

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C.S.DIAS

MONDAY, THE 19TH DAY OF OCTOBER 2020 / 27TH ASWINA, 1942

W.P(C) .No.2224 OF 2019 (C)

PETITIONER/S:

- 1 MAHESH.G., AGED 37 YEARS SON
OF GANGADHARAN PILLA.G,
GEETHA BHAVAN, POREDOME.P.O, KOLLAM-691534.
- 2 AZHIK NIZAR HASSAN, S/O NIZAR
HASSAN, UDAYA DASSERIL, THONNALLLOOR,
PANTHALAM, PATHANAMTHITTA-689501.
BY ADVS. SHRI.KURIAKOSE
VARGHESE SRI.MATHEW A
KUZHALANADAN SRI.K.R.ARUN
KRISHNAN SRI.SUDEEP
ARAVIND PANICKER
- 1 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
MINISTRY OF CIVIL AVIATION, RAJIV GANDHI BHAVAN,
NEAR SAFDARJUNG AIRPORT, NEW DELHI-110 003.
- 2 THE AIRPORTS AUTHORITY OF INDIA,
REPRESENTED BY ITS CHAIRMAN, RAJIV GANDHI BHAVAN,
NEAR SAFDARJUNG AIRPORT, NEW DELHI-110003.
- 3 THE REGIONAL EXECUTIVE DIRECTOR,
AIRPORTS AUTHORITY OF INDIA, OPERATIONAL OFFICE,
SOUTHERN REGION, CHENNAI AIRPORT, CHENNAI-600027.
- 4 THE AIRPORT DIRECTOR, AIRPORT AUTHORITY OF
INDIA, THIRUVANANTHAPURAM INTERNATIONAL
AIRPORT, VALLAKADAVU.P.O,
THIRUVANANTHAPURAM-695008.

5 THE AIRPORTS ECONOMIC REGULATORY AUTHORITY OF
INDIA, REPRESENTED BY ITS CHAIRMAN,
RAJIV GANDHI BHAVAN, NEAR SAFDARJUNG
AIRPORT, NEW DELHI-110003.

R1 BY SRI.K.M.NATARAJ, ADDL.SOLICITOR GENERAL OF INDIA
R1 BY SRI.P.L.VENUKUMAR, CGC
R2-R5 BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
R2-R5 BY ADV. SRI.V.SANTHARAM
R2-R5 BY ADV. SRI.LAKSHMEESH.S.KAMATH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-10-2020, ALONG WITH WP(C).5482/2019(I), WP(C).6076/2019(H), WP(C).6823/2019(C), WP(C).7060/2019(S), WP(C).7961/2019(S), WP(C).21321/2019(S), WP(C).20459/2020(S), THE COURT ON 19-10-2020 DELIVERED THE FOLLOWING:



LEGAL
BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C.S.DIAS

MONDAY, THE 19TH DAY OF OCTOBER 2020 / 27TH ASWINA, 1942

W.P(C).No.5482 OF 2019(I)

PETITIONER/S:

AIRPORT AUTHORITY EMPLOYEES' UNION (REG.NO.3515),
CALICUT INTERNATIONAL AIRPORT BRANCH, 1-145,
CALICUT, REPRESENTED BY ITS SECRETARY SOBHAN P.V.

BY ADVS.
SMT.DAISY A.PHILIPOSE
SRI.JAI GEORGE

RESPONDENT/S:

- 1 UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
MINISTRY OF CIVIL AVIATION, RAJIV GANDHI BHAVAN,
NEAR SAFDARJUNG AIRPORT, NEW DELHI 110 003.
- 2 THE AIRPORTS AUTHORITY OF INDIA,
RAJIV GANDHI BHAVAN, NEAR SAFDARJUNG AIRPORT,
NEW DELHI 110 003, REPRESENTED BY ITS CHAIRMAN.
- 3 THE AIRPORTS ECONOMIC REGULATORY AUTHORITY OF INDIA,
RAJIV GANDHI BHAVAN, NEAR SAFDARJUNG AIRPORT,
NEW DELHI 110 003, REPRESENTED BY ITS CHAIRMAN.
- 4 THE EXECUTIVE DIRECTOR,
KEY INFRASTRUCTURE DEVELOPMENT, RAJIV GANDHI BHAVAN,
NEAR SAFDARJUNG AIRPORT, NEW DELHI 110 003.
- 5 THE AIRPORTS DIRECTOR, AIRPORTS AUTHORITY OF
INDIA, THIRUVANANTHAPURAM INTERNATIONAL AIRPORT,
VALLAKKADAVU P.O, THIRUVANANTHAPURAM 695 008.

ADDL. R6 M/S.ADANI ENTERPRISES LIMITED,
'ADANI HOUSE', NEAR MITHAKHALI SIX ROADS,
NAVARANGPURA, AHMEDABAD-380 009, GUJARAT STATE.

(ADDITIONAL 6TH RESPONDENT IS IMPEADED AS
PER ORDER DATED 6.3.19 IN I.A. NO.01/2019)

R1 BY ADV. SRI.K.M.NATARAJ, ADDL.SG OF INDIA
R1 BY ADV. SRI.P.VIJAYAKUMAR, ASST.SG OF INDIA
R1 BY ADV. SRI.SHARATH NARAYAN NAMBIAR
R1 BY ADV. ANMOL CHANDAN
R2-R5 BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
R2-R5 BY ADV. SRI.V.SANTHARAM
R2-R5 BY ADV. SRI.LAKSHMEESH.S.KAMATH
R6 BY ADV. SRI.S.SREEKUMAR (SR.)
R6 BY ADV. SRI.ROSHEN.D.ALEXANDER
R6 BY ADV. SMT.TINA ALEX THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-10-2020, ALONG WITH WP(C).2224/2019(C), WP(C).6076/2019(H), WP(C).6823/2019(C), WP(C).7060/2019(S), WP(C).7961/2019(S), WP(C).21321/2019(S), WP(C).20459/2020(S), THE COURT ON 19-10-2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C.S.DIAS

MONDAY, THE 19TH DAY OF OCTOBER 2020 / 27TH ASWINA, 1942

W.P(C).No.6076 OF 2019(H)

PETITIONER/S:

KERALA STATE INDUSTRIAL DEVELOPMENT CORPORTION LTD.,
KESTON ROAD, KOWDIAR, THIRUVANANTHAPURAM -695 003,
REPRESENTED BY ITS EXECUTIVE DIRECTOR.

BY ADVS.
SRI.K.JAJU BABU (SR.)
SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN

RESPONDENT/S:

- 1 UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT OF
INDIA, MINISTRY OF CIVIL AVIATION, RAJEEV GANDHI
BHAVAN, SAFTHARJAN AIRPORT, NEW DELHI -110003.
- 2 STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT
OF KERALA, TRANSPORT DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM 695 001.
- 3 AIRPORT AUTHORITY OF INDIA,
RAJEEV GANDHI BHAVAN, SAFRTHARJAN
AIRPORT, NEW DELHI 110 003
REPRESENTED BY EXECUTIVE DIRECTOR ,
K.I.D, RAJEEV GANDHI BHAVAN, SAFTHARJAN
AIRPORT, NEW DELHI 110 003.
- 4 G.M.R AIRPORTS LTD.,
SKIP HOUSE, 25/1, MUSEUM ROAD,
BANGALORE, KARNATAKA 560 025,
REPRESENTED BY ITS MANAGING DIRECTOR.

5 ADANI ENTERPRISES LTD.,
ADANI HOUSE, SHRIMALI SOCIETY, MITHAKHALI-6 ROAD,
NAVARANGAPURAM, AHAHAMEDBAD, GUJARAT 380 009,
REPRESENTED BY ITS MANAGING DIRECTOR.

ADDL. R6 S.DILEEP, AGED 50 YEARS, S/O. LATE SHAHUL HAMEED,
SUNINA MANZIL, RUBY NAGAR, CHALI, THIRUVANANTHAPURAM.

(ADDITIONAL 6TH RESPONDENT IS IMPEADED AS PER ORDER
DATED 18-12-2019 IN IA 2/2019 IN WP(C) 6076/2019).

ADDL. R7 THE TRIVANDRUM CHAMBER OF COMMERCE AND INDUSTRY,
CHAMBER BUILDING, ITC ROAD, JAWAHAR NAGAR, KOWDIAR,
TRIVANDRUM-695 003, REPRESENTED BY ITS SECRETARY,
ABRAHAM THOMAS.

(ADDITIONAL 7TH RESPONDENT IS IMPEADED AS PER
ORDER DATED 09-10-2020 IN IA 1/2020).

R1 BY ADV. SRI.K.M.NATARAJ, ADDL.SG OF INDIA
R1 BY ADV. SRI.P.VIJAYAKUMAR, ASST.SG OF INDIA
R1 BY SRI.JAISHANKAR V.NAIR, CGC
R2 BY SRI.V.MANU, SENIOR GOVT. PLEADER
R2 BY SRI.P.NARAYANAN, SENIOR GOVT. PLEADER
R3 BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
R3 BY ADV. SRI.V.SANTHARAM
R3 BY ADV. SRI.LAKSHMEESH.S.KAMATH
R5 BY ADV. SRI.S.SREEKUMAR (SR.)
R5 BY ADV. SRI.ROSHEN.D.ALEXANDER
R5 BY ADV. SMT.TINA ALEX THOMAS
R6 BY ADV. SRI.R.SUNILKUMAR
R6 BY ADV. SMT.A. SALINI LAL
R7 BY ADV. SRI.K.JAYAKUMAR (SR.)
R7 BY ADV. SRI.M.SREEKUMAR
R7 BY ADV. SRI.A.ABDUL KHARIM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-10-2020, ALONG WITH WP(C).2224/2019(C), WP(C).5482/2019(I), WP(C).6823/2019(C), WP(C).7060/2019(S), WP(C).7961/2019(S), WP(C).21321/2019(S), WP(C).20459/2020(S), THE COURT ON 19-10-2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C.S.DIAS

MONDAY, THE 19TH DAY OF OCTOBER 2020 / 27TH ASWINA, 1942

W.P(C).No.6823 OF 2019(C)

PETITIONER/S:

STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
TRANSPORT DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY ADVS.

SRI.VIKAS SINGH, SENIOR ADVOCATE,
I/B.SRI.P.NARAYANAN, SENIOR GOVT. PLEADER
I/B.SRI.V.MANU, SENIOR GOVT. PLEADER

RESPONDENT/S:

- 1 THE UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF CIVIL AVIATION,
GOVERNMENT OF INDIA,
B BLOCK, RAJIV GANDHI BHAVAN,
SAFDARJUNG AIRPORT,
NEW DELHI - 110 003.
- 2 THE SECRETARY, MINISTRY OF CIVIL
AVIATION, GOVERNMENT OF INDIA, 'B' BLOCK,
RAJIV GANDHI BHAVAN,
SARDARJUNG AIRPORT,
NEW DELHI - 110 003.
- 3 AIRPORT AUTHORITY OF INDIA,
REPRESENTED BY ITS EXECUTIVE
DIRECTOR, RAJIV GANDHI BHAVAN,
SAFDARJUNG AIRPORT,
NEW DELHI - 110 003.

- 4 THE EXECUTIVE DIRECTOR,
AIRPORT AUTHORITY OF
INDIA, SAFDARJUNG AIRPORT,
NEW DELHI - 110 003.
- 5 THE REGIONAL EXECUTIVE DIRECTOR,
AIRPORTS AUTHORITY OF INDIA, AAI
OPERATIONAL OFFICES COMPLEX,
CHENNAI AIRPORT, CHENNAI- 600 027.
- 6 THE AIRPORT DIRECTOR, AIRPORTS AUTHORITY
OF INDIA, THIRUVANANTHAPURAM
INTERNATIONAL AIRPORT, VALLAKADAVU P.O.,

THIRUVANANTHAPURAM - 695 008.
- 7 AIRPORTS ECONOMIC REGULATORY AUTHORITY OF
INDIA, REPRESENTED BY ITS SECRETARY,
AERA BUILDING, ADMINISTRATIVE
COMPLEX, SAFDARJUNG AIRPORT,
NEW DELHI - 110 003.
- 8 G.M.R. AIRPORTS LIMITED,
SKIP HOUSE, 25/1, MUSEUM ROAD,
BENGALURU, KARNATAKA
- 560 025,
REPRESENTED BY ITS MANAGING DIRECTOR.
- 9 ADANI ENTERPRISES LIMITED, ADANI
HOUSE, SRIMALI SOCIETY,
MITHIKHALI-6 ROAD, NAVARANGAPURI,
AHMEDABAD, GUJARAT - 380 009,
REPRESENTED BY ITS MANAGING DIRECTOR.
- 10 KERALA STATE INDUSTRIAL DEVELOPMENT CORPORATION,
REPRESENTED BY ITS MANAGING DIRECTOR,
HEAD OFFICE, T.C. XI/266, KESTON ROAD,
KOWDIAR, THIRUVANANTHAPURAM -

695 003.

ADDL.

R11 THE TRIVANDRUM CHAMBER OF COMMERCE AND INDUSTRY,
CHAMBER BUILDING,
ITC ROAD, JAWAHAR NAGAR,
KOWDIAR, TRIVANDRUM-695003,
REPRESENTED BY ITS SECRETARY ABRAHAM THOMAS

ADDL. 11TH RESPONDENT IS IMPEADED AS
PER ORDER DATED 09.10.2020 IN IA 2/2020
IN WP(C) NO. 6823/2019

R1-R2 BY ADV. SRI.K.M.NATARAJ, ADDL.SG OF INDIA
R1-R2 BY ADV. SRI.P.VIJAYAKUMAR, ASST.SG OF INDIA
R1-R2 BY SRI.SUVIN R.MENON, CGC
R3-R7 BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
R3-R7 BY ADV. SRI.V.SANTHARAM
R3-R7 BY ADV. SRI.LAKSHMEESH.S.KAMATH
R9 BY ADV. SRI.S.SREEKUMAR (SR.)
R9 BY ADV. SRI.ROSHEN.D.ALEXANDER
R9 BY ADV. SMT.TINA ALEX THOMAS
R9 BY ADV. SHRI.HARIMOHAN
R10 BY ADV. SRI.K.JAJU BABU (SR.)
R10 BY ADV. SRI.P.U.SHAILAJAN
R11 BY ADV. SRI.K.JAYAKUMAR (SR.)
R11 BY ADV. M.SREEKUMAR
R11 BY ADV. SRI.A.ABDUL KHARIM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-10-2020, ALONG WITH WP(C).2224/2019(C), WP(C).5482/2019(I), WP(C).6076/2019(H), WP(C).7060/2019(S), WP(C).7961/2019(S), WP(C).21321/2019(S), WP(C).20459/2020(S), THE COURT ON 19-10-2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C.S.DIAS

MONDAY, THE 19TH DAY OF OCTOBER 2020 / 27TH ASWINA, 1942

W.P(C).No.7060 OF 2019(S)

PETITIONER/S:

M.VIJAYAKUMAR, AGED 70 YEARS,
S/O.V.MADHAVAN PILLAI,
RESIDING AT VIAJAYSREE,
EMS NAGAR,PATTOOR HOUSING COLONY,
VANCHIYOOR POST, THIRUVANANTHAPURAM,
PIN-695035.

BY ADVS.
SRI.T.KRISHNANUNNI (SR.)
SRI.VINOD RAVINDRANATH
SMT.MEENA.A.
SMT.M.R.MINI
SRI.ASHWIN SATHYANATH
SRI.ROHIT NANDAKUMAR

RESPONDENT/S:

- 1 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
MINISTRY OF CIVIL AVIATION,
RAJIV GANDHI BHAVAN, NEAR SAFDARJUNG
AIRPORT, NEW DELHI, PIN-110003.
- 2 THE AIRPORTS AUTHORITY OF
INDIA, REPRESENTED BY ITS
CHAIRMAN, RAJIV GANDHI BHAVAN,
NEAR SAFDARJUNG AIRPORT,
NEW DELHI-110003.
- 3 THE REGIONAL EXECUTIVE DIRECTOR,
AIRPORTS AUTHORITY OF INDIA,
OPERATIONAL OFFICE, SOUTHERN REGION,
CHENNAI AIRPORT, CHENNAI-600027.

- 4 THE AIRPORT DIRECTOR, AIRPORTS AUTHORITY OF
INDIA, THIRUVANANTHAPURAM INTERNATIONAL
AIRPORT, VALLAKADAVU.P.O,
THIRUVANANTHAPURAM-695008.
- 5 THE AIRPORTS ECONOMIC REGULATORY AUTHORITY OF
INDIA, REPRESENTED BY ITS CHAIRMAN, RAJIV GANDHI
BHAVAN, NEAR SAFDARJUNG AIRPORT, NEW DELHI-110003.
- 6 STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY, SECRETARIAT,
PALAYAM, TRIVANDRUM-695001.
- 7 ADANI ENTERPRISE LTD.,
ADANI CORPORATE OFFICE, ADANI HOUSE,
NEAR MITHAKHALI SIX ROADS, NAVRANGPURA,
AHMEDBAD-380009, GUJARAT, INDIA,
REPRESENTED BY ITS CHAIRMAN.
- R1-R2 BY ADV. SRI.K.M.NATARAJ, ADDL.SG OF INDIA
R1 BY ADV. SHRI.P.VIJAYAKUMAR, ASST.SG OF INDIA
R2-R5 BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
R2-R5 BY ADV. SRI.V.SANTHARAM
R2-R5 BY ADV. SRI.LAKSHMEESH.S.KAMATH
R6 BY SRI.P.NARAYANAN, SENIOR GOVT. PLEADER
R6 BY SRI.V.MANU, SENIOR GOVT. PLEADER
R7 BY ADV. SRI.S.SREEKUMAR (SR.)
R7 BY ADV. SRI.ROSHEN.D.ALEXANDER
R7 BY ADV. SMT.TINA ALEX THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-10-2020, ALONG WITH WP(C).2224/2019(C), WP(C).5482/2019(I), WP(C).6076/2019(H), WP(C).6823/2019(C), WP(C).7961/2019(S), WP(C).21321/2019(S), WP(C).20459/2020(S), THE COURT ON 19-10-2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C.S.DIAS

MONDAY, THE 19TH DAY OF OCTOBER 2020 / 27TH ASWINA, 1942

W.P(C).No.7961 OF 2019(S)

PETITIONER/S:

1 K P SURESH, AGED 52, S/O. M. KANNAN,
PRESIDENT OF THE AIRPORT AUTHORITY EMPLOYEE'S
UNION, THIRUVANANTHAPURAM INTERNATIONAL AIRPORT,
RESIDING AT B 11, AIRPORT STAFF QUARTERS,
SHANKUMUGHOM, VALLAKKADAV, THIRUVANANTHAPURAM-695
008

2 S. AJITH KUMAR, AGED 52 YEARS,
S/O. SREERAMAKRISHNA PILLA,
BRANCH SECRETARY, AIRPORT AUTHORITY EMPLOYEE'S
UNION, THIRUVANANTHAPURAM INTERNATIONAL AIRPORT,
RESIDING AT KALA, TC 86/189-1, ITI
JUNCTIN, CHAKA, THIRUVANANTHAPURAM-695 024

BY ADVS.

SHRI.GOPAL SANKARANAYANAN

(SR.) SHRI.KURIAKOSE VARGHESE

SRI.MATHEW A KUZHALANADAN

SRI.K.R.ARUN KRISHNAN

SRI.SUDEEP ARAVIND PANICKER

1 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY TO
GOVERNMENT, MINISTRY OF CIVIL AVIATION,
RAJIV GANDHI BHAVAN, NEAR SAFDARJUNG
AIRPORT, NEW DELHI-110 003

2 THE AIRPORTS AUTHORITY OF INDIA,
REPRESENTED BY ITS CHAIRMAN,
RAJIV GANDHI BHAVAN, NEAR SAFDARJUNG
AIRPORT, NEW DELHI-110 003.

- 3 THE REGIONAL EXECUTIVE DIRECTOR,
AIRPORTS AUTHORITY OF INDIA, OPERATIONAL OFFICE,
SOUTHERN REGION, CHENNAI AIRPORT, CHENNAI-600 027
- 4 THE AIRPORT DIRECTOR, AIRPORTS AUTHORITY
OF INDIA, THIRUVANANTHAPURAM INTERNATIONAL
AIRPORT, VALLAKADAVU P.O,
THIRUVANANTHAPURAM-695 008
- 5 THE AIRPORTS ECONOMIC REGULATORY AUTHORITY OF
INDIA, REPRESENTED BY ITS CHAIRMAN, RAJIV GANDHI
BHAVAN, NEAR SAFDARJUNG AIRPORT, NEW DELHI-110 003
- 6 ADANI ENTERPRISES LIMITED,
ADANI HOUSE, NEAR MITHAKHALI SIX ROADS,
NAVRANGPURA, AHMEDABAD-380 009, GUJARAT,
INDIA, REP. BY MANAGING DIRECTOR.
R1 BY ADV. SRI.K.M.NATARAJ, ADDL.SG OF INDIA
R1 BY ADV. SRI.P.VIJAYAKUMAR, ASST.SG OF INDIA.
R1 BY SMT.MINI GOPINATH, CGC
R2-R5 BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
R2-R5 BY ADV. SRI.V.SANTHARAM
R2-R5 BY ADV. SRI.LAKSHMEESH.S.KAMATH
R6 BY ADV. SRI.S.SREEKUMAR (SR.)
R6 BY ADV. SRI.ROSHEN.D.ALEXANDER
R6 BY ADV. SMT.TINA ALEX THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-10-2020, ALONG WITH WP(C).2224/2019(C), WP(C).5482/2019(I), WP(C).6076/2019(H), WP(C).6823/2019(C), WP(C).7060/2019(S), WP(C).21321/2019(S), WP(C).20459/2020(S), THE COURT ON 19-10-2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C.S.DIAS

MONDAY, THE 19TH DAY OF OCTOBER 2020 / 27TH ASWINA, 1942

W.P(C).No.21321 OF 2019(S)

PETITIONER/S:

1 THE TRIVANDRUM CHAMBER OF COMMERCE &
INDUSTRY, CHAMBER BUILDING, ITC ROAD, JAWAHAR
NAGAR, KOWDIAR, TRIVANDRUM-695003,
REPRESENTED BY ITS SECRETARY, ABRAHAM THOMAS.

2 S.N.REGHUCHANDRAN
NAIR PRESIDENT,
THE TRIVANDRUM CHAMBER OF COMMERCE AND
INDUSTRY, RESIDING AT TC.5/2619(8), BNRA-125,
KOWDIAR.P.O., TRIVANDRUM-695003.

BY ADVS.

SRI.K.JAYAKUMAR (SR.)

SRI.M.SREEKUMAR

SRI.A.ABDUL KHARIM

RESPONDENT/S:

1 THE UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF CIVIL AVIATION, GOVERNMENT OF
INDIA, 'B' BLOCK, RAJIV GANDHI BHAVAN,
SAFDARJUNG AIRPORT, NEW DELHI-11003.

2 THE SECRETARY,
MINISTRY OF CIVIL AVIATION,
GOVERNMENT OF INDIA, 'B' BLOCK,
RAJIV GANDHI BHAVAN, SAFDARJUNG
AIRPORT, NEW DELHI-110003.

3 AIRPORT AUTHORITY OF INDIA, REPRESENTED
BY ITS EXECUTIVE DIRECTOR, RAJIV GANDHI
BHAVN, SAFDARJUNG AIRPORT, NEW DELHI-
110003.

- 4 THE EXECUTIVE DIRECTOR,
AIRPORT AUTHORITY OF INDIA,
RAJIV GANDHI BHAVAN, SAFDARJUNG
AIRPORT, NEW DELHI-110003.
 - 5 THE AIRPORT DIRECTOR,
AIRPORTS AUTHORITY OF INDIA,
THIRUVANANTHAPURAM, INTERNATIONAL AIRPORT,
VALLAKADAVU.P.O., THIRUVANANTHAPURAM-695008.
 - 6 STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY,
TRANSPORT DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695001.
 - 7 KERALA STATE INDUSTRIAL DEVELOPMENT CORPORATION,
REPRESENTED BY ITS MANAGING DIRECTOR,
HEAD OFFICE, TC XI/266, KESTON ROAD,
KOWDIAR.P.O., THIRUVANANTHAPURAM-695003.
 - 8 G.M.R.AIRPORTS LIMITED,
SKIP HOUSE, 25/1, MUSEUM ROAD,
BENGALURU, KARNATAKA-560025,
REPRESENTED BY ITS MANAGING DIRECTOR.
 - 9 ADANI ENTERPRISES LIMITED,
ADANI HOUSE, SRIMALL SOCIETY, MITHIKHALI-6
ROAD, NAVARAGAPURI, AHMEDABAD, GUJARAT-380009,
REPRESENTED BY ITS MANAGING DIRECTOR.
- R1-R2 BY ADV. SRI.K.M.NATARAJ, ADDL.SG OF INDIA
R1-R2 BY ADV. SRI.P.VIJAYAKUMAR, ASST.SG OF INDIA
R1-R2 BY ADV. SRI.JAISHANKAR V. NAIR, CGC
R3-R5 BY ADV. SRI.V.SANTHARAM
R3-R5 BY ADV. SRI.LAKSHMEESH.S.KAMATH
R6 BY SRI.V.MANU, SENIOR GOVT. PLEADER
R6 BY SRI.P.NARAYANAN, SENIOR GOVT. PLEADER
R7 BY SRI.K.JAJU BABU (SR.)
R7 BY ADV. SRI.P.U.SHAILAJAN
R9 BY ADV. SRI.S.SREEKUMAR (SR.)
R9 BY ADV. ROSHAN D. ALEXANDER, SC.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-10-2020, ALONG WITH WP(C).2224/2019(C), WP(C).5482/2019(I), WP(C).6076/2019(H), WP(C).6823/2019(C), WP(C).7060/2019(S), WP(C).7961/2019(S), WP(C).20459/2020(S), THE COURT ON 19-10-2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C.S.DIAS

MONDAY, THE 19TH DAY OF OCTOBER 2020 / 27TH ASWINA, 1942

WP(C).No.20459 OF 2020(S)

PETITIONER/S:

SABU STEEPHEN, AGED 47 YEARS,
S/O.LATE C.STEEPHENSON,
RESIDING AT LILLY COTTAGE, PERUKAVU P.O., PEYAD,
THIRUVANANTHAPURAM-695 578, KERALA,
MOB.9387828166, E-MAIL. SABUSTEEPHEN73@GMAIL.COM
BY ADVS.
SRI.V.N.GOPALAKRISHNAN NAIR
SRI.A.CHANDRA BABU
SRI.G.ARUN
SRI.G.VARUN

RESPONDENT/S:

- 1 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF CIVIL AVIATION,
RAJIV GANDHI BHAVAN,
SAFDARJUNG AIRPORT AREA, NEW DELHI-110003
- 2 AIRPORT AUTHORITY OF INDIA,
REPRESENTED BY ITS CHAIRMAN,
RAJIV GANDHI BHAVAN,
SAFDARJUNG AIRPORT AREA, NEW DELHI-110003
- 3 STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, TRIVANDRUM 695 001
- 4 KERALA STATE INDUSTRIAL DEVELOPMENT CORPORATION,
REPRESENTED BY ITS SECRETARY, T.C.XI/266,
KESTON ROAD, KOWDIAR,
THIRUVANANTHAPURAM-695 003.

5 ADANI ENTERPRISES LIMITED,
REPRESENTED BY ITS CHAIRMAN, ADANI
CORPORATE HOUSE, SHANTIGRAM, NEAR
VAISHNODEVI CIRCLE, S G HIGHWAY,
AHMEDABAD, GUJARAT-382421
R1 BY ADV. SRI.K.M.NATARAJ, ADDL.SG OF INDIA
R2 BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
R2 BY ADV. SRI.V.SANTHARAM
R2 BY ADV. SRI.LAKSHMEESH.S.KAMATH
R3 BY SRI.P.NARAYANAN, SENIOR GOVT. PLEADER
R4 BY SRI.K.JAJU BABU (SR.)
R4 BY ADV. SRI.P.U.SHAILAJAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-10-2020, ALONG WITH WP(C).2224/2019(C), WP(C).5482/2019(I), WP(C).6076/2019(H), WP(C).6823/2019(C), WP(C).7060/2019(S), WP(C).7961/2019(S), WP(C).21321/2019(S), THE COURT ON 19-10-2020 DELIVERED THE FOLLOWING:

K. Vinod Chandran & C.S. Dias, JJ. "C.R."

W.P.(C) Nos.2224/2019-C, 5482/2019-I, 6076/2019-H,
6823/2019-C, 7060/2019-S, 7961/2019-S,
21321/2019-S & 20459/2020-S

Dated, this the 19th day of October, 2020

JUDGMENT

Vinod Chandran, J.

The above writ petitions, filed at different points of time over a period of one year, essentially challenge the leasing out of Thiruvananthapuram International Airport ('TIA' - this and the other abbreviations made hereafter are followed throughout the judgment, for brevity) as carried out by Airport Authority of India ('AAI'), in pursuance of the policy of the Central Government to bring in Public Private Participation ('PPP'). The petitioners are the State of Kerala ('State'), the Kerala State Industrial Development Corporation ('KSIDC') and individuals from various walks of life, both on public and private interest, raising grounds, some of which are identical. Another Division Bench found the writ petitions to be not maintainable since the dispute was one between the State and the Government of India ('GoI'), the resolution of which was within the original jurisdiction of the Supreme Court under Article 131 of the Constitution of

India. The Hon'ble Supreme Court in a series of Civil Appeals filed by the State and one filed by one of the petitioners, set aside the judgment dated 18.12.2019 of the Division Bench and remitted the matter for consideration on merits. The effect of Article 131 was left open.

2. We shall first notice the writ petitions and the reliefs prayed for, in the order in which they were filed. W.P(C) No.2224 of 2019 filed by two individuals, claiming to be frequent fliers and users of TIA, seek to protect their fundamental right to travel and assert their private rights. The prayer in the said writ petition is to declare the Request For Proposal ('RFP') issued by the AAI as *ultra vires* the provisions of the Airports Authority of India Act, 1994 ['AAI Act'] and to forbear from entrusting TIA to any private entity. Though the writ petition was filed first in time and an interim order was declined by a learned Single Judge on 25.02.2019, the further proceedings were not challenged; nor was the successful bidder impleaded.

3. The next writ petition filed was W.P(C) 5482 of 2019, by the Union of Employees of the Calicut Airport, which challenged the Cabinet (Central) approval for leasing out six Airports dated 8.11.2018 and also the RFP. The said

writ petition incorporated a challenge against the leasing out of all the six Airports, but the individual RFPs are not produced or challenged. Subsequently, an amendment was made raising a challenge against the Cabinet decision dated 03.07.2019 produced as Exhibit P14, which was not a decision affecting TIA because it dealt with three other Airports.

4. W.P(C) No.6076 of 2019 is filed by KSIDC, the nominee of the State, who failed in the bid under the RFP. KSIDC challenged the RFP and Exhibit P14, a document available in the Government e-Procurement System - indicating the highest amount for TIA having been quoted by Adani Enterprises Limited ('AEL'). They also challenge the entire tender procedure commencing from Exhibit P5 to P14 as arbitrary, illegal and unconstitutional; though as an agency of the Government of Kerala (GoK), they made their bid and failed in the very same proceedings. They also seek that the Central Government be directed to honour the commitment in Exhibits P1 and P2; which commitment, we cannot but observe; if at all there is any, was not made to the Corporation.

5. The State, then filed W.P(C) 6823 of 2019 seeking to set aside the RFP and in the alternative,

declare the State to have preferential claim, in public interest as regards the concession for operation, development and management of TIA. Declaration is also sought against AAI to accept the proposal of the 'GoK' to grant the facility at par with that offered by AEL. They also seek for quashing Exhibit P9 issued by the Central Government granting them Right of First Refusal [RoFR] within the range of 10%. The State has filed an application for amendment, just on the previous date of hearing seeking to incorporate the challenge against the communication conveying the Union Cabinet's approval and the Letter of Award. The Learned ASG sought time to file a counter to that application. However we were of the opinion that the hearing scheduled long before has to be proceeded with. We found that the amendment is sought to challenge two documents. They were the letter of the GoI to the AAI intimating the approval of the Union Cabinet to lease out three airports including TIA and the Letter of Award as regards that Airport. We were of the opinion that for completeness, the challenge raised has to be incorporated, but however without permitting the State to raise any fresh grounds; to ensure that the respondents too are not prejudiced. We hence allowed the amendment incorporating

the challenge against the two documents; accepted to the records as Exhibits P-22 and P23.

6. W.P(C) No.7961 of 2019 is filed by the President and Secretary of Union of Employees at TIA. The reliefs prayed are for setting aside the RFP as *ultra vires* the provisions of the AAI Act and forbear the AAI from issuing the Letter of Award, similar to that urged by the Union at Calicut; but again without any challenge to the further proceedings leading to the issuance of the Letter of Award.

7. W.P(C).No.21321 of 2019 is filed by the Trivandrum Chamber of Commerce and Industry, who prayed for expediting the tender process as per the RFP, which as of now is infructuous. They have filed an impleading petition in the Writ Petition of the State to urge their contentions in favour of privatization. There is another impleading petition filed by an individual as party in person. We heard the petitioners in the two applications and allowed one and rejected the other. The other two writ petitions are purportedly filed in public interest, one by a former Minister of the State and the other by a self proclaimed social activist. The reliefs sought for in W.P(C).No.7060 of 2019 is against the RFP and the social activist in the

other Writ Petition seeks an omnibus relief of setting aside the tender process and re-tendering in a just and fair manner.

8. Sri.Vikas Singh, learned Senior Counsel appearing for the State, instructed by learned Senior Government Pleader Sri.P.Narayanan, led the arguments. The learned Senior Counsel raised four legal contentions, first of promissory estoppel and legitimate expectation, then of arbitrariness in awarding the tender to the 9th respondent who has no prior experience in developing and managing an Airport, thirdly the financial requirements in the RFP being tailor made to suit the 9th respondent and lastly the AAI Act having not permitted any cross-subsidization, by way of utilization of the income generated from one Airport to augment the facilities of another. We were taken through the various documents produced to assert the legitimate expectation of the State to be participated in the management of TIA, if ever there was a move for privatization. The GoI in the year 2013 held out such a promise and the State had expended considerable amounts in acquiring land for the development of TIA; to which extent equity participation was expected and sought for. When there was a proposal to bring in private participation, it

& connected cases

was requested that either the operation be transferred seamlessly to the GoK or permit it to participate in the bid along with a strategic partner who has experience in Airport operations. It was also pointed out that the GoK is a major share holder in the Cochin International Airport Limited ('CIAL') which owns and operates the Airport at Nedumbassery Kochi; having international acclaim. Despite the various requests made, ignoring all, the AAI brought out the RFP on 14.12.2018, in which circumstance the State conceded to the ROFR, to incorporate which a corrigendum notification was brought out on 28.12.2018. The State's arms were tied for want of time and KSIDC was nominated on 12.02.2019 to participate in the bid.

9. To urge the grounds of legitimate expectation and promissory estoppel reliance was placed on Bannari Amman Sugars Ltd. v. CTO [(2005) 1 SCC 625] and Monnet Ispat & Energy Ltd. v. Union of India [(2012) 11 SCC 1]. The provisions of the AAI Act, specifically Section 12, 12A, 22A and 24(2) if given a purposive interpretation as has been held in Sidharth Vyas v. Ravi Nath Misra [(2015) 2 SCC 701]; there is a prohibition in using the amounts collected as development fees from the passengers to carry out development of other airports. A tender designed to

favour a particular person or entity would be vitiated for reason of lack of fairness, arbitrariness and unreasonableness as held in Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd. [(2016) 16 SCC 818] and Reliance Telecom Ltd. v. Union of India [(2017) 4 SCC 269].

It is further argued that stipulation of requisite financial qualification for participating in the tender, has to be satisfied separately for each of the Airports.

10. Sri.Jaju Babu, learned Senior Counsel, appearing for the KSIDC adopted the arguments of the State. Two significant aspects, according to him stare at the face of the RFP. Privatization policy cuts at the root of public good and the other, AEL, being preferred over others, vitiating the RFP which fails the test of reasonableness and rationality. KSIDC, an arm of the State, cannot act on purely commercial terms and the goal always is to subserve public good. The State had expended huge amounts, coming to almost half of the investment for the present Airport and hence the proposal was objected to from its very inception with a request for transfer of operations to the State or at least a first refusal without any range stipulation. It is also contended that AEL had an edge over the other tenderers as they bid for all the six Airports.

11. Sri.Gopal Sankaranarayanan, learned Senior Counsel, argued for the petitioners in W.P(C)No.7961/2019. The learned Senior Counsel commenced his submission with the caution that the Hon'ble Supreme Court has held that the employees and their Unions, in such matters have no say, but reserved the right of the employees to address legal arguments. The issue of PPP has been addressed actively for the last two decades and rejected. Various reports of competent and expert bodies, Exhibits P3 and P7 were read over. Section 21 of the AAI Act is pointed out to urge that despite the statute having provided a lease of thirty years, the present proposal intended a lease of fifty years. It was pointed out that prior to the RFP there should be a Request for Qualification ('RFQ'), which is absent herein. Both the RFQ and RFP have to be approved by the Private-Public Participation Appraisal Committee ('PPAC'). Section 21, it is pointed out permits a lease to a private entity only in public interest or in the interest of better management. The AAI is a top notch organization carrying on the operations of the airports in India with elan; which is evident from the statistics of profits of the TIA, as extracted in the writ petition. As far as public interest is concerned, learned Senior Counsel

specifically referred to the fact that tender had been floated on the sole basis of the charges applicable to a domestic passenger as distinguished from an international passenger. Out of the total traveling public in TIA, more than half are international; thus jeopardizing the revenue generated from TIA.

12. Sri.Kuriakose Varghese argued for the petitioners in W.P(C) No.2224 of 2019. The petitioners asserted their status of frequent fliers; we immediately observe, without any substantiation. There is also no ground raised as to how their fundamental right to travel would be curtailed by the private participation in TIA. All the same, we heard him rely on the statistics to contend that the present tendering process only will detrimentally affect the financial viability of TIA. It is argued that six of the Airports out of a total of more than 129, managed by the AAI have been chosen arbitrarily for privatization.

13. Smt.Daisy A. Philipose put forth arguments in W.P(C) No.5482 of 2019. The Employees' Union apprehend that their terms and conditions, specifically revision of pay would be adversely affected if the AAI Authority eventually loses its profit base in TIA. The requirement of RFQ prior

to RFP as is evident from Exhibit P6, the need to identify the project costs individually and the time frame provided for approval by the PPAC, as seen from Exhibit P10 Guidelines are emphasized. In fixing the financial capacity at Rs.3,500 Crore many aspirants were avoided. There is undue haste in granting the approval, which as seen from Exhibit P12 is in a most arbitrary manner. Exhibit P12 is further vitiated for the reason that only two Secretaries, who are members of the PPPAC constituted by Exhibit P10, attended the meeting. It was argued that the entire procedure is irregular, in violation of the specific guidelines required to bring in PPP and also engineered in such a manner as to complete the process before the Code of Conduct for General Elections 2019 came into effect. The undue haste is also for reason of the Empowered Group of Secretaries ('EGoS') breathing down the neck of the PPPAC to expedite the approval. Exhibit P11, the recommendations of the Niti Aayog, which is now in the role of Planning Commission and Exhibit P13, that of the Department of Economic Affairs were ignored. Both these were forwarded to the PPPAC on 10.12.2018 and the PPPAC's approval is found in Exhibit P12, granted in a meeting held on 11.12.2018. The recommendations in Exhibits P11 and P13 as against the

RFP were read over to us. The EGoS was constituted only to overcome the cumbersome but transparent process required by Exhibit P10 Guidelines for Formulation, Appraisal and Approval for Public-Private Partnership Projects; which jeopardises public interest. Paragraph 10 of Exhibit P12 was specifically read to point out that the EGoS on 17.11.2018 directed a single stage bidding so as to complete the transaction by 28.02.2019; prior to the Code of Conduct being implemented. The learned Counsel would argue that the policy framed by the Central Government has to be based on established guidelines. The decisions of the Hon'ble Supreme Court in Common Cause, A registered Society v. Union of India and others [1996(6) SCC 530] and Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and others [1997(1) SCC 35] are relied upon to further buttress her arguments. It was also pointed out that after the RFP is approved by the PPPAC, the competent authority has to affirm it. In the present case the competent authority by Exhibit P4 made its approval even prior to the consideration by the PPAC.

14. The learned Additional Solicitor General (ASG), Sri K.M.Nataraj appearing for the Union of India and their Ministries, led the arguments on behalf of the

respondents. Learned ASG at the outset raised three preliminary objections. The State of Kerala having participated in the tender process cannot now turn around to challenge it. The KSIDC and the other petitioners who failed to challenge the dismissal of their writ petitions cannot now raise arguments before this Court. The decisions of the Hon'ble Supreme Court in Cumbum Roadways (P) Ltd. v. Somu Transport (P) Ltd. And others. [1966 (3) SCR 7], Md.Aziz Alam and others v. Union of India and others [2001(10) SCC 93] and Union of India v. Madras Telephone SC & ST Social Welfare Assn. [2006(8) SCC 662] were relied on to further the said objection. The decisions in Reliance Telecom Ltd. & Meerut Development Authority v. Association of Management Studies and another [2009(6) SCC 171] were also relied on. The last of the preliminary objections was on Article 131 of the Constitution.

15. The learned ASG asserted that the grounds raised are on a clear misunderstanding of the provision of the AAI Act. According to him no development fund under Section 22A is levied and there is a clear prohibition on the Concessionaire to levy any such fund on the passengers. A distinction is drawn insofar as the revenue generated by the AAI which constitutes the fund of the Authority under

Section 24, when a lease is granted as per Section 12A. On the question of the bid being confined to that applicable to domestic passengers, it is pointed out from the RFP that the criteria is only for selection and the mandate on the Concessionaire is to pay amounts to the AAI with respect to both domestic and international passengers, for the latter the charge being twice the amount for a domestic passenger. It was also pointed out from the agreement to be executed by the Concessionaire, there is a clear vision insofar as the inclusion of a Master Plan based on which the infrastructure development in an Airport has to be carried out. Such development also would be on the approval of the AAI. Though an RFQ was absent, there is a double envelope clearance envisaged by the RFP itself. The limits in the RFP have been prescribed looking at the totality of the circumstances in which the lease is made and both the technical and financial capacity evaluation is made as per the RFP. There can also be no contention raised against the technical qualification since it is within the realm of the AAI, and Airport experience was avoided to ensure wider participation. What was followed was the Harmonised Master List as approved and notified by the Government. The EGoS is a Committee appointed by the Cabinet while PPPAC is one

constituted by the Guideline issued by a Ministry. The EGoS, being a body hierarchically superior is also comprised of the four Secretaries included in the PPPAC.

16. The learned ASG specifically referred to the following decisions to impress upon us the constrained jurisdiction we exercise in judicial review especially when looking at the qualifications prescribed and the terms devised in a procedure inviting tenders in a PPP to further the policy of the Government. Air India vs. Cochin International Airport [(2000) 2 SCC 617], Jagdish Mandal v. State of Orissa [2007(14) SCC 517], Meerut Development, Michigan Rubber v. State of Karnataka [2012(8) SCC 216], Afcons Infra, JSW Infrastructure v. Kakinada Seaports [2017(4) SCC 170], Reliance Telecom, Municipal Corporation Ujjain v. BVG Limited [2018(5) SCC 462]. The following decisions are relied upon to contend that the employee cannot challenge the decisions of the Government as to how a public authority under which they are employed is to be operated. BALCO Employees Union V. Union Of India [2002(2) SCC 333], Dhampur Sugar V. State Of Uttaranchal [2007 (8) SCC 418], Bajaj Hindustan V. Shadi Lal Enterprise [2011(1) SCC 640]. The caution as to how public interest forums should not be misused is specifically

pointed out from BALCO Employees Union.

17. Sri.N.N Sugunapalan, learned Senior Counsel, instructed by Sri.V. Santharam, learned Standing Counsel for AAI adopted the arguments of the learned ASG. The reliefs in the writ petition of the State are specifically pointed out to argue that the State is estopped from taking up such contention in view of the agreement of the State to the RoFR as per ExhibitR6(a), produced along with their counter affidavit. It is pointed out that the State nominated KSIDC to bid as per the RFP to avail the RoFR and their relationship is one of principal and agent. As a preliminary objection it was argued that there cannot be two different writ petitions filed raising similar contentions by the principal and agent. The EGoS as per Exhibit P9 had considered the request of the State Government and had incorporated the ROFR in the RFP. The State having participated in the tender process through the KSIDC, on being unsuccessful cannot raise contentions on legitimate expectation and the ideal qualifications to be prescribed in the RFP on technical and financial aspects. These prescriptions did not dis-entitle either the State or its agency from participating in the bid. It is specifically pointed out that Exhibits P2 and P3 does not

hold out any promise, as contended by the State. AIR (2019) SC 5222 [Kerala State Beverages (M&M) Corporation Ltd. v. P.P Suresh] & AIR (2019)SC 705 [State of Bihar v. Dr. Sachindra Narayan] were relied on to drive home the contention of total lack of application of the principle of legitimate expectation. The State had no benefit which it legitimately expected to be continued nor was there any assurance by either the Union Government or the AAI to extend any such benefit. The claim now raised on the acquisition as is evident from Exhibit P6 is only on the basis of the transfer of 27 acres 57 cents 111 square links of land. The employees are said to be amply protected from any adverse consequences like retrenchment by the specific clauses read over from Exhibit P16 concessionaire agreement. The declaration in BALCO Employees Union has been reiterated in 2009(7) SCC 561 [Villianur Iyarkkai Padukappu Maiyam v. Union of India and others]. As to the interference in policy matters in judicial review 2016(8) SCC 622 [Central Coalfields Ltd. v. SLL SML(Joint Venture Consortium)] and 2019 (2) SCC 505 [Janhit Manch v. State of Maharashtra] were relied on. On the Public Interest raised by certain petitioners, it was asserted that there is nothing produced to satisfy the test of *locus standi* to

file a public interest litigation, other than self serving statements. The decision of the Madhya Pradesh High Court reported in 2018 (KHC) 4193 [Surendra Pradap Singh v. State of Madhya Pradesh] was also relied on.

18. Sri. S. Sreekumar, learned Senior Counsel, instructed by Sri Roshen D Alexander appeared for AEL, the successful bidder in the process. At the outset it was pointed out that, despite direction by this Court, the petitioners in W.P(C) Nos.2224/2019 and 20459/2020 have not impleaded the successful bidder and for that reason alone the said writ petitions are to be dismissed. Though not argued, the learned Senior Counsel specifically referred to Paragraph 9 of the State's writ petition where a contention is raised as to the land in which the TIA now exists; continuing to vest in the State. National Airport Authority Act, 1985 and AAI Act is pointed out to rubbish the said averment. The arguments raised by the Union Government and the AAI against the claim of legitimate expectation and promissory estoppel were adopted by AEL. It was specifically contended that the State cannot be permitted to approbate and reprobate. 2011(5) SCC 435 [Joint Action Committee of Airlines Pilots Association of India vs. Director General of Civil Aviation], 1992 (4) SCC 683

[R.N.Gosain vs. Yashpal Dhir], 1998(8) SCC 358 [Babu Ram vs. Indra Pal Singh], 1998(6) SCC 507 [P.R. Deshpande vs. Maruti Balaram Haibatti], 2010(10) SCC 422 [Mumbai International Airport (P) Ltd. vs. Golden Chariot Airport] and Villiannur Iyarkkai Padukappu Maiyam were relied on to advance that contention. The disclaimer in the RFP was referred to counter the argument against lease for 50 years and the alleged attempt of the previous Government to finalise the tender before the general election. The new Government which takes Office, if on a change in policy, retracts from the move of privatization there could be no dispute raised by the tenderer. The draft concession agreement at Exhibit P16 was elaborately read to counter each of the arguments raised against the tendering process which is blatantly assumed to be only to favour AEL; without any substantiation. On the aspect of judicial review the learned Senior Counsel would refer to 2019(3) KHC 566 (DB) [Pushkarraj Constructions Pvt.Ltd v. Silppi Constructions and Contractors] and 2019 (11) SCALE 592 Silppi Constructions Contractors and others V. Union of India. On the employees having no right to contest a policy decision 1981 (1) SCC 568 [Fertilizer Corporation Kamgar Union (REGD), Sindri and others vs. Union of

India and others] and MANU/TN/2259/2014 (Manupatra)

Airport's Authority Employees' Union vs. Union of India]

were relied on.

19. Sri.K.Jayakumar learned Senior Counsel appeared for the petitioner in W.P(C) No.21321/2019 who was also the petitioner in I.A.No.2/2020 in W.P(C) No.6823/2019 seeking impleadment. It was contended that they represent the business population in Trivandrum who are interested in the development of the Airport and facilities at par with international standards being introduced. Also in view of the fact that there is a separate writ petition filed seeking expedition of the tender process we are of the opinion that the application had to be allowed and we did so on 09.10.2020. It is pertinently pointed out that though the State has been crying foul on the absence of Airport experience as a requisite qualification; the State as such does not have any experience on that count. The CIAL is a Public limited Company in which the State has a share which does not confer the State with any experience in operating or managing Airports and CIAL in any event did not bid for TIA. Half in jest, it is pointed out that the experience in managing road transport through a State owned Corporation, is by itself dismal and does not commend

entrustment of the more complex system of Air Transport, wherein the facilities are more high-end and has to rise up to international standards. The levity with which public funds are frittered away by the State Government is submitted to be evident from paragraph 42 of the counter affidavit of AAI which speaks of the State also, having purchased bid documents expending almost Rs.4 lakh with no bid being submitted.

20. We also heard the party in person who has filed I.A No.4/2020 in W.P(C) No.6823/2019 seeking impleadment. The petitioner declared himself to be the Chairman of a State level multi-purpose Co-operative Society without any substantiation of the same. He claimed to have experience in "all aspects Air Travel, management aspects of civil aviation, Airports having technology and financial support and willingness to join as consortium partners with leading companies under PPP." (sic). The petitioner also claimed to have coined the word PPP which according to him is private participation in public infrastructure development. He asserted to have also originated the concept of CIAL. In the affidavit accompanying the impleading petition he has referred to his association with various personalities who were part of the

executive governments in the Central and State. But for the high sounding claims about himself, nothing is produced to substantiate these vainglorious assertions. It is alleged that there is grave violation of the guidelines by the Central Vigilance Commission, on which contention no specific ground was urged. It was his specific claim that he is the most eligible party to get the tender for management of the TIA. We immediately notice that he has not participated in the tender proceedings. The petitioner, an individual seems to be seeking award of the contract to himself which he cannot urge in the writ petition filed by the State. To a specific question as to why he did not prefer a separate writ petition, no satisfactory explanation was given. The arguments addressed were similar to the unsubstantiated averments in the affidavit accompanying the petition. We hence declined the request for impleadment and rejected I.A 4/2020 on 09.10.2020.

I. Preliminary Objections

21. The learned ASG, as we noticed, raised three preliminary objections, so was one raised by the learned Senior Counsel appearing for the AAI. The first of the preliminary objections raised by the learned ASG was that

the State having participated in the tender cannot turn around and challenge the conditions of the RFP. We would consider the same after dealing with the ground of legitimate expectation and promissory estoppel as raised by the State. The second objection is with respect to the petitioners other than the State and the Union of Employees in TIA, having not challenged the earlier judgment of this Court. Md.Aziz Alam and Madras Telephone SC & ST Social Welfare Assn. relied on, are not applicable. The former found that when a claim is rejected, no fresh cause of action arises if relief is granted to similarly situated persons in another case. In the latter it was found that if the subsequent judgment of a Court took a contrary view that would not adversely affect persons who were granted relief earlier, if the same has attained finality. The position here is quite different. Reliance is also placed on Cumbum Roadways (P).Ltd., a Constitution Bench decision of the Hon'ble Supreme Court. Therein, against the grant of a permit seven appeals were filed before the Appellate Tribunal. The Appellate Tribunal disposed of all the appeals by a common order granting the permit to the appellant in one of the appeals. The 1st respondent who lost before the Tribunal filed an appeal before the High

Court. The High Court directed restoration of all the seven appeals. The Hon'ble Supreme Court found that with respect to the other six appeals the appellants having not taken up the matter before the High Court there is no ground for restoration of those appeals. Here, though there is some similarity; the State alone who was the respondent in all but one of the writ petitions had taken up the matter before the Hon'ble Supreme Court. The Hon'ble Supreme Court has set aside the judgment and send back the same for consideration on merits. We cannot deny consideration of those writ petitions in which also the Hon'ble Supreme Court had set aside the earlier judgment passed. The next objection raised is on Article 131 of the Constitution which requires to be considered only after consideration on merits, as directed by the Hon'ble Supreme Court.

22. Sri. Sugunapalan, learned Senior Counsel also had an objection with respect to both the State and KSIDC having filed two writ petitions. We do not find any cause to non-suit either since the State in their writ petition has other contentions not connected with the RFP itself. However, we made it clear that the KSIDC cannot raise any ground in support of the State's claim on legitimate expectation and promissory estoppel.

II. Legitimate Expectation and Promissory Estoppel

23. The writ petition filed by the State is treated as the lead case and the documents are referred to from the said writ petition and whenever otherwise, the writ petition from which the document is referred is mentioned. The first contention raised by the State is on legitimate expectation and promissory estoppel. The learned Senior Counsel would rely on Monnet Ispat and Energy Ltd. and specifically refer to paragraphs 188.1 and 188.2. Before we look at the legal principle, we notice the facts from that case, which led to a claim of promissory estoppel and legitimate expectation. The State of Jharkhand in an effort to facilitate setting up of new industries within the State, entered into MoUs with various promoters, to fulfill the Government's desire to utilize natural resources. In the MoUs this desire was specified with willingness expressed to extent assistance to suitable promoters for setting up new industries. The facts with respect to one of the promoters who was desirous of setting up manufacturing/generating facilities in the State of Jharkhand was specifically noticed. The MoU was found to have recorded the State Government's assistance in selecting the area for iron ore or other minerals as per

the requirement of the promoter as also the grant of mineral concession as per the existing Acts and Rules. The State Government identified the areas, in pursuance of the MoU and sought for prior approval from the Central Government, for mining. The promoter had also invested considerable amounts of money to construct and commission the plant and also availed of credit facilities. The Hon'ble Supreme Court found that though State Government had assured assistance in selecting the area for iron or other minerals, the grant of mineral concession was expressed to be only in accordance with the Act and the Rules. The State Government had omitted to notice that the area identified stood reserved for exploitation in the public sector. The commitment if at all any in the MoU, was held to be dependent on availability and as per the existing laws. The State Government if held down to the assurances made in the MoU; it would be in breach of the notification issued under the Act and Rules, was the finding, repelling the claim of the promoters. It was held:

"The doctrine of promissory estoppel is not attracted in the present facts, particularly when promise was made—assuming that some of the clauses in the MoU amount to promise—in a

mistaken belief and in ignorance of the position that the subject land was not available for iron ore mining in the private sector. I do not think that the State Government can be compelled to carry out what it cannot do in the existing state of affairs in view of the 1962 and 1969 Notifications. In my opinion, the State Government cannot be held to be bound by its commitments or assurances or representations made in the MoU because by enforcement of such commitments or assurances or representations, the object sought to be achieved by reservation of the subject area is likely to be defeated and thereby affecting the public interest.(sic) "

24. Now, we extract the law as reiterated by the Hon'ble Supreme Court:

"188. It is not necessary to multiply the decisions of this Court. Suffice it to observe that the following principles in relation to the doctrine of legitimate expectation are now well established:

188.1. The doctrine of legitimate expectation can be invoked as a substantive and enforceable right.

188.2. The doctrine of legitimate expectation is founded on the principle of reasonableness and fairness. The doctrine arises out of principles of natural justice and there are parallels between the doctrine of legitimate expectation and

promissory estoppel.

188.3. Where the decision of an authority is founded in public interest as per executive policy or law, the court would be reluctant to interfere with such decision by invoking the doctrine of legitimate expectation. The legitimate expectation doctrine cannot be invoked to fetter changes in administrative policy if it is in the public interest to do so.

188.4. The legitimate expectation is different from anticipation and an anticipation cannot amount to an assertable expectation. Such expectation should be justifiable, legitimate and protectable.

188.5. The protection of legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words, personal benefit must give way to public interest and the doctrine of legitimate expectation would not be invoked which could block public interest for private benefit".

The position is not differently stated in the decisions placed on record by the Union of India, the AAI and the AEL.

25. With the above principle in mind we examine the documents as pointed out by the learned Senior Counsel appearing for the State. Exhibit P2 is a communication from the Ministry of Civil Aviation to the Chief Secretary of

the State of Kerala dated 23.04.2003. This letter referred to the developments proposed in the Calicut & Thiruvananthapuram Airports and the investment contemplated in CIAL. It expressed distress insofar as the State having not considered the proposal for reduction of sales tax on ATF. It had also answered a query regarding privatization in the negative. In answer to the query on privatization, there was a thought expressed, of creation of a Special Purpose Vehicle (SPV) for development of Trivandrum with State Government and its financial institutions as partners. There is no concrete proposal or a promise discernible from the said thought expressed.

26. To that thought, the Chief Secretary responded by Exhibit P3 dated 07.10.2003 which again expressed a desire for a MoU between the Centre and State Governments to determine the role of the latter if there is a change of ownership/management. The handing over of 27 acres of land was noticed, with an enticing offer to acquire another 120 acres of land, which was stated to be under active contemplation. Exhibit P4 dated 02.12.2003, the response of the Ministry of Civil Aviation merely expressed their willingness to consult the State Government if at all a decision is taken to induct private sector into the

management of TIA; which we find has been effectively complied in the present instance. The State again responded by Exhibit P5 dated 06.03.2004 expressing its willingness to acquire additional 120 acres of land for the purpose of the Airport. This admittedly has not materialised till date. The Counter affidavit dated 28.03.2018 of the AAI filed in the State's W.P, notices the land details of the TIA. The land handed over by the Maharaja to the flying club is 258.06 acres and that subsequently acquired by the AAI is 329.68 acres. The land handed over by GoK is 40.85 acres including 32.56 acquired and 8.29 acres of Government land. This is also stated to be as declared in the presentation of the State before EGoS. There was no promise expressly made in the aforementioned documents to either hand over management of TIA to the State Government or permit their participation in such management. The matters ended there in the year 2005 with Exhibit P6.

27. The present attempt to lease out the TIA along with five other Airports as is seen from the records was informed to the State Government by Exhibit P1 dated 22.11.2018. There is a short narration of the history of TIA, with queries regarding the conditions on which the lands were demised by the Maharaja for the construction of

the Airport and later acquired and surrendered by the State. In this context we have to notice that, in the more than a decade and half from the handing over of 27 acres a significant policy shift in managements of Airport has been occasioned. This policy is evident from the introduction of Section 12A to the AAI Act. Section 12A permitted lease of an Airport in public interest or in the interest of better management; to carry out some of the Authority's functions under Section 12, not relating to air traffic or watch and ward. Hence the Ministry of Civil Aviation cannot be held down to what has been said in the year 2003 as to no privatization being intended. The amendment incorporating Section 12A was with effect from 01.07.2004. As per the major shift in legislative policy itself, many Airports have been leased out in the past too; as is admitted by the petitioners.

28. The State has also relied on the further exchange of communication with the Central Government in the year 2018. When the decision was taken to lease out the management of TIA, the Chief Minister himself wrote to the Central Minister by Exhibit P7 dated 27.11.2018. The desire to form a SPV to take over the Airport on such terms agreed with AAI was mooted with specific reference to the land

handed over by the State Government. The GoK projected their association with CIAL and the promotion of another company in the same model, being Kannur International Airport Ltd.; to stake their claim to be handed over TIA. It was also prayed that TIA may be de-linked from the recent decision of the Union Cabinet as a first step to proceed with the proposal of GoK. The letter of the Chief Minister was replied to by Exhibit P8 dated 28.11.2018 pointing out the constitution of an EGoS by the Union Cabinet before whom the State Government was invited to make a presentation. After the presentation, Exhibit P9 minutes indicate that the EGoS has decided to either invite GoK as a special invitee to participate in the selection process of the PPP partner for TIA, so as to address the concerns/interest of the State or proceed with the alternative offered by the State itself for a right of first refusal within a range of 10% of the highest bid. The Chief Minister again addressed the Union Minister requesting acceptance of the first proposal of seamless transfer to GoK by lease for a period of 50 years or the right of first refusal being granted without any limit. Both the requests were declined by Exhibit P12.

29. Exhibit P12 rightly found that the best balance between the State Government's requirement and the preservation of sanctity of bidding process would be available only if the 10% range is prescribed. In this context it has to be noticed that the bid document itself is to be purchased at a cost of almost Rs.4 lakh and there is also a Bid Security to be offered of Rs.8 Crore. If the State Government is granted right of first refusal without any range parameters there would have been no tenders submitted for reason of the State being entitled to match any quote made by the successful bidder. The quotes could only enure to the benefit of the State, who could act as a mere onlooker, to eventually walk away with the tender. A *fait accompli* not conducive to a process of competitive bidding on a level playing field.

30. The RFP was issued by the AAI on 14.12.2018 which was later amended to incorporate the ROFR as is seen from clause 3.8.1(d) of the RFP. The State conceded to the same and nominated KSIDC as its agent as is evidenced from Exhibits R6(a) and R6(b). We cannot find any promise expressed by the Central Government in the documents produced as Exhibits P2 to P6, to transfer operations of TIA or even to participate GoK in its management. The

State did not ever raise a concrete claim over the lands or for any equity participation in the TIA. As is pointed out by the learned Senior Counsel appearing for AEL, the NAA Act and Section 13 of the present AAI Act transfers and statutorily vests, *inter alia* all assets, rights, powers, authorities, privileges and all property movable and immovable as immediately available before the appointed date, to the ownership of the Authority constituted under the said Acts. By Section 13(2) of AAI Act, the lands acquired by the State Government for the purpose of the Airport, and vested earlier with the National Airports Authority or whichever entity in ownership and management of that Airport, vests in the AAI. The State cannot stake any ownership over the said property since the acquisition and transfer of the properties were made voluntarily without any condition and without pursuing claims for equity participation. The State also undertook the acquisition and handing over of land in public interest for development of the Airport in its capital city for which no claim of *quid pro quo* can arise.

31. There is no promise held out earlier or in the year 2018, after the decision by the Union Cabinet to lease out six Airports in the Country. The proposal made by GoK

was considered by the GoI, with all seriousness. The EGoS, the empowered group constituted by the Union Cabinet itself heard the GoK and offered a right of first refusal to any entity in which the GoK has 26% equity participation, locked in for a period of five years, on a range prescribed of 10% from the maximum bid. Hence on the bid of the GoK or its agency being within 10% of the maximum bid, the ROFR would entitle the GoK to stake a claim to be the Concessionaire at that maximum bid quoted. The said offer was accepted by the State Government and a State Owned Corporation, KSIDC, was nominated. The KSIDC participated and bid unsuccessfully in the RFP. The bid of AEL was Rs.168/- per domestic passenger while that of KSIDC was Rs.135 per domestic passenger; less by almost 20%.

32. We reject the ground raised by the State, of legitimate expectation as there is no benefit promised to the State Government or enjoyed by it; by way of participation in the management of TIA, which can be deemed to have been taken away by the Central Government by reason of the lease proposed. There can also be no claim of promissory estoppel as we find no promise having been extended by the Central Government or the AAI, at any point of time. The learned Senior Counsel for the State, had a

contention that the right of first refusal was agreed to, only since there was little time to act on the proposal of the Central Government. The proposal for ROFR was by Exhibit P12 dated 12.12.2018; two days after which the RFP was issued is the submission. We cannot countenance the above contention since the intention to lease out the Airport was informed to GoK as early as in November 2018 as seen from Exhibit P18. The GoK never raised any ground of legitimate expectation or promissory estoppel before the Central Government or before any Court. The various communications by the GoK to the Union Government also does not declare such an expectation or project the breach of any promise and only seeks indulgence. The State has failed to establish the contentions raised of legitimate expectation and promissory estoppel. As has been held in paragraph 188.4 in Monnet Ispat & Energy Ltd. the State at best had an anticipation; which also was never expressed in clear terms to the Union Government. But for urging the above contention in its W.P, we are of the opinion that the State cannot challenge the RFP and the proceedings culminating in that document, since the State has participated in the tender. There is no contention raised as to the procedure followed in opening the tenders or

finding the AEL to be the successful bidder. Despite that, we will notice the arguments raised by the learned Senior Counsel for the State in considering the other contentions since there are writ petitions by the Employees' Union and also PILs. We reiterate that KSIDC cannot raise any claim for legitimate expectation or promissory estoppel, on behalf of the State. KSIDC is also estopped from challenging the RFP, under which they bid and lost.

III. The AAI Act and the prohibition alleged in expending income received from one Airport in another Airport and the lease granted for 50 years.

33. The ground of prohibition raised is relying on Section 22A of the AAI Act which speaks of the power of the authority to receive development fees at Airports. Such levy is permissible only with the previous approval of the Central Government or under clause (b) of sub-section (1) of Section 13 of the Airports Economic Regulatory Authority of India Act, 2008; the latter applicable to major Airports referred to in that Act. The development fees levied and collected can be utilized only in the prescribed manner, for the purposes enumerated under clauses (a) to (c). Clause (a) refers to up-gradation, expansion or development of the Airport at which the fee is collected. Clause (b)

deals with establishment or development of a new Airport in lieu of that Airport. Clause (c) speaks of investment in equity by way of subscription in Companies, again engaged in establishing, owning, developing, operating or maintaining a private Airport *in lieu* of the Airport from which the collection is made. Undisputedly the development fees can only be used in that Airport from which the collection is made.

34. The learned ASG however asserted that the fees per domestic passenger as payable by the Concessionaire is not development fees as envisaged in Section 22A nor is it expected to be passed on to the passenger. Reference is made to clause 28.4.2 in Exhibit P16 which is the Concession Agreement required to be executed by the Concessionaire. Clause 28.4.2 reads as under:

"It is clarified that the Concessionaire shall not be entitled to levy or seek the right to levy on Users, any development fee under Section 22A of the Airports Authority of India Act, 1994 and any rules made thereunder, including the Airports Authority of India (Major Airports) Development Fee Rules, 2011".

This is in perfect consonance with the RFP which intends the development of the Airport to be carried on by the

Concessionaire. The per passenger rate quoted by the Concessionaire is the amounts to be paid, by the Concessionaire to the AAI, as consideration of the lease of the Airport. This cannot be passed over to a passenger and is not a development fee under Section 12A. It augments the fund of the AAI which is provided for in Section 24. As per Section 24, all receipts of the Authority shall be credited to its own fund and all payments shall be made therefrom. Sub-section (3) of Section 12A provides that any money payable by the lessee in terms of the lease made under sub-section (1) shall form part of the fund of the Authority and shall be credited thereto as if such money is the receipt of the Authority for purposes of Section 24. It is also discernible from sub-section (2) of Section 24 that the Authority shall have power, subject to the provisions of this Act, to spend such sums as it thinks fit to cover all administrative expenses of the authority and on objects or for purposes authorised by this Act and such sums shall be treated as expenditure out of the fund of the Authority. Looking at the provisions of the Act, there is a clear distinction between the development fee levied under Section 22A and amounts payable by the lessee under Section 12A. The revenue generated under Section 12A takes the

character of the receipt/revenue of the Authority; which augments its fund from which the administrative expenses as also the objects and purposes authorized by the AAI Act are carried out. The ground raised of prohibition against cross-subsidization fails.

35. There is a contention raised by the petitioners that the Concessionaire is entitled to levy Users' fee from the passengers. This need not be mixed up with development fees, the levy of which, by the Concessionaire is specifically prohibited. 'User' as defined in Exhibit P16 includes among others, a passenger who intends to use the Airport and the services offered therein, on payment of fees or in accordance with the provisions of this agreement and applicable laws. 'Fee' as defined in Exhibit P16 is the charge levied on and payable by a user for any or all of the services. With respect to aeronautical services, it shall be as per the rates determined or revised or approved by the Regulator, in accordance with the provisions of the Regulatory Framework. The Airports Economic Regulatory Authority of India Act, 2008 is enacted to provide for the establishment of the Regulatory Authority to regulate tariff and other charges for aeronautical services. Hence for the

aeronautical services fees can be levied only in accordance with the regulatory regime and for non-aeronautical services in accordance with the agreement. The per passenger rate per passenger is prescribed also because the services offered in the airport is for use of the passengers, from whom the revenue is generated. The Concessionaire has to carry out the development of the Airport as per the agreement, from such revenue generated and definitely a Concessionaire in his business interest would prudently expect a profit from such revenue; which none can grudge. The private participation itself is a concept developed *inter alia* to provide better service to the users and confine the Authority and its officials to technical and regulatory aspects.

36. The next ground urged is with respect to prohibition as per Section 21 in permitting a lease beyond thirty years. Section 20 empowers the Authority to enter into and perform any contract necessary for the discharge of its functions under the Act, subject to Section 21. Section 21 speaks of the mode of executing contracts on behalf of the Authority. A fetter to the power under Section 20 is seen from the two provisos to sub-section (1). The first proviso empowers the designated officers

under sub-section (1) of Section 21 to execute only contracts of such value or amounts as the Central Government may fix by order, from time to time; unless the same is previously approved by the Authority. The second proviso provides a further fetter on Section 20, carving out contracts for acquisition or sale or immovable property or lease of any such property for a term exceeding thirty years or exceeding the value or amount fixed by the Central Government under the first proviso; without previous approval of the Central Government. The restriction provided by the proviso is two-fold. Any contract exceeding the value or amount fixed by order of the Central Government shall not be entered into unless approved by the Authority. However, any contract for acquisition, sale or lease of an immovable property for a period exceeding thirty years or for an amount exceeding that fixed by the Central Government can only be entered into with prior approval of the Central Government.

37. The contention raised by the petitioners is that there is no approval of the Central Government for the contract exceeding thirty years. The RFP provides for a contract for fifty years which admittedly is without prior approval of the Central Government. The learned ASG alertly

pointed out that the proviso only speaks of prior approval before the contract itself is made. There is no requirement for an approval previous to the invitation of the tenders, is the contention. We had an apprehension that if the RFP proclaimed lease of fifty years and the Central Government later refuses to grant approval; prior to the execution of the contract, it would lead to unnecessary legal tangles. Our apprehension is set at rest by the clarificatory affidavit placed on record by the learned ASG and the disclaimer clause pointed out by Sri.S.Sreekumar.

38. The clarificatory affidavit dated 07.10.2020 filed by the Under Secretary, Ministry of Civil Aviation, in paragraph 8 speaks of the recommendation of the PPPAC being placed before the Minister for State for Civil Aviation on 14.12.2018 and the same having been approved by the Minister on 19.12.2018. Further, we have looked at the disclaimer clause in the RFP. In the RFP (page 4) at Exhibit P13 it is specified that RFP is neither an agreement nor an invitation by the Authority to the prospective bidders or any other person. RFP as is stated therein, only provides information to interested parties that may be useful in formulating their Bids pursuant to the RFP. It is also stated that the RFP reflects various

assumptions and assessments which may not be complete, accurate, adequate or correct. The disclaimer further states that the information provided in the RFP being on a wide range of matters, some would depend upon interpretation of law and the information is not an exhaustive account of statutory requirements. The prohibition as contained in the statute; no bidder can feign ignorance of and if the contract is eventually entered for a lesser period of thirty years for reason only of the Central Government having not approved it previous to its execution; none can claim legitimate expectation. As was found in Monnet Ispat & Energy Ltd., then it would be against the statutory prescription. Our apprehensions are allayed insofar as the Minister for Civil Aviation having approved the lease of fifty years as projected in the RFP.

IV. The erosion of the profit base of TIA

39. The ground raised by the Employees' Unions has reference to the statistics provided in Exhibit P7, produced in W.P(C).No.5482 of 2019 and that tabulated in the memorandum of the other W.P. It is emphasized that while the bid is for fees payable on a domestic passenger, TIA has more international passengers than domestic

passengers. The concern expressed by the employees is fairly addressed by the ASG that the per passenger fee for domestic passengers was made the selection criteria to identify the highest bidder, as is seen from Clause 3.8 of Exhibit P13 RFP. The RFP itself by clause 1.1.5 makes it obligatory on the Concessionaire to pay to the Authority, on a monthly basis, a fee in respect of each domestic and international passenger handled at the Airport in accordance with the Concession Agreement. In the Draft Concession Agreement, Exhibit P16; which is a part of the RFP, under Article 227, Concession Fee is dealt with. The fee for domestic passengers will be as per the bid and for international passengers at twice the rate payable for the domestic passenger. Clause 27.3 of the Agreement also provides for revision of per passenger fee, which is revised annually on the anniversary of the Commercial Operation Date (COD). The revision is linked to the Commercial Price Index (CPI) calculated at 85% in the first fifteen years and later at 50%.

40. The petitioner in W.P(C) 7961 of 2019 has relied on the statistics in the tabular form in paragraph 4 of the memorandum of writ petition. The statistics show the revenue and expenditure in the years 2013-14 to

2017-18, the highest of which is said to be in 2017-18, wherein there was a surplus/deficit of 169.32 crore. The AAI has met the contention in paragraphs 11 and 12 of their counter affidavit dated 28.03.2020 to the said writ petition. It has been specifically observed that the counter arguments are made, without commenting on the veracity of the statistics, the source of which is not disclosed. Even we are not convinced that any reliance can be placed on the statistics so tabulated; however, for argument's sake we accept it. The AAI would submit that the tabulated statistics includes the Air Navigation Services (ANS) which comprises of Route Navigation Facility Charges (RNFC) and Terminal Navigation Landing Charges (TNLC), which are not handed over to the Concessionaire and the revenue generated on that count would be retained with the AAI. Relating the statistics of 2017-18 as asserted by the petitioners, to the revenue payable by the Concessionaire, it is submitted that the total revenue would have been Rs.200.52 crore, far in excess of that actually said to have been obtained in the year 2017-18. The total is arrived based on the Passenger Throughput (embarking and disembarking passengers), both domestic and international. If the Concessionaire had been carrying on the operation

and management of the Airport in the year 2017-18, the concession fee generated would have been Rs.115.43 crore, at Rs.168/- per domestic passenger and double the amount per international passenger. The ANS would have generated a further net profit of Rs.28.21 crore, which services are retained with the AAI. There is also notional reimbursement of employee's cost as per the agreement which would run to Rs.56.88 crore. It is also specifically averred that in addition, the AAI would not also be required to make any Capital Expenditure (CAPEX) and Operational Expenditure (OPEX). There is no erosion of profit base as claimed by the Employees' Unions and their apprehensions are misplaced.

V. The RFP being tailor-made to suit AEL:

41. Before we embark upon the examination of the factual aspects pointed out, we cannot but observe that when the RFP was brought about, there could have been no contemplation of who would be the successful bidder in the global tender floated. Only one writ petition, W.P(C)No's:5482 of 2018 was filed before the bid was opened, which did not challenge the RFP on the ground of it being tailor made. The challenge was against privatization

and excluding the State from due participation. The other writ petitions were filed after the opening of the bid raising allegations of nepotism in favour of the successful bidder. It also has to be pertinently observed that there is no allegation raised against the bidding process or the choice made of AEL from among the total bids received; where alone there is a scope for undue favour being extended. Admittedly 10 bidders qualified who together submitted 36 bids with respect to the six Airports. Considering the magnitude of the project, we are of the opinion that the number of bidders is substantial. It is also of considerable import that there was a global tender floated.

42. The allegation raised of the RFP being tailor-made is urged on two grounds (i) the financial capacity placed at Rs.3,500 crore and (ii) the absence of experience in development and management of Airports. As far as the first ground urged, it is to be noticed that the lease is for a period of fifty years with a revision of Master Plan every five years as contemplated in clause 12.2.4 of the Draft Agreement. The Phase-I CAPEX as indicated from the RFP applicable to the Thiruvananthapuram Airport is Rs.413 crore. The Performance Security as

provided in the Draft Agreement is again Rs.80 crore for Phase-I, which, after completion of Phase-I, would stand revised to an amount equal to 10% of the yearly concession fee paid by the Concessionaire, in the immediately preceding concession-year (Clauses 9.1.1 and 9.1.3 of Exhibit P16). Considering the magnitude of the project, that too a global tender, we are not convinced that there was any subterfuge involved in fixing the minimum qualification of financial capacity at Rs.3,500 crore. It is also to be noticed that, one a State owned Corporation and the other a Public Limited Company, in which State is the major share holder; KSIDC and CIAL were both qualified to bid as per the RFP. When there were nine others bidding for the six Airports, there can be no allegation raised of the financial capacity being tailor-made for AEL. The other bidders failed in all the Airports only because AEL quoted the highest bid in each of the six Airports. We reiterate that there is no allegation raised as to the opening of the bids or its acceptance and the entire gamut of arguments addressed were on the policy to privatize and the haste in finalizing the RFP. Along with the argument that the limit prescribed was too high so as to exclude small operators, there is also an argument addressed that the prescription

of financial capacity had to be met separately for each of the Airports attempted to be leased out; which are mutually destructive pleas.

43. The next ground urged is of Airport experience being absent in the RFP. The contention is raised mainly on the ground that at the earlier occasions especially with respect to Delhi and Mumbai Airports the qualification prescribed included Airport experience. In paragraph 6 of Exhibit P12, approval of the PPPAC, it is specifically noticed that the eligible projects as per the RFP were the projects undertaken in the infrastructure sub-sectors set forth in the Harmonised Master List of Infrastructure Sub-sectors issued by the Department of Economic Affairs. The Harmonised Master List was notified as per Exhibit R6(d) produced in the counter affidavit dated 28.03.2019 of the AAI in W.P(C) No.6823 of 2019. The PPPAC in paragraph 6 of Exhibit P12 in W.P(C) 5482 of 2019, considered the issue of other infrastructure sectors being included for qualification purposes. It was found that the critical element for the present proposal also involves construction and operation of facilities, making it suitable for inclusion of all infrastructure projects as experience. It was also specifically noticed that the eligibility

& connected cases

criterion further require a single project of at least

Rs.1400 crore, thus eliminating the small players. The opinion of the EGoS that in 'brown field' Airports; ie: existing Airports as distinguished from 'green field' being newly established, Airport experience need not be a pre-requisite or a post-bid requirement.

44. The argument that the Delhi and Mumbai Airport though brown field, required pre-qualification of Airport experience is countered by the AAI, by production of the RFQ for operation and transfer of Ahmedabad Airport through PPP. We deem it appropriate that the counter arguments raised in W.P(C) No.6823 of 2019, by the AAI in its counter affidavit at paragraphs 28 and 29 be extracted hereunder:

"28. It is submitted that the development of an airport not only consists of aeronautical assets, but also non-aeronautical and assets that are to be created/developed in the city side. The pre-fixed percentage of revenue generated from the non-aeronautical assets contributes for subsidizing the aeronautical tariff. Though there are many experienced players in Indian market who have sufficient experience in the transport (other than airport) energy, communication, social and commercial infrastructure, there are only very few players with airport operation experience. In case of making airport experience as mandatory for the bidding process, the interested bidders who have

connected cases

good experience in other sectors will have to form a consortium with airport operators in abroad in order to demonstrate the airport experience. This creates a huge demand for the airport operators, who in turn dictate terms for their association and the cost of their engagement also very high. This resulted in many Indian players, having experience in other sectors, showing disinterest for such transaction leaving the competition limited only to Indian airport operators. Therefore, the requirement of operations and management experience was not made mandatory in the present Request for Proposal. Even in the Request for Qualification issued for six airports during September 2013, prior operation and management experience was not made mandatory. A copy of RFQ for Operations, Management and Transfer of Ahmedabad Airport through PPP is attached as Exhibit R6(c) [underlining by us for emphasis].

29. The Clause 2.2.3 of this RFQ says as hereunder:

"O&M Experience: The Applicant shall, in the case of Consortium, include a member who shall subscribe and continue to hold at least 10% (ten per cent) of the subscribed and paid up equity of the SPV for a period of 5 (five) years from COD of the Project, and has either by itself or through its Associate, experience of 5 (five) years or more in operation and maintenance (O&M) of Category I projects specified in Clause 3.2.1, which have an aggregate capital cost equal to the Estimated Project Coast. In case the Applicant is not a Consortium, it shall be eligible only if it

has equivalent experience of its own or through its Associates. In the event that the Applicant does not have such experience, it should furnish an undertaking that if selected to undertake the Project, it shall engage experienced and qualified personnel for discharging its operation & maintenance (O&M) obligations in accordance with the provisions of the Concession Agreement, failing which the Concession Agreement shall be liable to termination" .

Therefore, in the current exercise, not keeping the airport experience as a pre-requisite is not a recent concept. The decision on the O&M experience has been evolved over a period of time"

[underlining from the counter affidavit].

This was in the year 2013, long before the present lease. There are very few operators at the national level having Airport experience and hence the inclusion of the infrastructure sectors in the Harmonised Master List, is the submission. We also find the explanation, quite compelling; that otherwise there would be a monopoly exercised by those players having Airport experience, who would have an edge over others and be placed in a position from which they would dictate terms. We do not find any reason to hold the RFP to be vitiated for reason of the same being tailor-made for AEL, which remains in the realm of an allegation without substantiation.

VI. The contentions raised on the basis of the Guidelines for Approval of PPP Projects Exhibit P10 in W.P(C)5482 of 2019

45. In considering the above issue, we first look at the confines of judicial review as has been argued extensively by all the respondents. A wealth of decisions, spanning over a large period, were placed before us. We specifically refer to Silpi Construction Contractors v. Union of India [2019 (11) Scale 592] which referred to a number of the afore-cited decisions in paragraphs 7 to 18, which we need not reiterate. We extract paragraphs 19 and 20:

"19. 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 in all the aforesaid decisions 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 Art.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. As laid down in the judgments cited above 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.

20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to

the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, *mala fides* or perversity. With this approach in mind we shall deal with the present case".

Keeping in mind the caution of self-imposed restraint; while examining such matters having commercial overtones, that interference is possible on judicial review only if the exercise is found to be arbitrary, irrational, *malafide* or vitiated by bias or for overwhelming public interest, we proceed to consider the submissions made.

46. Exhibit P10 is only in the form of guidelines and it has no statutory force. The contentions first raised on Exhibit P10 were that it requires an RFQ prior to the RFP and contemplates a two stage bid process. Clause 7 in

Exhibit P10 has the nominal heading 'Expression of Interest', wherein after the 'in-principle' clearance of PPPAC the Administrative Ministry invites expression of interest in the form of RFQ for shortlisting pre-qualified bidders. In the second stage, by Clause 9 of Exhibit P10 invitation to submit financial bids, including all the agreements are to be issued after clearance of PPPAC. The 'in-principle' clearance of PPPAC before RFQ is also stated to be only in circumstances where there is no duly approved Model Concession Agreement (MCA), as per Clause 6.3. The counter affidavit of the AAI in W.P(C) 5482 of 2019 specifically states in paragraph 13 that after Exhibit P10 Guidelines, The Manual of Procurement of Goods was issued by GoI, Ministry of Finance, Department of Expenditure in 2017. As per the Manual, bidding systems are designed to achieve a balance between countervailing needs of Right Quality, Right Source and Right Price under different complexities/criticality of technical requirements and value of procurements. The Manual prescribes various bidding systems which *inter alia* are (a) a Single Stage Bidding System (b) Single Stage Two Envelopes System (Two Bid System) (c) Single Stage Multiple Envelopes System with pre-qualification (d) Pre-qualification Bidding (PQB) (e)

Two Stage Bidding - Expression of Interest Tenders - Market Exploration. What is adopted in the present case is, Single Stage Two Envelopes System.

47. We pertinently notice that the RFP was accompanied with Volume II Draft Concession Agreement with the following recital in the first page itself:

(This document is meant for exclusive purposes of submitting the proposal against this RFP document and shall not be transferred, reproduced or otherwise used for purposes other than that for which it is specifically issued).

In view of the fact that the Draft Concession Agreement (akin to a Model Concession Agreement) accompanied the RFP, there is no requirement for an 'in-principle' approval by the PPPAC and the two stages of short-listing of pre-qualified bidders and invitation of financial bid is achieved in view of the Single Stage Two Envelope System adopted.

48. The RFP by Clause 1.2.3 requires submission of details of technical capacity and financial capacity in Cover-1 and financial proposals in the format specified on the CPP, ie: the Central Procurement Portal. The former is treated as the Technical Bid which refers to the qualification and the latter the Financial Bid, which is

collectively referred to as the "Bid". The Financial Bid was to be made online which would be tamper free. The Schedule of Bidding process contained in Clause 1.3 also specifies the Technical Bid opening day to be 16.02.2019 and the Financial Bid opening day on 25.02.2019. There can hence be found no irregularity on adopting the Single Stage Two Envelope System as prescribed in the Manual brought out by the Department of Expenditure; which itself is a two stage system. The financial bids of only those who qualify will be opened. There is also no allegation raised that the successful bidder or even the others, whose bids were evaluated, did not qualify.

49. Multifarious contentions were raised on Exhibits P11 and P13 comments by the Niti Ayog and Department of Expenditure having been glossed over by the PPPAC. Coupled with the above allegation, it is also stated that the PPPAC abdicated its powers to swallow the findings of EGoS. In the context of the said allegation, we first notice the ASG's submission that Exhibit P10 Guidelines was issued by the Department of Expenditure, while the Cabinet itself as evident from Exhibit P4 produced in W.P(C) No.5482 of 2019 appointed an EGoS with four Secretaries who are also members of PPPAC along with the Secretary of the

Department of Law as seen from the constitution of PPPAC in Exhibit P10. What is, hence, relevant is the decision of the EGoS and not the PPPAC.

50. We also notice the following decisions placed by the ASG to contend that in the wake of the decision taken by the EGoS, there was no infirmity in the officers of the other Departments having attended the meeting of the PPPAC as deputed by the Secretary. 1968 (2) SCR 267 (Ishwarlal Giridharlal Joshi v. State of Gujarat), wherein a notification was signed by an Under Secretary when the provision required it to be signed by the Secretary or some officer duly authorized to certify the declaration under Section 6 of the Land Acquisition Act. Rule 13 of the Rules of Business was found to provide for an order or instrument of the Government to be signed by a Secretary, Additional Secretary, Joint Secretary or such officer as specifically empowered in that behalf. In (1974) 2 SCC 831 (Shamser Singh v. State of Punjab) (1970) 1 SCC 443 (A.Sanjeevi Naidu v. State of Madras) was followed and held that :

"35. The scheme was upheld for these reasons. The Governor makes rules under Article 166(3) for the more convenient transaction of business of the Government of the State. The Governor cannot only allocate the various subjects amongst the Ministers

but may go further and designate a particular official to discharge any particular function. But that could be done on the advice of the Council of Ministers. The essence of Cabinet System of Government responsible to the Legislature is that an individual Minister is responsible for every action taken or omitted to be taken in his Ministry. In every administration, decisions are taken by the civil servants. The Minister lays down the policies. The Council of Ministers settle the major policies. When a civil servant takes a decision, he does not do it as a delegate of his Minister. He does it on behalf of the Government. The officers are the limbs of the Government and not its delegates. Where functions are entrusted to a Minister and these are performed by an official employed in the Minister's department, there is in law no delegation because constitutionally the act or decision of the official is that of the Minister".

(Underlined by us for emphasis)

Going by the above precedents, it cannot be said that the Secretaries themselves should have participated in the PPPAC and we find that all the Departments referred to in Exhibit P10 are seen to have been participated in the PPPAC. Further, we find favour with the ASG's submission that EGoS is a Committee appointed by the Cabinet which has hierarchical prevalence over the PPPAC, which is constituted as per Exhibit P10 Guidelines. As to the haste

in granting approval, it has to be stated that when usually the executives are accused of lethargy due to red-tape; when a decision is taken with promptitude, then there is allegation of undue haste. The three weeks provided for granting approval in the guidelines is not the minimum period, but the maximum. There is also no valid ground raised in support of the allegation that there was an undue haste to complete the procedure before the Code of Conduct for the General Elections of 2019 came to be enforced. If an elected Government actively pushed its policy to implement what it thinks is good for the Country, there cannot be any allegation raised on that sole count without something more; which is absent. The allegation itself arose only when AEL turned out to be the successful bidder; which we can find only as a result of the higher quote made, obviously on a better analysis of the proposal than the other bidders and may be, for all we know fortuitous. Pertinent also is the fact that the Letter of Award was issued only after the new Government took office. The fact that the very same political dispensation came back to power was also not predictable.

51. Now we come to the arguments addressed on the aspect of comments on Exhibits P11 and P13 having been

glossed over. It has been pointed out that Exhibit P11 indicate that the per passenger fee evaluation parameter and the technical and financial capacities were sought to be reviewed. As far as Exhibit P13, it had raised the issue of Two Stage procedure as required in Exhibit P10 Guidelines not being followed. It is also stated that that there is no approved MCA for the project. We have already found that the Single Stage Two Envelopes System as per the Manual of 2017 was followed and the Draft Concessionaire Agreement having been accompanied with the RFP. The further contention raised is of no project cost estimate having been made and that the RFP is a poorly prepared project as seen in Clause z. There are also other concerns raised which we will presently deal with.

52. Here we find it apposite, to observe that Exhibit P10 is not statutory and Exhibits P11 and P13 are only in the nature of recommendations, which again do not have any statutory force. These recommendations are only in the realm of an opinion expressed, which can always be overruled by the PPPAC or the EGoS as constituted by the Union Cabinet. The decision of the EGoS is final, subject only to the approval of the Competent Authority. We also notice (2007) 8 SCC 212 [Chief Commercial Manager, Central

Railway v. G.Ratnam], wherein the Hon'ble Supreme Court found that breach of administrative rules, regulations or instructions which have no statutory force are not grounds for judicial review. In the present case, it is also pertinent that noticing the existence of the guidelines and also the constitution of PPPAC, the Cabinet constituted an empowered group of Secretaries conferring them with powers even beyond that of PPPAC.

53. Be that as it may, we have looked at the Concession Agreement to understand whether there is a project cost estimated and whether there is any long term vision as to how the development of the Airport will be carried out. Exhibit P16 produced in the State's writ petition is the Draft Concession Agreement. The 'Scope of the Project' as per Article 2 of the RFP means and include the operations, management and development of the Airport, during the concession period covering those activities provided in clauses (a) to (d). This includes design, development, financing, construction, upgradation and expansion of the Airport in a phased manner. Article 4, 'Conditions Precedent' require that the Concessionaire deliver to the Authority a list of the construction works proposed to be undertaken in the first seven construction

years having due regard to the works currently being implemented and proposed to be implemented by the Authority, as on the date of signing of the agreement. We have already noticed that there is a Performance Security of Rs.80 crore stipulated in Article 9, with revision to be made every five years. The 'Development and Expansion of the Airport' as per Article-12 provides for updation of the Master Plan periodically, i.e., every five years or earlier as the case may be, by Clause 12.2.4. Clause 12.2.5 also specifies the Development Plan for Phase-I and the subsequent phases to be prepared by the Concessionaire as per the provisions of the agreement, applicable laws and permits. The Master Plan for the site, for Phase-I development as per Clause 12.2.1 is provided in Annexure-II to Schedule-A, which lists out the obligation as also the perspective plan for which the RFP provides for a CAPEX of Rs.413 crore. This is noticed by the PPPAC in Exhibit P12 as the estimated CAPEX by Concessionaire in Phase-I. The CAPEX estimated at this point being less than Rs.1000 crore the Competent authority is the Minister and not the Cabinet Committee on Economic Affairs as seen from Ext.P-12. The Minister has approved the RFP as we saw from the Clarificatory Affidavit filed.

54. The Master Plan approval also has to be done by the Independent Engineer as per Article 24 in Exhibit P16. The Independent Engineer is an Engineering Firm selected jointly by the Authority and the Concessionaire as per the criteria set forth in Schedule-A. The remuneration costs and expenses of the said Independent Engineer is to be paid by the Authority which has to be reimbursed by the Concessionaire. The approval of the drawing submitted in accordance with the Master Plan, the supervision of the construction and the certification of its completion are all entrusted with the Independent Engineer, with the Authority also permitted to inspect and verify. We cannot subscribe to the comments expressed in Exhibit P13 as to the project being poorly prepared with the limited expertise we have and without looking into the technical details. The project is stated to be open ended especially by reason of the lease of fifty years, which is amply protected by the obligation of the Concessionaire to revise the Master Plan every five years in accordance with the requirements. The recommendations made by the Niti Ayog and the Ministry of Economic Affairs were considered by the PPPAC and the EGoS which comprises of the Secretaries of the said departments and it is not for us to examine every

detail to ferret out errors and omissions.

55. Tata Cellular v. Union of India, (1994) 6 SCC 651, held at page 687 :

"94. The principles deducible from the above are:

- (1) The modern trend points to judicial restraint in administrative action.
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
- (4) The terms of *the invitation to tender* cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.
- (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of *Wednesbury* principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by *mala fides*.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles".

56. Raunaq International Limited vs. IVR Constructions Limited [(199) 4 SCC 492] and Air India Ltd. v. CIAL [(2000) 2 SCC 617] held that discretionary powers should be invoked in matters of tenders only in furtherance of public interest or if there is *malafides* detected and not merely on making a legal point. In Jagdish Mandal it was held that a review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and *malafides*. The purpose of judicial review was held to be 'to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound".' (sic). We are unable to interfere with the RFP on the grounds raised based on Exhibits P10 to P13.

VII. Concern of Employees.

57. The Employees' Unions have expressed concerns about the employees of the AAI. We specifically notice

Clause 6.5 of the Concessionaire Agreement which deals with 'Authority's Employees'. There is reference to a category of employees called 'Select Employees' who are posted at the Airport by the AAI for deployment during the Joint Management Period and Deemed Deputation Period, which are respectively one calender year and two calender years from the COD. The Select Employees strength would stand reduced only to the extent of those who retire, decease or otherwise separate from the AAI services. As per Clauses 6.5.4 and 6.5.5, the costs for such Select Employees shall be borne by the Concessionaire, payable on a monthly basis, on the AAI raising an invoice, which shall be paid as emoluments to the said employees by the AAI. There is also a requirement that the Concessionaire make employment offers to a minimum of 60% of the Select Employees (Clause 6.5.6) with option given to such employees to either accept the offer or decline it. Clause 6.5.9 also allows those employees at the end of the deemed deputation period, opting to continue with AAI and those who have not received any offer from the Concessionaire, to continue with their employment with AAI. In such circumstances there can be no apprehension raised of retrenchment or loss of emoluments for the existing employees. There could definitely be a

transfer made, which would only be an incidence of service, even otherwise applicable.

VIII. Public Interest.

58. We will now examine the public interest involved or the lack of it alleged. The learned Counsel appearing for all the petitioners vigorously pointed out the absence of public interest, which could have alone motivated the AAI to invoke the provision under Section 12A of the AAI Act. On a totality of the considerations made herein above, as any reasonable man would assume, we are convinced that there is a public interest behind the attempt to lease out the Airport for the purposes of carrying out certain services enumerated under Section 12. We have already noticed that there would be no profit erosion for the AAI and that the Authority stands to gain. The lessee also intends a profit, but however in the process the development of the Airport would also be made possible without any capital expenditure from the AAI. The AAI which retains the operation and management of aeronautical services can bring in more expertise and care to such services, ensuring the safety of the passengers. There is also an attempt to down size the work force in the

AAI confining it again to personnel required for aeronautical services. These are a broad overview of the effects; which however are to be tested in actual execution. We are not expected to embark upon a more comprehensive enquiry nor can we bring in our subjective opinions to interfere with a decision of the executive government, as revealed from the ultimate approval granted by the Union Cabinet.

59. We also notice paragraph 12 from the short counter affidavit dated 14.09.2020 filed by the 1st respondent.

"That the decision to undertake the PPP mode of operation, management and development of some of the airports is taken purely on public interest. Respondent No.2 i.e.AAI is required to spend huge maintenance cost at the non-viable airports, which are maintained for social reasons. Further, the Respondent No.2 is also mandated to spend huge capital expenditure in the development of new airports as also the development of airports where Regional Connectivity Scheme is being implemented. The current exercise of PPP, if implemented then Respondent No.2 is not required to make any capital and maintenance expenditure in these six airports including Thiruvananthapuram airport. In addition, the revenue share that Respondent No.2 would get from the concessionaires will be used for the

development of new airports and existing non-viable airports thereby reducing the financial burden of Respondent No.2".

There cannot be alleged a total absence of public interest and there is nothing to substantiate that there are extraneous reasons; which too are aired only when a particular bidder came out successful in all the six Airports.

IX. Article 131 of the Constitution of India

60. Having found the various grounds raised against the RFP to be devoid of merit, we do not think there is any purpose served in considering the preliminary objection raised by the learned ASG as to the writ petition being not maintainable for reason of there being a dispute between the State and the Union Government, falling within the scope of a dispute referred to under Article 131 of the Constitution. All the same, since the Hon'ble Supreme Court has left open the question we are duty bound to consider the same.

61. At the outset it has to be observed that we are not confining ourselves to the consideration of the writ petition of the State, since there are other writ

petitions raising different grounds against the RFP, placed before us. Even with respect to the writ petition of the State we are not convinced that it is a dispute falling under Article 131. Article 131(a) speaks of any dispute between the Government of India and one or more States. In Union of India Vs. State of Rajasthan 1984 (4) SCC 238] it was held that Article 131 of the Constitution is attracted only when '*a dispute arises between or amongst the States and the Union in the context of the constitutional relationship that exists between them and the powers, rights, duties, immunities liabilities, disabilities etc., flowing there from*'(sic). Therein a suit was filed by the State of Rajasthan against the Railway Administration and Union of India, before the District Court, claiming damages for goods rendered useless, which were delivered by the Railways to the Collector, Rajasthan for rehabilitation activities. The right of the State of Rajasthan to sue for damages was held to be not giving rise to a dispute between the Union and the State. The State's claim is akin to that of any other consignee of goods and there was not even a formal contract entered into between the Union and the State, was the finding. The claim involved was also under Section 80 of the Indian Railways Act 1890, which is

essentially against the Railway Administration and the Union of India was impleaded as a party, only by reason of it being the owner of the Indian Railways. Neither of the parties in that proceeding had questioned the applicability of the provisions of the Indian Railways Act, 1890. It was held that there was no question of the dispute falling within the scope of Article 131.

62. In the present case too, the challenge made is against the tender floated by the AAI, a statutory authority to bring in private participation for the operation and management of an airport; in services not involving air traffic service and watch and ward at airports. The lease of the Airport for such purposes is permitted statutorily by Section 12A of the AAI Act, with the previous approval of the Central Government. The Private Public Participation which is a policy of the Union Government, statutorily recognised with respect to the Airports; is not questioned in the writ petitions. The question raised is only whether the AAI acting within the confines of Section 12A, is able to satisfy the mandate of public interest or the interest of better management, in leasing out the Airports. The State had bid under the RFP an attempt to participate in a commercial venture. There

is no question arising as to the relationship between the Union Government and the State in the federal set up, as envisaged in the Constitution of India. There is no question arising which involves overlapping of the power, authority or right of the Central Government and that of the State Government. As has been held in State of Karnataka vs. Union of India [1977 (4) SCC 608] "the quintessence of Article 131 is that there has to be a dispute regarding a question on which the existent or extend of a legal right depends"(sic). We do not see any such dispute arising even in the State's contention regarding legitimate expectation and promissory estoppel, which is solely grounded on communications exchanged between the Union Government and the State, not having any bearing on their respective powers or authority. The policy of the Central Government is not under challenge and even the State's bid for the lease under the RFP, could be maintained only under Section 12A of the AAI Act. The dispute essentially is between the State and the AAI which cannot be said to be a dispute wherein only the Hon'ble Supreme Court can be moved under Article 131 of the Constitution. We hence reject the preliminary objection raised by the learned ASG.

X. Our Conclusion

63. We conclude that there is absolutely no valid ground to cause interference to the proceedings challenged in the batch of writ petitions. As is discernible from the averments in the writ petitions, the challenge is against privatization which is the declared policy of the Union Government. With respect to Airports it is Public-Private Participation, which has been statutorily declared by incorporation of Section 12A to the AAI Act. There is no challenge to the statutory provision. Interference to a policy framed by the elected Government it is trite, is difficult, and the feeble challenge raised herein against the policy is devoid of merit. .

(i) The State nominated the KSIDC to bid under the Request for Proposal issued by the Airport Authority of India, with a Right of First Refusal on the maximum bid coming within the range of ten per cent. The bid failed and both have now turned against the very RFP under which they participated, with an edge over others. W.P(C) No.6076 of 2019 filed by KSIDC and W.P(C)No.6823 of 2019 filed by the State and the case set up by them, according to us, is a classic example of the proverbial 'sour grapes'. The State also raised a ground of legitimate expectation, which we

rejected. The said writ petitions are only to be dismissed and we do so.

(ii) We notice that W.P(C)No.5482 of 2019 has, by way of an amendment, challenged the Press Note published revealing the approval of the Cabinet for leasing out of three Airports at Ahmedabad, Lucknow and Mangaluru. Though there is a prayer challenging the lease of all the six Airports, we have found that the RFPs were separate which have not been produced or challenged. The challenge has to be confined to the RFP for Thiruvananthapuram International Airport. W.P(C)No.5482 of 2019 and W.P(C)No.7961 of 2019 filed by the Union of Employees are also found to be liable to be dismissed on the conclusions arrived at by us with respect to the grounds raised therein and also for reason of the Letter of Award issued to the successful bidder having not been challenged. We dismiss these writ petitions too.

(iii) W.P(C) No.2224 of 2019 and W.P(C) No.20459 of 2020 are petitions filed without establishing their *locus standi*. We find them to be mischievous and an abuse of process of this Court and we would have, while rejecting them, imposed heavy costs, but for the fact that they have not taken up any additional time of this Court. We hence

dismiss the above on the further ground of the two writ petitions being a clear abuse of process of this Court.

(iv) W.P(C) No.7060 of 2019 raises almost similar grounds as raised by the State, in public interest, which also is liable to be rejected and we do so.

(v) W.P(C) No.21321 of 2019 is dismissed as infructuous.

Ordered accordingly. The parties shall suffer their respective costs. All pending Interlocutory Applications, not specifically ordered, would stand closed.



Sd/-
K. Vinod Chandran
Judge

Sd/-
C.S.Dias
Judge

vku/jma.

APPENDIX OF WP(C) 2224/2019

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF REQUEST FOR PROPOSALS DT.14.12.2018
ISSUED BY THE AIRPORTS AUTHORITY OF INDIA.
- EXHIBIT P2 TRUE EXTRACT OF REPORT OF THE COMPTROLLER AND
AUDITOR GENERAL OF INDIA FOR THE YEAR ENDED MARCH
2012 ON IMPLEMENTATION OF PUBLIC PRIVATE
PARTNERSHI,INDIRA GANDHI INTERNATIONAL
AIRPORT,DELHI WITH RELEVANT DETAILS.
- EXHIBIT P3 TRUE COPY OF AERODROME LICENCE DT.02.03.2007
ISSUED BY THE DIRECTOR GENERAL OF CIVIL
AVIATION,NEW DELHI.
- EXHIBIT P4 TRUE COPY OF THE REQUIREMENTS OMITTING THE FORM
OF APPLICATIONS ETC.,ISSUED BY THE DIRECTOR
GENERAL OF CIVIL AVIATION,NEW DELHI.
- EXHIBIT P5 TRUE COPY OF REPORT OF THE RRIPARTITE COMMITTEE
CONSTITUTE BY THE MINISTRY OF CIVIL
AVIATION,GOVT.OF INDIA,SUBMITTED ON 02.06.2009
SUBMITTED TO THE MINISTRY OF CIVIL AVIATION.
- EXHIBIT P6 TRUE COPY OF REPORT OF PARLIAMENTARYSTANDING
COMMITTEE ON TRANSPORT,TOURISM AND CULTURE
ONPRIVATIZATION OF SERVICES AT AIRPORTS SUBMITTED
IN NOVEMBER,2013.
- EXHIBIT P7 TRUE COPY OF COMMUNICATION NO.DO NO.AV-
18030/17/2015-AD/109570-F DT.28.8.2015 BY THE
MINISTER FOR CIVIL AVIATION,GOVERNMENT OF INDIA.
- EXHIBIT P8 TRUE COPY OF DETAILS REGARDING THE SCORE AND
RATING OF CPSES,AS ON 28.12.2018 DT.28.12.2018
- EXHIBIT P9 TRUE COPY OF REPORT OF THE PUBLIC ACCOUNTS
COMMITTEE (2013-2014)ON IMPLEMENTATION OF PUBLIC
PRIVATE PARTNERSHIP-INDIRA GANDHI INTERNATIONAL
AIRPORTL,DELHI WITH RELEVANT DETAILS.
- EXHIBIT P10 TRUE COPY OF ORDER DT.29.01.2014 IN W.P.NO.2369
OF 2014 ON THE FILE OF THE MADRAS HIGH COURT.

RESPONDENT'S/S EXHIBITS:

- EXHIBIT R1 A TRUE COPY OF THE LETTER DATED 25/08/2020 ISSUED
BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT.

APPENDIX OF WP(C) 5482/2019

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 A TRUE COPY OF THE SCORE AND RATING OF CPSE AS ON
28/12/2018
- EXHIBIT P2 A TRUE COPY OF THE REPORT DATED 31/10/2013 ON
PRIVATIZATION OF SERVICES AT AIRPORTS SUBMITTED
BY THE DEPARTMENT RELATED PARLIAMENTARY STANDING
COMMITTEE ON TRANSPORT, TOURISM AND CULTURE,
BEFORE THE PARLIAMENT.
- EXHIBIT P3 A TRUE COPY OF THE LETTER DATED 28/8/2015, ISSUED
BY THE THEN MINISTER FOR CIVIL AVIATION TO ONE OF
THE MEMBERS OF PARLIAMENT.
- EXHIBIT P4 A TRUE COPY OF THE RELEVANT EXTRACT OF THE
DECISION OF THE UNION CABINET, POSTED ON
8/11/2018 IN THE WEBSITE MAINTAINED BY THE PUBLIC
INFORMATION BUREAU
- EXHIBIT P5 A TRUE COPY OF THE RELEVANT EXTRACT OF THE
REQUEST FOR PROPOSAL DATED 14/12/2018 ISSUED BY
THE 4TH RESPONDENT
- EXHIBIT P6 A TRUE COPY OF THE RELEVANT EXTRACT OF THE
REQUEST FOR QUALIFICATION IN RESPECT OF CHENNAI
INTERNATIONAL AIRPORT, ISSUED BY THE 2ND
RESPONDENT ON 2/9/2013
- EXHIBIT P7 A TRUE COPY OF THE RELEVANT EXTRACT OF THE AIR
TRAFFIC REPORT -2018 PUBLISHED IN THE WEBSITE
MAINTAINED BY THE 2ND RESPONDENT.
- EXHIBIT P8 A TRUE COPY OF THE RELEVANT EXTRACT OF THE 3RD
PAY REVISION ORDER
- EXHIBIT P-9 A TRUE COPY OF THE REPRESENTATION SUBMITTED TO
PRIME MINISTERS' OFFICE THROUGH PGPORTAL GOV.IN
ON 17.02.2019
- EXHIBIT P-10 A TRUE COPY OF THE RELEVANT EXTRACT OF THE
GUILDELINEs FOR FORMULATION, APPRAISAL AND
APPROVAL OF PUBLIC-PRIVATE PARTNERSHIP (PPP)
- EXHIBIT P-11 A TRUE COPY OF THE APPRAISAL NOTE DATED
10.12.2018, FORWARDED BY THE DEPARTMENT OF
ECONOMIC AFFAIRS.

connected cases

- EXHIBIT P12 A TRUE COPY OF THE RECORD OF DISCUSSION OF 85TH MEETING OF THE PUBLIC PRIVATE PARTNERSHIP APPRAISAL COMMITTEE, HELD ON 11.12.2018
- EXHIBIT P-13 A TRUE COPY OF THE OFFICE MEMORANDUM DATED 10.12.2018, FORWARDED BY THE NITI AYO TO DEPARTMENT OF ECONOMIC AFFAIRS.
- EXHIBIT P14 A TRUE COPY OF THE RELEVANT EXTRACT OF THE DECISION OF THE UNION CABINET, POSTED ON 3/7/2019 IN THE WEBSITE MAINTAINED BY THE PUBLIC INFORMATION BUREAU.

RESPONDENT'S/S EXHIBITS:

- EXHIBIT R6(a) TRUE COPY OF THE PRESS NOTE DTD. 08.11.2018 ISSUED THROUGH THE PRESS INFORMATION BUREAU, GOVERNMENT OF INDIA.
- EXHIBIT R6(b) TRUE COPY OF PRESS RELEASE DTD. 25.02.2019.
- EXHIBIT R5(A) TRUE COPY OF THE GAZETTE NOTIFICATION F.NO.13/1/201/-INF, DATED 14/11/2017.



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APPENDIX OF WP(C) 6076/2019

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 COPY OF THE LETTER VIDE NO. 1413/SCA/2003 DATED 23-04-2003 OF THE 1ST RESPONDENT.
- EXHIBIT P2 COPY OF THE LETTER DO. NO. AV.24018/1/99-AA IP-3 DATED 02-12-2003 OF THE 1ST RESPONDENT.
- EXHIBIT P3 COPY OF THE GOVERNMENT ORDER (MS) NO. 82/2005/RT DATED 29-03-2005
- EXHIBIT P4 COPY OF THE LETTER DO.NO. 2195/18/CM DATED 21-11-2018 OF THE CHIEF MINISTEER.
- EXHIBIT P5 COPY OF THE REQUEST FOR PROPOSAL (RFP) NOTIFIED BY THE 3RD RESPONDENT ON 14-12-2018. (*SUBSTITUTED) (EXT. P5 SUBSTITUTED AS PER ORDER DATED 08/03/2019 IN IA NO.1/2019.)
- EXHIBIT P6 COPY OF THE ADDEENDUM DATED 28-12-2018 OF THE AIR PORT AUTHORITY OF INDIA.
- EXHIBIT P7 COPY OF THE ADDENDUM DATED 22-01-2019 OF THE AIR PORT AUTHORITY F INDIA EXTENDING THE TIME FOR QUESRIES
- EXHIBIT P8 COPY OF THE RELEVANT EXTRACT OF THE DRAFT CONCESSION AGREEMENT OF THE AIR PORT AUTHORITY OF INDIA.
- EXHIBIT P9 COPY OF THE NOTIFICATION VIDE ADDENDUM NO. 2 DATED 08-02-2019 OF THE AIR PORT AUTHORITY OF INDIA.
- EXHIBIT P10 COPY OF THE NOTIFICATION VIDE ADDENDUM NO.1 DATED 08-02-2019 OF THE AIR PORT AUTHORITY OF INDIA.
- EXHIBIT P11 COPY OF THE GOVERNMENT ORDER (RT) NO. 67/2019/TRANS DATED 12-02-2019
- EXHIBIT P12 COPY OF THE COVERING LETTER DATED 13-02-2019 ISSUED BY THE PETITIONER TO THE CHAIRMAN AIR PORT AUTHORITY OF INDIA.
- EXHIBIT P13 COPY OF THE EVALUATION REPORT DATED 22-02-2019 OF THE AIR PORT AUTHORITY OF INDIA.
- EXHIBIT P14 COPY OF THE PRICE BID STATEMENT OF GOVERNMENT EPROCUREMENT SYSTEM NOTIFIED ON 25-02-2019.

RESPONDENT'S/S EXHIBITS:

EXHIBIT R5 (A) TRUE COPY OF THE PRESS NOTE DATED
08.11.2018 ISSUED THROUGH THE PRESS
INFORMATION BUREAU, GOVERNMENT OF INDIA

EXHIBIT R5 (B) TRUE COPY OF THE PRESS RELEASE DATED
25.2.2019

EXHIBIT R1 A TRUE COPY OF THE LETTER DATED 18.12.2018
ISSUED BY THE GOVERNMENT OF KERALA

EXHIBIT R1 B TRUE COPY OF THE GAZETTE NOTIFICATION
F.NO.13.01.2017 INF DATED 14.11.2017

EXHIBIT R3 (A) TRUE COPY OF THE COMMUNICATION D.O.
NO.333/18/CM DATED 08/12/2018.

EXHIBIT R3 (B) TRUE COPY OF THE COMMUNICATION D.O.
NO.415/D2/2018/TRANS, DATED 11/12/2018.

EXHIBIT R3 (C) TRUE COPY OF THE REPLY LETTER D.O. NO. AV
24011/141/2015-AD (VOL.IV) DATED 12/12/2018
ISSUED BY THE SECRETARY, CIVIL AVIATION.

EXHIBIT R3 (D) TRUE COPY OF THE COMMUNICATION NO.
415/D2/2018/TRANS DATED 18/12/2018.

EXHIBIT R3 (E) TRUE COPY OF RFQ FOR OPERATIONS, MANAGEMENT AND
TRANSFER OF AHMEDABAD AIRPORT THROUGH PPP.
TRUE COPY OF THE GAZETTE NOTIFICATION F.

EXHIBIT R3 (F) NO.13/01/2017-INF, DATED 14/11/2017.
TRUE COPY OF THE CERTIFICATE OF
ANNEXURE-A INCORPORATION DATED 4.6.2011 ISSUED BY THE REGISTRAR OF
NON-TRADING COMPANIES KERALA.
TRUE COPY OF RESOLUTION DATED 21.8.2020

ANNEXURE-B ISSUED BY THE PRESIDENT IN THE LETTERHEAD DATED
3.9.2020.
TRUE COPY OF THE ADDENDUM NO.4 DATED

ANNEXURE-C 28.12.2018.
TRUE COPY OF G.O.(Rt.)NO.57/2019/TRANS DATED

ANNEXURE-A 12.02.2019.

APPENDIX OF WP(C) 6823/2019

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE LETTER NO. AAT/LM/GEN/2018 DATED 22.11.2018 OF THE SIXTH RESPONDENT.
- EXHIBIT P2 TRUE COPY OF THE D.O. LETTER NO.1413/SCA/2003 DATED 23.04.2003.
- EXHIBIT P3 TRUE COPY OF THE DO NO.20311/D2/97/TRAN.
- EXHIBIT P4 TRUE COPY OF THE D.O. LETTER NO. AV.24018/1/99-AAI P-3 DATED 02.12.2003.
- EXHIBIT P5 TRUE COPY OF G.O. (MS)NO.11/2004/TRANS DATED 16.03.2004.
- EXHIBIT P6 TRUE COPY OF G.O. (MS) NO.82/05/RD DATED 29.03.2005.
- EXHIBIT P7 TRUE COPY OF THE D.O. LETTER NO.2195/2018/CM DATED 21.11.2018.
- EXHIBIT P8 TRUE COPY OF D.O. LETTER NO.AV.24011/141/2015-AD DATED 28.11.2018.
- EXHIBIT P9 TRUE COPY OF THE MINUTES OF THE MEETING OF THE EMPOWERED GROUP OF SECRETARIES (EGOS) DATED 04.12.2018.
- EXHIBIT P10 TRUE COPY OF D.O. LETTER NO.3333/18/CM DATED 08.12.2018.
- EXHIBIT P11 TRUE COPY OF LETTER NUMBERED AS DO NO.415/D2/2018/TRANS DATED 11.12.2018.
- EXHIBIT P12 TRUE COPY OF DO NO.AV.24011/141/2015-AD (VOL IV) DATED 12.12.2018.
- EXHIBIT P13 TRUE COPY OF THE REQUEST FOR PROPOSALS DATED 14/12/2018 (AS REVISED FINALLY) WITH REGARD TO CONCESSION FOR OPERATION, MANAGEMENT AND DEVELOPMENT OF THIRUVANANTHAPURAM INTERNATIONAL AIRPORT.
- EXHIBIT P14 TRUE COPY OF THE REQUEST FOR PROPOSAL DATED 01.04.2005 REGARDING RESTRUCTURING AND MODERNIZATION OF DELHI AIRPORT.

- EXHIBIT P15 TRUE COPY OF THE INVITATION TO REGISTER A
EXPRESSION OF INTEREST DATED 17.02.2004 FOR
RESTRUCTURING AND MODERNIZATION OF DELHI AND
MUMBAI AIRPORTS.
- EXHIBIT P16 TRUE PHOTOCOPY OF THE DRAFT CONCESSION AGREEMENT.
EXHIBIT P17 TRUE COPY OF THE ADDENDUM NO.2 DATED 08.02.2019
TO THE REVISED DRAFT CONCESSION AGREEMENT.
- EXHIBIT P18 TRUE COPY OF LETTER NO. AAI/KID/PPP/6 APTS/2018
DATED 05.02.2019.
- EXHIBIT P19 TRUE COPY OF THE LETTER DATED 27.02.2019 SENT BY
THE HON'BLE CHIEF MINISTER OF KERALA TO THE
HON'BLE PRIME MINISTER OF INDIA.
- EXHIBIT P20 TRUE PHOTOCOPY OF THE LETTER DATED 27.02.2019
SENT BY THE HON'BLE CHIEF MINISTER OF KERALA TO
THE HON'BLE UNION MINISTER FOR CIVIL AVIATION.
- EXHIBIT P21 A TRUE COPY OF THE RESOLUTION DATED 24.08.2020 OF
THE TWENTIETH SESSION OF THE FOURTEENTH KERALA
LEGISLATIVE ASSEMBLY
- EXHIBIT P22 A TRUE COPY OF THE LETTER DATED 25.08.2020 FROM
[AS RE-NUMBERED THE MINISTRY OF THE CIVIL AVIATION TO THE
VIDE ORDER CHAIRMAN, AIRPORTS AUTHORITY OF INDIA.
DT.06.10.2020]
- EXHIBIT P23 A TRUE COPY OF LETTER OF AWARD
[AS RE-NUMBERED NO.AAI/SIU/PPP/06APTS/LOA/THIRUVANANTHAPURAM/
VIDE ORDER 2020/364 DATED 01.09.2020.
DT.06.10.2020]

RESPONDENT'S/S EXHIBITS:

- ANNEXURE A TRUE COPY OF THE CERTIFICATE OF INCORPORATION
DATED 4.6.2011 ISSUED BY THE REGISTRAR OF NON
TRADING COMPANIES KERALA.
- ANNEXURE B TRUE COPY OF RESOLUTION DATED 21.08.2020 ISSUED
BY THE PRESIDENT IN THE LETTERHEAD DATED
3.9.2020.
- ANNEXURE C TRUE COPY OF THE ADDENDUM NO. 4 DATED 28.12.2018.
- ANNEXURE D TRUE COPY OF G.O(RT) NO. 67/2019/TRANS DATED
12.2.2019.

- EXHIBIT R9A TRUE COPY OF THE PRESS NOTE DTD.8.11.2018 ISSUED THROUGH THE PRESS INFORMATION BUREAU,GOVERNMENT OF INDIA.
- EXHIBIT R9 B TRUE COPY OF THE PRESS RELEASE DTD. 25.2.2019
- EXHIBIT R11A TRUE COPY OF THE LETTER NO.415/D2/2018/TRNS DATED 18.12.2018 FROM THE STATE GOVERNMENT TO THE SECRETARY,MINISTRY OF AVIATION, GOVERNMENT OF INDIA
- EXHIBIT R11B TRUE COPY OF THE ADDENDUM NO. 4 DATED 28.12.2018 ISSUED BY THE AIRPORTS AUTHORITY OF INDIA
- EXHIBIT R1 (A) TRUE COPY OF THE LETTER DATED 18.12.2018 ISSUED BY THE GOVERNMENT OF KERALA.
- EXHIBIT R1 (B) TRUE COPY OF THE LETTER DATED 25.08.2020 ISSUED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT.
- EXHIBIT R1 (C) TRUE COPY OF THE LETTER OF AWARD NO. AAI/SIU/PPP/06 APTS/LOA/THIRUVANANTHAPURAM/2020/364 DATED 01.09.2020.
- EXHIBIT R6 (A) TRUE COPY OF THE LETTER NO.415/D2/2018/TRANS DATED 18/12/2018.
- EXHIBIT R6 (B) TRUE COPY OF THE ORDER NO. GO(RT) NO. 67/2019/ TRANS DATED 12/02/2019 ISSUED BY THE PETITIONER.
- EXHIBIT R6 (C) TRUE COPY OF RFQ FOR OPERATIONS, MANAGEMENT AND TRANSFER OF AHMEDANAD AIRPORT THROUGH PPP.
- EXHIBIT R6 (D) TRUE COPY OF THE GAZETTE NOTIFICATION F. NO.13/01/2017-INF, DATED 14/11/2017.
- EXHIBIT R6 (E) TRUE COPY OF THE DOCUMENT SHOWING THE PAYMENT OF RFP PROCESSING FEE.
- EXHIBIT R6 (F) TRUE COPY OF THE COMMUNICATION DATED 28/01/2019.
- EXHIBIT R6 (G) TRUE COPY OF THE CIRCULAR NO.01/01/2010 DATED 20/01/2010.
- EXHIBIT R6 H TRUE COPY OF THE LETTER NO. AV-24011/141/2015 AD (VOL.IV) DATED 25.08.2020
- EXHIBIT R6 I TRUE COPY OF THE LETTER OF AWARD DT.1.9.2020 NO.AA1/SIU/PPP/06APTS/LOA/THIRUVANANTHAPURAM/2020 /3 DATED 01.09.2020

APPENDIX OF WP(C) 7060/2019

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE NOTICE DATED 14.12.2018 BY AIRPORT AUTHORITY OF INDIA INVITING PROPOSAL TO OPERATE,MANAGE AND DEVELOPMENT OF THIRUVANANTHAPURAM INTERNATIONAL AIRPORT.
- EXHIBIT P2 TRUE EXTRACT OF THE REPORT OF THE COMPTROLLER AND AUDITOR GENERAL WITH RELEVANT PAGES OF THE SAME.
- EXHIBIT P3 TRUE COPY OF THE LICENCE GRANTED BY THE DIRECTOR GENERAL OF CIVIL AVIATION VIDE S.O.NO.727(E) DATED 04.10.1994.
- EXHIBIT P4 TRUE COPY OF THE GUIDELINES FRAMED BY THE DIRECTOR GENERAL OF CIVIL AVIATION FOR ISSUING THE AERODROME LICENCE.
- EXHIBIT P5 TRUE COPY OF THE REPORT SUBMITTED BY THE COMMITTEE TO THE GOVERNMENT OF INDIA.
- EXHIBIT P6 TRUE COPY OF THE REPORT SUBMITTED BY THE PARLIAMENTARY STANDING COMMITTEE ON TRANSPORT,TOURISM AND CULTURE,RAJYA SABHA.
- EXHIBIT P7 TRUE COPY OF THE COMMUNICATION SENT BY THE MINISTRY OF CIVIL AVIATION,GOVERNMENT OF INDIA TO PROF.SAUGATA ROY,MEMBER OF PARLIAMENT.
- EXHIBIT P8 TRUE COPY OF THE SCORE AND RATING OF CENTRAL PUBLIC SECTOR ENTERPRISES AS ON 28.12.2018.
- EXHIBIT P9 TRUE COPY OF THE REPORT OF THE PUBLIC ACCOUNTS COMMITTEE OF THE PARLIAMENT HEADED BY SRI.MURALI MANOHAR JOSHI,WITH RELEVANT DETAILS.
- EXHIBIT P10 TRUE COPY OF THE CALCULATION OF STATEMENT SHOWING THE DETAILS OF NUMBER OF PASSENGERS USING THE AIRPORT AND THE INCOME GENERATED.
- EXHIBIT P11 TRUE COPY OF THE GOVERNMENT ORDER DATED 16.03.2004.
- EXHIBIT P12 TRUE COPY OF THE GOVERNMENT ORDER DATED 29.03.2005.

RESPONDENT'S/S EXHIBITS:

EXHIBITR7(A) TRUE COPY OF THE PRESS NOTE DATED 8.11.2018 ISSUED
THROUGH THE PRESS INFORMATION BUREAU, GOVERNMENT OF
INDIA

EXHIBITR7(B) TRUE COPY OF THE PRESS RELEASE DATED 25.2.2019
EXHIBIT R1(A) TRUE COPY OF THE LETTER DATED 25.08.2020 ISSUED
BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT.

EXHIBIT R4(a) True copy of RFQ for Operations, Management and
Transfer of Ahmedabad Airport through PPP.

EXHIBIT R4(b) True copy of the Gazette Notification
F.No.13/1/2017-INF, dated 14.11.2017.



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APPENDIX OF WP(C) 7961/2019

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE RELEVANT PORTION OF REQUEST FOR PROPOSAL DATED 14.12.2018 ISSUED BY THE AIRPORTS AUTHORITY OF INDIA.
- EXHIBIT P2 TRUE COPY OF DETAILS REGARDING THE SCORE AND RATING OF CPSE S AS ON 28.12.2018 DATED 28.12.2018
- EXHIBIT P3 TRUE COPY OF THE EXTRACT FROM THE REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA FOR THE YEAR ENDED MARCH, 2012 (REPORT NO. 5 OF 2012-13) ON IMPLEMENTATION OF PUBLIC PRIVATE PARTNERSHIP, INDIRA GANDHI INTERNATIONAL AIRPORT, DELHI.
- EXHIBIT P4 TRUE COPY OF THE REPORT OF THE TRIPARTITE COMMITTEE CONSTITUTED BY THE MINISTRY OF CIVIL AVIATION, GOVT. OF INDIA, SUBMITTED ON 02.06.2009
- EXHIBIT P5 TRUE COPY OF REPORT OF PARLIAMENTARY STANDING COMMITTEE ON TRANSPORT, TOURISM AND CULTURE ON PRIVATIZATION OF SERVICE AT AIRPORTS SUBMITTED ON 20TH NOVEMBER, 2013
- EXHIBIT P6 TRUE COPY OF COMMUNICATION NO. DO NO. AV-18030/17/2015-AD/109570-F DATED 28.8. 2015 BY THE MINISTER OF CIVIL AVIATION, GOVERNMENT OF INDIA.
- EXHIBIT P7 TRUE COPY OF THE RELEVANT PORTION OF THE PUBLIC ACCOUNTS COMMITTEE (2012-2013) ON IMPLEMENTATION OF PUBLIC PRIVATE PARTNERSHIP-INDIRA GANDHI INTERNATIONAL AIRPORT, DELHI.
- EXHIBIT P8 A PRINT OUT OF THE PRESS RELEASE BY MINISTRY OF FINANCE DATED 16/05/2020.
- EXHIBIT P9 A COPY OF THE SLP(C) 3233/2020 FILED CHALLENGING THE ORDER DATED 18/12/2018, OF THIS HON'BLE COUT IN PRESENT WRIT PETITION.
- EXHIBIT P10 A COPY OF THE CERTIFIED COPY OF ORDER DATED 28/02/2020 IN CIVIL APPEAL NO.1880/2020.
- EXHIBIT P11 A TRUE COPY OF THE ORDER PASSED BY THE HONOURABLE SUPREME COURT OF INDIA DATED 04-08-2020 IN WRIT PETITION (CIVIL) NO 643/2020

RESPONDENT'S/S EXHIBITS:

- EXHIBIT R1 (a) TRUE COPY OF THE LETTER DATED 25.08.2020
ISSUED BY THE 1ST RESPONDENT TO THE 2ND
RESPONDENT.
- EXHIBIT R4 (a) True copy of RFQ for Operations, Management
and Transfer of Ahmedabad Airport through
PPP
- EXHIBIT R4 (b) True copy of the Gazette Notification F
No.13/1/2017-INF, dated 14.11.2017
- EXHIBIT R4 (c) True copy of the Schedule U-List of works
proposed by the Authority
- EXHIBIT R(d) True copy of the letter No.AV-
24011/141/2015-AD (Vol.IV) dated 25.08.2020
- EXHIBIT R4 (e) True copy of the Letter of Award
No.AAI/SIU/PPP/06APTS/LOA/Thiruvananthapura
m/2020/364 dated 01.09.2020



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APPENDIX OF WP(C) 21321/2019

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF RESOLUTION DATED 22.7.2019.
EXHIBIT P2	TRUE COPY OF THE ADDENTUM NO.4 DATED 28.12.2018.
EXHIBIT P3	TRUE COPY OF G.O. (RT)NO.67/2019/TRANS DATED 12.2.2019.

RESPONDENT'S/S EXHIBITS:

EXHIBIT R1 (A)	TRUE COPY OF THE LETTER DATED 18.12.2018 ISSUED BY THE GOVERNMENT OF KERALA.
EXHIBIT R1 (B)	TRUE COPY OF THE LETTER DATED 25.08.2020 ISSUED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT.
EXHIBIT R1 (C)	TRUE COPY OF THE LETTER OF AWARD DATED 01.09.2020.



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APPENDIX OF WP(C) 20459/2020

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	THE TRUE COPY OF THE "THE PRINT" NEWS APPEARED IN THE PRINT DATED 21/8/2020.
EXHIBIT P2	THE NEWS APPEARED IN ON MANORAMA DATED 23/8/2020.



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