

GAHC010038762024



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

Case No. : WA/65/2024

RUNGTA IRRIGATION LTD
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT, 1956, HAVING ITS OFFICE AT 101, PRAGATI TOWER 26,
RAJENDRA PLACE, NEW DELHI. AND REPRESENTED BY SRI TARUN
MEGOTIA, AGED ABOUT 36 YEARS, EXECUTIVE DIRECTOR OF THE
INSTANT APPELLANT COMPANY

VERSUS

MUKAND POLY PRODUCTS AND 7 ORS
A PARTNERSHIP FIRM REGISTERED UNDER THE PARTNERSHIP ACT 1932
HAVING ITS OFFICE SITUATED AT PLOT NO. 38, BRAHMAPUTRA
INDUSTRIAL PARK, VILLAGE SILA AMINGAON, 781031 DIST KAMRUP M
ASSAM 781031

2:RISHI GUPTA

S/O LATE R.S GUPTA
RESIDENT OF F. A ROAD
KUMARPARA
GUWAHATI 781001 AND ONE OF THE PARTNERS OF THE RES. NO 1

3:UNION OF INDIA
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA. MINISTRY
OF PETROLEUM AND NATURAL GAS SHASTRI BHAWAN
NEW DELHI 110001

4:BHARAT PETROLEUM CORPORATION LIMITED
A GOVT. OF INDIA UNDERTAKING REPRESENTED BY ITS CHAIRMAN
AND MANAGING DIRECTOR
BHARAT BHAWAN
4 AND 6 CARRIIMBHOY ROAD

BALLARD ESTATE
MUMBAI 400001

5:EXECUTIVE DIRECTOR
CENTRAL PROCUREMENT ORGANISATION (MKTG.) BHARAT
PETROLEUM CORPORATION LIMITED
A INSTALLATION
SEWREE FORT ROAD
SEWREE(EAST) MUMBAI 400015

6:THE EXECUTIVE DIRECTOR (PROJECT) GAS BU
BHARAT PETROLEUM COR. LTD. 12TH FLOOR
F WING
MAKER TOWERS
COFEE PARADE
MUMBAI 40005

7:THE PROCUREMENT LEADER
GRADE III
BHARAT PETROLEUM CORPORATION LIMITED
BHARAT BHAWAN
4 AND 6 A INSTALLATION
SEWREE FORT ROAD
SEWREE (EAST)
MUMBAI 400015

8:GENERAL MANAGER (PROJECTS) GAS
BHARAT PETROLEUM CORPORATION LIMITED
A INSTALLATION
SEWREE FORT ROAD
SEWREE (EAST)
MUMBAI 40001

Advocate for the Petitioner : R SARMAH

Advocate for the Respondent : D.Y.S.G.I.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

26/02/2024

(Sanjay Kumar Medhi, J)

Heard Sri A Bhalla, learned counsel appearing for the appellant. Also heard Dr. A Saraf, learned Senior counsel assisted by Mr. N N Dutta, learned counsel appearing for the respondent Nos. 1 & 2 (writ petitioners); Sri K Gogoi, learned CGC appearing for the respondent No. 3 and Sri S Borthakur, learned counsel appearing for the Bharat Petroleum Corporation Limited (BPCL) respondent Nos. 4 to 8.

2. The present intra-Court appeal has been preferred against an order dated 20.02.2024 passed in I.A. (Civil) No. 285/2024 arising out of WP(C) No. 7421/2023.

3. The aforesaid writ petition was filed by the present respondent Nos. 1 & 2 as writ petitioners being aggrieved by an order of blacklisting. The said writ petition was taken up for consideration by the learned Single Judge on 20.12.2023, wherein an observation was made that the prayer for interim order would be considered on the next returnable date, i.e., 05.01.2024.

4. The aforesaid order dated 20.12.2023 was however the subject matter of a writ appeal preferred by the present writ petitioners which was registered as WA No. 471/2023.

5. A Division Bench of this Court vide order dated 21.12.2023 had disposed of the aforesaid appeal, the relevant observation of which is extracted herein below:-

“Further, we find that the prayer for interim will be considered on 05.01.2024. In that view of the matter, this writ appeal is disposed of directing that the bids of the petitioner’s firm will not be rejected on the basis of the order dated 08.12.2023. Further, the petitioners’ firm may also be permitted to submit fresh bids for other works and the order dated 08.12.2023 shall not come in the way of the petitioners’ firm. However, this order shall be subject to the outcome of the decision of the learned Single Judge with regard to the interim order which is to be considered on 05.01.2024.”

6. Thereafter, the matter had come up for consideration before the learned Single Judge on the date fixed, i.e., 05.01.2024.

7. The operative part of the said order dated 05.01.2024 is extracted herein below:-

“Be that as it may, let an affidavit-in-opposition be filed wherein the respondents would be at liberty to take up any preliminary objections questioning the maintainability of the writ petition. Such affidavit may be filed on or before 30.01.2024 and the matter be listed for consideration on 09.02.2024 so as to enable the petitioner to file rejoinder if any. The observations made by the Hon’ble Division Bench would operate till the next date of listing. This Court further makes it clear that so far as the works in which the petitioner has submitted its bid which are the subject matter of the observation of the Hon’ble Division Bench, the authorities may go ahead with the tender process and finalize the same but before allotting the work order, leave is required to be taken from this Court.

Pendency of this writ petition shall not be a bar to consider and dispose of the departmental appeal in accordance with law.”

8. The present appellant claims to be the valid highest bidder in view of the fact that though the financial bid of the writ petitioners was highest, since according to the appellant, the writ petitioner was not even eligible to participate, the bid of the appellant should be considered as the valid highest bidder.

9. Under those circumstances, an application under Order 1 Rule 10(2) of the Code of Civil Procedure was filed for impleadment of the present appellant as respondent No. 7 in the writ petition. A prayer was also made for setting aside the interim order dated 05.01.2024.

10. The learned Single Judge vide the order under appeal dated 20.02.2024 had however rejected the said application. Being aggrieved, the present appeal has been preferred.

11. Sri Bhalla, learned counsel appearing for the appellant, by referring to the relevant observations made by the Division Bench in its order dated 21.12.2023 has submitted that a perusal of the writ petition would reveal that there was no prayer for stalling the present tender process. He submits that even otherwise, a tender process can never be put to halt as that would be against the interest of public. The learned counsel has also submitted that the writ petition was filed by suppression of material facts. He points out that even the order of blacklisting which is the subject matter of the writ petition would reveal that one of the reasons for blacklisting was suppression of material facts.

12. The learned counsel further submits that simultaneously a departmental appeal was filed which was not revealed in the writ petition. He also strenuously contends that on the ground of lack of territorial jurisdiction, the writ petition itself is not maintainable. He, accordingly, submits that to have a fair adjudication, the appellant should be given an opportunity to contest the writ petition and its presence will not cause any prejudice to the parties to the *lis* and would only assist the Court to come to a fair conclusion.

13. Dr. A Saraf, learned Senior counsel for the respondent Nos. 1 & 2 (writ petitioners) however seriously opposes the present appeal. By referring to the impugned order dated 20.02.2024, he submits that while declining the prayer for impleadment, elaborate and cogent reasons have been cited by the learned Single Judge and the present appeal being an intra-Court appeal, this Court should be loath in interfering with such orders unless the same suffers from patent illegality or perversity.

14. As regards the issue of suppression of material facts which has been raised on behalf of the appellant, Dr. Saraf, learned Senior counsel submits that the appellant does not even have the locus to raise such issues on merit and in any case, the said issue has been adequately taken up by the owner-BPCL which would definitely be a part of the consideration by the learned Single Judge. As regards the allegation of preferring a departmental appeal simultaneously with the writ petition, Dr. Saraf, learned Senior counsel submits that though it is a matter of fact that a departmental appeal was indeed preferred, the same would not amount to suppression of material facts as the same would not have any bearing on the adjudication process. He has further submitted that the appeal has, in the meantime, been withdrawn.

15. Reliance has also been placed on a decision of the Hon'ble Supreme Court in the case of *S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others* reported in (2004) 7 SCC 166, wherein a situation of similar nature was there as a suit was filed along with the writ petition. The Hon'ble Supreme Court, however, had held that filing of a suit would not amount to suppression of material facts.

16. The rival submissions have been duly considered.

17. On perusal of the materials on record and the order passed by the learned Single Judge dated 20.02.2024, we are of the opinion that the case of the present appellant was duly considered and the prayer was rejected after citing cogent and adequate reasons. In paragraphs 33 and 34 of the

said order, the reasons assigned are cogent, plausible and acceptable and this appeal, being an intra-Court appeal, the scope of interfering with such order is absolutely limited.

18. The Hon'ble Supreme Court in the case of *Management of Narendra & Co. Pvt. Ltd. Vs. Workmen of Narendra and Co.* reported in (2016) 3 SCC 340 has laid down as follows-

“5. ... Be that as it may, in an intra-court appeal, on a finding of fact, unless the Appellate Bench reaches a conclusion that the finding of the Single Bench is perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order passed by the Single Judge, unless both sides agree for a fairer approach on relief.”

19. We are also been informed that the writ petition itself is slated for final consideration tomorrow, i.e., 27.02.2024.

20. As regards the two principal issues raised, we have also noticed that the issue of territorial jurisdiction is specifically taken up by the BPCL in its affidavit, more particularly, in paragraph 3. The affidavit has also taken up the point of suppression of material facts.

21. We see no reason as to why the learned Single Judge would not deal with those issues which in our view would form preliminary issues before going into the merits of the challenge. We are also of the opinion that if at all the present appellant is aggrieved by any orders finally passed by the learned Single Judge, the appellant would not be precluded in any manner in approaching the appropriate forum for redressal of its grievances. We have also noticed that the interim order of this Court was not the subject matter of any appeal.

22. In view of the aforesaid facts and circumstances, we are of the opinion that no case for interference is made out and accordingly, the writ appeal is dismissed.

JUDGE

JUDGE

Comparing Assistant