

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE DR. SHAMEEM AKTHER

Writ Appeal No.529 of 2019

ORDER: (Per the Hon'ble the Chief Justice Raghvendra Singh Chauhan)

The Telangana State Road Transport Corporation ('the Corporation', for short) has challenged the legality of the order dated 26.04.2019, passed by a learned Single Judge, in W.P. No. 42128 of 2018, whereby the learned Single Judge has set aside the notice dated 12.10.2018, wherein the appellant had issued a notice to the respondents-petitioners with regard to terminating the agreement of licence granted to them, and has directed the appellant to temporarily close the shops owned by the respondents-petitioners during the period, which is required for carrying of the up-gradation work of the Bus Station.

Briefly, the facts of the case are that the respondents-petitioners claimed to be authorised licensees of the Corporation for running newspaper/book stall, pan shop, and "mirchi & Samosa" shop at the Jadcherla Bus Station. According to the respondents-petitioners, the licence of petitioner No. 1, Mr. Md. Nazeeb Pasha commenced on 01.09.2017; the licence of the petitioner No. 2, Mr. Md. Rafiq commenced on 21.04.2014; and the licence of petitioner No. 3, Mr. V. Veera Narayana commenced on 28.08.2017. The said licences were for a period of five years. Therefore, while the licence of petitioner No.2, Md. Rafiq came to an end on 20.04.2019, the licence of the petitioner No. 1, and petitioner No. 3 would continue till the year 2022. However, despite these facts, the Corporation informed the petitioners by

notice dated 12.10.2018 that their agreement of licence is being terminated as the bus stand needs to be upgraded and renovated for the benefit of the public, in general and for the passengers, in particular. Since the petitioners were aggrieved by the said notice, they filed the writ petition before this Court. As mentioned hereinabove, the writ petition was not only allowed, but the Corporation was also directed to temporarily shift the shops till the renovation work was over.

In the order-sheet dated 04.07.2019 this Court had expressed its opinion that in case the Corporation were to completely close the shops owned by the respondents-petitioners, it would adversely affect their right of livelihood. Therefore, this Court suggested that the Corporation and the petitioners should explore the possibility of closing the shops owned by the petitioners, for a limited period, till the renovation is carried out, or the possibility of shifting them temporarily to another bus stand.

According to the order-sheet dated 08.07.2019, the learned counsel for the Corporation, Mr. B. Mayur Reddy, informed this Court that the Corporation is willing to shift the petitioners' shops temporarily to a nearby bus stand located at Badepally. He further informed this Court that the renovation work would require at least four months time to be completed. However, the learned counsel for the respondents-petitioners claimed that the renovation work would not require four months time to be completed. Hence, this Court directed the Depot Manager and the respondents to be present before this Court on 11.07.2019 to see whether a via-media could be worked out between the parties or not?

Consequently, on 11.07.2019 Mr. R. Venkata Ramana, Divisional Manager has appeared before this Court. According to Mr. Venkata Ramana, who has shown the blue print of the bus stand at Jadcherla, it is not only question of renovating the bus stand, but it is also a question of permanently closing the shops owned by the respondents-petitioners. According to him, since the licence for respondent-petitioner No. 2 has come to naught, this Court need not worry about the rights of respondent-petitioner No. 2. Moreover, according to him, the shop shown as O-4, the corner shop located in the Bay Area of the bus stand, needs to be demolished. The said shop is licensed to respondent-petitioner No. 1. Similarly, the corner shop located in the Bay Area, marked as O-3, which was licensed to respondent-petitioner No. 2 also needs to be demolished. These two shops need to be demolished so as to give a better view to the passengers to the buses standing at the either sides of the parking lots, while the buses are parked at the Bay Area. Furthermore, the shops marked as P-1 and P-2, which are situated on the left side of the foyer (entrance hall) also need to be demolished in order to create a waiting area for the passengers. P-1 is the shop owned by respondent-petitioner No. 3. Therefore, while renovating the entire bus stand, out of sheer necessity, the shops owned by respondent-petitioner No. 1 and respondent-petitioner No. 3, perforce, have to be demolished. Lastly, there is no space in the bus stand where the shops can be shifted. For, the other part of the bus stand campus is already occupied by the auto-rickshaw stand, by other shops, and by other structures. Hence, there is no possibility of the respondents-petitioners being shifted to another part of the bus stand campus.

Considering the submissions made by Mr. Venkata Ramana, Divisional Manager, considering the fact that there is no possibility of any via-media between the two parties, this case has to be decided on its merits.

Mr. B. Mayur Reddy, the learned standing counsel for the Corporation, has raised the following contentions before this Court:-

Firstly, although the licence agreement was valid till the year 2022, Clause 34 of the Licence Agreement permits the Corporation to terminate the licence by giving one month's notice, in case the premises are required for use of the licensor. Since the premises are, indeed, required for the use of the licensor, the Corporation was justified in issuing the notice dated 12.10.2018. Thereby, giving a notice of one month to the respondents-petitioners.

Secondly, the learned Single Judge has erred in interpreting the scope and ambit of Clause 34 of the Licence Agreement. According to the learned Single Judge, Clause 34 is applicable only in case "where the premises are required for the use of the licensor on a permanent basis". However, Clause 34 of the Licence Agreement is inapplicable in cases where the premises are required for the use of the licensor on a temporary basis.

Thirdly, relying on a decision of a learned Division Bench in the case of **Syed Abdul Moiz & another v. Telangana State Road Transport Corporation** in Writ Appeal Nos. 1375 and 1378 of 2018, decided on 12.11.2018, the learned counsel has pleaded that in the said judgment, the learned Division Bench has dealt with the scope and ambit of Clause 34 of the Licence Agreement. The learned counsel pleads that the said case is related to the

modernisation of the Karimnagar Bus Station in order to provide better amenities to the passengers. As part of the renovation plan, some of the permanent stalls had to be demolished, and open space need to be created. Therefore, in that case also the Corporation had issued notice to the owners of the permanent stalls. They had challenged the said notice. This Court had clearly held that such a case would be covered under Clause 34 of the Licence Agreement. According to the learned counsel, the present case is on identical footing. Therefore, the learned Single Judge was not justified in granting the relief to the respondents-petitioners.

Lastly, even in the present case, it is not a question of carrying out renovation, and of completing the renovation. Instead, it is a case where the shops will need to be demolished in order to provide better facilities to the public at large.

On the other hand, Mr. C. Ramachandra Raju, learned counsel for the respondents-petitioners has vehemently contended that the stand taken by the Corporation before the learned Single Judge was that merely a renovation work needs to be carried out, which will require a limited time for its completion. Therefore, the learned Single Judge was certainly justified in concluding firstly, that Clause 34 would not be applicable to the present case; secondly, in directing the Corporation to negotiate with the respondents-petitioners for temporarily shifting them to another place while the renovation work is carried out. Therefore, the Corporation is unjustified in re-inventing a new case in the present appeal.

Heard the learned counsel for the parties, perused the impugned order, and considered the case law cited at the Bar.

It is, indeed, trite to state that as the population grows, as the road connectivity grows, more and more buses are being introduced in the public transport system. Therefore, Bus Stations necessarily have to be updated and modernised in order to provide better facilities to the public at large. Therefore, the renovation, and maintenance, or the up-gradation of the bus stand is the need of the hour. However, while the process of renovation and maintenance, or up-gradation is continued, the fundamental rights of those shop-keepers also need to be kept in mind. Therefore, if the renovation is a temporary one, the shops can be closed for a limited period of time, and once the renovation is over, the shops can be permitted to operate from the very place, where they existed prior to the renovation. Even if the shops need to be closed, since the closing of the shops would adversely affect the right to livelihood, as a first step, the Corporation should find a suitable alternative area where the shops can be relocated so as to permit the shop-keepers to continue to eak out livelihood during the period of the validity of the licence.

Clause 34 of the licence deed is as under:-

The licensor reserves the right to terminate the licence by giving one month's notice in case the premises is required for use of the licensor.

A bare perusal of the said clause clearly reveals that it is silent on the point whether such a clause can be invoked when the use by the licensor is a permanent one or temporary one.

Since the closing of the shops would adversely affect the shop owners' right to livelihood, the said agreement would have to

be interpreted narrowly. Therefore, the power under Clause 34 can be invoked only where the premises are to be used by the licensor on permanent basis. In case, the use is a temporary one, the licensor would be justified in requiring that the shops be closed for a limited period, but certainly would not be justified in terminating the licence.

A perusal of the facts involved in the case of W.A. Nos. 1375 and 1378 of 2018 also reveal that it was a case where the Corporation had to permanently remove the stalls owned by the appellants therein. Since it was permanent removal of the stalls, the learned Division Bench had opined that the Corporation is certainly justified in invoking its power under Clause 34 of the Agreement and issuing the notice. The present case is similarly covered by Clause 34 of the Licence Agreement. Hence, the finding of the learned Single Judge is unjustified in the present case.

For the reasons stated above, this writ appeal is, hereby, allowed. The order of the learned Single Judge dated 26.04.2019 is set aside. Consequently, W.P. No. 42128 of 2018 is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.
No order as to costs.

(RAGHVENDRA SINGH CHAUHAN, CJ)

(DR. SHAMEEM AKTHER, J)

11th July, 2019

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