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(2014) 1 GLD 88 : (2013) 4 GLT 690

Gauhati High Court

Case No: Writ Petition (C) 4281 of 2012

Shri Raju Ali	APPELLANT
Vs	
The Union of India and Others	RESPONDENT

Date of Decision: Aug. 2, 2013

Acts Referred:
Constitution of India, 1950 â€" Article 14, 226

Citation: (2014) 1 GLD 88 : (2013) 4 GLT 690

Hon'ble Judges: B.K. Sharma, J

Bench: Single Bench

Advocate: M. Hazarika and Ms. R. Gogoi, for the Appellant; G.N. Sahewalla Mr. B.K. Das, Mr. M.K. Choudhury and Mr. N. Baruah, for the Respondent

Final Decision: Allowed

Judgement

B.K. Sharma, J.
The matter pertains to awarding of contract for handling and processing of Oily Sludge of Assam Assets. The petitioner,

who was a tenderer for the said work is aggrieved by rejection of his technical bid. His prayer in the writ petition is for a direction to the

respondents to open his commercial bid and thereafter to proceed with the matter in terms of the particular tender notice. By Annexure-a Invitation

to Bid (ITB) dated 24/02/2012, the ONGC authority invited bids under two bids system i.e. technical and commercial, for handling and

processing of Oily Sludge of Assam Assets. As notified in the ITB, the date and time of submission of bids and date and time of opening techno-

commercial bids were 29/03/2012 (1400 hrs) and 29/03/2012 (1500 hrs) respectively.

2. Pursuant to the said ITB, the petitioner along with another including the respondent No. 5 submitted tenders. According to him, he had

conformed to the requirements of the bid.

3. As stated in the writ petition, the bid offered by the 3rd party was found defective and accordingly the same was rejected. According to the

petitioner, the bids submitted by the petitioner and the respondent No. 5 were found technically acceptable as they fulfilled the norms prescribed in

the ITB dated 24/02/2012. The bid validity period was for 120 days from the date of opening of technical bid but the respondent ONGCL vide e-

mail dated 28/08/2012 asked the petitioner to extend the validity of the bid. Similarly, the respondent NO. 5 was also asked to extend its bid

validity period.

4. In response to the said e-mail, the petitioner submitted his consent for extension of the validity period. According to the petitioner, the

respondent No. 5 made a conditional offer for extension of the validity of the bid subject to rejection of the tender of the petitioner on the ground

that the petitioner being the local tenderer, the respondent No. 5 cannot compete with the petitioner in bid price. It is the further plea of the

petitioner that in consideration of the said demand made by the respondent No. 5, while opening the commercial bid of the respondent No. 5 on

05/09/2012, the ONGCL did not open the commercial bid of the petitioner and resultantly the respondent No. 5 became the lone tenderer, whose

commercial bid was opened and accepted.

5. It has been stated in the writ petition that on being queried, the petitioner was apprised that the work executed by the petitioner earlier did not

cover the execution of processing of Oily Sludge and as such, the experience of the petitioner in execution of the particular work was lacking.

6. It is the case of the petitioner that the grounds assigned for rejection of the technical bid of the petitioner was after thought with a view to justify

the action in not opening the commercial bid and confining the same only to the respondent No. 5.

7. The petitioner had executed certain works under the respondent No. 5 as sub-contractor pursuant to the purchase orders dated 04/12/2007

and 12/05/20087 (Annexure-B/1 and B/2). As claimed by the petitioner, the said works related to lifting of Oily Sludge till disposal of the same

which invariably included the processing of the Oily Sludge. As regards the plea of the respondents that the petitioner did not annex along with the

tender documents the Job Completion Certificate in respect of the particular Work Order dated 03/02/2011, it is the case of the petitioner that the

other documents submitted along with the bid were sufficient to show the execution of the work. Thus, in a nutshell, the case of the petitioner is that

he having conformed to the required experience of handling and processing of the Oily Sludge under the respondent No. 5, his technical bid ought

not to have been rejected on the ground of lack of experience, which according to him is an afterthought and only to suit the purpose of awarding

the contract to the respondent No. 5.

8. Denying the aforesaid pleas of the petitioner raised in the writ petition, the respondent ONGCL has filed its affidavit, in which it has been stated

that the petitioner having had no experience as per the requirement of ITB, his technical bid was not acceptable. Referring to the particular Work

Order dated 03/02/2011 issued by the respondent No. 5 to the petitioner, it has been stated that he was allotted only with pre-operative activities

like area dressing, leveling and operation assistance, supply of man-power etc. It has also been stated that inspite of granting opportunities, the

petitioner failed to produce any document in support of his experience. As regards the extension of bid value, it has been contended that the same

cannot lead to the conclusion that the technical bid of the petitioner was accepted. As regards the works involved i.e. handling and processing of

Oily Sludge of Assam Assets, Nazira at Sivasagar, it has been stated thus:-

That the deponent admits the statements made in paragraph 3 of the writ petition to the effect of invitation of bid dated 24.2.2012 (Tender No.

R16DC12002) for Handling and Processing of Oily Sludge of Assam Asset, Nazira, Sivasagar. It is stated that during drilling activities for the

purpose of exploration of hydrocarbons i.e. oil, gas, some waste products are also general which includes chemicals, debris, sediments soils, water

and some amount of hydro carbons in a mixture from which is altogether called ""Oily Sludge"". The methodology involved in separating the

components of oily sludge through chemicals mechanized process through special equipments is called ""Processing of Oily Sludge.

9. Referring to the work experience of the petitioner as mentioned in paragraph 7 of the writ petition, the respondent ONGCL in its counter

affidavit has stated thus:-

Para 10. That the statements made in paragraphs 7 of the writ petition are not admitted by the answering respondents and the petitioners are put to

the strictest proof of the same.

It is submitted that as per the information furnished by Respondent No. 5, they had awarded the work to the petitioner for necessary enabling

work, to provide support services by providing transportation, local manpower etc. The respondent No. 5 also stated that the scope of work in

the work order clearly defined the nature of work executed by the petitioner and it cannot be construed that they are capable of providing technical

support in the form of processing knowledge or selection of appropriate technology.

The work orders as well as job completion certificates of the petitioner do not state that process of sludge was ever done by the petitioner. The

statement that the sub-contract involved processing of oily sludge cannot be established from the documents submitted in petitioner''s bid and

presumption what so ever may be drawn in absence of requisite documents as per the specific provisions of tender in question. The petitioner only

provided local manpower and they do not posses the processing knowledge of sludge processing. The present tender dated 24.2.2012 is primarily

for the processing oily sludge. Therefore the experience as shown by the petitioner through work order (Annexure-D of the writ petition page 116)

issued by the Respondent No. 5 to the petitioner cannot be construed as experience for the current tender.

11. That the statements made in paragraph 8 of the writ petition are incorrect and hence denied by the answering respondents. As confirmed by

the Respondent No. 5 (M/s. Balmer Lawrie), the petitioner was awarded peripheral (secondary) work of handling and transportation of sludge,

which is a simple job. The work involved only providing unskilled manpower and not processing of sludge, which requires technical support in the

form of process knowledge or selection of appropriate technology and the petitioner does not possess same.

It is stated that mere receipt of work order does not mean that bidder has gained the requisite experience. In this regard clause 2.1(a02 of BEC

quoted by petitioner in para 4 may be referred. The petitioner was required to submit copies of respective contracts along with documentary

evidence in respect of satisfactory execution/completion of contracts, in the form of copies of any of the documents (indicating respective contract

number and type of services) (indicating respective contract number and type of services), such as-

(i) Satisfactory completion/performance report (OR).

(ii) Proof of release of Performance Security after completion of the contract (OR)

(iii) Proof of settlement/release of final payment against the contract (OR)

(iv) Any other documentary evidence.

While the petitioner has submitted copy of work order (Annexure-D), petitioner had failed to submit documentary evidence in respect of

satisfactory execution of the above contracts in any of the forms listed in the tender BEC.

In this regard clause 8.1 of Instructions to bidders of tender documents may be referred to which is as under:

Advice to bidders for avoiding rejection of their offers:

ONGC has to finalise its purchase within a limited time schedule. Therefore, it may not be feasible for ONGC to seek clarifications in respect of

incomplete offers.

Prospective bidders are advised to ensure that their bids are complete in all respects and conform to ONGC''s terms, conditions and bid

evaluation criteria of the tender. Bids not complying with ONGC''s requirement may be rejected without seeking any clarification.

ONGC was entitled to reject the petitioner''s bid at that stage itself. However, the petitioner was given an opportunity vide letter No.

NZR/MM/SC/FEG/Oily Sludge/42/2011-12 dtd. 23.05.2012 to provide documentary evidence towards meeting experience criteria within 12

days. But petitioner failed to do so. However again to give benefit of doubt, as the work to petitioner was awarded by M/s. Balmer Lawrie and

not ONGC, M/s. Balmer Lawrie was asked to certify completion of job by petitioner as claimed by petitioner. Against ONGC''s specific query as

to whether M/s. Raju Ali had completed job successfully M/s. Balmer Lawrie replied vide letter no. ROFS/BD/NAZ/Lagoon/04 dtd. 4.6.12 as

under:-

LD was imposed on us mainly due to delay in lifting and transportation only. We could process contractual qty of 3400 KL of oily sludge without

plant and equipment by processing accumulated sludge in Gelekey within the contractual period.

From the above it is apparent that the Respondent No. 5 did not certify the completion of work as claimed by petitioner. It is submitted that

petitioner cannot himself claim that he had successfully completed the work. But his employer M/s. Balmer Lawrie is the authority to certify

completion of work awarded by them and they have not done so. However, with out prejudice it is humbly submitted that work order dated

3.2.2011 for pre operative work and operational assistance with man power for processing sludge in pits at Nazira and Jorhat Sector of ONGC

did not seen scope of work as two purchase orders dated 4/12/2007 (Annexure B1 of the writ petition) and 12.5.2011 (Annexure B2 of the writ

petition) awarded by Respondent No. 5 to the petitioner as these contracts does not involve processing of oily sludge as part of scope of work.

10. In the counter affidavit filed by the respondent No. 5 denying the plea of the petitioner that he has got the experience of handling and

processing of Oily Sludge, it has been stated that it had engaged the petitioner as sub-contractor for the scope of work comprising enabling work

and for providing support services by providing transportation, local men-power etc. and not for chemical and mechanized processing of Oily

Sludge. Explaining the said process in paragraph 8 of the counter affidavit, it has been stated thus:-

During drilling activities for the purpose of exploration of hydrocarbons i.e. Oil, gas, some waste products are also generated which comprises oil,

chemicals, debris, sediments of soils and those are altogether called "oily sludge". The methodology involved in separating the components of oily

sludge through chemical and mechanized process by special equipment is called "processing of oily sludge". The processing requires technical

knowledge for suitable chemical treatment, selection of plant and machinery appropriate for particular nature of oily sludge to be treated, on a case

to case basis. The Respondent 5 has got the required plant & machinery and know-how of such sludge processing system and have got proven

credential for execution of similar job in various Refineries and oil installations. The execution of job requires manpower for enabling work for

installation of plant and equipment and for other support services.

The respondent no. 5 being a public sector enterprises under administrative control of Ministry of Petroleum and Natural Gas, unable to engage

local labour forces directly under its own payroll and execute the site work by engaging manpower from local agencies under its active supervision

and technical guidance by its own technical manpower posted at site.

...The respondent no. 5 used to depute its expert team to site to study the nature of oily sludge to be processed to select appropriate process and

equipment on a case to case basis. The local agency is engaged after selection of process for providing support services to do the are cleaning and

enabling work for installation of plant and to provide support services by providing transportation, local manpower etc. The Respondent used to

keep its own technical manpower at site for technical guidance and supervision of work. The petitioner M/s. Raju Ali, based at Naziram, assam, is

one of such local agency who had been engaged by Respondent no. 5 for providing local services as explained above for execution of two

previous contracts received by the Respondent no. 5 from the Respondent no. 2...

11. Explaining the work orders issued in favour of the petitioner by the respondent No. 5 vide orders dated 03/08/2007, 04/12/2007,

12/05/2008, 30/12/2010 and 03/02/2011, it has been stated that the works done did not involve any chemical and mechanized processing of

Sludge by the petitioner and that the same was done by the respondent No. 5 with its own plant and machineries. It has further been stated that the

petitioner was engaged only for enabling work and support services by providing transportation, local man-power etc. Referring to the particular

completion of work Certificate dated 12/07/2012 issued by the respondent No. 2 to the respondent No. 5 it has been stated that the quantity of

Sludge lifted, loaded, transported and unloaded from Pits/Lagoon of Jorhat Sector to the centralized plant of the respondent No. 5 was less than

the contractual quantity and thus the petitioner failed to discharge its contractual obligation to the respondent No. 5 for which liquidated damage

had been imposed by the respondent No. 2 and accordingly the respondent No. 5 had deducted Rs. 90,064/- from the petitioner"s bill towards

deduction of Liquidated Damage (LD). Referring to the required experience for awarding of the contract which has further been stated thus in

reference to the Annexure B/1 and B/2 purchase orders dated 04/12/2007 and 12/05/2008:

13. That in respect of the statements made in paragraph 14 of the writ petition the answering respondent submits that the purchase order dated

4.12.2007 (R-2) was only for collection and transportation of oily sludge from various locations in tanks/truck to the centralized processing unit of

Respondent No. 5 at Geleky. This is as per clause no. 4.1 of SCOPE OF WORK OF Special Conditions of contract. It was the Respondent no.

5 who had executed the chemical and mechanized processing of sludge with its own specialized equipments under the direct supervision of its

engineers posted at site.

Further, the answering respondent states that the second purchase order dated 12.05.2008 (R-3) was for supply of local manpower. Such local

manpower was taken to assist Respondent no. 5 for support services in its chemical and mechanized processing of oily sludge. Here also it is

Respondent no. 5 who had executed the chemical and mechanized processing of oily sludge with its own specialized equipments under the direct

supervision of its engineers posted at site.

The answering respondent states that the petitioner once again engaged by the Respondent no. 5 for providing similar services as it is evident vide

work order dated 03.02.2011 (R-5). Like other assignments, it was again the Respondent no. 5, who had executed the chemical and mechanized

processing of oily sludge with its own specialized equipment under the direct supervision of its engineers posted at site.

It is evident from the above that in none of the aforesaid assignments given by the Respondent no. 5, the petitioner was responsible for chemical

and mechanized processing of oily sludge. Therefore it is not true that petitioner had experience in processing of oily sludge as subcontractor in the

above three jobs.

12. In the reply affidavit filed by the petitioner reiterating the stand in the writ petition, it has been stated that the petitioner having had the

experience of handing and processing of Oily Sludge of Assam Assets working under the respondent No. 5, his technical bid could not have been

rejected. According to the petitioner he having been approved as sub-contractor in respect of the works of the ONGCL, the said authority had the

knowledge as to the nature and manner of work executed by the petitioner.

13. Mrs. M. Hazarika, learned senior counsel assisted by Ms. R. Gogoi, learned counsel for the petitioner in her persuasive persuits submitted that

it being a clear case of arbitrariness and unfairness in action by the respondent ONGCL, there has been violation of Article 14 of the Constitution

of India requiring interference of this Court in the matter with appropriate direction to the respondents. Referring to the documents available on

records, she submitted that the unfairness on the part of the respondents in dealing with the case of the petitioner is writ large on the fact of it.

According to her, it is a case of deprivation of the petitioner by not treating him equally with the respondent No. 5 leading to violation of Article 14

of the Constitution of India.

14. Countering the above argument, Mr. G.N. Sahewalla, learned senior counsel assisted by Mr. B.K. Das, learned counsel representing the

respondent ONGCL submitted that it is not a case for interference on the basis of the plea raised by the petitioner. He submitted that as to whether

the petitioner had conformed to the requirements of the experience envisaged in the ITB is a matter to be decided by the Tender Committee and

the said Committee having found the petitioner lacking in experience of handling and processing of Sludge rightly rejected his technical bid.

Referring to the decision reported in Michigan Rubber (India) Ltd. Vs. The State of Karnataka and Others, , he also submitted that the process

adopted and the decision taken by the ONGCL being fair and reasonable, is not open to judicial review under Article 226 of the Constitution of

India.

15. Mr. M.K. Choudhury, learned senior counsel assisted by Mr. N. Baruah, learned counsel representing the respondent No. 5 also submitted

that the writ petition is misconceived and does not disclose any ground warranting interference with the action taken by the ONGCL. He submitted

that the petitioner being a sub-contractor under the respondent No. 5 was entrusted with the works referred to in the purchase orders which did

not include handling and process of Sludge, which require expertise in the field.

16. I have given my anxious consideration to the submissions made by the learned counsel for the parties and have also perused the entire materials

on records. I have also gone through the file produced by Mr. B.K. Das, learned counsel representing the ONGCL. My findings and conclusions

are as follows.

17. Annexure-III to the ITB defines the scope of work as follows:-

SCOPE OF WORK

Name of Work: Handling of Oily sludge (Lifting, loading, transportation, unloading, processing & disposal) for Assam Asset on lump sum turnkey

basis

Carry out de-oiling of 8000 KL oily sludge available at ONGC Assam Asset (7000 KL at fields of Nazira sector and 1000 KL at fields of Jorhat

sector) using mechanized/chemical/combination processing system on turnkey basis. The work Handling of oily sludge includes Lifting, Loading,

Transportation and Unloading of oily sludge from pits/lagoons and its processing thereafter. Processing includes separation of debris,

sediments/solids, water and maximum recover of hydrocarbon for recycling.

The processing units/equipment''s should be brought and re-assembled near the Work Site. Feeding of the sludge to the vendor''s processing unit is

to be done by the vendor from the Pit/Lagoon using an appropriate mechanism. The process must have appropriate debris handing

facility/equipment. After completion of work Contractor is required to demobilize its plant/equipment''s from ONGC premises. All electrical,

piping, civil work including fencing of the site, if required, is included in scope of work.

The effluent from processed sludge is to be stored in PCC pit, to be constructed by the contractor, lined with HDPE sheet required thickness to

meet the APCB/CPCB requirement. The solid waste from processed sludge is to be stored in a pit at the designated site (identified by ONGC)

and handed over to ONGC covered with a layer of earth for further bio-remediation.

18. Laying down the technical part of SCC, the contractor"s scope for the work in question specified, inter alia, are as follows:-

Special conditions of contracts

7. The processing units/equipment should be brought and re-assembled near the Work-site. Feeding of the sludge to the contractor"s processing

unit is to be done by the contractor from the Pit/Lagoon using an appropriate mechanism.

8. Contractor has to submit Process methodology in details including PFD/P & ID, footprint area of the plant etc. for processing of the oily sludge

proposed to be adopted for the work along with the bid.

11. The process must have appropriate debris handing facility, Demulsifier or any other chemical can be used for proper separation of oil-water

emulsions in the process.

13. Contractor should undertake to recover maximum possible hydrocarbon present in the sludge so that the separated solids to have oil less than

10% (W/W) and the recovered oil after processing of sludge to have BS & W less than 8% (V/V) based upon the test. The oil content in

separated effluent shall have to be less than 100 PPM.

19. Annexure-IV to the ITB laying down bid evaluation criteria specified inter alia as follows:-

REJECTION CRITERIA

B. 1 Technical rejection criteria

The following vital technical conditions should be strictly complied with failing which the bid will be rejected.

1.0. Bid should be complete and covering the entire scope of job/supply and should conform to the Scope of work/Technical specifications

indicated in the bid documents, duly supported with technical catalogues/literatures wherever required. Incomplete and non-conforming bids will be

rejected outright.

2.0. Eligibility and experience of the bidder:

2.1(a)1. The bidder should have minimum two (02) years of operational experience in providing services of handling, transportation, processing

using mechanized/chemical/combination processing system & disposal of oily sludge in a Refinery/Petro-chemical/Oil & Gas related company

during the last 05 years.

2.1(a)2. Bidder should have executed at least one (01) number of contract of providing services of handling, transportation, processing using

mechanized/chemical combination processing system & disposal of at least 2000 m3 of oily sludge in a Refinery/Petro-chemical/Oil & gas related

company during the last 05 years.

The five years period will be reckoned from the closing date of the present tender.

To this effect, Bidder should submit copies of respective contracts, along with documentary evidence in respect of satisfactory execution of each of

those contracts, in the form of copies of any of the documents (indicating respective contract number and type of services), such as-(i) Satisfactory

completion/performance report (OR) (ii) proof of release of Performance Security after completion of the contract (OR) (iii) proof of

settlement/release of final payment against the contract (OR) (iv) any other documentary evidence that can substantiate the satisfactory execution of

each of the contracts cited above.

20. The ITB in question was in respect of the work of handling and processing of Oily Sludge of Assam Assets. While it is the case of the

petitioner that he conforms to the requirement of the experience referred to above according to the respondent ONGCL, the petitioner does not

conform to the requirement of said experience and accordingly his technical bid has been rightly rejected. In support of the claim of the petitioner

he has enclosed the Annexure B/1, B/2, C/1, C/2 and D Work Orders. Annexure-B/1 Purchase Order dated 04/12/2007 is on the subject of

handling of Oily Sludge and did not include processing. Similarly, the Annexure B/2 purchase order dated 12/05/2008 pertain to supply of

manpower and operational assistance and does not refer to any handling and processing of Oily Sludge. In both the work orders, referring to the

scope of work, it was indicated that the same would be as per the subject tender and Special Conditions of Contractor enclosed. However, the

petitioner had chosen not to enclose the copies of the Special Conditions of Contract pertaining to both the work orders.

21. Be that as it may, on perusal of both the work orders, nothing is discernible that the same pertained to handling and processing of oily sludge.

Be it stated here that the said two work orders had been issued by the respondent No. 5 (A Govt. of India Enterprise) to the petitioner as sub-

contractor. Although, referring to Liquidated Damage (LD) clause in the Annexure B/2 purchase order dated 121.5.2008, it was contended that

penalty being leviable per date on delay at the rate of daily loss in sludge processing quantity, the same itself would indicate that the petitioner was

engaged in sludge processing but the said contention is misplaced, inasmuch as, as per the said clause, penalty was leviable for the loss in sludge

processing quantity, which does not mean that the petitioner himself was engaged in sludge processing. What was mentioned in the LD clause was

that penalty would be leviable for the loss in sludge processing quantity. The petitioner''s task in the matter was supply of manpower and

operational assistance and not processing of sludge. It was in that context, for any delay in the job entrusted to the petitioner, penalty was leviable

for the loss in sludge processing quantity.

22. Annexure C/1 is a Job Completion Certificate dated 15.2.2010 which itself shows that the job was of handling of oily sludge. Same is the case

with Annexure C/2 Job Completion Certificate also dated 15/2/2010. Annexure-D is another work order dated 3/2/2011 entrusted to the

petitioner by the respondent No. 5 and the subject itself indicates that the job was pre-operative work and operational assistance with manpower

for processing of sludge in Pits at Nazira and Jorhat sector of ONGCL. As the letter disclosed, the work involved was operational assistance for

mechanized processing of oily sludge. Thus, the petitioner was engaged for operational assistance only and not for handling and processing of oily

sludge.

23. Above being the position, if the ONGCL rejected the technical bid of the petitioner on the ground of being not experienced in handling and

processing of oily sludge, no fault can be attributed to it.

24. Carrying/performing the works of pre-operative activity of certain works cannot be construed as experience for the main work. As noted

above, the petitioner was only allotted with pre-operative activities like area dressing, levelling and operation assistance, supply of manpower etc.

The methodology involved in separating the components of oily sludge through chemical mechanized processing through special equipments is

called ""processing of oily sludge"". The respondent No. 5 had awarded the aforementioned works to the petitioner for necessary enabling work

only to provide support services by providing transportation, local manpower, etc. None of the Job Completion Certificates states that processing

of sludge was ever done by the petitioner. The petitioner was required to submit copies of respective contracts along with documentary evidence in

respect of satisfactory execution/completion of works involving handing and processing of sludge which he failed to submit.

25. I have gone through the file in which the impugned decision has been taken. On perusal of the same I do not find any infirmity in the decision

making process. The tender committee in its threadbare discussion and upon evaluation of the bid documents of both the petitioner and the

respondent No. 5 took the conscious decision to reject the petitioner''s bid and the 3rd party, namely, M/s. Conmat Systems Private Ltd. and

recommended the respondent No. 5 for price bid opening. It was indicated that bid of the petitioner was technically not acceptable. Thereafter the

commercial bid of the respondent No. 5 has also been accepted.

26. Be it stated here that by an interim order dated 11.9.2012 it was provided that the respondents would not award the contract without the leave

of the Court. However, the said order has been modified by the Division Bench in WA No. 289/2012 vide order dated 18/10/2012 allowing the

ONGCL to award the contract, subject to further orders in the writ petition, after passing a speaking order giving due consideration to the claim of

the petitioner that he had the requisite experience.

27. Pursuant to the said Division Bench Order, the ONGCL authority has passed a speaking order on 22/10/2012 with due intimation to the

petitioner. By the said order, it has been conveyed that the petitioner did not conform to the requirement of handling and processing of sludge and

that work order and completion documents submitted by him pertaining to only collection and transportation of oily sludge and does not include

handling and processing of oily sludge. By the said order, it has also been conveyed that although the petitioner was asked to submit documentary

evidence in respect of certain work orders but the same was not complied with by the petitioner. Referring to the particular clarification of the

petitioner dated 8/6/2012 along with the additional set of documents, the authority has furnished the necessary clarification in the speaking order. It

appears that pursuant to the said speaking order, the respondent No. 5 has been awarded with the contract.

28. The speaking order and the order awarding the contract to the respondent No. 5 are not under challenge in this proceeding. However, that

aspect of the matter need not detain us in view of the findings and conclusions recorded above. It is well settled that in absence of any prejudice to

public interest, the Writ Court exercising its power of judicial review under Article 226 of the Constitution of India shall not interfere with the

award of contract pursuant to a tender process unless the same is shown to be the product of arbitrary, irrational and unfair exercise of power. As

has been held by the Apex Court in Tata Cellular Vs. Union of India, , if after taking into account all relevant considerations, a decision has been

arrived at to award the contract, the Writ Court will be slow in interfering with the decision. As discussed above, I do not find any compelling need

to interfere with the decision arrived at by the ONGCL authority.

29. The decision in Michigan Rubber (Supra) on which Mr. G.N. Sahewalla, learned counsel representing the ONGCL has placed reliance is to

buttress the argument that if the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, interference by Court

is very restricted since no person can claim a fundamental right to carry on business with the Govt. or its instrumentalities. It cannot be said to be a

case of adopting a decision by the ONGCL with mala fide exercise of power to favour the respondent No. 5, A Govt. of India Enterprise. It also

cannot be said to be a case of adopting the process or decision made as arbitrary and irrational requiring interference of this Court exercising

power and jurisdiction under Article 226 of the Constitution of India. For all the aforesaid reasons I do find any merit in the writ petition and

accordingly it is dismissed leaving the parties to bear their own costs.