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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: April 02, 2009
Date of Order: April 29, 2009

+ OMP 523/2008

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29.04.2009

Lt. Col. (retd.) K.S. Ahluwalia

...Petitioner

Through : Mr.S. N. Kumar, Sr. Adv. with Mr. K.B. Soni, Advocates

Versus

Indraprashta Gas Ltd.

...Respondent

Through: Mr. K.K. Rai, Sr. Adv. with Mr. S.K. Pandey, Advocates

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. This petition under Section 9 of the Arbitration & Conciliation Act, 1996 (for short, "the Act") has been made by the petitioner who was awarded a contract by the respondent for management and for operating services at GL/CNG Station at Sarita Vihar and Jasola, New Delhi. The contract was initially granted in April 2002. It was renewed from time to time and the last renewal was done in April, 2006 valid up to 5th April 2007. In April 2007, the contract was not renewed and the applicant filed a writ petition before this Court being WP(C) No.2086 of 2007. This writ petition was disposed of vide order dated 18th September, 2008 keeping in view the fact that the contract between the parties contained an arbitration clause being Clause No.12 and the petitioner sought time from the Court to move an application/petition under Section 9 of the Act. At the time of entertaining the writ petition, a status quo order was passed by the Writ Court, which continued up to its disposal and the respondent gave an assurance to this Court that it will

maintain status quo for further two weeks.

2. The agreement between the parties contained following clause:

10. Termination of Agreement

The company may, without prejudice to any other remedy for breach of Agreement, by written notice of default sent to the OPERATOR, terminate the Agreement in whole or in part;

- i) if the OPERATOR fails to deliver any or all of the services/ workers within the time period(s) specified in the Agreement or*
- ii) if the OPERATOR fails to perform any other obligation (s) under the Agreement; and*

the Company shall reserve the right, at any time during the period of the Agreement, to terminate it by giving one month notice to OPERATOR, and upon expiry of such notice period the OPERATOR shall vacate the site/ office occupied by him immediately. Upon termination of the agreement for any reason whatsoever, the OPERATOR or any person engaged by the OPERATOR shall cease to have any right thereafter or remain within the premises or to operate the facilities thereon. On termination of the Agreement and while handing over the station to the Company, the OPERATOR shall ensure that all the Company assets are in good condition.

Upon the termination of the Agreement the staff employed by the OPERATOR will have no claim whatsoever for employment temporary or permanent in the Company.

All dues payable to the staff employed by the OPERATOR will be settled by the OPERATOR and no claim of the staff shall be entertained by the Company."

The agreement also contained a Clause for resolving of disputes which provided for referring the disputes to Arbitration.

3. By this application petitioner has prayed that this Court should continue status quo order till the Arbitral proceedings are finally disposed of.

That implies a contract that has come to an end by efflux of time, should be continued by Court by way of interim injunction. The petitioner has already enjoyed such extension of contract on the basis of 'status quo' order for about two years.

4. The petitioner had entered into a commercial contract for managing and operating the CNG pump for a period of one year in the year 2002. The contract was renewed on the same terms and conditions from year to year, for five years. The renewal did not create a vested right in the petitioner for renewal of the contract in perpetuity. The contract between the parties is a commercial relationship and comes to an end on expiry of its period. The rights and obligations of the parties are to be determined on the basis of the terms of contract between the parties. Where a contract has been terminated or has come to an end on its expiry, the Court while entertaining an application under Section 9 of the Act, cannot restore the contract or write a new contract between the parties. It is not within the jurisdiction of the Court to renew a contract between the parties. Section 9 does not permit a Court to thrust services of someone on the employer, who does not want the services of the contractor. If by virtue of termination of the contract or by virtue of expiry of contract, any damages have been suffered by the petitioner, the same shall be considered by the Arbitrator. Under Section 9, a contract which has expired or which has been terminated, cannot be kept alive in perpetuity year after year by the Court. I find no force in this petition. The petition is hereby dismissed. No orders as to costs.

April 29, 2009
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SHIV NARAYAN DHINGRA J.