

(2011) 09 CHH CK 0044
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 1212 of 2011

M/s. Laxmi Construction Company

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 19-09-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 142
Partnership Act, 1932 — Section 32(2)

Citation : (2011) 2 CGBCLJ 308

Hon'ble Judges : Sunil Kumar Sinha, J; R.S. Sharma, J

Bench : Full Bench

Advocate : Rahul Jha, for the Appellant; U.N.S. Deo, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Sinha, J.—Chhattisgarh Rural Road Development Authority, respondent No. 3 herein, took a policy decision for registration of the Contractors by fixing certain norms, and circular/order No. 785/1424/Rc-3/ /2006 dated 27/1/06 (Annexure-P/6) was issued. Para-3 of the circular reads as under:-

The petitioner is aggrieved by the last part of Para-3 which says that in case of a Firm or Company seeking registration, the experience of the Partners of the Firm/ Directors of the company would not be considered as the experience of the Firm/ Company.

2. Mr. Rahul Jha, learned counsel appearing on behalf of the petitioner, argued that the impugned condition in the circular dated 27.1.2006 is impracticable, arbitrary, unreasonable and contrary to the judgment of the Supreme Court which is Law of the land, therefore, the same may be struck down and the respondents be directed to consider the application of the petitioner for its registration in respective category (S-5) and impugned communication dated 24.9.2009 (Annexure-P/10) be also quashed. He relied on the decision of New Horizons Limited and Another Vs. Union of India (UOI) and Others,

3. On the other hand, Mr. U.N.S. Deo, learned Govt. Advocate appearing on behalf of the respondents, opposed these arguments.

4. We have heard learned counsel for the parties at length and have also perused the records of the writ petition.

5. In *New Horizons* (supra), the Supreme Court deliberating on joint venture and partnership observed that "It is possible to visualize a situation where a person having past experience has entered into a partnership and the tender has been submitted in the name of the partnership firm which may not have any past experience in its own name. That does not mean that the earlier experience of one of the partners of the firm cannot be taken into consideration. Similarly, a company incorporated under the Companies Act having past experience may undergo reorganization as a result of merger or amalgamation with another company which may have no such past experience and the tender is submitted in the name of the reorganized company. It could not be the purport of the requirement about experience that the experience of the company which has merged into the reorganized company cannot be taken into consideration because the tender has not been submitted in its name and has been submitted in the name of the reorganized company which does not have experience in its name. Conversely there may be a split in a company and persons looking after a particular field of the business of the company form a new company after leaving it. The new company, through having persons with experience in the field, has no experience in its name while the original company having experience in its name lacks persons with experience. The requirement regarding experience does not mean that the offer of the original company must be considered because it has experience in its name though it does not have experienced persons with it and ignore the offer of the new company because it does not have experience in its name though it has persons having experience in the field. While considering the requirement regarding experience it has to be borne in mind that the said requirement is contained in a document inviting offers for a commercial transaction. The terms and conditions of such a document have to be construed from the standpoint of a prudent businessman. When a businessman enters into a contract whereunder some work is to be performed he seeks to assure himself about the credentials of the person who is to be entrusted with the performance of the work. Such credentials are to be examined from a commercial point of view which means that if the contract is to be entered with a company he will look into the background of the company and the persons who are in control of the same and their capacity to execute the work. He would go not by the name of the company but by the persons behind the company. While keeping in view the past experience he would also take note of the present state of affairs and the equipment and resources at the disposal of the company." The Supreme Court further observed that "The joint venture connotes a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share

risks."

6. On the above principles, the Supreme Court held in *New Horizons* (supra) that in the distribution of the State largesse, the State action should be in consonance with standards or norms which should not be arbitrary, irrational or irrelevant. It was held that in joint venture company, experience of constituents of the joint venture company should be treated as its own experience.

7. In case on hand, the petitioner, a registered partnership firm, is having 5 partners and, according to the petitioner, its partner is having requisite experience and on this basis the petitioner applied for registration as S-5 contractor with respondent No. 3. The application for registration of the petitioner has been dismissed on the ground that the petitioner firm as such was not having requisite experience and experience of the partner of the firm will not be taken as the experience of the firm.

8. Mr. Deo, learned Govt. Advocate appearing on behalf of the respondents, argued that the above policy decision has been taken with a long cited-ness that in case the experienced partner of the firm quits the firm during the pendency of the contract period, the contract awarded to the firm may not suffer. In *Syndicate Bank Vs. R.S.R. Engineering Works and Others*, , the Supreme Court held that "Under Section 32(2) of the Indian Partnership Act, 1932, the liability of the retiring partner as against third party would be discharged only if there is an agreement made by the retiring partner, with the third party, and the partners of the reconstituted firm. Of course, and agreement could be implied by the course of dealing between such third party and the reconstituted firm, after retirement of a partner." The above provisions of Section 32(2) of the Indian Partnership Act, protects the right and liability of the firm and the retiring partner and in view of the above, argument raised by Mr. Deo is not acceptable. Moreover, the above argument is on a hypothetical ground which cannot be considered good for imposing such a condition in the registration policy by the public authority. The State or public authority are governed by mandate of Article 14 of the Constitution and the decisions taken by them should not be arbitrary or irrational. The State or such authorities are to act fairly and reasonably and any decision which is arbitrary and irrational cannot be allowed to continue.

9. In *Palitana Sugar Mills Pvt. Ltd. and Another Vs. Smt. Vilasiniben Ramachandran and Others*, it was held that "The judgments of the Supreme Court are binding on all the authorities under Article 142 of the Constitution and it is not open to any authority to ignore a binding judgment of the Supreme Court on the ground that the full facts had not been placed before the Supreme Court and/or the judgment of the Supreme Court in the earlier proceedings had only collaterally or incidentally decided the issues raised in the show-cause notices. Such an attempt is to belittle the issues and the orders of the Supreme Court. Judgments of the Supreme Court are binding on all authorities and the Government cannot arrogate to its powers to reject the judgment of the Supreme Court."

10. In view of all this, the judgment laid down by the Supreme Court in New Horizons (*supra*) was binding of all the parties including the respondents and decision taken by the respondents by imposing the impugned condition in the circular dated 27.1.2006 (Annexure-P/6) goes against the spirit of law laid down by the Supreme Court in New Horizons and therefore, the same deserves to be struck down.

11. Accordingly, the writ petition is allowed. The impugned condition in Clause-3 of the circular dated 27.1.2006 (Annexure-P/6) is quashed. Consequently, the communication dated 24.9.2009 (Annexure-P/10) rejecting the application for registration of the petitioner is also quashed. The respondents are directed to consider the application of the petitioner for its registration as contractor in accordance with law and also in accordance with the principles and observations made in this judgment and the judgments of the Supreme Court referred herein. No order as to cost.