

(1994) 01 CAL CK 0021

Calcutta High Court

Case No: FMAT No. 3746 of 1993

International Airports Authority
of India and Another

APPELLANT

Vs

United ITDC Employees
Assistance and Others

RESPONDENT

Date of Decision: Jan. 27, 1994

Acts Referred:

- Constitution of India, 1950 - Article 12, 226, 43A

Citation: 98 CWN 436

Hon'ble Judges: A.M. Bhattacharya, C.J; N.K. Batabyal, J

Bench: Division Bench

Advocate: S. Pal, S. Chakraborty, Indrani Banerjee, Padam Khaitan and V. Murarka, for the Appellant; HIRAK MITRA, L. RAHMAN, JAYANTA MITRA and V. RAHMAN, for the Respondent

Final Decision: Allowed

Judgement

A.M. Bhattacharjee, C.J.

In order to make available proper services to the air passengers at the Calcutta Airport, a new domestic Terminal Building is being constructed by the Airports Authority wherein the Authority seeks to provide for a Restaurant and two Snack Bar Counters. The Authority has accordingly issued a notice inviting tender for operating the Restaurant and the Snack Bars at the said new Domestic Terminal Complex for a period of ten years. The tender notice made it expressly clear that only Five Star Hoteliers were eligible to participate in the said tender. Pursuant to the said notice inviting tender, five star Hoteliers have submitted their tenders after complying with the requisites there-for and they are (1) Hotel Hindustan International, (2) Park Hotel, (3) Oberoi Grand; (4) Taj Bengal and (5) Hotel Airport Ashok of the Indian Tourism Development Corporation. The Airports Authority has thereafter received a notice from the Area General Manager of the respondent No. 2, Indian Tourism Development Corporation, (hereinafter referred to as I.T.D.C) calling upon the

Airport Authority to cancel the aforesaid notice inviting tender and to give the job of operating the Restaurant and the two Snack Bar Counters to the respondent No. 2. The Airports Authority not 138 International Airports Authority vs United ITDC Employees CWN 98 having acted according to the said notice, the respondent No. 1 United I.T.O.C. (hereinafter referred to as the Employees Union), being the union of the employees of the respondent No. 2, has moved this Court under Article 226 of the Constitution and has obtained an interim order of injunction restraining the Airports Authority from giving effect and/of further effect to the Tender Notice and further restraining the Airports Authority from proceeding with the said Tender Notice in any manner whatsoever till the disposal of the writ petition. Being aggrieved, the Airports Authority has preferred this appeal. The main contention of the writ petitioner Employees Union in support of the impugned order is that if the Restaurant and the Snack Bars are allowed to be operated by some other concern other than the I.T.D.C., the existing Restaurant, which is being run by the respondent No. 2, I.T.D. C, would be so much affected that I.T.D. C may have to close down the same which would seriously affect the services of the employees and their livelihood.

2. After hearing the Learned Counsel for the parties, we are inclined to hold, and this we say with great respect to the learned Judge, that we cannot maintain the impugned order. It is true, as urged by Mr. Hirak Mitra for the Employees Union and Mr. Jayanta Mitra for the I.T.D. C, that under the expanding horizon of the modern Labour and Industrial law, it is no longer possible to ignore the workers as they are now being treated to be as much, if not more, a part of the industrial concern as the owners thereof. As pointed out by the Supreme Court in National. Textile Workers' Union AIR 1983 S.C. 75), in view of the Preamble and the Directive Principles of the State Policy of our Constitution and particularly after the introduction of Article 43A, it would be idle to contend that the workers should have no voice in the determination of the question as to whether the enterprise can be allowed to take a step which would affect the services and thus, the livelihood, of the workers. After the decision of the Supreme Court in Olga Tellis (A.I. R 1986 S.C. 180), it must be taken to be the settled law that the right to livelihood is a part of the right to life and no such right can be affected by the owners of an enterprise which would seriously jeopardise the livelihood of the workers. If the Airports Authority were going to take some steps affecting the employment of its own workers, the matter might have been entirely different. As at present advised, we do not see any jural relation between the Airports Authority and the employees of the I.T.D.C. which is running the existing Restaurant. The mere fact that the present Restaurant at the Airport is being run by the I.T.D.C. International Airports Authority vs United ITDC Employees 439 or its employees, cannot prevent the Airports Authority to have a fresh deal with a fresh concern in respect of a new Restaurant elsewhere.

3. It is true that the I.T.D.C. is a Public Authority which has also submitted tender in pursuance of the Tender Notice along with the four other concerns. On the record at

present we do not know whether I.T.D.C. would or would not suitably qualify for the job and would get the contract The Airports Authority, which is also a Public Concern, has the right to invite tenders from private concerns for the new job. It is no doubt true that the Airports Authority being a "State" within the meaning of Article 12 of the constitution, its action must be reasonable, right, just and fair. But in the present context of our policy relating to National Economy, it is neither unreasonable nor unjust or unfair for any Public Authority to negotiate with a private concern in a fair and reasonable manner. The Authority cannot obviously select one and reject the other tenders arbitrarily and if the Authority does so it would then be a case warranting our intervention but otherwise, it is not possible for us to direct the Airport Authority to invariably go for a Public Sector in preference to a private sector. Whether in view of our Constitutional resolve to constitute India into a Socialist Republic, our State Authority should invariably, or as far as possible, go for Public Sector enterprise is a debatable question of State Policy. Even with our avowed policy of Socialism, the private sectors have not become disqualified and on more occasions than one, our National Policy is demonstrating a soft heart towards the Private Sector.

4. On the facts and circumstances of the case, we do not think that we can direct the appellant to conclude the deal only with the I.T.D. C, or their Employees Union.

5. The action also appears to be rather hasty, if not premature. As we have already stated, we do not know as yet who among the tenderers shall finally qualify. It may be, who knows, the I.T.D.C. itself.

We would accordingly allow the appeal, set aside the impugned order passed by the learned trial judge, but without any order as to costs.

N.K. Batabyal, J.

I agree.