



GAHC010041112023

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

Case No. : WP(C)/1061/2023

ASC CONSULTING PRIVATE LTD.
REP. BY ITS DIRECTOR FAIZAN AHMED HAVING ITS REGISTERED OFFICE
AT C 100 SECTOR 2 NOIDA 201301 UTTAR PRADESH INDIA

VERSUS

OIL INDIA LTD. AND 10 ORS.
REP BY ITS CHAIRMAN CUM MANAGING DIRECTOR HAVING ITS
REGISTERED OFFICE AT DULIAJAN P.O. DULIAJAN DIST. DIBRUGARH
ASSAM PIN 786602 INDIA

2:SENIOR OFFICER CONTRACTS (G)
OIL INDIA LTD. P.O. DULIAJAN DIST. DIBRUGARH ASSAM PIN 786602
INDIA

3:SENIOR MANAGER CONTRACTS (G)
OIL INDIA LTD. P.O. DULIAJAN DIST. DIBRUGARH ASSAM PIN 786602
INDIA

4:GENERAL MANAGER CONTRACTS
OIL INDIA LTD. P.O. DULIAJAN DIST. DIBRUGARH ASSAM PIN 786602
INDIA

5:CHIEF GENERAL MANAGER CONTRACTS
OIL INDIA LTD. P.O. DULIAJAN DIST. DIBRUGARH ASSAM PIN 786602
INDIA

6:RESIDENT CHIEF EXECUTIVE
OIL INDIA LTD. P.O. DULIAJAN DIST. DIBRUGARH ASSAM PIN 786602
INDIA

7:SUTANU BEHURIA



IAS RTD
MEMBER OF INDEPENDENT EXTERNAL MONITORS (IEM) THROUGH OIL
INDIA LTD. P.O. DULIAJAN DIST. DIBRUGARH ASSAM PIN 786602 INDIA

8:RUDRA GANGADHARAN
IAS (RETD)
MEMBER OF INDEPENDENT EXTERNAL MONITORS (IEM) THORUGH OIL
INDIA LTD. P.O. DULIAJAN DIST. DIBRUGARH ASSAM PIN 786602 INDIA

9:OM PRAKASH SINGH
IPS (RETD)
MEMBER OF INDEPENDENT EXTERNAL MONITORS (IEM) THORUGH OIL
INDIA LTD. P.O. DULIAJAN DIST. DIBRUGARH ASSAM PIN 786602 INDIA

10:DR. T.M BHASIN
IAS (RETD)
MEMBER OF INDEPENDENT EXTERNAL MONITORS (IEM) THORUGH OIL
INDIA LTD. P.O. DULIAJAN DIST. DIBRUGARH ASSAM PIN 786602 INDIA

11:QUIPPPO OIL AND GAS INFRASTRUCTURE LTD.
HAVING ITS REGISTERED OFFICE AT PLOT NO. X-1
2 AND 3 SECTOR V SALT LAKE CITY KOLKATA 70009

Advocate for the Petitioner : R SARMAH

Advocate for the Respondent : SC, OIL

Linked Case : WP(C)/526/2023

ASC CONSULTING PVT. LTD.
REP. BY ITS DIRECTOR FAIZAN AHMED
HAVING ITS REGISTERED OFFICE AT C-100
SECTOR-2
NOIDA-201301
UTTAR PRADESH
INDIA

VERSUS

OIL INDIA LTD. AND ORS.
REPRESENTED BY ITS CHAIRMAN-CUM-MANAGING DIRECTOR
HAVING ITS REGISTERED OFFICE AT DULIAJAN



P.O- DULIAJAN
DIST- DIBRUGARH
ASSAM
PIN-786602
INDIA

2:SENIOR OFFICER CONTRACTS (G)
OIL INDIA LIMITED

P.O- DULIAJAN
DIST- DIBRUGARH
ASSAM
PIN-786602
INDIA

3:SENIOR MANAGER CONTRACTS (G)
OIL INDIA LIMITED

P.O- DULIAJAN
DIST- DIBRUGARH
ASSAM
PIN-786602
INDIA

4:GENERAL MANAGER (CONTRACTS)
OIL INDIA LIMITED

P.O- DULIAJAN
DIST- DIBRUGARH
ASSAM
PIN-786602
INDIA

5:CHIEF GENERAL MANAGER (CONTRACTS)
OIL INDIA LIMITED

P.O- DULIAJAN
DIST- DIBRUGARH
ASSAM
PIN-786602
INDIA

6:RESIDENT CHIEF EXECUTIVE
OIL INDIA LIMITED

P.O- DULIAJAN
DIST- DIBRUGARH
ASSAM
PIN-786602
INDIA

7:SUTANU BEHURIA IAS



(RETD)
MEMBER OF INDEPENDENT EXTERNAL MONITORS (IEM)

THROUGH OIL INDIA LIMITED

P.O- DULIAJAN
DIST- DIBRUGARH
ASSAM
PIN-786602
INDIA
8:RUDHRA GANGADHARAN
IAS (RETD)
MEMBER OF INDEPENDENT EXTERNAL MONITORS (IEM)

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P.O- DULIAJAN
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9:OM PRAKASH SINGH IPS (RETD)
MEMBER OF INDEPENDENT EXTERNAL MONITORS (IEM)

THROUGH OIL INDIA LIMITED

P.O- DULIAJAN
DIST- DIBRUGARH
ASSAM
PIN-786602
INDIA

Advocate for : R SARMAH
Advocate for : SC
OIL appearing for OIL INDIA LTD. AND ORS.

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri RB Phookan

Advocates for the respondents : Shri UK Nair, Sr. Adv, OIL

Shri A. Sarma
Shri B. Choudhury, R-11

Date of hearing : **28.03.2023**

Date of Judgment : **28.04.2023**

JUDGMENT & ORDER

Two writ petitions have been filed by the same petitioner. While in the first writ petition, namely, WP(C)/526/2023, a challenge has been made to the action of the respondent authorities in rejecting the bid of the petitioner pursuant to an E-Tender dated 03.06.2022 floated by the respondent – Oil India Limited (OIL). The second writ petition, namely, WP(C)/ 1061/2023 is an off-shoot of the first writ petition wherein an order dated 09.02.2023 passed by the Independent External Monitors (IEM) has been put to challenge. The IEM is an Internal Grievance Redressal Body before whom the issue of rejection of the bid of the petitioner was raised and was ultimately rejected vide the impugned order dated 09.02.2023. It is the validity and legality of the action of the respondent as well as of the order passed by the IEM which are the subject matter of challenge in these two writ petitions.

2. Before going to the issue which has arisen for consideration, it would be convenient if the basic facts of the cases are narrated.

3. An E-Tender No. CDG0477P23 dated 03.06.2022 was floated by the respondent no. 1 – OIL. The petitioner which is a Private Limited Company had participated in the same and according to the petitioner, though there was no requirement of submitting the Memorandum of Association (MoA), the petitioner had submitted the same. It is the categorical case of the petitioner that Clause 5.3 of the tender document which enumerates documents to be submitted along with the bid did not contain MoA. The bid of the petitioner was however rejected vide an order dated 12.12.2022 holding the same to be techno-commercially non responsive on the ground that the MoA of the petitioner did not include the services of the tender in question as one of the objects

of the petitioner company. It is the case of the petitioner that such rejection was not in accordance with law and the same was informed to the authorities vide E-mails dated 14.12.2022 and 26.12.2022. It is the further case of the petitioner that the MoA was amended by a special resolution passed by the shareholders on 01.08.2022 whereby the services in question was included as one of the objects. However, even after that as no positive steps were taken by the respondent authorities, the petitioner took recourse to the remedies provided in the tender document and referred the matter to the IEM for adjudication as per Clauses 31.3 and 31.4. Since, no action was forthcoming, as indicated above, the first writ petition was filed being WP(C)/526/2023.

4. After filing of the said writ petition, the petitioner was served with an order dated 09.02.2023 whereby the decision taken by the IEM, rejecting the case of the petitioner was conveyed. The petitioner alleges that in the IEM there was a particular member who was also a Director of a rival company which had also submitted its bid against the tender in question. The petitioner accordingly submits that there has been gross violation of the principles of natural justice and accordingly intervention of this Court has been sought for.

5. On the other hand, as per the respondents, the rejection is based on cogent reasons wherein all the relevant factors have been taken into consideration. It is submitted that when the MoA of the petitioner did not have the tender services as one of its objects, it would not be legally tenable on the part of the petitioner to contend that it was fit for grant of work in question. With regard to the challenge made in the second writ petition pertaining to the decision of the IEM, it is the case of the respondents that the challenge is both factually and legally untenable and therefore the same cannot be a ground for intervention by this Court.

6. I have heard Shri RB Phookan, learned counsel for the petitioner whereas OIL is represented by Shri UK Nair, learned Senior Counsel assisted by Shri A. Sarma,



learned counsel. The private respondent no. 11 in WP(C)/1061/2023 is represented by Shri B. Choudhury, learned counsel.

7. Shri Phookan, learned counsel for the petitioner has submitted that the rejection of the bid of the petitioner on techno-commercial ground is absolutely unreasonable and arbitrary. He submits that as per the NIT dated 30.06.2022, the last date of submission of bids was 04.08.2022 when the petitioner had submitted its tender. Since, there was an apprehension with regard to the objects enumerated in the MoA of the petitioner Company vis-à-vis the work in question, there was an amendment in the MoA incorporating the job in question as one of the objects. The resolution of the Board of Directors of the petitioner Company was approved on 18.11.2022, by which time, as per the petitioner, the evaluation of the bids did not even take place. He reiterates that there was actually no requirement of submission of the MoA which the petitioner Company had done on its own along with the tender document. He submits that when there was no such requirement, the impugned rejection is not sustainable in law as the same is based on an irrelevant consideration. The learned counsel for the petitioner further submits that the petitioner Company had entered into a Memorandum of Understanding (MoU) with an Iranian Company, namely, M/s Dana Petro Rig Kish (DANA) for taking technical support and this fact was informed to the respondent authorities vide a communication dated 03.08.2022. However, the same was not considered.

8. It is the further case of the petitioner that the contract in question had an inbuilt mechanism for redressal of grievance wherein an aggrieved party could approach an IEM which was accordingly done. The IEM vide an order dated 09.02.2023 had rejected the claim of the petitioner. Accordingly, the second writ petition WP(C)/1061/2023 was instituted where a specific challenge was made to the aforesaid order dated 09.02.2023.

9. Shri Phookan, learned counsel for the petitioner has submitted that the decision

of the IEM, apart from being erroneous and wholly unsustainable in law, the same is also vitiated because of gross violation of the principles of natural justice. Elaborating his submission, the learned counsel for the petitioner has submitted that in the IEM constituted, amongst others, there was one Shri Sutanu Behuria who has been made party respondent no. 7. The said respondent no. 7 is however a Director of Quippo Oil and Gas Infrastructure Limited (hereinafter Quippo) which is also a bidder in the present tender process. It is submitted that in view of the above, the decision of the IEM cannot be said to be a just and fair and the same is vitiated by bias and *mala fide*. It is submitted that in the decision making process which had determined the fate of the bid of the petitioner, the element of bias crept in inasmuch as, the said decision was taken by a body constituting of a person with whom there was a clash of interest pertaining to the same work in question.

10. Shri Phookan, learned counsel for the petitioner accordingly submits that both the decisions to reject the bid of the petitioner on techno-commercial ground by the respondent Company as well as the decision by the IEM are liable to be interfered with and the bid of the petitioner be considered for the financial evaluation.

11. In support of his submission, Shri Phookan, learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of **AK Kraipak and Ors. Vs. Union of India and Ors.** reported in **1969 (2) SCC 262**. In the said case, the Hon'ble Supreme Court had explained the concept of bias in a decision making process.

12. *Per contra*, Shri Nair, learned Senior Counsel for the OIL submits that the case projected and the relief claimed in these two writ petitions are incorrect and accordingly, not liable for any consideration.

13. Shri Nair, learned Senior Counsel has submitted that the decision taken by OIL is strictly in accordance with law and has been done by following the due process of law. He submits that the petitioner being a Company registered under the Companies

Act is governed and bound by the provisions of the said Act. He submits that a Company has, amongst others a MoA which contains the objects which the Company would be confined to and the same is a legal requirement. He submits that under the original MoA, there was no objects of the petitioner Company regarding the work of rigging. He submits that the last date for submission of bids for the NIT in question was 04.08.2022 on which date all the intending bidders had submitted their respective bids. As per the Senior Counsel for the OIL, the crucial date on which all the requirements are to be fulfilled is the last date of submission of the bids which in the instant case was 04.08.2022. He further submits that with the existing MoA, the petitioner Company was not even eligible for consideration as there was no objects in the MoA for rigging. The subsequent action of taking a special resolution to amend the MoA is absolutely irrelevant as the crucial date is the date on which the tender is submitted i.e., 04.08.2022. It is further submitted that though the special resolution was approved by the Registrar of Companies on 18.11.2022 that by itself will not make any difference. He reiterates that the crucial date of eligibility is the last date of submission of bids i.e. 04.08.2022.

14. By referring to Section 13(9) of the Companies Act, he submits that though the requirement of the said Section has been fulfilled and the Registrar has registered the amendment of the Memorandum with respect to the objects of the company, the same was admittedly done on 18.11.2022 which is much after the last date of submission of tender.

15. With regard to the ground of challenge in the 2nd writ petition WP(C)/1061/2023, Shri Nair, the learned Senior Counsel submits that though it is a fact that the respondent no. 7 Shri Sutanu Behuria is a Member of the IEM and is also a Director of Quippo, Shri Behuria had recused himself from the decision making process which is reflected in the meeting dated 09.02.2022. He submits that the IEM is an independent body constituted by the Ministry which was in existence even prior to the issuance of the NIT in question with Shri Behuria as one of the Members. As

and when the IEM was constituted, there was not even a contemplation of the work in question and that Quippo would be one of the bidders of which Shri Behuria is one of the Directors.

16. In support of his submission, Shri Nair, learned Senior Counsel for the OIL has placed reliance upon the decision of **A. Lakshmanaswami Mudaliar and Ors. Vs. Life Insurance Corporation of India and Anr.** Reported in **AIR 1963 SC 1185**. In the said decision, it has been clearly laid down that a Company cannot travel beyond the objects.

17. Shri B. Choudhury, learned counsel for the respondent no. 11 in WP(C)/1061/2023 while endorsing the submission made on behalf of the OIL has submitted that the present challenge is based on surmises and conjectures and accordingly, liable to be dismissed. He submits that the rejection of the bid of the petitioner has been done on the basis of the relevant factors and by following the provisions of the Companies Act.

18. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have also been carefully examined.

19. The thrust of the argument made on behalf of the petitioner is that its bid would not have been rejected on techno-commercial ground inasmuch as, the objects of the petitioner Company was amended even before the respective bids were taken up for consideration. The issue of bias is also required to be examined so far as the decision of IEM is concerned.

20. To examine the first issue, certain dates would be crucial. The last date for submission of the bids was 04.08.2022 on which date the petitioner had actually submitted its bid. The date on which the special resolution of the petitioner Company to incorporate the Clause pertaining to the nature of work in the present case was approved by the Registrar of Companies only on 18.11.2022. The settled position of

law is that the eligibility / qualification has to be there on the last date of submission of bid. Any such eligibility or qualification obtained after the last date of submission cannot be taken into consideration inasmuch as, the same will open a flood gate.

21. So far as the second challenge is concerned pertaining to the decision of the IEM on the ground of bias, this Court is of the opinion that such ground is a factual one which is required to be tested on the facts and circumstances of the case. In the present case, the constitution of the IEM was done much prior to the NIT in question, that too by the concerned Ministry. In other words, at the time of floating of the NIT, the IEM was in existing body with Shri Sutanu Behuria as one of its Members. It is an admitted fact that when the representation of the petitioner was taken up for consideration by the IEM on 09.02.2022, Shri Behuria had recused himself from the decision making process and did not have any role in the same.

22. In the landmark case of **AK Kraipak (Supra)**, the Hon'ble Supreme Court has laid down that a mere suspicion of a bias is not sufficient and there must be a reasonable likelihood of bias. For ready reference, the relevant part of paragraph 15 is extracted hereinbelow-

“15. ... Under those circumstances it is difficult to believe that he could have been impartial. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. ...”

23. As stated above, the presence of Shri Behuria in the IEM was by default as such IEM was already existing and as a matter of coincidence, M/S Quippo was one of the bidders of which Shri Behuria was a Director. There is also no dispute to the fact that



there was a recusal by Shri Behuria when the representation of the petitioner was being considered. Under such facts and circumstances, this Court is unable to accept the submission made on behalf of the petitioner of the existence of any bias in the decision taken by the IEM.

24. That apart, this Court is also of the opinion that the rejection is solely on a pure point of law regarding the objects which are incorporated in an MoA of a Company. Therefore, even from the point of view of suffering of any prejudice, no case could be made out by the petitioner, more so, when this Court is not inclined to interfere on merits on the decision of the authority to reject the bid of the petitioner on techno-commercial ground which is based on a legal provision pertaining to the Companies Act.

25. In view of the above, this Court is of the view that no case for interference is made out and accordingly, both these writ petitions stand dismissed. Consequently, the interim order passed earlier accordingly stands vacated.

26. No order as to cost.

JUDGE

Comparing Assistant