

GAHC010224362023



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

Case No. : WP(C)/5870/2023

MAHMUD ALI
S/O- HUNNUR ALI, R/O- VILL- HATIKHUK, P.O. DHULIAPAR, P.S.
SIVASAGAR, DIST.- SIVASAGAR, ASSAM, PIN- 785640

VERSUS

THE UNION OF INDIA AND 2 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-78102

Advocate for the Petitioner : MR. L N DIHINGIA

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

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

20.06.2024

1. Heard Mr. K.N. Choudhury, learned Senior Counsel assisted by Mr. L.N. Dihingia, learned counsel for the petitioner. Also heard Mr. G.N. Sahewalla, learned Senior Counsel assisted by Mr. N.A. Sing, learned counsel for the respondent nos.2 & 3. Mr. M.K. Choudhury, learned Senior Counsel assisted by Mr. P. Bhardwaj, learned counsel appears for the respondent no.4, while Mr. S.S. Roy, learned counsel appears for the respondent no.1.

2. The petitioner has prayed for setting aside Clause C.2 of the NIT bearing e-tender no.R16KC23003, wherein it has been stated in the 4th paragraph of Clause C.2 as follows :

“Bidder to note that quoted Basic running rate per KM exclusive of applicable GST should not be less than 0.275 x Diesel rates declared by IOC for Sivasagar as on TBO date.”

3. The case of the petitioner is that the IOCL have not declared a standard rate for their High Speed Diesel (HSD) for Sivasagar on their official basis and on a daily basis.

4. Mr. K.N. Choudhury, learned Senior Counsel for the petitioner submits that from the information gathered, the petitioner could learn that the diesel price declared by the IOC on 06.03.2023 was Rs.89.49 per litre and accordingly, he had prepared his bid on the basis of the said rate. In the Techno-Commercial Bid Opening Stage, the petitioner's bid was found responsive. Thereafter, the respondent ONGC authorities opened the price bids and after opening the price bids, a comparative chart had been prepared on 26.09.2023. It is submitted that the rate for 'Running charge without GST' in so far as the petitioner's bid was concerned is shown as Rs.24.61, whereas the rates quoted by the many of the other participant bidders are shown as 'Running charge without GST' at Rs.24.52. It is the submission on the part of the petitioner's counsel that there could not have been declaration of different rates for HSD by the IOCL for Sivasagar on 06.03.2023. It has to be one rate for Sivasagar and such rate declared by the IOCL should be accessible to all in the public domain.

5. The petitioner's counsel submits that the diesel price declared by various diesel outlets in Sivasabar District is different and as such, Clause C.2 of the NIT is unworkable.

6. Mr. G.N. Sahewalla, learned Senior Counsel for the private respondents, on the other hand submits that the IOCL declares a standard rate each day for the HSD in Sivasagar District and this can be seen from the official website of the IOCL.

7. Mr. M.K. Choudhury, learned Senior Counsel for the IOCL submits that Indian Oil provides One Mobile App showing the rates of MS and HSD for retail

outlets across the Country. The rates of MS & HSD in Sivasagar retail outlets can also be viewed in the App. However, there are other ways to see the pricing of MS & HSD of any retail outlet in the Country. Any person can get the Retailer Sales Price (RSP) by sending an SMS with the text as below (with the Dealer SAP Code of particular Petrol Pump) as follows :

“RSP<space>Dealer Code of Petrol Pump” to 92249 92249.

8. Mr. M.K. Choudhury however admits to the fact that on applying the One Mobile App in the presence of all the parties herein, there is a minor variation in the prices of the HSD in various retail outlets in Sivasagar District.

9. I have heard the learned counsels for the parties.

10. The respondent ONGC published a Tender Notice, whereby it invited bids for “Hiring of 9 KL Water Tanker Services for Assam Asset for a period of 03 years”. As per sub-clause C.2 of Clause C.0 : Price Evaluation Criteria contained in the Tender Document, a bidder has to quote basic running rate per KM exclusive of applicable GST at a rate not be less than $0.275 \times$ diesel rates declared by Indian Oil Corporation Limited [IOCL] for Sivasagar as on Techno-Commercial Bid Opening date [06.03.2023].

11. To ascertain whether the IOCL declared their HSD rates for Sivasagar District in the public domain on their official website, the IOCL had been directed to submit a report with regard to the same. As can be seen from the submission made by Mr. M.K. Choudhury, learned Senior Counsel for the IOCL and the affidavit submitted by them, the stand of the IOCL was that the

standard rate of the HSD in Sivasagar District could be ascertained, if one went into the Indian Oil One Mobile App for retail outlets for Sivasagar District. This Court then requested all the counsels to use their mobiles to find out the standard rate for HSD for Sivasagar District, by using the Indian Oil One Mobile App. The Mobile App of Mr. P. Bharadwaj has been used and it was found that there were variations in the rates of the HSD for various retail outlets in Sivasagar, which would make the Clause C.2 of the NIT unworkable.

12. In view of the reasons stated above, the disqualification of the petitioner's Technical Bid was not proper and as such, in the view of this Court, a fresh tender notice would have to be issued for the Sivasagar District. Accordingly, the ONGC shall issue a fresh tender notice by incorporating in their tender notice, a method to enable the tenderers to get to know the standard rate of the HSD for Sivasagar District for each day. Consequently, the respondents are directed not to issue any notification of Award to any of the bidders in respect of the NIT No.R16KC23003, insofar as it relates to the Sivasagar District.

13. The writ petition is accordingly allowed.

JUDGE

Comparing Assistant