
(1998) 03 AP CK 0010

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2012 of 1998

B. Papa Rao and Another

APPELLANT

Vs

Andhra Pradesh Road Transport Corporation and Another

RESPONDENT

Date of Decision : 18-03-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Road Transport Corporations Act, 1950 — Section 5
Road Transport Corporations Act, 1958 — Section 19(2)

Citation : AIR 1998 AP 239 : (1998) 2 ALD 745 : (1998) 3 ALT 204

Hon'ble Judges : D. Reddeppa Reddy, J;A. Hanumanthu, J

Bench : Division Bench

Advocate : Mr. C. Ramachandra Raju, for the Appellant; Mr. C.V. Ramulu, SC for APSRTC, for the Respondent

Judgement

A. Hanumanthu, J

1. The petitioners who are licencees of the respondent-Corporation to run soda and pan business at Guntur Bus Station have filed this Writ Petition challenging the tender notification dated 18-1-1998 calling for tenders from the eligible public to run one more soda and pan stall business in the same Bus Station. This writ petition has come up before this Bench on account of the reference order dated 28-1-1998 passed by our learned brother S.R. Nayak, J. as he could not agree with the ratio decidendi of another single Judge relating to the same point in the order in W-P.No.6631 of 1997 dated 4-4-1997.

2. The facts in brief, are as hereunder :

The two petitioners herein are the licencees of the two shops allotted to them by the management of the 1st respondent, the A.P.S.R.T.C. at Gunlur Bus Stand. The 1st petitioner Papa Rao has been granted licence on 30-07-1992 for running Pan Shop business on payment of licence fee of sum or Rs.19,080/- per month for initial period of three years and the said licence was renewed for a second term of three years from 20-7-1995 to 19-7-1998 on enhanced licence fee of

Rs.23,080/- per month. The said licence is still in force. The 2nd petitioner G. Ramu Reddy has been granted licence for running Soda and Cool Drinks business on 11-08-1991 for a period of three years on licence fee of Rs,27,000/- per month and it was renewed for another period of three years from 11-08-1994 to 10-08-1997 on payment of enhanced licence fee of Rs.38,880/- per month. The respondent-Corporation did not renew the licence of the 2nd petitioner for the third term. Hence, the 2nd petitioner filed a civil suit O.S.No.520 of 1997 on the file of the Subordinate Judge, Guntur seeking a decree for renewal of his licence and he also obtained interim order in I.A,No. 1709 of 1997 directing the respondent-Corporation to maintain the status quo ante as on 10-7-1997 and the said order is still in force. While the matters stood thus, the 2nd respondent i.e., Regional Manager of the 1st respondent-Corporation, in pursuance of the Circular No.64/96 dated 10-10-1996 issued by the Corporation, called for tenders for running Soda and Pan Stalls in Guntur Bus Stand by the notification bearing No.02/122(75)/97-RM(G) dated 8-12-1998. The petitioners filed this writ petition challenging the said notification calling the tenders for running Soda and Pan Stall in Guntur Bus Station and to declare the same as arbitrary, illegal and violative of Articles 14 and 21 of the Constitution of India.

3. When the matter came up before our learned brother S.R. Nayak, J. the learned Counsel for the petitioners brought to his notice the decision of the single Judge of this Court in W.P.No.6631/97, dated 4-4-1997 wherein it is observed that before the licence of the petitioner therein expired if the respondents-authorities are allowed to open a third shop, it will definitely affect the business and that tantamounting to interfering with the business of the petitioner therein during the subsistence of the licence. In that case, the petitioner therein was given licence for two Cool Drink shops in Srinivasa Bus Station, Tirupathi and that licence has to expire on 31-3-1998. But, before expiry of that licence, the respondent-A.P.S.R.T.C. issued tender notification inviting tenders for issuance of licence for a third Cool Drink business, the petitioner therein challenged the said notification contending that during the subsistence of licence period, if the respondents are allowed to open one more shop, his business is likely to be affected and he may incur financial loss. The learned single Judge in those circumstances, made the observations as stated supra Disagreeing with that ratio decidendi, the learned brother S.R. Nayak, J. observed that "if the ratio that may be deduced from the above mentioned decision is to be correct one, that would certainly prejudice the public interest. If the argument of the learned Counsel for the petitioner is upheld, it would tantamount to permitting the petitioner to dictate terms to the public authorities in the matter of parting or disposing of their property. Such a course never be adopted by Courts in reviewing the administrative action". Hence, he made this reference to a Division Bench (o have an authoritative pronouncement on the question involved in this case. Thus, this writ petition has come up before this Bench.

4. Sri C. Ramachandra Raju, the learned Counsel for the petitioners vehemently contends that licence was granted in favour of these petitioners for a period of 12

years from the date of execution of licence deeds and the licence deeds would be executed for a period of 3 years at a time which is renewable for every years on payment of enhanced licence fee at the rate of 20%, 30%, 30% in 4th year, 8th year and 12th year over the existing licence fee, that the respondent-Corporation has granted licences in favour of the petitioners for carrying on the business exclusively in A.P.S.R.T.C. Bus Station, Guntur barring others to do the same business during the period of licence granted to them, that at the time when the Corporation invited tenders proposing to grant licence to do the business in Soda and Pan Shop, the petitioners are the highest bidders and licences were granted in their favour and the petitioners accepted to pay such huge sums towards licence fee with a bona fide belief and legitimate expectation that the respondent-Corporation has granted exclusive right to them for carrying on their respective businesses barring the respondent-Corporation from granting similar licence to others during the subsistence of the licence period. Hence, the action of the respondent-Corporation in calling for tenders for granting licence in respect of the same business for which the petitioners have already been granted licences, is without jurisdiction, arbitrary, unreasonable and contrary to the legitimate expectation of the petitioners. It is further contended by the learned Counsel for the petitioners that the respondent-Corporation could not act in a way detrimental to the legitimate expectation of the petitioners.

5. The learned Standing Counsel for the respondent-Corporation submits that the respondent-Corporation, while granting licences in favour of these petitioners, never gave any indication or assurance that the Corporation is not going to issue any further licences to others for the same business and as such, the petitioners have no right to challenge the present notification calling for tenders. It is further contended that in pursuance of its revised policy, the management of the respondent-Corporation issued the Circular dated 10-10-1996 in the public interest with a view to augment its financial resources, restricting the licence period of the Stalls, Shops, Office accommodation located in the bus stand and commercial complexes and also issued new guidelines with respect to all the existing licences and in pursuance of the said new guidelines, the respondent-Corporation issued the impugned notification calling for tenders and that there is nothing on record to show that the said revised policy of the respondent-Corporation is not in the public interest or it is actuated by mala fides. The learned Standing Counsel further contends that the doctrine of legitimate expectation has no application to the facts in this case and even if it is there, the decision of the management of the respondent-Corporation in issuing the impugned notification is not based upon any abuse of the power vested in it.

6. In view of the rival contentions raised by the learned Counsel on either side, the point that arises for consideration in this petition is whether the petitioners have got a vested or accured right to challenge the impugned notification issued by the respondent-Corporation ?

7. Admittedly, the petitioners are the licencees of the respondent-Corporation to

carry on the particular businesses in the bus stand premises of the respondent-Corporation at Guntur. The licence with respect of 2nd petitioner is already over. The licence with respect to the 1st petitioner for carrying his business in selling Pan is going to expire by 19-7-1998 as seen from the licence granted in favour of these petitioners. It cannot be disputed that the grant of licence depends upon the policy prevailing as on the date of grant of the licence. There is nothing on record to show that the respondent-Corporation at the time of granting such licences in favour of the petitioners gave an impression to the petitioners that the respondent-Corporation is not going to issue any licences in future for the same business to others in the said premises. It may be a fact that at the time when the licences were issued in favour of these petitioners, they were the only licencees carrying on the said business. But, that does not mean that the respondent-Corporation had given an undertaking or promise to the petitioners that in future or during the continuance of their licences, no other licence will be issued to others for the same business. Therefore, the petitioners have no vested right to challenge the impugned notification.

8. It is contended by the learned Counsel for the petitioners that it was the policy of the Management of the respondent-Corporation to issue licences only for a particular business to one individual and in pursuance of that policy and in the fond hope that the same policy will be continued by the respondent-Corporation the petitioners agreed to pay the enhanced licence fee and, therefore, it is not open for the respondent-Corporation to change its policy till the expiry of the licence granted in favour of the 1st petitioner and issue the impugned notification. In our considered view, this contention cannot be accepted. There is nothing on record to show that it was the policy of the respondent-Corporation that licence will be issued only to a single person to carry on a particular business. Even if it is admitted for the argument sake that it is so, a decision taken on prior policy would not bind the management of the respondent-Corporation for all times to come. When the management of the respondent-Corporation is satisfied that the change in its policy is necessary in the public interest, it would be entitled to revise the policy and lay down a new policy. The Court could not bind the management of the respondent-Corporation with a policy that was existing on the date of issuance of the licence as per the previous policy. The Court would prefer to allow free play to the management of the respondent-Corporation to evolve its fiscal policy in the public interest and to act upon the same. The management of the respondent-Corporation is entitled, therefore, to issue or withdraw or modify its licencing policy in accordance with its new scheme evolved. In this context, the decision of the Apex Court in *P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others*, may be referred to. In that case, the Government of India notified particular export policy in Ready Made Garments for the year 1994-95. The petitioners who were the exporters in Ready Made Garments had applied for licence under the existing policy. But, in the year 1996, the Government of India changed its policy. The petitioners challenged the change in the policy of the Government on the ground

that they are entitled for licence under the old policy on the ground that the Government had issued permits and quotas under the said policy. Under those circumstances, the Apex Court held thus :

"An applicant has no vested right to have export or import licences in terms of the policies in force at the date of his making application. For obvious reasons, granting of licences depends upon the policy prevailing on the date of grant of the licence or permit. The authority concerned may be in a better position to have the overall picture of diverse factors to grant permit or refuse to grant permission to import or export goods. The decision, therefore, would be taken from diverse economic perspectives which the executive is in a better informed position unless, as we have stated earlier, the refusal is mala fide or is in abuse of the power in which event it is for the applicant to plead and prove to the satisfaction of the Court that the refusal was vitiated by the above factors.

It would, therefore, be clear that grant of licence depends upon the policy prevailing as on the date of the grant of licence. The Court, therefore, would not bind the Government with a policy which was existing on the date of application as per previous policy. A prior decision would not bind the Government for all times to come. When the Government is satisfied that change in the policy was necessary in the public interest, it would be entitled to revise the policy and lay down new policy. The Court, therefore, would prefer to allow free play to the Government to evolve fiscal policy in the public interest, and to act upon the same. Equally, the Government is left free to determine priorities in the matters of allocations or allotments or utilisation of its finances in the public interest. It is equally entitled, therefore, to issue or withdraw or modify the export or import policy in accordance with the scheme evolved."

9. It is next contended by the learned Counsel for the petitioners that the petitioners can resist the impugned notification under the doctrine of legitimate expectations.

10. On this doctrine of legitimate expectation, Clive Lewis in his Treatise "Judicial Remedies in Public Law" at page 97 states thus:

"Decisions affecting legitimate expectations :--

In the public law field, individuals may not have strictly enforceable rights but they may have legitimate expectations. Such expectations may stem either from a promise or a representation made by a public body, or from a previous practice of a public body. The promise of hearing before a decision is taken may give rise to a legitimate expectation that a hearing will be given. A past practice of consulting before a decision is taken may give rise to an expectation of consultation before any future decision is taken, A promise to confer, or past practice of conferring a substantive benefit, may give rise to an expectation that the individual will be given a hearing before a decision is taken not to confer the benefit. The actual enjoyment of a benefit may create a legitimate expectation that the benefit will not be removed without the individual being given a hearing.

On occasions, individuals seek to enforce the promise or expectation itself, by claiming that the substantive benefit be conferred. Decisions affecting such legitimate expectations are subject to judicial review."

11. In Halsbury's Laws of England, Vol.I(1), 4th Edition at para 81 at pages 151-152, it is stated thus :

"Legitimate expectations :--A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority.

12. Of late, the doctrine of legitimate expectation is being pressed into service in many cases particularly in contractual sphere while canvassing the implications underlined the Administrative Law. The legitimacy of an expectation can be inferred only if it is found on the sanction of law or custom or an established procedure followed in regular and natural sequence. It is stated that "Legitimate Expectation"" is the latest recruit to a long list of concepts fashioned by the Courts for the review of the administrative actions and this creation takes its place besides such principles as the rules of natural justice, unreasonableness, the fiduciary duty of the local authorities and "in future perhaps the principle of proportionately" (vide : Union of India and others Vs. Hindustan Development Corpn. and others, . In the same decision i.e., Union of India and others Vs. Hindustan Development Corpn. and others, , the Apex Court after elaborate discussion, observes in paras 33 and 34 thus :

"On examination of some of these important decisions it is generally agreed that legitimate expectation gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfilment of the expectation were an overriding public interest requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overriding public interest. Therefore, even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision

taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the Courts cannot interfere with a decision. In a given case, whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact. If these tests are satisfied and if the Court is satisfied that a case of legitimate expectation is made out then the next question would be whether failure to give an opportunity of hearing before the decision affecting such legitimate expectation is taken, has resulted in failure of justice and whether on that ground the decision should be quashed. If that be so, then what should be relief is again a matter which depends on several factors."

13. Once again the Supreme Court in Madras City Wine Merchants' Association and Another Vs. State of T.N. and Another, had an occasion to consider the scope of doctrine of legitimate expectation. After exhaustive survey of case law on the subject at page 535, the Apex Court held :

""From the above it is clear that legitimate expectation may arise-

- (a) If there is any express promise given by the public authority; or
- (b) Because of an existence of a regular practice which the claimant can reasonably expect to continue;
- (c) Certain expectations must be reasonable.

However, if there is change of polity or in public interest the position is altered by a rule or legislation, no question of legitimate expectation would arise."

14. The claim based on the principle of "Legitimate expectation" can be sustained and the decision resulting in denial of such expectation can be questioned provided the same is found to be unfair, unreasonable, arbitrary and violative of principles of natural justice (vide : Food Corporation of India's case-AIR 1993 SCW 1509).

15. Analysing the facts of the present case in the light of the above decisions of the Supreme Court, it has to be seen whether there is a representation or any express promise given to the petitioners by a public authority. No doubt, the respondent-Corporation is a public authority. There is nothing on record to show that the respondent-Corporation had at any time made any express or implied promise to the petitioners herein that it is not going to issue another licence to any other person for carrying on the same business which the petitioners are earning on by virtue of licences granted in their favour, It is also not the case of the petitioners that the respondent-Corporation had at any time made such an express promise to them. Further, the licence deeds executed between the parties, would show that there is no such an express promise made by the respondent-Corporation.

16. The next aspect to be examined is whether there is any existence of regular practice which the petitioners can reasonably expect to continue. The learned

Counsel for the petitioners vehemently contends that it was never the practice of the respondent-Corporation to issue another licence for the same business during the continuance of the licence issued to a particular person to carry on a particular business. It is no doubt true that the Standing Counsel for the respondent-Corporation could not deny this fact. But on that basis it cannot be said that it was the regular practice on the part of the respondent-Corporation not to issue licence for others.

As stated supra in para 8, that by virtue of change of policy on its part, the respondent-Corporation has resorted to granting further licence for the same business in its premises and as such, notification calling for tenders was issued. There is nothing on record to show that it was the policy of the respondent-Corporation that licence will be issued only to a single person to carry on a particular business. Even if it is so, a decision taken on prior policy would not bind the management of the respondent-Corporation for all times to come. When the management of the respondent-Corporation satisfies that a change in its policy is necessary in the public interest, it would be entitled to revise that policy and lay a new policy and the Court would not bind the management of the respondent-Corporation with a policy that was existing on the date of issuance of the licence as per the previous policy.

17. Further, granting of licence is an administrative action of the management of the respondent-Corporation, It is well settled that administrative action of a public authority is subject to control by judicial review under three heads -- (1) Illegally, where the decision making authority has been guilty of error of law i.e., by purporting to exercise power it does not possess; (2) Irrationality, where the decision-making authority has acted so unreasonably that no reasonable authority would have made a decision and (3) Procedural impropriety, where the decision-making authority has failed in its duty to act fairly (vide : Council of Civil Services Union v. Minister for the Civil Services, 1984 (3) AIL E.R 935). The impugned administrative action of the respondent-Corporation in this case does not come under any of these categories. It cannot be said that the management of the respondent-Corporation has no power to issue such a notification calling for tenders for granting licence. u/s 3 of the Road Transport Corporation Act, 1950, the State Government is empowered to establish a Road Transport Corporation by notification in the official gazette which is a body Corporate with perpetual succession. u/s 5 of the Act, the management of the Corporation is vested in the Board of Directors. Section 18 of the Act deals with the general duty of the Corporation. It enumerates the various powers entrusted to the Corporation by the Parliament Section 19(2)(b) thereof reads as follows :

""To acquire and hold such property both movable and immovable as the Corporation may deem necessary for the purpose of any of the activities and to lease, sell or otherwise transfer any property held by it."

This sub-section enables the respondent-Corporation to acquire and hold property, bu(also to lease, sell or otherwise transfer that property as the

Corporation may deem necessary for the purpose of any of these activities. Therefore, issuing notification for granting licence to cany on the business, cannot be said to be beyond the power of the respondent-Corporation. Further, there is nothing on record to show that the said administrative action of the respondent is irrational or there is any procedural impropriety.

18. On a careful consideration of the facts and circumstances in this case, it cannot be said that the licences issued in favour of the petitioners create a reasonable expectation as pleaded by the learned Counsel for the petitioners. Assuming for the sake of arguments that they create reasonable expectation, such a reasonable expectation created can legally be negated if it is sought to be done as a matter of policy in the public interest as it has been held by their Lordships of the Supreme Court in P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others, :

"The doctrine of legitimate expectation plays no role when the appropriate authority is empowered to take a decision by an executive policy or under law."

19. In the instant case, exercising the powers vested under the Road Transport Corporation Act, the respondent-Corporation, as a matter of policy, decided to grant licence to other persons with respect to the business for which licences were already granted in favour of the petitioners, for augmenting its financial resources and to serve the commuters with more facilities. It may be a fact that issuing licence to third party for the same business would reduce the income of the existing licence holder, but that could not be a valid ground for this Court to stall the proceedings of the public authorities when such proceedings are meant to meet the needs of the public at large. If the contention of the learned Counsel for the petitioners is accepted, it would tantamount to permitting the licencees to dictate terms to the public authorities in the matter of parting with or disposal of their properties and such a course never be adopted by a Court in reviewing the administrative action. Further, we have no reason to hold that the respondent-Corporation did not act in public interest or for carrying out objectives entrusted to it under the Road Transport Corporation Act. Thus the point is decided against the petitioners.

20. In the result, we find no merits in this writ petition and accordingly the writ petition is dismissed. No costs.