

GAHC010115842022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/241/2022

M/S TECHNO CANADA INC.
THROUGH ITS AUTHORIZED REPRESENTATIVE SHRI ANUPAM
PURKAYASTHA,
HAVING ITS REGD. OFFICE AT 607, CHERITON CRESCENT, EDMONTON,
ALBERTA T6R 2N3, CANADA, LOCAL OFFICE AT C/O. RK CHOUDHARY
AND CO. PUSPALAYA, 1ST FLOOR, TR PHUKAN ROAD, OPP. FORCE
MOTORS, CHOWKIDHINGEE DIBRUGARH-786001, ASSAM.

VERSUS

OIL INDIA LTD. AND 2 ORS.
THROUGH ITS CMD SHRI SUSHIL CHANDRA MISHRA, A GOVT. OF INDIA
ENTERPRISE HAVING ITS REGD. OFFICE AT P.O. DULIAJAN, DIST.
DIBRUGARH, PIN-786604, ASSAM.

2:SHRI G.C DEV CHOUDHARY

EXECUTIVE DIRECTOR
OIL INDIA LTD. P.O. DULIAJAN
DIST. DIBRUGARH
PIN-786604
ASSAM.

3:M/S BVISHAL OIL AND ENERGY LTD.
HAVING ITS REGD. OFFICE AT BSCC HOUSE
OPPOSITE ONGC COLONY HIGHWAY ROAD
PALAVASANA
MEHSANA
PIN-384003
GUJARAT

Advocate for the Petitioner : MR. A DAS

Advocate for the Respondent : SC, OIL

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

JUDGMENT

Date : 11-08-2023

(S.P. Khaund, J)

1. Heard Mr. K.N. Choudhury, learned Senior Counsel for the appellant assisted by learned counsel Mr. A. Das. Also heard Mr. B.D. Das, learned Senior Counsel for respondent No. 3 assisted by learned counsel Mr. B.B. Hussain and heard learned counsel Mr. A. Sarma and Mr. K. Kalita for respondent No. 1.

2. This writ appeal is preferred against the order dated 09.05.2022 passed by the learned Single Judge in connection with WP(C) 5507/2020 dismissing the writ petition preferred by the appellant. The petitioner/appellant is a duly registered company under the company's law, with its registered office in Canada. The company boasts international recognition of dealing in diverse range of quality oil field services across the globe.

3. The Oil India Limited, the Executive Director, OIL and M/s BVishal Oil & Energy Limited are arrayed as respondent Nos. 1, 2 and 3 respectively. On 14.09.2017, a notice of E-Tender No. CDG55746P18 was invited through International Competitive Bids (ICB for short) from competent and experienced

contractors through OIL's E-procurement site for contract work. The type of bidding was online single stage – 2 bid system. The bidders were required to submit both technical bid and price bid through electronic form in the E-procurement portal of the respondent OIL within the stipulated bid closing date and time. In response to the E-Tender (NIET for short) dated 14.09.2017, nine (9) bidders participated in the tender process by offering their bids. The techno/commercial bids were opened on 21.11.2017 and after evaluation of the techno commercial bids, seven (7) bidders were found qualified. The petitioner and the respondent No. 3 were amongst the seven bidders, whose techno commercial bids were accepted. The price bids of all the seven bidders were opened on 11.01.2018, and after evaluation, the respondent No. 3 viz, M/s BVishal Oil and Energy Limited earlier known as M/s Vishal Enterprise emerged as the L1 bidder and Letter of Award (LoA) was issued on 27.01.2018, in favour of the respondent for a total estimated contract cost of US\$ 64,90,251.40.

4. It is averred that the respondent No. 3 while participating in the bidding process projected one M/s 3 & 1 Enterprises De Quincy Louisiana, USA as its technical collaborator and submitted a Completion Certificate dated 03.11.2017 issued from M/s Pintail Oil & Gas Agency (LLC) by one Mr. Robert Perkins as the signatory wherein it was certified that "M/s 3 & 1 Enterprises" located in De Quincy had successfully completed six well test pressures with over 10,000 PSI

in Beauregard and Calcasieu Parishes and the wells completed were: SL 12239/001; WOOD 10H/001, MD 33/011-ALT, AKS PROP/001, FM 6/001 and OWENS/001. Along with the Completion Certificate, the respondent No. 3 had also submitted a Work Order No. CF-15128 dated 10.01.2016 issued by Mr. Robert Perkins.

5. The bone of contention as projected in the writ appeal is that the bid of respondent No. 3 was accepted on face value, without any verification merely on the basis of the afore-mentioned two documents, that is, the Completion Certificate dated 03.11.2017 and the Work Order dated 10.01.2016. The appellant/petitioner has alleged that on the perusal of the Work Order dated 10.01.2016, it was noticed that the Work Order was issued in favour of one 'M/s 3 & 1 Enterprises T&R Inc'. The appellant claims to have learnt about potential fraud committed by the respondent No. 3 from '*Petrowatch*', an English newspaper of Indian Oil Industry, through its issue dated 25.01.2018. The appellant/petitioner suo-moto probed into the authenticity of the documents furnished by respondent No. 3 and garnered evidence proving fabrication of the two documents mentioned hereinabove. The appellant/petitioner contacted the representative of M/s. Pintail Oil & Gas LLC, namely, Mr. Alec Watson to verify the genuineness of the Completion Certificate and the Work Order. In response, Mr. Alec Watson, through email dated 08.03.2018 replied that Mr. Robert Perkins

was neither an officer of M/s. Pintail nor was he authorised to speak on behalf of M/s Pintail. The appellant/petitioner also claims to have obtained incriminating information from a website named *Sonris*.

6. The appellant/petitioner then filed a complaint before the Chairman and Managing Director of OIL on 08.03.2018 alleging fraudulent misrepresentation by the respondent No. 3 and made a request to cancel the contract awarded to the respondent No. 3. Cognizance was taken on the complaint and Independent External Monitors (IEMs) were appointed and the first meeting was held on 12.04.2018. After hearing the appellant and the respondent's representative, it was observed that the respondent OIL appeared to have relied on the claims and documents submitted by respondent No. 3 in respect of the technical collaborator and works completed by them for M/s. Pintail, on face value without any independent due diligence on their part. In the proceeding before the IEMs, the respondent OIL assured that they would seek further clarification in the matter through their Office at Houston, USA. The IEMs advised the respondent OIL to seek confirmation on the authenticity of the claims. In their subsequent meeting, IEM observed on 31.05.2018 that in the event it was established that the documents submitted by the petitioner were forged then the OIL should implement the provisions of Integrity Pact.

7. The appellant has alleged that the company styled as M/s. Pintail Oil & Gas, (LLC) had issued the Work Order dated 10.01.2016 in the name of M/s 3 & 1 Enterprises T&R Inc, the technical collaborator of respondent No. 3 i.e. M/s BVishal Oil & Energy Limited whereas the said M/s. Pintail Oil & Gas, (LLC) had issued the completion certificate dated 03.11.2017 in the name of M/s 3 & 1 Enterprises, a different entity, with separate company number and identity. It is further alleged that M/s 3 & 1 Enterprises T&R Inc was not in existence on 10.01.2016, (the date of issue of Work Order) or on 03.11.2017 (the date of issue of Completion Certificate) as the firm had been dissolved on 21.05.2014. Secondly, the appellant has questioned the veracity of claim of M/s 3 & 1 Enterprises having successfully completed six well tests with pressures with over 10,000 PSI in Beauregard and Calcasieu Parishes, as mentioned in the Completion Certificate filed by the respondent M/s. BVishal with its bid. In this connection, the appellant has submitted the documents obtained from the State Government authorities of Louisiana before the IEMs in order to buttress the theory that majority of the wells had pressure ranging from 100 PSI to 2500 PSI only.

8. Per contra the respondents have submitted that pursuant to the receipt of complaint, hearing was conducted before IEMs on 12.04.2018 wherein the respondent No. 3 company had submitted that OIL sought clarification from

M/s. Pintail Oil & Gas, (LLC), USA. During the proceedings clarification was sought from Mr. Robert Perkins of M/s. Pintail Oil & Gas, (LLC) and he responded vide email dated 17.03.2018 that:-

“Yes Sir, Completion Certificate relates to the Work Order you sent and both the names signify the same party M/s 3 & 1 Enterprises T&R Inc.

Thanks”

9. It is further submitted by the respondent No. 3 that as advised by the IEMs on the previous meeting on 12.04.2018, relevant documents were sought from respondent No. 3 vide letter Ref. No. OIS/62/14/95 dated 16.04.2018 to be submitted on 23.04.2018. The respondent No. 3 vide letter dated 21.02.2018 sought extension of time to present the documents since the same were to be collected from a third party i.e. M/s. Pintail Oil & Gas, (LLC), USA. On being allowed time, the respondent No. 3, vide letter dated 02.05.2018 submitted the documents related to its technical collaborator viz., incorporation certificate along with other details of M/s 3 & 1 Enterprises T&R Inc dated 6 December, 2007 and copy of the article of incorporation of M/s 3 & 1 Enterprises T&R Inc dated 14.11.2011, tax return information along with the Profit & Loss accounts and Balance Sheets of the years 2013, 2014 and 2016 of M/s 3 & 1 Enterprises T&R Inc, bank receipts showing deposit of cheques received from M/s Pintail Oil and Gas LLC by M/s 3 & 1 Enterprises T&R Inc etc. The same were forwarded to

the IEMs for consideration vide email dated 07.05.2018.

10. In the proceedings before the IEMs dated 31.05.2018, the IEMs advised the respondent OIL to seek confirmation on the authenticity of the claims made by the respondent No. 3 on the basis of the documents placed before it in an independent manner. The IEMS further advised that *"in the event it is established that the documents submitted by M/s BVishal Oil and Energy Ltd. as alleged by M/s TCI (appellant) then OIL should implement the provisions of integrity pact. In any case OIL must keep the IEMs informed of the final outcome of the case."* Accordingly, steps were taken from the respondent OIL's office in the U.S.A. to ascertain the veracity of the documents submitted by M/s. BVishal. Thereafter, it was informed vide email dated 05.09.2018 from Mr. Austin W. Brister, engaged on behalf of the respondent OIL, who in turn received information from Lawyers of M/s Pintail Oil & Gas (LLC), that Robert Perkins does not have general authority to issue Completion Certificate on behalf of M/s Pintail Oil & Gas (LLC). This communication received from USA was forwarded to respondent No. 3. Vide letter reference No. OIL/CONT/V/3544/2089-90 dated 06.11.2018 an explanation/clarification with documentary evidence was sought regarding the impugned Completion Certificate and Work Experience Certificate submitted under the tender. Repeated reminders were sent to respondent No. 3 to clarify the anomalies relating to the Completion Certificate, Work Experience

Certificate submitted under the tender, and the doubts raised upon the authority of Mr. Robert Perkins with documentary evidence. Pursuant thereof, response was received from respondent No. 3 vide their letter dated 12.12.2018 clarifying and substantiating with multiple documents that the allegation that "Mr. Robert Perkins is not an officer of M/s. Pintail" has been negated. Additionally letter dated 16.02.2015, mentioning job responsibilities of Mr. Robert Perkins clearly indicate that he is overall in-charge of the field and is authorised to review and approve the work to be awarded to contractors and is also authorised to sign required documents related to work. Further, an email dated 14.10.2015 from Brandy (M/s 3 & 1 Enterprises) to Robert (Pintail) for the execution of the MSA has confirmed that M/s 3 & 1 has been hired for the execution of the contract. The VP-operations of Pintail OIL, Mr Jonathan Wells has confirmed that the Completion Certificate was issued to M/s. 3 & 1 Enterprises which clearly indicates that Robert Perkins was authorised to sign the completion certificate.

11. The issue was deliberated again in the Local Management Committee (LMC) meeting of the OIL on 27.12.2018 and after a threadbare deliberation and scrutiny of the documents submitted by respondent No. 3, a decision was taken to forward the responses received from OIL's Houston Office to the IEMs for their opinion. While forwarding the documents on 08.02.2019, the LMC had also opined that the "(i) responses/documents met the requirements of the

tender; and (ii) M/s BVishal had been rendering their services satisfactorily against the contract awarded, against the subject tender.

The final opinion of the IEMs dated 06.03.2019 was communicated to the respondent OIL vide email dated 08.03.2019 wherein it was stated that no further meeting of the matter will be conducted since the OIL had acted based on the advice of the IEMs during the hearing.

Submissions

12. It is submitted by the learned counsel for the appellant that the prayer of the appellant was for issuance of the writ of mandamus or writ of similar nature directing the respondent No. 1 OIL to follow the Integrity Pact signed by the respondent No. 2 and to follow its banning policy to disqualify the respondent No. 3 as per terms and conditions of the Integrity Pact of the E- Tender. A prayer was also made for a direction to respondent No. 1 to hold an enquiry against respondent No. 2 and other officials for not conducting a proper enquiry into the fake/fraudulent documents allegedly submitted by the respondent No. 3 and issuance of work order in favour of respondent No. 3. However, at this appellate stage, the prayer has narrowed down to banning the respondent No. 3. The integrity pact envisages an agreement between the prospective bidders and the tendering authority to refrain from resorting to any corrupt practices in

any aspect/stage of a contract. The respondent OIL has a Banning Policy dated 06.01.2017 wherein the Guidelines for appropriate action against erring and defaulting bidders, contractors, suppliers, vendors and service providers are laid down. It is submitted that as per the definitions provided therein "*fraudulent practice*" includes any act committed by a bidder by misrepresenting, misleading/submitting false documents or false information or concealments of facts in order to influence the procurement process. It is contended that the respondent No. 3 misrepresented the technical collaborator in a subterfuged manner. M/s 3&1 Enterprises was masqueraded as M/s 3&1 Enterprises T&R Inc. to procure the contract. An unholy nexus between respondent No. 2 and respondent No. 3 has been indicated through the submissions on behalf of the appellant. It is also submitted by the learned counsel for the appellant that although the respondents have vehemently denied that the technical collaborator has been dubiously misrepresented, yet several anomalies were not properly explained by the respondents. In the hearing of the IEMs the appellant and the respondent's representative were heard and in the first hearing on 12.04.2018, it was observed that the respondent OIL had relied on the claims and documents submitted by respondent No. 3 in respect of the technical collaborator and works completed by them for M/s Pintail, on face value, without any independent or diligence from their part. It was also found that Mr.

Robert Perkins was not an authorized signatory of M/s. Pintail Oil & Gas Agency (LLC) to issue Work Order or Completion Certificate. Again documents were called and a subsequent meeting of the IEM was fixed on 31.05.2018.

13. On the contrary the learned counsel for the respondent No. 3 laid stress in his argument that the appellant had left no stone unturned to bring the respondent No. 3 under the Banning Policy of the respondent OIL in relation to the subject tender. The appellant had filed a complaint dated 08.03.2018 before the Chairman and Managing Director of Oil, Sri Utpal Borah citing all the evidences and requesting the rejection and cancellation of the contract awarded to the respondent No. 3. Immediately, cognizance was taken upon the complainant and independent external monitors (IEMs), Sri Jagmohan Garg, Sri Satyananda Mishra and Rajib Mathu were appointed to look into the complaint of the petitioner company. It is submitted that the IEMs is an authority constituted under the integrity pact of the Central Vigilance Commission (CVC) and it had considered the complaint lodged by the appellant as per procedure. During the first hearing held on 12.04.2018 and subsequent hearing held on 31.05.2018, the evidences were produced and documents were submitted and the respondent No. 3 came out clean. It is submitted that the respondent No. 3 could refute the allegations that the work order dated 10.01.2016 (Annexure-6) and the Completion Certificate dated 03.11.2017 (Annexure-5) by Mr. Robert

Perkins for M/s Pintail Oil & Gas Agency (LLC) was fraudulently procured. It is also submitted that the allegation that 'M/s 3 & 1 Enterprises T & R Inc.' was not in existence on 10.06.2016 has also been refuted. It is also submitted on behalf of the respondents that the allegation of collusiveness between the respondent Oil and the IEMs is preposterous and absurd as the body of IEMs has no relationship with the authorities of the respondent OIL. On 17.03.2018 Mr. Robert Perkins of M/s. Pintail Oil and gas Agency (LLC) responded vide email to the clarification sought by the IEMs and it was submitted by Mr. Robert Perkins that *“the Completion Certificate relates to the work order in question and both the names signify the same party i.e. M/s 3 & 1 Enterprises T&R Inc.”* Thus the allegations that the collaborator M/s 3 & 1 Enterprises T&R Inc. was not in existence on 10.01.2016 has been refuted, fortifying the claim of the respondent No. 3 that the work order dated 10.01.2016 and the Completion Certificate dated 03.11.2017 is genuine.

Consideration of Submissions.

14. It has emerged through the rival contentions that the appellant and the respondent No. 3 were competitive bidders and the respondent No. 1 (representing OIL) floated the NIET. It has also surfaced through the rival submissions that the appellant was not the L2 bidder but he had qualified as the

L3 bidder. It cannot be ignored that when the allegation was made by the appellant that two different entities i.e. M/s 3&1 Enterprises and m/s 3&1 Enterprises T&R Inc. had been masqueraded as the same entity, hearings were conducted by the IEMs. As the appellant had alleged that some anomalies could be unearthed regarding the entity M/s. 3&1 Enterprises, documents and evidence were asked to be produced. The respondent no. 3 produced the evidence to clarify and substantiate its claim regarding the genuineness of Completion Certificate and Work Order. The issue was deliberated in the Local Management Committee (LMC) meeting of the OIL on 27.12.2018 and the LMC, after a detailed deliberation, noted the responses/documents submitted by the respondent No. 3 and a decision was taken to forward them to the IEMs for their opinion. On forwarding the documents on 08.02.2019 the LMC also opined that the responses/documents met the requirements of the tender. The final opinion of the IEMs dated 06.02.2019 was communicated to the respondent OIL by an email dated 08.03.2019 wherein it was stated that no further meeting on the matter will be conducted since the OIL had acted based on the advice of the IEMs during hearing. The reply of Mr. Robert Perkins on 07.03.2018 also clearly reflects that both the names M/s 3 & 2 Enterprises T&R Inc. signify the same party. It is thus palpably clear that the allegation of fraudulent practice was unfounded.

15. It has also been appositely held by the learned Single Judge in WP(C) 5507/2020 that:-

“A lis arising out of contractual matter is also not beyond the purview of judicial review that such purview is limited and the discretionary writ jurisdiction in such matters is to be exercised on sound judicial principles. When in a writ petition there are disputed questions of fact of serious and complex nature requiring appreciation of evidence, both oral and documentary, and for determination of such serious and complex questions of fact, examination of witnesses will be necessary then it may not be convenient to decide such disputes in a proceeding under Article 226 of the Constitution of India and then in such a case, the Court may decline to try a writ petition.”

16. It has been observed by Hon'ble the Supreme Court in *Noble Resources Ltd. vs State of Orissa and another*, reported in (2006) 10 SCC 236 that:-

“Moreover, certain serious disputed questions of fact have arisen for determination. Such disputed questions of facts ordinarily could not have been entertained by the High Court in exercise of its power of judicial review.

Ordinarily, a specific performance of contract would not be enforced by issuing a writ of or in the nature of mandamus, particularly when keeping in view the provisions of the [Specific Relief Act](#), 1963 damages may be an adequate remedy for breach of contract.

The questions as to whether OMC had the available stock of iron ore fines or the only ground to refuse supply thereof was the rise in international prices, are matters which could not have been fully and effectively adjudicated in the writ proceedings. It was difficult for the High to go into the other questions which have been raised before us by the Appellant, namely, the effect of the purported decision of OMC to offer to the Appellant 60,000 MT of 'A' Grade iron ore fines provided the Appellant gave up all other contractual rights which stating the bad faith on the part of OMC. We may, however, notice that although a decision had allegedly been taken by OMC not to supply iron ore fines prior to the expiry of the contractual period, but the same had not been communicated. Its effect has to be determined keeping in view the fact as to whether the Appellant suffered any loss thereby. The reasons for non-supply, we may reiterate, may constitute a breach of contract but having regard to the conduct of the parties, it cannot be said that the same was so arbitrary so as to attract the wrath of [Article 14](#) of the Constitution of

India. Before us also what has been emphasized is the purported breaches of contract by the Respondent. A contention has also been raised by Mr. Desai that keeping in view the facts and circumstances of this case, this Court should mould the relief. We do not intend to do so and leave the parties to raise all contentions before an appropriate forum.

For the reasons aforementioned, we are of the opinion that although the approach of the High Court was not entirely correct, its ultimate decision to refuse to exercise its discretionary jurisdiction cannot be faulted with."

17. In this appeal it has been submitted by both the parties that the duration of the subject tender was for 3 years from the date of commencement of operation with a provision for extension of the contract duration for another 1 year and also with a provision for quantity extension by another 2 (two) units. It is an admitted position that it is in that view of the matter the learned counsel for the respondent has submitted that the prayer regarding cancellation of the

contract work had become redundant and infructuous. The learned counsel for the appellant has also submitted that in such a given situation, he has not pressed the said prayer for cancellation of tender work.

18. This settles the matter. It is thus apparent that a roving enquiry was already made by the respondent authorities. The respondent No. 3 was found to be genuine. It has been fairly submitted that the contract work which was awarded to respondent No. 3 is complete. Moreover subsequent contractual works have been awarded to respondent No. 3. This Court is thus not inclined to

make a roving enquiry into the issues raised by the appellant in this appeal which involve seriously disputed questions of facts. The learned Single Judge, after due appraisal, has rightly observed that this Court cannot enter into the disputed question of facts. We are therefore hesitant to dwell into the facts at this belated stage.

19. This appeal is devoid of merits and is hereby dismissed.

JUDGE CHIEF JUSTICE

Comparing Assistant