

GAHC010179262019



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

Case No. : WP(C)/5518/2019

ARUNJYOTI SAIKIA
S/O- LIKHESWAR CHUTIA, R/O- BANMUKH CHUTIA GAON, P.O.
BANMUKH, DIST- SIVASAGAR- 785640, ASSAM, PH. NO. 6002714791

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF PETROLEUM
AND NATURAL GAS, NEW DELHI

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
DEPTT. OF HOME
DISPUR
GHY-6

3:OIL AND NATURAL GAS CORPORATION LTD.
REGD. OFFICE PANDIT DEENDAYAL UPADHYAYA URJA BHAWAN
5
NELSON MANDELA MARG
VASANT KUNJ
NEW DELHI- 110070
REP. BY ITS CHAIRMAN AND MANAGING DIRECTOR

4:THE CHIEF GENERAL MANAGER
(I/C MATERIAL MANAGEMENT)
ONGC LTD.
ASSAM ASSET
NAZIRA- 785685
ASSAM

5:THE GENERAL MANAGER

(I/C MATEIAL MANAGEMENT)

MATERIAL MANAGEMENT DEPTT. PURCHASE SECTION
CENTRAL STORES
ONGC LTD.
SIVASAGAR
ASSAM
PIN- 785640

6:THE GENERAL MANAGER
(LOGISTICS) OFFICE OF I/C LOGISTICS
LOGISTICS SECTION
ONGC LTD.
SIVASAGAR
ASSAM
PIN- 78564

Advocate for the Petitioner : MR. B D KONWAR SR. ADV.

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

04.01.2023

Heard Shri J. Singh, learned counsel for the petitioner. Also heard Shri K. Gogoi, learned CGC for the Union of India as well as Shri R. Talukdar, learned State Counsel for the State of Assam and Shri GN Sahewalla, learned Senior Counsel assisted by Ms. K. Bhattacharyya, learned counsel for the respondent nos. 3 to 6, Oil and Natural Gas Corporation Limited (ONGC).

2. Considering the dispute in question and the instructions received by the respondents, the writ petition is taken up for disposal at the order stage.
3. The fact projected in the petition is that the petitioner was awarded a contract for providing new Light Motor Vehicles on hire to the ONGC, Assam Asset at Sivasagar and in this connection a notification of the Award dated 14.01.2019 was issued. The

petitioner claims to have purchased one new Light Motor Vehicle and after having it registered had deployed the same to the ONGC in March 2019. The contract was for a period of four years which was from 01.03.2019 to 28.02.2023.

4. There was requirement under the contract to submit a performance security of Rs.1,04,000/- within 15 days from the date of issue of the Award either by Demand Draft or Bank Guarantee. It is the case of the petitioner that a Demand Draft for the said amount bearing No. 004148 dated 29.01.2019 of the Assam Co-Operative Apex Bank Ltd., Sivasagar was submitted. However, the respondent authorities had responded to the same by alleging the Demand Draft to be fake. The petitioner, however admitted the same and submitted a fresh Demand Draft. The grievance of the petitioner is against a letter dated 14.06.2019 by which the Award in question was terminated on the ground of submission of fake financial instrument and was also informed that an amount equal to the security would be recovered out of payments made due to the petitioner.

5. Shri Singh, learned counsel for the petitioner submits that there is no dispute to the fact that the Demand Draft submitted initially was a fake one. However, the illegality had occurred because of the fault of one of the employees of the petitioner and immediately on having informed about the same, a proper Demand Draft dated 23.04.2019 for the same value was tendered. He submits that the mistake being a *bona fide* one and properly explained, there is no occasion to issue the impugned order dated 14.06.2019 terminating the contract. He further submits that it is because of the contract that he had invested a huge amount and had also purchased a new Light Motor Vehicle.

6. Shri K. Gogoi, learned CGC as well as Shri R. Talukdar, learned Government Advocate, Assam submit that the matter is essentially one between the ONGC and the petitioner and therefore, they would not have much to say in this matter. However, both the learned State Counsel submit that this Court being a Court of Equity, fraud

has no role at all and should be deprecated in the strictest term.

7. Shri GN Sahewalla, learned Senior Counsel submits that the explanation put forth by the petitioner is wholly irrelevant as a fraud was sought to be practiced and in fact the Award was already issued vide the order dated 14.06.2019. The subsequent action of the petitioner in tendering his apology on detection of the fraud and furnishing a Demand Draft would not rectify the situation as there cannot be any consideration when fraud is involved.

8. After hearing the learned counsel for the parties and on perusal of the materials on record, this Court is of the opinion that the power exercised under Article 226 of the Constitution of India is essentially a power of Equity wherein the conduct of the parties are of paramount importance. In the instance case, the use of a fake Demand Draft which is the allegation is also admitted. The explanation given on behalf of the petitioner is not at all convincing as simply the petitioner has tried to shift the blame to one of his employee. This Court does not find any illegality in the action impugned in this proceeding by which the contract has been terminated.

9. In view of the above, the writ petition stands dismissed.

JUDGE

Comparing Assistant