

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.20584 of 2011

ORDER:

Heard Mr. Venkat Reddy Thipparthi for petitioners and
Mr. A. Ravi Babu for respondents.

2. Petitioners pray for Mandamus declaring Lr.No.01/3591(16)/2011-RM-N, No. 01/3591(18)/2011-RM-N and No.01/3591(17)/2011-RM-N dated 13.05.2011 of second respondent forfeiting the caution deposit of Rs.30,000/- each from the petitioners as arbitrary, unauthorized, illegal and contrary to Circular No.16/2009 dated 20.05.2009 and the petitioners pray for a direction to respondents to refund the forfeited caution deposit of Rs.30,000/-.

3. The circumstances relevant for the disposal of the writ petition are as follows:

The respondents issued tender notification dated 08/09.12.2010 for hiring private buses for inclusion in the fleet of buses operated by respondents on different routes. The second respondent through allotment No.01/359(3)/2010-ED-GHZ & H2 dated 28.12.2010 agreed to hire the buses of petitioners. The relevant clause in the tender notification and the allotment order are excerpted at the beginning to simplify the factual narration.

TENDER NOTIFICATION

"9. The entrepreneur who gets the allotment of the route will be allowed 60 days time from the date of Rout Allotment letter for production of the bus (duly registered with any RTA in AP and together with original R.C. Book and comprehensive Vehicle Insurance Policy. Corporation will not reimburse any expenditure incurred by the owner in registering the vehicle with concerned RTA) as per standards and specifications and color scheme prescribed before the Vehicle Inspection Committee of concerned District (Region) for certification of fitness and for operation on the allotted route. In case the applicant fails to produce the bus within the allowed 60 days time, the Caution Deposit amount paid will be forfeited.

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ALLOTMENT LETTER

“2) You have to produce the above type of bus (duly registered with concerned RTA or any RTA in AP) of specified make for inspection before the Regional Manager, APSRTC, of the above Region for certification of the fitness of the vehicle by the Vehicle Inspection Committee, together with original Registration Certificate of the vehicle and Comprehensive Vehicle Insurance Policy (Insurance policy of the vehicle shall have “IMT 44 i.e. Indemnity to hirer-package policy-negligence of the owner or hirer endorsement from the concerned Vehicle Insurance Co...,) as per the prescribed standards, specifications and colour scheme of the Corporation already supplied to you, within 60 days from the date of this letter. Failing to produce the bus within the specified time, the allotment will be treated as cancelled and the Caution Deposit amount paid by you stands forfeited.”

4. The first respondent issued Circular No.16/2009-OPD(PLG) dated 20.05.2009 authorising the Executive Directors of Zonal Offices to accepted belated delivery of buses subject to imposition of penalty. The subject of the instant circular discloses the purpose of issuance of the circular. Admittedly, the respondent corporation issued the circular enabling hiring of private buses and also authorized Zonal Executive Directors to impose penalties for belated presentation of hire buses. The Corporation through the above circular directed the Executive Directors to accept the performance of tendering buses for verification beyond the period stipulated in the allotment order subject to the following condition:

“1. Belated production of hire vehicles beyond the permitted period of 60 days:

In case allottees of hire buses avail more days for production of hire buses than the permitted 60 days from the date of hire bus Allotment Letter, concerned Regional Manager is competent to accept such hire buses by collecting following penalties from the owners of hire buses.

Sl.No.	Particulars	A I I conventional (Big) hire Buses	A I I Mini Hire Buses
1.	From the date of Route Allotment Letter to 60 days	No penalty	No penalty
2.	Delay in production of the bus for first 15 days (i.e. from 61 st day to 75 th day)	@Rs.500/- per bus per day	@ Rs.300/- Per bus per day.

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|----|---|-------------------------------|--------------------------------|
| 3. | Delay in production of the bus for over and above 75 th day
(i.e. from 76 th day to 150 th day) | @ Rs.600/-
Per bus per day | @ Rs.400/-
Per bus per day. |
|----|---|-------------------------------|--------------------------------|

In case hire bus operators avail more time than 150 days from the date of allotment letter, concerned Executive Director of Zone is competent to accept hire buses produced belatedly from 151 days to 365 days from the date of allotment letter, by imposing a consolidated penalty of Rs.60,000/- per bus and Rs.40,000/- per Mini Bus.”

5. Referring to the circumstances of the case, there is no dispute that the petitioners herein presented the vehicles for inspection on 135th day from the date of allotment, come under Sl.No.3 referred to above, have accordingly paid penalty for belated production of buses and the performance of tendering of vehicles was accepted by the respondents subject to above penalty. The second respondent again by referring to belated production of vehicles for inspection ordered forfeiture of caution deposit of Rs.30,000/-. Hence, the writ petition.

6. The respondents filed counter affidavit and the circumstances referred to above are not disputed but the explanation offered for forfeiture of caution deposit is that the petitioners violated the terms and conditions of tender notification and allotment order. The sum and substance of the reply of the respondents is that even after penalty is paid, the respondents can forfeit the caution deposit of the petitioners.

7. I have perused the material available on record and noted the submissions of the learned counsel appearing for the parties.

8. Now the point for consideration is whether the forfeiture of caution deposit of Rs.30,000/- each from the petitioners, when the agreement for hiring buses from petitioners is subsisting, more particularly, after acceptance of penalty in terms of Circular No.16/2009

dated 20.05.2009, is valid and authorized.

9. The tender conditions in clause 9 provide for forfeiture of caution deposit in case the allottee fails to produce the bus within the allowed 60 days time. The said condition of forfeiting the caution deposit was found to be causing inconvenience and Circular No.16/2009 dated 20.05.2009 was issued by the respondent corporation. Through the circular dated 20.05.2009 the corporation has called upon to speed up the induction of new hired buses as and when they are produced by hire bus operators, the Vice Chairman and Managing Director of the Corporation authorized the Executive Directors of Zones to induct hire vehicles by collecting penalty as referred to above. Therefore, the difference in language used in the tender notification and the circular is evident and according to the clause in the tender notification the corporation was empowered to forfeit the caution deposit if time schedules are not adhered to by the allottees. To mitigate hardship on both sides, acceptance of performance beyond the stipulated period is provided for in circular dated 20.05.2009 subject to payment of penalty. The very purpose of forfeiting the caution deposit was to act as a penalty for failure to perform the agreed term by the allottee. The corporation to keep the allotment and the agreement with the petitioners alive directed the Executive Directors to receive penalty and accept belated tender of vehicles for inspection. Once Circular No.16/2009 dated 20.05.2009 is resorted to, the actual penalty is levied and collected from the petitioners, this Court is of the view that further penalty of forfeiture of caution deposit when the agreement is still operational and subsisting between the parties, is arbitrary and unauthorized. In other words, acceptance of performance is accepted beyond the agreed period and thus the option to forfeit caution deposit is not available.

Otherwise, in practice, the petitioners suffer both ways viz. pay penalty for belated tender of vehicles and caution deposit is forfeited for the very same reason.

9. For the above reasons, the impugned communication to the extent of

forfeiting Rs.30,000/- each from the petitioners is set aside and the respondents are directed to pay Rs.30,000/- to the petitioners within sixty (60) days from the date of receipt of a copy of this order. In default thereof, the respondents are under obligation to pay interest at 9% per annum from the date of forfeiture till the date of realization.

The writ petition is allowed. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

S. V. BHATT, J

April 4, 2016
DSK