

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 21.01.2015

+ **W.P.(C) 629/2015**

SUNNY AGGARWAL

... Petitioner

versus

INDIAN OIL CORPORATION LTD

... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Mr S. C. Singhal

For the Respondent : Mr Rajat Navet

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)
CM 1083/2015

Allowed subject to all just exceptions.

WP(C) 629/2015 & CM 1084/2015

1. In this writ petition, the petitioner, who is a transporter and has one tank truck registered in U.P, has sought, *inter alia*, the following prayer:-

“(b) thereafter by issuance of appropriate writs or directions the Respondent be directed to consider the vehicles of the States as mentioned in the tender in preference to the tenders quoted for the vehicles having the registration number of other States and thereafter they be further directed not to issue letter of intent to such tenders who have quoted the vehicles of other States which

are not mentioned in the tender till requisite number is achieved out of the States as mentioned in clause 11(d) of the tender.”

2. A notice inviting e-tender was issued, *inter alia*, by the Indian Oil Corporation Limited (IOCL) in September, 2014. The NIT number was LPG/LOGS/TT/NR/2014/A. As per the NIT, the tenders were to be downloaded from 01.09.2014 to 22.09.2014. The bid submission / upload closing date was specified as 22.09.2014 at 1300 hours.

3. There is no dispute that the petitioner participated in the said e-tender. It is also not disputed that the petitioner was eligible to bid and that he was technically qualified to do so. The grievance of the petitioner, as referred to in the prayer clause extracted above, is with clause 11(d) of the general terms and conditions of the tender for transportation of bulk LPG by road. The said clause 11(d) reads as under:-

“(d) Contracting Corporations will have requirements for specific State wise Registered tank trucks in the following States:

Haryana, Uttar Pradesh, West Bengal, Bihar, Maharashtra, Gujarat, Madhya Pradesh, Andhra Pradesh, Tamil Nadu, Karnataka, Rajasthan, Punjab, Assam, J&K, Orissa, Chattisgarh, Himachal Pradesh, Goa, Jharkhand, Uttranchal and Kerala. In case sufficient numbers for this specific requirement is not available, the successful bidder at the advice of Contracting Corporation shall arrange to change the Registration number at their own cost as directed by Contracting Corporation within one month of such request. Failure to do so would be treated as

breach of contract and action as per the terms and conditions of the contract would be taken.”

4. According to the learned counsel for the petitioner, the trucks registered in Nagaland cannot be considered unless and until the numbers required are not satisfied by the tank trucks offered, which are registered in the States mentioned in clause 11(d).

5. The learned counsel for the respondent drew our attention to clause 4 (iii)(b) of the said general conditions. The said clause reads as under:-

“4(iii) Allocation of tank trucks (Applicable for tenders having Price Band in Price -- Bid only): In case of bidders quoting rates, which is floor price i.e. at the bottom. of the price band for all sectors and there is same financial outgo, then allocation of Tank Trucks (TTs) to such bidders will be as under :

a. XXXX XXXX XXXX XXXX

b. In case quoted tank trucks are more than the requirement, then TTs in order of latest model (from date of first registration as mentioned in table ii .b above in respect of individual Tank Truck) will be allocated to the bidders till the TT requirement is fulfilled .

c. XXXX XXXX XXXX XXXX

d. XXXX XXXX XXXX XXXX

e. XXXX XXXX XXXX XXXX

f. XXXX XXXX XXXX XXXX

g. XXXX XXXX XXXX XXXX

h. XXXX XXXX XXXX XXXX

- i. XXXX XXXX XXXX XXXX
- j. XXXX XXXX XXXX XXXX”

6. As per the learned counsel for the respondent, the tank trucks have to be of the latest model and they would be given preference over tank trucks which have older dates of first registration. The learned counsel for the respondent also submitted that there was a requirement of 1513 tank trucks for the North India region for IOC. He submitted that 2362 trucks were found to be technically qualified. Therefore, the requirement was far less than the supply that was forthcoming. In order to select the 1513 tank trucks, the criteria of clause 4(iii)(b) had to be adopted as per the general conditions. This required ranking of all the tank trucks according to the date of first registration. When the trucks were so ranked, the petitioner’s tank truck did not fall within the 1513 tank trucks which were to be selected. The learned counsel for the respondent also submitted that the letters of intent have already been issued in respect of the 1513 tank trucks, excluding some tank trucks which are the subject matter of a writ petition being WP(C) 8435/2014.

7. The learned counsel for the petitioner submits that the list of 1513 tank trucks prepared by the respondent included about 450 trucks which were registered in Nagaland. According to the learned counsel for the petitioner these

450 tank trucks have to be excluded while considering the question of successful bidders.

8. We do not agree with the interpretation that is sought to be placed by the learned counsel for the petitioner on clause 11(d) of the said general conditions. We find that successful bidders are to be selected on the criteria mentioned in clause 4(iii)(b) and which is to rank tank trucks in order of preference according to the date of first registration. The newer models are to be preferred to the older models. After that list is prepared, the provisions of clause 11(d) of the said general conditions are to be worked out, if so required. We do not read any prohibition in clause 11(d) so as to eliminate tank trucks registered in Nagaland or to give preference to the tank trucks registered in the States mentioned in clause 11(d) for the purposes of determining the successful bidders.

9. Consequently, there is no merit in the writ petition. The same is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

**JANUARY 21, 2015
SR**

SANJEEV SACHDEVA, J