IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

WA.No. 1636 of 2015 () IN WP(C).9708/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 9708/2015 of HIGH COURT OF KERALA DATED 10.06.2015

APPELLANT(S)/PETITIONER IN WPC.:

SABARI TRANSPORTS,
VARUKUZHIYIL VEEDU, ELANGAMANALAM, ENATH PO
PATHANAMTHITTA - 691 526
REPRESENTED BY ITS PARTNER RAJESH

BY ADVS.SMT.SUMATHY DANDAPANI (SR.)
SRI.MILLU DANDAPANI
SRI.PREMCHAND R.NAIR

RESPONDENT(S)/RESPONDENTS IN WPC.:

1. INDIAN OIL CORPORATION LIMITED,
CORPORATE OFFICE, 3079/3, J.B.TITO MARG,
SADIQ NAGAR
NEW DELHI - 110 049
REPRESENTED BY ITS MANAGING DIRECTOR

2. DEPUTY GENERAL MANAGER (LPG)
INDIAN OIL CORPORATION LTD.,
MARKETING DIVISION
KERALA STATE OFFICE, PANAMPILLY NAGAR AVENUE
PANAMPILLY NAGER PO, PIN - 682 036.

3. THE CHIEF MANAGER (LPG -O)/KESO,
INDIAN OIL CORPORATION LTD.,
MARKETING DIVISION,
KERALA STATE OFFICE, PANAMPILLY AVENUE,
PANAMPILLY NAGER PO, PIN - 682 036

4. M/S.AMMA TRANSPORTS
P.R.SADANAM, MUTHANA P.O.,
THIRUVANANTHAPURAM DISTRICT
REPRESENTED BY ITS PROPRIETOR
SMT. PRINCY SHIBU.

R1-R3 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
R1-R3 BY ADV. SRI.P.GOPINATH
R1-R3 BY ADV. SRI.P.BENNY THOMAS
R1-R3 BY ADV. SRI.K.JOHN MATHAI
R BY SRI.BIJU BALAKRISHNAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
SUNIL THOMAS, JJ.

....

W.A.No.1636 of 2015

....

Dated this the 3rd day of August, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. We have heard the learned senior counsel for the appellant and the learned standing counsel for the Indian Oil Corporation Limited.

2. The appellant, a partnership firm, was a competitor for bids for supply of transporting trucks for Indian Oil Corporation Limited (IOC). The partnership firm was formed as per Ext.P1 on 01.01.2015. Obviously therefore, it could not meet the prescription of IOC that it has to produce income tax returns for last three years. It appears that in a pre-qualification bid meeting, the IOC officials mentioned that for those persons who have only two years of experience, income tax returns for last two years would be sufficient. Anchoring on that stand of IOC, the writ petitioner sought relief against non-consideration of the

partnership firm. It is argued that the clause insisting on production of income tax returns can be treated only as a collateral prescription, going by the decisions of the Apex Court, which were referred to in the judgment of the learned single Judge.

3. The writ petition was dismissed by the learned single Judge holding that there could not have been any relaxation by the officers during the course of consideration of pre-qualification bids and also that the prescription for production of income tax returns for last three years was a clear indicia to determine the eligibility and competence of the bidder. The learned single Judge also appears to have taken stock of other relevant factors to conclude that even otherwise, the petitioner was not entitled to any relief.

4. Challenging the judgment of the learned single Judge, the learned senior counsel for the appellant argued that the prescription as to

production of income tax returns for last three years ought to be taken only as directory and collateral condition; and among the prescriptions, the said prescription is one which is incapable of compliance, when apart from the production of income tax returns, no minimum gross income or other indicators are provided for in the Rules of the competition. It is further argued that having regard to the fact that IOC officials have come down to the stage where they said that only the income tax returns for last two years need be produced by persons having experience of two years only, it is a clear indication that the term as to production of income tax returns could never be treated as mandatory.

5. Having examined the judgment of the learned single Judge, we are of the view that there is abundant substance in the finding that the requirement to produce income tax returns for last three years is itself a yard stick to assess the eligibility, competence and credibility of a competitor. The learned single Judge was fully

justified in taking that view having regard to the fact that IOC operates in public sector. The learned single Judge further went on to say that the officers of IOC could not have made any indication as to reducing the prescription by saying that income tax returns for two years alone would be sufficient in case a competitor has only two years of experience. We approve that finding of the learned single Judge for two reasons. Firstly, if the IOC had come to the conclusion that reduced period of two years was sufficient, such clause ought to have been re-notified for the public, so that other competitors in the open market who would have been found eligible in such a zone would have also come. Secondly and more importantly, IOC is a public sector undertaking which stands as part of State within Article 12 of the Constitution of India. So much so, any modification in the conditions of contract of such a nature which impacts the public will also have to stand against the contents of Article 14 of the Constitution of India. In that way also, the learned single Judge was justified in taking the view that no further modulation could have been made by the IOC officials at the pre-bid meeting.

6. On the totality of the facts and circumstances, we find no merit in the writ appeal challenging the verdict of the learned single Judge. This writ appeal, therefore, fails.

In the result, this writ appeal is dismissed.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(SUNIL THOMAS, JUDGE)

jg