

GAHC010057272024



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

**Case No. : WP(C)/1583/2024**

M/S INDHAN  
A PARTNERSHIP FIRM HAVING ITS HEAD OFFICE AT GURUDWARA ROAD,  
FAUZDARIPATTY, NAGAON, ASSAM- 782001  
REPRESENTED BY ONE OF ITS PARTNER HRISHIKESH SARMAH,  
AGED ABOUT 50 YEARS,  
SON OF LATE HEM KANTA SARMAH.

VERSUS

THE INDIAN OIL CORPORATION LIMITED AND 4 ORS  
REPRESENTED BY MANAGING DIRECTOR,  
INDIAN OIL BHAWAN, G9, ALI YAVAR JUNG MARG,  
BANDRA EAST, MUMBAI, MAHARASTRA- 400051.

2:THE CHIEF GENERAL MANAGER  
INDIAN OIL CORPORATION LIMITED  
MARKETING DIVISION  
REGIONAL CONTRACT CELL  
EASTERN REGION OFFICE

2 GARIAHAT ROAD  
SOUTH KOLKATA WEST BENGAL- 700068.

3:THE CHIEF GENERAL MANAGER  
MARKETING DIVISON  
NORTH EAST INTEGRATED STATE OFFICE  
INDIAN OIL CORPORATION LIMITED  
3RD FLOOR EAST POINT TOWER  
BAMUNIMAIDAM GUWAHATI- 781021.

4:THE MANAGER (LPG-OPS)  
IOAODSO INDIAN OIL CORPORATION LIMITED  
INDIAN OIL AOD STATE OFFICE  
SECTOR-III NOONMATI GUWAHATI- 781020.

5:THE TENDER EVALUATION COMMITTEE  
INDIAN OIL CORPORATION LIMITED  
INDIAN OIL AOD STATE OFFICE  
SECTOR-III NOONMATI GUWAHATI- 781020

**Advocate for the Petitioner : MR. K N CHOUDHURY**

**Advocate for the Respondent : SC, I O C**

**BEFORE  
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

**ORDER**

**Date : 21.06.2024**

Heard Mr. K. N. Choudhury, learned senior counsel, assisted by Mr. R. J. Das, learned counsel for the petitioner and Mr. P. Bharadwaj, learned counsel for the IOCL.

**2.** The petitioner's grievance is that the petitioner's technical bid submitted pursuant to the NIT dated 24.11.2023, for transportation of Indane LPG Cylinders in vertical position on unit rate basis ex-North Guwahati Bottling Plant, has been rejected, on the ground that the petitioner failed to submit his bid security declaration at the time of uploading his tender documents.

**3.** The petitioner's counsel submits that the petitioner had submitted his bid security declaration, which had been uploaded by the petitioner along with his bid documents and this is clear from the checklist prepared by the petitioner.

**4.** The petitioner's counsel further submits that assuming the petitioner had not submitted his bid security declaration, the respondent authorities should have asked him to submit his bid security declaration, inasmuch as, one Pragati Associates, having bid ID No. 999069, had been asked to submit seven

documents, which had not been submitted by Pragati Associates along with their tender documents. As such, if some concession could have been provided to Pragati Associates, the petitioner should have also been asked to submit his bid security declaration, if the same had not been submitted.

**5.** The petitioner's counsel further submits that the instant tender has been mired with controversy since the very beginning and though it was floated in November, 2023, it was extended from time to time by corrigendums. He also submits that the North East Packed LPC Transporter Association was negotiating very hard to call off the aforementioned tender. The Government of Assam also intervened in the said matter and the Joint Secretary to the Government of Assam, Food, Public Distribution and Consumer Affairs Department, vide letter dated 29.01.2024, called for a joint meeting on 30.01.2024. The petitioner, amongst others, was informed about the meeting, which reaffirmed their belief that the last date of submission of the tender documents would be extended. However, negotiations having failed, there was a huge rush on the last date, as almost all participating tenderers submitted their tenders on that day. The petitioner had uploaded all the documents, as envisaged by the NIT. As such, the petitioner should not be made a victim of any technical glitch, which might have happened and which was beyond the control of the petitioner.

**6.** Mr. P. Bharadwaj, learned counsel for the IOCL submits that on a thorough check made on the uploaded documents of the petitioner, it was found that the petitioner did not submit his bid security declaration and as such, there was no infirmity in disqualifying the petitioner's technical bid, in terms of Clause 4 of the Tender Schedule of the NIT.

**7.** I have heard the learned counsels for the parties.

**8.** The question to be decided is with regard to whether the petitioner had submitted his bid security declaration at the time of uploading his tender documents in the e-Tendering portal. The above is a disputed question of fact, inasmuch as, the petitioner has taken a stand that the same was uploaded in the e-Tendering portal, while the respondent's stand is that the bid security declaration was not found in the uploaded tender documents of the petitioner.

**9.** Clause 4 of the Tender Schedule of the NIT provides that "The bid shall be **summarily rejected**, if Bid Security Declaration in lieu of EMD is not uploaded in e-Tendering portal on or before tender submission date and time".

**10.** The affidavit of the IOCL purportedly contains all the uploaded documents pertaining to the petitioner's entire technical bid. The bid security declaration is however not amongst the said documents.

**11.** In view of the stand of the respondents, which can be checked in the e-Tendering portal, there is no reason for this Court not to accept the stand taken by the IOCL that the petitioner did not upload the bid security declaration. On that count, this Court does not find any infirmity with the rejection of the petitioner's technical bid, as the same is in conformity with Clause 4 of the Tender Schedule of the NIT.

**12.** With regard to the stand of the petitioner's counsel that the petitioner should have also been given a chance to submit the necessary document, if not found in the e-Tendering portal, as an opportunity for submitting documents had been given to Pragati Associates, this Court finds that the said argument does

not hold water, in view of the fact that the documents allegedly asked from Pragati Associates does not include the bid security declaration.

**13.** Further, in the case of ***Raunaq International Ltd. Vs. I.V.R. Construction Ltd. and Others***, reported in ***(1999) 1 SCC 492***, the Supreme Court has held that any judicial relief at the instance of a party which does not fulfill the requisite criteria seems to be misplaced. Thereafter, in a recent judgment of the Supreme Court passed in the case of ***TATA Motors Limited Vs. the Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and Others*** in ***Civil Appeal No. 3897/2023***, which is in line with the judgment in the case of ***Raunaq International Ltd. (supra)***, the Supreme Court affirmed the view of the High Court that once the bid of the TATA Motors had been declared as non responsive and having stood disqualified from the tender process, it could not have entered into the fray of investigating into the decision of BEST to declare the successful bidder.

**14.** In view of the fact that there is no infirmity in disqualifying the petitioner's technical bid, this Court does not find any ground to exercise it's discretion in the present case, by making a foray whether the petitioner should have been given a chance to submit the bid security declaration later.

**15.** Accordingly, this writ petition stands dismissed.

**JUDGE**

**Comparing Assistant**