

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1/2015**

M/s. P.K. Hospitality Services Pvt. Ltd. Petitioner.

Versus

Airport Authority of India and another. Respondents.

Shri R. G. Ramani and Shri Amay Phadte, Advocates for the petitioner.

Shri S. D. Padiyar, Advocate for the respondents.

**CORAM :- F.M. REIS &
K.L. WADANE, JJ.**

Date : - 14th January, 2015.

P.C. :

Heard Shri R. G. Ramani, learned Counsel appearing for the petitioner and Shri S.D. Padiyar, learned Counsel appearing for the respondents.

2. The above petition, *inter alia*, seeks to quash and set aside the tender process initiated by the respondent No.1 to operate a new restaurant and snack bars at the new airport terminal at Bambolim, Goa.

3. Shri Ramani, learned Counsel appearing for the petitioner has pointed out that the petitioners were successful tenderers for running a restaurant as well as a snack bar at the original airport terminal which was tendered way back in the year 2006 for a period of 10 years. The learned Counsel further points out that a contract was accordingly signed between the petitioners and the respondents on 11th May, 2006 which is valid upto 30th April, 2016. The learned Counsel further points out that after the expansion of the Dabolim Airport, an additional terminal was constructed by the respondents and, as such, the petitioners were asked to shift their operations to the new terminal somewhere in the year 2014. The learned Counsel further points out that for providing such facilities, the petitioners had to invest substantial amounts to meet the required standards prescribed in the contract between the parties. The learned Counsel further points out that though the contract is still subsisting, the respondents arbitrarily issued tenders for operating a new restaurant and snack bar at the new terminal, without making a proper study whether such restaurant and snack bar are in fact required. The learned Counsel further points out that the petitioners have invested a substantial amount to start the restaurant and snack bar at the airport terminal and, as such, the action of the respondents to permit a new restaurant and snack bar at the new

terminal is arbitrary and with malafide motives only to force the petitioners to close down their business activities. The learned Counsel further points out that the contention of the respondents in the reply that the petitioners want to monopolize the activity of the snack bars at the airport is totally misplaced as, according to the learned Counsel, the contractual terms signed by the petitioners themselves suggest that the petitioners have to maintain strict standards with regard to the supply of food items, as well as the conditions stipulated therein. The learned Counsel further submits that as the petitioners have acted upon the representation of the respondents, and have invested substantial sums of money, the action of the respondents to introduce the restaurant and snack bars when in fact only one and half years' term of the petitioner is remaining, is malafide and arbitrary and, as such, there is a case for interference by this Court. The learned Counsel further points out that there was a legitimate expectation on the part of the petitioners that no new restaurant and snack bars would be permitted during the period when the agreement with the petitioners was subsisting.

4. On the other hand, Shri S.D. Padiyar, learned Counsel appearing for the respondents, has pointed out that the terms of the

contracts themselves suggest that the respondents were not debarred or precluded from opening a new restaurant and snack bar at the new airport terminal. The learned Counsel further points out that the contract in favour of the petitioners was executed way back in the year 2006 and in view of the opening of the new terminal at the airport, the passenger traffic has increased and, as such, the respondents found it necessary to open a new restaurant and snack bars for the benefit of the passengers. The learned Counsel further points out that considering that the new terminal has a floor area of 46,000 sq. metres, whereas the old terminal had only a floor area of 16,000 sq. metres, the necessity of opening such restaurant and snack bars arose for consideration by the respondents, which forced them to issue a fresh tender. The learned Counsel has also taken us through clause 11 of agreement dated 11.5.2006 and clause 24 of the Additional/Special Terms and Conditions for Restaurant and Snack Bar, which is a part of the agreement, entered into between the parties, to point out that there was no restriction on the respondents to open any snack bar at the airport terminal. The learned Counsel further submits that the grievance of the petitioners cannot be considered by this Court in the present writ petition under Article 226 of the Constitution of India.

5. We have carefully considered the submissions of the learned Counsel and with their assistance, we have also gone through the record. The main contention of the petitioners is that the respondents are not entitled to open any new restaurant and snack bar at the new airport terminal. To examine the said contention, clause 11 of agreement dated 11.5.2006 and clause 24 of the Additional/Special Terms and Conditions for Restaurant and Snack Bar, which are part of the said agreement, would be material. The said clauses read thus :

“11. That the Licensee shall have no objection to the Authority for granting any other license for similar facility at the airport premises where the Licensee is rendering such services.

24. The Authority shall be at liberty to issue similar licenses in the areas of the Airport if so desired including vending machines etc.”

6. On plain reading of the said terms and conditions, it is apparent that the petitioners themselves have given their consent and authority to the respondents to open additional new snack bars during the subsistence of the said agreement. Considering the said terms, the contention of Shri Ramani, learned Counsel appearing for the petitioners that in terms of the contract, the petitioners have invested a substantial amount which would disentitle the respondents to open an

additional snack bar, cannot be accepted.

7. Be that as it may, in any event, if there is any contractual breach committed by the respondents with regard to the said agreement, the petitioners are at liberty to avail of such other remedy as may be available in law. In the present writ petition, taking note of the terms of the contract, the contention of Shri Ramani, learned Counsel appearing for the petitioner that the action of the respondents is arbitrary or that there are any malafides on the part of the respondent, cannot be accepted. The increase in passenger traffic and additional floor area at the new terminal has also not been disputed by the petitioners. In such circumstances, there is no case made out for interference of this Court in the action taken by the respondents to open a new restaurant and snack bars at the new airport terminal in the petition under Article 226 of the Constitution of India.

8. In view of the above, the petition stands rejected.

K.L. WADANE, J.

F.M. REIS, J.

ssm.