

GAHC010126542024



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

Case No. : WA/210/2024

RONGDOI SALES PRIVATE LTD
REPRESENTED BY ITS PROPRIETOR GAURAB GOHAIN, S/O DINESH
RESIDENT OF NAMRUP, DIST DIBRUGARH, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE UNDER SECRETARY TO THE GOVT. OF INDIA,
MINISTRY OF FINANCE, DEPARTMENT OF EXPENDITURE PROCUREMENT
POLICY DIVISION, LOK NAYAK, BHAWAN, NEW DELHI

2:THE DIRECTOR MSME ENTERPRISES
GOVT. OF INDIA
NIRMAN BHAWAN
7TH FLOOR
MAULANA AZAD ROAD

3:THE ADDITIONAL SECRETARY AND DEVELOPMENT COMMISSIONER
MSME ENTERPRISES
NIRMAN BHAWAN
7TH FLOOR
MAULANA AZAD ROAD

4:THE ASSAM PETRO CHEMICAL LIMITED
REPRESENTED BY CHAIRMAN
ASSAM PETRO CHEMICAL LTD. NAMRUP
PO PARBATPUR DIST DIBRUGARH
ASSAM 786623

5:THE CHAIRMAN
ASSAM PETRO CHEMICAL LTD. NAMRUP
PO PARBATPUR DIST DIBRUGARH
ASSAM 786623

6:THE CONTRACT AND PURCHASE DEPARTMENT APL
REPRESENTED BY MANAGING DIRECTOR
ASSAM PETRO CHEMICAL LTD. NAMRUP
PO PARBATPUR DIST DIBRUGARH
ASSAM 786623

7:THE DEPUTY GENERAL MANAGER
CONTRACT AND PURCHASE DEPARTMENT
ASSAM PETRO CHEMICAL LTD. NAMRUP
PO PARBATPUR DIST DIBRUGARH
ASSAM 78662

Advocate for the Petitioner : MR B P BORAH

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

BEFORE
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KARDAK ETE

28.06.2024.

(Vijay Bishnoi, CJ)

This Writ Appeal is filed by the appellant being aggrieved by the order dated 05.06.2024, passed by the learned Single Judge in WP(C) No.2924/2024, whereby the Writ Petition filed by the appellant has been dismissed.

(2) The appellant is a "start up" industry and obtained a certificate of "start up" on 26.02.2024, issued by the Ministry of Commerce and Industry, Department of Promotion of Industry and Internal Trade, Government of India.

(3) The grievance raised by the appellant before the learned Single Judge was that the respondents have issued an Expression of Interest (EOI) on 17.01.2024, for opening dealers for selling of Methanol in bulk quantities from APL, Namrup to North Zone for an initial period of three (3) years. However, in

the EOI, there is no incorporation of relaxation clause for “start ups”, in respect of criteria of prior term over and prior experience, in terms of the Office Memorandum dated 20.06.2019, issued by the Ministry of Finance.

(3) Learned Single Judge has dismissed the Writ Petition while observing that the EOI was issued on 17.01.2024 and the last date of submission of bids in response to the said EOI was 19.02.2024. But the appellant was granted the certificate of “start up” only on 26.02.2024 and therefore, the appellant was not even eligible to file its bid in response to the EOI and therefore, no relief can be granted to it.

(4) Learned counsel for the appellant has argued that even though the certificate of “start up” was issued by the concerned Department in favour of the appellant on 26.02.2024, the appellant has locus to challenge the bid proceedings. In support of the above contention, the learned counsel for the appellant has placed reliance on the decision of the Hon’ble Supreme Court in the case of *Ramana Dayaram Shetty vs. International Airport Authority of India and others*, reported in (1979) 3 SCC 489.

(5) Heard the learned counsel for the parties.

(6) It is to be noticed that the certificate of recognition was issued only on 26.02.2024. It is also to be noticed that the Office of the Registrar of Companies in its letter dated 05.02.2024 specifically clarified that the certificate of recognition is only an approval for availability of name of a proposed company. However, the holder of the certificate of “start up” cannot start business or enter into any agreement, contract, etc. in the name of the proposed company, until and unless the certificate of registration is issued by the Registrar of Companies, as per the provisions of the Companies Act, 2013 and Rules made there under.

(7) Admittedly, the certificate of registration was issued in favour of the appellant to start the company on 21.02.2024 and as such the appellant was not even entitled to submit its bids, in response to the EOI.

(8) So far as the judgment of the Hon'ble Supreme Court on which the learned counsel for the appellant has placed reliance is concerned, the same is quite distinguishable from the facts of this case. In the said case, a person who approached the Hon'ble Supreme Court was precluded from submitting his bids, in response to the tender notice and the authorities concerned have awarded the contract to a party who was ineligible on the date of its consideration. However, in the present case the appellant was not precluded from submission of his bid and it is not its case that contract is awarded to a party who is not qualified. In such circumstances, the said judgment of the Hon'ble Supreme Court has no help to the appellant.

(9) Having argued at length, the learned counsel for the appellant has failed to pursue us to take a different view as has been taken by the learned Single Judge.

(10) Hence, we do not find any merit in the Writ Appeal and the same is accordingly dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant