



W.P(MD)No.13421 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.08.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.13421 of 2024

and

W.M.P.(MD)No.11833, 11834 and 11839 of 2024

JSC Golla Engineering Private Ltd.,
Represented by its Authorized Signatory and Director,
Sivakumar Golla.

... Petitioner

Vs.

1.Oil and Nature Gas Corporation Limited,
Represented by Chief General Manager,
Regd. Office At
Deendayal Urja Bhavan,
5, Nelson Mandela Marg,
Vasant Kunj, New Delhi – 110 070.

2.The Chief General Manager (I/c, MM),
OGEP, Oil and Natural Gas Corporation Ltd,
11 High, 4th Floor, Bandra Sion Link Road,
Mumbai – 400 017.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned Letter of Termination dated 03.06.2024 (DLH/OES/MM/GDU/RJY and CAV/X11VC21007/2021/Group B) issued by first respondent (received by the petitioner on 05.06.2024) without issuance of any prior notice / show cause notice as arbitrary, illegal, unconstitutional, opposed to principles of natural justice, contrary to the terms of the contract



W.P(MD)No.13421 of 2024

and quash the same and consequentially direct the 1st Respondent to restore the contract.

For Petitioner : Mr.P.R.Raman, Senior Counsel,

For Mr.Anupm Raghuraman

For Respondents : Mr.ARL.Sundaresan,

Additional Solicitor General of India,
Assisted by Ms.Pooja Jain for R1.

ORDER

Heard the learned senior counsel for the writ petitioner and the learned Additional Solicitor General of India assisted by the learned counsel for the respondents.

2.The petitioner questions the impugned letter of termination dated 03.06.2024 issued by the first respondent. When the writ petition was listed for admission, I granted the following interim on 24.06.2024:-

*“Issue notice to the respondents returnable by 12.07.2024.
Private notice is also permitted.*

2.The learned senior counsel appearing for the petitioner draws my attention to the relevant clause in the contract entered into between the parties and contends that the impugned termination order is liable to be interfered with on the ground of principles of natural justice. I went through the contents of the impugned termination order. It cites



Para (1) of Section 3 of Integrity Pact and Clause 8.3.4 of the GCC of the contract.

WEB COPY

3.I am prima facie of the view that Clause 8.3.4 may not be applicable. It is because it envisages the termination of contract on the grounds of non-performance/unsatisfactory performance. The impugned order has nothing to do with the performance of the company.

4.Section 3 of Integrity Pact is as follows:-

"Section 3

Disqualification from tender process and exclusion from future contracts

If the Bidder, before contract award has committed a transgression through a violation of Section 2 or in any other form such as to put his reliability or credibility as Bidder into question, the Principal is entitled to disqualify the Bidder from the tender process or to terminate the contract, if already signed, for such reason.

(1) If the Bidder / Contractor has committed a transgression through a violation of Section 2 such as to put his reliability or credibility into question, the Principal is entitled also to exclude the Bidder / Contractor from future contract award processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, in particular the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder and the amount of the damage. The exclusion will be imposed for a minimum of 6 months and maximum of 3 years.

(2) A transgression is considered to have occurred, if the Principal after due consideration of the available evidence, concludes that no reasonable doubt is possible.



WEB COPY



W.P(MD)No.13421 of 2024

(3) The Bidder accepts and undertakes to respect and uphold the Principal's absolute right to resort to and impose such exclusion and further accepts and undertakes not to challenge or question such exclusion on any ground, including the lack of any hearing before the decision to resort to such exclusion is taken This undertaking is given freely and after obtaining independent legal advice.

(4) If the Bidder/Contractor can prove that he has restored / recouped the damage caused by him and has installed a suitable corruption prevention system, the Principal may revoke the exclusion prematurely.”

5.A reading of the same leads one to the conclusion that an order passed under the aforesaid provision will have dual consequences (a) termination of contract and (b) blacklisting. Blacklisting has very serious civil consequences. In the very nature of things, notice specifying the course of action proposed to be adopted by the employer ought to have been indicated. In this case, no such notice has been issued. The learned senior counsel also would harp on the principle of proportionality. Even assuming without committing that the petitioner had committed a lapse or two, the question that calls for consideration is whether for the said lapses, the contract itself should be terminated more so when 65% of the works have already been completed.

6.I am of the view that the issue has to be approached from the view of proportionality also. Even though the case on hand is a non-statutory contract, the Hon'ble Supreme Court had held that the affected contractor can very well invoke the jurisdiction under Article 226 of the Constitution of India. The issue raised by the petitioner deserves to be gone in the main writ petition.



W.P(MD)No.13421 of 2024

7.If in the meanwhile, if interim stay is not granted, the petitioner would definitely suffer irreparable loss and hardship. Bearing in mind all the parameters required for granting interim relief, I grant an order of interim stay for a period of six weeks from today.

To vacate the same, ONGC limited has filed petition.

3.When the matter was taken up for hearing, the learned Additional Solicitor General of India for the first respondent submitted that an identical issue was the subject matter of W.P.No.12243 of 2024 on the file of Hon'ble High Court, Andhra Pradesh at Amaravati. It is pointed out that the parties are one and the same and that except the site of contract, in all other respects, there is similarity. W.P.No.12243 of 2024 was disposed of Hon'ble Andhra Pradesh High Court in the following terms:-

“7. In respect of the other query of the petitioner with respect of extension of time is concerned, learned counsel for the petitioner submits that if the respondent considers the case of the petitioner for continuation of the contract after satisfaction of the explanation submitted by the petitioner, the extension of time should be considered proportionately as per the request of the petitioner.

8. Having regard to the submissions made by learned counsel for the petitioner as well as learned Standing Counsel for Respondent No.1 and on perusal of the material available on record, this writ



W.P(MD)No.13421 of 2024

petition is disposed of, directing the respondents to treat the Letter of Termination issued to the petitioner as Show Cause Notice. Further, the petitioner is permitted to submit an explanation for the Notice dated 03.06.2024 within a period of two weeks from the date of this order. Upon such submission of the explanation by the petitioner to the 1st respondent, the 1st respondent shall consider such explanation uninfluenced by any of the previous orders/circulars passed by the authority or counter affidavit filed by the respondents and pass appropriate orders with reference to the submissions as stated above, within a period of two (02) weeks thereafter After passing the final orders, the 1st respondent is directed to communicate the order to the petitioner In the meanwhile, the respondents are directed not to take any coercive steps against the petitioner, till final order is passed or till copy of the order is served to the petitioner.”

4.I am inclined to adopt the very same approach in this case also. The impugned letter of termination shall be treated as a show cause notice. The petitioner is given two weeks from today ie., 02.08.2024 to offer their explanation. The first respondent shall thereupon pass final order on merits and in accordance with law.

5.I need to make few more observations. Merely because counter affidavit has been filed justifying the letter of termination on merits, the first respondent will decide the issue de hors the same. In other words, the first



W.P(MD)No.13421 of 2024

respondent will go by the materials on record and the explanation to be submitted by the writ petitioner herein.

6.Since the impugned termination letter has been directed to be treated as show cause notice, nothing set out therein will operate as any final finding.

7.I want to add something more. If the first respondent accepts the petitioner's explanation, the issue stands closed. Assuming that the first respondent passes an adverse order, he is obliged to serve the same on the petitioner and the petitioner shall be given breathing time of seven days thereafter to workout his remedy in the manner known to law. Till the said one week period is over, the *status quo* as on date shall continue. The contentions of both parties are left open.

8.The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

02.08.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
ias

Issue order copy on 06.08.2024.



WEB COPY



W.P(MD)No.13421 of 2024

G.R.SWAMINATHAN, J.

ias

W.P(MD)No.13421 of 2024

02.08.2024