

GAHC010232412023



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

Case No. : I.A.(Civil)/3124/2023

THE OIL INDIA LTD.
REP. THE GENERAL MANAGER (CONTRACTS-HEAD OF DEPTT.) OIL INDIA
LIMITED DULIAJAN ASSAM 786602

VERSUS

RAM ASHISH GUPTA
S/O- LT. CHANDRIKA GUPTA, R/O- JAYANAGAR TINIALI, P.O. AND P.S.
DULIAJAN, DIST.- DIBRUGARH (THE SOLE PROPRIETOR OF M/S SHIVA
CONSTRUCTIONS, A SOLE PROPRIETORSHIP CONCERN REGD. WITH OIL)

Advocate for the Petitioner : SC, OIL

Advocate for the Respondent : MR. R B GOHAIN

Linked Case : WP(C)/973/2023

RAM ASHISH GUPTA
S/O- LT. CHANDRIKA GUPTA
R/O- JAYANAGAR TINIALI
P.O. AND P.S. DULIAJAN
DIST.- DIBRUGARH (THE SOLE PROPRIETOR OF M/S SHIVA
CONSTRUCTIONS
A SOLE PROPRIETORSHIP CONCERN REGD. WITH OIL)

VERSUS

THE OIL INDIA LTD. AND 3 ORS.
REP. THE GENERAL MANAGER (CONTRACTS-HEAD OF DEPTT.) OIL INDIA
LIMITED DULIAJAN ASSAM 786602

2:THE SENIOR CONTRACTS OFFICER (OPERATIONS)
CONTRACTS DEPTT.
OIL INDIA LIMITED
GUWAHATI ASSAM
786602

3:M/S A.D. ENTERPRISE
1 NO. DULIAJAN
P.O. ANNDAPARA
DIST.- DIBRUGARH
ASSAM- 786692
4:MR. DEBOJYOTI BORAH
R/O- DULIAJAN
P.O. DULIAJAN
DIST.- DIBRUGARH
ASSAM- 786692

Advocate for : MR. P MAHANTA
Advocate for : SC
OIL appearing for THE OIL INDIA LTD. AND 3 ORS.

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 17-10-2023

Heard Mr. K. Kalita, learned counsel for the applicants. There is no representation on behalf of the opposite party-writ petitioner today on call.

2. When the application was listed previously on 13.10.2023, the same was adjourned till today at the instance of the learned counsel for the opposite party-writ petitioner.

3. Today, Mr. Kalita, learned counsel for the applicants has expressed urgency in the matter. As Mr. Kalita has expressed urgency for taking up the instant

application, consideration, the application is taken up for consideration in the absence of the opposite party-writ petitioner, for the above reason of absence.

4. The instant interlocutory application is preferred by the applicants who are the respondent no. 1 and respondent no. 2 respectively in the connected writ petition, W.P.[C] no. 973/2023, seeking leave for making further allotment of bowsers [tankers] in respect of the contract, which is one of the subject-matters in the connected writ petition. The opposite party as the writ petitioner, has preferred the connected writ petition assailing *inter alia* actions on the part of the applicants-respondent Oil India Limited [OIL] authorities in allotting bowsers [tankers] to other participant bidders, short-listed at the end of a tender process, by issuing Letter of Acceptance [LoA] ignoring the position of the opposite party-writ petitioner in the tender process.

5. The facts leading to the institution of the connected writ petition can be stated, in brief, as under :-

6. The respondent OIL initiated a tender process vide Tender No. CDO4125P20 for 'Hiring of services of 12 KL capacity bowsers [tankers] for transportation of crude oil/condensate from various OIL's Field Locations in Assam fields' for a period of 3 [three] years with a provision of extension by another 1 [one] year [the subject-tender', for short]. The opposite party-writ petitioner was a participant bidder and he is also one of the empanelled vendors of the respondent OIL. The subject-tender was floated on OIL's offered rates basis for hiring of 33 Groups of 12 KL capacity bowser [31 Groups of readily available bowser and 2 Groups of brand-new bowsers] with each Group consisting of 5 [five] nos. of bowsers and thus, the tendered total requirement of bowsers was 165.

7. The selection of successful bidders in the subject-tender was undertaken by a process of Draw of Lots, held on 27.04.2021. After the Draw of Lots, the opposite party-writ petitioner was placed at Serial no. 8 in the category of bidders of readily available bowser and, his position was at Serial no. 32 in respect of bidders of brand new bowser. The opposite party-writ petitioner offered 2 [two] Groups of bowzers in the category of readily available bowzers. After the Draw of Lots, the OIL authorities had found that requirement of bowzers at the relevant point of time, was lesser than the total number of bowzers selected in the Draw of Lots, even after accounting for the projected additional production from the upcoming wells. Accordingly, the matter was discussed with the shortlisted bidders in a Meeting, held on 20.05.2021, and a decision was taken therein to the effect that LoA/Contract would be issued in each Group for 4 [four] nos. of bowzers and in case of future requirements, the 5th bowser would be hired as per priority list.

8. The opposite party-writ petitioner was, in the meantime, served with a Show Cause Notice dated 05.05.2021 whereby it was asked to show cause as to why the opposite party-writ petitioner should not be put on 'Holiday List' of Oil India Limited and be debarred from participating in any future tenders of OIL and also from carrying out any business with OIL during the said period for the reasons assigned therein. By the Show Cause Notice, the petitioner was placed under suspension with immediate effect for a period of 3 [three] months up to 04.08.2021. After receipt of a Reply to the Show Cause Notice dated 16.05.2021 to the Show Cause Notice, the matter was stated to be considered by the Competent Authority of the respondent OIL. It was on 17.05.2021, a Notice for Termination of a Contract bearing no. 61140820 which was then being undertaken by the opposite party-writ petitioner on behalf of the respondent

OIL, was issued on the premise that the petitioner had failed to perform the statutory as well as contractual obligations and to comply with the directive of the statutory authority, warranting termination of the Contract in terms of the clauses contained in the said Contract.

9. The Notice of Termination was followed by an Order dated 14.12.2021 whereby the opposite party-writ petitioner had been placed in *the Holiday List* of the respondent OIL thereby, debarring the opposite party-writ petitioner from entering into contracts for bowzers [tankers] business of the respondent Oil India Limited for a period of 1 [one] month with effect from the date of suspension i.e. 05.05.2021. Apart from assailing [i] the Show Cause Notice dated 05.05.2021; [ii] the Notice of Termination dated 17.05.2021; and [iii] the Order dated 14.12.2021, whereby, the opposite party-writ petitioner was put on *the Holiday List*, the opposite party-writ petitioner has assailed 2 [two] nos. of Allotment Orders, dated 22.10.2022 issued in favour of the respondent no. 3 and the respondent no. 4 impleaded in the writ petition.

10. This Court by Order dated 22.02.2023, while issuing notice to the respondents, had *inter alia* observed to the effect that if during the tenure of the Contract period of the subject-tender, there would be necessity for more bowzers, the allotment should not be given to any third party without taking leave of the Court. By the Order dated 22.02.2023, the opposite party-writ petitioner was also directed to take steps for service of notices upon the respondent no. 3 & the respondent no. 4 in the manner indicated therein. The Office Note dated 11.10.2023 made the connected writ petition, W.P.[C] no. 973/2023, has reflected that no steps for service of notices upon the respondent no. 3 & the respondent no. 4 therein had been taken by the opposite party-writ

petitioner till 11.10.2023.

11. In this interlocutory application, the applicants have averred that Clause 19.8.16 containing Special Conditions of the subject-tender has provided *inter alia* to the effect that the respondent OIL, depending upon the exigency of works, may, from time to time, require the services of additional bowsers [tankers] and as and when such requirement arises, the shortlisted contractors of the subject-tender would be given the offers to place such additional bowsers/tankers at the same rate, terms and conditions of the Contract of the subject-tender. It has been averred in paragraph 2 of the instant interlocutory application that such necessity have been arising from time to time, for deployment of additional bowsers [tankers]. It has been further averred that in the meantime, the User Department has again requested for hiring of additional 4 [four] nos. of Low Wax Crude [LWC] bowsers [tankers] as difficulties are being faced to carry out hot-oil jobs by using the existing 8 [eight] nos. of LWC bowsers due to increased requirement of jobs from assets. It has been further mentioned that as drilling operations at LOC MGM [South Lakwagaon] and LOC MGQ [North Lakwagaon] are nearing completion, the User Department has again requested for hiring of 10 [ten] nos. of additional bowsers for crude evacuation from respective HWSs. It has, thus, been averred that for operation exigency to evacuate crude oil from wells and to fulfill increasing demands of hot oil jobs across the assets, immediate deployment of 14 [fourteen] nos. of bowsers is of utmost necessity. The applicants have further submitted that the opposite party-writ petitioner has, in the meantime, been again put on *the Holiday List* by the Competent Authority in the respondent OIL vide an Order dated 14.09.2023 for a period of 2 [two] years w.e.f. 14.06.2023.

12. With the aforesaid projections that there is immediate necessity for deployment of 14 [fourteen] nos. of bowsers [tankers] for evacuation of crude oil from wells and to fulfill increasing demands of hot oil jobs across assets and the fact that the opposite party-writ petitioner has been put on *the Holiday List* for the period of 2 [two] years w.e.f. 14.06.2023, the applicant by the instant interlocutory application have sought leave to deploy 14 [fourteen] nos. of additional bowsers [tankers] by giving such allotments to the short Contractors, who are already selected in the subject-tender process.

13. In view of the fact situation obtaining in the case in hand, which are already mentioned above, and considering the fact that the opposite party-writ petitioner is currently placed in *the Holiday List* w.e.f. 14.06.2023, the leave sought for by the applicants for deployment of additional 14 [fourteen] nos. of bowsers [tankers] in the afore-stated manner deserves consideration and considering the nature of public element associated with the matter of such deployment of additional bowsers, this Court is of the considered view that such leave is the need of the hour, which should prevail over the interests of the opposite party-writ petitioner. The instant interlocutory application is accordingly allowed. The Court while allowing such leave, has taken note of the fact that in view of placement of the opposite party-writ petitioner in *the Holiday List* it is precluded, at this stage, to get the benefit of such additional deployment.

JUDGE

Comparing Assistant