IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

THE HON'BLE CHIEF JUSTICE MR. G. NARENDAR

AND

THE HON'BLE JUSTICE MR. ALOK MAHRA

Writ Petition (M/B) No.567 of 2025

23rd July, 2025

M/s Tarun Tour and Travels --Petitioner

Versus

State of Uttarakhand and others --Respondents

Presence:-
Mr. Jitendra Chaudhary, learned counsel for the petitioner.
Mr. Yogesh Tiwari, learned Standing Counsel along with Mr. S.M.S. Mehta, learned Brief Holder for the State.
Mr. N. S. Pundir and Ms. Sangeeta Patni Adhikari, learned counsel for respondent nos.2, 3 & 4/Corporation.

JUDGMENT : (per Mr. Alok Mahra, J.)

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. By means of this writ petition, petitioner seeks the following reliefs:-

> *"(i) Issue a writ, order or direction in the nature of Certiorari, calling for original record and pleased to quash the impugned office order no. 279/HQ/11-HB/Volvo/25 dated 17th May 2025 {Annexure No.1) issued by the respondent no. 4 i.e. the Managing Director (Technical) of Uttarakhand Transport Corporation (UTC).*
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> *(ii) Issue a writ, order or direction in the nature of Certiorari, calling for original record and pleased to quash the another impugned board decision dated 07-05-2025 {Annexure No.2} pertains to decision no.14 taken in the 37th board meeting by the respondent no. 2.*
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> *(iii) Issue a writ, order or direction in the nature of mandamus, directing and commanding the respondents, permit the petitioner*

> *to run their 05 Volvo Buses bearing registration no. UK-07PA-3996, UK-07PA-3998, UK-07PA-3999, UK-07PA-4001 and UK-07PA-4002 respectively for extended period of 6 months + 6 months (till 21 April 2026) as per the earlier 31st and 33rd Board Meetings dated 12-07-2022 and 01-03-2023 respectively and also make payment of rent as fixed between the parties in accordance with the terms and conditions of the agreement dated 04th May 2019."*

3. Petitioner is a proprietorship firm involved in public transport service registered with Uttarakhand Transport Corporation. According to the petitioner, in the year 2019, he was awarded a contract for operating 5 Volvo buses and agreement was executed between the petitioner and the U.T.C.

4. Learned counsel for the petitioner submitted that the respondent U.T.C., vide its two Board Meetings i.e. 31st Meeting and 33rd Meeting, took a decision that, for the purpose of granting Covid-19 benefit to the contractors, who had provided their buses on contract, after considering their representations, the aforesaid agreement is being extended for next one year and, hence, the contract of the petitioner which was going to expire on 03.05.2025, was extended to 03.05.2026; that, on 17.05.2025, the respondent issued a letter abruptly deciding to discontinue the petitioner's Volvo buses citing the BS-4 ban in Delhi NCR and, according to the petitioner, the Corporation have no authority to review its own order.

5. Per contra, learned counsel for the respondent-Corporation submits that the contract was extended for 6 months in 2023 and it was done only for the person whose contract was expiring in the month of March/April, 2023,

inasmuch as, that was the peak time of Char Dham Yatra. He further submits that petitioner did not make any objection at that point of time, when contract was extended for a further period of six months and that no further extension will be granted to the petitioner to ply the buses. He further submits that, as per the agreement executed between the petitioner and the respondent-Corporation, petitioner has a remedy to refer the matter for the Arbitration, as mentioned in Clause 45 of the aforesaid agreement.

6. The Hon'ble Supreme Court in the case of **Joshi Technologies International Inc. v. Union of India,** reported in **(2015) 7 SCC 728,** has held in para 69 and 70 as under:

> **"69.** The position thus summarised in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, it can refuse to exercise. It also follows that under the following circumstances, "normally", the Court would not exercise such a discretion:
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> **69.1.** The Court may not examine the issue unless the action has some public law character attached to it.
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> **69.2.** Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.
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> **69.3.** If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.
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> **69.4.** Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.
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> **70.** Further, the legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to contracts entered into by the State/public authority with private parties, can be summarised as under:

70.1. At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.

70.2. State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practise some discriminations.

70.3. Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 of the Constitution could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases the Court can direct the aggrieved party to resort to alternate remedy of civil suit, etc.

70.4. Writ jurisdiction of the High Court under Article 226 of the Constitution was not intended to facilitate avoidance of obligation voluntarily incurred.

70.5. Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the licence if he finds it profitable to do so : and he can challenge the conditions under which he agreed to take the licence, if he finds it commercially inexpedient to conduct his business.

70.6. Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

70.7. Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.

70.8. If the contract between private party and the State/instrumentality and/or agency of the State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.

70.9. The distinction between public law and private law element in the contract with the State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between the public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be

> examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision-making process or that the decision is not arbitrary.
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> **70.10.** Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.
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> **70.11.** The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes."

7. Similarly, in the case of **Life Insurance Corporation of India and others vs. Asha Goel (smt.) and another,** reported in **(2001) 2 SCC 160**, Hon'ble Supreme Court, while dealing with the identical issue, proceeded to hold in para 10 as under:

> "10. Article 226 of the Constitution confers extraordinary jurisdiction on the High Court to issue high prerogative writs for enforcement of the fundamental rights or for any other purpose. It is wide and expansive. The Constitution does not place any fetter on exercise of the extraordinary jurisdiction. It is left to the discretion of the High Court. Therefore, it cannot be laid down as a general proposition of law that in no case the High Court can entertain a writ petition under Article 226 of the Constitution to enforce a claim under a life insurance policy. It is neither possible nor proper to enumerate exhaustively the circumstances in which such a claim can or cannot be enforced by filing a writ petition. The determination of the question depends on consideration of several factors like, whether a writ petitioner is merely attempting to enforce his/her contractual rights or the case raises important questions of law and constitutional issues, the nature of the dispute raised; the nature of inquiry necessary for determination of the dispute etc. The matter is to be considered in the facts and circumstances of each case. While the jurisdiction of the High Court to entertain a writ petition under Article 226 of the Constitution cannot be denied altogether, courts must bear in mind the self-imposed restriction consistently followed by High Courts all these years after the constitutional power came into existence in not entertaining writ petitions filed for enforcement of purely contractual rights and obligations which involve disputed questions of facts. The courts have consistently taken the view that in a case where for determination of the dispute raised, it is necessary to inquire into facts for determination of which it may become necessary to record oral evidence a proceeding under Article 226 of the Constitution, is not the appropriate forum. The position is also well settled that if the contract entered between the parties provide an alternate forum for resolution of disputes arising from the contract, then the parties should approach the forum agreed by them and the High Court in writ jurisdiction should not permit them

> to bypass the agreed forum of dispute resolution. At the cost of repetition it may be stated that in the above discussions we have only indicated some of the circumstances in which the High Court have declined to entertain petitions filed under Article 226 of the Constitution for enforcement of contractual rights and obligation; the discussions are not intended to be exhaustive. This Court from time to time disapproved of a High Court entertaining a petition under Article 226 of the Constitution in matters of enforcement of contractual rights and obligation particularly where the claim by one party is contested by the other and adjudication of the dispute requires inquiry into facts. We may notice a few such cases; Mohd. Hanif v. State of Assam [(1969) 2 SCC 782] ; Banchhanidhi Rath v. State of Orissa [(1972) 4 SCC 781] ; Rukmanibai Gupta v. Collector, Jabalpur [(1980) 4 SCC 556] ; Food Corpn. of India v. Jagannath Dutta [1993 Supp (3) SCC 635] and State of H.P. v. Raja Mahendra Pal [(1999) 4 SCC 43]."

8. The general principle which may be concluded is where the contract entered into between the State and the person aggrieved is of a non-statutory character and the relationship is governed purely in terms of a contract between the parties, in such situations, the contractual obligations are matters of private law and a writ would not lie to enforce a civil liability arising purely out of a contract. The proper remedy in such cases would be to file a civil suit for claiming damages, injunctions or specific performance or such appropriate reliefs in a Civil Court. Pure contractual obligation in the absence of any statutory complexion would not be enforceable through a writ.

9. The remedy under Article 226 of the Constitution of India, being an extraordinary remedy, it is not intended to be used for the purpose of declaring private rights of the parties. In the case of enforcement of contractual rights and liabilities, the normal remedy of filing a civil suit being available to the aggrieved party, this Court may not exercise its prerogative writ

jurisdiction to enforce such contractual obligations.

10. In the case in hand, the claim sought to be set up by petitioner has been strongly disputed and the petitioner has raised its claim pertaining to contractual and commercial obligations, and the pleadings and the material which are on record do not, in any manner, indicate that it is a public law remedy, which the petitioner is seeking to invoke so as to persuade this Court to exercise its discretionary jurisdiction.

11. In view of the foregoing discussions and keeping in view the facts of the case at hand, we are not inclined to exercise our extraordinary jurisdiction under Article 226 of the Constitution.

12. The writ petition is accordingly dismissed. There shall be no order as to costs.

(G. NARENDAR, C. J.)

(ALOK MAHRA, J.)

Dated: 23.07.2025
BS

BALWANT SINGH