

GAHC010288582023



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

Case No. : WP(C)/7421/2023

1. MUKAND POLY PRODUCTS
A PARTNERSHIP FIRM REGISTERED UNDER THE PARTNERSHIP ACT 1932
HAVING ITS OFFICE SITUATED AT PLOT NO. 38, BRAHMAPUTRA
INDUSTRIAL PARK, VILLAGE SILA AMINGAON, 781031 DIST KAMRUP M
ASSAM

2: RISHI GUPTA
S/O LATE R.S GUPTA
RESIDENT OF F. A ROAD
KUMARPARA
GUWAHATI 781001 AND ONE OF THE PARTNERS OF THE PET.NO.

VERSUS

1. UNION OF INDIA
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA. MINISTRY
OF PETROLEUM AND NATURAL GAS SHASTRI BHAWAN, NEW DELHI
110001

2: BHARAT PETROLEUM CORPORATION LIMITED
A GOVT. OF INDIA UNDERTAKING REPRESENTED BY ITS CHAIRMAN
AND MANAGING DIRECTOR
BHARAT BHAWAN
4 AND 6 CARRIIMBHOY ROAD
BALLARD ESTATE
MUMBAI 400001

3: EXECUTIVE DIRECTOR
CENTRAL PROCUREMENT ORGANISATION (MKTG.) BHARAT
PETROLEUM CORPORATION LIMITED
A INSTALLATION
SEWREE FORT ROAD
SEWREE(EAST) MUMBAI 400015

4:THE EXECUTIVE DIRECTOR (PROJECT) GAS BU
BHARAT PETROLEUM COR. LTD.
12TH FLOOR
F WING
MAKER TOWERS
COFEE PARADE
MUMBAI 40005

5:THE PROCUREMENT LEADER
GRADE III
BHARAT PETROLEUM CORPORATION LIMITED
BHARAT BHAWAN
4 AND 6 A INSTALLATION
SEWREE FORT ROAD
SEWREE (EAST)
MUMBAI 400015

6:GENERAL MANAGER (PROJECTS) GAS
BHARAT PETROLEUM CORPORATION LIMITED
A INSTALLATION
SEWREE FORT ROAD
SEWREE (EAST)
MUMBAI 40001

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

For the petitioners	: Dr. A. Saraf	Sr. Advocate.
	Mr. P.K. Bora,	... Advocate

For the respondent no.1	: Mr. K. Gogoi	 CGC
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For the respondent nos.2- 5	: Mr. J. Roy.	Sr. Advocate.
	Mr. S.S. Roy,	 Advocate

Dates of hearing	: 04.06.2024 & 11.06.2024
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Date of Judgment	: 18.06.2024
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JUDGMENT AND ORDER (CAV)

1. Dr. A. Saraf, learned Senior Counsel appears for the petitioners assisted by Mr. P.K. Bora, learned counsel; Mr. J. Roy, learned Senior Counsel appears for the BPCL assisted by Mr. S.S. Roy, learned counsel; Mr. K. Gogoi, learned counsel appears for the respondent no.1 and Mr. Arohi Bhalla, learned counsel appears for the Intervenor Rungta Irrigation Limited. The Rungta Irrigation Limited, a Company incorporated under the provisions of the Companies Act, 1956, having its office at 101, Pragati tower 26, Rajendra Place, New Delhi was allowed to become an Intervenor in this case vide order dated 26.04.2024 passed by the Supreme Court in SLP(C) Nos.9654-9655/2024.

2. The petitioner has put to challenge the impugned order dated 08.12.2023 issued by the BPCL, by which he has been blacklisted for a year by the respondent authorities. The petitioners' counsel submits that the facts of the case show that the respondent authorities have blacklisted the petitioner due to a wrong assumption of facts, which is to the effect that the petitioner had taken a decision that it would not make any supply of pipes beyond the value of Rs.11.39 crores, pursuant to the NIT dated 25.07.2022, Letter of Acceptance dated 23.01.2023, First Call Off/Purchase Order dated 24.01.2023 and Dispatch Order dated 18.02.2023.

3. The petitioners' counsel submits that an NIT dated 25.07.2022 was published by the BPCL, for procurement of Polythene (MDPE) Pipes for BPCL/BGRL City Gas Distribution (CGD) Projects. The respondent nos.2 to 6

thereafter issued Letter of Acceptance dated 23.01.2023 to the petitioner, stating that its offer for the procurement of Polythene Pipes had been accepted for a total amount of Rs.15,01,70,715/-. Thereafter the BPCL issued a Call Off/Purchase Order dated 24.01.2023 for procurement of Polythene Pipes for Lot-1, 2, 3 & 4 of the Tender, as per the quantity given in the Annexure-B. Though Annexure-B gave the quantity for the Polythene Pipes to be supplied by the petitioner, the same does not give the value of the Pipes to be supplied by the petitioner. However, Paragraph-8 of the writ petition states that the Call Off/Procurement Order dated 24.01.2023 amounted to Rs.11,39,32,605/-.

4. The BPCL then issued the Dispatch Clearance Note dated 18.02.2023 to the petitioner for supply of a portion of the Polythene Pipes mentioned in Annexure-B of the Call Off letter dated 24.01.2023. Though no value of the pipes is mentioned in the Dispatch Clearance Note dated 18.02.2023, the writ petitioner in paragraph-8 of the writ petition has stated that the value of the pipes to be dispatched as per the Dispatch Clearance Note dated 18.02.2023 amounted to Rs.11,39,32,605/-.

5. The petitioners' counsel submits that the BPCL has not made any dispatch order beyond the approximate Rs.5.50 crores worth of pipes made in terms of the Dispatch Clearance Note dated 18.02.2023 till date. He submits that the petitioner has not made any statement or taken any decision to the effect that the petitioner cannot supply Rupees 15.00 crores (approximate) worth of Polythene Pipes in terms of the NIT dated 16.08.2022. On the other hand, the BPCL has only made a Letter of Acceptance dated 23.01.2023 for procurement of pipes amounting to Rs.11,30,30,097/- and taken delivery of Polythene Pipes

approximately valued at Rs.5.50 crores. He submits that when the petitioner has been pressing the BPCL to take the remaining balance amount of Polythene Pipes in terms of Letter of Acceptance dated 23.01.2023, the blacklisting of the petitioner on the assumption that it would not be able to supply Polythene Pipes in terms of the First Call Off/Procurement Order dated 24.01.2023, is false and without any basis. The petitioner's counsel submits that the petitioner is willing and capable of supplying pipes worth Rs.15,01,70,715/- to the respondents. However, BPCL is not making any orders for dispatch of the required quantity of pipes worth Rs.15,01,70,715/-.

6. The petitioners' counsel further submits that while the Show-Cause-Notice dated 21.07.2023 issued to the petitioner has stated that action would be taken against the petitioner, in terms of Clause 9 of the Holiday Listing Policy of BPCL, the impugned blacklisting order dated 08.12.2023 has not made any mention of the Clause 9 of the Holiday Listing Policy of the BPCL, which is as follows :

“9.1. The procuring companies shall impose sanction on manufacturers/service providers not fulfilling LC of Goods / services in accordance with the value mentioned in the certificate of LC.

9.2. The sanctions may be in form of written warning, financial penalty and blacklisting.

9.4. A manufacturer or supplier of goods and / or provider of services who has been awarded the contract after availing Purchase Preference is found to have violated the LC provision, in the execution of the procurement contract of goods and /or services shall be subject to financial penalty specified in clause 9.4.1.

9.4.1. The financial penalty shall be over and above the the PBG value prescribed in the contract and shall not be more than an amount equal to 10% of the Contract Price.”

7. The learned Senior Counsel for the petitioners submits that this Court has the territorial jurisdiction to decide the present case, as the Show-Cause-Notice and the blacklisting order had been received by the petitioner in Assam. Further, as it's office/factory and place of origin or dispatch of goods is in Assam, a part of the cause of action is within Assam. As such, this Court has jurisdiction to try the present case. In this regard, he has relied upon the judgment of the Division Bench of this Court in the case of ***State of Maharashtra & Others vs. State of Arunachal Pradesh & Others***, reported in ***(2003) 2 GLR 195*** (Paragraph-2, 12) and the Division Bench judgment of Gujrat High Court at Ahmedabad in the case of ***Ratnam Energy Private Limited vs. Oil and Natural Gas Corporation Limited (R/Special Civil Application No.1235/2021)*** (Paragraph-16).

8. The learned Senior Counsel for the petitioners submits that there is no suppression of material facts in the writ petition, just because the petitioner had not made a mention in the writ petition that it had approached the BPCL authorities by way of an Appeal under Clause 4.2.14 of the Policy for Holiday Listing of Vendors in the BPCL. He submits that though the writ petition and the appeal were filed on the same day, i.e. on 18.12.2023. The appeal appears to have been filed after filing of the writ petition. He submits that the appeal filed by the petitioner was subsequently withdrawn on 14.02.2024. He also submits that the Writ Court has the power to call upon the parties to elect whether it can proceed with the alternative remedy (appeal) or with the application under Article 226 of the Constitution. Further, the availability of an alternative remedy is not a bar for this Court to exercise it's writ jurisdiction. In this regard he has

relied upon the judgment of the Supreme Court in the case of ***S.J.S. Business Enterprises (P) Ltd. vs. State of Bihar & Others***, reported in **(2004) 7 SCC 166**.

9. Mr. J. Roy, learned Sr. Counsel for the respondent nos.2 to 6 submits that the service of notice upon the petitioner in his address in Assam only gives him a right of action and no cause of action has arisen in Assam due to the said fact. In this regard, he has relied upon the Full Bench judgment of the Kerala High Court in the case of ***The Registrar, Indian Maritime University East Coast Road, Uthandi, Chennai vs. Dr. K.G. Viswanathan & Another***, reported in **2014 SCC OnLine Ker 21221**. He further submits that the writ petitioner in paragraph-38 of the writ petition has given a false statement, inasmuch as, it is stated therein that "*There is no other efficacious and/or alternative remedy and the remedy sought for by way of the instant Writ Petition is just, proper and adequate, if so granted*". He submits that as the petitioner has suppressed facts, this Court should decline to enter into the merits of the case and dismiss the writ petition in terms of the judgment of the Supreme Court in the case of ***K.D. Sharma vs. Steel Authority of India Limited & Others***, reported in **(2008) 12 SCC 481** and paragraph-13 of the judgment in *S.J.S. Business Enterprises (P) Ltd.* (supra).

10. With regard to the petitioner not having any cause of action to file the present case before this Court, he has relied upon the judgment of the Supreme Court in the case of ***State of Goa vs. Summit Online Trade Solutions Private Limited & Others***, reported in **(2023) 7 SCC 791** (Paragraph-2, 14-17 and 21); Oil and ***Natural Gas Commission vs. Utpal Kumar Basu &***

Others, reported in **(1994) 4 SCC 711** (Paragraph-6, 11, 12, 14 and 15); ***Kusum Ingots & Alloys Ltd. vs. Union of India & Another***, reported in **(2004) 6 SCC 254** (Paragraph-2 to 18).

11. Mr. J. Roy has also relied upon the judgment of the Bombay High Court, Nagpur Bench in the case of ***Kohli Roadlines, Nagpur vs. Maharashtra State Power Generation Company Limited, Mumbai***, reported in **2023 SCC OnLine Bombay 638** decided on 16.03.2023, wherein it has held that mere fact that the office of the petitioner therein was situated at Nagpur was not sufficient to enable the writ petition to be filed at Nagpur for being entertained on merits. In support of his submission that this Court should not entertain the writ petition, as no cause of action arises within the jurisdiction of this Court, he has relied upon the judgment of the Supreme Court in ***National Textile Corpn. Ltd. & Ors. Vs. M/s Haibox Swalram***, reported in **(2004) 9 SCC 786**.

12. Mr. J. Roy further submits that the Show-Cause-Notice to the petitioner shows that the petitioner had given intimation that it would not be able to supply Polythene Pipes to the value of Rs.11.39 crores (approximate) and as such, the decision to blacklist the petitioner was taken with regard to defaulting in supplying pipes, in terms of the NIT dated 25.07.2022 amounting to approximately Rs.12.00 crores.

13. Mr. A. Bhalla, learned counsel for the Intervenor has submitted that the writ petition is not maintainable on three grounds. Firstly, on the issue of territorial jurisdiction. Secondly, the petitioner had availed of the alternative remedy in filing an appeal before the Departmental Appeal, against the

impugned order of blacklisting the petitioners, in terms of Clause 4.2.14 of the Policy for Holiday Listing of Vendors in BPCL. Thirdly, due to suppression of facts by the petitioners, inasmuch as, the petitioners did not inform this Court or the Division Bench about the filing and pendency of its appeal during the proceedings of this case and in WA 471/2023.

14. The counsel for the intervenor submits that while the writ petition had been filed on 18.12.2023 against the impugned blacklisting order issued on 08.12.2023, the petitioners had also simultaneously filed a Departmental Appeal on the same date. However, there is no whisper of the fact of filing of the appeal by the petitioners in their writ petition. He further submits that when the present writ petition had been listed on 20.12.2023, the petitioners should have informed this Court that an appeal had been preferred 2 (two) days earlier, i.e. on 18.12.2023. However, the petitioners did not do the same. As the interim prayer made by the petitioners before this Court was not granted on 20.12.2023, the petitioners preferred a Writ Appeal, being WA No.471/2023, which was listed on 21.12.2023. The Division Bench of this Court, vide its order dated 21.12.2023, allowed the petitioners to participate in all tender notices, vide order dated 21.12.2023. He submits that even before the Division Bench, no averment or submission had been made by the petitioners that they had filed an appeal by availing the alternative remedy available under Clause 4.2.14 of the contract agreement, thereby pursuing 2 parallel proceedings. When the matter was listed again before this Court on 05.01.2024, the issue of the petitioner filing an appeal was raised for the first time by the counsel for the BPCL, as can be seen from the order dated 05.01.2024 passed by this Court. Thereafter, the appeal was withdrawn by the petitioner on 14.02.2024.

15. The counsel for the intervenor submits that the petitioners while filing the writ petition, in paragraph-38 of the writ petition have stated that there was no other efficacious and/or alternative remedy available to the petitioners. Further, the petitioners in paragraph-8 of the affidavit-in-reply which was filed on 23.02.2024 stated that the Departmental Appeal filed by them which was withdrawn, vide letter dated 14.02.2024 on legal advice received, had been done under a mistake of law.

16. The counsel for the intervenor submits that the writ petition has to be dismissed for not being maintainable, as the Bombay High Court has the territorial jurisdiction to try the present case. He submits that the respondents are all located in Mumbai and the tender was floated in Mumbai. The supply of pipes are to be supplied to various places excluding the State of Assam. Further, the blacklisting order has been issued in Mumbai.

17. The counsel for the intervenor submits that the petitioners have not made any averment/pleadings with regard to this Court having territorial jurisdiction over the present subject matter in issue or the fact that the cause of action has arisen within the territorial jurisdiction of this Court. He accordingly submits that as the petitioners have not taken any averment in pleadings with regard to this Court having any jurisdiction over the subject matter in issue in terms of Article 226(1) and Article 226(2) of the Constitution, the writ petition should be dismissed, as not being maintainable.

18. In support of his submission that this Court lacks territorial jurisdiction to consider the subject matter in issue, he has relied upon the judgment of the Delhi High Court in the case of ***Jayaswals Neco Limited vs. Union of India***

& Others, reported in **2007 SCC OnLine Del 2094**, the judgments of the Supreme Court in the case of **Kusum Ingots & Alloys Ltd. vs. Union of India & Another**, reported in **(2004) 6 SCC 254** and **State of Goa vs. Summit Online Trade Solutions Private Limited & Others**, reported in **(2023) 7 SCC 791**.

19. In support of his submission that this Court should not exercise its discretion in this case, in view of the efficacious and alternative remedy being available and which had also been exercised by them and subsequently withdrawn, he relies upon the judgment of the Supreme Court in the case of **Godrej Sara Lee Ltd. vs. Excise and Taxation Officer-cum-Assessing Authority & Others**, reported in **2023 SCC OnLine SC 95**.

20. He also submits that as the petitioners have played hide and seek with facts, by suppressing the fact that they had filed an appeal under Clause 4.2.14, the writ petition should be dismissed in terms of the judgment of the Supreme Court in **K. Jayaram & Others vs. Bangalore Development Authority & Others**, reported in **(2022) 12 SCC 815**.

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

22. Clause 2.5 of the PPLC Policy provides the definition of Class-I and Class-II supplier depending upon the local content of the manufactured goods or services, which is as follows :

“2.5 Supplier of goods and/or provider of service shall be a business

entity having capability of providing goods and/or service in accordance with the business line and qualification thereof and classified as under:

'Class-I local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content equal to or more than 50% as defined under this Policy.

'Class-II local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content more than or equal to 20% but less than 50%, as defined under this Policy.

'Non-local supplier' means a supplier or service provider, whose goods, services or works offered for procurement, has local content less than 20%, as defined under this Policy."

23. The submission of the respondents counsel is that in pursuant to the NIT dated 25.07.2022, the petitioners had been issued a Letter of Acceptance dated 23.01.2023 by the BPCL, wherein it was specifically provided in Clause 1 and 3 of the said letter that the total contract value of the tender was Rs.15,01,70,715/- including GST @18%. Further, Clause 3 & 6B of the said Letter of Acceptance dated 23.01.2023 was to the effect that the basic value of the contract was Rs.12,72,63,317.80. This is clear from the contents of Clause 6B which states as follows :

"3. Estimated value of the contract :

The total contract value of the tender shall be Rs.15,01,70,715.00 including 18% (Rs. Fifteen Crore One Lakhs Seventy Thousand Seven hundred and Fifteen only)

6B. Further to the LOA, you are requested to submit PBG and/or Security deposit as per the following:

*A Performance Bank Guaranty (PBG) of 3% of Basic Value (**Rs.12,72,63,317.80**) of Contract shall be submitted, within 15 days of*

*receipt of PO/Call off. The PBG amount works out to **Rs.38,17,899.53***

*Alternatively, Bidder may opt to submit the PBG against each Call Off/Purchase Order at the time of Invoicing OR you may opt for retention money of 3% of basic supply order value up to the warranty period in lieu of PBG, THEN you are required to submit the Security deposit of **Rs.7.5 Lacs** through Bank Guarantee. This should be sent by courier/speed post to:*

Business Process Excellence Centre (BPEC)

4th Floor, BPCL Office Complex.

Plot No. 6 Sector-2.

Behind CIDCO Garden, Kharghar.

Navi Mumbai-410210.

The bidder shall have the option to convert the EMD into SD.”

24. The further submission of the respondents counsel is that the petitioners have misinterpreted the Policy to provide purchase preference (linked with local content) (PP-LC), inasmuch as, the definition of local content as provided in Clause 2.3 of the PP-LC provides that the amount of value added in India shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.

25. Further, Clause 6 of the PP-LC provides the determination of the local content which is enumerated in Clause 6.1 to 6.1.3, which are as follows :

“6. Determination of LC

6.1 LC of goods

6.1.1 LC of goods shall be computed on the basis of the cost of domestic components in goods, compared to the whole cost of product.

6.1.2 The criteria for determination of the local content cost in the goods shall be as follows:

a) in the case of direct component (material), based on country of origin;

b) in the case of manpower, based on INR component.

6.1.3 The calculation of LC of the combination of several kinds of goods shall be based on the ratio of the sum of the multiplication of LC of each of the goods with the acquisition price of each goods to the acquisition price of the combination of goods.”

26. The Tractebel Engineering Private Limited, which is the Inspecting Agency appointed by the BPCL, for carrying out inspection with regard to various aspects of the contract including the local content of the materials to be supplied, issued a Dispatch Clearance Note dated 18.02.2023 to the petitioners requiring the petitioners to dispatch items. The Chart made by Tractebel Engineering Private Limited in their dispatch clearance note dated 18.02.2023 is as follows :

Sr. No.	Material Description	PO Qty (Mtrs.)	Prev. Qty (Mtrs.)	Insp. Qty (Mtrs.)	Balance Qty (Mtrs.)
1.	PE 100 X DN 32 X 3.0 MM X SDR 11 MDPE PIPES	389,000	NIL	250000	139,000
2.	PE 100 X DN 63 X 5.8 MM X SDR 11	111,000	NIL	50000	61,000

	MDPE PIPES				
3.	PE 100 X DN 90 X 8.2 MM X SDR 11 MDPE PIPES	45000	NIL	30000	15,000
4.	PE 100 X DN 125 X 11.4 MM X SDR 11 MDPE PIPES	57000	NIL	20000	37,000

27. The Chart shows that the Quantity required for dispatch of 33 MM Pipes was 389,000 meters. For 63 MM Pipes, it was 111,000. For 90 MM Pipes, it was 45,000 and 125 MM Pipes it was 57,000.

28. However, the quantity inspected is lesser than the quantity to be dispatched. It is the stand of the respondents that it is the responsibility of the petitioners/suppliers to make available the required Pipes for inspection and it is not a case of the BPCL authorities inspecting a lesser quantity of Pipes than what was required. The respondents counsel submits that when the quantity required for dispatch has been mentioned, it is the duty of the supplier to make available the said quantity for inspection. Only the inspected goods can then be dispatched. However, the petitioners herein could not make available the quantity required for inspection for the BPCL, in terms of the dispatch clearance note dated 18.02.2023.

29. The counsel for the respondents further submits that there is no averment made by the petitioners in their pleadings that they had offered for inspection the entire quantity of materials of pipes to be supplied by them, in terms of the

dispatch clearance note dated 18.02.2023 or page-369. The respondents' further case is that despite the Tractebel Engineering Ltd requiring the petitioners to submit all documents to justify meeting the local contents of their pipes at 82.36%, the petitioners did not supply the required documents to Tractebel Engineering Ltd. Instead, the petitioners have annexed various invoices of the raw materials required for manufacturing pipes pertaining to the years 2019, 2020 and 2021, which is laughable, as the required pipe specifications were made known to tenderers only on 25.07.2022, when the NIT was issued.

30. The petitioners were thereafter directed to put on hold all dispatches to be made with respect to the supply of pipes, till verification of the local content documents relatable to the pipes to be supplied, were made by Tractebel Engineering Ltd and BPCL, vide e-mails dated 03.03.2023 and 09.03.2023.

31. Subsequent to the above facts, the petitioners submitted a letter dated 21.03.2023 to BPCL, stating that their earlier submitted declaration of 82.36% local content in the pipe category was not executable. Nevertheless, as the petitioners stand was that they still fell under the category of Class I supplier with local content of the pipe equal to or more than 50%, they would only be able to cater to the supply of the first call-up PO quantity under the PPLC Policy. The contents of the said petitioners letter dated 21.03.2023 is reproduced hereinbelow as follows-

“This is in reference to above mentioned tender being GEM/2022/B/2378197 dated 25/07/2022 for supply of Polyethylene (MDPE) PIPE for BPCL/BGRL CGD Projects. After assessing your requirements and BPCL's interpretation of the bid document, we have come to the conclusion that

our earlier submitted declaration of 82.36% Local content in the Polyethylene (MDPE) Pipe category, is not executable. Nevertheless, we would still fall under the category of Class 1 Local Supplier with Local content equal to or more than 50%.

Keeping in mind the above, and on the basis of the availability of raw material, to meet the Class 1 local supplier Local Content, we will only be able to cater the first call-up PO quantity under PPLC Policy.

Accordingly, please find attached the Statutory Auditor Certificate against the First Call Off Order (BPCL/MDPE/Calloff 01) for your kind perusal."

32. The fact that the petitioners had, in pursuance to the tender notice dated 25.07.2022, made a declaration that the local content of their Polythene (MDPE) Pipes was 82.36% and thereafter, changed the local content to be equal to or more than 50%, implies that the petitioners have not given the correct picture of their pipes at the tender evaluation stage.

33. Thereafter, the show cause notice dated 21.07.2023 was issued to the petitioners stating that they were liable to be blacklisted. The petitioners made a reply to the show cause notice vide letter dated 31.07.2023. Subsequently, the impugned blacklisting order was issued on 08.12.2023.

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

35. The brief facts of the case is that the writ petitioner has put to challenge an order dated 08.12.2023, by which he has been blacklisted for a year by the BPCL. In view of the blacklisting order, the writ petitioner cannot participate in supply/contract works that has that has been advertised/issued by the BPCL.

Being aggrieved, the writ petitioner approached this Court vide WP(C) 7421/2023. In the order dated 20.12.2023 passed by this Court, it was stated that the prayer for an interim order would be considered on the next returnable date, i.e. 05.01.2024.

36. Being aggrieved with the same, the writ petitioner preferred an appeal, being WA 471/2023 before the Division Bench of this Court. WA 471/2023 was disposed of by order dated 21.03.2023, by making the following observations:-

"6. Further we find that the prayer for interim will be considered on 05.01.2024. In that view of the matter this writ appeal is disposed of directing that the bids of the petitioner's firm will not be rejected on the basis of the order dated 08.12.2023. Further, the petitioner's firm may also be permitted to submit fresh bids for other works and the order dated 08.12.2023 shall not come in the way of the petitioner's firm. However, this order shall be subject to the outcome of the decision of the learned Single Judge with regard to the interim order which is to be considered on 05.01.2024."

37. Thereafter, this Court passed the following interim order dated 05.01.2024 in the main case, i.e. WP(C) No.7421/2023, as per the following:-

"Be that as it may, let an affidavit-in-opposition be filed wherein the respondents would be at liberty to take up any preliminary objections questioning the maintainability of the writ petition. Such affidavit may be filed on or before 30.01.2024 and the matter be listed for consideration on 09.02.2024 so as to enable the petitioner to file rejoinder if any. The observations made by the Hon'ble Division Bench would operate till the next date of listing. This Court further makes it clear that so far as the works in which the petitioner has submitted its bid which are the subject matter of the observation of the Hon'ble Division Bench, the authorities

may go ahead with the tender process and finalize the same but before allotting the work order, leave is required to be taken from this Court.

Pendency of this writ petition shall not be a bar to consider and dispose of the departmental appeal in accordance with law”

38. In the case of ***Jayaswals Neco Limited (supra)***, the Delhi High Court has held that while Article 226(1) empowers a High Court to issue writs to a person, authority or government within its territorial limits de hors the question of where the cause of action arose. Article 226(2) enables High Courts to issue writs to persons, authorities or governments located beyond its territorial limits, provided a cause of action arises (in whole or in part) within the territorial extent of the said High Court. What Article 226(2) has done is to extend the jurisdiction of the High Courts beyond their territories in cases where part of the cause of action arises within its territories. Therefore, Article 226(2) extends and does not supplant Article 226(1). The decision of the Delhi High Court had been made by considering the judgment of the Supreme Court in the case of ***Lt. Col. Khajoor Singh vs. The Union of India & Another***, reported in ***AIR 1961 SC 532*** and various other decisions, including the case of ***Kusum Ingots & Alloys Ltd. (supra)***.

39. In the case of ***Lt. Col. Khajoor Singh (supra)***, the Supreme Court was to decide the two questions, i.e. (i) *Whether the Government of India as such can be said to have a location in a particular place, viz., New Delhi, irrespective of the fact that its authority extends over all the States and its officers function throughout India, and (ii) whether there is any scope for introducing the concept of cause of action as the basis of exercise of jurisdiction under Article*

226.

40. The Supreme Court held that a Government may be functioning all over a State or all over India; but it certainly is not located all over the State or all over India. It is true that the Constitution has not provided that the seat of the Government of India will be at New Delhi. However, that does not mean that the Government of India as such has no seat where it is located. It is common knowledge that the seat of the Government of India is in New Delhi and the Government as such is located in New Delhi. The absence of a provision in the Constitution can make no difference to this fact. The Supreme Court thus held that what has to be seen is whether the words of Article 226 mean that the person or authority to whom a writ is to be issued has to be resident in or located within the territories of the High Court issuing the writ. With regard to the concept of cause of action, the Supreme Court in ***Khajoor Singh (supra)*** held that the same could not be introduced in Article 226. However, subsequent to the decision of the Supreme Court in ***Khajoor Singh (supra)***, the 15th Amendment to the Constitution introduced Clause (1-A) to Article 226, which was subsequently renumbered as Clause (2) by the Constitution 42nd Amendment. Paragraph-27 of ***Khajoor Singh (supra)*** states as follows:

*“27. After the decision in the case of ***Khajoor Singh (supra)***, the 15th Amendment to the Constitution introduced Clause (1-A) to Article 226 which was subsequently renumbered as Clause (2) by the Constitution 42nd Amendment and which now reads as under:*

226 (2). The power conferred by Clause (1) to issue directions, orders or writs to any Government authority or person may also be

exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

41. The Delhi High Court in ***Jayaswals Neco Limited (supra)***, thus held that the amendment to Article 226(2) showed that Article 226(2) is extended and did not supplant Article 226(1) and the same continued to remain in terms of the judgment of the Supreme Court in ***Khajoor Singh (supra)***. Thus what is clear from Article 226(2) is that the writ of the High Court would reach even beyond the territorial jurisdiction, provided cause of action (in whole or in part) arises therein, no matter that the seat of the authority concerned was outside the territorial jurisdiction of that High Court. Thus, in terms of Article 226(1) and 226(2), the High Court of a State would have jurisdiction where the authority or government is located and where the cause of action in whole or in part has arisen.

42. In the case of ***Kusum Ingots & Alloys Ltd. (supra)***, the Supreme Court has held that we must however remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

43. The Delhi High Court on considering various judgments of the Supreme Court held as follows :

“48. On the basis of the above discussion, it can be safely said that **Kusum Ingots (supra)**, was definitive with regard to the following:

(1) Passing of a legislation by itself does not confer any right to file a writ petition unless a cause of action arises therefore.⁴ [See: *Kusum Ingots (supra)*: para 19]

.(2) Situs of office of Parliament, legislature of a State or authorities empowered to make subordinate legislation would not by itself constitute any cause of action.⁵ [See *Kusum Ingots (supra)*: para 26].

(3) The High Court within whose jurisdiction a legislation is passed, would not have the sole territorial jurisdiction but all the High Courts where cause of action arises, will have jurisdiction. [See: *Mosaraf Hossain Khan (supra)*: para 26].

(4) The question as to whether the court has a territorial jurisdiction to entertain a writ petition, must be arrived at on the basis of averments made in the petition, the truth or otherwise thereof being immaterial. [See: *Kusum Ingots (supra)*: para 12 with reference to *ONGC v. Utpal Kumar Basu*.

(5) When a part of the cause of action arises within one or the other High Court, it will be for the petitioner to choose his forum. [See: *Kusum Ingots (supra)*: para 25].

(6) In appropriate cases, the court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of *forum conveniens*. [See: *Kusum Ingots (supra)*: para 30].”

44. In the case of ***State of Goa vs. Summit Online Trade Solutions Private Limited (supra)***, the Supreme Court has held that the constitutional mandate of clause (2) of Article 226 is that the cause of action must at least arise in part within the territories in relation to which the High Court exercises jurisdiction where writ powers conferred by Clause (1) are proposed to be exercised, notwithstanding that the seat of the Government or authority or the residence of the person is not within those territories. It further held that

without the cause there cannot be any action. Further, determination of the question as to whether the facts pleaded constitute a part of the cause of action, sufficient to attract clause (2) of Article 226 of the Constitution would necessarily involve an exercise by the High Court to ascertain the facts, as pleaded, constitute a material, essential or integral part of the cause of action. In so determining, it is the substance of the matter that is relevant.

In the present case, though the petitioners have not made any averments in the writ petition, to the effect that this Court has the territorial jurisdiction to decide the present case or a part of the cause of action arises in the State of Assam, the same has been done in the petitioner's rejoinder affidavit.

45. For guidance, Section 20 of the CPC is reproduced hereinbelow, as follows :

“20. Other suits to be instituted where defendants reside or cause of action arises-*Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-*
(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or
(c) The cause of action, wholly or in part, arises.”

46. On considering Section 20 CPC and the above three judgments, it is crystal clear that under Article 226 of the Constitution, this Court would have to consider as to whether the person or the authority to whom the writ is to be

issued is a resident or located within the territories of this Court. Further, whether any part of the cause of action arose within the territory of this Court. Though the petitioner has taken the stand that the petitioner is a manufacturer of the required Polythene (MDPE) Pipes in the State of Assam and that he got to know of the impugned blacklisting order in Assam, this Court is of the view that the same does not attract the writ jurisdiction of this Court, inasmuch as, the blacklisting order was issued by the respondent No.5 in Mumbai and all the respondents addresses are outside the territorial jurisdiction of this Court. As such, this Court does not have the territorial jurisdiction to try the present case, in terms of the judgments of the Delhi High Court and the Supreme Court mentioned above. With regard to there being an alternative remedy available, it is an admitted fact that the petitioner had filed an appeal against the impugned blacklisting order, in terms of Clause 4.2.14 of the contract agreement. However, the same was withdrawn by the petitioner on 14.02.2024 after nearly 2 months.

47. In the case of ***Godrej Sara Lee Ltd. (Supra)***, the Supreme Court has held that one of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. It further held that at the same time, it must be remembered that mere availability of an alternative remedy would not oust the jurisdiction of the High Court under Article 226 and render a writ petition not maintainable. The Supreme Court however observed the judgment of the Supreme Court in ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai***, reported in ***(1998) 8 SCC 1***, which carved out the exceptions, whereof a writ Court would be justified in entertaining a writ petition, which is

as follows :

- “(i) where the writ petition seeks enforcement of any of the fundamental rights;*
- (ii) where there is violation of principles of natural justice;*
- (iii) where the order or the proceedings are wholly without jurisdiction; or*
- (iv) where the vires of an Act is challenged.”*

None of the above four tests are attracted in the petitioners case and as such, this Court is of the view that the petitioners should avail the alternative remedy available.

48. With regard to the question of suppression of facts, this Court finds that the petitioner had not mentioned the fact that it had filed an appeal under Clause 4.2.14, at the time of filing the writ petition. In paragraph-38 & 39 of the writ petition, the writ petitioner has stated that there is no other efficacious and/or alternative remedy and that the petitioner had not filed any other petition in any Court of law on the same cause of action. This is clearly a wrong statement made under oath, inasmuch as, the petitioner had filed an appeal which it had withdrawn later, i.e. nearly two months after filing of the writ petition.

49. In the case of ***K. Jayaram (supra)*** the Supreme Court has held that in order to check multiplicity of proceedings pertaining to the same subject matter and more importantly to stop the menace of soliciting inconsistent orders through different judicial forums by suppressing material facts, either by remaining silent or by making misleading statements in the pleadings, the

parties have to disclose the details of all legal proceedings and litigations which is within their knowledge. In the present case, the petitioners have told a blatant lie at the time of filing their writ petition and even they have kept mum at the time of filing WA No.471/2023.

50. In the case of ***K.D. Sharma vs. SAIL***, reported in **(2008) 12 SCC 481**, the Supreme Court has held as follows :

“34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

*35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of **R. v. Kensington Income Tax Commissioners**, reported in **(1917) 1 KB 486** in the following words:*

".....It has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts- it says facts, not law. He must not misstate the law if he can help it; the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it the Court will set aside any action which it has taken on the faith of the imperfect statement".

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a Writ Court would certainly bear in mind the conduct of

the party who invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating "We will not listen to your application because of what you have done". The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it."

51. On considering the fact that the petitioner has played hide and seek with facts before this Court even after the filing of the writ petition, this Court is of the view that the petitioner has not been fair to the Court.

52. The petitioner's case is that the petitioners had been given the contract of supply of Polythene (MDPE) Pipes for a total amount of Rs.15,01,70,715/- and though the petitioner was ready to supply all the pipes, the respondents have not made any dispatch order beyond the dispatch clearance note dated 18.02.2023 for pipes worth Rs.5.50 crores only. The petitioner's further case is that the respondents had inspected of lesser number of pipes than required in the dispatch clearance note dated 18.02.2023, though they should have inspected the required quantity that was to be supplied by the petitioner. The further case of the petitioner is that the petitioner had informed the respondents to give clearance for dispatch of the quantities that had not been inspected by the respondents, in terms of the dispatch clearance note dated 18.02.2023, vide the petitioners letter dated 12.09.2023. However, the respondents did not give clearance.

53. On the other hand, the respondents case is that despite the respondents wanting the dispatch of certain quantity of pipes, the petitioner did not give the respondents any inspection call for inspecting the required quantity of pipes and

as such, it was clear that the petitioners could not supply the required quantity of pipes. Further, the petitioners had clearly stated that they could not supply the required quantity of pipes in their letter dated 31.07.2023.

54. As can be seen from the letter dated 21.03.2023 issued by the petitioner to the BPCL, the petitioner has stated that the local content of the pipe at 82.36% was not executable and that the local content of their pipe was equal to or more than 50%, which put them under Class-1 local supplier.

55. The petitioner's reply dated 31.07.2023 to the show-cause notice dated **21.07.2023** at Paragraph-A(3) is as follows :

“(iii) On subsequent interactions and specifically on 15/03/2023, when a meeting between M/s Mukand Poly Products and BPCL officials took place in Mumbai the subject issue was discussed in detail. It is in this meeting that we realized that the clause was capable of another interpretation, different to what was adopted by us. Accordingly, we submitted a letter MPP/COM/2022-23/376 dated 21/03/2023 to BPCL informing that as per BPCL's interpretation, the local content in the goods supplied by us was 51/45%. We informed BPCL our inability to meet the 82.36% local content criteria and keeping in mind BPCL's interpretation of the policy, and on the basis of the availability of raw material, to meet the Class 1 local supplier Local Content, we informed BPCL that we could cater only the first call-up P.O quantity under PPLC Policy. It is pertinent to state herein that although we did not match the requirement local content as per BPCL's interpretation, we were fully in compliance with the local content requirement as per Enclosure 1 of the subject Policy at Table 2 for supply contracts.”

The above admission made by the petitioners in their reply dated 31.07.2023 clearly goes to show that they were unable to supply pipes as per the contract, except to the extent of satisfying the first call up PO quantity under PPCL Policy.

56. The petitioners initial stand was that they were ready and in a position to supply the contract value of pipes worth Rs.15,01,70,715/-, which is belied by the petitioners letter dated 31.07.2023. Further, the local content of the petitioners pipes at the time of submission of their bids was 82.36%, which is now 50% or above, are disputed questions of fact, would touch upon the merits of the case. As no part of the cause of action regarding the blacklisting of petitioners lies within the territorial jurisdiction of this Court, this Court is not going into the merits of the case. Just because petitioners are located within the territorial jurisdiction of this Court, does not enclothe them with any right to challenge the blacklisting order before this Court. As this Court has no jurisdiction to decide the case, the petitioner would have to go before the appropriate Court having territorial jurisdiction or avail the alternative remedy available, to decide the grievance of the petitioners. Any observations or findings that may have been made by this Court with regard to the merits of the case, will not be considered to be the final findings or observations with regard to the merits of the case, as only the maintainability of the writ petition has been decided.

58. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant