

(2003) 05 PAT CK 0069
In the Patna High Court
Case No : C.W.J.C. No. 11187 of 2002

Hesperia Commodities Pvt. Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 02-05-2003

Acts Referred:

Citation : (2003) 4 PLJR 342

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

Bench : Division Bench

Advocate : Y.V. Giri, Jyoti Saran and Raju Giri, for the Appellant; R.K. Dutta, for State, for the Respondent

Judgement

1. Heard learned Counsel for the parties.
2. The Petitioner, a company registered under the Companies Act having its registered office in Kolkata has filed the present writ application for directions to the Respondent-State to consider its tender which was submitted by it in pursuance of the tender notice dated 16.1.2002 (Annexure-1) for manufacture and wholesale supply of spiced country liquor for the period from 1.4.2002 to 31.3.2005.
3. On 13.1.2002, a tender notice inviting application was issued in terms of the Bihar Excise Act for grant of exclusive privilege for manufacture and wholesale supply of spiced country liquor for the period 1.4.2002 to 31.3.2005. The last date for submitting the tender was 27.2.2003 up to 3.30 P.M. The Petitioner submitted his tender for all nine zones in the State of Bihar within time along with the relevant documents as required to be filed in terms of the tender notice.
4. The Petitioner had estimated Rs. 24.77 lacs as estimated cost to be invested as reported in the project report, but it has shown only Rs. 10,50,989/- only in current account in Oriental Bank of Commerce as on 26.2.2002. The Petitioner also filed a certificate for getting short term loan of Rs. 60 lacs from Basanti Finance and Investment Company. The certificate dated 25.2.2002 from the

Oriental Bank of Commerce, Calcutta merely says that they have been maintaining current account since 2.5.2001 and the account is satisfactory, but financial capacity of the company was not mentioned by the Bank. It was also found that the Petitioner-company had submitted a certificate supposed to be issued by the Registrar of the Companies, Calcutta, but this was without letter number and signature of the issuing officer was not at the proper place. Thus, according to the stand of the State, these were the two defects in terms of the tender notice, as a result of which, the case of the Petitioner was not considered.

5. It is an admitted position that so far as the certificate issued by the Registrar of the Companies is concerned, when the Petitioner was informed about the aforesaid discrepancy, it submitted another copy of one more certificate obtained from the Registrar of the Companies on a later date but after expiry of the period of tender.

6. Had the settlement been made by now, this Court would not have considered the case of the Petitioner because two requirements of the tender notice were not fulfilled by the Petitioner. But the fact remains that up-till-now the settlement has not been made, which has been postponed for one reason or the other. Now, direction has been issued by this Court to the authorities to grant exclusive privilege with regard to manufacture and wholesale supply of spiced country liquor.

7. So far as the first defect, as stated above, regarding certificate issued by the Registrar of Companies is concerned, that has already been removed. So far as the other defect regarding non-filing of certificate of financial capacity of the Company is concerned, learned Counsel for the Petitioner submitted that the main purpose of giving certificate regarding financial capacity is to show that the financial position of the company is sound and it can invest the amount as mentioned in the project report. The project report submitted by the Petitioner is for Rs. 24.77 lacs. The Petitioner is ready to deposit the aforesaid amount in the Nationalised Bank and file necessary document before the authority to satisfy about the financial capacity.

8. Taking into consideration the aforesaid stand taken by the Petitioner and the fact that the settlement has not been made till the date and is under active consideration and also taking in view the peculiar facts and circumstances of the case, we are of the view that one chance should be given to the Petitioner to participate in the settlement. Accordingly, if the Petitioner deposits Rs. 24.77 lacs in the Nationalised Bank by 19.5.2003 and files necessary document before the authority in support of the deposit and further gives an undertaking that it will not withdraw the aforesaid amount and spend the same only in the execution of the project in case the settlement is made in its favour, then the authorities will consider the case of the Petitioner along with other eligible tenderers for grant of exclusive privilege for manufacture and wholesale supply of spiced country liquor.

9. If the said amount is not deposited by the aforesaid period then the case of

the Petitioner shall not be considered.

10. This writ application is accordingly disposed of.