(2008) 01 GAU CK 0054

In the Gauhati High Court

Case No : Writ Petition (Civil) No(s). 2174 and 1880of 2007

Raunak Agency APPELLANT

Vs

State of Mizoram and Ors. RESPONDENT

Date of Decision : 11-01-2008

Acts Referred:

Mizoram State Lottery Rules, 2000 — Rule 2(g), 2(g), 4, 4
Mizoram State Online Lottery (Regulation) Rules, 2006 — Rule 5(1), 5(1)

Citation : (2008) 3 GLR 28

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : A.Dasgupta, A.K.Phukan, A.C.Borbora, G.N.Sahewalla, G.Singh, Islam , M.Dutta, R.Borbora, R.K.Goswarni, R.Phukan, S.Sharma, Advocates appearing for Parties

Judgement

1. Both the petitions project a challenge to the appointment of respondent Nos. 7 and 8, M/s. M.V. Marketing (P.) Ltd. New Delhi and M/s. Martin Lottery Agencies Ltd., Mumbai respectively as the sole selling agent for Mizoram State Online Lottery. The decision taken on 5.4.2007 by the State of Mizoram to the said effect has been impeached as illegal, arbitrary and lacking in transparency.

2. I have heard Mr. A.C. Borbora, senior advocate assisted by Mr. M. Gunadhar Singh, advocate for the petitioner in W.P.(C) No. 1880/2007, Mr. G.N. Sahewalla, senior advocate assisted by Md. Islam, advocate for the petitioner in W.P.(C) No. 2174/2007, Mr. A. Dasgupta, learned Additional Advocate General, Mizoram, for the official respondents, Mr. P.K. Goswami, senior advocate assisted by Mr. S. Sharma, advocate for the respondent No. 7 and Mr. A.K. Phukan, senior advocate assisted by Mr. R. Phukan, advocate for the respondent No. 8.

3. The thumbnail facts gleaned from the pleadings of the parties are indispensably essential for laying down the factual foundation for better comprehension of the rival contentions.

4. The petitioner No. 1 in W.P.(C) No. 1880/2007, Limras Lottery & Trading Co. (P) Ltd., (''Limras Ltd''.) has introduced itself to be a private limited company incorporated under the Companies Act, 1956 with its administrative office at New Delhi. It claims to be engaged in the business of distribution and marketing of lotteries, organized, conducted and promoted by various States including the State of Mizoram. It has averred that it had been appointed as the sole distributor by the State of Mizoram to market tickets of paper lotteries, organized, conducted f and promoted by the State of Mizoram in accordance with the provisions of the Lotteries (Regulation) Act, 1998 (hereinafter referred to as ''Act''). It has insisted that in such capacity it has been marketing and selling tickets of paper lotteries under numerous schemes organized, promoted and conducted by the State of Mizoram in different States of the country for the last fifteen years and is in numero uno position amongst the codistributors and that its volume of business and sale turnover is far better than others.

5. According to the petitioner the impugned appointments had been made out of the two existing codistributors without following any procedure prescribed by law or resorting to any competitive process. The petitioners have alleged lack of transparency and bona fide in appointing respondent Nos. 7 and 8 to be the sole selling agent for the Mizozram State Online Lottery. They have maintained that at the instance of respondent No. 7, the State respondents have limited the number of distributors for the Online Lottery to two besides stipulated a that they would have to generate sales turnover of Rs. 1.50 crore and offer 6% commission on the sale proceeds. The petitioners have imputed mala fide in favouring the codistributors by inducting them to the online lottery business of the State and accord a monopoly to reap rich dividends therefrom to the exclusion of other genuine distributors in the field. The petitioners have insisted that they too had offered a proposal for being appointed as the sole selling agent for the Mizoram State Online Lottery through a fax message dated 5.2.2007 followed by a letter dated 8.3.2007 which, however, inexplicably remained unattended. They have maintained that they have adequate infrastructure comparable to the best in the industry and are ready and willing to offer Rs. 2 crores as minimum sale proceeds guarantee and 1% commission thereon which is far better than the offers made by the respondent Nos. 7 and 8. Though their offer remained pending, the same was overlooked and vide impugned letter dated 5.4.2007 issued by the Director, Institutional Finance and State Lottery, Government of Mizoram, respondent Nos. 7 and 8 were appointed as the sole selling agent for the Mizoram State Online Lottery. The Legal Notice dated 28.3.2007 on behalf of the petitioners demanding consideration of their offer, also remained unheeded. The petitioners, therefore, have assailed the impugned action to be arbitrary, unfair and unjust besides being in derogation of their legitimate expectation to be considered for the agency in question.

6. The version of the petitioner in W.P.(C) No. 2174/2007, M/s. Raunak Agency is that, it is a proprietorship concern with its office at T.D. Road, Mumbai and is engaged in the business of distribution and marketing of lotteries organized,

conducted and promoted by various States. Presently it is operating as the distributor of the Arunachal Pradesh State Conventional Paper Lottery and Online Computerized Lottery in accordance with the provisions of the Act having been appointed so for a period of three years and five years respectively. Apart therefrom, it is engaged in the marketing of lotteries, organized, conducted and promoted by various States of the country for the last 10 years. It has claimed to possess necessary infrastructural facilities and technical expertise for operating and conducting online lotteries, if appointed as distributor and capable of maximizing the revenue earned by the State Government from online lotteries.

7. The petitioner came to learn about the contemplation of the State of Mizoram to appoint a distributor for Online Computerized Lottery and accordingly addressed a letter dated 5.2.2007 to the Director, Institutional Finance and State Lottery, Government of Mizoram with copies to other official respondents, conveying its desire to be appointed as distributor of the Mizoram State Online Lottery and Conventional a Paper Lottery. Though the said letter was received by the addressee in time and the petitioner remained under a bona fide expectation that the same would receive due consideration at the appropriate level, more particularly as similar offers had also been made by other interested parties as well, on enquiries being made in the face of undue delay, it , could learn in the third week of April 2007 that the State authorities had appointed respondent Nos. 7 and 8 as distributors for the Online Computerized Lottery Scheme on 5.4.2007 and that soon thereafter the agreements to the effect had been executed on 12th and 14th April, 2007. The petitioner in spite of several requests for being provided with the copies of the agreement was denied the same. The petitioner has questioned the appointment of respondent Nos. 7 and 8 to be illegal, discriminatory and a yield of furtive negotiations dominated by nongermane considerations. Denial of fair treatment in the matter of settlement of public contract has been asserted as well.

8. The State respondents in their counter while denying the charge of illegality, unfairness, unreasonableness and nontransparency in the matter of appointment of respondent Nos. 7 and 8 have affirmed that their selection had been in accordance with the provisions of the Mizoram State Online Lottery (Regulation) Rules, 2006 (''2006 Rules'').

9. With reference to rule 5(1) of the said Rules the answering respondents have asserted that it is not mandatory on the part of the Government to invite tenders for appointment of sole selling agent as the 2006 Rules permit appointments on the basis of voluntary offer and on the recommendation of the Mizoram State Lottery Committee. The official respondents have averred that M/s. Raunak Agency had never been associated with the State Government in lottery business and, therefore, its capability for operating and conducting online lotteries is unknown. While categorically denying the allegation of clandestine deal with the respondent Nos. 7 and 8, the State respondents have insisted that the g process for selection of the sole selling agent for the Mizoram State Online Lottery had

intact been initiated in the year 2002 by inviting tenders to ensure adequate participation therein. Tenders were floated through the website as well the Mizoram Houses situated in various States, and negotiations were held with existing paper lottery agents claiming rich experience in such venture through All India Lottery Syndicate.

10. In 2002 an agreement was executed with M/s. Dakshin Media Ltd. being the highest bidder for operation of the Mizoram State Online Lottery, However, due to technical reasons the arrangement could not takeoff and eventually the agreement was cancelled. According to the answering respondents, respondent No. 7 was the second highest bidder in the earlier tender process and was, thus, offered for being appointed as the sole selling agent of the State Online Lottery. As the State of Mizoram was not in favour of appointing one selling agent to avoid monopoly, the only other voluntary offer received at the relevant point of time from the respondent No. 8 was examined and accordingly on 5.4.2007 the two respondents were appointed as the sole selling agent for the Mizoram State Online Lottery. The agreements with them were executed on 8th and 9th of April, 2007 respectively. While admitting the receipt of the proposal forwarded by the petitioner M/s. Raunak Agency on 14.2.2007 the State respondents contended that by that time negotiations with respondent Nos. 7 and 8 were nearing culmination. Moreover the voluntary offer made by the petitioner M/s. Raunak Agency did not disclose any financial proposal in specific terms. The Mizoram State Committee in its meeting held on 1.3.2007 could not take up its application/proposal for consideration as, it was incomplete and lacking in materials particulars for want of selfexplanatory documents, etc., in absence of which the State of Mizoram was unable to discern its requisite experience in online lottery operation. According to the answering respondents though the petitioner M/s. Raunak Agency was fully aware of the initiation of the process in the year 2000 for appointment of sole selling agent for the online lottery in Mizoram, it neither participated therein nor before 5.2.2007 indicated that it was interested in the agency or had the requisite experience therefor.

11. Generally reiterating their stand visavis respondent No. 7, the official respondents with regard to the petitioner M/s. Limras Ltd. have admitted that it operating and functioning as the sole distributor of Mizoram State Paper Lottery for more than 10 years. They reiterated that prior to 5.2.2007 this petitioner as well did not indicate of its engagement or association with the computerized lottery business. While denying the petitioner''s claim of being "Numero uno" amongst the Codistributors in paper lottery, the respondents have asserted that huge amount of outstanding dues payable to the government was realizable from it, which when quantified stood at Rs. 1,42,26,889. They denied to have recognized the petitioner M/s. Limras Ltd to be specialized in online lottery business with the requisite experience as claimed and that the respondent No. 7 was a codistributor of Limras Ltd. as pleaded. The respondents reiterated that the limitation on the number of sole selling agent was in view of the fact that the online lottery was a comparatively a new enterprise in the State with a limited

infrast ructure available therefor. They indicated that on the expiry of the initial period of two years offers could be considered for appointment of additional sole selling agent of the State online lottery.

12. The respondents categorically averred that though the fax message despatched by the petitioner M/s. Limras (P.) Ltd. on 5.2.2007 was duly received, the selfexplanatory documents of Arunachal Pradesh Lottery stated to be enclosed therewith did not accompany the same. The Mizoram State Lottery Committee, therefore, in its meeting held on 6.2.2007 and 1.3.2007 could not consider the proposal as it was incomplete, lacking in substantial materials and documents, rendering the Government unable to determine as to whether it had been actually operating on the distribution of online lotteries in that State. According to them by the time the letter dated 8.3.2007 was received by the Director, Institutional Finance & State Lottery on 13.2.2007, essential formalities for appointment of the sole selling agents for the Mizoram State Online Lotteries had been completed in favour of the respondent Nos. 7 and 8. The State respondents, however, while reiterating that the appointments of the respondent Nos. 7 and. 8 had been done rigidly in compliance with the provisions of 2006 Rules, made a reference of a negotiation with respondent No. 7 pertaining to a pending arbitration case.

13. The respondent No. 7, M/s. N.V. Marketing Pvt. Ltd., while denying the imputation made against the process involved, asserted that its appointment as one of the sole selling agent for the Mizoram State Online Lottery, had been made in accordance with the Act and the Rules framed thereunder. It reiterated that in the process for such appointment, which had been initiated in the year 2002, the petitioners didn''t participate a fact suppressed by them in their petitions. With regard to the M/s. Rounak Agency, it contended that the said petitioner as one of the distributors of the Arunachal Pradesh Lotteries has f relatively a short standing and is deficient in technical and financial capacities, experience, infrastructure, etc., compared to it in lottery business. The answering respondent claimed that pursuant to its appointment and execution of the agreement with regard thereto, the Mizoram Online Lottery has been launched on 30.4.2007 for the first g time in the State. It affirmed that in terms of clause 7 of the agreement dated 9.4.2007, with regard to thereto, the share of the State Government in the revenue earned, would be 6 per cent of the gross sales after awarding the taxable and nontaxable prizes for the draw concerned. Further, as per clause 8 of the said agreement, the minimum assured revenue to the State is Rs, 1.5 crores annually.

14. It endorsed the stand of the State respondent that the process commenced in the year 2002 which had been widely circulated for the information of all concerned and that on an assessment of suitability of the bidders therein the offer of the M/s. Dakshin Media Ltd., Mumbai, was adjudged to be the highest followed by its bid as second in order. The petitioners, though aware of the said exercise did neither respond thereto nor disclosed any interest for the agency

before February 2007. The answering respondent denied in categorical terms that the contract had been awarded to it in a clandestine manner without following the due process of law or that the agreement with it, had been executed hurriedly, as alleged. It further asserted that its proposal to limit the number of online selling agent to two was as a matter of business prudence, as an increase of such agents, would have seriously jeopardized the prospects of the newly launched online lottery in the State, having regard to the highly competitive market perspective. The respondentState having agreed thereto, on an indepth consideration of all relevant aspects, the minimum annual guaranteed revenue of. Rs. 1.5 crores, was subscribed to. The respondent contended that the online lottery scheme is passing through a lean patch and that several States having been declared as lottery free zones internal competition is avoidable, more particularly at the initial phase of such enterprise. The number of sole selling agents was, therefore, limited to two in the interest of mutual benefit and the project undertaken. The respondent asserted to have invested huge amount of money to develop the needful infrastructure to fulfil the assignment and in the process, including a deposit of a bank guarantee of Rs. 1 crore in favour of the State. It claimed to have entered into business commitments with several selling agents in different parts of the country as well.

15. With reference to M/s. Limras Lottery & Trading Co. (P.) Ltd., it refuted its (petitioner) claim of being "Numero uno", amongst its codistributors. It also disputed the said petitioner''s plea of having the essential infrastructure for operating online lottery in question. The respondent in particular, emphasized that as the petitioners, though aware of the process commenced in the year 2000, had not either participated therein nor offered their proposals prior to February 2007, they were not entitled to any equitable consideration of this court. Besides, the impugned decision being not in any manner transgressive of any legal right of theirs, the petitions are liable to be dismissed.

16. The respondent No. 8, while substantially replicating the stand of its coselling agent, the respondent No. 7 has further questioned the bona fide of the petitioners in instituting the present ; proceedings.

h Besides claiming itself to be a doyen in lottery business in the country with an impressive infrastructure, technology and enviable track record, it claimed to have been appointed as sole distributor for passive paper lotteries for various State Governments and a distributor for online lotteries for the State of Arunachal Pradesh as well as bulk agents, amongst others of the State of Nagaland. It claimed to have deployed about 5000 terminals spread across various States to conduct the business with a total turnover of Rs, 10,607.82 crores recorded in the year 200506. The respondent asserted that with a mind to expand its online lottery business, it submitted a formal proposal with the Chief Secretary, Government of Mizoram for exclusive and internet lotteries, disclosing its terms and conditions. According to the respondent, the Government of Mizoram made an extensive scrutiny of its credentials and performance and on the recommendation of the State Lottery Committee, by the impugned letter dated 5.4.2007, appointed it as a sole selling agent for the Mizoram Online Lotteries, which was formalized through an agreement executed on 9.4.2007. The respondent has averred that in terms of the said agreement, it has already furnished a bank guarantee of Rs. 1 crore and has further commenced its first draw on 30.4.2007.

17. The respondent maintained that it had been regularly paying the Government''s share of the sale proceeds and is committed to pay the minimum assured revenue of Rs. 1.5 crores annually. It also claimed to have made huge investments to start the online business in the State and has contended that if its agency is interfered with, it will suffer irreparable loss and prejudice. The answering respondentsdismissed the letter dated 5.2.2007 of M/s. Raunak Agency to be a proposal as contemplated in the Rules, as the same was not only belated but also incomplete in material particulars. The respondent expressed its ignorance with regard to the letter dated 5.2.2007 and 8.3.2007 of M/s. Limras Lottery & Trading Co. Ltd. It asserted that under the 2006 Rules, it was not incumbent on the part of the State Government to invariably invite tenders and insisted that its appointment as the sole setting agent for the Mizoram Online State Lottery had been validly made thereunder.

18. M/s. Raunak Agency in its reply affidavits, insisted that in its application dated 5.2.2007, it had furnished all necessary particulars with regard to its experience including its appointment as the distributor of the Government of Arunachal Pradesh for its online lotteries and that its offer was complete in all other respects to be considered on merits. According to it, if the State respondents felt it necessary to seek any clarification on other details, it ought to have notified the petitioner. It reiterated that as its letter containing its proposal, had been received admittedly before the claimed negotiations with the respondent Nos. 7 and 8, were complete, the same could not have been disregarded as done. While emphasizing that it was unaware of the process initiated in the year 2002, it contended that it submitted its proposal by its letter dated 5.2.2007, having come to know of the ongoing exercise from some agents of other State Governments. It insisted that appointment of more than two sole selling agents was permissible under the Act. According to it, in any view of the matter, the process initiated in the year 2002, having been taken to its logical end following the execution of the agreement with M/s. Dakshin Media Ltd., Mumbai, resort to the said pursuit afresh is patently illegal and unauthorized. With reference to 2006 Rules, M/s. Raunak Agency insisted that as the same did not prescribe any qualification/experience to be the essential condition of eligibility for being a distributor/sole selling agent the contention that it was ineligible, is misconceived. The petitioner maintained that it has the necessary technical and financial capability of operating and conducting the online lotteries and the State respondents having admittedly received its proposal on 14.2.2007, could not have legally overlooked the same, the process involved not having been completed on that date.

19. In an additional affidavit, M/s. Raunak Agency with reference to a letter No. F23012/39/07DTE & SL/LOT, dated 07.02.2007 pleaded that the appointment of the respondent No. 7, has amongst others, been on the condition that it would withdraw the Arbitration Case No. 1/2003, pending against the State of Mizoram. The petitioner, therefore, avowed that the selection of the respondent No. 7, was glaringly on irrelevant and extraneous considerations.

20. Ms. Limras Lottery & Trading Co. Ltd., in its reply affidavit, specifically denied the allegation relating to Government dues in arrears. It clarified that during the business transactions with the Government of Mizoram, a running account is maintained and payments are made from time to time on receipt of the sale proceeds of the lotteries held. It denied that an amount of Rs. 1,42,26,889 presently is outstanding. It reiterated as well, that its offer vide its letter dated 5.2.2007, was a voluntary proposal under the 2006 Rules and being complete in all respects, ought to have acted upon by the State respondents. Without prejudice to the above, it contended that if any clarification was considered necessary, the same ought to have been elicited from it. Emphasizing that it had offered a minimum sale proceed of Rs. 2 crores, which was much above the agreed figure offered by the respondents 7 and 8, it maintained that the impugned decision is arbitrary, unfair and unjust and subversive of the fundamental principles governing settlement of Government contracts.

21. The respondent No. 7, in its additional affidavit, has denied to have agreed to the withdrawal of Arbitration Case No. 1/2003, as was suggested in the letter dated 13.2.2007. In connection therewith, it has averred that it agreed to withdraw the proceeding only on the condition of being conferred the exclusive right to conduct the online lotteries. However, as two sole selling agents have been selected and a on agreeing to pay a minimum guaranteed annual revenue of Rs. 1.50 crores, the stipulation bearing on the arbitration proceedings has been rendered inconsequential.

22. In the backdrop of the above mass of pleadings, Mr. Borbora, has persuasively urged that the appointment of a sole selling agent being akin to an act of bestowing State largesse, the related process and the action involved, has to be essentially fair, just and transparent. As the decision impugned conspicuously falls short of the said imperatives, it is liable to be adjudged unconstitutional, null and void. While, admitting that under rule 5 of the 2006 Rules, the State Government c is not obligated to invite tenders for appointment of a sole selling agent, the learned senior counsel, referring to the definition of "Online Lottery", engrafted in rule, 2(10), underlined that having regard to the essentialities enumerated therein, a highly technical and sophisticated infrastructure is warranted in addition to the required d expertise and experience to conduct the enterprise and, therefore, a fair and dispassionate assessment of all available tenders and/or proposals is a mandatory prerequisite for a valid selection. M/s. Limras Lottery & Trading Co. Ltd. being associated with the State of Mizoram in its lottery enterprises since long, it is not a stranger to the said

venture e and, therefore, the impugned action of the State respondents in wholly disregarding its proposal forwarded by its letter/message dated 5.2.2007, is patently unsustainable in law, thus, vitiating the appointment of the private respondents, he urged.

23. Mr. Borbora, argued that as no norm of eligibility had been prescribed or published, the proposal of M/s. Limras Lottery & Trading Co. Ltd. being otherwise complete in all respects, ought not to have been ignored as done, thereby denying it an opportunity of participating in an ongoing process for settlement of a Government contract. He dismissed the plea of default of M/s. Limras Lottery & Trading Co. Ltd. in payments as absurd. Referring to the impugned letter of appointment, the learned senior counsel contended that it is apparent therefrom that the terms and conditions were negotiable and consequentially the restrictive covenant of limiting the number of sole selling agents to two, was a postappointment concurrence. As it is, in the face of bank h guarantee of Rs. 1 crore, the allegation of arrears is wholly unfounded, he urged. Referring to the preappointment deliberations relating to withdrawal of the arbitration proceeding between the State of Mizoram and the respondent No. 7, Mr. Borbora, has maintained that the selection of the said respondent, is obviously influenced by extraneous and selfserving considerations. As admittedly, the superior offer of M/s. Limras a Ltd. had not been taken note of while the process was pending, the appointment of the private respondents in the facts and circumstances of the case, is afflicted by the violation of the tenets of fairness in State action and is, thus, liable to be adjudged invalid and nonexistent in law, he urged.

24. Mr. Sahewalla, while generally endorsing the above contentions, has argued that the State respondents having claimed to have made the appointments under rule 5 of the 2006 Rules, the related process ought to have been adequately propagated for the information of all concerned. As the same admittedly, has not been done, the same is liable to be declared ineffectual and null and void. Pointing out that the respondent No. 8 as well, had not participated in the process said to have been initiated in the year 2002, the learned senior counsel argued that the impugned appointments could not have been made in the manner so done. As the earlier exercise had culminated in the appointment of M/s. Dakshin Media Ltd., Mumbai in absence of any fresh Notice Inviting Tender or voluntary proposals, the sole bid of the respondent No. 7 and the purported proposal of the respondent No. 8, in isolation, could not have been considered leaving aside the offer of the petitioner, M/s. Raunak Agency, complete in all particulars. The State respondents having omitted to prescribe and publish the criteria of eligibility for the appointment of sole selling agent for its online lotteries, the petitioner''s proposal could not have been rejected or left out of consideration on the reasons enumerated in the State''s counter, he urged. Mr. Sahewalla, underlined that in any case, the proposal of M/s. Raunak Agency, could not have been sidetracked without affording an opportunity to it to furnish the informations considered necessary by the State respondents. The learned senior counsel, was particularly critical about the overt understanding between

the State Government and the respondent No. 7, pertaining to the arbitration case as a motivating factor for appointing it as one of the sole selling agents of the State Online Lotteries. Not only thereby the State respondents undermined the sanctity of the process, they also compromised with the interest of the State revenue as well, he urged.

25. Mr. Goswami, in reply has maintained that the petitioners not having associated themselves with the earlier process, though fully h aware thereof, are essentially estopped from questioning the appointments of the sole selling agents. They having maintained an inexplicable silence till the process had drifted to the final stages, their challenge lacks bona fide and as such in the face of their inert, casual and irresponsible conduct they are not entitled to any equitable relief in these proceedings under article 226 of the Constitution of India. The learned senior counsel emphasized that the respondent No. 7 had participated in the earlier process and was adjudged the second highest a bidder and, therefore, its appointment as one of the sole selling agent in terms of rule 5 of the 2006 Rules, is unassailable, there being no bar thereunder to act on the offer made in respect to a process initiated before the enactment thereof. Referring to section 4(c) of the Act, Mr. Goswami, argued that it having been left to the discretion of the u concerned State Government to decide the number of the sole selling agent, the plea of lack of bona fide in limiting the num her of sole selling agents at two, is wholly misplaced. Moreover, the same having been fixed, with regard to the prevalent market conditions appertaining to the online lotteries, the same cannot be discarded as arbitrary or whimsical ay well, he urged. Such a decision being within the realm of administrative policy, no interference therewith even otherwise is called for in absence of any persuasive and convincing ground.

26. Mr. Goswami, also dismissed the challenge founded on the consideration of withdrawal of the arbitration proceeding, as untenable as for all practical purposes, such a factor had not determined the appointment of the respondent No. 7. Besides, in view of the clauses 1.2 and 12 of the Agreement between the parties, this issue was beyond the purview of the present proceeding, he urged. The learned senior counsel contended that in any view of the matter, as the petitioner e (M/s. Raunak Agency), lacks in the experience prescribed by rule 4 of the Mizoram State Lottery Rules, 2000 (''the Rules''), integrated in rule 5 of the 2006 Rules, it is ineligible to be considered for being appointed as a sole selling agent.

27. Mr. Phukan has urged that the lotteries are dominantly State ventures and no fundamental right to conduct the same can be claimed and, therefore, the considerations and constraints conditioning a State action visavis other trade or enterprises are not enforceable therefor. Highlighting the distinction between the ''paper lottery'' and ''on line lottery'' with reference to the two Rules, the learned senior counsel has contended that the online lottery bears a totally new technology with atypical features and exigencies demanding specialized

infrastructure and singular expertise for apt administration thereof. The concept being comparatively new, it is a matter of common experience that a process inviting tenders for appointing a selling agent in the online lottery has rarely succeeded and, therefore, generally not insisted upon. The learned senior counsel has maintained that the petitioners as such do not have any absolute right to be considered in the instant case, they not having forwarded their proposal, in time, complete in all respects. The process having been commenced by the State respondents for appointment of the selling agent, the same ought to be concluded at some point of time and, therefore, the petitioner''s grievances of having been denied a consideration, though admittedly delayed in their approach is wholly misplaced, he urged, Moreover, the petitioner having offered to be appointed as a distributor, a concept unknown in the 2006 Rules, the same is construed to be non est and, therefore, their plea of legitimate expectation is apparently unsound. Besides. The petitioner having failed to incorporate in their offer, the datas and particulars demonstrating their experience as a sole distributor for three years as required under rule 5 of the 2000 Rules, they were ineligible for being appointed as a sole selling agent under the 2006 Rules and, therefore, cannot complain of nonconsideration of their cases. Pointing out that neither the capability nor the infrastructural adequacy of the respondents have been questioned by the petitioners, Mr. Phukan, contended that their offers even regarded as valid were by no means superior than those of the respondents. While rejecting the allegation of clandestine deal with the respondent No. 8, Mr. Phukan pleaded that its voluntary proposal for being appointed as the sole selling agent was earlier in point of time than that of the petitioner and the same having been accepted on a meticulous scrutiny thereof, it is unassailable. The learned senior counsel affirmed that the fetter on the number of the sole selling agent presently was to obviate monopoly and limit internal competition eyeing the contemporaneous market condition. As in the meantime, the private respondent since April 2007 has launched draws for the Mizoram on line lotteries as the sole selling agent complying with the terms and conditions agreed upon, any interference would not only dislocate the existing state of affairs, but would also visit the respondents with serious prejudicial consequences, he maintained,

28. The learned Additional Advocate General, Mizoram while reaffirming that the impugned appointments are in strict compliance of the Rules, persuasively urged that having regard to the sequence of events, following the initiation of the earlier process in the year 2002, the decision making process cannot be condemned to be vitiated by unfairness, unreasonableness or nontransparency in State action. Referring to the extracts from the records and the documents corresponding thereto, covering the entire gamut of the developments since the commencement of the process for appointment of the sole selling agent of the online lotteries in the State in the year 2002, Mr. Dasgupta insisted that the contentions questioning the validity or bona fide of the step undertaken preceding the impugned appointment, are fallacious. According to him, having regard to the nature of the project involved, it was not incumbent on the State

respondents to invite fresh tenders or proposals and that the decision to confine the scrutiny to the pending offers of the respondent Nos. 7 and 8 is in accord with the a Rules and, thus, valid. Lottery being a game of chance, comprehending a wagering contract not approvable in law, it is not a trade or commerce in the common parlance and, therefore, in the teeth of the scheme of the Act and the Rules framed thereunder, the petitioner''s challenge is obviously untenable.

The decisions of the Apex Court in

(i) Kasturilal Lakshwan Reddy, etc. v. State of J.K.,AIR 1980 SC1992.

(ii) B.R. Enterprises v. State of U.P. and Others, (1999) 9 SCC 702.

(iii) Netai Bag v. State of West Bengal (2000) 8 SCC 262 and of this court in

(iv) Computer Associated Industries of Mizoram v. Secretary to the Govt. of Mizoram (2004) 1 GLT 721 were relied upon.

29. Mr. Borbora, in his short reply contended that as admittedly the respondent No. 8''s proposal was also delayed, the action of ignoring the offer of the petitioner, which was subsisting at the time of the impugned decision, is conspicuously discriminatory, unfair and unjust. There being no restriction on the number of sole selling agent under 2006 Rules, the restraint thereon as imposed in the agreement is an unmistakable accord of monopoly favouring the private respondents.

30. Mr. Sahewalla supplemented the above by contending that the earlier process having culminated with the appointment of M/s. Dakshin Media Ltd., Mumbai, the provisions of the 2000 Rules are irrelevant for the present purpose in face of 2006 Rules and, therefore, the plea of want of expertise of the petitioner based on the earlier Rules is absurd.

31. I have bestowed my thoughtful consideration to the competing pleadings and persuasive arguments. The principal challenge being projected against the decision making process, discreet it would be to get posted with the relevant legal provisions governing the same.

32. The Lotteries (Regulations) Act, 1998 is a legislation to regulate lottery and to provide for matters connected therewith and exigencies relatable thereto. The definition of lottery as in section 2(b) means a scheme in whatever form and by whatever name called for distribution of prizes by lot or chance to those persons participating in the chances of a prize by purchasing tickets. Section 4 permits the State Government to organize, conduct or promote such activity subject to the conditions enumerated therein. A State Government under section 4 may organize, conduct or promote a lottery subject amongst others to the condition that it would print the lottery tickets bearing the emblem and logo of a the State in such manner that the authenticity of the lottery tickets is ensured. It can sell tickets either itself or through distributors or selling agent and is required to

conduct the draws of all lotteries. Section 5 authorizes a State Government to prohibit within its territorial limits any lottery organized, conducted or promoted by ever other State, 33. A conjoint reading of sections 3, 4 and 5 demonstrates a legislative stranglehold over lotteries so much so that even the State Governments may organize, conduct and/or promote such activity only subject to the conditions statutorily enjoined. Tb the extent of empowerment conferred, a State Government is obligated to exercise its authority over the essential segments constituting the enterprise for administering the same in alignment with the statute. Lottery, therefore, is a restricted pursuit zealously circumscribed by the legislative mandates enumerated in the Act. Section 12 empowers the State Government to make Rules to carry out the provisions thereof. 34. In exercise of such power, the Government of Mizoram framed the Mizoram State Lottery Rules, 2000 02000 Rules'') for the purpose of conducting Mizoram State Lotteries. Rule 2(g) defines "lottery" as in the Act. It contemplates "Sole Distributor" in rule 2(i) to signify the firm or party with whom the agreement for distribution of lottery tickets is executed. "Selling Agent" in rule 2(k) means a firm or person with whom the Sole Distributor or Stockists make agreement for a retail sale of lottery tickets to the public. Rule 4, which is of substantial significance, deserves to be extracted.

"4. Appointment of Sole Distributor. The Government may, by floating open tenders or such other manners as deemed appropriate, appoint a person or persons or firm having at least three years experience in running lotteries as Sole Distributor for a period as determined by the Government in accordance with the terms and conditions hereinafter provided."

35. The Sole Distributor in terms of rule 5 may appoint Stockist or selling agents to sell lottery tickets to the public. The 2000 Rules repealed the Mizoram State Lottery Rules, 1994 but deemed all actions determined therein prior to commencement thereto (2000 Rules) to have been taken under the repealed Rules. By notification No. G16016/5/2005F.Fst: dated 12th May, 2006 the Mizoram State Online Lottery (Regulation) Rules, 2006 (hereinbefore referred to as ''2006 Rules'') framed by the Governor of Mizoram in exercise of power under rule 12 of the Act was notified. Thereby the online lotteries organized, conducted or promoted by the Government of Mizoram was sought to be regulated.

''Online Lottery'' was defined in rule 2(10) as hereunder :

"Online Lottery means a system created to permit players to make purchases of online lottery tickets at the retail sites in online computerized lottery terminal, and in which the information is transmitted simultaneously to the Central Computer Server. The Online Lottery system is used to issue tickets, validate the tickets by giving a validation number duly authenticated with the authorized signature, b the logo and emblem of the State, and to verify the validity of the winning tickets ;"

36. Rule 2(19) defines ''Selling Agent'' to mean a person or a firm appointed by

the Government of Mizoram to promote and market Online Lotteries on behalf of the State Government with whom an agreement has been executed by the State Government.

37. Rule 3 makes it incumbent on the Government of Mizoram to organize, conduct or promote the Mizoram State Online Lottery authorizing the Directorate of Institutional Finance and State Lottery to conduct the exercise on its behalf.

38. Relevant excerpts of rule 5 and rule 7 which prescribes for the appointment of Selling Agent and the mode for conducting, organizing etc. of the Mizoram State Online Lottery are quoted hereunder for ready reference :

"5. Appointment of Selling Agent. (1) The State Government may, after inviting open tenders or voluntary proposals and on the recommendation of the State Lottery Committee, appoint an exclusive Selling Agent for selling Mizoram State Online Lottery tickets in strict compliance with the Lotteries (Regulation) Act, 1998, (Central Act 17 of 1998), the Mizoram . State Lottery Rules, 2000 as amended from time to time, the provisions of these rules subject to the terms and conditions of the Agreement executed for the conduct of the Online Lottery.

(2) The State Government may specify the qualifications, experience and terms and conditions applicable to the Selling Agent in addition to the following conditions :

(f) The Agreement executed between the State Government and the Selling Agent shall specify the conditions attached to it and shall be granted for an initial period of not more than seven years :

Provided that the State Government, after examining the merits of h the case, may at the option of the State Government, extend the Agency for a further period not exceeding seven years by executing a fresh Agreement.

(5) The Agreement executed between the State Government and the Selling Agent shall be deemed to include the following conditions requiring the Selling Agent:

(f) The Selling Agent may appoint subagents/retailers, vendors for sale of the Online Lottery tickets and all such subagents/retailers/vendors shall possess the qualifications and experience as may be specified by the State Government, in consultation with the Selling agent from time to time. The selling agent shall furnish a complete list of such subagents/retailers/vendors to the Director, Institutional Finance and State Lottery from time to time.

7. Conducting, Organizing, etc., of Mizoram State Online Lottery. (1) The State Government shall sell the Mizoram State Online Lottery tickets either by itself for through the Selling Agent, who will be governed by the conditions of the Agreement entered upon between the State Government and the Selling Agent.

39. Noticeably, the 2006 Rules do not provide for a repeal of the 2000 Rules. By the Mizoram State Online Lottery (Regulation) (First Amendment) Rules, 2007,

rule 5(1) of the 2006 Rules had been amended by deleting the word exclusive appearing between the words ''appoint an'' and "Selling Agent, etc''. In other words, by virtue of the said amendment, the word ''exclusive'' appearing in rule 5(1) of 2006 Rules has been deleted.

40. From the definition of lottery provided in the Act and adopted in the year 2000 Rules, it is comprehensive enough to lodge in its fold any scheme for distribution of prize by lot or chance to the participants on purchasing tickets of coupons. This logically would include paper, as well as online lotteries with individual characteristics thereof. A conspicuous distinguishing feature between the two sets of Rules, is that whereas the former, i.e., 2000 Rules, contemplate sole distributor, 2006 Rules envisages selling agent, as the prime agency for distribution of lottery tickets and promotion, as well as marketing of online lotteries on behalf of the State Government. Under the 2000 Rules, the sole distributor may enter into an agreement with any firm or person to act as its selling agent for retail sale of lottery tickets to the public and the 2006 Rules permits a selling agent to appoint subagent/retailers/ vendors for the sale of online lottery tickets. Significantly, the concept of sole distributor is not discernible in the latter Rules.

41. As alluded hereinabove, the 2006 Rules do not in clear terms repeal the 2000 Rules, Av,umparison of rule 4 of the 2000 Rules suggests with rule 5 of the 2006 Rules that the former is more accommodative in the matter of appointment of sole distributor as the State Government had been left at liberty to resort to any mode other than a tender process for the said purpose. Rule 5 of the 2006 Rules, however, prescribes that the State Government may after inviting open tenders or voluntary proposals and on the recommendation of the State Lottery Committee appoint a selling agent. The State Lottery Committee, therefore, has a pivotal role in the process of selecting the selling agent under the 2006 Rules. A bare reading of rule 5(1) of the 2006 Rules, evinces that the provision of the 2000 Rules, have been assimilated therein as well, to constitute an integral component of the decision making process for appointing a selling agent. This is of cardinal relevance as rule 4 of the 2000 Rules prescribes minimum experience of 3 years in running lotteries as a condition of eligibility for appointment as a sole distributor. Rule 5(1) of the 2006 Rules, however, candidly demonstrates that it is not incumbent on the State Government to invariably invite open tenders for appointment of a selling agent. It is free to act on voluntary proposals received in connection therewith. The 2006 Rules also do not as such bar completion of a process for appointment of a sole distributor initiated under the 2000 Rules for appointment of a selling agent to be completed after the enactment thereof. The Rules having been framed to carry out the objective of the Act, it is understandable that in terms of section 4(c) thereof, the State Government is within its powers to determine the number of distributors or selling agents, as the case may be.

42. The Apex Court in B.R. Enterprises (supra), while dealing with a challenge to

the vires amongst others of sections 4 and 5 of the Act, exhaustively dwelt on the purport of lottery to ascertain as to whether such an activity could be awarded the distinction of trade, commerce or intercourse for the purpose of articles 301 and 19(1)(g) of the Constitution of India. It noticed that in lottery there is no skill, but only an element of chance, so much so that when one purchases a lottery ticket, he purchases for a prize, which is by chance and the consideration thereof, is the prize of the ticket. Noticing the ingredients of a lottery to be ; (1) prize, (2) chance, and (3) consideration and referring to the accepted notion of trade and commerce with their inherent distinctive attributes, their lordships held that lottery could not be raised to the status of trade, commerce or intercourse and that & such a transaction would be bereft of the protection under article 19(1)(g) of the Constitution of India. It held that the same element of chance exists in the State organized lotteries and, therefore, the activity rests within the boundaries of gambling, the stringent measures and conditions imposed in such lotteries being only to inculcate a faith in h the participants of such lottery that it has been conducted fairly with no possibility of fraud, misappropriation or deceit and to assure the hopeful recipients of high prizes that all is fair and safe. It emphasized that the holding of the State lotteries being to augment public revenue, it is, thus, authorized and legalized and consequently, the lotteries authorized by the State, also have a sanction in law. This a notwithstanding, their lordships held the view that the Constitution makers could never have conceived to extend protection to gambling either under article 19(1)(g) or construed it to be a trade under article 301 of the Constitution.

43. The provisions of the Act, Rules and the exposition of law on lottery as above, thus, unequivocally proclaim that the lottery is neither a trade or commerce under the Constitution and no one has a fundamental right under article 19(1)(g) thereof, to practice or conduct the same, except to the extent statutorily prescribed and permitted. This venture, therefore, obviously cannot be equated with any other activity of trade or commerce recognized by the Constitution or the laws framed thereunder. Logically, therefore, the State Government, can wield its discretion within the format of the Act and the Rules framed thereunder in the matter, amongst others of appointment of a selling agent for selling and/or marketing the tickets of the State conducted lotteries. It is, in this touchstone that the rival contentions would have to be tested.

44. There is no denial as such of the fact that the process for introduction of the Mizoram State Online Lottery was commenced in the year 2002. Though the parties are at variance as to the knowledge of the petitioners thereof, the compilation of the relevant extracts of the official records produced in course of the arguments by the learned Addl. Advocate General, Mizoram, authenticity whereof, has not been questioned, establish that by the communication No. G16010/1/98FSL/354, dated 24.6.2002 of the Deputy Secretary to the Government of Mizoram, Finance Department (IF&SS), Aizawl put on circulation amongst others, the modalities for selection of offers for marketing of Mizoram

State Online Lottery Ticket. Thereby while forwarding the required number of copies of the online lottery news and the documents which predicated the eligible criteria and other stipulations for such appointment to the State Government establishments at New Delhi, Kolkata, Guwahati, Shillong and Silchar, the concerned authorities were required to issue the same on demand to the interested firms for running the Mizoram State Online Lottery for submission with the Director, Mizoram State Lottery, Aizawl by 2 p.m. on 16.7.2002. While clarifying that the documents on circulation were not to be deemed as a tender notice, it was disclosed therein that the selling agent for the online lottery would be appointed on the basis of a selection from voluntary offerers complying with the broad norms of selection. The eligibility criteria prescribed, inter alia, required offerer firm, party, company, consortium or an individual to have an average annual turnover for any business operated in India during the immediately preceding three financial years to be not less than Rs. 500 crores per annum. The offerer was to a be financially and technically capable of setting up of complete infrastructure for smooth operation and maintenance of the complete online system at his/their own cost. The offerer also required to satisfy beyond doubt that it enjoined a sound tie up with any firm, company or organization guaranteeing installation and successful operation and , marketing of online lottery on a crash scheme basis. On the financial aspect, the offerer was required to quote amongst others, the assured minimum guaranteed revenue to the Government in terms of crores per annum. A security deposit of Rs. 2 crores was required to be furnished by the selected sole selling agent at the time of signing of the agreement to remain in deposit as a security money during the entire period of the agreement plus 2 years after the expiry/cancellation thereof.

45. The documents produced, reveal that five firms including one M/s. Dakshin Media Ltd., Mumbai, the respondent No. 7 and M/s. Sapuri Enterprises, Gurgaon, Haryana submitted their offers. After, comparative assessment of the offers, M/s. Dakshin Media Ltd., Mumbai, and M/s. N.V. Marketing (P.) Ltd., New Delhi (respondent No. 7) were shortlisted. An agreement between the State of Mizoram and M/s. Dakshin Media Ltd,, Mumbai (highest bidder), was also executed on 21.5.2003, which was eventually terminated on 06.11.2003, for the agent''s failure to commence full operation for holding the draws of the online lottery in terms of the Agreement.

46. In the meantime, M/s. Sapuri Enterprises, Gurgaon, Haryana, one of the offerers had questioned the legality of the process and the appointment of M/s. Dakshin Media Ltd. as the distributor for the online lottery before this court in W.P.(C) No. 7854 of 2003. By order dated 22.12.2004, however, this petition was closed as infructuous, acting on the submission to the said effect made by the learned counsel for the petitioner.

47. The records produced, reveal that after the termination of the agreement with M/s. Dakshin Media Ltd., Mumbai, the State Government though, inclined to revive the earlier process, dithered to do so in view of the aforementioned writ

proceeding. However, after the disposal thereof, in the manner aforesaid, the concerned Department mooted the issue before the State Lottery Committee citing two options either to call for fresh voluntary offers from interested parties or to h offer appointment to the second highest bidder, i.e., the respondent No. 7. The State Lottery Committee in its meeting held on 28.3.2005, recommended that instead of initiating a fresh process, the Department should take necessary action to offer the appointment to the second highest bidder following detailed examination of all aspects in consultation with the Law and Judicial Department of the State. This, the Committee suggested as till then, no cancellation of the earlier offers had been made. Accordingly, an offer was made to the respondent No. 7, which however, maintained that due to lapse of considerable length of time in between and the prevailing uncertain market conditions, it would not be able to maintain its earlier offer. A negotiation followed resulting in execution of an agreement on 27,5.2005. As this was without reference to or on the recommendation of the State Lottery Committee, the latter in its meeting held 20.7.2005, disapproved the follow up steps taken and directed that the matter be placed before the Chief Minister of the State. The documents produced, disclose that thereafter a draft tender for online lottery on priority basis was drawn up, which eventually was not approved by the Government. While the matter stood at that M/s. N.V. Marketing (P.) Ltd., New Delhi (a sister concerned of the respondent No. 7), on 26.6,2006 submitted a proposal with the Chief SecretarycumChairman Lottery Committee, Government of Mizoram, in substance that if the respondent No. 7 was entrusted with the operation of the online lottery in terms of the agreement dated 27.5.2005, the amount of Rs. 4.32 crores claimed by it against the Government in a pending arbitration proceeding, need not be paid in cash or cheque, but adjusted against the sale proceeds from the said online lotteries.

48. The State Lottery Committee thereafter, in its meeting held on 5.12.2006, on a scrutiny of the agreement dated 27.5.2005 endorsed the proposal on the following conditions :

"1. The Arbitration Proceeding No. 1 of 2003 against Government of Mizoram pending in the court of hon''ble Justice HKK Singh (Rtd.) of Gauhati High Court shall be completely with drawn.

2. The Distributorship will be only sole and not exclusive.

3. The Selling Agent shall on the day next to the date of signing the Agreement, furnish (irrecoverable) Bank Guarantee duly issued by a Nationalized /P.S.U. Bank in favour of the Director, Mizoram State Lottery, amounting to Rs. 1.00 (one) crore as security of performance.

4. The validity of the Bank Guarantee shall he made sufficient to extend upto the first 1 (one) year commencement of the sale of Mizoram State Online Lottery Tickets and the Bank Guarantee is kept alive during the entire period covered by the Agreement.

5. Government share will be 6 (six) per cent of Gross Sale after giving taxable and nontaxable prizes for the draw concerned and as per approved scheme of Lottery.

6. There shall be a minimum of 10,000 draws per year.

7. A minimum Assured Profit to the Government will be Rs. 3.00 (three) crore.

8. The Agreement shall continue in force initially for a period of 5 (five) years subject to further extension on mutually agreed terms.

9. In case of failure to achieve a minimum draws of 10,000 per year, a penalty of Rs. 15.00 (fifteen) lakhs will be paid to the Government by the Agent."

49. The Director, Institutional Finance and State Lottery was required to negotiate on the above conditions and to revert to the Committee with response, received for further deliberations. The minutes of the said meeting also disclose that on that date, it examined as well, the voluntary offer submitted by the respondent No. 8, for exclusive sole selling agent of Mizoram Online Lottery and Internet lotteries. The Committee recommended that the Director, Institutional Finance and State Lottery, may negotiate with the respondent No. 8 broadly on the same lines for further consideration in its next meeting. The records contain the letter No. REF.MLAL/2.01/0607, dated 18.6.2006 of the respondent No. 8, offering its proposal for exclusive online and internet lotteries of the Government of Mizoram, detailing its credentials and offering minimum assured revenue of Rs. 3 crores per annum or assured revenue at the rate of 50 per cent on the actual sales,

50. Negotiations, thereafter, were initiated by the Director, Institutional Finance and State Lottery with these two firms within the framework of the stipulations outlined by the State Lottery Committee and various communications were exchanged in this regard. Though, the respondent No. 7, insisted on being granted, the distributorship on exclusive basis the State Lottery Committee in its meeting held on 6.2.2007, did not accede to the said insistence.

51. In the meantime, the respondent No, 8, by its letter dated 8.1.2007, apprised the Chief Secretary, Government of Mizoram, Aizawl of its acceptance of sole distributorship of the Mizoram State Online Lottery on nonexclusive basis but maintained that as in such an eventuality, it would face competition from other distributors affecting its turnover and profits, the offer of minimum assured profit would stand at Rs, 1.5 crores. The Government share of revenue, however, was agreed to be at 6% of the gross sales as well as after accounting for the taxable and nontaxable prizes for the draws. It also agreed to furnish the bank guarantees as required. The respondent No. 7, followed suit on 13.2.2007, amongst others, confirming the assured minimum profit of Rs. 1.5 crores to the State Government, but insisted that the number of distributors in any circumstances should not exceed two.

52. The State Lottery Committee in its meeting held on 1.3.2007, on a scrutiny

and evaluation of the final offers made by the said firms, recommended those for distributorship of Mizoram State Online Lottery on non exclusive basis. The Under Secretary to the Government of Mizoram, Finance Department, by his letter dated 5.4.2007, conveyed to the Director, Institutional Finance and State Lottery, Mizoram the approval of the State Government, with the enjoinment that a clause be inserted in the agreement to be executed that no appointment of more than two selling agents for a period of two years from the date of signing thereof, will be made, but depending on the market conditions and the prevalent Central and State laws and Regulations relating to lottery business, as well the performance of the selling agents, the necessity of appointment of more selling agents might be considered after two years. Thereby, the Director, Institutional Finance and State Lottery, Mizoram, was requested to have the agreement executed as per the approved draft thereof.

53. Accordingly, the respondent Nos. 7 and 8, were informed about the d acceptance of their offer for appointment as sole selling agent of the Mizoram State Online Lotteries on 5.4.2007, requiring them to execute the agreement with the Government of Mizoram to the above effect on or before 20th of April, 2007. The agreements were thereafter executed on 9.4.2007. Clause 1.2 thereof, recorded an undertaking of the State Government against making appointment of more than two sole selling agents for a period of two years from the date of signing thereof. It however, reserved to itself the right to consider further appointments on the considerations as incorporated in the letter dated 30.3.2007, as above. Apparently, the proposals of the petitioners, which were forwarded on 5.2.2007, had not been placed before the State Lottery Committee for consideration, the stand of State respondents being that those are unduly delayed and further were incomplete in material particulars and, therefore, did not constitute a valid offer. Their contention as well is that the requests were received at a stage when the negotiations with the respondent Nos. 7 and 8, were almost complete.

54. Though the petitioners have not conceded that they had been aware of the exercise initiated in the year 2002, there is no specific denial of the claim that the same was widely circulated for general information. None of the petitioners had participated therein and their offer/proposals were for the first time forwarded on 5.2.2007. By then, the candidacy of the respondent Nos. 7 and 8, was under close scrutiny and the parties were in the thick of negotiations for finalizing the terms and conditions for their appointment as the sole selling agents. The expressions distributor and selling agent, have noticeably been freely exchanged, which in the face of the contextual facts and as understood by the parties is not of much consequence. The proposal of the respondent No. 8, admittedly was well ahead in point of time than those of the petitioners.

55. Was it obligatory for the State respondents to initiate a fresh participatory process by either inviting tenders or voluntary proposals anew with adequate dissemination thereof, to facilitate competitive bidding in terms of the Act and

the Rules? The answer, if in the affirmative, would render the impugned decision making process void. If, otherwise, the justification for exclusion of the petitioners'' offer as furnished, would have to be tested on the touchstone of the attending facts and circumstances.

56. In Kasturi Lal Laxmi Reddy (supra), the decision of the State of Jammu & Kashmir in awarding the tapping contract for extraction of Olsoresin, in favour of the 2nd respondent therein, for the areas Reasi, Ramban and Poonch Divisions, was assailed as invalid as no opportunity to others to compete therefor was provided. The State action was impeached to be arbitrary and unconstitutional. Their Lordships on a scrutiny of the contextual facts noticed a conscious determination of the concerned authorities that the said areas were inaccessible and that past experience had showed it was difficult to attract bidders and that it would be, thus, futile to include the related blazes in the auctions for tapping on wage contract basis. The decision of the State authorities to exclude the blazes situated in the areas of Reasi, Ramban and Poonch Divisions from auctioned was held to be justified, negating the challenge. The omission to award the contract without inviting tenders, was, thus, not discountenanced by the Apex Court.

57. In Netai Bag (supra), dilating on the proposition of indispensability of a tender process for distribution of State largesse, the Apex Court propounded that generally when any State largesse is decided to be conferred, resort should be made to public auction or tenders from the eligible public. It, however, added that nonfloating of tenders or not holding of public auction, should not in all cases be deemed to be the result of exercise of the executive power in an arbitrary manner. It ruled that the making of an exception to the general rule, could be justified by the State executive, if challenged in appropriate proceedings and that the constitutional courts cannot be excepted to presume the alleged irregularities, illegalities or unconstitutionally nor the courts can substitute their opinion for the bona fide opinion of the State executive. It iterated with reference to its earlier rendering in Sackindanand Pandey v. State of W.B. (1987) 2 SCO 295, that though one of the methods of securing public interest when it is considered necessary to dispose of a State owned property is to sell the same by public auction or by inviting tenders, such a rule is not an invariable a one and there may be a situation, where there are compelling necessities admitting departure therefrom.

58. A similar view was taken by this court in Computer Associated Industries of Mizoram v. Secretary to the Government of Mizoram & Ors. (supra).

59. The preponderance of judicial opinion, thus, proclaims that though in the interest of fairness, transparency and competitive bids, distribution of State largesse ought to be through a participatory exercise, namely, public action or tender system, it is not an inflexible edict and can be departed from for cogent reasons. Axiomatically, therefore, the failure to hold/conduct a public auction or a tender process for settlement of a public contract, per se, would not render the decision pertinent thereto illegal, arbitrary or unconstitutional.

60. As evident from the compilation of the records produced before this court, the agreement to operate the Mizoram Online Lotteries with M/s. Dakshin Media Ltd., had to be cancelled on 11.3.2004, the awardee having failed to hold the draws in terms thereof. The process preceding the selection had been initiated under the 2000 Rules wherein, voluntary proposals were invited for the purpose. The respondent No. 7 was the second highest bidder and as per the records available, it was shortlisted to be the next in the queue following M/s. Dakshin Media Ltd. In the year 2003 itself, the process was impugned by one of the tenderers, namely, M/s. Sapuri Enterprises, Gurgaon, Haryana and the proceeding culminated on 22.12.2004, the same having been recorded to be infractuous on the submission made on behalf of the petitioner to the said effect. The records demonstrate that following the termination of agreement with M/s. Dakshin Media Ltd. Mumbai, the State authorities though, inclined to revive the process for negotiation with the respondent No. 7, it could not be immediately done in view of the pendency of the above proceeding before this court and it was only after the disposal thereof, that the matter was placed before the State Lottery Committee, which on 28.3.2005 following necessary deliberations recommended against invitation of fresh voluntary offers denovo as the earlier offers had not been cancelled. It, therefore, advised the concerned department to take necessary action to ascertain the possibility of offering appointment to the second highest bidder. Accordingly, offer was made to the respondent No. 7, which, however, in view of lapse of time in between, expressed its inability to maintain the earlier offer. After negotiations, an agreement was executed on 27.5.2005, however, without the recommendation of the State Lottery Committee, which in its meeting held on 20.7.2005, disapproved the initiative in this regard and the issue was placed before the government, suggesting that if approved, fresh tenders be invited. This was, however, a not accepted by the Government.

61. In the meantime, M/s. N.V. International (a sister concern of the respondent No. 7), had submitted a proposal indicating its willingness to settle the Arbitration Case No. 1/2003, by adjusting its, pending claim for compensation of Us. 4.32 crores against the Government of b Mizoram, if the distributorship of Mizoram State Online Lottery was awarded to the respondent No. 7. The records reveal that the State Lottery Committee in its meeting held on 5.12.2006, amongst others, discussed and examined the proposal of M/s. N.V. International and suggested withdrawal of the arbitration case by the firm. It further c enumerated, other conditions to pursue negotiations with the respondent No. 7 for the distributorship.

62. A voluntary offer for exclusive sole selling agent for the Mizoram Online and internal Internet Lotteries from the respondent No. 8, having in the meantime been received on 18.8.2006, the State Lottery d Committee also considered the same and recommended the Director (Institutional and Finance) and State Lottery to negotiate, with it also substantially on the above lines.

63. In terms of the recommendations of the State Lottery Committee, negotiations followed between the Director, Institutional Finance and State Lottery and the respondent Nos. 7 and 8 and on the completion thereof and finalization of the terms, the matter when placed before the State Lottery Committee, it in its meeting held on 1.3.2007, which after a threadbare discussion and scrutiny of the stipulations concurred upon, recommended both the firms for the distributorship of Mizoram State Online Lottery on nonexclusive basis, fixing the annual minimum assured profit of the Government to be Rs. 1.5 crores. It is noticeable that though both these firms insisted on exclusive distributorship, this proposal was not acceded to by the State respondents. The offer of appointing the respondent Nos. 7 and 8, as the sole selling agent of Mizoram State Online Lotteries, was thereafter made on 5.4.2007. Subsequent thereto, agreement to the said effect were executed by and between the parties on 9.4.2007/10.4.2007.

64. The above disclosures from the records establish that the initiation of the process culminating in the appointment of the respondent Nos. 7 and 8, is traceable to the letter dated 24.6.2002 of the Deputy Secretary to the Government of Mizoram (IF&SS), Aizawl, circulating the modalities for selection of offers for marketing of Mizoram State Online Lottery Tickets. Thereby, voluntary offers were solicited under the 2000 Rules, which by rule 4 thereof, authorized the Government to appoint sole distributor by floating open tenders or by any other method as deemed appropriate. The exercise, thus, launched, was in accordance with the mandate of the 2000 Rules. M/s. Dakshin Media Ltd., Mumbai and the respondent No. 7, were shortlisted from the five firms, submitting their voluntary offers. With the disposal of W.P.(C) No. 78547 2003, as being infructuous on 22.12.2004, a conscious decision was taken by the State Lottery Committee on 28.3.2005 to negotiate with the respondent No. 7 for the distributorship of the State Online Lotteries as its offer had not been cancelled though the agency had been awarded to M/s. Dakhin Media Ltd., Mumbai. The Government also had decided against floating the Notice Inviting Tender or inviting voluntary offers afresh. While the negotiation with the respondent No. 7, was pending the voluntary offer of respondent No. 8, was received. Admittedly, by that time, i.e., 5.12.2006, the petitioners had not made any offer for the distributorship/agency. In the meantime, the 2006 Rules, were notified on 12.5.2006 and in terms of rule 5 thereof, the State Government was empowered to appoint a selling agent for Mizoram State Online Lottery Tickets in compliance with the Act and the 2000 Rules. Not only the 2000 Rules were not proclaimed to have been repealed, thereby, the same, as rule 5(1) indicates, was integrated in the 2006 Rules. There is nothing in the 2006 Rules, either to indicate that the process initiated under the 2000 Rules, could not be pursued under any circumstances, even if, considered necessary. The modes comprehended in rule 5 (1) of the 2000 Rules instead, are in complete alignment therewith. The continuation of the earlier process on revival, therefore, per se, cannot be deemed to be in contravention of the 2006 Rules.

65. The role of the State Lottery Committee in the face of the enjoinment of rule 5(1) of the 2006 Rules being of definitive significance, its decision to negotiate with the respondent No. 7, as the second highest valid offer, thus, cannot be denounced to be in violation of the 2006 Rules. The respondent No. 7, having been shortlisted on a comparative assessment of suitability of the offerers pursuant to a participatory process commenced under 2000 Rules, this decision of the State Lottery Committee to confine the negotiations with it for the distributorship of the State Online Lotteries, cannot be condemned as subversive of the fundamental essentiality of transparency, fairness and nonarbitrariness in the matter of distribution of State largesse, including settlement of Government contract. The State respondents could have initiated a fresh exercise in terms of the 2006 Rules by inviting tenders or voluntary offers by treating the earlier one closed for all intents and purposes. By not doing so and limiting the attention to the respondent No. 7, whose offer had been tested earlier, for same purpose and not cancelled, in the opinion of this court, they did not act in breach of the Rules or the acknowledged essentials of a valid process, that ought to a inform and act of distribution of State largesse. As it is the petitioners, cannot claim any right far less any fundamental right to conduct or operate any lottery, their expectation for a fair and nondiscriminatory treatment though is legally recognized, by the time they had made their offers, i.e., 5.2.2007, negotiations with the respondent Nos. 7 and , 8, had not only advanced substantially but had taken a shape, the parties converging on the final covenants. The records reveal a well deliberated and conscious decision of the respondentauthorities on the recommendation of the State Lottery Committee not to launch a fresh process but to persist with the respondent Nos. 7 and 8, which stricto sensu, cannot be adjudged to be in contravention of the 2006 Rules.

66. The venture embarked upon, being new and competitive, the respondentauthorities understandably, were circumspect and wary in their approach and advised themselves to confine to the tested players on record. Having decided to restrict themselves to the respondent Nos. , 7 and 8, negotiations with these firms thereafter, cannot be construed to be arbitrary unreasonable or discriminatory. The petitioners'' remonstrance bearing on the deliberations pertaining to arbitration proceedings as a vitiating factor, thus, is of no significance. The offers of respondents 7 and 8 having been identified to be scrutinized only, negotiations with them for finalizing the terms and conditions of the agency, do not ipso facto, invalidate the process as has been expounded in Air India Ltd. v. Cochin International Airport Ltd., (2002) 2 SCC 617,

67. The contextual facts do not project a situation, where the respondent Nos. 7 and 8, have been picked up from nowhere to be interacted with and appointed as the sole selling agents of the Mizoram Online Lotteries. As alluded hereinabove, the respondent No. 7 figured in the process initiated in the year 2002, under the 2000 Rules and the respondent No. 8''s offer was earlier in point of time than that of the petitioners'' which too have been discarded as incomplete. The petitioners in the singular facts of the instant case, cannot complain of unfair,

unreasonable or unjust treatment to them, more particularly having regard to the nature of the project to be undertaken the legislative constrictions, their qualified right and the considerations that weighed with the State respondents in appointing the respondent Nos. 7 and 8, as the sole selling agents for the Mizoram State Online Lotteries.

68. The norms spelt out by the State Lottery Committee for negotiation with the respondent Nos. 7 and 8, adequately project its concern to select a competent, reliable and creditworthy selling agent, which can guarantee generation of desired Government revenue, the live purpose a for organizing the online lotteries. The justification provided for temporarily limiting the number of sole selling agents, namely to minimize internal competition having regard to the competitive market and the unstable business scenario cannot be discarded as irrelevant or inappropriate, as well.

69. The Apex Court in Air India Ltd. (supra), while dwelling on the power of the State and its functionaries in awarding a public contract, had announced that the State is at liberty to fix its own terms of invitation to tender and can enter into negotiations before finally deciding to accept one of the offers made to it. Though, the State, its corporations, instrumentalities and agencies have a public duty to be fair to all concerned, a writ court even a defect is found in the decision making process, must exercise its discretionary power with great caution and intervene only in furtherance of public interest and not merely on the making out of a legal point. Their lordships emphasized that interference would he warranted, only if an overwhelming public interest so demands. This view found reiteration in Rajasthan Housing Board and Another v. G.V. Investments and Another, (2007) 1 SCC 477.

70. Having regard to the nature and purpose of the pursuit, the circumscribed empowerment of the State by the Act to organize the same and the limited nature of right of participation in the process related thereto, I am of the view that in the present conspectus of facts, the impugned decision in the touchstone of public interest cannot be repudiated arbitrary, irrational, absurd nontransparent or unconstitutional, so as to .hastily interference in the exercise of this court power of judicial review.

On a consideration of the facts and the law involved, I, therefore, consider the petitions to be wanting in merit. The same are accordingly dismissed. No costs.