
(2003) 06 SIK CK 0002
In the Sikkim High Court
Case No : Writ Petition (C) No. 13 of 2003

Pooja Fortune Pvt. Ltd. and Another	Vs	APPELLANT
State of Sikkim and Others		RESPONDENT

Date of Decision : 24-06-2003

Acts Referred:

Citation : AIR 2003 Sikk 13

Hon'ble Judges : N. Surjamani Singh, Acting C.J.

Bench : Single Bench

Advocate : A.K. Upadhyaya, for the Appellant; S.P. Wangdi, General assisted by J.B. Pradhan, Government Advocate for Nos. 1 and 2 and Shyam Moorjani, for Nos. 3 and 4, for the Respondent

Judgement

N.S. Singh, Actg. C.J.

1. Two writ petitions, being Writ Petition (C) No. 4 of 2002 and Writ Petition (C) No. 44 of 2001 which are similarly situated with the present writ petition, has been disposed of finally today, thus quashing the impugned tender process and related agreement entered between respondent No. 1 and/or with the respondent No. 3 with the following observations, orders and directions :--

"41. For the reasons, observations and discussions made above, I am of the view that these writ petitioners could make out a case to justify interference with the impugned tender process and the appointment of the respondent No. 3 as a Marketing Agent for marketing the computerised network lottery of the Government of Sikkim and also related agreement dated 24th August 2001 and accordingly, the entire tender process thus awarding of the tender/work in favour of the respondent No. 3 and, appointment of the respondent No. 3 as Marketing Agent for the said computerized network lottery including the contract of marketing agency signed on 24th August 2001 between the State respondent No. 1/competent authority and the respondent No. 3 are hereby quashed thus directing the State respondent/competent authority to invite fresh tender by following the norms, rules and procedures by giving sufficient time to purchase

the tender papers and submit the acknowledgment of tenders and notice of intent to bid, in other words; to invite fresh tender/ make re-tender by making public advertisement in at least two prominent Newspapers of National circulation and to appoint a successful bidder as Marketing Agent for the said computerised network lottery by following reasonable required Tender procedure. It is made clear that the whole exercise shall be done within a period of 3 (three) months from today. Liberty is granted to the State respondents either to appoint a competent "Selectee" or Interim Marketing Agent under their wisdom till the appointment of New Marketing Agent in pursuance of the fresh tender or the existing Agent may continue for the stipulated period of 3 months only as mentioned above of till such new Marketing Agent is appointed whichever is earlier, that too after clearance of any outstanding dues/Govt. shares if any or to make any other alternative arrangement during the said period, as interim arrangement under the wisdom of the States-respondents/competent authority.

This Court hope and trust that the State respondents/competent authority shall ensure that in the revised Tender the mini mum Guaranteed Bid price should be Rs. 780 crores for a period of 7 years for the welfare of the State as well as people of Sikkim at large.

42. For the reasons, observations and dictum made above, these two writ petitions are allowed and accordingly, disposed of. but no order as to costs.

43. Despite the disposal of these two writ petitions, I am constrained to make the following observations, further order and directions keeping in view of the existing facts and circumstances of this case and in the public interest.

Government of Sikkim had decided to commence a computerized network lottery "as the government wishes to raise funds by utilising a computerised network lottery for the good causes, i.e. health, education and infrastructure development for which the authority intends to appoint a Marketing Agent to assume full responsibility for financing, developing, building and operating the desired on-line lottery system and also to design, acquire, install, implement, commission, operate and maintain an online lottery network. With these objectives the Government of Sikkim had ventured in this field of network lottery being a good booster for generation of revenue for the State by inviting and laying down tender response procedure etc. and thus appointing the respondent No. 3 once as Marketing Agent. In Public Interest Litigation case, being Writ Petition(C) No. 44/2001, the writ petitioners make certain statements in Paragraph 5 (g) of it that the said contract of marketing agency is void ab initio as it flaws only from the purchase of tender documents by an ineligible tenderer namely, the respondent No. 3 and the acceptance by the respondent Nos. 1 and 2 of the sole, bid made by the respondent No. 3, in contravention of the tender condition and that the petitioners have reliably learnt that the sale proceed of the lottery tickets collected under the said contract is not being credited to the public account, of the State of Sikkim and that the respondent No. 1 is not itself conducting the draw and that the unclaimed money is also not being deposited

with the State. Such allegation is denied by the State respondents in their counter affidavits. It may be mentioned that during the pendency of these two writ petitions for pronouncement of judgment another writ petition being Writ Petition (C) No. 13 of 2003 was filed by one M/s. Pooja Fortune Pvt. Ltd. and another questioning the validity of the same tender process and tender agreement dated 24th August 2001 and in that case, Rule was issued on 12th June 2001 which has been made reasonable on 24th June 2003, i.e. today, To secure ends of justice I took judicial notice of a document marked Annexure-P10 to the said Writ Petition (C) No. 13 of 2003 which is quoted below :--

Tele : 03592 Phone No : 22441 22684

STATE EMBLEM

GOVERNMENT OF SIKKIM

FINANCE DEPARTMENT

SIKKIM STATE LOTTERIES

GANGTOK.

No. 9300/FIN/DSSL Dated 1-11-02 To Mr. M. B. Zaidi, Director -- Corporate Legal Essel Group, 4th Floor, Band Box Building, Dr. Annie Besant Road , Worli, Bombay -- 400018. Fax No : 022-4965240

Sub : PAYMENT OF STATE SHARE.

Dear Sir,

This has reference to my earlier letters on the subject noted above and on the several discussions we had on the phone. I would once again like to draw your attention that the Government have not received its State's share for Sikkim Super Lotto from August onwards and for Thunder Ball from the 3rd draw. From our records, it is observed that a sum of Rs. 18,97,86.976 (both for Thunder Ball and Super Lotto) is due for payment. Further, the State's share towards Thunder Bal has been paid @ Rs. 15% for the 2nd and 3rd draw.

You are kindly requested to look into the matter at the earliest and forward the balance amount due to the Government at the earliest. The department needs to submit its compliance report of recovery by next week.

With warm regards.

Yours sincerely, Sd/- (L. P. BARPHUNGPA) DIRECTOR STATE LOTTERIES"

This Court is not; giving any finding or expressing its opinion at this juncture on the office letter dated 1st November 2002 mentioned above.

44. Be that as it may the Government of Sikkim shall earn revenue from this com-puterized network lottery and there shall not be loss to the public exchequer and the State shall continue its lottery network which is a good booster for

generation of revenue for the State and as well as for the welfare of the people of Sikkim at large."

2. It is an admitted position that the present case is squarely covered up by the common judgment dated 24th June 2003 passed in the said two cases, namely, Writ Petition (C) No. 4 of 2002 Modi Entertainers Network Private Limited v. State of Sikkim and Ors.) and Writ Petition (C) No. 44 of 2001 (J. K. Bhandari and Anr. v. State of Sikkim and Ors.) and, accordingly, the said common judgment dated 24th June 2003 shall cover up the present case also and the judgment passed in the said two cases shall form part of the record of this ease.

3. In view of the above position, the present writ petition is allowed thus quashing the impugned agreement, dated 24th August 2001 and related tender processes for the ends of justice with further directions/same direction to the State-respondents which has been done in the said two writ petitions as mentioned above.

4. For the reasons, observations and dictum made above, the present writ petition is also disposed of, but no order as to costs.