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**(2009) 07 OHC CK 0060**  
**In the Orissa High Court**  
**Case No : Writ Petition (C) No. 14593 of 2008**

Sandip Routray

APPELLANT

Vs

Airport Authority of India and Another

RESPONDENT

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**Date of Decision :** 29-07-2009

**Acts Referred:**

Constitution of India, 1950 — Article 12, 226

**Citation :** (2009) CLT 52 Supp

**Hon'ble Judges :** Sanju Panda, J;I.M. Quddusi, J

**Bench :** Division Bench

**Advocate :** Sangram Kumar Sahoo, G. Sahoo, M.K. Mallick, D.P. Pattalk and B.P. Mohanty, for the Appellant; P.K. Parhi, G. Mohanty and D. Rath for Opp. Party No. 1 and Dayananda Mohapatra, M. Mohapatra, S. Nanda, Gyana Ranjan Mohapatra and S.P Nath for Opp. Party No. 2, for the Respondent

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## Judgement

S. Panda, J.—The Petitioner has filed this writ petition invoking jurisdiction of this Court under Article 226 of the Constitution of India challenging the tender notice issued by the Airport Authority of India at Biju Pattanaik Airport, Bhubaneswar on 31 st August, 2008 published in the local Oriya daily "The Samaj".

2. The Petitioner, who is the proprietor of M/s. Sita Advertisers, obtained licence for the purpose of indoor advertisement sites in pursuance of the agreement dated 3.9.2007 with the Airport Authority of India, opposite party No. 1. The said agreement is valid for a period of five years. Accordingly, the Petitioner, by depositing the required licence fees from time to time, is doing his business as per the terms and conditions of the agreement. Though he has been discharging his part performance sincerely, the Airport Authority published a tender notice on 31st August, 2008 for grant of licence for advertisements on Pillars and conveyor belts, installation of Plasma/LCD T.V., etc. The grievance of the Petitioner is that if the authority as per the tender notice grants licence to other persons, the Petitioner will suffer irreparable loss and injury, as the areas allotted to him are going to be encroached upon affecting his business and violating the terms and

conditions of the licence. He has specifically stated that as per Clause-11 of the licence agreement, if the authority will grant licence to any other person then the Petitioner shall have objection to the same. Therefore, the authority has violated the terms and conditions of the licence agreement. Hence this writ petition.

3. Airport Authority of India, opposite party No. 1, after receiving notice appeared and filed counter affidavit. M/s. Ajanta Advertisers is opposite party No. 2 whose tender has been accepted by the authority in pursuance of tender notice dated 31.8.2008. Opposite party No. 1 in its counter affidavit has specifically taken a stand that the licence was granted in favour of the Petitioner and the agreement was executed on 3.9.2007 for particular works with specific sites and specific area as per Annexure-A. The number of site is "101". The total area is "8848.25 sq.ft" with "4" particular works, i.e., Hoarding, Glow sign, Show window and Kiosk (Electric Poles). The area was also increased from time to time and additional area has been granted in favour of the Petitioner extending the same from 8848.25 sq.ft. to 12, 478.25 sq. ft. for the aforesaid four categories of works later on. However, a specific stand has been taken that in Clause 11 of the licence agreement, the word "NO" was omitted deliberately by the Petitioner. It has further been stated that the Petitioner purchased the agreement paper, filled up the same and submitted it for execution in prescribed format which was published in the web site by the authority. A copy of the said format in respect of other item of works has also been filed to show that in clause 11 the work "NO" was there. Further it has been stated that the present advertisement dated 31.8.2008 was in respect of different categories of works. In the advertisement, the authority published five types of works which are totally different than that the works allotted to the Petitioner. Four categories of works out of the said tender notice have already been allotted to other tenderers. The Petitioner has not impleaded those persons as opposite parties in this writ petition. Only in respect of item No. 1, i.e, Advertisement on Pillars & conveyor belts, the work order has been allotted to M/s. Ajanta Advertisers, opposite party No. 2. Therefore, the writ petition is only in respect of item No. 1 of the tender notice.

4. The Petitioner's grievance is violation of the terms and conditions of the agreement. In a writ petition, the disputed questions of facts are not possible to be adjudicated. The Petitioner may approach the Civil Court for any violation or breach of the contract.

5. It is the policy of the Government to publish the tender notice in different languages in different newspapers and also in web site and as per the said policy the authority issued tender notice. Therefore, the authority has no mala fide intention and the writ petition is liable to be dismissed.

6. Though learned Counsel for opposite party No. 2 has appeared, he has not filed any counter affidavit. He has filed Misc. Case No. 8296 of 2009 for vacation of stay. In pursuance of the tender notice, opposite party No. 2 being the successful bidder got the work order. The learned Counsel for the opposite party No. 2 submitted that the work allotted in favour of M/s. Ajanta Advertisers in no

way overlaps the work allotted to the Petitioner. Therefore, there is no question of any financial loss or injury to the Petitioner.

7. On the above facts, this Court has to examine whether authority has violated any of the terms and conditions of the agreement and whether the writ petition is maintainable. There is no doubt that Airport authority, opposite party No. 1, being an instrumentality of the Central Government comes within the definition of "State" under Article 12 of the Constitution of India and is amenable to writ jurisdiction. The decisions of the authority are subject to judicial review. The apex Court in the case of Tata Cellular Vs. Union of India, has pointed out the factors which the Court has to consider in contractual matters regarding acceptance or refusal of tender under judicial review.

8. The record reveals that the Petitioner at present paying Rs. 118/- per sq. ft. per month as per the terms and conditions of the licence agreement though initially he had given " Rs.107.80 per sq. ft. per month with 10% escalation. However, opposite party No. 2 has offered Rs. 119.72 per sq. ft. per month with 10% escalation. The authority has jurisdiction to accept the higher bid amount if it was satisfied with the present and past performance in respect of the works of the bidder. The fact that the authority has also extended the area of the Petitioner from 8848.25 sq. ft. to 12, 478.25 sq. ft. clarifies the picture. The authority being satisfied with the work of the Petitioner has extended the area of works of the Petitioner and he is continuing with the advertisement works as per the licence agreement dated 3.9.2007.

9. As per the terms of the agreement dated 3rd September, 2007 executed between the Petitioner and the Airport authority, the contract is valid for a period of five years from 3.9.2007 to 2.9.2012 unless terminated earlier on account of non-fulfilling certain conditions.

10. Clauses 11 and 20 of the Licence Agreement are extracted hereunder for better appreciation:

11. That the Licensee shall have objection to the Authority for granting any other licence for similar Facility at the Airport premises where the Licensee is rendering such service.

20. Authority reserved to itself the right to change the locations of the advertisement sites at any time and may at its discretion to call upon the Licensee to vacate the site and may give him an alternate locations for the purpose of this license. In such a case, the licensee shall be bound to vacate the premises immediately and accept the said alternative locations. The entire expenditure on such shifting shall be borne by him and the licensee shall not be entitled to claim any compensation or downward revision in the license fee on that score.

11. From the above two clauses, it is apparent that the authority has reserved its rights to change the location of the advertisement sites at any time and may on

its discretion call upon the licensee to vacate the premises and the licensee is bound to vacate the premises immediately and accept the alternative location and all the costs shall be borne by the licensee without any claim of compensation. It also transpires from clause-11 of the licence agreement that the licensee shall have objection to the authority for granting any other licence for similar facility, A copy of the letter dated 25th/26th February, 2008 issued by the Airport Authority to M/s. Third Eye Communication (P) Ltd. has been annexed as Annexure-D. It shows that the licensee is to prepare an agreement on a non-judicial stamp paper in triplicate to be submitted to the authority for further necessary action. Therefore, the plea of the authority that the Petitioner prepared the agreement and intentionally omitted the word "NO" against clause-11 of the licence agreement and is now taking advantage of that clause appears to be true. Law is well settled that a wrong doer is not entitled to take advantage of his own wrong. Therefore, we have not accepted the plea of the Petitioner that the authority has violated any term and condition of the licence agreement and after reading clauses 11 and 20 of the licence agreement conjointly, it can easily be assumed that the authority is at liberty to allot any work for the interest of the Airport.

12. Clause-20 of the licence agreement is the regulating power of the authority to take further decision. The power conferred upon the authority with obligation and function to proceed with for the betterment and smooth running. In the present scenario, the competition is the Mantra to get a better hand. The action of the authority shows that it retained the Petitioner by giving him more area and at the same time nurtured and competitive atmosphere to get better works.

13. considering the above facts and circumstances, we are of the opinion that the allegations of the Petitioner are baseless. We are unable to accept the contention of the Petitioner that with mala fide intention the tender notice was published. Therefore, the writ petition is dismissed. No costs.

I.M. Quddusi, A.C.J.

14. I agree.