

(2010) 07 GAU CK 0024
In the Gauhati High Court
Case No : Writ Appeal No. 2 of 2010

State of Mizoram and Another	Vs	APPELLANT
Lalthai and Others		RESPONDENT

Date of Decision : 21-07-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2011) 4 GLR 637 : (2010) 4 GLT 151

Hon'ble Judges : Ketulhou Meruno, J;H.N. Sharma, J

Bench : Division Bench

Advocate : N. Sailo, for the Appellant; M. Zothankhuma, for the Respondent

Final Decision : Allowed

Judgement

H.N. Sarma, J.—The subject matter of challenge in this appeal is the common judgment and order dated 27.11.09 passed in WP (C) No. 47/09 and WP(C) No. 71/09 by the learned Single Judge, whereby and whereunder, allowing the WP(C) No. 47/09, the NIT dated 5.6.09 issued by the Secretary, Government of Mizoram, Food and Civil Supplied and Consumer Affairs Department has been quashed and thereby the period of carriage contract in respect of the Respondents Petitioners was extended upto 31.3.10 or till the process of notice inviting tender is completed, whichever is earlier. Consequent to allowing of WP(C) No. 47/09, the WP(C) No. 71/09 was dismissed by the same judgment.

2. We have heard Mr. N. Sailo, learned Addl. Advocate General, Mizoram for the Appellant and Mr. M. Zothankhuma, learned Counsel appearing for the Respondent writ Petitioners.

3. Briefly stated, the relevant facts necessary for the disposal of this appeal are that the Petitioners were appointed as carrying contractors by the Respondent authorities. The NIT for engagement of the aforesaid carrying contractors was floated on 15.2.06 inviting tender from the qualified persons to carry out foodstuffs through main routes i.e., Kolasib and Tanhril in total covering 26 routs

in all. The writ Petitioners along with Ors. submitted their tenders for the contract and after scrutiny they were selected and appointed as carrying contractors for the aforesaid routes for the calendar year 2006 vide order dated 20.7.06. The relevant terms and conditions of the contract were incorporated into an agreement executed by the parties. Although the NIT was issued for carrying the foodstuffs during the calendar year 2006, vide Clause 14 of the terms and conditions of the agreement it was provided that the contract would be initially for a period of one calendar year from the date of appointment and may be extended beyond the period of one calendar year for "Anr. specified period" or "till fresh tenders are invited and contractor appointed for carriage of foodstuff for the subsequent period/terms".

4. In terms of the aforesaid appointment, the writ Petitioners discharged their contractual obligation. At the end of the calendar year 2006, the terms of the contract was extended upto 31.7.07 or until further order vide order dated 11.12.06. The period of contract was extended for further period up to 31.3.09 vide order dated 1.10.07. Before expiry of the said period vide Anr. order dated 18.7.08 the period of the contract was further extended up to 31.3.11.

5. Various objections being raised by different intending contractors objecting against the process of such extension, the Government reviewed the matter and curtailed the period of extension up to 31.8.09 vide Notification dated 5.6.09 and thereafter on 9.6.09 fresh NIT was issued for selection of the carrying contractors. Although the Notification dated 5.6.09 and the NIT dated 9.6.09 covers Anr. rout namely, Bualpui rout but the period in respect of the Bualpui rout having been expired after the impugned judgment, fresh contract has been awarded selecting through a fresh NIT. Consequently, the present writ appeal relates only in respect of the carriage contract through the routs from Kolasib and Tanhril only. Upon issuance of the aforesaid Notification dated 5.6.09 curtailing the period of extension of the contract and the NIT dated 9.6.09, the writ Petitioners approached this Court by filing WP(C) No. 47/09 challenging those orders. The grievance of the writ Petitioners is that contract in question allotted to them having been extended till 31.3.11 upon valid consideration by competent officer of the department, the same cannot be curtailed subsequently by issuing impugned Notification, that too, without providing them any opportunity of hearing. The legitimate expectation that arose out of the extension order was also pressed into service in support of the contention.

6. The writ petitions are resisted the State Respondents by filing counter. However, the learned Single Judge vide impugned judgment and order dated 27.11.09 allowed the writ petitions setting aside the impugned Notification dated 5.6.09 and the NIT dated 9.6.09. In the meantime, the extended period of contract for carrying through Bualpui route having been expired in the month of December, 2009, the same was settled by inviting NIT and to this effect, none of the parties have any grievance.

7. Mr. N. Sailo, learned Addl. Advocate General submits that Clause 14 of the

agreement has been wrongly pressed into service as torrential source for repeated extension of the contract in favour of the writ Petitioners and scope, spirit, meaning and interpretation of said Clause, does not permit for such repeated extension of the contractual period after its expiry. It is further contended that there having no power to extend the contract awarded to the writ Petitioners either under the terms of the NIT or under the terms and condition of the agreement arrived at between the parties, there is no question of violation of the Principle of Natural Justice in passing the impugned order by which the extended period has been curtailed.

8. Mr. M. Zothankhuma, learned Counsel appearing for the Respondents/writ Petitioners, per contra, supporting the impugned judgment further submits that even if on proper interpretation, Clause 14 of the terms and conditions is held not to be applicable for extending the period minimum opportunity should have been provided to the writ Petitioners before curtailing the period of extension of the contract awarded to them and by not providing any opportunity to place their case the impugned orders suffer from infraction of the basic Principle of Natural Justice. Learned Counsel further submits that the impugned order is devoid of any reason and not a speaking order and the competent authority having exercised the power and authority to extend the period of contract up to 31.3.11, the same could not have been curtailed up to 31.8.09 when the writ Petitioners legitimately expected to carry out the contract till the 31.3.11 and in such a situation, the learned Single Judge has properly adjudicated the matter quashing the impugned Notification as well as the NIT which requires interference.

9. We have considered the rival submissions made by the learned Counsel for the appearing parties.

10. We have also perused the NIT dated 15.2.06 and the relevant terms and conditions of the agreement entered into between the parties to regulating the terms of the contract. Upon due consideration, we find that the facts of the present appeal hinges basically upon the interpretation of Clause 14 the terms and condition making provision of extension of the period of contract. For our ready reference, Clause 14 of the terms and condition is quoted herein below:

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

11. At this stage turning to the initial offer made in the NIT dated 15.2.06 we find that the tenders were invited for awarding the contract for carrying foodstuff during the calendar year 2006. There is no dispute that the Petitioners were duly selected for carrying out the contract and after such selection, necessary agreement was arrived at between the parties. In the agreement, however, there is extension Clause i.e. Clause 14 as quoted herein above. The said Clause 14

discloses that though the contract is initially for a period of one calendar year, the authorities reserve the power of extension of the period beyond one calendar year for "Anr. specific period" or "till fresh tenders are invited" and contractors appointed for the subsequent specified period. Meticulous examination of the Clause 14 it discloses that the power of extension was provided for "Anr. specified period". This leads us to consider the meaning of "Anr. " in its true sense of the terms vis-a-vis the contingency in the context of which the related Clause is incorporated in the NIT. Admittedly, the NIT was issued for awarding the contract for the calendar year 2006 and the intention for incorporating the clause is to be understood keeping in mind this specific period.

12. The meaning of the word "Anr. " as provided in the New Lexicon Webster's Dictionary, Volume I, 1988 Edition is "additional"/"different". The meaning of the word "Anr. " as provided in the Oxford Advanced Learner's Dictionary, Sixth Edition is "one more" "an extra thing or person". Applying the aforesaid meaning of the word Anr. if the Clause 14 is interpreted it provides that such extension is possible for only one more specified period and this interpretation would be in consonance with the terms of the NIT which was issued for awarding the contract for the calendar year 2006.

13. The purpose for providing such a power of extension under the aforesaid Clause 14 of the agreement is to provide the breathing time to complete the process of awarding the contract by issuing NIT in case of certain exigencies of circumstances when the process of selection through NIT is not completed within the calendar year on the one hand and on the other hand the carriage of foodstuff cannot be stopped on the ground of public interest and this appears to be the reason for reserving such power of extension only for one "specified period".

14. In the instant case, we find that although the contract was initially awarded vide order dated 20.07.06 for one calendar year, that was extended firstly up to 31.11.07 and thereafter up to 31.3.09 and finally up to 31.3.11. The final extension of the contract up to 31.3.11 was granted vide Notification dated 18.7.08 during the continuance of the second extension.

15. Examining the entire matter from Anr. angle, we find that by resorting to such process of repeated extension, the same set of contractors have been allowed to operate the contract since 2006 till 2011, although initially NIT was issued only for a period of one year and such action adopted by the Respondent authorities have excluded the other intending contractors from participating and submitting their tenders for the subsequent calendar years. All the citizens of the country have equal right to participate in the matters of earning their livelihood by entering into any contract with the State authorities and the State authority is not entitled to act in such a manner by which right of other intending businessman are adversely affected and under the touchstone of Article 14 of the Constitution of India such action is categorised as an arbitrary. The process of repeated extension of the contract smacks some amount of favouritism in favour

of certain contractors in getting the benefit through distribution of State largesse.

16. Clause 14 of the terms and conditions provides only for one extension for Anr. specified period and it does not authorise or permit the Respondent authorities to make such extension for period/s one after Anr. . Extension means extension of the original period of contract and not the extension of the extended period. In fact, after the expiry of the period of first extension, there arises no question of any further extension since the period of original contract has already over, in terms of Clause 14 of the agreement. In that view of the matter, the extension so granted by the Respondent authorities to the writ Petitioners vide orders dated 1.10.07 and 18.7.08 are not permissible under the law or to be more specific under Clause 14 of the agreement.

17. Though the learned Counsel for the writ Petitioners has also raised the issue of violation of the Principle of Natural Justice, we find that under the facts and circumstances of the present case, it is not necessary to provide any opportunity to justify the action, the benefit of which was provided to the Petitioners without there having (sic. being) any power or authority to do so. That apart, the writ Petitioners are still operating the contract till date as per the order of extension and in such a situation, in order to support the illegitimate action of the authority, in our considered opinion, the writ Petitioners cannot claim to have violated (sic. been deprived of) the Principle of Natural Justice. The Principle of Natural Justice is not an unruly horse and it is to be applied to protect the genuine and legitimate right.

18. In view of the above discussions, we find that the writ Petitioners could not make out a case for interference in the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India challenging the action proposed to be taken by the Respondent authorities in issuing the impugned order and proposing to settle the contract by inviting fresh NIT. The order dated 5.6.09 cannot be said to have been issued in violation of any provision of law or term of the contract agreement. However, since the period of extension as reserved in the impugned order dated 5.6.09 has already been expired and the NIT dated 9.6.09 is quashed by the learned Single Judge, it is directed that the Respondent authorities shall issue fresh NIT as early as possible and settle the contract to the successful bidder/s as per the NIT.

19. It is needless to say that the present Respondent writ Petitioners would also be entitled to participate in the said tender process. The entire process of fresh allotment of the contract shall be completed within a period of not later than six weeks from to-day and for the aforesaid period of six weeks, the writ Petitioners would be entitled to operate their contract.

20. Subject to the above direction the WP(C) No. 47/09 stands dismissed and this writ appeal is allowed.

21. In the facts and circumstances of the case, we direct the parties to bear their own costs.