(2001) 05 JH CK 0003

In the Jharkhand High Court

Case No : CWJC No. 1814 of 2001

Usha Agro Industries Private Ltd. and Another — APPELLANT

Vs

State of Jharkhand and Others — RESPONDENT

Date of Decision : 08-05-2001

Acts Referred:

Bihar Finance Act, 1981 — Section 14, 2, 3, 4
Constitution of India, 1950 — Article 14(1), 19(1), 301, 304

Citation : (2001) 05 JH CK 0003

Hon'ble Judges : Vinod Kumar Gupta, C.J;M.Y. Eqbal, J

Bench : Division Bench

Advocate : S.J. Roy, for the Appellant; B.S. Lal, for the Respondent

Final Decision : Allowed

Judgement

1. What is under challenge in this petition is a stipulation in the impugned tender documents whereby the intending tenderers have been required to enclose with the tender documents, inter alia. Sales-tax Clearance Certificate of Jharkhand State along with various other certificates, such as Income Tax clearance and 1SI certification etc.

2. The grievance of the petitioners is that petitioners are not dealers registered under the Bihar Finance Act. 1981 because they are not doing any business in the State of Jharkhand. Petitioners'' contention is that since they are doing business at a place which is outside the State of Jharkhand. they are not required to obtain any Sales-tax clearance certificate from the State of Jharkhand. The aforesaid impugned stipulation in the tender documents to the effect that the tenderers irrespective of the place where they are doing business or carrying out manufacturing operations, have to obtain Sales-tax clearance certificate from the Jharkhand State has come in the petitioners'' way in submitting the tender documents which according to them clearly infringes the petitioners'' fundamental right guaranteed under Article 19(1)(g) of the Constitution of India.

3. We have heard the learned counsel for the petitioner and Mr. Binod Poddar, learned Addl. Advocate General appearing for the respondents. Section 3 of the Bihar Finance Act, 1981. is the charging section and it lays down that the sales-tax/purchase-tax, as the case may be. shall be paid by every dealer if, inter alia, his gross turn over during a period not exceeding 12 months, exceeds a particular specified amount and this being subject to various other conditions and stipulation in that section. Dealer has been defined in Section 2(g) of the Act and means any person who carries on the business of buying, selling, supplying or distributing goods. Section 14 of the Act requires that every dealer who is liable to pay tax u/s 3 or Section 4 of the Act shall com-pulsorily be registrable under the Act and be in possession of a valid registration certificate and unless he does so he cannot sell or purchase goods.

4. In the aforesaid backdrop, we find that the impugned stipulation has no nexus with the objects sought to be achieved because admittedly the petitioner not being a dealer has not got himself registered as such u/s 14 of the Act- We also find that in the facts and circumstances of this case, the respondents do not appear to have indicated or spelt out any objective or purpose in making such a stipulation in the impugned tender documents. Admittedly and undoubtedly the respondents have not, and rightly so. shut out the manufacturers operating from outside Jharkhand State for responding to the tender inquiry and for submitting their tender papers for supply of the goods for which tenders have been invited. If a manufacturer who is manufacturing goods outside the Jharkhand State is required to fulfil the terms and conditions of the tender notice stipulating that he should obtain the Sales-tax clearance from the Jharkhand State, the very object of inviting the tender for supply of goods will be nullified and frustrated and such a tenderer thus will have to be kept outside and excluded from the process of consideration. The impugned stipulation therefore in the light of the fact that such a manufacturer has nothing to do with the sales tax authority of Jharkhand State seems to be totally unreasonable and irrational as it has no nexus with the object of the tender or the object to supply goods as per the tender notice.

5. The question of obtaining sales-tax clearance would based on the aforesaid reasoning, thus arise only in a situation and in respect of a person who is both a dealer registered u/s 14 of the Act and in whose case liability- to pay sales tax has arisen in the past or might have arisen at any point of time in the past. The petitioner admittedly neither being a dealer so far nor having had any occasion or opportunity to enter into any sale or purchase transaction, does not require any sales tax clearance.

6. The impugned stipulation to that extent, therefore. in respect of such manufacturers who have manufacturing bases outside the State may also tend to infringe or violate Article 301 or Article 304 or any other provision of Part XIII of the Constitution of India. However, we wish not to offer any further comment on this particular aspect of the matter.

7. The impugned stipulation in the tender document insofar as it applies and

relates to such intending tenderers who are not registered dealers in the Jharkhand State under the Bihar Finance Act. 1981 is quashed and struck down as being unreasonable, arbitrary and violative of Article 19(1)(g) of the Constitution of India. The striking down for the impugned stipulations, therefore, means that the respondents shall proceed to process the tender documents as received by them from these intending tenderers in accordance with the established norms, rules and regulations. Striking down of the impugned stipulations, however, does not mean that the respondents are under any obligation to receive fresh tender documents from any intending tenderer. Only such tender documents shall be processed which have been received by the respondents uptill the date,

8. Because we have struck down the impugned stipulation, it does not mean that the respondents or any other competent statutory authority in the State is debarred from laying down guidelines under the Bihar Finance Act, 1981 or any other law relating to supply and receipt of articles.

9. With the aforesaid observation, this application is allowed. No order as to costs.

10. Application allowed.

