

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION Nos.15344,15447,15468
and 15495 OF 2017

COMMON ORDER:

These four writ petitions are filed by the self-same petitioner by name Samiulla Khan against the self-same respondents 1 to 4 viz; Telangana State Road Transport Corporation(for short, 'TSRTC') represented by its Managing Director, Musheerabad; the Regional and Additional Managers, Adilabad Division and the Depot Manager of Nirmal District.

2. The prayers in all the writ petitions common but for different with regard to shop numbers and area read as follows:

'To issue an appropriate writ, order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring proceedings No.02/122(31)/2016-RM-ADB,dt.10.03.2017 (in W.P. No. 15468 of 2017); 02/122(54)/2016-RM-ADB,dt.10.03.2017 (in W.P. No. 15344 of 2017); 02/122(28)/2016-RM-ADB,dt.10.03.2017(in W.P. 15447 of 2017) and 02/122(117)/2016-RM-ADB, dt.10.03.2017 (in W.P.No.15495 of 2017); of the 3rd respondent as illegal, arbitrary, violation of principles of natural justice and as well as the violation of the fundamental rights guaranteed under the constitution of India and set aside the same and consequently direct the respondents to permit the petitioner to run the Sweet Stall in (Dot Shop No.10 (IN W.P.No.15468 of 2017); to run Flower and Loose Pan(in W.P.No.15344 of 2017); to run Fruit and Fruit Juice in Dot shop No.12(W.P.No.15447 of 2017) and to run the Seed shop No.1 in W.P.No.15495 of 2017) at Nirmal Bus Station, Nirmal, Nirmal District and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.'

3.The respective writ petition affidavits of the self-same deponent in support of the writ petitions prayers are that pursuant to the tender notifications dt.22.04.2016, the petitioner became the highest bidder of the 4 shops viz; (1). Seeds shop to an extent of 8 x 10 sft., (2) Sweet House to an extent of 11.9 x 13, (3) Fruit

and Fruit Juice shop 6 x 10 and (4) Flower and loose pan in open space 6 x 10sft, and the respective lease agreements were entered on 24.08.2016 for the lease period upto 18.03.2018 for the seeds shop and till 05.08.2021 for the other shops and the petitioner deposited EMD and other security deposits respectively. It is the further averment that the Depot Manager(4th respondent) demanded bribe and the petitioner was reluctant to pay and the Depot Manager created nuisance stating that the petitioner at the Seeds shop-1, occupied beyond the lease extent unauthorizedly and issued notice dated 06.02.2017, to remove the same, but in fact there is no notice served on him. The 4th respondent came to the shop on 18.02.2017 and tried to demolish the shop through his staff with JCB which the petitioner could avert despite they beaten him. The 4th respondent also filed a false criminal case which is pending for adjudication. The 4th respondent bore grudge and issued show cause notice on 20.02.2017, and the petitioner challenged the same in W.P.No.7701 of 2017 is pending for getting instructions by the learned Standing Counsel for the RTC. While stood thus, the proceedings canceling the licenses of the 4 shops issued are the subject matter of challenge in the writ petitions, since the 3rd respondent issued the impugned proceedings, without even considering the explanation submitted by the petitioner, by termination of the subsisting license period of the shops in question, which not only effects the avocation of the petitioner but also other workers and their families livelihood and the petitioner will suffer acute and irreparable financial loss as he also

availed bank loans for investing in the business and the action of the respondents 3 and 4 is revengeful and uncalled for. He thereby sought for setting aside the impugned proceedings of license cancellation and for its interim suspension pending disposal of the writ petitions so as to continue the petitioner to run the business in the 4 shops.

4. The counter affidavits filed by the Law Officer by the TSRTC on behalf of the 4th respondent in all the four writ petitions with the common contentions, but for difference in the area and extents of the shops and rents and the lease periods that pursuant to the licenses given for the shops in question as per the term of the agreements entered, the licensee has to procure items to be sold and sell within the allotted space respectively of the shops in question and as per clause No.10(i) of the license Deed, *“the licensee has to perform the business by confining to the extent of space stall/shop allotted as mentioned in the tender notification or as recorded in the Deed of License. There should not be any encroachment of platform, area of other stall/shop by the licensee, under any circumstances”*. Further the license is liable for termination if the licensee commits breach of terms of the license deed and as per clause-20, Sub-clause(iii) of the license deed *“If the licensee is found encroached on to the platforms, area meant for passenger movement or any other area/stall/shop.”* As per Condition/ Clause No.20(vi) of the license deed *“In case of misbehavior/assault committed by the licensee, his/her representatives against the employees of the Corporation.”* the

license is liable to be terminated. The petitioner was found utilizing additional space of 10x26 instead of allotted space of 18x10 sq.ft. OBS to run seeds shop and the Depot Manager-R.4 issued notice dated 06.02.2017 informing to vacate the encroached space, else to take action in terms of the agreement but he refused to receive the notice and even he was summoned by the Depot Manager-R.4 to remove the illegal encroachments, if any of the premises, though the petitioner agreed to vacate, but failed despite reminders. The Depot Manager-R.4 on 18.02.2017, with his staff when tried to remove the illegal encroachments, the petitioner, Irashad Khan, Rizwan and others created nuisance in the presence of police and the petitioner used unparliamentarily words against the Depot Manager-R.4 and also hit him with fist on his left cheek and caused internal injuries to him and broke his spectacles and the Depot Manager lodged a complaint with Nirmal Police vide FIR No.57 of 2014 dt. 18.02.2017 for the offences punishable Sections 447,353,332 and 506(ii) r/w 34 IPC and the police arrested the Writ Petitioner and remanded him along with some others to judicial custody. It was reported to the Regional Manager-R.2 by the Depot Manager-R.4 on 20.02.2017 and basing on that report, a show cause notice for termination of the contract and forfeiture of security deposit was issued by the Regional Manager on 20.02.2017 and sought for explanation of the petitioner and he issued reply dated 01.03.2017, through Advocate and having not convinced with his explanation, on perusal of the material and other evidence on record, the Regional Manager terminated the

license on 10.03.2017 which is as per the terms of the license agreement and the writ petitions are misconceived and fictitious. It is also mentioned in para-9 of the respective counter affidavits relying on the expression of the Apex Court that in Joshi Technologies International Inc. Vs. Union of India¹ at para-9 in which it was held that writ petition is not maintainable to resolve the contractual obligations and there is no public duty or statutory obligation in the working of the license agreements and the writ petitions are not thereby maintainable. The respondents also with a contention of in an identical matter in M/S ALLOY ITRIDES LTD., Vs. M/S A.P.STATE ROAD TRASPORT CORP., REP. BY VC., MD., & 2 OTHS-W.P.No.39117 of 2016 and said writ petition was dismissed on 21.12.2016, and against which Writ Appeal No.1495 of 2016 preferred was also dismissed on 06.01.2017 and against which SLP No.6495/2017 filed was also dismissed by the Apex Court on 03.03.2017 and thereby sought for dismissal of these Writ Petitions.

5. Now the point that arises for consideration is:-

Whether the Writ Petitions are maintainable and if so the reliefs sought for how far can be considered, for the reason of the impugned action of terminating the licenses even for the other shops also by forfeiting the security deposit, for the impugned action when can be confined only to the seeds shop in question for the so called violation of the terms of agreement in relation to the said seeds shop by encroachment of area other than licensed area and when tried to remove, obstructed and manhandled allegedly at the said seeds shop in question?

6. Coming to the very maintainability of the Writ Petitions, the respondent-Corporation comes within the meaning of other

¹ 2015(7) SCC 728

authorities under Article 12 of the Constitution of India. Further, it is not even the submission that no writ petition against the Road Transport Corporation is maintainable but for if at all against maintainability in the facts on hand by placed reliance upon M/S ALLOY ITRIDES LTD. In M/S ALLOY ITRIDES LTD., the expression of the Apex Court in ABL INTERNATIONAL LTD AND ANOTHER v. EXPORT CREDIT GUARANTEE CORPORATION OF INDIA LTD. AND OTHERS², JOSHI TECHNOLOGIES INTERNATIONAL INC v. UNION OF INDIA AND OTHERS³ and STATE OF U.P. AND OTHERS v. BRIDGE & ROOF COMPANY (INDIA) LTD⁴ were referred. Paragraph 28 of ABL INTERNATIONAL LIMITED (supra) 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 121]. 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.”

Paragraph 67 to 70 of JOSHI TECHNOLOGIES (supra) reads thus:

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:

“----- when an authority has to perform a public function or a public duty if there is a failure a writ petition

² (2004) 3 SCC 553

³ (2015) 7 SCC 728

⁴ (1996) 6 SCC 22

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] ----- 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 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 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 discrimination. (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."

7. It was there from the learned Single Judge on the facts held that the Circular impugned in the writ petition cannot and could not be considered *de hors* the rights claimed by the petitioner to agreement dated 30.05.2014, the point was answered against the petitioner. Coming to the appeal maintained by the

writ petitioner it was the observation from para-7 onwards as follows:-

“7. On 24-3-2016, the Managing Director of the Corporation issued an order to the effect excluding 677 new hire buses which are about to be inducted in the fleet of the Corporation from the purview of the subsisting agreement. The power to do so obviously flowed out of Clause 3(b) of the agreement.

8. The above order was followed by a Circular dated 03-6-2016, by which the Corporation launched a company known as APSRTC Logistics. This was done for the purpose of augmenting the financial resources of the Corporation.

9. Questioning the order dated 24-3-2016 and the Circular dated 03-6-2016, the appellant filed a writ petition in W.P.No.39117 of 2016. The writ petition was dismissed by learned Judge by an order dated 23-12-2016. Aggrieved by the said order, the appellant is before us.

10. The learned Judge dismissed the writ petition primarily on the ground that the case does not fall within the parameters indicated by the Supreme Court in *Joshi Technologies International Inc v. Union of India* [(2015) 7 SCC 728] and that therefore the appellant should work out his remedies only in a comprehensive suit either for specific performance or for damages.

11. But the contention of the learned Senior Counsel for the appellant is that the orders impugned in the writ petition struck at the very root of fairness, transparency and reasonableness and that therefore the writ petition was maintainable. It is contended by the learned Senior Counsel for the appellant that after having floated a tender on certain parameters and after having awarded the contract to the highest tenderer, it was not open to the respondents/ Corporation to sabotage the whole process and allow 3rd parties to get into the space reserved for the appellant. The learned Senior Counsel also contended that the floating of a separate Corporation by a statutory Corporation is not legal unless it is gazetted and the respondents/ Corporation cannot float a Corporation and award the business that has already been awarded to the appellant.

12. We have carefully considered the above submissions.

13. As we have indicated earlier, there are two things that go against the appellant. They are (1) under the agreement dated 30-5-2014, no definite space is allotted to the appellant either by way of minimum guaranteed space or otherwise and (2) the contract in any case is determinable at the option of either of the parties by a notice in writing of a duration of 3 months.

14. While one of the clauses in the agreement stipulate the size of each parcel and the maximum weight of all the parcels that could be carried in buses, there is no stipulation in the entire agreement prescribing a minimum guaranteed space in each of the buses in which the appellant was entitled to carry the parcels, goods and courier covers. So long as no minimum guaranteed space is indicated in the agreement, we do not know how the appellant could complain of shrinkage of space. The real grievance of the appellant to the orders impugned in the writ petition is that by virtue of those orders, the space available for him to use, may get shrink. But this complaint can be redressed only if there was a minimum guaranteed space.

15. Moreover, the contract was not determinable at the option of the appellant only for a period of one year. After the expiry of the period of one year from the date of commencement of the contract, the appellant got a right to terminate the contract by serving a 3 months' notice. Therefore, if the respondents/ Corporation was taking away the right conferred upon the appellant under the contract, it is always open to the appellant to determine the contract and seek damages.

16. Therefore, we find no justification to interfere with the order of the learned single Judge. Hence, the writ appeal is dismissed. The miscellaneous petitions, if any, pending in this writ appeal shall stand closed. No costs".

8. Thus, from the said expressions it is confined to the facts of that case and for the reasons assigned thereon in dismissal of the writ petition and non-interference by sitting in appeal and to grant any special leave in impugning it.

9. Coming to the case on hand, all four shops are governed by four independent agreements in favour of the respective highest bidder even the highest bidder is one and the same, the area of the respective shops and license period and rent are also independent. The termination of the license is by invoking the clauses in the agreement. The issue of encroachment is pertaining to only the Seeds shop and when tried to remove the encroachment for non-responding, there was altercation and rival complaints of manhandling. So far as that seeds shop concerned,

the said encroachment itself entitles to cancel the license apart from the so called action of manhandling. The so called action of manhandling is in dispute by the writ petitioner though he admits about the registration of the crime against him for that on the report of the Depot Manager-R.4, so far as that seeds shop from the above, there is a justification for termination of the license. However, the issue herein further is whether that is a cause to terminate the license for the other three shops in question. Even from the counter affidavits, there is nothing to show any giving of show cause notice so far as the other three shops concerned complaining any irregularity in relation thereto but for the notice dated 06.02.2017 so far as the seeds shop directing to vacate the encroached portion other than licensed area, else the license can be terminated pursuant to the clause-20 of the agreement. It was the notice issued by the 4th respondent-Depot Manager and not even by the 3rd respondent-Divisional Manager, who terminated the license in question. Coming to the notice issued by the Regional Manager-R.2, dated 20.02.2017 to the petitioner in relation to the four shops in question referring to notice dated 06.02.2017 supra of seeds shop and letter of Depot Manager-R.4 dated 20.02.2017, stating the Depot Manager-R.4 issued notice informing the encroachment beyond the allotted space to the Seeds stall and advised to vacate the unauthorized occupied space for which the licensee did not respond and when the Depot Manager-R.4 taken action to remove the illegally occupied space and while removing on 18.02.2017 the licensee came with others created nuisance in

the presence of police, Nimal P.S., by using unparliamentary language and hit with fist on his left cheek and caused internal injuries and the spectacles of the R.4 are broken therein which is covered by Cr.No.57 of 2017 of even date of Nirmal Town Police Station, which tarnished the image of the Corporation in public eye and also appeared in press. Clause 20(iii) and (vi) of the agreement speaks the encroachment of the platforms and a passenger movement or other area and in case of misbehavior or assault the license is liable to be terminated and for the violation of the above conditions called upon to show cause as to by the license cannot be terminated forfeiting the security deposit within seven days. The petitioner cause issued reply to the show cause notice to the advocate on 01.03.2017 having received the said show cause notice on 24.02.2017. The impugned order with reference to the reply covered by Ref.No.7, speaks nothing of what is the reply that was considered objectively with reasons. What all page-2, para-3 onwards in this regard covered by the impugned order speaks is there is a denial of serving of earlier notice dated 06.02.2017. What is contended of the Depot Manager acted as rowdysheetter and shown communal feeling is incorrect. As a responsible officer the Depot Manager with assistance of police while removing the illegal occupation the licensee assaulted the Depot Manager in the presence of the police and caused internal injuries and also it tarnished the image of the Corporation. Clause-20(vi) of the agreement stipulates in case of misbehavior or assault by licensee, the license is liable to be terminated. After careful consideration

of the explanation in reply to the show cause notice and from the material available on record concluded to terminate the contract and forfeit the security deposit. Here, the termination of license for the unexpired period so far as the seeds shop concerned, though justified the action for the issue in question, from that cause itself the termination of license for the three shops unexpired period and forfeiting the security deposits is no way apparently justified. The writ petitions thereby held maintainable and the action in so far as other than for the seeds shop is arbitrary and unsustainable for the reason the misbehavior covered by the clauses of the agreement must refer to the shop in respect of the license in question and not to extend to other shops.

10. Accordingly and in the result, while dismissing the Writ Petition No.15495 of 2017 in so far as the seeds shop by confirming the action of the respondents terminating the license and forfeiting the security deposit, the Writ Petition Nos.15447,15344 and 15468 of 2017 are allowed by setting aside the termination of licenses and forfeiting of security deposits, by directing to continue the petitioner in relation to the respective three shops in question for the unexpired license period, subject to undertaking affidavit of the petitioner, to the respondent No.2 by marking the copy of the same to respondent Nos. 3 and 4, of not to misbehave in any manner with the RTC officials or the staff or the passenger public in any manner and also not to encroach but for using only

the licensed area to the unexpired period strictly in terms of the license for the purpose of license.

11. Consequently, miscellaneous petitions if any, pending in these writ petitions shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date:01.08.2017
vvr.

