



THE HIGH COURT OF SIKKIM AT GANGTOK
(Civil Extraordinary Jurisdiction)

J U D G M E N T

S.B. W.P.(C) No. 43 of 2013

1. M/s Teesta Rangit Private Limited,
Upper Syari, Gangtok
Sikkim.
2. Mrs. Tara Subba,
Managing Director,
M/s Teesta Rangit Private Limited,
Upper Syari, Gangtok

... **Petitioners.**

- versus -

1. Director of Sikkim State Lotteries,
Finance, Revenue & Expenditure Deptt.,
Government of Sikkim,
Baluwakhani, Gangtok,
Sikkim.
Through the Director.
2. Tourism Department,
Government of Sikkim,
Gangtok, Sikkim.
Through the Secretary.

... **Respondents.**

CORAM

HON'BLE THE CHIEF JUSTICE
MR. JUSTICE N. K. JAIN



Date of Judgment : 29.08.2014

For Petitioner : M/s. Jorgay Namka, Panila
Theengh, Chenga Doma
Bhutia and Jigdal G.
Chankapa, Advocates.

For Respondents : M/s. J.B. Pradhan, Addl.
Advocate General, Karma
Thinlay, Sr. Govt. Advocate
with S.K. Chettri and Pollin
Rai, Asstt. Government
Advocates.

Mr. Suman Sharma, Legal
Retainer.

Jain, CJ (Oral).

Heard learned counsel for the parties.

2. The petitioners filed this writ petition on
09.11.2013 with the following prayers: -

- “(a) to issue a writ/order or direction to
quash/set aside the impugned
letter/order dated 30.10.2013 issued by
Respondent No. 1 by which the Petitioner
No. 1 is directed to cease the operation
of Casino Games w.e.f. 12.11.2013;
- (b) to issue a writ/order or direction the
Respondents to comply with the
provision of the Agreement dated



06.11.2007 and renew the agreement dated 06.11.2007 for a further period of 5 years in terms of Clause 2 of the Agreement dated 06.11.2007.

- (c) to issue a writ/order or direction directing the Respondent No. 1 to renew the Petitioner's Licence to operate the Casino Games as per the said Act and the said Rules.
- (d) in the interim to issue a writ/Order or direction calling for the records of Respondent No. 1 pertaining to the operation of Casinos in Sikkim and the files pertaining to the passing of the impugned order dated 30.10.2013 issued by Respondent No. 1 by which the Petitioner No. 1 is directed to cease of operation of Casino Games w.e.f. 12.11.2013;
- (e) to direct interim stay of the impugned letter/order dated 30.10.2013 issued by Respondent No. 1 by which the Petitioner No. 1 is directed to cease operation of Casino Games w.e.f. 12.11.2013 and all proceedings pursuant thereto pending disposal of the above writ petition;
- (f) to grant an order of interim injunction restraining the Respondent No. 1, their officers, employees, subordinates or any other persons claiming or acting under them from in any manner interfering with the right of the Petitioner in conducting the Casino business;
- (g) to grant Ad-interim ex-parte orders in terms of prayers (c), (d), (e) and (f) above may kindly be granted;
- (h) to pass any other direction/s, relief/s, order/s that may be deemed fit and proper in the circumstances of this case;
- (i) to allow the costs of the Writ Petition in favour of the Petitioners.”



3. The petitioners also filed Stay Application, i.e. CMA No. 153/2013.

4. The matter was listed before this Court on 11.11.2013. The writ petition was admitted and the following order was passed on the Stay Application, i.e. CMA No. 153/2013.

“Heard learned counsel for the parties on the stay petition.

Learned counsel for the petitioner submits that as per the agreement Annexure P-1, the period of 5 years was to be counted from the date of commercial operation of the casino games and not from 12.11.2008, as mentioned in the licence, Annexure P-6. He further submitted that petitioner has invested a huge amount of Rs.40.00 crores in the business and that was one of the reasons for inserting a condition in the agreement that the period of 5 years will further be extended for 5 years. He also submitted that the writ petition has been admitted today, therefore, it will be just and proper in the interest of justice to stay the operation of the impugned order dated 30.10.2013 Annexure P-41 and the petitioner be permitted to operate casino games, otherwise petitioner will suffer irreparable loss.

The learned senior Government counsel submitted that the gaming fee was enhanced vide notification dated 30.03.2011 and subsequent notification dated 20.06.2012, but the petitioner has not made the payment of gaming fee as per the amended provision. He also submitted that the petitioner is required to pay a sum of Rs.1,88,36,352/-. The said amount is calculated upto 31.07.2013 only. He, therefore, submitted that unless the petitioner deposits all arrears and dues of gaming fee, as per the amended notification, the interim order should not be passed.



The learned counsel for the petitioner submitted that looking to the huge amount of arrears, it will not be possible for the petitioner to deposit the amount in question. However, he submitted that a reasonable time be granted to the petitioner to deposit the arrears of the gaming fee and petitioner be permitted to operate its casino games.

During the course of argument, learned counsel for both the parties agreed that the stay petition may be disposed off as under:

- i) The petitioner will deposit Rs.35.00 lakhs by tomorrow i.e. 12.11.2013. The remaining amount, out of Rs.1,88,36,352/-, after deposit of Rs.35.00 lakhs, will be deposited by the petitioner within a period of one week from today.
- ii) The operation of the impugned order dated 30.10.2013, Annexure P-41, shall remain stayed and the petitioner will be permitted to operate its casino games. If the petitioner deposits Rs.35.00 lakhs by tomorrow, then the petitioner will be at liberty to start its casino games by tomorrow itself and on deposit of remaining amount within a period of one week then he will continue with his business till the disposal of the writ petition.
- iii) The operation of the casino games will also be subject to the payment of gaming fee as per notification of the State Government dated 30.03.2011 and 20.06.2012 in future.
- iv) The payment to be made by the petitioner will be subject to final outcome of this writ petition. It is made clear that in case the writ petition is allowed, the amount, if any, is found to be refundable to the petitioner, the same will be refunded by the respondents, to the petitioner with an interest @ 6% per annum.
- v) It is further made clear that in case petitioner fails to deposit the amount, as directed above, this order will be deemed to have



been vacated automatically, without reference to Court.

vi) Ordered accordingly.

The stay petition stands disposed off.”

There is no dispute between the parties that petitioners deposited the required amount as per order dated 11.11.2013 passed in CMA No. 153/2013.

5. During the pendency of this writ petition, the petitioners filed an Application before the respondents for renewal of their licence to operate their Casino Games on payment of gaming fees as per Notification dated 30.03.2011 (Annexure R-6). It is also relevant to mention that during the course of hearing on the various dates and today also the learned counsel for petitioners fairly and frankly submitted that petitioner has agreed to pay the gaming fees as per Notification dated 30.03.2011 with effect from 01.03.2014.

6. Learned Addl. Advocate General submitted that Application of the petitioners for renewal of licence to operate the Casino Games has been approved by the Government on 18.08.2014. He further submitted that he is



having the original file of the State Government, wherein a decision has been taken in this regard.

7. In view of above, learned counsel for both the parties have agreed that the writ petition to above extent has become infructuous and be dismissed as such.

8. The remaining disputes in the writ petition are: (i) about the payment of gaming fee as per Notification dated 30.03.2011 for the period, i.e. from the date of Notification till 28.02.2014 and (ii) what is the date of commercial operation. As per petitioners, the date of commercial operation was 01.03.2009 and the term of five years expired on 28.02.2014, whereas as per respondents, the date of commercial operation was 11.11.2008 and the term of five years expired on 11.11.2013.

9. Learned counsel for petitioners submitted that so far as the remaining two disputes in the writ petition are concerned, he may be given a liberty to seek alternative remedy before Arbitrator, in view of clause 11 i.e. arbitration clause of agreement dated 06.11.2007 (Annexure P-1). Learned counsel for respondents has no objection in it.



10. In view of above, the writ petition, so far it relates to renewal of licence is concerned, is dismissed as having become infructuous. So far as, remaining two disputes, as mentioned in paragraph 8 above, the writ petition is dismissed with liberty, as prayed for by learned counsel for the petitioners.

11. The learned Additional Advocate General undertakes that renewed licence will be issued within a period of 15 (fifteen) days. It is made clear that the petitioners will operate their Casino Games in terms of interim order of this Court dated 11.11.2013 till issuance of renewed licence.

(N.K. Jain)
Chief Justice
29.08.2014

Approved for reporting: ~~Yes~~ / No
Internet : Yes / ~~No~~

pm/ jk