



HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE TWENTY EIGHTH DAY OF APRIL
TWO THOUSAND AND TWENTY

PRESENT

THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU

WRIT PETITION NO: 7350 OF 2019

Between:

1. Marrapu Sankara Rao S/o M. Suryanarayana,
Aged 55 years, R/o 49-36-14, Garlapati Residency,
NGGOs Colony, Akkayyapalem,
Visakhapatnam - 530 016.

...PETITIONER(S)

AND:

1. Government of India, Ministry of Shipping,
Parivahan Bhavan, 1 Sansad Marg,
New Delhi - 110 001,
Represented by its Secretary.
2. Dredging Corporation of India Limited, 2nd Floor, Dredge House, Port
Area, Visakhapatnam - 53001,
Represented by its Managing Director.
3. Visakhapatnam Port Trust Port Area, Visakhapatnam - 530035,
Represented by its Chairman.
4. Paradip Port Trust Paradip Port - 754142, Odhisha, Represented by its
Chairman.
5. Jawaharlal Nehru Port Trust, 1107, Raheja Centre, FPJ Marg,
Nariman Point, Mumbai - 400021,
Maharashtra, Represented by its Chairman.
6. Deendayal Port Trust, P.O.Box No.50, Administrative Office Building,
Tagore Road, Gandhidham (Kutch) -370201, Gujarat, Represented by its
Chairman.

...RESPONDENTS

Counsel for the Petitioner(s): PRAKASH BUDDARAPU

**Counsel for the Respondents: B KRISHNA MOHAN (ASST SOLICITOR
GENERAL OF INDIA)**

The Court made the following: ORDER



***HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU**

+ W.P.No.7350 of 2019

% 28-04-2020

Marrapu Sankara Rao,
S/O M.Suryanarayana,
Akkayyapalem,
Visakhapatnam.

... Petitioner

Vs.

\$ Government of India,
Ministry of Shipping,
Parivahan Bhavan, 1 Sansad Marg,
New Delhi – 110001.

... Respondents

! Counsel for the petitioner: Sri Prakash Buddarapu

! Counsel for the Respondent No.1: Additional Solicitor
General

! Counsel for the Respondent Nos.2, 3 to 6: Sri M.Surender
Rao

< Gist:

> Head Note:

? Cases referred:

¹ AIR 2011 SC 1463

² AIR 1959 SC 24

³ Manu/DE/8215 2007

**HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU****W.P.No.7350 of 2019****ORDER :**

This writ petition is filed seeking the following relief:

“To issue an appropriate Writ Order or Direction preferably a Writ in the nature of Mandamus declaring the proceedings issued by the 2nd Respondent through its Company Secretary in Letter No.DCIL/MD/2019/638, dated 11.03.2019 and Office Order No.24/2019 in Ref.DC1/HR/41S00890/2019-59-B dated 23.04.2019 intimating to the petitioner that his services ceased to be continued as Director Operations and Technical with effect from 08.03.2019 (AN) as illegal, arbitrary and violative of the Fundamental Rights guaranteed under the Constitution of India particularly violative of Articles 19 (1)(g) 21 and 14 of the Constitution of India apart from the conditions stipulated under Share Purchase Agreement dated 08.03.2019 entered between the respondents consequently to set aside the proceedings in Letter No.DCIL/MD/2019/638, dated 11.03.2019 and the consequential Office Order No.24/2019 in Ref.DC1/HR/4/S00890/2019/59-B, dated 23.04.2019 issued by the 2nd Respondent by directing the respondents particularly Respondents 2 to 6 to continue the petitioner as Director (Operations and Technical) with effect from the date of Share Purchase Agreement i.e. 08.03.2019



(ii) to declare the action of the 2nd Respondent in not allowing the petitioner to exercise the option of Lien in the post of General manager in the 2nd Respondent Corporation and not allowing the petitioner as Director Operations and Technical as illegal arbitrary and unjust consequently direct the 2nd Respondent to allow the petitioner to exercise his option of Lien in the post of General Manager.”

This Court has heard Sri A. Satya Prasad, Learned Senior Counsel for Sri Prakash Buddarapu, Counsel for the petitioner, the learned Additional Solicitor General for respondent No.1 and Sri M.Surender Rao, learned senior counsel appearing for the main contesting respondent No.2 and respondent Nos.3 to 6.

FACTS:

The petitioner before this Court worked with the 2nd respondent which is a Company incorporated under the Companies Act, headquartered at Visakhapatnam. The petitioner’s case is that he was appointed in the year 2006 as the Deputy General Manager (Operations/Projects) in the 2nd respondent company which carries on dredging operations through out the country. Thereafter, over a period of time, he held many posts in the 2nd respondent company. After an interview, the petitioner was selected and appointed as Director (Operations & Technical) (hereinafter called as “Director”) vide office order dated 08.05.2015. He joined as



Director on 01.06.2015. By then, he was holding the position of General Manager (Operations). The post of Director (Operations and Technical) is a tenure position for a fixed period of five years.

At that stage, in terms of the Government of India's initiative, the shares of the 2nd respondent company were put up for strategic sale under the concept of dis-investment. Respondent Nos.3 to 6 have followed the statutory procedures and purchased 73.47% of the shares of the 2nd respondent company. Thus, they are now the current owners of the 2nd respondent company. This is the factual background.

DISPUTE:

The dispute in this case stems from the action of the 2nd respondent company passing the impugned order dated 11.03.2019 by which the petitioner's resignation from Directorship was accepted and he was also informed that he does not continue as a Whole Time Employee of the 2nd respondent also.

The contention of the petitioner is that he is entitled to continue as the Director by virtue of the terms and conditions of the sale contained in a document called Share Purchase Agreement. In the alternative he argues that he is entitled to a lien and continue in his post as General Manager (Operations) in the 2nd respondent till his date of superannuation.

**SUBMISSIONS OF THE PETITIONER:**

The terms of the Share Purchase Agreement, the sale etc., are not really in dispute as per the learned senior counsel for the petitioner. According to the terms and conditions of the Share Purchase Agreement, new owners have a right to appoint their Directors. The petitioner has resigned, relying upon certain representations as per him. The counsel for the petitioner argues that the petitioner's rights cannot be taken away by an agreement between the 2nd respondent and respondent Nos.3 to 6. It is his contention that the terms of the employment cannot be changed unilaterally by the respondents without the petitioner's consent. Learned senior counsel appearing for the petitioner relies upon the following clauses of the Share Purchase Agreement:

“7.2A. On the closing date, the Directors of the Company nominated by the Seller shall tender their resignation and the Whole Time Directors shall be eligible for re-appointment. The Purchasers shall appoint its nominees on the Board to replace the directors who have resigned.”

7.4. The Purchaser may re-appoint the Whole Time Directors who have resigned, failing which such Whole Time Directors shall be entitled to compensation from the Company in accordance with the terms of their employment contract, which shall be in addition to any terminal benefits, leave encashment, gratuity, benefits under VRS,



which they are entitled to under their contract for employment.

11.1 Directors: The Purchasers shall continue the appointment of the existing Whole Time Directors, Independent Directors and Nominee Directors until the expiry of their present term. However, post-Closing Date, the Purchasers shall be entitled to appoint Whole Time Directors and other directors in accordance with Clause 7 and the Applicable Law in that regard.

11.2 Employee Retention: The Purchasers shall ensure that all the employees of the Company as on the Execution Date shall continue to be in the employment of the Company and the Purchasers shall, directly or indirectly, not retrench any employees of the Company for a period of 1 year from the Closing Date other than any dismissal or termination of employees of the Company from their employment in accordance with the applicable staff regulations, standing orders of the Company and Applicable Law. The Purchasers shall not create any circumstances such as change in the terms of employment, withdrawal or change in the benefits available to the employees, or otherwise, that would result into the employee terminating its employment or which adversely may affect the employees' rights, entitlements or benefits.
(emphasis supplied)

Learned senior counsel appearing for the petitioner argues that a plain language interpretation of the clauses is the best method for interpreting a contract. According to him, clause 7.2A imposes two obligations. (a) that the Directors of the company nominated by respondent No.2 shall resign and (b) the Whole Time Directors shall be entitled for



re-appointment. He also states that the purchasers have a right to nominate their own Directors. Basing on the usage of the word “shall” the learned senior counsel argues that the Whole Time Directors shall be eligible for re-appointment and shall have to be considered. He also relies upon the literal meaning of the words in clause 11.2 and argues that the purchasers cannot enter into any agreement that would be detrimental to the interest of the workers/employees. He also states that clause 11.2 clearly states that the purchasers cannot change the terms of employment or any of the benefits that are available to the employees. Learned senior counsel for the petitioner argues that while the purchasers may have a right to nominate their Directors, the same can only be done if there are no Whole Time Directors, who are eligible for re-appointment or after the term of the Whole Time Directors expires. Learned senior counsel contends that by entering into an agreement contrary to the terms of the employment contract between petitioner and respondent No.2, the respondents have breached clause 11.2. It is his specific contention that the eligibility for re-appointment has been conferred upon the petitioner by clause 7.2A and therefore, he states that the petitioner is entitled for re-appointment as a Whole Time Director. Apart from this, learned senior counsel also argues in the alternative that the petitioner was holding a post of General Manager (Operations) and at that point of time, he was selected as the Director (Technical).



Therefore, it is his contention that the petitioner is entitled to continue in his post as General Manager (Operations) even if he is not eligible for re-appointment as a Director. It is his contention that since the appointment of the petitioner as a Director is a time bound appointment, the lien that the petitioner has over the existing post of General Manager is not lost. As per him, lien is still continuing. Therefore, he submits in the alternative that the petitioner is entitled to continue as the General Manager (Operations) till his superannuation. Hence he submits that the writ is to be allowed both on fact and in law.

SUBMISSIONS OF THE RESPONDENT:

In reply to this, Sri Surender Rao, learned senior counsel who appears for the respondent Nos.2 to 6 argues in line with the detailed counter affidavit that has been filed. He also relies upon the clauses which are referred to earlier. According to the learned senior counsel appearing for the respondents, clause 7.2A cannot be interpreted in a manner as suggested by the learned senior counsel for the petitioner. He points out that if the contract is read as a whole, the dominant purpose would be clear and according to him, it is an agreement to take over of the Management of the 2nd respondent company. Therefore, he submits that clause 7.2A clearly stipulated that the existing Directors of the company shall resign and they shall be “eligible” for re-appointment. He contends that only an eligibility and not a right is



conferred upon the existing Directors who have resigned to be considered for re-appointment. He submits that the words are very clear and the inclusion of the word 'eligible' in the sentence makes it clear that they do not have a vested right to be re-appointed. He also points out that it is made clear in the very same clause that the purchasers shall appoint its nominees. He also points out in the alternative that without admitting any liability that clause 7.4 gives an option to the new purchasers (respondent Nos.3 to 6) to pay compensation for Whole Time Directors who have not been appointed. Lastly, he relies upon clause 11.1 and argues vehemently that clause 11.1 clearly states that post closing date the purchasers shall be entitled to appoint Whole Time Directors and others in accordance with clause 7 and the applicable law. Therefore, learned senior counsel clearly states that after the closing date, (which is defined in clause 11.1 and 11.2) the purchasers are entitled to appoint their own Whole Time Directors in terms of clause 7. Learned senior counsel argues that the right of the petitioners to continue to be Director can only extend till the expiry of the closing date and that it cannot extend beyond the closing date. He also points out that the existing Directors had a duty to resign in order to facilitate the appointment of new Directors by the purchasers. He argues that the petitioner has also resigned on his own, and the same was also accepted. Therefore, it is his contention that once the resignation is accepted, the



petitioner does not have the right to pray for a writ of Mandamus. He also argues basing on the counter that the petitioner did not opt for a lien on the post of General Manager. It is his contention that unless and until the petitioner opts for the lien by making a formal application, the same cannot be granted. Hence, he argues that the petitioner does not even have a lien on the post of General Manager (Operations) (the post he was holding till the date of the selection as a Director). Hence, the conclusion of the learned senior counsel is that the petitioner is not entitled to any relief whatsoever.

Learned senior counsel for the respondents also submits that clause 11.2 deals with employees only and does not refer to any Directors. It is his contention that the usage of the term retrenchment and the reference to the standing orders makes it very clear that the said clause is applicable only to employees and not to Directors.

REJOINDER:

In reply to the above, learned senior counsel for the petitioner argues in rejoinder that lien is a right that continues with the post and that there is no need to specifically apply for a lien. He also argues that reading of the clauses which he is referred to earlier make it clear that the petitioner is entitled for re-appointment. On fact, he also points out that although a letter of resignation was submitted on 08.03.2019, a letter was also addressed on 09.03.2019



that the petitioner should continue as the Director (Operation and Technical). He also argues that till the impugned order was passed, there was no formal communication to him that the resignation was accepted on 11.03.2019. Hence, he states that the petitioner is entitled to the reliefs as prayed for.

DETERMINATION:

The dispute in this Court's opinion in this case centres round the interpretation to be placed on clauses 7.2A and 11.1.

Clause 7.2A is to the following effect:

7.2A. On the closing date, the Directors of the Company nominated by the Seller shall tender their resignation and the Whole Time Directors shall be eligible for re-appointment. The Purchasers shall appoint its nominees on the Board to replace the directors who have resigned.”

Clause 11.1 is as follows:

11.1 Directors: The Purchasers shall continue the appointment of the existing Whole Time Directors, Independent Directors and Nominee Directors until the expiry of their present term. However, post-Closing Date, the Purchasers shall be entitled to appoint Whole Time Directors and other directors in accordance with Clause 7 and the Applicable Law in that regard.

The question is one of re-conciliation of these two clauses. Clause 7.2A talks of the resignation and eligibility for re-appointment. Clause 11.1 states that the appointment



of the Directors shall continue till the expiry of their present term. In addition, clause 11.1 also says that for post-closing date, the petitioner shall be entitled to appoint Whole Time Directors as per clause 7.

Amongst the well known and settled principles of contractual interpretations, one of the best known is the principle that the contract should be read in its entirety. The following passage from ***DLF Universal Ltd. V. Director, Town and Country Planning, Haryana***¹ is apposite:-

11. It is settled principle in law that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values, policy that the contract is designed to actualize. It comprises joint intent of the parties. Every such contract expresses the autonomy of the contractual parties' private will. It creates reasonable, legally protected expectations between the parties and reliance on its results. Consistent with the character of purposive interpretation, the court is required to determine the ultimate purpose of a contract primarily by the joint intent of the parties at the time the contract so formed. It is not the intent of a single party; it is the joint intent of both parties and the joint intent of the parties is to be discovered from the entirety of the contract and the circumstances surrounding its formation.

¹ AIR 2011 SC 1463



Apart from that, as per law on the subject, including ***Radha Sundar Dutta v. Mohd. Jahadur Rahim***² and ***India Trade Promotion Organisation v. International Amusement Limited***³, if there are two interpretations possible, one which will give effect to all the clauses and another will render one or more of the same nugatory, it is the interpretation that would give effect to the contract that should be considered. In addition, it is also settled that if there is an earlier clause and a later clause which states the converse, it is the earlier clause that prevails. This is the rule of interpretation which is applicable to contracts and deeds. In a Will, it is the later clause that prevails over the former clause. But in a regular contract or a deed, the earlier clause will prevail over the later if the same are irreconcilable or in conflict with each other. In ***Radha Sundar Dutta***'s case (2 supra), the Hon'ble Supreme Court of India held as follows:

“.....If, in fact, there is a conflict between the earlier clause and the later clauses and it is not possible to give effect to all of them, then the rule of construction is well established that it is the earlier clause that must override the later clauses and not vice versa. In *Forbes v. Git* [1922] 1 A.C. 256, Lord Wrenbury stated the rule in the following terms :

"If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier

² AIR 1959 SC 24

³ Manu/DE/8215 2007



clause, the later clause is to be rejected as repugnant and the earlier clause prevails. In this case the two clauses cannot be reconciled and the earlier provision in the deed prevails over the later."

The same view has been reiterated in the judgment of the Delhi High Court referred to earlier. Therefore, if these settled principles of interpretation are utilised for deciding this writ, it is clear from the present Share Purchase Agreement that:

(1) that the purpose of the agreement is to transfer ownership and management of the 2nd respondent company to the new owners namely, respondents 3 to 6.

(2) 7.2.A only clearly states that the Directors shall resign and thereafter they shall be eligible for the appointment. The next clause says that the purchasers shall appoint their nominee to replace the Directors. 7.4 also talks of payment of compensation to the Directors who have resigned.

(3) Clause 11–First part of 11.1 states that the Directors shall continue to be in Office up to their present term. However, after the closing date, the purchasers are entitled to appoint Directors in accordance with clause 7.

Therefore, if a harmonious construction of the whole contract is adopted, it is clear that the purpose of the agreement is to transfer the ownership and control to the new



owners-respondent Nos.3 to 6. The interpretation of the learned senior counsel for the petitioner would run contrary to the main purpose of the agreement. The new purchasers should be given an opportunity to appoint their own nominees for the post of a Director. Even apart from this, if the conflict between 7.29 and 11.00 is viewed in line with the judgment of the Hon'ble Supreme Court of India and the Delhi High Court judgment cited earlier, the clause 7.2A will prevail over clause 11.1. The existing Directors shall have to tender their resignation and then only they will have considered for re-appointment. Therefore, the primary obligation is cast upon the Directors to resign. 11.1 also make it clear that new Directors shall be appointed in accordance with the clause 7. The former Directors are thus only "eligible" for reappointment.

It is also clear that the petitioner has submitted his resignation on 08.03.2019. He also clearly stated in the said letter that an acknowledgment for the resignation should be given to him and a copy of the requisite form filed with the Registrar of Companies should also be given to him. The petitioner himself has filed copy of the disclosure made by the 2nd respondent company on 08.03.2019 to the (SEBI) clearly mentioning that all the existing Directors have resigned and also stating the names of the new Directors who have been appointed. It is thus clear that the resignation has also been accepted and acted upon.



Therefore, both on the basis of the interpretation of the clause and also the facts, this Court is of the opinion that the petitioner has not made out a case for holding that he is entitled to be considered/continued as a Director of the petitioner company.

The other issue that survives for consideration is the petitioner's lien on the post of GM (Operations). The respondents have taken the stand that the petitioner should apply for a lien in order for it to be considered. The petitioner has relied upon standard terms and conditions for exercising of lien which have been formulated by the Department of public enterprises. As per the said document, more so para 1.1.8, it is clear that the petitioner is entitled to continue to hold lien over the post that he has. The document filed by the respondent also shows that the uniform policy is evolved for lien but it does not say the employee should "apply" for the lien. Apart from that, the case law on the subject is also clear. Lien is something that is attached to a post. Once the appointment is validly made, the Government servant will continue to hold the lien till he is appointed to another post permanently. In the case on hand, the petitioner was only given a tenure appointment for 5 years as a Director. It cannot be said that he has therefore lost his lien over the post that he was holding. Therefore, this Court holds that the petitioner is entitled to be continued as the General Manager



(Operations) till the date of his superannuation and subject to the relevant rules and regulations.

This Court holds that the petitioner's right to continue as the General Manager (Operations) cannot be taken away by the respondents. As the petitioner has succeeded in the writ; he is entitled to be retained and continued as the General Manager (Operations).

In view of the fact that final orders are being passed, no further orders are contemplated in IA.Nos.1 of 2019 and 3 of 2019. As far as IA.Nos.5 and 6 are concerned, this Court is of the opinion that the amendments are to be allowed since they relate to the issues that arise subsequent to the filing of the writ petition which have a bearing on the main issue on hand. The Office is therefore, directed to make necessary amendment. Since this Court holds that the petitioner has a lien over the post of GM operations I.A.No.2 of 2019 is also allowed and no recoveries can be made from the superannuation corpus etc. As I.A.No.2 of 2019 is allowed, I.A.No.4 of 2019 which is filed to vacate the order in I.A.No.2 of 2019 is consequently dismissed.

As far as IA.No.7 of 2019 is concerned, the prayer is to stay the operation of Advertisement No.3 of 2019 dated 18.09.2019. The contention of the petitioner is that another post is deliberately created, in order to deny the fruits of any order that may be passed, in favour of the petitioner. This



Court had granted, an interim order dated 01.10.2019 staying the operation of the order/advertisement. The interim order has been continuing till date. This Court has come to a conclusion that the petitioner is entitled to partially succeed in the writ petition. This Court also finds that there is sufficient force in what is stated by the learned senior counsel for the petitioner that the doors of the respondent-Corporation are being shut to the petitioner. The new post is created and attempt to be filled during the pendency of the writ petition. The same duties that are being discharged by the GM (Operations) are proposed to be given to the new incumbent. No proper or rational explanation is given for this. The averment that this new post of Chief Operating Officer is a non-cadre post is also not refuted. This Court finds that there is strength in what is stated by the learned counsel for the petitioner that the post of the Chief Operating Officer (COO) is being created to exercise the very same functions of the Director (Operations). Hence, IA.No.7 of 2019 is also allowed and the advertisement No.3/2019, dated 18.09.2019 is set aside.

For all the reasons mentioned above, the writ petition is partly allowed. It is held that the petitioner is entitled to continue in the post of General Manager (Operations) in the 2nd respondent DCI till his superannuation and as per the rules /regulations. As a result of this order, the petitioner is



entitled to all the benefits that would naturally/consequentially flow and arise.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

D.V.S.S.SOMAYAJULU,J

Date : 28.04.2020

Note: L.R.Copy be marked.

B/o
KLP