

REPORTED

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

BENCH AT AURANGABAD.

**WRIT PETITION NO.14847 OF 2017
WITH
CIVIL APPLICATION NO.447 OF 2018.
IN
WRIT PETITION NO.14847 OF 2017**

M/s S.K.Translines Pvt. Ltd.
17/19, 1st floor,
Suresh Dada Jain Complex,
Ajintha Road, Jalgaon,
through its Authorised
Representative
Prakash Dnyaneshwar Baviskar,
Age 30 years, Occ.Service,
R/o Jalgaon. ... Petitioner.

Versus

1. The State of Maharashtra,
through Secretary,
Transport Department,
Mantralaya, Mumbai-32.

2. Maharashtra State Road
Transport Corporation
Central Office - Maharashtra
Vahatuk Bhavan,
Dr.Anandrao Nair Marg,
Mumbai-400 008
through its Chairman,

3. Maharashtra State Road
Transport Corporation
Central Office - Maharashtra
Vahatuk Bhawan,
Dr.Anandrao Nair Marg,
Mumbai-400 008,
through its Vice Chairman-
Managing Director,

4. General Manager,
(Planning & Marketing),
Maharashtra State Road
Transport Corporation,
Maharashtra Vahatuk Bhawan,
Dr.Anandrao Nair Marg,
Mumbai-400 008.

5. General Manager(Traffic),
Maharashtra State Road
Transport Corporation,
Maharashtra Vahatuk Bhawan,
Dr.Anandrao Nair Marg,
Mumbai-400 008.

... Respondents.

...
Mr.P.M.Shah, Senior advocate holding for
Mr.A.N.Sikchi, advocate for the petitioner.
Mrs.Vaishali Patil Jadhav, A.G.P. for the State.
Mr.V.J.Dixit, Senior advocate holding for
Mr.D.S.Bagul, advocate for Respondent Nos.2 to 5.
Mr.S.U.Chaudhari, advocate for Applicant-
Intervener.

...

**CORAM : S.V.GANGAPURWALA AND
ARUN M. DHAVAL, JJ.**

Date : 16.01.2018.

ORAL JUDGMENT (Per S.V.Gangapurwala, J.)

1. The substratum of the matter is based
on following grounds :

(i) The jurisdiction of this Court under
Article 226 of the Constitution of India to
entertain the petition in contractual matter.

(ii) Whether by an agreement the jurisdiction of the Court under Article 226 of the Constitution of India can be restricted.

2. Pursuant to the tender process, the petitioner was the successful bidder and was awarded work order by Respondent No.5 for carrying out the business of transportation of parcel, specific allied services and couriers by the State Transport Buses of Respondent Corporation for the period 1.11.2015 to 31.10.2018 on the terms and conditions subscribed to in the licence deed and the tender document.

3. Under order dated 16.12.2017, communicated to the petitioner on 17.12.2017, the Respondent No.4 terminated licence granted to the petitioner for transportation of parcels, couriers and allied services with effect from 18.12.2017. Respondent No.4 in said order forfeited security deposit and Bank guarantee, and also imposed penalty. The petitioner has assailed aforesaid order in present Petition.

4. Mr.P.M.Shah, learned Senior advocate for the petitioner in his usual erudite disposition, put forth following submissions :

(a) The order terminating the licence granted to the petitioner by Respondent No.4 for transportation of parcels, couriers and allied services is without notice to the petitioner and without following the principles of natural justice. Clause 41 of the Licence deed requires the Respondents to give 30 days notice, if they want to prematurely terminate the contract. According to learned Senior advocate, principles of natural justice are required to be followed in such matters. The learned Senior advocate relies on judgment of the Apex Court in the case of **"Hindustan Petroleum Corpn. Ltd. and others Vs. Super Highway Services and another"** reported in **(2010) 3 SCC 347**. The learned Senior advocate also relies on judgment of a Division Bench of this Court in the case of **"Rajesh Sadanand Patil Vs. The Additional Collector and others"** reported in **AIR 2003 Bombay 304**.

(b) The learned Senior advocate further submits that in contractual matters involving the State and instrumentality of the State, powers of this Court of judicial review subsist. To buttress his submission, he relies on judgment of the Apex Court in the case of **"Noble Resources Ltd. Vs. State of Orissa and another"** reported in **(2006) 10 Supreme Court Cases 236**.

(c) It is further contended that when the effect of the termination of the contract entails civil consequences then opportunity of hearing is must. He relies on the judgment of the Apex Court in a case of **"Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and others"** reported in **(2014) 14 Supreme Court Cases 731**.

(d) The availability of alternate remedy would be no bar to invoke the jurisdiction of this Court. In present case even Arbitration clause does not exist. The learned Senior advocate further submits that by an agreement jurisdiction of this Court under Article 226 of

the Constitution of India, can not be restricted. He relies on judgment of the Apex Court in the case of **"P.R.Transport Agency Vs. Union of India (UOI) and others"** reported in **AIR 2006 Allahabad 23** and judgment of learned Single Judge of the Madras High Court in the case of **"Sun TV Network Ltd. and others Vs. Union of India and others"** reported in **(2016) 5 Mh.L.J. 198**.

e) The action is arbitrary and malafide. It is submitted by learned Senior advocate that reasons referred to in the order for termination are in fact non-existent. The alleged breaches were trivial and were in respect of earlier period. The grievance of the Respondent with regard to registration under GST, the petitioner had provided screen-shot to the Respondents showing that it is registered under GST. The petitioner had not received the certificate in physical form. While the same was received on 18.12.2017, it was immediately submitted to the Respondents. Even opinion of the Chartered Accountant of the Respondents is that GST would not apply.

5. Mr.Dixit, learned Senior advocate for the Respondents in a lucid manner canvassed following propositions :

(a) That the parties under clause 53 had agreed that if any dispute arises between them then the Court located at Mumbai alone shall have jurisdiction to try and decide the dispute between the parties. The learned Senior Advocate submits that if two or more Courts have jurisdiction, the parties by an agreement can restrict the jurisdiction to any one Court. The learned Senior advocate relies on judgment of the Apex Court in the case of **"Shriram City Union Finance Corporation Limited Vs. Rama Mishra"** reported in **2002 (9) SCC 613**, so also on case of **"Swastik Gases P. Ltd. Vs. Indian Oil Corp.Ltd."** reported in **2013 (9) SCC 32**.

(b) Learned Senior advocate further submits that in contractual matters, this Court would not exercise its jurisdiction of its judicial review. The matter between the parties arises out of the terms and conditions of contract. This Court

would not entertain a Writ Petition against termination of contract in its writ jurisdiction. The learned Senior advocate relies on judgment of the Apex Court in the case of **"Pimpri Chinchwad Municipal Corporation Vs. Gayatri Construction Company"** reported in **LEX(SC) 2008 822**, so also on the case of **"Empire Jute Co. Ltd Vs. Jute Corporation of India Ltd."** reported in **LEX(SC) 2007 1061**. Learned Senior advocate also places reliance on the case of **"State of Uttar Pradesh Vs. Bridge and Roof Company India Limited"** reported in **LEX(SC) 1996 845**.

(c) Learned Senior advocate further submits that considering breaches committed by the petitioner from time to time, notices were issued to the petitioner. The petitioner went on committing breaches of the terms of the license deed. It is not that the petitioner was not made aware of the lapses on its part. The lapses on the part of the petitioner as enumerated in the order of termination were communicated to the petitioner on each and every occasion and lastly, the petitioner was also directed to provide the

details of GST registration. The petitioner failed to provide the same. The petitioner was required to get itself registered under GST. Failure on the part of the petitioner to get itself registered under GST is fatal. The Respondents had rightly exercised its right and terminated the contract to avoid further defaults.

(d) The learned Senior advocate further submits that for forfeiture of security deposit, bank guarantee, the license deed does not provide for issuance of notice and the right has been given to the Respondent-Corporation to forfeit the security deposit, bank guarantee as contained in clause 6 of the Licence Deed. According to learned Senior advocate the right has been exercised by the Respondents, on account of breach committed by the petitioner. Action has been taken bonafide and can not be termed as arbitrary or malafide and prays for dismissal of the Writ Petition.

6. We have considered submissions of the

respective learned Senior counsel for the parties.

7. Before proceeding further it would be necessary to reproduce the clause relied by the parties. Clause 41 reads as under :

**"41. Notice of termination
of License Deed**

If during the period of deed remains in force, the General Manager (Traffic) has reason to be dissatisfied with the service or the manner of the implementation of the contract and/or the representatives of the Licencee, the Licensor may by notice in writing call upon the Licencee to remove the cause of such dissatisfaction in the way to be indicated in the notice and if the Licencee fails for a period of 30 days after the receipt of such notice to remedy such causes of dissatisfaction to the satisfaction

of the General Manager (Traffic) then notwithstanding anything contained in the agreement to the contrary the General Manager (Traffic) shall be at liberty to any time thereafter to terminate this deed by giving the Licencee 15 days notice in writing and the deed, shall, on expiry of the notice period, stand cancelled and the Licencee shall be liable to pay the guaranteed revenue of balance period of deed and also security deposit liable to be forfeited.

Clause 53. Jurisdiction of Court at Mumbai only

The Court located at Mumbai shall only have jurisdiction to try and decide any matter/dispute between the parties."

8. The contract between the Respondents and petitioner is for a period of three years starting from 1.11.2015 and ending on 31.10.2018.

The Respondents claim to have issued letters on 15.7.2017 and 11.9.2017 to the petitioner for starting parcel office/Booking at Bus stand as per clause 36 of the Licence deed and that petitioner did not comply. According to Respondents, the petitioner violated clauses 16,17.3 and 19 of the Licence deed and notice dated 7.10.2017 was issued. The breaches alleged by the Respondents are disputed by the petitioner. The grievance of the Respondents is also about non-registration under GST by the petitioner. The petitioner claims to have provided with the screen shot of its registration from the web-site. The Respondents were not convinced and the Respondents issued letter dated 16.12.2017, terminating the contract w.e.f. 18.12.2017 and said letter is received by the petitioner on 17.12.2017 in the evening at about 8.21 p.m.

9. The terms of the Licence deed are binding on both the parties.

10. Clause 41 of the Licence deed mandates

that if the Respondent is dissatisfied with the service or the manner of the implementation of the contract by licensee or its representative then the Licensor/Respondent is required to indicate in writing to the licensee to remove the causes of dissatisfaction and if the licensee fails within 30 days after the receipt of notice to remedy the causes of dissatisfaction then the Respondent is required to give 15 days notice in writing to terminate the licence.

11. This Court would be loath to exercise its jurisdiction to judicial review decision taken by a party under the contract may be largely a position, yet due adherence to the decision making process can be a concern for this Court.

12. We have to make it clear that we are not examining the decision of the Respondents on merits and are confining ourselves to the decision making process.

13. In the case of **"Pimpri Chinchwad**

Municipal Corporation Vs. Gayatri Construction Company" (supra) the Apex Court observed that Interpretation and implementation of clauses in contract can not be the subject matter of the Writ Petition. In the case of **"State of Uttar Pradesh Vs. Bridge and Roof Company India Limited"** (supra) it is held that Writ Petition for restraining Government from deducting or withholding particular sum payable to Respondent company under contract is wholly misconceived and not maintainable. In the case of **"Empire Jute Co.Ltd. Vs. Jute Corporation of India Ltd."** (supra) the Apex Court observed that when there is agreement between parties containing Arbitration Clause the power of judicial review should not be exercised.

14. The Apex Court in a case of **"Hindustan Petroleum Corpn. Ltd. and others Vs. Super Highway Services and Another"** (supra) has observed as under :

"17. The cancellation of dealership agreement of a party is a serious business and cannot be taken

lightly. In order to justify the action taken to terminate such an agreement, the concerned authority has to act fairly and in complete adherence to the rules/guidelines framed for the said purpose. The non-service of notice to the aggrieved person before termination of his dealership agreement also offends the well-established principle that no person should be condemned unheard. It was the duty of the petitioner to ensure that the Respondent No.1 was given a hearing or at least serious attempts were made to serve him with notice of the proceedings before terminating his agreement."

A Division Bench of this Court in the case of **"Rajesh Sadanand Patil Vs. Dadasaheb Kisan Suryawanshi"** (supra) has observed that requirements of Article 14 and contractual obligations are not alien concepts which can not

co-exist. It is difficult and unrealistic to exclude the State actions in contractual matters, after contract has been made from the purview of judicial review to test its validity on the anvil of Article 14 of the Constitution of India.

15. The Apex Court in a case of **"Noble Resources Ltd. Vs. State of Orissa and another"** (supra) has observed that contractual matters of the State are not totally beyond the scope of judicial review albeit its ambit is limited. Each case has to be decided on its own facts. Where State violates Article 14 or malafides or ulterior motives are attributed, judicial review would be permissible. Even existence of a disputed question of fact or availability of an alternate remedy are not ipso facto a bar to the exercise of High Court's writ jurisdiction.

16. The Respondent has failed to abide by clause 41. The Respondent in its letter of termination of contract dt.16.12.2017 has referred to the breach committed by the petitioner on 13.3.2016, for which petitioner was

imposed fine of Rs.1000/- (Rupees one thousand). The other lapse is of twice allowing parcel weighing more than 500 Kg. for which petitioner was imposed fine of Rs.15,000/- (Rupees fifteen thousand) by the Respondent on 21.6.2016, the petitioner had allowed parcel containing acid and the petitioner was imposed fine of Rs.1,000/- (Rupees one thousand). The other cause of dissatisfaction is non-registration under GST. The Chartered Accountant of the petitioner had opined that the transportation of parcel under the Licence deed would not deduct GST provided petitioner is registered under The Maharashtra Goods and Services Tax Act, 2017. The petitioner had provided the screen shot from the web-site to show that it is registered under GST. The petitioner till then had not received the certificate in the physical form. It is only on 18.12.2017, the petitioner could receive the certificate in physical form and on 18.12.2017, gave the copy in physical form, it being registered under GST Act.

17. The Respondent at no point of time ever

issued notice in writing to the petitioner that the cause of dissatisfaction has not been removed and straightway issued notice of termination of contract and forfeited security deposit, bank guarantee and levied penalty.

18. The Respondent miserably failed to abide imperative stipulation of giving 15 days notice terminating contract, according to clause 41 of the Licence deed. The Respondent did not even give an opportunity to the petitioner to blink and straightaway resorted to the drastic step of terminating the contract, so also forfeiting security deposit, bank guarantee and levying penalty of almost Rupees twelve crore and further on 19th December 2017 floated fresh tender inviting offer for said work. The action of the Respondent reeks arbitrariness.

19. The termination of contract entailed civil consequences. The security deposit is forfeited and also the Bank guarantee. The penalty is levied. The forfeiture of security, Bank guarantee and levy of penalty has the effect

of disqualifying the petitioner from participating in any other tender process in a way Blacklisting the petitioner. Even on this count prior notice was necessary in due observance of principles of natural justice.

20. The Respondent-Maharashtra State Road Transport Corporation is an instrumentality of the State. An instrumentality of the State is expected to act as a model litigant. Fair play is expected on the part of the Corporation. Any action that is arbitrary is unsustainable. Arbitrariness has no role in the society governed by the Rule of law. Arbitrariness is antithesis to the Rule of law, fair play justice, equity and good conscious.

21. In the present case it is undisputed that Arbitration clause does not exist. Clause 50 of the Licence deed specifically negates arbitration. It states that in event of any dispute and/or interpretation of terms and conditions arises the same shall be referred to the Vice Chairman & Managing Director,

Maharashtra State Road Transport Corporation and decision of the Vice Chairman and Managing Director shall be final and binding on both the parties. However, this shall not be treated as arbitration under the provisions of Arbitration and Conciliation Act,1996.

22. The Respondent has instantly terminated the contract and on the very next day issued fresh tender for the same work. We have initially made it clear that we are entertaining the Petition only to the extent of due adherence to the decision making process.

23. The contract has been terminated without adhering to clause 41 of the License deed, so also transgressing the principles of natural justice. The decision making process is flouted. The writ jurisdiction of this Court can be exercised.

24. Much emphasis was laid by the Respondents on clause 53 of the License deed to submit that if any dispute arises between the

parties then the jurisdiction is restricted to the Court at Mumbai. Reliance was placed on the judgments of Apex Court in the case of **"Shriram City Union Finance Corporation Limited Vs. Rama Mishra"** reported in **2002 (9) SCC 613**, so also on case of **"Swastik Gases P. Ltd. Vs. Indian Oil Corp. Ltd."** reported in **2013 (9) SCC 32** (supra). In said cases the Apex Court was considering the agreement restricting the jurisdiction of civil Court.

25. The Constitution of India is Suprema Lex. The jurisdiction of this Court under Article 226 of the Constitution of India is sacrosanct. It is an extra-ordinary jurisdiction. The jurisdiction under Article 226 of the Constitution of India can not be circumvented and circumscribed by an agreement.

26. If two or more Courts have concurrent jurisdiction by virtue of Section 28 of Contract Act, the jurisdiction can be restricted to one Court. The said Section would apply to ordinary Tribunals exercising jurisdiction provided by the

statute. Section 28 would not extend to the constitutional remedy. Even statute can not abrogate the jurisdiction of this Court under Article 226 of the Constitution of India, much less an agreement by the parties. Similar view has been taken by Allahabad High Court in the case of **"P.R.Transport Agency Vs. Union of India (UOI) and others"** reported in **AIR 2006 Allahabad 23** and the Madras High Court in the case of **"Sun TV Network Ltd. and others Vs. Union of India and others"** reported in **(2016) 5 Mh.L.J.198** (supra).

27. In view of the aforesaid, we pass the following order :

a) The order/communication dated 16.12.2017 is set aside.

b) The contents of communication dated 16.12.2017 with regard to the breaches shall be considered as a notice to the petitioner. The petitioner shall file its reply with the Respondents within a period of ten (10) days about remedying the dissatisfaction of the

Respondents.

c) On receipt of reply, the Respondents shall take appropriate decision upon it, on its own merits.

d) Till the decision is taken by Respondents, pursuant to the reply filed by the petitioner, the further tender process shall be kept in abeyance and shall not be proceeded with.

e) The Writ Petition is disposed of with aforesaid observations and directions with no order as to costs.

f) In view of disposal of Writ Petition, the Civil Application also stands disposed of.

28. At this stage, Mr.Bagul, learned advocate for the Respondent Nos.2 to 5 requests for keeping the present judgment in abeyance for a period of four (4) weeks. Mr. Sikchi, the learned advocate for the petitioner opposes the

said request.

29. With a view to give opportunity to Respondents to avail further remedy, the effect of this judgment is kept in abeyance for a period of four (4) weeks, however, the Respondents shall not proceed with the tender process initiated as directed above.

Sd/-

(ARUN M.DHAHALE, J.)

Sd/-

(S.V.GANGAPURWALA, J.)

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