place where vehicles are to be parked but prima facie this clause does not give a right to respondent not to allow the vehicles to come up to the gate of food outlets for

the purpose of dropping the guests/ customers and then taking the vehicles to the parking lot.

11. In view of my foregoing discussions, this petition under Section 9 of the Act is allowed to the extent that respondent may post its security officers at gates No. 1 and 7 to check the vehicles entering for the food outlets of petitioners for security purposes. The petitioners shall get parking facility of the vehicles only at the earmarked parking space however, respondent shall not stop the vehicles from reaching the food outlets for the purpose of dropping the guests and then bringing the vehicles back to the parking lot. Respondent is at liberty to place its security guards at the food outlets to ensure that no vehicle stays parked at the food outlets and all vehicles, after dropping the guests, go to the parking lot. The petitioners shall make arrangement for parking vehicles only in parking lots and employ drivers to see that owner driven vehicles are parked in the parking lot. The petitioners shall also post its own guards to ensure that no vehicle remains static/ parked near food outlets and all vehicles are taken to the parking site earmarked for the petitioner's food outlets.

12. With above directions, both petitions stand disposed of. However, petitioners, if already have not invoked the arbitration clause, shall invoke the arbitration clause within 30 days from today.

September 04, 2009
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SHIV NARAYAN DHINGRA J.