

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.A.Nos.955 to 957 of 2016

V.Krishnamurthy
Proprietor
M/s Aviation Express
No.66/142, Eldams Road
Teynampet
Chennai 600 018

.. Appellant in all the appeals

-vs-

1. Airports Authority of India
Rajiv Gandhi Bhavan
Safdarjung Airport
New Delhi 110 003
represented by its Chairman

2. Executive Director (Commercial)
Rajiv Gandhi Bhavan
Safdarjung Airport
New Delhi 110 003

3. Airport Director
Chennai Airport
Meenambakkam
Chennai 600 027

4. The Deputy General Manager (Commercial)
Airport Authority of India
Chennai Airport
Meenambakkam
Chennai 600 027

5. Bureau of Civil Aviation Security
Chennai Airport , Meenambakkam
Chennai 600 027
represented by Assistant Commissioner
of Security (CA) .. Respondents in all the appeals

Appeals under Clause 15 of the Letters Patent, against the order dated 26.07.2016 made in W.M.P.Nos.21609 to 21611 of 2016 in W.P.No.25253 of 2016.

To issue a Writ of Certiorarified Mandamus calling for the records relating to the 4th respondents communication in AAM / C.2367 / 2010/Vol.IV/1622 dt 28.6.2016 and consequently forbear the respondents from interfering with the functioning of the petitioners concern M/s. Aviation Express in regard to its Maxi Cab / Air Conditioned City Coach Services at Chennai Airport pending finalisation of the transportation policy.

Prayer in WMP No.21609 to 21611 of 2016

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to pass an order of interim injunction restraining the respondents from interfering with the functioning of the petitioners concern M/S.Aviation Express, as Maxi Cab/Air Conditioned City Coach Service Provider at Chennai Airport [in WMP.21609/16] pending[in W.P.25253 of 2016];

ii]to stay the operation of 4th respondents communication in AAM/C.2367/2010/Vol.IV/1622 dated 28.6.2016 issued to the petitioners concern M/S.Aviation Express[in WMP.21610/16] pending [in W.P.25253 of 2016];

iii]to issue an order of interim direction directing the 5th respondent to issue Security passes to the employees of M/S.Aviation Express[in WMP.21611/16] pending [in W.P.25253 of 2016] respectively.

For Appellant :: Mr.AR.L.Sundaresan
in appeals Senior Counsel for
M/s G.R.Associates

For Respondents:: Mr.Father Xavier Arul Raj
in all appeals Senior Counsel for
Ms.A.Arul Mary for R1 to R4
Mr.Su.Srinivasan
Assistant Solicitor General for R5

JUDGMENT

(Judgment of the Court was made by HULUVADI G.RAMESH, J.)

These appeals by the writ petitioner/licensee are against the common order of the learned single Judge dated 26.7.2016 made in W.M.P.Nos.21609 to 21611 of 2016 in W.P.No.25253 of 2016.

2. The appellant/writ petitioner filed the Writ Petition No.25253 of 2016 seeking for issuance of a writ of certiorarified mandamus, calling for the records relating to the fourth respondent's communication in AAM/C.2367/2010/Vol.IV/1622 dated 28.06.2016 and consequently forbear the respondents from interfering with the functioning of the appellant/petitioner's concern M/s Aviation Express in regard to its Maxi Cab/Air Conditioned City Coach Services at Chennai Airport, pending finalisation of the transportation policy. Pending the writ petition, the appellant/writ petitioner filed the writ miscellaneous petitions seeking for (i) an order of interim injunction restraining the respondents from interfering with the functioning of the petitioner's concern M/s Aviation Express as Maxi Cab/Air Conditioned City Coach Service Provider at Chennai Airport; (ii) to stay the operation of the fourth respondent's communication in AAM/C.2367/2010/Vol.IV/1622 dated 28.6.2016 issued to the petitioner's concern M/s Aviation Express; and (iii) an order of interim direction directing the fifth respondent to issue security passes to the employees of M/s Aviation Express, pending disposal of the writ petition. After hearing the learned counsel for the parties, the learned single Judge has passed the following order:-

"7. As per the communication of the 4th respondent, dated 28.2.2013, the competent authority has decided to extend the license period awarded to the petitioner till further orders, subject to certain conditions and consequently, vide letter dated 4.3.2013, titled "To whom so ever it may concern", has specifically stated that the license granted to the petitioner has been extended for a further period (which expired on 15.4.2013), pending finalization of the transportation policy by Airports Authority of India/1st respondent and also subject to satisfactory performance.

8. The 4th respondent has also sent a communication dated 2.2.2016, wherein, in first para, it refers to the extension of license period and in the second para, it is

clearly stated that the said license awarded to the petitioner was extended till 30.6.2016, subject to payment of 10% annual compound escalation on the existing license fee and that the other terms and conditions of license, shall remain unchanged.

9. In the light of the later communication dated 2.2.2016, this Court is of the view that the 'word/phraseology' appears in the communications, dated 28.2.2013 and 4.3.2013 of the 4th respondent, 'until further orders' means till further orders be passed by the 4th respondent and accordingly, the 4th respondent has sent a communication dated 2.2.2016 to the petitioner, informing that the license granted to the petitioner (which expired on 15.4.2016), is extended till 30.6.2016 and not beyond the said period.

10. Admittedly, the communication of the 4th respondent dated 2.2.2016, has not been put to challenge by the petitioner so far. The petitioner, acting under the pretext or under the impression that the license period is extended until further orders, has approached the 5th respondent for getting passes and when it was brought to the knowledge of the 4th respondent, they informed the petitioner by way of the impugned communication dated 28.6.2016, that the extension of the petitioner's ongoing contract stands expired on 30.06.2016 and it is being extended by another one month i.e., till 31.7.2016 and upon expiry of the above mentioned period, the contract of the petitioner stands terminated and called upon the petitioner to vacate and handover peaceful possession of the premises at Chennai Airport.

11. In the considered opinion of this Court, the stand taken by the 4th respondent in the light of their earlier communication dated 2.2.2016, which has not been put to challenge by the petitioner, cannot be found fault with. It is pertinent to note that at this juncture the petitioner is only a

licensee and it cannot as a matter of right to continue its operation forever despite the fact of expiry of license period.

12. The petitioner is a commercial entity and in the normal course of business operations, it is expected to face vagaries of business conditions in the form of profit-and-loss and if the petitioner is aggrieved of the fact that its license is unjustly not extended by the 4th respondent, it is always at liberty to avail common law remedy before the competent civil forum.

13. In the light of the above reasons, these W.M.P's are dismissed."

3. Heard the learned senior counsel for the appellant and the learned senior counsel for the respondents 1 to 4 as well as the learned Assistant Solicitor General for the fifth respondent.

4. The issue pertains to the termination of license granted to the appellant/writ petitioner. Though the learned senior counsel for the appellant took us through the series of correspondence between the appellant and the respondent-Airport Authority with respect to the extension of license from time to time, as rightly held by the learned single Judge in paragraph-10 of the order, by the communication dated 28.6.2016 impugned in the writ petition, the competent authority had examined the request and informed the appellant that the extension of the ongoing contract stands expired on 30.6.2016 and it is being extended by another one month i.e., till 31.7.2016 and also made it clear that upon expiry of the above mentioned period, the contract shall stand terminated, as such called upon the appellant to vacate and handover peaceful possession of the premises at Chennai Airport. Now what is being canvassed by the learned senior counsel for the respondent-Airport Authority, after taking us through the sketch enclosed in page-127 of the typed-set, is that the land of 770 square metres is very much necessary for further development and the appellant is enjoying the same for more than 16 years based on the interim order being extended by the civil Court from time to time. When the appellant has been enjoying the land for more than 16 years and has been directed to vacate and handover possession after the expiration of the contract based on a policy decision, though not stated in many words, to introduce a new system or development, we are of the view that the appellant, being a licensee, has no vested right to continue in possession even after the termination of the contract. In fact, on an earlier occasion, when the appellant/writ petitioner approached this Court, while challenging the communication dated 15.3.2004

issued by the Assistant General Manager (Commercial), Airport Authority of India and also to forbear the respondents therein from interfering with the possession of 770 square meters open area allotted to the writ petitioner, in W.P.No.8334 of 2004, by order dated 1.11.2006, a learned single Judge dismissed the writ petition holding that when the rights of the parties emanated from the terms and conditions of the contract, the appellant cannot invoke the extraordinary jurisdiction under Article 226 to maintain the writ petition. It was also held that there was no public interest involved except the personal interest of the appellant/writ petitioner. That apart, in our view, the appellant has been enjoying a privilege granted by the respondent-Airport Authority from time to time and any such decision contrary to the policy would be an abuse of process. In these circumstances, we do not find any scope for interference with the order passed by the learned single Judge, as the decision appears to have been taken looking into the series of correspondence between the appellant and the respondent-Airport Authority and also based on the policy decision, though not stated in many words. As such, we are not inclined to take any other decision in the matter. Accordingly, the writ appeals are dismissed. Consequently, C.M.P.Nos.12276 to 12278 of 2016 are also dismissed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

+2cc to M/S.A.Arulmarry, Advocate sR.44547

+3cc to M/S.G.R.Associates, Advocate Sr.44324,44325,44326

+1cc to M/S.Su.Srinivasan, Advocate Sr.44368

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W.A.Nos.955 to 957 of 2016

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