

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

WRIT PETITION No.30271 OF 2023

Between:

Sri A. Kondal Reddy and Others

... Petitioners

And

The Telangana State Road Transport Corporation and others

... Respondents

JUDGMENT PRONOUNCED ON: 30 .07.2024

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

MRS. JUSTICE SUREPALLI NANDA

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... **Petitioners**

And

\$ The Telangana State Road Transport Corporation

... **Respondents**

< **Gist:**

> **Head Note:**

! Counsel for the Petitioners : Sri P.Venkateswar Rao

^ Counsel for the Respondents: Sri M.Ram Mohan Reddy,
learned standing counsel for
TSRTC for R1,3,4 and 5
GP for Transportation for R2

? **Cases Referred:**

- (i) (1981) 1 SCC 664
- (ii) (2009) 12 SCC 40
- (iii) (2004) 2 SCC page 447

HON'BLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION No.30271 OF 2023

ORDER:

Heard Sri P.Venkateswar Rao, learned counsel appearing on behalf of the petitioners, Sri M.Ram Mohan Reddy, learned standing counsel for TSRTC appearing on behalf of respondent Nos.1, 3, 4 & 5 and learned Government Pleader for Transport appearing on behalf of respondent No.2.

2. The petitioners approached the court seeking the prayer as under:

"....to issue a writ or order or direction more particularly one in the nature of writ of mandamus by declaring that the action of the respondents in not paying the amount to the petitioners when less consumption of HSD oil than the eligible quota is used for their allotted buses (TS08UG 2041, TS08UG 2040, TS08UG 2726 and TS08UG 2738) and ordering recovery for the amounts earlier paid is bad, arbitrary, illegal, unjust, discriminatory and consequently direct the respondents to continue to pay the above subject payment and withdrawing recovery by setting aside Notification No.P1/359 (01)/2023 -CGCL

dt.21-9-2023 of the 5th respondent and pass such other order or orders ...”

3. The case of the Petitioners, in brief, as per the averments made in the affidavit filed by the Petitioners in support of the present writ petition is as under :

a) It is the case of the petitioners that, the petitioners are the Hire Bus owners who had executed agreements with the 3rd respondent herein and operating their buses under the control of the 3rd respondent are herein in different depots on different routes as per the agreements.

b) It is further the case of the petitioners that, as per the condition No.6 of the agreement, in case monthly consumption exceeds the monthly quota based on the HSD KMPL fixed as per the particular type of bus, recovery will be made for the excess consumption of HSD oil at the prevailing market price of the HSD oil. In the same manner, if the consumption is less than monthly quota on the HSD KMPL the balance amount would be repaid. So some amounts were repaid to the petitioners for the reason the HSD oil consumption is less than monthly quota.

c) The petitioners submit that the 5th respondent issued notification vide No.P1/359(01)/2023-CGCL, dated 21.09.2023

ordering recovery concerned with excess paid amount towards refund of less top-up HSD oil as per pre audit. This recovery is without notice and without giving any particulars/calculations. The said amount will be recovered from the hire bill of September, 2023 in four installments and the same shall have effect from 1st November, 2023 onwards. However, if the same is effected the petitioners shall face financial problems

d) It is the further case of the petitioners that they have also made representations to the respondents to stop the recovery but there is no response. The respondents had interpreted the condition No.6 of the agreement to be that where HSD oil consumed is more than monthly eligible quota then the recovery will be made but if HSD oil consumed is less than eligible quota there is no mention about repayment. But, this interpretation is arbitrary, illegal and unreasonable. Earlier, there are circulars, dated 18.08.2018 and 11.01.2016 for repayment of amount where there is less consumption of HSD oil. Hence, the present Writ Petition.

4. PERUSED THE RECORD:

A. Impugned notification, dated 21.09.2023 vide No.P1/359(01)/2023-CGCL of the 5th respondent issued to the petitioner reads as under:-

It is to inform that the Personnel Officer/Secunderabad Region has allotted Hire bus No. TS 08UG 2041 through tender Notification issued on 23.10.2019 for Allotment of City ordinary Bus under Hire Scheme to Sri Alimineti Kondal Reddy for a period of Four (04) Years from 26.02.2020 to 25.02.2024 vide ref 1st and 2nd cited.

In this connection Hire Bus Monthly Bills from the date of commencement to February 2023 was excess paid towards Refund of less top up HSD Oil at Depot after pre-audit to you and the same amount may be recoverable in next month Hire bill (i.e., September-2023) onwards in Four (04) Instalments of Rs.39,999.50/- and the statement is enclosed here with:

As per the agreement of PO/SR at Clause No.6: **The HSD oil will be supplied to hire bus by the depot allotted as per consumption. In case monthly consumption exceeds the monthly quota based on the HSD KMPL fixed for the particular type of bus, recovery will be made for the excess consumption of HSD oil at the prevailing market price of HSD oil. The HSD KMPL fixed for Pallevelugu as 5.66 Kms per ltr, Express 5.43Kms per ltr, City ordinary 4.81 Kms per**

ltr, City Sub-Urban 4.95kms per ltr and Metro Express 4.86 kms per ltr.

You are hereby advised to come to Depot Manager Office Chengicherla Depot Secunderabad Region on any working day.

B. Orders dated 14.11.2023 passed in I.A.No.01 of 2023 in W.P.No.30271 of 2023 reads as under:-

This interlocutory application has been filed praying this Court to direct the respondents not to recover any amounts in concerned with less top up HSD oil than the eligible quota to the petitioner's buses (TS-08-UG-2041, TS08-UG-2040, TS-08-UG-2726 and TS-08-UG-2738) by suspending Notification No.P1/359 (01)/2023-CGCL, dated 21.09.2023 of the 5th respondent.

Heard both sides.

Having regard to the facts and circumstances, mentioned in the affidavit filed in support of this petition, this petition is ordered by directing the respondents not to recover any amounts in concerned with less top up HSD oil than the eligible quota to the petitioners' buses (TS-08-UG-2041, TS-08-UG 2040, TS-08-UG-2726 and TS-08-UG-2738) by suspending Notification No.P1/359 (01)/2023-CGCL, dated 21.09.2023 of the 5th respondent, till 21.11.2023

C. Counter affidavit filed on behalf of respondent Nos.1,3,4 and 5 relevant paragraph Nos. 4 and 8 are extracted hereunder:-

4) I respectfully state that, the Petitioners herein are Private hire bus owners and their buses were allotted through 2019 tender Notification for a period of 04 years at Chengicherla depot, Secunderabad Region as shown below:

| S. No | Bus No. | Date of Agreement | | Tender Notification | Recovery Amount |
|---------------------------------|---------------|-------------------|------------|---------------------|-----------------|
| | | | | | |
| 1 | TS 08 UB 2726 | 19.03.2020 | 18.03.2024 | 2019 | 1,27,686/- |
| 2 | TS 08 UB 2738 | 11.03.2020 | 10.03.2024 | 2019 | 2,35,045/- |
| 3 | TS 08 UB 2040 | 28.02.2020 | 27.02.2024 | 2019 | 1,96,184/- |
| 4 | TS08 UB 2041 | 26.04.2020 | 25.04.2024 | 2019 | 1,59,998/- |
| Total amount arrived 7,18,913/- | | | | | |

Further, Petitioners have executed individual agreements with the Respondent No. 3 for operating their buses under the control on different routes.

8. I respectfully state that, basing on said notice dated 21.09.2023, the private hire bus owners approached the 3rd Respondent and a meeting was held. During the meeting, the 3rd Respondent explained in detail with the Private hire Bus owners about the erroneous payment and the Private Hire Bus owners agreed for recovery of the excess amount. **As the amount of recovery is very high**

and the Private hire Bus owners have to pay the monthly instalments of the hire buses and the wages to bus drivers, they have requested to recover the same in instalments. Therefore the Personnel Officer, Secunderabad Region has instructed to recover the excess paid amount in 8 instalments from the month of October - 2023.

DISCUSSION AND CONCLUSION:

5. A bare perusal of the impugned notification dated 21.09.2023 issued by the 5th respondent to petitioners and the averments made in the counter affidavit filed on behalf of respondent Nos. 1, 3, 4 and 5 indicates that in the reference column of the impugned notification dated 21.09.2023 reference is made to two documents i.e. i) Allotment letter, dated 23.10.2019 and ii) Agreement dated 16.06.2020 entered into between the petitioner and the respondent corporation; and further referring to clause No.6 of the agreement entered into between the petitioners and the respondent corporation, it is observed that there is no provision for refund of HSD oil for less top-up to the hire buses, but however due to oversight the corporation has paid amounts to the petitioners towards less top-up of HSD from the date of commencement erroneously and

further that during the audit, the Accounts Officer, Secunderabad Region had found that there was no refund in less top-up HSD through 2019 tender notification to the private hired vehicles and the petitioners were paid excess amount than the eligibility and hence, the 5th respondent directed for recovery of the excess paid amount from the petitioners.

6. A bare perusal of the impugned notification, dated 21.09.2023 of the 5th respondent issued to the petitioners further indicates the proposed recovery of amounts in hire bill pertaining to the month of September, 2023 in four instalments of Rs.39,999.50/- which is without issuing notice to the petitioners, without providing a reasonable opportunity of personal hearing to the petitioners which is in clear violation of principles of natural justice, without giving any particulars/calculations and without any indication of reasonable material or basis on record in arriving at the said determined amounts. This Court opines that the impugned notification, dated 21.09.2023 of the 5th respondent is in clear violation of principles of natural justice.

7. Law is well settled that when an action is proposed to be taken, which is likely to adversely affect the interest of a party, he or she is entitled to a notice. The Apex Court time and again held that unless a statutory provision specifically excludes the requirement of observation of principles of natural justice, such a requirement shall be read into the provision.

8. **In a decision of a three-Judge Bench of Apex Court reported in (1981) 1 Supreme Court Cases 664 in "SWADESHI COTTON MILLS v. UNION OF INDIA", the issue was whether the Central Government was required to comply with the requirements of *audi alteram partem* before it took over the management of an industrial undertaking under Section 18-AA(1)(a) of the Industries (Development and Regulation) Act, 1951. R.S. Sarkaria, J. speaking for the majority consisting of himself and D.A. Desai, J. laid down the following principles of law: (SCC p. 689, para 44) observed as under:**

"44. In short, the general principle - as distinguished from an absolute rule of uniform application seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post- decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the

audi alteram partem rule at the pre-decisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative progress or frustrate the need for utmost promptitude. In short, this rule of fair play 'must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands'. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, to recall the words of Bhagwati, J., the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

9. The Apex Court in the judgment reported in (2009) 12 SCC 40 in "UMA NATH PANDEY & OTEHRS v. STATE OF UTTAR PRADESH & ANOTHER" at para Nos. 10 & 11 observed as under :

"Para 10: The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as *audi alteram parte* rule. It says that no one should be condemned unheard. Notice is the best limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the celebrated case of *Cooper v. Wandsworth Board of Works* the principle was thus stated: (ER p.420). "Even God

himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' (says God), 'where art thou? Hast thou not eaten of the tree whereof I command thee that thou shouldest not eat'".

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

Para 11 : "Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice".

10. In "MANGILAL V. STATE OF M.P., reported in (2004) 2 SCC page 447, a two-Judge Bench of Apex Court held that the principles of natural justice need to be observed even if the statute is silent in that regard. In other words, a statutory silence should be taken to imply the need to observe the principles of natural justice where substantial

rights of parties are affected: (SCC pp.453-54, para 10)

observed as under:

"10. Even if a statute is silent and there are no positive words in the Act or the Rules made thereunder there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected, by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand. Even in the absence of a provision in procedural laws, power inheres in every tribunal/court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on the principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably

affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end in themselves."

11. Clause No.6 of Agreement entered into between the petitioners and the Respondent corporation is extracted hereunder:-

Clause:6- The HSD oil will be supplied to hire bus by depot allotted as per consumption. In case monthly consumption exceeds the monthly quota based on the HSD KMPS fixed for the particular type of bus, recovery will be made for the excess consumption of HSD oil at the prevailing market price of HSD oil. The HSD KMPL fixed for Pallevelugu as 5.66 Kms per ltr, express 5.43 kms per ltr, City ordinary 4.81 kms per ltr, city Sub-Urban 4.95 kms per ltr and Metro Express 4.86 kms per ltr.

12. A bare perusal of the Clause 6 of the agreement referred to and extracted above indicates that there is no provision for refund of HSD oil for less top-up to the hire buses. It is the specific case of the Respondent Corporation that the Respondent

Corporation due to oversight paid amounts to the petitioners towards less top-up of HSD from the date of commencement erroneously, hence the respondent Corporation intended to recover the said excess paid amount in instalments.

13. This Court opines that though it is stated at para No.8 of the counter affidavit filed on behalf of respondent Nos. 1, 3, 4 and 5 that in pursuance to the impugned notification dated 21.09.2023 issued by the 5th respondent to the petitioners, a meeting had been held and the private hire Bus owners agreed for recovery of the excess amount in instalments. The impugned notification dated 21.09.2023 of the 5th respondent, however curiously indicates an unilateral decision arrived at as on 21.09.2023 itself to recover the said excess amounts in instalments from the petitioners herein which admittedly is very illegal, arbitrary and in clear violation of principles of natural justice.

14. Taking into consideration:-

- a) The aforesaid facts and circumstances of the case.**
- b) The interim orders of this Court, dated 14.11.2023 passed in I.A.No.01 of 2023 in W.P.No.30271 of 2023,**

which are in force as on date, referred to an extracted above.

c) The view and observations of the Apex Court in the judgments (referred to and extracted above).

i) "SWADESHI COTTON MILLS v. UNION OF INDIA"
reported in (1981) 1 Supreme Court Cases 664

ii) "UMA NATH PANDEY & OTEHRS v. STATE OF UTTAR PRADESH & ANOTHER" reported in (2009) 12 SCC 40

iii) MANGILAL V. STATE OF M.P., reported in (2004) 2 SCC page 447

d) The averments made in the counter affidavit filed on behalf of respondent Nos.1, 3, 4 and 5 (referred to and extracted above).

In view of the fact that it is well settled law that in any proceedings which involves civil consequences, the doctrine of natural justice must be held to be applicable.

15. The Writ Petition is allowed, the impugned notification No.P1/359(01)/2023-CGCL, dated 21.09.2023 of the 5th respondent issued to the petitioners is set aside.

It is however observed that it is open to the respondents to proceed against the petitioners as per the terms and conditions of the agreement dated 16.06.2020 entered into between the petitioners and the Respondent TSRTC-Secunderabad Region, but in accordance to law in conformity with principles of natural justice by issuing notice to the petitioners and by providing an opportunity of personal hearing to the petitioners. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

MRS. JUSTICE SUREPALLI NANDA

Dated:30.07.2024

Note: L.R. copy to be marked
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