

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WA.No. 1717 of 2015

JUDGMENT DATED 21-07-2015 IN WP(C) 15447/2015
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APPELLANT(S)/PETITIONER:

**P.A.MUSTHAFA, AGED 44 YEARS,
PALASSERI HOUSE, KUMMINIPARAMBA P.O.,
MALAPPURAM DISTRICT, KERALA - 673 638.**

**BY ADVS.SRI.ABRAHAM VAKKANAL (SR.)
SRI.PAUL ABRAHAM VAKKANAL
SRI.DIJO SEBASTIAN
SMT.VINEETHA SUSAN THOMAS**

RESPONDENT(S)/RESPONDENTS:

- 1. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
CIVIL AVIATION DEPARTMENT,
NEW DELHI - 110 001.**
- 2. AIRPORT AUTHORITY OF INDIA,
REPRESENTED BY EXECUTIVE DIRECTOR (COMMERCIAL),
CORPORATE OFFICE, RAJIV GANDHI BHAWAN,
SAFDARJUNG AIRPORT, NEW DELHI - 110 001**
- 3. AIRPORT DIRECTOR,
TRIVANDRUM INTERNATIONAL AIRPORT,
THIRUVANANTHAPURAM - 695 008.**
- 4. THE SENIOR MANAGER (COMMERCIAL),
ADMIN ANNEX 1ST FLOOR,
DOMESTIC TERMINAL BUILDING,
TRIVANDRUM INTERNATIONAL AIRPORT,
THIRUVANANTHAPURAM 695 008.**
- 5. REGIONAL EXECUTIVE DIRECTOR,
AIRPORT AUTHORITY OF INDIA, SOUTHERN REGION,
CHENNAI INTERNATIONAL AIRPORT, CHENNAI - 600 027.**

**R1 BY ADVS. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
SMT.MAHESWARYG.
R2-R5 BY ADV. SRI.V.SANTHARAM**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
05-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

ASHOK BHUSHAN, C.J.

&

A.M.SHAFFIQUE, J.

.....

W.A.No.1717 of 2015

.....

Dated this the 5th day of August, 2015

JUDGMENT

A.M.Shaffique, J.

Heard learned Senior counsel for the appellant and Sri.V.Santharam, the learned counsel for the respondents.

2.This writ appeal has been filed against the judgment dated 21.07.2015 in W.P.(C) No.15447 of 2015. The writ petition is filed on the allegation that the 2nd respondent/Airport Authority of India [for short, 'AAI'], though, invited tenders for baggage wrapping service, and the petitioner became the successful bidder, his tender was not accepted for a period of five months and later alleging that there was a change in policy and fresh guidelines has been issued, the tender had been cancelled. The petitioner sought for the following relief :

- i. a writ of certiorari or other appropriate writ or order quashing Exts.P7 & P9 decisions to the extent it cancelled the e-BID No.1000004342 pertaining to baggage wrapping services contract at the

Trivandrum International Airport ;

ii. a writ of mandamus or other appropriate writ, order or direction commanding the respondents 2 to 5 to award the contract – e-BID No.1000004342 pertaining to baggage wrapping services contract at the Trivandrum International Airport in favour of the petitioner as per the guidelines in force when the NIT of e-BID No.1000004342 was issued & processed;

iii. A writ of mandamus or other appropriate writ, order or direction commanding the respondents 2 to 5 not to proceed further with the re-tender proceedings proposed in Ext.P9 and permit the petitioner to continue operating the baggage wrapping services in Trivandrum International Airport, pending this W.P.(C);

3.The learned single Judge after evaluating the respective contentions of the parties, dismissed the writ petition.

4.The learned senior counsel appearing for the appellant, however, would submit that the action on the part of the AAI in cancelling the tender after keeping it pending for more than five months is quite unfair and arbitrary and therefore appropriate directions ought to have been issued in the case

as prayed for.

5.The relief sought for by the petitioner/appellant apparently includes a direction to cancel Exts.P7 and P9 decisions. By Ext.P7 AAI took a decision to invite fresh tenders and cancelled the existing tender on account of the revised guidelines. Ext.P9 is a further communication dated 23.03.2015, by which, the appellant was informed that since the competent authority has issued revised guidelines/conditions for tendering baggage wrapping service, the bid of the petitioner/appellant stands cancelled. This was issued on 23.03.2015.

6.The learned counsel for AAI submits that, the fact that the tender had been cancelled by itself would indicate that the AAI had no intention to proceed with the said tender. They have also stated that the cancellation of tender was on account of the revised guidelines coming into force.

7.The learned Senior counsel appearing for the appellant would however contend that even in an earlier occasion a similar incident had occurred, wherein the appellant, who

became the successful bidder was not awarded the contract and the tender was cancelled. This is the second time that such an unfair method is adopted by the AAI.

8. Though, it is contended by the learned senior counsel for the appellant that the action of the AAI is unfair and arbitrary, we do not think that cancellation of a tender on account of revised guidelines coming into force would amount to an arbitrary action from the part of the AAI.

9. As far as the appellant is concerned, his tender remains as an offer and there is no concluded contract unless it is accepted. In between the date of opening of the tender and the award of contract, it is always open for the authority to consider whether they should proceed with the award or not. In the present case, it is stated that revised guidelines has been issued by the competent authority and therefore re-tender is invited.

In that view of the matter, we do not think that the action of AAI is anyway arbitrary. There has been sound reason for cancellation of the tender. Under such circumstances, we do

not think that learned single Judge has committed any error in dismissing the writ petition.

In the result, we do not find any ground to interfere with the impugned judgment, hence, this writ appeal is dismissed.

Sd/-
ASHOK BHUSHAN, Chief Justice.

Sd/-
A.M.SHAFFIQUE, Judge.

AMV/06/08/

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P.A.TO JUDGE