
(2008) 01 AP CK 0050

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5124 of 1996

B.R.G.K.S.V. Educational Society

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 18-01-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

Hyderabad Municipal Corporation Act, 1955 — Section 124, 148, 148(3), 679A

Citation : (2008) 2 ALD 417 : (2008) 2 ALT 297 : (2008) 1 APLJ 60

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : V.S.R. Anjaneyalu, for the Appellant; A.G. for Respondent No. 1, G. Jhansi and K. Narasimham, for the Respondent

Judgement

G. Rohini, J.—The petitioner is a society registered under the Societies Registration Act, 1860. Having proposed to establish a Junior College exclusively for women at Vijayawada, the petitioner-society, submitted a representation, dated 1.1.1991, to the 2nd respondent-Vijayawada Municipal Corporation, requesting to grant lease of the premises of Gandhi Memorial High School for locating the proposed college. Pursuant thereto, a resolution dated 1.2.1991 was passed by the 2nd respondent-Corporation unanimously resolving to grant lease in favour of the petitioner-society for a period of 25 years subject to grant of permission by the Government of Andhra Pradesh. In pursuance thereof, the premises of Gandhi Municipal High School was delivered to the petitioner-society on 21.2.1991. The action of the 2nd respondent-Corporation was approved by the Government vide G.O. Ms. No. 299, MA, dated 29.4.1993, thereby according permission to the 2nd respondent-Corporation to lease out the first floor of Gandhi Municipal High School in favour of the petitioner-society for a period of 25 years for running a Junior College and also a Decree College on shift basis on payment of lease amount as may be fixed by the 2nd respondent from time to time and subject to usual conditions applicable to Municipal Corporation leases. Thereafter, a lease deed dated 15.6.1993 was executed by the 2nd respondent-

Corporation in favour of petitioner-society granting lease for a period of 20 years with effect from 31.1.1991. The rent payable was fixed as Rs. 27,020/-per year by the 2nd respondent-Corporation vide its resolutions dated 16.4.1991 and 22.4.1991. The petitioner was also accorded provisional permission and affiliation by the Secretary of Board of Intermediate Education vide proceedings dated 4.6.1991 to run the college by name Gandhi Mahila Kalasala for the academic year 1991-92, subject to terms and conditions specified therein. Accordingly, the petitioner-society has been running the college from the academic year 1991-92.

2. While so, by notice dated 22.2.1996 the 2nd respondent-Corporation terminated the lease and called upon the petitioner to vacate the premises in question alleging violation of conditions of lease specified therein. The said notice was purportedly issued on the basis of an order passed by the 1st respondent on 13.2.1996 cancelling G.O. Ms. No. 299, dated 29.4.1993 and directing the 2nd respondent-Corporation to take necessary further action.

Aggrieved by the said action of the respondents 1 and 2, the present writ petition is filed seeking a declaration that the memo dated 13.2.1996 issued by the 1st respondent as well as consequential termination notice dated 22.2.1996 issued by the 2nd respondent-Corporation are arbitrary and illegal.

3. It is primarily contended by the petitioner that the impugned action of the respondents in terminating the lease in favour of the petitioner-society without issuing any prior notice to the petitioner-society is arbitrary, illegal and violative of principles of natural justice. It is further contended that the alleged violation of the conditions of the lease is absolutely false and without any basis.

On behalf of the 2nd respondent-Corporation, a counter-affidavit has been filed stating as under:

In spite of notice dated 1.6.1991 calling upon the petitioner-society to pay the lease amount within 7 days, the petitioner-society paid the amount on 1.7.1991, beyond the stipulated time. That apart, since the petitioner-society was using the northern side staircase in violation of the conditions of the lease, lot of inconvenience was being caused to run the High School in the ground floor. The conditions of lease were also violated on account of petitioner's failure to include the original name of Gandhi Municipal High School as agreed upon. It was also found that the petitioner received donations to the tune of Rs. 1,58,720/- as reflected in the Income and Expenditure Statement of the petitioner-society for the year ending with 31.3.1992 in contravention of conditions of lease. Hence, the petitioner was issued a notice dated 3.7.1992 and having considered the petitioner's explanation the then Commissioner ordered that no further action was required. While so, on the basis of complaints received from some service oriented organizations protesting against grant of lease to a private organization, the Government vide telegraphic order dated 28.5.1993 stayed the operation of G.O. Ms. No. 299, dated 29.4.1993. Subsequently, though the said order was vacated on 10.6.1993, the Government by letter dated 19.6.1993 directed the

petitioner-society to explore the possibility of securing their own building for locating the women's college making it clear that it is not possible to lease out the Municipal Corporation building for a longer period. However, in spite of reminders the petitioner-society failed to take any steps to shift the college to a different building. In the circumstances, by D.O. letter dated 24.1.1995, the Secretary to Government, Education Department, requested the 2nd respondent-Corporation to take necessary action for getting the premises in question vacated. The Government also issued memo dated 16.5.1995 requesting the Corporation to place the subject-matter before the Council. Accordingly, the Council passed the Resolution No. 115, dated 29.6.1995 requesting the Government to cancel the lease. Pursuant thereto, the impugned memo dated 13.2.1996 was issued followed by the order of termination of lease dated 22.2.1996.

A separate counter-affidavit has been filed on behalf of the 1st respondent on similar" lines.

4. I have heard the learned Counsel for both parties and perused the material on record.

Sri E. Manohar, the learned Senior Counsel appearing for the petitioner while submitting that the entire action of the respondents is arbitrary, illegal and in violation of the principles of natural justice, contended that as a matter of fact after granting the sanction vide G.O. Ms. No. 299 dated 29.4.1993, u/s 148 of the Hyderabad Municipal Corporation Act, 1955 (for short, "the Act") the 1st respondent has become functus officio and therefore the question of cancellation of lease does not arise. In support of his contention the learned Senior Counsel relied upon the decision of the Supreme Court in Raghuram Rao and Others Vs. Eric P. Mathias and Others, .

The learned Advocate-General appearing for the respondents, at the outset, raised an objection as to the maintainability of the writ petition on the ground that the dispute arising out of a non-statutory contract is not in the realm of public law. Even otherwise, since the violations pointed out in the impugned termination notice cannot be adjudicated in a writ proceeding, according to the learned Advocate-General, the petitioner ought to have availed the appropriate common law remedy before the proper forum.

5. The law is well-settled that even with regard to the disputes arising out of a non-statutory contract there is no absolute bar as such to exercise the plenary power under Article 226 of the Constitution of India but how far the interference by this Court is warranted always depends upon the facts and circumstances in a given case. Each case requires to be examined on its facts and circumstances to find out the nature of the activity, scope and nature of controversy and in case the Court comes to a conclusion that the action of the State or its instrumentality is vitiated on account of arbitrariness or the same is violative of the fair procedure envisaged under Articles 14 and 21 of the Constitution of India, it is

always open to interfere even in the matters arising out of non-statutory contracts. It was laid down in *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, , that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably in its contractual, constitutional or statutory obligation, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution, and in such circumstances, there should not be any inhibition to grant the relief under Article 226 of the Constitution of India. Having reviewed all the decided cases on the said issue, the Supreme Court in *ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others*, , held that there is no absolute bar with regard to the disputes relating to contracts in case it does not involve serious disputed questions of fact, which require consideration of evidence.

Hence, even assuming that the lease dated 15.6.1993 is non-statutory, the said fact by itself will not be a bar to maintain the writ petition under Article 226 of the Constitution of India.

6. As a matter of fact, in the present case, the property in question is owned by the 2nd respondent-Corporation and the lease deed was executed by the Commissioner who is empowered u/s 124 of the Act to execute contracts on behalf of the Corporation. It is also relevant to note that Section 148(3) of the Act contemplates grant of such lease in respect of immovable property belonging to the Corporation for a term exceeding 3 years with the previous sanction of the Government. Such sanction was admittedly granted by the Government under G.O. Ms. No. 299, dated 29.4.1993. Thus, the lease in question has been granted in exercise of the statutory power by a local authority. Consequently, the dispute arising out of such a contract, when challenged on the ground of arbitrary action cannot be held to be beyond the realm of public law.

7. Coming to the merits of the case, as could be noticed from the pleadings of the respective parties, admittedly, a. lease was granted in favour of the petitioner-society in respect of the premises belonging to the 2nd respondent-Corporation, after obtaining the sanction of the Government u/s 148(3) of the Act. Under the lease deed dated 15.6.1993 the first floor of the said building was leased out to the petitioner-society for running a Women's College under the name and style of Gandhi Mahila Kalasala. However, it is not in dispute that the petitioner was put in possession of the premises much prior to that on 21.2.1991.

The case of the respondents is that since several conditions of lease were violated by the petitioner, the 2nd respondent-Corporation was constrained to issue notice dated 3.7.1992 calling upon the petitioner to rectify the defects.

8. The petitioner-society did not dispute the fact that the notice dated 3.7.1992 was issued by the 2nd respondent-Corporation, however, it is stated that all the allegations were false and factually incorrect and, therefore, a reply dated 11.7.1992 was given explaining the whole situation and thereupon the further

proceedings were dropped by the respondents.

Even in the counter-affidavit of the respondent-Corporation, it was admitted that after considering the petitioner's explanation the then Commissioner ordered that no further action was required.

9. However, the impugned termination of lease appears to be mainly on account of objections raised by public protesting against grant of lease of premises belonging to the Corporation to a private society. It is clear from the counter-affidavit that pursuant to the Government Memo dated 16.5.1995, the matter was considered by the 2nd respondent-Corporation and a resolution was passed on 29.6.1995 to cancel the lease. Accordingly, 1st respondent vide impugned Memo dated 13.2.1996 cancelled its earlier order in G.O. Ms. No. 299, dated 29.4.1993 and requested the 2nd respondent to take necessary further action as per the lease rules. Pursuant thereto, the 2nd respondent-Corporation issued the termination order dated 22.2.1996 thereby terminating the lease in favour of the petitioner and calling upon to handover the vacant possession of the building after the expiry of one month from the date of receipt of the said order. Though the termination order dated 22.2.1996 referred to the 1st respondent's memo dated 13.2.1996, as could be seen from the order itself, the same was based upon various other allegations including the violation of Conditions 6, 10, 15, 16 and 17 of the Lease Deed, dated 15.6.1993.

10. The specific plea of the petitioner is that most of the allegations made in the impugned order dated 22.2.1996 related to the period prior to execution of lease deed dated 15.6.1993, which were already explained by the petitioner in its reply dated 11.7.1992 and having accepted the same the further proceedings were dropped could not be disputed by the 2nd respondent. With regard to other allegations relating to violation of conditions of lease, it is contended that there was no prior notice to the petitioner giving an opportunity to meet the said allegations.

As a matter of fact, according to the petitioner the termination of lease is permissible only where the leased premises is used for a purpose other than educational purpose or where the lessee commits default in payment of rents as agreed under Clauses 4 and 5 which alone contained a forfeiture clause. It is contended that since there was no prior notice, the petitioner could not raise its objections against the impugned Taction of cancellation of lease.

11. Having heard the learned Counsel for both the parties in detail and having regard to the undisputed fact that the impugned termination was not preceded by any notice affording an opportunity to the petitioner to explain the allegations, I find force in the contention of the petitioner that the impugned order is in violation of principles of natural justice.

As could be seen from the impugned order, the termination of lease was solely based upon the alleged violation of the conditions 6, 10, 15, 16 and 17 of the Lease Deed. It was also stated by the 2nd respondent that the notice of one year

contemplated under Condition No. 12 of Lease Deed does not arise since the conditions of lease were violated by the lessee and accordingly the lease was terminated with immediate effect and the petitioner was called upon to handover the vacant possession within one month. If that be so, the principles of natural justice require a reasonable opportunity to the petitioner to explain the alleged violation of the conditions of lease. Since admittedly no such opportunity was given to the petitioner, on the face of it, the order of termination dated 22.2.1996 is in violation of principles of natural justice and therefore liable to be set aside on that ground alone.

However, the learned Senior Counsel for the petitioner further contended that since the 1st respondent has become functus officio, the question of cancellation of sanction granted under G.O. Ms. No. 299, dated 29.4.1993 does not arise. I am not inclined to accept the said contention since the power of the 1st respondent to cancel the sanction granted u/s 148 of the Act can be traced to Section 679-A of the Act which empowers the 1st respondent to cancel or suspend the licence or permission granted or orders issued either suo motu or on representation of any Councillor, the Mayor or the Commissioner in the circumstances specified thereunder. However, as rightly contended by the learned Senior Counsel, before taking action u/s 679-A of the Act the Government is bound to give an opportunity for explanation to the authority or the person concerned.

12. For the aforesaid reasons, the order of the 1st respondent dated 13.2.1996 as well as the termination of lease by the 2nd respondent by proceedings dated 22.2.1996 being in violation of the principles of natural justice cannot be sustained.

Accordingly, the impugned orders dated 13.2.1996 and 22.2.1996 are hereby set aside and the writ petition is disposed of leaving it open to the respondents to initiate fresh action following due process of law if they so choose. No costs.