

GAHC010219702025



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

Case No. : WP(C)/5768/2025

SRI RAJIB HAZARIKA
S/O LATE PROBIN HAZARIKA, PRESENTLY RESIDING AT B.P. CHALIHA
ROAD, MELACHAKAR, DISTRICT - SIVASAGAR, ASSAM, PIN-785640.

VERSUS

OIL AND NATURAL GAS CORPORATION (ONGC), AND 4 ORS.
REPRESENTED BY ITS CHAIRMAN, HAVING ITS REGISTERED OFFICE AT
-5A- 5B, NELSON MANDELA ROAD, VASANT KUNJ, NEW DELHI, 110070.

2:CHIEF GENERAL MANAGER (MM)

CENTRAL LOGISTIC AND PRODUCTION SERVICES PROCUREMENT
GROUP
CENTRAL PROCUREMENT DEPARTMENT
ONGC
7TH FLOOR
NBP GREEN HEIGHTS
B
BANDRA E
MUMBAI
MAHARASHTRA 400051.

3:DEPUTY GENERAL MANAGER (MM)

CENTRAL LOGISTICS AND PRODUCTION - SERVICES GROUP
CENTRAL PROCUREMENT DEPARTMENT
ONGC
15TH FLOOR
MAKER TOWER E
CHAMUNDESHWARI NAGAR
CUFFE PARADE

MUMBAI
MAHARASHTRA-400005.

4:SUPERINTENDING ENGINEER (ELECTRICAL)

CENTRAL LOGISTICS AND PRODUCTION SERVICES PROCUREMENT
GROUP CLPG
CENTRAL PROCUREMENT DEPARTMENT CPD
ONGC
15TH FLOOR
MAKER TOWER E
CUFFE PARADE
MUMBAI-400005

5:NIRMAL KUMAR SHARMA
12
APSARA READYMADE
J.P. AGARWALA PATH
NEAR LACHIT PARK
SIVASAGAR
ASSAM - 785640

For the petitioner (s) : Mr. R. Sarma, Advocate

For the respondent (s) : Mr. P. Baruah, SC, ONGC

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 26.09.2025

Date of Judgment : 26.09.2025

JUDGMENT AND ORDER (ORAL)

Heard Mr. R. Sarmah, the learned counsel appearing on behalf of the petitioner. Mr. P. Baruah, the learned counsel appears on behalf of the respondent Nos.1 to 4.

2. The petitioner herein is aggrieved by the actions on the part of the Respondent Authorities in granting the entire contract for "Hiring of Services for 12 No. Scrapping Winch Units for Assam Asset for 5 years" to the respondent No.5 without taking into consideration Clause 29.1.1 of the Instructions/Information to the Bidders, which is Annexure-1 to the bid documents.

3. Taking into account that the petitioner's case solely hinges upon Clause 29.1.1 (i), the same is reproduced herein under:-

"29.1.1 (i) In case participating MSEs quote price within price band of L1+15%, such MSE shall be considered for award of contract by bringing down their price to L1 price in a situation where L1 price is from someone other than a MSE. In case of more than one bidder eligible for purchase preference, then the eligible MSE(s) shall be allowed to share portion of supply in the following manner:

(a)....."

4. In the backdrop of the above, it is relevant to take note of that the case of the petitioner. The case of the petitioner herein is that the petitioner participated as an MSE Enterprise. It is the further case of the petitioner that from a perusal of the technical evaluation as well as the financial evaluation of the respondent No.5, it does not appear that the respondent No.5 was evaluated as an MSE enterprise.

5. Mr. R. Sarmah, the learned counsel appearing on behalf of

the petitioner, on the basis of Clause 29.1.1(i), submitted that as the L1 bidder, i.e. the respondent No.5 was not evaluated as MSE enterprise, the Respondent Authorities were required to abide by the stipulations contained in the said Clause that if any MSE enterprise quotes a price within the price band of L1+15%, such MSE shall be considered for award of the contract by bringing down their price to L1 price in a situation where L1 price is from someone other than an MSE.

6. Referring to the technical evaluation as well as the financial evaluation of the respondent No.5 at Annexure Nos.4 & 5 to the writ petition, Mr. R. Sarmah, the learned counsel appearing on behalf of the petitioner submitted that the Respondent Authorities have all along treated the respondent No.5 as a non-MSE enterprise. The learned counsel appearing on behalf of the petitioner further submitted that this aspect of the matter would be further clear from the fact that after the opening of the price bid, the petitioner was also invited and asked to match the bid of the L1 bidder, i.e. the respondent No.5 vide the communications dated 11.09.2025 as well as on 13.09.2025 as would be seen from Annexure Nos.6 & 8 to the writ petition. However, the same was withdrawn and the respondent No.5 has been awarded the contract.

7. Mr. P. Baruah, the learned counsel appearing on behalf of

the respondent Nos.1 to 4, however, submitted that the respondent No.5 at the time of submission of his bid on 17.08.2025 had applied as an MSE Enterprise and this aspect of the matter can be seen from the bid participation document of the respondent No.5 and the supporting document enclosed for EMD exemption. The learned counsel for the respondents submitted that the EMD exemption is only granted to MSE Enterprise. The learned counsel for the respondents further placed before this Court the supporting document which was submitted for EMD exemption, i.e the Udyam Registration Certificate of the respondent No.5 dated 15.12.2021. In addition to that, the learned counsel appearing on behalf of the Respondent Authorities further submitted that at the time of submission of the bid in the electronic mode, the respondent No.5 may not have ticked the concerned box. But the physical document which was submitted in terms with Clause 8.2 of the Instruction/Information to the bidders which is Annexure-1 to the bid document, it is apparent that the respondent No.5 had claimed purchase preference under MSE. It is therefore the submission of the learned counsel appearing on behalf of the Respondent Authorities that Clause 29.1.1(i) cannot be applied to the facts of the instant case.

8. The documents which have been placed before this Court

during the course of the hearing, i.e. (i) the Bid Participation Document; (ii) the Udyam Registration Certificate and (iii) the Checklist are kept on record and marked with the letter "X", "Y" and "Z" respectively.

9. This Court has duly perused the materials on record as well as documents which have been placed, kept on record and marked with the letter "X", "Y" and "Z". Copies of such documents have also been handed over to Mr. R. Sarmah during the course of the hearing.

10. From a perusal of the said documents, it appears that the respondent No.5 all along participated as an MSE enterprise and in that regard has also uploaded the Udyam Registration Certificate, certifying that the respondent No.5 is an MSE enterprise with effect from 15.12.2021.

11. Considering the above and reading Clause 29.1.1(i) of the information/instructions to the bidders which has been quoted herein above, it is the opinion of this Court that the said Clause 29.1.1(i) cannot be applied in the present facts and circumstances taking into account that the respondent No.5 was an MSE enterprise and had participated as an MSE enterprise.

12. Accordingly, as this Court does not find any merit in the instant writ petition, the writ petition stands dismissed. However,

in the facts of the case, no costs.

JUDGE

Comparing Assistant