

VAIBHAVI ENTERPRISE

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v.

NOBEL CERA COAT & ORS.

(Civil Appeal No. 6289 of 2021)

OCTOBER 21, 2021

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[M. R. SHAH AND A. S. BOPANNA JJ.]

Constitution of India: Art.226 – Tender – Bid – Respondent ONGC invited “Expression of Interest” (EOI) for demand assessment for natural gas produced from two fields – Three applicants – ONGC sought approval of Ministry in terms of EOI for gas allocation – When matter was pending consideration before the Union Government, one of the applicant revised its response, and offered to commence off take of gas within 65 days of allotment – ONGC by letter dated 08.03.2021 re-invited the bids from the three shortlisted applicants to place fresh bid – The other applicant submitted fresh bid – However, writ applicant did not submit any fresh bid and filed writ petition challenging letter dated 08.03.2021 so far it calls for “expected period of readiness to offtake gas” and also praying for issuance of writ of mandamus to ONGC to proceed with award of gas allocation on the basis of its offer – In the writ petition, neither the Ministry nor other applicants were impleaded as party respondents – Matter came up before High Court on 19.08.2021 and Union of India was ordered to be arrayed as respondent no.3 – At the time of hearing of writ petition, writ applicant reduced days for lifting gas from 75 days to 65 days – High Court disposed of writ petition by directing ONGC to finalize the contract with the applicant on condition that the writ applicant shall lift the gas within 65 days from the date of allotment – On appeal by other applicants, held: The procedure adopted by High Court while disposing of writ petition in favour of writ applicant was unsustainable – High Court passed impugned order ex-parte and without giving any opportunity of being heard to the other applicants – Before the High Court, it was brought on record that there were two other applicants who submitted their EOI and even one of the applicants was ready and willing to lift the gas within 65 days – Till writ petition was filed and matter was heard by High Court on 19.08.2021 and 16.09.2021, the original writ applicant

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- A *offered to lift the gas within 75 days – Only at the time of hearing on 20.09.2021, writ applicant revised its offer and High Court allowed writ applicant to revise its offer and that too in exercise of powers under Art.226 – When High Court allowed the writ applicant to modify its offer, in that case, the opportunity ought to have been given to the other applicants – So the procedure adopted by High Court while disposing of writ petition by permitting the original writ applicant to modify its offer and that too in exercise of powers under Art.226 is unsustainable – Matter remitted to High Court for its fresh decision.*
- B *Allowing the appeals and remitting the matter to High Court, the Court*
 - HELD:** 1. When High Court permitted / allowed the writ applicant to modify its offer, in that case, the opportunity ought to have been given to the other applicants. Either they might have objected to permitting such modification of the offer in exercise of powers under Article 226 of the Constitution of India or they also could have modified their offer further and reduce number of days for lifting gas. It is not in dispute that neither of the appellants were impleaded as party to the writ petition. Not only that even initially Union of India was also not joined as a party
 - D and for the first time Union of India was directed to be impleaded as respondent no.3 pursuant to the order dated 19.08.2021 and that too not at the instance of the writ applicant but as the High Court felt that presence of the Union of India is required. So the procedure adopted by the High Court while disposing of the writ petition by permitting / allowing the original writ applicant to modify its offer and that too in exercise of powers under Article 226 of the Constitution of India, is unsustainable and unknown to law. [Para 4.0][770-D-F]
 - G 2. Though the High Court has, as such, directed and issued the writ of mandamus directing ONGC to finalize the contract with the writ applicant on the condition that the writ applicant shall lift gas within 65 days from the date of allotment, instead of allowing the writ petition and making the Rule absolute, High Court has used the word writ petition is disposed of. Once the writ of mandamus was issued, instead of disposing of the writ
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petition, the High Court ought to have allowed the writ petition. Even otherwise also, the impugned order passed by the High Court is unsustainable in as such no reasons whatsoever have been assigned by the High Court on merits. Except narrating the prayer clause and two earlier orders passed on 19.08.2021 and 16.09.2021 there is no further discussion by the High Court on merits of the matter. [Paras 4.0, 5.0][770-H; 771-A-C]

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3. The appellants to submit appropriate application for impleading them as party respondent nos. 4 and 5 and same to be allowed by the High court and thereafter the High Court to pass a fresh order in accordance with law and on merits and after giving fullest opportunities to all the respondents including ONGC, Union of India and the appellants herein. In the facts and circumstances of the case and looking to the urgency, we request the High Court to finally decide and dispose of the writ petition in accordance with law and on its own merits at the earliest and preferably within a period of four weeks from the date of receipt of the present order. Either of the parties to place the present order before the High Court forthwith. [Para 6.0][771-D-F]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No.6289 of 2021

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From the Judgment and Order dated 20.09.2021 of the High Court of Gujarat at Ahmedabad in SCA No. 5815 of 2021.

With

C.A. No. 6290 of 2021

Devan Parikh, Sr. Adv., Santosh Krishnan, E.C. Agrawala, Advs. for the appellant.

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Vikramjit Banerjee, ASG, Som Raj Choudhury, Saransh Kumar, Shrutee Aradhana, Saurav Agrawal, Trinath Tadakamalla, Ishaan Chhaya, Sahil Tagotra, Advs. for the respondents.

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The Judgment of the Court was delivered by

M. R. SHAH, J.

1.0. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Gujarat passed in Special Civil

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- A Application No.5815 of 2021 preferred by the respondent no.1 herein-original writ petitioner (hereinafter referred to as the “original writ applicant”), by which, the High Court has disposed of the said writ petition by directing the respondent no.2- ONGC to finalize the contract with the original writ applicant on the condition that the writ applicant shall lift the gas within 65 days from the date of allotment instead of 75 days as offered by it earlier.
- B 2.0. That the respondent ONGC invited “Expressions of Interest” (EOI) on 22.07.2020 for demand assessment for natural gas produced from the two fields. As per the EOI, the demand assessment for the natural gas in the area was to be undertaken by ONGC and the ultimate approval for allocation was to come from Ministry of Petroleum and Natural Gas, Government of India. If allotted, the gas supply would operate for a period of five years from the date of award.
- C It appears from the pleadings that only three applicants were interested in sourcing the natural gas from two fields advertised by ONGC viz. (1) original writ applicant – Nobel Cera Coat, (2) Vaibhavi Enterprise-appellant in Civil Appeal No. 6289 of 2021 and (3) Tanish Cerachem Private Limited – appellant in Civil Appeal No. 6290 of 2021. Nobel Cera Coat submitted their interest in sourcing natural gas from both VAD#3 and VAD#5. Vaibhavi Enterprise submitted their interest for VAD#3 and Tanish Cerachem Private Limited submitted their interest for sourcing gas for VAD#5. That thereafter, ONGC sought approval of Ministry for gas allocation. When the matter was pending consideration before the Union Government, in December 2020, one of the applicant-Tanish Cerachem Private Limited revised its response and offered to commence offtake of gas within 65 days of allotment. At this stage, it is required to be noted that the writ applicant offered to lift gas from the field / block situated at a place called Vadtal, District Bhavnagar within a period of 75 days. As per the case of the appellant having regard to the revised offer from Tanish Cerachem Private Limited, the ONGC thought it fit to re-invite the bids from all the three shortlisted applicants and accordingly on 08.03.2021, ONGC invited all the three applicants to place fresh bids. As per the case of the appellant, Vaibhavi Enterprise submitted to the fresh tendering process and submitted its bid. However, the writ applicant did not submit any fresh bid. The writ applicant filed a writ petition before the High Court challenging the ONGC letter dated 08.03.2021 so far as it calls for “expected period of readiness to offtake
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gas from ONGC's offer letter". The writ applicant also prayed for issuance of writ of mandamus directing the ONGC to proceed with the award of gas allocation on the basis of offer received in response to the ONGC/EOI/Vadtal GAS/2020 dated 22.07.2020. At this stage, it is required to be noted that though the Union of India was the ultimate authority to approve the bid / allocation of gas, in the writ petition neither the Ministry nor other applicants viz. Vaibhavi Enterprise and Tanish Cerachem Private Limited were impleaded as party respondents. From the impugned order passed by the High Court, it appears that the matter came up before the Division Bench on 19.08.2021 and Union of India was ordered to be arrayed as respondent no.3 and notice was made returnable on 26.08.2021. Thereafter, matter was heard by the Division Bench on 16.09.2021. Before the High Court, learned ASG appearing on behalf of the Union of India placed on record the communication dated 08.03.2021, which was directed to be taken on record. Thereafter, the matter was kept for further hearing on the very next date i.e. 20.09.2021. At the time of hearing of the writ petition, the writ applicant reduced days for lifting gas from 75 days to 65 days. Having noted the submissions on behalf of the ONGC that the writ applicant has agreed to lift the gas within 75 days, however, in view of the fact that one of the applicant was ready and willing to lift the gas within 65 days and therefore, the offer in favour of the writ applicant was not finalized and therefore, the ONGC was in dilemma. That thereafter by permitting the writ applicant to reduce the days for lifting gas from 75 days to 65 days, thereafter, the High Court by the impugned judgment and order has disposed of the said writ petition by directing the Corporation to finalize the contract with the writ applicant on the condition that the writ applicant shall lift the gas within 65 days from the date of allotment.

Feeling aggrieved and dissatisfied with the impugned order passed by the High Court, the other to applicants viz. Tanish Cerachem Private Limited and Vaibhavi Enterprise have preferred present appeals.

3.0. We have heard Shri Santosh Krishnan, learned counsel appearing for the appellant and Shri Saurav Agrawal, learned counsel appearing for the original writ applicant who is on caveat and Shri Vikramjit Banerjee, learned ASG appearing on behalf of the ONGC.

4.0. Having heard the learned counsel for the respective parties and considering the impugned order passed by the High Court, we are of the opinion that the procedure which has been adopted by the High

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- A Court while disposing of the writ petition in favour of the writ applicant is unsustainable. The High Court has passed the impugned order ex parte and without giving any opportunity of being heard to the other applicants – appellants herein. It is required to be noted that before the High Court it was brought on record that there are two other applicants who submitted their EOI and even one of the applicants was ready and willing to lift the gas within 65 days. At this stage, it is required to be noted that it appears that till writ petition was filed and the matter was heard by the Division Bench on 19.08.2021 and 16.09.2021, the original writ applicant offered to lift the gas within 75 days. Only at the time of hearing on 20.09.2021 and / or during the pendency of the petition, the original writ applicant revised its offer and unfortunately High Court allowed / permitted the original writ applicant to revise its offer to lift the gas from 75 days to 65 days and that too in exercise of powers under Article 226 of the Constitution of India. When High Court permitted / allowed the writ applicant to modify its offer, in that case, the opportunity ought to have been given to the other applicants. Either they might have objected to permitting such modification of the offer in exercise of powers under Article 226 of the Constitution of India or they also could have modified their offer further and reduce number of days for lifting gas. It is not in dispute that neither of the appellants were impleaded as party to the writ petition. Not only that even initially Union of India was also not joined as a party and for the first time Union of India was directed to be impleaded as respondent no.3 pursuant to the order dated 19.08.2021 and that too not at the instance of the writ applicant but as the High Court felt that presence of the Union of India is required. So the procedure adopted by the High Court while disposing of the writ petition by permitting / allowing the original writ applicant to modify its offer and that too in exercise of powers under Article 226 of the Constitution of India, as observed herein above, is unsustainable and unknown to law. We have our own doubt whether in exercise of powers under Article 226 of the Constitution of India, the High Court could have permitted one of the bidder to revise / modify its offer. Even in the facts and circumstances of the case, the High Court felt that instead of inviting fresh bids, the same could be allowed, in that case also, similar opportunity ought to have been given to the other applicants also.

It is also required to be noted that though the High Court has, as such, directed and issued the writ of mandamus directing ONGC to finalize the contract with the writ applicant on the condition that the writ

applicant shall lift gas within 65 days from the date of allotment, instead of allowing the writ petition and making the Rule absolute, High Court has used the word writ petition is disposed of. Once the writ of mandamus was issued, instead of disposing of the writ petition, the High Court ought to have allowed the writ petition.

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5.0. Even otherwise also, the impugned order passed by the High Court is unsustainable in as such no reasons whatsoever have been assigned by the High Court on merits. Except narrating the prayer clause and two earlier orders passed on 19.08.2021 and 16.09.2021 there is no further discussion by the High Court on merits of the matter.

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6.0. In view of the above and for the reasons stated above, impugned order passed by the High Court dated 20.09.2021 in Special Civil Application No.5815 of 2021 is hereby quashed and set aside. The matter is remitted back to the High Court for its fresh decision. Special Civil Application No.5815 of 2021 is ordered to be restored to the file of High Court. The appellants herein to submit appropriate application for impleading them as party respondent nos. 4 and 5 and same to be allowed by the High court and thereafter the High Court to pass a fresh order in accordance with law and on merits and after giving fullest opportunities to all the respondents including ONGC, Union of India and the appellants herein. In the facts and circumstances of the case and looking to the urgency, we request the High Court to finally decide and dispose of the writ petition in accordance with law and on its own merits at the earliest and preferably within a period of four weeks from the date of receipt of the present order. Either of the parties to place the present order before the High Court forthwith. It is made clear that this Court has not expressed anything on merits and the impugned order of the High Court has been set aside for the reasons stated above. Both these appeals succeed and accordingly allowed. However, there shall be no order as to costs.

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