

VITEM NO.102
Part-heard

COURT NO.4

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

C.A. NO. 960 of 2006

M/s. TDI International India Ltd.
Appellant(s)

Appell

VERSUS

Airports Authority of India & Anr.
Respondent(s)

(With appl(s) for directions and with office report)
With TC(C) Nos. 66, 67 and 68 of 2005 (with office report)

Date: 29/11/2006 This/these matter(s) was/were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE DALVEER BHANDARI

For Appellant(s)

Dr. A.M. Singhvi, Sr. Adv.
Mr. Ajay Kapoor, Adv.
Mr. Arunabh chowdhury, Adv.
Mr. Pankaj Singh, Adv.
Mr. Salim, Adv.
Ms. Jasmine Damkewala, Adv.
Mrs. Manik Karanjawala, Adv.
Ms. Pragya singh, Adv.
Mrs. Nandini Gore, Adv.

In TCs.

Mr. Sanjay R. Hegde, Adv.

For Respondent(s) Mr. V.B. Joshi, Adv.

For AAI

Mr. M.V. Kini, Adv.
Mr. Ravi Kini, Adv.

Mr. C.A. Sundaram, Sr. Adv.
Mr. Ankur Chawla, Adv.
Mr. Gopal Jain, Adv.
Ms. Pallavi Lagar, Adv.
Mr. Prashanta, Adv.
Ms. Nidhi Bisaria, Adv. for
Ms. Madhu Sikri, Adv.

Mr. Aarohi Bhalla, Adv.
Ms. Sujata Kurdukar, Adv.

Mr. Sunil Kumar Singh, Adv.

UPON hearing counsel the Court made the following
O R D E R

Appeal and Transferred Cases are disposed of

(Parveen Kr. Chawla)

(Kanwal Singh)

Court Master

Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 960 OF 2006

M/s. TDI International India Ltd.

Appellant(s)

VERSUS

Airports Authority of India & Anr.

Respondent(s)

WITH

T.C.(C) NOS.66 TO 68 OF 2005

O R D E R

TDI International India Ltd., the appellant herein, has filed this appeal

against the final judgment and order dated 29th October, 2004 passed by the

Division Bench of the High Court of Delhi at New Delhi in Writ Petition (C) No.

8391 of 2004. The High Court, by the impugned order, has dismissed the writ

petition filed by the appellant challenging the order dated 5th May, 2004 whereby

the Airports Authority of India (for short 'AAI') had informed the appellant that

the AAI decided to re-invite tenders due to privatisation/restructuring of Delhi

and

Mumbai Airports.

Facts in short are:

Appellant entered into an agreement with AAI for advertising rights in

the year 1999 which expired in December, 2002. After the expiry of the period of license, the license was extended by mutual agreement by AAI with a 10% increase over the existing license fees by one year and 24 days i.e. up to 6th January, 2004.

AAI invited tenders airport wise in November, 2003 for advertising rights and in January, 2004 after clubbing smaller airports with major airports, the tenders were opened in March, 2004. AAI decided to re-invite tenders after restructuring with contract period for Mumbai and Delhi Airports as 3 years, with all other terms and conditions remaining same. In the meantime, AAI extended the contracts of the appellant.

Fresh notice inviting tenders was issued on 30th January, 2004. Only two parties TDI, the appellant, and Chhabi submitted bids and their technical bids were opened. Bid of Chhabi was rejected and the only tender which remained to be opened was of the appellant. On 19.3.2004, AAI in its meeting took a decision that special consideration would arise in view of impending restructuring of Delhi and Mumbai Airports. Accordingly, on 5.5.2004, AAI informed the appellant that it has decided to re-invite tenders due to privatisation/restructuring of Delhi and Mumbai Airports.

Aggrieved against the order dated 5.5.2004, appellant filed a writ petition in the High Court of Delhi. The High Court by way of interim order directed that AAI would be at liberty to call fresh tenders but the same would not be opened without taking leave of the Court. AAI issued fresh notice inviting

tender.

On 27.7.2004, on a contempt petition filed by the appellant, AAI agreed not to open the financial bids. The High Court dismissed the writ petition filed by the appellant on 29th October, 2004 against which special leave petition was filed in this court in which leave was granted resulting in the present appeal.

This Court, by an interim order dated 2.11.2004, directed continuation of the interim order passed by the High Court of Delhi on 26th May, 2004. On 22.11.2004, this Court modified the earlier order by directing that status quo between the parties be maintained till 29.11.2004. being the next date of hearing. On 29.11.2004, the order of status quo granted on 22.11.2004 was made operative till further orders.

In order to bring the Delhi and Mumbai airports at par with a world class international airports, the Government of India took a decision to privatise them. After inviting tenders/negotiations, the Government of India entered into an agreement on 4.4.2006 with Mumbai International Airport Ltd. (for short 'MIAL') for Mumbai airport and Delhi International Airport Ltd. (for short 'DIAL') for Delhi airport. On 3.5.2006, Mumbai and Delhi airports were handed over to their respective successful bidders i.e. MIAL & DIAL.

The High Court in the impugned judgment, apart from other reasons, held that the

"...decision to invite fresh tenders was based on cogent reasons, it is indeed difficult for us to condemn the impugned action as a colourable or mala fide exercise of power by the respondents. Thus, the decision of the

Apex Court in Venkatraman's case [(1979) 2 SCC 491] is of no avail to the petitioner."

We agree with each of the findings recorded by the High Court . Apart this, we are of the opinion that the tenders invited on 30th January, 2004 cannot be worked out, as in the meantime Delhi and Mumbai airports have been privatised. Under the circumstances, the tenders have to be reinvited.

For Mumbai and Delhi airports, tenders have now to be invited by the successful bidders entrusted with the contract to renovate the airports at Mumbai and Delhi. AAI can no longer invite offers for the airports at Mumbai and Delhi but for the remaining airports, tenders would be invited by the AAI.

During the course of arguments, it was urged that for the period between 2004 till this date, the appellant should be asked to pay escalated price for the past period. We do not want to enter into this controversy. It would be for the parties to settle their dispute for recovery of the escalated price for the past period, if any, in accordance with law.

So far as Mumbai airport is concerned, the successful bidder i.e. MIAL is hopeful of completing the process of the tenders, already invited, by 31st December, 2006. During the interregnum period from today till 31.12.2006, the appellant shall continue at Mumbai airport and thereafter appellant is directed to handover possession of the advertising sites after removing hoardings and clearing advertisement material to MIAL on 1.1.2007

In so far as the other airports except Delhi are concerned, Mr.

V.B.Joshi, Adv., appearing for AAI, after taking instructions, states that

AAI

will invite fresh bids and finalise the fresh contract within a period of three

months from today i.e. by 28th February, 2007. He also states that for better

monitoring and management of the contract, the AAI Management has decided

to go in for individual airport wise tenders. He further states that AAI, in order to

avoid loss of revenue, shall continue with the contract as per the applicable terms

for a period of three months' from today i.e. on or before 28th February, 2007.

Appellant is directed to handover possession of the advertising sites after

removing hoardings and clearing material to AAI on 1.3.2007.

In so far as Delhi airport is concerned, since it is not before us, we leave

it open to DIAL either to continue with the appellant or not to continue with the

appellant. Appellant is directed to handover possession of the advertising sites

after removing hoardings and clearing material to DIAL, in case the DIAL

decides not to continue with the appellant on a date to be notified by DIAL to

the appellant.

The Appeal is disposed of in the above terms.

T.C. Nos.66 to 68 of 2005

In view of our order passed today in Civil Appeal No. 960 of 2006,

these transferred cases have become infructuous and are disposed of in terms of

our order passed in Civil Appeal No. 960 of 2006.

.....J.
[ASHOK BHAN]

.....J.
[DALVEER BHANDARI]

NEW DELHI;
NOVEMBER 29, 2006.