

GAHC010240382023



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

Case No. : WP(C)/6208/2023

DEFODIL DAS AND 3 ORS.
S/O- SRI ADHAR CH. DAS,
R/O- AMOLAPATTY, WARD NO. 9,
P.O.- SIVASAGAR,
DISTRICT- SIVASAGAR, ASSAM.

2: SALIM KAUCHAR SULTAN
S/O- LATE SULTAN MAHMUD
R/O- DARBAR ROAD
WARD NO.-3
P.O.- SIVASAGAR
DISTRICT- SIVASAGAR
ASSAM.

3: RANJIT BORA
S/O- LATE RATNESWAR BORA
R/O- PHUKAN NAGAR
WARD NO. 10
P.O.- SIVASAGAR
DISTRICT- SIVASAGAR

ASSAM.

4: M/S- R.T. ASSOCIATES AND CO.
A PROPRIETORSHIP FIRM REPRESENTED HEREIN BY ITS PROPRIETOR-
SRI HEMANTA KR. GOGOI
(AGE-48 YEARS)
S/O- JUGARAM GOGOI
R/O- LAHINGIA GAON
P.O.- KONWARPUR
DISTRICT- SIVASAGAR
ASSAM

VERSUS

THE OIL AND NATURAL GAS CORPORATION LTD. AND 9 ORS.
REPRESENTED BY THE CHAIRMAN AND C.E.O.
HAVING ITS REGISTERED OFFICE AT DEENDAYAL URJA BHAWAN,
5A, NELSON MANDELA MARG,
BASANT KUNJ, NEW DELHI- 110070.

2:THE CHAIRMAN AND C.E.O.
OIL AND NATURAL GAS CORPORATION LTD.
DEENDAYAL URJA BHAWAN
5A NELSON MANDELA MARG
BASANT KUNJ
NEW DELHI- 110070.

3:THE CHIEF MANAGING DIRECTOR
O.N.G.C. LTD.
DEENDAYAL URJA BHAWAN
5A NELSON MANDELA MARG
BASANT KUNJ
NEW DELHI- 110070.

4:THE EXECUTIVE DIRECTOR-CHIEF MM SERVICES
O.N.G.C. LTD.
CORPORATE MATERIALS MANAGEMENT
DEENDAYAL URJA BHAWAN
5A NELSON MANDELA MARG
BASANT KUNJ
NEW DELHI- 110070.

5:THE EXECUTIVE DIRECTOR-ASSET MANAGER
ONGCL
ASSAM ASSET
NAZIRA
ASSAM.

6:THE GENERAL MANAGER (MM)
MATERIAL MANAGEMENT DEPARTMENT CONTRACT CELL
ASSAM ASSET
ROB-II
FIRST FLOOR
NAZIRA ASSAM.

7:THE CHIEF GENERAL MANAGER-HEAD MM
PURCHASE DEPARTMENT
ASSAM ASSET
ROB-II FIRST FLOOR
NAZIRA
ASSAM.

8:THE HEAD MM
MATERIAL MANAGEMENT DEPARTMENT
CONTRACT CELL
ASSAM ASSET
EASTERN REGION
ROB-II
FIRST FLOOR
NAZIRA
ASSAM.

9:BID EVALUATION COMMITTEE (FOR HIRING OF LIGHT VEHICLES IN
ASSAM)
MATERIAL MANAGEMENT DEPARTMENT
C/O- GENERAL MANAGER HEAD MATERIAL MANAGEMENT
DEPARTMENT
ONGC LTD.
ASSAM ASSET
NAZIRA

DIST.- SIVASAGAR
ASSAM.

10:THE DISTRICT COMMISSIONER
SIVASAGAR
DIST.- SIVASAGAR
ASSAM

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 18.06.2024

Heard Mr. S. Borthakur, learned counsel for the petitioners and Mr. M. K. Das, learned counsel for the respondent Nos. 1 to 9. Mr. S. R. Baruah, learned Government Advocate appears for the respondent No. 10.

2. The 4 petitioners have instituted the present petition assailing the decision

taken by the respondent ONGC authorities, which has been communicated to the petitioners, vide e-mail dated 18.09.2023, by which the Invitation to Bid (ITB) dated July, 2023 has been cancelled, even before the bids of the tenderers were opened. The petitioners are also aggrieved by the letter dated 19.09.2023 issued by the ED-Chief MM services, wherein it has been decided to hire light passenger vehicles on one applicant - one vehicle basis at the rate offered by the ONGC, using draw of lots.

3. The petitioners' case is that the bidding process initiated for hiring of 372 Light vehicles (taxi) for Assam Asset for a period of 4 years has been cancelled, only due to the unlawful tactics of certain individuals or firms, with the ultimate issuance of a policy dated 19.09.2023. Thus the letter dated 18.09.2023 cancelling the ITB and the Policy dated 19.09.2023 should be set aside.

4. The petitioners' case in brief is that the petitioners, pursuant to an Invitation to Bid (ITB), had submitted their bids with the legitimate expectation that the respondent ONGC authorities would bring the bidding process to its logical conclusion. But it came as a surprise to the petitioners when the respondent ONGC authorities took the impugned decision on 18.09.2023, which was the last date for submission of bid after four extensions, to cancel the entire bidding process. The petitioners contend that the reason for the cancellation is attributable to some decisions taken in a tripartite meeting held on 08.08.2023. The petitioners contend that from the Minutes of the Meeting, it is clearly discernible that the decision of the respondent ONGC to cancel the bidding process was influenced by and at the behest of some organizations, who threatened to disrupt the activities of the respondent ONGC and sought to force the respondent ONGC authorities to modify some of the clauses in the Invitation

to Bid in the next bidding process, after the bidding process under reference was cancelled.

5. The petitioners' counsel submits that the minutes of the tripartite meeting held on 08.08.2023, which was shared by the District Commissioner, Sivsagar shows that the policy that has been made by the respondents for engaging the services of private vehicles (taxies) on one applicant-one vehicle basis has been made, only due to the threat of *bandh* being touted by various organizations. He accordingly submits that though the petitioners do not have any objection against the selection of individuals through the lottery system, the selection for the same should be made only after conclusion of the ITB dated July, 2023 and the lottery system can be applied by the respondents in the future.

6. Mr. M. K. Das, learned counsel for the respondents, on the other hand, submits that no right has accrued upon the petitioners to force the respondents to conclude the selection of bidders, pursuant to the ITB dated July, 2023. He also submits that the new policy, wherein the ONGC is going to engage the policy of one applicant-one vehicle, is for the benefit of a larger section of the society, compared to the earlier manner of selecting the successful tenderers. He further submits that Rule 32(1) of the ITB provides that the ONGC can reject all the bids without incurring any liability to the affected bidders. He submits that there is no infirmity with the respondents making a change in the policy to engage taxis on one vehicle - one applicant basis, instead of the earlier practice of appointing a few contractors, who would have a number of vehicles. He accordingly submits that the writ petition should be dismissed.

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

8. In the present case, though bids had been called for, vide ITB dated July, 2023, the bids of the petitioners have not been opened till date and as such, this Court is of the view that no right of the petitioners has been violated as on date.

9. In the case of ***Ayaubkhan Noorkhan Pathan vs. State of Maharashtra and others***, reported in ***(2013) 4 SCC 465***, the Supreme Court has held that there must be a judicially enforceable right available for enforcement, on the basis of which the writ jurisdiction is resorted to. Hence, a person, who raises a grievance under Article 226 of the Constitution of India, must show how he has suffered a legal injury. In the present case, the ITB is only an invitation for an offer. There has been no acceptance of the offer and in fact, the offer has not been opened as yet. There is no concluded contract. Thus, no right of the petitioner has been violated and as such, no enforceable right of the petitioner needs to be redressed.

10. The second stand of the petitioners is that the new policy for awarding the contract work by way of a lottery system, on the principle of one vehicle - one applicant cannot be applied now, as the tenders submitted in pursuant to the ITB has to be concluded first.

11. In the case of ***Shimnit Utsch India Private Limited and another vs. West Bengal Transport Infrastructure Development Corporation Limited and others***, reported in ***(2010) 6 SCC 303***, the Supreme Court has held that Government policy can be changed with changing circumstance and only on the ground of change, such policy will not be vitiated. The Government

has the discretion to adopt a different policy or alter or change its policy to serve public interest and make it more effective. Choice in the balancing of the pros and cons relevant to the change in policy lies with the authority. But like any discretion exercisable by the Government or public authority, change in policy must be in conformity with the reasonableness and it should be free from arbitrariness, irrationality, bias and malice.

12. In the present case, there is nothing to show that the change in policy by the respondents for applying the one vehicle – one applicant principle is unreasonable, bias and arbitrary. The change in policy for awarding the contract work on the principle of one vehicle – one applicant was made, on the basis of minutes of the tripartite meeting held on 08.08.2023. The members in the meeting consisted of District Administration, the ONGCL and various organizations of Sivasagar. Though it is reflected in the meeting minutes that the representatives of various organizations had threatened to declare a bandh on ONGC activities, if the tender for Light Motor Vehicles was not relaxed, the meeting finally resolved the issues raised by the various organizations as follows:-

- "1. *Tender of single vehicle will be accepted for single individual through lottery.*
2. *Experience certificate issued by a commercial vehicle owner will be accepted for the drivers.*
3. *Condition of GST/ETS will remain for this tendering process. However, ONGCL is requested to bring the matter to the notice of higher authority.*

4. *Equal weightage will be given to all qualified tenderers."*

13. In the present case, it is the stand of the State respondents that the new policy to be followed for extension of tender would be based on one vehicle – one applicant principle. There is nothing to show that the said change in policy is unreasonable or that it violates Article 14 of the Constitution. In fact, the new policy to be followed by the respondents has come about, after an extensive meeting had been held with various stakeholders. The resolution passed in the tripartite meeting held on 08.08.2023 shows that the same has been done in the public interest. In such a case, the larger public interest would outweigh individual interest.

14. Though the petitioners have submitted bids, pursuant to the ITB, the bids were never opened and as such, the doctrine of legitimate expectation cannot be claimed as a matter of right in this case, especially when there has been no violation of Article 14 of the Constitution.

15. In the case of ***Union of India vs. P. K. Choudhary, (2016) 4 SCC 236***, the Supreme Court held that the doctrine of legitimate expectation cannot be claimed as a right in itself, but can be used only when the denial of a legitimate expectation leads to the violation of Article 14 of the Constitution.

16. In view of the reasons stated above, this Court does not find any ground to interfere with the cancellation of the ITB dated July, 2023.

17. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant