

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos.31420 of 2017 & 37901 OF 2018

Dated:29.11.2018

Between:

M.Abdul Rahiman, APSRTC Cycle Stand Licensee,
Yemmiganur Bus Station, S/o.Iliyas,
aged 31 years, R/o.Yemmiganur, Kurnool District.

.. Petitioner

And

The A.P.S.R.T.C., rep. by its Managing Director,
Musheerabad, Hyderabad and others.

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos.31420 of 2017 & 37901 OF 2018

COMMON ORDER:

1. Heard the learned counsel for petitioner and the learned Standing Counsel for respondents Corporation.

2. W.P.No.31420 of 2017 is filed challenging the notice dated 18.08.2017, wherein it is alleged that the petitioner has occupied free space back side of the godown 74'x81' and fixed a gate and directed him to remove the gate within two days, failing which, appropriate action will be taken.

3. W.P.No.37901 of 2018 is filed alleging that the respondents are not permitting the petitioner to construct a shed to run cycle stand in the allotted space.

4. The facts, which are not in dispute, are as under :-

The place identified as Cycle Stand No.4 was put to open auction in the month of December, 2015 and the petitioner was the highest bidder and contract was awarded to him. The Tender Notification and the contract awarded to the petitioner specified open space available as 96' x 120' backside of DOT shops to run Cycle Stand No.4 on a monthly licence fee of Rs.10,000/-, which is for four years from 05.03.2016 to 04.03.2020. However, as the extent of space mentioned in the Tender Notification was not available, the petitioner made a representation to the competent authority. Taking due note of the issue, the matter was placed before the Tender Committee and on the recommendation of the

Tender Committee, in consultation with the Regional Manager, Kurnool the Deputy Chief Traffic Manager, Kurnool, issued Corrigendum on 25.08.2016, wherein it is observed as follows :-

“... It is hereby ordered to read the open space 9285 sft instead of open space 90' x 120' and license fee of Rs.24234-00 pm as per the table instead of Rs.10,000/- and ordered to correct the same in the concerned records. The remaining terms and conditions stipulated in the office order at reference 2nd cited, and terms and clauses of Deed of License are stands good.”

5. As the petitioner occupied additional space and the higher rental amount is not paid, the notice impugned in W.P.No.31420 of 2007 is issued to the petitioner.

6. Learned Standing Counsel places on record various proceedings issued by the respondents and the rough sketch of the area along with photographs showing the area, where the place for parking was allotted and states that the petitioner has agreed to pay higher licence fee for occupying additional space.

7. No material is placed on record to show that the petitioner has consented to pay licence fee and also continuous operation of his business in the space now identified than originally agreed upon.

8. Admittedly, no supplementary agreement was entered between the petitioner and the respondent Corporation incorporating revised terms with different extent of space allotted to him than originally identified with higher licence fee. In the absence of any such agreement, the respondent Corporation cannot compel the petitioner to pay higher licence fee.

9. It is not in dispute that the original space proposed for leasing was described as 96' X 120'. Admittedly, the same extent of space was not allotted to the petitioner.

10. It is not in dispute that the petitioner was not vested space originally proposed, but in fact he is in possession of space less than the originally proposed. Thus, in the absence of consent given by petitioner and entering into written supplementary agreement changing the terms of the agreement, the respondents cannot compel the petitioner to pay higher lease amount than the agreed one. The impugned notice is ex facie illegal and the same is liable to be set aside and accordingly set aside.

11. It is not in dispute that the original agreement did not envisage construction of a shed to run cycle stand. Having regard to the background of inter se dispute, as noted above, the respondent Corporation cannot be compelled to permit the petitioner to undertake construction contrary to the terms of agreement and no direction as sought for by the petitioner can be granted in exercise of power of judicial review. However, it is always open to the respective parties to re-determine terms of contract.

12. Accordingly, W.P.No.31420 of 2017 is allowed and W.P.No.37901 of 2018 is disposed of. No order as to costs.

Miscellaneous Petitions, if any, pending shall stand closed.

P. NAVEEN RAO, J

Date: 29.11.2018
Prv