(2003) 07 PAT CK 0003

In the Patna High Court

Case No : C.W.J.C. No. 5203 of 2003

Hesperia Commodities Pvt. Limited — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 22-07-2003

Acts Referred:
Wealth Tax Act, 1957 — Section 35(1)

Citation : (2003) 4 PLJR 44

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

Bench : Division Bench

Advocate : Y.V. Giri and Raj 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 Branch Office at Forbesganj (Bihar), being aggrieved by the order dated 31.5.2003 (Annexure-9) has come to this Court inter alia submitting that the order contained in Annexure-9 bearing No. 4/C5-205/2001-1580 issued on 31.5.2003 holding that the Petitioner having not complied with the mandatory terms of the tender conditions is not entitled to participate in the tender process, is patently illegal and is contrary to law.

2. Undisputedly present is a second round in this Court. The Petitioner Company had earlier filed C.W.J.C. No. 11259 of 2002 challenging the order disqualifying him from taking part in the process. On an earlier occasion the Respondents had raised two grounds to disqualify the Petitioner, first of the defect was that in the certificate granted by the Registrar of Companies relating to non-liquidation of the company signature was not at the proper place and the other was with regard to financial capacity of the Petitioner showing availability of Rs. 35 lacs to be provided by the Bank. This Court vide its judgment dated 2.5.2003 in said C.W.J.C. No. 11259 of 2002 observed that till that date no settlement was made

in terms of the tender notice and as the Court had directed the authorities to take steps for grant of exclusive privilege for manufacture and wholesale supply of country liquor for the aforesaid period the case of the Petitioner could be considered in its true perspective. This Court observed that the defect No. 1, the moment was brought to the notice of the Petitioner, the same was rectified by filing a fresh certificate regarding non-liquidation of the Company. Regarding the other defect this Court observed that though the Petitioner had filed documents to show his financial capacity to the extent of Rs. 10 lacs only but as the settlement was not made till date and as the Petitioner was ready and willing to deposit Rs. 35 lacs including the amount of Rs. 10 lacs they already deposited, he should be given one more chance to participate in the settlement process in pursuance of the tender filed by them. This Court observed that if the Petitioner deposits Rs. 35 lacs in the nationalised bank by 19.5.2003 and files necessary documents in support of the deposit and gives an undertaking that it will not withdraw the aforesaid amount and utilise the same in execution of the project only then the authorities will consider his case while considering cases of other eligible tenderers for grant of exclusive privilege for manufacture and wholesale supply of country liquor for the period between 1st April, 2002 to 31st March, 2005. The Petitioner undisputedly had deposited the total amount as required by Court but when he wanted to take part in the tender process he was held disqualified under Annexure-9.

3. Annexure-9 refers to as many as four grounds. The first ground was that the Petitioner has not submitted sales tax clearance certificate/no objection certificate from different Circles which are falling within the applied Zone, second that he had not filed the wealth tax clearance certificate, thirdly that along with the tender the certificate issued by the Registrar of Companies was not in accordance with the requirement and lastly that the certificate showing financial ability was not satisfactory and the liquidity and financial position certificate by the bank was not filed. In the later part of Annexure-9 it had been observed that in view of the order passed in C.W.J.C. No. 11259 of 2002 the defect No. 3 and 4 stands cured but the defect No. 1 and 2 continue to stay on the face of the conditions, therefore, the Petitioner would not be entitled to take part in the process.

4. it has been submitted by the Petitioner that so far as the defect No. 1 is concerned this Court in its recent judgment has observed that a tenderer is not required to obtain certificates/no objection/ tax clearance certificate from each and every Circle but if he is registered dealer under the provisions of the Commercial Tax Act then he is required to file these certificates from all Circles where he is doing business and if he is a new entrant then he would be required to file the sales tax clearance certificate from the place where he proposes to do the business. According to learned Counsel for the Petitioner, the Petitioner has filed the sales tax clearance certificate from the Circle where he had applied for the business, therefore, the defect No. 1 stands cured. Learned Counsel for the State Government concedes to this argument. Under these circumstances we

must hold that the alleged defect No. 1 does not survive.

5. The question for consideration now is whether filing of the wealth tax clearance certificate was mandatory and non-filing of the same would disentitle the Petitioner from taking part in the settlement process.

6. Shri Giri, learned senior counsel for the Petitioner has submitted that along with the supplementary affidavit filed on 11.7.2003 the Petitioner has filed Annexure-10 a certificate dated 7.7.2003 issued by the Assistant Commissioner of Income Tax Central Circle, VI, Kolkata, whereunder it is clearly mentioned that the Company has not filed any wealth tax return since its incorporation on 28.12.1994 and from the assessment records and balance-sheets annexed thereto it seems that net wealth of the company was below the minimum amount, not chargeable to wealth tax for accounting year 1995-96 to 2000-2001 and as such the question of wealth tax liability does not arise as per record. Shri Giri submits that Annexure-10 fulfils the requirement and would cure the defect. It is also contended by him that this Court, in view of Annexure-10 must require the Department to invite the Petitioner to take part in the settlement process. It is further submitted that the documents, Annexure-4, the income tax clearance certificate filed by the Petitioner along with the tender documents referred in Clause (b) is to the effect that certain period has passed from the date of order of conviction u/s 35(1) of the Wealth Tax Act, 1957, therefore, the Petitioner was mislead a little but in any case after filing of Annexure-10 he is entitled to take part in the settlement process.

7. Learned Counsel for the State and the intervenor submitted that according to Clause 12(b) of the tender every tenderer was required to file the wealth tax clearance certificate and as along with the tender form the said document was not filed, subsequent filing of the document would not enure to the benefit of the Petitioner. It is further submitted that while filing the tender papers, the Petitioner in column No. 7 had clearly mentioned that he was filing income tax/ wealth tax clearance certificate dated 17.12.2001 issued by I.T.O., Ward No. 12(3), Kolkata, therefore, at this stage he can not be allowed to say that the subsequent filing of the certificate would enure to his benefit or he was mislead a little. According to them the Petitioner had played a fraud with the Department by mentioning wrong facts, therefore, this Court should not interfere in the matter.

8. The Petitioner in reply to the above referred arguments has submitted that the question that the Petitioner did not file the Wealth tax clearance certificate was not praised in earlier proceedings, therefore at; this distance of time the Respondents are estopped from raising the question. It is, however, submitted that the Petitioner can not be thrown out of the settlement process on such a minor defect.

9. On 16.1.2002 the State Government had issued the tender notice for conferral of exclusive privilege for whole-sale supply of country liquor. The Petitioner had

applied for Patna Zone.

10. Clause 12 of the tender requires filing of certain documents. Clause 12(KH) requires each tenderer to file wealth tax clearance certificate. It is not in dispute before us that such documents were filed by all concerned and the Department had considered these conditions to be mandatory conditions, in our opinion also when a tender is required to be submitted in accordance with the terms of the tender notice then the terms of the tender notice must be religiously observed. None filing of the documents certainly would affect the validity of the tender. The subsequent filing of the document before this Court under Annexure-10 would not cure the initial defect. Though a strong reliance has been placed on Annexure-11 referring the budget highlights but we are not at all impressed by the conditions of Annexure-11 because we are of the considered opinion that such a document required under the tender conditions must be filed along with the tender documents to make the tender valid and worth consideration.

11. So far as the Petitioner''s submission that he was mislead by the conditions of Annexure-4 is concerned a perusal of Clause (b) of Annexure-4 would clearly show that it had nothing to do with the wealth tax clearance certificate. Clause (b) is in relation to the expiry of three years from the date of the order of conviction on or after 1.4.1975 u/s 35(1) of the Wealth Tax Act.

12. 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 would not be allowed to take benefit of such question. In the present matter two things stare at us. Firstly, the Petitioner in his tender form Clause (7) had submitted that he was filing the wealth tax clearance certificates dated 17.12.2001. This fact undisputedly was incorrect. Whether this tantamounts to fraud or not would be a different question but this certainly was a wrong statement which could create confusion in the mind of the person making the scrutiny of the tender papers. 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 wealth tax clearance certificate 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.

13. We find no reason to interfere in the matter, the petition deserves to and is accordingly dismissed.

