
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**CASE COMMENT: NEW HORIZONS LIMITED AND ORS. VS.
UNION OF INDIA (UOI) AND ORS.**- Nandani¹**INTRODUCTION**

This case pertains to the time of the 19th century when telephones were the primary source of communication. It was an instrument designed for the transmission and reception of the human voice simultaneously. At that time, the government printed and supplied telephone directories at its own expense. A telephone directory was a book listing people's names, addresses, and telephone numbers in a specific geographical area. Its purpose was basically to supply the title to the telephonesubscribers.

But now, due to modernization and globalization, it has become a revenue medium for the government. This is possible because those concerned with industrial and commercial areas use it as a medium of advertisement.

A distinct 'Yellow Pages' section devoted exclusively to advertisements is contained in the directory. Yellow Pages have been a valuable resource for consumers. It provides a centralized source of information about local businesses. Today, many Yellow Pages directories are available in diverse formats, particularly the online version of the Yellow Pages, as more and more people use the internet to find the information they need.

The person who tackles the task of printing directories procures the advertisement for the private parties, collects the amount for the same, and, in return, supplies the prescribed number of guides for free.² He also presents a certain amount of his income to the state from these advertisements.

The contract of printing and publishing telephone directories is awarded by inviting tenders and selecting the suitable offer among received tenders. Various companies and organizations issue a formal document to ask contractors or suppliers to submit a bid for a

¹ Student at Central University of South Bihar

²Casemine, <https://www.casemine.com/judgement/in/5609acb3e4b014971140f7b8>, last visited on December 2, 2023

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project.

ANALYSIS OF FACTS OF THE CASE

On April 22, 1993, Telecommunication, Telecom District, Hyderabad, advertised in various newspapers. The purpose was to invite the sealed tenders on account of printing, binding, and supplying several telecom directories in English for three annual issues commencing from 1993.

The tenderer was required to supply the telephone directories to the general manager of Hyderabad Telecommunications free of cost. It was mentioned in the advertisement that the successful tenderer would be permitted to acquire classified advertisements and the cover page of the advertisement on his own. In the said advertisement, it was explicitly mentioned that:

- The tenderer should have experience in assembling, printing and supplying telephone directories to large telephone systems with a capacity of more than 50,000 lines. They have to submit copies of the document with the help of which they can prove their experience. The tenderer should also furnish testimonials in this field.
- The tenderer should intimate the equipment, the list of machines, and the locations available with him that he would employ for carrying out this work if selected while submitting the tender.
- The tenderer was required to set aside a sum of Rs. 5,00,000 through a non-refundable earnest money deposit.
- After the input material is handed over to the tenderer, he should forward a memorandum furnishing turnout details and the time required to complete the job.
- The tender had to be submitted by May 14, 1993.

Five people submitted their tenders offering different royalty amounts.³ The tenders were opened on May 14, 1993, at 3.30 p.m. The royalty amount provided by the five tenderers was:

Name of the Tenderer	Agreed amount offered as Royalty		
	1993 Issue	1994 Issue	1995 Issue

³Lextechsuite, <https://lextechsuite.com/New-Horizons-Limited-Versus-Union-of-India-1994-11-09> , last visited on December 10, 2023

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1. SESA Seat Information System Ltd., Pune	41	121	151
2. M&N Publications Ltd., Bangalore	20	30	45
3. New Horizon Ltd., New Delhi	39	129.30	291.60
4. Hyder Media Information Services Pvt. Ltd. Bangalore.	6	45	72
5. Kaljothi Process Pvt. Ltd., Hyderabad	102	138	160

The Offer of M&N Publications Ltd., Bangalore, was accepted. The Tender Evaluation Committee considered this.

The Assistant General Manager of the Telecommunication Department, Hyderabad, in his letter dated August 3, 1993, informed New Horizon Ltd. that its offer could not be considered—however, the letter needed to indicate the reason for not considering the offer.

As a result, the appellant, i.e., New Horizon Ltd., filed a writ petition in the Delhi High Court under Articles 226 and 227 of the Indian Constitution seeking a remedy. In the counter-affidavit filed in reply to the said writ petition filed by the appellant, there as on for non-consideration of the offer of New Horizon Ltd. was disclosed.⁴

It was stated that the offer of NHL was not considered because the appellants needed to submit evidence to show that they have, in their name, undertaken compiling, printing, and supplying telephone directories for large telephone systems with the capacity of more than 50,000 lines.⁵ The company has nothing to show they have any experience printing or publishing such telephone directories. So, due to failure on the part of the company to fulfill the criteria mentioned in the advertisement, they are responsible for such non-consideration.

LEGAL ISSUES

1. Whether or not the appellant fulfilled the requirements of tender notice to be a successful tenderer.
2. Can the experience of the shareholder be taken as the company's experience?

⁴Lawyerservices, <https://lawyerservices.in/New-Horizons-Limited-Versus-Union-of-India-1994-11-09>, last visited on November 28, 2023

⁵ MANU/SC/0564/1995

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ARGUMENT ADVANCED

The central question concerning the first issue was raised in the Delhi High Court. On behalf of the appellant, it was argued that New Horizon Ltd is completely eligible and competent to assemble, print, and supply telephone directories, and it fulfills all other criteria as per the invitation of the tender.

It was also observed that the appellant venture doesn't possess any experience in the manufacture or provisions of such a directory. Still, its parent companies have skilled staff and equipment capable of this task. Integrated Information Pvt. Ltd. has extensive experience producing Yellow Pages telephone directories in Singapore. But the High Court negated this, and the writ petition filed by the appellant was dismissed.

On the second issue, the High Court continued to assume that the shareholders of the appellant joint venture had all the experience of compiling and printing telephone directories. Still, the fact that the company was independent of its members must be addressed. So, New Horizon Ltd operated independently of its shareholders.

Upon this observation, the High Court rejected the contention urged on behalf of the appellants regarding the absence of reasons for rejecting the appellant's tender. Further, the appellant appealed in the Supreme Court of India against the Delhi High Court Judgement to seek relief.⁶

ARGUMENT FROM THE APPELLANT SIDE

In his submission to the High Court, Soli Sorabjee, a qualified lawyer appearing for the appellants, stated that the High Court was in error in assessing whether NHL complied with the condition relating to experience set out in the invitation to tender. He also contended that the authorities should have considered the knowledge of the constituents of NHL, a joint venture company duly approved by the Government of India.

New Horizon Ltd is a joint venture company in which 40% of equity shares are owned by Integrated Information Pvt. Ltd. (IIPL), Singapore, and the remaining 60% equity share is held by an Indian group of companies consisting of Thomson Press (India) Limited (TPI), Living Media (India) Limited (LMI), World Media Limited (WML) and Mr. Aroon Purie. The constituent of the joint venture had expertise and experience in publishing yellow page directories and telephone directories and had the necessary resources for that purpose.

⁶Studocu, <https://www.studocu.com/in/document/guru-nanak-dev-university/bachelor-of-law/new-horizon-limited-vs-union-of-india/13221586?origin=home-recent-1> last visited on November 28, 2023

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The appellant's counsel also argued that it was a case in which authorities should have lifted the corporate veil, and if they had done so, their reality would have been known to them. The appellant further argued that the new company, though having persons with experience in the field, has yet to gain experience in its name. In contrast, the original company, which has experience in its name, lacks persons with expertise.

If the Tender Evaluation Committee had adopted this approach and had examined the tender of NHL, it would have found that NHL, being a joint venture, has access to the benefit of the resources and strength of its parent companies as well as to the experience in database management and publishing of its parent group companies.

ARGUMENT FROM RESPONDENT SIDE

The decision delivered by the Delhi High Court was supported by an experienced legal practitioner of respondent M&N Publications Ltd., Shri K.K. Venugopal. The applicant contends that, because it has yet to meet the conditions relating to experience as stated in the invitation to tender, authorities are justified in refusing to look at the appellant's offer.⁷

He also submitted that there is nothing to show that the constituent of the appellant had any experience in supplying telephone directories to large telephone systems with a capacity of more than 50,000 lines, as given in the tender notice.

Further replying to the appellant's questions, the respondent said that the conclusion would be similar even if the matter is approached purely from a legal standpoint. The fact that a corporation is a legal entity independent of its members cannot be disputed that, in law, a company is a legal entity distinct from its members. Since then, this has been followed by the English and British courts in cases like Salomon & Co., which were brought before them through that House of Lords judgment dated 1897.

CRITICAL ANALYSIS OF THE JUDGEMENT

Many things are argued in the court while pronouncing the judgment of this case, including the eligibility of New Horizon Ltd as per invitation of the Tender, Power, and impact of the parent company in the joint venture, and a breach by the Tender Evaluation committee. While discussing these questions, the court also justifies the term Joint Venture and the terms in the advertisement. A company incorporated under the Companies Act with a history of experience may be reorganized due to a merger or merger with another company that does

⁷Vlex, <https://vlex.in/vid/new-horizons-limited-and-571756606> last visited on December 1, 2023

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not have such experience. A tender shall be submitted in the name of the reorganized company.

It could not be purported about experience that the experience of the company that 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. In so far as the directory of 1993 is concerned, the process for preparation of Telephone directory has been already commenced. For 1994, it would not be feasible to bring out the guide because, as a result, the department would suffer a massive loss of revenue. And lastly, for 1995, there is sufficient time for the department to award a fresh contract.

The appeal against the judgment and order of the Delhi High Court dated 15-10-1993 in CWPN No. 3837 of 1993 is allowed, the said judgment is set aside, and the Writ Petition No. 3837 of 1993 filed by the appellant is disposed of with the direction that the award of the contract for printing and publishing the telephone directories for Hyderabad for the years 1993, 1994 and 1995 is set aside to the extent it relates to the guide for the year 1995.

RELEVANCE

In this case, New Horizon Ltd. is a joint venture company. Here, knowing what a joint venture is all about is essential.

So, a joint venture is a business arrangement in which two or more businesses combine their resources to fulfill an enumerated goal. All participants shall share this joint venture's profits, losses, and costs.

On a writ petition filed by the appellant in the Supreme Court of India against the decision of the Delhi High Court, the Supreme Court found that the approach from the legal stand point also leads to the conclusion that to consider whether the Appellant venture has the experience as contemplated by the advertisement for inviting tenders dated 22-4-1993, the experience of the constituents of NHL, i.e., the Indian group of companies (TPI, LMI and WML) and the Singapore-based company, (IIPL) has to be taken into consideration.

As per the tender of the appellant, one of its Indian constituents (LMI) had printed and bound the telephone directories of Delhi and Bombay for the years 1992, and its Singapore-based constituent (IIPL) has 25 years of experience in publishing the telephone directories with "yellow pages" in Singapore.

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The Tender Evaluation Committee has ignored the said experience on an erroneous view that the stated experience was not in the name of New Horizon Ltd and that this joint venture still needs to fulfill the conditions about eligibility for the contract award.

The Tender Evaluation Committee has misguided itself about the proper legal position and the terms and conditions prescribed for submitting tenders in the notice. A company incorporated under the Companies Act, having experience, may undergo reorganization by way of merger or amalgamation with another company, and the tender can be submitted in the name of such reorganized company.

REFERRED CASE LAWS

1. Sterling Computers Limited v. M&N Publications Limited and Anr.⁸

In this case, the Court has dealt with the award of such a contract for printing and publishing the telephone directories for Delhi and Bombay.

2. Ramanna Dayaram Shetty v. The International Airport Authority of India⁹

In this case, the SC concluded that a body could be an authority under Article 12, regardless of whether it is a statutory corporation or a registered society, if such a body is a government agency or instrumentality. So, the International Airport Authority of India is a state under Article 12. In this case, a 5-point test was administered by Justice P. N. Bhagwati.

3. Kasturi Lal Lakshmi Reddy v. State of J&K¹⁰

In this case, it was held that a transparent process must award government contracts. The method of inviting tenders ensures a level playing field for competing entities.¹¹

4. Harold Holdsworth & Co. (Wakejeld) Ltd. v. Caddies¹²

In this case, it was argued that the subsidiary companies were separate legal entities, each under the control of its board of directors, and that, in law, the board of the appellant company could not assign any duties to anyone about the management of the subsidiary

⁸ Sterling Computers Limited v. M&N Publications Limited and Anr. AIR1996SC51

⁹ Ramanna Dayaram Shetty v. The International Airport Authority of India (1979) ILLJ217SC

¹⁰ Kasturi Lal Lakshmi Reddy v. State of J&K [1980]3SCR1338

¹¹ SCC Online, [Supreme Court| Procuring medicines only from IMPCL & not from others mentioned under National AYUSH Mission Operational Guidelines is arbitrary | SCC Blog \(sconline.com\)](#) last visited on December 2, 2023

¹² Harold Holdsworth & Co. (Wakejeld) Ltd. v. Caddies (1955) 1 All.E.R. 725

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companies, and that, therefore, the agreement cannot be construed as entitling them to give any such tasks to the respondent.

5. *Juggilal Kamlatpat v. Commissioner of Income Tax*¹³

This case has stated that "in certain exceptional cases, the court is entitled to lift the veil of corporate entity and to pay regard to the economic realities behind the legal facade."

6. *Paharpur Cooling Towers Ltd., v. Banbaigon Refinery and Petrochemicals Ltd.*¹⁴

In this case, the Delhi High Court held that the expression "tenderer should possess such experience" would mean the experience of the tenderer itself and not that of its collaborator.



¹³ *Juggilal Kamlatpat v. Commissioner of Income Tax* [1969]73ITR702(SC)

¹⁴ *Paharpur Cooling Towers Ltd., v. Banbaigon Refinery and Petrochemicals Ltd* AIR1994Delhi322

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