

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

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Date of decision: 14th November, 2018

+ LPA 630/2018

M/S MIDDLE EAST ONSHORE AND OFFSHORE OIL AND GAS
EQUIPMENT FZE Appellant

Through: Mr. S. Sharma and Ms. Priyanka Das,
Advs.

versus

OIL AND NATURAL GAS CORPORATION LIMITED
& ORS Respondents

Through: Mr. A.C. Mishra and Ms. Pallavi
Dubey, Advs. for ONGC.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

CAV. No. 1037/2018

As learned counsel for the caveator appears, caveat stands
discharged.

CM. No. 47203/2018 and 47204/2018 (for exemptions)

Exemptions allowed subject to all just exceptions.

Applications stand disposed of.

LPA 630/2018

1. The challenge in the Appeal is to the order dated 26th
October, 2018 passed by the learned Single Judge in W.P.(C)
11171/2018 whereby the learned Single Judge has disposed of the

writ petition by directing the respondents to complete the enquiry as initiated against the appellant as expeditiously as possible not later than 4 weeks from that date after giving the appellant due opportunity of being heard.

2. The facts as noted from the record are that the appellant herein had challenged before the learned Single Judge the communication dated 31st August, 2018 whereby the dealings of the respondents with the appellant have been suspended pending enquiry instituted against the appellant for its blacklisting. The ground for initiating the enquiry against the appellant was its failure to perform the contract for supply of high-strength proppants and 20/14 Mesh which was awarded to the appellant on 21st July, 2017. The justification given by the appellant for the non-supply of the material concerned within the period of 60 days of purchase was that, there was suspension of supply of electricity to its manufacturing units from where the goods were to be supplied.

3. It was contended on behalf of the appellant that the goods have since been manufactured from different facilities, the same be inspected so that the supply can be made.

4. Respondents herein had relied upon Paragraph 51 of the General Conditions of the Contract forming part of Purchase Order dated 7th September, 2017 to contend that the same stipulates that pending completion of inquiry process for putting the supplier on holiday, the respondents shall neither issue any tender enquiry to the defaulting supplier nor shall consider their offer in any ongoing tender.

5. Learned Single Judge noting the fact that the goods were not supplied and without expressing any opinion on the merits of the allegations was of the view that the appropriate should be to give direction for the completion of inquiry, a reference of which has already been above.

6. It is the submission of the learned counsel for the appellant that the appellant is not aggrieved by the direction given by the learned Single Judge for completion of inquiry within four weeks but pending finalization of the enquiry, the appellant should be permitted to participate in five tenders which have been floated by the respondents, the closing dates of which are 1st November, 2018, 5th November, 2018, 29th November, 2018, 20th November, 2018 and 27th November, 2018 respectively. According to him, if

nothing adverse is found against the appellant in the inquiry, it shall lose the benefit of participating in five tenders as referred above. The learned Counsel refers to a judgment of this court in the case of ***M/s. Aurochem (India) Private Ltd. v. Union of India and Ors. Civil Writ Petition No. 4307/93 and other connected matter*** to contend that the blacklisting has to be tested on the touchstone of Articles 14 and 16 and the same must be resorted to only in appropriate cases on dire necessity where the facts of the case do warrant exercise of such power and where without exercise of interim power, the exercise of ultimate power would be rendered a farce. He also relied upon the judgment of the Division Bench of Bombay High Court in ***Paras V. Mehta India Inhabitant v. Mumbai Municipal Corporation 2013 SCC OnLine Bom 1118*** to contend that the Court had directed the respondents to permit the petitioner therein to take part in the tender process and consider the same uninfluenced by the impugned letter / circular and if the petitioner's bid is the most competitive, even then the respondents shall not award contracts or issue work orders to the petitioner, until the outcome of the inquiry / investigation.

7. Having considered the aforesaid submission made, suffice it to state that in the case in hand, Para 51 of the General Conditions of Contract as relied upon by the learned Single Judge vide (ii) stipulates as under:

“Pending completion of the enquiry process for putting the supplier on holiday, the ONGC shall neither issue any tender enquiry to the defaulting supplier nor shall consider their offer in any ongoing tender.

8. The aforesaid stipulation is clear, which has been agreed to by the appellant herein while signing the Contract. The submission made by the learned counsel for the appellant is apparently at variance with the aforesaid stipulation. The appellant having agreed to such a stipulation cannot now contend that de-hors the said stipulation in the contract, it should be allowed to participate in the tender process pending inquiry. Any such direction shall amount to rewriting of the Contract which is impermissible. The judgments as relied upon by the learned counsel for the appellant are distinguishable on facts, hence have no applicability. The impugned order passed by the learned Single Judge is justified. We do not see any reason to interfere in the impugned order.

The appeal is dismissed.

CM. No. 47203/2018 (for stay)
Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

NOVEMBER 14, 2018/jg

