

Telangana High Court

M/S. Ad Ways vs The State Of Telangana And 4 Others on 20 April, 2022

Bench: Lalitha Kanneganti

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION No. 30592 of 2021

O R D E R:

This Writ Petition is filed to declare the action of the 2nd respondent in transferring / assigning the obligations under the Authorization Agreement dated 26.10.2017 in favour of the 5th respondent as contrary to the Agreement and the same is illegal, arbitrary, against the principles of natural justice and violative of Articles 14, 19(1)(g), 21 and 300-A of the Constitution of India. A consequential direction is sought to set aside the letter dated 17.11.2021.

2. Learned Senior Counsel Sri A. Sudarshan Reddy appearing on behalf of M/s Pillix Law Firm submits that the 2nd respondent had issued tender notification dated 05.10.2016 for construction of Foot Over Bridges (FOBs.) at various locations of Hyderabad under PPP mode on a commercial format and along with the said notification, the 2nd respondent had issued request for proposal (RFP) by providing standards, specifications, design guidelines and maintenance and performance standards to be adhered to by the bidder. It is stated that the petitioner after verifying the details of the project, which was provided in the tender notification dated 05.10.2016, had participated in the competitive bidding and the petitioner was found to be the preferred bidder as it has quoted the lowest authorization period for the development of modern FOB. It is also stated that the petitioner was awarded to execute the construction of FOBs. as per the Letter of Intent and an agreement was entered on 26.10.2017 for two FOBs. at Madhapur, Cyber Towers Junction and ECIL Cross Roads. It is stated that the two FOBs. are not completed due to non-allotment of alternate sites by the GHMC. It is also stated that the two FOBs. were shifted after entering into Authorization Agreement but Respondents 3 and 4 neither executed any supplemental agreement with regard to change of location nor issued any proceedings to that effect. It is stated that further, by letters dated 22.01.2020, 14.12.2020, 23.10.2020, the petitioner had requested the 4th respondent to increase the tenure of the authorization period in view of the project location as per Article 5, Obligations of Parties, Section 5.1(d) & (e) of the Authorization Agreement, but for the best reasons known to Respondents 3 and 4, they did not choose to act upon the above-said letters. It is stated that the petitioner had invested huge amounts for completion of project and before the petitioner could commence commercial operations, COVID- 19 pandemic started and the petitioner suffered huge setbacks in terms of revenue generation from the project. It is stated that surprisingly, the petitioner was served with an intimation letter dated 12.11.2021 wherein it is stated that the 2nd respondent approved transfer of FOBs. from the administrative control of Respondents 3 and 4 ie. Project Wing to the 5th respondent i.e. Advertisement Wing with effect from 10.11.2021. It is further stated that the FOBs. constructed by the petitioner are now under the administrative control of the 5th respondent and that all the matters relating to FOBs. will be dealt with by the 5th respondent and all the communications pertaining to the said FOBs. shall only be made with the 5th respondent. Learned Senior Counsel submits that the said action of Respondents 2 to 4 and the letter issued by the 5th respondent is contrary to the terms of the Agreement and unilaterally the respondents

cannot alter the terms of the Agreement. It is submitted that as per clause 17.4(b) of Article 17 of the Authorization Agreement which reads as under:

" No amendment or modification or waiver of any provision of this Agreement, nor consent to any departure by any of the parties there from shall in any event be valid and effective unless the same is in writing and signed by the parties or their duly authorized representatives especially empowered in this behalf and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given."

there cannot be waiver of any of the provisions of the Authorization Agreement nor consent for departure by any of the parties unless the same is in writing and signed it is not valid. He submits that the particular action of the respondents in straightaway issuing this notice is contrary to the said Agreement. He also relied on clause 11.2(h) of Article 11 and submits that the rights and interest of the petitioner in the project will pass to Respondents 2 to 4 after the transfer date which is on completion of the authorization period. Hence, it is submitted that the obligation of the parties to the agreement will be entangled between the parties and cannot be either transferred or assigned and cannot be transferred in a manner unknown to law. Learned Senior Counsel relying on the judgment of the Apex Court in *Kapilaben v. Ashok Kumar Jyantilal Sheth Trough PoaGophalbhair Madhusudan Patel*¹ submits that the letter impugned in the Writ Petition is not only in violation of the Agreement but also unethical for the reason that the 5th respondent who is holding the post of Additional Commissioner (Advertisements), GHMC is also holding the post of The Director, Enforcement Vigilance and Disaster Management and he has levied several challans to the FOBs. 2019 SCC Online SC 1512 alleging the advertisement on the FOBs. as illegal in spite of the fact that the petitioner is having Authorization Agreement granted by Respondents 2 to 4. It is submitted that the 5th respondent was so prejudiced against the petitioner and started issuing challans on daily basis. The petitioner has challenged the said challans issued by the 5th respondent by filing several Writ Petitions before this Court. He submits that in spite of the categorical findings of the Hon'ble High Court, the 5th respondent is still continuing to issue challans on the very same ground. He submits that the action of the 2nd respondent in transferring / assigning the project FOBs. to the 5th respondent is completely in violation of the procedural impropriety where the decision-making authority has failed in its duty to act fairly. It is submitted that by the impugned proceedings, the Authorization Agreement is virtually being transferred to the 5th respondent and the same amounts to novation, hence, the petitioner has come before this Court.

3. Initially, on 26.11.2021, an interim order was passed and the impugned proceedings were suspended. Later, the interim order was extended from time to time.

4. Sri Pasham Krishna Reddy, learned Standing Counsel for the respondent Corporation filed a detailed counter affidavit. He submits that construction of FOBs. is completed and FOBs. are under operation and the 2nd respondent has instructed to hand over FOBs. to the Advertisement wing for better monitoring and proper implementation of the Authorization Agreement. It is stated that the role of Engineering Department ends with the construction and commissioning of FOBs. and thereafter, the advertisement wing is better equipped to monitor the Authorization Agreement,

hence, they have agreed to transfer the Authorization Agreement from Engineering Wing to Advertisement Wing. It is stated that the Authorization Agreement is made and executed between the parties ie. Greater Hyderabad Municipal Corporation and M/s GMR Ads. and Advertisement Wing is also part of GHMC and the transfer cannot be termed as violation of the terms of the contract. He further submits that as per the orders of the Commissioner, GHMC dated 10.11.2021, all the records have been handed over to the 5th respondent and the petitioner was intimated about handing over of the records by proceedings dated 17.11.2021 and in the process, the request of the petitioner was denied and the petitioner was directed to make correspondence with the 5th respondent. It is stated that when the petitioner has misused the FOBs. for advertisement and also gave vague explanations for the notices issued, the 5th respondent, who is the Director of EV & DM, GHMC issued challans for violating the Rules. Learned Standing Counsel submits that for effective utilization of the officers and staff of GHMC to bring the regulation of all the FOBs. with advertisements under a single wing, the 2nd respondent has instructed the 5th respondent to monitor the maintenance of the FOBs. with powers conferred under the Greater Hyderabad Municipal Corporation Act, 1955. It is submitted that by transferring the administrative control to the Advertisement Wing, none of the provisions of the Authorization Agreement is violated or altered. He also relied on the judgment of the Hon'ble Apex Court in Maharashtra Law Development Corporation v. State of Maharashtra² and submitted that the Court will be concerned with the correctness of the decision rather than the method to reach such decision. He submits that the measures adopted by the respondents are proportionate to the pursued objective and through the impugned decision there is no effect on the rights, interests and liberties of the petitioner. Further, relying on the judgment of the Apex Court in M/s Sethi Auto Service Station v. Delhi Development Authority, (2011) 15 SCC 616 learned Standing Counsel submits that by transfer of charge from Respondents 3 and 4 to the 5th respondent neither the rights and obligations under the Authorization Agreement are altered nor the petitioner was deprived of any benefit or advantage, hence, question of legitimate expectation does not arise. Learned Standing Counsel submits that absolutely there is no legal and tenable ground to interfere with the order impugned.

5. The sum and substance of the arguments advanced on behalf of the learned Senior Counsel is that as per the terms of the contract, the 4th respondent is the Authority and now the control has been shifted from the 4th respondent to the 5th respondent, who is not competent and the said transfer amounts to violation / altering the terms of contract. There is no dispute about the proposition that conditions of the agreement of a contract cannot be unilaterally changed as the rules of the game cannot be changed after the game starts. When extensive arguments are advanced by the learned Senior Counsel, this Court has specifically asked a query - which part of the agreement / provision / condition says that control of the FOB is with the Project Wing and now by virtue of the impugned proceedings it is transferred from Project Wing to the Advertisement Wing that amounts to change or alteration of the conditions of the Agreement. Learned Senior Counsel though relied on several provisions in the agreement, could not point out what is the violation / alteration of the terms of the Agreement. It is an admitted fact that the Agreement is between GHMC and the petitioner. There are several terms in the Agreement and as per Clause 17 of the Agreement, conditions of the Agreement cannot be changed and from the entire Agreement, learned Senior Counsel could not point out that the project wing of GHMC is specified in any of the conditions. The Corporation for effective implementation of the said contract had initially directed the project wing to take care of

installation of FOBs. and now as commissioning of FOBs. is over, for effective implementation, they wanted this to be under the administrative control of the Advertisement Wing which has nothing to do with any of the conditions in the Agreement. It is only for better administration and for convenience of GHMC. The petitioner could not make out any ground much less tenable ground to interfere with the impugned order.

6. The only grievance of the petitioner appears to be that the Additional Commissioner, who is the 5th respondent has issued certain challans against the petitioner and they assumed that if the control is transferred to him, it would cause some prejudice. That itself cannot be a ground to interfere with the proceedings impugned in the Writ Petition. This Court do not find any infirmity in the proceedings, dated 17.11.2021 and it cannot be termed as alteration or change in the terms and conditions of the contract. The Writ Petition is therefore, liable to be dismissed.

7. The Writ Petition is accordingly, dismissed. There shall be no order as to costs.

8. The miscellaneous Applications, if any shall stand closed.

_____ LALITHA KANNEGANTI, J 20th April 2022 ksld