



Serial No.02
Weekly List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.32/2024

Date of CAV : 02.12.2024

Date of pronouncement : 16.12.2024

Shri Deipormi Dkhar

..... Appellant

Vs.

1. State of Meghalaya, represented by Chief Secretary, Shillong.
2. The Commissioner and Secretary of Transport, Government of Meghalaya, Shillong.
3. The Commissioner of Transport, Government of Meghalaya, Shillong.
4. The District Transport Officer, Government of Meghalaya, West Jaintia Hills District, Meghalaya. Respondents

Coram:

Hon'ble Mr. Justice I.P. Mukerji, Chief Justice

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Mr. S. Sen, Adv with
Mr. R. Majaw, Adv
Mr. S.K. Roy, Adv

For the Respondents : Mr. A. Kumar, Advocate General with
Mr. N. Syngkon, GA
Ms. A. Thungwa, GA

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| i) | Whether approved for reporting in Law journals etc.: | Yes |
| ii) | Whether approved for publication | Yes/No |



in press:

Note: For proper public information and transparency, any media reporting this judgment is directed to mention the composition of the bench by name of judges, while reporting this judgment/order.

JUDGMENT

(Delivered by the Hon'ble, the Chief Justice)

This appeal is by a weighbridge operator in Amsarin on the Jowai-Dawki road, Meghalaya. He is in appeal before us from a judgment and order made by a learned single judge on 20th May, 2024 dismissing his writ petition (WP (C) No.8 of 2024).

The Meghalaya Installation, Regulation, Maintenance and Operation of Weighbridge Rules, 2009 and 2015 were made in exercise of powers of this State under Section 138 read with Section 212(1) of the Motor Vehicles Act, 1988. Rules 3 to 6 give power to the State government or any private individual upon obtaining due permission from the government to operate a weighbridge. Rule 7 provides for renewal of this permission for a period of three years.



In these Rules, the Commissioner of Transport is nominated as the authority.

The main question which arose for consideration in the writ and in this appeal was whether the Commissioner had the power to execute the agreement dated 1st June, 2022 allowing the appellant to operate the weighbridge for a period of three years. According to the respondents, no tender was invited as required under the Rules for operation of the weighbridge. Permission of the government or authorisation of the Hon'ble Governor was not obtained in favour of the Commissioner for execution of the agreement by him.

The facts are these.

On 7th December, 2017 an agreement was executed between the appellant and the Government of Meghalaya, allowing the appellant to operate the weighbridge at Amsarin Jowai-Dawki road. It was for three years and to end on 6th December, 2020.

During the subsistence of the agreement, the Covid pandemic invaded the country. The agreement was not renewed. On its expiry on 6th December, 2020, it was temporarily extended till 31st December, 2020.



Meanwhile, the appellant had filed an application with the respondents for renewal of the lease. When it was not renewed but merely temporarily extended till 31st December, 2020, on 4th January, 2021, the appellant filed a writ petition in this Court (WP (C) No.2 of 2021).

An interesting turn of events took place when the respondent Nos.2 and 3 filed their affidavit-in-opposition in this writ petition. In paragraph 5 of the affidavit-in-opposition there was an averment to the effect that the application for renewal of the weighbridge license would be considered favourably. It appears that this averment in the affidavit-in-opposition was pointed out to the Court. On 9th May, 2022 it disposed of the writ petition by, inter alia, directing that the appellant was at liberty to approach the respondents with an application for renewal which was to be decided within one month from the date of the order.

The respondent No.3, Commissioner of Transport, Meghalaya interpreted this order to mean that the license was to be renewed for a period of three years.



On 30th May, 2022 he asked the appellant to pay the renewal fee for execution of the agreement and on 1st June, 2022 executed a fresh agreement renewing his license for a period of three years.

It appears from the cause papers that there was lack of inter department information sharing and a communication gap.

Inspite of the agreement dated 1st June, 2022 having been executed by the respondent No.3, the Deputy Secretary of the Transport department wrote to the Commissioner of Transport on 14th July, 2023 that approval had been granted for execution of the agreement only till 30th September, 2023.

The appellant was aggrieved by this decision.

On 31st August, 2023, he filed another writ petition in this Court (WP (C) No.299 of 2023). A learned Single Judge hearing the writ on 28th September, 2023 passed an interim order directing that status quo be maintained with regard to the weighbridge license. This interim order was extended from time to time.

On 1st March, 2024 the respondents withdrew the decision dated 14th July, 2023.



According to the appellant, the effect of withdrawal of the decision dated 14th July, 2023 was that the agreement of 1st June, 2022 executed by the Commissioner of Transport revived together with all the rights under it. However, according to the respondents this renewed lease agreement was *non-est* as the Commissioner has no power to sign it. The original agreement expired on 6th December, 2020. The appellant had no right to operate the weighbridge.

On 1st February, 2024, the respondents withdraw all official staff employed in the weighbridge.

The appellant says that the respondents wrongfully started operating another weighbridge through those personnel 2 km from the location of the appellant's weighbridge.

This prompted the appellant to file the third writ petition (WP (C) No.8 of 2024) in this Court.

Mr. S. Sen, learned advocate appearing for the appellant contended that the personnel withdrawn from his client's weighbridge should be immediately restored back to him, the government weighbridge 2 km away



was illegal and should be shut down and the personnel deployed there should be returned to his weighbridge.

The appellant did not withdraw the second writ petition at that point of time.

The third writ petition (WP (C) No.8 of 2024) was dismissed by a learned single Judge of this Court by a judgment and order made on 20th May, 2024. The second writ petition (WP (C) No.299 of 2023) was also disposed of by this Court.

The weighbridge operator, the writ petitioner appeals to this Court against the said judgment and order.

It is noteworthy that in the impugned judgment and order, the learned single Judge accepted the argument made on behalf of the respondents that the Commissioner had no power to renew the lease agreement from 2022 to 2025. The execution of the fresh lease agreement of 1st June 2022 for a period of three years by the Commissioner was held to be unauthorised. Having held so, the learned Judge proceeded to criticize the subsequent actions and conduct of the respondents in temporarily renewing the lease agreement on 14th July, 2023 up to 30th September, 2023 and



thereafter, on 16th January, 2024 withdrawing the renewal made on 14th July, 2023, which had the effect of the appellant continuing to carry on operation of the weighbridge. The learned Judge also did not appreciate the subsequent withdrawal of the personnel from the weighbridge. Nevertheless, in view of his lordship's finding recorded above, the writ petition was dismissed.

In order to understand the issues involved in the writ petition and in this appeal, the grounds taken by the respondents need to be properly appreciated. They are as follows.

The permission of the government was not taken under Rules 3, 6 and 7 of the Meghalaya Installation, Regulation, Maintenance and Operation of Weighbridge Rules, 2009. Such permission could only be accorded by the Secretary to the Transport department. There was no recital in the agreement dated 1st June, 2022, that permission of the government had been obtained.

Although the agreement was in the name of the Hon'ble Governor, the Commissioner was not authorised by him to sign the agreement under Article 299 of the Constitution of India read with the rule of executive business of the Government of Meghalaya. Only the minister is the authorised signatory in the name of the Governor.



The government is not bound by the acts of an unauthorised officer.

The alleged agreement dated 1st June, 2022 was executed without issuance of tender.

Arguments and discussion:

Learned Advocate General relies upon Article 299 of the Constitution of India. It is an acknowledged fact that only the person authorised by the President of India and the Governor can execute contracts on behalf of the Government of India and the State, respectively. Any other person executing a contract document would render it invalid and unenforceable against the government. The contract has to be in the name of the President of India or the Governor and signed by an authorised signatory. Even if there is a genuine concluded contract but not signed by an authorised person, it would not bind the government. This protection or safeguard is provided in the Constitution to prevent unauthorised persons from binding the government to contracts and to ensure a systematic procedure for execution of government contracts. Even when a contract was novated, the said procedure had to be followed [see *Bhikraj Jaipuria v. Union of India-AIR 1962 SC 113*, *Union of India v. N.K. Private Limited-(1973) 3 SCC 388*,



Joshi Technologies International, INC v. Union of India-(2015) 7 SCC 728 and *Glock Asia Pacific Limited v. Union of India*-(2023) 8 SCC 226] cited by the learned Advocate General.

The other case cited by the learned Advocate General was *Kmenlang Suiam v. State of Meghalaya* reported in (2012) 1 GLR 445, which states that under Rules, 4, 5 6 and 7 of the said Rules, permission from the State government is required before grant of a weighbridge license.

Needless to mention the appellant based his case on the validity of the agreement dated 1st June, 2022, the wrongful acts of the respondents in issuing the notices dated 14th July, 2023 and 16th January, 2024 and thereafter withdrawing its personnel from the weighbridge.

Timber Kashmir Private Ltd. v. Conservator of Forests, Jammu reported in (1976) 4 SCC 497 cited by Mr. Sen, learned counsel for the appellant does not help him because the proposition laid down in that case is something different. It states that if a government lease is valid, the documents referred to, in it could be of evidentiary value regarding sanction. In that case there was no dispute regarding the validity of the lease but the authority of the Commissioner executing the lease was denied. In our case



the grant and validity of the lease is questioned. So this case has no application to the facts and circumstances of that case.

Mr. Sen also argued that there was another class of contracts known as statutory contracts, citing *Gujarat State Financial Corporation vs. Lotus Hotels Pvt. Ltd.* (1983) 3 SCC 379 and *India Thermal Power Ltd. vs. State of M.P.* reported in (2000) 3 SCC 379. The subject lease fell into this class and its execution governed by the statute. I do not know how these cases help the appellant because even assuming that under the said statute and rules, this contract was executable, nevertheless being executed by the government as a party, it had to comply with the requirements of Article 299 of the Constitution.

In paragraph 5 of the affidavit-in-opposition filed by the respondents in the first writ petition, it was clearly stated that should the appellant make an application for renewal of the license, it would be considered by the respondents. The tenor of the statement in this paragraph suggested that this application would receive favourable consideration by the respondents. Paragraph 5 of the affidavit is set out below:



“5. That the statements made in para 8 are correct with regard to mention about provision of Rule and the petitioner is advice to approach the Transport Department for favourable renewal which will be considered taking in to view the provisions of Rule 7 of the Meghalaya Installation, Regulation, Maintenance and Operation of Weighbridge Rules, 2009 and Point 2 (iii) of the Meghalaya State Policy for Weighbridges, 2018 and after proper scrutiny of records and documents related to payment of all Government dues. In fact it is also stated that recently the Government has accepted petition for extension of lease Agreement in respect of Majai Weighbridge, East Khasi Hills District.”

On this affidavit being placed before the Court, the writ petition was disposed of, on the submission of learned counsel for the appellant/writ petitioner based on his understanding that the appellant’s agreement was to be renewed.

Rule 7 is specific that permission would be renewable every three years. It necessarily implies that a renewal would be for a period of three years. If after the order disposing of the first writ petition, the Commissioner went ahead and executed the agreement dated 1st June, 2022 for three years, I see nothing wrong in his conduct. Otherwise, the respondents would be in breach of the express or implied assurance given to the Court that the lease agreement would be renewed.

If the Commissioner had power in 2017 to execute the agreement, he also had the power in 2022. In fact, the Meghalaya State Policy for



Weighbridges, 2018, authorised the Commissioner of Transport to sign the lease agreement. This policy was issued by the Governor. In my opinion, no further authority under Article 299 of the Constitution of India was needed by the Commissioner from the Governor to execute this agreement. The Commissioner had stated in the recital of the lease agreement that it was being executed in the name of the Governor.

In my interpretation of the rules, the proviso to Rule 3 only required the permission of the government to grant a lease to a private person. Once the lease had been granted no permission was again required for its renewal under Rule 7. In our case, seeking permission from the government would have been an idle formality because the above State policy authorised the Commissioner to execute the agreement.

If an authorised person tries to execute an agreement, binding the government, the government can rely on Article 299 of the Constitution and avoid it. But the case is entirely different when the government had full consent to the agreement but later tries to wriggle out of it on the ground that the requirements of Article 299 had not been complied with. It should not be allowed to do so. It is estopped from making this contention. More



importantly, the other party to the contract, if innocent, should not be made victim of any procedural error at the end of the administration.

Furthermore, the initial agreement had to be executed upon a tender being floated. There is no requirement for any tender at the time of renewal of the lease because this is against the concept of renewal which has to be made in favour of the same person.

Now, this decision to withdraw the notice of 14th July, 2023 was in my opinion violative of the order of the learned Single Judge made on 28th September, 2023 directing status quo in relation to the weighbridge, in WP (C) No.299 of 2023, because simultaneously with the withdrawal of the notice of 14th July, 2023, the government started contending that the original lease had not been renewed. Acting in furtherance thereof, they withdrew the personnel from the appellant's weighbridge making it inoperational, altering the status quo.

As the government was bound by the lease agreement executed on 1st June, 2022, as I have held, issuance of the notice of 14th July, 2023, thereafter revoking it and removing the personnel from the appellant's



weighbridge were all wrongful and illegal acts. So it is obliged to carry out the said agreement and restore the staff of the appellant's weighbridge.

As far as setting up of another weighbridge at Amjeha by the government 2 km away from the appellant's weighbridge and the rights and remedies of the parties in relation to this act of the government, I observe that this is not the subject-matter of this writ petition. Whether the appellant will take civil action alleging breach of contract or take out any other proceedings in the nature of writ or otherwise is up to the appellant. I say that I have not gone into the merits of that matter and leave is given to the appellant to take such action that he may be available to him or as he may be advised in an appropriate jurisdiction.

In those circumstances, I declare and direct as follows:

- (a) The lease agreement of 1st June, 2022 is legal, valid and binding on the respondents;
- (b) The decisions embodied in the notices dated 14th July, 2023 and 16th January, 2024 are declared invalid and set aside *ab initio*;



(c) The respondents are directed to restore the staff provided by them to the appellant's weighbridge within two weeks from communication of this order;

(d) The respondents should provide full assistance to the appellant to operate the weighbridge during the operation of the lease dated 1st June, 2022;

(e) With regard to setting up of another weighbridge by the respondents 2 km away from the site of the present weighbridge at Amjeha, the appellant is at liberty to take such action that may be available to him in accordance with law; and

(f) The impugned judgment and order dated 20th May, 2024 is set aside.

(g) This appeal is allowed.

(W. Diengdoh)
Judge

(I.P. Mukerji)
Chief Justice