

GAHC010091632024



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

Case No. : WP(C)/7005/2023

M/S BHOGJORA ENTERPRISE
A PROPRIETORSHIP FIRM
HAVING ITS REGISTERED OFFICE AT
BISHNU RABHA NAGAR
NOONMATI
GUWAHATI
PIN- 781020.

REPRESENTED BY ITS PROPRIETOR
SHRI NIPU KAKATI
AGED ABOUT 57 YEARS
S/O- LATE BHABA KANTA KAKATI
R/O- NOONMATI
B.R. NAGAR
GUWAHATI
P.O.- NOONMATI
P.S.- NOONMATI, DISTRICT- KAMRUP(M)
ASSAM
PIN- 781020.

VERSUS

INDIAN OIL CORPORATION LIMITED AND 5 ORS
REPRESENTED BY ITS CHAIRMAN
SCOPE COMPLEX
CORE-2
7
INSTITUTIONAL AREA
LODHI ROAD, NEW DELHI
PIN- 110003.

2:THE EXECUTIVE DIRECTOR
INDIAL OIL CORPORATION LIMITED

GUWAHATI REFINERY
NOONMATI

GUWAHATI- 781020.
3:THE CHIEF GENERAL MANAGER (HR)
INDIAL OIL CORPORATION LIMITED
GUWAHATI REFINERY
NOONMATI

GUWAHATI- 781020.
4:THE GENERAL MANAGER (CONTRACTS)
INDIAN OIL CORPORATION LIMITED
GUWAHATI REFINERY
NOONMATI

GUWAHATI- 781020.
5:THE DEPUTY GENERAL MANAGER (CONTRACTS)
INDIAN OIL CORPORATION LIMITED
GUWAHATI REFINERY
NOONMATI

GUWAHATI- 781020.
6:THE DEPUTY GENERAL MANAGER (EMS)
INDIAN OIL CORPORATION LIMITED
GUWAHATI REFINERY
NOONMATI

GUWAHATI- 781020.

Advocate for : MR B D DAS
Advocate for : SC
I O C appearing for INDIAN OIL CORPORATION LIMITED AND 5 ORS

Linked Case : WP(C)/2615/2024

M/S BHOGJORA ENTERPRISE
A PROPRIETORSHIP FIRM HAVING ITS REGISTERED OFFICE AT BISHNU
RABHA NAGAR

NOONMATI
GUWAHATI
PIN- 781020.
REPRESENTED BY ITS PROPRIETOR SHRI NIPU KALITA

AGED ABOUT 58 YEARS

S/O- LATE BHABA KANTA KAKATI

R/O- NOONMATI
B.R. NAGAR
GUWAHATI
P.O.- NOONMATI
P.S.- NOONMATI
DISTRICT- KAMRUP(M)
ASSAM
PIN- 781020.

VERSUS

INDIAN OIL CORPORATION LIMITED AND 6 ORS
REPRESENTED BY ITS CHAIRMAN
SCOPE COMPLEX
CORE-2
7
INSTITUTIONAL AREA
LODHI ROAD
NEW DELHI
PIN- 110003.

2:THE EXECUTIVE DIRECTOR
INDIAN OIL CORPORATION LIMITED
GUWAHATI REFINERY
NOONMATI
GUWAHATI
PIN- 781020.

3:THE CHIEF GENERAL MANAGER (HR)
INDIAN OIL CORPORATION LIMITED
GUWAHATI REFINERY
NOONMATI, GUWAHATI
PIN- 781020.

4:THE GENERAL MANAGER (CONTRACTS)
INDIAN OIL CORPORATION LIMITED
GUWAHATI REFINERY
NOONMATI, GUWAHATI
PIN- 781020.

5:THE DEPUTY GENERAL MANAGER (CONTRACTS)
INDIAN OIL CORPORATION LIMITED
GUWAHATI REFINERY
NOONMATI, GUWAHATI
PIN- 781020.

6:THE DEPUTY GENERAL MANAGER (EMS)
INDIAN OIL CORPORATION LIMITED
GUWAHATI REFINERY
NOONMATI, GUWAHATI
PIN- 781020.

7:GOVERNMENT E MARKET PLACE (GEM)
MINISTRY OF COMMERCE AND INDUSTRY
REPRESENTED BY ITS CHAIRPERSON AND NOMINEE DIRECTOR GEM
VANIJYA BHAWAN
NEW DELHI

PIN -110011.

Advocate for : MR B D DAS

Advocate for : SC

I O C appearing for INDIAN OIL CORPORATION LIMITED AND 6 ORS

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

27.05.2024

Heard Mr. B.D. Das, learned Sr. Counsel assisted by Mr. S.K. Sarma, learned counsel for the petitioner. Also heard Mr. N. Baruah, learned counsel appearing for the Indian Oil Corporation Limited (IOCL) and Mr. A.K. Dutta, learned CGC for the respondent No.7 in WP(C) 2615/2024.

2. The petitioner in WP(C) No. 7005/2023 is aggrieved by the issuance of the NIT dated 18.11.2023 issued by the respondent IOCL during the currency of the contract work allotted to the petitioner.

3. In WP(C) No.2615/2024, the petitioner seeks for a direction to be issued to the respondent authorities, to consider his representation dated 04.05.2024, for extension of the contract period for hiring of the petitioner's vehicles for

another 1 year, i.e., beyond the contract period of 2 years, in terms of Clause 8 of the Special Conditions of Contract.

4. The facts of the case in brief is that in pursuance to an NIT dated 04.03.2022 issued by the IOCL, for hiring of one 14+1 seater Mini Bus and 7(Seven) brand new Boleros or equivalent model with Drivers for 24 Months on 8 hours duty, the petitioner was awarded the contract work, vide work order dated 27.05.2022. During the subsistence of the contract work, the petitioner was issued a communication dated 15.05.2023, informing him that the termination of his contract would occur on 31.12.2023, as there was a new contract being considered in the offing. Thereafter, the respondent IOCL issued a new NIT dated 18.11.2023 for hiring of vehicles for another 2(two) years term, as had been set out in the earlier NIT dated 04.03.2022.

5. The contract period was for a period of 2 years w.e.f. the date of handing over of the site. Clause 4.0 of the work order states that the start of the contract shall be reckoned from the date of handing over of site.

6. Being aggrieved by the fact that a new NIT had been issued during the subsistence of the contract being executed by the petitioner in pursuant to the NIT dated 04.03.2022, the petitioner submitted a letter dated 30.11.2023 to the IOCL, requesting that the NIT dated 18.11.2023 along with the communication dated 15.05.2023 should be cancelled. The petitioner further prayed that he should be allowed to continue his contract work as per the work order dated 27.05.2022.

7. The counsel for the IOCL submits that the contract for hiring of vehicles

started w.e.f. 27.05.2022, when the work order was issued and the validity of the contract work expired on 26.05.2022. In this respect, he has also referred to the order dated 04.12.2023 passed by this Court in WP(C) No.7005/2023, wherein it is recorded that the learned senior counsel for the petitioner submitted that the date of handing over of the site would be the date of issuance of the work order. He submits that in terms of the 3rd paragraph of the synopsis in WP(C) No.2615/2024, the petitioner has stated that the contract period of 2 years, in terms of the work order dated 27.05.2022 would be expiring in the month of May, 2024. However, in terms of the letter dated 04.05.2024 issued by the petitioner to the DGM (EMS), HR Department, Guwahati Refinery, the contract period of 2 years was from 01.06.2022 to 31.05.2022.

8. The counsel for the IOCL further submits that the petitioner was issued letter dated 28.05.2022 by the IOCL, which stated that the site for the contract work had been handed over to the petitioner w.e.f. 01.06.2022 and he was to commence his contract work w.e.f. 01.06.2022. Further, the petitioner has been submitting his bills for the hiring charges of all the vehicles w.e.f. 01.06.2022. As such, the contract having commenced on 01.06.2022, the same expires on 31.05.2024.

9. Mr. B.D. Das, learned Sr. Counsel for the petitioner submits that the inconsistencies in the observation made by this Court in the order dated 04.12.2023 passed in WP(C) No.7005/2023, the 3rd paragraph of the synopsis in WP(C) No. 2615/2024 are not correct. He however submits that the petitioner has submitted bills for payment for hiring of his vehicles from 01.06.2022. As

such, the contract period would have to be considered to have started from 01.06.2022 and would end on 31.05.2024. He submits that even if the contract period is to end on 31.05.2024, the petitioner's representation dated 04.05.2024, praying for extension of his contract period for another 1 year, has to be decided by the authorities, in terms of Clause 8 of the Special Conditions of Contract.

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

11. As can be seen from the submissions made by the counsels for the parties, the communication dated 15.05.2023 issued by the IOCL to the petitioner, informing him that his contract would terminate on 31.12.2023 has become redundant, in view of the fact that the petitioner has continued to hire all his vehicles to the IOCL pursuant to the NIT dated 04.03.2022. Further, the issuance of a new NIT dated 18.11.2023, for hiring of vehicles for another 2 year term has not affected the petitioner's contract, which is going to expire on 31.05.2024. However, in view of Clause 8 of the Special Conditions of Contract, which provides that the work order of the petitioner may be extended for 1 year on the same rates, terms and conditions depending upon the satisfactory performance of the contractor, at the discretion of the IOCL, this Court is of the view that the petitioner's representation dated 04.05.2024 would have to be decided by the respondents.

12. Clause 8 of the Special Conditions of Contract states as follows-

“8. TIME SCHEDULE & WORKING TIME

Initially, the Contractual Period of the work shall be 2 (two) years from the date of commencement of the work and placement of vehicle. The work Order may be extended for 1 (one) year on the same rates, terms & conditions depending

on satisfactory performance of the contractor at the discretion of the Corporation.”

13. As can be seen from the above Clause 8, the respondents have to take a decision as to whether they want to extend the contractual period of the petitioner, in terms of the conditions therein, which is as per the discretion of the Corporation.

14. On considering all the above facts and circumstances, this Court is of the view that the respondents should take a decision on the petitioner's representation for extension of his contractual period, within a period of 5(five) days from today. As the petitioner has not submitted any bid pursuant to the NIT dated 18.11.2023, the petitioner is also granted a week's time from today, to submit his bid pursuant to the NIT dated 18.11.2023. In the event the respondents come to a decision that the petitioner's contractual period should be extended for another period of 1 year, the NIT dated 18.11.2023 should be cancelled/recalled by issuing an appropriate order.

15. The writ petitions are accordingly disposed of.

JUDGE

Comparing Assistant