

Karnataka High Court

Bangalore International Airport ... vs Menzies Aviation Bobba Bangalore ... on 23 May, 2023

Bench: Chief Justice, M.G.S. Kamal

-1-

WA No. 566 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF MAY, 2023

PRESENT

THE HON'BLE MR PRASANNA B. VARALE, CHIEF JUSTICE

AND

THE HON'BLE MR JUSTICE M.G.S. KAMAL

WRIT APPEAL NO. 566 OF 2023 (GM-TEN)

BETWEEN:

BANGALORE INTERNATIONAL AIRPORT LIMITED
A COMPANY WITHIN THE MEANING OF THE
COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
KEMPEGOWDA INTERNATIONAL AIRPORT
ALPHA 2, ADMINISTRATION BLOCK
DEVANAHALLI
BENGALURU - 560 330
REPRESENTED BY ITS AUTHORISED SIGNATORY
MR. K.P. MADHAN KUMAR

Digitally
signed by
SUMA B N
Location:
High Court
of Karnataka

S/O SHRI V.K.PARIMAINTHAN
MAJOR.

...APPELLANT

(BY SRI. UDAYA HOLLA SR. ADVOCATE FOR
SRI. MANU PRABHAKAR KULKARNI, ADVOCATE)

AND:

1. MENZIES AVIATION BOBBA (BANGALORE) PVT. LTD.,
A COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT:

-2-

WA No. 566 of 2023

CARGO TERMINAL 1,
KEMPEGOWDA INTERNATIONAL AIRPORT
DEVANAHALLI
BANGALORE - 560 300
REPRESENTED BY ITS DIRECTOR.

2. MENZIES AVIATION PLC
HAVING ITS REGISTERED OFFICE AT
MW1 BUILDING 557
SHOREHARN ROAD
HEATHROW AIRPORT
LONDON, UNITED KINGDOM
TW6 3RT
REPRESENTED BY ITS DIRECTOR.
3. AIRPORTS AUTHORITY OF INDIA
RAJIV GANDHI BHAWAN
SAFDARJUNG AIRPORT
NEW DELHI - 110 033
REPRESENTED BY ITS
DIRECTOR GENERAL OF CIVIL AVIATION.
4. MENZIES AVIATION CARGO (BANGALORE)
LIMITED, A CO. ORGANISED AND EXISTING UNDER
MAURITIAN LAW AND HAVING ITS
REGISTERED OFFICE AT:
5TH FLOOR, EBENE ESPLANDE
24 CYBERCITY, EBENE
REPUBLIC OF MAURITIUS

(AMENDED AS PER COURT ORDER DATED:23.05.2023)

...RESPONDENTS

(BY SRI. HARISH NARASAPPA SR. ADVOCATE FOR
SRI. ASHWINI G RAJ, ADVOCATE FOR R1;

-3-

WA No. 566 of 2023

SRI. C.K. NANDA KUMAR SR. ADVOCATE FOR
SRI.KASHYAP N NAIK, SRI. ABHIJIT ATUR, ADVOCATES FOR R2;
SRI. DHYAN CHINNAPPA SR. ADVOCATE FOR
SRI. PRASHANTH V.G., SRI. AYYANNA S., ADVOCATES FOR R4)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO A). CALL FOR ENTIRE
RECORDS IN THE W.P.NO. 22931/2022 CONNECTED WITH W.P.
NO.8306/2022 FILED BY THE RESPONDENT NO.1 TITLED

MENZIES AVIATION BOBBA (BANGALORE) PRIVATE LIMITED V.
BANGALORE INTERNATIONAL AIRPORT AND OTHERS. B). SET
ASIDE THE IMPUGNED ORDER DATED 23.05.2023 IN W.P.
NO.22931/2022 CONNECTED WITH W.P. NO. 8306/2022 FILED
BY THE RESPONDENT NO.1 TITLED MENZIES AVIATION BOBBA
(BANGALORE) PRIVATE LIMITED V. BANGALORE INTERNATIONAL
AIPIORT AND OTHERS. C). CONSEQUENTLY, STAY ALL FURTHER
PROCEEDINGS IN W.P.NO.22931/2022 CONNECTED WITH W.P.
8306/2022 FILED BY THE RESPONDENT NO.1 TITLED MENZIES
AVIATION BOBBA (BANGALORE) PRIVATE LIMITED V.
BANGALORE INTERNATIONAL AIRPORT AND OTHERS.

THIS APPEAL COMING ON FOR ORDERS, THIS DAY CHIEF

JUSTICE, DELIVERED THE FOLLOWING:

-4-

WA No. 566 of 2023

JUDGMENT

Oral prayer of the appellant for amendment of cause title is allowed.

Claiming an extreme urgency the writ appeal is circulated before this Court.

2. The above writ appeal is filed challenging an order passed by the learned Single Judge on an application seeking an interim prayer filed in W.P.No.22931/2022. It is submitted before this Court that the interim order of status quo was passed by the learned Single Judge at 3 P.M. today and the text of the order was uploaded at about 5.30 P.M. That the appellant immediately took steps such as preparation of the appeal memo and requested for placing the matter before the Court. In the backdrop of these facts, the matter was taken up by this Court at about 7.15 P.M.

WA No. 566 of 2023

3. Heard Sri.Uday Holla, learned Senior counsel appearing on behalf of Sri.Manu Prabhakar Kulkarni, learned counsel for appellant. Sri.Harish Narasappa, learned Senior counsel appearing on behalf of Sri.Ashwin G.Raj for respondent No.1. Sri.C.K.Nanda Kumar, learned Senior counsel appearing on behalf of Sri.Kashyap N. Naik, learned counsel for respondent No.2. Sri.Dhyan Chinnappa, learned Senior counsel appearing on behalf of Sri.Prashanth V.G., learned counsel for respondent No.4.

4. The writ appeal is filed seeking to set aside the impugned order dated 23.05.2023 passed in W.P.No.22931/20222 connected with W.P.No.8306/2022 filed by the respondent No.1 titled "Menzies Aviation Bobba (Bangalore) Private Limited Vs Bangalore International Airport and

others".

5. It may not be necessary for us to refer to the facts in detail. As such, we may refer to the relevant and material WA No. 566 of 2023 facts. The petitioner Menzies Aviation Bobba (Bangalore) Private Limited (hereinafter referred to as "MABP" for the sake of brevity) was awarded the contract by appellant (respondent No.1-Bangalore International Airport Limited) as a service provider to carry out development, operation, management, maintenance and transfer of cargo terminals for domestic cargo operations and international export and import cargo operations and cold chain facility operations at Kempegowda International Airport. The contract was executed between the parties on 16.05.2006 for a period of 15 years further extendable by five years. Grievance of the petitioner in the writ petition is the petitioner was expecting extension of contract as its services were satisfactory and there was no objection raised by appellant at any point of time. As such, the petitioner had sought for an extension of period of the contract. The said request of the petitioner for extension was rejected by appellant and the appellant had initiated tender process. Being aggrieved by the same petitioner filed first writ petition bearing No.8306/2022 WA No. 566 of 2023 seeking an order for extension of contract and also challenging the tender process.

6. During pendency of the first writ petition the tender process initiated by appellant was completed and tender was awarded to respondent No.2- Menzies Aviation PLC. As such being aggrieved by the said action second petition W.P.No.22931/2022 is filed by the petitioner on 14.11.2022. It appears that the writ petition though was listed on several occasions no interim order was passed. The petition was listed before the learned Single Judge along with an application for interim prayer today i.e., 23.05.2023. Learned Single Judge has by the interim order passed today directed the parties namely petitioner and appellant to maintain status quo and operate under the existing agreement till next date of hearing. Learned Single Judge has directed to list the matter for final hearing in the second week of June, 2023 as there is an urgency involved in the petition. Aggrieved by the said interim order the present appeal is filed by the appellant.

WA No. 566 of 2023

7. Learned Senior Counsel Sri.Uday Holla appearing for the appellant vehemently submitted that the interim order passed by the learned Single Judge leads to peculiar and chaotic situation. It is submitted that admittedly the contract awarded in favour of petitioner is effective only till 00.01 hours of 24.05.2023 inasmuch as no extension has been granted and request for extension has already been rejected. That a new contract is awarded to the successful bidder i.e., respondent No.2. In view of contract having being awarded to respondent No.2, the same would be effective from 00.01 hours of 24.05.2023. That existing security clearance and various other permissions and licences which were issued in favour of the petitioner also expires on 23.05.2023 at the close of business hours and the fresh security clearance licences and permissions accorded by Bureau of Civil Aviation Security for cargo and operations would be operative from 00.01 hours of 24.05.2023. Thus he submits after 00.01 hours of 24.05.2023 there is no valid licence or permission in favour of the petitioner. The appellant-BIAL has nominated WA No. 566 of 2023 successful bidder-respondent No.2 as a custodian licensee- security clearance licence. Learned Senior counsel Sri.Uday Holla further submits that by way of interim order the extension is granted to the

petitioner without there being any claim of the assessment and final approval on the claim of extension made by the petitioner. Thus in a way the learned Single Judge has granted final relief to the petitioner in the nature of interim order.

8. Learned Senior counsel Sri.Uday Holla further submits that situation that would emerge at 00.01 hours of 24.05.2023 at the Airport on account of the interim order passed by the learned Single Judge would be that the petitioner who is not having valid security clearance licence and permissions as stated above would not be in a position to operate and execute the terms of the contract. Whereas respondent No.2 custodianship of licensee who is the successful bidder would be prevented from carrying out any operations. Learned Senior counsel also submits that approximately 600 tonnes of material would be offloaded

- 10 -

WA No. 566 of 2023 and similar amount of material would be loaded at the cargo terminals at the Bangalore Airport for transportation to other countries. In this particular situation in the absence of valid approvals and security licence in favour of petitioner, the petitioner would not be in a position to operate and carry on with any function at the Airport and on the contrary respondent No.2 despite having valid licences and permissions would be prevented from operating and carrying on with the functions in view of the interim order. Learned Senior counsel further submits that despite bringing to the notice of the learned Single Judge about these aspects of the matter, the same has not been adverted to in the interim order impugned in this appeal.

9. Learned Senior counsel further submits that the contention of the petitioner before the court that the petitioner was carrying out or continuing with its contractual obligation satisfactorily and that there was no objection raised by respondent No.1 is not in consonance with the records. He further submits that time and again the

- 11 -

WA No. 566 of 2023 petitioner was communicated to focus on the quality enhancement in the services and without showing any positive response in that regard and making any attempt to enhance the quality in performance the petitioner replied that as and when contract is extended then only it would take appropriate steps for the quality enhancement in service. In support of his submission Sri.Uday Holla, learned Senior counsel referred to a communication dated 08.04.2022 which is placed on record along with the writ petition at Annexure-L. Sri.Uday Holla further referring to these very document submits that apart from communication there was also a personal meeting between the authority of the appellant and petitioner and even in the said personal meeting the authority of the appellant insisted upon the quality enhancement in the services. He further submits the very communication also refers to the periodical communications. As such, he submits the contention of the petitioner that there was no fault found in the services of the petitioner is incorrect. On these submissions learned Senior

- 12 -

WA No. 566 of 2023 counsel prayed for stay of the impugned order passed by the learned Single Judge.

10. Per contra, Sri.Harish Narasappa, learned Senior counsel for petitioner vehemently opposes the submissions of the learned Senior counsel for the appellant. The Senior counsel for the petitioner submits that by way of interim order an extension is granted to the petitioner only for a period of three weeks and that there will be no difficulty for the petitioner in obtaining further approval and security licences and if appellant co-operates with the petitioner by obeying the interim order the petitioner would be able to obtain necessary approvals and security licences within shortest possible time and there will be no hampering of activity for want of approvals and security licence. Learned Senior counsel for the petitioner seriously refutes the submission that after 00.01 hours of 24.05.2023 there would be a chaotic situation in the Airport. He submits that the petitioner has been carrying on the activities in terms of the contract over the years and that continuing further would

- 13 -

WA No. 566 of 2023 not be an issue of serious concern. He submits it is just a matter of adherence to the interim order by the appellant which would enable smooth functioning and performance of the terms of the contract as has been done over the years. He insists that since the rights of the petitioner with respect to the relief sought in the writ petitions are yet to be adjudicated it was just and reasonable that the status quo was maintained till such adjudication. As such he submits no grounds are made out warranting interference. Hence, seeks for dismissal of the appeal.

11. Sri.Dhyan Chinnappa, learned Senior counsel appearing on behalf of respondent No.4 vehemently submitted that the petition is filed on the basis of a resolution legality and validity of which is seriously disputed. He submits that the petitioner company is having 51% stake while respondent No.4 is having 49% stake therein. He submits that respondent No.4 has not consented either for extension of contract or for initiation of any legal proceedings. The proposal in the said meeting for

- 14 -

WA No. 566 of 2023 continuation of contract was only by 51% stake holders as such the same would not make the resolution valid and legal without having the approval or consent of other 49% stake holders. It is also submitted by learned Senior counsel that there are serious disputes between the stake holders which are pending consideration before the learned sole Arbitrator. Thus, he submits these and various other aspects of the matter would require consideration by the learned Single Judge and without considering these aspects learned Single Judge ought not to have passed an interim order.

12. Sri.C.K.Nanda Kumar, learned Senior counsel appearing for successful bidder -respondent No.2 a joint venture company submits that no blanket security clearances would be issued to a company but it is issued to each individual worker. He further submits that security licence which is granted

to the employees of the petitioner will be operational admittedly till 00.01 hours of 24.05.2023. He also submits all the employees of petitioner have now

- 15 -

WA No. 566 of 2023 been engaged by the successful bidder- respondent No.2 and an agreement is arrived at between these employees and successful bidder for the engagement of their services and the new security licence which is granted to its new employees would be operational from 00.01 hours of 24.05.2023. Therefore he submits that there will be chaotic situation wherein though interim order of status quo has been passed in favour of petitioner, yet the petitioner without having any manpower may not be in a position to carry out any operation at the Airport and that enforcement of the interim order remains only on paper.

13. Heard learned counsel for the parties. Perused the records.

14. The matter pertains to process of awarding of tender. It is pertinent to refer to the Judgment of the Apex Court in the case of N.G.Projects Limited Vs Vinod Kumar Jain reported in (2022) 6 SCC 127 wherein at paragraphs 23 and 26 the Apex Court has held as under:

- 16 -

WA No. 566 of 2023 "23. In view of the above judgments of this Court, the 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. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a malafide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest.

Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work.

26. A word of caution ought to be mentioned herein that any contract of public service should not be interfered with lightly and in any case, there should not be any interim order derailing the entire process of the services meant for larger public good. The grant of interim injunction by the learned Single Bench of the High Court has helped no-one except a contractor who lost a contract bid and

has only caused loss to the State with no corresponding gain to anyone.

- 17 -

WA No. 566 of 2023

15. Further a perusal of the agreement arrived at between the parties and the copy of which is placed on record by the petitioner itself indicates that it is the responsibility of the petitioner to obtain all necessary approvals and licences including a licence obtained from the Central Board of Excise and Customs and Bureau of Civil Aviation Security, Director General of Civil Aviation, Airport Authority of India and other relevant authority. There is no obligation on the part of appellant to provide any assistance to the petitioner for obtaining such approvals and licences. As such the submissions made by the learned Senior counsel for the petitioner that it is matter of few minutes in obtaining required approvals and licences if the appellant co- operates with the petitioner, is only a wishful thinking on the part of the petitioner and nothing more than that. This is particularly for the reason, firstly there is no obligation on the part of appellant-BIAL to obtain such approvals and licences. Secondly, appellant-BIAL has already rejected the request of the petitioner to extend the contract, which act of rejection has led to the present stalemate. In the light of

- 18 -

WA No. 566 of 2023 this adversarial situation submission of the learned Senior counsel for the petitioner that the appellant -BIAL should co-operate in obtaining approvals and licences just within few hours from now cannot be countenanced. As rightly submitted by the learned counsel for the appellant and successful bidder respondent No.2 in the absence of required approval and licence petitioner would not be in a position to lawfully carry out the functions and operation at the cargo terminal and therefore interim order of status quo granted by learned Single Judge would become unenforceable. The consequences and ramifications of such a situation cannot be lost sight of. Petitioner cannot be expected to function and operate without required approvals and licences which admittedly expires at 00.01 hours of 24.05.2023 and the approvals and licences admittedly granted in favour of successful bidder -respondent No.2 would become effective and operational at the same time. This in our considered view has missed the attention of the learned Single Judge while passing the interim order.

- 19 -

WA No. 566 of 2023

16. In consideration of the submissions of learned counsel for the parties, and in view of the factual and legal aspects of the matter, we are of the considered view that the interim order granted by the learned Single Judge impugned in this appeal cannot be sustained.

17. Needless to state that learned Single Judge has directed to list the matter for hearing on merits during second week of June 2023. As such, all the contentions to be raised or raised by the parties

are kept open. No fruitful purpose would be served by keeping the appeal pending. As such we propose to dispose of the writ appeal with a request to the learned Single Judge to hear and decide the petition on the scheduled date as mentioned in the impugned order. We hereby clarify that our observations in this order are only restricted to an interim order passed by the learned Single Judge impugned in this appeal and this order of us shall not come in the way of adjudication of the rights of the parties in accordance with law.

- 20 -

WA No. 566 of 2023

18. By taking into consideration all the above referred aspects, we are of the opinion that learned Senior counsel appearing for the appellant has made out a case.

For the reasons recorded above, following order is passed:

The order passed by the learned Single Judge is clearly unsustainable and as such deserves to be set aside. Accordingly, writ appeal is allowed and the impugned order is set aside.

Sd/-

CHIEF JUSTICE Sd/-

JUDGE SBN