



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :06.01.2020
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THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN
W.P.No.3823 of 2019
and
W.M.P.4245 of 2019

M/s.Appu Hotels Ltd.,
Rep. by its Legal Manager
B.Nagarajaran
PGP House No.7, Sterling Road
Nungambakkam, Chennai-34.

..Petitioner

vs

1. Tamil Nadu Tourism Development
Corporation Limited
Represented by its Chairman and Managing Director
Tamil Nadu Tourism Complex,
No.2, Wallajah Road,
Chennai-600 002.

2. The Regional Manager (Central)
Tamil Nadu Tourism Development
Corporation Limited
Tamil Nadu Tourism Complex
No.2, Wallajah Road, Chennai-02.

.. Respondents

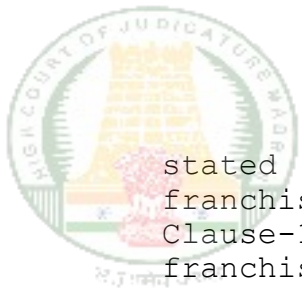
Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the order of the first respondent in LR No.2451/FH/2007 dated 01.02.2019 and to quash the same.

For Petitioner : Mr.P.T.Ramadevi

For Respondents : Mr.Bala Ramesh
Special Government Pleader

O R D E R

This writ petition has been filed in the nature of certiorari to call for the records relating to the order of the first respondent, namely, The Tamil Nadu Tourism Development Corporation Limited (TNTDC) and issued by the General Manager dated 01.02.2019 in Letter No.2451/FH/2007, relating to the petitioner, "Appu Hotels Limited" at Kumbakonam, a franchise of the first respondent at Kumbakonam, whereby, the franchise agreement was terminated. In the said letter, it had been



stated that the petitioner herein had breached Clause-7 of the franchise agreement, Clause-9 of the franchise agreement, Clause-10 of the franchise agreement and Clause-14 of the franchise agreement. The parties had entered into an agreement on 29.05.2007 and the first respondent TNTDC was called the franchisor and the petitioner "Appu Hotels" were called the franchisee. According to the agreement, the franchisee had to undertake to run a hotel unit at Kumbakonam as a franchisee of TNTDC. According to Clause-7, the period of franchise was 15 years. According to clause-9, if the Franchisee fails to remit the franchise fee of the subsequent years before 90 calendar days from the date of expiry of the earlier franchise period, apart from invoking Bank Guarantee, the franchisee can enter the premises and take possession. According to Clause-10, at the end of the 7th year, a Bank Guarantee equivalent to 50% of the lease amount should be provided. According to Clause-14, the franchisee shall bear all the taxes and other statutory payments required to the authorities including the State Government. According to Clause-25, in case of breach of any of the above terms, then, the franchisor (TNTDC) shall have an opportunity to issue a notice in writing and thereafter, may terminate the agreement. Accordingly, the impugned order has been issued stating that the petitioner herein had violated the Clauses 7, 9, 10 and 14 and therefore, as per Clause-25, the agreement was terminated. This notice has been challenged by filing this writ petition.

2. Attention is also brought to the fact that the parties have an arbitration clause namely Clause-35, according to which, the franchisor (TNTDC) will resolve disputes before an arbitrator or in accordance with the provisions of the Arbitration and Conciliation Act 1996. Pending the writ petition, it appears that the petitioner had also paid a sum of Rs.20,00,000/- as directed by this Court.

3. Once in the agreement an arbitration clause had been agreed between the parties, it would only be appropriate if all the issues including the issue of non-payment of statutory instalments and non-payment of rental lease and non-payment of any other charges as required and whether the agreement can be terminated for such non-payment are all referred to the Arbitrator. Under Article 226 of Constitution of India, this Court cannot enter into a discussion on the facts and on the payments made as claimed by the writ petitioner and as disputed by the respondents herein. These are all issues which have to be decided on the basis of evidence, more particularly, as the petitioner has stated that several payments have not been properly given credit and the respondents herein also claim interest, penal interest and also G.S.T and other taxes on the payments made and on the unpaid amounts.



4. It is stated by the parties that the agreement is in force till 2022. Therefore, there being a continuing existing relationship between the parties, it would be only in the interest of both the parties, that an Arbitrator examines all these issues and passes an award in accordance with law. After all, that is the tenor of the agreement entered into between the parties and they have decided to refer the disputes to the Arbitrator. The respondents/franchiser/TNTDC has to appoint an Arbitrator, who can examine all the issues relating to the payment/non-payment, termination/violation and every other issue arising out of the agreement between the parties which have been disputed by both the parties.

5. In view of these facts, I hold that this writ petition may not give an efficacious remedy to both the parties. On the other hand, all the disputes can be settled by arbitration.

6. In view of the above, this writ petition is disposed of, directing the respondents to appoint an Arbitrator on or before 31.01.2020 and both the parties may appear before the Arbitrator on receipt of the notice and the learned Arbitrator may proceed and pass order in accordance with law. No order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman and Managing Director
Tamil Nadu Tourism Development
Corporation Limited
Tamil Nadu Tourism Complex,
No.2, Wallajah Road,
Chennai-600 002.

2. The Regional Manager (Central
Tamil Nadu Tourism Development
Corporation Limited
Tamil Nadu Tourism Complex
No.2, Wallajah Road, Chennai-02.

+1cc to M/s.P.T.Ramadevi , Advocate SR.No. 763

W.P.No.3823 of 2019
and

W.M.P No.4245 of 2019

A.SK(08/01/2020)