

**P.P. Raja Reddy**

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**Court :** Kolkata

**Decided On :** Nov-27-1996

**Reported in :** AIR1997Cal192,(1997)1CALLT387(HC)

**Judge :** S.B. Sinha, J.

**Acts :** [Constitution of India](#) - Articles 12, 14, 226 and 298;; [Indian Contract Act, 1872](#) - Section 23

**Appellant :** P.P. Raja Reddy

**Advocate for Def. :** Gopal Chakraborty, Ajoy Datta and ;Arun Kumar Maji, Advs.

**Advocate for Pet/Ap. :** K.K. Maitra and ;Jabed Ali Sk. and ;D.P. Majumder, Advs.;P.K. Banerjee, Adv.

**Judgement :**

ORDER

1. The petitioner has filed this writ application, inter alia, praying for issuance of a Writ of or in the nature of Mandamus directing the respondents to allow him to carry on his business of tuck shop pursuant to the agreement entered into by and between the petitioner and the respondent No. 2. A copy of the said agreement has been produced before this Court. The petitioner was permitted to run a Tuck Shop on the terms and conditions mentioned therein. Intermis of the aforementioned agreement, the price of the articles which are to be sold had been fixed. Clause 13 of the said agreement states that in the matters of dispute the

Principal's decision will be final and binding on the contractor. In terms of Clause 3 of the said agreement the petitioner was prohibited from making any permanent structure even at his cost except with the written approval of the Principal.

On or about 27-9-1994 a Circular was issued calling upon the members of the staff to give their opinion in writing as to the opening of a Tuck Shop in the school campus. The said circular is contained in annexure 'A' to the writ application and only thereafter upon a resolution having been passed by the members of the Managing Committee the aforementioned agreement was entered into on 1-1-1995 and pursuant thereto the petitioner was to pay a sum of Rs. 160/- per month as well as electrical charges at the rate of Rs. 50/-per month and water charges at the rate of Rs. 10/- per month. The petitioner contends that he had constructed the shop in question on the basis of a plan prepared by the Principal which has been denied and disputed by the respondents. In paragraph 10 of the affidavit-in-opposition it has been stated that the petitioner was made certain renovation. On 4-7-1996 certain allegations were made as against the petitioner and by an order dated 17-7-1996 the petitioner was asked to vacate the shop room within 19-7-1996 inter alia upon complaint that he had been selling hard drinks mixed with soft drinks to the students. Allegedly the petitioner refused to accept the said notice and the same was pasted on the door of the shop room, Allegedly on 2-8-1996 an order was passed by the respondent No. 2 directing that P. M. Reddy who is a Chowkidar of Refrigeration section should not sit in the tuck shop as he is an unauthorised person. The said letter is contained in Annexure 'A' to the affidavit-in-reply. It has further been stated that despite the purported termination of the tenancy, the respondent No. 2 purchased soft drinks from the aforementioned shop. However on 13-8-1996 on instruction of the respondent No. 2 the military and Police authority removed mostof the articles including the Books. In the affidavit-in-opposition the respondent No. 2 has clearly stated that the complaints were being received from the students and guardians to the effect that the petitioner has been selling liquor mixing soft drinks and obscene pictures. It has further been stated that since the said shop room or the Tuck shop became a centre for anti-social activities of the writ petitioner, the police authority vacated the premises in question.

3. An application for intervention has been filed on behalf of some guardians of the wards wherein various allegations have been made against the petitioner.
4. Keeping in view the point involved in this application, both the main writ application as well as the application for intervention are taken up for hearing together.
5. Mr. K. K. Maitra, learned counsel for the petitioner very fairly submits that the petitioner has no objection if this Court takes into consideration the statements made by the intervenor and allow the said application.
6. In view of the stand taken by the learned counsel for the petitioner, the application for intervention is allowed.
7. Mr. K. K. Maitra, learned counsel for the petitioner, inter alia, submits that the petitioner having been in possession of the premises in question and having constructed the shop room as would be evident from paragraph 13 of the writ application, he could not have forcibly been evicted. The learned counsel in support of the aforementioned contention has relied upon a decision of the Supreme Court reported in : [1962]2SCR69 . The learned counsel submits that keeping in view the fact that a serious allegation has been made against the petitioner, he was entitled to an opportunity of hearing and as in the instant case the principles of natural justice had been violated at the hands of the respondent which is a 'State' within the meaning of Article 12 of the [Constitution of India](#), the action on the part of the respondent must be held to be illegal and bad in law. The learned counsel further submits that in any event the petitioner had acquired a right in terms of the aforementioned agreement dated 1-5-1994, inasmuch as, in terms thereof he was entitled to run the shop for a period of three years although such agreement was terminable on giving one month's notice. The learned counsel in support of the aforementioned contention has relied upon a decision reported in : AIR 1962 SC1044 . It was further submitted that if the condition of the agreement is one-sided and against the public policy, the petitioner can question the same as being violative of Section 23 of Indian Contract as well as Article 14 of the [Constitution of India](#).

8. The learned counsel for the respondents, on the other hand, submits that this writ application is not maintainable as by reason of the same the petitioner intends to enforce a contract. The learned counsel in this connection has placed a strong reliance upon a decision of the Supreme Court of India reported in : [1994]3SCR163 . The learned counsel submits that in the instant case the respondents have made out a sufficient cause for terminating the tenancy and thus there is absolutely no reason as to why this Court should interfere with the impugned action. So far as the alleged construction made by the petitioner is concerned the learned Counsel has drawn my attention to clause 3 of the aforementioned agreement as well as paragraph 10 of the affidavit-in-opposition and submits on the basis thereof that the story of making construction by the petitioner is not correct. In any event the learned counsel submits that keeping in view the nature of allegations made against the petitioner this Court should not exercise its equitable writ jurisdiction.

9. The first question which arises for consideration in this application is as to whether the respondent No. 2 had any authority or jurisdiction to enter into the aforementioned agreement with the petitioner.

10. From a letter dated 19-8-1996 as contained in annexure 'A' to the affidavit-in-reply to the affidavit-in-opposition of the respondents filed by the petitioner himself, it is evident that the respondent No. 2 had no such authority. The land on which the school building stands admittedly belongs to the Union of India. If any transfer of such land is made, the same must conform to the provisions of Article 298 of the [Constitution of India](#). It is not the case of the petitioner that the Principal was authorised to enter such an agreement on behalf of the Union of India nor does the agreement disclose such authority in her favour. By reason of such agreement, therefore, the petitioner did not derive any right, title or interest in respect of the premises in question.

11. It is an admitted fact that the petitioner was running a book shop-cum-canteen in the disputed premises on the basis of the agreement dated 1-1-1995. It is also admitted that the petitioner has been evicted upon issuance of the notice dated 17th July, 1996 by asking him to vacate the premises by 19th July, 1996.

According to the respondent, the petitioner was evicted on various grounds including :--

1. Sale of hard drinks mixed up with the soft drinks;
2. Sale of obscene literature;
3. Sale of guide books;
4. Sale of articles in excess of the price fixed therefor in terms of the said agreement.

The petitioner has of course denied and disputed the said allegations but this Court in exercise of its jurisdiction under Article 226 of the [Constitution of India](#) cannot consider the question as to whether the petitioner is guilty of violation of such agreement or not.

12. In *State of U.P. v. Maharaja Dharmender Prasad Singh* reported in : [1989]1SCR176 , the Apex Court held as follows :

'On a consideration of the matter, we think, in the facts and circumstances of this case, the High Court should have abstained from the examination of the legality or correctness of the purported cancellation of the lease which involved resolution of disputes on questions of fact as well'.

13. Furthermore, this writ application involves a disputed question of fact. This court, as is well known, cannot enter into a thicket of such a disputed question.

The question relating to exercise of jurisdiction by a writ court in the matter of a contract is no longer *res integra*. The court is required to exercise its vigil at the time of grant of contract or distribution of largess and has a duty to see that State for public goods and in public interest. It is also well settled that a court will exercise its discretion only when the writ petition involves a public law element. The approach of the court in deciding such an issue would be different when the primary object of the contract provides public service to the people as against a contract involving pure commercial venture.

14. In *U. P. Financial Corporation v. M/s. Nayer Oxygen & Acetylene Gas Ltd.* reported in : (1995)2SCC754 it appears that unless its action is mala fide even a wrong decision taken by it is not open to challenge. The Apex Court observed :

'It is not for the court or a third party to substitute its decision, however, not prudent, commercial or business like, it may be, for the decision of the Corporation'.

15. In *M/s. Radha Krishna Agarwal v. State of Bihar* reported in : [1977]3SCR249 , the Supreme Court while carving out three categories of cases vis-a-vis the right of judicial review, inter alia, held that where a contract entered into between the State and persons aggrieved is non-statutory and purely contractual of the rights and obligation of the parties thereto are governed by the terms of the contract, a writ petition shall not lie. However, keeping in view the subsequent development in law in the field a contract vis-a-vis jurisdiction of the High Court to entertain the writ application, a Full Bench of the Patna High Court presided over by N. P. Singh, J. (as His Lordship then was) in *M/s. Pancham Singh v. State of Bihar* reported in : AIR1991 Pat168 held that apart from three categories adumbrated in *Radhakrishnan* there exists fourth category namely, that a writ petition shall also be maintainable where the contract has been terminated by the State on a ground de hors any of the terms of the contract and which is per se violative of Art. 14 of the [Constitution of India](#).

16. No such base has been made out in the instant case. Furthermore, it is well known that the court will have no jurisdiction to entertain a writ application in a matter governed by contract-qua-contract as in such a matter public law element is not involved. Reference in this connection may be made to *Life Insurance Corporation v. EScortS* reported in : 1986(8)ECC189 , *F.C.I, v. Jagannath Dutta* reported in : [1993]2SCR497 , *State of Gujarat v. Meghraj Peth Raj Shah Charitable Trust* reported in : [1994]3SCR163 , *Assistant Excise Commissioner v. Issac Peter* reported in : [1994]2SCR67 which have been followed me in a decision in *A. C. Roy Co. v. Union of Indja* reported in : AIR1995 Cal246 . In the case reported in : AIR 1991 SC1153 , the Supreme Court held that the materials placed before the court fall far short but the law required to justify interference.

17. The submission of Mr. Maitra to the effect that the petitioner was entitled to an opportunity of hearing is stated to be rejected. It is not a case where the petitioner derived any legal right to continue to occupy the stall in question inasmuch as, the contract itself was void ab initio. The question as to whether principles of natural justice would be attracted or not depends upon the facts and circumstances of each case. It has to be considered in circumstantial flexibility and situational fairness in view of the serious allegations made by the respondents and keeping in view the nature thereof. There cannot be any doubt that immediate action was necessary to be taken before the agreement was terminated. The petitioner could not have been permitted by the concerned authorities to continue sale of hard liquor to the students mixing the same with soft drinks or to sale of obscene literature and pictures.

18. In a given case, the respondents are entitled to show that although no hearing has been given or no reason has been assigned that sufficient reasons existed and there had been sufficient materials in support of its action. Reference in this connection may be made to *Union of India v. E. G. Nambadri* reported in : (1991)11LLJ594SC which has been noted with approval in *Chandra Gupta IPS v. Secretary of Govt. of India, Ministry of Environment and Forest* reported in : AIR 1995 SC44 .

19. In *State of Gujarat v. Maghji Pethraj Shah Charitable Trust* reported in : [1994]3SCR163 , the Supreme Court almost in a similar situation stated the law thus :--

'We are unable to see any substance in the argument that the termination of arrangement without observing the principle of natural justice (*audi alteram partem*) is void. The termination is not a quasi-judicial act by any stretch of imagination; hence it was not necessary to observe the principles of natural justice. It is not also an executive or administrative act to attract the duty to act fairly. It was -- as has been repeatedly urged by Shri Ramaswamy -- a matter governed by a contract/agreement between the parties. If the matter is governed by a contract, the writ petition is not maintainable since it is a public law remedy and is not available in private law field, e.g., where the matter is governed by a

non-statutory contract. Be that as it may, in view of our opinion on the main question, it is not necessary to pursue this reasoning further'.

20. Mr. Moitra, learned counsel contended that the petitioner has raised a construction in terms of the plan approved by the Principal. As noticed hereinbefore the said statements have been denied and disputed by the respondent No. 2 in paragraph 17 of her affidavit-in-opposition.

21. It is relevant to note that even as regards repairing work or placing tiles etc. the petitioner in his letter dated 22-7-96 denied or disputed the same. Therefore, on the petitioner's own showing he had not even made any repairing of the premises in question. Be that as it may, this court, as at present advised, is not inclined to express its final opinion in the matter.

22. So far as the allegation of mala fide made by the petitioner against respondent No. 2 is concerned, apart from certain slips to show that the respondent No. 2 placed certain orders for soft drinks, no other material has been placed. The allegation of the petitioner to the effect that the respondent No. 2 had not paid the price for supply of such soft drinks etc. has been categorically denied and disputed by her. Moreover, there are various documentary evidences to show as would/ appear from the affidavit-in-opposition and supplementary affidavit-in-opposition filed by the respondent No. 2 as also the application for intervention that the object for directing the petitioner to vacate the premises in question was altogether different. Having regard to the materials on records I am of the view that the petitioner has not been able to prove mala fide on the part of the respondent No. 2. In any event, if the action of the respondent No. 2 can be held to be justified in view of the conduct of the petitioner which amounts to breach of faith and acts of immorality on his part, the vague allegations made in the writ application as against the respondent No. 2 would not absolve her from taking actions against him.

23. For the reasons aforementioned, it must be held that the petitioner has no right to maintain this writ application for enforcement of this contract.

24. There cannot, however, be any doubt that no person in India can be dispossessed except in accordance with law. Reference in this connection may be made to the case reported in : [1962]2SCR69 and : [1989]1SCR176 .

25. But the question which arises for consideration in this application is that despite the aforementioned legal position whether it would be proper for this court to exercise its equitable jurisdiction in the facts and circumstances of this case. The answer to the aforementioned question must be rendered in negative.

26. Reasons to refuse to exercise its equitable jurisdiction by this Court, inter alia, viz. (a) the school is co-educational institution, (b) and thus strict discipline is required to be maintained; the allegations against the petitioner are correct which are very serious in nature, he should not be permitted to operate the shop in question, (c) evidently the relationship between the petitioner and the respondent No. 2 has also become so bitter that on 16th August, 1996 after the petitioner was evicted from the premises in question, allegedly the respondent No. 2 had been assaulted by the wife of the petitioner for which she had to be treated in hospital and in respect of the said incident F.I.R. has been lodged.

27. Furthermore, the respondent No. 2 in her affidavit-in-opposition as also the inter-venors in their application had not even dared to reveal identity of the school and/or the guardian who had made complaints to the Principal on security reasons as allegedly the petitioner is an influential man.

28. It is now well known that issuance of a writ of certiorari is a discretionary remedy. Keeping in view the facts and circumstances of this case and the conduct of the petitioner I am of the view that this court should not exercise its jurisdiction in favour of the petitioner.

29. It now, however, appears that the book shop has been locked both by the Principal as also by the petitioner. The respondents do not have and in fact did not claim any right in respect of the books and other articles belonging to the petitioners. In that view of the matter if according to the petitioner any articles belonging to him is still lying in the said room (although according to the respondent, he had taken away all the articles), he may serve a notice to the

respondent No. 2 as also the Officer-in-Charge of the concerned Police Station and the Officer-in-Charge of the concerned Police Station may upon previous notice to the petitioner and the respondent No. 2 fix any date on which the said room shall be opened and if any article is found therein, the same shall be returned to the petitioner upon preparing an inventory therefor.

30. This order shall not, however, stand in the way of the petitioners in taking recourse to any other remedy, if any.

31. This writ application is disposed of with the aforementioned directions and observations but without any order as to costs.

32. Order accordingly.

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