

(1998) 06 GAU CK 0022

Gauhati High Court

Case No: Civil Rule No. 2159 of 1998

Guddi Enterprises

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: June 16, 1998**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 43 Rule 1
- Constitution of India, 1950 - Article 226

Citation: (1998) 3 GLT 259**Hon'ble Judges:** B.N. Singh Neelam, J**Bench:** Single Bench**Advocate:** R.M. Chatterjee and A.K. Thakur, for the Appellant; K.N. Choudhury and P. Bhowmick, for the Respondent

Judgement

B.N. Singh Neelam, J.

This writ petition is so preferred by M/s. Guddi Enterprises, a proprietorship firm represented by its proprietor for issuance of a writ in the nature of Mandamus/Certiorari or for passing any direction, challenging the Notice Inviting Tender (hereinafter referred to as NIT), in connection with issuance of licence for operating the Airport Restaurant at Guwahati Airport, Guwahati issued by the Airport Authority of India, North Eastern Region, Guwahati Airport, Guwahati published on 6.4.98 in English Daily the Assam Tribune. A copy of the NIT so published is being filed marked as Annexure-I to this petition.

2. Heard Mr. R.M. Chatterjee, learned Counsel for the Petitioner who has submitted that M/s. Guddi Enterprise is engaged in catering business since long and even runs Airport Snacks Bar at Guwahati Airport, fulfilling all its criteria. The Respondent No. 2 is a statutory body and instrumentality of a State constituted under the Airport Authority of India Act, 1994. The NIT in question was for having the licence for operating Airport Restaurant at Guwahati Airport so published by the Respondent

No. 5 Regional Executive Director and the criteria for making a person eligible for participating was so published in the NIT (Annexure-I) is under challenge. It is pointed out that the said NIT suffers from vagueness which as submitted cannot be said to be self-contained document. In the instant case publication of the NIT in question being in connection with commercial contract can well be said to be a basic document inviting attention of the public in general for participating thereunder which rather should have been as per the National Airport Authority's standard form and terms and conditions should not have been incomplete, arbitrary imposing cumbersome conditions. The NIT in question as submitted suffers from all above defects. There is no commencement date, area or space location so also not shown in the notice inviting tender on 6.4.98. There were also wanton proposition particularly Clause (3) of the NIT without indicating as to how the outstanding dues to be ascertained. These irregularities, as submitted by Mr. R.N. Chatterjee are having exfacie bearing on the very face of the tender notice under challenge which is thus liable to be struck off/set aside and hence this writ petition.

3. It is also the case of the Petitioner M/s. Guddi Enterprises that it was not given the same treatment/chance which is contrary to the basic rule and natural justice making it liable for interference under Article 226 of the Constitution. It is also pointed out that as per Clause (4) of the NIT, tender documents were to be availed by 22.4.98 on payment of Rs. 500/-. These documents included full details of licence, terms and conditions, general guidance, form of tender and form of agreement. After receiving such tender documents they were directed to be filled up and presented through Tender Box before the authority concerned by 24.4.98 when as per Clause (6) of the NIT the tenders were to be opened on that very date i.e. 24.4.98 itself at 1500 hours. In this connection it is pointed out that when the present Petitioner approached the authority concerned on 18.4.98 demanding tender documents on payment of Rs. 500/- he was being denied to be supplied with these documents on the ground that there was some injunction orders passed by the Court and this denial was nothing but giving a step-motherly treatment to the present Petitioner which can well said to be malafide, arbitrary and against the principle of natural justice while on the other hand, with regard to some of the persons receiving tender documents prior to 18.4.98, though not submitting those tender papers duly filled up by 24.4.98, were given privilege of extension of date of their depositing tenders only on having private communication with them extending the date for them upto 6.5.98 without in any way noticing public in general with regard to this extension of date upto 6.5.98. This act on the part of the Respondents as to declaring extension of the NIT under challenge is violation of sub principles of law. It is also pointed out that if any of the Clauses of the agreement [3(c) of the agreement] was to be so deleted by the authority, reference of which is made in the affidavit-in-opposition so filed by the Respondents marked as Annexure-IV, it was incumbent on the part of the authority to issue public notice to that effect instead of having private correspondence with Hotel Bellievew and four others who are said to

have procured tender documents prior to 18.4.98 though not submitting the same by 24.4.98. On the point that Hotel Bellievew and four others did not deposit tender papers by 24.4.98, Mr. Chatterjee has referred to Annexure-III of the affidavit-in-opposition so filed by the Respondent and submitted that in a letter so issued by the authority to Hotel Bellievew (Private) Ltd. and four others, the authority is specific in questioning them to deposit tender papers by 6.5.98 and the said letter is so issued on 30.4.98. A reference is also made to Annexure-U of the affidavit-in-opposition so filed by the authority/Respondents which is dated 8.5.98. In this connection, it is vehemently argued that so far as Annexures-II & III of the affidavit-in-opposition are concerned, these letters are issued to some of the persons who are said to have though received tender documents prior to 18.4.98, but correspondence entered into completely in violation of this Court's order dated 29.4.98 so passed in M.A.(F) No. 62/98 in its Misc. Case No. 93/98 by which as submitted by Mr. Chatterjee, the authority was simply directed as to sort out the tender so received without in any way issuing orders or having any communication with the tenderers who have already purchased tenders. This violation on the part of the authority is so apparent on the face of record that it in itself is sufficient to establish that equal opportunity was not so given to the present Petitioner which was so contrary to the basic rule and principles of natural justice.

4. Lastly, by referring the order dated 8.5.98 so passed in this Civil Rule it is also submitted that the present Petitioner had simply challenged the NIT dated 6.4.98 and even made no prayer for interim order, though this Court by order dated 8.5.98 in this Civil Rule was on its own motion pleased to direct the authorities to allow the present Petitioner also to participate in the said tender process by issuing tender papers to the Petitioner and because of this liberty so given by the Court, though not being called for by the Petitioner, the present Petitioner received tender documents but that in no way means that by receiving such documents and filing it up, the Petitioner is in any way reconciled with the grounds so taken in challenging the NIT dated 6.4.98 and the stand so taken by the Petitioner in this Civil Rule still holds good. It is also submitted that when affidavit-in-opposition was so filed by the authority on 26.5.98 an affidavit-in-reply was also given by the present Petitioner on 1.6.98 discussing at length the incompleteness, vagueness of the NIT under challenge and thus on no count it can be said that all these points being argued on behalf of the Petitioner challenging the NIT are beyond pleadings. Hence, the prayer is that the impugned NIT dated 6.4.98 (Annexure-I) with all its ancillary i.e. tender documents etc. be set aside.

5. Mr. K..N. Choudhury, learned Counsel for the Respondent authority on the other hand, has submitted that the present Petitioner has submitted his tender pursuant to the order passed by this Court on 8.5.98 and thus because of his participation, he cannot now challenge the terms and conditions of the NIT in question which is against the public policy. The second point so raised is that the present Petitioner M/s. Guddi Enterprises can also be not allowed to submit against the pleadings

which he has made in this petition. In support of his contention Mr. Choudhury has referred to two of the reported cases. Firstly [State of Haryana and Others Vs. Lal Chand and Others](#), particularly para 8 of its judgment. It is pointed out that one who makes a bid for grant of such privilege with a full knowledge of terms and conditions cannot be permitted to wriggle out of the contractual obligation arising out of acceptance of the bid. The second reported case so relied upon is [Bharat Singh and Others Vs. State of Haryana and Others](#), particularly its para 13, and it is submitted that the writ Petitioner must plead and prove the pleadings and facts on evidence on which he relied and cannot go beyond the pleadings. It is pointed out that in reply to the affidavit-in-opposition so many new points are added and also being argued on behalf of the Petitioner, but while preferring this writ petition all such points are not pleaded. By the plain reading of the contents of the writ petition, as submitted by Mr. Choudhury, it will transpire that the main objection of the present Petitioner was for his getting opportunity to participate in the NIT and that is being extended to him by supplying him tender papers enabling him to participate. Thus, this Civil Rule petition has got no merit, which is liable to be dismissed.

6. After hearing both the side lawyers also after going through the contents of this writ petition with that of the affidavit-in-opposition dated 26.5.98 so filed by the Respondent and the reply to that being filed by the Petitioner on 1.6.98 which are part of the record, and also after going through the Annexures so filed thereunder by the parties, reference of which is made in course of argument by the learned Counsel concerned, also keeping in mind the orders so passed in this Civil Rule on 8.5.98 with that of the order so passed in M.A.(F)No. 62/98 by this Court on 29.4.98 particularly in its Misc. Case referred to above, I hold the view that there is much of substance in the argument so advanced by Mr. R.N. Chatterjee appearing for the Petitioner Guddi Enterprises as regards NIT under challenge in the background of the facts and circumstances suffering from vagueness. Certain acts of the Respondent (National Airport Authority) can also be said to be malafide and arbitrary which can also well be termed to be contrary to the principles of natural justice, such as, commencement date of the licence, location of area which were not shown in the NIT for which the Airport Authority invited tenders on 6.4.98 (Annexure-I), also the authority entering into correspondence with some of the parties receiving tender papers prior to 18.4.98, but not submitting the same duly filled up by 24.4.98, and by entering into correspondence with them extending the date for receiving such tenders duly filled up contrary to the direction of this Court dated 29.4.98 passed in M.A. (F) No. 62/98 in its Misc. Case specifically directing the Airport Authority not to enter into any communication with those persons receiving tender documents and in the background of these acts it can well be said that the NIT under challenge requires interference. Furthermore, the ground so taken by the learned Counsel for the Respondent authority is also not tenable that in the pleadings the Petitioner has not taken any ground challenging the NIT in question.

Paragraph 26 of the writ petition runs as under:

26. That it is a fit case where this Hon"ble Court would interfere by invoking Article 226 of the Constitution of India by issuing appropriate writ/writs and/or direction or directions to cancel the aforesaid NIT issued by the Respondent No. 5 (Annexure-I) and the letter issued by the Respondents inviting submission of tender already purchased, complete in all respect along with requisite enclosures on or before 17-00 hours of 6.5.98 (Anr.-3).

7. Furthermore, the prayer portion of this writ petition at internal page 11 runs as follows:

(a) Issue a writ of Mandamus, commanding the Respondents from acting or taking any steps or further steps in respect of the impugned NIT dated 6.4.98;

(b) A writ Certiorari be issued asking the Respondents to certify and transmit the records relating to NIT, to quash the impugned NIT upon showing cause, if any, make the Rule absolute and quash the impugned NIT;

(c) Ad-interim injunction restraining the Respondents from giving effect of further effect of the impugned NIT and directing the Respondents to maintain status quo until hearing and disposal of the instant writ application, and/or pass such other order/orders as the Hon"ble Court may deem fit and proper.

8. In the background of the contents of paragraph 26 of the writ petition with that of the relief so sought for, it can well be said that the present Petitioner had challenged the NIT in question dated 6.4.98. With regard to Anr. ground so taken by Mr. Choudhury, that because of the present Petitioner receiving tender documents and filling up and submitting the same, the Petitioner has no right to challenge the NIT in question, it is found that in this writ petition this Court vide order dated 8.5.98 observed that learned Counsel for the Petitioner has challenged the NIT dated 6.4.98 and had not made any prayer for interim order. In that background, if this Court vide order dated 8.5.98 directed the Respondents to receive tender and duly fill up the same after issuance of the same to him with a particular direction that the participation of the Petitioner in tender process will be subject to decision in this writ petition, in the background of the facts and circumstances, in my considered opinion it does not debar the present Petitioner to challenge the NIT dated 6.4.98 which was/is his basic objection. Two of the reported cases so cited in the instant case are also distinguishable.

9. Consequently, the NIT under challenge dated 6.4.98 so issued by the National Airport Authority inviting tenders for licence to run Airport Restaurant at Guwahati Airport is thus hereby struck off and declared invalid with all its ancilliary acts/actions so taken by the Respondents relating to the NIT in question. However, if there is no impediment so put or continuing by any of the Court's order restraining/refraining the Respondents National Airport Authority as to proceed

with inviting tender notice in this regard, the Respondent is at liberty to call for a fresh NIT as per the NAA's standard terms and conditions, though not putting any cumbersome conditions, keeping in mind that the criteria so put for eligibility to participate and the terms and conditions so put in agreement be such as to meet public interest and such terms and conditions be also within the four walls of entering into valid legal commercial contract. The notice should also specify the period for granting licence for operating Airport Restaurant at Guwahati Airport for which tenders are intended to be invited specifying its location/area offered by the Airport Authority.

10. Before parting with this order, it will not be out of place to mention here that along with this petition, M.A.(F) No. 62/98 has also been disposed of today. In the said M.A.(F) which is so preferred by the Airports Authority under Order 43 Rule 1(r) Code of Civil Procedure, the said Misc. Appeal is dismissed with certain directions. That being the position it is also observed that in case the Airports Authority deciding to publish fresh NIT, the same be published observing all the observations and direction made above after disposal of Misc. (J) Case No. 12/98 so pending in connection with Title Suit No. 42/94 before the learned Civil Judge (Senior Division), Jorhat for which a time limit is also given for disposing of the said Misc. (J) Case No. 12/98.

11. With the above observation and directions, this writ petition is disposed of with no separate order as to costs.