
(1996) 12 AP CK 0048

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 24361, 24362 and 24370 of 1996

A. Raja Gopal and Others

APPELLANT

Vs

The Regional Manager, APSRTC, Ananthapur Region and Others

RESPONDENT

Date of Decision : 09-12-1996

Acts Referred:

Constitution of India, 1950 — Article 19(1)

Citation : (1997) 1 ALT 747

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : I. Venkataramana and R. Veera Reddy, for the Appellant; A.V. Sivaiah, SC, for the Respondent

Final Decision : Dismissed

Judgement

G. Bikshapathy, J.—As the questions involved in all these Writ Petitions are identical, the Writ Petitions are disposed of by a common order.

2. The petitioners were allotted the Stalls in the A.P.S.R.T.C. Ananthapur Bus Stand in pursuance of the Tenders submitted by them in the year 1987. They have been paying the prescribed fee to the Corporation from time to time. Initially, the period of contract was 3 years. While so, the Corporation issued Circular No. 5/90-OPD(C), dated 12-1-1990 wherein it was decided to increase the period of licence by 12 years on payment of enhanced rents from the 4th year onwards. In pursuance of the said Circular, the licence held by the petitioners is extended from time to time on appropriate rent in accordance with the Circulars.

3. It is the case of the petitioners that they have completed only 9 years of licence period and that was expiring by the end of November, 1996. However, the renewal has not been made by the Corporation as per the Circular No. 5/90, dated 12-1-1990. On the other hand, they have notified the stalls for fresh

tenders for allotment of stalls by Notification dated 8-11-1996 published in various news papers.. The petitioners further submitted that the Corporation issued Circular dated 10-10-1996 wherein it is stated that all the earlier Circulars issued on the subject of licensing of canteens, stalls, office accommodation etc. stand cancelled and they shall hence-forth be covered by Circular No. 64, dated 10-10-1996. Under the said Circular, the licence period has been fixed as 3 years and agreements were directed to be entered for the said period only. Under clause 7 of the said Circular, the existing licences of canteens, stalls, shops etc. allotted in pursuance of the earlier Circular instructions shall stand terminated after the completion of the existing agreement period irrespective of completion of maximum period of licences as stipulated in the Circulars governing the allotment. Aggrieved by this provision, the petitioners contended that Clause 7 cannot be introduced to the prejudice of the petitioners and that the Circular is having only prospective effect and it cannot curtail the existing period of lease. Therefore, the petitioners are entitled to continue for a total period of 12 years on the same terms and conditions in accordance with the earlier Circulars. It is also the case of the petitioners that the changed policy of the Corporation will have only prospective effect as the benefit already conferred under the earlier circulars cannot be taken away by the later circulars. The petitioners further submit that they made huge investments in the fond hope of continuing the business for a total period of 12 years and on account of the sudden cancellation of the lease, in pursuance of the Circular dated 10-10-1996, they are put to serious loss and their livelihood is in jeopardy. Thus, the petitioners submit that the fundamental right under Article 19(1)(g) of the Constitution has been violated by the Corporation.

4. The learned Counsel for the petitioners submits that the petitioners are entitled to continue in business for a total period of 12 years. Action of the Respondents in not renewing the lease and invoking certain clauses in the later Circular dated 10-10-1996 are arbitrary and illegal. On the other hand, the learned Counsel for the Corporation Sri A.V. Sivaiah, submits that as per the agreements entered into between the petitioners and the Corporation, lease has expired by the end of November, 1996 and therefore until and unless, it is extended by the Corporation they have no right to claim the renewal of lease as of right. The learned Counsel have accepted that under the earlier circular dated 12-1-1990 the lease-holders were entitled for lease of total period of 12 years. But, however, the petitioners having completed 9 years of lease period have no right of extension, it is purely optional by the Corporation either to extend the lease or to call for the fresh tenders. But the petitioners cannot claim the extension as of right. He further submits that the matter was considered by the Board of Directors of the Corporation in pursuance of the observations made by the Division Bench of this Court reported in A.P.S.R.T.C. Rep. by its Vice Chairman & Managing Director v. V. Mallesh 1995 (2) An.W.R. 539 : 1995 (3) ALD 898 and took decision to modify the existing Circulars in regard to licensing of stalls, shops etc. Under the revised Circulars, the period of licence has been

fixed only for 3 years and under Clause 7 of the revised instructions, all the existing licenses shall be deemed to have been terminated at the end of their subsisting period of agreement. Therefore, in pursuance of the said Circular, and after the end of the existing lease period, the stalls were notified by calling for the fresh tenders. Therefore, he submits that there is no illegality or irregularity in the matter.

5. The point that arises for consideration is whether the petitioners are entitled for renewal of licence by three more years in pursuance of the Circular No. 5/90 and whether the Clause No. 7 in Circular dated 10-10-1996 is valid?

6. With the construction of new bus Complexes in various parts of the State, the Corporation also made arrangements for running various stalls for the convenience of the travelling public such as general items, book stalls, pan shop, cool drinks, canteen facilities etc. Originally, they were allotted on the basis of the tenders initially for a period of 3 years. While so, the Corporation issued circular No. 5/90 wherein the lease periods are extended upto 12 years with some percentage of enhancement of the Licence fee. Now the petitioners submit that they have not completed 12 years of lease period and that by virtue of the Circulars issued by the Corporation, they are entitled for a total period of 12 years lease, on payment of proportionate enhancement of rentals. It is also not disputed by the Corporation that petitioners had completed 9 years of lease. However, it is contended that the petitioners are not entitled for extension of 3 years of lease period as there is no such right vested in them.

7. The learned Counsel for the Corporation relies on the judgment of the Division Bench of this Court in A.P.S.R.T.C.'s case (1st cited supra), wherein Circular No. 5/90 was considered and the Division Bench observed in paras 58 and 59 as follows:

"58. Keeping the above decisions in mind, we have perused page by page of all the files running into hundreds of pages to find out the reasons for extending the period of licences on nomination basis upto a maximum period of 12 years, having initially granted the licences for a period of 3 years under tender system. The only reason that could be culled out for conferring this undue favour on the existing contractors was that they had invested huge moneys for setting up the stalls. A similar ground was found to be impermissible in law in Ashok Kumar Vs. Union Territory, Chandigarh and another, (Para 50) by the Supreme Court.

59. When the tenderers gave their bids fully conscious of the fact that the period of licence was only three years, it is not known on what ground the appellant-Corporation could extend that period from time to time in the manner it did except to benefit the licencees financially to the detriment of the financial interests of the Corporation. We hope the Management of the A.P. State Road Transport Corporation will take effective steps hence-forth to safeguard the financial interests of the Corporation."

In pursuance of the observation of the Division Bench, the matter was considered

by the Board and the Revised Circular has been issued which has the effect of cancelling the existing licences on the expiry of the term fixed under the agreements irrespective of the fact whether they have completed 12 years of lease.

8. I have perused the judgment of the Division Bench. The matter principally related to the allotment of the shops in Imlibun Bus stand, a new bus complex in the City. In the said case the Division Bench has categorically held that even though the period of lease can be extended by the Corporation by virtue of the circulars issued by it, no agreement to that effect was entered between the petitioners and the management and such agreements did not even contain any reference to Circular No. 5/90. The Division Bench has categorically held that in the absence of any agreement to the effect that they are entitled for extension of contract, they cannot claim the extension of period of licence. The Division Bench also came to the conclusion that by extending the period of licence for 12 years, the Corporation is favouring the existing Contractors to the detriment of interest of the Corporation. The principles settled by the Division Bench apply in all its fours to the present case. Admittedly, in the instant case, the agreement entered between the Corporation and the petitioners has expired by 30-11-1996 and there is no provision in the agreement that it shall be extended for a further period of 3 years. On the other hand, there is a clear clause that on the expiry of the period of lease, possession of the stalls shall be delivered to the Corporation, failing which the power is vested with the Corporation to take possession of the premises by putting lock and key to the said premises. Thus, there is no trace of any extension leave alone reference to Circular No. 5/90. Since the period of agreement of the petitioners has come to an end, the question of cancellation during the subsistence of the agreement does not arise. That is the reason the Corporation was careful enough to incorporate such a provision in Clause 7 of the Circular dated 10-10-1996 so as not to cause any inconvenience to the existing licences. Thus, I find that the petitioners are not entitled for extension of period of licence beyond the period fixed in the agreement.

9. Accordingly, all the Writ Petitions are dismissed. No costs.