

(2017) 04 AP CK 0009
In the Andhra Pradesh High Court
Case No : 4603 of 2017, 6832 of 2017

D JAHED BASHA & OTHERS

APPELLANT

Vs

TELANGANA STATE ROAD TRANSPORT CORPORATION AND
ANOTHER

RESPONDENT

Date of Decision : 06-04-2017

Acts Referred:

Constitution of India, Article 14, Article 21, Article 226 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomou

Citation : (2017) 04 AP CK 0009

Hon'ble Judges : A V Sesha Sai

Bench : SINGLE BENCH

Advocate : C Ramchander Raju, G Vidyasagar, A Ravibabu, N Vasudeva Reddy

Final Decision : Dismissed

Judgement

1. Since the cause of action which prompted the petitioners in all these writ petitions is the same and as the issues raised in these writ petitions are also the same, this Court deems it appropriate to dispose of these writ petitions by way of this common order. 2. Petitioners herein are running stalls in various bus stations falling under the Telangana State Road Transport Corporation (hereinafter called "the Corporation") by obtaining licenses individually from the Corporation on payment of license fee. According to the petitioners, they are selling branded water bottles of various recognised and reputed water bottle companies i.e., Kinley, Aquafina, Bisleri, Tataplus etc., at the M.R.P rates for the last so many yeas and ever since the commencement of the license period of their respective stalls. It is also the case of the petitioners herein that the previous licensees were also selling branded water bottles of reputed companies irrespective of the nature of their business. It is also pleaded that the same has been the well recognised practise in the erstwhile A.P.S.R.T.C and the present T.S.R.T.C for the last so many years, permitting the licensees of all the stalls in the bus stations to

sell water bottles of all the recognised and reputed companies. 3. It is the further case of the petitioners herein that the Corporation entered into unholy business deal with Bisleri Company for unlawful enrichment of its higher officials at the cost of the licensees of all the stalls by giving monopoly rights to Bisleri company to do their business in all bus stations of the Corporation by debarring the water bottles of all other recognised and reputed companies in all the stalls of the bus stations within the jurisdiction of the Corporation and by compelling all the licensees of all the stalls to purchase the Bisleri water bottles from the nominated distributor of the Bisleri company at a very higher rate than that of the market rate of Bisleri company and to sell only the Bisleri water bottles at a very lesser margin of profit. 4. It is further pleaded that in furtherance of the said unholy agreement with Bisleri company, the Corporation issued a Circular bearing No.50 of 2016, dated 09.12.2016, compelling all the licensees of all the stalls, irrespective of their nature of business, in all the bus stations of the State of Telangana, to purchase the Bisleri water bottles from the nominated distributor of Bisleri company at higher rate than that of market rate and to sell only the Bisleri water bottles. It is also stated that the petitioners herein made representations to the respondents, but the same yielded no result. 5. In the above background, assailing the action of the respondents in insisting all the petitioners to sell only Bisleri water bottles and that too from the distributor of Bisleri company only as being illegal, arbitrary, malafide and violative of Articles 14 and 21 of the Constitution of India, these writ petitions came to be filed. 6. A counter affidavit deposed by the Law Officer of the Corporation, is filed on behalf of the respondents, denying the allegations and averments made in the writ affidavit and in the direction of justifying the impugned action. A reply is also filed by the writ petitioners. Learned counsel for the petitioners and the learned Standing Counsel for the respondent Corporation have filed their written arguments. 7. Heard Sri C.Ramchander Raju, learned counsel for the petitioners and Sri G.Vidyasagar, learned Senior Counsel for Sri A.Ravibabu and Sri N.Vasudeva Reddy, learned Standing Counsel for the Corporation apart from perusing the material available before the Court. 8. Submissions/contentions of Sri C.Ramchander Raju, learned counsel for the petitioners: 8.1. The impugned action is highly illegal, arbitrary, unreasonable and violative of Articles 14 and 21 of the Constitution of India, malafide and in the direction of creating monopoly to the Bisleri Company. 8.2. Directing the petitioners to purchase only from the Distributor of Bisleri Company and to sell the same is untenable and unsustainable and cannot stand for judicial scrutiny. 8.3. Having allowed all the licensees of the stalls to sell water bottles all these years, irrespective of their business as per the individual licenses, it is absolutely not open for the respondent Corporation to impose fetters on the business activities of the petitioners and the action of the respondents in the said direction is contrary to the Doctrine of Legitimate expectation. 8.4. The previous licensees of the stalls were also selling the branded water bottles of the reputed companies irrespective of their nature of business and having allowed so, earlier, there is no justification for the respondents to restrain the present licensees from doing so and the said

action is discriminatory and the impugned action is also prejudicial to the public interest. 8.5. There has never been any insistence by the respondent Corporation to pay additional amount of license fee in terms of Circular dated 24.09.2013 for selling the water bottles as the practise of permitting all the licensees to sell the water bottles is a long standing and recognised practise. 8.6. In the tender notification, responding to which the petitioners submitted the tenders, the respondent Corporation did not mention that the Corporation would not permit every stall owner to sell the water bottles. 8.7. It is within the knowledge of the Corporation that the Corporation would not get huge amounts of license fee unless permission is accorded to every licensee to sell water bottles and that the substantial part of business of every stall relates to sale of water bottles only and the licensees cannot survive without selling the water bottles. 8.8. The petitioners would not have offered huge amount of license fee, but for the recognised practise of the respondent Corporation permitting all the licensees to sell the water bottles irrespective of the nature of business covered by the licenses. 8.9. The respondent Corporation never treated the water bottles as unauthorised item and despite the clause in the agreement that the licensees have to run their business in accordance with the specifications in the tender notification, the same was never acted upon by the Corporation authorities and the said clause cannot be acted upon which was given go-bye by the authorities of the respondent Corporation. 8.10. By the impugned action, the consumers would be compelled to purchase the water bottles @ Rs.18/- per bottle i.e., more than the market price. The contention as regards the prevalence of the practise of permitting all the licensees to sell the water bottles for a considerable time is not denied by the respondents, as such, the same is deemed to have been admitted under the provisions of Order 8 Rules 3 and 5 of the Civil Procedure Code. 8.11. Petitioners herein are not praying for enforcement of any contractual obligation, as such, the relief sought would not fall within the realm of contract, as such, the contention touching the non-maintainability of the writ petitions advanced on behalf of the respondent Corporation cannot be sustained. 8.12. The claim of the petitioners is saved by the Doctrine of Legitimate Expectation created by the Corporation in the minds of the petitioners basing on the established long standing practise in the Corporation. 8.13. There is a threat of more number of bottles being sold on one invoice if the impugned action is permitted and the same would be prejudicial to the interest of the Corporation. To bolster his submissions and contentions, learned counsel for the petitioners places reliance on the judgments of the Hon"ble Apex Court in Confederation of Ex-Servicemen Associations And Ors. v. Union of India (Uoi) And Ors.(2006) 8 Scc 399 = 2007 (2) ALT 19.2 (DN SC), Ram Pravesh Singh And Ors. v. State of Bihar And Ors.(2006) 8 Scc 381, M.P. Oil Extraction And Anr. v. State of M.P. And Ors.(1997) 7 SCC 592, Poonam Verma And Ors. v. Delhi Development Authority, (2007) 13 SCC 154. 9. Submissions/contentions of the learned counsel appearing for the respondent/Corporation: 9.1. There is no illegality nor there is any infirmity in the questioned action and in the absence of the same the action impugned is not amenable for any judicial review under Article 226 of the

Constitution of India. 9.2. Since the cause of action arises out of a contract, writ petitions are not maintainable and various issues raised in the writ petitions cannot be gone into under Article 226 of the Constitution of India. 9.3. The petitioners herein are required to run their respective businesses by selling the items specified in the tender notification and the agreements strictly and only the petitioners 4 and 17 in W.P.No.4603 of 2017 are authorised to sell water bottles, but not other petitioners. 9.4. In view of several complaints received from the passengers regarding the quality of water and as regards charging of higher rates, the Corporation decided to enter into business partnership with a reputed firm and in the said direction the Corporation invited open tenders and Bisleri Firm emerged as successful bidder with "BIS" and "FSSAI" certification and the Corporation entered into partnership agreement with Bisleri on 07.12.2016. 9.5. In furtherance of the said agreement with Bisleri Company, the Corporation issued Circular No.50/2016-OPD(C), dated 09.12.2016. 9.6. Based on the representations, the Corporation issued further instructions on 23.12.2016, keeping it open for the licensees of water bottles to continue to sell water bottles of reputed brands with "BIS" and "FSSAI" certification in addition to Bisleri bottles with the Corporation logo and also the licensees of water bottles along with other products. 9.7. The issue in these writ petitions is purely a private obligation and no public interest is involved nor the same involves any statutory obligation and there is no prohibition of entering into contract with Bisleri Company under any law. In Support of Their Case, The Learned Advocates For The Respondents Relied on the Judgments of the Hon"ble Apex Court In Joshi Technologies International Inc. v. Union of India (Uoi) And Ors., (2015) 7 SCC 728, Arun Kumar Agrawal v. Union of India (Uoi) And Ors.,(2013) 7 Scc 1, B. Muralidhar Reddy And Ors. v. Government of A.P. And Ors.2006 (6) Ald 309 (Db), And The Order Dated 21.12.2016 In W.P.No.39117 of 2016 As Confirmed In W.A.No.1495 of 2016. 10. In the above backdrop, now the issues that emerge for consideration of this Court are: 1. Whether the petitioners are entitled for any relief from this Court? 2. Whether the petitioners have made out any case, warranting interference of this Court under Article 226 of the Constitution of India? 11. According to the learned counsel for the petitioners, there had been practise of permitting all the licensees, notwithstanding the business covered by their respective licenses, to sell drinking water also and sudden action of curtailing the petitioners violates the Doctrine of Legitimate Expectation and is an attempt to favour Bisleri company which would be prejudicial to Corporation and the public interest also. It is also the submission of the learned counsel for the petitioners that in view of the said involvement of public interest, the present writ petitions are maintainable. 12. On the other hand, it is the case of the Corporation, as advocated by the learned Senior counsel Sri G.Vidyasagar and the learned advocates on record for the respondent Corporation that there is no public interest in the cases on hand and as such the writ petitions are not maintainable and that in view of the express clause in the tender notifications and license deeds which have been agreed to mutually, the petitioners herein cannot claim benefit under the Doctrine of Legitimate Expectation. 13. The

validity and the legal sustainability of the above contentions are required to be verified and examined in the light of the material available on record and the judgments cited by the learned counsel for the petitioners and the learned Advocates for the respondent Corporation. 14. The respondent Corporation issued tender notifications, indicating the description of the items to be sold/ service offered and the particulars of which are as infra:

"DESCRIPTION OF ITEMS TO BE SOLD / SERVICES OFFERED. SL. NO.
NATURE OF BUSINESS DETAILS OF ITEMS TO BE SOLD/SERVICES OFFERED.

1 FAST FOOD CENTER Idli, Vada, Upma, Chapathi, Dosa, Vegetable biryani, Curd rice, Mysore Bajji, Tomato Bath, Poori, Pakoda, Dhahi Vada, Utappa, Tea, Coffee, Milk, Butter Milk, Bournvita, Boost, Maltova and Horlicks.

2 TOYS and LEATHER GOODS All kinds of Toys items and all kinds of leather goods

3 WATER KIOSKS Water shall be produced from the firms authorised by BIS to sell in the stall, sealed sachets of 100 ML Rs.1/- , 200 ML Rs.2/-, Filling of safe drinking water Rs.3/-, in one liter bottle, Supply of safe drinking water Rs.5/-, along with one liter bottle (BIS certificate shall be exhibited in conspicuous place).

4 BAKERY STALL Bakery : Biscuits, bread, chips, cakes, Jam, readymade packed food items and chocolates.

5 COOL DRINK, ICE CREAMS and SWAGRUHA FOODS Cool Drinks : Already manufactured and stored Drinks in bottles/packs (company Drinks) such as Limca, Thumsup, Gold spot, Pepsi, Coco-Cola, Maaza, Frooti etc., All kinds of Swagruha foods.

6 GENERAL STORES and FRUIT and FRUIT JUICE All kinds of general stores items and All kinds of Fruits and Fruit Juice.

7 WATCHES and CELL PHONES All kinds of Watches sales and services and all kinds of cell phones sales and services.

8 FRUITS and FRUIT JUICE All kinds of Fruits and Fruit Juice.

9 TEA, COFFEE and SNACKS Tea, coffee and any fried packed eatables which do not required heating or warming for sale. They should be packed in polythene wrappers or packets in ready to eat condition and should not be loosely stocked in open type vessels or tins. The Licensee shall not be permitted to have a stove/ heating point in the stall for preparation of food items.

10 MEDICAL DISPENSARY, PHARMACY and DIAGNOSTICS. All kinds of Allopathy prescribed by Medical counsel of India medicines and all kinds of Medical tests

11 CHAPPAL and PLASTICS GOODS All types of Foot Wear like Chappals, Sandals, Shoes and all kinds of plastic goods.

12 HOMEOPATHIC DISPENSARY and HOMEOPATHIC PHARMACY All kind of Homeo medicines provided with medical consultancy.

13 MOBILE SALES and SERVICES All kinds of mobiles sales and Services.

14 CLOAK ROOM Keeping of luggage of passengers : a) Brief cases, Suit cases, Leather bags and Country type boxes(Iron), Subject to ensuring that they are closed and locked. b) The licensee should not collect for each Item as follows: For 3 Hrs : Rs.5/- 6 Hrs : Rs.10/- 12 Hrs : Rs.15/- 24 Hrs : Rs.20/- Above 24 hrs Rs.5/- per each 3 hours and part of. c). The licensee should not collect more than the above mentioned rates.

15 Fruits and Fruit Juice and Chat Bandar Having a Computer with internet connection, Photo Copying, Fax Machine, DTP and Photo Studio Equipment.

16 Sweet Stall All kind of Sweet and Savoury items.

17 Leather Goods All kind of leather items.

18 Stationery and General Stores All kinds of Stationery and General items.

19 Chappal and plastic Goods All kinds of Chappal and all kinds of plastic goods

20 Fancy and Toys Plastic/Rubber goods, Bags, ladies small mirrors, Decorative papers items, Photo frames, Bangles, Trays, Toys, Cosmetic items, Detergents, shaving creams/lotions, combs, tooth pastes/brushes, flasks, roll gold items, photo albums and shampoos and all kind of toys.

21 Ice-cream, Dairy Parlour and Coffee, Soda Shoppe All kinds of ice creams, Dairy products and Coffee and Soda is sealed bottles, manufactured by reputed companies like Bislery, Kinley etc and local prepared sodas by health authorities and purified water.

22 Pharmacy All kinds of Allopathic Medicines, prescribed by Medical Council of India.

23 Departmental Stores 1 Snacks, 2 cool Drinks, 3 General - All kinds of Stationery goods, General goods, 4 Bakery, 5 Books stall, 6 plastic goods, 7 Travelling goods and readymade garments, 8 Cassette centre, 9 pan shop, 10 popcorn, 11 Flower stall, 12 Fruit stall, 16 cosmetic and bangles, 17 Fancy stores, 18. foot wear, (Note:- the licensee should not sale items other than the above mentioned items).

24 Drinking Water Water shall be procured from the firms authorised by BIS to sell in the Stall. Sealed sachets of 100 ml, 200ml. Filling of safe drinking water Rs. 3/- in one liter bottle, supply of safe drinking water Rs. 5/- along with one liter bottle (BIS certificate shall be exhibited in conspicuous place)

25 Pan and book stall All kinds of Pans and all kinds of books, Magazines, etc.,.

26 Flower and Coconut All kinds of Flowers and Kobbari bondams.

27 Canteen (For "B" Class Bus Station Only) a. Meals - Full Meals - Plate Meals. b. Tiffin Items - Idli, Vada, Upma, Chapati, Dosa, Vegetable Biryani, Curd Rice, Lemon Rice, Mysore Bajji, Tomato Bath, Poori, Pakoda, Dahi Vada and Utappa. c. Tea, Coffee, Milk, Butter Milk, Bournvita, Boost, Maltova and Horlicks.

Note: The Tenderer shall be member of Andhra Pradesh Hotel Association (APHA). If the tenderer is not a member of the APHA his/her tender shall be treated as invalid duly refunding the EMD amount paid by him/her. The Tenderer shall furnish the proof of membership of APHA along with the Tender Form.

28 Two Wheeler Parking The licensee shall permit scooter/motor cycle and two wheelers only. The licensee shall not collect more than the specified rates for Scooter/Two Wheeler/Cycle for MGBS, CVL, PRG, TDR and SKP Bus Stations. Scooter/Two Wheelers Cycles a) For 0 to 3 hrs.....05/-02/- b) For 0 to 15 hrs.....10/-05/- c) For 0 to 24 hrs.....20/-10/-

The licensee shall exhibit the rates on a board written in Telugu, English and Urdu languages at conspicuous place. The licensee shall necessarily issue a cash bill for the charges. Other "B" and "C" class Bus Station, as per the local market rates.

29 Stationery and Xerox All kinds of Stationery items and Xerox, DTP, etc.,

30 Deluxe Lounge Collection of user charges: 1. Upto one hour Rs.10/- per head. 2. Above one hr upto three hrs. Rs.20/- per head. 3. Above three hrs- for every one hr. Rs.10/- per head. "

15. It is not in dispute that all the petitioners herein entered into deeds of licensees and the same were also signed by the petitioners and a representative of the respondent Corporation. Clause 1 of the same shows the nature of business of the licensee and also mandates, in clear and unequivocal terms, that the licensees will not be permitted to sell items other than what is specified in annexure during the subsisting period of contract. Clause 9 of the licenses which deals with "Change of nature of business" obligates the licensees to do the same business which is mentioned in the tender notification for which the license is granted and the said Clause further clearly stipulates that "if the licensee is found doing business in the stall/shop other than that stipulated in the deed of license and if the licensee sells items other than those specified in the agreement/ tender schedule or as recorded in the deed of license, the license is liable for termination duly forfeiting the security deposit. 16. Condition No.19 (a) of the Deed of License stipulates that " if the licensee is found selling unauthorised items not related to his stall or sell the items at more than MRP rate, licensor can

levy the penalty up to a maximum amount on each occasion in the following manner: "19. Penalties For Selling Un-Authorised Items & Charging Excessive Rates: a. If the licensee is found selling un-authorised items/items not related to his stall or sell the items at more than MRP rates, licensor can levy penalties upto a maximum amount on each occasion as follow:

Sl No.	TYPE OF BUS STATION	AMOUNT OF PENALTY TO BE IMPOSED
1	Major and "A" Class	Rs.1,000/- on each occasion MGBS/JBS/DSNR
2	"B" Class	Rs.500/- on each occasion MNDL Bus Station
3	"C" Class	Rs.200/- on each occasion other Bus station "

17. Clause 20 deals with termination of license and as per Clause 20 (iv) the license is liable for termination with 7 days advance notice if the licensee performs business other than as specified in tender notification or as recorded in the deed of license and Clause 20 (vii) attracts termination for breach of terms and conditions of deed of license. Another clause which is contextual to be noted is Clause 13 which says that "the Corporation (Licensor) shall have right to grant license to more than one licensee to do same business which is already in existence in the same bus station/premises and the licensee shall not raise any objection over this". 18. Admittedly, in the present cases, the petitioners 4 and 17 in W.P.No.4603 of 2017 are the licensees to sell water bottles. In the impugned Circular dated 09.12.2016, the Corporation indicated the object and intention behind the impugned action and the same is as follows: "TELANGANA STATE ROAD TRANSPORT CORPORATION No.C2/437(3)/2016-OPD(M&C) Corporate office, OPD (M&C) Wing, Mushirabad, Hyd-624, Date:08.12.16, CIRCULAR No.50/2016-OPD©. Dated 09.12.2016 Sub:- Water Bottles: Sale of Bottled Water (of M/s. Bisleri International Pvt. Ltx.) with TSRTC logo at the stalls/Canteens in the Bus Stations of the Corporation-Instructions issued - Reg. ---- Introduction: Importance of Good Quality Water: Poor water quality is the leading cause of health problems. It is estimated that eighty percent of all illnesses in developing countries are caused by polluted water and 2 million people die from these illnesses every year. Pure water is an essential nutrient, the basis of fluids in all living organisms, and a requirement to sustain life, Water needs to be clean and free of toxins and microbes in order to prevent disease. Most people who are interested in health pay attention to the quality of food that goes into their body. Our bodies are 70% water and that means that good quality water is at least twice as important as food for helping our bodies carry out their normal processes. Importance of Bottled water: Bottled water is intended for human consumption, one of the most important and efficient uses of water. Purified bottled water is not just tap water in a bottle. Once this water enters the bottled water plant, several processes are employed to ensure that it meets the FDA purified water standard. These treatments may include one or more of the following: reverse osmosis, distillation, micro-filtration, carbon filtration, organisation and ultraviolet (UV) light. The finished water product is then placed

in a bottle under sanitary conditions and sold to the consumer. When we pay retail prices for bottled drinking water in lieu of water from the tap, we might think for sure that we are getting a clean, quality product that will quench our thirst and keep our cells clean and hydrated. After years of increased soft drink consumption, growing preference for bottled water has helped people find a path back to water as a healthier beverage of choice. Today people are drinking much more water than soft drinks and bottled water is growing. Therefore, with a view to abandon sale of spurious water bottles by the licensees of Stalls in the Bus Stations and to provide clean and safe drinking water to the commuters, it is decided to enforce sale of branded bottled water in the Bus stations of TSRTC. The commitment to environmental excellence holds true wherever bottled water facilities are located. Modus operandi: 1. Corporation has called tenders and appointed M/s Bisleri International Pvt. Ltd. (BIPL) as business partner to sell branded bottled water with TSRTC Logo on each Bottle to the commuters. 2. BIPL will appoint Distributors/Vendors for establishing Water Kiosks in the Bus Stations to sell Bisleri Water Bottles with TSRTC Logo to the commuting passengers. 3. The Distributors/Vendors appointed by BIPL also distribute the branded bottled water with TSRTC Logo to the licensees or Stalls/Canteens in the Bus Stations. 4. BIPL will pay a royalty to the Corporation on the invoice quantity raised/issued to the Distributors or vendors by BIPL as mentioned in the MoU. 5. Exclusive BIPL Water Kiosks will be installed in the Bus stations to: a) Sell BIPL bottled water to the customers and b) Supply bottled Water to the licensees of stalls/Canteens in the bus stations. 6. BIPL Distributors/Vendors and the licensees of Stalls/Canteens will sell the branded bottled water to the customers at MRP rates. However, in case of chilled bottled water, Re.1 extra is permitted. Guidelines to Field Managers: 1. (a) Regional Managers shall allot stall/open space at prominent place in the Bus stations (initially at major, A&B Class bus stations) to BIPL at free of cost for operating exclusive water kiosks and also a room at any available place in the Bus stations for stocking the water bottles. The stall shall be branded as "TSRTC Bisleri Water Stall". (b) Necessary electricity charges only shall be collected from BIPL appointed Distributors/vendors. (c) Any licensee who is intended to sell water bottles in their stalls/Canteens/fast Food centers has to procure the same from the Distributor/vendor who runs an exclusive Water Kiosk of TSRTC Bisleri Water stall at the bus stations. 2. The Regional Managers shall stop Allotment of stalls/spaces at the Bus Stations henceforth for the following businesses. Exclusive water kiosks Water and Combined business (water and cool drinks, Water and Snacks, Water and Popcorn, Water and Fruits etc.) 3. The existing Exclusive Water kiosks/Combined business with Water business in the Bus stations shall be continued till the expiry of their license period. However, it shall be ensured that these licensees sell only RTC logo Bisleri water bottles. The existing R.O. water plants in the Bus stations shall also be continued till expiry of their agreement period. 4. Vide circular dated 24.09.13, instructions were issued to permit the licensees of all the stalls (irrespective of existence of exclusive water stalls/kiosks at the Bus stations and irrespective of the nature businesses) to sell packaged drinking

water bottles on payment of additional license fee. In case of major, A and B Class Bus Stations, wherever permission has been accorded for sale of water bottles (additionally) in the stalls on payment of additional license fee, the licensees should be informed that they should sell only the Bisleri Water Bottles with TSRTC Logo and if they are reluctant for such proposal, they need not pay additional amount and the permission to sell Water bottles has to be withdrawn. The licensees shall sell only the permitted items as per their original business agreement and henceforth no permission shall be given for licensees of other stalls to sell water bottles. However, these licensees are at liberty to procure the branded bottled water from the Distributor/vendors of BIPL. Regional managers shall strictly ensure that only Bisleri Water bottles with RTC logo are sold by these licensees. 5. No licensee in the Bus stations shall be permitted to sell the water bottles @ more than MRP rates. However, in case of chilled water bottles, Re.1/- extra (than the MRP) may be permitted. 6. Regional Managers shall instruct the Divisional Managers/Depot Managers to cross check periodically the BIPL operated Kiosks and the licensees in the Bus stations to ensure that only BIPL Water bottles with RTC Logo on it are sold in the Bus stations. Since this is a novel concept, aimed at elimination of spurious (unhygienic) water bottles and facilitate supply of reputed branded bottled water (Hygienic) to our Valuable Commuters, the Field Managers shall extend necessary cooperation to the Distributor/vendor of BIPL and also the Stall Licensees in the Bus stations for smooth execution of the project w.e.f. 10.12.2016. The above instructions shall be followed scrupulously without giving scope for criticism. MANAGING DIRECTOR To All Regional Managers, T.S.R.T.C. Copy to" All EDS of the Corporation. Copy to: JD (V&S), All HODs (DVMs/Dy.CTMs & Dy.CAOs/AO). Copy to: All DVMs for infn. & necessary action Copy to: All DMs, ATMs of Bus Stations for infn. & nec. action. " 19. Subsequently based on the representations of licensees, the Corporation issued a Circular dated 23.12.2016, which reads as follows: " TELANGANA STATE ROAD TRANSPORT CORPORATION No.C2/437 (3)/2016-OPD(M&C) Bus Bhavan, OPD (Mktg, Com& CP), Mushirabad, Hyderabad Date: 23.12.2016 To, All Regional Manager, T.S.R.T.C, Sub:- Water bottles: Sale of Bottled water (of M/s. Bisleri International Pvt. Ltd.) with TSRTC logo in the Bus Stations of the Corporation - Issue of instructions - reg. Ref: Circular No.50/2016-OPD (C), Dated 09.12.2016--- Vide the circular cited, instructions have been issued advising the Regional Managers to ensure that the licensees sell only RTC logo Bisleri Water bottles in the Bus Stations. However, based on the representation received from the licensees, the following clarifications are issued: 1. The licensees who were granted license through tenders, to operate exclusive water kiosks can be allowed, till the expiry of their license period, to continue to sell water bottles of reputed brands with "BIS and "FSSAI" certification in addition to Bisleri bottles with "TSRTC" logo. 2. The licensees who were granted license through Tenders, to sell water bottles along with other products such as cool drinks etc. Also can be allowed till the expiry of their license period, to continue to sell water bottles of reputed brands with "BIS" and "FSSAI" certification in addition to Bisleri bottles with "TSRTC" logo. 3. The

Licenses who were granted license to sell products other than water bottles through tenders, but subsequently, granted permission to sell water bottles on payment of additional license fee, have to be informed that they should sell only Bisleri bottles with "TSRTC" logo and if they are reluctant for such proposal, they need not pay additional license fee and the permission to sell water bottles will be withdrawn. They can continue to operate their stalls by selling the products for which they have been authorised through Tenders initially. After expiry of the existing licenses, the Regional Managers shall not call tenders for allotting any space of stall for operating exclusive water kiosks for selling water bottles in combination with other products. It is therefore advised to take further necessary action, on the matter, accordingly. S/d MANAGIND DIRECTOR Copy to: All DVMs, DMs & Pos of the Regions for infn. & n/a." 20. It is the case of the Corporation in their counter that they are receiving complaints as regards quality of water and charge of higher rates i.e., in excess of MRP which prompted the Corporation to enter into partnership with Bisleri. The learned counsel for the Corporation seeks to justify the said action under Clause 13 of the deed of license, which states that the Corporation shall have right to grant license to more than one licensee to do the same business which is already in existence in the same bus stations/ premises and the licensee shall not raise any objection. It is also the submission of the learned Senior Counsel, Sri G.Vidyasagar that the petitioners herein are praying for the reliefs contrary to the agreements entered into. This Court finds sufficient force in the said submission of the learned counsel for the respondent/ Corporation. Having entered into the agreements, it is not open for the petitioners who are not the licensees of the water bottles to seek the reliefs contrary to the agreed conditions. In the considered opinion of this Court, the affidavits filed by the petitioners 4 and 17 in W.P.No.4603/2017, expressing no-objection for others to sell water bottles would not enure to the benefit of the other petitioners. 21. Coming to the judgments cited by the learned counsel for the petitioners, in the case of Confederation of Ex-Servicemen Associations And Ors. (supra 1), the Apex Court at paragraphs 33, 34 and 35, held as follows: "33. We are also not impressed by the argument that all medical benefits and facilities must be provided to exservicemen under the doctrine of "legitimate expectation". The doctrine of "legitimate expectation" is a "latest recruit" to a long list of concepts fashioned by Courts for review of administrative actions. No doubt, the doctrine has an important place in the development of Administrative Law and particularly law relating to "judicial review". Under the said doctrine, a person may have reasonable or legitimate expectation of being treated in a certain way by an administrative authority even though he has no right in law to receive the benefit. In such situation, if a decision is taken by an administrative authority adversely affecting his interests, he may have justifiable grievance in the light of the fact of continuous receipt of the benefit, legitimate expectation to receive the benefit or privilege which he has enjoyed all throughout. Such expectation may arise either from the express promise or from consistent practise which the applicant may reasonably expect to continue. 34. The expression "legitimate expectation" appears to have been originated by Lord

Denning, M.R. in the leading decision of *Schmidt v. Secretary of State* (1969) 1 All ER 904 : (1969) 2 WLR 337 : (1969) 2 Ch D 149. In *Attorney General of Hong Kong v. Ng Yuen Shiu* (1983) 2 All ER 346 : (1983) 2 AC 629 Lord Fraser referring to *Schmidt* stated; The expectations may be based on some statement or undertaking by, or on behalf of, the public authority which has the duty of making the decision, if the authority has, through its officers, acted in a way that would make it unfair or inconsistent with good administration for him to be denied such an inquiry. (emphasis supplied) 35. In such cases, therefore, the Court may not insist an administrative authority to act judicially but may still insist it to act fairly. The doctrine is based on the principle that good administration demands observance of reasonableness and where it has adopted a particular practice for a long time even in absence of a provision of law, it should adhere to such practice without depriving its citizens of the benefit enjoyed or privilege exercised." 22. In the case of *Ram Pravesh Singh And Ors.* (supra 2), the Hon"ble Apex Court at paragraph 15, held thus: "14. What is legitimate expectation? Obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practice. The term "established practice" refers to a regular, consistent predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by courts, for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established. In short, a person can be said to have a "legitimate expectation" of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. As a ground for relief, the efficacy of the doctrine is rather weak as its slot is just above "fairness in action" but far below "promissory estoppel". It may only entitle an expectant : (a) to an opportunity to show cause before the expectation is dashed; or (b) to an explanation as to the cause for denial. In appropriate cases, courts may grant a direction requiring the Authority to follow the promised procedure or established practice. A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bona fide reason given by the decision-maker, may be sufficient to negative the "legitimate expectation". The doctrine of legitimate expectation based on established practice (as contrasted from legitimate expectation based on a promise), can be invoked only by someone who has dealings or transactions or negotiations with an authority, on which such established practice has a bearing, or by someone who has a recognised legal relationship with the authority. A total stranger unconnected with the authority or a person who had no previous dealings with the authority and who has not

entered into any transaction or negotiations with the authority, cannot invoke the doctrine of legitimate expectation, merely on the ground that the authority has a general obligation to act fairly." 23. In the case of *M.P. Oil Extraction And Anr.* (supra 3), the Hon'ble Apex Court at paragraph 44, held as follows: "44. The renewal clause in the impugned agreements executed in favour of the respondents does not also appear to be unjust or improper. Whether protection by way of supply of sal seeds under the terms of agreement requires to be continued for a further period, is a matter for decision by the State Government and unless such decision is patently arbitrary, interference by the Court is not called for. In the facts of the case, the decision of the State Government to extend the protection for further period cannot be held to be per se irrational, arbitrary or capricious warranting judicial review of such policy decision. Therefore, the High Court has rightly rejected the appellant's contention about the invalidity of the renewal clause. The appellants failed in earlier attempts to challenge the validity of the agreement including the renewal clause. The subsequent challenge of the renewal clause, therefore, should not be entertained unless it can be clearly demonstrated that the fact situation has undergone such changes that the discretion in the matter of renewal of agreement should not be exercised by the State. It has been rightly contended by Dr. Singhvi that the respondents legitimately expect that the renewal clause should be given effect to in usual manner and according to past practise unless there is any special reason not to adhere to such practise. The doctrine of "legitimate expectation" has been judicially recognised by this Court in a number of decisions. The doctrine of "legitimate expectation" operates in the domain of public law and in appropriate case, constitutes a substantive and enforceable right." 24. In the case of *Poonam Verma And Ors. (SUPRA 4)*, the Hon'ble Apex Court at paragraphs 31 and 32, held as follows: "31. An endeavour has been made to invoke the principles of Legitimate Expectation and Promissory Estoppel. The doctrine of Legitimate Expectation would apply only when a practise is found to be prevailing. It has a positive concept. But, in a case of this nature where purported expectation is based on an illegal and unconstitutional order, the same is wholly inapplicable, as the same cannot be founded on an order which is per se illegal and without foundation. 32. Strong reliance has also been placed on a decision of this Court in *Ram Pravesh Singh and Ors. v. State of Bihar and Ors.: (2007)ILLJ 202 SC* wherein a Bench of this Court opined: "15. What is legitimate expectation? Obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practise. The term "established practise" refers to a regular, consistent, predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by the courts, for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the

promise made, or practise established. In short, a person can be said to have a "legitimate expectation" of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practise of the authority gives room for such expectation in the normal course. As a ground for relief, the efficacy of the doctrine is rather weak as its slot is just above "fairness in action" but far below "promissory estoppel". It may only entitle an expectant: (a) to an opportunity to show cause before the expectation is dashed; or (b) to an explanation as to the cause for denial. In appropriate cases, the courts may grant a direction requiring the authority to follow the promised procedure or established practise. A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bona fide reason given by the decision-maker, may be sufficient to negative the "legitimate expectation". The doctrine of legitimate expectation based on established practise (as contrasted from legitimate expectation based on a promise), can be invoked only by someone who has dealings or transactions or negotiations with an authority, on which such established practise has a bearing, or by someone who has a recognised legal relationship with the authority." The said decision, thus, instead of assisting the appellants runs counter to their contention." 25. In the considered view of this Court, the principles laid down in the above referred judgments rendered by the Hon"ble Apex Court on the principle of Doctrine of Legitimate Expectation would not render any assistance to the petitioners in view of the express conditions of the written agreements and the conditions in the tender notification. 26. Coming to the judgments cited by the learned advocates for the respondent Corporation,- in the case of Joshi Technologies International Inc. (supra 5), the Hon"ble Apex Court at paragraphs 69 to 71, held as follows: "69. The position thus summarized in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, can refuse to exercise. It also follows that under the following circumstances, "normally", the Court would not exercise such a discretion: 69.1. The Court may not examine the issue unless the action has some public law character attached to it. 69.2. Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion Under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration. 69.3. If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination. 69.4. Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances. 70. Further legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to the

contracts entered into by the State/public Authority with private parties, can be summarized as under: 70.1. At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness. 70.2. State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practise some discriminations. 70.3. Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, Involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings Under Article 226 of the Constitution. In such cases court can direct the aggrieved party to resort to alternate remedy of civil suit etc. 70.4. Writ jurisdiction of High Court Under Article 226 was not intended to facilitate avoidance of obligation voluntarily incurred. 70.5. Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the license if he finds it profitable to do so: and he can challenge the conditions under which he agreed to take the license, if he finds it commercially inexpedient to conduct his business. 70.6. Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages. 70.7. Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice. 70.8. If the contract between private party and the State/instrumentality and/or agency of State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court Under Article 226 of the Constitutional of India and invoking its extraordinary jurisdiction. 70.9. The distinction between public law and private law element in the contract with State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract. This Court has maintained the position that writ petition is not maintainable. Dichotomy between public law and private law, rights and remedies would depend on the factual matrix of each case and the distinction between public law remedies and private law, field cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be

examined by the High Court in writ petitions Under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision making process or that the decision is not arbitrary. 70.10. Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness. 70.11. The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. 71. Keeping in mind the aforesaid principles and after considering the arguments of respective parties, we are of the view that on the facts of the present case, it is not a fit case where the High Court should have exercised discretionary jurisdiction Under Article 226 of the Constitution. First, the matter is in the realm of pure contract. It is not a case where any statutory contract is awarded." 27. In the case of B. Muralidhar Reddy And Ors. (supra 7), a Division Bench of this Court, at paragraphs 22 to 25, held as under: "22. The doctrine of legitimate expectation invoked by Sri S. Ramachandra Rao and other learned Counsel is not available to the petitioners for seeking a direction to allow them to operate shops from the present premises because they had given bids knowing fully well that Rule 27(1) has been amended by G.O. Ms. No. 598 dated 26-5-2006. The opening note of notification dated 26-5-2006 which was published in Hyderabad District Gazette reads as under: "Andhra Pradesh Excise Lease of right of selling by Shop and conditions of Licence Rules, 2005 (including amendment) vide G.O. Ms. No. 598, Rev., (Ex.II) Dept., dated 26-5-2006." 23. It is, thus, evident that each of the tenderer including the petitioner had been made aware of the amendment carried out in Rule 27(1) vide G.O. Ms. No. 598, dated 26-5-2006. All of them gave bid keeping in view the fact that licence will be granted in accordance with amended Rule 27(1), which contains restriction of 100 meters on the location of shops and from the places of public worship, educational institutions and hospitals. Therefore, it is not open to the petitioners to contend that they had legitimate expectation to get licence to operate the shops as per the unamended Rule 27(1) and the respondents should be directed not to insist on enforcing compliance of amended Rule 27(1). The term of the licences granted to the petitioners for the year 2005-06 was upto 30-6- 2006. Therefore, it is not possible to accept their plea that they had made huge expenditure for establishing premises for running the shop in anticipation of grant of licence for future and the respondents are estopped from applying the distance criteria contained in the amended Rule 27(1) to their cases. 24. In Union of India v. International Trading Co.'s case (supra) the Supreme Court negated the argument based on the doctrine of legitimate expectation and observed: "Doctrines of promissory estoppel and legitimate expectation cannot come in the way of public interest. Indisputably,

public interest has to prevail over private interest. The case at hand shows that a conscious policy decision has been taken and there is no statutory compulsion to act contrary. In that context, it cannot be said that the respondents have acquired any right for renewal. The High Court was not justified in observing that the policy decision was contrary to statute and for that reason direction for consideration of the application for renewal was necessary. Had the High Court not recorded any finding on the merits of respective stands, direction for consideration in accordance with law would have been proper and there would not have been any difficulty in accepting the plea of the learned Counsel for the respondents. But having practically foreclosed any consideration by the findings recorded, consideration of the application would have been a mere formality and grant of renewal would have been the inevitable result, though it may be against the policy decision. That renders the High Court judgment indefensible." 25. In *Kuldeep Singh v. Government of NCT of Delhi* (supra) the Supreme Court upheld the decision of the Government of Delhi to rescind the earlier excise policy and negated the argument based on the doctrine of legitimate expectation by recording the following observations: "It is, however, difficult for us to accept the contention of the learned Senior Counsel Mr. Soli J. Sorabjee that the doctrine of "legitimate expectation" is attracted in the instant case. Indisputably, the said doctrine is a source of procedural or substantive right. See *R. v. North and East Devon Health Authority, ex parte Coughlan* 2001 QB 213. But, however, the relevance of application of the said doctrine is as to whether the expectation was legitimate. Such legitimate expectation was also required to be determined keeping in view the larger public interest. Claimant's perceptions would not be relevant therefor. The State actions indisputably must be fair and reasonable. Nonarbitrariness on its part is a significant facet in the field of good governance. The discretion conferred upon the State yet again cannot be exercised whimsically or capriciously. But where a change in the policy decision is valid in law, any action taken pursuant thereto or in furtherance thereof, cannot be invalidated. The State in its advertisement clearly stated: The grant of L-52 licence shall be subject to the acceptance of the application by the specified competent authority who may accept or reject any application without assigning any reason. The licensing authority shall be under no obligation to grant any licence for which application has been made. In view of clear stipulation made in the advertisement therefor, the appellants could not have had any legitimate expectation that they would invariably be granted a licence to deal in liquor. A date for grant of licence, however, was put in the case of *Surinder Katiyal*. The said date has been given evidently having regard to the time-frame made in the advertisement. It must have been done under a misconception. Such a clear mistake on the part of the authorities would not clothe them with any legal right. His application was received on 10-12-2004. While acknowledging receipt of the said application, it was stated that the licence will be issued on 10-1-2005. The same, however, would not mean that the contents of his application were not required to be verified in the light of the statutory requirements. Furthermore, he withdrew his application so as to enable him to apply for another vend. He filed

such an application only on 8-2-2005 which was acknowledged, as noticed hereinbefore, by the State in terms of its letter dated 6-5-2005. The said letter dated 6-5-2005 did not contain any promise that the licence would be granted by a particular date. Even otherwise, it was impermissible for the respondents to specify a date on which the licence shall be granted keeping in view the fact that it was required to process a large number of applications. It is, thus, not a case where the doctrine of legitimate expectation would be attracted." 28. In the above judgments, the Hon'ble Apex Court categorically held that the Writ jurisdiction of the High Court under Article 226 of the Constitution of India is not intended to facilitate avoidance of obligation voluntarily incurred. In the instant cases also the parties have entered into agreements to sell only the items indicated in the deeds of license, as such, they cannot maintain the writ petitions to seek the relief for avoiding the same. 29. In the case of Arun Kumar Agrawal (supra 6), the Hon'ble Apex Court at paragraphs 41 and 42, held as under: "41. We notice that the ONGC and the Government of India have considered various commercial and technical aspects flowing from the PSC and also its advantages that ONGC would derive if the Cairn and Vedanta deal was approved. This Court sitting in the jurisdiction cannot sit in judgment over the commercial or business decision taken by parties to the agreement, after evaluating and Assessing its monetary and financial implications, unless the decision is in clear violation of any statutory provisions or perverse or for extraneous considerations or improper motives. States and its instrumentalities can enter into various contracts which may involve complex economical factors. State or the State undertaking being a party to a contract, have to make various decisions which they deem just and proper. There is always an element of risk in such decisions, ultimately it may turn out to be a correct decision or a wrong one. But if the decision is taken bona fide and in public interest, the mere fact that decision has ultimately proved to be a wrong, that itself is not a ground to hold that the decision was mala fide or done with ulterior motives. 42. Matters relating to economic issues, have always an element of trial and error, so long as a trial and error are bona fide and with best intentions, such decisions cannot be questioned as arbitrary, capricious or illegal. This Court in State of M.P. and Ors. v. Nandlal Jaiswal and Ors.: (1986) 4 SCC 566 referring to the judgment of Frankfurter J. in Morey v. Dond 354 US 457 held that "34. we must not forget that in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call "trial and error method" and, therefore, its validity cannot be tested on any rigid "a priori" considerations or on the application of any straight jacket formula." 30. In W.P.No.39117 of 2016, a learned Single Judge of this Court refused to entertain the writ petition arising out of contractual obligation and the said judgment was confirmed by a Division bench of this Court in W.A.No.1495/2016, dated 06.01.2017. The contention advanced on behalf of the petitioners that the petitioners are not seeking any relief in the writ petitions for enforcement of contractual obligation, as such, the present writ petitions are maintainable, in the considered opinion of this Court cannot be sustained in view of the express clauses under the tender notification and the deeds of licensees

and since the cause for filing the writ petitions is obviously a cause arising out of a contractual obligation. In view of the express clauses in the tender notifications and the deeds of licenses, specifying the respective businesses to be carried on by the licensees, the contention that the tender notification did not mention that the Corporation would not permit every stall owner to sell the water bottles, as such, there cannot be any restriction, does not have any merit. 31. For the aforesaid reasons, writ petitions are dismissed. However, having regard to the nature of controversy, one month's time is granted to the licensees of the shops, other than the licensees authorised to sell the water bottles, to clear the stock of the water bottles. As a sequel, miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.