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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 19497 of 20223
+
IA No. C.A.N. 1 of 2024

With
W.P.A. No. 22864 of 2019
+
IA No. C.A.N. 1 of 2020
+
C.A.N. 2 of 2020

M/s. K.K.C. & D.N.M. Logistic
Vs.
Indian Oil Cooperation Limited & Ors.

Mr. Sirsanya Bandopadhyay,
Mr. Soham Kumar Roy,
Mr. Subhajit Das
…for the petitioner

Mr. Manwendra Singh Yadav,
Ms. Saswati Chatterjee,
Ms. Satabdi Naskar (Kundu)
…for the IOCL

Mr. T.M. Saiddiqui,
Mr. Suddhadev Adak
…for the State in
WPA 19497 of 2023

In Re.: C.A.N. 1 of 2020 (C.A.N. 135 of 2020) and
C.A.N. 2 of 2020 (C.A.N. 196 of 2020) in
connection with W.P.A. 22864 of 2019

1. The above two applications arise in connection with an order dated December 12, 2019, as modified by the order dated December 19, 2019, passed by a coordinate Bench of this Court in W.P.

No. 22864(W) of 2019, now renumbered as W.P.A. No. 22864 of 2019. The dispute arose in the said case pertaining to a show cause notice issued by the IOCL (Indian Oil Corporation Limited) to the petitioner.

2. The premise of the show cause notice was that the petitioner, which claimed to be an MSME (Micro, Small and Medium Enterprise) unit, was given a certificate in that regard by the DIC (District Industries Center) within the contemplation of the MSME Act. However, the IOCL took a stand that the certificate had to be issued in terms of the format of the IOCL.

3. On such sticking point, which could not be resolved, a show cause notice was issues by the IOCL to the petitioner as to why the petitioner's contract should not be terminated.

4. When the matter came up before a learned Single Judge on December 12, 2019, the writ petition was disposed of by directing the authority (the DIC) to issue fresh certificate in favour of the petitioner, incorporating the petitioner's investment. The same was, however, to be done within two weeks from that date. By reason of the direction, the impugned show cause notice was set aside on adjudication of the points by the learned Single Judge.

5. By the subsequent order dated December 19, 2019, only the last date of furnishing the fresh certificate by the petitioner to the IOCL was recorded to be January 06, 2020 instead of November 30, 2019.

6. The predicament of the petitioner started thereafter. Since the DIC refused to go by the order of the learned Single Judge dated December 12, 2019 as amended on December 19, 2019, the DIC filed a modification application of the order of the learned Single Judge.

7. On the other hand, in view of such refusal by the DIC, the writ petitioner was compelled to take out an application for extension of the last date of submitting the fresh certificate, which was not being issued by the DIC.

8. Both the said applications remained pending. Those are being heard now.

9. In the meantime, appeals were preferred by other Oil Companies as well as the IOCL against similar orders passed by the same learned Single Judge in connection with other writ petitions.

10. Such appeals were ultimately disposed of by the concerned Division Bench with certain observations. Primarily, the tenor of the order of the learned Single Judge was preserved. The Division Bench elaborately considered that a Standard

Operating Procedure (SOP) has to be evolved by the State where an enquiry will be conducted as to the particulars furnished by a particular enterprise based on the details uploaded by the relevant enterprise on the websites of other authorities.

11. The Division Bench, however, for the present, directed that the appellants, that is, the Oil Companies would be entitled to take physical verification to verify the quantum of investment if the appellants find any glaring error in the enquiry conducted by the DIC and will be entitled to bring such perceived error to the notice of DIC by appropriate action in accordance with law.

12. Thus, the DIC was directed by the Division Bench to physically verify the quantum of investment and other particulars which had been furnished by the writ petitioner at the time that it applied for its certification as a micro or small enterprise. The verification was to be conducted on the basis of Rules that obtained at the time the application was made and not by the then present Rules.

13. When the present matter is being heard, learned counsel for the IOCL places stress upon the quantum of investment which, it is submitted, is mandatorily required to be incorporated in the fresh certificate to be issued by the DIC, since the

same has a relevant and direct impact on the entity being an MSME unit.

14. The State, on principle, does not now have any objection to do so.

15. Thus, on a composite reading of the judgment of the Division Bench and that of the learned Single Judge, it transpires that the crystallized position is that the DIC was to issue a fresh certificate in favour of the petitioner incorporating the petitioner's investment.

16. However, the petitioner places reliance on the doctrine of *Actus Curiae Neminem Gravabit,* since in the present case, despite the petitioner having filed an application for extension of time to submit the fresh certificate, the application was kept pending and is being heard only now.

17. At the same time, the State's modification application, since the State took a contrary stand to the directive passed by the learned Single judge, was also kept pending, which has also fallen for consideration along with the petitioner's extension application.

18. Thus, the State, by keeping its modification application alive till date, obviously gave out that they were not abiding by the Division Bench judgment passed in other connected matters insofar as the present petitioner is concerned. In

such view of the matter, the Catch-22 situation for the petitioner was that although the date for submission of the fresh certificate issued by the DIC had expired for the petitioner in terms of the parent order of the learned Single Judge and the application for extension of such time was pending, the modification application of the DIC was also simultaneously kept pending, due to which the DIC was not issuing such certificate.

19. Seen in proper perspective, the cumulative pendency of the two applications indicates that the petitioner was not at fault in belated submission of the said fresh certificate, since the same was never issued to the petitioner by the DIC in the first place.

20. Although the IOCL claims that nineteen other similarly placed entities had, in fact, placed their certificates, issued afresh by the DIC, in time, the same does not have a direct bearing on the present case, since in the case of the petitioner, there was no appeal and, moreover, the DIC had not budged from its initial position by issuing fresh certificate in favour of the petitioner.

21. On the other hand, the subject-matter of challenge in the 2023 writ petition, that is, W.P.A. No. 19497 of 2023 is the termination of the contract of the petitioner by the IOCL authorities in pursuance of the show cause notice initially issued

and quashed by the learned Single Judge. The petitioner contends in such context that the IOCL could not have relied on the already-quashed show cause notice for termination of the contract of the petitioner.

22. Moreover, the subsequent insistence in the impugned termination order of the IOCL on non-submission of the fresh certificate by the petitioner also cannot be germane in view of the discussions made above, since the said certificate was never issued by the DIC in favour of the petitioner.

23. Thus, the subsequent termination of the petitioner's contract on the basis of the show cause notice which had been already quashed, and the non-submission of purported freshly-issued certificates by the DIC, which was never issued by the DIC, was palpably bad and cannot withstand the scrutiny of law.

24. The predicament, however, is that in the meantime, in the year 2023 itself, the tenure of the petitioner's contract has expired, although the petitioner claims to still continue its work for the IOCL.

25. Be that as it may, at best, the petitioner would be entitled to seek appropriate relief for such erroneous termination of the petitioner's contract, be it by way of insisting upon extension of such

contract or by way of damages or otherwise, which is not for this court to decide, being beyond the purview of the present writ petition.

26. However, W.P.A. 19497 of 2023 along with IA No. C.A.N. 1 of 2024 is allowed on contest, thereby setting aside the termination order of the petitioner's contract by the IOCL.

27. Insofar as IA No. C.A.N. 1 of 2020 (Old No. C.A.N. 135 of 2020) and C.A.N. 2 of 2020 (Old No. C.A.N. 196 of 2020) filed in connection with W.P.A. No. 22864 of 2019 are concerned, those are decided as follows:

28. The order of the learned Single Judge dated December 12, 2019, whereby the Authority (DIC) was directed to issue a fresh certificate in favour of the petitioner incorporating the petitioner's investment remains, more so, because a Division Bench, in connection with other similar matters passed in different writ petitions, modified the same only to the extent that the DIC is required to verify the quantum of investment and other particulars as well.

29. For the sake of judicial propriety, it would not be proper or judicially correct to modify the order of the learned Single Judge at this juncture. In any event, since there was sufficient substance in the Division Bench judgment cited by the petitioner in

other cases, there is no occasion for this Court, sitting in coordinate jurisdiction with the learned Single Judge, to modify the order dated December 12, 2019 as amended by order dated December 19, 2019 passed in W.P.A. No. 22864 of 2019.

30. Accordingly, IA No. C.A.N. 1 of 2020 (Old No. C.A.N. 135 of 2020), that is, the modification application of the DIC, is hereby dismissed on contest.

31. Insofar as C.A.N. 2 of 2020 (Old No. C.A.N. 196 of 2020) is concerned, filed in connection with W.P.A. No. 22864 of 2019 for extension of time to file the fresh certificate, the same has become infructuous in the meantime in view of the tenure of the contract of the petitioner having expired.

32. However, on principle, in view of the above observations, the petitioner would otherwise have been entitled to an extension, since it was the DIC which, on the pretext of pendency of its modification application, did not issue the certificate at all in favour of the petitioner.

33. Accordingly, C.A.N. 2 of 2020 (Old No. C.A.N. 196 of 2020) is disposed of in the light of the above observations.

34. There will be no order as to costs.

35. Since the W.P.A. No. 22864 of 2019 has already been disposed of previously and the application for

modification of the order passed therein is hereby dismissed, no further order need be passed in the said disposed of writ petition.

36. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)