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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 696/2022 & CM APPLs. 52336/2022, 52338/2022, 52616/2023
& 52617/2023

SRI AUREA AVIATION PVT LTD AND ORS Appellants

Through: Mr. Umakant Mishra with Mr.
Niranjan Sahu, Advocates.

versus

UNION OF INDIA AND ORS Respondents

Through: Mr. Apoorv Kurup, CGSC with Ms.
Aparva Arun and Mr. Svivansh
Dwivedi, Advocates for
respondent/UOI.

Mr. Digvijay Rai with Mr. Archit
Mishra, Advocates with Mr. Vivek
Gupta, AGM(Law), Mr. Praveen
Kumar, DGM (OPS) and Mr.
Shubham Jain, JE (OPS) for
respondent no. 2 and 3/AAI

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Date of Decision: 10th October, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

CM APPL.52617/2023

1. Exemption allowed, subject to all just exceptions.
2. Accordingly, the present application stands disposed of.



CM APPL.52616/2023

3. Present application has been filed for correction of the order dated 4th September, 2023.

4. Keeping in view the averments in the application, para 3 of the order dated 4th September, 2023 shall now read as under :-

*“3. Consequently, the present application is allowed and the additional affidavit as well as **Annexure R-2/15** is taken on record”.*

5. Accordingly, the present application stands disposed of.

LPA 696/2022

6. The present appeal has been filed challenging the order dated 15th November, 2022 passed by the learned Single Judge in *W.P.(C) 15722/2022* and order dated 21st November, 2022 in *Review Petition No. 311/2022*. The appellants are Ground Handling Agencies (“GHAs”), being members of an Association namely, Centre for Aviation Policy, Safety and Research (“CAPSR”). They have been operating in different airports across the country rendering Ground Handling Services.

7. Material facts of the present case are as follows:

7.1 The Ground Handling Services of various Airlines operators in different airports all over the country were earlier being handled by several GHAs including the appellants herein. For such purpose, the GHAs entered into Ground Handling Agreements with the respective Airlines operators for providing such services at the airports owned by the respondent/Airport Authority of India (“AAI”) under the permission/letter of engagement issued



by the AAI.

7.2 The GHAs including the appellants continued to provide the Ground Handling Services at different airports owned by the AAI under the strength of general extensions issued by the AAI.

7.3 The Ministry of Civil Aviation, Government of India notified the Ministry of Civil Aviation (Ground Handling Services) Regulations, 2017, which provided for appointment of GHAs through a fair and transparent auction process. Subsequently, on 30th November, 2018, the Ministry of Civil Aviation, Government of India notified the Ministry of Civil Aviation (Ground Handling Services) Regulations, 2018 (“2018 Regulations”).

7.4 The respondent/AAI floated tenders on 28th July, 2020 for procuring Ground Handling Services at airports classified into different categories like A, B, C and D. A writ petition, being *W.P.(C) 5722/2020* came to be filed against the conditions of tender floated for group “D” airports. The said writ petition was allowed and the tender was quashed by this court vide its order dated 14th July, 2021.

7.5 However, the AAI challenged the said order dated 14th July, 2021 passed by this Court in *W.P.(C) 5722/2020* by way of ***Civil Appeal Nos. 6615-6616/2022, Airports Authority of India Vs. Centre for Aviation Policy, Safety and Research (“CAPSR”) and Others*** before the Supreme Court. By judgment dated 30th September, 2022, the Supreme Court allowed the appeals filed on behalf of AAI thereby holding that none of the tender conditions/eligibility criteria can be said to be arbitrary and/or malafide and/or actuated by bias. Further, it was held that CAPSR had no *locus standi* to file writ petition before this Court.



7.6 It may be noted herein that as per Regulation 7 of the 2018 Regulations, the process of selection of the new GHAs as per the said Regulations was to be completed by 31st October, 2018. Further, the new GHAs so appointed were to commence their operations not later than 30th June, 2019. Since the conditions of tender floated for selection of new GHAs in terms of 2018 Regulations were subject matter of litigation and the time period for completion of selection process in terms of Regulation 7 of the 2018 Regulations had already lapsed, the Ministry of Civil Aviation extended the time for continuance of the service of the existing GHAs like appellants. Thus, vide letter dated 30th June, 2021 issued by the AAI, the approval of the Ministry of Civil Aviation for extension of compliance of time period as stipulated in Regulation 7 of the 2018 Regulations, was communicated, which time period was extended till 15th July, 2021/31st July, 2021.

7.7 In the meanwhile, another writ petition being *W.P.(C) 6993/2021* was filed in this Court, wherein vide order dated 26th July, 2021, this court directed that status quo be maintained qua the GHAs, which were the petitioners in the said petition. In a connected petition, this Court vide order dated 16th September, 2021 in *Cont. Cas(C) No. 609/2021* took note of the submission and undertaking of the respondents that denial of permission to the existing GHAs to provide Ground Handling Services will be only in cases where the respondents have already engaged any third party GHA through the bidding process as envisaged in the 2018 Regulations.

7.8 Subsequently, AAI floated fresh tender for awarding concession for



Ground Handling Services for 20 airports in Group “D” category on 06th October, 2022, followed by another tender notice for 41 airports on 03rd November, 2022.

7.9 The AAI also filed an application being *CM No. 44331/2022* in *W.P.(C) 6993/2021* for dismissal of the said writ petition since the issues raised in the said petition stood concluded in the light of the judgment rendered by the Supreme Court in *Civil Appeal Nos. 6615-6616/2022*. By order dated 28th October, 2022, learned Single Judge of this court deleted CAPSR from the array of parties, while allowing the said writ petition to be maintained on behalf of the remaining two writ petitioners therein.

7.10 The AAI did not allow the appellants to continue providing Ground Handling Services at various AAI airports. Vide communication dated 31st October, 2022 issued by the AAI with respect to appellant no.1, it was stated that henceforth the Ground Handling Operations at Jaisalmer Airport would be carried out and performed by Air India Air Services Limited (“AIASL”). Thus, aggrieved by the same, writ petition bearing *W.P.(C) No. 15722/2022* was filed. By order dated 15th November, 2022, the said writ petition filed on behalf of appellants herein was dismissed by the learned Single Judge. *Review Petition No. 311/2022* against the said order was also dismissed by the learned Single Judge vide order dated 21st November, 2022. Thus, the present appeal has been filed.

8. On behalf of the appellants, the following contentions have been raised:

8.1 Learned Single Judge failed to appreciate that the appellants had been providing Ground Handling Services at the Airports since last many years.



Thus, they have accrued vested existing rights to provide Ground Handling Services till one month after commencement of operation of GHAs duly appointed through the bidding process.

8.2 The acts of the respondents is against the Fundamental and Constitutional Rights of the appellants under Articles 14, 16, 19(1)(g) and 21 of the Constitution of India.

8.3 Letter/Order dated 10th November, 2022 issued by the respondent Authorities refusing permission to allow the protection being enjoyed by appellants by virtue of order dated 26th July, 2021 passed by this Court in *W.P.(C) 6993/2021* on the ground that CAPSR has been deleted from the array of parties, was bad in law and entailed blatant discrimination against the appellants.

8.4 Out of the 26 Group “D” airports, appellants are operating in as many as 15 such Group “D” airports where AIASL is not operating.

8.5 Learned Single Judge completely disregarded and misinterpreted the provisions of Regulation 7(1) and (2) of 2018 Regulations which mandated a process of selection of a GHA by 31st October, 2018, unless extended by Government of India and the GHA so appointed to commence its operations by 30th June, 2019. In view of non-compliance of provisions of Regulation 7(1) and (2) of 2018 Regulations, the respondent Authorities ought to have extended the permission of the existing GHAs till new GHAs appointed by respondent Authorities commence their operations.

8.6 The respondents themselves did not abide by the time lines as stipulated in Regulation 7 of the 2018 Regulations for completion of selection process of the new GHAs. Thus, the existing GHAs were granted



extension for continuance of their services for performing Ground Handling Services vide letter dated 30th June, 2021. Therefore, the appellants are entitled to continue to operate at the airports and not AIASL, as appointed by the respondents.

9. On the other hand on behalf of the respondents, the orders passed by the learned Single Judge have been justified. Further, this Court was informed that the Letter of Intent dated 09th February, 2023 and Concession Agreement dated 05th June, 2023 has been issued to M/s Ranbanka Aviation Pvt. Ltd. with regard to Ground Handling Services at Jaisalmer Airport.

10. We have heard learned counsel for the parties and perused the record.

11. At the outset, this Court notes that Regulations pertaining to Ground Handling Services in airports have been notified by the AAI. Such Regulations were firstly notified in the year 2000 followed by Regulations of the years 2007, 2017 and finally the 2018 Regulations, which currently hold the field. Regulation 7 of the 2018 Regulations provide the manner and timeline for the respondent authorities for transition from existing GHA entities to the duly selected and appointed GHA entities, after following the due transparent process of selection through open tender. Thus, Regulation 7 of the 2018 Regulations reads as under:

"7 (1) All airport operators shall complete the process of selection of requisite number of ground handling agencies by the 31st october, 2018 unless extended by Government of India.

(2) The ground handling agency so appointed shall commence its operation expeditiously and in any case not later than the 30th June, 2019.

(3) Airport where duly appointed ground handling agency is already in place and where any agency which is not permitted under these regulations is operating, such agencies shall not be allowed to continue after the 31st october, 2018 unless extended by Government of India.



(4) Any agency which is not permitted under these regulations and carrying out the ground handling activities on the commencement of these regulations, at an airport or civil enclave other than those referred to in sub-regulation (3), shall be allowed to continue till the 30th June, 2019 or till thirty days from the commencement of operations by the ground handling agencies duly appointed under these regulations, whichever is earlier.

(5) The Bureau of civil Aviation security shall issue airport entry permits to the existing ground handling agencies till such time their operations are allowed to continue under this regulation."

12. The aforesaid timelines as stipulated in Regulation 7 of the 2018 Regulations was subsequently extended by the respondents till 15th July, 2021/31st July, 2021 by way of letter dated 30th June, 2021, which reads as under:-

"Sir,

I am directed to refer to Regulation 7(4) of the Airports Authority of India (Ground Handling Services) Regulations, 2018 and to this Ministry's letter No.AV-24011/8/2017-AAI-MOCA-Part(1) dated 22.12.2020 (copy enclosed for ready reference) on the above noted subject and to convey the approval of the Competent Authority in Ministry of Civil Aviation for the following:

i. Extension of the date from 30th June 2021 to **15th July 2021**, for a period of 15 days, for continuance of the service of the agencies performing Ground Handling services at **eleven** (list at Annexure-I) AAI airports/Civil Enclaves.

ii. Extension of the date from 30th June 2021 to **31st July, 2021**, for a period of one month, for continuance of the service of the agencies performing Ground Handling services at **sixty-five** (list at Annexure-II) AAI airports/Civil Enclaves.

iii. At the eleven airports (mentioned in i, above), BCAS is requested to consider issuing provisional Security Clearance to the agencies to whom Airports Authority of India has issued the Letter of Intent Award.

2. Accordingly, BCAS is requested to consider the request for renewal of the Airport Entry Passes of the Ground Handling Staff of all the agencies including airlines at the above mentioned **airports** managed by AAI, including Joint User Defence airports/ Civil Enclaves/ as per para 1 above or till further orders, whichever is earlier.

3. BCAS may follow its due procedure for renewal of such passes.

Regards,
Section Officer, AAI Section,
Ministry of Civil Aviation"



13. Perusal of the aforesaid clearly shows that the existing GHAs were allowed to continue to carry out the Ground Handling Services till 30th June, 2019 or till 30 days from the commencement of operations by the GHAs duly appointed under the 2018 Regulations, whichever is earlier. This period was subsequently extended till 15th July, 2021/31st July, 2021 by way of letter dated 30th June, 2021. Thus, it is seen that the time period for the existing GHAs to continue to operate the Ground Handling Services expired long back on 15th July, 2021/31st July, 2021. Therefore, there is no right vested in the appellants to continue to operate as GHAs in the various airports under the AAI. As noted hereinabove, for Jaisalmer Airport from where appellant no.1 was operating, M/s Ranbanka Aviation Pvt. Ltd. has already been issued Letter of Intent dated 09th February, 2023 and Concession Agreement dated 05th June, 2023 for carrying out Ground Handling Services therein. Thus, it is noted that the bidding process for concession for Ground Handling Services at Group “D” airports, which includes Jaisalmer Airport, stands concluded.

14. The appellants had continued to provide Ground Handling Services in various airports in terms of the interim orders in their favour by this Court in various litigations initiated on their behalf. However, such interim orders in favour of the appellants do not in any manner grant any indefeasible right to continue to act as GHAs notwithstanding the identification of a third party agency in accordance with the provisions under the 2018 Regulations.

15. This Court notes that learned Single Judge of this Court in *W.P.(C) 6432/2021, and other connected matters* vide order dated 22nd April, 2022,



reported as 2022 SCC OnLine Del 1158 modified the earlier interim orders of status quo passed in favour of various existing GHAs and permitted the respondents herein to undertake requisite transition and handover Ground Handling Services to the identified parties selected for airports at Srinagar and Vishakhapatnam in terms of the exercise undertaken under 2018 Regulations. Therefore, the contentions of the appellants with respect to interim orders in other cases in favour of other similarly placed GHAs and discriminatory treatment meted out to them are totally erroneous and liable to be rejected.

16. The appellants have no vested right in their favour to continue as GHAs at various airports. The appellants were operating as GHAs at various airports in view of their respective Ground Handling Agreements with the Airline operators. However, after notification of the 2018 Regulations which envisage engagement of Ground Handling Agents through transparent bidding process in terms of Regulation 3(4) and 3(5) of the 2018 Regulations, the appellants cannot seek to continue operating as GHAs contrary to the stipulations in the 2018 Regulations. Merely because the appellants continued to operate in view of the various interim orders granted by this court in their favour, the same shall not confer any rights on the appellants to continue to operate as GHAs when third party GHAs have already been selected or in the process of being selected by way of open tender process in terms of the 2018 Regulations.

17. Holding that when Regulations or Schemes or Policies change, applicants for their benefits have no inherent right to be considered under the old policy; rather the consideration has to be under the new regime, the



Supreme Court in the case of **Ritu Maheshwari Vs. Promotional Club**¹, has held as follows:

“22. The High Court had directed that the club's applications should be considered “in accordance with law”. Noida proceeded to comply with that direction, and reinstate those applications and, furthermore, consider them in accordance with the existing scheme. The High Court, in contempt proceedings, has taken exception to this course of action; in this Court's opinion, in an entirely unnecessary and unwarranted manner. As held earlier, once the legality of closure of the old scheme was undisputed, there was no manner of right inhering with the club, to insist that its claim for any plot had to be considered. If at all, it ought to have applied under subsequent schemes, and waited like other applicants (of that scheme), Noida's interpretation of the High Court's judgment (to consider) in this context, was quite correct. Neither did Noida, in its announcement while closing the old scheme nor in any condition of the 2013 or later scheme, stipulate that old scheme applicants would be dealt with according to the terms of that (i.e. 2010) scheme. This meant that Noida had to consider the club's applications, in accordance with terms of the prevailing scheme. It did so, and incurred — quite unjustifiably—the wrath of the High Court in contempt proceedings. There is authority for the proposition that when regulations or schemes, or policies change, applicants for their benefits have no inherent right to be considered under the old policy; rather the consideration has to be under the new regime, unless the latter contains an express stipulation to the contrary.

23. In *Usman Gani J. Khatri v. Cantonment Board* [*Usman Gani J. Khatri v. Cantonment Board*, (1992) 3 SCC 455] this Court affirmed the decision of the High Court, which held that old rules could not be applied, and that new rules were applicable, for considering applications for sanction of buildings. It was held that : (SCC p. 469, para 24)

“24. ... In any case, the High Court is right in taking the view that the building plans can only be sanctioned according to the building regulations prevailing at the time of sanctioning of such building plans. At present the statutory bye-laws published on 30-4-1988 are in force and the fresh building plans to be submitted by the petitioners, if any, shall now be governed by these bye-laws and not by any other bye-laws or schemes which are no longer in force now. If we consider a reverse case where building regulations are amended more favourably to the builders before sanctioning of building plans already submitted, the builders would certainly claim and get the advantage of the regulations amended to their benefit.””

(Emphasis Supplied)

18. It is settled law that where there is business/commercial transaction, the same are to be examined on the commercial principles, where equity has no role to play. Thus, in the case of **Gwalior Development Authority and**

¹ 2022 SCC OnLine SC 551



Another Vs. Bhanu Pratap Singh², Supreme Court has held as follows:

“17. In the ordinary course of business, as the respondent has failed to deposit in terms of the tender document, the last instalment by 31st October, 1999, the auction was supposed to be cancelled and the earnest money deserved to be forfeited. We find no reasonable justification in the present facts and circumstances as to what would be the reason for undue indulgence being shown to the respondent while extending him the benefit to deposit the instalment by 25th August, 2005 and we have our strong reservations and such exercise of power by the Authority, in our view, is a clear abuse of discretion which is not only violative of Article 14 of the Constitution, but also smacks of an undue favour which is always to be avoided and whenever there is such a business/commercial transaction, it is always to be examined on the commercial principles where equity has no role to play. Be that as it may, as much water has flown in the Ganges, we would not like to stretch it any further.”

(Emphasis Supplied)

19. This Court affirms the finding of the learned Single Judge that the rights of existing GHAs to continue to discharge services till such time as an agency is selected through a transparent bidding process, alone was safeguarded and secured by this Court in terms of its various orders. Thus, it is clear that when the bidding process for selection of GHAs in terms of the 2018 Regulations is already complete and new GHAs have been selected after following the due procedure, there is no right that subsists in favour of the appellants to continue the Ground Handling Services in the airports.

20. This Court also finds no infirmity in the finding of the learned Single Judge that in the case of AIASL, it became eligible to be appointed as the GHA by virtue of Regulation 3(5)(b) of the 2018 Regulations.

21. In view of the aforesaid detailed discussion, the impugned orders passed by the learned Single Judge are upheld. No merit is found in the present appeal. This Court also notes that the appellants by initiating various litigations against the respondents have tried to virtually stall the operation

² 2023 SCC OnLine SC 450



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of the system of Ground Handling Services at airports in a fair manner in terms of the 2018 Regulations, making them liable for imposition of costs.

22. Accordingly, the present appeal is dismissed with cost of Rs. 50,000/- payable by the appellants to be deposited in favour of Delhi High Court Bar Association Lawyers Social Security and Welfare Fund [A/C 155530100009730; IFSC UCBA0001553]. The said cost is directed to be deposited within a period of two weeks and receipt thereof is directed to be filed in the Registry of this Court thereafter.

MINI PUSHKARNA, J

MANMOHAN, J

OCTOBER 10, 2023

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