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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4737 OF 2017

United Tectsa ...Petitioner
vs.
State of Maharashtra & Ors. ...Respondents

Mr.Vikram A. Sathaye I/b Ms Yogita M. Deshmukh for the Petitioner
Mr.Y.S.Khochare, AGP for the respondent-State

CORAM : A.S.OKA, &
M.S.SANKLECHA, JJ.
DATE : MARCH 28, 2019

P.C.:

1 Heard the learned counsel for the petitioner. The only substantive prayer in this petition is prayer clause (A) which reads thus:

> “(A) this Hon'ble Court be pleased to issue a Writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, thereby directing the Respondent No.2 to issue necessary `C Forms' in respect of all the invoices as mentioned in 2 letters dated 5th February 2016 annexed to the Petition.”

2 We have heard the learned counsel for the petitioner on the question whether the second respondent which is a private limited company is

State within a meaning of Article 12 of the Constitution of India. The learned counsel for the petitioner relied upon the decisions of the Apex Court in the case of Ajay Hasia etc. vs. Khalid Mujib Sehravardi and others[1] and D.S.Veer Ranji vs. CIBA Speciality Chemicals (I) Ltd. And others[2]. He also invited our attention to the averments made in the petition.

3 It is pointed in the petition that in the year 2008-2009, the State of Bihar decided to implement a scheme known as “Mahatma Gandhi Rashtriya Gramin Rojgar Guarantee Scheme” through the Bihar State Electronic Development Corporation Limited. The said Corporation invited bids. The case made out in the petition is that the petitioner’s parent company Anil Printers Limited and the second respondent in consortium along with a proprietary concern in South Africa offered a successful bid on the basis of which an agreement was executed by the parent company of the petitioner, the second respondent private limited company and the said firm from South Africa on one hand and the Bihar State Electronics Development Corporation Limited. The said agreement provided that the parties were entitled to sublet the contract to a third party. It is contended by the petitioner that manufacturing of smart cards was a part of the work under the scheme. The second respondent entrusted the said work to the petitioner by taking advantage of clause 28.1 of the said

1 AIR 1981 SC 487
2 AIR 2005 SC 3202

agreement. It is his contention that in case of certain transactions `C' forms under section 8(4) of the Central Sales Tax Act were not issued by the second respondent and to the rest of invoices, forms were issued.

4 Going by the averments made in the petition, the second respondent is a Contractor appointed by the said Corporation which is a part of consortium of the petitioner's parent company and the said firm of South Africa. The petitioner is merely a sub-contractor appointed by the second respondent company. Therefore, taking the case as pleaded in the petition as correct, it is impossible to accept the contention that the second respondent which is a private limited company is an agency or instrumentality of the State or that it was entrusted with any public duty. Therefore, the second respondent which is a private limited company cannot be held to be a State within the meaning of Article 12 of the Constitution of India.

5 The learned counsel for the petitioner relied upon the consent order passed on 6th February 2018 by the Division Bench of this Court in Writ Petition (L) 266 of 2018 and prayed that an order in terms of clause 3 of the said order be issued.

6 Firstly in Writ Petition (L) No.266 of 2018 there was a challenge to the order passed by the Maharashtra Sales Tax Tribunal. Secondly, the said

order is a consent order.

7 Suffice it to say that the second respondent not being a State within the meaning of Article 12 of the Constitution of India, a writ of mandamus cannot be issued against the second respondent. Only on this ground,we decline to entertain this petition under Article 226 of the Constitution of India. Writ Petition is disposed of.

8 We make it clear that if any statutory authority has power to compel the second respondent to issue `C' forms, the petitioner can always adopt appropriate remedy in that behalf.

(M.S.SANKLECHA,J.) (A.S.OKA,J.)