

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision:8.4.2015

1.

CWP No.4262 of 2015(O&M)

M/s Maur Service Station

....Petitioner

VERSUS

Union of India and others

.....Respondents

Present: Mr. T.P.S. Tung, Advocate for the petitioner.

Mr. Ashish Kapoor, Advocate for respondents No.2 to 5.

2.

CWP No.4590 of 2015(O&M)

M/s Romanas Filling Station

....Petitioner

VERSUS

Union of India and others

.....Respondents

Present: Mr. T.P.S. Tung, Advocate for the petitioner.

Mr. Namit Kumar, Advocate for respondent No.1.

Mr. Ashish Kapoor, Advocate for respondents No.2 to 5.

3.

CWP No.4742 of 2015(O&M)

M/s Rupana Petro Point

....Petitioner

VERSUS

Union of India and others

.....Respondents

Present: Mr. T.P.S. Tung, Advocate for the petitioner.

Mr. Namit Kumar, Advocate for respondent No.1.

Mr. Ashish Kapoor, Advocate for respondents No.2 to 5.

4. CWP No.4798 of 2015(O&M)

M/s Om Parkash Jindal and Bros.Petitioner

VERSUS

Union of India and othersRespondents

Present: Mr. T.P.S. Tung, Advocate for the petitioner.

Mr. Ashish Kapoor, Advocate for respondents No.2 to 5.

5. CWP No.4731 of 2015(O&M)

M/s Bee Dee EnterprisePetitioner

VERSUS

Indian Oil Corporation Ltd. and othersRespondents

Present: Mr. Amit Sharma, Advocate for the petitioner.

Mr. Ashish Kapoor, Advocate for respondents.

6. CWP No.5205 of 2015(O&M)

M/s Zimidara Oil BhandarPetitioner

VERSUS

Indian Oil Corporation Ltd. and othersRespondents

Present: Mr. Amit Sharma, Advocate for the petitioner.

Mr. Ashish Kapoor, Advocate for respondents.

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE LISA GILL

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

HEMANT GUPTA, J.(Oral)

This order shall dispose of CWP Nos.4262, 4798, 4590, 4731, 4742 and 5205 of 2015 wherein the petitioners have invoked the writ jurisdiction of this Court claiming a writ of certiorari challenging the action of the respondent-Corporation in rejecting technical bid submitted by the petitioner for the transportation of petroleum products. Since the issues are common in all the six writ petitions, therefore, all the petitions are taken up and being decided together.

However, for the facility of reference the facts are being taken from CWP No.4262 of 2015 wherein the challenge is to the order dated 31.12.2014 whereby a Tank Truck was blacklisted for a period of two years and also a communication dated 26.02.2015 whereby the tender submitted by the petitioner was rejected for the reason that one of the Tank Truck stands blacklisted on the ground that the petitioner has not disclosed the pending inquiry against it.

The petitioner, an existing transport contractor of transportation of bulk petroleum products, was served with a show cause notice on 28.06.2014 that one Tank Truck No.PB-03R-8823 has taken excess load of High Speed Diesel (HSD) on 21.04.2014 and 22.04.2014 by tempering of Automation System of the Corporation. A complaint was sent to the Senior Superintendent of Police, Bathinda in respect of such tempering. A show cause notice was also served upon the petitioner on 28.06.2014. The petitioner submitted its reply on 12.07.2014 but the decision to blacklist the said Tank Truck was taken on 31.12.2014. Before the decision to blacklist the Tank Truck

was taken, the respondents invited fresh tenders for the transportation of bulk products in November, 2014. The petitioner submitted its tender on 22.12.2014. The petitioner has not quoted the Tank Truck in question i.e. a blacklisted Tank Truck while submitting its tender as one of the truck available for performing the contract. It is, thereafter, technical bid of the petitioner was rejected on the ground that the petitioner has not disclosed the pending inquiry initiated in pursuance of the show cause notice while submitting tender.

Learned counsel for the petitioner referred to a communication dated 28.01.2015 (Annexure P-15) from Chief Manager, Operations, communicating a decision of the respondent-Corporation that the tenderers who have submitted their bids giving the Tank Truck, which has been blacklisted later on, are permitted to substitute another Tank Truck. The communication reads as under:-

“Recently some TTs were blacklisted at Bathinda Terminal, as their TT crews indulged in tampering Automation filling system. Following such-RO dealers (M/s Maur S/S, M/s Sukhmani Auto Fuels, M/s Om Parkash Jindal & Bros. and M/s Rupana Petro Point) have sent their representations to ED, PSO.

They have represented that since they received the communication wrt blacklisted of their TTs after their submission of documents against the subject Tender; their Tenders should not be rejected on the ground that the quoted TTs have been blacklisted.

It has been decided that such blacklisted TTs, if quoted by the RO dealers in the recent PT ex- Bathinda, will be treated as valid for evaluation of the Tenders. However, the RO Dealers will have to replace the same within the stipulated time, as decided by the Corporation.

The above message may please be conveyed to the concerned RO dealers, at your end.”

It is, thus, argued that the Corporation itself has permitted the substitution of the Tank Truck, even if some tenderer has quoted the blacklisted Tank Truck, whereas, the petitioner has not even quoted as the tank truck available for transportation. Therefore, the rejection of the bids is not justified. Mr. Kapoor, learned counsel for the respondent, argued that the technical bid of the petitioner has been rightly rejected for the reason that the petitioner has not disclosed pending inquiry initiated against the petitioner with the issuance of the show cause notice.

Though, it was incumbent upon the petitioner to disclose the factum of issuance of show cause notice but the decision of the respondents is to permit substitution of blacklisted Tank Truck with another Tank Truck. It means that the tenderers who have given their bids without quoting the blacklisted Tank Truck as one of the vehicles available with the tenderer cannot be declared technically unfit. Such tenderer stands on better footing than the persons who have offered a Tank Truck, which stands blacklisted.

Therefore, we find that the rejection of the tender of the petitioner for the reason that the petitioner has not disclosed the pending inquiry cannot be sustained in view of the decision of the Corporation itself.

Though, there is a challenge in some writ petitions to the blacklisting of the Tank Truck but during the course of arguments, Mr. T.P.S. Tung, learned counsel for the petitioner, has given up the

said challenge with liberty to dispute the blacklisting of the Tank Truck before Arbitrator in terms of the agreement between the parties.

In view of the said fact, we dispose of all the writ petitions with direction to the respondents to reconsider the technical bid of the petitioner and take appropriate action in accordance with law.

(HEMANT GUPTA)
JUDGE

APRIL 8, 2015
‘D. Gulati’

(LISA GILL)
JUDGE