

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 408/2010 & CM Nos. 12160/2010 & 14539/2010

M/S AMBUJA HOTELS & REAL
ESTATES (P) LTD.

..... Appellant

Through: Mr. Pradeep Ranjan Tiwary,
Advocate

versus

INDIAN RAILWAY CATERING AND
TOURISM CORPORAITON LTD.

..... Respondent

Through: Mr. Sunil Malhotra, Advocate

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Reserved on : 26th August, 2010.

Date of Decision : 06th September, 2010

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

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

J U D G M E N T

MANMOHAN, J

CM No. 12161/2010 (exemption)

Allowed, subject to all just exceptions.

Accordingly, application stands disposed of.

LPA No. 408/2010

1. Present Letters Patent Appeal has been filed challenging the order dated 1st June, 2010 passed in W.P.(C) 3877/2010 whereby the learned Single Judge has issued notice limited to the question of debarment of the appellant from participating in future contracts. It is pertinent to mention that learned Single Judge not only refused to stay the termination of the catering services contract but also directed the appellant to hand over catering services to the respondent-Indian Railway Catering & Tourism Corporation Ltd. (in short, “IRCTC”) positively by 09th June, 2010.

2. The relevant facts of the present case are that the respondent-IRCTC is a company duly incorporated and registered under the Companies Act, 1956 established inter alia for the purposes of upgrading, running and managing the catering and hospitality services for Indian Railways and for providing hygienic food and better services to the passengers travelling from one part to the other part of the country. To fulfil its objectives, respondent-IRCTC floated tenders inviting bids from catering contractors in order to provide catering services in the trains in accordance with the terms of the contract.

3. Appellant was one of the successful bidders who was awarded a contract of catering business in Kalka-Shatabadi Express (2005-2006) for a period of five years from 09th September, 2005 to 09th September, 2010.

4. From the facts before us, it seems that there were few complaints with regard to quality of food and services rendered by the appellant in the first couple of years. However, in 2008-2009, there were eight complaints regarding poor quality of food supplied by the appellant and during 2009-2010 the figure rose to thirty-six complaints. Similarly, the complaints regarding poor services increased appreciably from the year 2008-2009 to the year 2009-2010.

5. In fact, the respondent stated that it had periodically issued show cause notices dated 20th December, 2005, 26th April, 2006, 04th April, 2007 and 24th September, 2009 to the appellant asking it to improve its performance, but as they were of no avail, a final show cause notice dated 12th February, 2010 was issued to the appellant. The competent authority after examining the record and after affording due opportunity to the appellant, passed a detailed order cancelling the licence granted to the appellant vide order dated 12th May, 2010. By the said order, the appellant's security deposit was forfeited and appellant was debarred from participating in any future project by the respondent-IRCTC for a period of one year w.e.f. 24th May, 2010.

6. Feeling aggrieved, the appellant preferred the writ petition being W.P.(C) 3877/2010. But as pointed out hereinabove, the appellant was directed to hand over catering services to respondent-IRCTC positively by 09th June, 2010.

7. On the first date of hearing of the appeal, i.e., 03rd June, 2010, learned counsel for the appellant drew this Court's attention to an order passed in more or less a similar matter being LPA No. 278/2010 (R.K. Refreshment and Enterprises Pvt. Ltd. vs. IRCTC). In that case also, there was some complaints with regard to catering services but taking into consideration the fact that the contract was sought to be terminated in the midst of the holiday season and that respondent-IRCTC would take some time to bring into place a new arrangement and as also the fact that the contract was due to expire only on 30th June, 2010, it was directed that R.K. Refreshment and Enterprises Pvt. Ltd. be permitted to continue providing catering services till its contractual term concluded subject to more active quality control and supervision by IRCTC.

8. Consequently, this Court in the present appeal, keeping in view the approaching summer recess, permitted the present appellant to continue providing catering services subject to appellant's furnishing a bank guarantee of Rupees 20 lacs to the satisfaction of IRCTC within one week for providing good quality food and services to the passengers. It was specifically directed that in the event complaints against quality of food and services supplied by the appellant continued, respondent-IRCTC would be entitled to enforce the bank guarantee.

9. When this matter was taken up on 15th July, 2010, learned counsel for the respondent stated that the bank guarantee provided by

the appellant had lapsed. Accordingly, this Court directed that a fresh bank guarantee be immediately provided.

10. As on the next date of hearing, i.e. 26th July, 2010, there was a dispute with regard to the extension of the bank guarantee, this Court directed the appellant to deposit a sum of Rupees 20.25 lacs in the Registry of this Court on or before 29th July, 2010. On 13th August, 2010, it transpired that instead of depositing a sum of Rupees 20.25 lacs, the appellant had furnished a TDR for a sum of Rupees 20.25 lacs. Since the deposit was not in accordance with the order dated 26th July, 2010, this Court on 13th August, 2010 passed the following order:-

“This Court on 26th July, 2010 after referring to the order passed on 15th July, 2010 proceeded to issue the following directions :-

“Without entering into the said debate, we are only inclined to direct as agreed to by Mr. Manish Bishnoi, learned counsel instructing Dr. Abhishek Manu Singhvi, after obtaining instruction from the appellant that a sum of Rs. 20 lacs shall be deposited in the Registry of this Court on or before 29th July, 2010.

The bank guarantee shall be handed over to the appellant after the amount is deposited before this Court and the same shall not be encashed without leave of this Court.

That apart, as appellant had not extended the bank guarantee within the time stipulated, the appellant shall deposit Rs. 25,000/- towards costs along with Rs. 20 lacs before the Registry of this Court.

It the appellant would not deposit Rs. 20.25 lacs by 29th July, 2010, the appeal shall entail in dismissal.”

Be it noted, the appellant has furnished TDR amounting to Rs. 20,25,000/- before the Registry of this Court. We really fail to fathom how the appellant could furnish a TDR.

Mr. Sunil Malhotra, learned counsel appearing for the respondent submitted that the appellant is bent upon overreaching the Court by flouting the orders and, therefore, the appeal does not deserve to be heard on merits.

At this juncture, Dr. Abhishek Manu Singhvi, learned senior counsel instructed by Mr. Manish Bishnoi and Mr. Pradeep Ranjan Tiwary, learned counsel for the appellant could only state that there was a mistake and this Court may direct imposition of interest or any acceptable condition.

Regard being had to the totality of the facts and circumstances, it is directed that the appellant shall deposit Rs. 25,00,000/- on or before 19th August, 2010. On such deposit being made, the TDR shall be returned to appellant. In case the appellant fails to deposit the amount within the period as indicated hereinabove, the appeal shall stand dismissed without further reference to this Bench.

Let the matter be listed on 26th August, 2010 at 2.15 p.m.

It is hereby made clear that no adjournment shall be granted on the next date of hearing. It is further clarified that the matter shall be listed if the condition precedent as incorporated hereinabove is satisfied.

11. Ultimately, a sum of Rupees 25 lacs was deposited by the appellant with the Registry of this Court and accordingly, the matter has been taken up for disposal.

12. Mr. Pradeep Ranjan Tiwary, learned counsel for the appellant submitted that the decision to terminate the contract was motivated as it had been arrived at by the respondent-IRCTC in pursuance to Government of India's decision whereby the respondent-IRCTC had been advised to take over catering services of all Rajdhani and Shatabadi trains and run them departmentally. Mr. Tiwary further

submitted that the complaints referred to and relied upon by the respondent-IRCTC were not genuine. In any event, he submitted that the complaints were trivial in nature and could not lead to either termination of the catering services contract or encashment of bank guarantee.

13. Per contra, Mr. Sunil Malhotra, learned counsel for the respondent submitted that the decision of cancelling the licence and terminating the services of the appellant was taken only after several opportunities of hearing had been granted and that too after issuing various show cause notices and after taking note of appellant's performance after issuance of the final show cause notice. Learned counsel for respondent pointed out that complaints with regard to quality of food and services were made by the passengers even after issuance of the final show cause notice and even after this Court had passed the interim order dated 03rd June, 2010. He pointed out that nearly 45 complaints had been registered against the appellant after service of the show cause notice dated 12th February, 2010 up to 20th June, 2010 itself. Learned counsel for the respondent denied that there was any malice in terminating the appellant's contract or that the said decision had been arrived at in pursuance to the decision taken by the Government of India.

14. Mr. Malhotra further stated that in accordance with Clause 10 of the tender documents, all disputes arising between the present parties were subject matter of arbitration and, therefore, as the appellant had an

alternative remedy, this Court should not entertain the present appeal.

15. Having heard the learned counsel for the parties, we are of the view that the order of termination has been passed after affording due opportunity to the appellant by the respondent-IRCTC. In fact from what has been urged before us, it is apparent that show cause notices dated 20th December, 2005, 26th April, 2006, 04th April, 2007, 24th September, 2009 and 12th February, 2010 had been issued to the appellant pointing out deficiencies in catering services provided by the appellant. Consequently, we are of the view that it cannot be said that the decision to terminate the appellant's services was in pursuance to the Government of India's decision to take over catering services of all Rajdhani and Shatabadi trains.

16. In any event, in view of the admitted dispute resolution mechanism namely, the arbitration clause, we are of the view that neither the writ petition nor the present Letters Patent Appeal is maintainable. This is more so because disputed questions of fact arise for consideration in the present case. While it is the appellant's case that the complaints filed by the passengers are not genuine and too trivial, it is the case of the respondent-IRCTC that the complaints with regard to quality of food and services are grave and serious. For instance, one of the complaints highlighted by the respondent-IRCTC was that cockroaches had been found in the food supplied by the appellant as late as 13th June, 2010.

17. Even otherwise, the remedy if any, available to the appellant is to claim damages before the appropriate forum for breach of contract and/or its termination by the respondent-IRCTC .

18. In view the aforesaid, the present appeal is liable to be dismissed but keeping in view the fact that the appellant's contract is to expire after a few days i.e. on 09th September, 2010, we direct that the appellant shall hand over the catering service of the trains in question to respondent-IRCTC on 09th September, 2010. We further direct that a sum of Rupees 25 lacs deposited by the appellant with the Registry of this court shall be immediately remitted to the respondent-IRCTC as the respondent-IRCTC was entitled to enforce the bank guarantee for unsatisfactory services rendered by the appellant after this Court's order dated 03rd June, 2010. However, appellant would be at liberty to file appropriate proceedings in accordance with law for recovery of the said amount of Rupees 25 lacs or for any other claim it may have against the respondent-IRCTC. For the purposes of handing over a cheque of Rs. 25 lacs in favour of respondent-IRCTC through respondent's counsel, let the matter be listed on 10th September, 2010 before Registrar General.

19. It is made clear that all the observations made by us are in the context of the writ petition and LPA and would not bind alternative dispute resolution forum from arriving at any independent decision in accordance with law. We may hasten to clarify that we have made this observation as we have not gone into disputed questions of fact and

have not arrived at any conclusion with regard to either complaints or quality of services.

20. With the aforesaid observations, the present appeal and applications stand disposed of.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 06, 2010

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