

* **HIGH COURT OF DELHI : NEW DELHI**

+ **Writ Petition (Civil) No.8321 of 2008**

WITH

Writ Petition (C) Nos.8322/2008, 8323/2008, 8324/2008, 8326/2008, 8328/2008, 8329/2008, 8331/2008, 8334/2008 & 8325/2008

Judgment reserved on: January 7, 2009

% Judgment delivered on: January 19, 2009

Ravinder Singh
Proprietor
M/s Rohit Road Lines
House No. 533
V.P.O. Kurar Ibrahimpur
District Sonapat – 131 001
Haryana

...Petitioner

Through Mr. B.L. Wali with Mr. K.S. Negi,
Advocates

Versus

Indian Oil Corporation Limited
Delhi & Haryana State Office
OPS Department, 2nd Floor
World Trade Centre
New Delhi
(Through its Managing Director)

...Respondent

Through Mr. Abhinav Vashisht with
Mr. Raman Kumar, Advocates

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MADAN B. LOKUR, J.

The question of law raised for consideration in this batch of writ petitions under Article 226 of our Constitution is whether the Petitioners are entitled to the award of a contract for road transportation of bulk petroleum products pursuant to a tender issued by the Respondent. Our answer to the question is in the negative.

2. In our opinion, the Petitioners had no vested or even any accrued right to the award of a contract. The Respondent followed a fair, methodical and transparent system of awarding the contract and we do not find any discrepancy in the procedure followed by the Respondent. Merely because the Petitioners were agreeable to the rates given by the lowest bidder, it did not give them any right to a share in the transportation process.

3. As agreed by learned counsel for the parties, we have taken up

WP (C) No. 8321 of 2008 as the main case. All other cases have more or less similar facts and nothing materially dissimilar has been brought to our notice.

4. On or about 20th June, 2008 the Respondent issued a tender for the road transportation of bulk petroleum products ex Panipat Terminal. The estimated tank truck (TT) requirement was 631 TTs of 12 KL capacity and 111 TTs of 18/20 KL capacity making a total requirement of 742 TTs. Sealed tenders were invited for transportation with effect from 1st October, 2008 for a period of two years with an option for extension up to a further period of one year.

5. In response to the tender, the Respondent received 525 bids for a total of 1514 TTs. Some of the bids were liable for rejection being either in an unsealed or open condition or without the earnest money deposit. There were, in all, 499 successful bidders and they were given a ranking based on the quoted rate. The lowest quoted rate was ranked L-1 and the highest was ranked L-79.

6. Eight of the tenderers were ranked L-1 and they gave a total offer

of 47 TTs. These were naturally accepted by the Respondent. Since there was still a huge shortfall in the required quantity, the Respondent addressed a letter to all the successful tenderers on 15th October, 2008 enquiring whether they would be agreeable to transport the goods at the L-1 rate. According to learned counsel for the Petitioners, this letter is of some importance and so we quote its relevant portions.

“Ref. : DSO/OPS/POL/BULK/2008/01/PNP/22
M/s Rohit Road lines
H.No.-533
V.P.O :- Kurar Ibrahimpur
Distt.- Sonapat
Pin :-131001
Kurar Ibrahim Pur

SUB: POL TRANSPORTATION TENDER EX
PANIPAT:
TENDER NO. DSO/OPS/POL/BULK/2008/01/PNP

Dear Sir,

This is with reference to your bid submitted against the subject tender, further correspondence had with you and the SMS sent on your mobile number as given in the tender.

Further to the opening of Price Bid on 14.10.08, the L1 rate of

Rs 61.2 per KL and
Rs 1.31 per KL per KM

received is being offered to you for your acceptance/ non-acceptance for the subject tender.

Kindly intimate your written acceptance / non-acceptance of our above offer latest by **22nd of Oct '08**. Your acceptance / non-

acceptance letters may be sent to our Delhi State Office at the address given below:

Operations Department,
Indian Oil corporation Ltd
World Trade Center,
Barkhamba Road,
New Delhi – 110001

In case no intimation is received by us till office working hours of 22nd of Oct'08, it will be presumed that our above offer of L1 rate is not acceptable to you.

You are also requested to please note that this letter only seeks your acceptance / non-acceptance of the above offer. Receipt of this letter in no way should be construed as an offer or assurance of LOI / Work Order / Award of business for any/all trucks offered by you. Final allocation will be done in line with the Tender Terms and Conditions given in the Tender Document.

Thanking you,

Yours Truly
For Indian Oil Corporation Ltd.”

7. Some of the successful bidders answered the enquiry in the affirmative and some did not. The Petitioners were agreeable to transport the goods at the L-1 rate. According to the Petitioners since they had agreed to the L-1 rate, they should have been awarded the contract.

8. However, what the Respondent did (and we find nothing

objectionable about it) was that it awarded the balance TTs to identified groups mentioned in the terms of the tender document. The identified groups were (a) retail outlet dealers/customers of the Respondent; (b) SC and ST tenderers; (c) the rest as per their initial ranking. The system followed by the Respondent has been explained in its counter affidavit. The sum and substance of the exercise undertaken suggests that the under-mentioned grouping was adopted:

The first or (a) preference was given to the retail outlet dealers/customers of the Respondent. This was in terms of Clause A-10(a) and Clause B-9 of the tender. From this category, the Respondent could meet the requirement of 402 TTs. Clause A-10(a) and Clause B-9 of the tender read as follows:

“A-10(a) IOC existing RO Dealers/ Consumers can participate in this tender for award of transport contract. IOC reserves the right to give preference to award transport contract to their RO dealers/ consumers for transporting their own load requirements subject to their acceptance of L-1 rates offered by the Company at first instance. RO Dealers / Consumers not accepting L-1 rate offered by the company at first instance shall be treated at par with other tenderers and shall be evaluated based on their original rankings.”

“B-9. RO Dealers/ Direct Customers who are offering Tank Trucks only for their own supplies and RO Dealers offering tank trucks for supplies to consortium of RO Dealers and RO Dealers earmarking owned tank trucks for their own supplies shall be

allocated on acceptance of L-1 rate/revised rate accepted by L-1 tenderers. For meeting remaining requirement, based on the ranking and acceptance by the tenderers, Tank Trucks would be allocated at above rates till full requirement of Tank Trucks is met.”

The second or (b) preference was then given to SC and ST tenderers. However, since these tenderers had already been accommodated in the retail outlet dealers/customers category or had not accepted L-1 rate, no one from these categories actually benefitted from the preferential treatment.

The third or (c) preference was given to the rest depending upon their original ranking. This was in terms of the last sentence of Clause B-9 of the tender quoted above. As a result of this, the tenderers ranking from L-2 to L-26 were accommodated (except one of the bidders at L-16 who did not accept the L-1 rate). Thus, 40 tenderers accounting for 274 TTs were given the contract.

9. Out of the total requirement of 742 TTs, the Respondent had by this method given contracts for $47+402+274 = 723$ TTs. There was still a shortfall of 19 TTs and L-27 consisted of 5 bidders offering 31 TTs.

10. The Respondent then took resort to Clause B-10 of the tender for distributing the contract for the remaining 19 TTs. Clause B-10 reads as follows:

“In case, for a particular ranking, Tank Trucks offered are more than the requirement then the tenderers in that particular ranking shall be further ranked based on the following order of priority and allocations shall be made only till such time the full requirement of Tank Trucks is met and the tenderers who are ranked lower in that particular ranking may not get any allocation.

- i) Tank trucks offered by RO Dealer / Customer.
- ii) Maximum number of TTs offered by the tenderer.
- iii) Maximum number of owned TTs offered.
- iv) Tenderer offering highest number of 18/20 KL TTs.”

11. In the L-27 ranking, one tenderer had given an offer of 10 TTs and another had given an offer of 6 TTs. Since they fell in group (ii) of Clause B-10 of the tender [no one falling in group (i)] they were both given the contract. The balance 3 TTs were given to the L-27 tenderer falling in group (iii) of Clause B-10 of the tender. In fact, 5 TTs (2 additional) were given to this tenderer, being marginally over the estimate of 742 TTs.

12. On the facts of the case, we find that not only did the Respondent follow a fair, reasonable and practical system of allocation of TTs, but also that it was in accordance with the tender document. No one had objected to

or challenged any of the clauses of the tender document mentioned above, and now it is too late in the day for anyone to do so. Indeed, learned counsel for the Petitioners told us that no one was challenging the terms of the tender. Consequently, we need not spend any further time on this issue.

13. What is the position in law? Learned counsel for the Petitioners cited *Common Cause v. Union of India & others*, (1996) 6 SCC 530 wherein the Supreme Court referred (in paragraph 26 of the Report) to *Ramana Dayaram Shetty v. International Airport Authority of India*, (1979) 3 SCC 489 in the following words:

“This Court as far back as in 1979 in *Ramana Shetty case* held “it must, therefore, be taken to be the law ...” that even in the matter of grant of largesses including award of jobs, contracts, quotas and licences, the Government must act in fair and just manner and any arbitrary distribution of wealth would violate the law of the land.”

14. There is no doubt about the proposition of law laid down by the Supreme Court. Indeed, there is a host of other decisions of the Supreme Court on the subject, such as, *Fertilizer Corporation Kamgar Union (Regd.) v. Union of India*, (1981) 1 SCC 568, *Collector of Central Excise v. Dunlop India Ltd.*, (1985) 1 SCC 260, *Tata Cellular v. Union of India*, (1994) 6 SCC 651, *Ramniklal N. Bhutta v. State of Maharashtra*, (1997) 1

SCC 134, Raunaq International Ltd. v. I.V.R. Construction Ltd, (1999) 1 SCC 492, Air India Ltd. v. Cochin International Airport Ltd., (2000) 2 SCC 617 and so on. As long as an administrative or commercial decision is not fanciful, unrealistic or irrational, it ought not to be interfered with only because a better or different view could have been taken. It is precisely for dealing with such situations that the Courts must grant some latitude to the decision taking authority. Justice Holmes in *Bain Peanut Company v. Dave Pinson, 282 US 499* put this rather felicitously in the following words:

“We must remember that the machinery of government would not work if it were not allowed a little play in its joints.”

Of course, this was said in the context of constitutional principles being not too literally applied, but the general principle has been accepted by our Supreme Court in a variety of cases including in cases involving administrative decisions. (See for example, *Tata Cellular v. Union of India, (1994) 6 SCC 651, Sterling Computers Ltd. v. M&N Publications Ltd., (1993) 1 SCC 445*) and more recently in *Dhampur Sugar (Kashipur) Ltd. v. State of Uttaranchal, (2007) 8 SCC 418* [where the expression “play in the joints” has been incorrectly referred to as appearing in *Metropolis Theater Company v. State (should be City) of Chicago, 228 US 61*].

Consequently, merely because a decision is not palatable to the Petitioners, it can hardly be a ground in law to set it aside.

15. Learned counsel for the Petitioners contended that acceptance of the offer made by the Respondent in its letter dated 15th October, 2008 entitled the Petitioners to an award of the contract. We are afraid that the Petitioners have completely misread the letter. All that it solicits from the Petitioners is a response whether or not they are willing to accept the L-1 rate. The apparent reason for asking this query was only to narrow down the list of successful bidders – nothing more or less. As luck would have it, most of the bidders accepted the L-1 rate and so they continued in the reckoning, while some of them did not, with the result that they dropped out of contention. Moreover, the letter itself made it explicit that its receipt should not be construed “as an offer or assurance of LOI / Work Order / Award of business for any/all trucks offered by you.” This being so, the letter cannot be interpreted to mean that a definite offer was being made to the Petitioners for acceptance of the contract at the L-1 rate.

16. For all the above reasons, we do not find any merit in the writ petitions. They are accordingly dismissed. Since the Petitioners have

enjoyed the benefit of an interim arrangement in their favour, they will pay costs of Rs.10,000/- each. Each Petitioner is directed to deposit this amount by means of a demand draft drawn in favour of the Registrar General of this Court within four weeks from today.

17. List for compliance on 27th February, 2009.

MADAN B. LOKUR, J

January 19, 2009
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SIDDHARTH MRIDUL, J

Certified that the corrected copy of the judgment has been transmitted in the main Server.