

**IN THE COURT OF SENIOR CIVIL JUDGE- 1
AIZAWL DISTRICT :: AIZAWL**

CIVIL SUIT NO. 68 OF 2010

Plaintiff:

M/S Raunak Agency
Proprietor Mr. Manoj S. Singh
Having its registered office
At 210, Maa Durga Cooperative Housing
Jagnadey Chowk
Nandanvan, Nagpur
And its administrative office at
Shop No. 1, Babubhai Gayakwad Compound
Trikudas Road
Kandivali (W), Mumbai

By Advocates : 1. Mr. M. Zothankhuma, Sr. Adv.
2. Mr. S. Vanlalhriata
3. Mr. Lalfakawma

Versus

Defendants:

1. The State of Mizoram
Represented by the Principal Secretary to the Govt. of Mizoram
Finance Department
Mizoram- Aizawl.
2. The Secretary to the Govt. of Mizoram
Finance Department
Mizoram- Aizawl
3. The Director
Institutional Finance & State Lottery
Mizoram- Aizawl

By Advocates : 1. Mr. R. Lalremruata, AGA
2. Miss Bobita Lalhmingmawii, AGA

Date of Arguments : 01-06-2012
Date of Judgment & Order : 07-06-2012

BEFORE

Dr. H.T.C. LALRINCHHANA, MJS
Senior Civil Judge-1
Aizawl District: Aizawl

JUDGMENT & ORDER

INTRODUCTORY

It can be estimated that although Article 50 of the Constitution of India embodied the very purpose of independence of judiciary from the executives in India, independence of judiciary lately emerged during 1990s in India. Very praiseworthy, Indian Economic Policy, 1991 was successful for boosting up of Indian economy through Liberalisation, Privatisation and Globalisation. Credible judiciary in India at the relevant time contributed immense efforts for the successfulness of the said New Economic Policy as the foreign investors invested their huge amount of money without hesitations and any fright as remedy remain lies in the judiciary when the state commits any fault on their investment arena. Here is one example where the investor's outside the state is decreed against the State of Mizoram where most of the state revenue is generated through the business of lottery. In a nutshell, it is good for the future state executive administration for earning more revenue from the investors for having credible judiciary separated from executive services akin to the rest of the country.

BRIEF STORY

The plaintiff's case in brief is that an agreement dt.16.09.2008 (hereinafter simply referred to as 'the agreement') was signed between the plaintiff and the Government of Mizoram (defendants) wherein the plaintiff was appointed as the Sole Selling Agent to market all forms of Online Lotteries and other same or similar lotteries organized and conducted by the Government of Mizoram by providing the required infrastructure in Mizoram and in other states. The agreement is valid for a period of 4 (four) years from 16.09.2008 – 15.09.2012. Before the expiration of the agreement however, as early as on 22.09.2009, the State defendants tried to re-model the Mizoram State Lottery System with a completely different financial structure. And, successively on 29.01.2010, the defendant No. 2 issued an "Invitation for Expression of Interest" inviting interested Indian firms/parties to submit their willingness to enter into an agreement with the Government of Mizoram for paper and online lotteries. The said invitation for expression of interest carried an altogether new financial structure as compared to the agreement and the letter dt.22.09.2009. The plaintiff further submitted in his plaint that Thereafter, the lottery operations of the plaintiff was abruptly stopped by the State defendants on 01.03.2010 as the plaintiff did not agree to the remodeled financial structure and as the remodeled Lottery System was apparently implemented on 01.03.2010. Being aggrieved, the plaintiff approached the Hon'ble High Court of Guwahati vide WP(C) No.11/2010 and the Hon'ble High Court passed an Order dt. 05.03.2010 directing the State defendants to allow the plaintiff to do its business as per the terms and conditions of the agreement. To circumvent complying with the Order dt. 05.03.2010, the State defendants issued a Notification dt.18.03.2010, which effectively prohibited lotteries within the State of Mizoram with immediate effect. Because of the

impugned prohibitory Notification dt.18.03.2010, the Hon'ble High Court was constrained to dismiss WP(C) No.11/2010. Adding to the further astonishment and dismay of the plaintiff, the State defendants issued another Notification dt. 19.03.2010 partially relaxing the Notification dt.18.03.2010 to exempt a lottery scheme, CWGD-2010 Raffles, conducted jointly by the Government of Mizoram and the Organizing Committee, Commonwealth Games, Delhi – 2010 from the scope of the said prohibition. Thus, it is clear that the Notification dt.18.03.2010 is mala fide and is promulgated merely to avoid complying with the Order dt.05.03.2010 and to force the plaintiff to agree to the remodeled financial structure. It is humbly submitted that the plaintiff had altered his position on the basis of the agreement and had made a huge investment in the infrastructure required for marketing the lotteries for a period of 4 years keeping in mind the profit that would accrue from the lottery business, thus, the State defendants are liable to pay the plaintiff the expenditure he had invested in the infrastructure for his lottery operations and for the loss of profit that would have accrued to him had he been allowed to conduct his lottery business as per the agreement. Furthermore, the Hon'ble High Court in dismissing WP(C) No.11/2010 has observed that, "petitioner is also at liberty to approach the Civil Court for damages, if so advised". Hence, the instant suit for damages. The plaintiff therefore prays that- (i) directing the State defendants to pay the expenditure amount of Rs.40,91,400/- for the period from 01.03.2010 to 18.03.2010 to the plaintiff. (ii) directing the State defendants to pay to the plaintiff at the rate of Rs.2.5 lakhs a day amounting to Rs.45 lakhs for the loss of profit during the period from 01.03.2010 to 18.03.2010. (iii) directing the State defendants to pay Rs.2.5 lakhs per day as loss of profit to the plaintiff from 19.03.2010 till 15.09.2012 amounting to Rs.22,75 lakhs. (iv) directing the State defendants to pay the plaintiff the infrastructural investment amount of Rs.5 crore incurred by the plaintiff. (v) directing the State defendants to pay interest @ 9% per annum damages awarded to the plaintiff as damages from 01.03.2010 till final payment. (vi) setting aside/declaring that the letters dt.10.03.2010, 18.03.2010 and 31.03.2010 wherein the State defendants have threatened the plaintiff with invocation of the Bank Guarantee as void. (vii) issuing a perpetual and mandatory injunction restraining the State defendants from invoking the plaintiff's Bank Guarantee and directing them to return the Bank Guarantee to the plaintiff and (viii) any further or other order may be passed as this Court may deem fit and proper in the facts and circumstances of the case.

The defendants in their joint written statements stated that the plaintiff wanted to increase the number of his royalty draws and to prove his ability to give high royalty, the plaintiff rather simply submitted his undertaking to pay royalty @ 1% of gross sale subject to a minimum of Rs. 100/- per draw per scheme. The Notification No. G. 16010/43/2010-F. IF&SL Dt. 18th March, 2010 was not made with an intention to circumvent the Hon'ble High Court Order Dt. 5.3.2010 and to force the plaintiff to accept the re-modeled financial structure but was made solely for the public interest and the interest of government. As per clause 9.1 to 9.3 of the agreement, the plaintiff have to submit the assured revenue of the actual sale of tickets within 30 days after draw is held but the plaintiff have unpaid

dues of Rs. 50,14,195/- for the first year, Rs. 19,01,577/- for the second year. Furthermore, the plaintiff has also to deposit to the defendants the price money of more than Rs. 5000/- each within 7 days from the date of draw which the plaintiff never deposit within the due date. The business in lottery is not stable and often fluctuated even during a short period of time. At its peak, the plaintiff may earn Rs. 2.5. lakhs per day but in the lean session it will be barely nil. Therefore the daily earning or daily expenditure could not be generalized at the rate when the business was in its highest peak. As the action of the defendants was under section 5 of the Lotteries Act, 1998, there can be no loss to the plaintiff. by virtue of clause 16 of the agreement in between parties, the plaintiff was bound to abide the restructured and remodeled form of lotteries which was made effective from 1.3.2010, parties were not having any agreement during 1.3.2010 to 18.3.2010. As the plaintiff failed to clear his sale proceed dues from the first year of operation, his Bank Guarantees can be invoked by the Director as per their terms of agreement. The plaintiff rather accepted the re-modeled financial structure by submitting acceptance to the Chief Secretary and Addl. Secretary on 12.2.2010 and 15.2.2010 for online and paper lottery without any force and coercion to the plaintiff. More so, the suit is also bad for non compliance of section 80 of the CPC. Thus, prayed to dismiss of the suit with suffice cost.

ISSUES

On the basis of the pleadings of the parties the following issues were framed on 17.06.2011 and amended towards justice namely-

1. Whether the plaintiff paid requisite court fees in their plaint or not
2. Whether the plaintiff has cause of action against the defendants or not
3. Whether the agreement Dt. 16/9/2008 in between the plaintiff and the defendants is valid and binding to parties
4. Whether the plaintiff had violated an agreement Dt. 16/9/2008 in between the plaintiff and the defendants. If so, to what extend and what are its legal consequences
5. Whether the letters Dt. 10/3/2010, 18/3/2010 and 31/3/2010 are liable to set aside and quash or not
6. Whether the plaintiff is entitled to the reliefs claimed or not. If so, to what extend.

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff had produced only one witness namely Mr. Rajesh Madan S/o O.P. Madan (Hereinafter referred to as **PW**). In his examination in chief, he deposed that on 16.9.2008, there was an agreement in between parties in the lis for a period of four years during 16.9.2008 to 15.9.2012, wherein, he was to market the Mizoram State Online Lotteries by providing the required infrastructure in Mizoram and other states. He referred clauses 6.1 (a), 6.1 (b) and 1.1 of the said agreement. He thereby started the online

lottery operations w.e.f. 20.10.2008. He later entered into undertaking on 1/2/2009 in respect of the percentage of royalty to the defendants. He had received a letter on re-modeling of the Mizoram State Lottery System Dt. 22.9.2009. His executed one year agreement Dt. 16.9.2008 for marketing of the paper lottery was also extended for another one year as per the letter of the defendant no. 2 Dt. 16/10/2009. He therefore disfavours the new re-modeled Mizoram State Lottery and also pursued to the authorities in the Government of Mizoram including the Chief Minister. He prepared a chart for the difference of their agreement dt. 16.9.2008 and letter dt. 22.9.2009 as follows-

| Sl. No. | Documents | Bank Guarantee | Bank Draft for Prize Pool | Government share of Revenue will be | Minimum Assured Revenue | Advance Payment of Sale proceeds |
|---------|--|-------------------------------|-------------------------------|--|---------------------------------------|--------------------------------------|
| | 1 | 2 | 3 | 4 | 5 | 6 |
| 1 | Agreement dt. 16.09.2008 | 50 lakhs as per Clause 6.1(a) | 10 lakhs as per Clause 6.1(b) | 1 % of gross sales of the draw as per Clause 7.1 | 1.50 crore annually as per Clause 8.1 | |
| 2 | Letter dt. 22.09.2009 regarding re-modeled structure | 1 crore | Not mentioned | Rs. 5000/- per draw | 5 crores annually | |
| 3 | Invitation for Expression of Interest dt. 29.1.2010 | 5 crores | 1 crore | 1 % of Sales Turnover or Rs. 5000/- which ever is higher | 5 crores annually | 1 crore in the form of sale deposits |

He further deposed that the action and behavior of the defendants in trying to force him to enter into a new agreement with a revised financial structure shows that the defendants are going against all cannons of justice, equity and contract laws. In response to the "*Invitation for Expression of Interest*" Dt. 29.1.2010, he wrote a letter Dt. 12.2.2010 stating that he was willing to sign up for the re-modeled financial structure of lotteries. He had also sent another letter dt. 15.2.2010 to defendant no. 3 stating his willingness to market the Mizoram State Government Lottery for paper and online lottery as per the re-modeled financial structure. He also stated that the defendant no.3 wrote a letter to him to clear his shortfalls amounting to Rs. 69,16,492/- on 10.3.2010. As per the impugned Notification Dt. 18/3/2010, it was learned that the Governor of Mizoram prohibited the conduct, organization, promotion and sale of all kinds of lottery tickets within the state of Mizoram with immediate effect. He thereby deposed that-

1 Ext-P1 is the Letter of authorization dt. 2.3.10 issued by Raunak Agency authorizing Mr. Sanjay Mahato to be his authorized signatory.

2 Ext-P2 is the Agreement dt. 16.9.08 executed between Government of Mizoram and Raunak Agency

3 Ext-P3 is the Undertaking dt. 1.2.09 issued by Raunak Agency to sign the Revised Agreement with Government of Mizoram

- 4 Ext-P4 is the Letter dt. 10.9.09 requesting for renewal of paper lottery Agreement issued by Raunak Agency
- 5 Ext-P5 is the Letter dt. 22.9.09 for extension of paper lottery Agreement issued by Raunak Agency
6. Ext-P6 is the letter dt. 22.9.2009 issued by Directorate of Institutional Finance & State Lottery Letter for remodeling of Mizoram State Lottery System
7. Ext-P7 is a Meeting of Notice dt. 8.10.09 issued by Additional Secretary to the Government of Mizoram, Finance Department (IF&SL)
8. Ext-P8 is the letter dt. 13.10.09 issued by the Director, IF&SL to Raunak Agency for renewal of Agreement for Mizoram State Paper Lottery
9. Ext-P9 is the letter dt. 16.10.09 issued by Director, IF&SL to Raunak Agency for extension of Agreement of paper lottery.
10. Ext-P10 is the Letter dt. 19.10.09 issued by Raunak Agency to the to Chief Minister, Government of Mizoram of suggestion for new terms
11. Ext-P11 is the Minutes of Meeting of officers Dt. 22.10.09 under Finance Department and sole distributors of Mizoram State Lottery
12. Ext-P12 is the letter dt. 28.10.09 issued by Raunak Agency regarding Proposed remodeling of Mizoram State Lottery System
13. Ext-P13 is the letter dt. 21.12.09 issued by Director, IF&SL to Raunak Agency informing the decision of Government for implementation of remodeled structure of Mizoram State Lottery both paper and online lotteries
14. Ext-P14 is the letter dt. 6.1.10 issued by Director IF&SL to Raunak Agency regarding submission of willingness to sign Agreement for marketing Mizoram State Lotter (Paper Online) as pe the remodeled structure.
15. Ext-P15 is the letter dt. 20.1.10 issued by Director of Institutional Finance & State Lottery requesting Raunak Agency to sign the agreement for Online and Paper Lotteries as per remodeled financial structure
16. Ext-P16 is the letter dt. 27.1.10 issued by Director IF&SL to Raunak Agency regarding postponement of date and time for signing the Agreement
17. Ext-P17 is the Invitation for expression of interest dt. 29.1.10 issued by Directorate of Institutional Finance & State Lottery
- 18 Ext-P18 is the letter dt. 3.2.10 wrote by Raunak Agency to Shri Lalthanhawla, Chief Minister
- 19 Ext-P19 is the certificate dt. 11.12.10 issued by Directorate of Institutional Finance & State Lottery
20. Ext-P20 is the letter dt. 12.2.10 issued by Raunak Agency to Director Mizoram State Lottery.
21. Ext-P21 is the letter dt. 15.2.10 issued by Raunak agency to the Director Mizoram State Lottery, Aizawl
22. Ext-P22 is the letter dt. 16.Feb, 2010 issued by Raunak Agency, M.S Jalaram Lottery Agency and M/S Big Star G Services (P) Ltd to the Chief Minister, Government of Mizoram
23. Ext-P23 is the letter dt. 17.2.2010 issued by Raunak Agency, M.S Jalaram Lottery Agency and M/S Big Star G Services (P) Ltd to the Chief Secretary, Government of Mizoram
24. Ext-P24 is the letter dt. 22.2.2010 issued by the Director IF&SL to the Raunak Agency
25. Ext-P25 is the letter dt. 26.2.2010 issued by Director IF&SL to the Raunak agency
26. Ext-P26 is the letter dt. 1.3.10 issued by Raunak Agency to the Director, IF&SL

27. *Ext-P27 is a copy Order dt. 9.3.10 passed by the Gauhati High Court, Aizawl Bench in WP (C) No. 11/2010*
28. *Ext-P28 is a letter dt. 8.3.2010 wrote the Counsel for Raunak Agency to the Secretary to the Government of Mizoram, Finance Deptt and Director IF&SL requesting them to comply with the Order dt. 5.3.10 by Gauhati High Court, Aizawl Bench in WP (C) No. 11/2010.*
29. *Ext-P29 is the letter dt. 9.3.10 issued by Raunak Agency to Director, Mizoram State Lottery requesting him to continue all lottery draws which is stopped by Mizoram State Lotteries*
30. *Ext-P30 is the letter dt. 10.3.10 issued by Raunak Agency to Director, Mizoram State Lottery*
31. *Ext-P31 is the letter dt. 11.3.2010 wrote by the Counsel for Raunak Agency to the Secretary Finance Deptt, Government of Mizoram and The Director, IF&SL, Government of Mizoram*
32. *Ext-P32 is the letter dt. 15.3.2010 issued by Raunak Agency to Director, Mizoram State Lottery*
33. *Ext-P33 is the letter dt. 16.3.2010 issued by Raunak Agency to the Director Mizoram State Lottery*
34. *Ext-P34 is the letter dt. 18.3.2010 wrote by the Counsel for Raunak Agency to the Principal Secretary, Government of Mizoram Finance Deptt, Secretary, Government of Mizoram, Finance Deptt and Director, IF&SL, Government of Mizoram*
35. *Ext-P35 is the letter dt. 10.3.2010 issued by the Director IF&SL to the Raunak Agency*
36. *Ext-P36 is the letter dt. 18.3.10 issued by Director, IF&SL to the Raunak Agency*
37. *Ext-P37 are the 8 copies of letters dt. 18.3.2010 issued by Director IF & SL to the Raunak Agency.*
38. *Ext-P38 is the notification dt. 18.3.2010 issued by the Secretary to the Government of Mizoram Finance Deptt.*
39. *Ext-P39 is the notification dt. 19.3.2010 issued by Secretary to the Government of Mizoram, Finance Deptt*
40. *Ext-P40 is the letter dt. 20.3.2010 issued by Raunak Agency to the Secretary, Finance, Government of Mizoram*
41. *Ext-P41 is the letter dt. 22.3.2010 issued by Raunak Agency to Principal Secretary, Government of Mizoram Finance Deptt, Secretary, Government of Mizoram, Finance Deptt and Director, IF&SL, Government of Mizoram*
42. *Ext-P42 is the letter dt. 24.3.2010 issued by Raunak Agency to the Secretary, Finance, Government of Mizoram*
43. *Ext-P43 is the letter dt. 29.3.2010 issued by Director, IF&SL to Raunak Agency*
44. *Ext-P44 is the letter dt. 31.3.2010 issued by Director, IF&SL to the Raunak Agency*
45. *Ext-P45 is the details of total expenditure of Raunak Agency on Online Lottery from 20.10.2008 onwards*

In his cross examination, he further deposed that as on today, around Rs. 16 lakhs have to be paid by the plaintiff to the Govt. of Mizoram.

For the defendants:

The defendants had produced the following witnesses namely-

1. Mr. Lalringliana, Director, IF & SL, Govt. of Mizoram (Hereinafter referred to as DW-1)
2. Mr. Zokunga, Asst. Director. IF & SL, Govt. of Mizoram (Hereinafter referred to as DW-2)
3. Smt. Angela Zothanpuui, Under Secretary to the Govt. of Mizoram, Finance Department (Hereinafter referred to as DW-3)

The **DW-1** in his examination in chief deposed that as the plaintiff wanted to increase the number of his lottery draws and to prove his ability and to give high royalty, he submitted undertaking to pay royalty @ 1% of gross sale subject to a minimum of Rs. 100/- per draw per scheme. However, he gave his royalty at 1% of gross sale only. He further reiterated and affirmed the averments and submissions in the plaint.

In his cross examination, he admitted that there was an agreement with the plaintiff on 16.9.2008 for a period of 4 years. Lottery was banned by the Government of Mizoram on 18.3.2010 due to public interest but it does not meant to violate the agreement in between the plaintiff and the Govt. of Mizoram as it was meant to enable the government to run the lottery on a new remodeled financial structure. He admitted that the agreement dt. 16.9.2008 did not envisage the new re-modeled financial structure. The plaintiff has a liability to the Government of Mizoram as per their agreement Dt. 16.9.2008 @ Rs. 16.47 lakhs. He admitted that as the plaintiff was not able to work as per the agreement dt. 16.9.2008, the plaintiff would have made some loss but he cannot say what amount of loss will be caused. There was no agreement in between the plaintiff and the Govt. of Mizoram in respect of the newly re-modeled financial structure of lotteries planned to be introduced from 1/3/2010. He also admitted that there was no cancellation of the agreement Dt. 16/9/2008 before 18.3.2010. As per clause 12 of the agreement, without the consent of parties, the agreement Dt. 16/9/2008 could not be modified. Clause 16 of the agreement Dt. 16/9/2008 does not empowered the Government to change the terms and conditions of the said agreement.

The **DW-2** in his examination in chief deposed that the agreement Dt. 16/9/2008 was made in between the plaintiff and the Govt. of Mizoram for a period of four years. The overall performance of the plaintiff during the entire period of lottery draws i.e. 20.10.2008 to 28.2.2010 is as under-

| Sl. No. | Period | Min. Assured Revenue | Payment received | Dues (3-4) |
|---------|--------------------------|----------------------|-------------------|---------------------|
| 1 | 2 | 3 | 4 | 5 |
| 1 | 20.10.2008 to 19.10.2009 | Rs. 1,50,00,000.00 | Rs. 99,85,085.00 | Rs. 50,14,915.00 |
| 2 | 20.10.2009 to 28.2.2010 | Rs. 55,41,666.00 | Rs. 89,09,283.00 | (-) Rs. 33,67,617/- |
| Total | | Rs. 2,05,41,666.00 | Rs. 1,88,94,368/- | Rs. 16,47,298.00 |

Hon'ble Gauhati High Court dismissed the case of the plaintiff in connection with W.P. (C) No. 11/2010 on 19.4.2010. The contention of the

plaintiff as to pay compensation by the Government are not supported by any documents as there is no provision for payment of compensation in the agreement. The Director IF&SL is at liberty to revoke Bank Guarantee as per clause 6.1 (a) of the agreement. The plaintiff had started lottery draws with effect from 20.10.2008 with 233 numbers of draws per day. The first year of operation ended on 19.10.2009 and second year of operation continued from 20.10.2009 to 28.2.2010. The performance of the Sole Selling Agent for that period is enumerated as under-

First year (i.e. 20.10.2008 to 18.10.2009)

| | |
|-------------------------|---------------------|
| Minimum assured revenue | = Rs. 150,00,000.00 |
| Sale proceeds received | = Rs. 99,85,085.00 |
| Shortfalls (1-2) | = Rs. 50,14,915.00 |

Second year (i.e. 19.10.2009-28.02.2010)

| | |
|-------------------------|--------------------|
| Minimum assured revenue | = Rs. 55,41,666.00 |
| Sale proceeds received | = Rs. 36,40,089.00 |
| Shortfalls (1-2) | = Rs. 19,01,577.00 |

| | |
|------------------|--------------------|
| Total shortfalls | = Rs. 69,16,492.00 |
|------------------|--------------------|

He further deposed that the plaintiff on a number of occasions failed to pay the sale proceeds in time. For implementation of re-modeled financial structure of Mizoram State Lotteries, all existing Distributors/Sole Selling Agents were not forced to accept but requested to accept. No violation of the agreement or abuse of dominant position can be arisen. Notifications dt. 18.3.2010 and 19.3.2010 were solely meant for public interest. The actual amount of court fees to be paid as per section 2 (1) (xiii) of the Court Fees (Mizoram Amendment) Act, 1996 is Rs. 15,99,257/- for the instant suit with valued @ Rs. 28,60,91,400/- which is insufficient and is bad in law. Moreover, as the matter was also closed by Hon'ble Gauhati High Court in WP (C) No. 27/2011 on 26.8.2011, this court could not also pass decree in favour of the plaintiff.

In his cross examination, he further deposed that the Govt. of Mizoram ran the lotteries as per the old lottery structure as per the Agreement Dt. 16.9.2008 even on 2.3.2010 but stopped the same on 2/3/2010 due to the fact that the Govt. wanted to introduce the re-modeled financial structure for online lotteries w.e.f. 1/3/2010. He admitted that as per the judgment & order passed by Gauhati High Court, Aizawl Bench dt. 5/3/2010, it was directed to allow the plaintiff to do its business as per terms and conditions of the Agreement Dt. 6/9/2008 and their office also had received the said copy but he did not know whether their office complied the said judgment & order or not. He also admitted that the Directorate of IF&SL accord approval for various online lottery schemes to the plaintiff under their letter dt. 18/3/2010. Some lottery companies were allowed to continue their lottery business as per the old structure even in the month of March, 2010. He admitted that the Government of Mizoram as per Notification Dt. 19/3/2010 exempted Big Star from the purview of the

prohibition imposed on Dt. 18/3/2010. The Govt. of Mizoram also allowed Common Wealth Games Raffles despite the banned of lotteries. He admitted that the plaintiff had submitted a Guarantee of Rs. 50 lakhs as Security performance. He admitted that as the plaintiff was not able to work as per the agreement dt. 16.9.2008, the plaintiff would have made some loss but he cannot say what amount of loss will be caused. He admitted that the subject matter of WP (C) No. 27 of 2011 was the terms and conditions of the IEI Dt. 9.3.2011.

The **DW-3** in her examination in chief deposed that the conduct of lottery business is a means for earning revenue and cancellation of lotteries was due to viewing public interest towards more revenue generation. In view of the decision of Govt. of India for new regulations, the lotteries in Mizoram were stopped.

In her cross examination, she deposed that she aware of the agreement of parties Dt. 16/9/2008. She also aware of the Order passed by Hon'ble Gauhati High Court in WP (C) No. 11/2010 Dt. 5/3/2010 but she did not know whether the Government of Mizoram complied with the said order or not. The defendants do not have any documents showing that the lottery business of the plaintiff was closed due to non-payment of revenue. She admitted that when the Govt. entered into agreement, they were binding by such agreement.

ARGUMENTS

Mr. M. Zothankhuma, learned senior counsel for the plaintiff after reiterating facts and circumstances mentioned in their plaint submitted that the State defendants claim that the impugned Notification dt. 18.03.2010 has been made in the "interest of the public" in their written statement but has failed to clarify what public interest the prohibition of lotteries in Mizoram will serve. In the case of *Duncan Agro Industries Ltd. v. Secretary*, 1983 144 ITR 94, the Calcutta High Court held that, "*The expressions 'public interest' and 'public purpose' are not generally capable of a precise definition and they have no rigid meaning. The meaning of these expressions ought to be taken from the colour of the statute in which they occur and the concept varying with the time and state of society and its needs. The point to be determined in each case is whether the said purpose or interest would be in the general interest of the community as distinguished from the private interests of an individual. In other words, the same should be useful to the public.*" In the instant case, the Lotteries (Regulation) Act, 1998 does not mention the term "public interest". Thus, it is left to be seen whether the prohibitory Notification dt. 18.03.2010 is useful to the public. It is humbly submitted that the said Notification has not served any purpose but has instead robbed the State Government the opportunity of earning revenue through lotteries and is, therefore adverse to the interests of the public. In addition, he further submitted that the mode, guidelines and reasons for taking the policy decision have to be adequately explained. In any event, any policy decision is amenable to judicial review. It may also be submitted that the Government cannot discriminate and act arbitrarily in making policy decisions. The approval given to the plaintiff to start the new Lottery

series vide the 9 letters dt. 18.03.2010 and the issuance of the impugned Notification dt. 18.03.2010 shows the callousness, non-application of mind and mala fide intention of the State defendant. The subsequent issuance of the Notification dt. 19.03.2010 throws the bottom out of any argument the State defendants might have for justifying the prohibitory Notification dt. 18.03.2010. It is therefore submitted that public interest, being a vague term, is amenable to varied interpretations and in the absence of any specific explanation to what public interest the prohibition of lotteries will serve, it cannot be used as an umbrella protection for policy decision.

Mr. M. Zothankhuma further went on that the plaintiff was further shocked and repulsed by the issuance of yet another Notification dt. 19.03.2010 which had the effect of exempting CWGD-2010 Raffles, a scheme conducted jointly by the Government of Mizoram and the Organizing Committee, Commonwealth Games, Delhi -2010 from the scope of the afore-stated prohibition. Assuming but not admitting that some public interest would be served by the prohibition of lotteries in Mizoram, it is difficult to comprehend how one scheme of lottery, CWGD-2010 Raffles would not conflict with the said public interest. It may therefore be submitted that the Government of Mizoram had no intention whatsoever to prohibit lotteries within the State of Mizoram and that the Notification dt. 18.03.2010 had not been made in the interest of the public; rather it is only a smoke screen to circumvent the Orders of the Hon'ble High Court dt 05.03.2010 and to prevent the plaintiff from operating their lottery business. It thus becomes apparent that the Notification dt. 18.03.2010 was issued only to force the plaintiff to accept the remodeled financial structure of the Lottery System. The fact that the prohibition of lotteries in Mizoram vide Notification dt. 18.03.2010 had been issued only after the Hon'ble High Court of Gauhati had passed an Order on 05.03.2010 directing the State defendants to allow the plaintiff to continue its business as per the terms and conditions of the agreement dt. 16.09.2008 and also that it had been issued on the same day of approving several schemes of lottery of the plaintiff clearly shows that the Notification dt.18.03.2010 was issued to circumvent the orders of the Hon'ble High Court and to compel the plaintiff to agree to the remodeled financial structure of the Lottery System. Furthermore, the exemption of CWGD-Raffles 2010 vide Notification dt. 19.03.2010 clearly shows that the intention behind the issuance of Notification dt. 18.03.2010 is not the prohibition of lotteries but a tactic to avoid complying with the Hon'ble High Court's Order and to pressurize the plaintiff to enter into an agreement as per the remodeled financial structure of the Lottery System. By doing this, the State defendants have committed a colorable exercise of power which is malafide and unjust and goes against the canons of justice.

Mr. M. Zothankhuma relied under Section 56 of the Indian Contract Act, 1872 which states that, "*A contract to do an act which, after the contract is made, becomes impossible, or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.*" He then travelled that the agreement has not become impossible to perform or frustrated in the instant case since the State defendants has caused the frustrating event, i.e., Notification dt.

18.03.2010. The Supreme Court in **Boothalinga Agencies v. V. T. C. Poriaswami Nadar**, AIR 1969 SC 110 held that, *“The provisions of s.56 of the Indian Contract Act cannot apply to a case of ‘self-induced frustration’. In other words, the doctrine of frustration of contract cannot apply where the event which is alleged to have frustrated the contract arises from the act or election of a party”*. It is therefore submitted that there is no frustration by the prohibitory Notification dt.18.03.2010 and that the agreement dt. 16.09.2008 is subsisting. He also vehemently argued that the plaintiff had entered into an agreement with the State defendants on 16.09.2008 for a period of 4 years, it is understandable even for a lay man that he has invested huge amount of money in the requisite infrastructure for the marketing of lotteries in Mizoram and in other states keeping in mind the agreement period of 4 (years). It is therefore clear that the plaintiff would be adversely affected by the Notification dt. 18.03.2010 and that the said Notification would have devastating financial implications for the plaintiff. Hence, the plaintiff had the right of notice and the right to be heard and the State defendants, having failed to afford such opportunities to the plaintiff, have violated the principles of natural justice. He also contended that a plain reading of the agreement shows that the “decision/instruction” mentioned in Clause 16 merely refers to instructions that may be given by the Government to the plaintiff with respect to matters that are contemplated in the agreement. The interpretation of the said Clause cannot be manipulated to extend it to include the imposition of an inflated financial structure completely averse to the financial structure of the existing agreement. Furthermore, the directive authority of the Government granted by Clause 16 cannot be used mala fide and against the terms of what is contained in the agreement.

Mr. M. Zothankhuma also submitted that the plaintiff was making a profit of approximately Rs.2.5 lakhs per day as is depicted in Ext-P42 and the said Exhibit is not denied by the State defendants. Thus, by the supposed implementation of a remodeled Lottery System on 01.03.2010 and by the mala fide prohibition of lotteries vide Notification dt. 18.03.2010, the State defendants have deprived the plaintiff the opportunity of making the said profit of Rs.2.5 laksh per day. Section 73 of the Contract Act, 1872 states that, *“When a contract has been broken, the party who suffers by such breach is entitled to receive, from the part who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach or which the parties knew, when they made the contract, to be likely to result from the breach of it.* He relied in the observations of Hon’ble Supreme Court in a recent case i.e., **MSK Projects (I) (JV) Ltd. v. State of Rajasthan**, (2011) 10 SCC 573 upheld the interpretation of the provisions of Section 73 by the Supreme Court in **AT Brij Paul Singh v. State of Gujarat**, (1984) 4 SCC 59 stating that, *“Damages can be claimed by a contractor where the Government is proved to have committed breach by improperly rescinding the contract and for estimating the amount of damages, the court should make a broad evaluation instead of going into minute details. It was specifically held that where in the works contract, the contractor is entitled to claim the damages for loss of profit which he expected to earn by undertaking the works contract. Claim of expected profits is legally admissible on proof of the breach of*

contract by the erring party.” In another case, *Murlidhar Chiranjilal v. Harishchandra*, AIR 1962 SC 366, the Supreme Court held that, “*The primary aim or principle of the law of damages for a breach of contract is to place the plaintiff in the same position he would be in if the contract had been fulfilled, or to place the plaintiff in the position he would have occupied had the breach of the contract not occurred. When this is accomplished, the primary aim or principle of the law of damages has been fulfilled.*” Therefore, the State defendants are liable to pay the plaintiff Rs.45 lakhs @ Rs.2.5 lakhs for the loss of profit during the period from 01.03.2010 to 18.03.2010 and Rs. 22,75 lakhs @ Rs.2.5 lakhs per day as loss of profit to the plaintiff from 19.03.2010 till 15.09.2012 The State defendants are also liable to pay interest @ 9% per annum damages awarded to the plaintiff from 01.03.2010 till final payment. He concluded his arguments that the State Defendants have threatened the plaintiff with invocation of the Bank Guarantee amount of Rs.50 lakhs submitted by the plaintiff to the State defendants unless the alleged deficiencies as mentioned in the afore-stated 3 (three) letters are cleared. Meanwhile, the claim of the State defendants in the afore-state 3 (three) letters are wrong, inaccurate and cannot be acted upon. It may be submitted that the State defendants do not even have an ascertained amount of uncleared dues, if any, and is merely concocting claims and thus, cannot be acted upon. Furthermore, as has already been stated, the State defendants have violated the terms and conditions of the agreement dt.16.09.2008 by preventing the plaintiff from operating his lottery business as per the agreement and thus, the plaintiff is estopped from making any claim on the basis of the agreement which they have themselves breached. Thus, the letters dated 10.03.2010, 18.03.2010 and 31.03.2010 (Ext-P35, Ext-P36 and Ext-P44) should be quashed and the State defendants should not only be restrained from invoking the Bank Guarantee, they should be directed to return the said Bank Guarantee to the plaintiff.

On the other hand, Miss Bobita Lalhmingmawii, learned AGA for the state defendants argued that it is not denied that an Agreement dt. 16-9-2008 was entered into between the Plaintiff and the Defendants, the term of which was 4 years from the date of its execution. The Plaintiff was thereafter appointed as the Sole Selling Agent to market all forms of online lotteries and other similar lotteries organized by the Govt. of Mizoram w.e.f 20-10-2008. Clause 16 of the said Agreement reads as follows: “*The Sole Selling Agent shall abide by any decision/instruction issued by the Central Government/ State Government of Mizoram or any competent authority/ Court in respect of the matters relating to Mizoram State Online Lotteries*”. The Govt., with the intention of raising maximum revenue for the interest of the State, tried to implement remodeled financial structure of lottery business as clearly permissible under Clause 16 of the Agreement dt 16-9-2008. The Plaintiff was intimated of the intention on several occasions and the Plaintiff, from its end stated its willingness to sign up for the new remodeled financial structure while requesting that the Agency be allowed to continue the online lottery draws as per the terms of the Agreement dt. 16-9-2008. However, it is implied that once the Agency agrees to run the business as per the remodeled financial structure, all agreements in respect of the same business stand terminated. The Govt., by its Letter dt. 26-2-2010 informed the Plaintiff that latter’s agreement with the Govt. as per the

remodeled financial structure would be effective from 1-3-2010. As such, the ongoing business of the Plaintiff according to the terms and conditions of the Agreement dt. 16-9-2008 was stopped from 1-3-2010. Although the Plaintiff and the Defendants were both agreeable to the terms and conditions of the remodeled financial structure, no Agreement was executed between them. The reason being that the Plaintiff, though agreeable to signing up for the remodeled financial structure, requested the defendants to allow the Agency to function as per the Agreement dt. 16-9-2008 till the expiry of the same on 15-9-2012, a request which, if acceded to by the Defendants, would defeat the interest of the State. Thus, there was no business agreement between the parties from 1-3-2010 and this fact is clear from the Letter dt. 26-2-2010 reflecting “.....*However, please note that implementation of new system of Mizoram State Lottery in such a manner from 1-3-2010 as decided by the Govt. is likely tantamount to discontinuation of existing Agreement of all sole selling agent/distributor.....*”. The Plaintiff, in his examination-in-chief admitted to receiving the said Letter. More so, Notification dt. 18-3-2010 was issued by the Secretary to the Govt. of Mizoram, Finance Deptt., prohibiting the conduct, organization, promotion and sale of all kinds of lottery tickets within the State of Mizoram with immediate effect. The said prohibition was done in terms of Sections 3 and 5 of the Lotteries (Regulation) Act, 1998 and in the interest of the general public. The Plaintiff's business comes within the ambit of the said Notification and as such, its prohibition was rightly done as per law. Further, Notification dt. 19-3-2010 was again issued, exempting schemes which are of a special nature and organized in the interest of a national cause from the scope of the above prohibition. The business run by the Plaintiff does not fall within such scope, rendering its prohibition under the Notification dt. 18-3-2010 valid in all aspect. Although the Hon'ble High Court, by its Order dt. 5-3-2010 directed to allow the Plaintiff to resume its lottery business as per the terms and conditions of the Agreement dt. 16-9-2008, the Hon'ble High Court, by its Order dt. 19-4-2010 eventually dismissed the writ petition. The Plaintiff, as admitted by the PW No.1 still has a pending liability of about 16 lakhs, violating the terms and agreement entered into between the Plaintiff and the Govt. and in turn rendering a loss for the Govt. Running business on loss by the Govt. is against public interest and as such, it was crucial that the terms and agreements of the Agreement be revised and restructured, so as to serve the best interest of the State.

Miss Bobita Lalhmingmawii therefore stated that from the evidence adduced by both parties, it is clear that the Plaintiff and the Defendants had entered into an Agreement on 16-9-2008 and the same is to expire on 15-9-2012. However, implementation of re-modeled financial structure was felt needed in order to enhance revenue for the state. Therefore, the Govt. of Mizoram made a Policy Decision whereby all the lotteries were restructured and remodeled to take effect from 1-3-2010 and the same is to be complied with by the Plaintiff as per provision of Clause 16 of the Agreement dt. 16-9-2008 envisaging that the sole selling agent shall abide by any decision/instruction issued by the Central Govt./State Govt. of Mizoram and any competent authority/Court in respect of any matters relating to Mizoram State Online Lottery. Such policy decision taken by the Govt.,

being well within the purview of Clause 16 of the said Agreement, the Plaintiff is to be bound by such decision. However, as the Plaintiff, even though agreeable to the Defendants' request to operate the business as per the remodeled financial structure, did not execute any fresh agreement with the defendants to the effect, the parties were not under any legal agreement during the period 1-3-2010 (the date on which the former Agreement becomes void and a fresh Agreement on remodeled financial structure was to take effect) to 18-3-2010 (the date of the Notification banning lotteries altogether). She therefore submitted that as stated above, the conduct of lottery business is a means of earning revenue for the Govt. The cancellation made as per Clause 16 of the Agreement was done so in the interest of public in anticipation of better revenue prospects.

Miss Bobita Lalhmingmawii thereby sum up that taking into account all the evidences duly adduced by the witnesses and the materials available on record, it is clear that the plaintiffs are not entitled to the reliefs claimed by them.

FINDINGS

Issue No. 1

Whether the plaintiff paid requisite court fees in their plaint or not

The DW-2 in his examination in chief calculated that the actual amount of court fees to be paid as per section 2 (1) (xiii) of the Court Fees (Mizoram Amendment) Act, 1996 is Rs. 15,99,257/- for the instant suit with valued @ Rs. 28,60,91,400/- which is insufficient. Meanwhile, sub-section (3) of section 2 of the Court Fees (Mizoram Amendment) Act, 1996, it says that "*And the fees increases at the rate of forty one rupees and twenty five paise for every five thousand rupees, or part thereof, upto a maximum fee of eleven thousand rupees,*". So is the legal provision, payment of Rs. 11,000/- of court fees is sufficient in the instant case.

Issue No. 2

Whether the plaintiff has cause of action against the defendants or not

In a very nutshell, as per the judgment & order of Hon'ble Gauhati high Court in Writ Petition (Civil) No. 11 of 2010 Dt. 5.3.2010, it was held that "*It is made clear that the respondent authorities shall allow the petitioner to do its business per terms and conditions of the agreement dt. 16.09.2008*". Their order of Hon'ble Gauhati High Court in Writ Petition (Civil) No. 11 of 2010 Dt. 19.4.2010, it was concluded that "*.... Petitioner is also at liberty to approach the Civil Court for damages, if so advised*". As the matter is already taken up and already observed by Hon'ble Gauhati High Court, cause of action is in favour of the plaintiff against the defendants.

Issue No. 3

Whether the agreement Dt. 16/9/2008 in between the plaintiff and the defendants is valid and binding to parties

During the whole proceedings, the validity of the agreement Dt.

16/9/2008 is unchallenged and rather sought ground by parties under the ambit of the said agreement. Thus, it can be adjudicated that the agreement Dt. 16/9/2008 is legally valid and is binding to parties.

Issue No. 4

Whether the plaintiff had violated an agreement Dt. 16/9/2008 in between the plaintiff and the defendants. If so, to what extend and what are its legal consequences

As deposed during cross examination by the DW-1 that the plaintiff has a liability to the Government of Mizoram as per their agreement Dt. 16.9.2008 @ Rs. 16.47 lakhs. The plaintiff as PW also admitted the same during his cross examination stating that as on today, around Rs. 16 lakhs have to be paid by the plaintiff to the Govt. of Mizoram. For that purpose, the DW-2 accurately calculated in respect of overall performance of the plaintiff during the entire period of lottery draws i.e. 20.10.2008 to 28.2.2010 as follows-

| Sl. No. | Period | Min. Assured Revenue | Payment received | Dues (3-4) |
|---------|--------------------------|----------------------|-------------------|---------------------|
| 1 | 2 | 3 | 4 | 5 |
| 1 | 20.10.2008 to 19.10.2009 | Rs. 1,50,00,000.00 | Rs. 99,85,085.00 | Rs. 50,14,915.00 |
| 2 | 20.10.2009 to 28.2.2010 | Rs. 55,41,666.00 | Rs. 89,09,283.00 | (-) Rs. 33,67,617/- |
| Total | | Rs. 2,05,41,666.00 | Rs. 1,88,94,368/- | Rs. 16,47,298.00 |

Thus, certainly, the plaintiff have liability to pay Rs. 16,47,298.00 (Rupees sixteen lakhs, forty seven thousand, two hundred and ninety eight) to the defendant viz. Govt. of Mizoram. Cogently, which is in violation of clause 9.3 of the Agreement Dt. 16.9.2008 which is already held as legally valid for both parties under issue no. 3. If so, as per sub-clause (a) of clause 6.1, it was made an agreement that *"The whole or a part of the Bank Guarantee amount may be forfeited and encashed by the Government of Mizoram for settlement of outstanding amounts, if any, due towards the Government"*. Thus, the legal consequence is very obvious which will be dealt separately under issue No. 6.

Issue No. 5

Whether the letters Dt. 10/3/2010, 18/3/2010 and 31/3/2010 are liable to set aside and quash or not

In the impugned letter No. C. 28015/2/2008- DTE (IF&SL) - RAUNAK SALES REPORT Dated Aizawl, the 10th March, 2010 marked as Ext. P- 35, the plaintiff was directed to clear all unpaid dues/shortfall failing on which, his Bank Guarantee will be revoked to clear his dues which is calculated as below -

First year (i.e. 20.10.2008 to 18.10.2009)

| | |
|-------------------------|---------------------|
| Minimum assured revenue | = Rs. 150,00,000.00 |
| Sale proceeds received | = Rs. 99,85,085.00 |

Shortfalls (1-2) = Rs. 50,14,915.00

Second year (i.e. 19.10.2009-28.02.2010)

Minimum assured revenue = Rs. 55,41,666.00

Sale proceeds received = Rs. 36,40,089.00

Shortfalls (1-2) = Rs. 19,01,577.00

Total shortfalls = Rs. 69,16,492.00

It was further stated that the above calculation is exclusive of interest which can be charged due to late payment of Sale Proceeds.

In the second impugned letter No. C. 28015/2/2008- DTE (IF&SL) - RAUNAK SALES REPORT Dated Aizawl, the 18th March, 2010 marked as Ext. P-36, the plaintiff was warned to initiate necessary for revocation of his Bank Guarantee for adjustment of his dues as already communicated to him under the above letter No. C. 28015/2/2008- DTE (IF&SL) - RAUNAK SALES REPORT Dated Aizawl, the 10th March, 2010 marked as Ext. P- 35.

In the third impugned letter No. C. 28015/2/2008- DTE (IF&SL) - RAUNAK SALES REPORT Dated Aizawl, the 31st March, 2010 marked as Ext. P-44, the plaintiff was again directed to clear his dues amounting to Rs. 55,58,369/- upto 10/4/2010, failing on which revocation of his Bank Guarantee.

All the above crux will be answered as per the findings under issue no. 6 below.

Issue No. 6

Whether the plaintiff is entitled to the reliefs claimed or not. If so, to what extend.

Summing up of the law points, the instant crux is that whether a policy decision of the defendant Govt. of Mizoram can harm the plaintiff by annihilating the valid agreement Dt. 16-09-2008 during the validity of the said agreement without providing some savings or some relaxations pertaining to the said agreement Dt. 16-09-2008.

As per Clause 12 of the Agreement dt.16.09.2008, it was stated that *“Any modification to this agreement shall be made only with consent of both the parties to the agreement in writing”*.

Clause 16 of the said Agreement reads as follows:

“The Sole Selling Agent shall abide by any decision/instruction issued by the Central Government/ State Government of Mizoram or any competent authority/ Court in respect of the matters relating to Mizoram State Online Lotteries”.

In this catena, Mr. M. Zothankhuma stood that the interpretation of the said Clause cannot be manipulated to extend it to include the imposition of an inflated financial structure completely averse to the financial structure of the existing agreement. Furthermore, the directive authority of the Government granted by Clause 16 cannot be used mala fide and against the terms of what is contained in the agreement which is acceptable.

The reliance taken by Mr. M. Zothankhuma be close looked, in **R.S. Amarnath Mehra & Co. vs Union Of India And Ors.** decided on 25 August, 1993 reported in 51 (1993) DLT 455, 1993 (27) DRJ 1, Hon'ble Delhi High Court has held that-

“(15) We are of the view that in the facts of the instant case, it is amply clear that no fresh contract Was ever executed between the parties and the doctrine of 'Novation' is not applicable to the facts of this case. The principle of 'Novation' would not apply inasmuch as 'Novation' operates as a release of the original debtor and its effect is to discharge a party from its obligation under the old contract. Section 62 of the Indian Contract Act defines 'Novation' as under:- Section 62:

"EFFECT of novation, rescission and alteration of contract--- ----
----- If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed."

(16) It would thus be seen that 'Novation' implies a fresh contract directly or by implication in place of the original contract. Till the 2nd contract contemplated is brought into existence the old contract will exist and continued to be enforceable. The consideration of the new contract is the discharge of the old.”

And in **Boothalinga Agencies vs V. T. C. Poriaswami Nadar** decided on 22 April, 1968 reported in 1969 AIR 110, 1969 SCR (1) 65

“The doctrine of frustration of contract is really an aspect or part of the law of discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done and hence comes within the purview of s. 56 of the Indian Contract Act. It should be noticed that s. 56 lays down a rule of positive law and does not leave the matter to be determined according to the intention of the parties.”

In **M/S Msk Projects (I)(Jv) Ltd. vs State Of Rajasthan & Anr.** decided on 21 July, 2011 in connection with Civil Appeal No. 5416 of 2011 reported in (2011) 10 SCC 573, their Lordship of Hon'ble Supreme Court went on that-

“In M/s. A.T. Brij Paul Singh & Ors. v. State of Gujarat, AIR 1984 SC 1703, while interpreting the provisions of Section

73 of the Indian Contract Act, 1972, this Court held that damages can be claimed by a contractor where the government is proved to have committed breach by improperly rescinding the contract and for estimating the amount of damages, court should make a broad evaluation instead of going into minute details. It was specifically held that where in the works contract, the party entrusting the work committed breach of contract, the contractor is entitled to claim the damages for loss of profit which he expected to earn by undertaking the works contract. Claim of expected profits is legally admissible on proof of the breach of contract by the erring party. It was further observed that what would be the measure of profit would depend upon facts and circumstances of each case. But that there shall be a reasonable expectation of profit is implicit in a works contract and its loss has to be compensated by way of damages if the other party to the contract is guilty of breach of contract cannot be gainsaid.”

The Hon’ble Supreme Court thereby concluded that-

“Be that as it may, in order to do complete justice between the parties and protect the public exchequer, we feel that the matter requires adjudication and reconsideration on the following points by the arbitration tribunal:

- i) What amount could have been recovered by the private appellant for Bharatpur-Deeg part of the road from the vehicles using the road?
- ii) What could be the effect on the contract as a whole for non-executing the work of the second phase?”

The provision under Section 73 in the Indian Contract Act, 1872 is relevant in the instant case, which says that-

“73. Compensation for loss or damage caused by breach of contract.- When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach. Compensation for failure to discharge obligation resembling those created by contract.- When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation.- In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused- by the non- performance of the contract must be taken into account.

Section 56 in the Indian Contract Act, 1872 may also be required to close look, which reads thus-

“56. **Agreement to do impossible act.** An agreement to do an act impossible in itself is void. Contract to do act afterwards becoming impossible or unlawful.- A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the Promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful. Compensation for loss through non-performance of act known to be impossible or unlawful.- Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Illustrations

- (a) A agrees with B to discover treasure by magic. The agreement is void,
- (b) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.
- (c) A contracts to marry B, being already married to C, and being forbidden by the law to Which he is subject to Practise polygamy, A must make compensation to B for the loss caused to her by the non- performance of his promise.
- (d) A contracts to take in cargo for B at a foreign port. A' s Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.
- (e) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.”

Thus, violation/breach of contract like valid agreement Dt. 16.9.2008 in the instant case will entail compensation to the aggrieved parties like the plaintiff in the instant case but whether a policy decision of the Government of Mizoram for re-modeled of the financial structure can override the said Agreement without compensation to the plaintiff is another task.

Recently the Hon’ble Supreme Court relying on Ramana Dayaram Shetty v. International Airport Authority of India and Others reported in 1979 (3) SCC 489, M/s Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir & Another reported in 1980 (4) SCC 1 and various other judgments summed up the legal position in **Akhil Bharatiya Upbhokta Congress v. State of Madhya Pradesh and others** reported in JT 2011 (4) SC 311. The

relevant extracts from paragraph 31 (page 336 of the report) are excerpted below:-

"... Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well defined policy, which shall be made known to the public by publication in the Official Gazette and other recognized modes of publicity and such policy must be implemented/executed by adopting a non - discriminatory or non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State."

Furthermore, for chalking out of Government policies, ingredient is already sum up recently in **Brij Mohan Lal vs Union Of India & Ors.** decided on 19 April, 2012 in connection with Transferred Case (Civil) No. 22 of 2001, the Supreme Court therefore has held that-

"72. It is also a settled cannon of law that the Government has the authority and power to not only frame its policies, but also to change the same. The power of the Government, regarding how the policy should be shaped or implemented and what should be its scope, is very wide, subject to it not being arbitrary or unreasonable. In other words, the State may formulate or reformulate its policies to attain its obligations of governance or to achieve its objects, but the freedom so granted is subject to basic Constitutional limitations and is not so absolute in its terms that it would permit even arbitrary actions. Certain tests, whether this Court should or not interfere in the policy decisions of the State, as stated in other judgments, can be summed up as:

- (I) If the policy fails to satisfy the test of reasonableness, it would be unconstitutional.
- (II) The change in policy must be made fairly and should not give impression that it was so done arbitrarily on any ulterior intention.
- (III) The policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc.
- (IV) If the policy is found to be against any statute or the Constitution or runs counter to the philosophy behind these provisions.
- (V) It is de hors the provisions of the Act or Legislations.
- (VI) If the delegate has acted beyond its power of delegation.

73. Cases of this nature can be classified into two main classes: one class being the matters relating to general policy decisions of the State and the second relating to fiscal policies of the

State. In the former class of cases, the Courts have expanded the scope of judicial review when the actions are arbitrary, mala fide or contrary to the law of the land; while in the latter class of cases, the scope of such judicial review is far narrower. Nevertheless, unreasonableness, arbitrariness, unfair actions or policies contrary to the letter, intent and philosophy of law and policies expanding beyond the permissible limits of delegated power will be instances where the Courts will step in to interfere with government policy.

...76. The independence of the Indian Judiciary is one of the most significant features of the Constitution. Any policy or decision of the Government which would undermine or destroy the independence of the judiciary would not only be opposed to public policy but would also impinge upon the basic structure of the Constitution. It has to be clearly understood that the State policies should neither defeat nor cause impediment to discharge of judicial functions. To preserve the doctrine of separation of powers, it is necessary that the provisions falling in the domain of judicial field are discharged by the Judiciary and that too, effectively.”

Cogently, in the instant case, the agreement Dt. 16-09-2008 appointed the plaintiff as the Sole Selling Agent for assisting the Government in running its all forms of Online Lotteries subject to observance of all formalities and fulfillment of all requirements strictly in accordance with the provisions of Lottery (Regulations) Act, 1998 and the Rules made thereunder.

As per clause 1.1 of the said Agreement, the agreement was meant for four years viz. during 16.9.2008 to 15.9.2012. As per Ext. P- 6, the state defendants offered Re-modeling of Mizoram State Online and Paper Lotteries on 22nd September, 2009, a meeting was thereby called upon for inviting the Sole Selling Agents/Distributors on 22.10.2009 as per letter No. 8th Oct., 2009. Thereafter on 21st Dec., 2009 marked as Ext. P-13, the state Defendants conveyed their decisions for implementation of re-modeled structure of Mizoram State Lottery both paper and online to the plaintiff and later reminds the plaintiff by the defendants. Thus, Invitation for ‘Expression of Interest’ was made by the defendants on 29th Jan., 2010 marked as Ext. P-17. Pertinently, the state defendants as also deposed by their DWs did not comply with the direction of Hon’ble Gauhati High Court in Writ Petition (Civil) No. 11 of 2010 Dt. 5.3.2010, which directed that “*It is made clear that the respondent authorities shall allow the petitioner to do its business per terms and conditions of the agreement dt. 16.09.2008*”. For viewing all the above legal principles and factual matrix, I find no grounds to exonerate the state defendants from their deprivation of the business of the plaintiff. In short, the plaintiff will be entitled to receive compensation/damages from the defendants by violation of their agreement Dt. 16.9.2008. In other words, the powers of the state bestowed by the Constitution of India is also cogently subject to due process of law by not depriving the rights of citizenry like the instant plaintiff. For that purpose, the prayer of the plaintiff in the instant case is reproduced with the findings

of this court as below-

(i) *directing the State defendants to pay the expenditure amount of Rs. 40,91,400/- for the period from 01.03.2010 to 18.03.2010 to the plaintiff.*

In this task, since 1/3/2010, the plaintiff was curbed to continue his running online lottery operations. On 18/3/2010, in terms of Ss. 3 and 5 of the Lotteries Regulation) Act, 1998, the Governor of Mizoram prohibited the conduct, organization, promotion and sale of all kinds of lottery tickets within the state of Mizoram with immediate effect which is marked as Ext. P- 38, as per Ext. P-39, the Organising Committee, Common Wealth Games, Delhi- 2010 namely- “CWGD-2010 Raffles” was exempted from the said prohibition on 19th March, 2010 which itself is arbitrary as held in **Brij Mohan Lal vs Union Of India & Ors.** (supra), whether the said prohibition is within the power domain of the defendants or not is out of issue in the instant case. More so, whether it is public interest or not, no one should be harmed and affected arbitrarily by the policy decisions of the Government is acceptable legal principles. Thus, the plaintiff will be entitled to a relief but subject to scientific mode of calculations. In the instant pleadings, no other scientific mode of calculation is found except mere own calculation of the plaintiff which the DWs denied of the quantum. However, during the period when the plaintiff did not carry his business what expenditure will be suffered is another onerous task. Thus, the instant relief claimed is without basis and no scientific mode of calculation is found.

(ii) *directing the State defendants to pay to the plaintiff at the rate of Rs. 2.5 lakhs a day amounting to Rs. 45 lakhs for the loss of profit during the period from 01.03.2010 to 18.03.2010.*

As already found, the plaintiff will be entitled to the relief but subject to more actual than their submissions in the plaint, in the instant seeking relief, due to curbing of the plaintiff from the business of online lotteries, loss will be occurred but it may not be appropriated to consider as Rs. 2.5. lakhs per a every day. Thus, by decreasing the claim of the plaintiff, it can be presumed that in some occasions, the plaintiff may earn profit more than Rs. 2 lakhs but in some occasions, it will be nil. So is the facts and circumstances which can be seen in the instant case, Rs. 50,000/- (Rupees fifty thousand) per day relief during 01.03.2010 to 18.03.2010 will be reasonable. Thus, amounting to Rs. 9 (nine) lakhs will be entitled by the plaintiff from the defendants in the instant seeking relief.

(iii) *directing the State defendants to pay Rs. 2.5 lakhs per day as loss of profit to the plaintiff from 19.03.2010 till 15.09.3012 amounting to Rs. 22,75 lakhs.*

As already stated/discussed above, by decreasing the claim of the plaintiff, it can be presumed that in some occasions, the plaintiff may earn profit more than Rs. 2 lakhs but in some occasions, it will be nil. So is the natural facts and circumstances, Rs. 50,000/- (Rupees fifty thousand) per day relief during 19.03.2010 till 15.09.3012 will be reasonable. Thus,

amounting to Rs. 459 lakhs will be entitled by the plaintiff from the defendants with regards to the instant relief sought for.

(iv) directing the State defendants to pay the plaintiff the infrastructural investment amount of Rs. 5 crore incurred by the plaintiff.

As envisaged by Ext. P- 8, the agreement of paper Lottery of the plaintiff is extended till 30.9.2009. Furthermore, as revealed by Ext. P- 37, the plaintiff remain continued his Lottery business in the state of Mizoram. Thus, it will be inappropriate, granting of relief to the plaintiff in respect of his infrastructural investment on his lottery business.

(v) directing the State defendants to pay interest @ 9% per annum damages awarded to the plaintiff as damages from 01.03.2010 till final payment.

With regards to rate of interest in the lis, as Ext. P- 2 viz. Agreement Dt. 16th Sept., 2008 is silent on rate on interest on compensation or damages, the law settled in **Secretary/General Manager Chennai Central Cooperative Bank Ltd. & Anr. Vs. S. Kamalaveni Sundaram** decided on 4 January, 2011 and in connection with Civil Appeal No. 14 of 2011 (Arising out of SLP (Civil) No. 19305 of 2010) is relevant, wherein, the Supreme Court has held that-

“11. Section 34 of the Code of Civil Procedure, 1908 (CPC) empowers the court to award interest for the period from the date of the suit to the date of the decree and from the date of the decree to the date of payment where the decree is for payment of money. Section 34 of the CPC does not empower the court to award pre-suit interest. The pre-suit interest would ordinarily depend on the contract (express or implied) between the parties or some statutory provisions or the mercantile usage.”

Thus, the rate of interest @ 9% per annum will be calculated/reckoned from 09-04-2010 (When Institution of the suit) till realization.

(vi) setting aside/declaring that the letters dt. 10.03.2010, 18.03.2010 and 31.03.2010 wherein the State defendants have threatened the plaintiff with invocation of the Bank Guarantee as void.

Admittedly, the plaintiff also violated the terms and conditions in their Agreement Dt. 16th Sept., 2008 which can entail revocation of his Bank Guarantee as per the findings under issue no. 4. Meanwhile, as the liability of the defendants to the plaintiff is more than the liability of the plaintiff to the defendants and whilst no counter claim/set off petition is filed in the instant case, the letters dt. 10.03.2010, 18.03.2010 and 31.03.2010 are liable to set aside and quash.

(vii) issuing a perpetual and mandatory injunction restraining the State defendants from invoking the plaintiff's Bank Guarantee and directing them to return the Bank Guarantee to the plaintiff

As the liability of the defendants to the plaintiff is more than the liability of the plaintiff to the defendants as already adjudicated above and whilst no counter claim/set off petition is filed in the instant case, the plaintiff is entitled to receive back his Bank Guarantee from the defendants towards equity and justice.

(viii) any further or other order may be passed as this Court may deem fit and proper in the facts and circumstances of the case.

No other relief including cost of the suit will be reasonable due to the peculiar circumstances and facts of the case.

ORDER

UPON hearing of parties and on the basis of the afore findings in various issues, It is hereby ORDERED and DECREED that-

1. The defendants are directed to pay Rs. 468/- lakhs as compensation incurred on loss of profit to the plaintiff from 01.03.2010 till 15.09.2012 with an interest rate @ 9% per annum with effect from 09-04-2010 (When Institution of the suit) till realization. The defendants are further directed to pay the said decretal amount within sixty days from the date of this order.
2. The impugned letter No. C. 28015/2/2008- DTE (IF&SL) - RAUNAK SALES REPORT Dated Aizawl, the 10th March, 2010 marked as Ext. P- 35, the second impugned letter No. C. 28015/2/2008- DTE (IF&SL) - RAUNAK SALES REPORT Dated Aizawl, the 18th March, 2010 marked as Ext. P-36 and the third impugned letter No. C. 28015/2/2008- DTE (IF&SL) - RAUNAK SALES REPORT Dated Aizawl, the 31st March, 2010 marked as Ext. P-44 are hereby set aside and quashed as the liability of the defendants to the plaintiff is more than the liability of the plaintiff to the defendants and whilst no counter claim/set off petition is filed in the instant case.
3. As the liability of the defendants to the plaintiff is more than the liability of the plaintiff to the defendants as already adjudicated above and whilst no counter claim/set off petition is filed in the instant case, the defendants are hereby restrained not to invoke the Bank Guarantee of the plaintiff pertaining to their Agreement Dt. 16th Sept., 2008, the defendants are further directed to return back the said Bank Guarantee to the plaintiff within sixty days from the date of this order.

No order as to costs of the suit.

With this order, the case shall stand disposed of.

Give this copy to all concerned.

Given under my hand and seal of this court on this 7th June, 2012 Anno Domini within the premises and during the working hours of this court and is pronounced in an open court.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 1

Aizawl District: Aizawl

Memo No. CS/68/2010, Sr. CJ (A)/

Dated Aizawl, the 7th June, 2012

Copy to:

1. M/S Raunak Agency, Proprietor Mr. Manoj S. Singh through Mr. M. Zothankhuma, Sr. Adv.
2. The State of Mizoram Represented by the Principal Secretary to the Govt. of Mizoram, Finance Department, Mizoram- Aizawl through Mr. R. Lalremruata, AGA
3. The Secretary to the Govt. of Mizoram, Finance Department, Mizoram- Aizawl through Mr. R. Lalremruata, AGA
4. The Director, Institutional Finance & State Lottery, Mizoram- Aizawl through Mr. R. Lalremruata, AGA
5. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
6. Case record

PESKAR