

GAHC010264032023



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

Case No. : WA/435/2023

SHREEJI ENGINEERS
HAVING ITS REGISTERED OFFICE AT 401, ABHISHEK APARTMENT, 26/A,
ANANDANAAGR, FATEHPURA, PALDI, AHMEDABAD, GUJARAT, PIN-38007,
REPRESENTED BY ITS ONE OF THE PARTNER SHAH HIREN
NARENDRAKUMAR, S/O NARENDRAKUMAR, AGED ABOUT 48 YEARS,
R/O 401, ABHISEK FLAT, OPPOSITE ANANDANAGAR POST OFFICE,
BHATTHA, PALDI, AHMEDABAD, GUJRAT-380007.

VERSUS

OIL AND NATURAL GAS CORPORATION LTD AND 8 ORS.
HAVING ITS REGISTERED OFFICE AT PLOT NO. 5A-5B NELSON MANDELA
ROAD, VASANT KUNJ, NEW DELHI, SOUTH WEST DELHI-110070,
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR

2:THE EXECUTIVE DIRECTOR
OIL AND NATURAL GAS CORPORATION LIMITED
ASSAM ASSET
NAZIRA
ASSAM-786585

3:THE CHIEF GENERAL MANAGER (MM)-I/C
MATERIAL MANAGEMENT DEPARTMENT
CONTRACT CELL
ASSAM ASSET
ROB-II
FIRST FLOOR
NAZIRA
ASSAM-785685

4:THE SURFACE MANAGAER
OIL AND NATURAL GAS CORPORATION LIMITED

ASSAM ASSET
NAZIRA
ASSAM-785685

5:THE CHIEF VIGILANCE OFFICER
PLOT NO. 5A-5B
NELSON MANDELA MARG
VASANT KUNJ
NEW DELHI-110070

6:M/S S.K. PETRO SERVICES PVT. LTD.
SIVASAGAR
NAND NAGAR PATH
ASSAM TRUNK RD.
SIVASAGAR
ASSAM-785640

7:M/S AANAND ENERGY SERVICES
GANDHINAGAR
PLOT 2712 TINTODA ROAD
VILL-SERTHA
GANDHINAGAR
GUJARAT-382423

8:M/S PETROTECH
SIVASAGAR
MAIN ROAD
WARD NO. 4
NAZIRA
ASSAM-785685

9:M/S RAJU ALI
SIVASAGAR
GELAKY KAL GAON
P.O.-GELAKY
SIVASAGAR
ASSAM
78569

Advocate for the Petitioner : MR B D DAS

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 21.11.2023
(M. R. Pathak, J)

Heard Mr. B. D. Das, learned Senior Counsel assisted by Mr. K. Kalita, learned counsel for the appellant.

2. The authorities in the Oil and Natural Gas Corporation Limited (ONGC), Assam Asset Nazira, on 22.05.2023, published Invitation to Bid (ITB) for "Charter Hiring of Services for 39 Nos. of Chemical Dosing System for Surface Team Nazira, Assam Asset for a period of 3 years (2023-2026)" vide E-Tender No. R16KC23008. The said ITB dated 22.05.2023 was floated by the ONGC, Assam Asset by way of two bid systems, i.e. Technical Bid and Financial/Price Bid.

3. In the said ITB dated 22.05.2023 the date of downloading the Tender document from ONGC e-Procurement site was 23.05.2023 closing date and time for submission of Bids was on 13.06.2023 at 14:00 hours and date and time of opening of Techno Commercial Bids was on 13.06.2023 at 15:00 hours. The appellant herein participated in the said ITB dated 22.05.2023 by submitting their bid documents along with others bidders.

4. On opening of the Techno Commercial bids pursuant to the said ITB dated 22.05.2023 issued by the ONGC, 9 such bidders, including the appellant were found to be technically responsive and they were accordingly shortlisted by the employer of the project ONGC.

5. On 13.11.2023, the respondent in the ONGC by e-mail notified that on 15.11.2023 at 15:30 hours price bids / financial bids of those shortlisted bidders participated in the bid process pursuant to the said E-Tender No. R16KC23008 shall be opened.

6. The appellant, as a petitioner on 14.11.2023 filed a writ petition, being WP(C) No. 6607/2023 and moved the same on 15.11.2023. The learned Single Judge, considering the prayer of the petitioner, on 15.11.2023, passed the following order:

"The petitioner shall take steps in course of the day for service of notice on the respondent Nos. 1k to 5 by registered post with A/D as well as by dasti by routing the process through the Registry of this Court and upon service, an affidavit of service shall be filled prior to the next date of listing.

The prayer for consideration of the interim relief shall be taken on the next returnable date.

The contract, if any, awarded in respect of hereinbefore referred tender process shall be subject to further orders that may be passed by this Court.

Petitioner shall produce a certified copy of this order to the tendering authority to bring this order to the notice of the said authority.

List on 04.01.2023."

7. Accordingly, as directed by the learned Single Judge, the learned counsel for the petitioner informed the respondents in the ONGC about the filing of the said writ petition, WP(C) No. 6607/2023, as well as the order passed therein on 15.11.2023.

8. Thereafter, the respondent ONGC on 15.11.2023 around 03:15 – 03:30 pm through e-mail informed the nine concerned technically responsive shortlisted bidders that opening their Price Bids that was scheduled on 15.11.2023 at 15:30

hours, has been rescheduled on 22.11.2023 at 15:30 hours informing those bidders for their participation in the Price Bid opening relating to the e-Tender No. R16KC23008 by a valid authorization letter.

9. The said petitioner of WP(C) No. 6607/2023 - Shreeji Engineers have now filed this appeal challenging the order dated 15.11.2023, passed by the learned Single Judge in said WP(C) No. 6607/2023.

10. It is contended on behalf of the appellant/writ petitioner that on their representation dated 27.10.2023, the Vigilance Complaint No. VIG01776, dated 03.11.2023, has been registered by the authorities in the ONGC and that though the Court found force in the submission made the learned counsel for the petitioner that on opening of the bid as liberty has been granted to the parties to raise objection and if the result of the objection is not declared before technical evaluation tenders are done, then the petitioner, i.e. the appellant herein, as objected, would suffer immense prejudice. The contention of the appellant herein is that in spite of such observation, the learned Single Judge did not consider to pass any such order postponing the opening of the price bid pertaining to said e-Tender No. R16KC23008 till conclusion of said vigilance enquiry and furnishing of the report of such enquiry to the petitioner. It is also submitted on behalf of the appellant that the opening of the Price Bid can be postponed till such vigilance enquiry is concluded and report is submitted in that regard.

11. From the tender document, annexed with this memo of appeal, we have seen that Clause 38.0 relates to "Representation from the Bidder" and Clause 38.1 of the said bid document provides as follows:

"38.1 The bidder(s) can submit representation(s) if any, in connection with the processing of the tender directly only to the Competent Purchase Authority (CPA) i.e. to Shri Rajesh Tiwary, GGM- Surface Manager, Assam Asset, Nazira."

12. Further, Clause 38.2 of the bid document relates to "Raising Disputes/complaints", which reads as follows:

"38.2 Raising Disputes/ Complaints

Curriculum Vitae of Independent External Monitors (IEMs) are placed permanently on the home page of ONGC's website www.tenders.ongc.co.in. The bidders may raise disputes/complaints, if any, either with the designated Competent Purchase Authority (CPA) in ONGC or with concerned Director of ONGC or directly with the IEM c/o Chief Vigilance Officer, ONGC, Pandit Deen Dayal Upadhyaya Urja Bhawan, 5 Nelson Mandela Marg, Vasant Kunj, New Delhi-110070."

Note:

(i) IEMs would not consider any representation received after the oral submission has already been made by the representing bidder unless some addition documents or clarifications have specifically been sought by IEMs from the representing bidder.

(ii) IEMs would consider only those representations on post contract issues wherein there is an alleged violation of provision of IP.

iii. The name and e-mail IDs of the IEMs appointed in ONGC are as under:

- 1. Sh. Sh. Rishi Kumar Shukla, IPS (Retd.) (rishi_2000in@yahoo.com)*
- 2. Vice Admiral Arun Kumar Bahl (Retd.) (arunkbahl@gamil.com)."*

13. From the Annexures appended to this memo of appeal at Page Nos. 198, 199, 233 & 234 dated 12.07.2023, 18.08.2023, 27.10.2023 & 09.11.2023, respectively, it is seen that those are the communications of the appellant to the authorities who are not specified in the ITB document dated 22.05.2023 involved in the case, particularly, at Clauses 17 and 18 (at page 64 to this memo of appeal) as well as at Clauses 38.1 and 38.2 (at pages 86 and 87 to this memo of appeal).

14. Further, on perusal of the order dated 15.11.2023, passed by the learned Single Judge in WP(C) No. 6607/2023, we have seen that the Court was aware of the fact that on 15.11.2023, at 15.30 hours, the Price Bid was to be opened relating to said E-Tender No. R16KC23008. We have also found that the learned Single Judge considered the submission made by the learned counsel for the appellant before it about the aspects submitted before us and the learned Single Judge accordingly, in its said order dated 15.11.2023, while issuing notice to the respondents in ONGC, also issued notice on the prayer for interim relief fixing the matter on 04.12.2023 with further observation that "*the contract, if any, awarded in respect of hereinbefore referred tender process shall be subject to further orders that may be passed by the this Court.*"

15. Further, from the Annexures appended to this memo of appeal, we have seen that the appellant/petitioner, through its counsel, communicated to the respondents in ONGC in their e-mails, i.e. am_assam@ongc.co.in, vigilance_nzr@ongc.co.in, tiwari_rajeshh@ongc.co.in, gupta_anikr@ongc.co.in, on 15.11.2023, at 03.03 p.m. as well as 03.25 p.m. the scanned copy of the certified copy of the order dated 15.11.2023, passed in said WP(C) No. 6607/2023, for information and necessary action with further communication that hardcopy will be submitted to them subsequently.

16. However, the addresses in which the e-mails, dated 15.11.2023, were forwarded by the appellant/petitioner are not the addresses specified in the bid document with regard to the contact person at Clause 17 as well as the e-mail ID of the Independent External Monitors (IEM), appointed by the ONGC with regard to the said E-Tender, as specified in Clause 38.2 (iii), noted above.

17. Mr. B. D. Das, learned Senior Counsel for the appellant, placed reliance on

the judgment of the Hon'ble Supreme Court in *Afcons Infrastructure Ltd Vs. Nagpur Metro Rail Corporation*, reported in (2016) 16 SCC 818, and another decision of the Delhi High Court in *Sempersol Consultancy Ptv. Ltd Vs. Union of India & Ors.*, reported in 2023 SCC OnLine Del 745. Mr. Das, learned Senior Counsel, also submitted that the hardcopy of the order dated 15.11.2023, passed by the learned Single Judge in WP(C) No. 6607/2023, along with the copy of the writ petition, has also been submitted to the respondents in the ONGC.

18. Thus, from the impugned order dated 15.11.2023, passed by the learned Single Judge in WP(C) No. 6607/2023, it is seen that the Court has given sufficient protection to the appellant/writ petitioner that if the respondents in the ONGC awards any contract in respect of the said e-Tender No. R16KC23008, it will be subject to further orders that may be passed by the Court and that the said matter is fixed on 04.12.2023.

19. For the reasons above, we are of the opinion that the order dated 15.11.2023, passed by the learned Single Judge in WP(C) No. 6607/2023 does not call for any interference as the law is well settled that the Constitutional Courts are concerned with the decision making process that had been arrived at through a valid process and the Constitutional Courts shall interfere only if such decision is challenged and found to be perverse or irrational or arbitrary. In the case in hand, the respondent authorities in the ONGC are yet to take its final decision with regard to the said e-Tender No. R16KC23008 since final Price Bids of those nine shortlisted bidders, including the appellant, have not yet been opened.

20. Considering the above, this writ appeal being devoid of merit, accordingly

stands dismissed.

21. The connected WP(C) No. 6607/2023 be now listed before the appropriate Bench of learned Single Judge on 04.12.2023.

JUDGE

JUDGE

Comparing Assistant