

(2009) 11 GAU CK 0056
In the Gauhati High Court
Case No : Writ Petition No. 47 of 2009

Lalthai and Others

APPELLANT

Vs

State of Mizoram and Another

RESPONDENT

Date of Decision : 27-11-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226

Citation : AIR 2010 Guw 108 : (2010) 2 GLR 652 : (2010) 2 GLT 85

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Advocate : M. Zothankhuma, R. Laltanpuia, S. Vanlahriata, R. Lalrinchhami, Joel J. Denga, P.C. Prusty and H. Lalremsanga, for the Appellant; N. Sailo, Addl. A.G. and M. Zothankhuma, for the Respondent

Final Decision : Dismissed

Judgement

H. Baruah, J.—Both the writ petitions being inter connected with each other were heard together and are being disposed of by this common judgment and order.

2. In Writ Petition No. 47 of 2009, petitioners have challenged the notification dated 5-6-2009 issued by respondent No. 1 vide memo No. S-1 1014/1/2009-FCS & CA (An-nexure-12) and NIT dated 9-6-2009 issued by respondent No. 1 vide memo No. S-1 1014/ 1/1009-FCS and CA dated 5-6-2009 (Annex-ure-13) while the writ petitioner in W.P.(c) No. 71 of 2009 has sought for setting aside and quashment of the impugned notification No. 11014/1/2006-FCS-CA dated 18-7-2008 issued by respondent No. 1 (Annexure-3 to the writ petition) and corrigendum No. D-99011/3/2008/DTE (SPY) GEN dated 1-10-2008 by the Respondent No. 2 (Annexure 4 to the writ petition) by which term of appointment as carrying contractors had been extended.

3. W.P. (c) No. 47 of 2009:

Respondent No. 2, the Director, Food and Civil Supplies and Consumer Affairs Department, Aizawl issued a Notice Inviting Tender (for short NIT) dated

15-2-2006 (Annexure-1) inviting tenders from interested persons /firms to carry foodstuff on various main routes originating from Kolasib, and Tanhril during the calendar year 2006. Pursuant to the NIT as indicated above all the petitioners herein submitted their tenders and the petitioners having been found qualified, respondent No. 2 appointed them as carrying contractors for the calendar year 2006 in the main routes as indicated in the appointment order dated 20-7-2006 (Annexure-4). Per Clause 15 of the terms and conditions of the NIT, petitioners executed agreement with the respondent No. 1 as carrying contractors for transportation of foodstuff including loading and unloading and stocking from the godown to their place of destination. While the petitioners were executing the works as carrying contractors for the year 2006, the term was extended up to 31-11-2007 or until further order vide order dated 11-12-2006 issued by respondent No. 2 (Annexure-5). Such extension was approved on the basis of a letter of under Secretary, Food, Civil Supplies and Consumer Affairs dated 1-10-2007 till 31-3-2009 and accordingly respondent No. 2 by another letter dated 1-10-2007 extended the term of the petitioners as carrying contractors for the main routes up to 31-3-2009 (Annexures-6 & 7). Respondent No. 1 vide notification dated 18-7-2008 (Annexure-8) further extended the term of the petitioners as carrying contractors up to 31-3-2011 in the main routes. In the meantime, respondent No. 1 issued another NIT dated 21-7-2008 inviting tenders from interested persons/firms to carry foodstuff in respect of the main routes starting from Bualpui FSD during the calendar year 2008. The petitioners having fulfilled all the terms and conditions pursuant to the NIT, were appointed as carrying contractors for the calendar year 2008 as against the routes shown in the appointment order dated 26-9-2008 (Annexures-9 & 10). Corrigendum dated 1-10-2008 was issued by the respondent No. 2 in respect of order dated 26-9-2008 wherein it has been indicated that "Calendar year 2008" be read as "up to 31st December, 2009". As per appointment orders and other orders issued by the respondents the petitioners have been carrying foodstuff to the satisfaction of the department concerned. For the purpose of execution of the works petitioners have invested a lot of money and machineries including vehicles. However, vide notification dated 5-6-2009 (Annexure-12) in super session of notification No. S-11014/1/06-FCS & CA dated 18-7-2008 and corrigendum issued under letter No. D.99011/3/2008/DTE/SPY/(Gen) dated 1-10-2008 the extended term of carrying contractors under the main routes have been shortened and extended up to 31-8-2009 or till process of notice inviting tender for carrying of foodstuff under all main routes is completed whichever is earlier and accordingly issued NIT dated 9-6-2009 inviting tenders from the interested persons, bona fide citizens of India/ reputed firms to carry foodstuff in respect of main routes originating from Kolasib, Tanhril and Bualpui indicating 3-7-2009 as last date of submitting tender (Annexure-13).

4. It is contended that respondents before issuing notification dated 5-6-2009 (Annex-ure-12) and issuing NIT dated 9-6-2009 (Annexure-13) did never issue any show cause notice to the petitioners why action as indicated in notification

dated 5-6-2009 (Annex-ure-12) and NIT dated 9-6-2009 (Annexure-13) should not be resorted to. It is contended that by issuing the notification and the NIT the respondents violated the principle of natural justice. The term has been shortened by the impugned notification without any just cause, the action on the part of the respondent is arbitrary in nature which cannot receive sanction of law. It is also contended that due to extension of their terms as carrying contractors the petitioners had taken loans from the banks for smooth execution of the work and had purchased the vehicles for transportation of the foodstuff. On account of shortening of the term it is contended that the petitioners will suffer irreparable loss and injuries. Moreover, for the execution of the works the petitioners have employed man power like Manager, Drivers, handyman etc. The petitioners were appointed as carrying contractors on fulfilling terms and conditions of the NIT, but the NIT impugned herein being not contained such condition a step has been created for adopting pick and choose policy in appointing such carrying contractors. It is also contended that the doctrine of promissory estoppel would come into play against the respondents since they cannot be allowed to take away the right of the petitioners in an illegal and arbitrary manner. The extension of the term of the petitioners being validly extended by the competent authority, the petitioners thereby accrued some right and such rights cannot be taken away unilaterally and arbitrarily. The petitioners thus in the face of the above facts have sought for setting aside and quashment of the impugned notification and the NIT as indicated above.

5. W.P. (C) No. 71 of 2009:

The petitioner herein purchased the requisite tender papers in respect of a notice inviting tender (for short NIT) dated 9-6-2009 from the office of the respondent No. 2 and to submit his quotation for carrying of foodstuff during the year 2009 for the main routes indicated in the NIT, wherein last date of submission of the tender was fixed up to 12 noon of 3-7-2009. When the petitioner had been to the office of the respondents for submitted his tender he was informed by the respondent No. 2 that tender could not be accepted as the NIT dated 9-6-2009 had been stayed by the order of this Court dated 12-6-2009 passed in WPC No. 47 of 2009. Private respondent Nos. 3 to 13 had been granted extension of their terms of appointments as carrying contractors against NIT dated 15-2-2009. It is claimed that the respondent authority has the right to float fresh tender per Clause 14 of the terms and conditions of the NIT dated 15-6-2006 and, therefore, the extension so far allowed by the Government of Mizoram to the private respondent Nos. 3 to 13 are to be treated null and void per Clause 14 of the NIT. It is further contended by the petitioners that the impugned extension in favour of the private respondent Nos. 3 to 13 precluded him from participating in the tender process for appointment as carrying contractor. The improper and illegal extension of the term of the carrying contractors (private respondents Nos. 3 to 13) should not be allowed to continue keeping in view the general and common interest and welfare of the people of Mizoram. The petitioner, therefore, by filing this writ petition under Article 226 of the Constitution of India has

sought for setting aside of the impugned notification No. 11014/1/2006-FCS & CA dated 18-7-2008 (Annexure-3) and corrigendum No. D.99011/3/2008/DTE(SPY)/GEN dated 1-10-2008 (Annexure-4) by which the term of appointment of the carrying contractors had been extended.

6. The writ petition in W.P.(C) No. 47 of 2009 has been resisted by the State respondents by filing affidavit-in-opposition. Respondents by resorting Clause 14 of the terms and condition of the, NIT contending inter alia that the extension of the term of carrying contractors at least up to 31-3-2009 is illegal. Per Clause 14 of the terms and conditions initial appointment will be for one calendar year, extension thereby cannot be granted and therefore, extension so made rather granted from calendar year 2006 to 2007 and finally up to 2007 is illegal and void. It is also contended that the extension made per Annexure-8 till 31-3-2011 is also illegal and void which, however, by corrigendum and in supersession of notification dated 18-7-2008 (Annexure-8) has been reduced to 31-8-2009. Such contentions of the State respondents brightly find place in paragraph 6 of the counter which speaks as under:

6. That with regard to the statements made in paragraph No. 10 of the writ petition, I say that the extension of terms of carrying contractors up to 31-3-2009 is against Clause 14 of the Terms and conditions. Since the said Terms and Conditions stipulated that the contract appointment will be for a period of one calendar year, the extension made till 31-3-2009 is illegal. It is pertinent to point out that if initial appointment is for one calendar year, extension cannot be granted for more than one year and therefore, illegal extension granted in this case from the calendar year 2006 to 2007 and finally up to 2009 is illegal and void.

In paragraph 7 of the counter it is also contended that the carrying contractors' rates are approved on the recommendation of the purchased advisory board in terms of the instructions and guideline issued from time to time more particularly vide office memorandum under memo No. FMC. 17/88 dated 3-7-1991 and No. G.25017/1/03-KEC dated 11-5-2007 respectively wherein it has been clearly provided that the recommendation of the board will be effective from the date it is approved by the Government and will be valid for a period of one year from the effective date of implementation. Under exceptional circumstances the period of validity may be extended by another six months by the Government or by the concerned administrative department with prior approval of the Minister concerned, therefore, the extension of the term from calendar year 2006 to 2007 and then to 2009 and finally up to 31-3-2011 is against the terms and conditions of the NIT and therefore, is illegal and void. It is also contended in paragraph 10 of the counter that though Clause 14 of the terms and conditions stipulates the initial period of appointment as one year such term was extended up to 31-12-2009 at the instance of the Minister in-charge in violation of the Clause 14 and extension thereafter up to 31-3-2011 is also illegal. The purpose behind the issuance of Annexure-12 by which the period of term has been squeezed till

31-8-2009 or till process of notice inviting tender for carrying of foodstuff under all main routes is completed whichever is earlier is to save cost of transportation from the godown located at the places indicated in the NIT to the destinations through the main routes. Further, they also contended that Government is within its right and competency to float tender in terms of Clause 14 of the terms and conditions of the NIT and accordingly impugned notification dated 5-6-2009 is validly made in terms of the Clause 14 and the NIT dated 9-6-2009 inviting sealed tenders from the interested persons was validly made in the interest of public. Since the extension of the terms of the carrying contractors made earlier is not accordance with Clause 14 of the terms and conditions of the NIT, making of notification dated 5-6-2009 and the NIT dated 9-6-2009 is not arbitrary, illegal and in violation of the principle of natural justice. Notice inviting tender was legally made in a transparent manner. The State respondents, therefore, urged this Court to dismiss the writ petition.

7. The statements made in counter-affidavit by the State respondents have been resisted by the petitioners by filing re-joinder affidavit wherein they have reiterated that the respondents illegally shortened the period by impugned notification dated 5-6-2009. It is also contended in their re-joinder affidavit that Clause 14 of the terms and conditions of the NIT does not stipulate the period of extension. It was not within the competence of the State respondents to reduce the period of examination once validly extended. The petitioners, therefore, contended that the statements made in the counter-affidavit by the respondents cannot legally stand. The respondents misinterpreted the provisions of Clause 14 and thus, acted prejudicially to the interest of the petitioners.

8. The respondents in WP (C) No. 71 of 2009 also adopted the same view that per Clause 14, contract may be initially offered for a period of one year which, however, can be extended to a certain period. Such extension cannot be made to a longer period which prejudicially affects the interest of the intending persons to participate in the process of tender. Extension of the contract to a longer period denied the opportunity to participate in the tender process. Private respondents, the petitioners in W.P. (C) No. 47 of 2009 by filing their counter-affidavit reiterate their stand taken in the W.P. (C) No. 47 of 2009.

9. Mr. M. Zothankhuma, learned Counsel for the writ petitioner as well as Mr. P.C. Prusty, learned Counsel assisted by Mr. Joel J. Denga for the writ petitioners were heard at length. We have also heard Mr. N. Sailo, learned Addl. Advocate General for the State respondents.

10. There is no denial that petitioners were not appointed as carrying contractors for carrying foodstuff from godowns situated at Kolasib and Tanhril pursuant to the NIT dated 15-2-2006 and submission of tender for the calendar year 2006. By various orders the term had been extended from 2006 to 2007 and then 2009 and ultimately up to 31-3-2011. It is also an admitted fact that the petitioners were also engaged as carrying contractors pursuant to NIT and submission of tender for carrying foodstuff from Bualpui godown to different destination for

calendar year 2008 vide order dated 26-9-2008. While the petitioners were executing the contract work by engaging man power and expending money, the respondents authority suddenly by notification dated 5-6-2009 shortened the period to 31-8-2009. It was contended by Mr. M. Zothankhuma, learned Counsel appearing for and on behalf of the petitioners that the shortening of the period vide notification dated 5-6-2009 was made by the respondents without giving any notice whatsoever. The respondents denied the petitioners of being heard and projecting their case objecting to such shortening of the period of the contract work. It was argued by Mr. M. Zothankhuma that the notification dated 5-6-2009 is made in violation of the principle of natural justice which violates the fundamental right enshrined in Article 14 of the Constitution. In supporting the case of the petitioners it was argued by Mr. M. Zothankhuma that the extension indicated in Annexures-5, 6, 7 and 8 were made validly by appropriate authority. Such extension were not made by the concerned authority in consideration of extraneous circumstances. Therefore, the shortening of period from 31-3-2009 to 31-8-2009 is illegal and in violation of principle of natural justice. Further Mr. M. Zothankhuma argued that the rates at which the petitioners are transporting the foodstuff from the godown to different destinations is much less than the rates approved by the Purchased Advisory Board and, therefore, the claim of the respondents that the foodstuff are being carried at a higher rate is unfounded and there is no basis at all. Therefore, respondents' contention for inviting tender for the purpose to bring down the transportation cost does not have any reasonable basis. The purpose behind shortening of the period and issue of NIT inviting tender from intending persons, firms etc. is to pick and chose the interested person with ulterior motive. It was also argued by Mr. Michael that on account of extension of period as indicated in Annexures-5, 6, 7 and 8 the, petitioners herein purchased trucks, employed man power and took loans from the bank for the execution of the works properly and satisfactorily. Shortening the period by the respondents thus, would cause enormous injury to the petitioners.

11. As against the contention raised in para 6 of the counter-affidavit by the respondent it was argued by Mr. M. Zothankhuma that interpretation employed to this provision by the respondents is totally wrong. Clause 14 though provides for engagement of carrying contractors initially for one calendar year from the date of appointment such term can be extended beyond the period of one calendar year for carrying foodstuff for another specified period. Therefore, the claim of the respondents that the initial period of one year cannot be extended beyond it, is not the intention of Clause 14 of the terms and conditions of the NIT. The words employed in Clause 14 "for another satisfied period" according to Mr. M. Zothankhuma do not mean that it cannot be extended beyond the period of one year. It was argued by Mr. M. Zothankhuma, that the appropriate authority by taking resort to Clause 14 was pleased to extend the period by Annexure-5, 6, 7 and 8 up to 31-3-2011. Therefore, the concerned authority who made such extension did not commit any error or illegality since such extension

has been sanctioned/ allowed by the provisions of Clause 14 of the terms and conditions of the NIT.

12. Contrary to the submission advanced by Mr. M. Zothankhuma, Mr. N. Sailo, learned Addl. Advocate General representing the State respondents strenuously argued that if the initial appointment is for one calendar year, extension cannot be granted for more than one year and therefore, extension made vide Annexure-5, 6, 7 and 8 is illegal and void. In view of the submission advanced by Mr. M. Zothankhuma, as well as Mr. N. Sailo, learned Addl. Advocate General it would be appropriate to place the Clause 14 of the terms and conditions of the NIT at this stage. Clause 14 reads as under:

14. The contract will be initially for a period of 1 (one) calendar year from the date of appointment. The contract may, however, be extended beyond the period of 1 (one) calendar year for carrying foodstuff for another specified period or till fresh tenders are invited and contractor appointed for carriage of carriage of foodstuff for the subsequent period/terms.

This clause does not specifically say that such extension cannot be made beyond one year. Words "for another specified period" would indicate any period beyond one year. The literal meaning of this clause, therefore, cannot be denied from the intention employed in the clause. The argument put forward by Mr. N. Sailo, that such extension cannot be made beyond the period of one year since initial appointment is for one calendar is not the intention of the Clause 14 of the terms and conditions of the NIT. Such extension can be made by the authority by taking resort to Clause 14. The extension indicated in Annexure-5 to 8 were undoubtedly made by the appropriate authority. Therefore, it cannot be said that such extension were illegal and beyond the intention of Clause 14 of the terms and conditions of the NIT. This Court after careful marshalling of the facts of both the writ petitions and the submissions made by the counsel of both the parties, is of the view that the statement made in paragraph 6 of the counter-affidavit (W.P. (C) No. 47 of 2009) cannot be accepted branding it contrary to provisions of Clause 14. Since the specified period employed in Clause 14 does not provide limitation, claim of the respondents that it cannot be extended beyond the period of one calendar year if the initial appointment if for one calendar year cannot be accepted. This Court finds no force in the argument advanced by Mr. N. Sailo, the learned Addl. Advocate General, Mizoram for the State respondents. The acts resorted to by the respondents taking aid of Clause 14 is not an act to be appreciated in view of the intention of Clause 14. Perhaps the respondents on the basis of some other grounds which does not find place in the counter-affidavit shortened the period to 31-8-2009 by notification dated 5-6-2009 (Annexure-12). It is stated herein before that since the extension were made by a competent authority by employing Clause 14, such extension cannot be held invalid by saying that extension cannot be made beyond one year if the initial appointment is one calendar year. This Court finds no substance in the statement made in paragraph 6 of the counter-affidavit as well as in the submission

advanced by Mr. N. Sailo, learned Addl. Advocate General, Mizoram.

13. Mr. M. Zothankhuma, while supporting the writ petition also contended that the respondents while shortening the terms of the writ petitioners failed to assign reasons in the notification for so doing in order to facilitate the petitioners to make a fruitful representation before the appropriate authority non-assigning of the reasons in the notification impliedly prejudiced the writ petitioners. It was also contended by Mr. M. Zothankhuma that the foodstuff are being carried by the writ petitioners at a rate lower than the rate fixed by the Government, which, however, benefits the Government. The contention of the respondents that the foodstuff are being carried at a higher rate is not sustainable, he argued.

14. Mr. M. Zothankhuma, also in support of his argument relying the ratio laid down by the Apex Court in the case between National Buildings Construction Corporation Vs. S. Raghunathan and Others, submitted that the petitioners have a legitimate expectation on account of extension of the period by Annexure-5 to 8 to make more profit by execution of the works and such expectation has been denied by shortening the period of 31-8-2009 from 31-3-2001. The petitioners on account of extension of time purchased means of transportation after expending lot of money and engaging man power and by alteration their rights to have the profit has been curtailed by the respondents. Therefore, according to Mr. M. Zothankhuma, the ratio laid in the (supra) would be available in favour of the petitioners. In paragraphs 20 and 21 of the case (supra) their Lordships of the Supreme Court held as under:

20. Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service laid down that the doctrine of "legitimate expectation" can be invoked if the decision which is challenged in the Court has some person aggrieved either (a) by altering rights or obligations of that person which are enforceable by or against him in private law; or (b) by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that it should not be withdrawn.

(Emphasis supplied)

21. The Indian scenario in the field of "legitimate expectation" is not different. In fact, this Court, in several of its decisions, has explained the doctrine in no uncertain terms.

15. In regard to violation of principle of natural justice, Mr. M. Zothankhuma, learned Counsel for the petitioners relied in the ratio laid down in the case between Raja Ram Pal v. Hon"ble Speaker, Raja Ram Pal Vs. The Hon"ble Speaker, Lok Sabha and Others, wherein in paragraphs 671 and 672 their

Lordships held as under:

671. It was also urged that the Committee had not given sufficient opportunity to the petitioners to defend them and had not complied with the principles of natural justice and fair play. It was submitted that the doctrine of natural justice is not merely a matter of procedure but of substance and any action taken in contravention of natural justice is violative of fundamental rights guaranteed by Articles 14, 19 and 21 of the Constitution. Reference in this connection was made to *Maneka Gandhi v. Union of India*, *Kohoto Hollohan* and *Ors.* decisions.

672. So far as principle of law is concerned, it is well settled and cannot be disputed and is not challenged. In my opinion, however, in the facts of the case, it cannot successfully be contended that there is breach or non-observance of natural justice by the Committee. Reading of the reports makes it clear that adequate opportunity had been afforded to the petitioners and thereafter the* action was taken. Notices were issued to the members, CDs were supplied to them, evidence of witnesses was recorded, defence version was considered and "findings and conclusions" were reached.

16. From the scrupulous perusal of the records it is nowhere noticed nor the annexures that before resorting to action as indicated in Annexure-12 (W.R (C) No. 47 of 2009) the respondents issued show cause notice to the petitioners asking them as to why the extended period should not be cut short to 31-8-2009. Non issuance of show cause notice to the writ petitioners prevented them from projecting their case before the respondents authority. Before taking action against someone opportunity of being heard is required to be provided. This opportunity admittedly being not provided to the petitioners, actions resorted to by impugned notification (Annexure-12) in contravention of natural justice is violative of fundamental rights guaranteed by Articles 14, 19 and 21 of the Constitution. It was submitted by Mr. M. Zothankhima that doctrine of natural justice is not merely a matter of procedure but of substance. Therefore, the shortening of period by impugned notification (Annexure-12) cannot receive sanction in law and liable to be turned down. The respondents when failed to project or in other words place sufficient materials for consideration of this Court, the claim of the petitioners, therefore, cannot be thrown into a waste paper basket merrily. The petitioners appear to have a good case in their favour sufficient to urge this Court to set aside the impugned notification dated 5-6-2009 (Annexure-21) and NIT dated 9-6-2009 (Annexure-13). This Court, therefore, finds sufficient grounds to interfere with the notification and the NIT.

17. By taking care of all the facts and circumstances of the case and the averments made in the counter-affidavit/re-joinder affidavit and the submissions advanced by the counsel of both the parties and the law laid down by the Apex Court, I am of the considered view that the period extended as carrying contractors vide Annexures-5 to 8 and corrigendum (Annexure-11) has been illegally shortened vide notification dated 5-6-2009 (Annexure-12).

18. In the result, the impugned notification dated 5-6-2009 (Annexure-12) and the NIT dated 9-6-2009 (Annexure-13) are set aside and quashed. Writ petition (C) No. 47 of 2009 is allowed.

19. In view of the setting aside of the notification and the NIT as indicated above, the writ petition No. 71 of 2009 filed by the writ petitioner, namely, Pu H. Zohmingthanga turns infructuous and accordingly dismissed.