
(2016) 11 AP CK 0063
In the Andhra Pradesh High Court
Case No : Writ Petition No. 39273 of 2016

K. Srinivas

APPELLANT

Vs

The State of Telangna

RESPONDENT

Date of Decision : 30-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 ALT 790 : (2017) 2 AndhLD 257

Hon'ble Judges : Sri P. Naveen Rao, J.

Bench : Single Bench

Advocate : Sri G Tuhin Kumar, Advocate, for the Petitioner; GP for Municipal Admn & Urban Development, for the Respondent No. 1; Sri V Narasimha Goud, Advocate, for the Respondent Nos. 2 and 3

Final Decision : Disposed Off

Judgement

Sri P. Naveen Rao, J.—Petitioner was granted license to run Snack Bar (Kiosk) at Laserium Complex, Hyderabad for three years. The lease period commenced in August, 2013 and three years period expired in August, 2016. In October 2016, fresh tender notification was issued calling for enlistment by interested persons. In this writ petition, petitioner challenges the said notification.

2. Heard Sri G.Tuhin Kumar, learned counsel for petitioner, learned Government Pleader for respondent No.1, and Sri V.Narasimha Goud, learned counsel for respondents 2 and 3. As matter agitated is on question of entitlement of petitioner to maintain writ petition to claim enforcement of terms of contract, this writ petition is heard on the said issue.

3. Sri Tuhin Kumar submitted that contract was entered into with the respondent authority on 10.06.2013. In Clause-57 of the contract, power is vested in Hyderabad Metropolitan Development Authority (HMDA) to grant extension/renewal of license for a period of one year, each time, with maximum of two extensions. To consider such extension, power is vested in the HMDA to assess

the performance of the lessee on various parameters mentioned in the clause. He would submit that there was no allegation of lack of maintenance, not obtaining the fitness certificate, payment of wages to the staff etc. He would, therefore, submit that since petitioner performance is satisfactory, he is automatically entitled to such extension and not granting the extension and going for fresh tender is ex facie illegal and contrary to the terms of the contract. To buttress his contention, he placed reliance on Clauses 75 and 77 of the contract. According to Clause 75, if any terms and conditions of the contract are violated by the licensee, HMDA is competent to cancel the license. According to Clause 77, the authority is also competent to terminate the license if in the opinion of the authority, the services rendered are not up to the standard/satisfactory. Since his performance is good and satisfactory on all parameters, neither Clause 75 nor Clause 77 was invoked.

4. Learned counsel for petitioner placed reliance on the decision of Supreme Court in the case of *M.P. Oil Extraction and another v. State of Madhya Pradesh and others*, (1997) 7 SCC 592, particularly the observations made by the Supreme Court in paragraph 44. He would submit that, petitioner had "legitimate expectation" of renewal in view of clause-57 and, therefore, the renewal ought to have been granted.

5. Learned standing counsel supported the decision to go for fresh tender. According to him, the lease period expired and renewal is not automatic and the lessee is not entitled to seek extension of license. It is the discretion of the authority to grant extension/renewal and no right is vested in the lessee to insist for extension/renewal.

6. The short point for consideration in this writ petition is, whether the petitioner is entitled, as a matter of course, for extension of lease in terms of Clause 57 of the contract ?

7.1. By long line of precedents, the scope of judicial review against administrative decisions is well settled. Court can undertake judicial review of an executive decision on grounds of "illegality", "irrationality", and "procedural impropriety". The writ Court is required to consider whether the decision making process satisfies the test of reasonableness, fairness, non-arbitrariness and whether authority lacks competence. The Court is required to test whether a decision is preceded by detailed exercise and whether such decision was taken in arbitrary manner, with mala fide intention to scuttle the right of the individual.

7.2. In *Asia Foundation & Construction Ltd. v. Trafalgar House Construction (I) Ltd.*, (1997) 1 SCC 738, while referring to guidelines laid down in *Tata Cellular v. Union of India* [(1994) 6 SCC 651], Supreme Court held as under:

"9. ???. The High Court in construing certain clauses of the bid documents has come to the conclusion that such a correction was permissible and, therefore, the Bank could not have insisted upon granting the contract in favour of the appellant. We are of the considered opinion that it was not within the permissible

limits of interference for a court of law, particularly when there has been no allegation of malice or ulterior motive and particularly when the court has not found any mala fides or favouritism in the grant of contract in favour of the appellant. In *Tata Cellular v. Union of India* [(1994) 6 SCC 651] this Court has held that:

"The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers,
2. committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) **Illegality:** This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it;

(ii) **Irrationality, namely, Wednesbury unreasonableness.**

(iii) **Procedural impropriety.**

The above are only the broad grounds but it does not rule out addition of further grounds in course of time."

(emphasis supplied)

7.3. The wisdom and admissibility of decision is not amenable to judicial review unless the same is declared as arbitrary or irrational or in abuse of power. In *Reliance Airport Developers (P) Ltd. v. Airports Authority of India*, (2006) 10 SCC 1, Supreme Court elaborated on these three parameters. Supreme Court observed:

"65. In other words, to characterise a decision of the administrator as "irrational" the court has to hold, on material, that it is a decision "so outrageous" as to be in total defiance of logic or moral standards. Adoption of "proportionality" into administrative law was left for the future.

66. In essence, the test is to see whether there is any infirmity in the decision-making process and not in the decision itself. (See *Indian Rly. Construction Co. Ltd. v. Ajay Kumar* [(2006) 4 SCC 579 : 2006 SCC (L&S) 528].)

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73. While exercising power of judicial review courts should not proceed where two views are possible and one view has been taken."

7.4. In *Sri Ram Builders v. State of Madhya Pradesh and others*, (2014) 14 SCC 102, Supreme Court was considering the scope of interference of the writ Court in contractual matters. In the said case, the main plank of attack was that there was a breach of contract relating to grant of lease by Madhya Pradesh Road Transport Corporation. By referring to the principle laid down by the Supreme Court in *Tata Cellular v. Union of India*, (1994) 6 SCC 651, Supreme Court observed as under:

"58. In the ultimate analysis, the whole controversy boils down to a breach of contract by M.P. RTC entered into with the appellant. The scope of judicial review is very limited in contractual matters even where one of the contracting parties is the State or an instrumentality of the State. The parameters within which power of judicial review can be exercised, has been authoritatively laid down by this Court in a number of cases.

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60. In our opinion, the case put forward by the appellant would not be covered by the aforesaid ratio of law laid down by this Court. The High Court, in our opinion, has rightly observed that the appellant can seek the appropriate relief by way of a civil suit. The High Court in exercise of its jurisdiction under Article 226 of the Constitution of India would not normally grant the relief of specific performance of a contract. This view is supported by *Ramchandra Murarilal Bhattad v. State of Maharashtra* [(2007) 2 SCC 588]. This Court relying upon the earlier decision in *Noble Resources Ltd. v. State of Orissa* [(2006) 10 SCC 236] held as under: (*Ramchandra Murarilal Bhattad case* [(2007) 2 SCC 588], SCC p. 607, paras 50-51)

"50. ? this Court would not enforce specific performance of contract where damages would be adequate remedy. It was also held that conduct of the parties would also play an important role.

51. The expansive role of courts in exercising its power of judicial review is not in dispute. But as indicated hereinbefore, each case must be decided on its own facts."

7.5. At this stage, it is opt to refer to the decision of Supreme Court in *Radhakrishna Agarwal v. State of Bihar*, (1977) 3 SCC 457. Supreme Court held as under:

"12. The Patna High Court had, very rightly, divided the types of cases I n which breaches of alleged obligation by the State or its agents can be setup into three types. These were stated as follows:

"(i) Where a petitioner makes a grievance of breach of promise on the part of the

State in cases where on assurance or promise made by the State he has acted to his prejudice and predicament, but the agreement is short of a contract within the meaning of Article 299 of the Constitution;

(ii) Where the contract entered into between the person aggrieved and the State is in exercise of a statutory power under certain Act or Rules framed thereunder and the petitioner alleges a breach on the part of the State; and

(iii) Where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract, and the petitioner complains about breach of such contract by the State."

15. It then, very rightly, held that the cases now before us should be placed in the third category where questions of pure alleged breaches of contract are involved. It held, upon the strength of *Umakant Saran v. State of Bihar* [(1973) 1 SCC 485 : (1972) 2 LLJ 580] and *Lekhraj Satramdas v. Deputy Custodian-cum-Managing Officer* [AIR 1966 SC 334 : (1966) 1 SCR 120] and *B.K. Sinha v. State of Bihar* [AIR 1974 Pat 230 : 1973 BLJR 657] that no writ or order can issue under Article 226 of the Constitution in such cases "to compel the authorities to remedy a breach of contract pure and simple".

17. Learned Counsel contends that in the cases before us breaches of public duty are involved. The submission made before us is that, whenever a State or its agents or officers deal with the citizen, either when making a transaction or, after making it, acting in exercise of powers under the terms of a contract between the parties, there is a dealing between the State and the citizen which involves performance of "certain legal and public duties". If we were to accept this very wide proposition every case of a breach of contract by the State or its agents or its officers would call for interference under Article 226 of the Constitution. We do not consider this to be a sound proposition at all.

18. Learned Counsel for the appellants cited certain authorities in an attempt to support his submission that the State and its officers are clothed with special Constitutional obligations, including those under Article 14 of the Constitution, in all their dealings with the public even when a contract is there to regulate such dealings. The authorities cited were: *D.F. South Kheri v. Ram Sanehi Singh* where all that was decided, relying upon *K.N. Guruswamy v. State of Mysore*, was that, where the source of a right was contractual but the action complained of was the purported exercise of a statutory power, relief could be claimed under Article 226; and, *Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal* [AIR 1962 SC 1044 : 1962 Supp 3 SCR 1 : (1963) 1 SCJ 106] where the real question considered was whether the petitioner had a locus standi to question the validity of an enactment; *Basheshar Nath v. CIT* [1959 Suppl 1 SCR 528, 551 : AIR 1959 SC 149 : (1959) 35 ITR 190], which has nothing to do with any breach of contract but only lays down that "Article 14 protects us from both legislative and administrative tyranny of discrimination" *State of M.P. v. Thakur Bharat Singh*

[(1967) 2 SCR 454 : AIR 1967 SC 1170 : (1968) 1 SCJ 173] which lays that even executive action must not be exercised arbitrarily but must have the authority of law to support it; S.S. Sawhney v. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi [(1967) 3 SCR 525 : AIR 1967 SC 1836 : (1968) 1 SCJ 178], which repeats requirements of action which satisfy Articles 14 and 21 of the Constitution where compliance with these provisions is obligatory.

19. We do not think that any of these cases could assist the appellants or is at all relevant. None of these cases lays down that, when the State or its officers purport to operate within the contractual field and the only grievance of the citizen could be that the contract between the parties is broken by the action complained of, the appropriate remedy is by way of a petition under Article 226 of the Constitution and not an ordinary suit. There is a formidable array of authority against any such a proposition. In Lekhraj Satramdas Lalvani v. N.M. Shah, Deputy Custodian-cum-Managing Officer, Bombay this Court said (at p. 337):

"In our opinion, any duty or obligation falling upon a public servant out of a contract entered into by him as such public servant cannot be enforced by the machinery of a writ under Article 226 of the Constitution."

In Banchhanidhi Rath v. State of Orissa [AIR 1972 SC 843 : (1972) 4 SCC 781] this Court declared (at p. 845) (SCC p. 783, para 8):

"If a right is claimed in terms of a contract such a right cannot be enforced in a writ petition."

In Har Shankar v. Deputy Excise & Taxation Commissioner [(1975) 3 SCR 254, 265 : (1975) 1 SCC 737] a Constitution Bench of this Court observed (at p. 265) (SCC p. 747, para 21):

"The appellants have displayed ingenuity in their search for invalidating circumstances but a writ petition is not an appropriate remedy for impeaching contractual obligations."

7.6. Yet again in Life Insurance corporation of India v. Escorts Limited and others, AIR 1986 SC 1370 delineated scope of judicial review in contract matters. Supreme Court held as under:

"101. It was, however, urged by the learned counsel for the company that the Life Insurance Corporation was an instrumentality of the State and was, therefore, debarred by Article 14 from acting arbitrarily. It was, therefore, under an obligation to state to the court its reasons for the resolution once a rule nisi was issued to it. If it failed to disclose its reasons to the court, the court would presume that it had no valid reasons to give and its action was, therefore, arbitrary. ?????. While we do not for a moment doubt that every action of the State or an instrumentality of the State must be informed by reason and that, in appropriate cases, actions uninformed by reason may be questioned as arbitrary

in proceedings under Article 226 or Article 32 of the Constitution, we do not construe Article 14 as a charter for judicial review of State actions and to call upon the State to account for its actions in its manifold activities by stating reasons for such actions.

102. For example, if the action of the State is political or sovereign in character, the court will keep away from it. The court will not debate academic matters or concern itself with the intricacies of trade and commerce. If the action of the State is related to contractual obligations or obligations arising out of the tort, the court may not ordinarily examine it unless the action has some public law character attached to it. Broadly speaking, the court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. "

(emphasis supplied)

7.7. In Natural Resources Allocation, Supreme Court held:

"188. In the main opinion, it has been concluded that auction is not a constitutional mandate, in the nature of an absolute principle which has to be applied in all situations. And as such, auction cannot be read into Article 14 of the Constitution of India, so as to be applied in all situations (refer to paras 108 and 109 of the main opinion, above). Auction is certainly not a constitutional mandate in the manner expressed, but it can surely be applied in some situations to maximise revenue returns, to satisfy legal and constitutional requirements. It is therefore, that I have chosen to express the manner of disposal of natural resources by using the words "maximisation of revenue" in place of the term "auction", in the foregoing two paragraphs (i.e. paras 186 and 187). But it may be pointed out, the Attorney General for India had acknowledged during the course of hearing, that auction by way of competitive bidding was certainly an indisputable means, by which maximisation of revenue returns is assured (in this behalf other observations recorded by me in para 156 above may also be kept in mind). In the aforesaid view of the matter, all that needs to be stated is, that if the State arrives at the conclusion, in a given situation, that maximum revenue would be earned by auction of the natural resource in question, then that alone would be the process which it would have to adopt, in the situations contemplated in the foregoing two paragraphs."

8.1. In M.P.Oil Extraction, Supreme Court observed that, the respondents legitimately expected 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. Supreme Court observed, "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 an appropriate case, constitutes a substantive and enforceable right".

8.2. To appreciate the observation of the Supreme Court on the principle of

legitimate expectation, it is necessary to dwell into the facts of the said case. State of Madhya Pradesh entered into an agreement with M/s. Bastar Oil Mills and Industries Limited and M/s. Sal Udyog (Pvt.) Ltd., for supply of sal seeds grown in the State of Madhya Pradesh on payment of determined royalty. It was contended that the said contract amounted to hostile discrimination in the matter of grant of largesse so far as distribution of sal seeds is concerned by favourably treating the above two companies and affecting the economic viability of the writ petitioners. The agreement also envisaged renewal clause. Sum and substance of the challenge was invoking renewal clause by the State and granting renewal in favour of those two companies for supply of sal seeds was illegal. It was contended that "legitimate expectations" of the respondents as persons having agreement with specific renewal clause which constitute both a representation and established past practise by the State of Madhya Pradesh cannot be denied or thwarted unless overwhelming and specific higher public interest is shown to override those legitimate expectations. Supreme Court noticed in paragraph-43 the reasons for the Government decision to enter into agreement with those two companies. It appears that Bastar Oil Mills is situated in Jagdalpur, which is admittedly a backward and tribal area. Supreme Court observed that classification on the basis of geographical situation has a rational basis. Supreme Court further observed as under:

"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."

8.3. On a careful reading of the facts and issue in the said case, it is seen, similar discretion was vested in the State and State exercised the discretion in granting renewal of lease. The exercise of discretion to renew the lease was challenged. Supreme Court noticed that the clause enable the government to exercise discretion and once such clause is exercised, it cannot be said that exercise of such discretion is vitiated. Supreme Court also noticed that the earlier practise would show that such discretion was exercised and renewal was granted. Thus, it was a converse case. In the instant case, petitioner is seeking mandamus to exercise discretion in his favour. Further, in the instant case, no such renewal granted earlier was brought to the notice of the Court.

9.1. In *Jal Mahal Resorts (P) Ltd., v. K.P. Sharma*, (2014) 8 SCC 804, the decision of the Supreme Court in *M.P.Oil Extraction* is considered. Supreme Court cautioned interference of writ Court in contractual matters. Supreme Court approved the opinion expressed in paragraph-41 in *M.P.Oil Extraction*. It is opt to extract paragraph-41. It reads as under:

"41. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in out stepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields."

9.2. Supreme Court observed that "what is sought to be emphasized is that there has to be a boundary line or the proverbial "Laxman Rekha" while examining the correctness of an administrative decision taken by the State after due deliberation and diligence which do not reflect arbitrariness or illegality in its decision and execution." (para 138).

10. At this stage, it is necessary to consider the scope of Clause 57. It reads as under:

"Clause-57. The license period based on satisfactory performance (in the Three years) maybe considered for an extension at the discretion of HMDA Authority. Each extension will be for a period of one year only and a maximum of two extension shall be considered. The annual license fee for each extension shall be as fixed by the HMDA.

The extension of license will be considered based on the performance of the Lessee on the following aspects:

- i. Timely payment of advance rents
- ii. Proper maintenance of running of activity
- iii. Timely obtaining the fitness certificate
- iv. Payment of minimum wages to the staff
- v. Occurrence of accidents
- vi. Over using of the slides
- vii. Maintenance of premises
- viii. Proper security arrangements
- ix. Response of Public opinion in run, operation and customer care will be carried out every month.
- x. Proper register on all the above aspects as approved by Engineer-in-charge shall be maintained for proof. "

11. A bare perusal of this clause would show that discretion is vested in the HMDA to extend the lease for a period of one year. However, even though such discretion is vested in the HMDA to extend the lease, the clause has imposed several restrictions in exercise of such discretion; firstly, such extension can be

granted only twice and secondly, consideration for grant of extension is based on the performance of the lessee and not automatic; the clause incorporated ten sub-points on which the performance of the lessee is required to be assessed before granting extension. Per se the clause does not appear to give legitimate expectation to petitioner of automatic renewal. When discretion is vested by the contract in the employer, and if the employer is not willing to exercise the discretion to grant extension, no mandamus can be issued to grant extension. Moreover, in this case, the competent authority considered the request of the petitioner vis-à-vis the scope of grant of extension and request for extension was rejected. Non-exercise of discretion in contract matters cannot be termed as arbitrary and offending mandate of Article 14 of the Constitution of India.

12. It is not in dispute that the place where petitioner was running Snack Bar (kiosk) is Laserium complex; people come in large numbers to witness the programmes and it is a public place. Whenever the authority intend to grant lease of the public premises for any commercial activity, the primary consideration for the authority is to ensure the best possible deal/lease amount to the authority, which can be utilized for various development activities. Best possible price can be secured if the authority goes for a public auction. Thus, these are economic considerations; if intendment is to secure better price, jurisdiction of the writ Court is very limited. It is not the case of the petitioner that the decision of the respondent authority in going for fresh tender is vitiated by personal prejudice and preference of person vested with authority to take decision and such action is not bona fide. No allegations of mala fide exercise of power are made against any officer. As noted above, the only contention urged is that in terms of clause 57 of contract, he is entitled for such extension. Thus, I do not see any illegality or irregularity in the decision of the respondents to go for fresh tenders and rejection of request of the petitioner for extension of licence period.

13. As noted above, in the instant case also, petitioner is seeking enforcement of clause in the contract and to grant renewal to him and alleges breach of contract. Non-renewal of contract gives rise to cause of action for the petitioner to assail the same by way of common law remedy by claiming relief of specific performance of contract and not by way of extraordinary remedy under Article 226 of the Constitution of India. Writ remedy is not available on a grievance of the petitioner against breach of contractual obligations.

14. In the case on hand, there is no public law element involved. The petitioner claims that in terms of relevant clause provided in the contract, he has a right to get the lease renewed as a matter of course; that not granting renewal amounts to arbitrary exercise of power; that by conduct respondents have deemed to have renewed the contract. With all these submissions, petitioner was seeking to tread a path, which, by long line of precedents, some of which are referred to above, illuminate and lead to only one conclusion. Common thread that emanate from these precedents is, that such issues are not amenable to scrutiny of writ

Court in exercise of power of judicial review. Claims flowing out of terms of contract have to be agitated by way of common law remedies or through redressal mechanism mutually agreed.

15. For all the aforesaid reasons, Writ Petition is liable to be dismissed and is accordingly dismissed. It is made clear that there is no expression of opinion on merits and it is open to petitioner to work out his remedies as available in law.

16. Miscellaneous petitions if any pending shall stand closed. There shall be no order as to costs.