

GAHC010263842024



2024:GAU-AS:12934

IN THE GAUHATI HIGH COURT

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

WP(C) 6625/2024

Hemanta Bora,
S/O- Late Padma Kanta Bora,
R/O- Near Agcl Main Gate,
P.O- Duliajan, Dist- Dibrugarh,
Assam, Pin-786602

.....**Petitioner.**

Versus

1. **Oil India Ltd.,**
Duliajan, Dibrugarh,
Rep. by the Resident Chief Executive-Fhq,
Oil India Limited, Duliajan, Pin-786602, Assam.
2. **The Resident Chief Executive fhq,**
Oil India Limited, Duliajan, Pin-786602, Assam.
3. **The Chief General Manager - Contracts (HoD)**
Oil India Limited, Duliajan, Pin-786602, Assam.
4. **The Dgm - Contracts (TS)**
Oil India Limited, Duliajan,
Pin-786602, Assam.
5. **The Manager -Contracts (TS)**
Oil India Limited, Duliajan,
Pin-786602, Assam

.....**Respondents.**

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

For the petitioner	: Mr. S. Banik	 Advocate.
For the respondents	: Mr. A. Sharma	 SC, Oil.
Date of hearing	: 16.12.2024	
Date of Judgment	: 19.12.2024	

JUDGMENT AND ORDER (CAV)

- 1.** Heard Mr. S. Banik, learned counsel for the petitioner and Mr. A. Sharma, learned Standing Counsel, Oil India Limited for all the respondents.
- 2.** The petitioner's case is that the Oil India Limited used to float tenders every three years, for transportation of crude oil etc, by using 12 KL capacity bowsers/tankers from various Oil's field locations in Assam and Arunachal Pradesh.
- 3.** The petitioner's counsel submits that earlier a person, who did not have the required number of bowsers to be a bidder for transportation of the crude oil, could attach his bowser with the bid of a bidder, who had bowsers and also had the other eligibility criteria required for participating in the tenders issued by Oil India Limited. The person who attached his bowser with a bid of a bidder, could thereafter count his participation in the tender process as "experience", for participating in the next bid to be made by Oil India Limited. However, by the new tender No.CDT7868P25, Oil India Limited has done away with the concept of a bowser owner attaching his bowser with the bid of an eligible bidder, thereby eliminating any chance for the said person having only a single bowser,

to gain any experience for participating in any future Oil India Limited Tender, for transportation of crude oil etc.

4. The petitioner's counsel submits that in terms of the new tender No.CDT7868P25, the bidder must have a minimum of 2/3 bowsers/tankers. He submits that the bowsers/tankers have to be in the name of the bidder and the bidder cannot attach the bowsers/tankers of any other person as a part of his bid. He submits that the doing away with the Clause allowing the attachment of a bowser of other persons to the bids of bidders by the Oil India Limited, restricts new players like the petitioner from participating in future tenders, as they would never be able to have the required "experience", to participate in future tenders. He submits that the same also encourages the formation of a cartel to dominate the tender proceedings. He accordingly submits that a direction should be issued to the respondents, to cancel the tender and direct them to issue a fresh tender, allowing new players like the petitioner to attach their single bowser with the bid of the bidders, who can participate in the bidding process.

5. Mr. A. Sharma, learned Standing Counsel, Oil India Limited, on the other hand, submits that the Oil India Limited have done away with the process of the bidder attaching the bowsers of other persons, for the sake of accountability and to enable Oil India Limited to fix the responsibility in the case of any untoward incident that may happen to the bowser owned by somebody else, other than the bidder. He submits that events pertaining to accidents would also not require Oil India Limited to run after persons other than the actual bidder. He further submits that as per Clause 3.1 of the Terms and Conditions of the Tender, the bidder can always gain "experience", by providing services for

transportation under the Central Government/State Government/ Public Sector Undertaking/Exploration and Production Company/Nationalized Banks/Public Limited Company for a continuous period of minimum two years under a single contract by deploying the minimum of 1 tanker/bowser, having a capacity of not less than 9 KLS each. He submits that no right vests with the petitioner, to gain “experience” only from the tenders issued by Oil India Limited. He accordingly submits that Oil India Limited is the best person to understand and appreciate its own requirement and that it must have the freedom to make a contract on its own terms. He accordingly submits that the interpretation of a tender document should be left solely to the author of the tender document, unless the same is arbitrary, unreasonable, *mala-fide* or biased. In the present case, he submits that none of the above is attracted and as such, the writ petition should be dismissed.

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

7. In the case of ***Vidarbha Irrigation Development Corporation and Ors. Vs. Anoj Kumar Agarwala and Ors.***, reported in ***(2020) 17 SCC 577***, the Supreme Court has referred to the judgment in ***Afcons Infrastructure Ltd. (supra)***, which is to the effect that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The Court must defer to this understanding and appreciation of the tender documents, unless there is *mala-fides* or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. Further, the word used in the tender documents cannot be ignored or treated as

redundant or superfluous and they must be given meaning and their necessary significance. Para 16 of the decision of the Supreme Court in ***Vidarbha Irrigation Development Corporation and Ors. (supra)*** is reproduced herein below as follows:-

“It is clear even on a reading of this judgment that the words used in the tender document cannot be ignored or treated as redundant or superfluous – they must be given meaning and their necessary significance. Given the fact that in the present case, an essential tender condition which had to be strictly complied with was not so complied with, the appellant would have no power to condone lack of such strict compliance. Any such condonation, as has been done in the present case, would amount to perversity in the understanding or appreciation of the terms of the tender conditions, which must be interfered with by a constitutional court.”

8. In the case of ***Balaji Ventures Pvt. Ltd vs. Maharashtra State Power Generation Company Ltd.,*** reported in ***2022 SCC OnLine SC 1967***, the Supreme Court has held that the author of the tender should always have the freedom to provide the eligibility criteria and/or the terms and conditions of the bid, unless it is found to be arbitrary, *mala-fide* and/or tailor made. The Supreme Court further held that the bidder/tenderer cannot be permitted to challenge the bid condition/clause, which might not suit him and/or is inconvenient to him.

9. In the case of ***Silppi Constructions Contractors vs. Union of India,*** reported in ***(2020) 16 SCC 489***, the Supreme Court observed in para 20 as under:

“20. The essence of the law [laid down in the judgments referred to above](#) is the exercise of restraint and caution; the need for overwhelming public interest to justify

judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case."

10. In the present case, the Oil India Limited have done away with the clause permitting persons, who were not eligible as bidders, to include their bowsers/tankers as a part of bid of the eligible bidders. For reasons of accountability and responsibility, Oil India Limited has done away with allowing non-eligible bidders to be a part of the tender process.

11. Clause 3.1 and 3.7 of the NIT provides as follows:-

"3.1 Experience: *The bidder must have successfully executed/completed "Similar Work" over the last 7(seven) years reckoned from the Original Bid Closing Date of the tender:*

"Similar Work" mentioned above means the following:

(1) The bidder must be in the business of providing services for transportation of Petroleum Products / Hazardous chemicals / Chemical Salt Solution in any Central Govt. / State Govt. / Public Sector Undertaking / E&P Company/ Nationalized Banks / Public Limited Company for a continuous period of minimum 02 (Two) years (i.e., 24 months) under a single contract by deploying minimum 01(one) No. of Tanker/Bowser, having capacity not less than 9KLs each.

OR

(ii) The bidder must have experience of providing services at least 01 No. of attached bowsers/tankers (having capacity not less than 9 KLS) to Oil India Limited (i.e., experience of providing attached tankers/bowsers to the contractor(s) engaged by Oil India Limited) for transportation of Petroleum Products/Hazardous chemicals/ Chemical Salt Solution for a continuous period of minimum 02 (Two) years (i.e., 24 months)."

"3.7 All the offered Oil Tankers/ Oil Bowsers shall meet the following brief requirements:

(i) Each bidder can offer only for 02(Two) numbers of readily available 12KL capacity Oil Bowsers/Oil Tankers as mentioned above in BEC/BRC Clause No. 2.0 for 12KL capacity bowsers of model TATA SE 1613 Cowl (or equivalent) with minimum 16200 KG GVW. All the Oil Tankers/Oil Bowsers offered must be in the bidder's name (in case of proprietary firm it may be in proprietor's name and similarly it may be in the firm name in case of partnership firm/company).

(ii) The offered Oil Bowsers/Oil Tankers must be registered in the name of the respective bidders/owners as per Motor Vehicle Act, 1988 & Central Motor Vehicle Rules, 1989 of India as on the bid closing date of this tender."

12. As can be seen from Clause 3.7, only a bidder having two oil bowsers/oil tankers, with a capacity of 12 KL and having the required experience as per Clause 3.1, are eligible to participate in the bidding process. The oil bowsers/tankers have also to be registered in the name of the bidders to be able to participate in the tender. There is no infirmity with the Oil India Limited requiring bidders to have two oil bowsers in their names to be able to participate in the tender. The petitioner not being able to participate in the tender process, because he does not have two bowsers nor the required experience, does not mean that there is any discrimination or arbitrariness in the terms and conditions of the NIT. The lack of experience on the part of the petitioner does not bar him from gaining "experience" in terms of Clause 3.1 of the NIT, by participating in other tenders issued by the Central/State Government, other Companies etc.

13. In the world of contract, some tenders require only persons having high turnover and experience to participate. Just because a person is a new entrant, does not mean that he has to be given concessions to be able to compete with eligible persons, who have the experience borne from being in the business for a longer time. The petitioner cannot demand that the tender conditions should be changed to suit his needs, so that he can be a part of the bidding/tender process.

14. In the case of ***Silppi Constructions Contractors (supra)***, the Supreme Court has held that there is a need for overwhelming public interest to justify intervention in contractual matters and that the Court should give weight to the opinion of the experts, unless a decision is totally arbitrary or unreasonable. It further held that the Court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible, then the interpretation of the author must be accepted. The Courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity.

15. In the case of ***N.G. Projects Ltd. vs. Vinod Kumar Jain & Others***, reported in ***(2022) 6 SCC 127***, the Supreme Court held that the satisfaction whether a bidder satisfies the tender condition is primarily upon the authority inviting the bids. Such authority is aware of expectations from the tenderers while evaluating the consequences of non-performance. If the view of the

Technical Evaluation Committee is not to the liking of the bidder, such decision does not warrant for interference in a grant of contract for a successful bidder. The Court further held that the Writ Court should refrain itself from imposing its decision over the decision of the employer, as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present- day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues, as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be, not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is made after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a mala-fide manner, still the Court should refrain from interfering in the grant of tender, but instead relegate the parties to seek damages for the wrongful exclusion, rather than to injunct the execution of the contract.

16. As stated earlier, Clause 3.1 of the NIT provides that a new entrant into the business of transportation of petroleum products can always gain experience by transporting petroleum products etc., from Central Government/State Government/Public Sector Undertaking/Exploration and Production Company/Nationalized Banks/Public Limited Company etc. The petitioner cannot demand that his experience has to be gained from carrying Oil India Limited products only.

17. In view of the reasons stated above, this Court does not find any

arbitrariness, irrationality, perversity, *mala-fide* or biasness in the impugned tender not allowing a person with only one oil bowser/tanker and/or a person not having any experience to participate in the tender process, by allowing him to attach his one bowser/tanker with the bid of a qualified bidder. Accordingly, the writ petition stands dismissed.

JUDGE

Comparing Assistant