

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 19th May, 2015
Judgment delivered on: 24th September, 2015

W.P.(C) 964/2015 & CM Nos. 1697/2015 (for stay), 4833/2015 (for Impleadment) , 5167/2015 (for Impleadment) 5269/2015 (for impleadment), 5270/2015 (for vacation of interim order), 5271/2015(for impleadment), 6332/2015 (for impleadment), 6333/2015 (for modification of interim order) & 7527/2015 (for directions for issuance of provisional LOI)

BAJRANG INTERNATIONAL & ORS.

..... PETITIONERS

VERSUS

INDIAN OIL CORPORATION LTD. (IOCL) & ORS.

..... RESPONDENTS

Advocates who appeared in this case:

For the Petitioner : Ms Meenakshi Arora, Sr Advocate with Mr Neeraj Kumar and Mr Vasav Anantharaman, Advocates.

For the Respondent : Mr Abhinav Vashisht, Sr Advocate with Mr Rajat Navet, Advocate for respondent No.1.

Mr S.S. Ray with Mr Vaibhav Gulai and Ms Rakhi Ray, Advocates for respondent No.2.

Mr Rikesh Singh with Mr Nakul Pathania, Advocates for respondent No.3.

Ms Neelima Tripathi with Ms Nidhi Parashar, Advocates for respondent Nos.4 & 5.

Mr Kapil Sibbal, Sr Advocate with Mr Rahul Shukla, Mr Md. Nizam Pasha, Advocates for respondent No.40.

Mr Sandeep Sethi, Sr Advocate with Mr Jhaan Mohan, Advocate for respondent Nos.61 & 82.

+ **W.P.(C) 4702/2015 & CM No. 8513/2015 (for stay)**

MANMOHAN SINGH & ORS

..... PETITIONERS

VERSUS

INDIAN OIL CORPORATION LIMITED (IOCL) & ORS RESPONDENTS

Advocates who appeared in this case:

For the Petitioner : Mr Krishnan Venugopal, Sr Advocate with Mr Rajesh Yadav and Mr Neeraj Yadav, Advocates.

For the Respondent : Mr Rajat Navet, Advocate for respondent No. 1.

Mr. Amit Mahajan, CGSC with Mr Krishanu Barua, Advocates for respondent No.3/UOI.

+ **W.P.(C) 4708/2015 & CM No. 8518/2015 (for stay)**

ETERNITY MOVERS & ORS

..... PETITIONERS

VERSUS

INDIAN OIL CORPORATION LIMITED (IOCL) & ANR RESPONDENTS

Advocates who appeared in this case:

For the Petitioner : Mr Jayant K. Mehta with Mr Anshumaan Sahni, Advocates.

For the Respondent : Mr Rajat Navet, Advocate for respondent No. 1.

+ **W.P.(C) 4716/2015 & CM No. 8528/2015 (for stay)**

J.S. MOVERS & ANR

..... PETITIONERS

VERSUS

INDIAN OIL CORPORATION LIMITED (IOCL) & ANR RESPONDENTS

Advocates who appeared in this case:

For the Petitioner : Mr Jayant K. Mehta with Mr Sukant Vikram, Advocates.

For the Respondent : Mr Rajat Navet, Advocate for respondent No. 1.

+ **W.P.(C) 4720/2015& CM No. 8539/2015 (for stay)**

MAYANK KANODIA & ORS.

..... PETITIONERS

VERSUS

INDIAN OIL CORPORATION LIMITED (IOCL) & ORS..... RESPONDENTS

Advocates who appeared in this case:

For the Petitioner : Mr Krishnan Venugopal, Sr Advocate with Mr Rajesh Yadav and Mr Neeraj Yadav, Advocates.

For the Respondent : Mr Rajat Navet, Advocate for respondent No. 1.

Mr Amit Mahajan, CGSC with Mr Krishanu Barua, Advocates for respondent No.3/UOI.

+ **W.P.(C) 4721/2015& CM No. 8541/2015 (for stay)**

PRAVEEN BHATIA AND ORS

..... PETITIONERS

VERSUS

INDIAN OIL CORPORATION LTD. & ORS

..... RESPONDENTS

Advocates who appeared in this case:

For the Petitioner : Mr Krishnan Venugopal, Sr Advocate with Mr Rajesh Yadav and Mr Neeraj Yadav, Advocates.

For the Respondent : Mr Rajat Navet, Advocate for respondent No. 1.

Mr Amit Mahajan, CGSC with Mr Krishanu Barua, Advocates
for respondent No.3/UOI.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

WP(C)964/2015, 4702/15, 4708/15, 4716/15, 4720/15 & 4721/15

1. The petitioners in the all these writ petitions have sought a mandamus directing the Respondent Nos. 1, 2 & 3 to strictly follow the prescribed specifications in the Tender dated 01.09.2014 as on the closing dates of tender i.e. 22.09.2014 and 23.09.2014. Further mandamus has been sought for directing the Respondent Nos. 1, 2 and 3 to disqualify those tank trucks offered by the bidders which are not fitted with Internal Excess Flow Check Valve (in short - IEFC Valve) as per Petroleum & Explosives Safety Organization (in short - PESO) Circular dated 16.04.2013 and to issue a Letter of Intent (LOI) or provisional LOI or work order to only those tank trucks which fulfilled all these specifications mentioned in Clause 11 of the general terms and conditions of the Tender for transportation of bulk LPG by road specially Clause 11 (a) (x) as on the closing date of tender.

2. The Respondent Nos. 1, 2 and 3 i.e. Indian Oil Corporation Ltd., Bharat Petroleum Corporation Ltd and Hindustan Petroleum Corporation Ltd., respectively, had jointly issued a notice inviting e-tender for bulk LPG transportation contract by road. As per the notice inviting tender dated 01.09.2014, the bid submission/upload closing date was 22.09.2014 for the Northern Region, Eastern Region and North-East Region and 23.09.2014 for the Western Region and the Southern Region.

3. The dispute really pertains to the date of the applicability of Clause 11(a) (x) of the NIT. Clause 11 deals with the specifications of the tanks trucks and the relevant clause (a) (x) thereof reads as under: -

11. SPECIFICATION OF TANK TRUCKS:

The tank trucks offered against this tender should conform to the specification mentioned in Motor Vehicles Act, as applicable from time to time and be equipped to transport bulk LPG and should conform to the following:

- a) (i) xxxxxx
- (x) All trucks offered have to be fitted with Internal Excess Flow Check Valves (IEFCV) as per PESO guidelines.
- (xi) xxxxxx

4. The contention of the petitioners is that since the NIT laid down the specifications of the tank trucks and that the tank trucks offered against the

said tender should conform to the conditions specified in Clause 11, one of which stipulated that all tank trucks offered have to be fitted with IEFC Valves as per PESO guidelines. It is contended that the compliance with the NIT is irrespective of the relaxation given by PESO of the date for installation of the IEFC Valve. It is further contended that the crucial date for consideration is the date when the tank truck is offered by the bidders in terms of the tender. It is contended that the said condition is in addition to a valid licence and compliance with the PESO guidelines. It is contended that the said stipulation in the tender is an essential condition of eligibility and thus cannot be waived. It is contended that in case a truck offered on the date of bid submission/upload closing date was not fitted with the IEFC Valves, the said truck was liable to be rejected.

5. On the other hand, the contention of the respondents is that all the trucks offered had to have a valid licence from PESO as on the closing date of tender. Though as per the PESO guidelines dated 16.04.2013, all trucks had to be fitted with IEFC Valves but for the purpose of tender, what was relevant was that there must be a valid licence from PESO on the closing date. As per the clarification/modification guidelines issued by PESO dated 10.06.2013, it was agreed that the fitting of the IEFC Valves would be treated as optional upto 31.12.2013 and all vehicles falling due for tests after 31.12.2013 were to be mandatorily fitted with the said Valves before renewal, amendment, etc. of their licences. Relying upon the above modified

guidelines, it is contended that all trucks that required renewal or amendment of licence after the credential bid opening date of 24.09.2014 would be eligible, in as much as, their licences were valid till the said date and were not due for renewal and as per the modified guidelines, the said trucks would fall due for tests after the bid submission date.

6. The counter affidavits filed by the respondents show that the respondents have taken into consideration the tank trucks that were not fitted with IEFC Valves but had a valid PESO licence as on the date of bid submission since their licences were falling due after the said date.

7. It is not in dispute that the tank trucks offered have to be fitted with Internal Excess Flow Check Valves (IEFC Valves). The dispute revolves around the date on which the tank trucks offered are to be fitted with IEFC Valves. The contention of the petitioners is that the tank trucks offered should be fitted with IEFC Valves as on the bid submission/upload closing date. On the other hand the contention of the respondents is that IEFC Valves should be fitted in the tank trucks as on the date the tank trucks fall for renewal of their licence in terms of the modified guidelines dated 10.06.2013 issued by PESO.

8. As per the tender conditions, the tank trucks of the qualified bidders are to be ranked on the basis of the conditions stipulated in the NIT. Subject to the fulfillment of the various conditions, the LOI/work order is to be

issued based on ranking. For example, if the tank trucks required are 700 in number then the LOI/work order is to be issued to the tank trucks that ranks in the first 700. The tank truck that ranks 701, even though otherwise qualified, would not be issued an LOI/work order. It is in this view of the matter, that the petitioners have filed the present petitions contending that the Respondent Nos. 1, 2 and 3 have qualified bidders and taken into consideration even those tank trucks that did not have the IEFC Valve fitted on the bid submission/upload closing date, thereby creating a situation whereby the tank trucks that did not have the IEFC Valve fitted have been ranked higher to the tank trucks that had the IEFC Valve fitted on the bid submission/upload closing date.

9. To resolve the controversy, it would be necessary to refer to some of the conditions of the NIT.

Clause 3 of the NIT stipulates as under:

“Tank Truck quoted must have valid licence from Petroleum Explosives Safety Organization (PESO) as on closing date of tender.”

Clause 11 (a) (x) stipulates as under: -

The tank trucks offered against this tender should conform to the specification mentioned in Motor Vehicles Act, as applicable from time to time and be equipped to transport bulk LPG and should conform to the following:

- a) (i) xxxxxx
- (x) All trucks offered have to be fitted with Internal Excess Flow Check Valves (IEFCV) as per PESO guidelines.
- (xi) xxxxxx

Clause 16 reads as under: -

“The bidder will provide trucks to IOCL/BPCL/HPCL after opening of credential bid for its physical verification by location-in-charges of the concerned Corporation at their own cost and submit the physical verification certificate in Original within one month from the date of opening of the credential bid or such extended period as may be permitted by IOCL/BPCL/HPCL at its sole discretion. All such trucks offered for physical verification should be produced at any of the location of concerned Contracting Corporation on any day mutually agreed by the Corporation and the bidder within the stipulated period. If the bidder fails to produce all the trucks required for physical verification, then only the trucks produced for physical verification on the pre-decided / agreed date will be considered as qualified offered trucks. Tank trucks which are currently operating in contract under IOCL/BPCL/HPCL will not be required to be physically verified if the bidder has submitted the copy of last one loading challan of Oil Marketing Company (IOCL/BPCL/HPCL) on or after 01.06.2014. However the Corporations reserves the right to direct any bidder to submit any offered tank truck for physical verification at any point of time during the pendency of the contract. Physical verification is part of the

Credential Bid evaluation, and should not be construed as acceptance of offer. Particulars of licenced /registered / and operational LPG Tank trucks offered in the credential bid of the tender will only be accepted for induction in the system after issuance of LOI / Work Order. In case of any deviation found in respect of details of tank trucks furnished in the credential bid and the physical tank trucks produced at the time of induction or at any later stage, then Corporation shall reject the tender.”

10. Thus from the above referred conditions of NIT it is clear that the Tank truck quoted by a bidder has to have a valid licence from PESO as on closing date of tender. The tank truck offered against the tender should conform to the specification mentioned in Motor Vehicles Act, as applicable from time to time and be equipped to transport bulk LPG and has to be fitted with Internal Excess Flow Check Valves (IEFCV) as per PESO guidelines. The tank truck has to be produced for physical verification and in case of any deviation found in respect of details of tank trucks furnished in the credential bid and the physical tank trucks produced, the tender is to be rejected.

11. Coming to the guidelines laid-down by PESO. On 16.04.2013 a communication was issued by PESO under the subject “Installation of internal, valve with excess flow check valve in LPG and other flammable, toxic/corrosive compressed gas road tankers covered under SMPV (U)

Rules, 1981-reg.” The said communication notices that there have been increased instances of LPG road tanker accidents in the recent past resulting into release of LPG from the transport vessel causing wide spread loss to life and property. It records that during the investigation, it had been revealed that one of the major causes of such accidents is the failure of the external flow valve provided on the liquid/vapour lines of the vessel of the road tanker owing to various reasons mentioned therein.

12. In view of what is noticed in the said correspondence and in order to prevent recurrence of such accidents of release of LPG or other flammable, toxic & corrosive compressed gases due to failure of external excess flow valves, certain preventive measures were recommended in the interest of safety pending amendment of SMPV (U) Rules, 1981. One such measure recommended is as under: -

1. All the compressed gas road tankers used for flammable, toxic & corrosive compressed gases shall be provided with internal valve having dual function comprising of primary shut off valve and excess flow valve of appropriate rating in liquid and vapour lines approved under SMPV(U) Rules, 1981. Built-in internal valve shall be remotely operable from rear end of vehicle with a lever through a cable system fitted with thermal fuse links. Such fuse links shall be attached to the internal valve and also at the rear end connected to the lever. Further, the internal valve shall have a shear section and be designed such that in the event of accident, the lower section of the valve is sheared off, the

valve seat (soft seat - which ensures zero leakage) remains inside the tank and is closed by self-stored energy (spring).

2. xxxxx

3. xxxxx

4. The grant of new licences in Form IV of the SMPV(U) Rules, 1981 for LPG, other flammable and toxic/corrosive compressed gas road tankers shall be considered after compliances of the recommendations at SI. No. 1 mentioned above. However, in case of existing licenced road tankers, the external excess flow valve shall be replaced with internal excess flow valve either during periodic testing of safety valve under rule 18 Or hydraulic testing under rule 19, whichever earlier. The revised-rule 43 certificate incorporating the details of the internal type excess flow check valve under SMPV(U) Rules, 1981 shall be furnished to the licensing authority.
(underlining supplied)

13. On 16.04.2013 itself, the Chief Controller of Explosive issued an order in terms of the said communication as under: -

“In exercise of the powers conferred under rule 62A of the SMPV(U) Rules, 1981, all the transport vessels for LPG and other flammable, toxic/corrosive compressed gas road tankers licenced under Form IV of the SMPV(U) Rules, 1981 are required to be provided with approved type internal valve having dual function comprising of primary shut off valve of excess flow valve of appropriate rating in the vapour and liquid

discharge lines with immediate effect in the interest of safety.”

(underlining supplied)

14. The communication of PESO and the order dated 16.04.2013 of Chief Controller of Explosives mandated every transport vehicle covered therein to immediately install an IEFC Valve. The said communication and order were issued in interest of public safety.

15. Thereafter another communication dated 10.06.2013 was issued by the Chief Controller of Explosive granting extension for fitting of IEFC Valve. The communication reads as under: -

“To

The LPG Tanker Association (as per enclosed list).

Sub:' Installation of internal valve with excess flow check valve in LPG and other flammable, toxic/Corrosive compressed gas road tankers covered under SMPV(U) Rules, 1981-reg.

Dear Sirs,

This refers to the numbers of representations received from various LPG Tanker Associations and subsequently meeting with the members of the associations in this office on 05/06/2013 for extension of the time for installation of internal valve with excess flow check valve in their existing licenced LPG tankers in compliance to this office letter of even No. dated

16/04/2013 owing to the expenditure and time involved in installing the said internal valve.

During the meeting, it has been decided by agreement of all that installation of internal valve with excess flow check valve is absolutely necessary in the interest of safety. However, after careful consideration of the representations and the deliberations held, the fitting of the internal excess flow check valve as per this Office letter dated 16/04/2013 will be treated as optional for the safety valve test or hydro test up to 31/12/2013. For any issue or re-grant of licence in Form IV of the said rules, the certifications after fitting of the internal excess flow valves are required. All the transport vessels mentioned above falling due for tests after 31/12/2013 shall mandatorily be fitted with internal excess flow valves before renewal, amendment, etc. of the licences in Form IV of SMPV(U) Rules, 1981.

Further, the provision for cable system for remote operations of the internal valve from rear end of vehicle with a lever is also dispensed with.

You are requested to advise all your members to carry out the installation of the internal valve in the existing road tankers within the period mentioned above. Please note that no further extension beyond 31/12/2013 will be considered in this regard.”

(underlining supplied)

16. Clause 3 of the NIT mandates that tank trucks quoted must have a valid licence from PESO. Clause 11 (a) (x) is an additional condition, over and above clause 3 of the NIT, i.e. a valid licence from PESO. The NIT

categorically lays down the specifications to which the tank trucks must conform to and one of which being that the trucks offered have to be fitted with the IEFC Valves as per PESO guidelines.

17. Every bidder had to ensure that the offer made by the bidder was strictly in conformity with the tender conditions. The tender condition required the tank trucks offered to be fitted with the IEFC Valves. The fact that separate conditions have been stipulated with regard to the 'specifications of the tanks trucks' shows that the tank trucks offered have to be of the specified specifications to conform to the said conditions in addition to the other stipulation of the tender. If having a mere licence from PESO was sufficient then there was no necessity of stipulating the specifications of tank trucks in Clause 11. The express condition stipulating specifications of tank trucks shows that the stipulations have to be complied with and the tank trucks offered have to be fitted with the IEFC Valves. The said stipulation in the tender is an essential condition of eligibility and thus cannot be waived.

18. It is for the tender inviting authority to lay down specifications that the tank trucks offered have to conform to. If the tender inviting authority has laid down specifications of the tank trucks to be offered then the said specifications become essential conditions of eligibility and thus have to be strictly complied with. The Circular dated 16.04.2013 issued by PESO shows that the Circular/guideline has been issued to ensure public safety.

Even though, PESO may have relaxed the date for fitting of the IEFC Valve but that would not amount to relaxation of the tender conditions. It was open to the tender inviting authority to stipulate in addition to a valid PESO Licence a condition that the vehicle shall be fitted with the IEFC Valve as per PESO guidelines and that is what has been done in the present case.

19. The modified Circular of PESO dated 10.06.2013 cannot, in any manner, relax or dilute the requirement of having the IEFC Valves fitted as mandated by the NIT, rather it reiterates that the installation of internal excess flow check Valve is absolutely necessary in the interest of safety. However, because of representations received from various LPG Tanker Associations owing to the expenditure and time involved in installing the said IEFC Valve that PESO made it optional for the fitting of the Valve upto 31.12.2013. However, a further relaxation was granted to vehicles falling due for renewal of licences/tests after 31.12.2013 that they shall be mandatorily fitted with IEFC Valves before renewal of their respective licences.

20. The relaxation given by the PESO for fitting of the Valve to a date beyond 31.12.2013 for vehicles whose licence was falling due for renewal after the said date cannot, in any manner, affect the tender condition. The tender conditions would be applicable irrespective of the relaxation given by the PESO. The two conditions i.e. i) that there should be valid PESO licence; and ii) that the tank trucks should be fitted with the IEFC Valves as

per PESO specifications are independent of each other. Both the said conditions have to be complied with. Merely because the licence remained valid in the absence of IEFC Valve till the bid submission/upload closing date, i.e., the date on which the truck was offered by the bidder would not, in any manner, absolve the bidder from complying with the second condition of having the safety Valve fitted.

21. What is relevant is that the tank trucks offered must be in conformity with the stipulations in the tender document. The tank trucks offered have to conform to the specifications as laid down in the tender document. The date of fitting of the IEFC Valves would be irrelevant. The bidders who wanted their tank trucks to be considered for the bid, had to ensure compliances of all the tender conditions. Even though absence of IEFC Valves may not invalidate the licence from PESO but if the same does not meet the tender condition, the same would invalidate the bid. The tank trucks offered must comply with all the tender conditions. What is to be considered is whether the bid submitted by the bidder was compliant of all tender conditions or not. If the bid submitted by the bidder is not compliant, the bid is liable to be rejected.

22. The essential tender conditions have to be strictly complied with. The said stipulation in the tender is an essential condition of eligibility and thus cannot be waived. The bidders have to ensure that the tank trucks offered must be compliant of all the tender conditions. The term used in the NIT is

that the tank trucks offered must comply with the tender conditions. The fact that the word 'offered' is used in the NIT implies that the date on which the offer is made is the crucial date. Thus, the crucial cut-off date would be the bid submission/upload closing date, i.e., 22.09.2014 and 23.09.2014 for the different regions respectively. So as on the crucial cut-off date, in addition to having a valid PESO licence, the tank trucks offered should also have had IEFC Valves fitted.

23. The interpretation of the respondents of the tender conditions thus cannot be accepted. The respondent Nos. 1, 2 and 3 have to strictly adhere to the tender conditions and more specifically Clause 11 (a) (x) as on the bid submission/upload closing date.

24. That the tank trucks offered by the bidders that do not have the IEFC Valves fitted as per the PESO guidelines as on the bid submission/upload closing date, cannot be considered and the bids in respect thereof are to be rejected.

25. In view of the above, the writ petitions are allowed directing the respondents to strictly adhere to the tender conditions including Clause 11(a) (x) and further to disqualify the tanks trucks offered by the bidders that were not fitted with IEFC Valves as on the bid submission/upload closing date. The Respondent Nos. 1, 2 and 3 are further directed to revise the rankings by eliminating the tank trucks that were not fitted with IEFC Valves as on the

bid submission/upload closing date and to issue the LOI/work order only after revision of the said ranking to the tank trucks offered that had the IEFC valve fitted as on the bid submission/upload closing date.

26. There shall be no orders as to costs.

CM Nos. 1697/2015 (for stay), 4833/2015 (for Impleadment) , 5167/2015 (for Impleadment) 5269/2015 (for impleadment), 5270/2015 (for vacation of interim order), 5271/2015 (for impleadment), 6332/2015 (for impleadment), 6333/2015 (for modification of interim order) & 7527/2015 (for directions for issuance of provisional LOI) in W.P.(C) 964/2015 & CM No. 8513/2015 (for stay) in W.P.(C) 4702/2015 & CM No. 8518/2015 (for stay) in W.P.(C) 4708/2015 & CM No. 8528/2015 (for stay) in W.P.(C) 4716/2015 & CM No. 8539/2015 (for stay) in W.P.(C) 4720/2015 & CM No. 8541/2015 (for stay) in W.P.(C) 4721/2015

Since the Writ Petitions have been disposed of on merits and all parties including the applicants seeking impleadment who wished to be heard were heard, no separate orders are being passed in the pending applications and they are disposed of in the above terms.

SANJEEV SACHDEVA, J

BADAR DURREZ AHMED, J

September 24 , 2015
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