IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

WP(C).No. 9708 of 2015 (K)

PETITIONER :
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*SABARI TRANSPORTS,
VARUKUZHIYIL VEEDU, ELANGAMANGALAM, ENATH P.O.,
PATHAMANTHITTA - 691 526,
"REPRESENTED BY ITS PARTNER RAJESH"
THE ABOVE CORRECTION IS CARRIED OUT AS PER ORDER IN
IA.NO.5620/2015 DATED 17/04/2015

BY ADVS.SRI.S.SANTHOSH KUMAR
SMT.P.LISSY JOSE.

RESPONDENT(S):
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1. INDIAN OIL CORPORATION LTD.,
   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,
   KEALA STATE OFFICE, PANAMPILLY AVENUE,
   PANAMPILLY NAGER P.O, - 682 036

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

*ADDL.R4 IMPLEADED

*ADDL.R4: M/S. AMMA TRANSPORTS, 'P.R.SADANAM',
MUTHANA.P.O., THIRUVANANTHAPURAM DISTRICT,
REPRESENTED BY ITS PROPRIETOR SMT. PRINCY SHIBU.

*ADDL.R4 IS IMPLEADED AS PER ORDER DATED 10/06/2015 IN IA.NO.5098/2015

R1 TO R3 BY ADVS. SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
ADDL.R4 BY ADV. SRI.BIJU BALAKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 9708 of 2015 (K)

APPENDIX

PETITIONER(S)' EXHIBITS

P1- **TRUE COPY OF PARTNERTSHIP DEED DATED 1.1.2015**

P2- **TRUE COPY OF PAGE NOS. 1 TO 21 OF NOTICE FEF.NO.KESO/LPG-O/PT-10/2014-15 INVITING E-TENDER**

P3- **TRUE COPY OF THE RELEVANT PORITON TENDER DOCUMENTS SUBMITTED BY THE PETITIONER**

P4- **TRUE COPY OF E-MAIL DATED 23.3.2015 ISSUED BY THE 2ND RESPONDENT**

P5- **TRUE COPY OF E-MAIL DATED 23.3.2015 OF THE PETITIONER TO THE 2ND RESPONDENT**

P6- **TRUE COPY OF THE E-MAIL DATED 23.3.2015 BY THE 2ND RESPONDENT TO THE PETITONER**

P7- **TRUE COPY OF THE POWER OF ATTORNEY DATED 30/1/2015**

RESPONDENT(S)' EXHIBITS
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R1(A) **TRUE COPY OF THE MINUTES OF PRE-BID MEETING HELD ON 21/1/2015.**

/TRUE COPY/

P.A.TO JUDGE

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K. VINOD CHANDRAN, J.

W.P(C). No.9708 of 2015

Dated this the 10th day of June, 2015.

JUDGMENT

The petitioner, a partnership firm, is aggrieved with the non-consideration of the bid made in accordance with Ext.P2 tender. The petitioner, admittedly, is a partnership, constituted on 01.01.2015, as is indicated by Ext.P1. The partnership obviously is one between S. Suresh Babu, his wife, his daughter and a third party. The petitioner firm applied under Ext.P2, which was a tender for transportation of L.P.G. cylinders.

2. The petitioner contends that, the condition with respect to the production of Income Tax Returns for three consecutive years is not applicable to the petitioner, since it is a firm constituted only on 01.01.2015. Reliance is placed on the decision of the Hon'ble Supreme Court in ***Rashmi Metaliks Limited and another v. Kolkata Metropolitan Development Authority and others*** [(2013) 10 SCC 95], to contend that

there being no prescription of a minimum of gross or net income as a threshold pre-qualification criteria, the production of the Income Tax Return for the past three assessment years also could only be considered to be a collateral term, which the respondent Corporation cannot insist upon. The petitioner also relies on the minutes of the Pre-bid Meeting produced by the respondent Corporation, by which the respondent Corporation issued a clarification that, a firm having existence for two years need only produce the I.T. Returns for the said period. In the context of such relaxation, it is argued; a firm having existence for one year need only produce the Income Tax Return for that year and one which is newly constituted need not at all produce the Income Tax Return, for the simple reason that there is not such a return in existence.

3. The learned counsel for the respondent however contends that the production of Income Tax Return is a threshold eligibility, as has been indicated in Ext.P1 document, since the pre-qualification documents also include the copy of the Income Tax Returns for the last three years, and in the case of a

partnership firm, the return of the partnership firm. The specification with respect to the pre-qualification criteria, also insist for production of the said Income Tax Returns. Further, the learned counsel appearing for the respondent Corporation would point out that the petitioner's bid was a gross violation of the terms of Ext.P2 notice being Clause No.1.13, which mandates that only 10% of the maximum requirement of trucks in a particular category could be bid by one individual/corporate body/partnership firm. The stipulation, it is urged, is only to ensure that the disruption of distribution of LPG cylinders is not occasioned, for reason only of a single contractor, on account of the dispute with the awarder or their employees suspends the contract of transportation altogether. The violation is projected in so far as the Managing Partner of the petitioner firm having made a bid by himself in the name of a Proprietorship concern, which is evident in Ext.R1(a). The learned counsel for the petitioner however would contend that since there is no prohibition for a partner and a firm to apply separately, no objection can be taken on that count.

4. I have heard the learned counsel for the petitioner, the learned counsel for the respondent Corporation and the learned counsel for the addl. respondents.

5. Dealing with the aspect of production of the income tax return for the past three assessment years, it is to be noticed that the same is a pre-qualification criteria as per Ext.P2 unlike as disclosed from the facts indicated in the aforecited judgment of the Hon'ble Supreme Court. A tenderor, who intends to make a bid, has to necessarily submit the income tax return for the past three assessment years and the relaxation made in the pre-bid meeting cannot be taken as one intended at further relaxation for a firm having existence for one year or not at all, in the previous years.

6. Essentially, it is to be noticed that, the prescription is one, which is indicative of the intention of the Corporation to assess the credibility and experience of the person/firm making the bid and to ensure that continued operations will be carried on during the entire contract period. This Court would not interfere with such a prescription made by the awarder invoking the

extraordinary jurisdiction under Article 226 of the Constitution of India. The cited judgment of the Hon'ble Supreme Court would not be applicable since therein the tender conditions merely mandated a production of the latest IT return. However, herein the condition is that the tenderors, should produce the returns for the past three years. Where the tenderor had been filing Income Tax Returns and had failed to produce the same along with the tender document, the Hon'ble Supreme Court held so in paragraph 18, which is extracted hereunder:

> *"18. We think that the income tax return would have assumed the character of an essential term if one of the qualifications was either the gross income or the net income on which tax was attracted. In many cases this is a salutary stipulation, since it is indicative of the commercial standing and reliability of the tendering entity. This feature being absent, we think that the filing of the latest income tax return was a collateral term, and accordingly the Tendering Authority ought to have brought this discrepancy to the notice of the appellant Company and if even thereafter no rectification had been carried out, the position may have been appreciably different. It has been asserted on behalf of the appellant Company, and not denied by the learned counsel for the respondent Authority, that the financial bid of the appellant Company is substantially lower than that of the others, and, therefore, pecuniarily preferable."*

7. What assumes relevance in the present case is that, the

Hon'ble Supreme Court found that in the facts peculiar to the said case the stipulation is not one of eligibility and a mere defect should have been communicated and opportunity afforded to rectify it. The above extract would indicate that the Hon'ble Supreme Court specifically noticed that if no rectification was made thereafter, then the situation would have been appreciably different. In the present case, it is an admitted fact that the partnership firm was commenced only on 01.01.2015 and any opportunity for rectification also would have been futile, since admittedly no Income Tax Return is in existence for any of the previous years. Further, herein the stipulation was not a mere stipulation of proof of Income Tax Return having been filed; but a clear mandate of pre-qualification of there being an Income Tax Return for three previous years; relaxed only by one year. In such circumstances, the present case, on facts and on the law dilated upon by the Hon'ble Supreme Court stands on a different footing. The Hon'ble Supreme Court has in the said judgment referred to the futility of referring to the facts in each precedent relied on, for reason of the law laid down being of paramount relevance, the applicability of which has to be tested on the facts of each case.

9. The contention with respect to the violation of tender conditions as indicated in paragraph 1.13, was not a reason for rejection and has been raised in the Counter Affidavit. The petitioner's tender never reached a consideration beyond pre-qualification since the essential documents necessary for pre-qualification was not filed by the petitioner, and was not available or in existence; dispelling any sustainable ground on not having been given an opportunity. The contention raised in the Counter Affidavit is an argument after an examination of the documents produced by the petitioner herein, as also in the process of tendering, which was necessitated due to the filing of the above writ petition. In any event, Clause 1.13 specifically provides that, if any tenderor quotes more than 10% of the trucks, as against each of the tenders, then that particular person would be considered only for the 10% of the trucks in each category. In the category, in which the petitioner, as also the Managing Partner of the petitioner applied, is more than 10% as indicated

in Clause 1.13. The petitioner as also the Managing Partner individually as a Proprietor applied for 14 trucks each registered in the name of the Managing Partner, but different ones, in each application. Hence even if crossing the threshold eligibility either of the tenders would have be disqualified. Admittedly, the Managing Partner of the petitioner was successful in his individual tender.

In such circumstances, even if the petitioner is found to have the threshold eligibility, then the petitioner would be disqualified, in so far as the Managing Partner having applied with 14 other trucks in the name of the Proprietorship concern.

For all the above reasons, the writ petition is found to be devoid of any merit and the same is dismissed. No costs.

K. VINOD CHANDRAN,
JUDGE

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