
**OIL and NATURAL GAS CORPORATION LIMITED and 2 ORS. Vs ASSAM
PETROLEUM LIMITED and ANR**

I.A.(Civil) 3443 of 2017 in WP (c) No. 1235 of 2017

Court: GAUHATI HIGH COURT

Date of Decision: March 6, 2018

Acts Referred:

Arbitration and Conciliation Act, 1996 " Section 11#Indian Contract Act, 1872 " Section 23,
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Hon'ble Judges: PRASANTA KUMAR DEKA

Bench: Single Bench

Final Decision: Allowed

Judgement

1. Heard Mr. GN Sahewalla, learned Senior Counsel, assisted by Ms. N.K. Devi, learned counsel, appearing for the petitioners (respondents in

connected WP (C) No. 1235/2017) and Mr. SK Medhi, learned Senior Counsel, assisted by Mr. P.N. Sharma, learned counsel, appearing for the

respondents (writ petitioners in WP (C) No. 1235/2017).

2. The present respondent Nos. 1 and 2 in the present application preferred the connected WP (C) No. 1235/2017 against the present petitioners as

respondents. Prior to that the present respondents preferred WP (C) No. 6066/2016 against the present petitioners, as the respondents. In the said

writ petition, the respondents assailed the impugned order dated 9.9.2016 issued vide letter No. DLI/ CHMM/ Q&M/ WOR/ ZNSVC5001/ 2015/

9010023082 by the present petitioner terminating the Contract No. 9010023082 dated 2.5.2016 and suspending the business with the respondents

pending completion of enquiry process as per Clause 18.6 of the contract agreement executed between the parties.

3. A challenge in the WP (C) No. 6066/2016, as per the submission of the learned counsel for the respondents was found to the extent of the act of

causing the enquiry in order to put the respondent company on "Holiday" and act of invoking the Bank guarantee. The prayer made in the said

writ petition is reproduced herein below:-

"In the premises aforesaid it is therefore most humbly prayed that your Lordship would be pleased to call for the records and issue Rule calling

upon the respondents to show cause as to why a writ in the nature of Certiorari shall not be issued quashing/ setting aside the impugned Order No.

No. DLI/ CHMM/ Q&M/ WOR/ ZNSVC5001/ 2015/ 9010023082 dated 09.09.2016 so far as it relates to the suspension of business dealing the M/S.

Assam Petroleum Ltd. i.e. the petitioner (vendor Code : 121549) pending completion of the enquiry process and the action by which the Performance

Bank Guarantee No. 0144010001700 dated 27.01.2016 and No. 01440100001701 dated 27.01.2016 for an amount of Rs. 5,00,000/- and Rs. 7, 66,003/-

respectively has been invoked and/ or as to why a writ in the nature of Mandamus shall not be issued directing/ commanding the respondents to recall/

revoke the impugned order so far as the suspension of business dealing with the petitioners pending completion of the enquiry process is concerned

and the action of invocation of the Performance Bank Guarantee and/ or pass such further order (s) as to your Lordship may deem fit and proper. -

AND- Pending disposal of the instant petition your Lordship may be pleased to stay the operation of the order No. DLI/ CHMM/ Q&M/ WOR/

ZNSVC5001/ 2015/ 9010023082, dated 09/09/2016 issued by the Respondent Authority so far as "suspension of business dealing with the M/S.

Assam Petroleum Ltd. pending completion of the enquiry process is concerned and/ or pass such further Order(s) as to your Lordship may deem fit

and proper. "

4. The present connected WP (C) No. 1235/2017 assailed the impugned order dated 8.2.2017 issued by the present petitioner Corporation banning the

business dealing with the respondent Company or its allied concern(s) etc. in any ongoing / future tenders for the period of 2 (two) years with effect

from 09.09.2016. In the earlier writ petition, it was pleaded that the respondent Company was "Put on Holiday" without being heard terming the

same to be an act of gross violation of the principles of natural justice. The contention in the present connected writ petition is that the present

petitioner Corporation during the pendency of the earlier writ petition issued a show cause notice to the respondent Company on 27.10.2016 upon

termination of contract No. 9010023082 dated 2.5.2016 due to alleged failure to mobilize acceptable men power for O.M. contract within the

permitted period and alleged submission of fake personnel related documents by the present respondent contractor purportedly in order to take the

consequential action after termination of the contract thereby putting the respondent company on holiday. Though a reply was submitted on 22.11.2016

but the petitioner Corporation without serving any notice or giving any opportunity to be heard in the enquiry issued impugned order dated 8.2.2017

thereby black listing the writ petitioner Company. The prayer made in the connected writ petition is reproduced herein below:-

“In the premises aforesaid it is therefore most humbly prayed that your Lordship would be pleased to call for the records and issue Rule calling

upon the respondents to show cause as to why a writ in the nature of Certiorari shall not be issued quashing/ setting aside the impugned Office Order

No. DLI/ Corp./ MM/ ZNSVC5001/ 2016 dated 08.02.2017 banning business dealing with the petitioners Company or its allied concern(s), Partner(s)

or Associate(s) or Director(s) or proprietor involved in any capacity as aforesaid shall be considered by ONGC in any of the ongoing/ future tenders

for a period to two years commencing from 09/09/2016 and/ or as to why a writ in the nature of Mandamus shall not be issued directing/ commanding

the respondents to recall/ revoke the impugned order stated as aforesaid and further to delete the name of the petitioners firm appearing at SL No.

281 in the list of banned firms as uploaded in the portal of the respondent corporation and / or pass such further order (s) as to your Lordship may

deem fit and proper. -AND- Pending disposal of the instant petition your Lordship may be pleased to stay the operation of the Office Order No. DLI/

Corp./ MM/ ZNSVC5001/ 2016 dated 08.02.2017 issued by the respondent corporation stated as aforesaid and direct the respondent corporation to

delete the name of the petitioners Company placed at Sl. No. 281 of the list of banned firms as uploaded in the portal of the respondent Corporation

and/or pass such further Order(s) as your Lordship may deem fit and proper.

5. The present petitioner in this Interlocutory application raised the issue of maintainability of the said WP (C) No. 1235/ 2017 on the ground that this

court has no jurisdiction to decide the dispute arising out of the agreement wherein the jurisdiction of the courts are accepted and agreed to by the

parties as provided under the procedural law of the Land.

6. The present petitioner Corporation floated an E-Tender for hiring of operation and maintenance services for Oil & Natural Gas Corporation

(ONGC) owned work of Rigs at Mehsana and Ahmedabad through its E-procurement site vide tender No. ZNSVC 5001 dated 7.10.2015. Thereafter

vide two notices the works relating to the Rig at Ahmedabad Asset and Rig at Mehsana Asset, were awarded to the respondents which were issued

from Delhi office of the Corporation. After deposit of the bank guarantee by the respondents/ writ petitioners two contract agreements both dated

2.5.2016 were executed between the parties to the writ petition at Delhi.

7. Mr. Sahewalla, learned senior counsel for the present petitioners referring to Clause 26 of the contract agreement submits that the parties agreed to

the exclusive jurisdiction upon the courts where the contract agreements were executed and as the same were executed at Delhi, the courts at Delhi

will have exclusive jurisdiction to adjudicate any issue evolving out of the contract agreements dated 2.5.2016. It is further submitted that the

Notification of award and even the letter of termination were issued from Delhi office and as such if any cause of action exists in favour of the

respondents/ writ petitioners the same has arisen under the territorial jurisdiction of the Delhi court.

8. Mr. Sahewalla submits further that in the present case in hand, the work sites are under the territorial jurisdiction of the courts at Ahmedabad and

on the other hand the agreements were executed at Delhi. When there are two or more places wherein the cause of action arose there is no illegality

in accepting the jurisdiction of either of the courts ousting the other courts. In support of his contention, Mr. Sahewalla relies (1989) 2 SCC 163 (

A.B.C. Laminart Pvt. Ltd. and another Vs. A.P. Agencies Salem) and (2013) 9 SCC 32 (Swastik Gases Private Limited Vs. Indian Oil Corporation

Ltd). Accordingly, Mr. Sahewalla submits that the connected Writ Petition (C) No. 1235/2017 cannot be entertained by this court as this court has no

jurisdiction to decide the dispute between the parties arising out of the two contract agreements.

9. Mr. SK Medhi, learned senior counsel on the other hand fairly submits that the ratio of the aforesaid two decisions of the Hon'ble Apex Court

are undisputable but his projection is that being aggrieved by the manner in which the writ petitioner Company was black listed in clear violation of the

basic rules of law such action has been put under challenge inasmuch as the impugned order of black listing, has caused prejudice to the writ

petitioners. By way of the said projection, the learned Senior Counsel submits that while deciding the question of maintainability it is the duty of the

court to enter into the substance of the dispute made in the pleadings and on going through the writ petition, it is very much clear and apparent that the

writ petitioners have not pleaded anything with respect to the performance of contract agreements in the writ petition. The manner and the process

adopted by the ONGC in black listing the respondent Company has been challenged in this writ petition and not with respect to the termination of the

contract. For black listing a person in a contractual matter there are guided principles of law and observation of said guidelines are strictly to be

examined by this court. The act on the part of the ONGC has caused serious prejudice both in terms of reputation of the writ petitioners and financial

loss as such this court has the jurisdiction to examine the same. In support of his contention, Mr. Medhi relies (1985) 1 SCC 475 (Bank of Baroda Vs.

Moti Bhai and Others) and (2017) 4 SCC 150 (Krishna Veni Nagam Vs. Harish Nagam). Accordingly, Mr. Medhi submits that the point of

maintainability is to be decided in favour of the petitioner.

10. Considered the submission of the learned senior counsels. On perusal of both the contract agreements it is seen that the same were executed at

Delhi. Clause 26 of the agreement is reproduced herein below:- "26. JURISDICTION AND APPLICABLE LAW:- This Agreement including all

matter connected with this Agreement, shall be governed by the laws of India (both substantive and procedural) for the time being in force and shall

be subject to exclusive jurisdiction of the Indian Courts (the place where the CONTRACT is signed in India). Foreign companies, operating in India

entering into Joint ventures in India, shall have to obey the law of the Land and there shall be no compromise or excuse for the ignorance of the Indian

legal system in any way.

11. From the perusal of the said Clause the parties to this writ petition agreed that all matters connected with the agreements shall be governed by the

laws of India (both substantive and procedural) for the time being in force. In the present case in hand, the agreements were signed/ executed at Delhi

and the place of work which are situated at Mehsana and Ahmedabad are under the State of Gujarat. Any cause of action giving rise to any

grievances within the four corners of the agreements to either of the parties to the agreements, the proper court for redressal of the grievances of the

parties to the said agreements will be the courts under whose territorial jurisdiction, the said cause of action arose, viz either at Delhi or in the State of

Gujarat.

12. Let us now refer Clause 18.5 and 18.6 of the agreements signed by the parties to the writ petition which are reproduced herein below:-

“18.5 Termination for delay in mobilization Successful bidder shall be required to mobilize complete equipment alongwith crew (only manpower/

crew in case of Operation and Maintenance Contracts) for commencement of services at the specified site within a maximum number of 45 days

from the date of issue of mobilization notice by the respective Asset. If the CONTRACTOR (successful bidder) fails to mobilize as above, ONGC

shall have, without prejudice to any other clause of the CONTRACT, the right to terminate the contract.

18.6 Consequences of termination In all cases of termination herein set forth, the obligation of the ONGC to pay shall be limited to the period upto the

date of termination. Notwithstanding the termination of this Agreement, the parties shall continue to be bound by the provisions of this Agreement that

reasonably require some action or forbearance after termination. In case of termination of Contract herein set forth, except under 18.1 and 18.2 and/

or annulment of the contract due to non submission of Performance Security (as per clause 36 of Annexure-1), following actions shall be taken against

the Contractor.

i. ONGC shall conduct an inquiry against the Contractor and consequent to the conclusion of the inquiry, if it is found that fault is on the part of the

Contractor, then they shall be put on holiday (i.e. neither any tender enquiry will be issued to such a Contractor by the ONGC against any type of

tender nor their offer will be considered by the ONGC against any ongoing tender(s) where contract between ONGC and that particular Contractor

(as bidder) has not been concluded for a period of two years from the date of the order for putting the Contractor on holiday is issued. However, the

action taken by the ONGC for putting that contractor on holiday shall not have any effect on other ongoing contract(s), if any with that Contractor

which shall continue till expiry of their term(s).

ii. Pending completion of the enquiry process for putting the Contractor on holiday, ONGC shall neither issue any tender enquiry to the defaulting

Contractor nor shall consider their offer in any ongoing tender.

13. From the aforesaid clauses it comes out that the successful bidder is required to mobilize the complete equipment alongwith crew for

commencement of services at the specified site within a specific time period, failing which the ONGC has a right to terminate the contract. The

consequences of termination are stipulated whereby the ONGC shall conduct an enquiry against the contractor and if fault is found to be on the part

of the contractor then the contractor shall be "Put on Holiday" for a period of two years from the date of the order for "Putting the Contractor

on Holiday" is issued. From the aforesaid two provisions it can be concluded that black listing would follow only after the termination of the contract.

If the submission of Mr. Medhi that in the connected writ petition the manner of black listing the writ petitioner company has been put under

challenge is accepted then definitely this court will have to enter to ascertain as to whether the writ petitioners had violated Clause 18.5 with regard

to the mobilization with the equipment alongwith the crew. If that be so, it is incumbent on the part of this court to enter into the performance of the

writ petitioner as per the terms stipulated in the agreements executed at Delhi.

14. Mr. Medhi submits that the writ petitioner is a Company having its registered office at Guwahati and on the other hand ONGC is also having its

office within the jurisdiction of this court. Under such circumstances filing of the present writ petition cannot at all be termed to be without jurisdiction

under this court. The act of the ONGC of black listing the writ petitioner Company has given a cause of action to it, having its registered office at

Guwahati to file the connected writ petition here in this court and under such circumstances, the stipulation made in the agreements cannot be a bar,

more so when the writ petitioners have sought for the relief only against the action of black listing and not beyond that.

15. In (1989) 2 SCC 163 (Supra), the various kinds of causes of action in the matter of contract was discussed and it was held that if amongst various

jurisdictions under various courts the parties to an agreement choose a particular jurisdiction out of the rest of the courts the same is not illegal. The

said view of the Hon'ble Apex Court is reproduced herein below:-

"16. So long as the parties to a contract do not oust the jurisdiction of all the courts which would otherwise have jurisdiction to decide the cause of

action under the law it cannot be said that the parties have by their contract ousted the jurisdiction of the court. If under the law several courts would

have jurisdiction and the parties have agreed to submit to one of these jurisdictions and not to other or others of them it cannot be said that there is total

oust of jurisdiction. In other words, where the parties to a contract agreed to submit the disputes arising from it to a particular jurisdiction which

would otherwise also be a proper jurisdiction under the law their agreement to the extent they agreed not to submit to other jurisdiction cannot be said

to be void as against public policy. If on the other hand the jurisdiction they agreed to submit to would not otherwise be proper jurisdiction to decide

disputes arising out of the contract it must be declared void being against public policy

16. In (2013) 9 SCC 32 (Supra), the appellant therein did not dispute that part of cause of action has arisen at Kolkata. But it was the contention of the

appellant that part of cause of action has arisen at Jaipur and therefore the Chief Justice of the Rajasthan High Court or the Designate Judge has

jurisdiction to consider the application for appellant for appointment of arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. As

against the said submission, the Hon'ble Apex Court held as follows:-

"32. For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement

shall be subject to jurisdiction of the courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like

"alone", "only", "exclusive" or "exclusive jurisdiction" have not been used but this, in our view, is not decisive and does not make

any material difference. The intention of the parties-by having Clause 18 in the agreement- is clear and unambiguous that the courts at Kolkata shall

have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like Clause

18 in the agreement, the maxim expressio unius est exclusio alterius comes into play as there is nothing to indicate to the contrary. This legal maxim

means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at

Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular

place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other

courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It

does not offend Section 28 of the Contract Act in any manner.

17. Keeping in view of the said ratio, in the present case in hand the parties to the agreement agreed that all matters connected with the agreements

would be governed by the law of India (both substantive and procedural). In a suit under a contract the making of the contract is part of the cause of

action and as such it can be filed at the place where it was made. The determination of the place where the contract was made is part of the law of

contract. The performance of a contract is a part of cause of action and a suit in respect of breach can always be filed where the contract has been

performed or its performance completed.

18. The act of black listing the writ petitioner Company has arisen out of the agreements which were made at Delhi. The act of performance of the

stipulated terms of the contract are to be performed at Mehsana and at Ahmedabad. The parties to the said agreement agreed that all matters

connected with the agreements would be governed by both the substantive and procedural laws of India. Under the law in the present case in hand

redressal of any grievances arising out of the terms of the contract would lie either within the territorial jurisdiction of the courts at Delhi or at

Mehsana or Ahmedabad. The said territorial jurisdictions of courts are in compliance of the Code of Civil Procedure, 1908 which undisputedly is the

procedural law agreed to be followed by the parties in both the agreements as stipulated in Clause 26 and referred hereinabove. Entertaining of the

writ petition by this court on the face of the Clause 26 referred above would be a clear violation of the said clause and would hit by the public policy

inasmuch as under no circumstances the jurisdiction of this court could be held to be proper more so even the law considering the factual matrix this

court has no jurisdiction. The contention of the writ petitioners that it has confined its prayer with respect to the act of black listing only cannot be

accepted inasmuch as the root cause evolving such dispute between the parties to the writ petition arose out of the contract agreements and as such

this court has no territorial jurisdiction to decide the dispute referred in the connected writ petition. The decisions relied by Mr. Medhi, learned Senior

Counsel for the writ petitioners/ respondents cannot be considered as the same does not relate to accrual of cause of action on the basis of the

agreement between the parties forming a contract. Hence this writ petition is not maintainable in this court.

19. Accordingly, this IA (Civil) is allowed.