

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.41530 of 2016

Date: 08.12.2016

Between:

Syed Shabbir s/o Late Syed Yakoob,
Aged about 60 years, Occu: Petty Business,
Mahmood Nagar, Kishan Bagh, Bahadurpura,
Hyderabad, Telangana State and others.

.....Petitioners

and

State of Telangana, rep.by its Principal
Secretary to Govt., School Education Dept.,
Telangana Secretariat, Hyderabad and others.

.....Respondents



The Court made the following:

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ORDER:

Petitioners claim as the owners of the subject buildings within the limits of city of Hyderabad. They have let-out the said buildings to the Government for the purpose of running Government Schools. All the petitioners have independently entered into the lease agreements. One of the clauses in the agreement envisages that the lessee should pay the rent before the 10th day of every month. Alleging that the rent as agreed is not paid every month, but is being paid for interval of three months and the same is arbitrary and discriminatory and causing lot of hardship to the petitioners, petitioners submitted representations to the Commissioner & Director of School Education and since there is no response to the said representations, this writ petition is filed.

2. A bare perusal of the prayer sought in the writ petition would show that petitioners are seeking enforcement of the terms of agreement entered into with the authority of the Government with reference to the payment of rent.

3. Learned counsel for petitioners placed reliance on the decision of the Supreme Court in **Harbanslal Sahnia and another v. Indian Oil Corporation Limited and others**¹ and decision of this Court in W.P.No.11463 of 2010 and batch, dated 15.04.2011 to contend that availability of alternative remedy is not a bar for entertaining the writ petition.

¹ (2003) 2 SCC 107

3.1. In **Harbanslal Sahnia**, Supreme Court held that rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court can still exercise its writ jurisdiction. Supreme Court pointed out three contingencies, where writ Court can exercise writ jurisdiction, (1) where the writ petition seeks enforcement of any of the fundamental rights; (2) where there is failure of natural justice and (3) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In the case on hand, none of these three contingencies mentioned by the Supreme Court are attracted. In the said case, the plea taken was since agreement provided arbitration clause for resolution of dispute, writ petition is not maintainable. Supreme Court held in the said case that the first two contingencies were attracted. It appears that the contract was terminated on an irrelevant and non-existent clause.

3.2. In the judgment of this Court, the objection raised against entertaining writ petition was that if petitioners are aggrieved by allotment of one more electronic weigh bridge by the Market Committee, they ought to have assailed the same before the Director and later before the Government and without assailing the same before the Director and Government, writ petition could not have been filed. Having regard to the facts of the said case, Court overruled the said objection and entertained the writ petition.

4.1. There is no dispute that the writ Court can entertain the writ petitions even when an alternative remedy is available and it is the discretion of the writ Court to entertain the writ petition in the given factual situation. However, on enforcement of terms of contract, the scope of jurisdiction of writ Court is well settled by long line of precedents. It is apropos to refer to few decisions.

4.2. In **Radhakrishna Agarwal v. State of Bihar**². Supreme Court held as under:

17. Learned Counsel contends that in the cases before us breaches of public duty are involved. The submission made before us is that, whenever a State or its agents or officers deal with the citizen, either when making a transaction or, after making it, acting in exercise of powers under the terms of a contract between the parties, there is a dealing between the State and the citizen which involves performance of "certain legal and public duties". If we were to accept this very wide proposition every case of a breach of contract by the State or its agents or its officers would call for interference under Article 226 of the Constitution. We do not consider this to be a sound proposition at all.

18. Learned Counsel for the appellants cited certain authorities in an attempt to support his submission that the State and its officers are clothed with special Constitutional obligations, including those under Article 14 of the Constitution, in all their dealings with the public even when a contract is there to regulate such dealings. The authorities cited were: *D.F. South Kheri v. Ram Sanehi Singh* where all that was decided, relying upon *K.N. Guruswamy v. State of Mysore*, was that, where the source of a right was contractual but the action complained of was the purported exercise of a statutory power, relief could be claimed under Article 226; and, *Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal* [AIR 1962 SC 1044 : 1962 Supp 3 SCR 1 : (1963) 1 SCJ 106] where the real question considered was whether the petitioner had a *locus standi* to question the validity of an enactment; *Basheshar Nath v. CIT* [1959 Suppl 1 SCR 528, 551 : AIR 1959 SC 149 : (1959) 35 ITR 190] , which has nothing to do with any breach of contract but only lays down that "Article 14 protects us from both legislative and administrative tyranny of discrimination"; *State of M.P. v. Thakur Bharat Singh* [(1967) 2 SCR 454 : AIR 1967 SC 1170 : (1968) 1 SCJ 173] which lays that even executive action must not be exercised arbitrarily but must have the authority of law to support it; *S.S. Sawhney v. D.*

² (1977) 3 SCC 457

Ramarathnam, Assistant Passport Officer, Government of India, New Delhi [(1967) 3 SCR 525 : AIR 1967 SC 1836 : (1968) 1 SCJ 178] , which repeats requirements of action which satisfy Articles 14 and 21 of the Constitution where compliance with these provisions is obligatory.

19. We do not think that any of these cases could assist the appellants or is at all relevant. ***None of these cases lays down that, when the State or its officers purport to operate within the contractual field and the only grievance of the citizen could be that the contract between the parties is broken by the action complained of, the appropriate remedy is by way of a petition under Article 226 of the Constitution and not an ordinary suit. There is a formidable array of authority against any such a proposition.*** In *Lekhraj Satramdas Lalvani v. N.M. Shah, Deputy Custodian-cum-Managing Officer, Bombay* this Court said (at p. 337):

“In our opinion, any duty or obligation falling upon a public servant out of a contract entered into by him as such public servant cannot be enforced by the machinery of a writ under Article 226 of the Constitution.”

In *Banchhanidhi Rath v. State of Orissa* [AIR 1972 SC 843 : (1972) 4 SCC 781] this Court declared (at p. 845) (SCC p. 783, para 8):

“If a right is claimed in terms of a contract such a right cannot be enforced in a writ petition.”

In *Har Shankar v. Deputy Excise & Taxation Commissioner* [(1975) 3 SCR 254, 265 : (1975) 1 SCC 737] a Constitution Bench of this Court observed (at p. 265) (SCC p. 747, para 21):

“The appellants have displayed ingenuity in their search for invalidating circumstances but a writ petition is not an appropriate remedy for impeaching contractual obligations.”
(emphasis supplied)

4.3. Yet again in **Life Insurance corporation of India v. Escorts Limited and others**³ delineated scope of judicial review in contract matters. Supreme Court held as under:

“101. It was, however, urged by the learned counsel for the company that the Life Insurance Corporation was an instrumentality of the State and was, therefore, debarred by

³ AIR 1986 SC 1370

Article 14 from acting arbitrarily. It was, therefore, under an obligation to state to the court its reasons for the resolution once a rule nisi was issued to it. If it failed to disclose its reasons to the court, the court would presume that it had no valid reasons to give and its action was, therefore, arbitrary.

While we do not for a moment doubt that every action of the State or an instrumentality of the State must be informed by reason and that, in appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution, we do not construe **Article 14 as a charter for judicial review of State actions and to call upon the State to account for its actions in its manifold activities by stating reasons for such actions.**

102. For example, if the action of the State is political or sovereign in character, the court will keep away from it. The court will not debate academic matters or concern itself with the intricacies of trade and commerce. ***If the action of the State is related to contractual obligations or obligations arising out of the tort, the court may not ordinarily examine it unless the action has some public law character attached to it. Broadly speaking, the court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field.*** ”
(emphasis supplied)

4.4. In **Joshi Technologies International Inc. v. Union of India, [(2015) 7 SCC 728]**, Supreme Court summarised the scope of judicial interference in contract matters. The principles, delineated, to the extent relevant to this case, read 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:

69.1. The Court may not examine the issue unless the action has some public law character attached to it.

69.3. If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.

69.4. Money claims *per se* particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.

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:

70.6. 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.

70.8. 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.

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.”

5. The principle of law laid down in the above precedent decisions would clearly point out that in matters concerning the enforcement of terms of contract, writ remedy is not the remedy

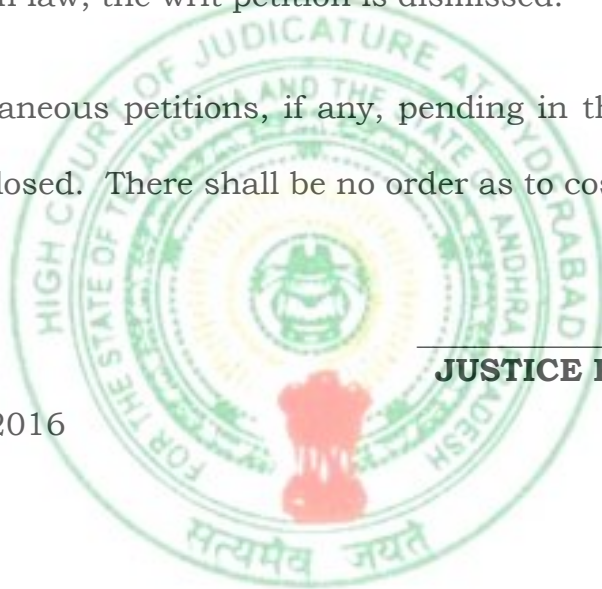
and if a person is aggrieved by violation of terms of contract, he has to avail the common law remedy as available to him.

6. Nothing prevented the petitioner in putting on notice the lessee against the violation of the terms of agreement and in terminating the agreement on the alleged ground of non-payment of rent. In matters of this nature, the question of preferring representations and invoking jurisdiction of this Court on the ground of non-disposal of the representations would not arise. Thus, leaving it open to the petitioners to work out their remedies as available in law, the writ petition is dismissed.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

Date: 08.12.2016
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