

GAHC010013522024



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

Case No. : I.A.(Civil)/285/2024

RUNGTAA IRRIGATION LTD
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT, 1956, HAVING ITS OFFICE AT 101, PRAGATI TOWER 26,
RAJENDRA PLACE, NEW DELHI.

VERSUS

MUKAND POLY PRODUCTS AND ANR
A PARTNERSHIP FIRM REGISTERED UNDER THE PARTNERSHIP ACT 1932
HAVING ITS OFFICE SITUATED AT PLOT NO. 38, BRAHMAPUTRA
INDUSTRIAL PARK, VILLAGE SILA AMINGAON, 781031 DIST KAMRUP M
ASSAM

2:RISHI GUPTA

S/O LATE R.S GUPTA
RESIDENT OF F. A ROAD
KUMARPARA
GUWAHATI 781001 AND ONE OF THE PARTNERS OF THE PET.NO.

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

For the applicant : Mr. S. Mehta. Advocate.

For the opposite parties : Dr. A. Saraf Sr. Advocate.
Mr. N.N. Dutta. ... Advocate

Dates of hearing : 16.02.2024

Date of Order : 20.02.2024

ORDER (CAV)

1. Heard Mr. S. Mehta, learned counsel for the applicant and Dr. A. Saraf, learned Senior Counsel assisted by Mr. N.N. Dutta, learned counsel for the opposite party nos.1 & 2. Mr. S. Borthakur, learned counsel appears for the Bharat Petroleum Corporation Ltd., while Mr. K. Gogoi, learned counsel appears for the Secretary to the Government of India, Ministry of Petroleum & Natural in WP(C) No.7421/2023.
2. This is an application under Order 1 Rule 10(2) CPC for impleadment of the applicant as respondent no.7 in the writ petition and for setting aside the impugned interim order dated 05.01.2024 passed therein.
3. The case of the applicant is that it is a Company incorporated under the provisions of Companies Act, 1956, having its office at 101, Pragati Tower 26, Rajendra Place, New Delhi. The applicant is MSME (Micro, Small & Medium Enterprise) and one of the registered suppliers to Bharat Petroleum Corporation Ltd.
4. The applicant's case is that it submitted it's bid in Tender No. GEM/2023/B/3897172 dated 31.08.2023 CRFQ No.1000408895 floated by the Bharat Petroleum Corporation Ltd. on 31.08.2023 , for procurement of Polyethylene (PE) Pipes (32, 63, 90 & 125 mm) FOR BPCL CGD PROJECTS.
5. The applicant was evaluated as the lowest bidder, as the writ petitioner

was disqualified/blacklisted by Bharat Petroleum Corporation Ltd., hereinafter referred to as the BPCL.

6. The applicant's counsel submits that due to the interim order passed by this Court on 05.01.2024, which has prejudiced the applicant, the applicant should be impleaded as a party. He submits that the writ petitioner, who was also one of the bidders in respect of the Tender dated 31.08.2023 having been disqualified, the applicant was to be awarded the tender. However, due to the writ petitioner challenging his disqualification in this Court and the interim order dated 05.01.2024 having affected all the tenders/contracts in which the writ petitioner had participated all over India, the applicant is a necessary party. In support of his submissions, the applicant's counsel has relied upon the judgment of the Apex Court in the cases of

- (i) ***Antonio S.C. Pereira vs. Richardina Noronha (Dead) by LRS.***, reported in ***(2006) 7 SCC 740;***
- (ii) ***State Bank of India vs. Ind. Bank Merchant Banking Services Limited & Others***, reported in ***1999 (3) A.P.L.J. 304 (HC);***
- (iii) ***Crickitt vs. Crickitt. (Crickitt Intervening)*** reported in ***(1902) P. 177*** and
- (iv) ***Krippendorf vs. Hyde & Another***, reported in ***1884 SCC OnLine US SC 58.***

7. The applicant's counsel submits that the impugned order has effected the outcome of numerous tenders of the BPCL all over India, though all the tender notices relate to areas outside the State of Assam. Further, the addresses of all

the respondents in the writ petition are outside the State of Assam and none of them are within the State of Assam.

8. Mr. S. Borthakur, learned counsel appears for the BPCL and Mr. K. Gogoi, learned counsel appearing for the Government of India, Ministry of Petroleum & Natural Gas submit that they have got no objection to the application for impleadment being allowed.

9. Dr. A. Saraf, learned counsel for the opposite party nos. 1 & 2 submits that the impleadment application should be rejected, inasmuch as, the impugned order dated 05.01.2024 has not caused any prejudice to the rights of the applicant. He submits that there is no stay of the tender proceedings in the impugned order dated 05.01.2024 passed in WP(C) No.7421/2023. As such, the applicant has got no legal right to be impleaded as a party and participate in the proceedings of this case. In support of his submission the learned Senior Counsel has relied upon the following cases :

1. **DOLLFUS MIEG ET COMPAGNEI S.A. vs. BANK OF ENGLAND**, reported in (**1948 D. 1962**)
2. **AMON V. RAPHAEL TUCK & SONS LTD.**, reported in (**1955 A. No.1298**).
3. **MCCHEANE vs. GYLES**, reported in (**1901 M. 1004**)
4. **MOSER vs. MARSDEN**, reported in (**1982) 1 Ch. 487.**
5. **M.A. JALEEL SAHIB vs. Seenappa Ramaswami Mudaliar & Co. by its Managing Partner**, reported in **1950 SCC OnLine Mad 241**

6. **Deputy Commissioner, Hardoi vs. Rama Krishna Narain & Others**, reported in **(1953) 2 SCC 319**.

7. **Ramesh Hirachand Kundanmal vs. Municipal Corporation of Greater Bombay & Others**, reported in **(1992) 2 SCC 524**.

He accordingly prays that the application should be rejected.

10. I have heard the learned counsels for the parties.

11. In the case of **Antonio S.C. Pereira (supra)**, the Supreme Court, while deciding an issue relating to a dispute over landed property under the Goa, Daman and Diu Administration of Evacuee Property Act, 1964, held that the statute may not contain any explicit provision to hear a third party, but it is not excluded either. The principal of natural justice as well as that of *pro interesse suo* would be applicable in such a situation.

12. In the case of **State Bank of India vs. Ind. Bank Merchant Banking Services Limited & Others**, the Andhra Pradesh High Court, while deciding an issue regarding recovery of lease rentals, referred to the case in **Narhar Raj vs. Tirupathi Bibi**, reported in **AIR 1982 AP 115** and held that *pro interesse suo* proceedings are a judicial device, intended to protect the rights of the persons who are not parties to the proceedings in a suit, but who suffered a legal injury because of the dominant Court action. It thus held that 3rd parties whose rights have been affected, can certainly approach the Court under the doctrine or the judicial devise can be invoked.

13. In the case of **Krippendorf (supra)**, the U.S Supreme Court held that no

one, even in equity, is entitled to be made or become a party to the suit unless he has an interest in its object. Yet it is the common practice of the Court to permit strangers to the litigation, claiming an interest in its subject matter to intervene and assert their titles.

14. In the case of **Dollfus Mieg Et Compagnie S.A. Vs. Bank of England [1948 D. 1962]**, it was held that the proposition that a plaintiff cannot be compelled to join persons whom he does not wish to sue and against whom he does not seek relief, indicates that applicants who wish to be impleaded in a case cannot succeed, if their interest is only indirect.

15. In **Amon Vs. Raphael Tuck & Sons Ltd. (1955 A. No. 1298)**, where there was an application to be joined as a defendant in a case, it was held that the only reason which makes it necessary to make a person a party to an action, is so that he should be bound by the result of the action, and the question to be settled therefore must be a question in the action which cannot be effectually and completely settled unless he is a party.

16. In the case of **McCheane Vs. Gyles (1901 M. 1004)**, relating to an application for impleadment, it was held that the Court is to consider whether the person ought to have been joined or that his presence before the Court was necessary, to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the cause or matter.

17. In the case of **Moser Vs. Marsden, (1982) 1 Ch. 487**, it was held that if the Court cannot decide the question without the presence of the other

parties, the cause is not defeated, but the parties are to be added so as to put the proper parties before the Court.

18. In the case of ***M.A. Jaleel Sahib Vs. Seenappa Ramaswami Mudaliar and Co., by its Managing Partner***, reported in ***1950 SCC OnLine Mad 241***, the Madras High Court held that in an application for impleadment, the only question that has to be seen, is as to whether the person's presence is necessary for effective and complete adjudication of the matter in dispute.

19. In the case of ***Deputy Commissioner, Hardoi Vs. Rama Krishna Narain and Ors.***, reported in ***(1953) 2 SCC 319***, the Hon'ble Supreme Court held that eventual interest of a party in the fruits of a litigation cannot be held to be the true test of impleading parties under the Code of Civil Procedure.

20. In the case of ***Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Ors.***, reported in ***(1992) 2 SCC 524***, the Hon'ble Supreme Court held that a person may be added as a party to a suit, if he has a direct interest in the subject matter of the litigation, whether it be questions relating to movable or immovable property. The Supreme Court further held that the only reason which makes it necessary to make a person a party to an action, is so that he should be bound by the result of the action and the question to be settled. Therefore, there must be a question in the action, which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action and in the answer, i.e.,

he can say that the litigation may lead to a result which will affect him legally, that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant, a person whose only object is to prosecute his own cause of action.

21. The Supreme Court also considered the reasoning of Devlin, J. in **Dollfus Mieg et Compagnie S.A. (supra)** which is as follows-

“The test is ‘May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights?’”

22. In the case of **Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra and Ors.**, reported in **(2013) 4 SCC 465**, the Hon’ble Supreme Court held that a stranger cannot be permitted to meddle in any proceeding, unless he falls within the category of aggrieved person, i.e., a person who has suffered a legal injury.

23. In the case of **Ex parte SIDEBOTHAM. In re SIDEBOTHAM**, the Chancery Division held that a “person aggrieved” do not really mean a man who is disappointed of a benefit which he might have received if some other order had been stopped. A “person aggrieved” must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something.

24. For taking a decision in this matter, the brief facts of the case needs to be enumerated. The writ petitioner has put to challenge an order dated

08.12.2023, by which he has been blacklisted for a year by the BPCL. In view of the blacklisting order, the writ petitioner cannot participate in supply/contract works that has been advertised/issued by the BPCL. Being aggrieved, the writ petitioner approached this Court vide WP(C) 7421/2023. In the order dated 20.12.2023 passed by this Court, it was stated that the prayer for an interim order would be considered on the next returnable date, i.e. 05.01.2024.

25. Being aggrieved with the same, the writ petitioner preferred an appeal, being WA 471/2023 before the Division Bench of this Court. WA 471/2023 was disposed of by order dated 21.03.2023, by making the following observations:-

“6. Further we find that the prayer for interim will be considered on 05.01.2024. In that view of the matter this writ appeal is disposed of directing that the bids of the petitioner’s firm will not be rejected on the basis of the order dated 08.12.2023. Further, the petitioner’s firm may also be permitted to submit fresh bids for other works and the order dated 08.12.2023 shall not come in the way of the petitioner’s firm. However, this order shall be subject to the outcome of the decision of the learned Single Judge with regard to the interim order which is to be considered on 05.01.2024.”

26. Thereafter, this Court passed the following interim order dated 05.01.2024 in the main case, i.e. WP(C) No.7421/2023, as per the following:-

“Be that as it may, let an affidavit-in-opposition be filed wherein the respondents would be at liberty to take up any preliminary objections questioning the maintainability of the writ petition. Such affidavit may be filed on or before 30.01.2024 and the matter be listed for consideration on 09.02.2024 so as to enable the petitioner to file rejoinder if any. The observations made by the Hon’ble Division Bench would operate till the

next date of listing. This Court further makes it clear that so far as the works in which the petitioner has submitted its bid which are the subject matter of the observation of the Hon'ble Division Bench, the authorities may go ahead with the tender process and finalize the same but before allotting the work order, leave is required to be taken from this Court.

Pendency of this writ petition shall not be a bar to consider and dispose of the departmental appeal in accordance with law."

27. The applicant being aggrieved with the impugned order dated 05.01.2024 has asked for impleadment and vacation of the same by way of the present application. On perusing the interim order passed on 05.01.2024, it is seen that the BPCL authorities were allowed to go ahead with the tender process and to finalize the same. However, before allotting the work order, leave was required to be taken from this Court.

28. The impugned order dated 05.01.2024 does not bar the BPCL from finalizing the tender process in which the writ petitioner and the applicant have participated in, i.e., in respect of the tender dated 31.08.2023. The only requirement for starting the supply order would be for BPCL to take a permission of the Court before the work order is issued.

29. The above being said, it is seen that the said tender No. Gn/2023/B/39172 dated 31.08.2023, CRFQ No. 1408895 is in relation to the supply to be made in Maharashtra, which is under the jurisdiction of the Bombay High Court. The respondents in the writ petition are having their addresses outside Assam.

30. The order passed by the Hon'ble Division Bench on 21.12.2023 in WA 471/2023 shows that there was a stay on the order dated 08.12.2023, which blacklisted the writ petitioner, only for the purpose of allowing the petitioner to submit his tenders, which was also subject to the outcome of the decision to be taken by this Court on 05.01.2024.

31. This Court, vide impugned order dated 05.01.2024 has not confirmed the order dated 08.12.2023 passed in WA 471/2023. The fact however remains that the blacklisting of the petitioner still remains and the order of the Hon'ble Division Bench was only confined to the blacklisting order, not being used as a bar for the writ petitioner to submit his bids for the Tender Notices issued by the BPCL.

32. Order 1 Rule 10(2) CPC provides that the Court may at any stage of the suit as may appear to the Court to be just, may strike out or join any person as plaintiff or defendant, whose presence before the Court may be necessary, to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit.

33. On considering the fact that the applicant is the lowest tenderer as the writ petitioner has been blacklisted, the decision taken in the writ petition could affect the issue whether the applicant should be given the supply order. However, there is no certainty attached with the above issue. In the present case, there is nothing to show that that the tender process has been finalized, though the BPCL was given the liberty to finalize the same vide the impugned interim order. There is nothing to show that the applicant has been selected by

the BPCL as the successful tenderer or that the work/supply order is to be given to the applicant. The tender can even be finalised with the 3rd or 4th highest bidder also and as such, as on date the applicant who is the 2nd highest bidder, cannot be said to be a necessary party. As no legal or fundamental right of the applicant has been violated as on date, the applicant cannot be said to be an aggrieved person. The applicant can be said to be an aggrieved person only when he is selected by the authorities for allotment of the supply/contract order.

34. The only issue as on date in the main case is the challenge made by the writ petitioner to his blacklisting. No doubt, the indirect effect of the decision to be taken by this Court in the main case could be felt by the applicant. However, the fact remains that the challenge to the blacklisting order does not require the presence of the applicant for effectually and completely adjudicating the issue/question involved in the main case. In fact, the applicant has absolutely no role to play in respect of the above issue at this stage.

35. In view of the reasons stated above, this Court does not find any ground to allow the application for impleadment. Accordingly, the same is dismissed.

JUDGE

Comparing Assistant