
(2016) 11 AP CK 0052

In the Andhra Pradesh High Court

Case No : Writ Petition No. 40256 of 2016

Yogibear Entertainment Pvt. Ltd.

APPELLANT

Vs

State of Telangana

RESPONDENT

Date of Decision : 30-11-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 226

Citation : (2017) 2 ALT 68 : (2017) 2 AndhLD 435 : (2017) 1 HLT 316

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

Bench : Single Bench

Advocate : Mr. P. Venugopal, Senior Counsel for Mr. K. Tharun Chowdary, Council, for the Petitioner; Advocate General (TG) for G.P for Tourism and Culture, for the Respondent No. 1; Mr. P. Keshava Rao, SC for GHMC, for the Respondent No. 2.; Mr. V. Narasimha Goud, S

Final Decision : Disposed Off

Judgement

P. Naveen Rao, J.—Heard Sri P. Venugopal, learned senior counsel appearing for petitioner and learned Advocate General for the State of Telangana for respondents.

2. Petitioner entered into an agreement with the Greater Hyderabad Municipal Corporation (for short GHMC) to build "Mini Golf Course" operate and transfer. This agreement was entered on 26.6.2001 and was for a period of 15 years. The terms of agreement come to an end on 30.6.2016. Petitioner claims that his agreement ought to have been renewed and he should have been continued to run the Golf Course for a further period and not renewing the agreement and high-handedly superimposing locks in respect of the petitioner's business premises is illegal, arbitrary and without authority or jurisdiction. Seeking declaration that the same has been violative of Articles 14, 19, 21 and 300-A of the Constitution of India, this writ petition is filed. Petitioner also sought for a consequential direction to forthwith remove the super-imposed locks in respect of the petitioner's business premises. To complete the narration, the business

premises established by the petitioner in consequences to the agreement dated 26.6.2001 is called as M/s. Yogibear park.

3.1. Mr. P. Venugopal, contended that Yogibear Entertainment Centre is established by spending huge finances and there was a clear understanding between the petitioner and respondent GHMC to grant further extension on expiry of the lease period. By referring to clauses 2.2 and 13.2 of the agreement, he would submit that GHMC is vested with discretion to grant renewal and the fact that 12 months before the conclusion of the contract, no steps were initiated as required by clause 13.2 of the agreement, it is deemed that the renewal clause is exercised by GHMC and renewal is granted in favour of the petitioner. He would therefore submit that the impugned action of the respondents in preventing the petitioner from carrying on his business, is ex-facie illegal, amounts to arbitrary exercise of power.

3.2 He further submitted that challenging the tender notification issued on 21.4.2016, he filed W.P. NO. 15509 of 2016, in the said writ petition he made specific allegation that this tender notification is concerning the subject premises and without considering the extension clause, such tender notification ought not to have been issued. Petitioner also filed application for extension of lease. The said writ petition is pending and this Court in WPMP No. 19208 of 2016 passed the following interim order dated 28.4.2016:-

"As the period of licence in favour of the petitioner is yet to expire, there shall be a direction to the respondent authorities not to interfere with the activities of the petitioner till the expiry of the licence period in accordance with clause 2.2 of the licence agreement dated 26.06.2001. Pendency of this writ petition shall not preclude the respondents from considering and passing appropriate orders on petitioner's representation."

3.3. He would further submit that since, no orders are passed on his application and on the contrary there was threat dispossessing him, he filed W.P. No. 19331 of 2016, wherein this Court on 17.6.2011 passed following interim order:-

"....Having regard to the fact that lease period expires by 30.6.2016 and in view of the orders passed by this Court in WPM No. 19208 of 2016 in WP 15509 of 2016 the respondents shall not interfere with the possession of the petitioner till 30.6.2016. as ordered by this Court earlier".

3.4. The above interim order was operative till 18.10.2016.

3.5. He would therefore submit that terms of the said order, and clauses in contract it was mandatory for respondents to consider extension of petitioner and even before the application considered and orders are passed, they could not have restrained the petitioner from operating from the business premises.

3.6. He would submit that the arbitration clause is incorporated in agreement, since no orders are passed, is no occasion for the petitioner to invoke the arbitration clause and therefore, petition is maintainable.

3.7. He would further submit that, the writ petition is maintainable in contractual sphere also when there is violation of the constitutional mandate by instrument of the State or the State. Petitioner is aggrieved by the arbitrary action of the respondent corporation and their actions violate the mandate of Articles 14 and 19 of the Constitution of India

4.1 Learned Advocate General (TS) submitted that the contract came to an end on 30.6.2016 and after 30.6.2016 petitioner has no manner of right to continue to occupy the subject premises. He would submit that there is no obligation on the respondents to renew the lease. The clauses relied upon by the petitioner, do not give a right in the petitioner to insist for grant of renewal. According to him, there is no provision made for renewal of contract for a further period and therefore continuation of the petitioner in the subject premises beyond 30.6.2016 is illegal.

4.2. He would submit that petitioner is seeking enforcement of terms of contract or issues flowing out of the contract and therefore writ petition is not maintainable. Specific performance of the terms of the contract are not amenable to writ jurisdiction and aggrieved party has to avail the civil law remedy. This Court in exercise of power of judicial review cannot venture into enforcement of the terms of contract. In support of his contention, he placed reliance on the decision of the Supreme Court in LIC of India v. Escorts Ltd (1) AIR 1986 1 SC 1370 (paras 101 and 102) and Natural Resources Allocation, In re, Special Reference No. 1 of 2012 (2) 2012 (10) SCC 11 more particularly para 188.

4.3. Learned Advocate General contended that the present writ petition is not maintainable as petitioner has already instituted two writ petitions earlier and in substance the grievance in all the writ petitions is same. Petitioner cannot institute successive writ petitions on the same cause of action and the writ petition is liable to be dismissed on this ground alone.

4.4 He would submit that interim order granted by this Court not to dispossess the petitioner was valid initially till 30.6.16 and extended till 17.10.2016 and thereafter interim order was not in operation. He would therefore submit that there is no protection to the petitioner for continuation in the subject premises from 18.10.2016. Petitioner also participated in the tender process. His offer was far less as compared to other participants. The tenders were finalized by awarding the contract to the best offer given from among the participants, contractual formalities are completed but property" could not be handed over because of the attitude of the petitioner. Since, contract term is already over and petitioner is illegally continuing in the subject premises, GHMC had no option but to lock the subject premises.

4.5. He further submits that request of the petitioner for renewal of the lease was already rejected.

5. In 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.

6. In *Asia Foundation and Construction Ltd. v. Trafalgar House Construction (I) Ltd.* (3) (1997) 1 SCC 738, while referring to guidelines laid down in *Tata Cellular v. Union of India* (4) (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. 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* (5) (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* [(2003) 4 SCC 579 : 2003 SCC (L&S) 528].)

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

8. In *Radhakrishna Agarwal v. State of Bihar* (6) (1977) 3 SCC 457. Supreme Court held as under:-

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."

(emphasis supplied)

9. Yet again in Life Insurance corporation of India v. Escorts Limited and others (7) AIR 1986 SC 1370 delineated scope of judicial review in contract matters. Supreme Court held as under:-

"10. 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 charade 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)

10. 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 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 chosen to express the manner of disposal of natural resources by using the "maximisation of revenue" in place of term "auction", in the foregoing paragraphs (i.e. paras 186 and 187). But it may be pointed out, the Attorney General for India had acknowledged during course of hearing, that auction by means of competitive bidding was certainly indisputable means, by which maximisation of revenue returns is assured (in this regard other observations recorded by me 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, 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."

11. In *Joshi Technologies International Inc. v. Union of India* (8) (2015) 7 SCC 728, Supreme Court summarised the scope of judicial interference in contract matters. The principles, delineated, to the extent relevant to this case, read as under:-

"69. The position thus summarised 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, it 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, the legal position which emerges from various judgments of this Court dealing with different situations/ aspects relating to contracts entered into by the State/public authority with private parties, can be summarised as under:-

70.4. Writ jurisdiction of the High Court under Article 226 of the Constitution was not intended to facilitate avoidance of obligation voluntarily incurred.

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.

70.8. If the contract between private party and the State/instrumentality and/or agency of the 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 Constitution of India and invoking its extraordinary jurisdiction.

70.9. The distinction between public law and private law element in the contract with the 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. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between the 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."

12. Basic facts are not in dispute. Petitioner was granted license to build, operate "Mini Golf Course" in Sanjivaiah Park adjacent to Tank Bund in Hyderabad and the license was for a period of 15 years ending on 30.6.2016. The only issue for consideration is whether petitioner is entitled to occupy the subject premises after 30.6.2016 and whether petitioner is entitled to claim as a matter of right for renewal of license for a further period.

13. Sri P.Venugopal, placed heavy reliance on proviso (a) to clause 2.2 and clause 13.2 of contract in support of his contention that petitioner ought to be granted renewal.

14. Relevant clauses, which may have a bearing on the rival claims are extracted hereunder:-

(i) Clause : 2.2 - License Period

"The license hereby granted is for a period of 15 years commencing from the commencement date (the License period) during which the Licensee is authorised to implement the Project and to operate Project Facility in accordance with the provisions hereof.

Provided that:-

(a) In the event of the License being extended by MCH beyond the said period of 15 years in accordance with the provisions of this Agreement, the License period shall include the period" aggregate period by which the License is so extended, and

(b) in the event of Termination, the License Period shall mean and be limited to the period commencing from the Commencement Date and ending with the

termination."

(ii) Clause: 13.1-Handing Over of the Project Assets:

Upon the expiry of the License by efflux of time and in the normal course, the Licensee shall at the end of the License Period, hand over vacant and peaceful possession of the Project Assets including Project Site/Facility at no cost to MCH failing which the Project site with assets stand reverted to MCH on and at the moment the License period expires.

(iii) Clause: 13.2-Joint Inspection and Removal of Deficiency:-

The handing over process shall be initiated at least 12 months before the actual dated expiry of the License Period by a join inspection by the MCH and the Licensee.

(iv) Clause: 14.1 -Amicable Resolution:-

(a) Save where expressly stated otherwise in this Agreement, any dispute difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement including in-completion of the Project between the parties and so notified in writing by either Party to the other (the "Dispute") in the first instance shall be attempted to be resolved amicably by the MCH.

(v) Clause : 14.2 (a) - Arbitrators:-

Any Dispute which is not resolved amicably as provided in Article 15.1 (a) shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996...."

15. On bare perusal of above clauses, prima facie it does not appear that a right is vested in the petitioner to claim that the contract should be renewed as a matter of course. On scanning through the agreement, there appears to be no specific clause for renewal of lease after completion of 15 years term. Even assuming that the GHMC is vested with discretion and ought to have exercised such discretion, in exercise of power of judicial review, this Court cannot mandate a party to a contract to exercise discretion in a particularly manner and to grant extension of license.

16. Sri P.Venugopal, sought to draw solace from clause 13.2 to contend that since GHMC did not take steps as mandated therein 12 months prior to the ending of the lease period, it is deemed that GHMC has decided to grant extension of the lease. Clause 13 deals with handing over of the Project Assets. Clause 13.1 mandates licensee to hand over the vacant and peaceful possession of the Estates including project site and facility to GHMC. Clause 13.2 provides for joint inspection and removal of deficiency, which requires commencement of handing over process at least 12 months in advance of expiry of the licensee period. Merely because no such joint inspection was undertaken as required by Clause 13.2, it cannot be inferred, more particularly, when no clause is incorporated in the agreement for renewal of the lease to hold in favour of the

petitioner that lease is deemed to have been renewed. In fact, this clause obligate initiation of process of handing over and ultimately hand over, the moment the lease period is over.

17. On the above analysis, it cannot be said actions of respondents is arbitrary and discriminatory and amounted to abuse of power vested in them and therefore offends mandate of Article 14 of the Constitution of India. It cannot be said that a party to a Contract not granting renewal of lease to another party would amount to arbitrary exercise of power vitiating mandate of Article 14 of the Constitution.

18. In the case on hand, there is no public law element involved. The relationship of petitioner and respondents is contractual and regulated by terms of contract. By his submissions on several issues agitated in the writ petition, Sri Venugopal 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.

19. Even otherwise, contract envisages resolution of disputes by mechanism provided there under. Article 14 deals with dispute resolution. It envisages resolution of the dispute amicably and if dispute is not resolved amicably, refer the dispute for resolution through means of arbitration and provisions of Arbitration and Conciliation Act, 1996, are made applicable for arbitration proceedings. Thus, even assuming that the petitioner has valid grievance with reference to enforcement of the terms of contract, he ought to have availed remedies provided in Article 14 of the contract. In fact, the writ petitioner is silent on why petitioner has not availed the remedy of arbitration. The declaration given in para 12 of the writ affidavit is bald. The declaration given by petitioner is contrary to Clause 14 of the agreement. No basis is shown for this Court to entertain the writ petition notwithstanding availability of alternative mechanism for resolution of disputes.

20. Having regard to flood of litigation, it has been the resolve of this Court to encourage litigants to avail alternative modes of resolution of disputes. That being so, this Court cannot encourage litigants to avails extra-ordinary remedy under Article 226, when parties to a contract agreed for resolution of disputes by alternative modes, such as conciliation and arbitration.

21. For all the aforesaid reasons, writ petition fails and it is accordingly dismissed. It is made clear that there is no expression of opinion and it is open to petitioner to avail appropriate remedy as available in law and to raise all pleas as agitated in this writ petition.

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

Date 30.11.2016.

After the order is pronounced, learned senior counsel for the petitioner submits that the belongings and the birds of the petitioner are still lying in the subject premises and it may be permitted to take away its belongings and the birds.

Learned standing counsel is directed instruct the competent authority to open tin subject premises on 5-12-2016 at 11.00a.m. An authorised representative of the petitioner shall be present at the premises on 5-12-2016 at 11.00 a.m. and it shall also furnish a list of its belongings. The item which the petitioner claims as belonging to him, be permitted to be taken under a cowl of panchanama in the presence of the of the officer of the respondent authority. If there is any specific objection to any of the items, reasons for such objection, be communicated to the representative of the petitioner.