
(2012) 05 GAU CK 0037

In the Gauhati High Court

Case No : WA No. 103 of 2012, WP (C) No. 327 of 2012

Purbanchal Banijya Vikash Pvt. Ltd.

APPELLANT

Vs

Assam Tourism Development Corporation Ltd. and Others

RESPONDENT

Date of Decision : 22-05-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 3 GLT 76

Hon'ble Judges : Prasanta Kumar Saikia, J; Amitava Roy, J

Bench : Division Bench

**Advocate : P. Pathak, Mr. B. Chakraborty and Mr. T.R. Sarma, for the Appellant;
D. Saikia, Addl. AG, Ms. A. Verma and Mr. B. Gogoi, for the Respondent**

Final Decision : Dismissed

Judgement

Amitava Roy, J.—The stand off centers around the refusal of the respondent Corporation to grant extension of the period of contract with the appellant for development, maintenance and running of the units of the tourist lodge/cottage and its premises at Pobitora near the Pobitora Wildlife Sanctuary beyond 31.1.2012. The initial order in the writ proceedings assailing the aforementioned decision granting status-quo of the continuing arrangement having been vacated, the writ petitioner is in appeal. The learned counsel for the parties having agreed, considering the nature of the adjudication essential to resolve the pother expeditiously, the writ proceedings as well has been taken up for final disposal.

2. We have heard Mr. P Pathak, Senior Advocate assisted by Mr. B Chakraborty, Advocate for the appellant/writ petitioner and Mr. D Saikia, learned Additional Advocate General, Assam for the respondents.

3. The factual preface available from the rival pleadings would be necessary to facilitate an appropriate determination of the issues involved. The appellant (also referred to as the writ petitioner in the narration to follow) has claimed to be a company registered under the Companies Act, 1956 and is represented by its

Managing Director, Bijoyananda Choudhury. The respondent Corporation is a Government company admitting of permeating control of the State Government over the management and conduct of its affairs. The Pobitora Wildlife Sanctuary which is situated in the Morigaon District of the State of Assam has graduated itself with time to be a global tourist destination. The respondent Corporation with a view to offer comfortable accommodation thereat had established a tourist lodge near the sanctuary named "Prashanti Lodge" which due to compelling administrative exigencies had to be in occupation of the Army for long. According to the appellant, having been selected through a tender process it was assigned the lease to run the lodge by the respondent Corporation on the mutually agreed terms and conditions. However, in view of the prolonged occupation of the lodge by the Army it warranted extensive repairs and renovations to make it befitting and suitable to house the visiting tourists and as agreed with the Corporation, it invested approximately Rs. 5 Lakhs to that effect. This was in and around the year 2006. The appellant has further pleaded that by that time a second unit of the lodge was constructed within the same premises and was made operational with effect from 10.1.2009, the management whereof was also entrusted to it, amongst others, on the condition of payment of rent at the rate of Rs. 20,500/- per month. It also, as required, deposited an amount of Rs. 1 Lakh as security and had to make appreciable investments for drawing electricity to the new unit.

4. According to the appellant, it made all possible endeavours towards development, maintenance and upkeep of both the units to the satisfaction of all concerned. That the sanctuary remains open for the tourists from 1st November to 30th April every year i.e. for six months and that for the rest of the period remains closed has been underlined as well. Referring to a written agreement dated 29.11.2010 between it and the respondent Corporation, the appellant has asserted that in view of its satisfactory performance it was entitled to an extension of the term of lease (which was otherwise going to expire on 31.1.2012) by a further period of two years on the same terms and conditions. This legitimate expectation on its part, it is pleaded, was not only founded on its satisfactory performance, but also due to lack of any expression of dissatisfaction with regard thereto by the Corporation at any point of time during the relevant period. As to the contrary, belying such legitimate expectation the respondent Corporation by the impugned letter/order 4/11.1.2012 required it to hand over the project to it (Corporation) on 1.2.2012, it approached this Court seeking its remedial intervention under Article 226 of the Constitution of India.

5. In its additional pleadings supplementing the averments originally made, the appellant hinted at some verbal understanding between the parties that the period of lease would be for a period of five years pleading that the refusal of extension of the term expiring on 31.1.2012 was contrary thereto. That meanwhile the appellant had paid the rent upto the month of February, 2012 has also been mentioned.

6. The respondent Corporation in its affidavit affirmed by its Managing Director

while admitting that the appellant had invested an amount of Rs. 2.4 Lakhs towards repairs and renovations of the old unit and that the monthly rent had been cumulatively (for both units) fixed at Rs. 20,500/- and further that the appellant had deposited Rs. 1 Lakh as security deposit, however, has assertively pleaded against the claim of satisfactory performance in maintaining the two units so as to entitle it (appellant) to any extension as contemplated under the agreement dated 29.11.2010. It referred in particular to a written complaint dated 23.6.2010 of the Regional Director, Tourism, Government of India addressed to its Managing Director strongly expressing her views about the shabby maintenance and inconvenience "noticed/suffered by her" at the tourist lodge. According to it, this was duly brought to the notice of the appellant with a request to attend to the issues of complaint and improve the level of maintenance and management of the tourist lodge so that no inconvenience is faced by any tourist in future. According to the respondent Corporation, though the appellant was required by it to improve the quality of the maintenance and administration of the tourist lodge from time to time, the same remained far from satisfactory. The respondent Corporation, therefore, has maintained that due to unsatisfactory performance of the appellant, it was not bound under the contract to grant extension to it as contemplated therein and, thus, it having been decided by its (Corporation) Board of Directors in its meeting held on 14.12.2011 to run the lodge on its own, the impugned decision was taken and communicated accordingly.

7. In the above backdrop of competing pleadings, Mr. Pathak has emphatically urged that in the face of satisfactory performance of the appellant, the respondent Corporation was obliged under the contract to grant further extension of two years to the term beyond 31.1.2012. The agreement dated 29.11.2010 embodying the contract being binding on the parties, refusal of extension has been arbitrary, in violation thereof and militate of its legitimate expectation in law, thus, rendering it unconstitutional, he urged. The learned senior counsel has dismissed the relevance of the complaint dated 23.6.2010 qua the impugned decision contending that not only in absence of any prior intimation the visit as referred to therein was unexpected and inexplicable, the grievance having been attended to immediately thereafter with a written intimation to the officer concerned, it could by no means have been made a ground to adjudge the performance of the appellant. As for all practical purposes on the date of such complaint there was no agreement in writing or a subsisting contract in law between the parties entrusting the responsibility of management of the tourist lodge to the appellant, it (appellant) in no view of the matter could have been held responsible for the lapses, if any, as mentioned in the complaint dated 23.6.2010. According to Mr. Pathak, this complaint in fact was directed against the respondent Corporation which is being conveniently shifted to the appellant and acted upon to oust it so as to admit some other agency of its choice on collateral considerations. Referring to the huge investments made meanwhile by the appellant and the entrustment of the maintenance and management of the

tourist lodge in recognition of the appellant's experience in the line, the learned senior counsel has underlined that no complaint whatsoever has ever been received by it vis-a-vis its performance during the relevant period and, thus, the plea to the contrary is clearly and afterthought. While insisting that the appellant's plea is reinforced by absence of any reference of unsatisfactory performance in the impugned letter, Mr. Pathak on instructions has submitted that it (appellant) is still in charge of the tourist lodge and that appropriate directions ought to be issued to the respondent Corporation to grant it the extension as envisaged by the contract. To reinforce his assertions, Mr. Pathak placed reliance on the decision of the Apex Court in *State of U.P. & Ors. Vs. Lalji Tandon*: (2004) 1 SCC J

8. Responding to the above, the learned Addl. Advocate General has insistently urged that the official records would reveal that the appellant's performance had been unsatisfactory for which its attention had been drawn by the Corporation from time to time, but to no avail. Not only did the appellant's Managing Director unreasonably delayed the execution of the agreement, the original term of contract having been fixed for a period of three years with effect from 1.2.2009, it cannot in law claim any right for extension thereof in the face of sub-standard services rendered by it during the relevant period. The learned Addl. Advocate General while pointing out that though the appellant had in fact been entrusted with the management of the lodge since 2005 there were numerous complaints and that it having failed to improve the quality of its performance inspite of several opportunities granted, has urged that the impugned decision in this background cannot be faulted with at all. According to Mr. Saikia, the complaint having been lodged by none other than the Regional Director of Tourism, Government of India, the same can neither be ignored nor trivialized as sought to be endeavoured by the appellant, Mr. Sakia argued that whereas in terms of Clause 12 of the agreement the appellant was under an obligation to hand over the possession of the tourist lodge without any reservation, it has acted to the contrary in holding on thereto by force. According to the learned Addl. Advocate General, the appellant in the attendant facts and circumstances has no right to claim extension of the term of the contract and, thus, the challenge ought to be dismissed in limine. The relevant official records have been laid for our perusal.

9. The pleaded projections and the arguments based thereon have received our due consideration. The facts available would demonstrate the appellant's association with the tourist lodge has been from much prior to the formal execution of the written agreement on 29.11.2010. That it had for all intents and purposes been involved, along with the Corporation, in the repairs and renovation works thereof after being vacated by the Army and that in connection therewith had made financial investments is also apparent from the official records laid with us. The records reveal observations of the authorities of the Corporation exhibiting deficiencies time and again in the maintenance and upkeep of the lodge including the furniture and fixtures for which necessary suggestions had been offered to effect all round improvement thereof. The

records also reveal that in the year 2007 though the respondent Corporation had decided to initiate a tender process for inducting another lessee by way of replacement of the appellant, it called off that move to offer an opportunity to it (appellant) to respond to its (Corporation) suggestions and measures to usher in all round upliftment of the lodge. The appellant though not very quick in its reflexes in response, the respondent Corporation, as the records reveal, decided to continue with the entrustment of the tourist lodge with it for a period of three years from 1.11.2008 as initially decided. To complete the formalities and finalise the terms and conditions of the agreement it took quite some time for the parties and eventually the agreement was executed on 29.11.2010.

10. That the tourist lodge on essential aspects needed further attention had in the meantime been hinted at by the respondent Corporation at times is also borne out by the records. The clause prescribing the term of the lease and the stipulation for extension thereof subject to satisfactory performance of the appellants, the records demonstrate, was a conscious incorporation. The aspect of extension as the term drew near, the records divulge, was duly examined and with the observation that the lessee had not managed the lodge satisfactorily, the issue was placed before the Board of Directors of the Corporation with the suggestion that the same be run departmentally and logistics be worked out in connection therewith. The Board of Directors in its meeting held on 14.12.2011 approved the said proposal with the observation that the performance under the new arrangement in all respects be reviewed in regular intervals authorizing the Managing Director of the Corporation to take appropriate action as warranted. The complaint dated 23.6.2010 of the Regional Director, Ministry of Tourism, Government of India was duly taken note of in coming to the ultimate conclusion as above. The letter dated 4/11th January, 2012 of the Managing Director of the Corporation addressed to the Managing Director of the appellant Company was issued thereafter requesting him to hand over the project along with its (Corporation) properties to the Tourist Information Officer, ATDC on 1.2.2012 on the expiry of the contract period on 31.1.2012 so as to enable the unit to be run departmentally. Noticeably, the letter did not mention as such the reason for the decision as is otherwise, as indicated hereinabove, a part of the records.

11. The relevant clauses of the agreement, namely, Clause-1, 29 and 40 thereof are extracted here in below for ready reference:

1. That the period of contract will be initially for 3 years w.e.f. 1-2-2009 with provision for extension by 2(Two) years on the same terms and conditions subject to satisfactory performance by the 2nd party during the period of contract in all respect

....

29. That on expiry of the term of contract or premature termination the 2nd party will hand over both the units and its properties peacefully to the 1st party and clear all dues.

...

...

40. That in case the 2nd party commits breach of any of the terms and conditions, the 1st party will issue a written intimation to rectify such breach within such time as may be fixed by the 1st party. In case the 2nd party fails to comply with the warning, then the same shall result into termination of this agreement or such other action as may be deemed fit and proper by the 1st party.

12. As would be obvious from Clause-1 of the agreement, the initial period of the contract was for a period of 3 years with effect from 1.2.2009, thus, expiring on 31.1.2012. The provision for extension by 2 years on the same terms and conditions, it is apparent is not in absolute terms but subject to satisfactory performance by the lessee during the period of contract in all respects. Whereas Clause-40 authorised the respondent Corporation to terminate the agreement on the breach of any of the terms and conditions by the lessee in the contingencies as referred to therein, under Clause-29 on the expiry of the term of the contract or premature termination thereof, the lessee was obliged to hand over the units and the properties in connection therewith peacefully to the Corporation and clear all dues.

13. Assuredly, the parties having executed the agreement with the above terms and conditions, amongst others, engrafted therein, they are irrefutably bound thereby. The present is not a case of premature termination of the contract, the term whereof had been allowed to run and lapse on 31.1.2012. Having regard to the covenant for extension, we are afraid no right in the absolute is conferred on the lessee to claim the same irrespective of the quality of its performance during the period of contract in all respects. The grant of extension as Clause-1 in unmistakable term would convey, was made subject to satisfactory performance by the lessee during the period of contract in all respects. Though this agreement had been executed on 29.11.2010 much after the complaint had been lodged by the Regional Director, Ministry of Tourism, Govt. of India on 23.6.2010, it is visibly within the period of the contract contemplated by the agreement. The appellant having accepted the terms and conditions of the agreement without any demur, its plea that the alleged deficiencies and lapses as referred to therein are wholly inconsequential to judge the level of its performance qua its right of obtaining extension does not appeal to us. Not only in our estimate the complaint lodged by a high dignitary of the Ministry of Tourism, Govt. of India as made cannot be lightly disregarded, it is a matter of record that the Managing Director of the appellant Company in his letter dated 14.7.2011 to her had apologized for the inconveniences faced by her at the lodge and had assured to take all remedial and corrective steps to efface the shortcomings noticed. For reasons best known to the Managing Director of the appellant, no other explanation or clarification was offered indicating prima facie the correctness of the deficiencies, lapses and omissions complained about.

14. On an overall and comprehensive survey of the official records, the pleadings available and the documents appended thereto, we are left unpersuaded in the exercise of our review jurisdiction to interfere with the impugned decision. Not only, to reiterate, the provision for extension of the term of the contract does not in our understanding confer an unassailable right on the appellant to demand the same, it being contingent on its satisfactory performance, we are unable to conclude on the basis of the materials available that the respondent Corporation had been either unmindful of the clause of extension or had mechanically decided not to extend the period of contract qua the appellant. The issue, as the official records would reveal, had been adequately dealt with in details before being laid before the Board of Directors which took an unanimous decision on 14.12.2011 to recall the lodge and run it departmentally by making appropriate arrangements therefor. The assessment of the respondent Corporation as a whole on the quality of the performance of the appellant had been made, as the records reveal, from time to time and on more than one occasion reservations were expressed in connection therewith. The office notes would demonstrate that from time to time the attention of the Managing Director of the appellant Company had been drawn to the observations vis-a-vis the performance bearing on the management and maintenance of the tourist lodge. Having regard to the element of value judgment of the respondent Corporation qua the performance of the appellant, on a cumulative consideration of the materials on record, we are of the view that the impugned decision cannot be repudiated to be wholly illogical and in violation of the agreement, more particularly, the provision for extension as contained therein.

15. The decision in *State of U.P. & Ors. Vs. Lalji Tandon* (supra) is of no avail to the appellant. Not only a distinction therein had been made between renewal and extension of lease, in the face of the express rider subject to which the extension was to be granted in the instant case, we are unable to lend our concurrence to the plea that the extension or otherwise of the original period of contract was to be an unilateral act of the appellant under all circumstances. The impugned decision being a plausible one, in the exercise of the writ jurisdiction of this Court, it would be wholly inexpedient, in the above factual premise, to substitute the same by one different in absence of any overwhelming material to the contrary. The writ petition as well as the writ appeal, therefore, fail and are dismissed. No costs.