

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 598 OF 2016

1. Divisional Controller, .. Petitioners
Maharashtra State Road Transport
Corporation, S.T. Division Office,
Samarth Nagar, Aurangabad.
2. Depot Manager,
S.T. Depot, Sillod,
MSRTC, Sillod, Tq. Sillod,
Dist. Aurangabad.

Versus

Dada Bawri Educated Unemployment Youth .. Respondent
Clean Labour Service Co-operative Society
Maryadit, Aurangabad, through its Chairman
Sanjay s/o. Prasanda Rajora,
Age. 30 years, Occ. Labour,
R/o. Sillod, Tq. Sillod,
Dist. Aurangabad.

Mrs. Ranjana D. Reddy, Advocate for the petitioners.
Mr. Umesh Shete, Advocate for sole respondent.

CORAM : S.B. SHUKRE, J.

DATED : 14.03.2017

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally by consent.
2. By this application, legality and correctness of order dated 05.09.2015 passed in Misc. Civil Appeal No.28

of 2014, by the Adhoc District Judge-1, Aurangabad, thereby granting temporary injunction against the petitioners, has been challenged.

3. The issue involved in this petition is as to whether or not the respondent could have been permitted to run the toilet situated at Sillod Bus Station without there being any contract or agreement executed by the petitioners in favour of the respondent.

4. According to the learned Counsel for the petitioners, letter dated 07.04.2010, which permitted the respondent to carry out repairs and then run toilet on BOT basis was subject to the condition that after repairs were carried out to the satisfaction of the authorities, there would be executed between the petitioners and the respondent an agreement for a specific period of time for running of the toilet on the conditions stipulated in such an agreement and no such agreement was ever executed. Learned Counsel for the respondent submits that although an agreement was to be executed, this condition was waived by the petitioners, as can be seen from the communication dated 15.07.2010, by which from that date onwards, the respondent was authorized to run the toilet.

5. On going through the communication dated 07.04.2010 and 15.07.2010, I find that there is great substance in the arguments of learned Counsel for the respondent. Although the communication dated 07.04.2010 is quite confusing as in the initial paragraph it states that this toilet or wash room has been handed over to the respondent for carrying out repairs and then run it on contract for ten years, later paragraph states that specific agreement will be executed upon the authorities being satisfied about the quality of repairs made or construction work, the communication dated 15.07.2010 is very clear. By this communication, the Divisional Controller of Aurangabad Division of the petitioners has in no uncertain terms stated that this toilet was being given to the respondent on the condition that it would be cleaned three times a day and the entire bus station would be cleaned once in every 15 days. It states that these conditions will be mentioned in the agreement that was to be executed between the petitioners and the respondent, but it also makes clear that the work of cleaning should be started henceforth from the date of that communication. This letter dated 15.07.2010, prima facie, shows intention of the authorities to the effect that for all practical purpose the authorities have treated the contract of running of toilet in question as granted to the respondent. The authorities, it appears,

have not taken any disciplinary action against the Divisional Controller, who has given such blanket authority to the respondent even though there is no agreement specifically executed between the parties. It would only show, prima faice, that the petitioners have ratified actions taken by its employee and therefore the petitioners' implied consent in giving of toilet in question for its being run by the respondent can also be inferred. Then, no show-cause notice has been issued to the respondent before the order dated 12.10.2013 was passed by the petitioners. By this order the work of maintenance given to the respondent was cancelled. In these circumstances, I do not think that any perversity or patent illegality can be seen in the impugned order. There is no merit in the petition. It deserves to be dismissed. Accordingly, the writ petition stands dismissed. However, the Trial Court shall make endeavour to dispose of the suit, in any case, within six months from the date of this order.

6. Rule is discharged. No costs.

[S.B. SHUKRE, J.]