

(2022) 09 GAU CK 0032

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 6422 Of 2021

M/S Narayan Mukharjee And Co.

APPELLANT

Vs

Indian Oil Corporation Limited And 5 Ors

RESPONDENT

Date of Decision : 20-09-2022

Acts Referred:

Citation : (2022) 09 GAU CK 0032

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : V K Chopra

Final Decision : Disposed Of

Judgement

1. Heard Mr. O.P. Bhatti, learned counsel for the petitioner and Mr. S.N. Sarma, learned Senior counsel for the respondents in the Indian Oil Corporation Limited (IOCL).

2. The respondent IOCL issued an online e-tender bearing No. DRE0195024 dated 04.06.2019, amongst others, for 'providing and laying of 100 mm thick M-50 grade concrete paver block' at Digboi Refinery. The petitioner upon participating in the tender process was found to be the successful bidder and accordingly, a letter of acceptance dated 24.12.2019 was issued to the petitioner. The letter of acceptance mentioned that it was in respect of tender No. DRE0195024 bearing work order No. 26244091 dated 24.12.2019. The value of the work was stated to be Rs. 1,02,49,629.95/-. By the letter of acceptance, the petitioner was informed that their offer in respect of the work of 'providing and laying of 100 mm thick M-50 grade concrete paver block' at Digboi Refinery had been accepted by the respondents IOCL on the terms and conditions as provided in the tender document as well as in the letter of acceptance. The petitioner was also requested to return one copy of the work order duly signed and stamped on each page as a token of acceptance.

2. It is the stand of the respondents in the IOCL that the petitioner failed to

return back a copy of the work order as a token of acceptance and had neither accepted nor performed the work and as a consequence, by the impugned communication dated 27.09.2021, the petitioner was placed on a holiday list and debarred from entering into any contract with the IOCL for a period of 896 (eight ninety six) days effective from 27.09.2021. Being aggrieved this writ petition is instituted.

3. Mr. O.P. Bhatti, learned counsel for the petitioner has raised a contention that under the terms and conditions applicable between the parties, the petitioner could not have been placed on a holiday list inasmuch as, there was no contract agreement between the petitioner and the respondents in the IOCL.

4. We are not very impressed with the aforesaid contention so as to accept it but leave the question open for an adjudication in any future adjudication as to upon participating in a tender process and the work order being issued and the person to whom the work order is issued refuses to perform the work, as to whether at that stage it can be stated that there was no valid agreement between the parties. But, however, we take note of the second contention of Mr. O.P. Bhatti, learned counsel for the petitioner that after the work order was issued, the petitioner explored the market on the availability of 100 mm thick M-50 grade concrete paver block but found that in Assam, the 100 mm thick M-50 grade concrete paver block was not available. The petitioner upon surveying the market found that 80 mm thick M-50 grade concrete paver block was available and accordingly, by their communication dated 10.02.2020 to the Deputy General Manager (Contracts), IOCL (AOD), Digboi, a counter offer was made to allow the petitioner to provide 80 mm thick M-50 grade concrete paver block instead of 100 mm thick M-50 grade concrete paver block.

5. The respondents in the IOCL by their communication dated 12.02.2020 advised the contractor to inform the address of factory manufacturing the aforesaid product so as to enable the engineers of the IOCL to visit the same without any delay. The petitioner made another communication dated 26.02.2020, also to the Deputy General Manager (Contracts), IOCL (AOD), Digboi, reiterating that 100 mm thick M-50 grade concrete paver block was not available in the local market in the State of Assam and there was no manufacturer of blocks of such nature and all the searches made by the petitioner did not result in any favourable response.

6. Upon certain further communications, the petitioner by a communication dated 30.05.2020 was informed by the respondents in the IOCL that according to the IOCL, three manufacturers were manufacturing concrete block of 100 mm thick M-50 grade concrete paver block and their names were Green Vision Industries, Ace Concrete and Concrete Paver Block Manufacturer. The petitioner accordingly approached the three manufacturers indicated by the respondents in the IOCL. One of the manufacturers Ace Concrete by their communication dated 28.07.2020 informed the petitioner that they were not manufacturing 100 mm thick M-50 grade paver block but they were manufacturing 80 mm thick M-40

grade paver block, which they can supply. The other prospective manufacturer Green Vision Industries by their communication dated 08.07.2020, informed the petitioner that they do manufacture 100 mm thick M-50 grade concrete paver block but at that moment, the supply thereof was not available and that the said supplier can make the supply only after 90(ninety) days and in respect thereof, the rate per piece of the concrete blocks was also provided to the petitioner.

7. In the meantime, the respondents in the IOCL by their communication dated 23.06.2020, had issued a show cause notice to the petitioner as to why the contract should not be terminated. The petitioner in response informed that their search for 100 mm thick M-50 grade concrete paver block from the State of Assam did not result in their favour and accordingly, a request was made that the awarded contract may be cancelled.

8. Mr. O.P. Bhatti, learned counsel for the petitioner also raises a technical issue that the guidelines applicable for placing a contractor on a holiday list is applicable only in respect of those contractors who have entered into an agreement and are not applicable to prospective contractors of the nature of the petitioner who were yet to arrive at an agreement.

9. As we have declined to answer the first issue raised, we are also not answering the said contention raised by Mr. O.M. Bhatti. But with regard to the second contention, it is noticed that the conduct of the petitioner was such that the petitioner had not turned away from the offer of work order issued in their favour in an arbitrary and unreasonable manner without there being any reason. From the various communications, it appears that the petitioner did make a genuine effort to find a supplier of 100 mm thick M-50 grade concrete paver block but was unable to find any supplier of the said item. Although out of three names suggested by the respondents in the IOCL, one of them had responded that they do manufacture the said item but again it was conditional that it could be supplied only after 90 (ninety) days. Moreover, they had put in a rate per piece of the concrete block which again was untested. It is only in such circumstance that against the notice of termination, the petitioner had given his reply that the respondents may cancel the work order as they were unable to find the items to be supplied in the local market.

10. Mr. S.N. Sarma, learned Senior counsel for the respondents in the IOCL seeks to justify the holiday listing of the petitioner by stating that in the meantime, a fresh tender was issued and another contractor had nearly completed the work. On a query being put as to from where the other contractor found the concrete blocks, the answer given is that he established a manufacturing unit near the place where the work is being done. If the subsequent contractor, who may be of such economic proportion that he has the ability to establish a manufacturing unit and then make the supply, the same would not be an answer to the question raised by the petitioner that they were unable to find the product in the local market.

11. Considering the aforesaid circumstance, we find that there is a mitigating circumstance in favour of the petitioner to the extent that they had not unscrupulously or arbitrarily or without any reason had abandoned the work order given to them. We also take notice that by the impugned communication dated 27.09.2021, the petitioner had been placed on a holiday list for 896 (eight ninety six) days and out of which nearly one year is already over till today, although it may be 7 (seven) days short.

12. Accordingly, taking into consideration the mitigating circumstance and the further aspect of the petitioner had already been on a holiday list for nearly a year, we provide that the holiday list be restricted to one year and the same be not have its effect from 27.09.2022, onwards. In other words, from 27.09.2022 the petitioner will not be in any holiday list as far as the respondents in the IOCL are concerned and they would be at liberty to participate in any further tender process, if so advised.

13. The observations and conclusions arrived at in this writ petition shall not be referred or relied upon in any other writ petitions that the writ petitioner may have filed against the order of termination.

Writ petition stands disposed of as indicated above.