

**IN THE HIGH COURT OF MADHYA
PRADESH**

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 21st OF DECEMBER, 2023

WRIT PETITION No. 28521 of 2023

BETWEEN:-

**M/S HIMALAYA TRADERS THROUGH ITS
AUTHORISED OFFICER G-2/119 A, GULMOHAR
COLONY, TRILANGA ROAD (OPP. PNB), BHOPAL
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI RISHABH SINGH CHOUHAN - ADVOCATE)

AND

- 1. UNION OF INDIA SECRETARY MINISTRY
OF CIVIL AVIATION RAJIV GANDHI
BHAWAN, BLOCK B, SAFDARJUNG
AIRPORT AREA, NEW DELHI (DELHI)**
- 2. AIRPORT AUTHORITY OF INDIA
THROUGH ITS DIRECTOR GENERAL
RAJIV GANDHI BHAWAN BLOCK B
SAFDARJUNG AIRPORT AREA NEW
DELHI (DELHI)**
- 3. DEVI AHILYABAI HOLKAR AIRPORT
THROUGH ITS DIRECTOR DEVI
AHILYABAI HOLKAR AIRPORT NEAR
BISASEN MATA MANDIR INDORE
(MADHYA PRADESH)**

**4. DEVI AHILYABAI HOLKAR AIRPORT
THROUGH DEPUTY GENERAL MANAGER
COMMERCIAL DEVI AHILYABAI
HOLKAR AIRPORT NEAR BISASEN MATA
MANDIR INDORE (MADHYA PRADESH)**

.....RESPONDENTS

**(BY SHRI PIYUSH SHRIVASTAVA – ADVOCATE FOR RESPONDENT NOS.2
TO 4)**

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*This petition coming on for admission this day, the court passed
the following:*

ORDER

- 1] Heard finally, with the consent of the parties.
- 2] This writ petition has been filed by the petitioner – M/s. Himayala Traders under Article 226 of the Constitution of India against the order dated 26.10.2023 and 31.10.2023 (Annexures P/8 and P/9) passed by the respondent No.4. Vide letter dated 26.10.2023 the security deposit has been forfeited by the respondents and bank guarantee has been invoked, whereas vide letter dated 31.10.2023 the respondent No.4 has also issued a letter seeking payment of outstanding dues and in case the petitioner fails to do so, it was threatened to terminate the license agreement.
- 3] In brief, the facts of the case are that the petitioner is a partnership firm, engaged in the business of liquor. The petitioner was granted license at Devi Ahilya Bai Holkar Airport, Indore for the purposes of operating duty paid liquor shop in arrival hall. The license agreement was executed on 31.08.2022. The license was valid for a period of five years with effect from 03.12.2022 to 02.12.2027 unless terminated. Admittedly, a dispute has arisen in respect of the aforesaid

agreement.

4] Counsel for the petitioner has submitted that the action taken by the respondents runs contrary to the provisions of law as no opportunity of hearing was granted to the petitioner before passing the same. It is also submitted that respondents have created various hurdles for the petitioner to operate the shop, which has led to heavy losses being suffered by the petitioner and the petitioner has already involved the internal dispute resolution clause contained in the agreement. However, the respondents have still adjusted the security deposit and an amount of Rs.19,58,382/- is shown as outstanding on account of demurrage charges. It is also stated that the respondents have illegally painted the entire shop with black colour.

5] A preliminary objection has been raised by the counsel for the respondents contending that since there is an arbitration clause contained in the license agreement, the petition itself is liable to be dismissed as the same is not maintainable on account of availability of the remedy under the Arbitration and Conciliation Act,1996. Counsel has also drawn the attention of this Court to clause 29 of the general terms and conditions of the license, which provides alternate dispute resolution system. In support of his submissions, counsel for the respondents has also relied upon certain decisions in the cases of **Nirmal Software Services Private Limited Vs. Dr. Babasaheb Ambedkar Marathwada University and others** reported as **(2019) 7 SCC 356**; **Kerala State Electricity Board and another Vs. Kurien E. Kalathil and others**; reported as **(2000) 6 SCC 293**; **State of U.P. and others Vs. Bridge & Roof Company (India) Ltd.** reported as

(1996) 6 SCC 22; E to E Transportation Infrastructure Private Limited Through its Authorized Representative Anurag Choudhary Vs. Ircon International Limited Through its Chairman Having Corporate reported as **2022 SCC OnLine MP 2143;** and **State of Kerala and others Vs. M. K. Jose** reported as **2016 (2) MPLJ 327.**

6] Having considered rival submissions, perusal of the documents filed on record, this Court finds that so far as the license agreement is concerned, the dispute resolution clause of the same reads as under:-

“29. All disputes and differences arising out of or in any way touching or concerning this Agreement (except those the decision whereof is otherwise herein before expressly provided for or to which the AAT ACT, 1994 and the rules framed there-under which are now enforced or which may here-after come into force are applicable), shall, in the first instance, be referred to a Dispute Resolution Committee (DRC) setup at the airports, for which a written application should be obtained from the party and the points clearly spelt out. In case the dispute is not resolved within 45 days of reference, then the case shall be referred to the sole arbitration of a person to be appointed by the Chairman / Member/ RED of the Authority. The award of the arbitrator so appointed shall be final and binding on the parties, The Arbitration & Conciliation Act 1996 as amended up to date shall be applicable. Once the arbitration clause has been invoked, the DRC process will cease to be operative. It will be no bar that the Arbitrator appointed as aforesaid is or has been an employee of the Authority and the appointment of the Arbitrator will not be challenged or be open to question in any Court of Law, on this account.”

7] It is also found that the petitioner has already invoked the aforesaid clause through notice dated 03.11.2023. This Court does not find it to be a fit case to exercise its extraordinary original jurisdiction by invoking Article 226 of the Constitution of India as the dispute between the parties is purely commercial in nature and as has been

held by the Supreme Court in the case of **Kerala State Electricity**

Board (supra) wherein it is held as under:-

10. We find that there is a merit in the first contention of Mr. Rawal. Learned Counsel has rightly questioned the maintainability of the writ petition. The interpretation and implementation of a clause in a contract cannot be the subject matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract? If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226. We are also unable to agree with the observations of the High Court that the contractor was seeking enforcement of a statutory contract. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. We are also unable to agree with the observation of the High Court that since the obligations imposed by the contract on the contracting parties come within the purview of the Contract Act, that would not make the contract statutory. Clearly, the High Court fell into an error in coming to the conclusion that the contract in question was statutory in nature.

11. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not of itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should

have been relegated to other remedies.

(emphasis supplied)

8] This Court is of the considered opinion that the better course available to the petitioner is only to resort to the remedy already available to him under the agreement, and so far as the interim protection granted by this Court is concerned, the petitioner can certainly take recourse to the provisions of the Arbitration and Conciliation Act, 1996 to seek further interim relief.

9] With the aforesaid direction, the petition stands **disposed of**.

(SUBODH ABHYANKAR)
JUDGE

Pankaj