IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.06.2024

Pronounced on : 24.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.9942, 10000, 10534, 10539, 10543, 10552, 10556, 10873, 11090, 11099, 11106, 12229 of 2020 & 587 of 2022
and
WMP.Nos.13569, 12090, 12098, 12095, 12091, 13573, 12162, 12160, 12796, 12792, 12794, 12791, 12802, 12797, 12799, 12807, 12801, 12800, 12798, 12806, 12812, 12811, 12810, 12808, 12817, 12815, 12813, 13193, 13197, 13526, 13533, 13521, 13518, 13538, 13539, 13537, 13541, 13551, 13550, 13549, 13548, 14991, 14996 & 14993 of 2020 & 643, 645 of 2022

<u>WP.No.9942 of 2020</u>

M/s.Global Flight Handling Services Pvt.Ltd,
No.158, Rayala Tower, 1st Floor,
Anna Salai, Mount Road,
Chennai 600 002
Rep by its Managing Director ... Petitioner

Vs.

1.The Airport Authority of India,
Rep. By its Chairman,
New Delhi
2.The Executive Director(Operations)
Airport Authority of India,
New Delhi
3.The Airport Director,
Airports Authority of India,
Chennai Airport,
Meenambakkam,
Chennai

4.The General Manager(Operations)
Airport Authority of India,
Chennai Airport,
Chennai
5.M/s Spice Jet Ltd.,
Having its office at
Indira Gandhi International Airport,
Terminal I-D,
New Delhi 110 037
6.M/s Jet Airways (India) Ltd.,
Having its Office at
Siroya Centre, Sahar Airport Road,
Andheri East,
Mumbai 400 099 ... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned E-mail communication dated 22.07.2020 of the 4th Respondent herein relating to the Royalty outstanding dues and quash the same and direct the Respondents 1 and 2 herein to permit the petitioner to participate in the Tender for grant of concession for Ground Handling Services pursuant to the Tender dated 06.03.2020 bearing Tender ID : 2020_AAI_41227_1, read with Corrigendum No.7 bearing Tender ID : 2020_AAI_41227_1 dated 10.07.2020 of the 2nd Respondent herein.

<u>WP.No.9942 of 2020</u>

For Petitioner : M/s.AL.Gandhimathi,
Senior Counsel
for Mr.AR.Karthik Lakshmanan

For Respondents

For R1 to 4 : Mr.Father Xavier Arulraj,
Senior Counsel
for M/s.A.Arul Mary

WP.No.10556 of 2020

For Petitioner : M/s.AL.Gandhimathi,
Senior Counsel
for Mr.AR.Karthik Lakshmanan

For Respondents

For R1 to 4 : Mr.Father Xavier Arulraj,
Senior Counsel
for M/s.A.Arul Mary

WP.No.10534 of 2020

For Petitioner : M/s.AL.Gandhimathi,
Senior Counsel
for Mr.AR.Karthik Lakshmanan

For Respondents

For R1 to 4 : Mr.Father Xavier Arulraj,
Senior Counsel
for M/s.A.Arul Mary

WP.No.12229 of 2020

For Petitioner : Mr.L.K.Manjunath

For Respondents

For R1 to 4 : Mr.Father Xavier Arulraj,
Senior Counsel
for M/s.A.Arul Mary

For R8 : Mr.P.Giridharan

For R5 to 7 : No appearance

WP.No.10000 of 2020

For Petitioner : Mr.A.S.Baalaji

For Respondents : Mr.Father Xavier Arulraj,
Senior Counsel
for M/s.A.Arul Mary

WP.No.10873 of 2020

For Petitioner : Mr.A.S.Baalaji

For Respondents
For R1 & 2 : Mr.Father Xavier Arulraj,
Senior Counsel
for M/s.A.Arul Mary

For R8 : Mr.P.Giridharan

For R4 : Mr.O.R.Santhanakrishnen

WP.No.11090 of 2020

For Petitioner : M/s.AL.Gandhimathi,
Senior Counsel
for Mr.AR.Karthik Lakshmanan

For Respondents
For R1 to 4 : Mr.Father Xavier Arulraj,
Senior Counsel
for M/s.A.Arul Mary

WP.No.587 of 2022

For Petitioner : M/s.AL.Gandhimathi,
Senior Counsel
for Mr.AR.Karthik Lakshmanan

For Respondents
For R1 to 4 : Mr.Father Xavier Arulraj,
Senior Counsel
for M/s.A.Arul Mary

WP.No.11106 of 2020

For Petitioner : M/s.AL.Gandhimathi,
Senior Counsel
for Mr.AR.Karthik Lakshmanan

For Respondents
For R1 to 4 : Mr.Father Xavier Arulraj,
Senior Counsel
for M/s.A.Arul Mary

WP.No.11099 of 2020

For Petitioner : M/s.AL.Gandhimathi,
Senior Counsel
for Mr.AR.Karthik Lakshmanan

For Respondents
For R1 to 4 : Mr.Father Xavier Arulraj,
Senior Counsel
for M/s.A.Arul Mary

WP.No.10552 of 2020

For Petitioner : M/s.AL.Gandhimathi,
Senior Counsel
for Mr.AR.Karthik Lakshmanan

For Respondents
For R1 to 4 : Mr.Father Xavier Arulraj,
Senior Counsel
for M/s.A.Arul Mary

WP.No.10543 of 2020

For Petitioner : M/s.AL.Gandhimathi,
Senior Counsel
for Mr.AR.Karthik Lakshmanan

For Respondents
For R1 to 4 : Mr.Father Xavier Arulraj,
Senior Counsel
for M/s.A.Arul Mary

WP.No.10539 of 2020

For Petitioner : M/s.AL.Gandhimathi,
Senior Counsel
for Mr.AR.Karthik Lakshmanan

For Respondents
For R1 to 4 : Mr.Father Xavier Arulraj,
Senior Counsel
for M/s.A.Arul Mary

COMMON ORDER

The writ petitions in WP.Nos.9942, 10556, 10534, 11090, 10539, 10543, 10552, 11099 & 11106 of 2020 have been filed challenging the communication of fourth respondent dated 22.07.2020 thereby directed to pay royalty outstanding dues; the writ petition in WP.No.587 of 2022 has been filed challenging the communication of fourth respondent dated 22.12.2021 thereby directed to pay royalty outstanding dues; the writ petition in WP.No.12229 of 2020 has been filed challenging the communication of fourth respondent dated 21.07.2020 thereby directed to pay royalty outstanding dues; and the writ petitions in WP.Nos.10000 & 10873 of 2020 have been filed challenging the email communication dated 21.07.2020 issued by the respondents.

2. In the writ petition in WP.No.10534 of 2020, the petitioner therein is carrying on business in flight handling services such as supply of manpower to private airlines. Initially these services were carried on by M/s.Global Facility Management Services Private Limited and subsequently, it was taken over by the petitioner under agreement dated 10.01.2015. Accordingly, the petitioners will continue to do the business and the petitioner started carrying on business from April 2016. The petitioner had entered into service agreement with the fifth respondent on 27.01.2016 for flight handling services. Also the petitioner entered into an agreement with the sixth respondent for flight handling services on 22.03.2016. In terms of the agreement, the petitioner will raise bills before respondents 5 & 6 for the services rendered by the petitioner. From April 2016, the petitioner had duly remitted royalty at the rate of

13% on gross turn over to respondents 1 to 4. Thereafter, royalty amount added to the bills payable by respondents 5 and 6 to the petitioner and collected entire bill amount from them. On 29.09.2016, the respondents had written a letter to all airlines operating at Chennai Airport stating that as per the guidelines of the Airport Authority of India, the applicable royalty to be charged from the ground handling activities at Chennai Airport is 32.5% on Gross Turn Over and requested to pay royalty at 32.5%. Accordingly, the petitioner had remitted royalty charges at the rate of 32.5%.

2.1 When the petitioner intended to submit its bid for the tender floated by the second respondent for the grant of concession for ground handling services at Chennai and Kolkata Airports, the petitioner was denied no due certificate from respondents 1 to 4 on the ground that some arrears due and payable by the petitioner towards differential amount of royalty. Thereafter, the petitioner was communicated by an e-mail dated 22.07.2020 that there is royal outstanding dues calculated for the period April 2016 to March 2019 at Rs.87,13,818/-. Further, royalty outstanding for the period January 2015 to March 2016 arrived at Rs.1,54,60,470.33/- thereby calling upon the petitioner to clear the said outstanding dues.

3. The learned Senior Counsel appearing for the petitioners submitted that the security clearance was granted to the petitioners by the Ministry of Civil Aviation only on 03.02.2016. Thereafter, the petitioner was engaged on the ground handling services by entering into an agreement with respondents 5 and 6. Therefore, the petitioners did not enter into any agreement with respondents 1 to 4. There is no privity of contract between them. Respondents 1 to 4 never raised any demand to the petitioners and all of sudden, when the petitioners applied for no due certificate, in order to tender bid for the tender floated by them for grant of concession of ground handling services at Chennai and Kolkata, the petitioners were denied no due certificate on the ground that there is arrears due payable by the petitioners towards differential royalty. In fact, the petitioners had paid at 13% of royalty up to September 2016 and after increasing the royalty from 13% to 32.5% i.e. on 29.09.2016, the

petitioners had paid royalty at 32.5%. Therefore, the impugned demand, that too retrospective effect, issued by the fourth respondent is arbitrary and illegal.

3.1 She further submitted that the demand cannot be made on the petitioners since the petitioners had no privity of contract with respondents 1 to 4. Even assuming that the said royalty payable to the respondents 1 to 4, is only by respondents 5 and 6 and not by the petitioners. Whatever the amount paid as royalty to be claimed from respondents 5 and 6 along with the bill raised by the petitioners as per the agreement entered between the petitioners and respondents 5 and 6. Therefore, no demand can be issued as against the petitioners. Because of non issuance of no due certificate, the petitioners could not able to participate in the tender floated by the second respondnent in various airports of India.

4. On perusal of the counter filed by the respondents and also on hearing the submissions made by the learned Senior Counsel

appearing on either side, revealed that as per the Ground Handling Regulations, 2007, the ground handling services had to be provided only through entitled entities. Respondents 1 to 4 licenced the consortium of M/s.Novia and M/s.Bhadra as an entitled entity for ground handling activities through a competitive bidding process to carry out the activities. Accordingly, they had entered into an agreement with M/s.Bhadra with effect from 23.09.2010. The royalty was fixed at 32.5% over the gross turn over. Therefore, the domestic Airline Operators filed a petition agitating their right to engage their own Ground Agencies and failed. They had preferred an appeal before the Hon'ble Supreme Court of India in SLP(C)No.7764 of 2011 and by an interim order dated 04.04.2011, the airlines operators shall be entitled to renewal of passes for their ground handling staff subject to their entering into a memorandum with any ground handling agency without prejudice. Accordingly, the petitioners in all the writ petitions had entered into an agreement with respondents 1 to 4 under different conditions. However, the question of percentage of royalty was not disputed before the Hon'ble Supreme Court of India by the private airlines.

5. By an order dated 30.08.2012, the Hon'ble Supreme Court of India permitted the private airlines to withdraw the interlocutory application reserving their liberty to file independent petitions challenging the revision in the royalty for ground handling activities. Thereafter, there was no challenge in respect of revision of royalty for ground handling activities. In fact, M/s.Bhadra was initially remitting 32.5% royalty from the date of its operation as per the contract. Therefore, the petitioners were directed to pay royalty at 32.5% on par with entitled agencies. It was communicated through private airlines to the petitioners to remit 32.5% of royalty on the gross turn over. By the proceedings dated 26.07.2022, informed the airlines about the payment of royalty at the rate of 32.5% with effect from 01.08.2012 as against 13% of royalty. Once again, by the communication dated 01.08.2012, it was reiterated that the royalty is to be charged at 32.5%. In fact, the request made by the airlines for remittance of royalty at the rate of 13% was rejected and confirmed the royalty at the rate of 32.5% to all airlines through their non entitled agencies. By the e-mail communication dated 12.09.2012, respondents 1 to 4 communicated to all airlines and operators and directed to pay

royalty at the rate of 32.5% with effect from 01.08.2012 for the purpose of renewal of airport driving permit, airport entry permit and airport vehicle permit.

6. Thereafter, on 25.02.2013, a meeting was held in which once again, respondents 1 to 4 issued instructions to remit 32.5% royalty and if failed to pay, it will lead to financial complications at a later point on account of revenue loss to respondents 1 to 4. By letter dated 29.06.2016 also duly intimated to the airlines about payment of royalty. Insofar as petitioner M/s.Global Flight Handling Services Private Limited is concerned, they took over the operations from M/s.Global Facility Management Services Private limited by an agreement dated 10.01.2015. Though the petitioners had operated under the erstwhile company name from 10.01.2015 to March 2015, it failed to pay any royalty for the said period. Further, though the petitioners raised invoices in the name of erstwhile management, failed to pay royalty neither at the rate of 13% nor at the rate of 32.5%. Therefore, the outstanding due worked out to the tune of Rs.1,54,60,470.33/-. The petitioners had entered into an

agreement with the sixth respondent on 22.03.2016 and with fifth respondent entered into an agreement as on 27.06.2016. Therefore, the contention of the learned Senior Counsel that there is no privity of contract between the petitioners and respondents 1 to 4 cannot be countenanced since the ground handling services have been done through the petitioners engaged by the respective private airlines as their non entitled entities and as per the order passed by the Hon'ble Supreme Court of India.

7. In this regard, the learned Senior Counsel appearing for the respondents relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Food Corporation of India and others Vs. Vikas Majdoor Kamdar Sahkari Mandli Limited*** reported in ***(2007) 13 SCC 544***, wherein it is held as follows:

> *19. The principle of quantum meruit is often applied where for some technical reason a contract is held to be invalid. Under such circumstances an implied contract is assumed, by which the person for whom the work is to be done contracts to pay reasonably for the work done, to the person who does*

the work. The provisions of this section are based on the doctrine of quantum meruit, but the provisions of the Contract Act admit of a more liberal interpretation; the principle of the section being wider than the principle of quantum meruit.' The principle has no application where there is a specific agreement in operation. A person who does work or who supplies goods under a contract, if no price is fixed, is entitled to be paid a reasonable sum for his labour and the goods supplied. If the work is outside the contract, the terms of the contract can have no application; and the contractor is entitled to be paid a reasonable price for such work as was done by him.

20. If a party to a contract has done additional construction for another not intending to do it gratuitously and such other has obtained benefit, the former is entitled to compensation for the additional work not covered by the contract. If an oral agreement is pleaded, which is not proved, he will be entitled to compensation under Section 70. Payment under this section can also be claimed for work done beyond the terms of the contract, when the benefit of the work has been availed of by the defendant.

8. The learned Senior Counsel appearing for the respondents also relied upon the judgment in the case of ***Nabha Power Limited (NPL) Vs. Punjab State Power Corporation Limited(PSPCL) and another*** reported in ***(2018) 11 SCC 508***, wherein it is held as follows:

> *43. A parallel development in Australia arose out of a judgment of the Lords of the Judicial Committee of the Privy Council in the appeal preferred from the Full Court of the Supreme Court of Victoria in B.P. Refinery (Westernport) Proprietary Limited vs. The President Councillors and Ratepayers of the Shire of Hastings8 . On the implication of the terms of contraction five conditions were laid down and a reference was, once again, made to the The Moorcock (supra), Reigate vs. Union Manufacturing Co. (Ramsbottom) Ltd. (supra) and Shirlaw v. Southern Foundries (supra) in the following terms: "40. Their Lordships do not think it necessary to review exhaustively the authorities on the implication of a term in a contract which the parties have not thought fit to express. In their view, for a term to be implied, the following conditions (which may overlap) must be satisfied: (1) it must be reasonable*

and equitable; (2) it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; (3) it must be so obvious that "it goes without saying"; (4) it must be capable of clear expression; (5) it must not contradict any express term of the contract.

49. We now proceed to apply the aforesaid principles which have evolved for interpreting the terms of a commercial contract in question. Parties indulging in commerce act in a commercial sense. It is this ground rule which is the basis of The Moorcock test of giving 'business efficacy' to the transaction, as must have been intended at all events by both business parties. The development of law saw the 'five condition test' for an implied condition to be read into the contract including the 'business efficacy' test. It also sought to incorporate 'The Officious Bystander Test' [Shirlaw vs. Southern Foundries (supra)]. This test has been set out in B.P. Refinery (Westernport) Proprietary Limited vs. The President Councillors and Ratepayers of the Shire of Hastings (supra) requiring the requisite conditions to be satisfied: (1) reasonable and equitable; (2) necessary to give business efficacy to the contract; (3) it goes without saying, i.e., The Officious Bystander Test; (4) capable of *clear expression; and (5) must not contradict any express term of the contract. The same penta-principles find reference also in Investors Compensation Scheme Ltd. vs. West Bromwich Building Society (supra) and Attorney General of Belize and Ors. vs. Belize Telecom Ltd. and Anr. (supra). Needless to say that the application of these principles would not be to substitute this Court's own view of the presumed understanding of commercial terms by the parties if the terms are explicit in their expression. The explicit terms of a contract are always the final word with regards to the intention of the parties. The multi-clause contract inter se the parties has, thus, to be understood and interpreted in a manner that any view, on a particular clause of the contract, should not do violence to another part of the contract.*

9. It is also relevant to extract the relevant portion of the agreement dated 22.03.2016 hereunder:

7. The Contractor shall be solely responsible for performance of and observation of all laws, rules and regulations, including all directions and instructions which may be issued from time to time by the Airports of Authority of India, and for this purpose the Contractor *shall be solely responsible for ensuring compliance by his employees of all legal and other requirements, including compliance with practices and procedures prescribed by the Airports Authority of India.*

8. The Contractor, by this Agreement agrees and undertakes to keep the Company indemnified at all times during the period of contract against any and all claims by the Airport Authority of India and/or any other Authority or body arising from any breach of this clause by the Contractor or its employees.

12. The Contractor shall be solely responsible and liable for all payments due to its employees, including wages, overtime wages, if any, statutory payments, contributions to Provident Fund and Employees State Insurance, Bonus, Gratuity, if payable, uniforms and all other payments of whatsoever nature. In the event of any increase in the Contractor's statutory or other liabilities towards its employees during the period of contract, the Contractor may seek a commensurate increase in Service
Charge payable and upon arriving at acceptable rate, the increased service Charge shall thereafter become payable. However, Contractor shall at all time keep the

company indemnified and protected any and all claims of whatsoever nature by its employees.

9.1 Thus it is clear that the petitioners had agreed to indemnify the contracting company, from all claims by any third party arising out of the performance of services, by the manpower provided under the agreement. The payment of royalty by the petitioners to respondents 1 to 4 and the liabilities including the indemnity of the petitioners as against the the contracting airlines. In fact, even according to the petitioners, the royalty should be paid at 32.5%. Therefore, in order to participate in the tenders, floated all over India, the entities like the petitioners ought to have produced no due certificate and royalty documents.

10. The petitioners approached this Court and made attempt to bye pass the tender conditions, production of no due certificate and royalty documents. Now the contract between the petitioners and the private airlines were terminated. On verification of records, revealed that the petitioner had paid royalty at the rate of 13% from April 2016 to September 2016. From October 2016 onwards, the petitioners have been

paying 32.5% royalty. Thereafter, from February 2019 to April 2019, the petitioners failed to pay royalty on behalf of the sixth respondent. Therefore, respondents 1 to 4 had issued email to clarify this position. However, failed to clarify and as such, another email was sent to all non entitled agencies to submit details of the royalty paid by them within a period of seven days to enable the respondents 1 to 4 to calculate outstanding dues. Therefore, the petitioners were communicated by email with the details of the liability and royalty which worked out to sum of Rs.2,41,74,289/- in respect of two periods from January 2015 to March 2016 and from April 2016 to 2019-2020.

11. Further, insofar as the writ petition in WP.No.10873 of 2020 is concerned, the fourth respondent filed counter and stated that the fourth respondent does not have contract with the petitioner since the petitioner was appointed only by the sixth respondent. The sixth respondent had outsourced the petitioner for cabin cleaning. Therefore, the contract entered between the fourth respondent and the sixth respondent covers comprehensive groundling at the Chennai Airport. Further, according to

the National Civil Aviation Policy, 2016, under the Ground Handling Policy, hiring of employees through manpower supplies or contract denied permission to the outsourced teams within the premises of Chennai Airport due to security reasons, which resulted in terminating the contract between the fourth and sixth respondent. Therefore, the royalty charges paid by the fourth respondent are only to the sixth respondent and not to the petitioner. As such, the petitioner is liable to pay royalty to respondents 1 and 2 therein.

12. Insofar as the petitioner in WP.No.12229 of 2020, based upon the CA verified certificate submitted by the petitioner on 08.07.2020, the royalty outstanding dues calculated is Rs.3,40,35,774/- (inclusive GST). In the CA certificate signed by M/s SBVA & Associates, Bangalore, the name of the Petitioner which has done the ground handling activity is not reflected. Hence, it was presumed that the data provided in the certificate is applicable to the petitioner. The difference in percentage of payment of royalty, i.e., 32.5% minus 13% on gross turn over, has been computed by the fourth respondent from 2010-2011 to 2019-2020 to arrive at Rs.3,40,35,774/- (inclusive GST), for claiming

royalty outstanding dues of respondents 5 to 8 from the Petitioner.

13. Therefore, this Court finds no infirmity or illegality in the orders impugned in these writ petitions. As such, all the writ petitions are liable to be dismissed. Accordingly, all the writ petitions are dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

24.06.2024

Neutral Citation:Yes/No
Index: Yes/No
Speaking/Non-speaking order
lok

G.K.ILANTHIRAIYAN, J.

lok

To
1.Chairman,
The Airport Authority of India,
New Delhi
2.The Executive Director(Operations)
Airport Authority of India,
New Delhi
3.The Airport Director,
Airports Authority of India,
Chennai Airport,
Meenambakkam,
Chennai
4.The General Manager(Operations)
Airport Authority of India,
Chennai Airport,
Chennai
5.M/s Spice Jet Ltd.,
Having its office at
Indira Gandhi International Airport,
Terminal I-D,
New Delhi 110 037
6.M/s Jet Airways (India) Ltd.,
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