HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

MONDAY, THE TWENTY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY

PRESENT

THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

WRIT PETITION NO: 21609 OF 2020

Between:

M. Devadas, S/o. Ratnaiah, Age. 60 years, Occ. Business, R/o. H.No. 4-70, Thadiparthy village, Gopalpet Mandel, Wanaparthy District. (Formerly Mahaboobnagar).

...PETITIONER

AND

1. The TSRTC, rep., by its Managing Director and Vice Chairman Bus Bhavan, Musheerabad, Hyderabad.
2. The Regional Manager, TSRTC., Mahaboob Nagar Region, Mahaboob Nagar District.
3. The Personnel Officer, O/o. The Regional Manager, TSRTC Mahaboob Nagar Region, Mahaboob Nagar District.
4. The Depot Manager, TSRTC., Wanaparthy, Wanaparthy District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order, or direction more particularly one in the nature of Writ of Mandamus declaring the Proceedings No. 01/259(1)/2019-RM/MBNR dated 14/10/2020 imposing penalty of Rs. 1,87,000/- by the 3rd respondent on the petitioner to permit the operation of the petitioner's hire bus bearing No. TS-32-T-5798 on hire basis by entering into an agreement as per the allotment letter in No. 01/259(2)2019-RM(MB) dated. 26/10/2019 as illegal, arbitrary, in violation of Principles of natural justice, fair play, and in violation of Art. 14, 19(1)(g), 21 and 300-A of the Constitution of India.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents to operate the petitioners passenger bus bearing no. TS-32-T5798 on hire basis as per the allotment letter No. 01/259(2)2019- RM(MB) dated. 26/10/2019, pending disposal of the above writ petition.

Counsel for the Petitioner: SRI D. V. CHALAPATHI RAO

Counsel for Respondents: SRI B. MAYUR REDDY, SC FOR TSRTC

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

WRIT PETITION No.21609 of 2020

ORDER:

Heard the learned counsel for the petitioner and Sri B.Mayur Reddy, the learned Standing Counsel for TSRTC, appearing for the respondents. With their consent, the Writ Petition is disposed of at the stage of admission itself.

2. This writ petition is filed seeking a writ of *mandamus* declaring the proceedings *vide* No.01/259(1)/2019 RM/MBNR, dated 14.10.2020, issued by respondent No.3 – the Personnel Officer, TSRTC, Mahabubnagar Region, imposing penalty of Rs.1,87,000/- on the petitioner for operating the bus bearing No.TS-32-T-5798 on hire basis as per the allotment letter dated 26.10.2019.

3. The case of the petitioner is that pursuant to the Tender Notification dated 24.10.2019 issued by the respondent Corporation for the supply of passenger buses to be operated on a hire basis, the petitioner has submitted his tender application and was declared as successful bidder. The Executive Director, Hyderabad Zone of the respondent Corporation *vide* letter dated 26.10.2019 has allotted the route to the petitioner and directed him to produce the passenger bus within 90 days from the date of the said allotment letter. Accordingly, the petitioner has placed an order for the chassis with Ashok Leyland and after receiving the chassis on 24.01.2020, he has handed over the same to Hyderabad Coach Builders and Fabricators for fabrication of express bus body as per the specifications of the respondent Corporation. But, due to huge workload, the said Hyderabad Coach Builders and Fabricators, which is one of the authorized coach builders of the

respondent Corporation, has delivered the bus only on 05.03.2020. Immediately, the petitioner has a0pplied for registration of the vehicle with the Transport Department, and in the meanwhile, the Government has declared lockdown due to COVID-19. Therefore, after receiving the Registration Certificate and the Fitness Certificate, he has produced the passenger bus before respondent No.2 for inspection. But, however, respondent No.2, instead of allowing the petitioner to operate the bus by entering into a hire agreement, has issued the impugned proceedings imposing penalty of Rs.1,87,000/- on the petitioner on the ground that the bus was not produced within 90 days. Hence, this writ petition.

4. The respondent-Corporation has filed a counter affidavit stating that as there is no legal right of the writ petitioner and the corresponding statutory obligation on the part of the Corporation, no Mandamus can be issued. Pursuant to the tender notification, dated 24.10.2019, the petitioner had participated in the tenders and was the successful tenderer to operate the Express type bus on route Wanaparthy-Kurnool (462 KMs) from Wanaparthy Depot and the Corporation also issued an allotment letter, dated 26.10.2019, on an agreed rate of Rs.7.97/- per KM and advised him to produce the bus within a period of 90 days from the date of allotment, which expired by 23.01.2020. However, the petitioner produced the bus before the Inspection Committee on 04.07.2020. As such, the penalty amount of Rs.2,34,000/- was imposed, as per the guidelines vide Circular No.26/2019. However, considering the Covid-19 situation, the Corporation reduced an amount of Rs.47,000/- (for the lockdown period waived off) from the actual penalty and also advised the petitioner to pay only Rs.1,87,000/-. Further, the contention of the petitioner that due to Covid-19

situation he could not produce the bus is incorrect for the reason that the period of 90 days granted to the petitioner for producing the bus was expired by 23.01.2020 whereas the lockdown was imposed w.e.f.22.03.2020 and the petitioner has produced the bus before the Inspection Committee on 04.07.2020 and therefore the Corporation has rightly imposed the penalty on the petitioner as per the terms and conditions of the tender and the Circular No.26/2019-OPD(Plg) and therefore the writ petition is liable to be dismissed.

5. The learned counsel for the petitioner has stated that without taking into consideration the present Covid-19 situation and taking a pragmatic view of the matter, the Corporation has imposed penalty on the petitioner causing huge financial loss to the petitioner. The Corporation has also not taken into consideration the fact that the services of the Corporation are yet restored fully even as on date. In spite of making a representation before the Corporation, the request of the petitioner was not considered and the same was rejected vide order dated 17.11.2020 stating that there is no provision for giving such facility and without taking into consideration present Covic-19 situation. Hence, the learned counsel seeks indulgence of this Court and set aside the impugned notice. Learned counsel has taken this Court through the letter issued by the Corporation, vide No.01/259(2)2019-RM(MB), dated 26.10.2019, and has drawn the attention of this Court to the one of the conditions stipulated in the said letter which reads as follows:

> *"Failing to produce the bus within the specified time, the allotment will be treated as cancelled and the caution deposit amount paid by you stand forfeited."*

and argued that the Corporation had a right to cancel the allotment but there was no stipulation of imposing any penalty. That the delay caused was due to the circumstances which were beyond the control of the petitioner. That, immediately after receipt of the aforementioned letter, the petitioner had placed an order for the bus, but there was a delay by the Dealer as the production had slowed down at the factory and after the delivery of the vehicle, the same was given to Hyderabad Coach Builder and Fabrication for bodybuilding who delivered the vehicle on 05.03.2020, but due to the lockdown imposed throughout the country, the registration of the vehicle could not be done till 03.07.2020 and the vehicle was produced before the Corporation, but the impugned letter is issued imposing a penalty of Rs.2,34,000/- out of which an amount of Rs.17,000/- reduction is given. That, inspite of giving an explanation, the authorities have not considered the same and rejected the representation without assigning any reason. Learned Counsel could argued that the authorities have not taken into consideration the current pandemic situation, the lockdown of the entire nation, and also the fact that till September, 2020, the Corporation is unable to run its fleet. Therefore, even if the petitioner had produced the vehicle within the stipulated time, the Corporation could not had been in a position to run the vehicles, more than50% of the fleet is not being run even as on date. That, this is only a partial running of the vehicles and therefore the penalty imposed is not only arbitrary exercise of power not vested with the authority but opposed to all principles of natural justice.

6. Per contra, the learned Standing Counsel has opposed the very maintainability of the Writ Petition itself and has contended that sufficient time has been granted to the petitioner for production of the bus, but the petitioner failed to produce the same on time. The time granted to the petitioner has expired by 22.01.2020 i.e. two months prior to the lockdown imposed by the Government w.e.f.22.03.2020, therefore, the petitioner cannot take advantage of the Covid-19 situation and seek indulgence of this Court. Even otherwise, the Corporation has reduced an amount of Rs.47,000/- from the penalty amount for the lockdown period and therefore the said ground is not available to the petitioner. Learned Standing Counsel would argue that once the petitioner had agreed to the terms of the contract, he is bound to adhere to the stipulated time period. That, this Court while dealing with the matter of contractual nature should not intervene under Article 226 of the Constitution of India, more so, where disputed questions of fact are involved and relegate the party to a Civil Court or the competent authority, and has relied on **Joshi Technologies International INC vs. Union of India**[1] to support his contention. Learned Standing Counsel has further contended that the Corporation duly taking into consideration the present pandemic situation has reduced the quantum of penalty by Rs.47,000/-. Hence, the learned Standing Counsel prays this Court to dismiss the writ petition.

7. Heard learned Counsel for the petitioner and the learned Standing Counsel appearing for the respondents and perused the record.

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[1] (2015) 7) SCC 728

8. The record reveals that the petitioner had participated in the tender for supply of Bus and was allotted the route Wanaparthy-Kurnool (Exp.) on 26.10.2019, as per the terms of the Tender Notification and also the letter of allotment, the petitioner had to produce the bus before the authorities within a period of 90 days i.e., he had time till 23.01.2020 to produce the vehicle for inspection and for induction into the fleet. The petitioner has produced the vehicle for inspection and induction on 04.07.2020. By letter, dated 14.10.2020, the Corporation has informed the petitioner that he has to pay an amount of Rs.1,87,000/- for producing the bus beyond the stipulated 90 days so as to permit the operation of the vehicle. The petitioner gave a representation on 04.11.2020 seeking exemption of the penalty for late production of the vehicle as the delay was due to the circumstances which were beyond the control of the petitioner. By letter, dated 17.11.2020, the Corporation has rejected the request of the petitioner. The said letter reads as follows:

> "The representation submitted by you vide ref.5th cited has been examined by the competent authority in terms of the tender conditions. There is no provision to give such facility as requested by you."

The said letter reveals that absolutely no reason assigned for rejecting the request.

9. This Court as well as the Apex Court, on number of occasions, have held that any authority/court/quasi judicial authority have to necessarily give reasoning in the order passed by them. Unless reasoning is given in the order, neither the party nor Courts/before whom the order is challenged will be in a position to

appreciate as to what has weighed with the said authority either for dismissing or allowing the application of the petitioner. Though the quasi judicial or administrative authority are not obligated to give a lengthy or elaborate reasoning as in the case of Judicial order, yet they are expected to give a reasoned order which should be precise, concisely setting out the reason for allowing or dismissing the contention/application/case.

10. Though the learned Standing Counsel for the Corporation has argued at length about the contractual obligations of the petitioner to produce the vehicle within the stipulated time, a perusal of the terms and conditions mentioned in the Tender Schedule does not reveals that there is a condition which gives the Corporation a right to impose penalty for late production of the vehicle. These tenders were notified vide Tender Notification No.P9/359(33)/15-OPD(P), dated 24.10.2019, and the petitioner being one of the successful bidder was sent allotment letter vide Lr.No.01/259(2)/2019-RM.MB, dated 26.10.2019. Neither the tender notification nor the letter of allotment stipulates any imposition of penalty for producing the vehicle after the stipulated period. The learned Standing Counsel has sought to support the impugned letter on the basis of the circular No.26/2019-OPD-PLG, dated 17.12.2019, to buttress his contention that the Corporation was well within its rights to impose the penalty for producing the vehicle after the stipulated date.

11. Admittedly, the Circular, dated 17.12.2019, is issued much after the issuance of the tender notification. Neither the petitioner was made aware about the issuance of the said circular at any point before the expiry of the stipulated period of 90 days, nor after the said period. It is only for the first time, a mention is made in

the impugned letter, dated 14.10.2020, and a copy of the said Circular is filed along with the counter. The Circular reveals that the Managing Director of the Corporation had issued the same and the copies were marked to (1) All Executive Directors & F.A. for information, (2) All DVMs, All Dy.CAOs for information & n/actions (3) All Depot Managers/Accounts Officers for information & n/actions. It is neither explained in the counter nor by the Standing Counsel as to how the petitioner is expected to know about the imposition of the penalty for producing the vehicle after the stipulated period when the said condition is not part of the tender notification, the letter of allotment and not communicated to the petitioner before the stipulated time period. The reading of the Circular reveals the quantum of penalties as under:

	Particulars	Existing Penalties
1)	From the date of letter Allotment Letter to 90 days	No Penalty
2)	Delay in production of the bus from 91st day to 180th day after the permissible 90 days time	@ Rs.1,000/- per bus per day
3)	Delay in production of bus from 181st day to till submission of bus	@ Rs.2,000/- per bus per day

12. There is no indication as to why two rates were fixed (1) Rs.1,000/- for the delay in production of the bus from 91st day to 180th day after the permissible 90 days time, and (2) Rs.2,000/- for the delay in production of the bus from 181st day to till submission of bus. If the only reason for imposing the penalty is to see that the bidder supplies the buses within the stipulated time, and that the Corporation does not suffer any loss due to the non-running of the buses in the allotted route, there is no logic or reason for fixing two rates. Be that as it may, the fact remains that this Circular is not part of the contract nor the allotment letter. It is not even the

case of the Corporation that the petitioner was put on notice about the issuance of the Circular or forewarned about the imposition of penalty immediately after the issuance of the Circular or before the expiry of 90 days term period. If the petitioner was put on notice and intimated about the Circular before the expiry of 90 days and still the petitioner had not taken any steps to produce the bus within the stipulated time, then the Corporation would had been perfectly justified in imposing the penalty. Once the tender conditions are notified and the parties have come forward accepting the terms of the tender condition and given their offer for supply of the buses at a particular rate and for a particular route, the said offer was accepted by the Corporation by issuance of the Allotment Letter, dated 26.10.2019, the parties are bound by the said terms and conditions, they cannot alter, modify, vary, rescind the terms of the contract unilaterally. Once a concluded contract was arrived at, the parties were bound thereby. If they were to alter or modify the terms thereof, it was required to be done either by express agreement or by necessary implication which would negate the application of the doctrine of "acceptance sub silentio". But, there is nothing on record to show that such a course of action was taken. The petitioner at no point of time was made known about the internal circulars. The parties that would suffer civil consequences by issuance of the Circular must be given due notice. Principles of natural justice are required to be complied with. The impugned notice issued by the respondents is based on a Circular which has not been communicated to the petitioner and he was not put on notice at any point of time before issuance of the impugned notice. The Circular is neither part and parcel of the terms of tender document nor the letter of allotment and therefore

the same cannot be relied on by the Corporation to impose the penalty. Therefore, this Court is of the considered opinion that the imposition of the penalty of Rs.1,87,000/- and insisting the petitioner to pay the said penalty as a condition precedent for induction into the fleet is an arbitrary exercise of power, illegal, bad, opposed to principles of natural justice and the same has to be necessarily set aside.

13. In view of the above, the writ petition is allowed by setting aside the proceedings *vide* No.01/259(1)/2019-RM/MBNR, dated 14.10.2020, issued by respondent No.3 – the Personnel Officer, TSRTC, Mahabubnagar Region, imposing penalty of Rs.1,87,000/- on the petitioner for operating the bus bearing No.TS-32-T-5798 on hire basis as per the allotment letter dated 26.10.2019 and consequently the respondents are directed to permit the operation of the petitioner's hire bus bearing No.TS-32-T-5798 on hire basis by entering into an agreement as per the allotment letter in No.01/259(2)2019-RM(MB), dated 26.10.2019, without insisting for payment of penalty.

The miscellaneous petitions pending, if any, shall stand closed.

SD/-K.VENKAIAH
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Managing Director and Vice Chairman, TSRTC, Bus Bhavan, Musheerabad, Hyderabad.
2. The Regional Manager, TSRTC., Mahaboob Nagar Region, Mahaboob Nagar District.
3. The Personnel Officer, O/o. The Regional Manager, TSRTC Mahaboob Nagar Region, Mahaboob Nagar District.
4. The Depot Manager, TSRTC., Wanaparthy, Wanaparthy District.
5. One CC to Sri D V Chalapathi Rao, Advocate [OPUC]
6. One CC to Sri B. Mayur Reddy, SC for TSRTC (OPUC)
7. Two CD Copies

MBC

HIGH COURT

DATED: 21/12/2020



ORDER

WP.No.21609 of 2020

ALLOWING THE WRIT PETITION AT THE

STAGE OF ADMISSION, WITHOUT COSTS

SW
8 copies
Dt 29/12/2020