

IN THE HIGH COURT OF DELHI AT NEW DELHI

OMP No. 658 of 2011

Date of order: November 21, 2011

VF SERVICES (UK) LIMITED Petitioner
Through: Mr. Neeraj Kishan Kaul, Senior
Advocate with Mr. Neeraj Malhotra, Mr. J.
Sivanandaraaj, Mr. Shourjyo Mukherjee and
Ms. Trishna Mohan, Advocates

versus

UNION OF INDIA & ANR Respondents
Through: Mr. Ruchir Mishra, Advocate

CORAM: JUSTICE S. MURALIDHAR

- | | |
|--|-----|
| 1. Whether 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 Digest? | Yes |

JUDGMENT
21.11.2011

1. This is a petition under Section 9 of the Arbitration & Conciliation Act, 1996 ('Act') by VF Services (UK) Limited having its office in London seeking a stay of the operation of a letter dated 8th August 2011 issued by the Embassy of Government of India at Netherlands, terminating the Visa Outsourcing Contract ['VOC'] dated 26th November 2010 entered into between the Embassy of India, The Hague, Respondent No. 2 herein. 4. At the hearing on 3rd October

2011 learned counsel for the Respondent placed reliance on certain additional documents which had not been placed along with the reply. While adjourning the case to enable the Petitioner to respond to the said documents, this Court ordered the termination notice would not take effect till the next date.

2. The relevant facts are that in terms of the VOC dated 26th November 2010 the Petitioner was to provide range of services at three locations i.e., The Hague, Amsterdam and Rotterdam. These included distribution of visa/OCI card/PIO card/passport application forms, assistance to applicants, sending/ collection of Visa/OCI card/passport, ensuring applications are complete, return of documents to applicants, reporting of fraud, and provision of other incidental internal facilities. In terms of the VOC, Visa/Consular Service Centres were to be opened for the public by the Petitioner on or before 90 days from the date of signing of the agreement. In the request for proposal ('RPF') issued by the Respondents inviting bids, it was indicated that service providers would be required to start operations within three months from the signing of the agreement and full operations would have to commence within one month from the start of operations. Further it was provided in the RPF that either party could terminate the contract by giving two months' advance notice of being unable to carry on the services any longer. Clause 11 of the VOC provided for termination and read as under:

"11. Termination

a. Either party may terminate the contract by giving two

months' advance notice of being unable to carry on the services any longer. In such circumstances, the process of smooth takeover of services will deem to begin from the date of receipt of the notice by the other party or from the date as stated in the notice, whichever is later and the process of termination/smooth takeover will be completed in a reasonable period of time or not more than two months.

b. In the event of implementation of 'Visa Free' regime agreed to mutually between the Government of India and the Government of the Netherlands, the Government of India/Mission will not have any liability to compensate the Service Provider.

c. In the unlikely event of break-up of diplomatic relations between the Government of India and the Government of the Netherlands the Government of India/Mission will terminate this Agreement at one week's notice without any liability to the Government of India/Mission.

3. Clause 14 of the VOC set out the term of agreement and read as under:

14. Term of Agreement

14.1 This agreement, which commences on 26th November 2010, would be valid for a three year period expiring on 25th November 2013 subject to performance based annual review that could lead to its termination before the three year deadline.

14.2 The Government of India and/or the Mission shall have the option to extend the operation of this Agreement for a period to be mutually agreed upon on such terms and conditions as are agreed to by giving the Service Provider notice of eight weeks prior to the date on which it is due to expire".

4. Clause 10 of the VOC provided that any dispute or difference regarding the interpretation of the provisions of the VOC should be resolved amicably between the parties. If the dispute was not resolved through mutation consultations within a period of six months, either party may refer the dispute to the arbitration in accordance with the Act. There was to be a sole arbitrator and the place of arbitration was New Delhi, India. The applicable law was the law of India.

5. Mr. Neeraj Kishan Kaul, learned Senior counsel appearing for the Petitioner submitted that although by an interim order, particularly in view of the legal bar under Section 14 (1) (c) read with Section 41 (e) of the Specific Relief Act 1963 ('SRA'), the Court would normally not be inclined to grant any interim stay of the order terminating the contract which by its very nature was determinable, this Court had in several decisions including *Pioneer Publicity Corporation v. Delhi Transport Corporation* 2003 (2) Raj 132 (Del) and *Atlas Interactive (India) Private Limited v. Bharat Sanchar Nigam Limited* 2005 (4) Raj 585 (Del), explained that an entity of State could not be seen to be acting arbitrarily or unreasonably even in the realm of contract and that in appropriate cases this Court would grant such interim relief. According to him, this was one such case. Referring to the correspondence exchanged between the parties prior to the letter of termination dated 8th August 2011 it was submitted by Mr.Kaul that the reasons adduced by Respondent No. 2 did not justify the abrupt termination of the contract. The Petitioner had always expressed its willingness to cure any deficiencies. Some of the complaints were

anonymous and could have been engineered by the Petitioner's competitors. In terms of the VOC an annual review was due. The short-comings pointed out were far too few and in any event not serious enough to warrant the disproportionate measure of termination of the contract. The letter of termination gave no reasons whatsoever. The facts contained in the additional affidavit filed by Respondent No. 2 pertained to events subsequent to the date of termination, i.e., 8th August 2011 and could not be acted upon to justify the termination. It was further submitted that apart from the Petitioner having a *prima facie* case, the balance of convenience in granting a stay of the termination of the VOC was also in its favour. The term of the contract was till 25th November 2013. On the question of irreparable hardship, it is pointed out that the Petitioner is at present providing visa services for the Government of India ('GOI') at its embassies in 17 other countries as well as providing visa services on behalf 37 countries other than India. Given its excellent track record thus far, the termination of the VOC would adversely affect the Petitioner's reputation and would cause it severe prejudice in the matter of bidding in the future for visa services not only for the embassies of India but of other countries as well.

6. Mr. Ruchir Mishra, learned counsel for the Respondents on the other hand submitted that Respondent No.2 the letter dated 8th August 2011 terminating the VOC clearly indicated that it was Clause 11 of the VOC which had been invoked and therefore, the termination was not stigmatic. Also, the termination was not effected all of a sudden.

A number of complaints had been received by Respondent No.2 from visa seekers from The Hague and elsewhere in Netherlands about the poor quality of services offered by the Petitioner. Despite several warnings and opportunities, the Petitioner failed to improve the quality of services. He referred to the correspondence exchanged between the parties, copies of which were enclosed both with the reply and the additional affidavit of the Respondents. The Indian embassy abroad was the first point of contact for visitors to India from the concerned country and it was important that the services provided to such intending visitors were of the highest quality. Mr. Mishra submitted that no interim relief that would result in the continuation of a contract that stood terminated could be granted by this Court in terms of Section 14 (1) (c) and Section 41 (e) SRA. He pointed out that an arbitrator was likely to be appointed shortly to adjudicate the disputes between the parties.

7. The VOC is a contract which by its very nature is determinable. Although in exceptional facts of individual cases involving agencies of the State, this Court has granted interim relief even against the termination of a contract (for e.g., *Pioneer Publicity Corporation v. Delhi Transport Corporation*), the settled law is that even where a contract has been illegally terminated the aggrieved party would be able to only claim damages and no interim relief against termination of the contract. In *Indian Oil Corporation v. Amritsar Gas Service (1991) 1 SCC 533*, the Supreme Court explained that even where one of the contracting parties was an agency of state, the constitutional

limitations of Article 14 as explained in *Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay*(1989) 3 SCC 293, *Mahabir Auto Stores v. Indian Oil Corporation*(1990) 3 SCC 752 and *Shrilekha Vidyarthi v. State of U.P. (1991) 1 SCC 212* would not apply since the case was based only on breach of contract and remedies flowing therefrom. Therefore (SCC, p.541) “the further questions of public law based on Article 14 of the Constitution do not arise for decision in the present case and the matter must be decided strictly in the realm of private law rights governed by the general law relating to contracts with reference to the provisions of the Specific Relief Act providing for non-enforceability of certain types of contracts.” On the facts of that case it was held that (SCC, p.542) “granting the relief of restoration of the distributorship even on the finding that the breach was committed by the appellant-Corporation is contrary to the mandate in Section 14(1) of the Specific Relief Act.”

8. Here the VOC dated 26th November 2010 is by its very nature determinable. There appear prima facie to be no extenuating circumstances that warrant a departure from the settled legal position that the court will not grant an interim relief of continuing a contract that is by its very nature determinable. In other words, this Court is not persuaded to overlook the legal bar erected by Section 14 (1) (c) read with Section 41 (e) of the SRA. Clause 11 of the VOC, which has been invoked by Respondent No.2, envisages either party terminating the contract by giving two months’ advance notice “of being unable to carry on the services any longer”. Respondent No. 2 did give two

months' advance notice to the Petitioner. There was correspondence exchanged between the parties in relation to the complaints received about the unsatisfactory quality of the services being provided by the Petitioner to visa seekers. The documents along with the reply of the Respondents are copies of some of the complaints received from visa seekers about the quality of the services at the office of the Petitioner at The Hague. It also appears that the Petitioner did give written assurances about rectifying the deficiencies pointed out by Respondent No. 2. One of the complaints received on 9th July 2011 mentions that "the waiting time is very-very long" as a result of which "many clients were frustrated and some even decided to leave without submitting their visa application." The other complaint was "body and communication language of staff is not good. They act and react very rude." Another complaint dated 26th July 2011 from a foreigner visiting the Petitioner's office was that "everyone in the room is complaining about the turn-around time of service delivery". Of course, the Petitioner on its part has placed on record the feedback forms it has received from several customers who have expressed their satisfaction with the services offered by the Petitioner.

9. For the purposes of the present petition this Court does not propose to determine whether the complaints against the Petitioner were justified. This Court is not expected at this stage to sit in appeal over the decision taken by Respondent No. 2 in light of the complaints received by it. It is not possible for this Court to whether the above complaints were trivial or substantial. That is something the

Respondent No.2 has to take a call on given the nature of the contract. All that can be said at this stage is that the quality of the services offered by the Petitioner, and the impact it would have on the image of the country in the eyes of a visitor to India are certainly relevant considerations that would go into the process of Respondent No.2 arriving at a decision whether to continue the contract. The impugned decision communicated to the Petitioner by Respondent No.2 by its letter dated 8th August 2011 cannot be said to be an impulsive one taken at the spur of the moment. It is difficult to *prima facie* conclude that the decision was arbitrary or unreasonable or disproportionate. It is however emphasised that this is a tentative conclusion for the purposes of the present petition under Section 9 of the Act. It is not intended to influence the final decision in the arbitration proceedings.

10. For the aforementioned reasons, this Court is not inclined to continue the interim order passed by this Court on 3rd October 2011 or to grant any of the reliefs prayed for in this petition. The said interim order is accordingly vacated. The petition is dismissed with no order as to costs.

S. MURALIDHAR, J.

November 21, 2011

rk