

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(APPELLATE JURISDICTION)**

**IA No. 1253 of 2018 in
DFR NO. 2239 OF 2018**

Dated: 12th October, 2018

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. B.N. Talukdar, Technical Member (P&NG)**

In the matter of :

M/s Jay Madhok Energy Private Limited ...Appellant(s)

Vs.

Petroleum & Natural Gas Regulatory Board ...Respondent(s)

Counsel for the Appellant(s) : Mr. Basava Prabhu S.Patil, Sr. Adv.
Mr. Vineet Malhotra
Mr. Vishal Gohri
Mr. Geet Ahuja
Ms. Aarushi Patil

Counsel for the Respondent(s) : Mr. Prashant Bezboruah a/w
Mr. Khaja Mohideen (Rep.) for R.1

Mr. Sajan Poovayya, Sr. Adv.
Mr. Piyush Joshi
Ms. Sumiti Yadava
Ms. Parminder Kaur
Mr. Pratibhanu Kharola
for Think Gas/Applicant in
IA No. 1253/18

ORDER

(PER HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON)

The facts which led to filing of the appeal, wherein the impleadment application came to be filed in brief are as under:

2. In the year 2010 by notification dated 23.07.2010, Respondent-Board invited bids in the 3rd round bidding process for geographical areas of Jalandhar along with 7 others for grant of authorisation for laying, building, operating etc., for the City Gas Distribution network (**CGD network**) in respect of those cities mentioned in the notification.

3. On 08.08.2013, the Appellant received Letter of Intent (**LOI**) from the Respondent-Board in respect of its bid for the geographical area of Jalandhar. This is followed by a letter dated 06.09.2013 granting authorisation for CGD network for geographical area of Jalandhar. On 15.12.2017, a letter was addressed to the Appellant by the Respondent-Board wherein the Respondent-Board has clearly stated that the Respondent-Board has been taking the complete district in the geographical area since the third round of bidding for the geographical area, which was done to ensure development of rural areas as well as urban areas in the said district.

4. According to the Appellant, Respondent-Board has always taken entire districts of Jalandhar, Kapurthala and SBS Nagar to be geographical area of Jalandhar and contiguous areas and they were now trying to invite bids for these areas of Jalandhar so also other areas.

5. Immediately, on 18.12.2017 the Appellant responded to the above letter stating that the district of Jalandhar and that of Kapurthala and SBS Nagar districts fall within the authorisation already granted to the Appellant inasmuch as the said area fell within the definition of geographical area as defined in the Regulations which specifically provides that any area contiguous to the geographical area would be considered to be the authorised area. However, no further reply was received by the Appellant.

6. On 01.03.2018, the Appellant was shocked and surprised to note that Respondent-Board had invited bids for 86 geographical areas including the districts of Jalandhar, Kapurthala and SBS Nagar in the 9th round bidding. Several representations came to be addressed to the Respondent-Board requesting to recall the invitation for bids specifically contending that the invitation for bids for the said areas were already covered in the authorisation given to the Appellant for the areas of Jalandhar and that no bid could be invited for the said areas. By letter dated 12.06.2018 Respondent-Board informed the Appellant that Respondent-Board would go ahead with the 9th round bidding for geographical area of Jalandhar, Kapurthala and SBS Nagar.

Challenging the same, present appeal came to be filed. It is pertinent to state that the Appellant has not taken part in the 9th round bidding process.

7. During the pendency of this appeal, this IA being IA No. 1253 of 2018 came to be filed by the Applicant seeking its impleadment as party Respondent in the present appeal on the ground that the Applicant has been issued the LOI, referred to in the appeal, and therefore the Applicant would directly be affected by the outcome of the appeal, if it will be allowed in favour of the Appellant.

8. The Applicant contends that on 10.08.2018 LOI was granted in its favour by the Respondent-Board in the 9th round bidding for the geographical area of Jalandhar (except the areas already authorised), Kapurthala and SBS Nagar districts. The Applicant further contends that during the pendency of the appeal, this Tribunal granted interim direction on 17.08.2018 which affects the interest of the applicant. The applicant is gravely aggrieved by the interim order since it may come in the way of final authorisation to be issued by the Respondent-Board in favour of the Applicant.

9. The Applicant specifically contends that the work of expansion of CGD network in Jalandhar, which came to be granted by way of authorisation to the Appellant by the Respondent-Board in the 3rd round bidding is limited to a geographical area measuring only 338 Sq. Km as depicted in the map enclosed. Therefore, the entire Jalandhar district is not covered in the authorisation letter issued in favour of the Appellant. The map demarcates the area from entire district making it clear that geographical area is specifically limited to the identified portion within the Jalandhar district.

10. According to the Applicant in the 9th round bidding, so far as Jalandhar, Kapurthala and SBS Nagar are concerned, it was excluding areas already authorised to the Appellant. In pursuance of the LOI, authorisation is granted in favour of the Applicant and even bank guarantee is furnished by the Applicant for performance of the work.

11. According to the Applicant, the total geographical area in square kilometres is 5226.79 and out of which only 338 Sq. Kms was granted in favour of the Appellant. Therefore the area for which authorisation is granted in favour of the Applicant has nothing to do with the area covered under authorisation already granted in favour of the Appellant.

The Applicant in support of his contentions relies on a Judgment of the Supreme Court in **BISHNU PRASAD DASH vs. RAJ KUMAR AGARWAL AND OTHERS** reported in **2006 (11) SCC 151**, wherein the relevant portions read as under:

“3. Respondent 1 has been lifting copper –cable scrap from OSICL since 2002. For disposal of 16,625.09 kg of copper cable pertaining to Main Dam Division, Burla, proposal for tender was submitted by the Chief Engineer, Mechanical and offset price was fixed at Rs 160 per kg. IDCOL did not respond to the said tender. OSICL offered a price of Rs.80 per kg. But no other party responded to the tender invited by the Executive Engineer. Thereafter, IDCOL made an offer of Rs 84 per kg of copper cable excluding all taxes and duties. The matter was processed and finally orders were passed by the Government at the level of Chief Minister of Orissa for disposal of the copper cable at the rate of Rs 84 per kg to IDCOL. After the aforesaid order was passed by the Chief Minister of Orissa on 16-12-2004, OSICL submitted a fresh offer dated 20-12-2004 at Rs 85 per kg but the said offer of OSICL was not considered pursuant to the notes given in the department that the offer was made belatedly after order was passed by the Government and if the said order is entertained, it will affect the sanctity of the government order. Respondent 1 filed a writ petition challenging the government order.

4. The High Court was of the view that the offer of IDCOL was Rs 84 per kg whereas the offer of OSICL, though belated, was Rs 85 per kg. It was felt that the offer of OSICL should have been considered at the rate of Rs 85 per kg by the highest level of the Government, namely, the Chief Minister. Accordingly, the government order was set aside and directions as noted supra were given.

5.

Since IDCOL was not a party and the writ application was disposed of in a great haste even without issuing notice, relevant facts could not be placed on record.

.....

6.

7.

The High Court has interfered in a contractual matter without hearing the party whose offer had been accepted.

.....”

12. As against this, learned counsel for the Appellant submits that the presence of the Applicant in no way assist the Court to arrive at a right conclusion since the Court has to consider whether the area so far as the district of Jalandhar is concerned authorisation in favour of the Appellant in the 3rd round bidding includes entire geographical area, ie., entire district of Jalandhar. According to the Appellant’s counsel if the stand of the Appellant is accepted by the Tribunal, then as per 3rd round bidding process the Appellant has to get authorisation for the entire district of Jalandhar whereas out of entire geographical area of Jalandhar district, but only 338 Sq. Kms was authorised by authorisation letter granted in favour of the Appellant way back in 2010. They further contend mere issuance of LOI and authorisation does not create any right or interest in favour of the Applicant.

13. The disputed question or the controversy in the present appeal is whether geographical area of Jalandhar district as contemplated in the

3rd round bidding process invited by the Respondent-Board would include the entire area of district of Jalandhar or it would restrict only to 338 Sq. Kms as indicated in the bid map of 3rd round bidding as well as map attached to bid document in the 9th round bidding.

14. It is well settled that a necessary party is one without whose presence the controversy or matter in dispute or issue in dispute cannot be effectively adjudicated finally. The proper party would mean whose presence would assist the court to adjudicate the *lis* effectually and finally.

15. The Appellant contends that in the 3rd round bidding so far as Jalandhar geographical area is concerned, the entire district was to be authorised in its favour and therefore there was no scope for another invitation inviting bids for the same area in the 9th round bidding by the Respondent-Board. Admittedly, the authorisation is granted in favour of the Applicant by the Respondent-Board in respect of geographical area of Kapurthala and SBS Nagar districts. If the stand or the plea of the Appellant that entire district of Jalandhar had to be authorised in its favour is accepted, the authorisation given in favour of the Applicant would be affected. If the Applicant is not impleaded as a party

Respondent to the present appeal, his interest would be prejudiced and even can be adversely affected if this tribunal accepts the stand of the Appellant. It would ultimately lead to multiplicity of proceedings. The Respondent-Board also contends that the area meant in the 3rd round bidding is the geographical area (part of entire area of district of Jalandhar) which was demarcated in the bid document., therefore, they invited bids in the 9th round bidding only for balance geographical area except the area already authorised. The decision relied upon by the Applicant squarely applies to the present case.

16. In the light of the above stand of the parties with regard to what is geographical area, we are of the opinion that the Applicant is a necessary and proper party in order to decide the issue of controversy finally and effectually. Hence, IA No. 1253 of 2018 is allowed. Learned counsel for the Appellant is directed to file amended memo of parties impleading the Applicant as Respondent No.2 and also carry out consequential amendments in the appeal within two weeks from today.

17. Pronounced in the open court on 12th October, 2018.

(B.N. Talukdar)
Technical Member (P&NG)

(Justice Manjula Chellur)
Chairperson

REPORTABLE/~~NON-REPORTABLE~~