

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6390 of 2016

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1. M/s Gopsons Printers Private Limited through its Director Anil Kr. Goel, Son of Late Devi Dayal Goel, having its registered Office at 21/B, Sri Ram marg, Civil Lines, P.S. - Civil Lines, New Delhi – 110054.
 2. Anil Kr. Goel, Son of Late Devi Dayal Goel, Resident of 21/B, Sri Ramk Marg, Civil Lines, P.S. - Civil Lines, New Delhi - 110054.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Food & Consumer Protection, Govt. of Bihar, Patna.
2. The Secretary, Department of Food & Consumer Protection, Govt. of Bihar, Patna.
3. M/s Manipal Technology, having its registered office at Manipal, District - Mangalore, Karnataka through Mr. Narhari, General Manager (Sales).

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Advocate Mr. Vipin kumar
For the State	:	Mr. Manoj Kr. Ambastha, G.P.-14
For the Private Respondent	:	Mr. Chitranjan Sinha, Sr. Advocate Mr. Anujit Sinha, Advocate Mr. Shashi Shekhar Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 27-06-2016

Heard Mr. P.K. Shahi, learned Senior Counsel has appeared for the petitioner, Mr. Manoj Kumar Ambastha, learned G.P.-14, for the State and learned counsel for the private respondent.

With the consent of the parties the matter has been considered with a view to its final disposal at the state of admission itself. The two petitioners by this writ petition filed under Article-226 of the Constitution of India have questioned the decision of the



Departmental Purchase Committee whereby the petitioners have been unsuited in the technical bid on grounds of failing in the eligibility criteria. While petitioner no.1 is a company incorporated under the Indian Companies Act, 1956, the petitioner no.2 is one of the directors of petitioner no.1.

Facts of the case lie in a very narrow compass. A tender notice was published by Government of Bihar, Department of Food & Consumer Protection inviting sealed tenders under the two bid system for printing and supply of ration and kerosene coupons at the District headquarter of the State for the year 2016-17(July 2016-June17). A copy of the tender notice dated 10.3.2016 is on record at Annexure-2. While the qualifications required of the intending tenderer stands discussed at paragraph- II of the tender notice, the documents accompanying the tender stands discussed in paragraph-III. Paragraph-X of the tender notice provides that the tender documents are to be submitted up to 12.00 PM on 1.4.2016 and would be opened on the same day at 4.00 PM by the Departmental Purchase Committee headed by the Secretary, Food & Consumer Protection Department, Government of Bihar.

Five applicants filed the respective tenders as discussed in the proceedings of the Purchase Committee present at Annexure-B and in which the petitioner was disqualified in the technical bid



inter alia on grounds of having failed to satisfy the requirements present at clause-II (d) and (e) and III(d). In fact of the five applicants to the tender except the private respondent and one other who succeeded in the technical bid, the rest three applicants were disqualified on eligibility which stands discussed in the proceedings present at Annexure-B.

In so far as the writ petitioners are concerned the tender committee granted them time until 4.4.2016 to take proper steps in the light of the objections on eligibility but the proceedings held on 4.4.2016 of the Departmental Purchase Committee present at Annexure-C reflects that no satisfactory document was produced by the writ petitioners to satisfy the ineligibility noted in the proceedings dated 1.4.2016 and as a consequence, the petitioners were held disqualified. The financial bid of the two remaining successful tenderers in the technical bid was examined and the offer of the private respondent was found to be the most suitable. The petitioners being aggrieved are before this Court.

Mr. Shahi, learned Senior Counsel for the petitioner has taken this Court through various clauses of the tender notice to submit that the petitioner stood qualified on the eligibility conditions discussed in paragraph- II (d) and (e) as well as III(d) of the tender notice present at Annexure-2 which *inter alia* requires



each tenderer to satisfy the condition of having a turn over of at least Rs.50 Crores approximately in the previous three years along with the Audit reports; the work order/job experience of similar nature with government of at least Rs.5 Crores with experience of Bar Code printing with 600 x 300 dpi and attested copy of PAN and TIN No. along with the Income Tax return for the past three years. Mr. Shahi, has referred to paragraph-7 to 13 of the writ petition to submit that a concept of 'Slump Sale' was incorporated in the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide Finance Act, 1999 and stands defined in Section – 2 (42C) of the said Act. It is explained by Mr. Shahi that invoking the 'Slump Sale' concept, a business transfer agreement as provided under section- 2 (42C) of 'the Act', was executed and the entire business of M/s. Gopsons Papers Limited, a company incorporated under the Indian Companies Act and engaged in the business of book printing, security printing, hologram, labels and other forms of printing, was transferred in favour of the petitioner no.1 company vide business transfer agreement dated 31.3.2014 present at Annexure-1. According to Mr. Shahi by virtue of this business transfer agreement the entire business of M/s. Gopsons Papers Limited stood transferred with the petitioner no.1 along with the assets and liabilities on 31.3.2016 effective from 1.4.2014. Mr.



Shahi has taken this Court to the various clause in the agreement present at Annexure-1 to impress that experience and the financial status of M/s. Gopsons Papers Limited stood added to the status of the petitioner no.1 and in which event the documents filed by the petitioner to satisfy the requirements of the eligibility condition present at paragraph- II (d) and (e) stood satisfied by the Auditor's report present at Annexure-3 series and the condition stipulated in paragraph-III (d) stood satisfied by the documents enclosed at Annexure-4 series. Mr. Shahi referred to the tabulated chart accompanying Annexure-C to the counter affidavit of the respondent nos. 1 and 2 to submit that the sole ground on which the petitioner have been unsuited is that he has filed a turn over of Rs.50 Crores for only one year which is factually not correct as manifest from Annexure-3 series. Mr. Shahi, has referred to the statement made in paragraphs-16 to 18 of the writ petition to submit that the statement made therein have not been controverted and since after the 'Slump Sale' Agreement present at Annexure-1, whatsoever was the financial status of the printing business of M/s. Gopsons Papers Limited has by virtue of the transfer become a part of the business status of the petitioner no.1 and the petitioner no.1 can well rely upon the Audit reports and the Income Tax statement relatable to the business so transferred.



The argument of Mr. Shahi has been contested by Mr. Ambastha, learned G.P.-14, for the State as well as Mr. Sinha, learned counsel appearing for the private respondent. While it is the argument of Mr. Ambastha that the 'Slump Sale' Agreement is executed as a matter of convenience exclusively for the tender in question and that even after such agreement has been entered wherein the business of M/s. Gopsons Papers Limited stands transferred and vested in the petitioner no.1 yet the said company continues to file its returns as is manifest from the document present at page-371 and 372 i.e. Annexures- D and E respectively to the supplementary counter affidavit. He endeavors to submit that while the business transfer has taken place on 31.3.2014 yet M/s. Gopsons Papers Limited has not only filed its balance sheet as on 31.3.2015 but has also held its annual general meeting on 30.9.2015. With reference to Annexure-E, he submits that on the other hand the petitioner no.1 has not filed its balance sheet since after 31.3.2014 nor has held its annual general meeting since after 30.9.2014 as per the information provided by the Ministry of Corporate Affairs on 21.6.2016. Mr. Ambastha, learned G.P.-14, for the State has referred to the Auditor's report present at Annexure-3 series to submit that while the Auditor's report filed to support the turnover for the period 2013-14 present at Annexure-3



is in respect of M/s. Gopsons Papers Limited, the Auditor's report for the period 2014-15 and 2015-16 is in respect of M/s. Gopsons Printers Private Limited which is present at Annexures- 3/1 and 3/2 at page 88 and 105 respectively. He submits that when it comes to filing Income Tax returns then the petitioner no.1 has filed the returns for the periods 2013-14 and 2014-15 present at Annexure- 4/1 and 4/2 respectively in respect of M/s. Gopsons Papers Limited while the Income Tax returns for the period 2015-16 is in respect of M/s. Gopsons Printers Private Limited. He submits that there is no uniformity in the documents supplied by the petitioner. According to Mr. Ambastha, since admittedly the eligibility criteria present at paragraph-II (d) and (e) and III (d) is apparently not satisfied by the documents appended by the petitioner hence his disqualification requires no interference.

Mr. Sinha, learned counsel for the private respondent has referred to the statement made in paragraph-9 of the writ petition to submit that it is not the company-M/s. Gopsons Papers Limited which has been taken over by M/s. Gopsons Printers Private Limited rather a bare perusal of the agreement present at Annexure- 1 at page-25 would show that it is only a unit of M/s. Gopsons Papers Limited which has been transferred in favour of the petitioner no.1. Mr. Sinha has referred to the definition present at



paragraph-1 and 1/1 to submit that the business transfer in question is in relation to the undertaking (security division) of M/s. Gopsons Papers Limited and not the entire business as canvassed by Mr. Shahi, learned Senior Counsel for the petitioner. Mr. Sinha, has further referred to the document present at Annexure-5/1 of the rejoinder filed by the petitioner to the counter affidavit of the respondent nos.1 and 2 at page-339 to submit that an affidavit has been filed by the Director of M/s. Gopsons Printers Private Limited that it is only the security division of M/s. Gopsons Papers Limited which has been transferred through the business transfer agreement dated 1.4.2014. Mr. Sinha, has next referred to the statement present at paragraph-22 and 23 of the counter affidavit filed on behalf of respondent no.3 to submit that the definition of 'Slump Sale' found under Section-2 (42C) of 'the Act' means a transfer of one or more undertaking and in so far as the present case is concerned it is only the security division which has been transferred and not the entire business of M/s. Gopsons Papers Limited.

Mr. Shahi, learned Senior Counsel for the petitioner in his short reply has referred to the documents accompanying the 'Slump Sale' Agreement present at Annexure-A/1 to submit that admittedly it is only the security division of M/s. Gopsons Papers Limited which stands transferred. He further submits that it has



never been his argument that the company- M/s. Gopsons Papers Limited stood merged or transferred in favour of the petitioner no.1 rather while M/s. Gopsons Papers Limited continues to maintain its legal identity, it is only the business in the security division of the said company which stood transferred and vested in the petitioner no.1.

I have heard learned counsel for the parties and I have perused the materials on record.

Although exhaustive arguments have been advanced by the contesting parties but the dispute lies in a very narrow compass and i.e. whether the documents present at Annexures-3 series would satisfy the eligibility conditions present at paragraph- II (d) and (e) and whether the document present at Annexure- 4 series satisfies the stipulations present at condition-III (d). There is absolutely no contest on the documents on record and undisputedly, in support of his eligibility towards the condition present at paragraph-II (d) and (e) and III (d) of the tender, the petitioners have enclosed the documents present at Annexure-3 series and 4 series. The issue is whether these documents satisfies the conditions. The stand of the respondents as reflected in the counter affidavit is that the petitioner no.1 has been able to only partially satisfy the said conditions for whereas the Auditor's report present at Annexure-3 series relates to



M/s. Gopsons Papers Limited in so far as the financial year 2013-14 is concerned, even the Income Tax return for the period 2013-14 and 2014-15 relate to M/s. Gopsons Papers Limited and not the petitioner no.1. Mr. Shahi, learned Senior Counsel appearing for the petitioner has admitted that it is only the security division of M/s. Gopsons Papers Limited which stood transferred under the business agreement present at Annexure-1 and not the company, although initially he endeavored to argue that the entire business of the said company stood transferred. Mr. Sinha has rightly pointed out that it is only one of the unit of M/s. Gopsons Papers Limited which stood transferred under the business agreement and not the entire business of M/s. Gopsons Printers Private Limited. Even the agreement present at Annexure-1 confirms this decision that it is only the security division of M/s. Gopsons Papers Limited which stood transferred.

In the admitted circumstances the filing of the Auditor's report by the petitioner in respect of M/s. Gopsons Papers Limited for the period 2013-14 certainly did not satisfy the eligibility criteria present at Clause- II(d) for it was only one of the unit of M/s. Gopsons Papers Limited which stood transferred and not the company. It is a matter of record and also admitted by Mr. Shahi that vide the business transfer agreement present at Annexure-1, it



is only the security division of M/s. Gopsons Papers Limited, a company incorporated under the Indian Companies Act was transferred while the said company continues to maintain its legal status. This undisputed position is by itself enough to uphold the disqualification of the petitioner *inter alia* on grounds of not satisfying the eligibility condition of filing the turn over of Rs.50 Crores for the previous years since the document present at Annexure-3/1 is admittedly in respect of M/s. Gopsons Papers Limited and not M/s. Gopsons Printers Private Limited, the applicant. Considering that it is only a unit of M/s. Gopsons Papers Limited which stood transferred in favour of the petitioner as per the business transfer agreement, the petitioners certainly could not utilize the turn over report relatable to the said company. Admittedly, there is no document demonstrating a turn over structure of the security division of M/s. Gopsons Papers Limited which stood transferred to the petitioner and thus the Auditor's report filed by the petitioner relatable to M/s. Gopsons Papers Limited should not have been filed by the petitioner and have been rightly rejected by the Departmental Purchase Committee. A similar situation accompanies the filing of the Income Tax returns for the period 2013-14 and 2014-15 which is again in respect of M/s. Gopsons Papers Limited and not in respect of the security division

of the said company.

Another relevant aspect of the matter is that when the security division of M/s. Gopsons Papers Ltd. stood transferred to the petitioners only w.e.f. 1.4.2016, whether the petitioner could take its benefit for a period prior to the transfer when the status of the said division was associated with M/s. Gopsons Papers Limited.

In the admitted circumstances discussed above, there is absolutely no infirmity in the order of disqualification passed by the Departmental Purchase Committee warranting interference and the writ petition is dismissed accordingly.

(Jyoti Saran, J)

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