

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

56 WRIT PETITION NO.10764 OF 2022

DEEPALI SANJAY CHAUDHARI
VERSUS
THE UNION OF INDIA THROUGH THE SECRETARY AND
OTHERS

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Advocate for Petitioner : Mr. Kulkarni Mukul S.
Advocate for Respondents : Mr. Kulkarni Bhushan B.

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WITH
CA/1160/2023 IN WP/10764/2022

GEETA W/O SHANKAR ZUNGAREKAR AND ANOTHER
VERSUS
DEEPALI SANJAY CHAUDHARI AND OTHERS.

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Mr. N.R.Dayama advocate for applicants.
Mr. M.S.Kulkarni Advocate for respondent no.1.
Mr. B.B.Kulkarni Advocate for respondents 2 to 5.

...

WITH
CA/1161/2023 IN WP/10764/2022

ZAKIR KHAN REHMAN KHAN
VERSUS
DEEPALI SANJAY CHAUDHARI AND OTHERS.

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Mr. G.A.Kulkarni advocate for applicant.
Mr. M.S.Kulkarni Advocate for respondent no.1.
Mr. B.B.Kulkarni Advocate for respondents 2 to 5.

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CORAM : NITIN W. SAMBRE & S. G. CHAPALGAONKAR, JJ.
Dated: April 24, 2023

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PER COURT :-

1. Heard.

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2. The petitioner, running a Tea Stall on Platform nos.1 and 2 of Bhusawal Railway Station pursuant to the agreement/Award issued on July 22, 2019. Agreement to that effect was registered in respect of the operation of Tea stall.

3. The aforesaid Tea stall was to be operated through authorized person by name Mr. Kalim Shaikh.

4. Respondent authority has carried out surprise inspection of the Tea stall operated by the petitioner on 24.9.2022 and has noticed that the petitioner was in possession of bottles of Alcohol, Gootkha, Cigarettes, Tobacco, etc., which has resulted into the respondents railway authorities to terminate the permission in favour of the petitioner vide impugned communicated dated 28th September, 2022.

5. Mr. Mukul Kulkarni, learned counsel appearing for the petitioner would urge that, the respondents/railway authority are 'State' within the meaning of Article 12 of the Constitution of India. Said Authority while dealing with the rights of the parties, particularly, the Act of the respondents/authority has adverse civil consequence, is required to follow the principles of natural justice. According to him, the respondent authority
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has neither given any show cause notice nor the petitioner was heard before passing the impugned order.

6. While countering the aforesaid submissions, learned counsel for the respondents would invite our attention to the terms and conditions of the award of contract in favour of the petitioner. According to him, Registered agreement entered into between the parties particularly, clause no.6.15, clause no.17.3 and clause 19.1 reads thus :-

“6.15.Ban on sale of products :-

The Licensee shall not sell/distribute tobacco products, wine, beer or any other alcoholic drink or any other item prohibited by law on the SMU. Further, the Licensee shall not use beef/pork in any form in any food items served to the customers.

17.3. Railway shall also have, without prejudice to other rights and remedies, the right, in the event of ‘Material Breach’ by the licensee of any of the terms and conditions of the contract, or due to the Licensee’s inability to perform as agreed for any reason whatsoever, to terminate the contract forthwith and get the work done for the unexpired period of the License at the ‘risk and cost’ of the Licensee or in the manner Railway deems fit to recover losses, damages, expenses or costs that may be suffered or incurred by the Railways. The decision of the Railway about the breach/failure on the part of the Licensee shall be final and binding on the Licensee and shall not be called into question.

19.1. In the event of any dispute or differences between the parties hereto as to the construction or operation of this contract, or the respective rights

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and obligations of the parties on any matter in question, dispute or difference on any account, the same will be resolved in terms of the General conditions of contract for works of Railways as amended from time to time and as per the provisions of Arbitration and Conciliation Amendment Act, 2015 and the rules there as amended from time to time and as per the extant instructions issued by Railway Board.”

7. Said agreement empowered the respondents authority to proceed against the petitioner, particularly, when during surprise inspection whiskey bottles, country liquor bottles, tobacco products were found in the custody of the petitioner.

8. According to the learned counsel for respondents, in such an eventuality, the respondents have every right and authority to terminate the license agreement. Accordingly, it is claimed that the impugned communication, termination of license is in tune with the terms of agreement.

9. Mr. R.S. Deshmukh, learned senior counsel appearing for the intervenor submits that the applicants in civil applications are the intervenors; whose names are unnecessarily dragged in the controversy in question. According to him, filing of the petition has lead to the contract being hijacked by the petitioner without there being any successful order in favour of

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the petitioner, as the petitioner under order of stay has stalled allocation of the work in favour of the intervenors, who are successful bidders.

10. We have appreciated the submissions.

11. The petitioner has not disputed the terms of the license agreement and particularly, the powers of the respondents to terminate the contract, in case, if the petitioner is found to be violating the terms of the agreement.

12. According to him, even if during surprise inspection materials like liquor bottles, tobacco, cigarette etc. were found in the custody of the petitioner, at least that was expected from the respondents was to give an opportunity of hearing to the petitioner.

13. As such, what can be noticed is that, the petitioner is not disputing the power of the respondents, but is aggrieved by violation of respondents State authorities in conducting such act which is contrary to the principles of equality under Article 14 of the Constitution of India.

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14. It is an admitted position on record that neither show cause notice was given to the petitioner nor an opportunity of hearing was given before passing the order impugned dated 28.9.2022.

15. In this background, even if the petitioner has an alternate remedy of going for resolution of the dispute, however, denial of an opportunity of hearing which has resulted into violation of principles of natural justice resulted into exercise of writ jurisdiction (discretionary) in favour of the petitioner.

16. As such, the order impugned for the aforesaid reasons passed on 28th September, 2022 is hereby quashed and set aside. We permit the respondents authorities to issue fresh show cause notice to the petitioner and respondents must give an opportunity to file reply to the said show cause notice within the reasonable period and so also offer personal opportunity of hearing in the matter.

17. The respondents may pass appropriate orders having regard to the rival claims raised before it without being influenced by the observations noted here-in-above. In the
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result, petition stands is allowed in above terms. Pending civil applications stands disposed off. Petition stands disposed off accordingly.

(S. G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE, J.)

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