

**SYNOPSIS**

This Special Leave Petition arises from the Judgment passed by the High Court of Kerala dismissing the Writ Petition filed by the State of Kerala as not maintainable, holding that the question raised in the Writ Petition is to be decided by the Hon'ble Supreme Court under Article 131 of the Constitution of India. The High Court rejected the contention of the petitioner State of Kerala that the Writ Petition filed under Article 226 of the Constitution is maintainable, as apart from Union of India, the Airports Authority of India and its functionaries are also arrayed as party respondents in the Writ Petition, as also private respondents 8 to 10 who are necessary parties in the Writ Petition.

It is submitted that this Hon'ble Court in a catena of Judgments viz. ***State of Bihar v. Union of India (1970)1 SCC 67***, ***State of Rajasthan v. Union of India (1977) 3 SCC 592***, ***Union of India v. State of Rajasthan, (1984) 4 SCC 238*** and ***Tashi Delek Gaming Solutions Ltd. v. State of Karnataka (2006) 1 SCC 442*** held that Article 131 of the Constitution of India does not contemplate any private party being arrayed as a disputant on one side or the other and Article 131 will not be applicable where citizens or private bodies are parties either jointly or in the alternate with the State or the Government of India.

In the instant case, the State of Kerala filed a Writ Petition before the High Court of Kerala under Article 226 of the Constitution of India challenging the arbitrary and illegal action of the Airports Authority of India in attempting to prefer a particular private concessionaire (who is

arrayed as Respondent No.9 in the said Writ Petition) for the operation, management and development of Thiruvananthapuram International Airport. The writ petition is filed on various grounds, including absence of public interest in the grant of such concession, the same not being in the interest of better management of the Airport, the entire proceedings including tender process being vitiated by malafides and also in violation of the provisions of the Airport Authority of India Act, 1994 and the attempted grant of concession being in violation of an earlier undertaking by the Ministry of Civil Aviation, Government of India and rejecting the proposal of the State Government to form a Special Purpose Vehicle (SPV) to take over and run the Airport on revenue sharing basis.

The Government of Kerala is having experience in running Airports through its various organizations. The Kochi International Airport at Nedumbasserry, Ernakulam, Kerala, which is being operated by Cochin International Airport Limited (CIAL), a State Government sponsored Company, is one of the leading Airports world over. The State Government is having major share in the same apart from the shares of other Government Institutions including the Kerala State Industrial Development Corporation, Respondent No.10 herein. The Kochi International Airport had won much recognition, including recognition from the United Nations and is the only airport in the world which is being operated solely by solar energy. The Kochi International Airport is also making huge profits, unlike many other airports in the country.

Apart from the above mentioned Kochi International Airport, the Kannur International Airport, having most modern and state of the art aviation and other passenger and cargo facilities, which is being operated by the Kannur International Airport Limited (KIAL), another State Government sponsored Company, has become operational and is making steadfast progress.

The contention of the State of Kerala in the Writ Petition, inter alia, is that the attempt on the part of the Airport Authority to grant right of Operation, Management and Development of Thiruvananthapuram Airport, to a private party, Respondent No.9, who has no previous experience in managing airports, is not in public interest and is violative of the provisions of the Airport Authority of India Act, 1994 as well as the proprietary rights of the State Government as regards the land wherein the Thiruvananthapuram Airport is situated, especially when the Hon'ble Chief Minister of Kerala, has offered to take the project at the rate at par with what was quoted by Respondent No.9. It was further contended that the condition precedent for the Airport Authority to invoke provisions of Section 12A of the Airport Authority of India Act, 1994 is either public interest or for better management thereof and in the Request For Proposals published by the Airport Authority of India there is no mention that such a cause is being adopted on the basis of the conditions mentioned in Section 12A of the Airport Authority of India Act, 1994 and therefore the Request For Proposals is an arbitrary exercise of power.

The High Court by the impugned Judgment held that the writ petition filed by the State of Kerala is not maintainable in so far as the remedy of the Petitioner State is to file a suit before the Supreme Court in terms of Article 131 of the Constitution of India. It was further held that the Airport Authority of India was essentially implementing a policy of the Government of India in terms of section 40 of the Airport Authority of India Act and therefore, essentially the dispute was between the Government of India and the State of Kerala, which is a dispute over which the Hon'ble Supreme Court is having jurisdiction to the exclusion of all Courts.

It is submitted that the High Court failed to appreciate that Article 131 of the Constitution does not contemplate any private party being arrayed as a party on one side or other. In the instant case the Airport Authority is made as a respondent in the Writ Petition as it is a necessary party. A suit under Article 131 is not maintainable with Airport Authority as defendant in the suit. It is submitted that for determining as to whether a suit before the Hon'ble Supreme Court under Article 131 of the Constitution has to be taken recourse to, it is necessary to consider whether the State can, in the facts of the given case, independently maintain a suit against the Government of India. As per section 12A of the Airport Authority of India Act, it is the Airport Authority which is to make a lease, though it is a government policy in terms of Section 40 of the said Act. It is submitted that any proceedings regarding the decision to make such a lease will be bad for non joinder of necessary parties if Airport Authority of India is not in

the party array. Therefore Airport Authority of India is a necessary party to such a lis and no writ petition will lie without Airport Authority on the party array. It is submitted that in the instant case, it is the Airport Authority which invited the Request For Proposal and any challenge impugning the proceedings which led to the Request For Proposal cannot be instituted without Airport Authority on the party array.

It is submitted that the High Court failed to appreciate that the word "State" in Article 131 of the Constitution cannot be a "State" under Article 12 of the Constitution of India. The Airports Authority may qualify to be a "State" in terms of Articles 12 and 36 of the Constitution. It is submitted that such wider definition of "State" in Articles 12 and 36 of the Constitution, as mandated in the said Articles itself, are intended for the purpose of Part III and IV of the Constitution and therefore the attributes of "State" in terms of Parts III and IV of the Constitution cannot be imported to "States" as provided for in Article 131, which takes in only a "State" which is the constituent unit of the Union of India.

It is submitted that the High Court failed to appreciate that in so far as Airports Authority is a necessary party and in so far as Airports Authority will not qualify to be a "State" as provided for under Article 131 of the Constitution and no suit in terms of the said Article 131 can be filed with any party other than any State or Government of India in the party array, no suit will lie before the Hon'ble Supreme Court in the

given case and only a writ petition under Article 226 of the Constitution will lie.

It is submitted that the High Court failed to appreciate that apart from the third respondent Airports Authority, the respondents 4 to 6, being officers of the Airports Authority viz. the Executive Director, the Regional Executive Director and the Airport Director Airports Authority of India and the respondents 8 to 10, being entities which took part in the bid for lease of operations of Thiruvananthapuram Airport viz. Airports Economic Regulatory Authority of India, G.M.R Airports Ltd, Adani Enterprises Ltd and the Kerala Industrial Development Corporation, are also necessary parties to the writ petition. The petitioner has explained as to how a writ petition is maintainable and as to why proceedings in terms of Article 131 of the Constitution of India cannot be taken recourse to in paragraph 2 of the writ petition. Paragraph 2 of the writ petition is reproduced hereunder:

- 2) It is trite and settled law that in a suit in terms of Article 131 of the Constitution of India, it could only be the constituent units of the Union of India and the Government of India itself arrayed on one side or the other either singly or jointly with another unit or the Government of India. Thus, as settled by the Hon'ble Apex Court in a catena of decisions, a dispute which fell within the ambit of Article 131 could only be determined in the Hon'ble Supreme Court if there had not been impleaded in the said dispute any private party, be it a citizen or a firm or a

corporation along with a State either jointly or in the alternative and that a dispute in which such a private party was involved must be brought before a Court, other than the Hon'ble Apex Court. It is also trite and settled law that the enlarged definition of "State" given in Parts III and IV of the Constitution would not be attracted to Article 131 of the Constitution. Thus the Airport Authority of India cannot be considered to be a "State" for the purpose of Article 131 of the Constitution. The lis in this writ petition cannot be finalised without the Airport Authority of India or its Officers or the respondents 8 and 9 in the party array. Thus, in so far as the respondents 3 to 6 and 8 and 9 are necessary parties to the lis, no suit, on the cause of action traced in this writ petition, can be sustained before the Honourable Apex Court in terms of Article 131 of the Constitution of India and, as such, this writ petition is maintainable before the Hon'ble Court on the various grounds raised herein below.

It is submitted that when the maintainability of the writ petition was properly explained by the petitioner in the writ petition itself and also in view of the ratio laid down by this Hon'ble Court regarding the maintainability of a suit under Article 131 of the Constitution, the High Court should not have dismissed the writ petition on the ground of maintainability.

This Hon'ble Court in ***State of Bihar v. Union of India, (1970) 1 SCC 67*** held as follows:-

3. Clauses (a), (b) and (c) of the article specify the parties who can appear as disputants before this Court. Under clause (a) it is the Government of India and one or more States; under clause (b) it is the Government of India and one or more States on one side and one or more other States on the other, while under clause (c) the parties can be two or more States without the Government of India being involved in the dispute. *The specification of the parties is not of an inclusive kind. The express words of clauses (a), (b) and (c) exclude the idea of a private citizen, a firm or a corporation figuring as disputant either alone or even along with a State or with the Government of India in the category of a party to the dispute. There is no scope for suggesting that a private citizen, a firm or a corporation can be arrayed as a party by itself on one side and one or more States including the Government of India on the other. Nor is there anything in the article which suggests a claim being made by or preferred against a private party jointly or in the alternative with a State or the Government of India. The framers of the Constitution appear not to have contemplated the case of a dispute in which a private citizen, a firm or a corporation is in any way involved as a fit subject for adjudication by this Court under its exclusive original jurisdiction conferred by Article 131.*

This Hon'ble Court in ***State of Rajasthan v. Union of India, (1977) 3 SCC 592*** held as follows:-

There are two limitations in regard to the nature of the suit which can be entertained by the Supreme Court under this Article. One is in regard to parties and the other is in regard to the subject-matter. The Article provides in so many terms in clauses (a), (b) and (c) that the dispute must be between the Government of India and one or more States, or between the Government of India and any other State or States on one side and one or more other States on the other, or between two or more States. *It does not contemplate any private party being arrayed as a disputant on one side or the other. The parties to the dispute must fall within one or the other category specified in clauses (a), (b) and (c).*

This Hon'ble Court in ***Tashi Delek Gaming Solutions Ltd. v. State of Karnataka, (2006) 1 SCC 442*** held as follows:-

Article 131 of the Constitution postulates that this Court to the exclusion of any other court shall have original jurisdiction in any dispute between the Government of India and one or more States; or between the Government of India and any State or States on one side and one or more other States on the other; or between two or more States. We in this case are not concerned with the proviso to the said article. The said article would

be attracted where adjudication is necessary in relation to a legal right of one State or the Union of India vis-à-vis other States, as the case may be. Indisputably, the expression “legal right” has received liberal interpretation by this Court from time to time. *However, it is now well settled by various decisions of this Court that this article will not be applicable where citizens or private bodies are parties either jointly or in the alternative with the State or the Government of India. The enlarged definition of “State” under Article 12 would not extend to Article 131 of the Constitution. It is also not in dispute that even a statutory corporation is not a State within the meaning of the said provision.*

It is submitted that the reliefs claimed in the Writ Petition filed by the State of Kerala itself shows that a suit under Article 131 is not all maintainable and the Hon’ble Supreme Court cannot pass a decree in such terms under Article 131 of the Constitution. The Reliefs in the writ Petition are as follows:-

#### RELIEFS

- (1) Declare that Exhibits P13 Request for Proposal (RFP) for Concession with regard to the Operation, Management and Development of Thiruvananthapuram International Airport is without jurisdiction, illegal and violative of Section 12A of the Airport Authority Act;

Or in the alternative

- (2) Declare that the Petitioner State of Kerala is entitled to preferential consideration over the ninth respondent in public interest as regards the Concession for Operation, Development and Management of Thiruvananthapuram Airport, in view of the mandate of Section 12A of the Airport Authority Act;
- (3) Declare that the third respondent Airport Authority of India is bound to accept the proposal of the State Government through the tenth respondent for grant of concession facility at par with the amount offered by the ninth respondent;
- (4) Issue a writ of mandamus or any other appropriate writ or order or direction commanding the 3<sup>rd</sup> respondent to positively consider the offer of the State of Kerala, as revealed from Exhibits P19 and P20 letters, before finalizing the Tender pursuant to Exhibit P13;
- (5) Issue a writ of certiorari or any other appropriate writ or order or direction calling for the records leading to Exhibit P9 and quash the same, in so far as it limits the Right of First Refusal (RFP) to the petitioner State in the manner to plus or minus 10%.

It is submitted that the issuance of writs sought for in the Writ Petition are against the Airport Authority of India and for issuing the declarations, the Court has to hear the private parties and thus only a Writ Court can hear such a petition.

It is submitted that the dispute regarding whether the Request For Proposal issued by the Airport Authority of India is violative of Section 12A of the Airport Authority of India Act or whether the State of Kerala is entitled to preferential consideration over Respondent No.9 in public interest regards the Concession for Operation, Development and Management of the Thiruvananthapuram Airport in view of the mandate of the Airport Authority of India Act and other questions arises in the Writ Petition cannot be treated as question “on which the existence or extent of a legal right depends” as contemplated under Article 131 of the Constitution, when the lis involves private parties and a Statutory Authority.

Hence the Special Leave Petition

**LIST OF DATES**

- 1932                    The Thiruvananthapuram Airport, the first such facility in the erstwhile Travancore Princely State and the present day geographical area of Kerala State, was established in 1932 as part of Royal Flying Club in 258.06 acres of land owned by the said princely State of Travancore. Thus the Airport happened to be initially established in 258.06 acres of land, which land belonged to the then existent princely State of Travancore and which is presently in Pettah Village of Thiruvananthapuram Taluk, Thiruvananthapuram District.
- 1938                    TATA Airlines made its Maiden Flight from therein. The first squadron of Royal Indian Air Force began operating therein from 1938.
- After independence, the Domestic Terminal was constructed.
- 1.7.1949                The Rulers of the then princely States of Travancore and Cochin entered into a Covenant with the concurrence and guarantee of the Government of India, by virtue of which the United States of Travancore and Cochin came into being with effect from 01.07.1949. By virtue of Article III of the said Covenant, the assets and liabilities of

each of the covenanting State of Travancore and Cochin became the assets and liabilities of the United States of Travancore and Cochin. As such, the aforementioned 258.06 acres of land (in Pettah Village) in which the Airport was initially established became the land owned by the United States of Travancore and Cochin.

1956

By virtue of Article IX of the above mentioned Covenant, an Instrument of Accession was executed by the Rajapramukh of the United States of Travancore and Cochin and by virtue of the said instrument of accession, the United States of Travancore and Cochin became a constituent unit of the Indian Union. By virtue of Section 5 of the States Reorganisation Act, 1956, State of Kerala was formed including the Travancore -Cochin State (except those areas of the said State which were ceded to the then Madras State as per Section 4 of the said Act), the erstwhile Malabar District (excluding Laccadives and Minicoy islands) of Madras State and Kasaragode Taluk of South Canara District. By virtue of Section 2 (o) of the said Act, the new State of Kerala is the successor State of the erstwhile Travancore - Cochin State and by virtue of Section 77 of the said Act, all land

which belonged to the erstwhile Travancore - Cochin State passed on to the newly formed Kerala State. Hence, after 1956, the aforesaid 258.06 acres of land (now in Pettah Village), in which the Airport was initially established and now forms part of the larger area in which it is functioning, became the asset of the State of Kerala.

1970 International operations were initiated from the Airport by Air India in the year 1970. In the early 1980s, Indian Airlines started services to Colombo and Male.

1985 By virtue of Section 13 of the National Airport Authority Act 1985, the equipments and navigational and ground aids relating to air traffic services in the Airport became vested with National Airport Authority and the Airport became part of the National Airport Authority in matters of its operation. The aforementioned landed property, upon which the Airport was initially established, continued to be vested with the State Government. After the commencement of the Airport Authority of India Act 1994, the Airport came under the operational authority of the Airport Authority of India. But the said land, as earlier, continued to be vested with the State.

1.01.1991

The Airport was upgraded to International Airport. The State of Kerala has effectively and purposefully promoted the Thiruvananthapuram Airport and because of its earnest efforts, the Airport, as stated above, was declared as the first International Airport of the State of Kerala in 1991. The State of Kerala has given the entire infrastructural and other facilities for promoting the affairs of the Airport and is continuing to do so. The betterment of the Airport, both international and domestic terminals, is in the best interests of the people of Kerala and hence the State Government is visibly interested in promoting the affairs of the Airport to the best of its efforts.

As on today, the Airport is having a total extent of 636.57 acres of land. Airport Authority of India has ownership only 0.5756 hectares out of the total extent of 636.57 acres of land.

Apart from the aforementioned 258.06 Acres of property, 329.6 Acres of land was acquired by the third respondent Airport Authority of India and Government of India, 32.56 Acres of land was acquired by the Government of Kerala and 8.29 Acres of Government land was transferred by the Government of Kerala free of cost. The aforementioned 258.06 Acres in which the Airport was initially established has been entered in

revenue records as Puramboke land, meaning Government land. That the said 258.06 acres of land has been entered in revenue records as Puramboke land.

23.04.2003

After the economic policy of the Union Government changed, with the advent of liberalisation, privatisation and globalisation measures, there were attempts to privatise the management and operation of various airports in India. When there were some movements for privatising the management of the Airport, the State Government approached the Central Government, detailing the interest of the State Government in protecting the public interest. Pursuant to the repeated efforts of the State Government to protect the affairs of the Thiruvananthapuram Airport, the Secretary, Ministry of Civil Aviation, Government of India, the second respondent herein, issued D.O. Letter No. 1413/SCA/2003 dated 23.04.2003 to the Chief Secretary of the Petitioner State regarding development of Airports in Kerala. In answer to the query of the petitioner State with regard to the possibility of private sector involvement in the development of the Airport, it was clarified by the second respondent in the said letter that there was

no plan to handover to the Airport to any private agency; that a Special Purpose Vehicle (SPV) for development of Airport with State Government and financial institutions as partners could be created; and that cost of acquisition of land by the Government fully or partially could be adjusted towards the State's share. A copy of the Letter D.O.No. 1413/SCA/2003 issued by the Secretary, Ministry of Civil Aviation, Government of India dated 23.04.2003 is annexed and marked as **ANNEXURE-P1** ( at page .....to.....).

As can be seen from Annexure-P1 letter dated 23.04.2003, the Union Government, through its Ministry of Civil Aviation, had assured the State that a SPV for development of Thiruvananthapuram Airport was to be created and that the State Government's equity share in the said SPV would be the cost of the acquisition of the land. It was also assured that when a decision was taken to induct private sector in the management of the Airport, the Union Government would be happy to consult the State taking into account the contribution being made by the State Government towards the acquisition of the additional land for the Airport.

7.10.2003 Through Letter numbered DO No. 20311/D2/97/TRAN dated 7.10.2003 and earlier letters dated 17.03.2003 and 23.04.2003 issued by the then Principal Secretary to the Government of Kerala, Department of Transport to the then Secretary, Ministry of Civil Aviation, Government of India, the Government of the Petitioner State had expressed its desire for signing of a Memorandum of Understanding between the Government of India and the State Government if there was a change of ownership, management etc of the Airport once the land was handed over to the third respondent. Letters dated 17.03.2003 and 23.04.2003 were sent in this regard is discernible from the Letter dated 7.10.2003. A copy of the DO No. 20311/D2/97/TRAN dated 7.10.2003 is annexed and marked as **ANNEXURE-P2** ( at page .....to.....).

2.12.2003 As per D.O. Letter No. AV.24018/1/99-AAI P-3 dated 02.12.2003, the Secretary, Ministry of Civil Aviation, Government of India assured the State Government that taking into account the contribution being made by the State for acquisition of additional land for the Airport, the State Government would be consulted at the time

when a decision would be taken to induct private sector in to the management of Thiruvananthapuram Airport. A copy of the D.O.24018/1/99-AAI P-3 dated 02.12.2003 is annexed and marked as **ANNEXURE-P3** ( at page .....to.....).

16.3.2004

Sanction was accorded for handing over of land to the third respondent Airport Authority and for acquisition of 120 acres of land for the Airport as per G.O. (MS) No. 11/2004/Trans dated 16.03.2004 relying on the assurances given by the Central Government. The assurance given by the Government of India to the effect that no policy decision had been taken to induct private sector into the management of the Airport and that, in such an event, the Government of India would consult with the State Government was specifically noted in G.O. (MS) No. 11/2004/Trans. A true copy of G.O. (MS) No. 11/2004/Trans dated 16.03.2004 is annexed and marked as **ANNEXURE-P4** ( at page .....to.....).

29.3.2005

As a matter of fact, during this period, the State Government had acquired by its own fund an extent of 27 acres of land for the purpose of the Airport and handed over the same to the third

respondent Airport Authority of India free of cost. The same is discernible from G.O. (MS) No. 82/05/RD dated 29.03.2005. As per the said Government Order, the Government of Kerala accorded sanction for transfer of 27 acres 57 cents and 11 square links of property comprised in Pettah Village of Thiruvananthapuram Taluk in favour of the third respondent on condition that in the event of the third respondent being structured into a Company for any reason or if a Special Purpose Vehicle is set up for the Airport, then the value of the land transferred to the third respondent would need to be reflected as Government of Kerala's share capital and/ or in any other financial instrument as might be mutually agreed upon. A true copy of G.O.(MS) No. 82/2005/RD dated 29.03.2005 is annexed and marked as **ANNEXURE-P5** ( at page .....to.....).

However, in total negation of the assurance given by the Government of India and even without consulting the State Government, Government of India as well as the Airport Authority of India took initial steps for giving concession for operation, management and development of certain Airports

including the Thiruvananthapuram International Airport to private sector. Accordingly Request For Proposals (RFP) were published as regards Six Airports including Thiruvananthapuram.

The third respondent Airport Authority of India had earlier made similar concessionaire as regards Airports of Delhi and Mumbai in the year 2005. While issuing the Request For Proposals with regard to the said airports in 2005, one of the paramount qualifications to participate in the tender process was previous experience in running Airport. This was highly essential since Airport Management was unlike other commercial, activities and needed prior experience and professional and technical expertise.

The Government of Kerala is having experience in running Airports through its various organizations. The Kochi International Airport at Nedumbasserry, Ernakulam, Kerala, which is being operated by Cochin International Airport Limited (CIAL), a State Government sponsored Company, is one of the leading Airports world over. The State Government is having major share in the same apart from the shares of other Government Institutions including Kerala State Industrial Development Corporation,

Respondent No.10 herein. It is submitted that the Cochin International Airport has won many recognitions, including recognition from the United Nations and is the only airport in the world which is being operated solely by solar energy. The aforesaid Airport is also making huge profits, unlike many other airports in the country.

Apart from the Kochi International Airport, Kannur International Airport, having most modern and state of the art aviation and other passenger and cargo facilities, which is being operated by the Kannur International Airport Limited (KIAL), another State Government sponsored Company, has become operational and is making steadfast progress. Thus, if the proposed Request For Proposal of concession for development and management of Thiruvananthapuram Airport was having a condition of previous experience as a pre-qualification, necessarily the State Government and its instrumentalities would have got preference.

21.11.2018

On coming to know that the Union Government unilaterally decided to develop the Thiruvananthapuram Airport on Public Private Partnership (PPP) Mode, the Hon'ble Chief

Minister of Kerala sent D.O. Letter No. 2195/2018/CM dated 21.11.2018 to the Hon'ble Minister for Civil Aviation, Union of India seeking for intervention to reconsider the decision of the Union Cabinet to development the Airport on PPP Mode and to allow the State Government to form a special purpose vehicle to takeover and run the Airport on revenue sharing basis. A true copy of the Letter D.O.No. 2195/2018/CM dated 21.11.2018 is annexed and marked as **ANNEXURE-P6** ( at page .....to.....).

In Annexure P6 Letter, it was specifically stated that the Airport property comprised of land given by the State Government, erstwhile Travancore State and the land acquired by the State Government from time to time and given to the third respondent Authority free of cost; that the State had been acquiring land from 2000 onwards for the purpose of the Airport on the pre requisite that the Government of India would consult the petitioner State before inducting the private sector to the management of the Airport and further that the value of the land being acquired and handed over to the third respondent Authority would be treated as the share of the

Government of Kerala in the event of a Company or a special purpose vehicle being set up for the purpose of management of the Airport; that the State Government was in the process of acquiring a further 18 acres of land for the Airport at a cost of Rupees 250 Crores; that the State Government had promoted Cochin International Airport Limited (CIAL) through public participation through a business model that had made Kochi International Airport one of the best airports in the country winning even accolades from the United Nations; that the State Government had promoted a Company, Kannur International Airport Limited (KIAL), for another international airport in the State at Kannur, which was then about to commence operations (now operative); and that it was well very well demonstrated that the Government of the petitioner State had adequate experience in promoting/ sponsoring SPVs for the construction and operation of green field international airports in the State. The Government of India was requested to delink the Thiruvananthapuram Airport from the list of airports set apart for PPP mode development. The Government of India was also requested to constitute a committee to look at various other

options and business models under which a SPV could be formed for the operation and development of the Airport wherein the cost of land acquired by the State could be converted to its equity share, the investment made by the third respondent Authority could be converted to its share and wherein remaining investment could come from various institutional investors for future development. The suggestion of the petitioner State was that the Airport could be developed and operated through a SPV with the Government of Kerala as the chief promoter taking the responsibility to bring in the investors.

28.11.2018 The Secretary, Government of India, Ministry of Civil Aviation issued D.O. Letter No. AV.24011/141/2015-AD dated 28.11.2018 informing that the Union Cabinet had approved the constitution of an Empowered Group of Secretaries (EGoS) for deciding issues relating to PPP of the Airport. It was stated therein that the first meeting of the EGoS was scheduled on 04.12.2018 and the Chief Secretary of the Government of Kerala was requested to make presentation before the EGoS. A copy of Letter D.O.No.AV.24011/141/2015-AD (Vol-IV) dated

28.11.2018 is annexed and marked as **ANNEXURE-P7** ( at page .....to.....).

4.12.2018 The Chief Secretary of the Petitioner State made a presentation before the EGoS on 04.12.2018. The presentation, inter alia, included the history of the Airport, the area parameters, the split up details of the land available with the Airport and the assurances given in 2003 by the Ministry of Civil Aviation in 2003 regarding formation of an SPV and consultation with the Government of Kerala in the event of inducting private sector to the management of the Airport. Two options were placed as (A) and (B). Option (A): "The third respondent Authority may transfer the Airport assets and operation to the Government of Kerala. The Government of Kerala, thereafter, will form an SPV and tie up with a strategic partner who is a proven operator at the international level". Option (B): "The third respondent Authority may offer the right of first refusal to the SPV of the Government of Kerala and the said SPV will participate in the bid along with a strategic partner who has vast experience in Airport operations.

4.12.2018 The EGoS, in its meeting dated 04.12.2018, decided to offer two options for the Government

of Kerala as a special case in respect of the PPP of the Airport. The options were (i) that the Government of India will invite Chief Secretary and other officials of Government of Kerala as special invitees for the purpose of participating in the selection process for the PPP partner for the Airport so as to address concerns/ interests of the State Government or (ii) to proceed with alternative (B) offered by the Government of Kerala with the stipulation that an entity/ SPV in which Government of Kerala has a direct equity of 26 % or more is eligible for the right of first refusal provided that the SPV's bid falls within the range (plus or minus) of 10 % of the highest bid. It was specifically recorded in the minutes of the EGoS that the aforementioned options were being provided recognizing the expertise demonstrated by the State Government in the airport sector. True copy of the Minutes of the meeting of the Empowered Group of Secretaries (EGoS) dated 04.12.2018 is annexed and marked as **ANNEXURE-P8** ( at page .....to.....). As can be seen from Annexure-P8, the expertise of the State Government in the Airport Sector is recognized by the Airport Authority/3<sup>rd</sup> respondent. However, the Right of First Refusal

was arbitrarily limited to plus or minus 10% of the highest bid. Even then, there was no mention that the previous experience in Airport Management will not be considered.

8.12.2018

The Hon'ble Chief Minister of Kerala addressed D.O Letter No. 3333/18/CM dated 08.12.2018 to the Hon'ble Union Minister for Civil Aviation stating that the EGoS meeting had not resolved the issue and also reiterating the first option submitted by the Government of Kerala (that is Option (A): "The third respondent Authority may transfer the Airport assets and operation to the Government of Kerala. The Government of Kerala, thereafter, will form an SPV and tie up with a strategic partner who is a proven operator at the international level") or in the alternative to offer the right of first refusal to the SPV of the Government of Kerala without any range parameters. It was requested that the options may be acceded to having regard to the demonstrable experience of the Government of Kerala in promoting SPVs for design build-operate and maintenance of airports. A true copy of Letter D.O.No. 3333/18/CM dated 08.12.2018 is annexed and marked as **ANNEXURE-P9** ( at page .....to.....).

- 11.12.2018 A similar letter, DO No. 415/02/2018/Trans dated 11.12.2018, was sent by the Chief Secretary of the petitioner State to the Secretary, Ministry of Civil Aviation, Government of India. A true copy of Letter DO No. 415/02/2018/Trans dated 11.12.2018 is annexed and marked as **ANNEXURE-P10** ( at page .....to.....).
- 12.12.2018 In response to Annexure-P10 letter, DO No. AV .24011/141/2015-AD (Vol IV) dated 12.12.2018 was sent by the Secretary, Ministry of Civil Aviation to the Chief Secretary of the petitioner State to the effect that parameters for Right to First Refusal was required to maintain the sanctity of the bidding process and that further enlargement of the range beyond 10 % was also not advisable for the said reason. A true copy of DO No. AV .24011/141/2015-AD (Vol-IV) dated 12.12.2018 is annexed and marked as **ANNEXURE-P11** ( at page .....to.....).
- 14.12.2018 On 14/12/2018, the Request For Proposals (RFP) with regard to concession for operation, management and development of the Airport was published by the Airport Authority, ignoring the legitimate claims of the petitioner State Government. In order to avoid a situation, where

the petitioner is not a participant in the Tender process, it was decided that the petitioner State Government through the Kerala State Industrial Development Corporation Limited, Respondent No.10 herein, should participate in the Tender, though under protest, which was obvious from the previous as well as subsequent communications by the State Government to the Airport Authority and Union of India. A copy of the Request For Proposals issued by the Airport Authority of India dated 14.12.2018 is annexed and marked as **ANNEXURE-P12** ( at page .....to.....).

Though the Hon'ble Chief Minister in the Letter dated 21.11.2018 addressed to the Hon'ble Minister for Civil Aviation, Government of India had specifically pointed out the previous experience of the State Government and its instrumentalities in running, managing and developing airports, so that other private players without previous experience in airport management and development would not be taken into account. However, obviously to avoid the State Government and its instrumentalities from getting a preference in process of granting the concession for operation, management and

development of Thiruvananthapuram Airport, the clause regarding previous experience as a pre-qualification for concessionaire for Thiruvananthapuram Airport was intentionally omitted from the RFP for the same. The same was contrary to what was provided for in the Concessionaire tenders regarding the Delhi and Mumbai Airports.

As can be seen from RFP, it was published on 14.12.2018. The last date for submitting the bid was 14.02.2019. As can be seen from paragraph 2.2.2 of RFP, the technical and financial qualification is mentioned. The prospective bidder has to register for the bid, upon which he will be provided with a Draft Concession Agreement.

As per Clause 2.2.1 (b) of the RFP, the bidder can also be single entity, group or combination of entities. The technical qualification provided for in paragraph 2.2.2 (a) of the RFP does not mandate any previous experience in Airport Management as one of the qualification, which is obviously to ensure that the- credentials of the State Government is not protected and is overcome by the ninth respondent. The financial qualification provided for in paragraph 2.2.2 (b) (ii) of the RFP

mandates that ch bidder should have net worth of Rs. 1000 crores. Thus for each bid, the bidder should have an asset of thousand crores.

After paying the registration fee of Rs. 3.89 lakhs, the bidder has to provide documents including power of attorney authorizing a person to access data room of the authority for getting the requisite data for filing tender. Paragraph 2.9 of the RFP provides for raising queries and getting clarifications as also additional information from the Airport Authority of India regarding the tender procedure.

As can be seen from Paragraph 1.3 of the RFP, the time limit for submitting the queries seeking clarifications was 18.01.2019 and the answers would be given up to 22.01.2019. However this time limit was changed by the Authority several times and extended up to 29.01.2019 and then to 31.01.2019. Even after that, the clarifications and amendment of the proposal continued up to 08.02.2019. Thus the clarifications as well as amendment of the conditions were continued up to 08.02.2019 and the last date for filing the tender was 14.02.2019. Thus there was only '6' days from the last date of issuance of clarification and

amendment and last date of filing of the tender.

5.2.2019

The questions whether a Government entity can participate in the tender or a Government entity was got clarified by the Airport Authority of India only as per Letter No. MI/KID/PPP/6 Apts/2018 dated 05.02.2019. A copy of Letter No. AAI/KID/PPP/6 Apts/2018 dated 05.02.2019 is annexed and marked as **ANNEXURE-P13**.(at pages.....to.....). It was also subsequently clarified that while considering the technical qualification to have undertaken Rs. 3500 crores worth work as well as financial qualification of Rs.1000 crores worth asset, the same would be sourced by the Kerala State Industrial Development Corporation (KSIDC) taking into account the asset of the Government or any of the instrumentalities since the State Government is the sole owner of KSIDC.

8.2.2019

As a matter of fact crucial amendments and clarifications were issued by the Authority, even on 08.02.2019. A copy of the Addendum No.2 dated 08.02.2019 to the revised draft concession agreement is annexed and marked as **ANNEXURE-P14** ( at page .....to.....). Even the criteria of the passengers was changed, the

passengers to be charged was clarified and amended excluding the passengers who were on transit, which was not in the RFP. The entire calculations and modulations have to be changed because of these changes. Thus there was total confusion up to 08.02.2019 regarding the details and modalities of the tender. Even then, the last date for submitting tender was not extended beyond 14.02.2019. Thus the KSIDC which had participated in the tender on 14.02.2019, as ordered by the State Government, got only '6' day's which included 2 public holidays, for finally preparing the tender. It is submitted that this haste in ensuring the submission of tender on 14.02.2019 within 6 days of the last clarification/ amendment is without any legal basis and is arbitrary.

14.2.2019

The KSIDC had submitted the tender pursuant to the request for the purpose on 14.02.2019 with all the details. As a matter of fact, the KSIDC had quoted the rate of 135 as per passenger tariff which was the only criteria for the selection of the tenderer as per RFP. It is submitted that as regards the Delhi and Bangalore Airport RFP is concerned, the criteria,

for selection of the tenderer is the rate of profit sharing.

25.2.2019 The Airport Authority had opened the tenders on 25.02.2019 and it is now understood that the 9th respondent has quoted Rs. 168 per passenger. There is every possibility that the Airport Authority would finalise the bid as regards the Thiruvananthapuram Airport to Respondent No.9. Respondent No.8 also took part in the bidding process.

27.2.2019 The State Government feeling aggrieved, the Hon'ble Chief Minister sent a letter to the Hon'ble Prime Minister as well as the Hon'ble Union Minister for Civil Aviation. A Copy of the letter D.O.No.463/19/CM dated 27.02.2019 sent by the Hon'ble Chief Minister of Kerala to the Hon'ble Prime Minister of India is annexed and marked as **ANNEXURE-P15** ( at page .....to.....). A photo copy of the letter D.O.No. 464/19/CM dated 27.02.2019 sent by the Hon'ble Chief Minister of Kerala to the Hon'ble Union Minister for Civil Aviation is annexed and marked as **ANNEXURE-P16** ( at page .....to.....). The Chief Secretary of the petitioner State had sent a similar letter to the Airport Authority.

5.3.2019

The petitioner herein, State of Kerala, filed Writ Petition (Civil) No. 6823 of 2019 before the High Court of Kerala contending inter alia that the attempt on the part of the third respondent Airport Authority to grant right of Operation, Management and Development of Thiruvananthapuram Airport, to the ninth respondent is not in public interest and is violative of the provisions of the Airport Authority of India Act as well as the proprietary rights of the State Government as regards the land wherein the Thiruvananthapuram Airport is situated, especially when the Hon'ble Chief Minister of Kerala, has offered to take the project at the rate at par with what was quoted by the ninth respondent. It was further contended that the condition precedent for the Airport Authority to invoke provisions of Section 12A of the Airport Authority of India Act, 1994 is either public interest or for better management thereof and there is no mention in the RFP that such a cause is being adopted on the basis of the conditions mentioned in Section 12A. Thus RFP is without jurisdiction and also an arbitrary exercise of power. A copy of the Writ Petition W.P.(C) No. 6823 of 2019 (without Exhibits) dated 5.3.2019 filed before High Court of Kerala is annexed and marked as **ANNEXURE-P17** ( at page .....to.....).

- 18.12.2019 Impugned Judgment passed by the High Court holding that the writ petition filed by the State of Kerala is not maintainable in so far as the remedy of the Petitioner State is to file a suit before the Supreme Court in terms of Article 131 of the Constitution of India. It was further held that the Airport Authority of India was essentially implementing a policy of the Government of India in terms of section 40 of the Airport Authority of India Act and therefore, essentially the dispute was between the Government of India and the State of Kerala, which is a dispute over which the Hon'ble Supreme Court is having jurisdiction to the exclusion of all Courts.
- 03.02.2020 The Special Leave Petition filed.

IN THE SUPREME COURT OF INDIA  
[ORDER XXI RULE 3(1) (a)]  
CIVIL APPELLATE JURISDICTION  
(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)  
SPECIAL LEAVE PETITION (CIVIL) NO.                      OF 2020  
**(WITH PRAYER FOR INTERIM RELIEF)**

**BETWEEN**

**Position of Parties**

In the High Court

In this Court

State of Kerala,  
Represented by its Principal Secretary  
Transport Department  
Government Secretariat  
Thiruvananthapuram  
KERALA STATE

Petitioner

Petitioner

**AND**

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. Respondent No.1                      Respondent No.1
2. The Secretary  
Ministry of Civil Aviation  
Government of India, "B" Block,  
Rajiv Gandhi Bhavan  
Safdarjung Airport  
NEW DELHI - 110 003. Respondent No.2                      Respondent No.2
3. Airport Authority of India  
Represented by Its Executive Director,  
Rajiv Gandhi Bhavan  
Safdarjung Airport  
NEW DELHI - 110 003. Respondent No.3                      Respondent No.3

4. The Executive Director  
Airport Authority of India  
Safdarjung Airport  
NEW DELHI - 110 003. Respondent No.4      Respondent No.4
5. The Regional Executive Director  
Airports Authority of India  
Aai Operational Offices Complex  
Chennai Airport, Chennai- 600 027  
TAMIL NADU                      Respondent No.5      Respondent No.5
6. The Airport Director  
Airports Authority of India  
Thiruvananthapuram International Airport  
Vallakadavu P.O.,  
Thiruvananthapuram - 695 008.  
KERALA STATE                  Respondent No.6      Respondent No.6
7. Airports Economic Regulatory Authority of India,  
Represented by its Secretary  
Aera Building  
Administrative Complex  
Safdarjung Airport,  
NEW DELHI - 110 003. Respondent No.7      Respondent No.7
8. G.M.R. Airports Limited,  
Represented by its Managing Director  
Skip House, 25/1  
Museum Road, Bengaluru,  
KARNATAKA - 560 025. Respondent No.8      Respondent No.8
9. Adani Enterprises Limited,  
Represented By Its Managing Director.  
Adani House, Srimali Society,  
Mithikhali-6 Road, Navarangapuri,  
Ahmedabad,  
Gujarat - 380 009,                  Respondent No.9      Respondent No.9
10. Kerala State Industrial Development Corporation,  
Represented by its Managing Director,  
Head Office, T.C. Xi/266,  
Keston Road, Kowdiar,  
Thiruvananthapuram - 695 003.  
KERALA STATE.                  Respondent No.10      Respondent No.10

**(All are Contesting Respondents )**

To

The Hon'ble the Chief Justice of India

And His companion Justices of the Supreme Court of India

The Humble petition of the petitioner

**MOST RESPECTFULLY SHOWETH:-**

1. By way of the present petition under Article 136 of the Constitution of India, the petitioners prays for special leave to appeal against the impugned final common Judgment dated 18.12.2019 passed by the High Court of Kerala at Ernakulam in W.P.(C)No. 6823 of 2019 by which the High Court dismissed the Writ petition filed by the petitioner herein.

**2. QUESTIONS OF LAW**

- A. Whether a Suit under Article 131 of the Constitution of India is maintainable with any private party being arrayed as a party on one side or other?
- B. Whether the impugned Judgment is contrary to the law laid down by this Hon'ble Court in ***State of Bihar v. Union of India (1970)1 SCC 67***, ***State of Rajasthan v. Union of India (1977) 3 SCC 592***, ***Union of India v. State of Rajasthan, (1984) 4 SCC 238*** and ***Tashi Delek Gaming Solutions Ltd. v. State of Karnataka (2006) 1 SCC 442*** ?

- C. Whether the word “State” in Article 131 of the Constitution can be a “State” under Article 12 of the Constitution of India?
- D. Whether the High Court is justified in dismissing the Writ Petition filed by the State of Kerala as not maintainable holding that the dispute in the Writ Petition is to be decided by the Hon’ble Supreme Court of India under Article 131 of the Constitution of India, when the dispute involves the rights of the State of Kerala in a tender process relating to Operation, Development and Management of an Airport, at the instance of the Airport Authority of India?
- E. Whether the High Court is justified in dismissing the Writ Petition filed by the State of Kerala as not maintainable in view of Article 131 of the Constitution of India, when in the Writ Petition, the Airports Authority, the Executive Director, the Regional Executive Director and the Airport Director Airports Authority of India and the private entities which took part in the bid for lease of operations of Thiruvananthapuram Airport are also arrayed as party respondents?

**3. DECLARATION INTERMS OF RULE 3(2)**

The petitioner states that no other petition seeking leave to appeal has been filed by him against the impugned final common Judgment passed by the High Court of Kerala at Ernakulam dated 18.12.2019 in W.P.(C)No. 6823 of 2019.

**4. DECLARATION IN TERMS OF RULE 5**

The annexures P1 to P17 produced along with the S.L.P are true copies of the pleadings /documents which formed part of the records of the case in the court below against whose order the leave to appeal is sought for in this petition.

**5. GROUNDS**

- A. For that the High Court failed to appreciate that Article 131 of the Constitution does not contemplate any private party being arrayed as a party on one side or other. In the instant case the Airport Authority is made as a respondent in the Writ Petition as it is a necessary party. A suit under Article 131 is not maintainable with Airport Authority as defendant in the suit. It is submitted that for determining as to whether a suit before the Hon'ble Supreme Court under Article 131 of the Constitution has to be taken recourse to, it is necessary to consider whether the State can, in the facts of the given case, independently maintain a suit against the Government of India. As per section 12A of the Airport Authority of India Act, it is the Airport Authority which is to make a lease, though it is a government policy in terms of Section 40 of the said Act. It is submitted that any proceedings regarding the decision to make such a lease will be bad for non joinder of necessary parties if Airport Authority of India is not there in the party array. Therefore Airport Authority of India is an essential party to such a lis and no writ petition will lie without Airport

Authority on the party array. It is submitted that in the instant case, it is the Airport Authority which invited the Request For Proposal and any challenge impugning the proceedings which led to the Request For Proposal cannot be instituted without Airport Authority on the part array.

- B. For that the impugned Judgment is contrary to the law laid down by this Hon'ble Court in ***State of Bihar v. Union of India (1970)1 SCC 67***, ***State of Rajasthan v. Union of India (1977) 3 SCC 592***, ***Union of India v. State of Rajasthan, (1984) 4 SCC 238*** and ***Tashi Delek Gaming Solutions Ltd. v. State of Karnataka (2006) 1 SCC 442***. This Hon'ble Court in the said Judgments held that Article 131 of the Constitution of India does not contemplate any private party being arrayed as a disputant on one side or the other and Article 131 will not be applicable where citizens or private bodies are parties either jointly or in the alternate with the State or the Government of India.
- C. For that the High Court failed to appreciate that the word "State" in Article 131 of the Constitution cannot be a "State" under Article 12 of the Constitution of India. The Airports Authority may qualify to be a "State" in terms of Articles 12 and 36 of the Constitution. It is submitted that such wider definition of "State" in Articles 12 and 36 of the Constitution, as mandated in the said Articles itself, are intended for the purpose of Part III and IV of the Constitution and therefore the attributes of "State" in terms of Parts III and IV of the

Constitution cannot be imported to “States” as provided for in Article 131, which takes in only a “State” which is the constituent unit of the Union of India.

- D. For that the High Court failed to appreciate that in so far as Airports Authority is a necessary party and in so far as Airports Authority will not qualify to be a “State” as provided for under Article 131 of the Constitution and no suit in terms of the said Article 131 can be filed with any party other than any State or Government of India in the party array, no suit will lie before the Hon’ble Supreme Court in the given case and only a writ petition under Article 226 of the Constitution will lie.
- E. For that the High Court failed to appreciate that apart from the third respondent Airports Authority, the respondents 4 to 6, being officers of the Airports Authority viz. the Executive Director, the Regional Executive Director and the Airport Director Airports Authority of India and the respondents 8 to 10, being entities which took part in the bid for lease of operations of Thiruvananthapuram Airport viz. Airports Economic Regulatory Authority of India, G.M.R Airports Ltd, Adani Enterprises Ltd and the Kerala Industrial Development Corporation, are also necessary parties to the writ petition. The petitioner has explained as to how a writ petition is maintainable and as to why proceedings in terms of Article 131 of the Constitution of India

cannot be taken recourse to in paragraph 2 of the writ petition.

Paragraph 2 of the writ petition is reproduced hereunder:-

- 2) It is trite and settled law that in a suit in terms of Article 131 of the Constitution of India, it could only be the constituent units of the Union of India and the Government of India itself arrayed or one side or the other either singly or jointly with another unit or the Government of India. Thus, as settled by the Hon'ble Apex Court in a catena of decisions, a dispute which fell within the ambit of Article 131 could only be determined in the Hon'ble Supreme Court if there had not been impleaded in the said dispute any private party, be it a citizen or a firm or a corporation along with a State either jointly or in the alternative and that a dispute in which such a private party was involved must be brought before a Court, other than the Hon'ble Apex Court. It is also trite and settled law that the enlarged definition of "State" given in Parts III and IV of the Constitution would not be attracted to Article 131 of the Constitution. Thus the Airport Authority of India cannot be considered to be a "State" for the purpose of Article 131 of the Constitution. The lis in this writ petition cannot be finalised without the Airport Authority of India or its Officers or the respondents 8 and 9 in the party array. Thus, in so far as the respondents 3 to 6 and 8 and 9 are necessary parties to the lis, no suit, on the cause of action traced in this writ petition, can be sustained before

the Honourable Apex Court in terms of Article 131 of the Constitution of India and, as such, this writ petition is maintainable before the Hon'ble Court on the various grounds raised herein below.

It is submitted that when the maintainability of the writ petition was properly explained by the petitioner in the writ petition itself and also in view of the ratio laid down by this Hon'ble Court regarding the maintainability of a suit under Article 131 of the Constitution, the High Court should not have dismissed the writ petition on the ground of maintainability.

F. This Hon'ble Court in ***State of Bihar v. Union of India, (1970) 1 SCC 67*** held as follows:-

3. Clauses (a), (b) and (c) of the article specify the parties who can appear as disputants before this Court. Under clause (a) it is the Government of India and one or more States; under clause (b) it is the Government of India and one or more States on one side and one or more other States on the other, while under clause (c) the parties can be two or more States without the Government of India being involved in the dispute. *The specification of the parties is not of an inclusive kind. The express words of clauses (a), (b) and (c) exclude the idea of a private citizen, a firm or a corporation figuring as disputant either alone or even along with a State or with the Government of India in*

*the category of a party to the dispute. There is no scope for suggesting that a private citizen, a firm or a corporation can be arrayed as a party by itself on one side and one or more States including the Government of India on the other. Nor is there anything in the article which suggests a claim being made by or preferred against a private party jointly or in the alternative with a State or the Government of India. The framers of the Constitution appear not to have contemplated the case of a dispute in which a private citizen, a firm or a corporation is in any way involved as a fit subject for adjudication by this Court under its exclusive original jurisdiction conferred by Article 131.*

- G. This Hon'ble Court in ***State of Rajasthan v. Union of India, (1977) 3 SCC 592*** held as follows:-

There are two limitations in regard to the nature of the suit which can be entertained by the Supreme Court under this Article. One is in regard to parties and the other is in regard to the subject-matter. The Article provides in so many terms in clauses (a), (b) and (c) that the dispute must be between the Government of India and one or more States, or between the Government of India and any other State or States on one side and one or more other States on the other, or between two or more States. *It does not contemplate any private party being arrayed as a disputant*

*on one side or the other. The parties to the dispute must fall within one or the other category specified in clauses (a), (b) and (c).*

H. This Hon'ble Court in ***Tashi Delek Gaming Solutions Ltd. v. State of Karnataka, (2006) 1 SCC 442*** held as follows:-

Article 131 of the Constitution postulates that this Court to the exclusion of any other court shall have original jurisdiction in any dispute between the Government of India and one or more States; or between the Government of India and any State or States on one side and one or more other States on the other; or between two or more States. We in this case are not concerned with the proviso to the said article. The said article would be attracted where adjudication is necessary in relation to a legal right of one State or the Union of India vis-à-vis other States, as the case may be. Indisputably, the expression "legal right" has received liberal interpretation by this Court from time to time. *However, it is now well settled by various decisions of this Court that this article will not be applicable where citizens or private bodies are parties either jointly or in the alternative with the State or the Government of India. The enlarged definition of "State" under Article 12 would not extend to Article 131 of the Constitution. It is also not in*

*dispute that even a statutory corporation is not a State within the meaning of the said provision.*

- I. It is submitted that the reliefs claimed in the Writ Petition filed by the State of Kerala itself shows that a suit under Article 131 is not all maintainable and the Hon'ble Supreme Court cannot pass a decree in such terms under Article 131 of the Constitution. The Reliefs in the writ Petition are as follows:-

RELIEFS

- (1) Declare that Exhibits P13 Request for Proposal (RFP) for Concession with regard to the Operation, Management and Development of Thiruvananthapuram International Airport is without jurisdiction, illegal and violative of Section 12A of the Airport Authority Act;

Or in the alternative

- (2) Declare that the Petitioner State of Kerala is entitled to preferential consideration over the ninth respondent in public interest as regards the Concession for Operation, Development and Management of Thiruvananthapuram Airport, in view of the mandate of Section 12A of the Airport Authority Act;
- (3) Declare that the third respondent Airport Authority of India is bound to accept the proposal of the State Government through the tenth respondent for grant of concession facility at par with the amount offered by the ninth respondent;

- (4) Issue a writ of mandamus or any other appropriate writ or order or direction commanding the 3<sup>rd</sup> respondent to positively consider the offer of the State of Kerala, as revealed from Exhibits P19 and P20 letters, before finalizing the Tender pursuant to Exhibit P13;
- (5) Issue a writ of certiorari or any other appropriate writ or order or direction calling for the records leading to Exhibit P9 and quash the same, in so far as it limits the Right of First Refusal (RFP) to the petitioner State in the manner to plus or minus 10%.

It is submitted that the issuance of writs sought for in the Writ Petition are against the Airport Authority of India and for issuing the declarations, the Court has to hear the private parties and thus only a Writ Court can hear such a petition.

- J. For that the High Court failed to appreciate that the dispute regarding whether the Request For Proposal issued by the Airport Authority of India is violative of Section 12A of the Airport Authority Act or whether the State of Kerala is entitled to preferential consideration over Respondent No.9 in public interest regards the Concession for Operation, Development and Management of the Thiruvananthapuram Airport in view of the mandate of the Airport Authority Act and other questions arises in the Writ Petition cannot be treated as question "on which the existence or extent of a legal right depends" as contemplated

under Article 131 of the Constitution, when the lis involves private parties and a Statutory Authority.

- K. For that the High Court erred in holding that the writ petition seeking to quash the Request For Proposal dated 14.12.2018 is premature. It is submitted that State has rightly challenged the Request For Proposal as it violated the right of the State to get right for first refusal. The second respondent assured the State of Kerala that there would not be any privatization of Thiruvananthapuram Airport and that a Special Purpose Vehicle with State Government and financial institutions as partners could be created with the value of the State's property as the State's share. The total extent of 636.57 acres of land of the Thiruvananthapuram Airport is, interalia, made up of 258.06 acres owned exclusively by the State of Kerala in continuation of the Princely State of Travancore and the United States of Travancore – Cochin, 32.56 acres acquired by the Government of Kerala and 8.29 acres of Government land handed over to the Airports Authority. The Government of India assured the State that it would be consulted at the time any decision regarding privatization was taken, taking into account its contribution towards cost for acquisition of land for Airport expansion. It is submitted that when a Request For Proposal was issued containing clauses which negates the rights of the State, the

same can be challenged in the Writ Petition and such challenge cannot be treated as premature.

- L. For that the High Court failed to note that State changed the tender process itself as it being violative of the preconditions in Section 12 A (1) of the Airport Authority of India Act. The conditions for leasing out, viz “public interest” and “better management of the airport”, were not satisfied in the case of Thiruvananthapuram Airport. It is submitted that when the leasing itself is violative of the statutory provisions and the State is an aggrieved party in the process, the Writ Petition cannot be dismissed as premature.
- M. For that the High Court failed to appreciate that the State requested the Government of India to form a Special Purpose Vehicle with regard to Thiruvananthapuram Airport taking into account its contribution towards the same including in the manner of providing land free of cost and also expending costs for acquisition of land and various deliberations were held in this regard including the grant of right for first refusal. In such a situation, incorporation of many of the clauses in the Request For Proposal, which are tailor made to suit Respondent No.9 to the exclusion of the State, is a question liable to be adjudicated by the High Court and such a question cannot be rejected as premature.

N. For that the High Court failed to appreciate that the process of tender itself is vitiated for many reasons and therefore the Writ Petition challenging the tender process cannot be rejected as premature. It is submitted that one of the pre-qualification condition that the tenderer should have previous experience in Airport management for which previous experience of the State was not considered by the third respondent. Instead the previous practice of providing previous experience in Airport management as a prequalification was deliberately deleted from the RFP related to Thiruvananthapuram Airport. This is done with a deliberate attempt to avoid the State Government, which is having previous experience. It is submitted that though the State Government has requested for the right of first refusal without any parameters as regards the tender amount quoted is concerned, the Airport Authority of India had limited the said right of refusal to plus or minus 10% of the highest bid. There is no plausible reason for limiting the rate of refusal of plus or minus 10% of the highest bid when the State Government is having previous experience in running Airports and also having the asset worthiness, at par with or even higher than any other bidder. It was specifically contented by the State that limiting of the right of the refusal plus or minus 10% of the highest bid, as regards the State Government and its entities are concerned, is arbitrary. It is submitted that on the premise these factual matrix and legal

contentions, the High Court should not have rejected the writ petition as premature.

**6. GROUNDS FOR INTERIM RELIEF**

- I. That the High Court passed the impugned Judgment dismissing the Writ Petition filed by the State of Kerala as not maintainable, holding that the question raised in the Writ Petition is to be decided by the Hon'ble Supreme Court under Article 131 of the Constitution of India. The High Court rejected the contention of the petitioner State of Kerala that the Writ Petition filed under Article 226 of the Constitution is maintainable, as apart from Union of India, the Airports Authority of India and its functionaries are also arrayed as party respondents in the Writ Petition, as also private respondents 8 to 10 who are necessary parties in the Writ Petition.
  
- II. It is submitted that this Hon'ble Court in a catena of Judgments viz. ***State of Bihar v. Union of India* (1970)1 SCC 67**, ***State of Rajasthan v. Union of India* (1977) 3 SCC 592**, ***Union of India v. State of Rajasthan*, (1984) 4 SCC 238** and ***Tashi Delek Gaming Solutions Ltd. v. State of Karnataka* (2006) 1 SCC 442** held that Article 131 of the Constitution of India does not contemplate any private party being arrayed as a disputant on one side or the other and Article 131 will not be applicable where

citizens or private bodies are parties either jointly or in the alternate with the State or the Government of India.

- III. It is submitted that when the maintainability of the writ petition was properly explained by the petitioner in the writ petition itself and also in view of the ratio laid down by this Hon'ble Court regarding the maintainability of a suit under Article 131 of the Constitution, the High Court should not have dismissed the writ petition on the ground of maintainability.
  
- IV. It is submitted that that State changed the tender process itself as it being violative of the preconditions in Section 12 A (1) of the Airport Authority of India Act. It is submitted that since the writ petition filed by the State is dismissed on the ground of maintainability, without adjudicating the legality of the tender process, it is prayed that the tender process and all further proceedings pursuant to the Request For Proposal may be stayed by this Hon'ble Court till the disposal of the Special Leave Petition, and also the operation of the impugned judgment otherwise the petitioner will be put to irreparable injury, loss and hardship.

**8. MAIN PRAYER**

In view of the above it is most respectfully prayed that this Hon'ble Court may be pleased to:-

- (a) Grant special leave to appeal against the impugned final common Judgment passed by the High Court of Kerala at Ernakulam dated 18.12.2019 in W.P.(C)No. 6823 of 2019;
- (b) Pass such other order or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

**7. PRAYER FOR INTERIM RELIEF**

It is most respectfully prayed that this Hon'ble court may be pleased to pass:-

- (a) An ad-interim ex-parte stay order staying the operation and implementation of all further proceedings pursuant to the Request For Proposals issued by the Airport Authority of India dated 14.12.2018, for concession for Operation, Development and Management of Thiruvananthapuram Airport, till the disposal of the Special Leave Petition;
- (b) An ad-interim ex-parte stay order staying the operation of the impugned final common Judgement passed by the High Court of Kerala at Ernakulam dated 18.12.2019 in W.P.(C)No. 6823 of 2019;

- (c) Pass such other order or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

FOR WHICH ACT OF KINDNESS THE HUMBLE PETITIONER SHALL AS IN DUTY BOUND EVER PRAY.

FILED BY

(C.K SASI)  
ADVOCATE FOR THE PETITIONER

Drawn on:01.02.2020  
Filed on :03.02.2020  
New Delhi.

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
SPECIAL LEAVE PETITION (CIVIL) NO. OF 2020

IN THE MATTER OF:

State of Kerala. .... Petitioner

Versus

The Union of India & Ors. .... Respondents

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the Hon'ble High Court of Kerala at Ernakulam whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the Annexures attached to the Special Leave Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the SLP for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the petitioner whose affidavit is filed in support of the Special Leave Petition.

FILED BY

(C.K SASI)  
ADVOCATE FOR THE PETITIONER

Filed on:03.02.2020  
New Delhi.

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
SPECIAL LEAVE PETITION (CIVIL) NO. OF 2020

IN THE MATTER OF:

State of Kerala. .... Petitioner

Versus

The Union of India & Ors. .... Respondents

OFFICE REPORT ON LIMITATION

1. The petition is within time.
2. The petition is barred by time and there is delay of .....days in filing the same against order dated 18.12.2019 and petition for condonation of delay of .....days has been filed.
3. There is a delay of .....days in filing the petition and petition for condonation of delay of .....days in refilling has been filed.

BRANCH OFFICER

New Delhi

Dated :03.02.2020



elaborate and detailed synopsis and list of dates which is lengthy. It is submitted that the submissions made in the Synopsis and List of Dates are extremely relevant and important for adjudication of the present case. It is therefore prayed that the application for permission to file a lengthy synopsis and list of dates may be allowed in the interest of justice.

PRAYER

In the facts and circumstances above-mentioned, the Petitioner most respectfully pray that this Hon'ble Court may be pleased to:-

- a. Permit the Petitioner to file a lengthy Synopsis and List of Dates in the present Special Leave Petition filed against the impugned final common judgment passed by the High Court of Kerala at Ernakulam dated 18.12.2019 in W.P.(C)No. 6823 of 2019;
- b. Pass such other and further orders as may be deemed fit by this Hon'ble Court.

FOR WHICH ACT OF KINDNESS THE HUMBLE PETITIONER SHALL AS IN DUTY BOUND EVER PRAY.

FILED BY

(C.K SASI)  
ADVOCATE FOR THE PETITIONER

Filed on: 03.02.2020  
New Delhi



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