THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

I.A.No.2 of 2018 in WP.No.16919 of 2018

and

WP.No.16919 of 2018

and

WP.No.19326 of 2018

COMMON ORDER :

WP.No.16919 of 2018 :

The petitioner in WP.No.16919 of 2018 was granted a license by the Telangana State Road Transport Corporation (**for short 'the Corporation'**) for running Departmental Stores in Jubilee Bus Station for a period of five (05) years from 29.01.2015 to 28.01.2020 on payment of license fee for a sum of Rs.3,88,999/- per month.

2. The Regional Manager, Ranga Reddy Region issued a tender notification on 16.04.2018 calling for tenders for granting license for running bakery, snacks and cool drinks stall in Jubilee Bus Station. These items are also part of the business of the petitioner in WP.No.16919 of 2018.

3. Alleging that the Corporation and its Regional Manager are proposing to grant licence to a stall for selling bakery, snacks and cool drink products in the Jubilee Bus Station very near to the petitioner's stall which would destroy the petitioner's business, the petitioner in WP.No.16919 of 2018 filed the Writ Petition.

WP.No.19326 of 2018

4. The petitioner in WP.No.19326 of 2018 was granted a license by the Corporation for running tea, coffee and snacks stall bearing Stall No.33 in Mahatma Gandhi Bus Station, Hyderabad for five (05) years from 16.03.2016 till 15.03.2021 for a sum of Rs.55,555/- per month.

5. In this case also, the Regional Manager, Ranga Reddy Region of the Corporation had issued a tender notification dt.24.05.2018 calling for tenders for granting license for running tea, coffee, sweets and bakery stall at Stall No.31, adjacent to the stall of the petitioner in WP.No.19326 of 2018. Alleging that this would also affect his business, the petitioner in WP.No.19326 of 2018 has filed the said Writ Petition.

Contentions Of Petitioners

6. It is the contention of petitioners in both the cases that they offered huge amounts of license fee to the Corporation with a legitimate expectation that it will not grant license in future to others for selling the items for which they have been granted license; that the petitioners estimated the volume of business of the stall and submitted tenders by taking into consideration the number of licenses which the Corporation was going to grant for similar businesses for the same Bus Station; that the petitioners/tenderers then worked out the license fee they intended to offer to the Corporation in such a way that there would be not be any business risk for them; that the Corporation, being a statutory authority, is expected to act in a fair and reasonable manner giving opportunity to the tenderer to estimate the probable business of the stall for which he submits his tender, basing on the stable chances of business existing *at the time* of submitting his tender; and the Corporation cannot change the situation prevailing at the time of calling for tenders in 2015 or 2016 by proceeding to consider in 2018 issuing licenses to other persons during the subsistence of the licenses of each of the petitioners.

7. Petitioners contend that though the Corporation may grant licenses to more than one person for selling the same articles or doing the same business at a time, once the Corporation had called for tenders in 2015 or 2016 without doing so, they cannot at a later point of time in 2018 call for tenders for granting licenses to other persons for the same businesses which the petitioners in the Writ Petition have been granted license.

8. According to petitioners, though Clause (13) of the respective licenses entered into by the Corporation with the petitioners empowers the Corporation to call for tenders for granting license to more than one person for the same business, such Clause can be invoked only *at the time* of granting license to the petitioners, and it cannot be invoked by it to grant license *after the* petitioners have been granted license, *at a later point of time, for the same business* to another person; that if Clause (13) is considered to permit the

Corporation to call for tenders for the same business for which the petitioners have been granted licenses after a long period after the petitioners have been granted license, it would amount to the Corporation acting arbitrarily and unconscionably, and the said Clause (13) itself has to be termed as unconscionable, atrocious, irrational, arbitrary, discriminatory and violative of Article 14 of the Constitution of India.

9. It is further contended that there is no necessity at all to call for fresh tenders for running a stall similar to that of the petitioners; and if there had been such necessity, the Corporation would have granted licenses to others for running the same business when it had issued tender notifications in the years 2015 and 2016, when the petitioners were declared as successful bidders.

The interim order in WP.No.16919 of 2018:

10. On 02.05.2018, this Court adjourned WP.No.16919 of 2018 to 04.06.2018, and directed that the process of considering the tenders pursuant to the tender notification issued on 16.04.2018 be continued, but finalization shall be deferred till then.

I.A.No.2 of 2018 in WP.No.16919 of 2018 :

11. I.A.No.2 of 2018 in WP.No.16919 of 2018 was filed by the Corporation to vacate the order dt.02.05.2018 passed in WP.No.16919 of 2018.

12. There is no interim order granted in favour of petitioner in WP.No.19326 of 2018. But, in that case also counter-affidavit has been filed by the respondents.

Counter-affidavits of respondents in the Writ Petitions :

13. In the counter-affidavits filed by respondents in both the cases, it is the contention of respondents that the Writ Petitions itself are not maintainable, and if the petitioners are aggrieved by any clause in the license or if they suffered any damages or loss, they ought to approach the competent Civil Court only.

14. It was also pointed out that petitioners participated and submitted tenders pursuant to tender notifications dt.05.12.2014 in the Jubilee Bus Station, Secunderabad, and tender notification dt.25.11.2015 at Mahatma Gandhi Bus Station, Hyderabad, respectively, for stalls for departmental stores and for tea, coffee and snacks stalls, respectively; and the terms of the respective tenders included non-exclusive clauses (Clause 30) which empowered the Corporation to grant license to more than one licensee to do the same business in the same Bus Station or premises; that petitioners were aware of the same and yet signed the terms and conditions of the tender accepting the said conditions; that even in the license deed which was granted to petitioners, Clause (13) incorporated the same and empowered the Corporation to have the right to grant license to more than one licensee to do the same business which is already in existence in the same Bus Station or premises. They contend that the licensee cannot raise objection over this and that both the petitioners signed the license deeds accepting the said terms and now they are not entitled to question the same since they have never raised any such objection regarding the said clause.

15. The respondents further contend that the petitioners cannot claim monopoly over the nature of business they are conducting in a public place like a bus station; that the Corporation, in a fair manner, made known the terms and conditions including the non-exclusive clause to the petitioners before the tenders were awarded; and the petitioners cannot claim that they have legitimate expectation of business, since they are already aware of the terms and conditions and restrictions imposed by the Corporation.

16. They contend that that the Corporation can take decision about the number of stalls and the nature of stalls which would be allowed to conduct business in a bus station; that the Corporation has to ensure that passengers and commuters have options of their choice to buy items for their need and requirement; moreover, the volume of passengers / commuters in 2014 was not the same in 2018; and the Corporation keeping in view of the needs and demands of the passengers / consumers is entitled to add or remove stalls at the Bus Station.

17. According to the respondents, the nature of business of petitioner in WP.No.16919 of 2018 being departmental store, he can sell other items such as stationery, general goods, books, plastic goods, traveling goods and ready-made garments, cassettes, pan, popcorn, flower stall, fruits, cosmetic bangles, fancy store, footwear, in addition to snacks, cool drinks and bakery items and it is not correct to state that his business will be completely affected by granting license to another stall for bakery, snacks and cool drinks.

18. It is stated that in regard to Mahatma Gandhi Bus Station, where the petitioner in WPNo.19326 of 2018 has been granted license in 2015 at Stall No.33 pursuant to tender notification dt.25.11.2015 for providing tea, coffee and snacks with vending machine, there was an earlier tender notification on 15.06.2015 inviting tenders for Stall Nos.27, 31, 33, 37 and 60 for similar business of tea and coffee; that Stall No.31 was allotted to one M. Nagesh for five (05) years from 23.09.2015 to 22.09.2020 on a monthly license fee of Rs.1,59,000/-; that for Stall No.33, no satisfactory bids were received, and the petitioner had no objection when he was allotted Stall No.33, even though Stall No.31 at that time was doing the same business and was existing at the time when he was allotted Stall No.33.

19. It is stated that pursuant to the tender notification dt.16.04.2018 for Stall No.31, there were four offers, highest of which was for Rs.1,56,999/- ,and the Corporation had issued allotment letter to the highest bidder on 21.06.2018.

20. Respondents assert that the interest and convenience of the general public outweighs the business prospects of the petitioners and that there is no illegality or impropriety in the action of the respondents in issuing the impugned tender notifications.

The considertation by the Court :

21. Sri C. Ramachandra Raju, counsel for petitioners, in both the Writ Petitions reiterated the contentions of petitioners.

22. He sought to contend that as per Clause (viii) of the Circular No.31/2017-OPD (MNC) dt.02.11.2017, issued by the Corporation, a Tender Committee shall ensure that no tenderer of any single stall shall engage in other businesses mentioned under the said Clause, and therefore, the Tender Committee ought not to have permitted the Corporation to issue the impugned tenders for selling of the items which the petitioners are empowered to sell.

23. In my considered opinion, this contention has no merit for the reason that the said Clause directs the Tender Committee to ensure that the items allotted to each type of stall alone shall be sold in that stall, and each of those stalls shall not deal with other items for which they have not been granted license. The said clause cannot be interpreted to mean that the Corporation is prohibited from granting licenses to other persons for doing the same business which existing licensees, such as the petitioners, are doing.

24. The further contention of counsel for petitioners is that Clause (13) of the respective license deeds is unconscionable and opposed to public policy and has to be declared to be void. Counsel placed reliance on the decision in **Central Inland Water Transport Corporation Ltd and another v. Brojonath Ganguly and another**[1] in this regard.

25. In **Central Inland Water Transport Corporation Ltd and another** (1 supra), unconscionable terms in contract of employment between a State entity and its employee which permitted termination of services of contracting employee by giving three (03) months' notice and making payment equivalent to three (03) months' Basic Pay and Dearness Allowance in lieu of notice, was challenged. The Supreme Court, in an elaborate judgment, considered whether an 'unconscionable' term in a contract of employment entered into with the appellant-Corporation, which is a 'State' within the meaning of the expression in Article 12, can be declared to be void as being violative of Article 14 of the Constitution of India. It concluded that the clause in question was in the nature of a '*hire and fire*' Rule; and the power conferred by such rule is arbitrary and discriminatory and enables the appellant-Corporation therein to discriminate between employee and employee even when circumstances exist which would justify the Corporation to hold a regular disciplinary enquiry into the misconduct of an employee. It also held that the said Rule ignores the

---

[1] 1986 (3) SCC 156

settled principle of *audi alteram partem* and violates Article 14 of the Constitution of India. In that context, the Court observed that *Courts will interfere and will, when called upon to do so, strike down an unfair and unreasonable contract or an unfair and unreasonable clauses in a contract, entered into between parties who are not equal in bargaining power*. It observed that the said principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties and would apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form, or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. It clarified that the principle will not apply where the bargaining power of the contracting parties is equal or almost equal and also would not apply where both parties are businessmen and the contract is a commercial transaction.

26. The contention of the counsel for petitioners is that Clause (13) of the license deed which permits the Corporation to grant license to more than one licensee to do the same business which is already in existence in the same Bus Station or premises and precluding the licensee from raising any objection over it is unconscionable in view of the above decision. I am unable to accede to the said contention.

27. The petitioners herein are businessmen. It is also not a situation where the petitioners cannot earn their livelihood by selling the articles in question except upon the terms imposed by the Corporation. Nothing compelled the petitioners, if they are inclined to do business elsewhere from doing so. The contract in question is also a commercial transaction and both the petitioners have entered into the license agreement with the Corporation knowing fully well, even at the time of submitting their respective tenders that such non-exclusivity clause will form part of the contract or license, and with open eyes signed the contract / license with Clause (13). Therefore, they cannot now complain after more than two (02) years of signing the license agreement that the said Clause (13) is unconscionable and void.

28. The Supreme Court in **Bihar State Electricity Board, Patna and others v. M/s. Green Rubber Industries and others**[2], a person who signs a document which contains contractual terms is normally bound by them even though he has not read them, even though he is ignorant of the precise legal effect.

29. So the decision in **Central Inland Water Transport Corporation Ltd and another** (1 supra) cannot come to the aid of the

[2] (1990) 1 SCC 731

petitioners and Clause (13) of the respective license deeds cannot be said to be unconscionable and opposed to public policy or void. It is perfectly valid.

30. It is also the contention of the counsel for petitioners that Clause (13) should be interpreted to mean that the Corporation will have their right to grant licenses for same types of businesses only at a single time and not after persons like the petitioners who have already been granted licenses.

31. The Supreme Court in **Rajasthan State Industrial Development and Investment Corporation and Another v. Diamond & Gem Development Corporation Limited and another**[3] declared that a contract has to be interpreted giving actual meaning to the words contained in it and it is not permissible for the Court to make a new contract, however reasonable, if the parties have not made it themselves. It cannot be interpreted in such a way that its terms may be varied.

32. On a plain reading of Clause 13 of the licence deeds, the Corporation has the power, even after persons like the petitioners have already been granted licenses, to grant to others licences to do same type of business in any bus station.

33. The respondents had contended that there was an increase in volume of commuters from the respective Bus Station between 2014

[3] (2013) 5 SCC 470

and 2018 when the impugned tender notifications have been issued. This is not disputed by the petitioners. When there is such increase in the volume of commuters or persons using the Bus Stations, naturally the interest and convenience of the general public would outweigh the business prospects of the petitioners. The Corporation is entitled to keep in view the needs and demands of the passengers and commuters in deciding whether or not to grant fresh licenses to persons for doing the existing business. The public interest far outweighs the interest of the petitioners.

34. The jurisdiction of this Court under Article 226 of the Constitution of India is equitable in nature and it's discretion must be exercised on grounds of public policy, public interest and public good and also to promote substantial justice.(**Rajasthan State Industrial Development and Investment Corporation and Another** (3 supra)).

35. In my opinion, the Corporation cannot be deprived of it's powers to take decision about the number of stalls and the nature of stalls which would be allowed to conduct business in it's bus stations as it has to ensure that passengers and commuters have options of their choice to buy items for their need and requirement. The petitioners have not made out any case for interference with the action of the respondents in issuing the impugned tenders.

36. Therefore, for all the aforesaid reasons, I do not find any merit in the Writ Petitions and they are accordingly dismissed. No costs.

37. The interim order granted on 02.05.2018 in WP.No.16919 of 2018 is vacated, and I.A.No.2 of 2018 in WP.No.16919 of 2018 is allowed.

38. As a sequel, miscellaneous applications pending, if any, in these Writ Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30-07-2018
Ndr/*