GAHC010288902025

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

Case No. : WP(C)/7481/2025

SRI GOPAL AGARWALLA
S/O LATE SEW KUMAR AGARWALA
RESIDENT OF HOUSE NO.32, BASANTA DOLEY PATH, BELTOLA COLLEGE ROAD, GUWAHATI, DIST. KAMRUP (M), ASSAM, PIN-7810296

VERSUS

OIL AND NATURAL GAS CORPORATION LTD AND 4 ORS.
A GOVT. OF INDIA ENTERPRISE DULY INCORPORATED UNDER THE COMPANIES ACT, 1956 HAVING ITS REGISTERED OFFICE AT PANDIT DEEN DYAL UPADHAYAYA URJA BHAVAN, 5, NELSON MANDELA MARG, VASANTA KUNJ, NEW DELHI -110070 AND
REGIONAL OFFICE AT NAZIR IN THE DISTRICT OF SIVASAGAR, ASSAM, REPRESENTED BY THE EXECUTIVE DIRECTOR, EASTERN REGION, ONGCL, NAZIRA, ASSAM, PIN-785684.

2:THE EXECUTIVE DIRECTOR

ASSAM ASSET
NAZIRA SIVASAGAR
ASSAM.

3:THE GROUP GENERAL MANAGER

HEAD CCLG-CPD
8TH FLOOR
CENTRAL PROCUREMENT DEPARTMENT
CCLG-LAKSHMI NAGAR
NEW DELHI
110092.

4:THE SUPERINTENDING ENGINEER CPD-CCLG DELHI

OIL AND NATURAL GAS CORPORATION LIMITED
SCOPE MINAR LAXMI NAGAR NEW DELHI.

5:ENQUIRYT OFFICER

GM(P)-HSE
ONGC
MH ASSET
MUMBAI
VASUDHARA BHAVAN
BANDRA EAST
MUMBAI- 400051

Advocate for the Petitioner : MR. A K GUPTA, MR. R K MAHANTA

Advocate for the Respondent : MR. P BARUAH,

Linked Case : WP(C)/114/2026

BIJAY KUMAR AGARWAL
SON OF LATE SEW KUMAR AGARWAL
RESIDENT OF ATHKEL
P.S. GELAKEY
DISTRICT- SIVASAGAR
ASSAM

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OIL AND NATURAL GAS CORPORATION LTD. AND 4 ORS
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REPRESENTED BY THE EXECUTIVE DIRECTOR
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OIL AND NATURAL GAS CORPORATION LIMITED SCOPE MINAR LAXMI NAGAR NEW DELHI

5:ENQUIRY OFFICER
GM(P)-HSE
ONGC
MH ASSET
MUMBAI
VASUNDHARA BHAVAN
BANDRA EAST
MUMBAI- 400051

Advocate for : MR. R S MISHRA
Advocate for : SC
ONGC appearing for OIL AND NATURAL GAS CORPORATION LTD. AND 4 ORS

Linked Case : WP(C)/7418/2025

SHRI HITESH DUTTA
S/O- LATE RUPESWAR DUTTA.
R/O- BOKHOTA
P.O.- NANGALAMORA
DIST.- SIVSAGAR

ASSAM.

VERSUS

OIL AND NATURAL GAS CORPORATION LTD
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1956 HAVING ITS REGISTERED OFFICE AT PANDIT DEEN DAYAL UPADHAYAYA URJA BHAVAN
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NELSON MANDELA MARG
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AND

REGIONAL OFFICE AT NAZIRA IN THE DISTRICT OF SIVSAGAR
ASSAM
REPRESENTED BY THE EXECUTIVE DIRECTOR
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NAZIRA
ASSAM
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2:THE EXECUTIVE DIRECTOR
ASSAM ASSET
NAZIRA
SIVSAGAR
ASSAM.

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CCLG- LAKSHMINAGAR
NEW DELHI-110092.

4:THE SUPERINTENDING ENGINNER CPD-CCLG DELHI
OIL AND NATURAL GAS CORPORATION LIMITED SCOPE MINAR LAXMI NAGAR
NEW DELHI

5:ENQUIRY OFFICER
GM(P)- HSE
ONGC

MH ASSET
MUMBAI
VASUDHARA BHAVAN
BANDRA EAST
MUMBAI-400051.

Advocate for : MS M NIROLA
Advocate for : MR P BARUAH appearing for OIL AND NATURAL GAS CORPORATION LTD

- BEFORE -

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner in WP(C) No. 7481/2025 : Shri. A.K Gupta

Advocate for the petitioner in WP(C) No. 7418/2025 : Ms. M. Nirola

Advocate for the petitioner in WP(C) No. 114/2026 : Shri. R.S Mishra

Advocate for the respondents : Shri. I. Choudhury, Sr. Adv.
Shri. P. Barua, ONGC

Date on which judgment is reserved : **28.08.2026**

Date of pronouncement of judgment : **17.09.2026**

Whether the pronouncement is of the operative part of the judgment ? : No

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER

1. The cause of action in these 3 writ petitions being common and analogous, those were heard together and disposed of by this common judgement and order. The challenge is with regard to the decision of the ONGC, initiating action for blacklisting the petitioners and also for

forfeiture of the EMD.

2. At the outset, the learned counsel for the petitioners have clarified that the present challenge would be on the subject matter of forfeiture of the EMD. It may be mentioned that, while issuing notice, this particular issue was also noted by this Court on 07.01.2026, when this Court had observed that there were apparently two separate and distinct causes of action.

3. As per the facts projected, a Notice Inviting Tender (hereinafter NIT) dated 16.05.2025 was issued by the ONGC for the work "Annual Rate Contract for Construction of various Drill sites and other Civil jobs for exploratory and development location at Jorhat Asset for 3(three) years (2025-2028)". The petitioners claim to have submitted their respective bids for quantum of work of 16% and had also deposited the EMD of ₹29,35,000/-. However, vide an e-mail dated 02.09.2025, the bids of the petitioners were rejected on the ground of violation of Section 2(1)(b) of the Integrity Pact. It was alleged that the IP addresses of the petitioners mentioned in the portal were the same. The petitioners claim to have submitted representation, which was, however, rejected and thereafter on 08.12.2025, show cause notices were issued against the petitioners under Section 2(1)(b) of the Integrity Pact requiring to show cause as to why the petitioners should not be blacklisted. It is this cause of action for which the present writ petitions were instituted. As noted above, it has however, been clarified that since 2 distinct causes of action were sought to be amalgamated, the petitioners would restrict the present challenge only to

the aspect of forfeiture of the EMD.

4. I have heard Shri A.K. Gupta, learned counsel for the petitioner in WP(C)/7481/2025; Ms. M. Nirola, learned counsel for the petitioner in WP(C)/7418/2025 and Shri R.S. Mishra, learned counsel for the petitioner in WP(C)/114/2026. I have also heard Shri I. Choudhury, learned Senior Counsel assisted by Shri P. Barua, learned counsel for the respondents ONGC.

5. Shri Gupta, the learned counsel for the petitioner in WP(C) 7481/2025 has submitted that the impugned action of forfeiture of the EMD has been done without any application of mind and on mere surmises and conjectures. He has submitted that though it is a matter of fact that the bid system was online, the same was done through a common service provider – one Shri Durlov Gogoi, who renders such online service in the city of Sivasagar. He has submitted that for more than a decade, such services are being offered by the aforesaid gentleman and accordingly, the IP address of the petitioner was identical with the bids of the other parties who had also submitted online bids from the said service provider. He has submitted that, from the affidavit-in-opposition filed by the ONGC, it appears that the action was taken on certain discernible grounds, namely, same IP address, same Chartered Accountant who gave the certificates, identical appendices BP-1, BP-2 and BP-3 and identical appendix GU. So far as the petitioners in WP(C)/7481/2025 and WP(C)/114/2026 are concerned, there is another ground that the parties were brothers and therefore, it was assumed that there was a connivance. The learned

counsel has submitted that the aforesaid reasons are untenable on facts as well as in law.

6. By referring to the affidavit-in-reply filed on 19.08.2026, the learned counsel for the petitioner has submitted that it was very common for the contractors in Sivasagar to avail the services of the said Shri Durlov Gogoi. He has submitted that the process being online and there was lack of expertise, the petitioner, along with others availed such services which is a mere coincidence and cannot be assumed to form a cartel. He has also given the explanation that having a certificate from the same Chartered Accountant is also a mere coincidence and would not be conclusive of forming a cartel. As regards the relationship between the petitioners in WP(C)/7481/2025 and WP(C)/114/2026, he submits that though as a matter of fact, the proprietor of one of the petitioner is the brother of the other petitioner, they have independent business and therefore, the same cannot be conclusive of forming a cartel. He has clarified that 30 nos. of bidders had participated in the bid who could quote either 16% or 20%. He has submitted the petitioners have quoted 16% and in the process, others would also get some part of the work.

7. In support of his submission, Shri Gupta, the learned counsel for the petitioner has relied upon the following case laws:

i) ***AIR Online 2018 SC 736 [Rajasthan Cylinders & Containers Limited V. Union of India].***

ii) AIR online 2026 Gau 19 [M/s Versha Technotrade Pvt. Ltd. V. State of Assam]

iii) 2026:BHC-Nag: 6315 [M/s G.H. Khandelwal V. Amravati Municipal Corporation]

8. In the case of ***Rajasthan Cylinders*** (supra), the concept of bid rigging has been explained by the Hon'ble Supreme Court. In the case of ***Versha*** *(supra)*, this Court had held that if there is a common site visit by two bidders where such cite visit is mandatory, no definite conclusion can be drawn that a cartel was formed. In the case of ***Khandelwal*** *(supra)* a Division Bench of the Bombay High Court has submitted that mere participation of two parties who are related as son and father would not by itself constitute forming of a cartel.

9. The learned counsel for the petitioner has accordingly submitted that the impugned action is unsustainable in law and is liable to be set aside.

10. Supporting the submissions of Sri Gupta, Shri Mishra the learned counsel for the petitioner in WP(C)/114/2026 has added that the work distribution methodology would not permit assumption of formation of a cartel. He has submitted that in total, 30 nos. of bidders had participated in the tender process and the work is to be distributed amongst 6 bidders. He has submitted that the petitioners are 3(three) in numbers and therefore, they cannot form a cartel. In this connection, he has relied upon Clauses (iv) and (v) of the bid document. He has further submitted that the prices were yet to be opened and therefore, the conclusion of forming a cartel is premature.

11. Ms. Nirola, learned counsel for the petitioner in WP(C)/7418/2025

has adopted the arguments of the learned counsel for the petitioners in the other two petitions and submitted that the writ petition be allowed.

12. *Per contra*, Shri I. Choudhury, learned Senior Counsel for the ONGC has submitted that the contentions advanced towards the challenge made by the petitioners are wholly unsustainable in law. He has submitted that it is not only the 3 petitioners against whom the allegation of cartel is there and as a matter of fact, out of 30 nos. of participating bidders, the allegation of forming a cartel is against 15 nos. He has informed that it is a different matter that the rest 12 nos. of bidders have not come to the Court challenging such decision. He has clarified that the challenge on the aspect of blacklisting has already been given up by the petitioners and the present challenge is only with respect to the forfeiture of EMD.

13. The learner Senior Counsel for the ONGC has submitted that on 11.11.2025, the contracts were already given and thereafter the writ petitions were filed. However, such allotments of contracts were not the subject matter of challenge and there was no interim order. Further, the petitioners did not take any steps for modification of the writ petitions or amendment so as to implead the successful bidders. He has also brought the attention of this Court to the order passed on 07.01.2026, wherein this Court had observed that there are two distinct and separate causes of action.

14. By drawing the attention of this Court to the affidavit-in-opposition filed by the ONGC on 08.04.2026, the learner Senior Counsel has submitted that guidelines have been framed by the Competition

Commission of India. He has submitted that in such guidelines, certain "warning signals" are indicated which would be discernable from the documents. Those include bidders being sister concerns, same mistakes in the bids, same IP address etc. For ready reference, the said warning signals given by the Competition Commission of India are extracted here in below:

"***(ii) Warning Signals in Documents***

- *Bids were prepared by the same person or were prepared jointly.*
- *Identical mistakes/corrections in the bid documents or letters submitted by different companies, such as spelling errors.*
- *Bids from different companies contain similar handwriting or typeface or use identical forms or stationery.*
- *Bid documents from one company make express reference to competitors' bids or use another bidder's letterhead or fax number.*
- *Bids from different companies contain identical mis-calculations.*
- *Bids from different companies contain a significant number of identical estimates of the cost of certain items.*
- *The packagings from different companies have similar postmarks or post metering machine marks.*
- *Bid documents from different companies indicate numerous last minute adjustments, such as the use of erasers or other physical alterations.*
- *Bid documents submitted by different companies contain less detail that would be necessary or expected, or give other indications of not being genuine.*

- *Two or more bidders offered same nomenclature or brand name of specialized product although they claim to be manufacturers.*
- *Bids submitted by firms are sister concerns or have common directors in their Board of Directors or having more than 50% stake or shareholding in the other firm.*
- *Bids submitted by the bidder is incomplete or submit less credentials although have the potential to do the work or qualify in the tender.*
- *Bids of one or more bidders have the same language mistakes or some stylistic similarities (the use of identical terminology, identical mistakes in the calculations, identical crossing outs or changes of certain figures, identical handwriting when the tender documentation should be completed in handwriting).*
- *When submitted electronically the documents of the different bidders, contain edits made by the same people, or edits made at one and the same time.*
- *Bidders are having the same address/office/authorized signatory etc.*
- *Bidders having position of common Key Managerial Person (KMP) or Partner or Proprietor.*
- *Bidders using same email ids.*
- *Bids received from same IP address.*
- *Bids submitted within short span of time."*

15. He has also drawn the attention of this Court to the requirement of Integrity Pact (IP) for tenders above Rs.1(one) crore as found in Clause (f)

of the tender document read with Section 2(1)(b). He has also referred to the techno-commercial bid evaluation criteria, more particularly, Clause 4.0(h.ii) that offers of bidders violating the provisions of the Integrity Pact would be rejected and by following such provision the bids have been rejected. He has also drawn the attention of this Court to the aspect that there is an Independent External Monitor (IEM) under Section 8 which can be approached by any aggrieved bidders. He has submitted that, as a matter of fact, the petitioner in WP(C)/114/2026 had approached the said IEM which was rejected on 28.10.2025. He has submitted that such rejection is not the subject matter of challenge. He has also submitted that in paragraph 5.3, the IEM has stated the reasons of such rejection which are germane and not liable for any interference.

16. In support of his submissions, the learned Senior Counsel for the ONGC has drawn the attention of this Court to the following decisions:

i) Air India Ltd V. Cochin International Airport Ltd. [(2000) 2 SCC 617]

ii) Silppi Constructions Contractors V. Union of India [(2020) 16 SCC 489]

17. In the case of ***Cochin International*** *(supra),* the Hon'ble Supreme Court had reiterated that judicial review under Article 226 of the Constitution of India is not an appeal and the examination is of the decision-making process and the Court should weigh the private grievance against larger public interest.

18. In the case of ***Silppi Constructions*** *(supra)*, it has been laid down

that in matters of contract, there should judicial restraint and Court should not easily interfere which commercial decision made by the State or its instrumentalities.

19. The rival submissions advanced in the Bar have been duly considered and the materials placed before this Court have been carefully examined.

20. As appears from the writ petitions, the challenge was structured both on the aspect of blacklisting as well as forfeiture of the EMD. However, as noted above, it has been clarified that the present challenge would be confined to the aspect of forfeiture of the EMD.

21. The forfeiture of EMD triggers from a decision arrived at by the ONGC that the petitioners had formed a cartel. Though a protection was made by the petitioners that there were in total 30 nos. of bidders and therefore, 3 petitioners could not have formed a cartel, however, such projection appears to be factually incorrect inasmuch as allegation of forming a cartel has been made against 15 nos. of bidders and 12 nos. of bidders have not put the aforesaid decision to challenge. It is only the 3 (three) nos. of petitioners have come before this Court by filing Writ Petitions. Therefore, the contention that a cartel cannot be formed by 3 parties cannot be countenanced.

22. Coming to the merits of the case, the respondent ONGC has arrived at the conclusion based upon certain objective satisfactions. Such objective satisfactions have been incorporated in the affidavit-in-opposition filed by the ONGC. Amongst others, it has been stated that the

IP addresses (49.37.100.115) of all the petitioners are the same; the CA certificate which is mandatory in nature were issued by the same Chartered Accountant; identical appendix in BP1, BP2 and BP3 have been furnished by all the petitioners; the Appendix GU is also identical. As noted above, there is also an additional ground so far as the petitioners in WP(C)7481/2025 and WP(C)114/2026 are concerned that the petitioners are brothers. The petitioners had given certain explanations that it was a common practice to avail the services of one Shri Durlov Gogoi in submitting bids which are in the online mode. It is also submitted that certificates taken by the same Chartered Accountant is a mere coincidence.

23. Though the ground taken that the petitioners in WP(C)/7481/2025 and WP(C)/114/2026 regarding brothers may not, by itself be a ground to assume formation of a cartel, the same is to be examined from the point of view of the "warning signals" which has been given in the form of guidelines by the Competition Commission of India to avoid any cartelisation. While two brothers may do business independently and being brothers, would not by itself be a reason to presume formation of a cartel, the same may still be one of the factors to come to a conclusion of such cartelization. The guidelines by the Competition Commission of India have already been extracted above. The same include committing the same mistake, submission of bids from the same IP addresses etc. Though the petitioners have come up with the explanation that one Shri Durlov Gogoi was an expert in submitting bids through *e-mode*, when such practice was declared by the Competition Commission of India to be

one of the factors to presume formation of a cartel, the petitioners should have taken due care and attention not to submit bids through one IP address. As revealed in the deliberation, there were in total 30 nos. of bidders and cartel has been found against 15 nos. The same would imply that so far as the other 15 nos. of successful bidders are concerned, they had submitted online bids through different IP addresses.

24. This Court is unable to accept the submissions and explanations made on behalf of the petitioners that furnishing of a certificate by the same Chartered Accountant is a mere coincidence. The petitioners ought to have been alert and vigilant so that such scope of drawing a presumption leading to levelling of an allegation does not arise. As noted above, the rest of the 15 nos. of bidders had also submitted CA certificates which clearly appear to be from different Chartered Accountants. This Court has also noticed that apart from the aspect of the Certificate by the same CA, the appendices of the bids submitted by the petitioners are identical.

25. This Court is of the considered opinion that the decision-making process taken by ONGC has been done on the basis of objective materials which are discernible from the materials made available. Under those circumstances, the scope of interference in such decision making process would be absolutely circumscribed. This Court has also noticed that the power to forfeit EMD which is a part of Section 4 of the Integrity Pact namely, Section 4(1)(1) is not the subject matter of challenge.

26. In the case of ***Silppi Construction*** (supra), the Hon'ble Supreme

Court has laid down the principles that exercise of judicial review in matters pertaining contract should be circumscribed and such interference can be made only when a case of gross illegality, perversity and unreasonableness is made out. However, in the instant case, the decision appears to be reasonable which appeals to the mind of a common man.

27. In view of the aforesaid discussions, the writ petitions are held to be devoid of any merit and are accordingly dismissed. The interim orders operating are vacated.

28. This Court makes it clear that the present adjudication is only on the aspect of forfeiture of the EMD and therefore, the petitioners would be at liberty to challenge the decision on blacklisting, if so advised.

29. No order as to costs.

JUDGE

Comparing Assistant