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**SooperKanoon Citation : [sooperkanoon.com/137305](http://sooperkanoon.com/137305)**

**Court : Guwahati**

**Decided On : Jan-28-2004**

**Judge : Ranjan Gogoi, J.**

**Acts : [Constitution of India](#) - Article 226**

**Appeal No. : W.P.(C) No. 8696 of 2003**

**Appellant : A.i.A. Enterprise and anr.**

**Respondent : Guwahati Metropolitan Development Authority and ors.**

**Advocate for Def. : K.N. Choudhury and S. Shyam, Adv.**

**Advocate for Pet/Ap. : N. Dutta, S.K. Kakati and A.N. Choudhury, Adv.**

**Judgement :**

**Ranjan Gogoi, J.**

1. An order dated 7.10.2003 passed by the Chief Executive Officer, Guwahati Metropolitan Development Authority (hereinafter referred to as the 'G.M.D.A.') terminating an agreement dated 8.10.2002 executed in favour of the writ petitioner No. 1 for improvement of G.M.D.A.'s Truck Parking Yard at Gotanagar on build, operate and transfer basis (B.O.T.) has been put to challenge in the present writ

petition. The facts, in brief, may be noted at the outset :-

2. A notice inviting tenders was published by the respondent No. 2 inviting bids for the work of improvement of G.M.D.A.'s Truck Parking Yard at Gotanagor on B.O.T. basis. As per the N.I.T., the successful bidder was required to complete the Parking Yard with its own resources as per the specifications given by the respondent authority. After completion of the work, the successful bidder was to be allowed to operate the Parking Yard for a fixed period and during the period of such operation, the successful bidder was required to pay an agreed amount to the authority out of the revenue collected by him. On the completion of expiry of the period of operation, the Parking Yard was required to be handed over by the contractor to the respondent authority.

3. The petitioner No. 1 submitted its tender pursuant to the N.I.T. dated 22.4.2002 contemplating an investment of Rs. 1,07,06,125 as the total costs involved in the project. Payment of annual revenue to the tune of Rs. 43.50 lakh was offered by the petitioner No. 1. There were several other tenderers, who had submitted their respective bids. The authority, on consideration of the tenders received, accepted the tender of the petitioner and pursuant thereto an agreement dated 8.10.2002 was executed by and between the petitioner No. 1 and the Respondent No. 1. According to the petitioner, the construction works on the Parking Yard commenced and the investment as per commitments made in the tender, were made by the petitioner No. 1 and the works were duly completed. According to the petitioner, the Parking Yard was inaugurated on 9.4.2003. In terms of the agreement executed by and between the parties, the petitioner No. 1 was to operate the Parking Yard for a period of 5 years on payment of annual revenue of Rs. 43.50 lakh. The petitioner was allowed to collect parking fee from the trucks, which under the agreement was fixed at Rs. 50.00 for 8 (eight) hours. Under the specific clauses of the agreement, particularly additional Clauses 5 and 9, realisation of parking fees, over and above the rates stipulated, was contemplated to be a serious violation of the terms of the agreement entailing cancellation of the contract.

4. According to the petitioner, a show cause notice dated 25.8.2003 was served on the petitioner alleging that a report has been received from

the Superintendent of Police (City), Kamrup, Guwahati, to the effect that the petitioner No. 1 was indulging in extortion of money from trucks inspite of repeated warnings and that some employees of the petitioner No. 1, who were involved in such illegal activities, had been arrested by police. On the aforesaid basis, contravention of Clauses 5 and 9 of the Additional Conditions of the Contract was alleged and the petitioner No. 1 was asked to show cause as to why the agreement should not be terminated. On receipt of the aforesaid show cause notice, the petitioner No. 1, by its letter dated 28.8.2003, requested the Respondent authority for a copy of the Superintendent of Police's letter referred to in the show cause notice dated 25.8.2003 so as to enable it to file an effective reply against the show cause notice in question. By a letter dated 8.9.2003, the respondent No. 1 informed the petitioner that the letter of the Superintendent of Police sought for, cannot be furnished to the petitioner and that his reply should be submitted on or before 12.9.2003. The writ petitioner, in the aforesaid circumstances, obtained a copy of the F.I.R. dated 4.8.2003, reference to which had been made in the show cause notice dated 25.8.2003 and thereafter on 12.9.2003 filed its reply to the show cause notice in question. Thereafter the impugned order dated 7.10.2003 was issued cancelling the contract agreement and ordering for taking over the possession of the Parking Yard from the petitioner No. 1, which direction, on the materials on record, appear to have been duly effected.

5. The challenge against the order dated 7.10.2003, has been pleaded by the writ petitioner to be illegal and void for non-compliance with the principles of natural justice. According to the writ petitioner, a full opportunity to show cause was not afforded, inasmuch as, the letter of the Superintendent of Police, which was the basis of the show cause notice issued, was not made available to the writ petitioner. Additionally, it has been pleaded that the petitioner having made investments in the Parking Yard to the extent of Rs. 1,07,06,125.00, the take over effected on the basis of the order dated 7.10.2003, without reimbursing the petitioner any amount whatsoever, amounts to illegal confiscation of the property

belonging to the petitioner, thereby infringing the rights of the petitioner under Article 300A of the [Constitution of India](#).

6. An affidavit has been filed on behalf of the Respondents wherein a preliminary objection to the maintainability of the writ petition has been raised on the ground that the contract between the parties being determinable in nature, the remedy of the writ petitioner, if any, is to sue for damages. In the affidavit filed, the investment of Rs. 1,07,06,125.00, alleged to have been made by the writ petitioner, has been denied. It has been further stated in the affidavit filed on behalf of the Respondents that under the contract agreement between the parties, no notice prior to cancellation by invoking Additional Clauses 5 and 9 is contemplated; yet the petitioner was given an opportunity and there being sufficient materials to satisfy the authority that the actions of the writ petitioner No. 1 had contravened Clauses 5 and 9 of the Additional Conditions of Contract, the impugned cancellation order dated 7.10.2003 would not suffer from any legal infirmity, as alleged.

7. Elaborate arguments have been advanced on behalf of both the parties by the learned counsels representing them.

Mr. N. Dutta, learned senior counsel appearing for the writ petitioner has contended that the affidavit filed by the Respondents would go to show that in respect of the incident in question, after the F.I.R. was filed on 4.8.2003, the allegations made were enquired into by the Officer-in-Charge of the Jalukbari Police Station, who submitted a report dated 7.8.2.2003 to the Superintendent of Police (City), Guwahati. It is on the aforesaid basis that the Superintendent of Police (City), Guwahati had written the letter dated 8.8.2003 to the Respondent No. 1, whereafter the impugned show cause notice dated 25.8.2003 was issued. Neither the report of the Officer-in-Charge, Jalukbari Police Station dated 7.8.2003, nor the letter of the Superintendent of Police (City), Guwahati dated 8.8.2003 was furnished to the writ petitioner along with the show cause notice. In fact the letter dated 8.8.2003 of the Superintendent of Police (City), Guwahati though specifically asked for, was refused to the writ petitioner. That apart, according to the learned counsel for the petitioners, the impugned cancellation

made by order dated 7.10.2003 has been resorted to on the basis of another complaint/report of the Superintendent of Police (City) dated 15.9.2003 containing similar allegations of extortion. However, no copy of the aforesaid report and no opportunity to show cause in respect of the aforesaid allegation was afforded to the writ petitioner prior to the impugned order dated 7.10.2003. Learned counsel, therefore, submits that the impugned order was passed in flagrant violation of the principles of natural justice and consequently on the aforesaid question alone, this writ petition should be allowed and the matter be sent back to for a de novo consideration by the Respondent No. 1, after giving the petitioner a full opportunity to show cause.

8. The arguments advanced on behalf of the petitioner have met with stiff resistance from the learned counsel appealing on behalf of the Respondents.

Mr. K.N. Chaudhury, learned senior counsel for the Respondents, has argued that the contract being terminable on the happening of certain contingencies must be understood to be determinable in nature and, therefore, under Section 14(1)(C) of the Specific Relief Act, 1963, this Court ought not to pass any orders, which will have the effect of

restoration of the contract in question. A decision of the Apex Court in the case of Indian Oil Corporation Ltd. v. Amritsar Gas Service and Ors., reported in (1991) 1 SCC page 533 as well as a decision of this Court in the case of Star India Ltd. v. Arup Bora and Ors., reported in (2003) 1 GLR 619 has been relied upon by the learned counsel for the respondents in support of the above stated proposition. Learned counsel for the respondents has further argued that under Article 226 of the Constitution, there can be no scrutiny of actions taken in the execution of the contract merely because one of the contracting parties is the State. The parties in such a situation must be left to the remedy of a civil action wherein the grievances may be expressed. Two decision of the Apex Court reported in (1977) 3 SCC page 457 (Radha Krishna Agarwal and Ors. v. State of Bihar and Ors.) and (1990) 3 SCC page 753 (Mahavir Auto Stores v. Indian Oil Corporation) have been relied upon in this regard. The judgment of the Apex Court, in the case of Shrilekha Vidyarthi v. State of U.P., reported in AIR 1991 SCC page 537 has been sought to

be explained by the learned counsel for the respondents by contending that the writ scrutiny of matters in execution of the contract would be available, as held by the Apex Court in *Shrilekha* (supra), only if the contract discloses a public element. In support of the aforesaid argument, reliance has been placed on another decision of the Apex Court in the case of *Assistant Exercise Commissioner v. Issac Peter*, reported in (1994) 4 SCC page 104. Mr. Chaudhury, learned senior counsel appearing for the Respondents, has further submitted that though notice prior to cancellation as per Clauses 5 and 9 of the Additional Conditions of Contract was not required, in the instant case, notice was given to the writ petitioner, who submitted its reply to the same. The question of adequacy of notice, according to the learned counsel, would hardly be a relevant question, inasmuch as, cancellation of an agreement is not quasi judicial act requiring any prior notice. Reliance in this regard has been placed on a judgment of this Court in the case of *Jarban v. Assam Fisheries Development Corporation Limited*, reported in (1999) 1 GLR page 1 as well as an Apex Court judgment in the case of *State of Gujrat v. M.P. Shah Charitable Trust*, reported in (1994) 3 SCC page 552.

9. The arguments of the learned counsel for the respondents with regard to the maintainability of the writ petition has been sought to be answered by Mr. N. Dutta, learned counsel for the writ petitioner in his reply argument, by asserting that only contracts which are terminable at the volition of the parties, would be contracts detenninable in nature within the meaning of Section 14(1)(C) of the Specific Report Act. This, learned counsel has argued, is the true ratio of the law laid down by the Apex Court in the case of *Amritsar Gas Service* (supra). The instant contract is terminable only on the happening of certain contingencies and not on the volition of the parties. That apart, learned counsel for the petitioner in his reply argument, has contended that the instant contract having been entered into by the G.M.D.A. in exercise of its statutory powers under Section 36 of the G.M.D.A. Act, 1985, the requirement of compliance with the principles of natural justice in every action of the statutory authority would be mandatory.

10. The rival submissions advanced on behalf of the parties have been duly considered. In *Amritsar Gas* (supra), there were two clauses in the agreement which visualised cessation thereof. Under Clause 27, the contract was terminable

on the happening of certain contingencies whereas under Clause 28, the contract was terminable at the volition of either party by giving 30 days notice. The Indian Oil Corporation had terminated the contract with Amritsar Gas Service by invoking Clause 27. The Arbitrator to whom, a reference of the dispute was made, held Clause 27 to be not applicable as the occurrence of the contingencies for application of Clause 27, was held by the learned Arbitrator to have been wrongly decided by the Indian Oil Corporation. On that basis, restoration of the contract was ordered by the Arbitrator. A careful perusal of the judgment of the Apex Court in the above case, reveals that the Apex Court held that restoration of the contract could not have been ordered as Clause 28 provided for termination of the contract between the parties merely by giving of 30 days notice by either party. It is, by relying on the aforesaid law laid down by the Apex Court, that the rationale behind the statutory bar imposed by Section 14 of the Specific Relief Act was sought to be understood by this Court in *Star India v. Arup Bora* (supra). In the said case also, the contract was terminable on the happening of certain contingencies or by giving of requisite notice by either side without any such contingency occurring.

11. In the present case, the contract between the parties was made terminable only on the happening of certain events, in the absence of which, the contract was to run for its full duration of 5 years. On the ratio of the law laid down by the Apex Court in the case of *Amritsar Gas Service* (supra), such a contract would not be determinable in nature within the meaning of the said expression as appealing in Section 14(1)(e) of the Specific Relief Act, unless there is a provision in the contract agreement for its termination at the volition of the parties, which is conspicuously lacking. The preliminary objection with regard to the maintainability of the writ petition, therefore, cannot find favour with this Court.

12. Consistent with the multifarious role that a modern day State has to perform, there is ever increasing foray by the State into non-conventional areas that were hitherto outside State activities. Gone are the days when the State was concerned only with the exercise of 'sovereign functions'. The modern State is a dynamic businessman engaged in several spheres of commercial activities. Is the State to be understood to have shed its character as a 'State' while being engaged in commercial activity with its citizens so as to make it free from the constitutional

obligations under Part-III of the Constitution Is the State, in the sphere of such activities to be governed by the private law governing contractual relations between two individuals Such questions have frequently confronted the Courts. The answer is far more complex than what has been contended by Shri K. N. Chaudhury, learned senior counsel for the Respondents, who would like this Court to hold that while the constitutional mandate under Article 14 would apply only at the threshold, i.e., at the time of grant of the contract, once the contract is entered into, the relationship of the parties is to be governed only by the law of contract. Neither the decision in M/s. Radhakrishna Agarwal (supra) nor in Mahavir Auto (supra) are authorities laying down any such general proposition. In M/s. Radhakrishna Agarwal (supra), a clear exception was carved out in respect of a contract entered into by the state in exercise of its statutory powers. Reference in this regard has been made to an earlier decision of the Apex Court in the case of D.F.O., South Kheri v. .... reported in (1971) 3 SCC 864, a case which has also been relied upon by the learned counsel for the petitioner by contending that the instant contract is in exercise of powers under Section 36 of the G.M.D.A. Act, 1985, a contention, which this Court finds to be correct. In Mahavir Auto's case, even a long subsisting relationship, resembling a contract for supply of lubricants, which was sought to be terminated by cessation of supply, was held to be required to be made after giving an adequate opportunity/notice. In Shrilekha's case (supra), it has been held by the Apex Court that a contract, even sans the public element, is amenable to scrutiny on the anvil of Article 14. It would be appropriate to quote herein the following passage from the judgment of the Apex Court in Shrilekha's case as contained in paragraphs 18 and 19 of the judgment :

'18. The scope of judicial review permissible in the present case, does not require any elaborate consideration since even the minimum permitted scope of judicial review on the ground of arbitrariness or unreasonableness or irrationality, once Article 14 is attracted, is sufficient to invalidate the impugned circular as indicated later. We need not, therefore, deal at length with the scope of judicial review permissible in such cases since several nuances of that ticklish question do not arise for consideration in the present case.

19. Even otherwise and sans the public element so obvious in these appointments, the appointment and its concomitants viewed as purely contractual matters after the appointment is made, also attract Article 14 and exclude arbitrariness permitting judicial review of the impugned State action. This aspect is dealt with hereafter.'

13. The arguments advanced on behalf of the respondents that Issac Peter's case (supra) strikes a different note and clarifies the law laid down in Shrilekha's case by holding that the scrutiny of the Writ Court on the basis of Article 14, to actions in execution of a contract, would only be available when the contract discloses a public element, proceeds on a somewhat unacceptable understanding of the decision in Issac Peter's case. What was really held in Issac Peter's case is that the decision in Srilekha's case is not an authority for the proposition that the doctrine of fairness and reasonableness inherent in Article 14, could be invoked to require the State to perform an act, which was not contemplated in the agreement between the parties.

14. For the aforesaid reasons, the argument advanced that the present attempt to invoke the writ scrutiny in respect of the actions leading to termination of the contract must fail at the threshold as no such scrutiny is permissible, must be rejected.

15. Coming to next point urged, what must be noticed is that though the respondents had afforded to the writ petitioner an opportunity to show cause, yet it is now contended that no such opportunity was required as the act of cancellation made by the order dated 7.10.2003 is not a quasi judicial act. Even assuming that the aforesaid contention would be open for argument by the respondents, what this Court notices is that the authorities relied upon in support of the aforesaid argument cannot be understood to be laying down any such law of general application. While in the case of Jarban Das v. Assam Fisheries Development Corporation (1991) 1 GLR page 1, this Court did not decide the said question and proceeded, by assuming that the principles of natural justice were applicable to hold the notice afforded to be adequate and sufficient, the facts of the case of State Gujrat v. M. P. Shah Charitable Trust (1994 (3) SCC 552) must be noticed.

In M. P. Shah Charitable Trust, the Trust was granted the absolute discretion to fill up 12 seats in a Medical College established in the year 1954 on a payment of Rs. 15,00,000.00 made by one M. P. Shah, the predecessor of the Trust. The said privilege continued in favour of the Trust uninterruptedly since the year 1954 and continued to remain in force notwithstanding the negation of any such right by the Apex Court in the case of J.P. Unikrishnan v. State of Andhra Pradesh (1993) 1 SCC 645. The privilege was brought to an end and it is in that context that the Apex Court held that such a cancellation would not involve a quasi judicial act requiring prior notice. The law laid down by the Apex Court must be understood in that context and can hardly have any application to the facts of the present case where a statutory contract has been sought to be terminated by a statutory authority by contending that

certain contingencies, as contemplated, had occurred.

16. This would bring us to the last limb of the case, i.e., whether the notice/opportunity afforded to the writ petitioner was adequate. The requirement of notice/opportunity being a principle of natural justice, cannot be entrapped in any strait jacket formula. Much would depend on the facts of a case and it is by having regard to all relevant facts that the question of adequacy/sufficiency of the notice must be decided keeping in mind the cardinal principle involved, i.e., that the person proceeded against must have all reasonable opportunity to answer the allegations levelled.

17. In the instant case, a perusal of the records produced in original by the learned counsel for the respondents would go to show that after the F.I.R. dated 4.8.2003 was filed, the Officer-in-Charge of the Jalukbari Police Station had himself made an enquiry in respect of the incident and had submitted a detailed report to the Superintendent of Police (City) on 7.8.2003. The said report, which is available in the record, would go to show that there are specific details revealed by the enquiry, including the names of the persons responsible for the acts alleged and their relationship with the petitioner No. 1. The report of the Superintendent of Police (City) dated 8.8.2003 though based on the said report of the Officer-in-Charge of Jalukbari Police Station, omits the details available in the report of the

Officer-in-Charge of Jalukbari Police Station. The order passed in the note-sheet recommending cancellation, places reliance on the report of the Officer-in-Charge as well as the letter of the Superintendent of Police (City) dated 7.8.2003 and 8.8.2003 respectively. Yet the petitioner was not given a copy of either the report or the letter in question. The order recommending cancellation as available in the note-sheet, which was approved by the Chairman of the G.M.D.A., would further go to show that the cancellation was recommended relying on a second report of the Superintendent of Police (City) dated 15.9.2003 containing similar allegations of extortion against the petitioner No. 1. The aforesaid second report of the Superintendent of Police (City) dated 15.9.2003 finds mention in the order of cancellation dated 7.10.2003. Yet the allegations contained in the aforesaid second report of the Superintendent of Police (City) dated 15.9.2003 were not even pointed out to the writ petitioner. The materials available with the respondents, in their view, may be adequate to sustain a satisfaction that the contract ought to be cancelled, but such satisfaction cannot be unilaterally reached without affording the writ petitioner an opportunity of controverting the same or to put forward its version of the matter. The facts narrated above, as evident from the record in original, leaves the Court with an indelible impression that the writ petitioner was not afforded a full, complete and adequate opportunity to meet the allegations leveled. Having reached the aforesaid conclusion, this court must hold that the impugned order dated 7.10.2003 would stand vitiated in law for breach of the principles of natural justice. The said order is, therefore, being interfered with and the matter is left open to be re-decided by the Respondent No. 1 after giving the writ petitioner an opportunity in conformity with the directions contained herein. Such re-determination will be completed at the earliest and in any case within a period of 30 days from the date of receipt of a certified copy of this order. In view of the limited duration of time fixed by this Court within which the exercise will now have to be completed and having regard to the allegations leveled against the petitioner from which the petitioner is yet to be absolved, I am of the considered view that until the matter is finalised as directed, the writ petitioner need not be put back into possession of the Parking Yard in question.

18. The Writ Petition shall accordingly stand allowed to the extent as indicated above.

