HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Appeal No.1495 of 2016

Judgment: (per V.Ramasubramanian, J.)

The writ appeal arises out of the dismissal of a writ petition filed by the appellant herein challenging the exclusion of new hire buses from the purview of the contract entrusted by the Andhra Pradesh State Road Transport Corporation to the appellant.

2. Heard Mr. S.Ravi, learned Senior Counsel for the appellant and the learned Advocate General (Andhra Pradesh) appearing for the respondents/Corporation.

3. The appellant is carrying on the business of transportation of parcels and goods for the past 30 years. The 1st respondent/Corporation issued a Tender Notification on 26-4-2013 for the appointment of contractors for transportation of parcels, goods and courier covers through the buses of the respondents/Corporation. The appellant participated in the tender and bagged the contract for a period of 4 years. An agreement was entered into on 30-5-2014. Under the agreement, the appellant was permitted to transport parcels, goods and courier covers by certain categories of buses, namely (1) Palle Velugu, (2) Express, (3) Deluxe and (4) Super Luxury. There was an express stipulation that the appellant will not be permitted to transport parcels, goods and courier covers by Garuda (Volvo), all A.C. Buses, Metro Deluxe, Metro Express and City

Buses being operated in Hyderabad City Zone, Vijayawada and Visakhapatnam cities and Warangal and Hanamkonda towns including hire. It was also stipulated specifically that the appellant will not be permitted to transport parcels, goods and courier covers by buses which are specifically excluded by an order of the Managing Director of the Corporation during the subsisting period of the agreement.

4. In Clause 32 of the agreement, the packing conditions such as the size of the parcel, weight of the parcel, maximum value of the contents of the parcel etc., were stipulated. Clause 32(e) also stipulated the maximum weight of the goods that could be transported in Palle Velugu, Deluxe and Express buses as 750 kgs and in Super Luxury buses as 1,000 kgs. Clause 32(f) made it clear that the parcels/goods/ courier covers that can be loaded on a bus for transportation is subject to availability of space and weight, duly taking into consideration the passengers' luggage.

5. In Clause 41 of the agreement, the respondents/ Corporation reserved the right to transport their goods, Dak and other departmental items by the buses. The Corporation also reserved under Clause 42 of the agreement to transport Postal mails, Newspapers/Magazine bundles.

6. The contract was determinable at the instance of both parties under Clause 48, by giving a notice of a duration of 3 months. Clause 59 empowered the Managing Director to modify or add any condition.

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 a 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.

V.RAMASUBRAMANIAN, J.

G.SHYAM PRASAD, J.

06th January, 2017.
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AND
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Writ Appeal No.1495 of 2016
(per VRS, J.)

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