

GAHC010187112024



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

Case No. : I.A.(Civil)/2803/2024
In WA No.10413/2024 (Filing Number)

1.M/S ALI BROTHERS AND 3 ORS
A PARTNERSHIP FIRM, OFFICE AT DELHI NEAR BONIA BARI MOSZID,
SIVASAGAR, 785640 BEING REPRESENTED BY ITS PARTNER MUKHTABUR
RAHMAN, AGED ABOUT 33 YEARS. SON OF MOTLIB ALI, RESIDENT OF
DHAILI, NEAR BONIA BARI MOSZID, SIVASAGAR, ASSAM 785640

2: M/S P AND G ENTERPRISE
A PARTNERSHIP FIRM HAVING ITS OFFICE AT OLD AMOLAPATTY
SIVASGAR 785640 DIST SIVASAGAR
ASSAM BEING REPRESENTED BY ITS PARTNER GAUTAM KUMAR
PHUKAN AGED ABOUT 52 YEARS
SON OF LATE AKHIL CHANDRA PHUKAN
RESIDENT OF OLD AMOLAPATTY WARD NO. 11
PO AND DIST SIVASAGAR ASSAM

3: AMAR KR. CHOUDHURY
S/O LATE CHANDRA PRASAD CHOUDHURY
PROPRIETOR OF M.S AMAR KR. CHOUDHARY
RESIDENT OF GAJPURIA ROAD
RAJA MAIDAN JORHAT ASSAM 785001

4: SAHABUDDIN AHMED
S/O LATE RUKUNOTDIN
PROPRIETOR OF M/S SHABUDDIN AHMED ALI
RESIDENT OF JENGONIKOTIA TAX ALI
PO SIVASAGAR DIST SIVASAGAR ASSA

VERSUS

1.THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF PETROLEUM AND NATURAL GAS, NEW DELHI

2:THE OIL AND NATURAL GAS CORPORATION LTD.
EASTERN REGION REPRESENTED BY THE E.D.
ASSET MANAGER
P.O.- NAZIRA DISTRICT- SIVASAGAR ASSAM

3:THE CHIEF GENERAL MANAGER
HEAD MM ASSAM ASSET ONGC (L)
NAZIRA ROB-II ASSAM

4:THE INDIAN OIL CORPORATION LIMITED
REPRESENTED BY THE EXECUTIVE DIRECTOR
AO AOD INDIAN OIL BHAWAN
SECTOR-III NEAR FLY OVER NOONMATI
GUWAHATI-781020

5:MAHMUD ALI
S/O- HUNNUR ALI
R/O- VILL- HATIKHUK P.O. DHULIAPAR
P.S. SIVASAGAR DIST.- SIVASAGAR
ASSAM PIN- 78564

Linked Case : I.A.(Civil)/2804/2024

M/S ALI BROTHERS AND 3 ORS
A PARTNERSHIP FIRM
OFFICE AT DELHI NEAR BONIA BARI MOSZID
SIVASAGAR
785640 BEING REPRESENTED BY ITS PARTNER MUKHTABUR RAHMAN
AGED ABOUT 33 YEARS. SON OF MOTLIB ALI
RESIDENT OF DHAILI NEAR BONIA BARI MOSZID
SIVASAGAR ASSAM 785640

2: M/S P AND G ENTERPRISE
A PARTNERSHIP FIRM HAVING ITS OFFICE AT OLD AMOLAPATTY
SIVASGAR 785640 DIST SIVASAGAR
ASSAM BEING REPRESENTED BY ITS PARTNER GAUTAM KUMAR
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P.S. SIVASAGAR DIST.- SIVASAGAR
ASSAM PIN- 785640

For the Applicant(s)	: Mr. P. Bora, Senior Advocate assisted by Mr. B. Sharma, Advocate and Mr. M. Hassan, Advocate.
For the Respondent(s)	: Ms. K. Phukan, Central Government Counsel for respondent No.1.
	: Mr. D. Saikia, Senior Advocate assisted by Mr. A. Singh, Advocate for ONGC/respondent Nos.2 and 3.
	: Mr. M.K. Choudhury, Senior Advocate assisted by Ms. A. Choudhury, Advocate for IOCL/respondent No.4.
	: Mr. L. Dihingia, Advocate for respondent No.5.

– BEFORE –
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

26.09.2024

(Vijay Bishnoi, CJ)

The matters come upon for consideration of the instant Interlocutory Applications [I.A.(Civil) No.2803/2024 and I.A.(Civil) No.2804/2024].

I.A.(Civil) No.2803/2024 is filed by the applicants with a prayer to condone the delay of 47 days in filing the connected writ appeal whereas I.A.(Civil) No.2804/2024 is filed by the applicants seeking leave to file appeal challenging the order dated 20.06.2024 passed by the learned Single Judge in WP(C) No.5870/2023.

It is noticed that WP(C) No.5870/2023 was filed by the writ petitioner/respondent No.5 herein challenging the condition of Clause No.C.2 of the e-Tender Notice No.R16KC23003, issued by the respondent Oil and Natural Gas Corporation Limited (hereinafter to be referred as "respondent ONGC").

The learned Single Judge, on 04.10.2023, having heard the learned counsel for the parties, has ordered for listing the case on 06.10.2023 and has further ordered that till 06.10.2023, the respondent IOCL authorities shall not undertake any further process in terms of the price bid opening statement dated 26.09.2023.

It appears that on the very same day, on 04.10.2023, the respondent ONGC has issued Notifications of Award to 5(five) bidders including the applicants.

The respondent No.5/writ petitioner filed an Interlocutory Application, being I.A. (Civil) No.3252/2023, before the writ court with a prayer to issue direction for cancelling the Notifications of Award dated 04.10.2023 issued by the respondent ONGC to different bidders.

It is also to be noticed that in the said Interlocutory Application as well as pending writ petition, the applicants were not impleaded as party respondents and the

situation remained the same till the aforesaid writ petition, WP(C) No.5870/2023 was decided by this Court on 20.06.2024.

Mr. P. Bora, learned Senior Counsel appearing for the applicants has submitted that the applicants were amongst the bidders in whose favour the Notifications of Award were issued. However, before cancellation of the whole tender process, no opportunity of hearing was granted to the applicants. It is contended that as a matter of fact, the Notifications of Award in favour of the applicants were issued on 04.10.2023 and pursuant to that, the applicants have already provided the 9 KL Water Tankers to the ONGC and the same are in operation till date.

Mr. L. Dihingia, learned counsel appearing for the respondent No.5/writ petitioner has submitted that since the respondent No.5 has challenged the condition of Clause No.C.2 of the NIT in question and has not challenged the Notifications of Award issued in favour of the applicants, the applicants were not made party respondents in the writ petition.

Mr. D. Saikia, learned Senior counsel appearing for the respondent ONGC has submitted that the respondent ONGC was not supposed to implead the applicants as party respondents in the aforesaid writ petition and it was the duty of the writ petitioner to implead the applicants as party respondents in the writ petition when the respondent No.5 was having the information regarding issuance of Notifications of Award in favour of the applicants.

Heard the learned counsel appearing for the parties.

The fact remains that the Notifications of Award were issued in favour of the applicants on 04.10.2023 pursuant to the tender notice issued by the respondent ONGC. The respondent No.5/writ petitioner was aware of the said fact and had also brought the said fact to the notice of the writ court by moving an Interlocutory Application. However, he had not made the applicants as party respondents in the aforesaid writ petition.

The learned Single Judge set aside the tender proceedings vide order dated

20.06.2024 without providing any opportunity of hearing to the applicants, in whose favour the Notifications of Award were issued, supposedly because the respondent No.5/writ petitioner and other respondents did not bring the said fact to the notice of the learned Single Judge.

In view of the above discussion, we are of the view that I.A. (Civil) No.2803/2024 seeking condonation of the delay of 47 days as well as I.A.(C) No.2804/2024 seeking leave to file an appeal against the order dated 20.06.2024 deserves to be allowed. Hence, the present applications are allowed.

Registry is directed to register the connected writ appeal and list the same in the month of ***November, 2024***.

All the respondents in the connected writ appeal, which is yet to be registered, are duly represented through their respective counsel; copy of the writ appeal has also been supplied to them.

In the facts and circumstances noted above, we deem it appropriate to direct the respondent authorities not to discontinue the Notifications of Award issued in favour of the applicants. However, the respondent ONGC authorities are free to proceed further in pursuance to the fresh tender notice dated 19.08.2024 in respect of the other services except the services already being rendered by the applicants.

JUDGE

CHIEF JUSTICE

Comparing Assistant