

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.39117 OF 2016

ORDER:

Heard Mr.S.Ravi, learned senior counsel for petitioner and the learned Advocate General (A.P) for respondents.

The petitioner prays for Mandamus declaring proceedings No.C2/644/PARCEL/2013-OPD(C) dated 24.03.2016 and Circular No.13/2016-OPD(C-II) dated 03.06.2016, as illegal, arbitrary and violative of petitioner's constitutional and contractual rights and consequently direct the respondents not to interfere with the petitioner's business.

Learned counsel appearing for the parties have argued substantially on the maintainability of writ petition under Article 226 of the Constitution of India, for the writ prayer if considered amounts to enforcement of contractual obligation under a pure and simple contract of carriage and incidentally submitted on merits of prayer.

To appreciate the rival submissions, I find it convenient to excerpt the impugned proceedings No.C2/644/PARCEL/2013-OPD(C) dated 24.03.2016 and a portion of Circular No.13/2016-OPD(C-II) dated 03.06.2016:

Proceedings No.C2/644/PARCEL/2013-OPD(C) dated 24.03.2016

ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION

No.C2/644/PARCEL/2013-OPD(C)

Dt.24.03.2016
Bus Bhavan,
Hyderabad

//O R D E R//

SUB: **Parcel Transport** – Exclusion of 677 NEW Hire buses from the contract for transportation of Goods, Parcels & Courier Covers by PVG, EXP, DLX & S.LUX buses of the Corporation – Issue of orders – Reg.

Based on the representation of the hire bus owners for excluding the hire buses from the contract with M/s ANL, citing certain operational/mechanical practical reasons, I hereby order to exclude the 677 new hire buses which are going to be inducted in the fleet of APSRTC from the preview of the subsisting period of parcel transport agreement.

Sd/-
Vice Chairman &
Managing Director,
A.P.S.R.T.C”

Circular No.13/2016-OPD(C-II) dated 03.06.2016:

ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION

Case No.C2/541(1)/2016-OPD(C-II)

Office of the VC&MD,
Bus Bhavan, Mushirabad,
HYDERABAD- 500 020

CIRCULAR 13/2016-OPD(C-II).dated 03.06.2016

SUB: **Parcels and Goods transport by APSRTC** – Launching of ‘APSRTC Logistics” for transportation of parcels & couriers – Issue of circular instructions - Reg.

INTRODUCTION:

APSRTC is operating 47.50 lakh KMs with 12,000 buses and transporting 65 lakh passengers per day.

For the financial year 2015-16 Corporation ended up with Rs.549 crore losses. For the financial year 2016-17, operational targets were fixed for 5000 crore, still there is an estimated loss of Rs.260 crores. To make a turn around non traffic revenue (NTR) are to be maximized.

As a part of enhancement of non-traffic revenue, creation of new stream of commercial revenue “APSRTC Logistics” is identified.

EXISTING SCENARIO:

APSRTC had appointed M/s ANL as agent for transportation of goods/parcels/couriers by non A.C buses including Hire buses on payment of monthly license fee as fixed per annum on tender basis. Transportation of Goods by A.C buses was separately given to different Agencies on Tender Basis. The agreement with M/s ANL will be completing in the month of Aug’ 2017. The agreement in case of allotment of contract for 39 A.C services to M/s Balaji Max Mail and M/s ANL was concluded on 29.02.2016.

SCOPE FOR REALIZATION OF HUGE NON-TRAFFIC REVENUE (NTR) THROUGH APSRTC LOGISTICS:

APSRTC had appointed M/s ANL as agent for transportation of goods/parcels/couriers by its non A.C buses including Hire buses on payment of monthly license fee as fixed per annum on tender basis. The present license fee per annum is Rs.9 crore only. Corporation desires to realize huge amounts of Rs.1000 crore from transportation of couriers/parcels/goods over a period of time by having its own Logistic Services duly supported by vehicle tracking and other IT supports.

Existing Super Luxury Boot Space:

As per clauses 32 (e) of the agreement with M/s ANL that the Agent can load the goods and parcels on the luggage carrier of the buses only. Hence corporation can utilize 3 cu.mt. luggage boot space in all the services of 1397 Super Luxury buses, including hire buses by allotting the luggage space to individual parties. There is scope for allotting the luggage boot spaces @ Rs.1.25 to Rs.3.00 per KM depending upon the potentiality of the routes”.

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ACCOUNT HEADS:

The amounts received by transporting the consignments under this project APSRTC Logistics should be account in a separate Account Head under the name "PARCEL SERVICE-APSRTC-9236". All expenses like crew allowance, Hamali charges, ATB Agent commission etc., shall be booked in a separate account head by name "PARCEL SERVICE EXPENDITURE-APSRTC-7336"

All the Executive Directors (Zones), Regional Managers, Dy.CTM, Dy.CTM (M&C), Depot Managers and Assistant Traffic Managers (Commercial) are advised to involve in implementation of this newly introduced project and to make a grand success of the Project in the Corporation. A review will be made on the earnings realized through this project at regular intervals during the meetings connected with the above officers.

All the ATMs (Commercial) are advised to send weekly progress of the services booked, amounts realized etc., to the Dy.CTM(Commercial)-II, Head Office besides keeping the progress in the ATMs(Commercial) group on daily basis".

The case of petitioner is that it has been doing business of transporting Parcels, Goods and Courier Covers under the name and style 'ANL Parcel Service' for 30 years. The 1st respondent issued Tender Notification 1/2013-14-OPD(C) dated 26.04.2013 inviting tenders from interested parties for appointment of contractors for transport of Parcels, Goods and Courier Covers on permitted buses of respondent/APSRTC. The petitioner participated in the tender, the bid of petitioner being the highest was accepted as successful bid by respondents. On 30.05.2014, by incorporating all the terms agreed between the parties, agreement was entered into between the parties. The agreement is for a period of four years starting from 27.08.2013 to 26.08.2017, extendable by one more year as per agreed terms. According to

petitioner, it has been authorized to transport parcels etc., by (1) Palla Velugu (2) Express (3) Deluxe and (4) Super Luxury category buses, including Hire Buses. The petitioner states that even after the division of Corporation into two entities i.e., AP & TS Corporations, the contractual obligation accepted by APSRTC under agreement dated 30.05.2014 has been smoothly operated. The petitioner alleges that at the instance of 2nd respondent, the business operation in the State of Andhra Pradesh was put to avoidable and unnecessary hardship. To illustrate the hardship caused by respondents, it is stated that the employees of 1st respondent Corporation, men and agents have been objecting to the petitioner using dickey (boot) space for transporting the luggage to different destinations.

It is further alleged that objection to load the parcels in dickey was raised in spite of permitted buses plying empty on a few routes. The insistence by respondents or its agents to transport luggage on roof top of the buses is contrary to the agreed conditions between parties. It is averred that the 2nd respondent in utter violation of agreed obligation through the impugned proceedings No.C2/644/PARCEL/2013-OPD(C) dated 24.03.2016 excluded 677 new hire buses included into the fleet of 1st respondent Corporation from the scope of permitted buses. The exclusion of new hire buses from the permitted buses through impugned proceedings is illegal and amounts to colourable exercise of power causing loss to petitioner.

It is further alleged that Circular No.13/2016-OPD(C-II) dated 03.06.2016 is contrary to the exclusive right granted to petitioner as per Clauses 41 and 42 of the agreement dated 30.05.2014. In the above circumstances, the petitioner while praying for declaration against the impugned proceedings/circular seeks protection of contractual rights under agreement dated 30.05.2014.

The stand of respondents is that the writ petition under Article 226 of the Constitution of India is not maintainable, for the writ affidavit does not disclose any case warranting exercise of jurisdiction of this Court under Article 226 of the Constitution of India. According to respondents, the consideration of writ prayer requires adjudication of alleged breach of terms of agreement and such adjudication of terms of agreement in the absence of public duty attached to these violations is impermissible in law. It is contended that the writ petition is filed on the premise that the petitioner has monopoly to transport parcels, goods and courier covers by buses operated by the respondent-Corporation but the premise is not correct and the respondents specifically deny the exclusive right of transportation of goods claimed by petitioner. The respondents interpret various clauses in the agreement dated 30.05.2014 firstly to show that even by taking note of the case pleaded by respective parties, at best, a dispute in the performance of respective obligations under agreement dated 30.05.2014 arises, but no public function or discharge of a public duty is attracted, the remedy of petitioner is in terms of Clause 61 of agreement dated 30.05.2014, the petitioner cannot enforce the right under Article 226 of the

Constitution of India. The respondents pray for dismissal of the writ petition. I am not referring to the stand of respondents on merits of the controversy for the nature of consideration I propose to undertake.

Mr.SRavi for petitioner argues on the maintainability of writ petition, and the legality of impugned proceedings dated 24.03.2016 and circular dated 03.06.2016. He contends that the Corporation being an instrumentality of State, its existence is under the Road Transport Corporation Act and is expected to act fairly and objectively even in matters touching upon contractual obligations. He submits that the agreement dated 30.05.2014 between the petitioner and the respondents is pursuant to the Tender Notification dated 26.04.2013. The petitioner offered to pay a sum of Rs.12 crores for the first year and thereafter enhanced licence fee at 10% every year from third year up to the end of contract period. The agreement is the final document on the topic arrived at between the parties and it cannot be interpreted without legal sanctity. Therefore, according to him, the respondents are under obligation firstly not to impose fetters on the working of agreement dated 30.05.2014 and cannot include one more category in the Not Permitted buses by excluding newly Hired Buses. To appreciate his contention, it is useful to excerpt the details of Permitted and Not Permitted Buses under the agreement, which read thus:

PERMITTED:

M/s ANL is permitted to transport parcels, goods and couriers by the following category of buses (including hire):

- 1) Pallavelugu 2) Express 3) Delux
4) Super Luxury

NOT PERMITTED:

- a) M/s ANL is not permitted to transport parcels, goods and couriers by Garuda (Volvo), all AC buses, Metro Delux, Metro Express and City buses being operated in Hyderabad City Zone, Vijayawada, Visakhapatnam cities and Warangal & Hanamkonda towns (including hire).
- b) M/s ANL is not permitted to transport parcels, goods and couriers by the buses which are specifically excluded by an order of the Managing Director of the Corporation during the subsisting period of agreement.

He further contends that the circular dated 03.06.2016 is a devise adopted by 1st respondent, launching APSRTC logistics to defeat and deny the licence rights granted to petitioner. He places reliance upon ABL INTERNATIONAL LTD AND ANOTHER v. EXPORT CREDIT GUARANTEE CORPORATION OF INDIA LTD. AND OTHERS¹ and contends that a writ petition under Article 226 of the Constitution of India is maintainable and prays to protect and enforce the rights of petitioner under agreement dated 30.05.2014 by setting aside the impugned proceedings and the circular.

Per contra, the learned Advocate General contends that the writ prayer under Article 226 of the Constitution of India is not maintainable. According to him, the writ prayer *per se* challenges proceedings and circular, but in effect the right or challenge to these proceedings/circular is traceable to obligations under agreement dated 30.05.2014. According to him, the writ prayer

¹ (2004) 3 SCC 553

refers to both violation of petitioner's constitutional and contractual rights, but in effect even assuming that a dispute arises, the same is in the realm of agreement. He elaborates the submission by contending that the affidavit does not refer to breach of constitutional right and on the contrary the prayer is one in the nature of enforcement of contractual right. According to him, the interpretation of petitioner of Permitted and Not Permitted Buses clause is incomplete, and the reading of Permitted and Not Permitted buses has to be in conjunction with the following clauses:

"Corporation reserves the right to appoint separate agent/agents for transportation of parcels, goods and couriers by Garuda (Volvo) and other AC buses".

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The Managing Director of APSRTC reserves the right to modify any condition/conditions of the agreement and add any other condition/(s) during the contract period. The Contractor has to abide by the conditions modified/incorporated and has to enter into a fresh agreement with the Corporation at their cost.

In case of any dispute or differences arising on the terms and conditions of the tender or contract as the case may be, the decision of the Managing Director, APSRTC, shall be final and binding on both the parties.

If any dispute arises between the Contractor and the Andhra Pradesh State Road Transport Corporation, the Courts in Hyderabad and Secunderabad shall have jurisdiction."

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Corporation reserves the right to appoint separate contract/contractors for transportation of parcels,

goods and couriers by all types of AC buses and the contractor appointed for transportation of parcels, goods and courier covers in the permitted buses shall not raise any objection nor shall claim any thereof”.

According to him, the 2nd respondent has reserved rights to confer licence rights of transporting parcels on other agencies as well, including to modify any condition or conditions of the agreement and include any other condition during the subsistence of agreement. Therefore, he contends that the exclusion of 677 hire buses from permitted category is within the power retained by the 2nd respondent. According to him, constitution of APSRTC logistics is well within the power of 2nd respondent and the petitioner cannot complain if steps are taken by establishing divisions for augmenting income of APSRTC. Therefore, in the ultimate analysis, the issue hinges on the contractual right claimed by the petitioner and the privilege retained by the respondents. Therefore, the dispute is one in the realm of a simple commercial non-statutory contract between the parties, and the writ remedy is not available. In support of his legal objection, he places strong reliance on JOSHI TECHNOLOGIES INTERNATIONAL INC v. UNION OF INDIA AND OTHERS² and STATE OF U.P. AND OTHERS v. BRIDGE & ROOF COMPANY (INDIA) LTD³. While replying to the reliance by petitioner on ABL INTERNATIONAL LIMITED's case (1 supra), he contends that ABL INTERNATIONAL LIMITED's case was also considered in JOSHI TECHNOLOGIES INTERNATIONAL INC's case (2 supra) by the Apex Court and the ratio laid down by the Apex Court on ultimate analysis is

² (2015) 7 SCC 728

³ (1996) 6 SCC 22

binding on this Court, as no breach of public duty is made out for entertaining the writ petition. He prays for dismissing the writ petition on this preliminary objection.

The respondents are vehemently contending that writ petition is not maintainable. I prefer first to decide this point and subject to conclusion on the issue, the other aspects if needed are considered.

Now, the point for consideration is - whether the writ petition under Article 226 of the Constitution of India is maintainable for considering the challenge to proceedings No.C2/644/PARCEL/2013-OPD(C) dated 24.03.2016 and the Circular No.13/2016-OPD(C-II) dated 03.06.2016 or not, and if writ petition is maintainable, to what relief?

Before considering the writ prayer, this Court finds it convenient to preface the decisions relied upon by the counsel appearing for parties. The petitioner relies on paragraph 28 of ABL INTERNATIONAL LIMITED's case (1 supra) to contend that the writ petition is maintainable. Paragraph 28 reads thus:

“However, while entertaining an objection as to the maintainability of a writ petition under [Article 226](#) of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under [Article 226](#) of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power [See: [Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors.](#) [1998 (8) SCC

1]. And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of [Article 14](#) or for other valid and legitimate reasons, for which the court thinks it necessary to exercise the said jurisdiction.”

The respondents rely upon BRIDGE & ROOF COMPANY (INDIA) LIMITED's case (3 supra) and JOSHI TECHNOLOGIES INTERNATIONAL INC's case (2 Supra) which reads as follows:

BRIDGE & ROOF COMPANY (INDIA) LIMITED:

” Firstly, the contract between the parties is a contract in the realm of private law. It is governed by the provisions of the contract Act or may be, also by certain provisions of the sale of [Goods Act](#). Any dispute relating to interpretation of the terms and conditions of such a contract cannot be agitated, and could not have been agitated, in a writ petition. That is a matter either for arbitration as provided by the contract or for Civil court as the case may be. whether any amount is due to the respondent from the appellant-Government under the contract and, if so, how much and the further question whether retention or refusal to pay any amount by the Government is justified, or not are all matters which cannot be agitated in or adjudicated upon in a writ petition. The prayer in the writ petition, viz., to restrain the Government from deducting particular amount from the writ petitioner's bill(s) was not a prayer which could be granted by the High court under [Article 226](#). Indeed, the High Court has not granted the said prayer.”

JOSHI TECHNOLOGIES INTERNATIONAL INC:

67) Insofar as the argument of the respondents in the said case that writ petition on contractual matter was not maintainable unless it is shown that the authority performs a public function or discharges a public duty, is concerned, it was answered in the following manner:

“22. We do not think the above judgment in VST Industries Ltd. (supra) supports the argument of the learned counsel on the question of maintainability of the present writ petition. It is to be noted that VST Industries Ltd. against whom the writ petition was filed was not a State or an instrumentality of a State as contemplated under Article 12 of the Constitution, hence, in the normal course, no writ Civil Appeal No. 6929 of 2012 Page 57 of 66 Page 58 could have been issued against the said industry. But it was the contention of the writ petitioner in that case that the said industry was obligated under the concerned statute to perform certain public functions, failure to do so would give rise to a complaint under Article 226 against a private body. While considering such argument, this Court held that when an authority has to perform a public function or a public duty if there is a failure a writ petition under Article 226 of the Constitution is maintainable. In the instant case, as to the fact that the respondent is an instrumentality of a State, there is no dispute but the question is: was first respondent discharging a public duty or a public function while repudiating the claim of the appellants arising out of a contract? Answer to this question, in our opinion, is found in the judgment of this Court in the case of Kumari Shri Lekha Vidyarthi & Ors. vs. State of U.P. & Ors. [1991] (1) SCC 212] wherein this Court held: “The impact of every State action is also on public interest. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters.” 23. It is clear from the above observations of this Court, once State or an instrumentality of State is a party to the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an

instrumentality of the State has acted in contravention of the above said requirement of Article 14 then we have no hesitation that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent."

68) The Court thereafter summarized the legal position in the Civil Appeal No. 6929 of 2012 Page 58 of 66 Page 59 following manner: "27. From the above discussion of ours, following legal principles emerge as to the maintainability of a writ petition :- (a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable. (b) Merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule. (c) A writ petition involving a consequential relief of monetary claim is also maintainable. 28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power [See: Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors. [1998 (8) SCC 1]. And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the court thinks it necessary to exercise the said jurisdiction."

69) The position thus summarized 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 Civil Appeal No. 6929 of 2012 Page 59 of 66 Page 60 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, can refuse to exercise. It also follows that under the following circumstances, 'normally', the Court would not exercise such a discretion: (a) the Court may not examine the issue unless the action has some public law character attached to it.** (b) 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. (c) If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination. (d) Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.

70) Further legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to the Civil Appeal No. 6929 of 2012 Page 60 of 66 Page 61 contracts entered into by the State/public Authority with private parties, can be summarized as under: (i) At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness. (ii) State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practice some discriminations. (iii) 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 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 court can direct the aggrieved party to resort to alternate remedy of civil suit etc. (iv) Writ jurisdiction of High Court under Article 226 was not intended to facilitate avoidance of obligation voluntarily incurred. (v) Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or Civil Appeal No. 6929 of 2012 Page 61 of 66 Page 62 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 license if he finds it profitable to do so: and he can challenge the conditions under which he agreed to take the license, if he finds it commercially inexpedient to conduct his business. (vi) 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. (vii) 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 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. (viii) If the contract between private party and the State/instrumentality and/or agency of State is under the realm of a private law and there is no element of public law, the normal Civil Appeal No. 6929 of 2012 Page 62 of 66 Page 63 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 Constitutional of India and invoking its extraordinary jurisdiction. (ix) The distinction between public law and private law element in the contract with 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. Dichotomy between public law and private law, rights and remedies would depend on the factual

matrix of each case and the distinction between 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. Civil Appeal No. 6929 of 2012 Page 63 of 66 Page 64 (x) 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. (xi) 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."

The case of petitioner is that through agreement dated 30.05.2014, right to transport Parcels, Goods and Courier Covers on various Bus Routes operated by Palle Velugu, Express, Deluxe and Super Luxury category Buses, including hire Buses are conferred on petitioner. The impugned proceedings exclude 677 new Hire Buses inducted by 1st respondent into its fleet from transportation of parcels etc. The impugned proceeding is challenged by referring to a few clauses in agreement dated 30.05.2014. Against the circular the challenge of petitioner is that to frustrate contractual obligation

under agreement dated 30.05.2014, the respondents created a new division to look after transportation of parcels, goods, courier covers etc. and the petitioner will be prevented from utilizing the plying buses for transportation of Parcels, Goods, Courier Covers etc., on the very same Buses or in the same way the Division is permitted to utilize the space in Buses. On the other hand, briefly reiterated the respondents claim that the impugned proceedings are not disturbing the obligations under the agreement, but to the extent of newly Hired Buses, having regard to the power vested in 2nd respondent, a notification is issued excluding them from scope of the Permitted Buses. Therefore, for appreciating the writ prayer, the consideration of contractual clauses, mutual obligations and power retained by respondents do fall for consideration, the writ petition is not maintainable and the petitioner has to work out the remedies elsewhere.

By way of reply, Mr.SRavi contends that even assuming interpretation of clauses of agreement dated 30.05.2014 falls for consideration in considering the writ prayer, still as there are no disputed questions of fact but interpretation of a clause falls for consideration, this Court has jurisdiction to entertain the writ petition.

I have carefully considered the pleadings of parties, perused the material available on record and noted the submissions of learned counsel for parties.

Through agreement dated 30.05.2014, the respondents granted to petitioner the contract for transportation of Parcels,

Goods and Courier Covers by the Permitted Buses of the APSRTC. This can be considered as a contract for carriage of goods booked by petitioner for transport to different destinations for the benefit of its customers. The controversy between the parties centers around Clause 3 dealing with Permitted and Not Permitted Buses, the right reserved by the Corporation in a few cases to modify the clauses or add/delete a clause in the agreement. The agreement confers power of Managing Director to modify any condition/conditions of the agreement, and add any other condition(s) during the contract period. Such addition and deletion of condition is made binding on the contractor. The agreement provides for finality to the decision of the Managing Director. The Courts in Hyderabad and Secunderabad is conferred jurisdiction to resolve a dispute under the agreement. After examining the check list on which the right is tested, I have difficulty in accepting the submission of Mr.S.Ravi that though there is no element of public duty or statutory obligation on the respondents vis-à-vis the agreement dated 30.05.2014, still by interpreting the clauses the relief can be worked out. This Court is bound by the dicta of Apex Court in JOSHI TECHNOLOGIES INTERNATIONAL INC's case (2 supra), which reads thus:

69) The position thus summarized 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 Civil Appeal No. 6929 of 2012 Page 59 of 66 Page 60 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, can refuse to exercise. It also follows that under the following circumstances, 'normally', the Court

would not exercise such a discretion: (a) **the Court may not examine the issue unless the action has some public law character attached to it.** (b) 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. (c) If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination. (d) Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.

From the above, it is clear that the Apex Court held that if a case falls under one or other circumstances summarized in JOSHI TECHNOLOGIES INTERNATIONAL INC's case (2 supra), the Court would not entertain a writ petition under Article 226 of the Constitution of India for resolving contractual obligations. In the case on hand, admittedly, there is no public duty or statutory obligation in the working of agreement dated 30.05.2014 and no ground on those lines is referred to challenge either proceedings or the circular. The agreement provides dispute resolution forum and place. May be that there is no money claim in the writ prayer, still the Court would be considering challenge to proceedings impugned in the writ petition by interpreting the rights under the agreement. Paragraphs 70 of JOSHI TECHNOLOGIES INTERNATIONAL INC's case (2 supra) deals with the maintainability of writ petition against the State/Public Authority in the realm of contract. The summary of above discussion is that writ petition against State/Statutory authorities is not maintained, a party aggrieved by breach of right

or obligation has to sue for specific performance of contract or otherwise sue for damages.

In BRIDGE & ROOF COMPANY (INDIA) LTD's case (3 supra), the Hon'ble Supreme Court held that the contract between the parties is in the realm of private law. It is not a statutory contract. Then it is governed by provisions of Contract Act or may also attract a certain provisions of the Sale of Goods Act. Any dispute on interpretation of terms and conditions of such contract cannot be agitated and could not have been agitated in a writ petition. This is a matter either for arbitration as provided by the contract or for the Civil Court, as the case may be. I do not want to reiterate either the clauses on which the learned counsel in support of their submissions rely upon or record a finding in this behalf while concluding the discussion. The fact of the matter is interpretation simplicitor of clauses in support of their respective cases is attempted. I am satisfied that either to challenge the proceeding/ circular or for any consequential relief, the petitioner can certainly work out the reliefs in a comprehensive suit or proceeding instituted.

On the ground that the proceeding/circular impugned in the writ petition cannot and could not be considered *de hors* the rights claimed by the petitioner through agreement dated 30.05.2014, the point is answered in favour of respondents and against the petitioner.

The writ petition is, accordingly, dismissed. No order as to costs.

Consequently, pending miscellaneous petitions, if any, also stand disposed of.

S.V.BHATT, J

21st December 2016

Lrkm/Sp

