
(1998) 08 AP CK 0039

In the Andhra Pradesh High Court

Case No : WA No. 1395 of 1997 and batch

APSRTC, Hyderabad and others

APPELLANT

Vs

S. Rajasekharam

RESPONDENT

Date of Decision : 21-08-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1998) 6 ALD 722 : (1998) 6 ALT 419

Hon'ble Judges : P. Venkatarama Reddi, J;A.S. Bhate, J

Bench : Division Bench

Advocate : Mr. K. Harinath, SC for APSRTC, for the Appellant; Mr. V. Venkataramana, for the Respondent

Judgement

P. Venkatarama Reddi, J

1. These writ appeals arise out of a common judgment in WP No. 17470 of 1997 and four other writ petitions dated 19-11-1997. In all the writ petitions, the prayer is to quash the communication sent by the Regional Manager, Vizianagaram, Andhra Pradesh State Road Transport Corporation (hereinafter referred to as "Corporation") on 19-7-1997 informing the writ petitioners that they failed to produce the vehicles within the agreed time and the Corporation's offer for hiring the petitioners' vehicles was cancelled and the applications submitted by the petitioners must be treated to have been closed. In Writ Petition No. 18158 of 1997 out of which Writ Appeal No. 1395 of 1997 arose, a further prayer was made to direct the respondents to consider the tender of the petitioner so as to enable him to hire his bus bearing No. AP 35/T 2442 in accordance with the tender notification.

2. The said writ petitions were allowed by the learned single Judge quashing the impugned letter and permitting the writ petitioners to produce the vehicles by 30-9-1997. The respondents (appellants herein) were directed to make necessary arrangements to inspect the vehicles and hire them as per the notification. It is against this judgment, the present writ appeals are filed. The

Judgment under appeal was suspended pending disposal of these writ appeals.

WA No.1418 of 1997

3. Broadly, the facts in all the writ appeals are same. We will first take up Writ Appeal No. 1418 of 1997 which is directed against the first writ petition viz., WP No.17470 of 1997. Vizianagaram Zonal Office of the Corporation published a Notification in the newspapers on 2-1-1997 inviting applications for hiring of private buses in four districts forming part of Vizianagaram zone. Following terms and conditions are stipulated:

- (1) Luxury and Express buses should be of 1997 model and hire charges at Rs.5.65 per KM will be paid.
- (2) Ordinary buses shall be of the models 1994 to 1997 and hire charges will be paid at Rs.6.81 to 6.34 per KM depending on the model of the bus.
- (3) Contract period will be 2 to 5 years.
- (4) Luxury/Express buses will be permitted to run upto 400 KMs and ordinary buses upto 300 KMs each day.
- (5) The buses taken on hire will be run on the routes as determined by the Corporation.
- (6) Applications obtained in any district will be limited to that district only.
- (7) The application forms have to be accompanied with non-refundable demand draft of Rs.2,000/-.
- (8) The last date for receipt of application was 22-4-1997."

4. The writ petitioner (respondent herein) submitted his application together with a demand draft for Rs.2,000/-. The Entrepreneurs Committee consisting of Executive Director, Vizianagaram Zone and other officials met on 6-5-1997 and after discussion, the applicants were asked to submit specific details in the proforma known as "guide sheet". In that, the type of bus, model of the bus, whether it is readily available or not, the time chosen for production of bus and whether the party is willing to pay the caution deposit of Rs.8,000/-, are the points mentioned. After noting down the details, the applicants have appended their signatures on the guide sheets. The applicants offer to produce the buses within a period ranging between 20 days and 45 days. Wherever the bus is available, they gave the number of the bus with the particulars thereon. Some of the applicants mentioned that the buses are under fabrication or "booked". On 12-5-1997, a communication was sent by the Deputy Chief Traffic Manager, Vizianagaram confirming the minutes of the meeting held on 6-5-1997 and calling upon the applicants to submit the demand drafts for Rs.8,000/- towards caution deposit on or before 17-5-1997. The time within which the applicants agreed to produce the buses for inspection was also mentioned therein. A statement of technical specifications to be followed while fabricating the body

was enclosed to the letter dated 12-5-1997. On 15-5-1997, slight modification with regard to the flooring of the bus was communicated. The caution deposit amount was paid by the applicants thereafter. It is the case of the respondents - writ petitioners that they submitted a representation to the Regional Manager stating that the buses were ready for hiring, but there was no response from the Corporation. On 9-7-1997, the Head Office of the Corporation sent Fax message to respondents 2 and 3 to hire the buses from four applicants to be plied on specified routes. When this fact came to be known by the respondents on 15-7-1997, they in turn submitted representations to the Regional Manager mentioning registration numbers of the buses which were ready to be hired and requesting him to inspect the buses. Thereafter, the impugned communication dated 19-7-1997 was issued cancelling the offer.

5. Counter-affidavits have been filed by the fourth respondent in the writ petition (Managing Director of the Corporation) and the Chief Law Officer of the Corporation. The Managing Director has clarified in the counter that the Entrepreneurs Committee and the vehicle inspection committee sent up a report on 5-7-1997 after inspecting the buses produced for approval. The Committee approved the applications of 20 persons. The Managing Director having found that 16 persons satisfied the terms and conditions of the offer, approved the names of those 16 persons on 9-7-1997. Four long distance buses were finalised on 10-7-1997 and buses on 12 other routes were finalised on 14-7-1997. All the vehicles which were approved were of 1997 model. The agreements were entered into with 16 operators on 15-7-1997 and the operations commenced on 16-7-1997. It is further averred that there was no necessity of taking of any more buses on hire basis and the same was intimated in the letter issued by the Head Office on 9-7-1997. The allegations of mala fide were denied.

6. In the counter affidavit filed by the Chief Law Officer, it is stated that the writ petitioners failed to produce their vehicles for inspection within the stipulated time. The oral representations said to have been made to the Regional Manager by the petitioners were denied. The deponent stated that the first respondent (A. Madhusudhan Rao) addressed a letter on 5-6-1997 to the Regional Manager informing him that on 6-5-1997 he stated in the presence of the Executive Director that he would produce the bus within 30 days, and that he was granted only 20 days time. He requested the Regional Manager to inform him whether he shall produce the bus. It was followed by another letter from the first respondent on 22-7-1997 informing that he made an application on 30-6-1997 requesting the Regional Manager to inspect the bus. The receipt of alleged letter dated 30-6-1997 is denied. It is further stated that the respondents 2 to 6 addressed letters on 22-7-1997 informing the Regional Manager that their buses were ready for inspection before 30-6-1997 and requesting him to intimate the date of produce their vehicles for inspection. The said letters referred to their earlier letter dated 15-7-1997 which was not at all received by the Regional Manager. In the letter dated 15-7-1997, it was mentioned that respondents 2 to 6 made a request to inspect their buses, but, there was no response. The deponent stated

categorically that no request was received from respondents 2 to 6 prior to 15-7-1997 for inspection of their buses. It is finally contended that none of the petitioners offered to produce the buses for inspection within the stipulated time. It is also contended that there was no concluded contract and the petitioners have no legal right to enforce the alleged agreement for hire. It is reiterated that such of those buses of 1997 model which were produced for inspection within the agreed time were only approved for hiring.

7. The reasons which weighed with the learned single Judge are to be found in the following extract:

"When the number of buses required was not indicated in the Notification, it leads to the inference that buses which are made to specifications and offered by the applicants were required to be taken by the Corporation. Since the applicants were made to manufacture the buses according to the need of the Corporation, definitely the principle of promissory estoppel applies to the facts of the case."

8. It was also pointed out that there is nothing in the Notification to indicate that time shall be the essence of the contract. According to the learned Judge, the consequence of non-production of the bus within a stipulated time is not laid down in the letter dated 12-5-1997 which is in contrast with the stipulation with regard to the caution money deposit.

9. As already noted, the learned Judge gave a positive direction that the appellant should inspect the vehicles and hire the buses. Having regard to the arguments advanced and the pleadings, the first point that arises for consideration is whether there was failure to produce the vehicles within the date stipulated in the "guide sheets" dated 6-5-1997 which was prepared after discussions with the Entrepreneur Committee. The learned Counsel for the respondents submits that the time shall be counted from 12-5-1997 when the technical specifications were furnished and the applicants were required to deposit the caution money. As far as the date - 15-5-1997 is concerned, that is not very material for the reason that a slight modification with regard to the nature of flooring has been provided. It is not as if this modification will have any bearing on the supply period. If the relevant date is taken as 12-5-1997, the offer of the vehicles for inspection was nowhere near the date of expiry of stipulated time of 20 to 45 days. In the letter addressed by the first respondent on 5-6-1997, there was no offer to produce the vehicles for inspection. But he only complained against grant of inadequate time. The other respondents did not address any such letters at all. For the first time in the letter dated 22-7-1997, the respondents came forward with a version that the buses were ready for inspection "before 30-6-1997" and request was made to inspect the buses, but, there was no response. The factum of making any request for inspection is denied. Even if it is taken that the respondents offered the buses for inspection on or about 30-6-1997, that would be beyond the time agreed to by the parties, assuming that the starting point of calculation should be from 12-5-1997. In any case, there is no proof of any such offer made by the respondents at any time

before 22-7-1997 i.e., after the impugned communication was issued. The respondents did wait for more than 60 days after the meeting was held by the Committee with the applicants and guide-sheets were collected from them. It is only on 9-7-1997, the Head-Office of the Corporation took a decision. We need not get into a debate on the question whether time factor is intended to be the essence of the deal. It is not proper for the Court exercising writ jurisdiction under Article 226 to go into such questions, which are not purely legal. What all we have to see is whether the appellants can be said to have acted arbitrarily or high-handedly or in a discriminatory fashion; attracting the wrath of Article 14 of the Constitution. We are unable to find any such unreasonableness or arbitrariness in the action of the respondents, viewed in the light of the undisputed or indisputable facts. The view taken by the learned single Judge implies that the buses made to specifications whenever offered by the applicants are bound to be hired by the Corporation irrespective of the delay in production of the vehicles and irrespective of the need of the Corporation. The Corporation was content with hiring 17 buses of 1997 model which were all offered for inspection within the time and found to be suitable. The writ petitioners have no legal right to insist that contract of hiring should be entered into without regard to the considerations of the need and time-factor. Though in the impugned communications dated 19-7-1997, it is not stated that the Corporation had taken a decision that no more buses should be hired, it is clear from the communication addressed by the Managing Director on 9-7-1997 that after the expiry of 60 days from the date of the meeting on 6-5-1997, no more buses need to be hired by the Corporation. The report which we have obtained from the Regional Transport Officer, Vizianagaram during the pendency of the writ petition also bears testimony to the fact that the buses of the Corporation - either owned or hired are plying on all the routes in the Vizianagaram district and there is no vacant route available. It may be recalled that one of the conditions in the Notification is that the buses hired will be deployed on the notified routes as decided by the Corporation. Thus, the idea of availability of vacant routes or the need to deploy the latest model buses on some of the routes is implicit in the Notification. It is true that the Notification issued by the Corporation should have spelt out more clearly about the outer-limit for production of the buses and the absence of obligation on the part of the Corporation to accept all the buses found suitable, but, by reason of such omission, we fail to understand how the principle of promissory estoppel could be invoked. As already observed, there was no commitment or compromise that all the buses offered by the applicants shall have to be accepted, subject to fitness irrespective of the time limit and the actual needs of the Corporation. The absence of certain particulars in the Notification does not lead to any positive commitment or assurance to hire the vehicles offered by the respondents. Promissory estoppel has to yield to paramount considerations of public interest. The Corporation which is a statutory body discharging public functions cannot be expected to incur expenditure by hiring buses beyond their needs and resources.

10. For the aforesaid reasons, we are of the undoubted view that the mandamus issued by the learned single Judge cannot be sustained and we therefore, set aside the judgment and allow the appeal.

11. WA No.1395 of 1997: In the "guide-sheet" signed by the respondent against column -- "Time chosen for production of bus", "30 days" is mentioned. But, against the next column "whether party is willing to pay caution deposit of Rs.8,000/-", the respondent mentioned as follows: "within 60 days, 1997 model bus will be produced". In the 5th column, it is stated that "chassis purchased". Thus two contradictory dates are given, but, it may be taken that the respondent agreed to offer the bus for inspection within 60 days from 6-5-1997. Even if 12-5-1997 is to be taken as relevant date as discussed earlier, still, there is no proof to the effect that he made the bus available for inspection atleast by 12-7-1997. Even if the alleged date of receipt of letter i.e., 14-5-1997 is taken into account, the respondent failed to offer the bus for inspection within 60 days from that date. According to the respondent, the vehicle was registered on 8-7-1997. The fact that the bus was getting ready for registration should have been intimated to the Corporation well in advance instead of relying on his own impression about the last date of offer. Though it is the case of the respondent that from 30-6-1997 onwards, he was approaching the Deputy Chief Traffic Manager offering to produce the bus for inspection, the same is denied in the counter affidavit. The respondent claimed to have made a written representation on 15-7-1997 to the officials of the Corporation in which he stated that the bus was ready for inspection from 30-6-1997, but, it was not inspected. If the respondent was ready to produce the bus for inspection before that date i.e., 15-7-1997, as a reasonable and prudent person, he would not have taken the risk of not intimating the Corporation in writing, The reasonable inference if that the version of the respondent that he approached the Corporation officials at any time prior to 15-7-1997 offering the bus for inspection immediately, is not correct. It is pertinent to mention that in the notice dated 12-6-1997 issued to the Corporation after the impugned letter was sent to him, the respondent did not take the stand that the period of 60 days shall be computed from 15-7-1997 which according to him is the relevant date.

12. Thus, the respondent in the present writ appeal, though docs not stand on a better footing than the respondents in other appeals, his case is a shade better than the one set up by others. Still, the WA has to be allowed.

13. WA No.1397 of 1997: The respondent in this WA undertook to produce the vehicle of 1997 model within 45 days. It is the case of the respondent that he submitted a representation on 15-7-1997 stating that his bus was ready and it may be inspected, but no steps were taken by the Corporation officials for inspection. No counter is filed. It must be therefore, taken that the representation to that effect in tact was submitted to the Regional Manager on 15-7-1997. It would be much beyond the last date, even if for the sake of argument, the starting date is taken as 17-5-1997. Hence, this writ appeal

should also be allowed.

14. WA No.1398 of 1997: In the proforma of guide-sheet, the first respondent gave two dates for producing the bus for inspection i.e., one is thirty days and another is 60 days. In the application form, he mentioned that the vehicle will be produced after granting 30 days. The second respondent also gave two periods i.e., 30 days and 45 days. It is averred in the affidavit filed in support of the writ petition that by 15-7-1997, the vehicle of the first writ petitioner was made ready and by 30-6-1997, the vehicle of the second petitioner was made ready. Elsewhere, it is stated "though the vehicles of the petitioners are ready for hiring, the respondents refused to take on hire". The writ petitioners allege that they submitted a representation on 15-7-1997 to the Regional Manager stating that their buses were ready for hiring and may be inspected. But, by that time, the period of 60 days and 45 days expired even if the relevant date is taken as 12-5-1997. No counter is filed by the appellants. Assuming that the respondents did send the letter on 15-7-1997 for the first time, there is no reason why they should not have intimated the Corporation well in advance that the vehicle was getting ready and it will be produced within a few days. In fact, no details are spelt out in the affidavit regarding the actual date of vehicles being made ready and when they were registered. For the reasons recorded in WA No.1418 of 1997, this writ appeal should also succeed.

15. Incidentally, we may mention that during the pendency of the writ appeals, a report obtained from the RTO, Vizianagaram shows that some of the vehicles were transferred to others, some are plying on town service routes and some are plying on temporary permits. It is stated that one of the vehicles is not borne on the rolls of Vizianagaram District. It is also brought to our notice by both the learned Counsel that the proposal of the Corporation to hire substantial number of buses and putting them on some other routes is under active consideration of the State Government. In case of future necessity for hiring the buses, the applications of the respondents - writ petitioners should, if other things being equal, be given due preference. We are giving this direction in view of the fact that the possibility of respondents having entertained a hope and investing substantial amount on new buses cannot be ruled out.

16. In the result, the writ appeals are allowed with the above observations. No costs.