(2003) 07 PAT CK 0059

In the Patna High Court

Case No : C.W.J.C. No. 5205 of 2003

Hesperia Commodities Pvt. Limited. APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 22-07-2003

Acts Referred:
Companies Act, 1956 — Section 2(9), 8

Citation : (2003) 4 PLJR 58

Hon'ble Judges : R.S. Garg, J;Nagendra Rai, J

Bench : Division Bench

Advocate : Y.V. Giri and Raju Giri, for the Appellant; R.K. Dutta and P.K. Shashi, for Intervenor, for the Respondent

Final Decision : Dismissed

Judgement

1. The Petitioner a private limited company registered under the Companies Act having its registered office at 37, Shakespheare Sarani, Kolkata (West Bengal) and having its office at Forbesganj (Bihar), being aggrieved by letter No. 4/ Masala-612/ 2001-1581 dated 31.5.2003 contained in Annexure-12 holding that the Petitioner is not qualified to take part in the settlement process has come to this Court inter alia submitting that the order contained In Annexure-12 is contrary to records and it violates the Principles of Estoppel and the provisions of the Companies Act.

2. Shorn of unnecessary details the facts necessary for disposal of present petition are that the Petitioner Company in consequence to the tender notice dated 16.1.2002 contained in Annexure-1 filed its tender papers for conferral of the exclusive privilege for manufacture and whole-sale supply of spiced country liquor for the period 1st April, 2002 to 31st March, 2005. According to the Petitioner the tender papers were complete but for the reasons best known to the departmental officers wrong interpretation was being given and the Petitioner was sought to be thrown out of the competition.

3. Undisputedly present is a second round. The Petitioner had come to this Court on an earlier occasion in C.W.J.C. No. 11187 of 2002 submitted that the order disqualifying him from taking part in the settlement process was illegal and a Division Bench of this Court by its judgment and order dated 2.5.2003 directed the Respondent authorities to consider the case of the Petitioner for grant of exclusive privilege for manufacture and whole sale supply of spiced country liquor. Undisputedly on the earlier occasion two defects were pointed out by the State and this Court overruled both the defects and required the authorities to consider the case of the Petitioner in accordance with law. The Petitioner in accordance with the directions of this Court deposited a sum of Rs. 24.77 lacs and also furnished the certificate of deposit of the said amount. The Respondents vide their order dated 31.5.2003 (Annexure-12) informed the Petitioner that the Petitioner did not file the no objection/sales tax clearance certificate from each and every Circle, therefore, the Petitioner being a tenderer situate outside the State was required to file a certificate that he held an operational distillery and was also required to file a certificate in accordance with Clause 11 (Ang) of the tender form which he had not filed. The certificate issued by the Registrar of the Companies was incorrect and that his certificate relating to financial capacity was incorrect, therefore, he was not entitled to take part in the settlement process. The order further observed that in accordance with the directions issued by this Court the defect Nos. 3 and 4 were cured, but, however, in view of the above referred defect Nos. 1 and 2 the Petitioner was not entitled to take part in the settlement process.

4. In view of our judgments interpreting provisions relating to submission of the no objection/tax clearance certificate learned Counsel for the State has conceded before us that the defect No. 1 does not survive.

5. Shri Giri, learned senior counsel for the Petitioner has submitted that the defect No. 2 would not be applicable in the present matter because the Petitioner is not an outsider but the Company having its branch office in the State of Bihar would be deemed to be a local person. It was contended by him that in accordance with Clause 1 (Gh) the tenders were invited from the distillery owners and non-distillery owners of the State of Bihar and the operational distilleries situate outside the State of Bihar. According to him Clause 11 (Ang) would be applicable to a person who is an outsider and as the Petitioner''s branch office is located at Forbesganj in the State of Bihar he could not be deemed to be an outsider. Referring to the definition of the Branch Office contained in Section 2 (9) of the Companies Act it is contended that the Petitioner company being a legal and juristic person would be demeed to carry on its business at all places where it had its head office or branch offices and therefore it could not be deemed to be an outsider. It is also contended that on the earlier occasion this objection was not raised therefore, the Respondent are estopped from raising this question against the validity of the tender.

6. It is contended by the State counsel and the counsel for the intervenors that

Clause 11 (Ang) would apply with full force to the case of the present Petitioner and as he did not file the required certificates the department was justified in observing that the Petitioner was not entitled to take part in the settlement process. Regarding question of estoppel it had been submitted by him that non-raising of the objection by the Department on the earlier occasion would not make an invalid tender as a valid one. According to them if a tender is void-ab-initio or is patently invalid then such inherent defects can not be cured and therefore, question of estoppel would not be allowed.

7. For proper appreciation of the matter it is necessary to refer to Clause 11 (Ang) which shows that if the Petitioner is owner of the distillery outside the State then he would be required to file additional documents as under:

(i) Attested copy of licence of distillery;

(ii) Certificate of good working and production and supply of potable spirit during last five years from the Excise Commissioner of the concerned State;

(iii) An assurance letter of the Excise Commissioner of the State to supply spirit for production of spiced country liquor.

8. We would also be inclined to refer to the last sentence of the tender notice wherein it is clearly said that apart from the aforesaid documents the tenderer would be required to file all necessary informations/documents which are provided under the terms of the tender.

9. Undisputedly the Petitioner Company did not submit the required certificates from the Excise Commissioner of the concerned State along with tender papers. The Department whether is absolutely justified in observing that the Petitioner is not entitled to take part in settlement process is the question and is the sheet anchor of the argument of the Respondents.

10. Shri Giri, learned Counsel for the Petitioner submits that Section 2(9) of the Companies Act, 1956 defines the term ''branch office'' and as the Petitioner is having a branch office within the State of Bihar the Petitioner would be deemed to be a local person and is not required to file a certificate from the Excise Commissioner of the concerned State.

11. For proper appreciation of the arguments it is necessary to refer to the definition of the words ''branch office''. Section 2(9) reads as under:

2(9) "Branch Office" in relation to a

(a) any establishment described as a branch by the company; or

(b) any establishment carrying on neither the same or substantially the same activity as that carried on by the head office of the Company; or

(c) any establishment engaged in any production, processing or manufacture, but does not include any establishment specified in any order made by the Central Government u/s 8:)

12. Undisputedly the Petitioner is registered in the State of West Bengal. It is not in dispute before us that it had a branch office within the State of Bihar. According to Clause (b) a branch office of the Company would mean any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the Company. Clause (c) provides that a branch office in relation to a Company means any establishment engaged in any production, processing or manufacture. On the first flush the argument of Shri Giri appear to be lucrative and impressive but a legal probe into the matter would show that it is patently hollow and can not be allowed to stand. Undisputedly the Petitioner is registered Company at Kolkata in West Bengal. It is not the Petitioner''s case that it has any distillery within the State of Bihar. It is also not the case of the Petitioner that he would obtain spirit from within the State of Bihar and would supply the spiced liquor to the State after manufacturing the same in the State. The case of the Petitioner is that he is an outside distillery and having its branch office within the State of Bihar is entitled to take part in the settlement process. True it is that the Petitioner is not a living thing but an incorporated Company is also a juristic person. When the incorporated company is having its registered office at a particular place then for purposes of present tenders it would be deemed to be an outsider. The words ''Branch Office'' as contained in Sub-section (9) of Section 2 would not come to the benefit of the Petitioner. The Petitioner did not say that he is carrying on the same or substantially the same activities as that carried on by the Company''s head office. The Petitioner has also not tiled such document along with tender papers that it was submitting its tender as a local person and not as an outsider. The tender papers in our opinion were incomplete. The Respondents were certainly justified in observing that the tender papers were incomplete and therefore, the Petitioner was not entitled to take part in the settlement process.

13. So far as the question of estoppel is concerned though the learned Counsel for the Petitioner has referred to certain text books but we are not impressed by the said argument. The Principle of Estoppel helps an honest person, it defeats the right of the other side to raise a question in subsequent proceedings between the same parties. The Principle of Estoppel clearly says that a question which was available and could be raised if is not raised right in time then the party raising the question subsequently could not be allowed to take benefit of such question. It would also be necessary to note that the tender forms are to be examined in their entirety and the Principle of Estoppel would not apply to a case where a document is patently void or invalid and a question showing it to be defective, invalid or void was not raised right in time. A lapse on the part of the scrutinising Officer would not confer any right upon the Petitioner. The Petitioner from his own showing did not submit the certificate from the concerned Excise Commissioner along with his tender papers. As the tender papers were incomplete and the Petitioner did not comply with the mandatory requirements the Department certainly was justified in observing that the Petitioner was not entitled to take part in the process.

14. For the reasons aforesaid we are unable to hold that the Petitioner has made out any case for interference. The petition is accordingly dismissed.

