

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY
AND

THE HON'BLE SRI JUSTICE TARLADA RAJASEKHAR RAO

Writ Appeal No.1078 of 2022
and
Writ Appeal Nos.299, 300 and 301 of 2023

COMMON JUDGMENT: (per Hon'ble Sri Justice Cheekati Manavendranath Roy)

Aggrieved by the common order, dated 07.09.2022, of the learned Single Judge, passed in W.P.Nos.29751, 31207 of 2021 and W.P.Nos.4359 and 6015 of 2022, these Writ Appeals are preferred by the appellant.

2) Since the writ petitioners in the above Writ Petitions had a common grievance and as relief claimed in all the Writ Petitions is one and the same sought against the same respondents, the learned Single Judge heard the said Writ Petitions together and disposed of the said Writ Petitions by a common order.

3) Therefore, these Writ Appeals preferred against the said common order are also heard together and they are being disposed of by this common judgment.

4) Facts germane to dispose of these Writ Appeals may briefly be stated as follows:

5) The appellant is the Tirumala Tirupati Devasathanam (for short, the "T.T.D."). It is statutory body constituted under Chapter XIV of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987. The Presiding Deity in the temple of the said T.T.D. is Lord Sri Venkateswara Swamy, which is on the hills of Tirumala in Chittoor District. The T.T.D. has been offering Aarjitha Sevas to Lord Sri Venkateswara Swamy. Various Sevas like "Melchat Vastram, Suprabhatham, Archana" etc. are being performed to the God. The T.T.D. is also providing an opportunity to the devotees of the God to participate in the Sevas and has been permitting the Gruhasthas to participate in the Aarjitha Sevas. The T.T.D. has made an offer to the devotees to participate in the said Sevas of their choice by purchasing tickets issued for the said purpose by paying the requisite money fixed for the said Sevas. The devotees are accepting the said offer and paying money and tickets are being issued to them to participate in the said Sevas as per the slots given to them on various dates.

6) Accordingly, the respondents/writ petitioners have paid money to T.T.D. and obtained tickets to participate in various Sevas. The writ petitioner in W.P.No.29751 of 2021 booked a

ticket for “Melchat Vastram” on 09.07.2007 and slot was given to him to participate in the said Seva on 07.12.2021. The writ petitioner in W.P.No.31207 of 2021 booked a ticket for “Poorabhishekam” and slot was given to him on 12.02.2021. The writ petitioners in W.P.No.3459 of 2022 booked a ticket for “Thomala Seva, Shuprabatha Darshan, Archana, Poorabhishekam and Nijapada Darshanam” and accordingly slots were also given to them. The writ petitioner in W.P. No.6015 of 2022 booked a ticket for “Vastralanka Seva” and slot was also given to him.

7) All the said dates for which slots were given to them have fallen during the pandemic season after spread of Corona virus in the country and in the entire world. Therefore, Covid-19 guidelines were issued by the Union of India to follow during the said pandemic situation. Therefore, the T.T.D. could not allow the devotees to whom slots were given during the said pandemic period to participate in the said Aarjitha Sevas and all the said Sevas offered to the devotees have been cancelled in the larger interest of the life and health of the public and the devotees. Only “Eakantha Sevas” are performed to the God and

the devotees are not allowed to participate in the same in view of the restrictions imposed due to Covid-19 guidelines.

8) Therefore, the T.T.D. has passed a resolution and has taken a decision to cancel all the said permissions accorded to the petitioners and other devotees of more than 18,000 devotees to participate in the said Sevas as per the slots allotted to them and has given an option to them either to take return of the money paid by them or to participate in Break Darshan offered to devotees, who paid donation of Rupees One Crore to the T.T.D. Many of the devotees have either taken return of the money paid by them from T.T.D. or availed the other option of Break Darshan. But, the petitioners herein did not avail the said option and they have filed these Writ Petitions questioning the resolution passed by the T.T.D. cancelling the said permission accorded to them to participate in the Sevas and sought direction to the T.T.D. and its officials to provide the same Sevas to them by allotting slots to them in the coming one or two years.

9) The said Writ Petitions are opposed by the T.T.D. vehemently. It is contended that huge number of devotees

would purchase tickets to participate in the said Sevas and persons who purchased the said tickets would get an opportunity after ten or more years from the date of purchasing the tickets and the petitioners also who have purchased the tickets long back about 15 years ago, got the slots in the years 2020-2021 and the said slots fell during the pandemic period when there is spread of Corona virus in the country and other parts of the world. So, the Union of India has issued Covid-19 guidelines which imposed restrictions to allow public to openly participate in any such Sevas that they are constrained to cancel all permissions given to the public to participate in the said Aarjitha Sevas of God. It is their specific case that on account of the said unforeseen future event that they could not permit the public or devotees to participate in the said Sevas. It is stated that almost 17,490 ticket holders got slots during the said Covid period and 8,347 pilgrims have availed Break Darshan offered by the T.T.D.; 191 pilgrims have taken refund of money paid by them and the remaining 8,918 pilgrims, including the writ petitioners, did not avail any option. Therefore, it is stated that as the said permission was cancelled due to said unforeseen future event that has come in the way,

the writ petitioners cannot challenge the resolution passed by the T.T.D., which is valid under law, in the given circumstances of the case and the writ petitioners also cannot claim to allot slots in the coming one or two years as the slots are already booked to thousands of devotees till 10 to 15 years in future. Therefore, they opposed the Writ Petitions on the above grounds.

10) After hearing both the parties, learned Single Judge allowed the Writ Petitions by the impugned common order on the ground that doctrine of legitimate expectation comes into play and the writ petitioners, who have purchased the tickets and got their slots booked, are entitled to participate in the said Sevas after the Sevas are resumed. Therefore, the Writ Petitions are allowed and a direction was given to the T.T.D. to permit them to participate in the Sevas in future dates by allotting slots to them.

11) Aggrieved thereby, the instant Writ Appeals have been filed by the T.T.D. assailing the legality and validity of the impugned common order.

12) Learned senior counsel Sri S.S. Prasad, appearing on behalf of the appellant-T.T.D., would vehemently contend that the Sevas will be performed to the Deity in isolation, which are called as “Eakantha Sevas” and to enable the devotees to participate in the Sevas, the T.T.D. has floated a Scheme to permit the devotees to participate by making an offer to book tickets by way of paying money fixed for the said purpose and accepting the said offer made by the T.T.D. that the devotees have paid money and booked the slots and as such, the dispute is in the realm of Law of Contract. It is contended that it is a contract between the T.T.D. and the devotees, who have accepted the said offer and booked the tickets. He would then contend that due to unforeseen future event i.e. as there is sudden spread of Corona virus in the country and other parts of the world, and due to the Covid-19 guidelines issued by the Union of India that the T.T.D. could not allow them to participate in the Sevas as their slots unfortunately fell during the Covid period, and as such, their permissions are cancelled and opportunity was given to them either to take return of the money or to participate in the Break Darshan. So, he would contend that there was frustration of contract under Section 56

of the Indian Contract Act and the contract became void. Therefore, he would contend that the writ petitioners ought to have availed the options given to them and they are not entitled to seek directions to give them slots in the coming one or two years as the said slots till the coming 10 to 15 years were already booked to various devotees, who are in thousands in number long back. He would then contend that tickets were already booked upto the year 2040. In support of his contentions, he relied on the judgments of the Apex Court rendered in the cases of **Satyabrata Ghose v. Mugneeram Bangur & Co.**¹ and **Mugneeram Bangur & Co. Ltd. v. Gurbachan Singh**².

13) *Per contra*, learned counsel appearing for the respondents/writ petitioners would contend that it is a rare opportunity, which the devotees would get after waiting for several years together after booking the tickets to participate in the Aarjitha Sevas of the Deity and even though the slots, which were allotted to them have fallen during Covid-19 season that nothing prevents the T.T.D. to allot the slots in future after the Sevas are resumed and T.T.D. cannot deprive the devotees

¹ AIR 1954 SC 44 = 1954 SCR 310

² AIR 1965 SC 1523 = (1965) 2 SCR 630

of their opportunity to participate in the said Sevas on the ground that Covid-19 guidelines came in their way to allow them to participate in the said Sevas. They would contend that as rightly held by the learned Single Judge that doctrine of legitimate expectation clearly applies to the case and the T.T.D. is bound under law to perform their part of the contract and permit the devotees to participate in the said Seva by allotting slots to them in the future dates.

14) The facts of the case clearly show that the dispute clearly falls within the realm of law of contract. An open offer was made by the T.T.D. to the devotees to participate in the Aarjitha Sevas of the Deity by paying the money fixed for the said purpose and book a slot and the said offer was accepted by the writ petitioners along with other devotees and they paid money and accordingly, slots were allotted to them. So, it is a clear case of entering into a contract between both the parties i.e. the T.T.D. and the writ petitioners. The offer made was accepted and the contract was concluded between the parties. Almost, 17,490 tickets were issued. To all the said 17,490 devotees, slots were allotted during the year 2020-2021. Unfortunately, the said slots fell during the first wave and second wave of

spread of Corona virus in the country. The Union of India has issued Covid-19 guidelines to prevent spread of Corona virus among the people in the interests of their life and health. The said fact is not denied by the writ petitioners and it could not also be denied as it is a fact. Due to the said Covid-19 guidelines, which are issued imposing restrictions to permit people to gather together, the T.T.D. has passed a resolution to cancel permissions to the devotees to participate in the Aarjitha Sevas and to perform only Eakantha Sevas to the God. They also permitted the devotees, who got the slots during the said period, either to take return of the money or to participate in superior class Break Darshan offered to devotees, who paid Rupees One Crore donation to T.T.D. It is stated that 8,347 devotees have availed the said Break Darshan and 191 devotees have claimed refund of money and only 8,918, including the writ petitioners, did not avail the said opportunity. Therefore, in the said facts and circumstances of the case, the doctrine of frustration of contract clearly applies to the present dispute. It is not as though that the T.T.D. has cancelled the said permission accorded to the writ petitioners without any valid reason. It is not disputed before the Court that the T.T.D. did

not permit any devotee to participate in the Aarjitha Sevas during the pandemic period. In fact, the T.T.D. is constrained to take the said decision to prevent spread of Corona virus in the best interests of the public at large and the devotees. It is a clear case where an unforeseen future event has unfortunately come in the way of T.T.D. to perform their part of contract in permitting the writ petitioners to participate in the said Sevas of the Deity.

15) Section 56 of the Indian Contract Act, 1872, therefore, clearly comes into play and applies to the present *lis*. For better appreciation, Section 56 of the Indian Contract Act is extracted hereunder and it reads thus:

“56. Agreement to do impossible act.—An agreement to do an act impossible in itself is void.

Contract to do an act afterwards becoming impossible or unlawful.—A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.—Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make

compensation to such promisee for any loss which such promisee sustains through the nonperformance of the promise.”

16) A bare reading of the aforesaid Section makes it manifest that when a contract to do an act becomes impossible by reason of some event which the promisor could not prevent that the said contract becomes void. So, when the performance of the act promised becomes impossible due to some reason which is beyond the control of T.T.D., namely in the present case, the pandemic situation, the T.T.D. could not perform the said act. So, the contract got frustrated.

17) The whole world including India has been affected with the spread of Corona virus. It is an unprecedented event/situation that took place in the country. Several people have unfortunately lost their lives. Therefore, the Union of India was constrained to issue Covid-19 guidelines to prevent the spread of the Corona virus in the interests of the health and life of the public. So, the T.T.D. is also constrained to follow the said guidelines and cancel all the Sevas to the devotees to protect their life and health. So, when the T.T.D. is unable to perform their part of contract due to frustration of the contract in the above circumstances, none can find fault with the act

of the T.T.D. in cancelling the said permission during the said period.

18) The three-Judge Bench of the Apex Court in the case of **Satyabrata Ghose v. Mugneeram Bangur & Co.**¹ held at para.20 as follows:

“It is well settled and not disputed before us that if and when there is frustration the dissolution of the contract occurs automatically. It does not depend, as does rescission of a contract on the ground of repudiation or breach, or on the choice or election of either party. It depends on the effect of what has actually happened on the possibility of performing the contract. What happens generally in such cases and has happened here is that one party claims that the contract has been frustrated while the other party denies it. The issue has got to be decided by the court "*ex post facto*, on the actual circumstances of the case".

19) In the case of **Mugneeram Bangur & Co. Ltd. v. Gurbachan Singh**² also, the same view was taken at para.7 of the judgment.

20) The law relating to frustration of contract under Section 56 of the Indian Contract Act is not considered and it was not at all discussed in the impugned common order.

21) As per the version of the T.T.D., the request of the writ petitioners to permit them to participate in the said Sevas in future in the coming one or two years could not also be considered as already the slots were booked for thousands of people in future after the Sevas are resumed upto the year 2040. It is a known fact that huge flow of devotees will be there on Tirumala Hills to have Darshan of Lord Sri Venkateswara Swamy and to participate in the Sevas of the Deity. Thousands of people have already booked their slots till the year 2040. Therefore, it is not possible for the T.T.D. to cancel the slots, which were already allotted to the devotees, and give the said slots to the writ petitioners. Further, the contract between the T.T.D. and the writ petitioners is to permit Sevas on a particular day i.e. on the date on which slots were given to them. When that contract could not be performed on that day, they cannot claim to give the slots in a future day. That is not part of the conditions of the contract or term of the contract. So, legally they are not entitled to any such direction.

22) Therefore, for the aforesaid reasons, the impugned common order is not sustainable under law and it warrants

interference in these Writ Appeals and the same is liable to be set aside.

23) Resultantly, the Writ Appeals are allowed and the impugned common order of the learned Single Judge passed in all the above four Writ Petitions is set aside. However, the writ petitioners are at liberty either to claim refund of the money paid by them to the T.T.D. or to avail the other option of Break Darshan. No costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall stand closed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

JUSTICE TARLADA RAJASEKHAR RAO

Date:19.10.2023.

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