

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12379 of 2021

Ex-Armyemens Welfare and Security Services Pvt. Ltd. a company registered under the provisions of the Companies Act having its registered office at Azad Path, Opposite Doon Public School, New Bus Stand, Bigrahpur, P.O.- GPO, P.S.- Jakkanpur, District- Patna, Pincode- 800001, through its Manager-cum-Authorized Signatory, Mr. Akhouri Naresh Kumar, aged about 55 years (Male), Son of Akhouri Ganga Prasad, Resident of Housing Colony, Bhootnath Road, P.O. and P.S.- Agamkuan, District- Patna, Pincode- 800026.

... .. Petitioner/s

Versus

1. The Union of India through Secretary, Department of Civil Aviation, New Delhi- 110001.
2. The Airport Authority of India through its Chairmn, Rajeev Gandhi Bhawan, New Delhi- 110003.
3. Bureau of Civil Aviation Security, Ministry of Civil Aviation, A- Wing, Janpath Bhawan, Janpath, New Delhi- 110001.
4. The Commissioner of Security, Civil Aviation, Bureau of Civil Aviation, Security of Civil Aviation, Government of India, A-Wing, Janpath Bhawan, Janpath, New Delhi- 110001.
5. Deputy Commissioner of Security (CA), Bureau of Civil Aviation Security, Ministry of Civil Aviation, A-Wing, Janpath Bhawan, Janpath, New Delhi- 110001.
6. Assistant Director (Policy), Bureau of Civil Aviation Security, Ministry of Civil Aviation, A-Wing, Janpath Bhawan, Janpath, New Delhi- 110001.
7. Joint Director (QCNOPS), Bureau of Civil Aviation Security, Ministry of Civil Aviation, A-Wing, Janpath Bhawan, Janpath, New Delhi- 110001.
8. Section Officer, Airport Authority of India Section, Ministry of Civil Aviation, New Delhi.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashish Giri, Adv.
For the Respondent/s	:	Dr. K.N. Singh, Sr. Advocate/Additional Solicitor General
		Mr. Anshay Bahadur Mathur, Adv.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV JUDGMENT

01-09-2021

Heard Mr. Ashish Giri, learned counsel for the petitioner and Dr. K.N. Singh, Senior Advocate, learned Additional Solicitor General along with Mr. Anshay Bahadur Mathur, learned counsel for the respondents through video



conferencing.

2. The petitioner which is a Private Limited Company has filed the present writ application for following relief(s):-

“(i) To hold and declare that the notification dated 29.06.2021 issued under the signature of the Joint Director, Bureau of Civil Aviation and the letter dated 30.06.2021 issued by the Section Officer, Airport Authority of India Section, Ministry of Civil Aviation by which the services of the agencies performing ground handling services at the airports enlisted therein has been extended from 30.06.2021 upto 15.07.2021 & 31.07.2021 respectively will not be applicable to the petitioner who is performing ground handling services in Patna and Ranchi Airports as the Security clearance having been granted in terms of the airport Authority of India (Ground Handling Services) Regulations, 2018 whose security clearance is valid for a period of 5 years with effect from 11.06.2019.

(ii) To alternatively quash the said decisions/letters dated 29.06.2021 issued under the signature of the Joint Director, Bureau of Civil Aviation and the letter dated 30.06.2021 issued by the Section Officer, Airport Authority of India Section, Ministry of Civil Aviation limiting the ground handling services of the petitioner for a period of only upto 15.07.2021 contrary to the security clearance granted to it for



period of 5 years w.e.f. 11.06.2019.

(iii) To issue a writ/order/direction in the nature of mandamus commanding the respondents to permit the petitioner to discharge the ground handling services in the Patna and Ranchi Airports in light of the security clearance granted to it for 5 years w.e.f. 11.06.2019 pursuant to which agreement has been entered with the airlines namely Air Asia (India) Ltd, Vistara and Go Air for ground handling work.

(iv) To pass interim /*ex parte* interim order permitting the petitioner to continue operation of its ground handling services in the Patna and Ranchi Airports in light of the existing agreement entered with the different Airlines pursuant to the security clearance granted vide letter dated 11.06.2019 which is valid for 5 years and/or stay the operation of impugned letters dated 29.06.2021 & 30.06.2021.

(v) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.”

3. The brief facts giving rise to the present writ application is that the petitioner-company was granted security clearance by the Bureau of Civil Aviation Security, Ministry of Civil Aviation in the year 2013 vide its letter dated 20.12.2013 for providing ground handling services at various airports in



India including Ranchi Airport. The validity of the security clearance was for a period of five years from the date of issuance of the letter. In pursuance of said clearance, the petitioner-company entered into an agreement with different airlines for providing ground handling services to them and according to the petitioner, it performed the ground handling services with due care and precautions and there was no complaint against it whatsoever from any quarter. It has further been stated that Central Government enacted a Rule called Aircraft Rules 1937 exercising powers under Section 5 of the Aircraft Act 1934 for securing the safety of aircraft operation as well as licensing in respect of regulation of aerodromes. Rule 92 deals with ground handling services and ensure a competitive environment by allowing the airline operators at the airport to engage, without any restriction, any of the ground handling service provider who is permitted by the Central Government to provide such service subject to the condition that such ground handling service provider shall have the security clearance of the Central Government.

4. As per Rule-15 of the Aircraft (Security) Rules, 2011, no ground handling service provider is allowed to provide ground handling services at any aerodrome without obtaining



security clearance and the approval of its security programme from the Commissioner.

5. A Regulation called the Ministry of Civil Aviation (Ground Handling Services) Regulations 2018, (in short 'Regulations 2018') came into force *vide* Notification dated 26.10.2018 and Section 2(b) of the said Regulation defines the 'Ground Handling Agency' in the following terms:-

“ground handling” means services necessary for an aircraft’s arrival at, and departure from, an airport other than air traffic control and it includes-

- (i) ramp handling including activities as specified in Schedule-I;
- (ii) traffic handling including activities as specified in Schedule-II; and
- (iii) any other activity specified by the Central Government from time to time.

6. Regulation 2(c) defines “ground handling agency” as follows:-

“Ground Handling Agency” means an entity established for the purpose of providing ground handling service at an airport and security cleared by the Bureau of Civil Aviation Security and duly appointed by the airport operator;

7. Regulation 3 deals with the ground handling services at airports and in terms thereof, the airport operator has the right to appoint ground handling agents including ground handling agency through a transparent bidding process. A copy



of the Regulations is attached at Annexure-1 to the writ application.

8. According to the petitioner, after coming into force the 'Regulations 2018' petitioner was again granted security clearance by the Bureau of Civil Aviation Security ('BCAS' for further reference) *vide* letter dated 11.06.2019 under category of 'ground handling agency' for a period of five years from the date of issuance of security clearance or the period of validity of the contract with airport operator, whichever is earlier. The letter dated 11.06.2019 is available at Annexure-3 to the petition.

9. In terms of security clearance, the petitioner entered into an agreement with Air Asia, Vistara and Go Air *vide* agreement dated 26.03.2021 for providing ground handling services inasmuch as the agreement was executed with the said airlines earlier in the year 2017 as well which has been extended subsequently, by the different addendum and the current agreement with the said Air Asia is effective from 1st of April 2021 upto 31st of March 2022. With Vistara airlines, the agreement was entered into by the petitioner for providing ground handling services at Ranchi airport in 2017 itself, which has continued and subsequent to the fresh security clearance granted to the petitioner *vide* Notification dated 11.06.2019



(Annexure-3) the agreement with the airline has been renewed again for a period of commencement from October 2019-20 expiring on 28th of October 2021. Likewise, another agreement was entered into with Vistara for providing ground handling services at Patna airport with effect from November 2019 being valid till 2nd November 2021.

10. Similarly, Go Air has also entered into an agreement with the petitioner for providing ground handling services w.e.f. 1st June 2020 at Ranchi and Patna airports as apparent from Letter Of Intent dated 29.05.2020 read with extension letter dated 28.05.2021 being effective from 01.06.2021 for one year along with agreement. Copies of the agreement have been annexed as Annexure-5, 5A, 5B & 5C.

11. Further case of the petitioner is that for the purpose of providing ground handling services, a huge amount has been invested by it by way of purchase of various equipments to the tune of approximately Rs. 7 to 8 Crores to be used at Patna airport and around Rs. 5 Crores at Ranchi airport. Details of which has been provided at Annexure-6 series to the writ application. Further, the petitioner appointed various staff both at Patna and Ranchi airports and a substantial amount is being paid to the staff as their wages and salary from providing



ground handling services to the airlines pursuant to its appointment as ground handling agency. Petitioner is also paying royalty per month to the airport authority of India and the last payment was made on 01.06.2021 for the months of March and April, 2021 to the tune of Rs. 4 Lacs. Further case of the petitioner is that the letter dated 29.06.2021 was issued under the signature of Joint Director, Bureau of Civil Aviation in terms of which the earlier letter dated 15.04.2021 has been modified and the validity of the security programme of various aircrafts has been extended in view of COVID-19 Pandemic till 31.08.2021 or until the revocation of the said order, whichever is earlier (Annexure-9, Impugned letter).

12. Thereafter, another letter dated 30.06.2021 has been issued under the signature of Section Officer, Airport Authority of India referring to Regulation 7(4) of Regulations 2018, the date of continuation of service of the agencies performing ground handling services at eleven airports has been extended from 30.06.2021 to 15.07.2021 and at sixty five airports, the date was extended from 30.06.2021 to 31.07.2021 (Annexure-10, Impugned letter).

13. According to the petitioner pursuant to letter dated 30.06.2021, the petitioner is being prevented from



providing ground handling services beyond the dated of 15.07.2021 even though the security clearance of the petitioner is valid from 11.06.2019 for the period of five years i.e. upto 2024 and the impugned letter dated 30.06.2021 cannot be made applicable in the case of petitioner inasmuch as the security clearance granted to the petitioner has never been suspended or cancelled till date.

14. Two separate counter affidavits have been filed by the Respondent No.2 i.e., Airport Authority of India (in short 'AAI') and Respondents No.3, 4, 5, 6 and 7 i.e., by Bureau of Civil Aviation Security, Ministry of Civil Aviation (in short 'BCAS'). Respondent No.2/AAI in its counter affidavit, *inter alia*, stated that the petitioner is not entitled to work as ground handling service provider in terms of Regulation 3(5)(c) of the Regulations 2018 and it is not entitled for security clearance from Respondent Nos. 3 to 7/BCAS in view of the discontinuation of services of the petitioner by the concerned airlines *vide* Annexure- 'C' series, letters showing alternative arrangements by the airlines. It is further stated that Respondent No.2/AAI has never issued any award letter nor entered into any agreement with the petitioner for carrying out ground handling services at Patna and Ranchi airports.



15. After coming into force, Regulations 2018 w.e.f. 26.10.2018, the power to appoint the ground handling service provider has changed from airline operator to airport operator and since Patna and Ranchi airports are having less than ten million passengers per annum traffic output, therefore, the case of the petitioner is covered under Regulation 3(5)(c) which defines as follows:-

“At the airport having annual passenger throughput of less than ten million passengers per annum, based on the traffic output and airside and terminal building capacity, the airport operator may decide on the number of ground handling agencies, not exceeding three, including that of,--

(a) the airport operator or its joint venture or its hundred percent owned subsidiary;

(b) a joint venture or a subsidiary of Air India;
and

(c) any other ground handling agency appointed by the airport operator through a transparent bidding process.....”

16. Further case of the Respondent No.2/AAI is that in view of aforesaid Regulations 2018, airport operator i.e., AAI (Respondent No.2) is competent to decide on the number of ground handling agencies, not exceeding three including that



of:-

(a) The airport operator, or its joint venture or its hundred percent owned subsidiary;

(b) A joint venture or a subsidiary of Air India. In this category Air India Airport Services Ltd. (for short AIASL) has been appointed for ground handling services for both Patna and Ranchi Airports.

(c) Any other ground handling agency appointed by the Airport Operator through a transparent bidding process. Here, in this category M/s Global Flight Handling Services Pvt. Ltd. has been appointed by the Airport Operator, Respondent No.2 for JPNI Airport, Patna through a transparent bidding process by Letter of Intent dated 13.04.2021.

17. In terms of Regulations 7(4) of Regulations 2018, any agency which is not permitted under these Regulations and carried out the ground handling activities on the commencement of the Regulations at an Airport or Civil Enclave were allowed to continue the work till 30.06.2019 or till 30 days from the commencement of operations by the ground handling agencies duly appointed under these Regulations, whichever is earlier. However, the said date was extended by the respondent authority from time to time due to various reasons and in this



way, the petitioner was given an indirect opportunity to wind up its operational activities in the light of Regulations 2018. In pursuance of Regulation 7(4) of Regulations 2018, Respondent No.8 has issued a General letter dated 30.06.2021 (Annexure-10 to the writ petition), to all the eleven airports (Annexure-I) in which Patna airport is at Serial No. 6 directing extension of date from 30.06.2021 to 15.07.2021 for continuance of service of agencies performing ground handling services. In the said letter extension of the date from 30.06.2021 to 31.07.2021 has been given to all the 65 (Annexure-II) airports in which Ranchi is at Serial No. 4. In the said letter, Respondents No. 3 to 7 i.e., BCAS has been requested by Respondent No.8, i.e., Ministry of Civil Aviation to consider the request of the renewal of the Airport Entry passes of the ground handling staff of all the agencies appointed by the Airport Operator through transparent bidding process in terms of Regulation 3(5) (c) of the Regulations 2018.

18. It has further been stated that Vistara Airlines has informed the Respondent No.2 by letter dated 08.07.2021 that in pursuance of Regulation 3(5)(c) of the Regulations 2018, and the letter dated 30.06.2021, they have changed the existing ground handling agency, i.e., the petitioner and the last date of



their operation with Vistara would be 15th of July 2021 at Patna Airport and from 16th of July, 2021, they will switch over to new ground handling agency i.e., Air India Airport Services Ltd for Patna and 31st July, 2021 for Ranchi Airport. In the same way, Go Airlines has informed to the Respondent Authorities by letter dated 15.07.2021 that they would carry out self handling services with effect from 16th of July 2021 for Patna Airport and 31st of July, 2021 for Ranchi Airport.

19. Likewise, Air Asia India Ltd has informed Respondent Authorities by letter dated 05.07.2021 that they have appointed M/s Air India Airport Services Ltd. as their ground handling service provided for Ranchi Airport with effect from 16th July, 2021.

20. The photocopies of letters issued by Vistara, Go Air and Air Asia are attached as Annexures C/1, C/2 & C/3 to counter affidavit.

21. Thus, according to Respondent No.2, the petitioner is not entitled for security clearance from Respondent Nos. 3 to 7 (BCAS) in view of the discontinuation of the service of the petitioner by the concerned airlines. It has further been stated by the Respondent No.2 that petitioner has never participated in the open bidding process by tender for



appointment of ground handling agency which was invited by the Respondent Authority. Respondent Nos. 3 to 7 i.e., BCAS in their counter affidavit has stated that the letter dated 29.06.2021(Annexure-9) to the writ application, issued by Respondent No.3 to 7 i.e. BCAS is applicable to those GHA's /concessionaires /Auxillary service providers etc who have valid legal contract with respondent No.2/AAI. The AAI is competent authority for awarding the business contracts at airports managed by AAI. The respondent Nos. 3 to 7/BCAS is looking after the security aspect of civil aviation and the petitioner had been given security clearance by the Respondent No.3 to 7 by letter dated 11.06.2019 and in para-3 of the said letter, it has clearly been mentioned that; *"..... the security clearance shall be valid for a period of five years from the dated of issue of security clearance or the period of validity of contract with the **Airport Operator**, whichever is earlier, upon expiry of which a fresh clearance would be required to be taken from bureau....."*

22. In view of the aforesaid, it is evident that validity of security clearance to the petitioner is till the validity of contract with Airport Operator.



23. It has further been stated by Respondent No.3 to 7/BCAS that the security clearance does not confer any right to the petitioner to acquire ground handling business at the airport, if otherwise not found eligible according to extent ground handling policy of the Government. Security clearance granted by the Respondent Nos. 3 to 7/BCAS to the petitioner remain valid till the validity of contract with the airport operator and in the present case the petitioner is having no valid contract with the airport operator i.e., Respondent No.2/AAI and the airlines operators have already terminated their contracts with the petitioner.

24. Rejoinders on behalf of the petitioner to the counter affidavits filed by Respondent No.2/AAI as well as Respondent Nos. 3 to 7/BCAS have been filed in which the petitioner has stated that letter dated 30.06.2021(Annexure-10) does not apply to the petitioner and hence the restrictions and limitations imposed therein are not applicable to it since it has been permitted to carry out its operation by the order of the Airport Operator i.e., the Respondent No. 2 vide grant dated 11.06.2019 which is valid for five years (Annexure-3). The petitioner-agency has valid permission under the Regulations 2018 and it will not fall under Sub-clause (3) & (4) of the said



Regulations and the petitioner being the existing ground handling agencies under Regulations 2018, the respective entry permits were mandatory to be given in terms of Regulation 7(5). The petitioner further stated that impugned action of the respondent amounts to terminating the permit granted to the petitioner without any show-cause notice showing such intention that the permit of the petitioner was not being treated as a valid permit under Regulations 2018 and further no notice was given to the petitioner that the petitioner was required to participate in the selection process in terms of Regulation 7(1) and in absence of the same the action becomes violative of the natural justice as having adverse civil consequences upon the petitioner.

25. Respondent No.2 as well as Respondent Nos. 3 to 7 filed their separate supplementary counter affidavits giving reply to the rejoinder filed by the petitioner and Respondent No.2 in its supplementary counter affidavit stated that after coming into operation of Regulations 2018, power to appoint ground handling service providers has changed from airline operators to airport operators. Further, Respondent Nos. 3 to 7 in their supplementary counter affidavit stated that the security clearance accorded to the entity is not the combined permit of



ground handling rather it is just endorsement of the fact that entity and its directors are clear from the security angle for the business at airport, provided they enter into valid, legal agreement for the same with the concerned airport operator. In the present case, petitioner is having no valid contract with the airport operator and the airline operators have already terminated their contract with the petitioner.

26. In pursuance of Regulation 3(5)(b), M/s Air India Airport Services Limited (for short AIASL) is authorized by regulation as ground handling service provider for both Patna and Ranchi Airports.

27. Whereas, in pursuance of Regulation 3 (5) (c), the Respondent No.2/AAI has already appointed M/s Global Flight Handling Services Pvt Ltd by letter dated 13.04.2021 for JPNI Airport, Patna through a transparent bidding process. (Tenders available in public domain on AAI Website as well as GoI CPT portal). It has further been stated that AIASL is the only authorized ground handling agency as on that whereas M/s Global Flight Handling Services Pvt. Ltd has been awarded the work by AAI as per GHA Regulation 2018 and is in the process of statutory compliance to start the work.



28. The petitioner was not functioning on these two airports under the license granted under Regulations 2018 rather the petitioner was working since 2013 in terms of Rule 92 of Aircraft Rules 1937. Secondly, the petitioner was never appointed by the Respondents no.2 rather the petitioner being a ground handling service provider was appointed by the Airlines operator and on their recommendation, security clearance has been given to it by Respondent Nos. 3 to 7 i.e. BCAS.

29. The security clearance dated 11.06.2019 (Annexure-3) to the writ application was not issued by the Airport Operator i.e., Respondent No.2 rather it was issued by Respondent Nos. 3 to 7 i.e., BCAS and para-3 of the letter dated 11.06.2019 clearly stipulates that the security clearance is conditional security clearance subject to valid contract with the airport operators and further security clearance does not confer any rights to the petitioner to acquire business at Airports.

30. Mr. Giri, learned counsel for the petitioner in support of writ application advanced his arguments and submits that impugned letter dated 30.06.2021 purported to be issued under regulation 7(4) of Regulations 2018 does not apply to the petitioner and accordingly, the restrictions and limitations imposed therein are not applicable to the petitioner inasmuch as



Respondent authorities granted composite license and security clearance vide grant dated 11.06.2019 (Annexure-3) for a period of five years. It is further submitted that Regulation 7(1) pertains to those agencies who have not got permission under Regulations 2018 whereas the petitioner has got valid permission under Regulations 2018 and accordingly, Sub-clause 3 and 4 of the said regulation shall not be applicable to the petitioner. Since the petitioner is existing ground handling agency, the respondents are obliged to issue entry passes to the petitioner in terms of Regulation 7(2) and respondents cannot prevent the petitioner from working as ground handling agent on the basis of impugned letter dated 30.06.2021.

31. Learned counsel further submits that action of the Respondents in not permitting the petitioner to work as ground handling agent after the cutoff date 15.07.2021 at Patna Airport and 31.07.2021 at Ranchi Airport is completely violative of Regulation 3(5) because according to the petitioner under Clause 3(5) (c) of the Regulations 2018, Respondent authorities can appoint ground handling agencies through the transparent bidding process but in exercise of power granted under Regulation 3(5) they cannot disturb the functioning of the existing ground handling agents, particularly when the petitioner



has been granted license/security clearance on 11.06.2019 after coming into force Regulation 2018 and till the validity of the license which expires in 2024, the petitioner cannot be prevented from operating as a ground handling agent.

32. The impugned action of the Respondents by not permitting the petitioner to operate amounts to terminating the permit granted in favour of the petitioner without any show-cause notice communicating the intention of the Respondent Authorities that the permit of the petitioner was not being treated as valid permit under Regulation 2018 and further no notice was given to the petitioner informing that the petitioner was required to participate in the selection process in terms of Regulation 3(5)(c) and in absence of such notice, the impugned action of the Respondents becomes violative of natural justice having adverse civil consequence upon the petitioner amounting to denial of fundamental right of the petitioner to carry out its business directly under Article 19(1) (g) of the Constitution.

33. Learned counsel further submits that under Regulation 3 (5) the Respondent Authorities particularly Respondent No.2 cannot proceed to replace the petitioner, however, according to the petitioner Regulation 3(5) confers discretion upon the authority and the Respondent Authorities



while exercising its discretion to appoint private ground handling agency did not pass any order under Regulation 3(5), particularly, when the petitioner was appointed by the authority earlier and was working as such. The Respondent Authority was required to pass speaking order giving reason for exercising the discretion restricting the ground handling service by only one agency. Learned counsel also submits that pursuant to the permit granted in terms of Regulation 2018 on 11.06.2019 (Annexure-3) the petitioner invested a large sum of amount and employed manpower based upon promise given by the Respondent Authorities, materially altering its position, as such, Respondents are estopped under law from taking a contrary stand preventing the petitioner from working as ground handling agent.

34. Learned counsel further submits that Respondent Authorities cannot question their own permit inasmuch as it is accepted principle of law that the Government cannot challenge its own order and in support of his argument, learned counsel relied upon a judgment passed by this Court in the case of *Smt. Clara Ainda v. The State of Bihar* as reported in **2005(4) PLJR 691**.



35. Lastly, learned counsel for the petitioner submits that since a huge sum of money has been invested and manpower and machinery have already been engaged by it, the petitioner alternatively, be permitted to operate as ground handling agent at Patna and Ranchi Airports at least till new agencies are validly appointed and deploy its machinery and manpower after obtaining the necessary security clearance and entry passes.

36. On the point of proper exercise of discretion by the Respondents Authorities under Regulation 3(5) of Regulation 2018, learned counsel for the petitioner relied upon the judgments of Hon'ble Supreme Court in the case of ***Bangalore Medical Trust v. B.S. Mudappa & Ors*** as reported in ***(1991) 4 SCC 54*** (Paras- 46,47,48) and also in the case of ***Shibu Soren v. Dayanand Sahay & Ors*** as reported in ***(2001) 7 SCC 425*** (Paras-29, 30, 31). On the point of violation of principle of natural justice and his contention that conduct of the Respondents amounts to termination of license, he relied upon the judgments of the Hon'ble Supreme Court in the case of ***Baraka Overseas Traders v. Director General of Foreign Trade & Anr*** as reported in ***(2006) 8 SCC 103*** (Paras-16 and 17) and in the case of ***Oryx Fisheries Private Limited v. Union of***



India & Ors as reported in **(2010) 13 SCC 427** (Paras 20, 24 to 27).

37. Learned counsel also relied upon the judgments of Hon'ble Supreme Court in the case of **State of Orissa & Ors. v. Mamata Mohanty** as reported in **(2011) 3 SCC 436** (Para-37) and in the case of **Chairman-cum-Managing Director, Coal India Limited & Ors v. Ananta Saha & Ors** as reported in **(2011) 5 SCC 142** (Paras-32, 33) on the point of promissory estoppel, learned counsel for the petitioner relied upon the judgments of the Hon'ble Supreme Court in the case of **State of Bihar & Ors. v. Kalyanpur Cement Ltd** as reported in **(2010)3 SCC 274** (Paras-26, 44, 76, 77, 79) and in the case of **Devi Multiplex & Anr v. State of Gujarat & Ors** as reported in **(2015) 9 SCC 132** (Paras 19, 20, 21).

38. *Per contra*, Dr. K. N. Singh, Additional Solicitor General, learned senior counsel along with Mr. Anshay Bahadur Mathur appearing for Union of India opposed the argument advanced on behalf of the learned counsel for the petitioner and submitted that in exercise of power conferred under Section 42 of the Airports Authority of India Act, 1994 and in supersession of the Ministry of Civil Aviation (Ground Handling Services) Regulations 2017, Airports Authority of India (Ground



Handling Services) Regulations 2018 came into existence. Learned counsel further submits that as per earlier practice and in terms of Rule 92 of the Aircraft Rules 1937, the ground handling operators were being appointed by different airlines and the petitioner being ground handling service provider was appointed by the Airline Operators and on the recommendation, security clearance was given by Respondents No. 3 to 7 (BCAS). Learned counsel vehemently argued that Respondent No.2, AAI has never issued any license/grant/award letter nor entered into any agreement with the petitioner for carrying out ground handling services at Patna and Ranchi Airports. Regulation 3(5) lays down three categories and fixes the number of ground handling agents as not exceeding three and in order to do away with the people who had come through backdoor a transparent bidding process for selection of ground handling agent came under Regulation 3(5)(c) of Regulations 2018. Ground handling operators must be appointed within the three categories mentioned in the Regulations. Referring to Annexure-5 Series of the writ petition, learned senior counsel submits that the petitioner is claiming his right on the basis of agreement between the petitioner and airline operators i.e. private bodies and as per Clause 9.1, 9.3 and 9.4 of the agreement at page 48,



the agreement between handling company and the Carrier was subject to revocation, cancellation or suspension and termination. Referring to Annexure-5/C, which is a Letter of Intent issued by Go Air, learned counsel submits that LOI given by Go Air to the petitioner can be terminated by either of the parties by giving thirty days' notice and the agreement between Airlines and the petitioner was entered into as per the earlier regulation and with the coming into force Regulations 2018, the whole system was stopped and cutoff date was fixed under Regulations 7(1)(2)(3) and (4) which was extended from time to time and lastly, extended vide Annexure-9 and Annexure-10.

39. Learned counsel reiterated that Respondent No. 2/AAI has never issued any award letter nor entered into any agreement with the petitioner. Learned counsel, referring to Annexure-3 (dated 11.06.2019), upon which the petitioner heavily relied contending that the same is a composite license/award along with security clearance, submits that the letter dated 11.06.2019 has been issued by Respondent Nos. 3 to 7/BCAS in terms of Rule 15 of the Aircraft (Security) Rules, 2011 and the same is not a license to operate but is a security clearance given to the petitioner. Referring to Clause-3 of the said letter, it has been submitted that there is no contract



between the petitioner and Airport Operator and even the contract with the Airlines has come to an end inasmuch as earlier Airlines themselves engaged ground handling operators.

40. Learned counsel further submits that since cutoff date mentioned in the Regulation 2018 was being extended, Annexure-3 was issued granting security clearance to the petitioner and Annexure-3 is not a permit/license/grant given by Respondent No.2 and also does not give him the authority to work as ground handling operator. The assumption of the petitioner that Annexure-3 is a license/grant given by the Respondent No.2/AAI is completely misconceived having no basis. Contending the argument of learned counsel of the petitioner that the impugned action of the Respondent amounts to termination of the contract and as such the Respondents were duty bound under law to serve notice before termination of the contract, learned senior counsel for the Union of India submits that Respondent No. 2 never issued any license/award letter nor entered into any agreement with the petitioner for any service thereof, as such, there is no question of termination of the contract of service by the Respondent and accordingly, there is no requirement of service of notice of termination upon the petitioner. The petitioner/company was rendering the ground



handling services since 2013 at Patna and Ranchi airports in terms of Rule 92 of the Aircraft Rules and the petitioner was engaged by the various airlines, namely, M/s Vistara, M/s Air Asia and M/s Go Air and on their recommendations, the Respondents No.3 to 7 had issued the security clearance for different purpose, since the Airline Operators have discontinued the services of the petitioner and appointed new ground handling provider by different letters annexed as Annexure C/1, C/2 and C/3 of the counter affidavit in terms of Regulation 2018, therefore, the allegation for violation of principle of natural justice due to non service of notice by the Respondent No.2/AAI upon the petitioner, is baseless and the decisions cited by the petitioner are not relevant in the facts and circumstances of the present case. In case, the petitioner is aggrieved by the termination letter issued by the Airlines, the petitioner may seek its remedy against them in accordance with law.

41. In reply to the argument of learned counsel for the petitioner that before exercising their discretion to appoint private operator under clause 3(5)(c), no notice or speaking order was ever served upon the petitioner to participate in the transparent bidding process, learned senior counsel appearing for Union of India submits that it was not required under



Regulation 2018 inasmuch as advertisement was published on website, newspapers, moreover, petitioner did not have any contract with the AAI and was not a licensee of AAI. Learned counsel further submits that Airport Operator i.e., AAI (Respondent No.2) is competent to appoint a number of ground handling agencies not exceeding three and in terms of Regulation 3(5)(c) of Regulation 2018, M/s Global Flight Handling Services Private Limited has been appointed by the Airport Operator i.e., Respondent No.2/AAI for JPNI Airport, Patna through transparent bidding process and has issued letter of intent dated 13.04.2021. Learned counsel further submits that for appointment of private ground handling agency, tender documents were published on the website of Respondent No.2, Airport Authority of India as well as on the portal of Government of India Central Procurement Portal (CPP) which is still available on the website. It has also been submitted that tender notice was published in fourteen leading newspapers across the country. As such, allegation of the petitioner about improper circulation of notice is baseless and unjustified.

42. The writ petitioner chose not to participate in the open tender floated by Respondent No.2 and M/s Global Flight Handling Services Private Limited has already deposited the



security deposit and started installing its men and machinery for operation of ground handling services at Patna Airport and Air India Airport Services Ltd who has been working as ground handling service provider for Patna and Ranchi Airports in terms of Regulations 3 (5)(b) and has started to give services to Vistara Airlines with complete infrastructure from 16th July, 2021 and to Vistara, Air Asia Ltd from 1st August 2021 at Ranchi Airport and since commercial interest of both the operators have been created at Patna and Ranchi Airports, therefore, alternative prayer of the petitioner is also not permissible. The petitioner has not made M/s Global Flight Handling Services Private Limited party nor challenged the termination of agreement by Airlines.

43. Learned ASG further argued that doctrine of estoppel and legitimate expectation are not applicable in the facts and circumstance of the present case. Firstly, the petitioner has not brought on record any chit of paper that Government of India/ Respondent No.2 at any point of time ordered the petitioner to alter its position on their representation and also ordered for any investment to the petitioner. The petitioner is only relying upon Annexure-3 i.e., security clearance without appreciating that there is a difference between the license and



security clearance inasmuch as security clearance only entitles one to enter into airport. Further, the petitioner has not given any details regarding expenditure and only the fact has been stated orally regarding expenses without any supporting document on record. Learned counsel reiterates that only after security clearance, agreement can be entered into and Annexure 3 has not been issued by AAI/Respondent No.2.

44. Learned counsel cited the judgment rendered by High Court of Judicature at Madras dated 16.06.2021 in the case of ***Bhadra International (India) Pvt. Ltd v. Union of India & Ors*** in ***WP NO. 20314/2020*** and submitted that in an identical matter Madras High Court by its judgment dismissed the writ application. Lastly, learned counsel submits that none of the judgments cited by the petitioner is applicable in the facts and circumstances of the present case and there is no order/document from which Respondent is running out, as such, the case of ***Smt. Clara Ainda v. The State of Bihar (supra)*** is of no help to the petitioner. He further submits that the petitioner has concealed the material fact inasmuch as the petitioner is a member of Centre for Aviation Policy Safety and Research which has challenged the same impugned letters before the Delhi High Court in WP(C) No.6993/2021.



45. Mr. Giri, learned counsel for the petitioner in reply submits that from conjoint reading of Rule 92 of the Aircraft Rules and Regulations 2018, no contract was required to be entered into with AAI(Respondent No.2) and after coming into force the Regulation 2018, Annexure-3 i.e. license was issued by Respondent Authorities and when assuming that Annexure-3 was not issued by the Respondent No.2 but the fact of the matter is, it has been withdrawn by it without any notice, it violates right of the petitioner under Article 14 and 19 of the Constitution of India. As such, ***Bhadra International (India) Pvt. Ltd v. Union of India & Ors*** in ***WP NO. 20314/2020*** (supra) is not applicable and is based upon the different facts.

46. Learned counsel also submits that the petitioner paid royalty to the Respondent No.2, as such, they cannot shirk from their responsibility to serve notice before the exercise of its discretion to appoint another ground handling service agent and also requires to pass a speaking order in this regard.

47. I have heard learned counsel for the parties at length and have carefully gone through the materials on record.

48. The issue which requires determination is as to whether after coming into force Regulation 2018, the Airport Operator i.e., Respondent No.2/AAI is competent to appoint



private agency as ground handling agent in terms of Regulation 3(5)(c) and whether Annexure-3 is the license/grant given to the petitioner by AAI/Respondent No.2 for five years to work as ground handling agent under Regulations 2018. It is admitted position that the petitioner has not challenged the validity of the statutory Regulations 2018. From perusal of the Regulations 2018, it appears that it came into force with effect from 26th October 2018, there was a paradigm shift from earlier practice allowing the Airline Operators to engage their ground handling agents. After Regulations 2018, it appears that power to appoint the ground handling service provider has changed from Airline operators to Airport Operators i.e., Respondent No.2. It is also evident from the fact that petitioner was rendering its ground handling services since 2012-2013 and due to fact that Patna and Ranchi Airports are having less than ten million passengers per annum traffic output, therefore, in terms of Regulation 3(5)(c), the Respondent No.2 started process of appointment of ground handling agent through transparent bidding process and upon publication of tender notice in the various news papers, website as well as portal of Government of India Central Procurement Portal (CPP) of Respondent No.2, the M/s Global Flight Handling Services Private Limited has been appointed by



Airport Operator i.e., Repondent No.2 at Patna Airport in terms of Regulation 3(5)(c). Air India Airport Services Ltd has started working as ground handling service provider for Patna and Ranchi Airports from 16.07.2021 and 1st August 2021 respectively.

49. I have also noticed that Regulations 2018 clearly fixes the cutoff date in terms of Regulations 7(4). Any agency which is not appointed by Airport Operator i.e., Respondent No.2 and has been carrying out the ground handling activities on the commencement of Regulations 2018 at Airports, were allowed to continue the work till 30.06.2019 or till 30 days from the commencement of operation duly appointed under the Regulations whichever is earlier. However, the said date was extended from time to time by the Respondents due to various reasons on account of COVID-19 pandemic and lastly, by Annexure-10 it was finally extended till 15.07.2021/31.07.2021.

50. Admittedly, petitioner was aware about Regulations 2018 and cutoff date mentioned therein was extended from time to time. Accordingly, I do not find force in the argument of learned counsel for the petitioner that before issuance of tender notice for appointment of ground handling agents under Regulation 3(5)(c) a notice or speaking order was



required to be served upon the petitioner. The petitioner was well aware that as per Regulations 2018, the Airport Operator i.e., Respondent No.2 was authorized to appoint ground handling agents in terms of Regulation 3 (4) (5) but the petitioner did not participate in the transparent bidding process duly published and circulated by Respondent No.2 in terms of Regulation 3(5) (c) of Regulations 2018. I also find from the records that the petitioner was working as ground handling agents since 2013 on the basis of agreement entered into by Airlines Operator and not Airport Operator i.e., Respondent No.2 and the Airline Operators have already terminated/revoked the agreement entered into by them with the petitioner. As such, the petitioner cannot take plea that before termination of agreement Respondent No.2 was required to furnish show-cause notice upon the petitioner.

51. I also do not find force in the argument of learned counsel for the petitioner that the impugned letters issued by Respondents amount to challenging its own decisions and the judgment i.e., *Smt. Clara Ainda v. The State of Bihar (supra)* relied upon by the petitioner inasmuch as from the materials on record it appears that the petitioner has not brought on record any order/document from which the Respondent Authorities are



running out and are challenging the same but on the contrary, it appears that in view of National Civil Aviation Policy 2016 and the Regulations 2018, Respondent No.2 initiated/started the process of appointment of ground handling agents by transparent bidding process.

52. I have also carefully gone through Annexure-3 which according to the petitioner is a composite license/security clearance granted by Respondent No.2 and from close scrutiny of the same, it appears that Annexure-3 has been issued by Assistant Director (Policy), BCAS. HQ. New Delhi in terms of Rule 15 of the Aircraft (Security) Rules 2011 having the subject matter as “Security Clearance in respect of M/s Ex-Armymens Welfare & Security Services Pvt Ltd and its Directors” as ground handling agency to operate at airports for a term of five years or till the validity of the contract with the Airport Operator. I find that Annexure-3 has not been issued by Respondent No.2, i.e., Airport Operators and accordingly, the same cannot be called as a license/permit granted by Respondent No.2 after coming into force Regulations 2018 inasmuch as admittedly, in terms of Regulation 3(5)(c) of Regulations 2018, Respondent No.2 i.e., Airport Operator initiated the transparent bidding process for appointment of



private ground handling agent and in pursuance thereof, LOI in favour of M/s Global Flight Handling Services Private Limited has been issued.

53. I also find that the security clearance given by the Respondent No.3 to 7/BCAS to the petitioner does not confer any right to it to acquire ground handling business at the airport if he did not participate in the transparent bidding process and if otherwise not found eligible as per extant Regulations 2018. It is clear from the fact that the petitioner is having no valid contract with the Airport Operator i.e., Respondent No.2 and the Airline Operators have already terminated their contracts with the petitioner. As such, contention of the petitioner that the impugned letter dated 30.06.2021 and restrictions and limitations imposed therein, do not apply to the petitioner is not tenable in law and fact.

54. I also do not find force in the argument of the petitioner that petitioner has got legitimate expectations and the Respondents are estopped from resiling its grant of license for five years by Annexure-3 inasmuch as I have already come to the finding that Annexure-3 is not a license/permit/grant given to the petitioner by Respondent No.2 i.e., Airport Operators in terms of Regulations 2018 and further the petitioner has not



brought on record any material or document to show that Government of India or Respondent No.2 at any point of time represented to the petitioner or ordered the petitioner for any investment. On the contrary, it was the petitioner who chose not to participate in the transparent bidding process for appointment of ground handling agents and continued to render the services of ground handling to the Airlines on the basis of agreement entered into with the petitioner and the Airline Operators being fully aware of the fact that after coming into force the Regulations 2018, the ground handling agents shall be appointed by Airport Operators i.e., Respondent No.2 by transparent bidding process. Admittedly, Respondent No.2 is not a party to the agreement between the petitioner and Airline Operators as such, the plea of estoppel, legitimate expectation taken by the petitioner is not tenable in the facts of the present case.

55. The Airport Authority of India i.e. Respondent No.2 has been vested with the power under the Act and Regulations for the discharge of their functions with the prior approval of the Central Government and in order to ensure smooth transfer of the passengers as well as transfer of the goods, Regulations 2018 was framed in supersession of earlier



Regulations and as per Clause 3(5)(c) of the Regulations 2018, AAI/Respondent No.2 duly appointed M/s Global Flight Handling Services Private Limited as ground handling agent. Since the petitioner did not participate in the open bidding process for appointment of ground handling agent as per Regulation 2018, it cannot contend that action of the Respondent-Authorities is arbitrary and violative under Article 19(1)(g) of the Constitution of India. The judgments relied upon by the petitioner (*supra*) are not applicable in the facts of the present case.

56. In view of the aforesaid discussions, I have come to the conclusion that the impugned letters at Annexures 9 and 10 do not require any interference by this Court and accordingly, this writ application is dismissed.

57. In view of the fact that Air India Airport Services Ltd (AIASL) has started rendering ground handling services at Patna and Ranchi airports with complete infrastructure from 16th of July 2021 and further M/s Global Flight Handling Services Private Limited has been issued LOI and it has already furnished security deposit and started installing its men and machinery for operation of ground handling services at Patna Airport, alternative prayer of the petitioner is also rejected.



58. There shall be no order as to costs.

(Anil Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	11/08/2021
Uploading Date	02/09/2021
Transmission Date	N/A

