

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CWP No.10959 of 2019 (O&M)
Date of decision:-29.04.2019

Balkar Singh

.....Petitioner

versus

PGIMER & another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Rahul Sharma, Advocate for the petitioner.

Mr. Amit Jhanji, Advocate for the respondents.

TEJINDER SINGH DHINDSA, J.

The Post Graduate Institute of Medical Education and Research (PGIMER) Chandigarh, had granted licence in favour of the petitioner to operate a tea/coffee/soup/vending machine site for a period of two years in August 2016. The licence was extended for a period of one year i.e. from 01.09.2018 to 31.08.2019.

Instant writ petition has been filed assailing the order dated 08.03.2019 (Annexure P-13) passed by the Administrative Officer, Estate Branch-I, PGIMER, Chandigarh and in terms of which the licence in favour of the petitioner stands terminated by giving a 30 days clear notice and the petitioner has been directed to vacate the site on or before 30.04.2019.

Counsel for the petitioner has argued that the action of the respondent institute in terminating the licence of the petitioner is in violation of the principles of natural justice. It is urged that no opportunity

of hearing was granted to the petitioner prior to issuance of the impugned termination order/notice (Annexure P-13). Further argued that the action of termination of the licence was based upon a report of the Area Inspection Committee and which itself was vague and lacking in necessary particulars and accordingly the action of termination of the licence cannot sustain. It has further been argued that in the initial period of licence of two years, the petitioner had been imposed two penalties of imposition of fines but the same were prior to the grant of extension of the licence and as such, such penalties cannot be taken into consideration while terminating the licence of the petitioner giving the extended period of the licence.

As an advance copy of the writ paper-book had already been served upon the respondent-Institute, Mr. Amit Jhanji, Advocate, has put in appearance and has also made available for perusal of this Court the original record of the case.

Having heard counsel for the parties and having perused the pleadings on record, this Court is of the considered view that no intervention in the matter is warranted.

At the stage of grant of licence for the initial period of two years a licence deed 29.08.2016 (Annexure P-1) had been entered into. Clause 16, 17 and 26 of the Licence Deed would be relevant to the controversy at hand and are reproduced herein:-

MAINTENANCE OF THE PREMISES

16 (a) *The licensee shall keep the premises in a clean sanitary and tenable condition and shall pay for the cost of making good any damage thereto or to adjacent premises,*

caused by negligence or misuse of premises by the licensee and shall indemnify the licensor against any loss/damage/additions/alterations to the premises.

(b) The licensee shall not store empty packing cases or baskets or any goods or any other material on the open spaces around the premises or any other place from where such goods or material may be visible from the outside. The area in front of the said premises shall not be encroached upon and used or allowed to be encroached upon or used for any purpose other than the public passage. The licensee shall not make any addition or alteration in or around the premises without the written consent of the Director.

(c) The licensee would provide dust free, mosquito, cockroach and fly free environment. The conditions, which increase the infection, shall not be allowed. The licensor reserves the right to issue directions from time to time for proper sanitation and cleanliness of the premises. These will have to be followed by the licensee.

(d) The shop will have to be accepted by the allottee on "As it is" basis. The repair required if any shall be the responsibility of the allottee himself/herself.

17. (a) In case of failure to implement the directions regarding conditions and specifications mentioned, a fine to the tune of 2%, 3% and 5% of the monthly license fee will be imposed upon the licensee for 1st, 2nd and 3rd violations respectively by the estate Committee (Commercial). The tender

is also liable to be terminated by the Director, PGI. The decision of the Director, PGI, Chandigarh, in this case shall be final and binding.

(b) The licensee will not sell items other than the items/quality/brand prescribed/ authorised and shall not charge rates higher than the rates fixed/mentioned, failing suitable penalty/fine will be imposed for every laps by the DDA of the PGIMER, Chandigarh.

(c) The penalty fine so imposed for violation must be deposited within stipulated period failing interest @ 12% will be charged.

VACATION/TERMINATION NOTICE

26. Notwithstanding anything contained in condition 03 above, the licensor shall be at liberty to terminate this licence by giving 30 days clear notice ending with the expiry of that month of licence without assigning any reason whatsoever. However, the licensee may terminate this licence by giving 60 days clear notice ending with the expiry of the month of licence. In this case he/she will be debarred for participating in the tender process of all the commercial sites for 2 years/site subsequent to his/her vacation notice and 50% of the one month licence fee will be charged/deducted from the licensee and the same will be deducted from his/her security deposit subject to minimum of Rs.20,000/- and maximum of Rs.5 Lacs (including the cost of re-tendering).

However, the Director, PGI reserves the right to allot

the licence to the 2nd or 3rd highest bidder, in case the initial licensee opts to terminate the licence any time during the period of initial allotment of the licence.”

As per Clause 16 (b) the licensee was barred from storing any empty packing cases or baskets or any goods or any other material on the open spaces around the premises or any other place from where such goods or material may be visible from the outside. It was clearly stipulated therein that the area in front of the premises shall not be encroached upon or used for any other purpose other than the public passage. In terms of Clause 17 (a) in case of failure to adhere with any of the conditions and specifications under the licence deed, a fine to the tune of 2%, 3% and 5% of the monthly licence fee was liable to be imposed upon the licensee for the 1st, 2nd and 3rd violations respectively by the Estate committee (Commercial). Clause 17- (a) further crystallized the matter that under such situation the tender in favour of the licensee was also liable to be terminated by the Director, PGI. Under Clause 26, the licensor i.e. PGI was at liberty to terminate the licence by giving 30 days clear notice ending with the expiry of the month in question.

There is no dispute as regards the factual premise that the licence had been granted in favour of the petitioner for an initial period of two years in August 2016. During the initial period of two years itself, petitioner had been imposed penalties twice over i.e. of Rs.2036/- and Rs.3054/- as contemplated under Clause 17 (a) of the licence deed. The penalty/fine imposed was duly deposited. Vide letter dated 01.08.2018, the licence period had been extended for a period of one year i.e. from 01.09.2018 to 31.08.2019. On 13.10.2018, petitioner was imposed the 3rd

penalty of Rs.6158/-. Even though there are averments in the writ petition to suggest that the imposition of the 3rd penalty was arbitrary and unjust yet no challenge has been led to the same in the present writ petition. The letter of extension dated 01.08.2018 has been placed on record and appended as Annexure P-4 alongwith the writ petition. Term/condition No.3 contained in such letter of extension would be vital and reads as follows:-

“(iii) Other terms and conditions will remain the same as stipulated in the licence deed/allotment letter No.PGI/Estate-1/2016/EST-1002012 dated 16.08.2016.

What clearly emerges is that the extension period vide letter dated 01.08.2018 (Annexure P-4) was in continuation of the terms and conditions contained in the original licence deed. In the facts of the present case, the petitioner would be viewed as a chronic defaulter. He had been imposed penalties twice over during the initial period of the licence and thereafter the 3rd penalty during the period of extension of the licence period.

Under such circumstances, the respondent authorities were well within the rights to terminate the licence by virtue of operation of Clause 17-A of the Licence Deed (Annexure P-1).

The contention raised by counsel with regard to violation of the principles of natural justice is not well founded. Apart from imposition of three separate penalties upon the petitioner, petitioner had been served upon a communication dated 08.02.2019 (Annexure P-9) seeking an explanation and apprising him that during a surprise checking by the Area

Inspection Committee on 23.01.2019, it had been observed that the area in front of the shop had been encroached upon and that people were complaining regarding poor quality of tea. Petitioner at such point of time called upon the respondent authorities for supply of the copy of the report submitted by the Area Inspection Committee. Vide memo dated 22.02.2019 (Annexure P-11), the report of the Area Inspection Committees with regard to the checking dated 23.01.2019 was duly supplied. As per contents of the report of the Area Inspection Committee, the portion in front of the site/shop for which the petitioner had been granted the licence had been found to be encroached upon. That apart the report had cited that people are complaining regarding poor quality of tea etc.

The petitioner in the response submitted to the PGI authorities and even in the instant writ petition does not deny encroachment. Rather counsel would take a stand that the petitioner pursuant to the licence having been granted had taken the site on “**as is whereas basis**”. Even such stand would not enure to the benefit of the petitioner. It is not the case made out on behalf of the petitioner that at any stage subsequent to the licence having been granted in the month of August 2016 he had brought to the notice of the competent authority under the respondent institute that there was already certain encroachment in front of the site/shop in question.

In the considered view of this Court, the impugned action of termination of the licence of the petitioner has been taken after giving adequate opportunity to the petitioner and the same is in conformity with the terms and conditions of the license deed dated 29.08.2016 as also the letter dated 01.08.2018 (Annexure P-4) granting extension in the period of

licence.

No merit.

Writ petition dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

29.04.2019

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No