(2010) 04 BOM CK 0004

In the Bombay High Court

Case No : Writ Petition No. 265 of 2010

M/s. Pooja Fortune Pvt. Ltd. APPELLANT

Vs

The Government of Goa and Another RESPONDENT

Date of Decision : 13-04-2010

Acts Referred:

Citation : (2010) 04 BOM CK 0004

Hon'ble Judges : U.D. Salvi, J;S.J. Vazifdar, J

Bench : Division Bench

Advocate : S.G. Dessai, with Mr. Pavithran A.V, for the Appellant; S.S. Kantak, Advocate General with Mr. A. Kamat, Addl. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner has sought an order quashing and setting aside the first respondent''s invitation for "Expression of Interest" from eligible Lottery Operators/Parties for appointment of Marketing Agents/Distributors for operating and marketing all kinds of lotteries under the Goa Brand Lottery Scheme (online and paper lotteries) under the Lotteries (Regulation) Act, 1998 and the Rules made thereunder. The petitioner has also sought an order quashing and setting aside the terms and conditions in the proposal form issued pursuant thereto and for consequential orders. Mr. S. G. Dessai, the learned Senior Counsel appearing on behalf of the petitioner firstly contended that the entire exercise was mala fide, inasmuch as the terms and conditions are framed to favour two parties only, viz. Playwin and SNJ and Company.

2. The submission is totally unfounded. Respondent No.1 has, in an affidavit dated 8.4.2010, stated that nine entities had purchased the proposal forms and Playwin and SNJ and Company are not amongst them. It is further stated that two companies had submitted their proposals, neither of which are Playwin or SNJ and Company. The allegation of mala fide on this basis, therefore, requires no further consideration.

3. Mr. Dessai then submitted that Clauses iii, iv, vi, viii and xiv of the Terms and Conditions for appointment of Marketing Agent/ Distributor are unreasonable and arbitrary.

He submitted, on the basis of proforma letters submitted by the participants, that the requirement of minimum gross turn over of the participants of Rs.4000 crores was totally irrational, as the proforma letter requires a participant to offer a net guaranteed revenue per annum upto a turnover of only Rs.1000 crores.

4. This submission is not well founded. The respondents are well within their rights to require a participant to have a minimum gross turn over of Rs.4000 crores, per annum, during the last three financial years. This is obviously to ensure, as far as possible, that the participant would be in a position to raise a revenue per annum upto a turn over of Rs.1000 crores. The manner in which the same is to be ensured must be left to the decision of the respondents.

5. The contention that a participant is required to pay only Rs. 12 crores is also not well founded, as the proforma letter itself indicates that a participant is bound to pay 0.25 % in respect of the turn over, over and above Rs.1000 crores, per annum.

6. There is nothing unreasonable or irrational about clause iv. This clause too is to test the capacity of a participant to successfully comply with the obligations under the lottery scheme. The manner in which the same is to be ensured or tested must again be left to the respondents. The learned Advocate General''s reliance upon the Judgment of the Supreme Court in the case of Directorate of Education and Others Vs. Educomp Datamatics Ltd. and Others, , is well founded. In para 12, the Supreme Court held :

12. It has clearly been held in these decisions that the terms of the invitation to tender are not open to judicial scrutiny, the same being in the realm of contract. That the Government must have a free hand in setting the terms of the tender. It must have reasonable play in its joints as a necessary concomitant for an administrative body in an administrative sphere. The courts would interfere with the administrative policy decision only if it is arbitrary, discriminatory, mala fide or actuated by bias. It is entitled to pragmatic adjustments which may be called for by the particular circumstances. The courts cannot strike down the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. The courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide.

7. Mr. Dessai submitted that Clause xiv is contrary to Rule 2(p) of the Goa Lotteries (Regulation) Rules, 2003 which reads as under :

2. Definitions :-In these rules, unless the context otherwise requires :-

(p) "security" means any lumpsum amount specified under the Agreement by the Government required to be furnished by the agent or printer, with whom an agreement is executed for sale Lottery tickets, or for printing, packing, transporting of tickets, or to various destinations/ sales depots for the performance of obligations under the Agreement;

8. Mr. Dessai submitted that under Rule 2(p), the security is to be paid only pursuant to the agreement that may be entered into. In other words, according to him, the security cannot be demanded prior to the agreement.

9. What is required by clause xiv is not the security deposit, but the Earnest Money Deposit (EMD). There is nothing that prevents the respondents from requiring a bidder to make an EMD. This is to ensure that only serious and capable bidders participate in the process. The error in the submission arises on account of equating the EMD with the security. In the circumstances, the writ petition is dismissed, but with no order as to costs.