

(2015) 05 SIK CK 0012
In the Sikkim High Court
Case No : Review Pet. No. 02 of 2014

Summit Online Trade Solutions Private Limited and Others	APPELLANT
Vs	
The State of Sikkim and Others	RESPONDENT

Date of Decision : 25-05-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 05 SIK CK 0012

Hon'ble Judges : Sunil Kumar Sinha, C.J

Bench : Single Bench

Advocate : Surajit Dutta and Binita Chhetri, for the Appellant; J.B. Pradhan, A.A.G and S.K. Chettri, Asstt. Govt. Advocate, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Sinha, C.J—Review Petitioner No. 1 is a Company incorporated under the Indian Companies Act, 1956. It is engaged in the business of sale of online lottery tickets organized by the Government of Sikkim. It had entered into an Agreement with the Government of Sikkim on 09th May, 2005, whereby it used to purchase the lottery tickets from the Government and resell the same to the public at large through various agents, stockists, resellers, etc. The said Agreement was valid for a period of seven years i.e. till 08th May, 2012. This Agreement has been further renewed for an other period of five years vide subsequent Agreement dated 09th November, 2012, effective from 09th May, 2012. Thus the period of second Agreement dated 09th November 2012 is to terminate on 08th May, 2017.

2. M/s. Future Gaming and Hotel Services Pvt. Ltd., Respondent No. 3 herein, had also an Agreement in its favour for selling and marketing of lottery tickets of Sikkim State Paper Lottery. It's said Agreement was renewed by the State Government without floating any tender. The aforesaid action of the State Government was challenged by Respondent No. 4 herein, M/s. Gaming India Distributor Ltd., by filing writ petition, W.P.(C) No. 35 of 2014. In the writ

petition, Review Petitioner No. 1 was not a party. The said writ petition came up for hearing before this Court on 24.09.2014 and learned counsel for the parties agreed, on instructions, to dispose of the writ petition and the Court on such agreement disposed of the writ petition in the following manner:-

"3. Learned counsel for parties argued the case at length, but during the course of arguments, they agreed, on instruction, to dispose off the writ petition, as under:-

i) Respondents No. 1 and 2 will float the tender for appointment of distributor for selling and marketing of lottery tickets of Sikkim State Lotteries. The tender notice will be published in daily two national news papers and two local news papers, on or before 15.11.2014 giving time of at least one month for collecting and depositing the tender notice, etc.

ii) All the tender notices received by respondents No. 1 and 2 will be opened and finalized on or before 07.01.2015. Thereafter, the agreement with the concerned party/distributor, to be appointed, will be executed on or before 31.01.2015.

iii) The agreement dated 06.08.2013, whereby contesting respondent No. 3 has been authorized/appointed as distributor for selling and marketing of lottery tickets of Sikkim State Lotteries is confined to the period from 18.10.2014 to 31.01.2015 and it stands cancelled for the period after 31.01.2015, meaning thereby respondent No. 3 will carry its business/work of distribution of selling and marketing of lottery tickets of Sikkim State Lotteries under the agreement dated 06.08.2013, till 31.01.2015, so there may not be any loss of revenue to State of Sikkim.

iv) In case any other agreement of similar nature for appointment of distributor for selling and marketing of lottery tickets of Sikkim State Lotteries has been renewed/extended/executed by respondents No. 1 and 2 with any other party/distributor, without floating the tender in open market, then respondents No. 1 and 2 will take necessary steps for cancellation of their agreement in accordance with law and to float the tender for those draws/lotteries also and complete all formalities/action before 31.01.2015.

4. Ordered accordingly.

5. Parties are directed to bear their own costs."

3. When the authorities of Review Petitioner No. 1 came to know about the Judgment dated 24.09.2014 passed in W.P.(C) No. 35 of 2014 and found that on the basis of a consent Judgment passed between Respondent No. 3 and 4, a direction was issued by this Court on which their Agreement would also come to an end and notices to this effect were issued, they have filed this Review Petition for setting aside/modification of direction No. 3(iv) of the Judgment dated 24.09.2014 passed in W.P.(C) No. 35 of 2014.

4. Mr. Surajit Dutta, learned counsel appearing on behalf of Review Petitioners,

has mainly contended that the Review Petitioner No. 1 was not a party in the said writ petition; the aforesaid directions effecting its right was not issued on any finding; it was on the basis of an agreement arrived at by the parties, therefore, the said agreed Judgment is not binding on the Review Petitioners. He also contended that clause 3(iv) of the aforesaid Judgment had a civil consequence and when the Review Petitioner was not a party to that Petition and was not heard before passing the Judgment, there was violation of principles of natural justice. He further contended that in fact the Writ Court entered upon an issue which was not sub judice before it and, therefore, there is an apparent error on the face of the record as the matter goes to the jurisdiction of the Writ Court to issue a direction on a point, which was never raised before it. He further argued that the agreement between the contesting parties of the Writ Petition (C) No. 35 of 2014 was about "paper lotteries" whereas the Agreement entered into between the Review Petitioner and the Government is in relation to "online lotteries", therefore, even otherwise also the subject matters of both the cases of Review Petitioners and contesting parties in the writ petition were quite different. He, therefore, has prayed for suitable amendment/modification/deletion of clause 3(iv) of the impugned Judgment.

5. On the other hand, learned counsel for the Respondents have opposed these arguments and supported the Judgment passed by the Writ Court.

6. I have heard learned counsel for the parties.

7. Admittedly, the Review Petitioners were not the parties before the Writ Court in W.P.(C) No. 35 of 2014. The contesting parties in the said writ petition were Respondents 3 and 4 herein. Respondent No. 4 had challenged the validity of Agreement of extension of contract of Respondent No. 3 by taking ground that the contract should have been awarded to anyone after floating an open tender in the market which would have earned more money for the State. In the realm of the said challenge between the above parties, in fact, they agreed that their writ petition may be disposed of in the above terms. Therefore, it is clear that the directions contained in paragraph 3 of the Judgment of the Writ Court were neither based on determination of any issue involved between the parties nor on a finding recorded, and they were simply on an agreement between the parties. If any part of that Judgment was offending to any third party inasmuch as an existing contract was going to be terminated, it would certainly be the decision/order without giving any opportunity of being heard to that party. In the instant case, the Review Petitioners were never heard before passing the impugned Judgment by the Writ Court by which their existing Agreement was also to be terminated. Thus the order cannot be said to be binding on the Review Petitioners and it cannot be made effective against them.

8. It was argued on behalf of Respondents that the consent of the concerned Respondent was given on the terms that all such contracts shall come to an end. The above point was argued before this Court in Review Petition (C) No. 03 of 2014, which was filed by Respondent No. 3 herein. The point raised was dealt

with in the said Review Petition (No. 03 of 2014) vide paragraph 13 as under: -

"13. It is not the case here that the consent was not given. In the instant case, the consent was given to cancel the contract on certain conditions. Mr. Rao has argued that cancellation of similar contract of other persons was also a condition. How a third party can give consent for cancellation of the contract of an other party and making it a ground for passing an order in its case. Thus the condition No. 3(iv) itself was beyond the authority of the Review Petitioner and was totally redundant and non-enforceable. This matter was in the realm of a particular contract. If the Review Petitioner itself was agreed to get its contract cancelled and reappoint the Distributor after floating a fresh tender, no fault can be attributed to anyone except the Review Petitioner."

9. The Review Petition (C) No. 03 of 2014 was dismissed by this Court on 28.11.2014 and the Special Leave Petition (C) Diary No. 39415/2014 filed in the Supreme Court against the said order was withdrawn even without its registration on 26.02.2015.

10. The Review Petitioners are running their online lottery business on the strength of the Agreement, which, as per its term, shall terminate in the year 2017. They have invested a lot of amount to create the infrastructure and other online facilities to run their business. Thus the impugned Judgment dated 24.09.2014 passed in W.P.(C) No. 35 of 2014 has a civil consequence on contractual and statutory rights of the Review Petitioners. Therefore, it is certainly a case where the principles of natural justice have been violated.

11. For the error apparent on the face of the record, Mr. Dutta referred to the decision of Chiranjilal Shrilal Goenka (Deceased) through Lrs. Vs. Jasjit Singh and Others, (1993) 2 JT 341 : (1993) 2 SCALE 146 : (1993) 2 SCC 507 : (1993) 2 SCR 454 . It was mainly contended by him that the consent cannot confer jurisdiction upon a Court nor it creates an estoppels against statute. According to him, the Writ Court acted in excess of jurisdiction while making a decision on consent in relation to an agreement, which was not under challenge before it.

12. In Orissa State Financial Corporation Vs. Narsingh Ch. Nayak and Others, (2003) 95 CLT 116 : (2004) 120 CompCas 279 : (2004) 1 CTLJ 433 : (2002) 3 JT 406 : (2003) 10 SCC 261 , the High Court, while considering the writ petition filed by the owner of the vehicle for quashing of the notice of auction-sale and for other consequential reliefs, had passed certain orders, which were beyond the issues raised, as certain directions were issued, which were unrelated to the main controversy. The Supreme Court held that the order passed by the High Court amounts to drawing up a fresh contract between the parties and the order, to say the least, was beyond the scope of the writ petition which was being considered by the High Court and beyond jurisdiction of the Court in a contractual matter. It was further held that no doubt, while exercising its extraordinary jurisdiction under Article 226 of the Constitution the High Court has wide power to pass appropriate order and issue proper direction as necessary in

the facts and circumstances of the case and in the interest of justice, but, that is not to say that the High Court can ignore the scope of the writ petition and nature of the dispute and enter the field pertaining to contractual obligations between the parties and issue such directions annulling the existing contract and introducing a fresh contract in its place.

13. In the instant case, the writ petition was filed by Respondent No. 4 against Respondent No. 3 challenging a particular Agreement in favour of Respondent No. 3. Thus the validity of the Agreement of Respondent No. 3 only, was the subject matter of the writ petition and the scope of the writ petition was only with relation to the validity of the said Agreement as also the action of the Government in relation thereto. While disposing of the said writ petition on the aforesaid challenge being made to the Agreement of Respondent No. 3, the Writ Court also passed a decision in relation to other Agreements, which were even not before the Writ Court. Thus in the instant case, the order regarding other Agreements of similar nature i.e. clause (iv) of paragraph 3 is beyond the scope of the writ petition and thus is an apparent error on the face of the record.

14. So far as the argument in relation to Agreements of both the parties being dissimilar on the ground that one was in relation to "paper lotteries" and the other was in relation to "online lotteries" is concerned, I do not deem it necessary to enter into this controversy in this Review Petition because the grounds relating to violation of principles of natural justice and an apparent error on the face of the record have been successfully demonstrated and are sufficient for the suitable modification in the impugned Judgment.

15. For all these reasons the Review Petition is allowed and the impugned Judgment dated 24.09.2014 is modified to the extent that clause (iv) of paragraph 3 of the impugned Judgment shall be taken as redundant and it shall not be given effect to by the State-Respondents.

16. No cost.