

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14657 of 2016

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Binod Kumar Singh son of Late Arjun Prasad Singh of Village- Ahmadpure, P.O.- Ahmadpure, P.S.- Sarairanjan, District- Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar through Principle Secretary, Department Food and Civil Supplies, Government of Bihar.
2. The Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Khadhya Bhawan, Daroga Rai Path, R.Block, Road No-2, Patna-01.
3. The Deputy in Chief, Parivahan Department of Bihar State Food and Civil Supplies Corporation Limited, Khadya Bhawan, Daroga Rai Patha, R Block, Road, No.2, Patna-01.
4. The District Magistrate-cum-Chairman District Transport Committee Samastipur.
5. The Deputy Development Commissioner, District- Samastipur.
6. The Additional Collector, District- Samastipur.
7. The District Transport Officer, District- Samastipur.
8. The District Manager, Bihar State Food and Civil Supplies Corporation Limited, District- Samastipur.
9. Sri Pankaj Kumar, Vill- Shahpur, Post- Bhorejal Ram, P.S. Khanpur, District Samastipur.
10. Sri Manoj Kumar Thakur Vill- Nandani Post- Siwaisingpur, P.S. Town, District- Samastipur.
11. Sri Kulanand Jha Vill- Gopur, Post- Bhagwatpur, P.S. Sarairanjan , Distt Samastipur.
12. Jitendra Jha R/o Vill- Jhakhre , P.S Sarairanjan, Distt Samastipur.
13. Sri Harendra Sah Village & Post- Motipur, P.S. - Tajpur, District Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.A. Narayan, Sr. Adv. Mr. Anirudh Kumar Sinha, Adv.
For the Resp.9, 10, 12, 13 :	:	Mr. P.K. Shahi, Sr. Adv. Mr. Aditya Prakash Sahay, Adv.
For the Resp. No.11	:	Mr. Anil Kr. Sinha, Adv. Mr. Ankit Katriyar, Adv.
For the BSFC	:	Mr. Prabhat Kr. Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 28-06-2017

Heard learned counsel for the parties.

In the present case, the petitioner is challenging the order



dated 12.8.2016 (Annexure-5) passed by the Deputy Chief of Transport, thereby informing to the petitioner that he has not satisfied the condition with respect to the category of own vehicle should not be more than 50% Tractor and, on that account, the tender of the petitioner was rejected.

The Bihar State Food and Civil Supplies Corporation (hereinafter to be referred to as 'the Corporation') invited tender for selection and empanelment of Transportation cum handling & Delivery Agent published in the Hindi Newspaper "Prabhat Khabar" on 23.5.2016 for the Samastipur and other districts. In terms of the schedule, the pre-bid meeting was conducted on 3.6.2016, wherein, all applicants participated, were explained the conditions along with other points, it has been clarified with regard to Clause No. 9(ix) and 11(xii) of the terms and conditions and Clause 13 & 14 of the checklist of the tender for cross verification of the tender document. After pre-bid meeting, the petitioner purchased the document, dropped his sealed cover tender on 3.6.2016. In terms of fixed schedule of date, the technical and financial bid was to be opened on 14.6.2016 at 4 PM but, the District Magistrate, Samastipur, vide letter dated 24.8.2016 (Annexure-8), requested all the tenderers to remain present on 29.8.2016 at 1 PM for opening of sealed tender and selection of Contractor. The petitioner did not satisfy the condition of



technical bid and, as such, the financial bid of the petitioner was not opened and, after proper scrutiny, the tender was finalized, Transportation cum Handling & Delivery Agents were selected, were directed to execute the agreement within fifteen days, whereafter, all the selected contractors had entered into the agreement with the Corporation. The petitioner was informed by the Deputy Chief of Transport that as he could not satisfy the condition of technical bid of the condition of not having more than 50% of the tractor under the category of owned vehicle, was not found eligible to remain in fray in financial bid for the selection of transporting and handling agent, which is under challenge.

Learned counsel for the petitioner submits that rejection is per-se illegal as in terms of the NIT, Clause (ix) stipulates two categories of vehicles, namely, the self-owned vehicle would be 5 and the hired vehicle would be 30, in both the categories, same class of vehicle was required as pickup van/407/mini truck/Tractor, in the category of self owned vehicle, the vehicle must be registered in the name of bidder or their family members with up-to-date tax token, road permit duly certified by the Transport Officer and similar conditions are also mentioned with respect to hired vehicle but, singular term and condition has been stipulated, number of tractor would not be more than 50% of the total number of small vehicles.



Learned counsel for the petitioner submits that the formation of opinion of the Deputy Chief of Transport with respect to number of tractor should not be more than 50% under the category of own vehicle is completely a wrong interpretation, has been offered by them is under challenge, is completely misconceived and misdirected as ceiling of 50% is applicable in the total number of vehicle, ceiling 50% cannot be made applicable relating to the self owned vehicle. He has further submitted that the Clause 13 and 14 of the check list will not supersede and control the main clause of the NIT and even under Clause 13, which stipulates about the self-owned vehicle, ceiling has been made of tractor up to 50% but pointed out the difference in Clause 13 and 14 as Clause 13 deals with the ceiling in private owned vehicle is 50% whereas Clause 14 relates to the hired vehicle, does not stipulate such condition. It has further been argued that Clause 11(xii) stipulates that tender paper not accompanied with all the schedule/annexure documents with details of check list will be liable for rejection. It only talks about the check list and documents not as per the check list will entail rejection of the tender. It has further been argued that Clause 9(ix) is very much clear in the sense that only classification of categories have been made but condition of 50% tractor is applicable to total number of vehicles as is clear from NIT but 50% of the tractor in each category not applicable i.e. self owned



tractor and hired tractor. In the present case, the petitioner has offered 50% of total number of vehicle though he has given the details of owned tractors. Now when no such condition has been incorporated in the NIT which is very much clear, the formation of opinion by the Deputy Chief of Transport rejecting his tender on technical bid for appointment of transporting and handling agent is completely not sustainable, misconceived and liable to be interfered with. It has further been argued that this Court vide order dated 9.9.2016 has passed order of stay of letter dated 30.8.2016 (Annexure-11) which reflect the name of handling and transporting agent were invited to execute the agreement after complying the condition within fifteen days, thereby he has tried to derive home that even after order of this Court, they have ignored and flouted the stay order of this Court amounts to commission of contempt of Court. He has also placed reliance on the letter dated 5.8.2016 (Annexure-4) issued by the District Magistrate, Samastipur which itself shows confusion prevailing with respect to ceiling of 50% tractor under the category of own vehicle. He has also placed reliance on the letter dated 10.9.2016 (Annexure12) of District Manager selected Contractor does not fulfill the condition. He has also placed reliance on the letter dated 4.10.2016 (Annexure-13) for flouting the order of stay by the District Manager, Samastipur. He has further argued that the power of



interpretation of terms of agreement does not lie with the Chairman cum Managing Director of the Corporation as Clause 13 (xiv) specifically mentions in the event of dispute, the decision of the Corporation shall be final. That stipulation made in the check list of NIT will not govern and control the main clause of conditions mentioned in the NIT. It has further been argued that if the provisions are clear and unambiguous, the marginal note of the statutory provision does not guide and control the main part of statutory provision. In a situation of ambiguity, the marginal notes of Section plays a vital role in explaining the provision of Section. He has placed reliance on the two judgments of the Supreme Court in the case of *Bhinka & Ors. Vs. Charan Singh* reported in AIR 1959 SC 960, Para-15 and in the case of *Western India Theatres Ltd. Vs. Municipal Corporation of the City of Poona* reported in 1959 SC 586, Para-7.

Learned counsel for the respondents have argued that the interpretation which has been offered by the petitioner is completely misconceived as Clause 9 (ix) along with checklist itself stipulates the percentage of tractor furnished by the contractor will equally be applicable with respect to own vehicle. It makes it very clear that 50% ceiling will be applicable to both the categories not in sum total number of vehicles. It has further been argued that while interpreting the deed or document, it should be read whole, each part of the deed



plays an important part of role, it has further argued that while interpreting the deed, intention of writer is gathered reading each part of the deed. In the present case, the checklist is part of the NIT which explains and prescribes ceiling of tractor under own category will not be more than 50%. The NIT has to be read in a composite manner not in isolation of each part of the NIT. It has further been argued that before opening the technical and financial bid, all the contractors were called, they were explained conditions of NIT in the pre-bid meeting in which the petitioner has also participated which has been mentioned in the writ application itself shows that the guideline explained to all Contractors ceiling of tractor under the category of personal vehicle and the hired vehicle will not be more than 50% of the tractor. This condition is mandatorily required, if there was any confusion, the petitioner should have sought for clarification but, knowing it well, the petitioner dropped the sealed tender, as the condition was not satisfied led to rejection of the technical bid and in support of his submission, he has placed reliance in the case of *Laxmi Sales Corpn. Vs. Bolangir Trading Co. & Ors.* reported in 2005 (3) SCC 157 Para 11 & 12 wherein the Hon'ble Supreme Court has said that even the checklist is the part of the NIT and if the documents were not filed which is mandatorily required, in case of failure of attachment of necessary document, that will certainly will lead to rejection of the



tender. In the present case, the petitioner did not maintain 50% ceiling of tractor with respect to own vehicle, rightly the action has been taken.

In view of the aforementioned rival contentions, this case is primarily dependent on the manner the NIT would be read, understood and interpreted and also it has to be examined the role of checklist which is part of the NIT has any bearing for arriving to the finding of ceiling of tractor under own vehicle category, as to whether 50% ceiling of tractor would be applicable to sum total or each category of vehicle.

In reply, learned counsel for the petitioner submits that in terms of the scheduled date provided in the NIT, the petitioner and others were called for pre bid meeting on 3.6.2016 vide letter dated 24.8.2016, and, accordingly, he participated in the meeting but the letter dated 5.8.2016 (Annexure-4) of the District Magistrate, Samastipur itself discloses the confusion was prevailing in the matter of condition of ceiling fixed for tractor not more than 50% with respect to the private owned vehicle. It has further been submitted that the response of the respondents that the pre bid meeting has explained to the petitioner about the fixation of upper limit of 50% of tractor itself is belied from the letter of the District Magistrate, Samastipur. In



such circumstances, Clause 9(ix) makes it abundant clear the percentage of tractor with 50% limit cannot be attached to the private vehicle but it will be only in sum total vehicle, namely, own vehicle and hired vehicle. In that view of the matter, rejection of the tender of the petitioner is per-se illegal and not sustainable in law.

Admittedly, in this case, there was a pre-bid meeting, all the Contractors were called, they have been explained and accordingly, they have dropped the sealed tender. Clause-9 (ix) prescribes two types of vehicle, one is self owned vehicle and the another is a hired vehicle. It will be relevant to quote Clause 9(ix) and 11(xii), 13 & 14 of the checklist which reads as follows:-

"Clause 9(ix) - Self-attested photocopy of Owner book of 05 small vehicles like Pick up van/407/mini truck/Tractor registered in the name of the bidder of her/his/their family members/with up to date tax-token and road permits duly certified by the District Transport Officer of the Concerned District and also self-attested photocopy of insurance, pollution certificates and fitness certificates counter signed by MVI of the district from where vehicle is registered along with original copies of the separate lease/contract agreements on stamp of Rs. 1000/- of 30 (thirty) such small vehicles like pick up van/407/mini truck/Tractor for every vehicle separately. Total number of tractor cannot be more than 50% of total number of small vehicles like pick up van/407/mini truck.

Clause 11 (xii) – Tender paper not accompanied with all the schedules/annexure, documents as detailed at



Checklist (Annexure-), the same shall be liable for rejection.

Sl. No.13 – *Owner book of five small vehicles like- pick up van/407/mini truck/Tractor of the bidder with road permits, up to date tax token, insurance paper, pollution certificates and fitness certificate. (Tractor at most 50%)*

Sl. No. 14 – *30 original copies of Lease/Contract agreements of vehicles on stamp of Rs. 1000/- each."*

For interpreting the document, it has to be decided in what manner the document or contract or NIT has been formulated and arranged the principle of interpretation of statute and statutory provision will akin be applicable or will have to be interpreted in similar manner, while interpreting the document, will be taken into consideration entire document to gather the intention of party and every part of the document would play important and significant role in understanding and in interpreting the different clauses of the document. In order to understand the principle of interpretation, it will be relevant to examine the following judgments; *Sohan Lal Naraindas Vs. Laxmidas Raghunath Gadit* reported in 1971 (1) SCC 276 Para-9, *Delta International Ltd. Vs. Shyam Sundar Gangeriwalla & Anr.* reported in (1999) 4 SCC 545 Para-9 & 10 and in the case of *Union of India Vs. Millenium Mumbai Broadcast (P) Ltd.* reported in 2006 (10) SCC 510.

It will be appropriate to deal with the judgment pressed in service by the petitioner. In the case of Western India



Theatres Limited (supra), the Hon'ble Apex Court was considering the role of marginal note in the section. It has been held that when words of the statutory provisions are clear and unambiguous, the marginal note cannot control the construction of provision or in any manner would influence in interpreting the plain and unambiguous statutory provision. In the said judgment, it has been held, in the first place, the marginal notes cannot influence and control the construction of the language used in the body of the Section, if it is otherwise not clear and ambiguous, the marginal note give light to the intention of legislature, placing reliance on the judgment in the case of Commissioner of Income Tax, Bombay v. Ahmedbhai Umarbhai and Co., Bombay) ([1950] S.C.R. 335 at p. 353.)

In another judgment in the case of Bhinka (supra) wherein the Lord speaking for the court has held as follows:-

"The heading prefixed to sections or sets of sections in some modern statutes are regarded as preambles to those sections. They cannot control the plain words of the statute but they may explain ambiguous words."

If there is any doubt in the interpretation of the words in the section, the heading certainly helps us to resolve that doubt. Unless the person sought to be evicted has title or right to possession, it cannot be said that his possession is in accordance with the provisions of the law for the time being in force. If so, the appellants must establish that the order of the Magistrate issued under the provisions of s. 145 of the Code of Criminal Procedure conferred a title or a right to possession on them.



In the present case, the first of the argument of the petitioner is that the checklist works as a marginal note of the Section and would not go contrary to the main part of the provision of the NIT but, in the present case, this court is of the view that akin to principle of interpretation of the statute will be applicable while interpreting the document, it as has been held in the case of Sohan Lal Gadit (supra) wherein it has been held that intention of the parties to an instrument must be gathered from the terms of the agreement examined in the light of surrounding circumstances. The description given by the parties may be evidence of the intention but is not decisive. Mere use of the words appropriate to the creation of a lease will not preclude the agreement operating as a licence. A recital that the agreement does not create a tenancy is also not decisive. The crucial test in each case is whether the instrument is intended to create or not to create an interest in the property is the subject-matter of the agreement. If it is in fact intended to create an interest in the property, then it is a lease, if it does not, it is a licence. So while interpreting the document, intention derived from the document, plays a significantly an important role and intention has to be gathered on examining the different clauses and residual parts of the document. It is relevant to quote paragraph no.9 of the aforesaid judgment which reads as follows:-



"Intention of the parties to an instrument must be gathered from the terms of the agreement examined in the light of the surrounding circumstances. The description given by the parties may be evidence of the intention but is not decisive. Mere use of the words appropriate to the creation of a lease will not preclude the agreement operating as a licence. A recital that the agreement does not create a tenancy is also not decisive. The crucial test in each case is whether the instrument is intended to create or not to create an interest in the property the subject matter of the agreement. If it is in fact intended to create an interest in the property it is a lease, if it does not, it is a licence. In determining whether the agreement creates a lease or a licence the test of exclusive possession, though not decisive, is of significance. Mrs. M. N. Clubwala v. Fida Hussain Saheb and Ors(AIR 1965 SC 610)"

In the case of Delta International Ltd. (supra) while the proposition has been made while interpreting the contract of agreement, the intention of the parties plays an important role and when the terms of agreement are vague or having double intendment one which is lawful will be preferred. It has been held that the intention of the parties plays a dominant role in recycling the different residuary or the clauses of the agreement. It has been held that intention of the parties is the real test for ascertaining the character of a document. It is relevant to quote paragraph nos. 9, 10, 11 and 15 of the aforesaid judgment which reads as follows:-



"9. From the aforesaid submissions it is apparent that the common contention of the learned counsel for both the parties is that the Court has to gather and find out the true 'intention of the parties' as to whether the document creates a lease or license; the dominant intention of the parties is to be gathered from the terms of the document irrespective of the labels that the parties may put upon it. It is to be stated that even though it is the common contention of the learned counsel for the parties that dominant intention of the parties is to be gathered from the document, yet all throughout the question had remained a vexed one, having no easy solution and precise mathematical tests. Because ultimately 'intention of the parties' is to be inferred. For this purpose, we would first refer to the tests laid down by this Court in the case of *Associated Hotels of India Ltd. v. R.N. Kapoor*, [1960] 1 SCR 368 which are relied upon in subsequent decisions. In minority judgment rendered by Subba Rao, J, the Court held that there is a clear distinction between lease and license: the dividing line is clear, though sometimes it becomes very thin or even blurred and observed that for such determination following propositions may be taken as well established ;

"(1) To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form;

(2) The real test is the intention of the parties-Whether they intended to create a lease of a licence;

(3) If the document creates an interest in the property, it is a lease; but if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and

(4) if under the document a party gets exclusive possession of the property, prima facie, he is



considered to be a tenant; but circumstances may be established which negated the intention to create a lease."

10. *Before laying down the aforesaid proposition, the Court held as under-*

"At one time it was thought that the test of exclusive possession was infallible and if a person Was given exclusive possession of a premises, it would conclusively establish that he was a lessee. But there was a change and recent trend of judicial opinion is reflected in Errington v. Errington, wherein Lord Denning reviewing the case law on the subject summarizes the result of his discussion thus at p. 155;

"The result of all these cases is that, although a person who is let into exclusive possession is, prima facie, to be considered to be tenant, nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy."

'The Court of Appeal again in Cobb v. Lane considered the legal position and laid down that the intention of the parties was the real test for ascertaining the character of a document. At p. 1201, Somervell, L. J., stated' :

"... the solution that would seem to have been found is, as one would expect, that it must depend on the intention of the parties."

Denning, L.J., said much to the same effect at p.



1202,

"The question in all these cases is one of intention : Did the circumstances and the conduct of the parties show that all that was intended was that the occupier should have a personal privilege with no interest in the land?"

11. At this stage, it would be worthwhile to quote some more instructive discussion from the case of *Cobb and Another V. Lane*, (1952) 1 All. E.R, 1199 rendered by three learned Judges in their judgments given separately :-

Somervell, L.J, observed ;

"Certainly under the old cases (and I doubt if this has been affected by the modern authorities), if all one finds is that somebody has been in occupation for an indefinite period with no special evidence of how he got there or of any arrangement being made when he went into occupation, it may be that the court will find a tenancy at will. I am assuming that there is no document, or clear evidence as to terms. The modern cases establish that, if there is evidence of the circumstances in which the person claiming to be a tenant at will went into occupation those circumstances must be considered in deciding what the intention of the parties was. "

The learned judge further observed :

"No doubt, in former days, except for the question of the statute, the distinction between a tenancy, whether at will or for a period, and a licence was not so important as it has become since the Rent Restrictions Acts came into



operation. In many cases under those Acts it has a special importance. That fact has led to an examination of the distinction, and the solution that -would seem to have been found is, as one - would expect, that it must depend on the intention of the parties."

Denning, L.J, further observed to the same effect as under :

"Under the old cases there would have been some colour for saying that the brother was a tenant at will, but the old cases can no longer be relied on. Owing to the impact of the [Rent Acts](#), the courts have had to define more precisely the difference between a tenant and a licensee.". ...The question in all these cases is one of intention: Did the circumstances and the conduct of the parties show that all that was intended was that the occupier should have a personal privilege with no interest in the land?"

Delivering concurring judgment, Romer. LJ, further considered the facts and observed :

"She was not a tenant at will, and unless she was, she could not create the tenancy on which the defendant relies. In the absence of a sufficient title or interest in her to carve out or to create a similar tenancy in the defendant, his claim. I say, fails in limine."

15. *Dealing with the contention that intention of the parties is to be determined upon a proper construction of the deed entered into between the parties, and that alone is a decisive matter, the Court dealt with the said contention in paragraph 32 and observed as under : -*

"Indeed learned counsel placed strong reliance



on the following observations by this Court in *Mrs. M.N. Clubwalq V. Fida Hussain*

"Whether an agreement creates between the parties the relationship of landlord and tenant or merely that of licensor and licensee the decisive consideration is the intention of the parties. This intention has to be ascertained on a consideration of all the relevant provisions in the agreement. " (Emphasis supplied)

The proposition of Dr. Chitale as to the conclusiveness of What emanates from the construction of the documents has, in this case, its own limitations. The import, significance and conclusiveness of such documents making, or evidencing, the grants fall to be examined in two distinct contexts. The dispute may arise between the very parties to the written instrument, where on the construction of the deed one party contends that the transaction is a 'licence' and the other that it is a 'lease'. The intention to be gathered from the document read as a whole has, quite obviously, a direct bearing. But in cases where, as here, the landlord alleges that the tenant has sublet the premises and where the tenant, in support of his own defence sets up the plea of a mere licensee and relies upon a deed entered into, inter se, between himself and the alleged licensee, the landlord who is not a party to the deed is not bound by emanates from the construction of the deed. At best, it is a piece of evidence, the weight to be accorded to which will necessarily depend upon all the other



circumstances of the case; The tenant and the subtenant, who jointly set up a plea of licence against the landlord may choose to camouflage the truth and substance of the transaction behind a facade of a self-serving and conveniently drafted instrument."

(emphasis supplied)

The case of Millennium Mumbai Broadcast (supra) is related to submission of certain documents wherein in paragraph no. 31, the court has held that "It is now a well-settled principle of law that a document must be construed having regard to the terms and conditions as well as the nature thereof." (placing reliance in the case of Pearey Lal Vs. Rameshwar Das [AIR 1963 SC 1703] and Administrator of the Specified Undertaking of the Unit Trust of India V. Garware Polyester Ltd. [(2005) 10 SCC 682]).

While understanding and interpreting the document, the intention of the document maker is to cull out having been held in the case of ***V.S. Talwar Vs. Prem Chandra Sharma*** reported in ***AIR 1984 SC 664*** Para-7 and in the case of ***Hind Plastics & Anr. Vs. Collector of Customs, Bombay & Anr.*** reported in ***1994 (5) SCC 167***. It is relevant to quote paragraph no.7 in the case of V.S. Talwar (supra) and paragraph no.17 in the case of Hind Plastics (supra) which reads as follows:-

[AIR 1984 SC 664]

"6. Lord Wensleydale in *Monypenny v. Monypenny* [1861]



9 H.L.C. 114 said:

"the question is not what the parties to a deed may have intended to do by entering into that deed, but what is the meaning of the words used in that deed; a most important distinction in all cases of construction and the disregards of which often leads to erroneous conclusions."

7. Brett, L.J, in *Re Meredith, ex-parte Chick* [1879] 11 Ch. D. 731 observed:

"I am disposed to follow the rule of construction which was laid down by Lord Denman and Baron Parke.... They said that in construing instruments you must have regard not to the presumed intention of the parties, but to the meaning of the words which they have used."

Since we agree with this exposition of the law reference to the oral evidence or even to the tenant's documents would be wholly out of place. The terms of the document if they make any good meaning must be given effect to."

[1994 (5) SCC 167]

*"17. In this connection, it is well to remind ourselves that every instrument, statutory or otherwise, has to be so interpreted as to accord with the intention of its maker having regard to the language used. True, one cannot ignore the actual words used and go after the supposed intention of the maker as pointed out in *Hansraj Gordhandas v. H.H. Dave, Assistant Collector of Central Excise and Customs*⁵ since that would amount to entering the arena of speculation but all the same the principle is unexceptionable that whether it is statute,*



statutory instrument or an ordinary instrument, the interpretation placed has to accord with the intention of the maker as evidenced by the words/language used. The decision in Hansraj Gordhandas⁵ does not lay down any contrary proposition."

As per learned counsel for the respondents, while interpreting the document the checklist attached with the NIT will be treated to be form part of the NIT and if the checklist provide certain condition with respect to owned vehicle, failure to comply the condition mentioned in the checklist, will lead to rejection of the tender and in the case of Laxmi Sales Corporation (supra) also, the same question arose that the documents were not attached as per the checklist, was treated to be for part of the NIT, in failure to attach the latest profit and loss account duly certified by the Chartered Accountant led to rejection of the tender and the Hon'ble Supreme Court has refused to entertain the submission that the documents mentioned in the checklist were not required to be attached. This judgment itself indicates that the checklist attached to the NIT form part of the document and instruction mentioned therein was to be carried out.

In the present case, Clause 9(ix) of the NIT of-course indicates that total number of tractor cannot be more than 50% of the



total number of small vehicles. Under Clause 9(ix), two categories of the vehicles have been incorporated, first category of vehicles were itself self owned vehicle and number should be 5 and hired vehicle which should be 30 in number and thus the total number of vehicles mentioned is 35, Clause 9(ix) does not reflect that the ceiling of 50% will be applicable in both the categories but in Clause 11 (xii) it has been mentioned about the papers to be attached as per checklist and the checklist specifically mentions that the percentage of tractor in category of owned vehicle will not be above 50% of the total vehicles. The NIT has to be understood and give proper interpretations, it cannot be read in separation and in isolation but has to be read in homogeneously and in composite manner and each part plays its role in understanding the true meaning and intention ingrained therein. In my consideration the checklist is part of NIT which makes it clear, what would be the percentage of Tractor. The claim that he had attended the pre bid meeting where sheer confusion was prevailing is apparent from the letter of the District Magistrate, the parties were not explained percentage of ceiling of tractor with respect to privately owned vehicle. It also appears that except the petitioner, no one has objected that they had not understood the contents of the NIT and were under confusion. In the entire writ application, the petitioner has not stated that he does possess higher number percentage of other



vehicles than the tractor. He has furnished details of number of vehicles under the category of own vehicle indicates the percentage of tractor is more than 50% of the vehicle.

In that view of the matter, the contention of the petitioner that the checklist cannot be treated to be part of agreement and would not play any role in explaining Clause 9(ix) of the NIT is not accepted as the checklist is also a part of the contract, makes it clear the ceiling of percentage of tractor with respect to own vehicle category.

Accordingly, this Court does not find any merit in this case and the same is dismissed.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.07.2017
Transmission Date	NA

