

GAHC010142522023



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

Case No. : WP(C)/3804/2023

M/S S H ENTERPRISE
A SOLE PROPRIETORSHIP OF MD. SAFIQL HUSSAIN, SON OF LATE
HUSSAIN ALI WITH ITS REGISTERED OFFICE AT SILBHANGA, JAGIROAD,
P.O. AND P.S. JAGIROAD, DIST. MORIGAON, ASSAM, REPRESENTED BY ITS
AUTHORISED REPRESENTATIVE MR. WAZIDUR RAHMAN, SON OF LATE
OHIDUR RAHMAN, R/O- RAJ APARTMENT, BLOCK-B, 2ND FLOOR, GMCH
ROAD, BHANGAGHAR, GUWAHATI, KAMRUP, ASSAM-781005.

VERSUS

THE INDIAN OIL CORPORATION LTD AND 2 ORS
REPRESENTED BY ITS EXECUTIVE DIRECTOR, BONGAIGAON REFINERY,
P.O. DHALIGAON, DIST. CHIRANG, ASSAM, PIN- 783385.

2:THE DEPUTY GENERAL MANAGER (CONTRACTS)

INDIAN OIL CORPORATION LTD.
BONGAIGAON REFINERY
P.O. DHALIGAON
DIST. CHIRANG
ASSAM
PIN- 783385.

3:THE SENIOR MANAGER (EMPLOYEE SERVICE)

INDIAN OIL CORPORATION LTD.
BONGAIGAON REFINERY
P.O. DHALIGAON
DIST. CHIRANG
ASSAM-783385

Advocate for the Petitioner : MS. B BHUYAN, MS R TADO,MS P PHUKAN,MR. T DEURI,MR

A ATREYA

Advocate for the Respondent : MR. K N CHOUDHURY (r-1,2,3), MR. D J DAS (r-1,2,3), MS N MAHANTA (r-1,2,3), MISS. R R KAKATI (r-1,2,3)

Linked Case : WP(C)/6596/2023

M/S S H ENTERPRISE
A SOLE PROPRIETORSHIP OF MD. SAFIQL HUSSAIN
SON OF LATE HUSSAIN ALI WITH ITS REGISTERED OFFICE AT SILBHANGA
JAGIROAD
P.O. AND P.S. JAGIROAD
DIST. MORIGAON
ASSAM
REPRESENTED BY ITS AUTHORISED REPRESENTATIVE MR. WAZIDUR
RAHMAN
SON OF LATE OHIDUR RAHMAN
R/O- RAJ APARTMENT
BLOCK-B
2ND FLOOR
GMCH ROAD
BHANGAGHAR
GUWAHATI
KAMRUP
ASSAM-781005.

VERSUS

INDIAN OIL CORPORATION LTD AND 3 ORS
REPRESENTED BY ITS EXECUTIVE DIRECTOR
BONGAIGAON REFINERY
P.O. DHALIGAON
DIST. CHIRANG
ASSAM
PIN- 783385.

2:THE GENERAL MANAGER I/C (HR)
INDIAN OIL CORPORATION LTD. BONGAIGAON REFINERY P.O DHALIGAON
DIST. CHIRANG ASSAM 783385

3:THE DEPUTY GENERAL MANAGER (CONTRACTS)
INDIAN OIL CORPORATION LTD.
BONGAIGAON REFINERY

P.O. DHALIGAON
DIST. CHIRANG
ASSAM
PIN- 783385.

4:THE SENIOR MANAGER (EMPLOYEE SERVICES)
INDIAN OIL CORPORATION LTD.
BONGAIGAON REFINERY
P.O. DHALIGAON
DIST. CHIRANG
ASSAM
PIN- 783385.

5:THE CHIEF MANAGER (EMS)
INDIAN OIL CORPORATION LTD.
BONGAIGAON REFINERY
P.O. DHALIGAON
DIST. CHIRANG
ASSAM
PIN- 783385.

Advocate for : MR. T DEURI
Advocate for : SC
I O C appearing for INDIAN OIL CORPORATION LTD AND 3 ORS

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri R. Sarma, Sr. Counsel
Ms. P. Phukan

Advocate for the respondents : Shri KN Choudhury, Sr. Counsel
Ms. RR Kakati
Shri A. Dasgupta, Sr. Counsel
Shri A. Das

Date of hearing : **03.09.2024**
Date of Judgment : **06.09.2024**

JUDGMENT & ORDER

Both these writ petitions being connected, have been heard analogously and

are disposed of by this common judgment and order. The issue pertains to a contract for providing catering services in the Guest House of the respondent no. 1 - Refinery at Guwahati. The grievance also involves termination of the contract by an order dated 06.11.2023.

2. Before coming to the issue involved, it would be convenient if the basic facts are recorded in brief.

3. Pursuant to a tender process which was made through the Government E-Marketplace i.e., GeM Portal, the petitioner which is a sole proprietorship firm was awarded a contract for providing catering and other services in the Guest House and Office Complex of the respondent no. 1 - Refinery at Guwahati at a total value of Rs.28,040,977.20/-. In terms of the said contract, certain issues arose between the parties with regard to the handing over the kitchen of the Guest House as well as other worksite. It is the specific case of the petitioner that the job requires skilled workers and the petitioner was restrained from engaging its own workers and was forced to engage workers who had worked with the previous contractor. The petitioner had made several representation, however no heed was paid to the same and as a result of which a stalemate had resulted. The petitioner had therefore filed the first WP(C)/3804/2023 wherein notice was issued on 28.06.2023. However, during the pendency of the said writ petition, the contract was terminated on 06.11.2023. Accordingly, the second writ petition has been filed.

4. I have heard Shri R. Sarma, learned Senior Counsel assisted by Ms. P. Phukan, learned counsel for the petitioner. Also heard Shri KN Choudhury, learned Senior Counsel assisted by Ms. RR Kakati, learned counsel for the respondent nos. 1 to 3 and Shri A. Dasgupta, learned Senior Counsel assisted by Shri A. Das, learned counsel for the respondent nos. 4 - 25.

5. Shri Sarma, the learned Senior Counsel for the petitioner has submitted that the petitioner cannot be forced to engage workers of the previous contractor. It is submitted that the agreement entered into by the petitioner with the respondents stipulates that the petitioner would engage a certain number of workers which clearly mean that the petitioner would be allowed to engage his own persons. In this connection, he has drawn the attention of this Court to Clause 2.2 of the agreement which deals with the contractor's scope. As per Clause 2.2.1, the contractor shall, at his own cost engage adequate number of workforce of various categories as per details given for carrying out the services. The workforce had four categories, namely, highly skilled, skilled, semi skilled and unskilled by which 27 persons were to be engaged. On 18.05.2023, the petitioner had issued a letter to hand over the kitchen and the other worksite and a similar letter was also issued on 25.05.2023. However, there was no response. Thereafter, on 08.06.2020, the petitioner had submitted a list of employees with a further request to allow the petitioner to operate and discharge his duties as per the contract. It is submitted that from the stand taken by the respondents, it appears that an earlier agreement was there of the Refinery with the Workers' Association. However, it has been submitted that such agreement would not have any binding effect upon the petitioner, more so, when the same was neither incorporated nor disclosed at the time of entering into the agreement by the respondent Refinery with the petitioner.

6. The learned Senior Counsel for the petitioner has referred to the Memorandum of Settlement brought on record by the respondents. It is submitted that such Settlement cannot have any bearing or relevancy with the nature of engagements to be done by the petitioner so far as the 27 nos. of staff are concerned. It is submitted that the petitioner had made huge

investment and because of the impugned action, the petitioner is made to suffer immensely.

7. As regards the impugned order of termination dated 06.11.2023, it is submitted that the said order has been passed without affording reasonable opportunity to the petitioner. It is also submitted that though certain reasons have been cited, none of those reasons are even applicable to the facts and circumstances of the case. It is submitted that the issue is not in relation to failure to make payment of labour wages or resuming the job. It is also not a case of unsatisfactory performance or delay in payment of wages. It is submitted that the stalemate was caused by the unreasonable action of the respondent authorities for which the petitioner cannot be faulted with.

8. On the aspect of the maintainability of the writ petition, the learned Senior Counsel for the petitioner has placed reliance upon the cases of ***MP Power Management Company Limited, Jabalpur Vs. SKY Power Southeast Solar India Private Limited and Ors.*** reported in ***(2023) 2 SCC 703*** and ***ABL Industrial Ltd. and Anr. Vs. Export Credit Guarantee Corporation of India Ltd. and Ors.*** reported in ***(2004) 3 SCC 553***. In the subsequent decision of ***MP Power*** (supra), the Hon'ble Supreme Court has relied upon a host of previous decisions including the case of ***ABL Industries*** (supra). It is submitted that the respondent authorities being an instrumentality of the State is bound by Article 14 of the Constitution of India to act fairly, justly and reasonably. He accordingly submits that the impugned order of termination of the contract be set aside.

9. *Per contra*, Shri K. N. Choudhury, learned Senior Counsel for the respondent-Refinery has submitted that on 01.05.2023, the petitioner had started operating the canteen which was done for a month and on 08.06.2023,

a new list of workers was given by the petitioner. Regarding the submission that the contractor can engage his own men, he has submitted that if there is a change in the existing workers, the same will lead to an industrial unrest which would not be in the interest of justice. By referring to the affidavit-in-reply filed on 17.07.2024, the learned Senior Counsel has submitted that there is a binding settlement between the Refinery authorities and the contract laborers, as per which the such laborers are given certain safeguards. He has also emphasized that there is no clause in the contract agreement with the petitioner which would enable the contractor to have his own men. He has submitted that the settlement between the Workers' Coordination Committee and the Refinery which contains several clauses which are mainly to ensure safeguarding the interest of the contract laborers. He submits that in absence of an enabling clause which gives the right to the contractor to engage his own men, the decision to have the earlier set of workers to continue cannot be termed as arbitrary or unreasonable and therefore he submits that there is no merit in the writ petition which is liable to be dismissed. As regards the nature of the job, it is submitted that the same is of essential nature involving catering and other services and in the order dated 04.01.2024 passed in IA(C)/3824/2023, the Refinery authorities were given the liberty to make alternative arrangements.

10. Endorsing the submission made on behalf of the Refinery, Shri A. Dasgupta, learned Senior Counsel for the respondent nos. 4 to 25, who has been newly impleaded in WP(C)/3804/2023 vide order dated 10.11.2023 passed in IA(C)/2649/2023, has submitted that the stand taken by the Refinery is just and proper. By representing the earlier set of workers, the learned Senior Counsel has submitted that even on earlier occasions, irrespective of change of the contractor, the workmen were not changed. He has also referred to the

provisions of the Industrial Disputes Act, more particularly, Sections 2(p) and 18 which relate to Settlement. It is submitted that the Settlement arrived at by the workers Union and the Refinery will have binding effect and therefore the respondent nos. 4 to 25 have a right to continue irrespective of the change of the contractor.

11. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

12. The *lis* involves the scope of the work as a caterer in the Guest House of the Refinery at Guwahati. The work order was issued on 29.03.2023 which has been carefully perused. This Court has also examined the other materials which relate to the relationship between the Refinery and the petitioner.

13. Clause 2.2 of the agreement deals with the Contractor's Scope, as per which the contractor was to engage adequate number of workers. The aforesaid scope of work cannot be construed to put a fetter on the contractor to engage the previous workers of the previous contractor. The transaction involved is of commercial nature wherein the bids are offered after making certain calculation which would include the nature and scope of engaging workers in a strategic manner. While exploitation of any nature of the worker will not be permitted in any case and the contractor would be bound by the provisions of law to ensure that they are given their due, the same cannot be stretched to the extent of curtailing his rights so far as the engagements of a particular set of workers are concerned.

14. This Court has carefully looked and re-looked at the Settlement which is in existence between the Workers Committee and the Refinery. While the various clauses ensure that the rights and interest of the contract labourers are secured

by payment of the prescribed rates, medical allowance and other benefits, the same does not have any clause which would ensure their continuity when there is a change of the contractor. In absence of any such clause, this Court finds it absolutely difficult to impose upon a third party of a condition which would have a direct impact on the manner of discharge of his functions in terms of the contract. This Court is also of the opinion that even assuming that such a clause existed in the Settlement, the contract with the petitioner is of subsequent date and unless the said contract contains a clause of restriction and specifying a particular manner for engaging workers in terms of the Settlement, such a condition cannot be imposed upon the petitioner.

15. As regards reliance upon Section 18 of the Industrial Disputes Act is concerned, in the opinion of this Court, the Settlement, as envisaged by Section 18 will have no manner of application, more so, when the Settlement in question does not contain any such clause of continuity. This Court has noticed that the Settlement is of the year 2011 followed by two other Settlements whereas the contract in question is of a subsequent period, namely, of the year 2023. As regards the arguments sought to be advanced on behalf of the Refinery that the agreement, in implied terms had the aforesaid clause, this Court is unable to accept the said submission. This Court has also noticed that the kick off meeting which has been referred to by the learned Senior Counsel for the Refinery was even before handing over and therefore the eventuality had started only after such handing over when the petitioner had made repeated representation for allotting the worksite and also to approve the list of workers submitted by him. So far as the argument made by Shri Dasgupta, learned Senior Counsel is concerned, the mere fact that the earlier contractor had chosen to retain the existing worker cannot not be held to be binding upon the

petitioner, who is the new contractor and has been allotted the work in accordance with law.

16. As regards the question of maintainability is concerned, no serious issues were raised on behalf of the respondents. In any case, the Hon'ble Supreme Court in the case of **MP Power** (supra) has made the position clear. By referring to the catena of earlier judgments including the case of **ABL International** (supra), the following has laid down-

“67. ABL (supra) marks a milestone, as it were, in the matter of the superior court interfering in contractual matters where the State is a player even after the contract is entered into. A petition was filed under Article 226 wherein the respondent which was incorporated under the Companies Act repudiated an insurance claim made by the appellant-writ petitioner. This Court undertook an elaborate discussion of the earlier case law. We find that this Court dealt with several obstacles which were sought to be posed by the respondent. They included disputed questions of facts being involved, availability of alternate remedy, and the case involving entertaining a money claim. This court went on to hold as follows:

“27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ

petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.”

17. In view of the aforesaid facts and circumstances, this Court is of the opinion that a case for interference is made out. Accordingly, the termination order dated 06.11.2023 is interfered with. Consequently, the respondent-Refinery is directed to allow the petitioner to complete the contractual liabilities in terms of the work order dated 29.03.2023. It is also made clear that the respondent-Refinery cannot restrain the petitioner from engaging its own men for discharge of the duties.

18. Since the contract was for two years and because of the issue involved, the petitioner could not discharge the same, the petitioner would have the liberty to file application for allowing to discharge the functions for the full term and in case such application is made, the same would be considered by the respondent-Refinery in accordance with law and by passing of a speaking order.

19. Both these writ petitions accordingly stand allowed.

JUDGE

Comparing Assistant