

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 3544 OF 2017

**Airport Services Providers }
Association and Anr. } Petitioners
 versus
Union of India and Ors. } Respondents**

Mr. Zal Andhyarujina with Mr. Shanay Sancheti and Mr. Rahul P. Jain i/b. Mr. Alpha Chambers for the petitioner.

Mr. Parag Vyas for respondent nos. 1, 4 and 5.

Mr. Janak Dwarkadas-Senior Advocate with Mr. Farid Karachiwalla, Mr. Ahuramazda Postvala, Ms. Sneha Mehta, Ms. Hemangi Abhyankar i/b. M/s. Wadia Ghandy and Co. for respondent no. 2.

Mr. Venkatesh Dhond-Senior Advocate with Mr. Abhay Jadeja and Mr. Varun Satiya i/b. M/s. Crawford Bayley and Co. for respondent no. 6.

**CORAM :- S. C. DHARMADHIKARI &
 SMT. BHARATI H. DANGRE, JJ.**

DATE :- JANUARY 29, 2018

P.C. :-

1. The petitioner before us has challenged by this petition the conditions imposed by the amendment to the tender/request for qualification-cum-request for proposal for ground handling concession at Chatrapati Shivaji International Airport, Mumbai.

2. It is common ground that the petitioner before us seeks to represent the Indian private ground service providers. They say that the members of this first petitioner association have been providing efficient, timely and secure ground handling services to various domestic and international airlines and private airport operators at various Indian airports and particularly the metropolitan airports.

3. The first respondent is the Union of India and the second respondent is the person operating, managing and administering agency at the Chatrapati Shivaji International Airport, Mumbai. The third respondent is the Airports Authority of India and the fourth and fifth respondents are the statutory authorities, whereas, the sixth respondent to this petition seeks to be appointed for it has purchased the tender document.

4. The petitioners say that petitioner no. 1 is constrained to challenge the two stipulations although one of its members has purchased the tender form. The learned counsel appearing for the petitioners would submit that the three terms and conditions in this document are unreasonable, unjust and violative of Article 14 of the Constitution of India. These conditions have no nexus with the object sought to be achieved. His first argument is that the insistence on furnishing a performance guarantee of Rs.100

crores and furnishing a technical experience criteria of handling minimum 10 million passengers and finally, the turnover condition is unreasonable because such conditions were imposed in the past, but at that time, they were not so unreasonable and discriminatory ruling out the participation of domestic operators. Now, the situation is no different from 2015-16. When such conditions are imposed, the local operators are out of the reckoning. It is in these circumstances, he would submit that we should interfere in writ jurisdiction.

5. With his assistance, we have perused the writ petition and annexures thereto. We are mindful of the fact that in writ jurisdiction it is not for us to test the reason and necessity for inserting the terms and conditions to be imposed on the bidders nor are we controlling the interpretation of the same. It is too well settled to require any reference to the Hon'ble Supreme Court judgment that the terms and conditions of a tender are beyond judicial scrutiny unless such conditions make it impossible for a person to participate in the process. They ought to be of such nature as would make them ex-facie unreasonable and violative of the constitutional mandate. They ought to be demonstrated as tailor made for a particular bidder.

6. On a perusal of the relevant terms and conditions and which are under challenge, we do not find this to be the position. The conditions are set out at page 53 of the paper book titled as “Eligibility Criteria And Nature of Bidder”. The bidder should have, during the year ended 31st March, 2017, handled as a ground handler, at least 10 million passengers in aggregate at international airports (which may be within or outside India). Given the passenger traffic and at the International Airport at Mumbai, where even domestic airlines have their operations, we do not think that this condition is unreasonable or having no nexus with the object sought to be achieved. The object obviously is to provide expeditious ground handling services at the airport. The nature of the services is also set out. Apart from giving the passengers assistance, cleanliness and hygiene, there are several duties, which are to be performed by these agencies. They should deploy adequate and sufficient number of manpower so that the services do not suffer. There could be a breakdown in the event the passenger traffic exceeds the limit, particularly during vacations and holidays. In these circumstances and to obtain most efficient services that such conditions are imposed.

7. Secondly, The financial eligibility criteria, namely, turnover of Rs.75 crores from the ground handling business and positive

net worth are also conditions matching with the requirement of respondent nos. 1 to 3. It has always been noticed by them that in the event there is no financial stability, the service providers may withdraw their services abruptly or do not deploy requisite staff at the international airport, which is busy. It is, therefore, to meet a situation of breakdown and then to avoid proceeding for breaches and violations of the terms and conditions that such insistence on turnover of Rs.75 crores. We do not think, in the backdrop and the magnitude of the services, which are required to be provided, such a condition can be termed as unreasonable.

8. Finally, the condition that there should be furnished a performance guarantee of Rs.100 crores would ensure that the best participates and then provide services of the requisite and required quality. The conditions, therefore, have a clear nexus with the object that is sought to be achieved. We cannot, by comparative analysis, as is sought to be undertaken by the petitioners, strike down these conditions. It has been noticed that competitive bidding is undertaken so that the services to the passengers do not fall below the international standards. In these circumstances, we do not see anything unreasonable, unfair or unjust in the terms and conditions. We are of the firm view that entertaining this petition would mean sitting in judgment over

wisdom of the authorities in inserting these conditions and their necessity. That is not an exercise that we can undertake in writ jurisdiction. These conditions cannot be substituted only because another view is possible.

9. As a result of the above discussion, the writ petition fails. It is dismissed, but without any order as to costs.

(SMT. BHARATI H. DANGRE, J.)

(S.C.DHARMADHIKARI, J.)