

29.01.2021
Item No.11
AP/ss

FMAT 4 of 2021
With
CAN 1 of 2021

The Airports Authority of India & Ors.

-Vs.-

Shri Shiv Prakash Pandey
(Through Video Conference)

M/s. Sudipta Mazumdar, Assistant Solicitor General and
Ashok Kumar Ghosh, Advocate

... For the Appellants present in Court.

Mr. Nabankur Paul, Advocate

... For the respondent.

The present appeal has been filed challenging the order dated November 9, 2020 passed by the District Judge, Darjeeling whereby the application filed by the respondent for extension of interim order already granted on November 4, 2020 was allowed and an application filed by the appellants for vacation of interim stay was rejected.

Learned counsel for the appellants submitted that the respondent was awarded a contract for running Snacks Bar at Bagdogra Airport on December 9, 2014. The period was extended from time to time. It finally expired on February 9, 2020. Fresh tenders were issued and the same was allotted to M/s. A.K. Agencies vide letter dated January 22, 2020. He was to takeover till April 6, 2020. However, due to COVID-19 pandemic the new allottee could not take over the site. He was granted extension till April 8, 2020. The new allottee did not take over, hence, the respondent who was running the Snacks Bar, he was granted extension vide communication dated

September 10, 2020 with effect from April 9, 2020 for a period of six months, which was extendable by another six months or till the finalization of the tender to be floated, whichever is earlier.

Vide communication dated September 30, 2020 the contract awarded to the respondent was cancelled as the appellants were in the process of issuing fresh tender. The cancellation was to take place one week after the issuance of the aforesaid notice. For challenging the cancellation notice dated September 30, 2020 the respondent filed WPA 8423 of 2020 before the Principal Bench of this Court. However, during the pendency of the aforesaid petition an application was filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') before the District Judge, Darjeeling for grant of interim stay of termination notice dated September 30, 2020. While issuing notice in the aforesaid application vide order dated October 9, 2020 the Court allowed the respondent to operate the business till November 9, 2020. As before the next date of hearing the appellants had issued a fresh tender, an application was filed by the respondent for stay of finalization of the tendering process. On November 4, 2020 the Court directed that till November 9, 2020 the technical or financial bids of the tender floated by the appellants, will not be opened.

On November 9, 2020 the application filed by the respondent for extension of interim order was allowed

whereas application filed by the appellants for vacation of the interim order was dismissed.

He further submitted that while filing the application under Section 9 of the Act the respondent had concealed the factum of filing of writ petition in the High Court challenging the termination notice dated September 30, 2020, which was still pending.

He further submitted that till date no request has been made by the respondent for appointment of arbitrator either to the appellants or by filing application before the Court under Section 11 of the Act. It was further argued that the respondent has been black listed by the Birsa Munda Airport Authority in Jharkhand for allotment of any contract for a period of one year. Hence, the respondent will not be able to participate in any tendering process. He just wants to continue for another year with the Court order.

The argument is that even if the respondent invokes the arbitration clause, the appellants cannot be restrained from going through the tendering process as the Snacks Bar allotted to the respondent initially in the year 2014 was allowed to continue till April 2020 and thereafter the extension was only for a period of six months, extendable for another six months or till such time fresh tender was allotted. Hence, the respondent cannot claim that he should be allowed to continue.

On the other hand, learned counsel for the respondent submitted that he has not been served with the copy of the stay application.

He further submitted that he may be granted time to file affidavit in opposition to the stay application filed by the appellants. The termination notice dated September 30, 2020 is totally illegal once the period for allotment to the respondent for running the Snacks Bar at Bagdogra Airport was extended. As on date there was no tender issued or allotted. The fact that while filing the application under Section 9 of the Act factum of filing of writ petition challenging the termination notice dated September 30, 2020 was not mentioned, is not in dispute. The writ petition filed before the Principal Bench of this Court was withdrawn on November 18, 2020.

Learned counsel further submitted that he has no instruction about the blacklisting of the respondent at the Birsa Munda Airport in Jharkhand.

He further submitted that he has no instructions regarding filing of any application for appointment of arbitrator either to the respondent or before the Court.

Argument of the learned counsels for the parties were heard and the present appeal is taken up for final disposal with their consent.

It is a case in which the undisputed facts on record are that the respondent was allotted a contract for running a Snacks Bar at Bagdogra Airport in December, 2014. The period was extended from time to time. Finally

vide a communication dated 10th September, 2020 the period was extended for a period of six months, further extendable for a period of six months, or till the fresh tender is allowed. It was with effect from April 9, 2020. Prior to that tender had been allotted to a successful bidder, however, because of COVID-19 pandemic intervening the successful bidder could not take over the site. This was the reason to grant extension to the respondent.

The fact remains that before new tendering process was initiated the termination notice was issued to the respondent on September 30, 2020. One week time was granted to vacate the Snacks Bar.

It was the aforesaid notice which was under challenge in WPA 8423 of 2020 filed before the Principal Bench of this Court. While filing application under Section 9 of the Act before the District Judge, Darjeeling the factum of filing of writ petition and pendency thereof was not mentioned by the respondent.

Vide impugned order passed by the District Judge, Darjeeling the appellants had been restrained from opening the technical or financial bids of the tender floated for allotment of Snacks Bar for a period of one year.

We find the order to be totally illegal. The last extension granted to the respondent was for a period of six months extendable for further period of six months, or till such time a fresh tender is allotted. It was to take

effect from April 9, 2020, the date on which his earlier period of contract expired. New tendering process had been initiated by the appellants in October 20, 2020. On account of interim stay granted by the District Judge, Darjeeling, the same could not be finalized.

However, the fact remains that he has no right to continue, in terms of extension granted to him.

It would not be appropriate at this stage to evict the respondent from the Snacks Bar for the reason that flight operations have resumed after COVID-19 pandemic restrictions were relaxed. The allotment of tender to the new bidder may take some time. As the passenger traffic at the airport has increased, we deem it appropriate to direct that till such time the tender is opened and the same is allotted to the successful bidder for operation of the Snacks Bar at Bagdogra Airport, the respondent should be allowed to continue to operate the Snacks Bar on the same conditions, on which extension was granted to him vide letter dated September 10, 2020.

We make it clear that we have not touched the issue of concealment of material facts by the respondent while filing the application under Section 9 of the Act before the District Judge, Darjeeling, wherein the factum of filing of writ petition before the Principal Bench of this Court and the pendency thereof at that stage was not disclosed as the same was sufficient to non-suit the respondent on the ground of concealment of material facts.

We also do not find any merit in the request made by the counsel for the respondent for adjournment on the ground that copy of the stay application has not been served on him, when the stand of the appellants was that it was sent to the respondent earlier and given to the counsel for the respondent after the last order was passed. Effort seems to be to delay the decision as the respondent wants to prolong the litigation when he has interim order in his favour.

For the reasons mentioned above, the present appeal is disposed of with a direction to the appellants to allow respondent to continue with the Snacks Bar till such time the tenders are finalized and new successful bidder is allowed to operate the Snacks Bar, on the same terms and conditions on which he is presently continuing. Impugned order of the learned Court below is modified to the extent mentioned above. However, the appellants will not sleep over the matter to finalise the process. It shall be completed as expeditiously as possible.

The appeal and other connected application are disposed of.

(Rajesh Bindal, J.)

(Saugata Bhattacharyya, J.)