

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

WRIT APPEAL NO.846 OF 2018

Between:

V. Praveen

.... Appellant/Petitioner

and

Telangana State Road Transport Corporation rep., by its
Managing Director, Bus Bhavan, Musheerabad, Hyderabad
and another.

.... Respondents/Respondents

DATE OF JUDGMENT PRONOUNCED: 09.08.2018.

SUBMITTED FOR APPROVAL:

**HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI**

1. Whether Reporters of Local newspapers may
be allowed to see the Judgments? --
2. Whether the copies of judgment may be marked
to Law Reports/Journals Yes
3. Whether Their Ladyship/Lordship wish to see the
fair copy of the Judgment? Yes

RAMESH RANGANATHAN, J

*** HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI**

+ WRIT APPEAL NO.846 OF 2018

% 09.08.2018

V. Praveen

.. Appellant/Petitioner

Vs.

\$. Telangana State Road Transport Corporation rep., by its
Managing Director, Bus Bhavan, Musheerabad, Hyderabad
and another.

.. Respondents/Respondents

! Counsel for the Appellant/petitioner: Sri C. Ramachandra Raju

^ Counsel for the respondents: Sri G. Vidyasagar, Learned Senior
Counsel and Sri A. Ravi Babu

< Gist:

> Head Note:

? CITATIONS:

- 1) 1989 Supp (1) SCC 487
- 2) (2017) 1 SCC 487
- 3) (2004) 8 SCC 229
- 4) (1969) 3 SCC 445
- 5) (1971) 1 SCC 619
- 6) (1990) 4 SCC 668
- 7) AIR 1959 SC 689
- 8) 2002 (3) APLJ 39 (SN)
- 9) AIR 1955 SC 425
- 10) (1987) 4 SCC 391
- 11) (1989) 4 SCC 635
- 12) (1994) 2 SCC 481
- 13) (2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153
- 14) AIR 1964 SC 1419
- 15) (2002) 1 SCC 100
- 16) AIR 1984 SC 1401
- 17) (2005) 6 SCC 138
- 18) (2000) 2 SCC 617
- 19) AIR 2004 SC 1402
- 20) (2016) 2 SCC 653
- 21) (1974) 2 SCC 630
- 22) (1942) A. C. 130
- 23) AIR 1960 SC 1156
- 24) (2013) 9 SCC 221 : (2013) 4 SCC (Civ) 285
- 25) 1990 Supp (1) SCC 727

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

WRIT APPEAL NO.846 OF 2018

JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

This appeal is preferred, under Clause 15 of the Letters Patent, against the order passed by the Learned Single Judge in I.A. No.1 of 2018 in W.P. No.19378 of 2018 dated 12.06.2018. The appellant herein is the petitioner in the Writ Petition. He sought a mandamus to declare the action of the Divisional Manager, Nalgonda, in issuing proceedings dated 01.06.2018, as contrary to the order passed by this Court in W.A. Nos.1519, 1520 and 1521 of 2017 dated 20.10.2017, unjust, arbitrary, malafide, violative of principles of natural justice, and violative of Articles 14 and 21 of the Constitution of India. By way of interim relief, the appellant-writ petitioner sought suspension of the proceedings dated 01.06.2018 issued by the Divisional Manager. On I.A.No.1 of 2018, in W.P.No.19378 of 2018, being dismissed, the appellant-writ petitioner has invoked the jurisdiction of this Court under Clause 15 of the Letters Patent.

Facts, to the extent necessary, are that, pursuant to tenders being invited for allotment of stalls in various bus stations of the Telangana State Road Transport Corporation in Nalgonda District, the appellant-writ petitioner, on his being found to be the successful tenderer for two stalls in two different bus stations, was awarded licences for a period of five years from 21.07.2016 to 20.07.2021. He was awarded a license for running a fresh fruit stall at Suryapet Hi-tech bus station on payment of a monthly licence fee of Rs.86,516/-. He was also awarded a license for

running a sweet stall at Suryapet Ordinary bus station, for a period of 5 years from 21.07.2016 till 20.07.2021, on payment of a monthly licence fee of Rs.19,172/-.

The license deed dated 21.07.2016, executed by the respondent-corporation in favour of the appellant in relation to Suryapet Hi-tec bus station, records the appellant having agreed to take up the contract for running a fresh fruit juice, mineral water bottle business in the stall at Suryapet Hi-tech bus station on payment of the license fee of Rs.86,516/- per annum to the Corporation for five years. Clause 9 of the license deed relates to the nature of business and, thereunder, the licensee (the appellant) was required to carry on the same business which was mentioned in the tender notification, and for which the license was issued; representations, for change in the nature of the business, by the licensee would not be entertained; and if the licensee was found doing business in a stall, other than that stipulated in the deed of licence, and if the licensee sold items other than those specified in the allotment order or as recorded in the deed of licence, the licence was liable for termination duly forfeiting the security deposit. Under Clause 45 of the licence deed, the Corporation reserved the right to modify any condition/conditions of the agreement, and to incorporate fresh clauses. Clause 45 required the licensee to enter into a fresh deed of licence at his/her own cost. Enclosed to the licence deed was an Annexure wherein details of the nature of business/businesses, and the permitted items for sale, were detailed.

As shall be referred to hereinafter, the items permitted to be sold, in terms of the Annexure to the licence deed, is at variance

with even what the appellant had specified in Annexure I of his tender application which, in turn, differed from the nature of business, and items to be sold, as per Annexure I of the original tender conditions.

The licence deed dated 21.07.2016, in so far as it related to Suryapet ordinary bus station, permitted the appellant to carry on sweet stall business thereat. Under clause 45 of this deed of licence also, the respondent-Corporation reserved the right to modify any condition/conditions of the agreement, and to incorporate fresh clauses; and the licensee was required to enter into a fresh license deed at his/her own cost. The Annexure of the deed of the license deed dated 21.07.2016, with respect to the sweet stall, is also at variance with Annexure I of the tender form submitted by the appellant. It is clear that there is a variation, between the license deeds, Annexure – I of the tender submitted by the appellant, and Annexure I of the original tender form, both with regards the nature of business, and the items permitted to be sold thereunder.

The appellant was informed, by notice dated 05.10.2016, that the license, for the fresh fruit juice and mineral water bottles stall at Suryapet hi-tech bus station, was allotted to him and an agreement was executed on 21.07.2016; the permitted items in the above said stall had been mentioned erroneously at Sl.No.6 in the Annexure to the agreement as:-

“fresh fruit juice and mineral water bottles”, fruit juice/drinks, other drinks or juices in packed condition, safe drinking water, chips, badam milk, buttermilk, soda, lassi, kara items, all fruit juice and flavoured juices, mineral water bottles, all fruits and all emulsion juices”.

The said notice dated 05.10.2016 also records that, as per the tender notification, the permitted items, mentioned at Sl.No.6 in the annexure to the tender form, were “*fresh fruit juice and mineral water bottles*”, in addition to the items mentioned under fruit stall category i.e., fruit juice made on the spot, cool drinks and other drinks or juices in packed condition; and, under Clause 45, the Corporation reserved the right to modify any condition/conditions of the agreement. The appellant was advised to attend the office of the Deputy Chief Traffic Manager to enter into a fresh agreement within 7 days from the date of receipt of the notice, failing which the licence would be terminated duly forfeiting the security deposit, as per the agreement.

The appellant was issued notice dated 08.10.2016 informing him that he was given a license for running a sweet stall at Suryapet ordinary bus station; an agreement was entered into on 21.07.2016; the permitted items, to be sold in the above said stall, had been mentioned erroneously at Sl.No.7, in the Annexure to the agreement, as:-

“sweet stall”, all kinds of sweet items, all kinds of khara items, loose water and all the items mentioned in Sl.No.8 (biscuits, bread, khara, chips, cakes, jam ready made baked food items and chocolates).

The said notice dated 08.10.2016 records that, as per the tender notification, the permitted items, mentioned at Sl.No.7 in the Annexure to the tender form, were “*sweet stall*” (a) *all kinds of sweet items; (b) all kinds of savoury (khara) items*”. In terms of clause No.45, the appellant was advised to attend the office of the Deputy Chief Traffic Manager, Nalgonda Region to enter into a fresh agreement, within 7 days from the date of receipt of a copy of the notice, failing

which the licence would be terminated duly forfeiting the security deposit as per the agreement.

Aggrieved thereby, the petitioner filed W.P.No.34574 of 2016 seeking a mandamus to declare the action of the official respondents, in issuing the said notice, as illegal, arbitrary and in violation of Articles 14, 19 and 21 of the Constitution of India. He sought a consequential direction to have the said proceedings set aside, and to direct the official respondents to permit the petitioner to run his stall in the hi-tech bus station, Suryapet as per the licence deed dated 21.07.2016. W.P.No.34600 of 2016 was filed by the petitioner questioning the show-cause notice issued in relation to the sweet stall at Suryapet ordinary bus station. Initially the Learned Single Judge, in his order dated 14.10.2016, recorded the statement of the Learned Standing Counsel for the Corporation that the Corporation would not take any coercive steps against the petitioners pursuant to the show-cause notice until further orders. Thereafter, on a vacate stay petition being filed, the Learned Single Judge observed that the Deputy Chief Traffic Manager, who signed the Annexure, was facing disciplinary proceedings; the Corporation had approved the list of items to be sold in each stall in the bus station, and a circular was issued on 13.09.2001 advising field officers to notify the items to be sold at the bus stations; as per the said Circular, in respect of fruit juice stall, *'fruit juice made out of the fruits on the spot'* shall only be permitted; the petitioner was authorized to sell the permitted items only; however, in the Annexure to the agreement, several other items were included; the said fact came to light only after the agreement was signed; and, in those circumstances, a notice was issued on 05.10.2016 calling

upon the petitioner to modify the agreement, as Clause 45 of the agreement conferred a right on the Corporation to modify the conditions of the agreement. On a comparison of the tender filed by the petitioner, with Annexure-I of the original tender form, the Learned Single Judge observed that the petitioner should not have been permitted to deal with other items, but the Annexures appeared to have been manipulated and signed by the Deputy Chief Traffic Manager against whom disciplinary proceedings had been taken by the Corporation; there was no irregularity in asking the petitioner to come and enter into a fresh agreement in accordance with the tender form submitted by him; it was always open to the Corporation to rectify the mistake, whether it was committed by the petitioner or by the Officers of the Corporation; the action to be taken, against the officers responsible for such inclusion of items, was a different matter; and since the tender form, submitted by the petitioner, was for particular items, the licence agreement should have been entered into only for those items. Both the Writ Petitions were, accordingly, dismissed.

Aggrieved thereby, the appellant herein filed W.A.Nos.1519, 1520 and 1521 of 2017. A Division Bench of this Court, in its common order dated 20.10.2017, noted the submission of Sri G. Vidyasagar, Learned Senior counsel appearing on behalf of the Corporation, that it would suffice, instead of adjudicating the appeals on merits, if the Corporation was permitted to issue show-cause notices to the appellants, give them an opportunity of being heard, and thereafter pass orders afresh in accordance with law. He requested that a time frame be specified by the Court within which the appellants should submit their reply to the fresh show-

cause notices. Sri C. Ramachandra Raju, Learned Counsel for the appellant-writ petitioner, fairly stated that a reply would be submitted to the fresh show-cause notices within two weeks from that day. The Division Bench held that, as both the Learned Counsel were in agreement, the order under appeal should be set aside, and the Corporation permitted to issue fresh show-cause notices to the appellant; and, on receipt of the said notices, the appellant should submit his reply thereto within two weeks thereafter. The respondents were directed to then pass a reasoned order afresh in accordance with law.

The Divisional Manager, Suryapet, Nalgonda District issued a show-cause notice to the appellant on 01.11.2017 wherein, after referring to various items in the Annexure to the tender form submitted by the petitioner, it was observed that, as per the terms and conditions of the tender document signed by the appellant, he had to submit a tender form only for the business mentioned against those items specified in the tender notification; the terms of the tender document specified that the tender form, with any additional conditions other than the conditions prescribed by the Corporation, would be summarily rejected at the time of opening of the tenders; thus, the tender form of the appellant had to be rejected summarily in view of the changes made by him in the tender document; and his earnest money deposit was also liable to be forfeited, since he had submitted his tender for a business other than that notified in the tender notification.

It was further stated, in the said show cause notice, that the tender committee did not notice the tampering of Annexure-I; since a printed copy of Annexure-I was given by the Corporation, and the

tenderer was not required to fill up any details in Annexure-I, the tender committee did not verify the said document; in good faith, the Committee had finalized the price at Rs.86,516/- per month, and had submitted its recommendations; a deed of licence was also entered into with the appellant on 21.07.2016 enclosing the same tampered Annexure-I; and subsequently it came to light that the appellant-writ petitioner had tampered with the tender document. While observing that, in view of the misdeeds committed by the appellant, the deed of licence was liable to be terminated, the Divisional Manager, Suryapet observed that, keeping in view the entire circumstances of the case, it was proposed to provide the appellant an opportunity to run the stall by operating the business notified by the Corporation. Invoking Clause 45 of the licence deed dated 21.07.2016, the Divisional Manager, Suryapet informed the appellant that it was proposed to change the terms and conditions of the deed of licence by specifying the nature of business as notified by the Corporation, in the place of the tampered document submitted by the appellant. The appellant was advised to attend the Regional Manager's Office, Nalgonda during office hours on any working day, to enter into a fresh deed of licence (agreement) with approved RTC Annexure-I, within 7 days from the date of receipt of the notice, failing which his licence was liable to be terminated without any further notice. By proceedings dated 11.12.2017, the Divisional Manager informed the appellant that the notice issued to him, vide proceedings dated 01.11.2017, was being withdrawn.

Thereafter the Divisional Manager, Suryapet, Nalgonda informed the appellant, vide notice dated 12.12.2017, that a tender

notification was issued calling for tenders to lease out vacant stalls/shops at Suryapet Hi-tech bus station and ordinary bus station; the tender form was sold along with the terms and conditions including Annexure - I; and the appellant had to fill up and sign the tender form and the Annexure, and submit them to the Corporation. After referring to the terms and conditions of the tender, the Divisional Manager stated that, in terms of the tender form, the nature of business and permitted items were furnished in Annexure - I; the nature of business to be carried at a Fruit Juice and Mineral Water bottles stall was specified at item No.7 of Annexure - I; while submitting the tender form, the appellant had tampered with Annexure - I; he had changed the nature of business specified therein, and had mentioned it differently; the terms of the tender document stipulated that the tender forms submitted by a tenderer, with any additional conditions other than the conditions prescribed and supplied by the respondent-Corporation, would be summarily rejected at the time of opening of the tenders; the appellant's tender form had to be rejected summarily in view of the changes made by him in the tender document; his EMD was also liable to be forfeited, since he had submitted his tender for a business other than that notified in the tender notification; the tender committee did not notice tampering of Annexure - I; since a printed copy of Annexure - I was given by the Corporation, and the tenderer was not required to fill up any details therein, the tender committee did not verify the said document; with all good faith in the tenderer, the committee had finalised the price, and had submitted its recommendations; an agreement was also entered into with the appellant, enclosing the

same tampered Annexure – I; subsequently it came to light that the appellant had tampered with the tender document; however, keeping in view the entire circumstances of the case, it was proposed to provide him an opportunity to run the stall by operating such business as was notified by the Corporation; in terms of Clause 45 of the license deed it was proposed to change the terms and conditions of the agreement specifying the nature of business as notified by the Corporation, in the place of the tampered documents submitted by him. The appellant was advised to show cause why action should not be taken and, if he failed to submit his remarks within seven days from the date of receipt of the notice, further action, as deemed fit, would be taken.

In reply thereto the appellant stated, in his letter dated 25.12.2017, that the allegation that he had tampered with Annexure – I of the tender form was not true; he had only used the departmental tender form with the Annexure; after thorough examination of the tender, the tender committee had approved his tender; it was not true to state that he had enclosed the tampered annexure of the tender form; the Corporation had prepared the Annexure, and had enclosed it to his agreement; the Corporation had given him the Annexure of the agreement, being fully aware of the terms and conditions; it was not proper, therefore, to propose to change the terms and conditions in his agreement; the Corporation had sent him notice dated 05.10.2016 stating that some of the items were added in the Annexure of the agreement, and he should enter into a new agreement; he had filed a Writ Petition in the High Court, and the subject notice was set aside with liberty being granted to the respondent-Corporation to issue a

fresh notice; pursuant to the order of the High Court, the Corporation had issued a notice to him on 01.11.2017 alleging that he had submitted his tender without enclosing Annexure – I; he had submitted his explanation to the said notice; the Corporation had, thereafter, withdrawn the notice; both the 1st notice dated 05.10.2016, and the 2nd notice dated 01.11.2017, did not allege that he had tampered with the Annexure of the tender form; the present show cause notice dated 01.12.2017 alleged that the appellant had tampered with the Annexure of the tender form; if there was any truth in the allegations levelled against him in the present show cause notice, the same allegations would have been made in the two previous notices also; the present show cause notice was opposite to the two previous notices; and the three notices were inconsistent with each another.

The appellant further stated that if the allegation against him was true as per the present show cause notice, that he had tampered with the Annexure of the tender, the Corporation would have accused him of the same in the previous notices also; the previous notices prove that the present allegations, against the appellant, were neither true nor valid; in the 1st notice dated 05.10.2016, the Corporation had taken the stand that the agreement Annexure was prepared by mistake; the present allegation, against the appellant, was in contrast to the previous one; hence the show cause notice given to him was invalid; he had not committed any offence; the Corporation had prepared the agreement Annexure with thorough knowledge and awareness; and there was no justification in proposing to amend the agreement.

The appellant prayed that his appeal be considered, the show cause notice withdrawn, and justice be meted out to him.

The 2nd respondent-Divisional Manager passed an order on 05.03.2018 deciding to modify the terms and conditions of the original agreement. The appellant-writ petitioner was directed to attend his office for executing fresh agreements. A copy of the order was sent to the appellant-writ petitioner by registered post. The Divisional Manager, thereafter, issued proceedings dated 14.03.2018 informing the appellant that he had to fill up the tender form, sign on it and on the Annexure, and submit it to the Corporation. After referring to the terms and conditions of the tender, the Divisional Manager stated that a letter was addressed to the appellant on 05.03.2018 advising him to attend the office for changing the terms and conditions; he had failed to attend the office, within the stipulated time or till date, for changing the terms and conditions of the agreement deed; and the deed of licence was being cancelled, the amount was duly adjusted towards the outstanding licence fee from the security deposit, and the remaining security deposit was being forfeited after deducting the dues upto 14.03.2018.

The appellant filed W.P. No.8955 of 2018 before this Court questioning the validity of the termination order dated 14.03.2018. In his order dated 28.03.2018, the Learned Single Judge observed that a perusal of the termination order revealed that, except referring to the explanation offered by the petitioner, the Divisional Manager did not make any endeavour to consider the contents of the explanation offered by the petitioner; this was illegal and arbitrary; and, having issued the show cause notice and having

acknowledged receipt of the explanation, it was obligatory on the part of the respondent authorities to consider the contents of the explanation while passing the impugned order. While allowing the Writ Petition, and setting aside the impugned termination order dated 14.03.2018, the Learned Single Judge remitted the matter to the respondent Corporation for fresh consideration of the issue after duly considering the explanation offered by the appellant-writ petitioner, and its contents, including the objections raised as to the issuance of the 2nd show cause notice. The Learned Single Judge made it clear that the respondent-Corporation should communicate the order to the petitioner and, if any order was passed against him, a week's time should be granted to the petitioner. Consequent thereto, the Divisional Manager, Nalgonda passed a reasoned order dated 01.06.2018.

Questioning the proceedings dated 01.06.2018, the appellant filed W.P. No.19378 of 2018. In the order under appeal, in I.A. No.1 of 2018 in W.P. No.19378 of 2018 dated 12.06.2018, the Learned Single Judge observed that the impugned proceedings were issued proposing to modify the conditions of the deed of licence dated 21.07.2016, invoking Clause 45 thereof; the Counsel for the petitioner contended that invocation of this clause by the respondent was arbitrary; the allegations levelled in the impugned order and in the show cause notice preceding it, that the appellant-writ petitioner had tampered with the licence forms, was incorrect; and the appellant-writ petitioner cannot be coerced into agreeing to the change in the terms of the license issued to him under threat of termination of the license. The Leaned Single Judge observed that Clause 45 of the licence deed dated

21.07.2016 empowered the 1st respondent-corporation to modify the conditions of the licence, and such modification was not made subject to the consent of the petitioner; unilateral modification was also permitted by the deed of licence; and having entered into a licence agreement with the 1st respondent, and having agreed to such a clause, it was not open to the petitioner, *prima facie*, to object to the modification of the terms of the licence. The Learned Single Judge, while expressing his disinclination to suspend operation of the impugned proceedings dated 01.06.2018 issued by the Divisional Manager, dismissed the I.A.

A copy of Circular No.45 dated 13.09.2001 issued by the APSRTC is placed for our perusal whereby revised instructions were issued in respect of the constitution of a tender committee, the procedure to be followed in allotment of stalls, and for entering into agreements with the successful tenderer etc. Clause 4 of the said circular stipulated the nature of business. Clause 4(a) stipulated that, in the tender notification, the nature of business shall be indicated against each stall located in the bus station; terms like “*any permitted business*”, “*statutory business*”, should not be mentioned in the tender notification; in other words, the nature of business shall be specified invariably; clause 4(c) stipulated that permission for change of business shall not be given under any circumstances; and clause 4(d) provided that the items to be sold/services to be provided shall be incorporated in the terms and conditions of the tender. While Clause 9 of the circular related to finalisation of tenders by the Divisional tender committee, Clause 10 provided for approval, of the tender committee proceedings, by the Regional Manager. Clause 12 required an agreement to be

entered into, and Clause 14 related to forfeiture of the EMD. Serial Nos.5 to 8 of the Annexure to the said Circular read thus:

5. FRUIT STALL:

All kinds of Dry Fruits and Fresh Fruits such as Banana, Apple, Orange, Grapes, Mangoes, pine Apple etc. The licensee shall not be allowed to sell fruit juice.

6. FRUITS – FRUIT JUICE STALL:

In addition to the items mentioned under Fruits Stall Category, Fruit juice made out of the Fruits on the spot.

7. SWEET STALL:

- (a) All finds of sweet items
- (b) All finds of Savoury (Khara) items

8. BAKERY STALL:

Biscuits, Bread, Khara, Chips, Cakes, Jam ready made packed food items and Chocolates.

Elaborate submissions were put forth by Sri C.Ramachandra Raju, Learned Counsel for the appellant, and Sri G.Vidyasagar, Learned Senior Counsel appearing on behalf of the respondent-Corporation. It is convenient to examine the rival submissions under different heads.

I. CAN THE DECISION OF THE RESPONDENT-CORPORATION BE FAULTED FOR ALLEGING EARLIER THAT THERE WAS A MISTAKE AND LATER CONTENDING THAT THE DOCUMENTS WERE TAMPERED?

Sri C. Ramachandra Raju, Learned Counsel for the appellant would submit that, in the earlier round of litigation, the respondent-corporation had taken the stand that, by mistake, certain items were included in the agreement, and it should be deleted; having taken such a stand, a statutory corporation is not

entitled to take a contrary stand, and allege that the appellant-writ petitioner had tampered with the documents.

Sri G. Vidya Sagar, Learned Senior Counsel appearing on behalf of the respondent-Corporation, would submit that the appellant-writ petitioner had, surreptitiously, entered more than one business in Annexure-I of his tender form; though, in the tender forms submitted by him, he had stated that the nature of business, for which tender was submitted, with respect to Suryapet ordinary bus station, (Tender No.41) was a sweet-stall; and, in the tender form submitted by him for Suryapet Hi-tech bus station (tender No.50/F), it was fresh fruit juice and badam milk stall.

Clause 1(a) of the terms and conditions of the tender notification, issued by the respondent-Corporation, stipulated that the maximum period of licence would be for five years for stalls/shops; the licence fee shall be the same during the initial three years, and shall be increased by 10% for the fourth year, and 15% in the fifth year over the licence fee payable in the fourth year of the licence. Para 2(a) stipulated that separate tender forms should be submitted for each stall/shop; the tenderer should submit the tender form only for the business mentioned against such stall/shop in the tender notification; no combined quotation for multiple businesses should be submitted; and for any deviation, the tender would be rejected. Para 2(d) stipulated that the nature of business/businesses and permitted items were as furnished in the enclosed Annexure-I. Para 5(f) stipulated that the earnest money deposit of the tenderer was liable to be forfeited when the tender is submitted for businesses, other than that

notified in the tender notification. Annexure-I prescribed the nature of business/businesses and permitted items.

Annexure-I of the original tender form classified the nature of business under 12 different heads i.e. (1) canteen; (2) fast food centre; (3) soda and cool drinks stall; (4) pan and soda and cool drinks stall; (5) fruit stall; (6) fruits – fruits juice stall; (7) sweet stall; (8) bakery stall; (9) sweets and bakery stall; (10) telephone booth with local/STD/ISD facility and fax; (11) book stall; and (12) medical and general stores. Each of these businesses specified the items permitted to be sold thereat. The tenderers were required to submit their bid only for any one of these twelve distinct categories of business, and for the items stipulated under such head alone to be sold at the stalls for which a license, to carry on the specified business, was to be granted by the respondent-Corporation.

We are concerned, in this Writ Petition, with businesses 5 to 8 as specified in Annexure-I of the original tender notification. While the business referred to at Sl. No.5 is a fruit stall, at Sl.No.6 of Annexure – I is a Fruits – Fruit Juice Stall. The business mentioned at Sl.No.7 is a sweet stall, and the business referred to at Sl. No.8 is a bakery stall. It is useful, in this context, to refer to the business at serial Nos.5 to 8 of the original Annexure – I and the items permitted to be sold thereat, Annexure – I of the tender form submitted by the appellant-writ petitioner for Suryapet ordinary bus station, and Annexure – I of the tender form submitted by the appellant-writ petitioner for Suryapet hitech bus station, in juxtaposition with each other.

Annexure-I in the original tender form	Annexure-I submitted by the appellant-writ petitioner	as the for	Annexure-I submitted by the appellant-writ petitioner	as the for
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	Suryapet Ordinary Bus Station (tender form 41)	Suryapet Hi-tech bus station (tender form 50-F)
Sl.No.5: Fruit Stall: All kinds of dry fruits and fresh fruits such as Banana, Apple, Orange, Grapes, Mangoes, Pine-Apple etc. The licensee shall not be allowed to sell fruit juice.	Sl.No.5: Fruit Stall: All kinds of dry fruits and fresh fruits such as Banana, Apple, Orange, Grapes, Mangoes, Pine-apple etc. The licensee shall not be allowed to sell fruit juice.	Sl.No.5: Fruit Stall: All kinds of dry fruits and fresh fruits such as Banana, Apple, Orange, Grapes, Mangoes, Pine-apple etc. The licensee shall not be allowed to sell fruit juice.
Sl.No.6. Fruits - Fruit Juice Stall: In addition to the items mentioned under fruit stall category, fruit juice made out of the fruits on the spot.	Sl.No.6. Fruits - Fruit Juice Stall: In addition to the items mentioned under fruit stall category, fruit juice made out of the fruits on the spot.	Sl.No.6. Fruits - Fruit Juice & Mineral Water Bottles: <i>Fruits stall category, flavoured juices, water packets, soda, butter milk, flavoured milk and all fruit juices.</i>
Sl.No.7. Sweet Stall: a) all kinds of sweet items; b) all kinds of savoury (Khara) items.	Sl.No.7. Sweet Stall: a) all kinds of sweet items; b) <i>all the items mentioned under Sl.Nos. 7 and 8.</i>	Sl.No.7. Sweet Stall: a) all kinds of sweet items; b) all kinds of savoury (khara) items.
Sl.No.8. Bakery Stall: Biscuits, bread, khara, chips, cakes, jam ready made packed food items and chocolates.	Sl.No.8. Bakery Stall: Biscuits, bread, khara, chips, cakes, jam, <i>loose water, water bottles</i> , ready made packed food items.	Sl.No.8. Bakery Stall: Biscuits, bread, khara, chips, cakes, jam, ready made packed food items and chocolates,

It is evident from the aforesaid table that, while submitting his bid for the “*fruit – fruit juice stall*” at Suryapet Hi-tech bus station, the appellant-writ petitioner had, in the Annexure I enclosed to his tender, referred to the “*sweet stall*” at serial No.7, and the items permitted to be sold under the said category, just as it is reflected in Annexure I of the original tender. Likewise in the tender submitted by him for “*sweet stall*” at Suryapet ordinary bus station, the petitioner had, in Annexure I of his tender, referred to the “*fruit – fruit juice stall*” just as it is reflected at serial No.6 of Annexure I of the original tender form and the items permitted to

be sold under the said category. It is evident, therefore, that the petitioner was aware of the nature of business, and the items to be sold under each business category, as reflected in Annexure-I of the original tender form. Yet, while submitting his bid for a “*fruit – fruit juice stall*” at Suryapet Hi-tech bus station, the petitioner had, in addition to what is mentioned at serial No.6 of the original tender form, also added “*water packets, flavoured juices, soda, butter milk, flavoured milk*” as items permitted to be sold at the “*fruit – fruit juice stall*”. He had also changed the nomenclature of the nature of business to “*fruit – fruit juice stall and mineral water bottles*”, though serial No.6 of Annexure I of the original tender form refers to the nature of business as “*fruit – fruit juice stall*”.

Similarly, while submitting his bid for the “*sweet stall*” at Suryapet ordinary bus station, (which is at serial No.7 of Annexure-I of the original tender), the petitioner had also included the items mentioned at serial No.8 in Annexure I of the original tender. As serial No.8 relates to a “*bakery stall*”, the items permitted to be sold in such a stall, are not the items permitted to be sold at a “*sweet stall*”. By including items at serial No.8, besides item No.7, in Annexure I of his tender, the petitioner has, besides the items permitted to be sold under the “*sweet stall*” category i.e., “*all kinds of sweet items and all kinds of savory (khara items)*”, also sought to sell “*biscuits, bread, chips, cakes, jam, loose water, water bottles and readymade packet food items*”.

It is evident, therefore, that the petitioner has altered both the nature of business, and the items permitted to be sold thereunder, as reflected in Annexure I of the original tender form, in Annexure I of the tender submitted by him. In terms of para

2(a), 2(d) and 5(f) of the Original tender notification, the petitioner was prohibited from submitting a bid changing either the business, or the items to be sold under the category of such a business, as stipulated in Annexure I of the original tender notification. A bare perusal of the tender, submitted by the petitioner, would show that Annexure I, enclosed to the tender submitted by him, is at variance with Annexure I of the original tender form.

Not only did the petitioner submit his tender along with Annexure I which is at variance with Annexure I of the original tender form, even worse is that Annexure I enclosed to the license deed is not only at variance with Annexure I of the original tender form, but is also at variance with Annexure I of the tender form submitted by the petitioner himself. It is useful, therefore, to note the variation, between Annexure I of the tender submitted by the petitioner and Annexure I of the license deed executed in his favour, in juxta-position with each other.

Serial No.	Bus station for which tender submitted	Annexure I of the tender submitted by the petitioner	Annexure I of the license deed executed in favour of the petitioner
1	Suryapet Ordinary bus station	Sweet Stall: (a) <i>all kinds of sweet items;</i> (b) all the items mentioned under sl.nos.7 and 8.	“sweet stall”, all kinds of sweet items, all kinds of khara items, <i>loose water</i> and all the items mentioned in Sl.No.8 (biscuits, bread, khara, chips, cakes, jam, ready-made baked food items and chocolates).
	Suryapet Hi-tec bus station	Fruits – Fruit Juice & Mineral Water Bottles:	Fruit Juice/Drinks and other

		Fruits stall category flavoured juices, water packets, soda, butter milk, flavoured milk and all fruit juices.	drinks or juices in packed condition, Safe drinking water, chips, Badam milk, Butter milk, soda, lussi, khara items , all fruit juice and flavoured juices mineral water bottles , all fruits, all emulsion juices.
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While in Annexure I of the tender submitted by the petitioner for Suryapet hi-tech bus station, the items permitted to be sold is shown as *“fruit stall category, flavoured juices, water packets, soda, butter milk, flavoured milk, all fruit juices”*, Annexure I of license deed, refers to the items permitted to be sold as *“fruit juice/drinks and other drinks or juices in packed condition, safe drinking water, chips, Badam milk, Butter milk, Soda, Lussi, Khara items of fruit juice and flavoured juices, mineral water bottles, all fruits, all emulsion juices”*. Likewise for Suryapet ordinary bus station, while Annexure I of the tender submitted by the appellant-petitioner refers to all items mentioned at serial Nos.7 and 8, Annexure-I of the license deed, besides referring to the items at serial Nos.7 and 8 also includes *“loose water”*. It is evident, therefore, that both Annexure-I of the tender submitted by the appellant, and Annexure-I of the license deed executed between the appellant-writ petitioner and the respondent-corporation, are at variance with the terms and conditions of the original tender notification.

The respondent-corporation initially claimed that the items shown in Annexure I of the tender submitted earlier by the appellant-petitioner was by mistake, and they later contended that it had been tampered with. Whether it is by mistake or design is

immaterial as it is clear that Annexure-I, of both the tenders submitted by the petitioner, is not in accordance with Annexure-I of the original tender notification. While it is difficult to believe that all the aforesaid changes were not noticed earlier by the officials of the respondent-corporation by oversight, and involvement of the officials of the respondent-corporation, in accepting the appellant-writ petitioner's tender though it did not accord with the original tender conditions, is a distinct possibility, that would not enable the appellant-writ petitioner to take advantage of his own wrong, and now claim that he should be permitted to run both the stalls to carry on a business, and to sell items thereat, at variance with the nature of business, and items to be sold thereat, as stipulated in Annexure-I of the original tender notification.

By submitting his tender contrary to the terms and conditions of the original tender, the appellant-writ petitioner seeks continuance of a benefit which was not made available to other tenderers at the time of submission of their bids. Though the respondent-corporation was entitled to reject the tenders submitted by the appellant, all that they intend doing is to bring the license deed in conformity with Annexure I of the original tender, and restrict the appellant-writ petitioner's license only to the category of business stipulated in Annexure I of the original tender form, as also to restrict sale of goods, at the stalls licensed to the appellant, only to those items mentioned, under the said category, in Annexure I of the original tender.

II. ARE THE ALLEGATIONS OF TAMPERING JUSTIFIED?

Sri C. Ramachandra Raju, Learned Counsel for the appellant, would submit that the allegation, that the appellant had tampered with the tender document and the license deed, is without any basis; “tampering” of documents would arise only if the appellant-writ petitioner had surreptitiously altered either the tender or the license deed, after it was executed, to suit his convenience; both the tender form submitted by the appellant, and the license deed executed between the parties, are in the custody of the respondent-corporation; the appellant has no access to these documents; even assuming, without admitting, that the appellant-writ petitioner had added something in the tender form, that would not amount to “tampering”; and, as the agreement was entered into by the respondent-corporation with their eyes open, they cannot claim that it has been tampered.

Sri G. Vidyasagar, Learned Senior Counsel appearing on behalf of the respondent-corporation, would submit that the word “tamper”, as used in the show-cause notice, must be read in its context; and since Annexure – I was required to be submitted as it is, and as the appellant-writ petitioner had added words thereto, it was alleged that he had tampered with Annexure – I of the tender document.

As noted hereinabove Annexure-I of the original tender notification detailed the nature of business, and the items to be sold under each category of business. Tenderers were required to submit their bid only for one of the businesses mentioned in Annexure - I. They were required to refer to the nature of business in their tender application, and to submit Annexure-I as it was without any alterations. In his tender form, submitted for

Suryapet ordinary bus station, the appellant mentioned the name of the business as “sweet stall” which is at Serial No.7 of Annexure-I. However, he altered the items mentioned under Serial No.7 in Annexure-I; and, in addition to the items mentioned under the said serial number, he included the items mentioned under Serial No.8, though no alterations were permitted in Annexure-I. Likewise, in the tender submitted by him for Suryapet hi-tech bus station, the appellant mentioned the nature of business, in his tender application, as “Fruit, Fruit Juice and mineral water bottles” which is largely reflected at Serial No.6 of Annexure – I. He, however, altered the items permitted to be sold under Serial No.6 of Annexure-I, and included, in addition thereto, various other items. These items were again altered in the license deed executed in the appellant’s favour. A copy of the original tender form submitted by the appellant, and the license deed executed in his favour, were placed for our perusal; and it is evident therefrom that alterations were made, in Annexure-I of both these documents, to benefit the appellant.

Sri C.Ramachandra Raju, Learned Counsel for the appellant, would place emphasis on the changes made from the earlier show-cause notice to the latter, and would contend that, while the earlier show-cause notices referred to a mistake having been committed, the subsequent show-cause notice alleges “tampering”. This distinction in our opinion matters little, since the allegation, in substance, is that alterations were made in Annexure-I of the tender submitted by the appellant; and both “the nature of business”, and “the items to be sold thereat”, in Annexure-I of the tender submitted by the appellant, were at variance with

Annexure-I of the original tender notification. The word “tampering” is referred to in dictionaries to mean to interfere with something in order to damage, or to make unauthorized alterations. The fact that unauthorized alterations were made in Annexure – I of the tender submitted by the appellant, and in the license deed executed in his favour, is evident. The respondent-Corporation cannot, therefore, be faulted for using the word “tampered” in the subsequent show-cause notice.

It is true that both the tender submitted by the appellant, and the license deed executed in his favour, are in the custody of the respondent-Corporation. If, as is now feebly contended before us, the appellant had not made any alterations, and had submitted his tender along with Annexure – I as is enclosed to the original tender notification, he cannot have any grievance if his license deed is modified to bring it in conformity with the nature of business for which he had submitted the tender, which, in terms of Annexure-I of the original tender notification, stipulates the items permitted to be sold under such a category.

It is for this reason that it is contended, on the appellant’s behalf, that, even assuming that the tender submitted by the appellant is at variance with the original tender notification, the respondent-Corporation could only have cancelled the tender at the stage of tender evaluation, and could not alter the condition of the license-deed, as the respondent-corporation had accepted the appellant’s tender, and had thereafter executed a license-deed in his favour. In the tender, admittedly submitted by the appellant, the nature of business and the items to be sold thereunder, as stipulated in Annexure – I of the original tender notification, has

been altered. It is evident, therefore, that the tender submitted by the appellant is at variance with Annexure-I of the original tender notification; and, by submitting such a tender, the appellant has violated the terms and conditions of the tender notification. Since it is the appellant who has submitted the tender containing alterations in Annexure – I, it hardly matters that the tender form submitted by him is in the custody of the respondent-Corporation.

The submission put forth, on behalf of the respondent-Corporation, that the appellant was permitted to prepare the license deed, and submit it to the respondent-Corporation, is difficult to accept as it is the respondent-corporation's obligation to prepare the license deed and to execute it. The variation in the license deed, as compared both to the tender submitted by the appellant and the original tender form, could not have gone unnoticed, but for the officials of the respondent-Corporation having either colluded with the appellant or because of gross negligence on their part. In either event, disciplinary action must be taken against the officials concerned. That, however, would not justify the appellant claiming a benefit which he is not entitled to. We see no reason, therefore, to accept the submission of Sri C. Ramachandra Raju, Learned Counsel for the appellant, that the impugned order necessitates being set aside on this ground.

III. HAS THE RESPONDENT-CORPORATION ACQUIESCED TO THE APPELLANT'S TENDER DISABLING THEM FROM NOW TAKING ACTION AGAINST HIM?

Sri C. Ramachandra Raju, Learned Counsel for the appellant would submit that, if there was any truth in the present allegations, the respondent-corporation would have leveled such allegations earlier; the respondent-corporation, having accepted

the appellant's tender with its eyes open and having executed a license deed in his favour, cannot resile therefrom, and contend that the appellant had submitted his tender contrary to the original tender conditions or that it had made a mistake; and such a plea is impermissible in law.

On the other hand Sri G. Vidyasagar, Learned Senior Counsel appearing on behalf of the respondent-corporation, would submit that all bidders, other than the appellant, had submitted their tender in strict compliance with Annexure – I of the tender notification; the appellant had submitted his tenders contrary to Annexure – I of the original tender notification; Annexure – I of the tender, submitted by the appellant, is at variance with Annexure – I prescribed in the original tender documents; the license deed executed between the parties is not only at variance with Annexure – I of the prescribed tender document, but also with the tender submitted by the appellant himself; while the appellant's failure to abide by the terms and conditions of the tender would have required the respondent-corporation to reject his tender, this deviation, from the terms and conditions of the tender, was not noticed earlier; it is only after it was noticed, was action initiated by the respondent-corporation against the appellant; and, while disciplinary action is being initiated against those officials who were negligent in accepting the tender submitted by the appellant, and for having executed a license deed in his favour, that would not confer any right on the appellant-writ petitioner to claim that, despite having violated the terms and conditions of the tender, and having submitted his bid contrary thereto, the respondent-corporation should not take any action against him.

The contention urged on behalf of the appellant-writ petitioner, by Sri C.Ramachandra Raju, Learned Counsel, based on acquiescence, waiver or estoppel is without merit. The essential element of waiver is that there must be a voluntary and intentional relinquishment of a known right or such conduct as warrants the inference of the relinquishment of such a right. It means forsaking the assertion of a right at the proper opportunity. (**Provash Chandra Dalui v. Biswanath Banerjee**¹).

Estoppel is not a cause of action. It is a rule of evidence. (**All India Power Engineer Federation v. Sasan Power Ltd.**,²; **Krishna Bahadur v. Purna Theatre**³). In estoppel the actual intent to abandon or surrender the right is immaterial. The necessary condition is the detriment to the other party by the conduct of the one estopped. An estoppel may result though the party estopped did not intend to lose any existing right. (**Provash Chandra Dalui**¹).

The general principle with regard to waiver of contractual obligations is to be found in Section 63 of the Contract Act whereunder it is open to a promisee to dispense with or remit, wholly or in part, the performance of the promise made to him or he can accept instead of it any satisfaction which he thinks fit. Neither consideration nor an agreement would be necessary to constitute waiver. (**All India Power Engineer Federation**²; **Jagad Bandhu Chatterjee v. Nilima Rani**⁴).

Waiver is contractual and may constitute a cause of action. It is an agreement between the parties, and a party fully knowing

¹ 1989 Supp (1) SCC 487

² (2017) 1 SCC 487

³ (2004) 8 SCC 229

⁴ (1969) 3 SCC 445

its rights having agreed not to assert the right for a consideration.

(All India Power Engineer Federation²; Krishna Bahadur³).

Everyone has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity which may be dispensed with without infringing any public right or public policy. **(All India Power Engineer Federation²; Lachoo Mal v. Radhey Shyam⁵).**

The maxim which sanctions the non-observance of the statutory provision is *cuilibet licet juri pro se introducto renuntiare*. If there is any express prohibition against contracting out of a statute in it, then no question can arise of anyone entering into a contract which is so prohibited but where there is no such prohibition, it must be seen whether an act is intended to have a more extensive operation as a matter of public policy. **(All India Power Engineer Federation v. Sasan Power Ltd.,²; Lachoo Mal⁵; Maxwell on Interpretation of Statutes, Eleventh Edn., pp. 375 and 376.)** If there is any element of public interest involved, the Court steps in to thwart any waiver which may be contrary to such public interest. **(All India Power Engineer Federation²).**

If any element of public interest is involved and a waiver takes place by one of the parties to an agreement, such waiver will not be given effect to if it is contrary to such public interest. **(All India Power Engineer Federation²).** The test to determine the nature of interest, namely private or public, is whether the right which is renounced is the right of the party alone or of the public also in the sense that the general welfare of the society is involved. If the answer is latter then it may be difficult to put estoppel as a

⁵ (1971) 1 SCC 619

defence. But if it is the right of the party alone, then it is capable of being abnegated either in writing or by conduct. (**Indira Bai v. Nand Kishore**⁶; **All India Power Engineer Federation**²).

The plea of acquiescence or waiver does not merit acceptance as, by permitting the appellant to continue to operate the stalls on terms and conditions, which are at variance with those stipulated in the original tender conditions, the respondent-corporation would be acting contrary to the larger public interest of ensuring a level playing field for all bidders, and in preventing tenderers, who have surreptitiously altered the clauses in the tender conditions though the original tender conditions prohibited them from doing so, from going scot-free, and thereby taking advantage of their own wrong.

The essential element of waiver is that there must be a voluntary and intentional relinquishment of a right. There should exist an opportunity for choice between the relinquishment and an enforcement of the right in question. It cannot be held that there has been a waiver of a valuable rights where the circumstances show that what was done was involuntary. There can be no waiver of a non-existent right. Similarly, one cannot waive that which is not one's as a right at the time of waiver. Some mistake or misapprehension as to some facts which constitute the underlying assumption, without which parties would not have made the contract, may be sufficient to justify the court in saying that there was no consent. (**All India Power Engineer Federation**²; **Waman Shriniwas Kini v. Ratilal Bhagwandas & Co.**⁷).

⁶ (1990) 4 SCC 668

⁷ AIR 1959 SC 689

In the light of the terms and conditions stipulated in the original tender notification, the respondent could not have, and in fact did not, waive application of those conditions. The respondent corporation was either under the mistaken impression, or was falsely led to believe by its officials, that Annexure I of the tender submitted by the appellant was in conformity with Annexure I of the original tender form. As no right of the appellant-writ petitioner is now sought to be taken away, and all that the respondent-corporation intends doing is to place the appellant on par with all other stall licensees, and ensure that he operates both his stalls strictly in accordance with the terms and conditions of the original tender, the doctrine of estoppel or acquiescence or waiver has no application.

IV. ON THEIR HAVING EXECUTED A LICENSE DEED IN THE APPELLANT'S FAVOUR, IS THE RESPONDENT-CORPORATION DISABLED FROM TRACING THE ILLEGALITY TO THE TENDER SUBMITTED BY THE APPELLANT EARLIER?

Sri C. Ramachandra Raju, Learned Counsel for the appellant, would submit that nothing prevented the respondent-corporation from properly examining the tender form submitted by the appellant, and in rejecting it; if the corporation was of the view that the tender submitted by the appellant-writ petitioner was contrary to the terms and conditions of the original tender, they ought to have rejected the tender, before the tenders were finalized; even if there was an error in the license deed, the respondent-corporation is not entitled to trace it back to the tender form submitted by the appellant; and having executed the license agreement, it is not open to the respondent-corporation to now contend that the tender, submitted by the appellant-writ petitioner, is invalid.

On the other hand Sri G. Vidyasagar, Learned Senior Counsel appearing on behalf of the respondent-corporation, would submit that a comparison of the two tenders submitted by the appellant, (one for Suryapet ordinary bus station and the other for Suryapet hitech bus station), would disclose that the appellant was conscious of the nature of businesses, and the items permitted to be sold in each stall, in Annexure – I; having surreptitiously submitted his tender contrary to the original tender conditions, the appellant cannot now take advantage of his own wrong, and claim that he should be permitted to enjoy the illegal benefits surreptitiously obtained by him, and he should be permitted to take advantage of his illegal act; while the respondent-corporation would be justified in canceling the appellant's tender and in terminating the agreement, on the ground that he had submitted his tender contrary to the terms and conditions of the tender, all that the respondent-corporation intended doing was to call upon the appellant-writ petitioner to enter into a fresh agreement in strict compliance with the terms and conditions of the tender, and thereby disable the appellant-writ petitioner from enjoying the illegal benefits, which he had surreptitiously obtained contrary to the terms and conditions of the original tender.

As noted hereinabove, not only has the respondent-Corporation accepted the tender submitted by the appellant, though it was contrary to the original tender notification, they have also executed a license deed in his favour, which again is at variance with both the original tender notification as also the tender submitted by the appellant himself. We are, however, not impressed with the submission of Sri C.Ramachandra Raju,

Learned Counsel for the appellant, that the respondent-Corporation cannot trace the illegality back to the original tender form. As the license-deed was executed in favour of the appellant only on the tender submitted by him having been accepted, the patent illegality in the license deed, which is substantially based on the tender submitted by the appellant, can always be corrected in the exercise of the powers conferred on the respondent-Corporation under Clause 45 of the license agreement. Having accepted the terms and conditions of the License deed with his eyes open, the appellant cannot now be heard to contend that the respondent-corporation cannot exercise its powers under clause 45 of the license deed.

While the respondent-Corporation could have rejected the appellant's tender at the tender evaluation stage, as it was contrary to the terms and conditions of the original tender notification, the mere fact that the respondent-Corporation failed to notice the illegality earlier, and had permitted the appellant to continue to run both the stalls, does not disable them from exercising their power under clause 45 of the License agreement to alter the terms and conditions of the license deed, in order to bring it in conformity with the terms and conditions of the original tender notification and the circular issued by the respondent-Corporation. As both the tender form submitted by the appellant, and the license deed executed in his favour, are contrary to the terms and conditions of the original tender notification, the license deed can always be suitably modified to bring it in conformity with the terms and conditions of the original tender notification. The appellant, having benefited by his tender having been accepted,

(though it could have been rejected as it was contrary to the terms and conditions of the original tender notification), cannot now claim that his illegal act, of altering Annexure-I of the tender submitted by him, cannot be corrected later; and the appellant should be permitted to take advantage of his illegal acts. This contention also necessitates rejection.

V. HAS THE RESPONDENT-CORPORATION FAILED TO CONSIDER THE CONTENTIONS PUT FORTH BY THE APPELLANT IN HIS REPLY TO THE SHOW-CAUSE NOTICE?

Sri C. Ramachandra Raju, Learned Counsel for the appellant, would submit that an elaborate explanation was submitted by the appellant; and the contentions urged on his behalf were not considered by the respondent.

The Divisional Manager informed the appellant, by proceedings dated 01.06.2018, that, at item 2(d) of the tender form, it was clearly mentioned that the nature of business and permitted items was as furnished in Annexure – I; the nature of business to be carried on in a “sweet stall” was mentioned at serial No.7, and for the “fruit-stall” at item No.6 of Annexure – I; in response to the tender notification, the appellant, while submitting the tender form, had tampered with Annexure – I thereof, and had changed the nature of business specified under items 7 and 6 thereunder; the terms and conditions of the tender stipulated that tender forms with any additional conditions, other than the conditions prescribed and supplied by the respondent-Corporation, would be summarily rejected at the time of opening of the tenders; the tender form had to be rejected summarily in view of the changes made by the petitioner in the tender document; EMD was liable to be forfeited, since the appellant had submitted his tender

for a business other than that notified in the terms and conditions of the tender notification; the tender committee did not notice the tampering of Annexure – 1, since a printed copy thereof was given to the Corporation; the nature of business to be carried on was mentioned at items 6 and 7 of Annexure – I; in response to the tender notification, the tender form was submitted by the appellant to carry on business of a “sweet-stall”, and a “fresh fruit-juice and mineral water bottle stall”; the terms and conditions of the tender documents specified that the tender forms with any additional conditions, other than the conditions prescribed and supplied by the appellant, would be summarily rejected at the time of opening of the tender; the tender form was, therefore, required to be rejected summarily in view of the changes made by the appellant in the tender document; the EMD was also liable to be forfeited, since the appellant had submitted his tender for a business other than that notified in the terms and conditions of the tender notification; the tender committee did not notice the tampering of Annexure – I, since the printed copy of Annexure – I was given by the Corporation, and the tenderer was not liable to fill up any details in Annexure – I; the tender committee did not verify the said document; in good faith the committee, after negotiations, had finalised the price and had submitted its recommendations; the deed of licence was also entered into on 21.07.2016 by enclosing the tampered Annexure – I; subsequently it came to light that the appellant had tampered with the tender document; in view of the misdeeds committed by the appellant, the deed of licence (agreement) was liable to be terminated; keeping in view the entire circumstances of the case, it had been proposed to provide an

opportunity to the appellant to run the stall by operating the business notified by the Corporation; and the appellant's contention that he did not tamper with the document, and he had submitted the same document which was given by the Corporation, was not acceptable.

The Divisional Manager further stated that the Corporation had approved the list of items to be sold in each stall in the bus station, and a circular was issued on 13.09.2001 advising field officers to notify the items to be sold at the bus stations; the items to be sold at the "sweet stall" and the "fresh juice stall" were specified in the circular; following the circular dated 13.09.2001, tenders were invited for each stall in all the bus stations of the Corporation, and such a list was also enclosed as an Annexure to the tender document; the appellant's contention that he had submitted the same Annexure, as was given to him by the Corporation, was wrong, since the notification given by the Corporation in all the bus stations was based on the circular dated 13.09.2001; more over the appellant had submitted his tender for another stall; in the Annexure to the tender document signed by him, the items to be sold in the other stall were mentioned in accordance with the tender condition; since he had submitted the tender document, for allotment of the sweet stall/fresh juice stall in two different bus stations, he had altered the items only in relation to the stall for which he had submitted his bid, and he did not verify any items pertaining to the other stall; the said document in Annexure – I was signed by him, and was enclosed to the agreement; it was proved that he had tampered with the document annexed to the tender form, while submitting his tender

for the sweet stall/fresh fruit juice stall; he was allowed the stall for selling only such items which were authorised, as it would effect the business of other licencees; and, therefore, the agreement had to be amended. Placing reliance on Clause 45 of licence deed dated 21.07.2016, the Divisional Manager requested the appellant to attend his office, on any working day during office hours, within seven days from the date of receipt of the proceedings, for changing the terms and conditions of the deed of licence, failing which further action would be initiated invoking the terms and conditions of the agreement.

The order dated 01.06.2018 is a reasoned order wherein all relevant contentions, urged on behalf of the appellant, has been dealt with. We find it difficult, therefore, to accept the submission that the contention urged on behalf of the appellant has not been dealt with. In proceedings, under Article 226 of the Constitution of India, this Court would not examine the order of the Divisional Manager dated 01.06.2018 with a microscope to determine whether each contention, irrespective of its relevance, has been dealt with. As long as the order reflects reasons, which are relevant for arriving at the decision, no interference is called for.

VI. CLAUSE 45 OF THE LICENSE DEED : DOES IT CONFER UNILATERAL POWER ON THE RESPONDENT-CORPORATION TO DIRECT ALTERATION OF THE TERMS AND CONDITIONS OF THE LICENSE DEED?

Sri C. Ramachandra Raju, Learned Counsel for the appellant would submit that the Learned Single Judge had erred in holding that Clause 45 conferred a unilateral power on the respondent-corporation to alter the conditions of the license deed.

On the other hand Sri G. Vidyasagar, Learned Senior Counsel appearing on behalf of the respondent-corporation, would submit that the appellant was well aware that a combined tender, for more than one category of stalls in Annexure I, should not be submitted; clause 45 confers power on the respondent-corporation to alter modify/delete the conditions in the agreement in public interest; the respondent-corporation has not acted arbitrarily as the appellant was put on notice, and was given an opportunity of being heard, before action was taken; and as the action taken by the respondent-corporation is in larger public interest, the order under appeal does not necessitate interference.

Having submitted his tender in contravention of the terms and conditions of the original tender notification, the appellant-writ petitioner cannot now be heard to contend that, since the officials of the respondent-corporation were not vigilant when the tenders were being scrutinized, and had compounded that error by executing a license deed in the appellant-writ petitioner's favour contrary to Annexure - I of the original tender, they are now not entitled to correct their earlier error; and the appellant-writ petitioner should be permitted to carry on business in terms of the license deed, though clause 45 thereof confers power on the respondent corporation to modify any condition/conditions of the agreement, to incorporate fresh clauses, and to require the licensee to enter into a fresh deed of license at his cost. While clause 45 may not enable officials of the respondent-corporation to unilaterally alter the license deed at their mere whim or fancy, the said power would undoubtedly be available for them to correct bonafide errors committed by them earlier. In any event the

appellant, by signing the license deed, has acquiesced to clause 45 thereof. Having signed the license deed with his eyes open, it is now not open to the appellant to contend that the respondent corporation cannot, even for just and valid reasons, exercise its power under clause 45 of the license deed.

VII. WAS THE LEARNED SINGLE JUDGE JUSTIFIED IN REFUSING TO EXERCISE HIS DISCRETION TO INTERFERE?

It is well settled that jurisdiction which this Court exercises under Article 226 of the Constitution of India, is discretionary, and it is only if larger public interest requires its intervention would this Court be justified in intervening in the matter. As exercise of jurisdiction under Article 226 of the Constitution of India is discretionary, a Writ is not issued as of right or as a matter of course. (**C.R. Reddy Law College Employees' Association, Eluru W.G. District v. Bar Council of India, New Delhi**⁸). The discretionary power of this Court, under Article 226 of the Constitution of India, need not be exercised in every case where there is an error of law. One of the limitations imposed by this Court, on itself, is that it would not exercise jurisdiction unless substantial injustice has ensued or is likely to ensue. (**Sangram Singh v. Election Tribunal, Kotah**⁹). Even if a legal flaw might be electronically detected, this Court would not interfere save manifest injustice or a substantial question of public importance is involved. (**Rashpal Malhotra v. Mrs. Saya Rajput**¹⁰ and **Council**

⁸ 2002 (3) APLJ 39 (SN)

⁹ AIR 1955 SC 425

¹⁰ (1987) 4 SCC 391

of Scientific and Industrial Research v. K.G.S.Bhatt¹¹). One of the principles inherent is that exercise of discretionary power should be for the sake of justice and, if granting relief results in greater harm to the society, the Court may refrain from exercising the power. (**State of Maharashtra v. Prabhu**¹²).

In its writ jurisdiction the Court exercises discretion, taking into consideration a wide variety of circumstances, inter alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of the grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal. (**Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.**,¹³). The discretionary jurisdiction of the High Court, under Article 226 of the Constitution of India, is not to be exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will, ordinarily, be exercised subject to certain self-imposed limitations, (**Thansingh Nathmal v. Supdt. of Taxes**¹⁴), and not as a matter of course. Discretion must be exercised by the Court on grounds of public policy, public interest and public good. The writ is equitable in nature and, thus, its issuance is governed by equitable principles. The prime consideration for the issuance of the said writ is, whether or not substantial justice will be promoted. (**Rajasthan State Industrial Development & Investment Corpn.**¹³).

The power conferred, under Articles 226 of the Constitution, is to advance justice and not to thwart it. The High Court should,

¹¹ (1989) 4 SCC 635

¹² (1994) 2 SCC 481

¹³ (2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153

¹⁴ AIR 1964 SC 1419

therefore, not merely examine errors of law academically, but should ascertain whether injustice has ensued as a result of an erroneous interpretation of the law. If justice became the by-product of an erroneous view of law, the High Court is not expected to erase such justice in the name of correcting such an error. (**Roshan Deen v. Preeti Lal**¹⁵ and **State of U.P. v. District Judge, Unnao**¹⁶). The High Court exercises its discretion, under Article 226 of the Constitution of India, with great caution and only in furtherance of public interest, and not merely on the making out of a legal point. This Court is required to keep larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to the conclusion that overwhelming public interest requires interference, would it intervene in the matter. (**Master Marine Services Pvt. Ltd v. Metcalfe and Hodgkinson Pvt Ltd**¹⁷ and **Air India Ltd v. Cochin International Airport Ltd.**¹⁸).

The appellant has, by submitting his tender contrary to the terms and conditions of the tender, sought to secure an undue benefit which was not made available to any other tenderer or licensee of any of the stalls in any of the bus stations of the TSRTC. The respondent-corporation has, therefore, called upon the appellant to enter into a fresh agreement. In the present case the action of the respondent-corporation, in insisting that the appellant-writ petitioner adheres to the terms and conditions stipulated in the original tender, is in the larger public interest of ensuring a level playing field; for all

¹⁵ (2002) 1 SCC 100

¹⁶ AIR 1984 SC 1401

¹⁷ (2005) 6 SCC 138

¹⁸ (2000) 2 SCC 617

tenderers and license holders, in various stalls in various bus stations in the entire State of Telangana, to be treated on par; for tenderers to strictly adhere to the tender conditions; and not to permit any tenderer, who has surreptitiously secured an illegal benefit contrary to the tender conditions, from retaining it. As the action now sought to be taken by the respondent-corporation is in larger public interest, the Learned Single Judge was justified in refusing to exercise discretion, under Article 226 of the Constitution of India, to interfere.

VIII. NO LEGAL RIGHT OF THE APPELLANT HAS BEEN VIOLATED JUSTIFYING A WRIT OF MANDAMUS BEING ISSUED:

In the present case, the appellant sought a Writ of Mandamus to declare the action of the Divisional Manager, TSRTC, Nalgonda in issuing proceedings dated 01.06.2018 as arbitrary and illegal. Mandamus, literally, means a command directing performance of a public legal duty. (**Union of India v. S.B. Vohra**¹⁹; **D.N. Jeevaraj v. State of Karnataka**²⁰). No writ or order in the nature of a mandamus would issue when there is no failure to perform a mandatory duty. (**Saraswati Industrial Syndicate Ltd. v. Union of India**²¹; **D.N. Jeevaraj**²⁰). A writ of mandamus is issued in favour of a person who establishes a legal right in himself, and against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either the discharge of a public duty or by operation of law. The object of mandamus is to prevent disorder from a failure of justice. (**D.N. Jeevaraj**²⁰).

¹⁹ AIR 2004 SC 1402

²⁰ (2016) 2 SCC 653

²¹ (1974) 2 SCC 630

The primary purpose of a writ of mandamus is to protect and establish rights and to impose a corresponding imperative duty existing in law. It is designed to promote justice (*ex debito justitiae*). The grant or refusal of the writ is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or to establish a legal right, but to enforce one that is already established. **(Rajasthan State Industrial Development & Investment Corpn.¹³)**. In order to maintain a writ of mandamus, the first and foremost requirement is that the petition must not be frivolous, and must be filed in *good faith*. **(Rajasthan State Industrial Development & Investment Corpn.¹³)**.

The appellant-writ petitioner has not been able to show any legal right of his having been violated. Instead of rejecting his tender, the respondent-Corporation is only seeking to restrict his operation of the stalls, in both the bus stations, only to one category of business stipulated in Annexure-I of the original tender, and to ensure that he sells only those items in his stalls as are specified, under that nature of business in Annexure-I of the original tender notification, based on which he was required to submit his tender. No legal right of the appellant-writ petitioner has been affected thereby, nor can he claim, as of right, that he should be permitted to continue to enjoy the illegal benefit which was extended to him by over-sight if the respondent-corporation were to be believed, or in collusion with its officials who deliberately turned a blind eye to the fact that the appellant's tender for both the stalls was contrary to the terms and conditions

and Annexure I of the original tender. No mandamus, as sought for by the appellant-writ petitioner, can therefore be issued.

IX. SCOPE OF INTERFERENCE, IN CLAUSE 15 OF THE LETTERS PATENT, WITH THE EXERCISE OF DISCRETION BY THE LEARNED SINGLE JUDGE:

In any event, in an intra-Court appeal under Clause 15 of the Letters Patent, interference with the order of the Learned Single Judge is not as a matter of course. A Division bench would, ordinarily, not interfere with the exercise of discretion by the Learned Single Judge in granting interim relief. The law as to the reversal by a Court of Appeal of an order made by a Single Judge in the exercise of his discretion is well established. (**Osenton (Charles) & Co. v. Johnston**²²; **Printers (Mysore) (P) Ltd. v. Pothan Joseph**²³; **Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan**²⁴; **Wander Ltd. v. Antox India (P) Ltd.**²⁵). Where the appeal before the Division Bench is preferred against the exercise of discretion by the Single Judge, the appellate court will not interfere with such exercise of discretion by the court of first instance, and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the Court has ignored settled principles of law regulating grant or refusal of interlocutory orders. An appeal against exercise of discretion is said to be an appeal on principle. The appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would, normally, not be justified

²² (1942) A. C. 130

²³ AIR 1960 SC 1156

²⁴ (2013) 9 SCC 221 : (2013) 4 SCC (Civ) 285

²⁵ 1990 Supp (1) SCC 727

in interfering with the exercise of discretion under appeal solely on the ground that, if it had considered the matter at the earlier stage, it would have come to a contrary conclusion. If the discretion has been exercised by the learned Single Judge reasonably, and in a judicious manner, the fact that the appellate Court would have taken a different view may not justify interference with the learned Single Judge's exercise of discretion. The appellate court would not interfere with the exercise of discretion by the learned Single Judge unless such exercise is found to be palpably incorrect or untenable or if the view taken by the Learned Single Judge is not a possible view. (**Wander Ltd.**²⁵; **Mohd. Mehtab Khan**²⁴). As we are satisfied that, exercise of discretion by the Learned Single Judge accords with law, we see no reason to interfere.

X. CONCLUSION:

The respondent-corporation has, by their proceedings dated 01.06.2018, merely called upon the appellant-writ petitioner to attend their office within one week to change the terms and conditions; and had informed him that, if he failed to do so, action would be initiated against him invoking the terms and conditions of the agreement. The power of the respondent-corporation to issue the proceedings dated 01.06.2018 is referable to clause 45 of the License deed. We consider it to appropriate, in such circumstances, to direct that, in case the appellant-writ petitioner approaches the Divisional Manager, TSRTC, Suryapet within ten days from today in order to effect alterations in the license deed to bring it in conformity with the terms and conditions of the original tender, the respondent-corporation shall not take any coercive measures against him during this period. Needless to state that,

in case the petitioner fails to do so, it is open to the respondent-corporation to proceed and take action against him after the aforesaid period of ten days.

As Sri C. Ramachandra Raju, Learned Counsel for the appellant-writ petitioner, had put forth elaborate submissions on merits, we have dealt with all these contentions in the order now passed by us. Since he had, at the conclusion of his arguments, stated that his submissions were confined only to the appeal preferred against the interlocutory order, and not to the main Writ Petition, suffice it to make it clear that the order now passed by us, affirming the order passed by the Learned Single Judge, is confined only to the interlocutory order under appeal. The Learned Single Judge shall, when the Writ Petition is finally heard, consider the rival contentions on its merits uninfluenced by any observations made either in the order now passed by us or in the order under appeal.

Before parting with the case, we must record our concern of the manner in which officials of the respondent-corporation have examined the appellant's tender for both the stalls. Not only have they failed to detect the variance in Annexure-I submitted by the appellant-writ petitioner at the stage of tender scrutiny of both his tenders, they have also failed to notice, or have consciously chosen to ignore, the variation between the tender submitted by the appellant and the license deeds executed in his favour. The respondent-corporation shall conduct a detailed investigation, identify the officer/officers responsible for these lapses, take disciplinary action against them, and submit an action taken

report to the Learned Single Judge before whom W.P. No.193778 of 2018 is pending.

Subject to the aforesaid observations, the appeal fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. No costs.

RAMESH RANGANATHAN, J

J. UMA DEVI, J.

Date: 09.08.2018

Note: L.R. copy to be marked.

B/o
MRKR/CS

