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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 5817/2017 and CM No. 24245/2017**

ANAND & CO. THROUGH ITS PROPRIETOR Petitioner

Through: Mr V.M. Koura with Ms P.K.
Benipal, Advocates.

versus

INDIAN OIL CORP. LTD. & ORS

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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10.10.2017

1. The petitioner has filed the present petition, *inter alia*, impugning the letter dated 18.03.2015 (hereafter 'the impugned order') whereby respondent no.1 (hereafter 'IOCL') had placed the petitioner on 'holiday list' and debarred the petitioner from entering into any contract with IOCL for a period of three years effective from the said date.
2. The impugned order was passed after issuing a show cause notice to the petitioner and after examining the petitioner's response thereto. The allegation against the petitioner was that it had submitted false information in the bid documents furnished pursuant to the notice inviting tender (hereafter 'NIT') issued in October 2014.
3. The petitioner had filed the writ petition (W.P.(C) 2608/2017) assailing the said order on several grounds including that the punishment imposed by IOCL was disproportionate. It was contended that the false

information regarding an earlier works executed on behalf of GAIL Ltd. had been submitted inadvertently due to a mistake of an employee. It was also pointed out that the petitioner has been working as a contractor with IOCL since 1963 and had an unblemished record.

4. In view of the same, the aforementioned writ petition was disposed of by an order dated 22.03.2017 granting liberty to the petitioner to file a representation for reducing the holiday period by one year. It was further directed that if the representation is filed within a period of one week of passing the said order, the same would be considered and disposed of as expeditiously as possible and preferably within a period of three weeks thereafter. In compliance of the aforesaid order, the petitioner filed the representation on 27.03.2017 which was rejected by a communication dated 09.05.2017. The said decision is also impugned herein in this petition.

5. The present petition was moved on 14.07.2017 and on 31.07.2017, this Court had passed an order directing the respondent to, *inter alia*, place an affidavit whether the petitioner had derived any benefits from the forged documents. IOCL had filed an affidavit indicating that eligibility criteria for submitting the bid included completion of work costing not less than ₹8.14 lacs. The relevant eligibility criteria as specified in the NIT is reproduced below:

"3(Three) completed works each costing not less than Rs.4.88 Lacs

OR

(Two) completed works each costing not less than

Value of Single Work s.6.51 Lacs

OR

(One) completed work costing not less than Rs.8.14 Lacs.

Detail work order (similar in nature as described below in 3(c)) including covering letter and schedule of rates and completion - Certificate containing executed value of work shall be required. Completed value of work as mentioned in the completion certificate shall be considered for evaluation against single/multiple work order value required under PQ. However where he executed value is riot mentioned in the completion certificate, the copy of certified bill shall also be acceptable for determining value if submitted along with completion certificate.

In case of Rate Contracts which are running under extension after original contractual completion period, suitable document (certified by 'WO issuing company'/Engineer-In-Charge) as per format given in Annexure-H indicating executed value up to the original completion period along with extension letter will be treated as proof of successful completion of work."

6. The counter affidavit filed on behalf of IOCL indicates that the Letter of Acceptance issued by GAIL Limited submitted by the petitioner in support of its work experience as required under the NIT, indicated that the petitioner had completed the following works:

2.98	KWHR	500 EA	1625.00	8,12,500.00
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	METER(ENERGY METER), 1PH:240V 5-20A, 50HZ, TYPE: ELECTRONICS, WITH MECHANICAL, DISPLY, CLASS-1, IS: 13779/IEC: 1036, BASE MOUNTING, WITH TEST CERTIFICATE Make: L&T/HAVELS/BENTE X			
2.99	KWHR METER (ENERGY METER), 3PH.240V, 10-40A, 50HZ, TYPE: ELECTRONICS, WITH MECHANICAL DISPLY, CLASS-1, IS: 13779/IEC:1036, BASE MOUNTING, WITH TEST CERTIFICATE, Make:L&T/HAVELS/B ENTEX	8 EA	3209.00.00	15,600.00

7. The aforesaid entries were not correct and the entries in the correct LOA issued by GAIL Ltd read as under:

2.98	KWHR METER(ENERGY METER), 1PH:240V 5-20A, 50HZ, TYPE: ELECTRONICS, WITH MECHANICAL, DISPLAY, CLASS-1, IS: 13779/IEC: 1036, BASE MOUNTING, WITH TEST	100 EA	600.00	60,000.00
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	CERTIFICATE Make: L&T/HAVELS/BENTEX			
2.99	KWHR METER (ENERGY METER), 3PH.240V, 10-40A, 50HZ, TYPE: ELECTRONICS, WITH MECHANICAL DISPLAY, CLASS-1, IS: 13779/IEC: 1036, BASE MOUNTING, WITH TEST CERTIFICATE, Make:L&T/Havels/bentex	4 EA	1,200.00	4,800.00

8. If the above relevant entries of the correct document are considered, it is apparent that the petitioner had completed works of relevant nature only to the extent of ₹64,800/- (₹60,000/- and ₹4,800/-). Thus, the petitioner was ineligible to participate in the NIT. The said contention is not disputed by the learned counsel for the petitioner.

9. In view of the above, it is apparent that the forged document submitted by the petitioner was not inconsequential as claimed by the petitioner but was vital to establish the petitioner's eligibility to secure the contract. Thus, this Court is unable to accept that the punishment imposed on the petitioner is in any manner disproportionate or unreasonable.

10. In view of the above, this Court finds no reason to interfere with the impugned order. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

**OCTOBER 10, 2017
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