
(2006) 07 OHC CK 0033
In the Orissa High Court
Case No : Writ petition (C) No. 11982 of 2004

Barabati Gas

APPELLANT

Vs

Indian Oil Corporation Ltd. and Another

RESPONDENT

Date of Decision : 17-07-2006

Acts Referred:

Citation : (2006) 102 CLT 390 : (2006) 1 OLR 1054 Supp

Hon'ble Judges : Sujit Barman Roy, C.J;M.M. Das, J

Bench : Division Bench

Advocate : Narasingha Patra, A.K. Patra and B.N. Shadangi, for the Appellant; Sanjit Mohanty, S. Patnaik, N.C. Sahoo, P.K. Muduli, S. Mohanty and R.R. Swain, (For O.P. No. 1) and M.C. Jena, P.K. Tripathy, S.K. Das and M. Jena, (For O.P. No. 2), for the Respondent

Final Decision : Dismissed

Judgement

M.M. Das, J.—The petitioner, in the present writ petition, has challenged the action of the opp. party No. 1 Indian Oil Corporation Ltd. (for short, "the IOCL") in attempting to appoint the opp. Party No. 2 as its Carrying and Forwarding Agents (CFAs) for lubricants of the Division Office of the opp. party No. 1-company situated at Bhubaneswar for the areas of Cuttack and Sambalpur. In the writ petition, the petitioner has stated that it is a Proprietorship concern functioning at Link Road, Cuttack as Distributor of Indane Gas supplied by the IOCL since, 1982. A Notice Inviting Tender (for short "the NIT") was issued by the IOCL inviting offers from competent and experienced parties with sound technical and financial capabilities fulfilling the qualifying requirements, as prescribed in the said NIT as well as the tender documents for being appointed as CFAs for lubricants manufactured by the said company for Cuttack and Sambalpur. A set of instructions for filling up the tender form as given in Annexure-2 to the writ petition was provided to the tenderers. Under the heading "Special terms and conditions" as mentioned in the tender paper, minimum qualifying requirements were prescribed which are as follows:

SECTION - IV

SPECIAL TERMS AND CONDITIONS

*** * * * ***

1.0. Minimum Qualifying Requirements:

a. The minimum annual turnover of the party in any year of the last three financial years shall be for Cuttack : Rs. 60.03 lacs and for Sambalpur: Rs. 56.76 lacs.

b. The party shall possess adequate land for covered warehouse of minimum stipulated area and open space as mentioned below or covered warehouse and open space of at least same area in his own name or by way of lease agreement for a period of more than 6 years at the time of submission of tender for creation of facilities required by IOCL from CFA.

----- Location Minimum			
area for the Minimum area of covered ware house the open space			

metre	500	square	Cuttack 2178 square metre

square	metre	500	Sambalpur 1800 metre

c. The land for godown/warehouse should be beyond municipal limits of Cuttack/ Sambalpur.

d. The party shall be executing or have executed at least one order for CFA or similar operation during last three years including 2003-04.

e. In addition to above, the following conditions are also to be fulfilled by owner(s) of CFA.

Citizen(s) of India, Matriculate(s), Minimum 25 years of age on the due date of tender and not convicted in any Court of Law (proof for age /qualification to be submitted).

* * * * *

2. According to the petitioner, after it submitted its offer pursuant to the NIT, it received a letter dated 4.2.2004 from the opp. Party No. 1 seeking certain clarification from it. In response to the said letter, while giving its clarification, the petitioner submitted further documents as mentioned in paragraph-9 of the writ petition in support of such clarification. On the above basis, the petitioner claims that though it fulfilled all the tender conditions, the opp. party No. 1 without selecting the petitioner, is negotiating with the opp. party No. 2 for appointing it as CFAs for Cuttack and Sambalpur.

3. A counter affidavit has been filed by the opp. party No. 2 in which, while

denying the allegations made in the writ petition, it has been, inter alia, stated that the petitioner's bid was not considered as it did not fulfill the minimum requirements with regard to the extent of land required to be under its possession for construction of a covered ware house. As no such documents were submitted by the petitioner along with its tender documents, its offer was rejected at the stage of Techno-Commercial Bid. It is further stated in the counter affidavit that since the opp. party No. 2 satisfies all the requirements as prescribed in the tender conditions, it (O.P. 2) is eligible to be selected for appointment as CFAs. With regard to the allegation that the tenders offered were valid for 180 days only, and, therefore, as no selection was made within the said period, the tender offered by the opp. party No. 2 became inoperative. The opp. party No. 2 has stated in its counter affidavit that nowhere in the tender document, it was mentioned that the tender will remain valid for a period of 180 days only. It is further averred that though it is stated in the instructions to the tenderers that the offer of the tenderers shall be valid for a period of 180 days from the date of opening of the tender, but due to intervention of the General Election, on application of the model of Code of Conduct, selection process was stalled, for which the opp. party No. 2 was asked to extend the bank guarantee for a further period of six months from the date of its expiry, i.e. from 26.5.2004. The opp. party No. 2 accordingly extended the said bank guarantee till 30.11.2004 and the selection process continued, after expiry of the General Election, with effect from 25.5.2004.

4. A counter affidavit has also been filed on behalf of the IOCL. In the said counter affidavit, the opp. party No. 1 has denied the allegations made in the writ petition to effect that the petitioner satisfied the minimum eligibility criteria. It is specifically stated that since the petitioner did not fulfil the minimum requirement of the tender, i.e., agreement between it and the Shagon Network, which the petitioner claims to be valid till 31.3.2001, the IDCO land offered by the petitioner did not meet the requirement as per tender conditions. It is further stated that the subsequent letter of IDCO agreeing to offer additional land was dated 31.1.2004, which was submitted by the petitioner on 12.2.2004 i.e., much after the date of opening of the tender on 28.11.2003.

5. Considering the submissions made by the Learned Counsel for the parties and the averments made in the respective counter affidavits of the opp. parties 1 and 2, we find no illegality to have been committed in the process of selection of the successful tenderer pursuant to the NIT under Annexure -1. We are, therefore, not inclined to interfere with the process of selection for appointment of CFAs pursuant to the NIT by the IOCL and we, accordingly, dismiss the writ petition being devoid of any merit.

Consequently, the interim order dated 18.11.2004 stands vacated.

Sujit Barman Ray, C.J.

6. I agree.