

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE Ms. JUSTICE J. UMA DEVI**

Writ Appeal No. 1200 of 2017

And

Writ Petition No. 27235 of 2017

Common Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

The allegations, based on which the licence issued in favour of the respondent-writ petitioner was terminated, was that a video clipping was widely circulated in the social media, and a copy thereof was made available to the appellant, which showed the respondent-writ petitioner's employees picking up food particles from the Visakhapatnam railway station platform and putting them in a casserole/foil pack. The inference drawn therefrom by the appellant, and by the public at large, was that these food particles were collected for being supplied/served again to railway passengers. The respondent-writ petitioner was initially imposed a penalty of Rs.8,000/-, which was subsequently enhanced to Rs.1.00 lakh. The respondent-writ petitioner claims to have paid these amounts.

On his jurisdiction being invoked, questioning termination of the license, the learned Single Judge has, in the order under appeal, observed that the proceedings of the Divisional Commercial Manager, East Coast Railways disclosed that a sum of Rs. 1.00 lakh was directed to be paid as penalty in connection with the twitter complaint of mishandling of food packets at the Visakhapatnam Railway Station on 29.7.2017; since the appellants had chosen to levy penalty, which the respondent-writ petitioner had paid, the incident was excusable; and, by termination of their licence, the petitioner cannot be punished a second time. The

proceedings dated 10.8.2017, whereby the licence of the respondent-writ petitioner was terminated, was suspended pending disposal of the writ petition.

Sri L. Ravichander, Learned Senior Counsel appearing on behalf of the appellant, would submit that the licence granted to the respondent-writ petitioner is not referable to any statute; the licence was terminated by the appellant in the larger public interest of protecting the health of railway passengers, and to ensure that the strewn food particles on railway platforms are not re-used for being served to them; and as the respondent-writ petitioner has the contractual remedy of invoking the arbitration clause, the Learned Single Judge ought not to have entertained the Writ Petition.

On the other hand Sri Aadesh Varma, learned counsel for the respondent-writ petitioner, would submit that the respondent-writ petitioner was neither put on notice nor were they given an opportunity of being heard before the order, of termination of their license, was passed; the respondent-writ petitioner was imposed a fine of Rs.8,000/- which was later enhanced to Rs.1.00 lakh for the very same offence; as the respondent-writ petitioner has already been punished for these incidents, the appellant-Railways was not justified in terminating their license; the respondent-writ petitioner has been called upon to pay the balance license fees of Rs.80.00 lakhs by proceedings dated 2.8.2017; the respondent-writ petitioner paid the said sum of Rs.80.00 lakhs, towards the balance licence fee, on 9.8.2017; and since termination of their license, the very next day on 10.8.2017, has caused the

respondent-writ petitioner irreparable loss and injury, the Learned Single Judge was justified in suspending the order whereby the petitioners license was terminated. Learned Counsel would rely on **M/s. Raj Restaurant and another vs. Municipal Corporation of Delhi¹, Allied Motors Limited vs. Bharat Petroleum Corporation Limited² and Union of India vs. Tania Construction Private Limited³.**

In **Allied Motors Ltd²**, the Supreme Court held that termination of a 30 year old petrol pump dealership, even without giving a show-cause notice and without giving an opportunity of being heard to the dealer, indicated that the entire exercise was carried out by the respondent-Corporation on non-existent, irrelevant and on extraneous considerations; there had been a total violation of the provisions of law, and the principles of natural justice; and samples were collected in complete violation of the procedural laws and in non-adherence of the guidelines of the respondent-corporation. It is in such circumstances that the termination order was set aside.

In **Tantia Construction Pvt. Ltd³**, the impugned proceedings was the order passed by the Deputy Chief Engineer (Construction) calling upon the respondent-Company to execute the enlarged/extended quantity of the contract work pursuant to a tender. The respondent-petitioner had sought a mandamus directing the Union of India to let it complete the reduced quantity of work relating to the construction of the rail over-bridge. It is in

¹ (1982(3) SCC 338

² (2012) 2 SCC 1

³ (2011) 5 SCC 697

this context that the Supreme Court held that existence of an arbitration clause in the agreement did not bar invocation of the writ jurisdiction of the High Court, when injustice was caused and the rule of law was violated.

In **Raj Restaurant**¹, the Supreme Court held that in cases where, in order to carry on business, a licence is required, refusal to issue the licence or cancellation or revocation of the licence would be visited with both civil and pecuniary consequences; as the business cannot be carried on without the licence, it would also affect the livelihood of the person; and, in such a situation before either refusing to renew the licence or cancelling or revoking the same, the minimum principle of natural justice of notice and opportunity to represent one's case is a must.

While existence of an alternate remedy of either invoking the arbitration clause in a non-statutory contract, or of invoking the jurisdiction of a Civil Court questioning the wrongful termination of such a contract, would not bar exercise of jurisdiction under Article 226 of the Constitution of India, it must be borne in mind that the jurisdiction which this Court exercises, under Article 226 of the Constitution of India, is discretionary and is exercised only in furtherance of the interest of justice and in larger public interest, and not merely on a legal point being made out. The interest of justice and the public interest coalesce. They are very often one and the same. The High Court would weigh public interest vis-à-vis private interest while exercising its discretionary powers (**Ramnislal N. Bhutta v. State of Maharashtra**⁴; **Manohar**

⁴ (1997) 1 SCC 134

Lal²⁰; Master Marine Services Pvt. Ltd v. Metcalfe and Hodgkinson Pvt Ltd⁵; Air India Ltd. v. Cochin International Airport Ltd.⁶) and would refrain from interference, save in larger public interest. A writ of mandamus and a writ of certiorari are discretionary, unlike a writ of habeas corpus which can be sought as a matter of right. One of the principles inherent is that the exercise of discretionary power should be for the sake of justice and, if interference would result in greater harm to society, then this Court may refrain from exercising the power. (**State of Maharashtra v. Prabhu⁷**). The discretionary jurisdiction, under Article 226 of the Constitution of India, must be exercised with great caution, and larger public interest must be kept in mind in order to decide whether the intervention of the Court is called for or not. (**Master Marine Services Pvt. Ltd v. Metcalfe and Hodgkinson Pvt Ltd⁸; Air India Ltd⁶**). This Court would, ordinarily, not interfere save where manifest injustice is caused or a substantial question of public importance is involved. (**Rashpal Malhotra v. Mrs. Satya Rajput⁹; Council of Scientific and Industrial Research v. K.G.S. Bhatt¹⁰**). Even if a legal flaw might be electronically detected, this Court would not interfere save manifest injustice. (**Rashpal Malhotra v. Mrs. Satya Rajput¹¹; Council of Scientific and Industrial Research v. K. G. S. Bhatt¹²**).

⁵ (2005) 6 SCC 138

⁶ (2000) 2 SCC 617 = (2000) 1 SCR 505

⁷ (1994) 2 SCC 481

⁸ (2005) 6 SCC 138

⁹ AIR 1987 SC 2235

¹⁰ AIR 1987 SC 1972

¹¹ AIR 1987 SC 2235

¹² AIR 1989 SC 1972

In such matters, where the licensee is alleged to have indulged in acts harmful to the health and well-being of railway passengers, larger public interest would require this Court to refrain from entertaining the writ petition, and to relegate the respondent-writ petitioner to the remedy of arbitration or of filing a Civil Suit. As the possibility of the food particles strewn on the Railway platform, being picked and put in a casserole/foil pack by employees of the respondent-writ petitioner for its being reused and served to railway passengers, cannot be ruled out, and the question whether the respondent-writ petitioner has a reasonable explanation for such acts of its employees are all matters of evidence which can be properly examined in arbitral proceedings or in a Civil Suit filed before the Civil Court of competent jurisdiction, large public interest would require this Court to refrain from interference, and to relegate the respondent-writ petitioner to avail its contractual or common law remedy.

The services which the appellant-Railways provide is to a large segment of the population of this country to whom trains are alone an affordable mode of transportation. Employees of the respondent-writ petitioner are alleged to have been videographed picking food particles from the Visakhapatnam Railway station platform, and putting them in a casserole/Foil pack. This fact does not appear to be in dispute for, otherwise, there was no need for the respondent-writ petitioner to pay the enhanced fine of Rs.1.00 lakhs. What the respondent-writ petitioner intended to do by putting these food particles, picked up from the Visakhapatnam Railway platform, in a casserole/foil pack is for them to explain. The public outcry, on this video being widely circulated in the

social media, appears to have resulted in the Appellant-Railways terminating the respondent-writ petitioner's license, though they were imposed a fine for this incident earlier. While the appellant does not appear to have put the respondent-writ petitioner on notice or to have given them an opportunity of being heard, it is always open to the respondent-writ petitioner to claim damages for wrongful termination of the contract if, according to them, the action of the Railways is illegal.

In judicial review proceedings, under Article 226 of the Constitution of India, this Court would, ordinarily, not adjudicate disputes arising under a non-statutory contract, more so those in which disputed questions of fact arise for consideration. The truth or otherwise of the allegations, which resulted in termination of the petitioner's license, are all matters which can be examined only on the basis of the evidence adduced in properly constituted legal proceedings either by way of arbitration or by way of a Civil Suit before the Civil Court of competent jurisdiction.

Suffice it to make it clear it is always open to the respondent-writ petitioner to raise all questions of fact and law, before the learned Arbitrator/civil Court, to claim damages for wrongful termination if any, and for refund of the amounts they had paid earlier. Leaving it open to the respondent-writ petitioner to avail the contractual remedy of arbitration in terms of the licence agreement, or to file a Civil Suit, the writ petition is dismissed. The writ appeal is, accordingly, disposed of.

It is also made clear that the learned Arbitrator/Civil Court, if his/its jurisdiction is invoked by the respondent-writ petitioner,

shall examine their claim on its merits, uninfluenced by any observations made either in the order under appeal or in the order now passed by us. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

24th August, 2017
pnb



THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE Ms. JUSTICE J. UMA DEVI



Writ Appeal No. 1200 of 2017
And
Writ Petition No. 27235 of 2017

Date: 24.08.2017

pnb



