

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 16th December, 2010

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W.P.(C) 8052/2010

**DELHI JAL BOARD CONTRACTORS
WELFARE ASSOCIATION (REGD.)**

..... Petitioner

Through: Mr. Neeraj Gupta & Mr. R.D.
Sharma, Advocates

Versus

DELHI JAL BOARD & ORS.

..... Respondents

Through: Mr. Ghanshyam Yadav, Advocate
for Mr. Suresh Tripathy, Advocate
for DJB.
Mr. Anand Shukla, Advocate for
respondent No.5.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported
in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. The petition has been filed impugning the enlistment by the respondent No.1 Delhi Jal Board (DJB) of the respondent No.5 M/s Vishal Nimriti Pvt. Ltd. (New contractor) as a Class-I Contractor with the respondent No.1 DJB. The petitioner is an Association of contractors enlisted with the respondent No.1 DJB. Enlistment of a new contractor would evidently affect the prospects of the members of the petitioner. Not finding any pleas in the petition as to why the enlistment of the new

contractor by the respondent No.1 DJB was bad or contrary to Rules, on 1st December, 2010 when the petition came up first before this Court and finding the present petition to be an attempt by the petitioner / its members to prevent competition and while adjourning the matter on the request of the counsel to amend the petition, condition was imposed on the petitioner to deposit ₹35,000/- with the DJB as a pre-condition to pursuing the petition.

2. The said sum of ₹35,000/- was deposited by the petitioner with the respondent No.1 DJB. The petitioner has filed CM No.21585/2010 for amendment of the petition with amended petition and further documents. The matter being at an initial stage, the application for amendment is allowed and the amended petition is taken on record.

3. The counsel for the petitioner, the counsel for the respondent No.1 DJB and the counsel for the new contractor appearing on advance notice have been heard.

4. The challenge by the petitioner to the enlistment / empanelment of the new contractor by the respondent No.1 DJB is on the ground that the new contractor has not executed the requisite number and magnitude of works as fixed under the Eligibility Criteria for registration as a Class-I Contractor with the respondent No.1 DJB. It is stated that the new contractor viz. M/s Vishal Nimriti Pvt. Ltd. had not executed any works whatsoever for the respondent No.1 DJB. It is stated that the new contractor has been

empanelled on the basis of M/s Permanent Prestress Pvt. Ltd. which had executed the requisite number and magnitude of works with the respondent No.1 DJB, having merged / amalgamated with the new contractor M/s Vishal Nimriti Pvt. Ltd. under orders of the High Court of Bombay. It is contended that since M/s Permanent Prestress Pvt. Ltd. had merged in the new contractor, the said M/s Permanent Prestress Pvt. Ltd. lost its identity upon amalgamation and no benefit of its work experience would enure to the benefit of new contractor. Reliance in this regard is also placed on *Saraswati Industrial Syndicate Ltd. Vs. Commissioner of Income Tax* 1990 (Supp.) SCC 675 laying down that the transferee company on amalgamation loses its identity and on *M/s General Radio & Appliances Co. Ltd. Vs. M.A. Khader (Dead) by Lrs.* AIR 1986 SC 1218 relating to effect of amalgamation on tenancies protected under the Rent Act.

5. On the contrary, the counsel for the new contractor has handed over in the Court the Scheme of Amalgamation approved by the Bombay High Court (which is not disputed by the counsel for the petitioner) and as per which all contracts, agreements, arrangements of whatsoever nature to which M/s Permanent Prestress Pvt. Ltd. was a party or had benefit of stood transferred to the new contractor. It is thus contended that the respondent No.1 Board was fully justified in empanelling / enlisting the new contractor on the basis of the requisite number and magnitude of works done by M/s Permanent Prestress Pvt. Ltd. which stood amalgamated in the new

contractor. It is further argued that the matter is no longer *res integra* being fully covered by ***New Horizons Ltd. Vs. Union of India*** (1995) 1 SCC 478. The Supreme Court held 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 of its own. It was held that that does not mean that the earlier experience of one of the partners of the firm cannot be taken into consideration. It was further held that 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. The Supreme Court laid down that 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.

6. Reliance is also placed on ***Ganpati RV-Talleres Alegria Track Pvt. Ltd. Vs. Union of India*** (2009) 1 SCC 589 also relying upon the judgment in ***New Horizons Ltd.*** (supra).

7. Faced with the aforesaid, the counsel for the petitioner has sought to distinguish the aforesaid two judgments by contending that they deal with

joint ventures which are like a partnership and where the benefit of the experience of the constituent of the joint venture is available. It is contended that in the present case the well known and settled principle relating to amalgamation, of the transferee company in the process of amalgamation, dying and coming to an end, would apply. It is argued that the benefit of experience of a dead person cannot be availed of.

8. The judgment in *New Horizons Ltd.*, in my view does not leave any doubt. The Supreme Court has expressly held that “a company having past experience may undergo reorganization as a result of merger or amalgamation with another company which may have no such past experience” and which expressly covers the present situation. It is thus not open to this Court to take any different view.

9. I am even otherwise in exercise of discretionary equitable jurisdiction not inclined to interfere in the decision of the respondent no.1 DJB to empanel the new contractor. The challenge by the petitioner is found to be aimed at stifling competition and intended to benefit the members of the petitioner at the cost of the respondent no.1 DJB. Henry Ford observed, “Competition is the keen cutting edge of business, always shaving away at costs.” Competition promotes rivalry among firms and achieves sustained growth in consumer welfare. The Indian Competition Act, 2002 has been enacted *inter alia* to promote and sustain competition and the Competition Commission of India been empowered *inter alia* to prohibit anti competitive

agreements and abuse of dominance and such practices that have an adverse effect on competition in the Indian Market. The cartels as the petitioner are essentially conspiracies and are presumed to have appreciable adverse effect on competition. What Henry Clay, American Secretary of State said in 19th Century “of all human powers operating on the affairs of mankind, none is greater than that of competition” holds good today also.

10. The matter being no longer *res integra* and for reason aforesaid, the petition is dismissed *in limine* with costs of ₹35,000/- to the respondent Delhi Jal Board already paid by the petitioner.

**RAJIV SAHAI ENDLAW
(JUDGE)**

DECEMBER 16, 2010

‘gsr’..

(corrected and released on 17th January, 2011.)