

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.42128 OF 2018

Date: 26.04.2019

Between:

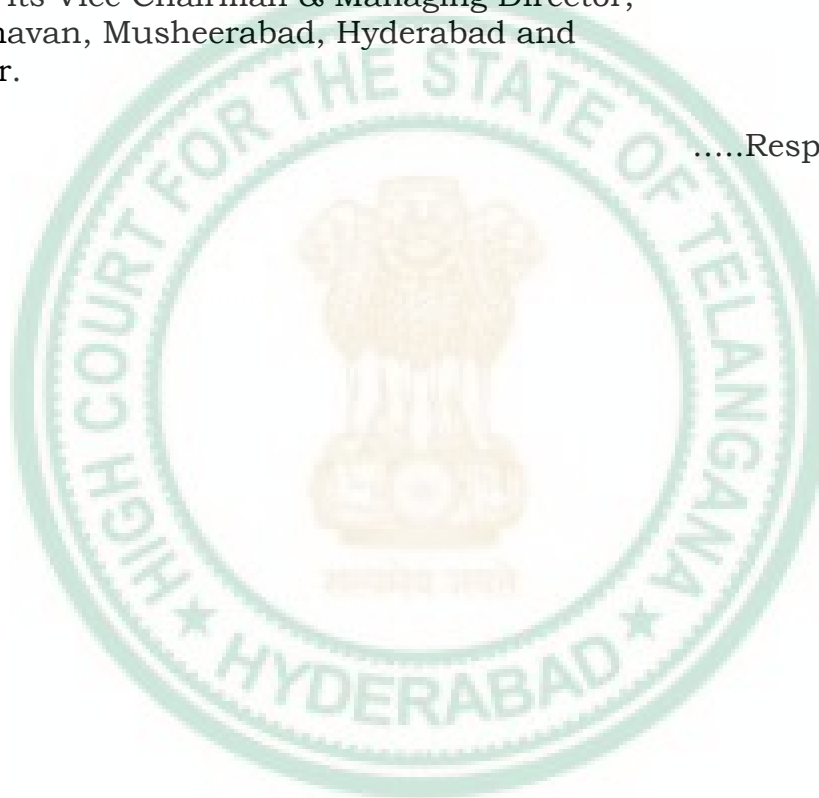
Md.Nazeeb Pasha, s/o. Ahmed Moinuddin,
Aged about 26 years, License Holder of
Newspaper and Book Stall i.e., Stall Bearing
No.3 in Jadcherla Bus Station, Jadcherla,
Mahabubnagar district and others.

.....Petitioners

and

Telangana State Road Transport Corporation,
Rep.by its Vice Chairman & Managing Director,
Bus Bhavan, Musheerabad, Hyderabad and
another.

.....Respondents



The Court made the following:

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ORDER:

Petitioners are three in number. They were granted licenses to run Newspaper and Book Stall, Pan Shop, Mirchi and Samosa, respectively, in Jadcherla Bus Station. The first petitioner license commenced from 01.09.2017; the second petitioner on 21.4.2014 and the third petitioner on 28.08.2017. The agreement is for a period of five years from the date of commencement. In this Writ Petition, petitioners assailed notice dated 12.10.2018, where under advance notice is given terminating the agreement of license granted to the petitioners. The notice refers to clause 34 of the Deed of License, where under the licensor reserves the right to terminate the license by giving a month advance notice in case the premises is required for use of Licensors. It is stated that improvement works are proposed in the Bus Station and the Open Space Nos.03 & 04, and the Pucca stall No.1 occupied respectively by the petitioners are obstructing the work for up-gradation of Bus Station. In other words, this notice terminates the license granted to the petitioners much before completion of the tenure of license.

2. Heard learned counsel Sri C.Ramachandra Raju, and learned senior counsel Sri G.Vidya Sagar for respondent-Corporation.

3.1. According to the learned counsel for petitioners, the notices impugned suffers from competence and therefore *ex facie* illegal. The contract was entered by the petitioners with the respondent-Corporation, represented by the authorized person i.e., Regional

Manager. The Regional Manager is competent authority for allotment of Canteens, Stalls, Space/Office accommodation etc., is the licensing authority, and he alone is competent to terminate the license. The tender notification was issued by the Regional Manager. Thus, the order of termination by the Divisional Manager being incompetent authority, even if he was authorized, the same is liable to be set aside on that ground alone. He placed reliance on the Circular No.48/2007-OPD (C) dated 31.12.2007, annexed to the writ petition paper book as Exhibit P3. He would submit, the specific averments on competence of Divisional Manager are not denied. Their reply is evasive. He would further submit that even the approval from the Regional Manager does not save the initial infirmity. Apparently, it was not his decision. He would emphasize that respondents have taken inconsistent stand in paragraphs – 5, 7 and 8 of the counter-affidavit and all this would clearly imply that *post facto*, they sought to justify their illegal action.

3.2. By referring to the averments in paragraph-5 of the counter-affidavit, he would submit that approval sought by the Regional Manager from the Executive Director was for removal of shops and not to terminate the license. He would submit that impugned order does not speak of decision by Regional Manager or approval of Executive Director. The letter of Executive Director is not filed.

3.3. The impugned notices are vague. The notices do not disclose specific use of spaces occupied by petitioners. If the respondents require the space occupied by petitioners for improvement of facilities in the Bus Station, they could have relocated petitioners with permission to resume their business from the same place

after the renovation work is completed. In fact, petitioners are willing and ready to hand over the property if they are relocated and to put them back in possession. Alternatively, petitioners are also willing to close the shops temporarily.

3.4. He would submit that place occupied by the petitioners is not useful for any purpose. The impugned notice is silent on the important aspect of purpose and notice is vague. He would submit that work proposed is laying of roof on a small area above petitioners' shops. According to the learned counsel, only 25.00 lakhs was sanctioned, implying thereby only to a small extent the work is taken up, and with the said amount, as sought to be contended by the respondent Corporation, it is not possible to undertake renovation. Thus, justification of renovation is made to throw out the petitioners. The statement of respondents on the nature of work is misleading. For no reason, initial proposal to remove the shops were differed and notice of termination was issued, more so by the incompetent authority.

3.5. He would submit that RTC cannot act unilaterally. The impugned notices are issued in colorable exercise of power. Clause-34 of the contract is conditional and unless those conditions are fulfilled, the license cannot be cancelled. According to clause-34, the Licensor should require the premises. In the instant case, the justification shown in the counter-affidavit is that certain improvements are proposed for the Bus Station and the space occupied by the petitioners is coming in the way of such improvements, whereas notice of termination does not assign reason that the space occupied by the petitioners is required for

the use of the Licensor. In support of this contention, he referred to the notice dated 12.10.2018, where in what is mentioned is “causing obstruction for carrying out improvements” and has not stated that “required for use of the Licensor”. He would therefore submit that the decision to terminate license would amount to colorable exercise of power. Merely because power is available to terminate the license, it cannot be exercised in whimsical manner. The authority vested with power must exercise such power in a fair and reasonable manner and decision taken in exercise of such power should not offend a citizen’s fundamental rights. There is neither exigency nor imminent need to terminate the license.

3.6. He would submit that by way of counter-affidavit, respondents cannot justify their decision to terminate, but the notice of termination must contain reasons in support of the decision. By placing reliance on the earlier decision made by the respondent-Corporation with reference to Karimnagar Bus Station, he would submit that clear reasons were mentioned for premature termination of license, whereas no such reasons are assigned in the present case.

3.7. He would submit that the termination of licenses is vitiated as they were not preceded by notice and opportunity. Even if clause-34 of the agreement enables the Licensor to terminate the license, opportunity of hearing must be read into said clause and without prior notice, decision to terminate cannot be taken. He would submit that it would also amount to arbitrary exercise of power offending Article 14 of the Constitution of India. The termination has the effect of affecting their right to carryon

business/avocation. Petitioners have right to raise objections against termination and, therefore, opportunity ought to have been afforded to them.

3.8. He would submit that as the impugned notices suffer from vice of jurisdiction, arbitrary exercise of power, violation of principles of natural justice, the Writ Petition is maintainable. Further petitioners are not seeking enforcement of terms of contract.

3.9. He would submit that the decision of this Court in W.P.No.16569 of 2018 and W.P.No.17136 of 2018 and W.A.No.1375 of 2018 and W.A.No.1378 of 2018 are not relevant for the case on hand. Further, no principle of law is laid down in these decisions.

3.10. He would submit that petitioners have legitimate expectation of operating the stalls allotted to them for the period of license and the same is illegally denied.

3.11. Learned counsel for petitioners also circulated written submissions.

4.1. Learned senior counsel appearing for the respondent-Corporation would submit that clause-35 of the agreement provides for resolution of disputes by the decision of the Vice Chairman and Managing Director, whereas petitioners have not availed the said remedy, but straightaway invoked jurisdiction of this Court. According to learned senior counsel, all issues can be agitated under the said clause. Therefore, writ petition is not maintainable.

4.2. He would submit that no fundamental right of petitioners is violated; that terms of contract cannot be enforced in the writ petition; Clause-34 of the contract does not envisage prior opportunity of hearing; that notice of termination is not an administrative decision, but is in consequent to invoking clause-34 of agreement and, therefore principles of natural justice cannot be borrowed into such contracts, and the notice of termination is not vitiated on that ground.

4.3. He would submit that Divisional Manager was acting on behalf of the respondent-Corporation; notice of termination was issued as Officer of the respondent- Corporation and, therefore does not vitiate on that ground. The circular relied upon by the petitioners has no relevance. It only refers to the competence of Regional Manager in awarding contracts and said circular does not take away the competence of Divisional Manager to represent RTC and to issue notice of termination in accordance with agreement clause-34. In support of the said contention, learned counsel placed reliance on the order of Division Bench in Rev.I.A.No.3 of 2018 in W.A.No.1375 of 2018 and Rev.I.A.No.2 of 2018 in W.A.No.1378 of 2018. He would submit that the view taken by the learned single Judge on the competence of the Divisional Manager was reversed by the Division Bench.

4.4. The notice of termination is not vague. It only mentions that space is required for improving facilities and in fact decision is taken to improve the facilities in the Jadcherla Bus Station. He would submit that there is no other space available, where petitioners can be relocated. He would submit that the decision to

terminate is *bona fide* and in the interest of respondent-Corporation and in the larger interest of commuters, who avail the facilities in the respondent-Corporation.

4.5. In support of his contention, learned senior counsel placed reliance on the following decisions:

i) **Common order in Rev.I.A.No.3 of 2018 in W.A.No.1375 of 2018 and Rev. I.A.No.2 of 2018 in W.A.No.1378 of 2018;**

ii) **State of U.P. and others v. Bridge & Roof Company (India) Limited¹**

5. Basic facts are not in dispute. Licenses were granted to the petitioners for a period of five years, and period of license is not expired by the time the impugned notices were issued, terminating the licenses. Licenses were terminated by relying on clause 34 of the agreement granting license. In the termination notices the reasons assigned for termination was, open space occupied by the petitioners at Jadcherla Bus Station was obstructing the works for up-gradation of Bus Station. Therefore, it has become necessary to get the space vacated in the interest of travelling public.

6. It appears that Jadcherla Bus Station is one of the big Bus Stations in the State of Telangana located on National Highway-44 between Hyderabad and Kurnool and large number of Buses operate to various destinations. The Civil Engineering Department of the respondent Corporation proposed for renovation of Bus Station, so that larger waiting area can be provided for passengers with other amenities. The Civil Engineering Department proposed for dismantling the old structures and to construct a new waiting

¹ (1996) 6 SCC 22

area for the passengers. The averments in the counter-affidavit would also disclose that having regard to the fact that the license period has not expired, the Corporation was contemplating to relocate the licensees at some other place. But the Civil Engineering Department reported that no vacant space is available for relocation. Therefore, extreme step of termination of licenses was taken.

7. The termination is challenged primarily on the ground that it was not preceded by notice and opportunity; that there was no requirement to terminate their licenses as what was proposed was only a small work and continuation of stalls of petitioners would not hamper such renovation work. Even assuming that renovation work required closer of petitioners' shops, petitioners' shops could have been relocated or ought to have permitted to temporarily close their shops till renovation work is completed. The extreme decision to terminate is unjust, and offending the right to livelihood, offending their legitimate expectation to carry on their business for the period of license.

8. The scope of judicial review in contractual matters is limited. The precedent decisions guided this court on exercise of judicial review in these matters:

9. In **Asia Foundation & Construction Ltd. Vs. Trafalgar House Construction (I) Ltd.**², while referring to guidelines laid down in **Tata Cellular v. Union of India** [(1994) 6 SCC 651], Supreme Court held as under:

² (1997) 1 SCC 738

“9. The High Court in construing certain clauses of the bid documents has come to the conclusion that such a correction was permissible and, therefore, the Bank could not have insisted upon granting the contract in favour of the appellant. We are of the considered opinion that it was not within the permissible limits of interference for a court of law, particularly when there has been no allegation of malice or ulterior motive and particularly when the court has not found any mala fides or favouritism in the grant of contract in favour of the appellant. In *Tata Cellular v. Union of India* [(1994) 6 SCC 651] this Court has held that:

“The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers,
2. committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. ***Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:***

(i) ***Illegality***: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it;

(ii) ***Irrationality***, namely, Wednesbury unreasonableness.

(iii) Procedural ***impropriety***.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time.” (emphasis supplied)

The wisdom and admissibility of decision is not amenable to judicial review unless the same is declared as arbitrary or irrational or in abuse of power.

10. In **Joshi Technologies International Inc. v. Union of India**³, on review of precedent decisions on various aspects of the matters relating to contracts involving State/public authority, Supreme Court summarized the principles on judicial review in contract matters. Paragraph-70 to the extent relevant reads as under:

“70. Further, the legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to contracts entered into by the State/public authority with private parties, can be summarised as under:

70.1. At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.

70.2. State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practise some discriminations.

70.7. Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.

70.9. The distinction between public law and private law element in the contract with the State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between the

³ (2015) 7 SCC 728

public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision-making process or that the decision is not arbitrary.

70.10. Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.”

11. Guided by the precedent law, as briefly noted above, the issue needs to be considered.

12. The respondent Corporation augments it's resources by effectively utilizing the space available within the Bus Stations. Further, commuters also require various facilities in the bus stations. Thus, spaces are identified for establishing Canteens, Stalls, which can sell food products, drinking water, cycle/scooter stand etc. To secure better revenue and to ensure transparency the licenses are granted by conducting open auction. Elaborate guidelines are formulated and notified regulating procedure for awarding of licenses, competency to award contract/license and period of license. In super session/modification of earlier instructions, further instructions are notified vide Circular

No.48/2007-OPD(C) dated 31.12.2007. Paragraph-III authorizes the Regional Managers and the Executive Directors of the Zones to award contracts/licenses to successful tenderers. Elaborate clauses are incorporated in the agreements to grant license to use its premises.

13. The issue revolves on the scope of Clause 34 of the agreement. This clause reserves in the licensor the right to terminate the license by giving one month notice in case premises is required for use of licensor. This clause vests residuary power in the licensor to terminate the license. However, a careful reading of the clause makes it clear that the licensor can exercise such power only if the premises occupied by the licensee is required for the use of licensor, implying thereby that such requirement is permanent. If what is stated in the notice is correct, it cannot be said that space is required for the use of licensor permanently, but shops are to be vacated to carry out civil works to improve facilities in the Bus Station as they are obstructing the working area. This is also evident from the fact that authorities explored the possibility of temporarily relocating the petitioners but there was no other space available. Further, it is also not the case of the respondent Corporation that this space is permanently required for improving the facilities in the Bus station and to create larger area for commuters facilities. Therefore, there is merit in the contention of learned counsel for petitioners that it is a short-term requirement for undertaking civil works and, therefore, temporary relocation could have been taken up. Alternatively, petitioners' shops could have been closed till the renovation work is completed. Thus, merely because clause 34 enables termination, in the facts of this

case, respondent Corporation could not have resorted to extreme step of termination. It is not the case of respondent Corporation that petitioners have violated terms of contract. In the facts of this case, clause 34 relied upon by respondents has no application.

14. On the above analysis of the clause-34 and in the facts of this case, there is merit in the contention of learned counsel for petitioners that notice ought to have been given to them before terminating the licenses and giving opportunity as required under clause 34. It cannot be said that petitioners have no explanation to offer. It is possible for petitioners to negotiate with respondent corporation on various aspects.

15. Its' actions amounted to arbitrary exercise of power. The decision of respondent-Corporation is illegal, irrational and there is procedural impropriety. This case attracts parameters of judicial review in contract matters within the small window created in the precedent decisions referred to above.

16. The Writ Petition is allowed. It is made clear that having regard to the issue decided in the Writ Petition, no opinion is expressed on the issue of competency of Divisional Manager. Further, it is open to petitioners and respondent-Corporation to temporarily close the shops on which license was granted to petitioners while the improvement works are carried out in the Bus Station. Pending miscellaneous petitions shall stand closed.

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