

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.19290 OF 2015

ORDER:

This writ petition is filed by the licensee of the 1st respondent-Corporation at Vijayawada questioning the notice dated 06.01.2015 issued by the 2nd respondent-Regional Manager advising the petitioner to stop the proposal of selling non vegetarian food items alleging the same is unauthorised and in violation of the agreement conditions.

The brief facts for the purpose of disposal of the case as under:

Sworn of all details it is an admitted fact that the petitioner was a successful bidder in the open tender conducted by the respondents-Corporation in the year 2008 under the tender notification dated 8.2.2008. Pursuant to the same, a Deed of Licence was executed in favour of the petitioner on 1.4.2009 and pursuant to which an area of 31,700 sft was handed over the possession to the petitioner on 29.3.2010. Thereafter a Supplementary Deed of Licence was entered into on 2.8.2010 wherein it was categorically stipulated that the license period shall be for a period of 10 years commencing from 29.3.2010 to 28.03.2020. Thereafter, the petitioner made certain constructions in the leased premises after obtaining necessary permissions and was carrying on business. In the first floor of the building petitioner desired to run a restaurant and accordingly made all arrangements in accordance with the permission granted to him. Subsequently, in the month of January, 2015, petitioner desired to open a restaurant in the first floor to serve vegetarian and non-vegetarian food items and accordingly appeared to have advertised. Noticing the same, the impugned notice came to be issued by the 2nd respondent. The said communication dated 6.1.2015 was responded by the petitioner by submitting a representation/explanation dated 12.1.2015 specifically denying the allegations and further asserting that in terms of Clause 8 (g) and Clause 43(p) of the Deed of Licence do not prohibit the petitioner from selling the cooked non-vegetarian food items. Thereafter, by a letter dated 23.1.2015, the 2nd respondent by rejecting the explanation of the petitioner dated 12.1.2015 once again advised the

petitioner to stop the proposal of selling non vegetarian food items and to remove the menu board. Petitioner was also cautioned failing to comply with the instructions would result in steps being taken for termination of the contract as per the conditions of the Deed of Licence. In those circumstances, the writ petition came be filed.

On behalf of the respondents 1 to 3, a counter-affidavit is filed denying the allegations. The sum and substance of the counter-affidavit is to the effect that Clause XXI of the Deed of License permits the petitioner to carry out any legal business except selling of meat, pork, fish, dry fish and other contraband items etc. It is admitted that the license period was from 29.03.2010 to 28.03.2020. It was further asserted that the management of Kalimatha temple has also made a representation to the respondents-Corporation not to permit the petitioner to sell non vegetarian food items. On 24.1.2015 when the Vice Chairman and Managing Director of the Corporation attended for the inauguration function only vegetarian food items were sold and there was no mention about the non vegetarian food items being sold. Further, a specific objection with regard to the maintainability of the writ petition was also raised contending that, if there is any dispute, as per the terms of the Deed of Licence, the decision of the V.C and M.D of the Corporation is final in all respects.

A reply affidavit dated 15.2.2016 is filed by the petitioner categorically rebutting the averments made in the counter-affidavit filed by the respondents apart from enclosing the tender notification dated 8.2.2008, letter dated 13.12.2015 of the Personal Officer addressed to all the Depot Managers.

The contention of the learned counsel for the petitioner is that in the Deed of Licence agreement granted in favour of the petitioner, there is no prohibition to sell non vegetarian food items and in fact the authorities of the corporation were present on the date of inauguration of the restaurant on 24.1.2015. In fact, the function was attended by the Vice Chairman and the Managing Director of the Corporation and apart from the M.L.A of Gannavaram and other dignitaries.

On the other hand, learned counsel appearing for the respondents-Corporation while reiterating the contentions in the counter-affidavit vehemently opposes any relief being granted in the writ petition.

Having perused and having heard both the learned counsel at the outset it may be noted that the case involves practically no disputed questions of fact. Petitioner being a successful bidder in the tender dated 8.2.2008; having been granted licence and the said licence being valid till 28.03.2020 are admitted. The only controversy is in terms of the deed of license entered into between the parties as to whether the petitioner is permitted to sell the non vegetarian food items. To find out this aspect a reference may be made to the only Clause which is relevant in the Deed of License. Clause XXI(1) of the Deed of Licence, which reads as under:

“He is permitted to carry out any legal business except the business of Bar, liquor, sale of lottery tickets, gambling, Massage parlour, any business harmful to Commuters and image of the Corporation, any business detrimental to the legitimate revenues of Corporation such as Booking tickets to private buses, passenger transport etc., narcotics, Breweries, meat, forque, fish, dry fish sugar cane juice, explosives and other contraband items etc.”

It would also be useful to make a reference to some of the clauses in the tender form pursuant to which petitioner became a successful bidder. A composite tender notice was issued by the Corporation calling the bidders to participate with respect to stalls/shops/shopping complexes/canteens/dormitory/ telephone booth/cycle shops/scooter stands/office facilities/nursery/ educational institutions/business shops etc. Condition No.8 deals with the license fees, collection of electricity and water charges. So far as the present case is concerned, Clause 8(g) of license may be relevant. Clause 8(g) refers to that the license holders of fast food centers, non vegetarian/the bidders in relation to fast food centers non vegetarian/canteen are required to give their price list. Condition 43 of the Deed of Licence enumerates the nature of business and the permitted items. Subheading 43(p) reads as under:

Any business:- Any lawful business is permitted except intoxicants items, breweries, meat, sugar cane juice etc.

A harmonious and the combined reading of the above indicate that there was no prohibition for selling non vegetarian food items. On the other

hand, even in the tender notification there is a permission in relation to selling of the non vegetarian food items subject to condition only tenderer fulfilling the condition of disclosing the price list in relation to the items to be sold. There is no prohibition with respect to selling of the non vegetarian food items. Prohibition is only in relation to selling of intoxicating products; brewery items apart from meat. In the deed of license, the meat items are further elaborated by making a specific reference to all specifically enumerating items like pork, fish, dry fish. It is well settled that the meaning given to particular sentence would take colour from the company which they keep under the principle of 'noscitur'. In the Clause XXI(1) of the licence, the words meat, pork, fish and dry fish cannot be understood as cooked meat, cooked pork, cooked fish and cooked dry fish by adding the word cooked. In that view of the matter a plain reading of the Clause XXI(1) would leave no manner of doubt that what has been prohibited is only sale of specific items as mentioned in the deed and same cannot be elaborated to mean as non vegetarian food items normally sold in the restaurants. Further, it is not the case of the respondents that the petitioner is prohibited to run a restaurant. Inasmuch as the petitioner is permitted to run or carry out any lawful business and there being no prohibition in law for running a non vegetarian restaurant, it cannot be said that the petitioner cannot be permitted to run a non vegetarian restaurant in the premises licensed to him.

One another factor which is germane and relevant in the context is the very letter of the 2nd respondent dated 13.12.2015 to all the Depot Managers wherein the existing licensees may be permitted to sell non vegetarian food items subject to their agreeing to pay 30% as additional license fees in addition to the existing monthly fees. In other words, the respondents corporation is only interested in additional revenue and as a matter of principle they do not have any objection for non vegetarian food items being sold in their canteens/restaurants etc.

Since the counter-affidavit having been filed by the Corporation for and on behalf of the respondents 1 to 3, there is no useful purpose would be served by directing the petitioner to approach the Vice Chairman and Managing Director in terms of the lease agreement as the Corporation by

their own act and action clearly declared that the impugned decision is the result of the respondents themselves including the V.C and M.D who in fact attended the inauguration function on 24.1.2015. As such the contention with regard to alternative remedy does not stand and cannot bar for this Court to entertain the writ petition in the interest of justice.

For the reasons stated above and in the facts of the case, the writ petition deserves to be allowed declaring that the petitioner is entitled to run the non vegetarian restaurant in the premises leased to him subject to his complying with the various terms and conditions and obtain statutory permissions as required.

Accordingly, the writ petition is allowed. No order as to costs.

Miscellaneous petitions, if any pending in this writ petition, shall stand closed.

CHALLA KODANDA RAM, J

Date:07.04.2016.

Gk.

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

-
-
-
-

WRIT PETITION No.19290 OF 2015

-
-

Date:07.04.2016.