



2024:CGHC:38258-DB

**AFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WPC No. 4885 of 2024**

Santosh Tiwari S/o Shri Chandrabhushan Tiwari Aged About 45 Years  
Occupation - Business, Proprietor Of M/s Anjaney Enterprises , Having Its  
Office At 142, Banerjee Layout, Bhagwan Nagar, Nagpur, Maharashtra -  
440027.

**... Petitioner**

**Versus**

- 1** - Union Of India Through Its Principal Secretary, Ministry Of Civil Aviation ,  
Having Its Office At Rajiv Gandhi Bhawan Block B , Jorbagh Safdarjung Airport  
Area, New Delhi – 110003
- 2** - Airport Authority Of India Through Its Chairman, Having Its Corporate Office  
At Rajiv Gandhi Bhawan, Safdarjung Airport, New Delhi – 110003.
- 3** - The Executive Director ( Commercial ) Airport Authority Of India, Rajiv  
Gandhi Bhavan, Safdarjung Airport, New Delhi – 110003.
- 4** - Regional Executive Director ( Commercial ) Eastern Region Of The Airports  
Authority Of India, Netaji Subhashchandra Bose International Airport, Kolkata –  
700052.
- 5** - The Airport Director Airport Authority Of India, Swami Vivekanand Airport,  
Raipur – 492015.

6 - Senior Manager ( Commercial ) Airport Authority Of India, Swami Vivekanand Airport, Raipur – 492015.

**... Respondents**

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For Petitioner : Dr. N.K.Shukla, Senior Advocate assisted by Mr. Vivek Ranjan Pandey, Advocate and Ms. Priya Mishra  
 For Respondent/Uol : Mr. Ramakant Mishra, Deputy Solicitor General  
 For Respondent No. 2 to 6 : Mr. Aman Saxena, Advocate.

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**Hon'ble Mr. Ramesh Sinha, Chief Justice**

**Hon'ble Mr. Bibhu Datta Guru, Judge**

**Judgment on Board**

**Per Ramesh Sinha, Chief Justice**

**27/09/2024**

1. By this petition, the petitioner has prayed for the following relief(s):

*“10.1 Issue writ of mandamus, appropriate Writ, Writ Order against the respondents and thereby cancel/quash and set aside the impugned E-Tender ID No. 2024\_AAI\_208987\_1, September 2024, Notice Inviting Short Term E-Tender (NIET) for Operating Automated Vehicle Parking Management, System, Collection of Parking fees and Excess Time Fees Rights at Swami Vivekanand Airport, Raipur floated by the respondent No.6, which is at Annexure-P44, in the interest of justice.*

*10.2 Issue writ of Mandamus, appropriate writ, writ order against the respondents and thereby direct them to provide extension of the license period in the license agreement dated 28/11/2019 for Concession to supply, install, test, commission, and operate automated parking management system, collection of parking fees and access fees; and lane management at Swami Vivekananda Airport, Raipur, under Concessionaire Support Scheme, which is at Annexure- P2, in the interest of justice.*

*10.3 During the pendency of the present petition grant stay to the process of impugned E-Tender ID No. 2024\_AAI\_208987\_1, September 2024, Notice Inviting Short Term E-Tender (NIET) for Operating Automated Vehicle Parking Management, System, Collection of Parking fees and Excess Time Fees Rights at Swami Vivekanand Airport, Raipur floated by the respondent No.6, which is at Annexure-P44, in the interest of justice.*

*10.4 Any other relief deem fit, under the facts and circumstances of the case may be also granted to the petitioner in the interest of justice.”*

2. The facts, in brief, as projected by the petitioner are that he is the Proprietor M/s. Anjaney Enterprises. The main business of the proprietary concern M/s Anjaney Enterprises is to take parking spaces on lease or licence of various Airports in India. Respondent No.5 had published Notice Inviting E-Limited-Tender (*for short, NIELT*) for Concession to Supply, Install, Test, Commission & Operate Automated Parking Management System; Collection of Parking Fees and Access Fees Rights; and Lane Management at Swamy Vivekanand Airport, Raipur on 08/06/2019 vide E-bid No.: 2019\_AAI\_27114. The tender processing fee was Rs.25,000/- (non-refundable), earnest money deposit was Rs.3,10,000/- and minimum reserved licence fees was Rs.4,50,000/- per month was prescribed in the aforesaid E-Tender.
3. The petitioner applied for the aforesaid tender and submitted the bid on 29/06/2019. After opening of the bids, the petitioner's bid was accepted by the respondent No.5 & 6 and accordingly, the respondent No.6 issued award letter dated 13/08/2019 to the petitioner. By virtue of the said licence agreement dated 13/08/2019, the respondent No. 5 awarded the License for the said work at Swamy Vivekanand Airport, Raipur on monthly license fee of Rs.6,57,777/- per month plus taxes and charges

with annual escalation as per Appendix 2A. The license period was for five years from the date of commencement of operation or expiry of gestation period, whichever is earlier. The petitioner had to pay advance license fee with GST i.e. Rs. 6,57,777/- plus GST at the rate 18% Rs. 1,18,400/-= Rs. 7,76,177/-. The petitioner was also required to pay security deposit in the mode of 6 months of concession fee of fifth year i.e. Rs.57,78,308/-. The security deposit was payable in the mode of 3 months, concession fee of Rs. 28,89,154/ in the form of Bank Guarantee from any Scheduled Commercial Bank and 3 months equivalent Concession Fee of Rs.28,89,154/- in the form of Demand Draft/ NEFT/ RTGS in favour of Airport Authority of India, payable at Raipur to be deposited within 15 days from the date of award letter. The petitioner was further required to pay security deposit of electricity of Rs. 33,000/- in the form of Demand Draft / NEFT / RTGS in favour of Airport Authority of India payable at Raipur within 15 days from the date of award letter. In compliance to the letter dated 13/08/2019, the petitioner started paying license fee of Rs. 7,76,177/-for every month, in favour of the Airport Authority of India, payable at Raipur and security deposit equivalent to 3 months i.e.Rs. 28,89,154/- in the form of Bank Guarantee and remaining amount of Rs. 28,89,154/- in the form of Demand Draft / NEFT / RTGS and also Security Deposit of electricity for an amount of Rs.33,000/- in favour of the Airport Authority of India payable at Raipur within 15 days from the date of Award of license. Thereafter, the respondent No.5 had executed the license agreement for the said work at S.V. Airport, Raipur on 28/11/2019 in favour of the petitioner, on the terms and conditions as incorporated in the license agreement. In the said agreement, the respondent No.6 stood as witness. The license was for a period of 5 years from 28/10/2019 to 27/10/2024, or for 5 years from the date of

expiry of gestation period. The license fee was subject to annual escalation as per the escalation formula given in Appendix: 2A. In addition to license fee, the petitioner is also liable to pay Rs. 550/- per square metre per month towards Non-AC space rent.

4. Dr. N.K.Shukla, learned Senior Advocate appearing for the petitioner submits that as per the new CHQ guidelines, it was mandatory for the licensee/petitioner to install mandatory set up. The petitioner had fulfilled all the terms and conditions of the tender and incurred expenses for about Rs.75,00,000/- for the part of security deposit, license fee and mandatory set up excluding Bank Guarantee of Rs. 30,00,000/- approx. After few days of receiving the award letter, the respondents have nominated the spots in a meeting for set up of parking management system. While nominating the spot for the setup, the respondents have also given the majority of the required amendments in the premises under new policy of car parking i.e. different dropping and pick up area for efficient lane management and furnishing the space of parking area. The petitioner had commenced the contract on 28/10/2019, but no such work has been done by the respondents as per the new policies.
5. It was clearly mentioned in the terms of the new policy, that there will be two separate lanes for dropping and pick up for the reduction of traffic and smooth lane management, which clearly means the requirement of manpower, dropping and pick up line management separately and allowing only 5 vehicles at a time and giving 3 minutes of grace time for staying and if the grace time is passed, then the penalty is chargeable, but there is no separate lane for pick up and drop, and because of that, all the passengers are being dropped and picked at the same place, which also includes taxes as well and due to this, the front porch of the Terminal Building is blocked due to many vehicles parked instead of 5

vehicles, according to terms and the passengers are taking more time to settle up. The petitioner had issued letter to the respondent No.5 on 03/01/2020, highlighting the aforesaid fact and wrong implementation of new policy by the respondent No.5.

6. It is submitted Dr. Shukla that on 24/03/2020, the Government of India ordered a nationwide lockdown initially for 21 days, limiting the movement of the entire population of India as a preventive measures against the COVID-19 pandemic in India. The lockdown was extended from time to time and thereafter it was partially opened with intermittent unlocks till 15/06/2021. During this period, the respondent No. 2 and 3 have issued Commercial Instruction - 13/2020 dated 02/06/2020 as a response measure for COVID-19. The General Manager (Commercial) for the respondent No.3 as per the orders of the respondent No. 1 and 2 issued letter No. CL 11041/7/2020 Commercial/188 dated 04/08/2020, to the Regional Executive Director, Airport Authority of India, RHQ, Northern region, Southern region, Western region, North- eastern region and to the respondent No.4 and also to the Airport Director, Airport Authority of India, Chennai and Kolkata Airport regarding Concessionaire Support Scheme in the outbreak of Covid 19 pandemic and subsequent impact on aviation activities: entry measures for June/ July/August-2020. It is observed in the said scheme, that in view of the impact observed on the Commercial Concessionaire at AAI airports as a result of the ongoing Covid-19 pandemic and the various representations received from different stakeholders. The situation is under consideration of AAI management and based on the same, the interim measures have been decided as part of Concessionaire Support Scheme. As per the said Concessionaire Support Scheme, the contract based on fixed license fees, model like vehicle parking, advertisement, rights, money, exchange,

etc. prorata license fee billing link with passenger traffic methodology has to be adopted. The above entry measures are provided for provisional billing to meet the requirements at airport level any access/shortage against the bills will be adjusted in the subsequent months post August/2020 based on the final decision of AAI board. The Comprehensive Concessionaire Support Scheme is under the active consideration of AAI management i.e. respondent No.2 and will be communicated at the earliest to regularise the billing activity. It was also observed that the arrangement may be put in a place at respective Airport as an entry measure for the period up to 30/08/2020 or until further instructions from CHQ, whichever is earlier.

7. The respondent No.3 had issued Commercial Circular No. 24/2020 on 14/08/2020 to the Regional Executive Director, Airport Authority of India Northern/ Western/ Southern/ Eastern/ North Eastern region, Delhi/ Mumbai/ Chennai/ Kolkata/ Guwahati and to the Airport Directors of Chennai and Kolkata Airport regarding Concessional Support Scheme in the wake of Covid 19 pandemic and subsequent impact on aviation activities - relief measures reg. In the Commercial Circular No. 24/2020, the respondent No. 3 has observed that outbreak of Covid 19 pandemic had severely impacted the Domestic and International Aviation Market including India for airport operation suspension period from 23 or 25/03/2020 till the date of lifting of restrictions by the Government of India for facilities in Domestic Terminal or Domestic part of Integrated Terminal for the period 25/03/2020 to 24/05/2020. All commercial concessionaires may be released from their contractual obligations and accordingly, no concession fee/license fee is to be levied on account of complete closer and non-cooperation of domestic flights. Similarly, for facilities in International Terminal or International part of Integrated Terminal for the

period from 23/03/2020 till commencement of International Flights Operations, all Concessionaires is released from their contractual obligations in line with the similar action proposed in case of Domestic Terminus. The arrangement is made at respective airport for the period till 31/03/2021 or till such time passenger traffic in three consecutive months during Financial Year 2020-21, averages to 80% of passenger traffic levels as compared to corresponding three months in Financial Year 2019-20, whichever is earlier.

8. The respondent No.3 issued Commercial Circular No. 26/2020 dated 09/12/2020 to the Regional Executive Director, Airport Authority of India of Northern region, Western region, Southern region, North-Eastern region and to the respondent No.4 and also to the Airport Directors of Chennai and Kolkata Airport. As per the said circular, the respondent No. 2 and 3 had given an option to the Commercial Concessionaires to get the contracts extended for a period equivalent to the remaining contract period w.e.f. 25/03/2020 or three years, whichever is lesser on some terms and conditions. (a) the option of extending the contract period will be subject to mutual consent, (b) the option of extending the contract period will not be given to the contract already running on extension or contracts awarded under stop-gap arrangement, (c) the option will also not be made available to the contracts awarded after 25/03/2020, (d) the annual escalation will be made applicable during the extended period as per the provisions Of Commercial Manual - 2019, (e) other terms and conditions of extension shall be as per the agreement provisions for the contracts already determined between 25/03/2020 and (f) date of issue of instant policy guidelines to the AAI units, the option of extension of contract period would not be available. The petitioner has fulfilled all the terms and conditions as in the Commercial Circular No. 26/2020 and



therefore he is entitled for the License period extended for further 3 years as envisaged in the said Commercial Circular No. 26/2020.

- 9.** The respondent No.4 issued letter dated 28/12/2020 to the Regional Executive Director, Airport Authority of India of Northern region, Western region, Southern region, North-Eastern region and to the respondent No.4 and also to the Airport Directors of Chennai and Kolkata Airport requesting them all region Airports to obtain unconditional acceptance in writing for Concessionaire Support Scheme issued by AAI from all the Concessionaire within a period of 7 days.
- 10.** Dr. Shukla submits that the Commercial Section of the respondent No.5 issued email to the petitioner on 29/12/2020 stating that during COVID-19 pandemic, AAI has issued Concessionaire Support Scheme vide letter dated 14/08/2020 and 09/12/2020, and thereby requested the petitioner to submit the unconditional, acceptance in writing to the CSS issued by AAI within a period of seven days for further necessary action. In reply, the petitioner vide his email dated 04/01/2021 gave acceptance of AAI Concessionaire Support Scheme.
- 11.** The respondent No. 3 issued Commercial Circular No. 40/2021 dated 05/08/2021 to the Regional Executive Director, Airport Authority of India of Northern region, Western region, Southern region, North-Eastern region and to the respondent No.4 and also to the Airport Director, Airport Authority of India of Chennai and Kolkata Airport, regarding Concessionaire Support Scheme in the wake of Covid 19 pandemic and subsequent impact on Aviation activities relief measures reg. It is mentioned in the aforesaid Commercial Circular No. 40/2021, that the relief measures under Concessionaire Support Scheme as brought out hereunder and under Commercial Circular No. 24/2020 and 26/2020 be

extended to the Concessionaire in respect of regular tenders invited to issuance of CL-21, 2021 dated 12/01/2021.

- 12.** During the period when the Covid-19 pandemic was not completely eradicated, the petitioner on 20/12/2021 issued letter to the respondent No.5 regarding availing extension for parking contract under COVID-19 Concessionary Support Scheme. In the letter 20/12/2021, the petitioner had stated that due to Covid 19 outbreak, the businesses were heavily impacted and traffic movement was stopped at Raipur Airport. The petitioner further stated that they have made heavy investment in operating the businesses which was affected by Covid-19 in the year 2020 and 2021 and their half of contract period was passed and impacted due to this outbreak which resulted in heavy losses as there was no traffic movement. The petitioner further requested to grant him extension for the contract as per the Concessionaire Support Scheme. Thereafter, the respondent No.3 issued letter dated 21/02/2022, regarding Concessionaire Support Scheme in the wake of Covid 19 pandemic and subsequent impact on Aviation activities, relief measures reg. to the Regional Executive Director, Airport Authority of India of northern region, western region, southern region, north-eastern region and to the respondent No.4 and also to the Airport Director, Airport Authority of India of Chennai and Kolkata Airport.
- 13.** It is further submitted that the petitioner vide his email dated 13/12/2022 sent to the Commercial Section of the respondent No.5 again requested for grant of extension for the license period at Raipur Airport under Concessionaire Support Scheme as he suffered heavy loss due to sudden outbreak of Covid 19 pandemic. The respondent No.3 issued letter to the Regional Executive Directors, Airport, Authority of India, Northern region, Southern region, Western region, Eastern region, North-

Eastern region and to the Airport Director of Chennai and Kolkata Airport on 24/02/2023, directing them to ensure that RFID facility is provided immediately as per the contractual provisions for Category I to Category IV Airports and at Airports of Category V, AAI shall take necessary action for installation of RFID at Airport level.

- 14.** On 26/04/2023, the respondent No.6 issued letter to the petitioner stating that as per the License Agreement, the petitioner was required to install RFID Parking System, in the Raipur Airport w.e.f. 30/04/2023 and directed the petitioner to install RFID parking system in the Raipur airport. On 12/10/2023, the respondent No.6 issued letter to the petitioner, thereby pressurising him to install RFID facility in the Raipur Airport. For installation of RFID system, the petitioner is required to spend approximate Rs.12,00,000/- and the respondent No.5 & 6 were continuously pressurising the petitioner to install the Fastag system also and give assurance to the petitioner that their file for extension of the time period of the License Agreement as per Concessionaire Support Scheme is in process. In between October 2023 to 16/11/2023, and 23/11/2023, the respondent No.6 recommended for extension of the license period for two years six days.
- 15.** On 07/02/2023, the petitioner issued email to the respondent No.5 stating that the petitioner had already submitted their acceptance and willingness for the Concessionaire Support Scheme in January 2021. In November 2021, they had sent reminder letter to the Airport to avail the extension of the contract period, through the said scheme during visit of the petitioner and discussion in meeting with the former Airport Director regarding the applicability of Concessionaire Support Scheme in which it has been communicated to the petitioner that they are eligible for extension under the said scheme. In the April 2022, the petitioner visited

the Airport and requested the respondent No.6 to finalise the rebate of the excess payment of the parking license fees of the unutilised and utilised space and also regarding the extension under the Concessionaire Support Scheme and it was discussed with the Senior Commercial Manager, i.e. the respondent No.6 in which the petitioner was told that the finalisation of the extension is yet to complete, as it was not clarified whether to give extension with or without escalation of license fees as per the escalation clause was removed during the Covid period, due to this, the finalisation of the Concessionaire Support Scheme was pending, but the petitioner was assured to get the extension. The petitioner even informed to the respondent No.5 that the Bhubaneswar Airport, which comes under the same jurisdiction as of Raipur Airport has already started its working for the extension under the Concessionaire Support Scheme to its contractors. The petitioner again requested the respondent No.5 to grant extension of the contract as per the Concessionaire Support Scheme.

- 16.** The petitioner, on 28/06/2023 issued another reminder email to the respondent No.5 stating that, the Bhubaneswar Airport Parking Contract, Goa Airport Parking Contract, Indore Airport Parking Contract, Patna Airport Parking Contract and Chandigarh Airport Parking Contract has been given extension under the Concessionaire Support Scheme to its contractors, but no clarification has yet been received by him from the respondent No.5 regarding extension of the contract period. On 27/02/2024, the petitioner issued another email to the respondent No.5 stating that the Former Senior Manager (Commercial), Airport Authority of India, Swami Vivekanand Airport, Raipur has recommended for parking extension under the Concessionaire Support Scheme to the petitioner. The petitioner vide the said email had requested the

respondent No.5 to expedite the process and to provide them with the necessary extension under the Concessionaire Support Scheme. The petitioner again on 17/03/2024 issued another email to the respondent No.4 requesting for extension of the Concessionaire Support Scheme and thereby to extend the contract period and also to grant him personal hearing to represent his case before the higher authority. The copy of the email dated 17/03/2024 issued by the petitioner to the respondent No.4. On 20/03/2024, the petitioner issued email to the respondent No.4, with a copy to the other responsible officers of the respondents requesting for extension of the contract period under Covid 19 Concessionaire Support Scheme for parking contract at Swami Vivekananda Airport, Raipur. The petitioner had also stated in the said email that as per the instructions of the respondent No.5, the petitioner installed Fastag system and reinvested about 2.10-12 lakhs, but despite having the Fastag system fitted, due to some technical reasons, the respondent No.5 was not happy. The petitioner, on 29/04/2024 issued email to the respondent No.2 requesting for grant of extension of vehicle parking license at Raipur Airport as per Concessionaire Support Scheme. The petitioner, on 12/05/2024 issued another email to the respondent No. 2 requesting for extension of concession support scheme to them and for grant of extension of license period, accordingly, as per the said scheme. On 20/05/2024, another reminder email was issued to the respondent No.2 for grant of extension as per the Concessionaire Support Scheme to the contract period of the petitioner. In the said email the petitioner has stated that they are not being treated equally at Raipur Airport. The petitioner further stated in the email that, the Airport Director, Shri Rakesh Sahay had stated in a personal meeting in the month of April 2022, to the petitioner that, the original period of the Licence would be

extended in due course of time. The petitioner had also stated in the email that, in the regime of Shri Praveen Jain, the then Airport Director, it was reiterated in the personal meeting in the month of October 2023, that the extension of the said license would be governed by as per CSS Scheme and there would not be any discrimination in this regard. Shri Praveen Jain had again assured that the then Commercial Incharge (Shri Suresh Sahoo) had put the file of extension as per CSS Scheme. The petitioner has further stated in the email that, Shri Praveen Jain has also got retired after directing the petitioner to install FASTag and get extension under Concessionaire Support Scheme. Even after investment of around Rs. 12 lakhs for installation of FASTag system, including, computers, printers, booths, boom barriers etc., though it was not the part of the Licence Agreement, but the Airport Authority did not give extension, and got all the aforesaid extra work of FASTag Systems and allied works done from the petitioner. The petitioner in the said email had also given reference of his request letter submitted in the month of December 2021.

17. The petitioner issued another email to the respondent No.3 on 13/06/2024, highlighting the fact that he is facing discrimination at Raipur Airport by not granting him extension as per the Concessionaire Support Scheme issued by the Airport Authority of India. The petitioner in the said email dated 13/06/2024 had also stated that, the respondent No.5 assured during a personal meeting in April 2022 the then Airport Director, Shri Rakesh Sahay had assured the petitioner that they would extend the license in time. It was also stated in the email that the previous Commercial Officer had informed the petitioner that, he is eligible for extension and accordingly the process of extension was initiated, however, the extension could not be finalised due to the transfer

of the officer. It was also stated in the email that, the Former Airport Director Shri Praveen Jain has forcibly installed the FASTag system in the name of extension. The petitioner had invested Rs.12- 14 lakhs in the name of extension and such an investment is not appropriate for the remaining six months of the Licence Period.

- 18.** The petitioner issued letter to the respondent No.2 on 06/08/2024 and had again requested for extension of Covid 19 Concessionaire Support Scheme issued by the Airport Authority of India for extension of the contract period and reiterated the same facts as stated in the aforesaid email dated 13/06/2024. The petitioner in the said email had specifically stated that the airports such as Bhubaneswar, Bagdogra, Indore, Patna, Rajamundri, Vijayawada, Vishakhapatnam, Udaipur, Tirupati and Chandigarh had already granted extension to the contractors for extension of their contract period, however, the respondent No.5 deprived the petitioner from grant of extension of the contract period, despite the petitioner is eligible under the said Concessionaire Support Scheme.
- 19.** Dr. Shukla further submits that the petitioner, through his Advocate filed various applications under the Right to Information Act to the respondent No. 2 to provide details of Airports in India to whom the Concessionaire Support Scheme was extended on 29/06/2024 & 03/07/2024. In response to the application, information has been given by the concerned authorities which are detailed from paragraph 8.29 to 8.42 of the writ petition.
- 20.** On 21/09/2024, the petitioner again made representation to the respondent No. 2 vide email, requesting to redress his grievances and direct the respondent No.6 to extend the contract period as per Concessionaire Support Scheme, as per CHQ guidelines. However, on

21/09/2024 itself, the respondent No.6, arbitrarily published Notice Inviting Short Term E-Tender (NIET) for Operating Automated Vehicle Parking Management, System, Collection of Parking fees and Excess Time Fees Rights at Swami Vivekanand Airport, Raipur vide E-Tender ID No. 2024\_AAI\_208987\_1, September 2024, ignoring without answering several requests of the petitioner for extension of contract period as per Concessionaire Support Scheme. The petitioner has already given its unconditional acceptance to the Concessionaire Support Scheme to the respondents on 04/01/2021 and letter regarding availing extension of Concessionaire Support Scheme on 20/12/2021, but the respondents are not providing extension to the petitioner under the Concessionaire Support Scheme and on the contrary in an arbitrary manner issued the E-Tender of the subject contract on 21/09/2024, hence, this petition.

- 21.** Dr. Shukla submits that the Airports at Calicut, Pune, Kangra, Surat, Belgaum, Hubli, Mysore, Agatti, Bagdogra, Bhubaneswar, Patna, Port Blair, Dibrugarh, Silchar, Shillong, Jorhat, Goa, Bhopal and Jodhpur have granted extension of the contract period under Concessionaire Support Scheme to the Concessionaires/contractors which is evident from the information/letters of the said Airport Authority are at Annex-P30 to P43. By not granting extension of the contract period to the petitioner under the Concessionaire Support Scheme, the respondents are giving discriminatory treatment to the petitioner which is violative of violation of Article 14 of the Constitution of India. The respondents are not considering the fact, the purpose of providing Concessionaire Support Scheme to the contractor. The respondents have not considered the fact, that during the Covid 19 pandemic, there was no traffic movement and therefore, in order to compensate and grant relief to the contractors/Concessionaire the Concessionaire Support Scheme was



issued by the respondent No.2. It is further submitted that the respondents have promised the petitioner that, they would grant extension of contract period to the petitioner under Concessionaire Support Scheme and assured that, the process of extension was initiated, and got made huge investment of FASTag facility in the Raipur Airport by the petitioner, where the petitioner's contract was about to expire in next 6 months. Thus, by not granting the extension of contract period to the petitioner under Concessionaire Support Scheme and floating fresh e- tender amounts to violation of principles of legitimate expectations and promissory estoppel. The petitioner has fulfilled all the criteria and already given acceptance of Concessionaire Support Scheme and submitted the application within cut-off date. Thus, by not granting extension and not deciding the applications/representations of the petitioner for grant of extension of the contract period under Concessionaire Support Scheme and action of floating fresh e-tender, is arbitrary and discriminatory action of the respondents actuated by malice.

- 22.** Mr. Ramakant Mishra, learned Deputy Solicitor General for the Union of India/respondent No. 1 states that the main contesting party in this petition would be the Airport Authority of India.
- 23.** Mr. Aman Saxena, learned counsel for the respondents No. 2 to 6 submits that if the contract period of the petitioner is not extended under the Concessionaire Support Scheme, that does not mean that the petitioner is being penalised. It is the own say of the petitioner that a fresh tender has been floated and the petitioner has not been restrained from participating in the fresh tender process. Now, much water has flown since the Covid-19 pandemic period and the things have normalised way back and the petitioner cannot claim as a matter of right

that he should be granted extension. It was not only the petitioner who had suffered during the pandemic situation but the entire nation had to face the same consequences. It is the prerogative and discretion of the respondent authorities whether to give or not to give any extension. The contention of the petitioner that he had made huge investments and if the contract period is not extended, he would suffer financial losses, is also no ground to be considered as whatever investment the petitioner has made, that was done under the terms of the contract and the petitioner was bound to do so. The petitioner was well aware with all the terms and conditions of the contract and if he wished to continue with the work, he had to comply with those terms and conditions.

- 24.** We have heard learned counsel for the parties, perused the pleadings and documents appended thereto.
- 25.** The sole grievance of the petitioner appears to be that he was granted contract for Concession to Supply, Install, Test, Commission and Operate Automated Parking Management System; collection of parking fees and access fees rights and lane management at Swamy Vivekanand Airport, Raipur for a period from 28.10.2019 to 27.10.2024. The contention of the petitioner is that the contractors, operating in various other Airports of the country have been granted the benefit of extension of the licence period under the Concessionaire Support Scheme but the petitioner has been singled out. The further contention of the petitioner is that despite making various requests/representations to the authorities, the petitioner has not been granted the benefit of extending his licence period but all of a sudden, on 21.09.2024, the respondent No. 6 has published a short term e-tender (Annexure P/44) which would cause huge financial losses to the petitioner as he has made huge investment in the Raipur Airport and if he is not allowed to run and

operate the parking fees and access fee rights and lane management. Whatever investment the petitioner has made, it was obliged to do so as he was bound by the terms and conditions of the contract and if the petitioner has made any investment which were not part of the contract, that would be at his own risk.

26. Now since the fresh short tender has been floated, if the petitioner fulfills all the criteria, the petitioner can very well participate in the said tender process as there is no order restraining participation of the petitioner. The tender was floated on 21.09.2024 and the last date for submission of the bid is 27.09.2024 by 3:00 p.m. According to Dr. Shukla, the petitioner has not submitted its bid. The petitioner cannot claim that prejudice has been caused to him by publication of the fresh tender as it is the prerogative of the respondent authorities as to whether after completion of the contract period, they would like to continue with the same bidder or they would go for fresh tender which in turn would be beneficial for the exchequer of the State.
27. Recently, a three-Judge Bench of the Supreme Court, in **Tata Motors Limited v. The Brihan Mumbai Electric Supply & Transport**, Civil Appeal No. 3897 of 2023, decided on 19.05.2023, had observed as under:

*“48. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private*

*industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. The courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer. (See: *Silppi Constructions Contractors v. Union of India*, (2020) 16 SCC 489)*

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*52. Ordinarily, a writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this stage may consume lot of time and also loss to the public exchequer to the tune of crores of rupees. The financial burden/implications on the public exchequer that the State may have to meet with if the Court directs issue of a fresh tender notice, should be one of the guiding factors that the Court should keep in mind. This is evident from a three-Judge Bench decision of this Court in *Association of**

*Registration Plates v. Union of India and Others*, reported in (2005) 1 SCC 679.

53. The law relating to award of contract by the State and public sector corporations was reviewed in *Air India Ltd. v. Cochin International Airport Ltd.*, reported in (2000) 2 SCC 617 and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere.

54. As observed by this Court in *Jagdish Mandal v. State of Orissa and Others*, reported in (2007) 14 SCC 517, that while invoking power of judicial review in matters as to tenders or award of contracts, certain special features should be borne in mind that evaluations of tenders and awarding of contracts are essentially commercial functions and principles of equity and natural justice stay at a distance in such matters. If the decision relating to award of contract is bona fide and is in public interest, courts will not interfere by exercising powers of judicial review even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.”

28. In view of the settled principles of law with regard to contractual disputes and award of tender as aforesaid, we are of the view that this is not a fit case so as to interfere with the decision of the respondent-Airport Authority of India.
29. Resultantly, this petition stands **dismissed**.

Sd/-  
(Bibhu Datta Guru)  
**JUDGE**

Sd/-  
(Ramesh Sinha)  
**CHIEF JUSTICE**