

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
25~08~2021	06-09~2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P. No.903 of 2019
and Appln.No.8512 of 2019

1.M/s. Bhadra International (India) Pvt. Ltd.,
Rep.by its General Manager (Finance & Accounts)
having its Branch Office at
A-9, Airlines Office Gallery,
2nd Floor, Anna International Terminal
Chennai Airport, Chennai 600027.
ant its Registered Office at No.42,
Rani Jhansi Road, New Delhi 110055. .. Petitioner

.Vs.

1.Airports Authority of India
Rep.by its Airport Director
having office at Chennai International Airport,
chennai 600027.

2.The Chairman, Airports Authority of India,
Rajiv Gandhi Bhawan, Safdarjung Airport,
New Delhi 110033. .. Respondents

Prayer: Petition filed under Section 34(2)(b)(ii) & 34(2)(a)(iv) of the Arbitration

and Conciliation Act, 1996 r/w Order 14 Rule 8 of the Original Side rules, to set aside the Award dated 06.08.2019 passed by the Sole Arbitrator in the dispute between the Petitioner and the Respondents.

For Petitioners : Mr. P.S. Raman,
Senior Counsel for
M/s.R. Maheswari

For Respondents : M/s. Father Xavier Arulraj,
Senior Counsel for
Sister A. Arulmery

ORDER

Challenge has been made to the Award passed by the learned Arbitrator rejecting the Claim and allowing the Counter Claim.

2. The brief facts leading to file this Original Petition is as follows:

2.a. The claimant entered in a lease agreement dated 29.11.2020 to carry out the ground handling activities in the Chennai Airport. It was the Parent License Agreement. Clause 4 of the above agreement provides for entering into separate agreement. Accordingly, separate License Agreement was entered on 05.01.2011 and the same was renewed on 23.06.2014. It is the contention that the

Original Agreement did not provide for astronomical increase in the lease rental. Whereas by Circular dated 20.11.2014 the fee rates were revised with effect from 01.10.2014 in an astronomical manner. After the renewal agreement dated 23.06.2014 again the license fee was fixed at Rs.2,778/- per square meter per annum along with 7.5% annual compounded increase. Though, these two agreements were acted upon and the rents being paid at revised rates, it is the contention of the claimant that Original Agreement dated 29.11.2010 did not provide for midterm arbitrary increase in the rate of license fee applicable to licensed land, that the midterm increase now made have been arbitrarily fixed providing for 272% increase with effect from 01.01.2014. The claimant have also objected the same by their letter dated 08.12.2014. However, when the matter stood thus the Respondent issued notice dated 14.02.2017 through the Eviction Officer for payment of of Rs.12,36,92,506/-

2.b. As the dispute arose, matter was referred to the Arbitrator. The main contention is that the astronomical increase in license fee is not provided for in the Parent License Agreement dated 29.11.2010. Besides the increase is not in line with the rental value in and around Chennai Airport. Such increase also made in

violation of the principles of natural justice and that is also hit by the principle of legitimate expectations of the Claimant. It is further contended that the land license policy of the Airport Authority of India has not been finalized by the Authority till date. Therefore, the increase is bad in law.

3.a. It is the contention of the Respondent that the Circular dated 20.11.2014 is not pertaining to the Claimant alone and that it was a Common Circular applicable to all the licensees which hold the field for the past 4 years. The Claimant while disputing the Circular dated 20.11.2014 has not challenged the letter dated 27.10.2014 which prescribes the upward revision to which the Claimant was also one of the parties along with other licensees. Similarly, the objection of the Claimant as against the Revision was rejected by the Respondent and the same has not been challenged till date and it become final. It is the contention that the hike in rent is a policy decision of the Authority falling under Article 12 of the Constitution, it tantamounts to the public policy. As the Claimant is one of the parties to the Contract there cannot be any reference as against the Revision. It is also stated by the Respondent that in the License Agreement dated 05.01.2011 the Claimant was given initially 2,200 sq.mts.of land

and due to subsequent allotments the Claimant came to occupy 7,105 sq.mts.of paved land + office space of 601.60 sq.mts. Till date the Claimant has not submitted a composite license agreement encompassing the total extent of allotment and therefore the Respondent was not in a position to handover the copy of the agreement. It is also stated that the Claimant had not renewed the license or submitted a License Agreement after 14.03.2013. The initial agreement dated 05.01.2011 has already expired by 14.03.2013.

3.b. It is the contention that since the Tribunal has given interim protection, the Respondent has not taken any coercive steps against the Claimant. After repeated insistence, the Claimant applied on 20.08.2014. Thereafter, license was renewed on 04.09.2014 for a further period of 01.04.2014 to 31.03.2017. The Claimant has not executed the License Agreement in the prescribed format. Hence, it is their contention that after 1.4.2017 the Claimant was not an authorised occupant of the Airport premises. Having accepted the renewal letter dated 04.09.2014 with conditions including the increase of rents and fees the Claimant cannot agitate the same after lapse of 4 years. Hence submitted that the revised base rent was a policy decision of the Authority as the arrears mounting the

Respondent issued notice invoking Section 28 G of the Airports Authority of India Act 1994. Hence, disputed the Claim.

4. Based on the above the Learned Arbitrator has framed 8 issues and passed final award :-

1. *Both the prayers of the Claimant in the Statement of Claim as set out in paragraph IX are rejected as not maintainable.*
2. *The Counter Claim of the Respondent for a direction to the Claimant to pay a sum of Rs.20,28,37,461/- as the amount pending outstanding and due as on 25.10.2018 covering the period upto 31.03.2019 is granted and the Claimant is directed to pay the same to the Respondent within 3 months from the date of receipt of copy of this Award.*
3. *The Claimant is also directed to pay the outstanding amount of Rs.20,28,37,461/- along with simple interest at the rate of 18% per annum as provided under Clause 13 of the general terms and conditions of Ex.C.2 = Ex.R.4 dated 05.01.2011 from the date it fell due. The interest amount*

is also directed to be paid by the Claimant to the Respondent within the said period of 3 months from the date of receipt of copy of this Award.

4. *In the light of Ex.C.29 dated 02.02.2018,as the Respondents have frozen the base rates for a period of 5 years from 01.04.2017 to 31.03.2022 without any annual escalation and the next revision of base rates may be considered with effect from 01.04.2022, the Claimant is liable to pay the subsequent rents on and after 01.04.2019 also at the same rate at which it was calculated for the immediate preceding period i.e., ending with 31.03.2019. A direction to that effect is issued accordingly.*

5. *In as much as the various contentious issues were dealt with elaborately and since the Claimant's stand cannot be held to be frivolous, I am of the considered view that the parties should be allowed to bear their respective costs including the fees, expenses and other charges of the Arbitral Proceedings and the Arbitrator. It is ordered accordingly."*

5. Though several grounds of challenge are made under Section 34 of the

Act, the learned Senior Counsel Mr.P.S. Raman appearing for the Petitioner, has mainly canvassed his submissions only with regard to one ground that the increase or revision of the rent with effect from 01.04.2011 would be based on the Land Lease Policy of Airport Authority of India. The License Fee shall be payable based on the finalisation of the Land Lease Policy of Airport Authority of India. Hence his contention is that the policy has not been finalised till now and the Circular issued in the year 2014 for upward revision of License Fee is not valid in the eye of law. He has also placed much reliance on the documents obtained after Arbitral Award to buttress his submissions. Therefore, his contention is that the minutes of the 164th Board of Meeting held on 26 March 2015 and the Draft Regulations sent to the Government and the Draft Minutes 189th Board of Meeting held on 27 December 2019 and the reply received from the Government of India, Ministry of Civil Aviation under Right to Information Act that Regulation with regard to the Acquisition and Contract relates to a land has not been approved by the Union Government. Therefore, those documents are necessary to be brought on record as an Additional Documents to substantiate his submissions. Otherwise, his only contention is that the Land Policy of Airport Authority of India has not been finalised, the astronomical increase of the rents and License by mere circular

is not valid in the eye of law and go against the contract. In support of his contention he relied upon the following Judgments:

1. Canara Nidhi Limited vs. M.Shashikala and Others
[(2019) 9 SCC 462]

2. Emkay Global Financial Services Limited vs. Girdhar
Sondhi [(2018) 9 SCC 49]

6. Whereas it is the contention of the learned Senior Counsel Mr. Father Xavier Arulraj appearing for the Respondents that the Learned Arbitrator has considered the entire aspects. The very Agreement itself provides for increase of the rent and the Circular was issued in the year 2014 itself. The challenge to the Circular has been rejected and the same has been considered by the Learned Arbitrator. It is his further contention that the very decision of the Airport Authority to increase the rent on the basis of the Contract itself is the policy decision by the Authority. It is not only confined to the Applicant but also the other licensees across the country. Hence it is his contention that the attempt of the Petitioner to contend that there was no policy is not sustainable. What is

pending for the approval by the Union Government is only Regulations. Hence, submitted that the Claimant now taking advantage of the Draft Regulations pending with the Union Government, try to nullify the very contract entered into between them. Hence submitted that Learned Arbitrator has considered the entire aspect, in fact, the very contention put forth by them before this Court was also considered by the learned Arbitrator. Therefore, there is no ground made out to interfere in the well reasoned Award. In support of his contention, he relied upon the following judgments:

1. *Fiza Developers and Inter-Trade Private Limited vs. AMCI Private Limited [(2009) 17 SCC 796]*
2. *Bajaj Hindustan Ltd., Vs. Sir Shadi Lal Enterprises Ltd., and another [(2011) 1 SCC 640]*
3. *Emkay Global Financial Service Ltd., vs. Girdhar Sondhi [(2008) 9 SCC 49]*
4. *Associated Builders vs. Delhi Development Authority [(2015) 3 SCC 49]*

5. *State of Jharkhand and others vs. HSS Integrated SDNB and another [(2019) 9 SCC 798]*

6. *Ssangyong Engineering and Construction Company Ltd., vs. National Highways Authority of India [(2019) 15 SCC 131]*

7. As the submission is narrowed down only with regard to the Policy Decision of the Authorities, this court has to see whether the Draft Regulations sent by the Airport Authority of India pertaining to the Lease and License Agreement which governs the parties herein. With regard to the additional evidence sought to be relied upon by the Petitioner, in ***Fiza Developers and Inter-Trade Private Limited vs. AMCI Private Limited [(2009) 17 SCC 796]*** the Honourable Apex Court has held as follows:-

“31.Applications under **section 34** of the Act are summary proceedings with provision for objections by the defendant/respondent, followed by an opportunity to the applicant to 'prove' the existence of any ground under **section 34(2)**. The applicant is permitted to file affidavits of his witnesses in proof. A corresponding opportunity is given to the defendant/respondent to place

his evidence by affidavit. Where the case so warrants, the court permits cross-examination of the persons swearing to the affidavit. Thereafter, court hears arguments and/or receives written submissions and decides the matter. This is of course the routine procedure. The Court may vary the said procedure, depending upon the facts of any particular case or the local rules. What is however clear is that framing of issues as contemplated under Rule 1 of Order 14 of the Code is not an integral part of the process of a proceedings under [section 34](#) of the Act.”

8. In ***Emkay Global Financial Service Ltd., vs. Girdhar Sondhi [(2008) 9 SCC 49]*** after considering the ***Fiza Developer's case*** (supra) the Honourable Supreme Court has held that an application for setting aside an Arbitral Award will not ordinarily require anything beyond the record that was before the Arbitrator. However, if there are matters not contained in such record, and are relevant to the determination of issues arising under Section 34 (2)(a), they may be brought to the notice of the Court by way of affidavits filed by both parties. Cross examination of the persons swearing to the affidavits should not be allowed unless absolutely necessary as the truth will emerge on a reading of the affidavits filed by

both parties.

9. In *Canara Nidhi Limited vs. M.Shashikala and Others [(2019) 9 SCC 462]* the Honourable Apex Court has followed the *Emkay Gobal Financial Service Limited case* (supra) and held that no ground has been made out to receive the additional documents.

10. Admittedly the parties have entered into License Agreement on 29.11.2010. Clause 4 of the above agreement reads as follows:

“4. The License shall be provided with space/land for its office/maintenance and parking of equipments within the Airport area subject to availability, at the prevailing license fee as fixed by the Authority from time to time. A separate license agreement shall be executed for the purpose at Chennai & Kolkata Airports respectively.”

11. There is dispute with regard to the first Agreement which is the Parent License Agreement. Above Clause makes it very clear that the Licensees are bound by themselves for the License Fee as fixed by the Authority from time to time and separate License Agreement shall be executed for the purpose of Chennai

and Kolkata Airports respectively. Thereafter, License Agreement dated 05.01.2011 came to be executed between the parties. Clause 4 of the License Agreement is as follows:

“4. NOW HEREBY it is agreed between the said Authority and the Licensee that in consideration of the premises and on payment of Rs.2080.13 per square meter per annum upto 31.03.2011, the rate is subject to an annually compounded escalation at 7.50% on the first April of every subsequent year. The rate is also due for upward revision/rationalization w.e.f.01.04.2011 on finalization of land lease policy of AAI and the Licensee should pay the same without any protest/demur. The Authority grants unto the Licensee and authorizes it to use the said plot of paved land for a period cited above.”

12. The above Clause also makes it very clear that the Original rate of Rs.2080.13 per square meter per annum upto 31.03.2011 was agreed by the Claimant. Thereafter, the terms indicate that there will be upward revision with effect from 01.04.2011 on finalization of the Land Lease Policy of Airport

Authority of India. Thereafter, there shall not be any protest, demur etc., Circular was issued on 20.11.2014 not only pertaining to the Claimant but also other Licensees who hold the field for the last 4 years. Prior to that in Ex.R.9 dated 27.10.2014, the parties have agreed for upward revision, wherein the Claimant was also one of the parties. It is also admitted that the objection raised with regard to increase of land rents by Circular was also rejected by the authority on 24.04.2015. These are all admitted facts.

13. As per the Original Agreement the Claimant was given 2,200 Sq. Mtr. of land. Thereafter he came to occupy more than 7,105 sq.mtr., and office space of 601.60 sq. and the Lease Agreement was renewed only on 04.09.2014 for a further period from 01.04.2014 to 31.03.2017. The Claimant agreed to pay the contractual rate including the revised rate as may be increased by the authorities from time to time. Now it cannot be said that such revision is not subject matter of the policy decision of the Airport Authority of India. It is relevant to note that the documents now sought to be relied on are the Minutes of 164th Board Meeting dated 26th March 2015. These Minutes passed much after the last agreement viz., Ex.C-3 dated 23.06.2014. On 04.09.2014 the License was renewed for a further

period of 01.04.2014 to 31.03.2017 and the Minutes relied upon by the Petitioner is of the year 2015. The draft regulations sent to the Government indicates that the short title and commencement relates to the regulations to ensure that the land resources of the authority are put to optimum use as per the Act. These regulations shall be called the Airports Authority of India (Acquisition and Contract in relation to land) Regulations, 2014.

14. It is to be noted that only the Regulations require approval from the Union Cabinet as per Section 42 of the Airports Authority of India Act, 1994. Even assuming that the regulations touching upon the fixing of the License Fee such regulations would be valid only on the date of notification by the Government. Therefore, any subsequent regulations or draft sent to the Central Government, the same cannot be taken advantage by the Petitioner to nullify the very Contract itself wherein they have subjected to the terms of the Contract. When they have agreed to pay the rent as fixed by the Authority from time to time as per the Parent License Contract, they are bound to pay the rent as may be fixed by the Authority. Section 42 of the Act when carefully seen, Sub-Clause 42(a) to 42(o) though not deal with the fixation of the rents and increase of the license

Fees, However, the Regulations have been sent to the Central Government in this case after 2015 (for acquisition and contract in relation to the land) indicating the manner in which Airport Authority of India take into account various factors while fixing rates. Therefore till the Regulations are culminated as Gazette Notification, it cannot be said that earlier action of the authority to fix the rent or increase the rent as per the Contract agreed between the parties or increase by the Authority is not valid, such contention cannot be countenanced.

15. Learned Arbitrator from Paragraph 59, 60 and 76 has held that hike by the Authorities well within the Powers and there is no violation of any statutory provisions and also not violation of the provisions of the Contract or other statutory provisions and finally in Paragraph 83 the Learned Arbitrator has considered Ex.R-9, R-10, R-11 and R-13 and found that the Airport Authority of India considered the various factors which weighed with the Respondent while initially announcing the revision in the base rent under Ex.R-9 and negated the Claimants contention in this regard.

16. Having regard to the above factors, the learned Arbitrator has also

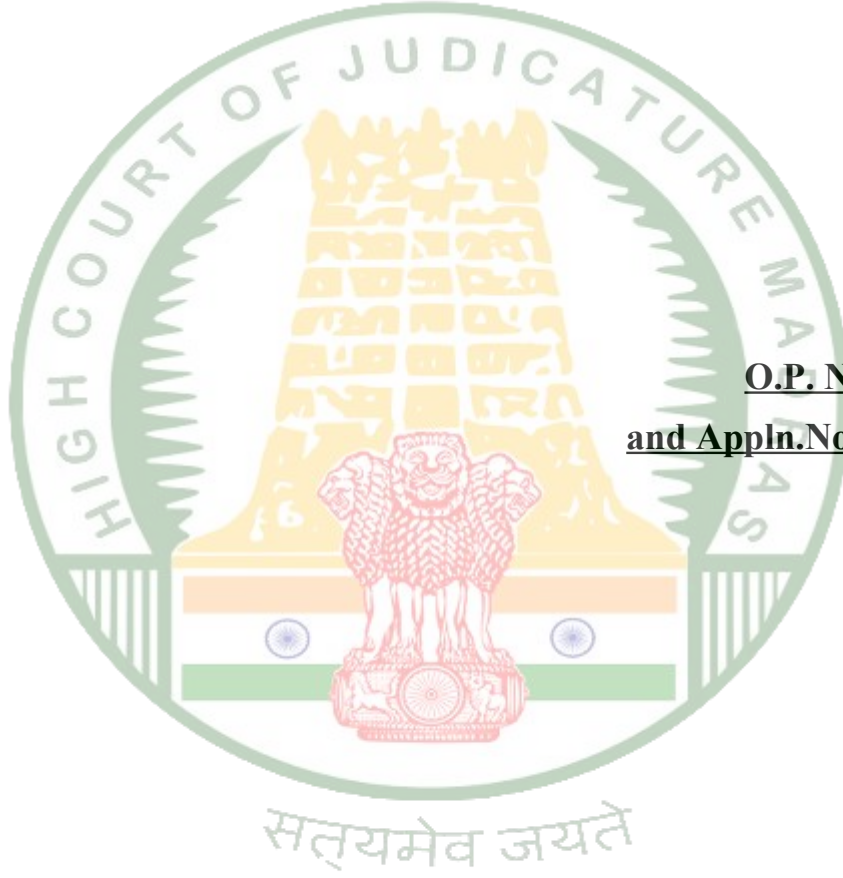
factually found that the rents are due and the notice issued by the Eviction Officer is also valid in the eye of law. At any event even any decision to bring the revision of the rents within the purview of regulations, such decision has been taken subsequent to the Contract and the parties have already agreed upon the contract and continue to pay the revised rent from the year 2010 and 2011, the Petitioner cannot contend that they are not payable rent till the Regulations are finalized. Therefore, this Court is of the view that the contention lacks merit and the detailed Award passed by the Learned Arbitrator does not require any interference in any of the grounds contemplated under Section 34 of the Arbitration and Conciliation Act. Accordingly, the Original Petition is liable to be dismissed.

17. In fine, the Original Petition is dismissed. Consequently, connected Application is closed.

06.09.2021

Index : Yes
Internet : Yes
Speaking/Non-Speaking order
ggs

N. SATHISH KUMAR, J.
ggs



Order in:
O.P. No.903 of 2019
and Appln.No.8512 of 2019

06.09.2021

WEB COPY