

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2018

CORAM

THE HONOURABLE **MR.JUSTICE R.MAHADEVAN**

W.P.Nos.22106 and 21430 of 2018
and
WMP.Nos.25907, 25908, 25165 and 25166 of 2018

M/s. S.S.Enterprises
 represented by its Authorized Signatory
 Sandeep Bholanath Shukla

... Petitioner in
 both the WPs

Vs

1.Airports Authority of India,
 Chennai Airport,
 rep.by Airport Director,
 Chennai Airport,
 Chennai-600 027.

2.Assistant General Manager (Commercial)
 Airport Authority of India,
 Chennai Airport,
 Chennai- 600 027.

... Respondents in
 both the WPs

WP.No.22106/2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the 2nd respondent relating to the impugned order bearing No.AAM/C.146/2018/2310 dated 17.08.2018 and quash the same.

WP.No.21430/2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent relating to the impugned order received by mail order dated 18.08.2018 bearing Subject: Clearance of the outstanding dues pending against the Car Parking Contract at Chennai Airport-Reg and quash the same and consequently direct the respondents 1 and 2 to constitute a Dispute Resolution Committee in furtherance of the petitioner's request dated 09.01.2018.

For Petitioner : Mr.A.L.Somayaji, SC
for Mr.T.Gowthaman

For R1 & R2 : Mr.G.Rajagopal, Assistant Solicitor General
assisted by Mr.Mathumathy Madhavan

COMMON ORDER

Apprehending the encashment of bank guarantee for the outstanding dues payable by the petitioner, the present writ petitions have been filed to quash the communications dated 17.08.2018 and 18.08.2018 respectively issued by the second respondent.

2.The facts of the case in WP.No.22106 of 2018 are as follows:

2.1 The petitioner is a reputed agency operating parking spaces in various airports for the last ten years. In May 2017, the first respondent invited e-tenders for the grant of licence for Management of airport admission Entry ticket at Chennai Airport for a period of

three years. Pursuant to the same, the petitioner submitted their tender in the prescribed format along with the requisite/prescribed documents and paid necessary fees. After due scrutiny, their bid was accepted and they were declared as the successful bidder. Consequently, they were awarded the licence vide letter bearing No.AAM/C0146/2017 dated 20.10.2017 issued by the first respondent.

2.2 According to the petitioner, as per the terms of the Notice Inviting Tender (NIT) as well as the award letter, the annual escalation would be 10% from the last paid licence fee. Accordingly, they were liable to pay an escalated monthly fee of Rs.77,04,345/- for the second year and a monthly fee of Rs.84,74,780/- for the third year of the licence, besides advance licence fee of Rs.82,76,452/- with 18% GST, security deposit of Rs.3,39,05,172/- and electricity deposit of Rs.7,00,000/- and they duly complied with the same.

2.3 It is the grievance of the petitioner that the minimum reserve licence fee of Rs.69,78,950/- fixed by the respondents in the tender was 60%, which is higher than what the previous contractor was paying. Further, the respondents unilaterally shifted the location of the visitors gallery to a completely unviable location and the ambience of the relocated area was designed in such a way that it was not viewer-friendly at all.

2.4 Due to the predicaments faced by them, the petitioner sustained huge loss, which constrained them to send a communication dated 11.12.2017 to the respondents requesting to reduce the monthly licence fee and other issues, through arbitration as per the terms of the NIT. However, the second respondent rejected the said request.

2.5 The petitioner sent another communication dated 21.12.2017 reiterating their issues and praying for the setting up a Dispute Resolution Committee under Clause 29 of the General terms and conditions of the NIT.

2.6 The second respondent, vide communication in AAM/Comml/DRC/Entry Ticket/2018 1960-65, informed the petitioner that a Dispute Resolution Committee has been constituted by the first respondent to examine the disputes and bring about a settlement. Immediately, the petitioner submitted their claims on 25.07.2018. Thereafter, the representatives of the petitioner attended the meeting and set forth the claims of the petitioner in detail.

2.7 Even before the Commercial Department could send its response to the Dispute Resolution Committee to make its recommendations, the second respondent has sent the impugned order vide communication dated 17.08.2018, directing the petitioner

to clear the outstanding dues, to the tune of Rs.4,17,37,145.92 based on the calculations made with respect to its original bid amount of Rs.70,03,950/- with applicable GST and ancillary charges, failing which, suitable action would be taken against it by the respondents, including the encashment of its bank guarantee. Aggrieved over the same, the petitioner is before this Court.

3.The facts of the case in WP.No.21430 of 2018 are as follows:

3.1 The petitioner had successfully executed various car parking contracts with various airports for the last ten years. During February 2017, the first respondent invited e-tenders for the grant of licence for vehicle parking rights at international and domestic terminals of the Chennai airport. Pursuant to the same, the petitioner submitted their tender in the prescribed format along with the requisite/prescribed documents. After due scrutiny, their bid was accepted and they were declared as the successful bidder and was awarded licence vide letter dated 20.06.2017. After settlement of the issues with the earlier contractor, the car parking facility was handed over to the petitioner only on 01.10.2017.

3.2 According to the petitioner, when the actual parking facility was handed over to the petitioner, it was found that the space

allocated to the petitioner was substantially lesser than the area notified in the NIT. After the inspection and joint measurement, it came to light that the area actually allocated by the respondents for the car parking facility was only 27,000 sq.m, while the area mentioned in the NIT for the same was 51,401 sq.m. Aggrieved over the same, the petitioner sent a communication dated 07.10.2017 to the respondents setting out the anomaly and sought appropriate rebate in the licence fee in proportion to the reduction in the area pointing out that similar benefits had been extended to the petitioner itself qua Kolkata airport.

3.3 Further, the respondents took a unilateral decision to permit App-based taxis such as Ola and Uber to have free access to the airport, without levy of any parking fee irrespective of the time that they spent in the airport, which was opposed by the petitioner. Hence, a joint meeting was held and it was concluded that the respondents offered to reduce the licence fee payable by the petitioner to Rs.1.95 crores per month, which worked to a rebate of 11%, whereas, the petitioner expressed their inability to pay such a huge licence fee. However, the petitioner paid the advance licence fee of Rs.2,38,68,888/- as per the terms and conditions of the NIT.

3.4 Thereafter, the petitioner sent a communication dated 09.01.2018 setting out all the difficulties and sought a rebate or a reference to the disputes to a Dispute Resolution Committee under Clause 29 of the General terms and conditions of the NIT, despite which, the respondents continued to raise bills as per the original bid quoted by the petitioner viz., Rs.2,07,55,555/- with applicable GST and insisted on the payment of the monthly licence fees without any reference/consideration to the ground reality. Further, the second respondent sent the impugned order vide e-mail dated 18.08.2018 with Subject as "Clearance of the outstanding dues pending against the Car parking contract at Chennai Airport – Reg", whereby, the petitioner was directed to remit all the arrears based on the calculations made with respect to their original bid amount of Rs.2,07,55,555/- with applicable GST and ancillary charges, failing which, it was indicated that their bank guarantee would be invoked by the respondents. Hence, this writ petition.

4.The learned Senior Counsel appearing for the petitioner submitted that the respondents, having not considered the issues raised by the petitioner and having not resolved the same through the Dispute Resolution Committee as per Clause 29 of the terms and

conditions of the NIT, issued the impugned communications, directing the petitioner to pay the outstanding dues, failing which, they would encash the bank guarantee furnished by them, which, according to the learned Senior Counsel, is arbitrary, illegal and against the terms and conditions of the NIT. The learned Senior Counsel further submitted that to safeguard the interest of the revenue, the petitioner furnished the bank guarantee to the tune of Rs.11,00,00,000/- which is valid till 19.12.2018. According to him, in the event of the bank guarantee being encashed by the respondents, the petitioner would be subjected to untold hardship and irreparable loss. Hence, he sought appropriate orders in these writ petitions.

5. On the other hand, the learned Additional Solicitor General of India, placing reliance on the decision of the Supreme Court in **Ansal Engineering Projects Limited v. Tehri Hydro Development Corporation Limited and another [(1996) 5 SCC 450]**, submitted that the bank guarantee is an independent and distinct contract between the bank and the beneficiary and is not qualified by the underlying transaction and the validity of the primary contract between the person at whose instance the bank guarantee was given and the beneficiary; and the Court, exercising its powers, cannot interfere with

enforcement of bank guarantee/letters of credit, except only in cases, where fraud or special equity is *prima facie* made out in the case as triable issue by strong evidence so as to prevent irretrievable injustice to the parties. However, he fairly submitted that the issues raised by the petitioner would be resolved through Dispute Resolution Committee, as per the terms and conditions of the NIT, even in respect of W.P.No.21430 of 2018 where the Dispute Resolution Committee is yet to be constituted.

6.Considering the facts and circumstances of the case and having regard to the submissions made by the learned Senior Counsel for the petitioner and the learned Additional Solicitor General appearing for the respondents and taking note of the fact that to protect the interest of the revenue, the petitioner furnished bank guarantee to the tune of Rs.11 crores, which is valid upto 19.12.2018, this Court directs the respondents to constitute a Dispute Resolution Committee, if not, already constituted, which shall consider all the claims of the petitioner and dispose of the same, on merits and in accordance with law, after affording an opportunity of personal hearing to the parties, within a period of four weeks from the date of receipt of a copy of this order. Till such time, *status quo* as obtaining today shall be maintained by the parties.

R.MAHADEVAN, J.

rk

7.Both these writ petitions stand disposed of in the above terms.

No costs. Consequently, connected Miscellaneous Petitions are closed.

20.11.2018

rk

Index: Yes/ No

Note: Issue today

To

1.Airport Director,
Airports Authority of India,
Chennai Airport,
Chennai Airport,
Chennai-600 027.

2.Assistant General Manager (Commercial)
Airport Authority of India,
Chennai Airport,
Chennai- 600 027.

सत्यमेव जयते

W.P.Nos.22106 and 21430 of 2018

WEB COPY