

GAHC010180112023



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

Case No. : WP(C)/4692/2023

NORTH EAST BHARAT PETROLEUM PACKED LIQUIFIED PETROLEUM GAS
TRANSPORTERS ASSOCIATION AND ANR
A SOCIETY REGISTERED UNDER THE SOCIETIES REGISTRATION ACT,
1860

HAVING ITS OFFICE AT NO. 1 PANAKA GAON, KANAIGHAT, NEAR NRL,
BISHNUPUR, P.O.- KANAIGHAT, DISTRICT- GOLAGHAT, ASSAM. PIN-
785699.

REPRESENTED BY ITS VICE PRESIDENT, SRI JAGADISH KAKATI.

2: JAGADISH KAKATI
VICE PRESIDENT

SON OF LATE SARAT CHANDRA KAKATI

RESIDENT OF HOUSE NO. 685/A

KAHILIPARA COLONY BAZAR

GUWAHATI
DISTRICT- KAMRUP(M)

ASSAM
PIN- 781018

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF PETROLEUM AND NATURAL GAS, SHASTRI BHAWAN,
NEW DELHI, PIN- 110001.

2: BHARAT PETROLEUM CORPORATION LTD.
REPRESENTED BY THE CHAIRMAN AND MANAGING DIRECTOR

BHARAT BHAWAN
4 AND 6 CURRIMBHOY ROAD
BALLARD ESTATE

MUMBAI. PIN- 400001.

3:THE ASSISTANT MANAGER
CO-ORDINATION
(LPG)
BHARAT PETROLEUM CORPORATION LTD.
NUMALIGARH
NUMALIGARH REFINERY MARKETING TERMINAL

DISTRICT- GOLAGHAT
ASSAM

PIN- 785699.

4:THE TERRITORY MANAGER (LPG)
BPCL
1ST FLOOR
NEXIA PARK
GMC ROAD

CHRISTIAN BASTI
GUWAHATI

ASSAM
PIN- 781005.

5:THE DEPUTY GENERAL MANAGER (LOGISTICS)
BHARAT PETROLEUM CORPORATION LTD.
BHARAT BHAWAN
PLOT NO. 31

MD. SHAH ROAD
KOLKATA

WEST BENGAL
PIN- 700095

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : DY.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

05.03.2024

1. Heard Mr. K.N. Choudhury, learned Senior Counsel assisted by Mr. R.M. Deka, learned counsel for the petitioners. Also heard Mr. D. Saikia, learned Senior Counsel assisted by Mr. S. Borthakur, learned counsel for the Bharat Petroleum Corporation Limited (BPCL), respondent nos.2 to 5 and Mr. S.S. Roy, learned CGC appearing for the respondent no.1.

2. The petitioners' case is that the petitioner no. 1 is a registered society, whose members are involved in transportation of packed LPG cylinders on behalf of the respondent Bharat Petroleum Corporation Limited [BPCL]. The members of the petitioner no. 1 society had participated in a tender process in 2017 initiated by the respondent BPCL authorities for road transportation of packed LPG cylinders from loading location at Numaligarh Refinery Limited Terminal. As per the tender process initiated in the year 2017, there were two types of trucks having carrying capacity of [i] 306 nos. of 14.2 kg LPG cylinders; and [ii] 450 nos. of 14.2 kg cylinders. The members of the petitioner no. 1 society were awarded contracts for transportation of LPG cylinders in the said two categories of trucks with rates of [i] Rs. 15.29 per LPG cylinder for a distance of 0-100 kilometer in respect of trucks having capacity of 306 nos. of LPG cylinders and [ii] Rs. 13.75 for a distance of 0-100 kilometer in respect of trucks having capacity of 450 nos. of cylinders. In addition, there were other rates for different distances and an escalation clause.

3. The petitioners further case is that the price of High Speed Diesel [HSD] in the year 2017 was Rs. 57.66 per litre, whereas the present rate of HSD per litre is Rs. 89.6 per litre. Similarly, there are proportionate increases in a number of other aspects like insurance rate, taxes, price of vehicles, etc., as outlined in paragraph 25 of the writ petition. The petitioner no. 1 society is aggrieved by the terms and conditions of a Notice Inviting Tender vide Tender Reference no. BPCL/LPG/PKD/NRL/2023-28 E-Tender ID:13036 dated 04.08.2023, published by the respondent BPCL authorities 'For Road Transportation of Packed LPG Cylinders for PBCL Numaligarh Refinery Marketing Terminal, Assam' by trucks, for supply to LPG Distributorships/Locations within and outside the State of Assam, more particularly, within minus 5% or plus 5% of the Bench Mark Rates (BMR). As per the present NIT, the bidders are required to place two categories of trucks having capacity to carry [i] 342 cylinders and [ii] 524 cylinders respectively for 0-100 kilometres, etc. In respect of trucks having capacity of 342 cylinders, the Tendering Authority has fixed a rate of Rs. 15.87 per LPG cylinder and a rate of Rs. 14.53 per LPG cylinder for trucks having capacity of 524 cylinders for 0-100 kilometres. For other distances of more than 100 kilometres, different rates have been fixed on the base rates. The petitioners have, thus, asserted that due to increase in rates of HSD and all other factors, outlined in the Table in paragraph 25 of the writ petition, the rates mentioned in the present NIT are clearly not proportionate to the costs involved. They have assailed the rates mentioned in the present NIT as irrational ones.

4. The learned Senior Counsel for the petitioners submits that in view of the Bench Mark Rates provided in the NIT dated 04.08.2023, the petitioners would not be able to earn their livelihood, as the rates for carrying the LPG Cylinders

would be less than the fixed in terms of the earlier NIT of 2017.

5. The learned Senior Counsel for the petitioners submits that the BPCL, vide e-mail dated 19.09.2022, had requested the President of the petitioner society to provide the details regarding the expenditure that the transporters would have to pay at the present date, to carry out the transportation business of carrying LPG Cylinders. In reply to the said e-mail, the petitioner society submitted their suggestions vide letter No. NE 01/2023 dated 17.01.2023 to the respondent no.4. The learned Senior Counsel for the petitioners submits that no decision has been taken by the respondent nos.2 to 5 to the petitioner's letter dated 17.01.2023 (Annexure-E). As such, this writ petition can be disposed off, if a direction is issued to the respondent nos.2 to 5, to take a decision on the petitioners letter dated 17.01.2023.

6. The learned Senior Counsel appearing for the respondent nos.2 to 5 submits that the BPCL had issued the NIT dated 04.08.2023 for Road Transportation of Packed LPG Cylinders for BPCL, Numaligarh Refinery Marketing Terminal, Assam. The petitioners, on coming to learn of the issuance of the NIT, submitted letter no.14/2023 dated 14.08.2023 to the respondent no.4, requesting re-modification of the Transportation Rates against the NIT dated 04.08.2023, i.e., e-tender ID-13036. The respondents thereafter made a reply to the petitioners' request for re-modification of the Transportation Rates against the new NIT dated 4.08.2023, vide letter dated 31.08.2023, by rejecting their request and asked them to participate in the tender process.

7. The learned Senior Counsel for the respondent nos.2 to 5 submits that 33 tenderers participated in the NIT dated 04.08.2023, out of which 30 were found to be technically qualified. He further submits that out of the total 33 participants, 13 tenderers were those who had participated in the NIT of 2017. He further submits that as bigger trucks have been allowed to be used for transporting the packed LPG in terms of the Government of India, Ministry of Road Transport & Highways (Transport Division) letter no. RT11028/11/2017-NVL dated 18.07.2018, wherein axle weight norms have been allowed to be raised, more Gas Cylinders can be transported in the new trucks, as compared to the old trucks. The petitioners, on the other hand are having old trucks which cannot carry the increased load quantity. As such, the benefit of the low rates for transportation which the respondents are trying to achieve, would not be able to trickle down to the ultimate beneficiaries, i.e. the consumers, if the petitioners only want to make profit. The learned Senior Counsel submits that the fixation of the rates of the supply contractors is entirely within the purview of the Executive, which has been done by experts having technical knowledge. Accordingly, this Court should not interfere with the decision of the technical experts.

8. Mr. D. Saikia, learned Senior Counsel submits that the Karnataka High Court in the case of ***Saikrupa Roadways vs. Bharat Petroleum Corporation Limited & Others***, reported in ***MANU/KA/3397/2023*** has held that the logical system employed by each Oil Company in finalising the transportation rates for petroleum products is a testament to their commitment to economic prudence, regulatory adherence and strategic acumen. As such, judicial intervention is warranted only when the procedure adopted by the Public

Sector Company is found to be tainted by arbitrariness or malafides. He submits that vide taking into account the ratio decided by the Karnataka High Court, the benchmark rates indicated in the Tender Notice dated 04.08.2023 cannot be the subject matter of judicial review in this writ petition. He also submits that in terms of the judgment of the Supreme Court in ***Michigan Rubber (India) Limited vs. State of Karnataka & Others***, reported in ***(2012) 8 SCC 216***, the Supreme Court held that fixation of a value of the tender is entirely within the purview of the Executive and the Courts hardly have any role to play in this process, except for striking down such action of the Executive, if it is proved to be arbitrary or unreasonable.

9. At this stage, Mr. K.N. Choudhury, learned Senior Counsel for the petitioners submits that in view of the respondent nos.2 to 5 vide letter dated 31.08.2023, having rejected the petitioners letter dated 14.08.2023, requesting re-modification of the Transportation Rates in the NIT dated 04.08.2023, the question of the respondent nos.2 to 5 taking a decision on the petitioners earlier representation/letter dated 17.01.2023 has become redundant.

10. I have heard the learned counsels for the parties.

11. The issue pressed by the learned Senior Counsel for the petitioners was only to the effect that the petitioners representation/letter dated 17.01.2023 should be examined and a decision taken by the respondents on the same, as the said letter encapsulated the grievances of the petitioners. However, in view of the respondents rejecting the petitioners letter dated 14.08.2023 and asking

them to participate in the tender process pursuant to the NIT dated 04.08.2023 vide letter dated 31.08.2023, the prayer of the petitioners counsel has become infructuous.

12. Accordingly, the writ petition stands dismissed as infructuous. Interim order passed earlier stands vacated.

JUDGE

Comparing Assistant