

GAHC010261722022



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

Case No. : I.A.(Civil)/3787/2022

M/S SULTAN AHMED
GNB ROAD, P.O., P.S. AND DIST.- TINSUKIA, ASSAM. A PROPRIETORSHIP
CONCERN REP. BY ITS PROPRIETOR SULTAN AHMED AGED ABOUT 30
YEARS
, S/O OKIL AZIZ, R/O DHEKIAJURI OVER BRIDGE, SAIBARI, P.O., P.S. AND
DIST.- TINSUKIA, ASSAM.

VERSUS

SK ABIDUL HUSSAIN AND 22 ORS.
S/O ABDUL AZIZ, R/O DESANG GHAT, P.O.-RAJABARI, P.S.-SIVASAGAR,
DIST- SIVASAGAR, ASSAM.

2:INDIAN OIL CORPORATION LTD. (MARKETING DIVISION)
EASTERN REGION OFFICE
REGIONAL CONTRACT SALE
INDIAN OIL BHAWAN
2 GARIAHAT ROAD
(SOUTH)
DHAKURIA
KOLKATA- 700068.

3:THE CHIEF GENERAL MANAGER
INDIAN OIL CORPORATION LTD (MARKETING DIVISION)
EASTERN REGION OFFICES
REGIONAL CONTRACT SALE
INDIAN OIL BHAWAN
2 GARIAHAT ROAD
(SOUTH)
DHAKURIA
KOLKATA-700068

4:INDIAN OIL CORPORATION LTD (MARKETING DIVISION) DIGBOI
TERMINAL
PO-DIGBOI
DIST-TINSUKIA
ASSAM
PIN-786171

5:DISTRICT TRANSPORT OFFICER
KAMRUP (M)
NH BYPASS
BETKUCHI
GUWAHATI- 781035.

6:M/S SHISAM SHAH
MISSION PARA
P.O.-TINSUKIA
DIST- TINSUKIA
ASSAM
PIN-786125

7:M/S A K AND COMPANY
BUDDHA MANDIR ROAD
P.O.-DULIAJAN
DIST- DIBRUGARH
ASSAM
PIN-786602

8:M/S SEKHAR KALITA
SRIPURIA
TINSUKIA
ASSAM
PIN-786125

9:M/S M.K. TRANSPORT
G.N.B. ROAD
TINSUKIA
ASSAM
PIN-786125

10:M/S JOYANTA BARMAN
RUPJYOTI NAGAR
WARD NO-1
GOLAGHAT-785621

11:M/S N.S TRANSPORT
WEST SRIPURIA
P.O.-TINSUKIA
DIST-TINSUKIA

ASSAM
PIN-786125

12:M/S BIPLOB MECH
HATIALI GAON
DIGHOLIA
DIST- DIBRUGARH
ASSAM
PIN-786101

13:SRI HIMANTA HAZARIKA
TENGAKHAT
P.O.-TENGAKHAT
DIST- DIBRUGARH
ASSAM
PIN-786101

14:M/S PUNAM TRANSPORT
L.N.B ROAD
NEAR NEPALI MANDIR
SRIPURIA
P.O.-TINSUKIA
DIST- TINSUKIA
PIN-786125

15:M/S A B C CONSTRUCTION
GOLAI NO. 1
PO- DIGBOI
DIST- TINSUKIA
ASSAM
PIN-786171

16:M/S BAIPALLI GIRIDHAE RAO
BAM HUKUTA
P.O.- DULIAJAN
DIST- DIBRUGARH
ASSAM
PIN-786602

17:M/S JOYDEEP DAS
SAMPRITEE LANE 2 NO. DULIAJAN GAON
P.O.-ANANDAPARA
DIST-DIBRUGARH
ASSAM
PIN-786602

18:M/S TUHIN TRANSPORT
SAI SARI

AT ROAD
DHKIAJURI
TINSUKIA
ASSAM
PIN-786125

19:M/S KAVITA KALITA
LACHIT NAGAR
SRIPURIA
TINSUKIA
ASSAM
PIN-786125

20:M/S PRASAD TRANSPORT
SRIPURIA NEPALI MANDIR
IOC ROAD
TINSUKIA
ASSAM
PIN-786125

21:M/S HARDISH SINGH
HIJUGURI
P.O.-HIJUGURI
DIST-TINSUKIA
ASSAM
PIN-786192

22:M/S BHUJAL GRAM COKE COAL
LEDO TRAP GAON
P.O.-LEDO
DIST-TINSUKIA
ASSAM
PIN-786182

23:DEPUTY CHIEF CONTROLLER OF EXCLUSIVES
GUWAHATI
HOUSE NO. 216
2ND FLOOR
ABOVE IDBI
CHANDMARI
GUWAHATI-781021

Advocate for the Petitioner : MR. P J SAIKIA, SR. ADV

Advocate for the Respondent : SC, I O C

Linked Case : WP(C)/6839/2022

SK. ABIDUL HUSSAIN
S/O ABDUL AZIZ
R/O DESANG GHAT
P.O.-RAJABARI
P.S.-SIVASAGAR
DIST- SIVASAGAR
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REPRESENTED BY THE CHIEF GENERAL MANAGER
INDIA OIL CORPORATION LTD. (MARKETING DIVISION)

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Advocate for : MR. U K NAIR

Advocate for : SC

I O C appearing for INDIAN OIL CORPORATION LTD. AND 22 ORS.

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

14.03.2023

1. Heard Shri P.J. Saikia, learned Senior Counsel assisted by Shri A.K. Gupta, learned counsel for the applicant - respondent no. 4, who by means of this application has prayed for modification / vacation / alteration of the *ex-parte* interim order dated 09.12.2022 passed in the connected WP(C)/6839/2022. Also heard Shri S. Islam, learned counsel for the opposite party / writ petitioner. Shri M.K. Choudhury, learned Senior Counsel assisted by Shri A. Barkataki, learned counsel is present for the IOCL - the Tendering authority whereas the Transport Department is represented by Ms. M.D. Bora, learned Standing Counsel. Shri B. Chakraborty, learned counsel is present for the respondent no. 6 in the writ petition.

2. Before coming to the interim order dated 09.12.2022 which has been sought to be modified, a brief background of the facts may be necessary.

3. A Notice Inviting Tender was issued by the IOCL on 26.02.2022 for hiring of Oil Tankers (70 in numbers). Amongst different categories, there were categories of above 12.00 KL and above 18.00 KL and the vehicles concerning these two categories are the subject matter of this writ petition. There was a stipulation in the contract that new vehicles will get priority and the pattern of offering the vehicles was in the ratio of 2:1 with regard to 12.00 KL and 18.00 KL. It is the case of the applicant - respondent no. 4 that in February, 2022 he had purchased 6 nos. of vehicles and got those fitted with tanks and subsequently registered. It is the further case of the applicant that on 10.03.2022, the Explosive License was granted.

4. Pursuant to the aforesaid NIT dated 26.02.2022, the bid was submitted by the applicant for 6 vehicles on 19.03.2022 in the ratio 4:2. Shri Saikia, the learned Senior Counsel submits that the tender condition also indicated preference in the manner that LoT -1 would be those vehicles meeting the ratio, LoT-2 of those vehicles which do not meet the ratio and LoT-3 of those vehicles only where Chassis of the vehicles have been offered. A further priority would be given to a bidder who offers the maximum numbers of vehicles. It is the case of the applicant -respondent no. 4 that on 31.08.2022, having the offer of the applicant found suitable, it was issued the LoA.

5. It appears that an FIR was lodged in the Digboi Police Station alleging that

so far as Vehicles Nos. AS-01 NC 8865 and AS-01 NC 8861, the Explosive License was issued even before the tank was fitted. On such allegation, the police had seized 3 nos. of vehicles including Vehicle No. AS-01 NC 8864.

6. Shri Saikia, the learned Senior Counsel has submitted that so far as the third vehicle is concerned, at the time of seizure, the authorities were informed by the Fabricator that the tank was not properly fitted for which a Crane had to be utilized to remove the tank and the vehicle was seized thereafter. All these facts were made known by the applicant-respondent no. 4 by way of a complaint whereafter the Court had released all the vehicles and the same were placed with the IOCL and on 11.11.2022, the work order was issued. On 08.12.2022, however, the vehicles of the applicant were not engaged on the ground of pendency of a case and on 09.12.2022 the present interim order has been passed.

7. Shri Saikia, the learned Senior Counsel has submitted that the primary allegations made in the writ petition is that tanks were fitted after issuance of the LoA and so far as the allegation against the respondent no. 6 is concerned, the same was with regard to that the vehicle was not a Oil Tanker but a lorry. In the present writ petition, an order was passed on 25.11.2022 by this Court directing the IOCL to give the details including the copy of the Explosive License, pertaining to the allegations against the respondent nos. 4 & 6 in the writ petition. From the information given by the IOCL, it appears that the allegation against the respondent no. 6 was more or less substantiated only in respect of Oil Tanker bearing Registration No. AS-09 AC 9075. However, based on an observation made by this Court in the interim order dated 09.12.2022,

none of the vehicles of the applicant have been utilized. For ready reference, the observation made in paragraph 7 of the said order dated 09.12.2022 is extracted herein below:

7. "As regards the IOCL for engaging the tanker lorries, we reiterate that apart from the offending vehicles and the contractors who have offered the offending vehicles, all other vehicles as may be permissible under the contract process may be utilized by the IOC for furtherance of their cause, including the vehicles as may be offered by such contractors who are in the waiting list pursuant to the tender process, as well as any other vehicle as may be permissible under the law."

8. It is the submission made on behalf of the applicant that the restriction imposed was only against the offending vehicles and only because use of the expression "contractors", all the vehicles of the applicant have been put outside the purview of utilization by the IOCL. The learned Senior Counsel submits that such interpretation would be an incorrect one as the allegation is against the vehicles and not against any individual.

9. Shri S. Islam, learned counsel for the opposite party / writ petitioner however submits that instead of modifying the interim order, the entire writ petition may be heard as the work in question is hazardous in nature and the allegations which have been made are of serious nature.

10. Shri M.K. Choudhury, learned Senior Counsel appearing on behalf of the IOCL has submitted that the present measure has been taken by the IOCL as an

abundant caution in compliance with the observation made by this Court as extracted above.

11. Having heard the learned counsel for the parties, this Court is of the opinion that while the restraint / embargo put by this Court vide the order dated 09.12.2022 is not interfered with, it is clarified that the said restraint is only with respect to the offending vehicle namely vehicle no. AS-01 NC 8864 which finds mention in paragraph 5 of the aforesaid order. This Court has also been informed that so far as the respondent no. 6 is concerned, the allegation is with respect of Vehicle No. AS-09 AC 9075.

12. In view of the above, the aforesaid order dated 09.12.2022 stands modified by giving liberty to the IOCL to utilize the other vehicles of the applicant-respondent no. 4 as well as the respondent no. 6 in accordance with law.

13. Interlocutory Application accordingly stands disposed of.

JUDGE

Comparing Assistant