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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: May 20, 2009
Date of Order: May 26, 2009

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26.05.2009

M/s Bharat Catering Corporation

...Petitioner

Through: Mr. Jayant Bhushan, Sr. Adv. with Mr. Manish K. Bishnoi,
Advocates

Versus

Indian Railway Catering & Tourism Corp Ltd. ...Respondent

Through: Mr. Saurav Agrawal, Advocate

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. The petitioner's firm having five partners was awarded catering contract by the respondent for various trains for providing mobile and static catering services. It was one of the conditions of the tender that in case of any change to be made in the constitution of the firm an approval shall be sought from the respondent. During continuation of the contract, one of the partners made representation to the respondent that the firm had been dissolved and he had become the sole proprietor of the firm. Thereafter, another partner approached the respondent saying that the representation made by the partner to respondent was wrong and in fact he had been expelled and the other partner was the sole proprietor. Four partners continued to make allegations against each other and kept making representations to the respondent that the other was no longer the partner of

the firm and the business now belonged to him. The license fees, running into several lacs of rupees in respect of the contract also became due. The partners lodged FIRs against each other and also made representations to the respondent and filed dissolution deed of the firm and other documents and letters resulting into the respondent cancelling the contract vide letter dated 6th May 2009. The letter dated 6th May 2009 is self-explanatory and gives all details and chain of events as to how various representations were made to the respondent regarding constitution of the firm, expelling of the partners etc. The letter observed that in view of the inter se quarrel between the partners of the firm and the fact that despite giving opportunities to the partners to appear in person before Board Committee on 27th April 2009 along with their affidavits and undertakings, two of partners did not appear resulting into a serious doubt regarding existence of the firm and legal status of the license. The respondent also notified that it was not clear as to who was actually running the catering service. The respondent observed that in such a scenario, the travelling public ought not to suffer inconvenience and there would also be problems regarding fixing of responsibility in case of breach of the terms of the license or non service or improper service. Thus, the license was terminated by letter dated 6th May 2009.

2. The petitioner by this petition under Section 9 of the Arbitration & Conciliation Act, 1996 made a prayer that the operation of this termination letter dated 6th May 2009 should be stayed by the Court and the respondent should be restrained from giving effect to impugned letter dated 6th May 2009 and the petitioner should be allowed to continue with the catering service and vending service in the trains being run by respondent.

3. During arguments, counsel for the petitioner brought all the four partners in the Court and submitted that now they were one again and explained the reasons of their non appearance before the respondent's committee on the date fixed before it. It is, however, not in dispute that the different partners filed letters and representations before the respondent making allegations against each other and it is also not in dispute that even an FIR was lodged by one of the partners against the others. It is also revealed on perusal of record that the dissolution deed of the partnership firm was also filed before the respondent.

4. It only seems that the four partners, after termination of the contract, had come to the court together with the sole purpose to take relief from the Court and to represent to the Court that they are one, though till other day they were at loggerheads.

5. Be that as it may, the scope and ambit of Section 9 is not to restore the contract which has already been terminated. The contract between the respondent and the petitioner created a commercial relationship between the parties. The termination of contract is one of the facets of the contract and as per contract entered into between the parties, the contract could be terminated by respondent for various reasons given therein. If the petitioner is aggrieved by the act of the termination of the contract by respondent and considers that the termination was bad or illegal, the petitioner is at liberty to invoke the arbitration clause and claim damages, if any, suffered by the petitioner. The contract cannot be restored by the Court under Section 9 nor is it a case where the Court should interfere. In my view prima facie there is no case made out in favour of petitioners. The petitioners' conduct, as

reflected from the impugned letter of termination justifies termination of the contract.

6. I, therefore, find no force in this petition. The petition is hereby dismissed. However, any opinion expressed herein shall have no bearing on the arbitrator's decision if the arbitration clause is invoked.

May 26, 2009
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SHIV NARAYAN DHINGRA J.