

Sh. Bishamber Dayal Gupta Vs General Manager, DMS

Court: Delhi High Court

Date of Decision: May 15, 2002

Acts Referred: Arbitration and Conciliation Act, 1996 " Section 2, 8, 9
Constitution of India, 1950 " Article 12, 14, 226

Citation: (2002) 98 DLT 379

Hon'ble Judges: Manmohan Sarin, J

Bench: Single Bench

Advocate: S.S. Gulati, for the Appellant; Ashok K. Gupta, for the Respondent

Final Decision: Dismissed

Judgement

Manmohan Sarin, J.

Petitioner seeks a writ of certiorari to quash the order passed by the respondent transferring the allotment of the

petitioner from booth No. 279 to another booth. Further, a writ of prohibition is sought to restrain the respondent and its officers from illegally and

forcibly taking possession of the booth in question and terminating the agreement without following the due process of law.

2. Petitioner, who had been selected as Concessionaire for selling milk and milk products, was allotted milk booth Depot No. 279, located at

Nehru Market, Pahar Ganj, New Delhi, vide allotment letter No. 7-3(1459)/2000-V dated 21.10.2000. Petitioner claims that after the allotment,

he commenced his business from 23.11.2000 and satisfactorily carried out the same. There was no dispute between the parties till 27.2.2001.

Petitioner was not notified of any complaint or short-comings in the running and functioning of the milk booth. Petitioner claims that vide letter

dated 21.11.2000, petitioner was informed that his depot was converted to Concessionaire full day Milk Booth, in terms of which petitioner could

sell other products also.

3. Learned counsel for the petitioner submits that suddenly on 27.2.2001, petitioner was asked to vacate the booth, without any show cause

notice. Petitioner thereupon moved this Court and obtained ex parte stay on 3.3.2001. Learned counsel submits that the action of the respondent

in seeking to evict the petitioner and to transfer his allotment to another booth is arbitrary, unfair, malafide and in violation of Article 14 of the

Constitution of India.

4. Learned counsel submits that respondents have no right under the contract to transfer the petitioner from one booth to the other. Even for

termination, a notice of one week is required to be given, which was not given. Learned counsel submits that writ should be entertained since

respondent/Delhi Milk Scheme is state within the meaning of Article 12 of the Constitution of India. The purported exercise of power to transfer

the booth is beyond the contract. Accordingly, the respondent be deemed to have acted under statutory powers. Learned counsel, Therefore,

submits that this Court would have jurisdiction under Article 226 of the Constitution of India to interfere in the matter. Counsel submits that the

action of the respondents is in violation of principles of natural justice and for this reason also Court should interfere and come to the rescue of the

petitioner.

Learned counsel for the petitioner places reliance on Sunair Hotels Ltd. Vs. N.D.M.C. and Another, , Veriganto Naveen Vs. Government of

Andhra Pradesh and Others, and Shyam Kishore v. MCD and Ors. (1991) 43 DLT 459.

5. Learned counsel submits that the invocation of the arbitration agreement in this case would not sub-serve the ends of justice, as the arbitrator

would be the nominee of the respondent and he could not be expected to render justice to the petitioner. Learned counsel submits that the action

of the respondent was mala fide one as it was being taken under the direct instructions of the Minister of State for Food Processing and the officers

of the respondent are being hard pressed to get the booth vacated from the petitioner. He submits that a small person, like the petitioner, on

account of interference by those placed at high position in the echelons of power, is sought to be deprived of his livelihood.

6. Learned counsel for the respondent submits that an application (CM. 5317/2001) u/s 8 of the Arbitration and Conciliation Act, 1996

(hereinafter referred to as the Act) has been moved. Admittedly, there is a contract between the parties dated 4.10.2000, which has arbitration

agreement in the following terms:-

All disputes and differences arising out or in any way touching or concerning to the agreement, whatsoever shall be referred to the Sole Arbitration

of the General Manager, Delhi milk Scheme, or his nominee. It will be no objection to any appointment that the General Manager, or the person

appointed by him is a Government servant that had to deal with the matters to which this agreement relates and that in the course of his duties, as

such Government servant he had expressed views all or any of the matter in disputes or differences. The award of the General Manager, Delhi

Milk Scheme or the Arbitrator so appointed shall be final and binding on the parties to this, agreement.

The arbitration agreement is couched in very wide terms and would cover any dispute or difference arising out of or even touching or concerning

the agreement. The challenge to the transfer of milk booth would fall within its ambit.

7. Learned counsel for the respondent submits that in view of the provisions of Section 8 of the Act, this would be a case, which was squarely

covered by arbitration agreement and no interference was warranted by the Court in exercise of writ jurisdiction. He relied on Smt. Kalpana

Kothari Vs. Smt. Sudha Yadav and Others, ; P. Anand Gajapathi Raju and Others Vs. P.V.G. Raju (Died) and Others, and Gaya Electric Supply

Co. Ltd. Vs. The State of Bihar, . He submits that irrespective of the merits of the case, petitioner is not entitled to any relief as there is an

efficacious remedy u/s 8 of the Act. Parties have consciously entered into the agreement and they are bound by the same. Learned counsel further

submits that although it not necessary to go into the merits of the controversy, he would like to rebut the contention of the petitioner that there

was no dispute. Show cause notice had been issued to the petitioner, which has been placed on record. Learned counsel submits that the plea of

malafide is bereft of any particulars. Besides, the concerned Minister, Mr. Nitesh Kumar, has not even been impleaded.

8. Having perused the pleadings, noted the rival contentions and submissions, as above, as also the authorities cited, the question which requires

consideration is whether the petitioner is bound to invoke the efficacious remedy provided u/s 8 of the Act. Admittedly, there is an arbitration

agreement, which governs the relationship between the parties qua the allotment and functioning of the petitioner, as Concessionaire for selling the

products of the respondents. The disputes that have arisen between the parties are post contractual in nature. It is not a case of challenge to any

action in a pre contractual state, where the decision making process is being assailed. Respondent contends that the petitioner has committed

breach of the agreement terms by selling products other than milk and remaining absent himself from the booth. Besides, the booth being found

closed during working hours. Counsel submits that, Therefore, the respondent's action in transferring the petitioner from present site to another

booth is really a lenient view being taken of the matter as the respondent was well entitled even to terminate the agreement. Petitioner on the other

hand contends that there was no dispute and the whole action is a malafide exercise of power.

9. Be that as it may, one thing is clear that there is a contract, having an arbitration agreement, which governs the relationship between the parties

as regards the allotment and functioning of the milk booth. Section 8 would operate as a bar to exclude entertainment of the petition. The Supreme

Court in Kalpana Kothari (Smt.) v. Sudha Yadav (Smt.) and Ors. (Supra) has described Section 8 of the Act as all comprehensive provision of

mandatory character enabling the parties to have the matter related to the dispute referred to arbitration in terms of the arbitration agreement.

In P. Anand Gajapathi Raju and Ors. v. P.V.G.Raju (Dead) and Ors. (Supra), the Supreme Court has noted that the requirement to refer the

disputes to arbitration u/s 8 is peremptory. The following observation from the said judgment may be usefully reproduced:--

The language of Section 8 is peremptory. It is, Therefore, obligatory for the Court to refer the parties to arbitration in terms of their arbitration

agreement. Nothing remains to be decided in the original action or the appeal arising there from. There is no question of stay of the proceedings till

the arbitration proceedings conclude and the award becomes final in terms of provision of new Act. All the rights, obligations and remedies of the

parties would now be governed by the new Act, including the right to challenge the award. The Court to which the party shall have recourse to

challenge the award would be the Court as defined in Clause(e) of Section 2 of the new Act and not the Court to which the application u/s 8 of the

new Act is made. An application before the Court u/s 8 merely brings to the Court notice that the subject matter of the action before it is the

subject matter of an arbitration agreement.

10. There is also merit in the submission of the respondent that the petitioner has failed to give particulars, as required for making out a case of

malafides. Besides, malafides were alleged against a person, who has not been imp leaded. Secondly, there is nothing in the original record, which

would lend support to the petitioner"s allegations of malafide and bias. Petitioner"s contention that the transfer was illegal and not permissible under

the terms of the Contract are matters, issues and disputes, which can be gone into in arbitration and decided on merits. In these circumstances, I

allow the application u/s 8 of the Act and direct that the disputes between the parties be referred to arbitration and hold that the present writ

petition would not be maintainable. However, with a view to enable the petitioner to seek his relief or protection by resorting to Section 9 of the

Act or from the arbitration, the interim protection granted to the petitioner shall ensure to his benefit for a period of three weeks from today.

The writ petition is dismissed with these directions.