

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

24 WRIT PETITION NO.1665 OF 2023
WITH
WRIT PETITION NO. 3947 OF 2022
WITH
WRIT PETITION NO. 4208 OF 2022

ILYAS IQBAL MEMON
VERSUS
SENIOR DIVISIONAL COMMERCIAL MANAGER

...
Advocate for Petitioner : Mr. Jain Gajendra Devichand
Advocate for the respondent – UOI : Mrs. Sudha Kulthe
...

**CORAM : MANGESH S. PATIL &
S. G. CHAPALGAONKAR, JJ.**

DATE : 27 FEBRUARY 2023

ORAL ORDER (MANGESH S. PATIL, J.) :

Heard both sides.

2. The petitioner who was issued with letter of LOA to run the commercial stalls on two different platforms of the respondent at Aurangabad railway station, is aggrieved by termination of the contracts by impugned communications on the ground *inter alia* that the businesses were not commenced within 30 days of issuance of LOA as per the stipulation in the contract.

3. Ex facie, the mode of termination provided for under Article 17 requires a notice of at least 15 days to be served to the vendor and contemplates the principles of natural justice to be followed.

4. Even if admittedly, the petitioner had failed to commence the business within 30 days, as per article 15, it would constitute a material breach and even in that contingency, the process as provided in article 17 for termination has to be undertaken.

5. As can be seen from the impugned communications, there is absolute absence of any reference to the procedure as contemplated under article 17 to have been followed. There is material to *prima facie* demonstrate that in spite of the fact that the petitioner had failed to commence the business within 30 days in respect of both the contracts, the parties had indulged in subsequent correspondence *prima facie* showing that the respondents never treated the contracts to have terminated.

6. Such supervening conduct in spite of absence of commencement within 30 days coupled with the fact that abruptly by the impugned communications the contracts were sought to be terminated that too without issuing any notice and giving the petitioner an opportunity of being heard which is clearly in breach of the stipulation as regards termination contained in article 17.

7. Interesting enough to note that in one of the two contracts, the petitioner has been allowed to continue with the business and stated to have deposited the necessary license fees and security

deposit. One wonders why when the facts are similar in respect of both the contracts, the conduct of the respondents is different *qua* one of the contracts.

8. The learned advocate for the respondents, on instructions, submits that indeed in writ petition no. 4208 of 2022, the petitioner has been allowed to continue with the contract on the same terms and conditions and has even continued with the business.

9. Again, resorting to article 16, a drastic action in the form of debarring the petitioner from participating in future catering contracts for a period of five years has been taken without following the principles of natural justice.

10. The petitioner in writ petition no. 1665 of 2023 is also seeking a direction that taking into consideration all the aforementioned facts and circumstances the representation which he has put up with the respondent on 09-01-2023 be directed to be considered by the respondents.

11. Taking an overall view of the matter, it would be apposite to quash and set aside the impugned communications terminating the contracts. The respondents if they so intend may take appropriate steps for termination as is contemplated in terms and conditions of the

contract and particularly article 17 by extending an opportunity to the petitioner of being heard.

12. We allow the writ petitions.

13. We quash and set aside the impugned communication terminating the contracts between the parties and direct the respondents to take a decision on the petitioner's representation dated 09-01-2023 on its own merits.

[S. G. CHAPALGAONKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/