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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 23.12.2014
Pronounced on: 06.01.2015

+ **W.P.(C) 8776/2014, C.M. NOS.20152-20153/2014**

BARODA ROAD TANKERS & ANR. Petitioners

versus

DEPUTY GENERAL MANAGER-LPG NORTH ZONE
HINDUSTAN PETROLEUM CORPORATION LTD & ORS.

..... Respondents

+ **W.P.(C) 8435/2014, C.M. NO.19492/2014**

MR. RAJESH MALIK & ANR. Petitioners

versus

UNION OF INDIA & ORS.

..... Respondents

+ **W.P.(C) 8568/2014, C.M. NOS. 19774/2014 & 20119/2014**

M/S. THAKUR BALWAN SINGH Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Sh. Yashank Adhyaru, Sr. Advocate
with Sh. Naman Joshi, Advocate, for petitioners in
Item No.2.

Sh. Jasmeet Singh, CGSC, for UOI in Item No.2.

Sh. Rajat Navet with Sh. Kushagra Pandit and Sh. Rohan Yadav, Advocates, for IOC/BPCL in Item Nos. 2 to 4.

Sh. A.K. Singh, Sr. Advocate with Sh. Rahul Shukla, Advocates, for petitioner in Item No.4.

Sh. Rikesh Singh and Sh. Nakul Pathania, Advocates with Sh. T.S. Cheema, Sr. Manager, LPG Distribution (NZ), HPCL, for Resp. Nos. 1 and 2 in Item No.2; for Resp. No.3 in Item No.3 and for Resp. No.3 in Item No.4.

Sh. Sandeep Sethi, Sr. Advocate with Sh. Ayush Agrawal and Sh. Shaan Mohan, Advocates, for the petitioners in Item No.3.

Sh. Sanjeev Narula, CGSC with Sh. Ajay Kalra, Advocate, for UOI in Item No.3.

Sh. Yeeshu Jain and Sh. K.S.M. Vimal Kanth, Advocates, for LAC, for Item No.3.

Ms. Suparna Srivastava, CGSC with Ms. Nishtha Sikroria, Advocates, for respondents in Item No.4.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIPIN SANGHI

MR. JUSTICE S. RAVINDRA BHAT

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1. These three writ petitions involve adjudication on common issues arising from the same facts, i.e. interpretation of tender no.

LPG/LOGS/TT/ER/2014/A dated 01.09.2014 issued jointly by the three contesting respondents – hereafter referred to conveniently as “the oil marketing companies”. The petitioners in W.P.(C) 8776/2014 argue that the rejection of their bids on the ground that the mismatch between the prime mover capacity and the trailer capacity made the bid non-conforming, is arbitrary. The petitioners in this writ petition are referred to compendiously as “the Baroda group”. The petitioners in W.P.(C) 8435/2014 (hereafter called “the Malik Group”), on the other hand, assert that the oil marketing companies should strictly follow the tender conditions and reject the tanker contracts (TTs) which do not conform to the prescribed specifications. They seek consequent directions for quashing of actions taken towards accepting bids which are not in conformity with the tender specifications, so far. The writ petitioners in the third group, i.e. W.P.(C) 8568/2014 (hereafter called “the Balwan Singh group”) seeks directions to the oil marketing companies to reject the tenders submitted by the bidders quoting LPG tank trucks of 18 MT capacity attached with prime movers/trucks of 4018/4019 model coupled with two axle trailer. In addition, they seek rejection of bids of two tenderers who applied in the SC/ST quotas with certificates which were more than a year old calculated from the date of the tender advertisement.

2. Through a common advertisement, three the respondents, i.e., (hereafter called "the oil marketing companies" consisting of Indian Oil Corporation Ltd ("IOCL"); Bharat Petroleum Corporation Ltd (BPCL) and Hindustan Petroleum Corporation Ltd (HPCL) invited electronic bids for transportation of bulk Liquefied Petroleum Gas ("LPG") by road. The

electronic bids (e-tenders) invited consisted a Two-Bid system from *bona-fide* bidders, willing to quote rates fulfilling advertised conditions, i.e.:

1. Owning at least One Bulk LPG / PROPANE tank truck ("TT") as on closing date of tender.
2. The age of the tank truck quoted being not more than 15 years as on 31.10.2014 from the date of first registration.
3. Tank Truck quoted possessing a valid license from Petroleum Explosives Safety Organization (PESO) as on closing date of tender.

3. The tender was advertised for Region/Zone wise requirements of the Oil Marketing Companies; the interested bidders had to quote rate for the Region / Zone as well as for each Company of their choice. Bidders had to meet the minimum qualification criteria, of the tender to participate in the process. However, induction of TTs was to be based on evaluation criteria of the tender. Furthermore, bidders had to upload particulars of all TTs offered, according to a prescribed format - in terms of Annexure-II at the time of submission of the e-tender. The TTs had to lift (pick up) the product from any or all of the sources of bulk LPG for transportation of bulk LPG by road in tank trucks, from loading locations as mentioned in the tender (Price bid and technical bid) to all bottling Plants/Customers (Ex- MI / Delivered) of the Oil Marketing Companies as well as for stock transfer of Auto LPG from supply sources to Bottling plants during the contract period. The contracts were to be valid for three years with effect from 01.11.2014 and extendable for two more years at the sole discretion of the Corporation(s) at the same terms and conditions. The tender provided for a yearly escalation of 3.25 %

for the 4th year & 5th year on the non fuel component of the applicable rate (maximum 50% of rate) with formula mentioned in clause No.33 of Contract Agreement. The bidders offering single ready owned truck could offer one proposed owned truck and bidders offering more than one ready owned trucks could offer maximum two proposed owned trucks of licensed capacity of minimum 17 MT and above except for specified sectors.

4. Proprietorships, partnership firms as well as other juristic entities could participate and submit bids. Furthermore, reservation was permitted in favour of Scheduled Cast/Scheduled Tribe applicants. The condition with respect to the specification of TTs, contained in Clause 11 of the General Terms and Conditions, stated that:

"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) Tank Trucks expected to be inducted for movements from Mumbai/ BPCR/HPCR, should not be more than 8 years old as on 31.10.2014.

For this purpose BPCL Western Region will be requiring minimum 50 trucks which are not more than 8 years old as on 31.10.2014, HPCL Western Zone will be requiring minimum 274 trucks which are not more than 8 years old as on 31.10.2014. The bidders are required to offer trucks accordingly for meeting above requirement. In case sufficient number of such tank trucks are not received in this tender, Corporation may either request the Bidders for replacement of the offered trucks to meet the above requirement or take suitable measures to meet such requirement. IOCL Eastern Region will be requiring minimum 16(sixteen) Tank Trucks (fixed chassis) having capacity upto 14

MTs. HPCL Eastern Region will require minimum 20 tank trucks having capacity upto 12.5 MTs and 20 tank trucks having capacity upto 7.5 MTs. M/s HPCL, Northern Region would require minimum 116 tank trucks having capacity upto 12 MTs. The bidders are required to offer trucks accordingly for meeting above requirement. In case sufficient number of such tank trucks are not received in this tender to meet the above requirement, Corporation may take suitable measures to meet such requirement.

(ii) Rules pertaining to the transportation of LPG under SMPV Rules and amendments issued from time to time;

(iii) specifications as laid down by OISD and other statutory authorities and amendments issued from time to time;

(iv) pressure vessel to be designed and constructed and tested in accordance with the Indian Standards IS: 2825 and amendments issued from time to time;

(v) Central Motor Vehicle (Fifth Amendment) Rules, 2005 and amendments issued from time to time;

(vi) Requirement as per Public Liability Insurance Act and amendments issued from time to time;

(vii) Bulk LPG Tank Trucks of category other than tractor-trailer combination manufactured on and after 1st October 2006 should be fitted with Anti Lock Brake System (ABS) .

(viii) Bulk LPG Tank Trucks manufactured on and after 1st day of October 2007 that are used as tractor-trailer combination should be fitted with Anti Lock Brake System (ABS).

(ix) If ABS has been made mandatory by any of the State Govt.(s), the same to be complied by the bidders irrespective of the model.

(x) Three point seat belt to be provided in each of the tank truck irrespective of any model.

(xi) Large rear view mirrors have to be fitted in each tank truck on either sides.

(xii) All trucks offered have to be fitted with Internal Excess Flow Check Valves (IEFCV) as per PESO guidelines.

(xiii) Visual Manifestation Standards (VMS) : Induction of Trucks will be done only after ensuring of compliance of VM standards of respective Oil Companies.

(xiv) The body of a tanker carrying dangerous or hazardous goods shall be painted in white colour with a dry leaf brown ribbon of 5 centimeters width around in the middle of the exterior and that of the driver's cabin in orange colour (Rule 90(1) of the CMVR, 1989).

(xv) Fixing of retro –high-intensity grade reflective stickers white tape with 7 cm width in the front of prime mover, yellow colour on both sides in the same width and red colour tape with 7 cm width throughout at rear side for better visibility in poor light condition.

(xvi) There should not be any mobile re-charging facility in the cabin.

(xvii) Any other applicable Act/Rule or any other amendment or re-enactment thereof as per specific State / Central Authorities, if any from time to time .

b) No tank truck will be offered under this tender which :

(i) is presently in Contract with any Oil Company (including Private Company) for a period beyond the commencement date of this contract i.e. 01.11.2014

(ii) has been offered in more than one tender or to more than one Corporation. Such Tank Truck(s) will be rejected and shall not be considered in any of the tenders."

Contentions of the Baroda group of Petitioners in W.P.(C) 8776/2014

5. The Baroda group petitioners submitted their tenders and offered three and two tank trucks respectively. Their tenders enclosed the necessary documents, such as the Registration Certificates (RCs) issued by the concerned Road Transport Officers (RTOs), stating: (i) MLW of 40.2 MT with two axles; (ii) PESO license for 18 MT with ML not exceeding 40.2 MT, and (iii) mounted trucks for 35.2 MT. The Baroda group claims that they discovered- from website of the oil marketing companies- on 29.11.2014 that their bids were disqualified, due to mismatch of licenses and RTO registrations. This was because one of the oil marketing companies, i.e. HPCL was of the opinion that there was a discrepancy between the RC and the PESO certificate on the one hand and the mounted drawings of the trucks on the other. The RC and PESO license provided for MLW of 40.2 MT and the mounted drawings provided for MLW of 35.2 MT. The Baroda group petitioners were asked on 02.12.2014 by the HPCL to interact with them at their offices for clarifications on the issue of disqualification. In this, they had referred to some minutes of meeting of the oil marketing companies. The Baroda group petitioners sought for copies of the minutes of meeting. The petitioners also by their e-mail sought clarifications as to whether they could furnish any documents for clarifications – a stand which was not accepted by the oil marketing companies. In these circumstances, the Baroda group state that since the document, i.e. the minutes of the meeting of the oil marketing companies were not furnished, they sought for it under the RTI Act. This application was, however, not accepted.

6. In this background of circumstances, the Baroda group contends that there is no requirement of synchrony or uniformity between the mounted

trucks and the TTs as long as the certificates issued by the PESO and the licenses issued by the RTO are valid and legal. In this connection, it is contended that no tender condition has been referred to in the report by the HPCL, an oil marketing company, while rejecting the bid. It is argued that since the petitioners are in possession of RC and mounted trucks endorsed for 40.2 MT, the tank trucks are logically suitable for 35.2 MTs. In this connection, the Baroda group petitioners also referred to the interpretation adopted by the other companies - IOCL and BPCL where the difference between the mounted trucks and the TT capacity (referred to as mismatch by the HPCL) was overlooked as long as the PESO certificate and the RTO license were subsisting, provided the RTO endorsement indicated acceptance of such TTs. The Baroda group assert that such a position has been adopted by the oil marketing companies with respect to alleged mismatch for the first time in seven years during which such vehicles had been consistently accepted and awarded LoI/contracts.

7. Sh. Yashank Adhyaru, learned senior counsel argued that there is no basis for the alleged mismatch, given that the tender conditions merely referred to the licensed capacity of minimum MT and above, except for specified sectors. It is submitted that neither the general terms and conditions of the tender, nor the notice inviting the bidders to respond to the e-tender, nor for that matter do any of the other tender documents and its several annexures, refer to the specifications, alleged to be applicable. It was submitted that the alleged mismatch between the prime mover and the trailer is of no consequence considering that the prime mover is heavier, i.e. 40.2

MT whereas the trailer load is 35.2 MT. In reality, therefore, the TT could not cater to anything more than what a 35.2 MT tanker capacity could.

8. Sh. Yashank Adhyaru, learned senior counsel referred to the PESO license issued to both the petitioners of the Baroda group as well as the insurance documents and highlighted that the copy of the licenses of the vehicles which are part of the record fully describe the TTs as follows:

<i>Weight laden</i>	<i>40200</i>
<i>XXXXXX</i>	<i>XXXXXX</i>
<i>Tyre description</i>	<i>F – 10.00 x 20, 16 PR</i> <i>Rear – 10.00 x 20, 16 PR</i>
<i>Axle weight</i>	<i>Front – 6000 kgs. Rear</i> <i>10200 Kgs</i> <i>Tandem 24,000 Kgs.</i>

Learned senior counsel also relied upon the RC in the case of five tank trucks to underline that they are duly endorsed and were valid as on the date of the submission of the bids. It was further submitted that all the documents were duly verified by the concerned oil marketing companies and in these circumstances, the rejection based on the interpretation of the tender condition, i.e. that the RCs endorsed for GVW of 40.2 MT and mounted drawings endorsed for GVW 35.2 MTs for the “TTs with 2 axle trailer but MLW as per form IV – PESO certificate is 40.2 MT” was utterly unwarranted. These were determined as mismatch and were rejected on the basis of the minutes of meeting dated 11.11.2014. The learned senior counsel contended that this criteria was never notified in the advertisement.

Referring to the minutes of the meeting dated 11.11.2014, which was in turn relied upon by the HPCL (the oil marketing company) in the rejection note, it was submitted that, alternatively, even the narrow interpretation given to the minutes of the said meeting was also not justified.

9. Sh. Adhyaru, learned senior counsel submitted that since the minutes of meeting of the oil marketing companies was silent and no clarification issued thereafter, fairness demanded that all the bidders who had furnished/submitted their bids - but without the necessary endorsement of the RTOs concerned, ought to have been provided an opportunity to obtain the same and thereafter consider the tenders on the basis of the endorsements made. The relevant extracts of the minutes of the meeting which clarified the basis for assessing the bids, provided as follows in regard to the different models of trucks:

“12.	<i>Trucks with 4018/4019/4021 models with GW of 40000 KG+</i>		
		<i>Bidders have submitted the T/L with these models having different combinations.</i>	
		<i>(a) RC with GVW (Gross Vehicle Weight) of 40200 (three axle) whereas PESO certificate with</i>	<i>To be accepted.</i>

		<i>GW of 40200 kg (three axle)</i>	
		<i>(b) RC with GVW of 40200 (three axle) whereas PESO certificate with GVW of 35200 kg (three axle)</i>	<i>To be rejected unless endorsed by RTO for revised RLW/Axle in RC Book.</i>
		<i>(c) RC with GVW of 35200 (two axle) whereas PESO certificate with GVW of 35200 kg (two axle)</i>	<i>To be accepted</i>
		<i>(d) RC with GVW of 25200 (single axle) whereas PESO certificate with GVW of 35200 kg (two axle)</i>	<i>To be rejected.</i>
	<i>Gujarat Registered T/L having RC Book in Smart Card Format</i>	<i>Such Smart Card does not contain any date of RLW/ULW. This data can not be verified. Some transporter have submitted the screen shot which does not contain any signatures/rubber stamp of RTO authorities.</i>	<i>Smart card contains all basic data. To be verified with original. Action on deviation to be taken as per tender condition.</i>

10. It is argued on behalf of the Baroda group that the oil marketing companies' imposition of superfluous and subsequently thought-out criteria is a colourable exercise of discretion and power. Asserting that so called "mismatch" was never thought-out as a disqualifying factor in the tender notice or the essential conditions spelt out with it, learned senior counsel submitted that the oil marketing companies could not unilaterally, in the guise of bringing interpretive uniformity, impose new conditions. It was further stressed that whilst the reading of the minutes of meeting dated 11.11.2014 itself underlines that there is nothing inherently illegal or unacceptable in regard to the allegedly mismatch between the prime movers and the trailers as long as the PESO certificate and the RTO endorsement with respect to that condition, i.e. the mismatch is furnished, it was argued that, therefore, the insistence on a newly created condition amounts to hostilely discriminating those who never had the occasion to secure such documents on the one hand, and favourably treat those who managed to secure it beforehand and submit it with their tender bids, on the other. Learned counsel also referred to a letter issued by the Deputy Chief Controller of Explosives (West Circle) dated 28.10.2014 as well as the certificate issued in respect of the vehicles (i.e. 40200 mover with 35200 kg. capacity trailer 2 axle trailer) by the Automotive Research Association of India (ARAI). It was submitted that in these circumstances, the rejection of the Baroda group's position is both arbitrary and unfair. Counsel lastly relied on the decision in *M.R. Shah Logistics Pvt. Ltd v Indian Oil Corporation Ltd* (W.P.(C) 7957/2012 and a connected writ petition, decided by a Division Bench of this Court on 26.07.2013) to say that change of the vehicle specifications is not considered an essential deviation, as long as the

license and registration conditions are met with, so as to empower the oil company to reject the tender altogether.

Contentions of the Malik Group (W.P.(C) 8435/2014) & the Balwan Singh group (W.P.(C) 8568/2014)

11. The Malik and Balwan Singh groups in their petitions as well as through the submissions of their senior counsel - M/s. Sandeep Sethi and A.K. Singla submit that the rejection of the Baroda group's bids was a necessary consequence of the correct interpretation of the tender conditions and specifications. It was also submitted that to the extent the minutes of meeting of 11.11.2014 dilute the tender specifications, they are contrary to law. In support of this argument, this second group of petitioners – the Malik and Balwan Singh groups firstly seek to highlight the malpractices whereby the PESO issued licenses for 600 TTs whereas, in reality, a fraction of them are manufacturing the corresponding TTs. It was argued consequently- and more substantially - that LPG is carried in a specifically designed vessel known as SMPV (Static and Mobile Pressure Vessels) governed by the Static and Mobile Pressure Vessels (Unfired) Rules, 1981. Such TTs consist of two main body parts – the prime mover and the trailer. Though they are different constituents, they are treated as part of one unit. The gross vehicle weight of TTs, it is contended, is governed by the statutory notification under Section 58(1) of the Motor Vehicle Act (hereafter referred to as “the Act”) dated 18.10.1996. It is stressed here that in terms of the notification, where the prime mover is of 3516/3518 chassis model, it can be coupled with two/double axle trailer. Likewise, where a prime mover is 4018/4019 chassis model, it can be coupled only with a suitable triple/three axle trailer. It is submitted that manufacturers of such TTs, i.e. Tata and Ashok Leyland

first seek approval of the ARAI, certifying that their vehicles comply with the Motor Vehicle Act and Rules and after such certifications they approach the concerned RTO for registration of the vehicle.

12. The second group of petitioners alluded to a previous writ petition, i.e. W.P.(C) 17451/2005 which was a public interest litigation that highlighted the misuse of the forged or fictitious RCs based upon which PESO licenses were obtained and sought to be used to obtain Letters of Intent from the oil marketing companies. It is contended that as a consequence of the undertaking recorded by this Court on 08.08.2007 that firm contracts would not be issued and only LoI work permits would be first issued to enable the forwarding of documents requiring verification from the concerned agencies and only thereafter work orders would be issued, was the practice of issuing LoIs initiated.

13. The provisions of the Motor Vehicle Act, particularly Sections 52 and 58 are relied upon by M/s. Sandeep Sethi and A.K. Singla, to say that any changes not only have to be in conformity with the notified specifications for vehicles, to be considered permissible ones- but that every change has to be endorsed and duly accepted by the concerned RTO in the absence of which, the motor vehicles itself fall within the forbidden category, prohibited from plying on the roads. In this connection, the notification dated 18.10.1996 issued in respect of the maximum GVW was relied on by both these petitioners. The said notification reads as follows:

***“GOVERNMENT OF INDIA
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS***

NOTIFICATION

Specification of Maximum Gross Vehicle Weight and the Maximum Safe Axle Weight.

S.O.728(E), dated 18.10.1996.- In exercise of the powers conferred by sub-section(I) of section 58 of the Motor Vehicles Act,1988 (59 of 1988) and in supercession of the notification of the Government of India in the Ministry of Surface Transport S.O. No.479(E), dated the 4th July, 1996, the Central Government hereby specifies that in relation to the transport vehicles (other than motor cabs) of various categories detailed in the Schedule below the maximum gross vehicle weight and the maximum safe axle weight of each axle of such vehicles shall, having regard to the size, nature and number of tyres and maximum weight permitted to be carried by the tyres as per rule 95 of the Central Motor Vehicles Rules,1989, be-

(i) vehicle manufacturers rating of the gross vehicle weight and axle weight respectively for each make and model as duly certified by the testing agencies for compliance of rule 126 of the Central Motor Vehicles Rules,1989, or

(ii) the maximum gross vehicle weight and the maximum safe axle weight of each vehicle respectively as specified in the Schedule below for the relevant category,or

(iii) the maximum load permitted to be carried by the tyre(s) as specified in the rule 95 of the Central Motor Vehicles Rules,1989, for the size and number of the tyres fitted on the axle (s) of the relevant make and model, whichever is less:

Provided that the maximum gross vehicle weight in respect of all such transport vehicles, including multi-axle vehicles shall not be more than the sum total of all the maximum safe axle weight put together subject to the restrictions, if any, on the maximum gross vehicle weight given in the said schedule.

SCHEDULE

<i>Transport Vehicles Category</i>		<i>Max GVW Tonnes</i>	<i>Maximum Safe Axle Weight</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
<i>I. Rigid Vehicles</i>			

(i)	Two Axle	9.00	
XXXX	XXXX	XXXX	XXXX
II Semi-Articulated Vehicles			
(i)	Two Axle Tractor	26.4	
	Single Axle Trailer		
	Tractor: 2 tyres on front axle 4 tyres on rear axle		
	Trailer: 4 tyres on single axle		
(ii)	Two Axle Tractor	35.2	
	Tandem Axle Trailer		
	Tractor: 2 tyres on front axle 4 tyres on rear axle		
	Trailer: 8 tyres on tandem axle		
(iii)	Two Axle Tractor	40.2	
	Three Axle Trailer		
	Tractor: 2 tyres on front axle 4 tyres on rear axle		
	Trailer: 12 tyres on 3		
			6 tonnes on front axle 10.2 tonnes on rear axle
			10.2 tonnes on single trailer axle
			6 tonnes on front axle 10.2 tonnes on rear axle
			19 tonnes on tandem axle
			6 tonnes on front axle 10.2 tonnes on rear axle
			24 tonnes on 3

	<i>axles</i>		<i>axles.</i>
(iv)	<i>Three Axle Tractor</i>	35.2	
	<i>Single Axle Tractor:</i> <i>2 tyres on front axle</i>		<i>6 tonnes on front axle</i>
	<i>8 tyres on rear axle</i>		<i>19 tonnes on rear axle</i>
	<i>Trailer:</i> <i>8 tyres on single axle</i>		<i>10.2 tonnes on single axle</i>

14. It was lastly argued that by reason of Section 52 of the Act, alternations which involve change in the structure of the vehicle and the resulting change in its basic feature cannot be effected without approval of the Central Government. Any consequential changes such as alteration in the seating capacity – subject to parameters of Chapter V etc. only can be undertaken. It is urged that given the specific phraseology of Section 52, any permissible alterations which are not specifically mentioned and which is contrary to terms of notifications under Section 58(1) have to receive express approval. It was, therefore, urged that the minutes of the meeting to the extent they clarified the acceptance of vehicles that are not authorized to ply on the road, is illegal.

Stand of the Official Respondents- the Oil Marketing Companies

15. The position adopted by the oil marketing companies – the BPCL and IOCL - in a joint reply filed in the Baroda group writ petition disclose the estimated/undertaken requirement of the number of TTs of the oil marketing companies and further relied upon the eligibility criteria prescribed for the

TTs. They also stated that the credential bids were opened on 24.09.2014 and the process of price bid evaluation is underway. It is urged that since the tenders are being finalized on a common basis for all regions, common issues cropped-up which needed clarifications. As a result, the meeting was held on 11.11.2014 where it was particularly decided upon the common approach to be adopted in the evaluation exercise. It was in these circumstances that the relevant clarification No.12 was issued. The oil marketing companies in their affidavit state that they would be evaluating TTs offered by the bidders and where the model of the TT is 4018/4019/4021, its GVW is recorded in the RC as 40.2 MT and the explosive license records GVW/MLW as 35.2 MT and not as 40.2 MT, the same would be rejected unless the RC with respect to the revised GVW as recorded in the explosive license is endorsed. It is because of this that this position was taken since the RC is issued by the RTO and the explosive licence is issued by PESO and they form the bids' basic documents on which the eligibility of a TT is premised. The oil marketing companies assert that whether the registering authority or the explosive department issues a written certificate is neither within their domain, nor they are qualified to make such an enquiry.

16. The counter affidavit and reply of the HPCL interestingly in its most part supports the arguments of the second group of the petitioners and heavily relies upon the notification dated 18.10.1996. It is submitted that the variance in specification of TTs from the description mentioned in the RC makes it incompatible with the tender specifications, which strikes at the very root of the validity of the RC. The HPCL relies upon a clarification issued by the Additional Transport Commissioner, Maharashtra Circle to the

Chief Controller of Explosives in reply to the latter's letter dated 28.10.2014 which is to the following effect:

*"To,
Chief Controller of Explosives
A-Block, 5th Floor, CGO Complex,
Seminary Hills, Nagpur-440 006*

Sub:- Prime Movers with GVW of 40200 kgs.

Ref:1) Complaint of Mr. Vijay Khosala, President Western India Bulk LPG Transporters Association dt. 16/10/2014

2) Your office Letter No.PV(M) General/2009 dt. 28/10/2014."

Mr. Vijay Khosala, President Western India Bulk LPG Transporters Association, vide his letter dt. 16.10.2014 complained that some operators are using the tractor of 40200 kgs. With 2 axle trailer. However, GVW of these vehicles are noted as 40200 kgs. in the vehicle registration certificates.

As per S.O. no.728E dt. 18.10.1996, the Govt. of India specifies the Maximum Gross Vehicle Weight for semi trailers is as below:

Sr. No.	Type of semi trailer	GVW
1.	Two Axle Tractor Tandem Axle Trailer Tractor: 2 tyres on front axle 4 tyres on rear axle trailer 8 tyres on tandem axle	35200 kgs.6 tonnes on front axle 10.2 tonnes on rear axle 19 tonnes on tandem axle
2.	Two Axle Tractor Three Axle Trailer Tractor: 2 tyres on front axle 4 tyres on rear axle trailer 12 tyres on 3 axles	40200 kgs. 6 tonnes on front axle 10.2 tonnes on rear axle 24 tonnes on 3 axles.

However, if the operator who are using the tractor of 40200 kgs. with 2 axle trailers and whose GVW is noted as 40200 kgs. in the vehicle registration certificates are violating the provisions of MV Act, 1988, such kind of tractors are required to be provided with 3 axle semi trailer.

You are requested not to certify these tractors whose GVW is noted as 40200 kgs. in the registration certificates and fitted with 2 axle trailer. You are also requested to send these operators back to Registering Authorities for verification of records.

Sd/-

**Addl. Transport Commissioner,
Maharashtra State, Mumbai”**

The HPCL highlights that the tender conditions unequivocally require that the vehicle offered at all times should be in conformity with the provisions of the Motor Vehicles Act.

Analysis & Conclusions

Provisions of the Motor Vehicles Act

17. Section 52 of the Motor Vehicles Act, which was cited during the submissions, reads as follows¹:

¹ Old Section 52 was substituted by Act 27 of 2000, S.2 (w.e.f. 11-8-2000). Prior to its substitution, Section 52 read as under :-

“52. Alteration in motor vehicle .- (1) No owner of a motor vehicle shall so alter the vehicle that the particulars contained in the certificate of registration are no longer accurate, unless.-

(a) he has given notice to the registering authority within whose jurisdiction he has the residence or the place of business where the vehicle is normally kept, as the case may be of the alteration he proposes to make; and

(b) he has obtained the approval of that registering authority to make such alteration :

Provided that it shall not be necessary to obtain such approval for making any change in the unladen weight of the motor vehicle consequent on the addition or removal of fittings or accessories, if such change does not exceed two per cent. of the weight entered in the certificate of registration :

**[Provided further that modification of the engine, or any part thereof, of a vehicle for facilitating its operation by a different type of fuel or source of energy including battery, compressed natural gas, solar power or any other fuel or source of energy other than liquid petroleum gas shall be treated as an alteration but that shall be subject to such conditions as may be prescribed.]*

“52. Alteration in motor vehicle. - (1) No owner of a motor vehicle shall so alter the vehicle that the particulars contained in the certificate of registration are at variance with those originally specified by the manufacturer :

Provided that where the owner of a motor vehicle makes modification of the engine, or any part thereof of a vehicle for facilitating its operation by different type of fuel or source of energy including battery, compressed natural gas, solar power, liquid petroleum gas or any other fuel or source of energy, by fitment of a conversion kit, such modification shall be carried out subject to such conditions as may be prescribed:

Provided further that the Central Government may prescribe specifications, conditions for approval, retro fitment and other related matters for such conversion kits;

Provided also that the Central Government may grant exemption for alteration of vehicles in a manner other than specified above, for any specific purpose.

(2) Notwithstanding anything contained in sub-section (1), a State Government may, by notification in the Official Gazette, authorise, subject to such conditions as may be specified in the notifications, and permit any person owing not less than ten transport vehicles to alter any vehicle owned by him so as to replace the engine thereof with engine of the same make and type, without the approval of registering authority.

(3) Where any alteration has been made in motor vehicle without the approval of registering authority or by reason of replacement of its engine without such approval under sub-section (2), the owner of the vehicle shall, within fourteen days of the making of the alteration, report the alteration to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that authority together with the prescribed fee in order that particulars of registration may be entered therein.

(4) A registering authority other than the original registering authority making any such entry shall communicate the details of the entry to the original registering authority.

(5) Subject to the provisions made under sub-section (1), (2), (3) and (4), no person holding a vehicle under a hire-purchase

agreement shall make any alteration to the vehicle except with the written consent of the registered owner.

Explanation. - For the purpose of this section, “alteration” means a change in the structure of a vehicle which results in change in its basic feature.]

18. Section 58 reads as follows:

“58. Special provisions in regard to transport vehicles. – (1) The Central Government may, having regard to the number, nature and size of the tyres attached to the wheels of a transport vehicle (other than a motorcab), and its make and model and other relevant considerations, by notification in the Official Gazette, specify, in relation to each make and model of a transport vehicle, the [maximum gross vehicle weight] of such vehicle and the maximum safe axle weight of each axle of such vehicle.

(2) A registering authority, when registering a transport vehicle, other than a motor cab shall enter in the record of registration and shall also enter in the certificate of registration of the vehicle the following particulars, namely :-

(a) the unladen weight of the vehicle;

(b) the number, nature and size of the tyres attached to each wheel;

(c) the gross weight of the vehicle and the registered axle weights pertaining to the several axles thereof; and

(d) if the vehicle is used or adapted to be used for the carriage of passengers solely or in addition to goods, the number of passengers for whom accommodation is provided, and the owner of the vehicle shall have the same particulars exhibited in the prescribed manner on the vehicle.

(3) There shall not be entered in the certificate of registration of any such vehicle any gross vehicle weight or a registered axle weight of any of the axles different from that specified in the notification under sub-section (1) in relation to the make and model of such vehicle and to the number, nature and size of the tyres attached to its wheels :

Provided that where it appears to the Central Government that heavier weights than those specified in the notification under

sub-section (1) may be permitted in a particular locality for vehicle of a particular type, the Central Government may, by order in the Official Gazette direct that the provisions of this sub-section shall apply with such modifications as may be specified in the order.

²

(5) In order that the gross vehicle weight entered in the certificate of registration of a vehicle may be revised in accordance with the provisions of sub-section (3), the registering authority may require the owner of transport vehicle in accordance with such procedure as may be prescribed to produce the certificate of registration within such time as may be specified by the registering authority.”

The objects and reasons for this provision (Clause 57 of the Bill as it originally stood) provided that this was to “*specify in relation to each make and model of a transport vehicle the maximum safe laden weight and the maximum safe axle weight of each such vehicle*”; and further that “*the registering authorities while registering a transport vehicle shall make a note of the unladen weight, and gross vehicle weight and such other particulars in the registration certificate of the vehicle and other such particulars in the registration certificate...*”

19. Section 52 enacts, therefore, a general prohibition against the owners and pliers of motor vehicles- with few well defined exceptions- from

² Act 27 of 2000, by S.3 omitted Sub section (4) w.e.f. 11-8-2000. Prior to its omission, sub-Section (4) read as under :-

“(4) When by reason of any alteration in such vehicle, including an alteration in the number, nature or size of its tyres, the gross vehicle weight of the vehicle or the registered axle weight of any of its axles no longer accords with the provisions of sub-section (3), the provisions of section 52 shall apply and the registering authority shall enter in the certificate of registration of the vehicle revised registered weights which accord with the said sub-section.”

changing or altering the basic character of a vehicle. Section 58 (1) deals with special provisions in respect to transport vehicles. Parliament here empowered only the Central Government to specify, through a notification, *“in relation to each make and model of a transport vehicle, the [maximum gross vehicle weight] of such vehicle and the maximum safe axle weight of each axle of such vehicle...”* Section 58 (2) enjoins every registering authority to enter certain details, viz (a) the unladen weight of the vehicle; (b) the number, nature and size of the tyres attached to each wheel; (c) the gross weight of the vehicle and the registered axle weights pertaining to the several axles thereof; and (d) if the vehicle is used or adapted to be used for the carriage of passengers solely or in addition to goods, the number of passengers for whom accommodation is provided, and the owner of the vehicle shall have the same particulars exhibited in the prescribed manner on the vehicle. Section 58 (3) importantly directs that no registration certificate of a vehicle can reflect *“any gross vehicle weight or a registered axle weight of any of the axles different from that specified in the notification under sub-section (1) in relation to the make and model of such vehicle and to the number, nature and size of the tyres attached to its wheels..”* The proviso to this sub-section authorizes the Central Government to relieve this condition only *“in a particular locality for vehicle of a particular type, the Central Government may, by order in the Official Gazette direct that the provisions of this sub-section shall apply with such modifications as may be specified in the order.”*

20. It is thus apparent that what Parliament intended by enacting Section 58 (1) and (3) was to ensure uniformity in regard to the standards which every transport vehicle had to conform. Section 58 (1) enabled the

prescription of criteria. This means that only one authority, i.e. the Central Government alone, is empowered to notify what should be “*maximum gross vehicle weight of such vehicle and the maximum safe axle weight of each axle of such vehicle*” in respect of transport vehicles. Section 58 (2) obliges every registering authority to effectuate the mandate of Section 58 (1) by describing the relevant particulars, i.e. unladen weight of the vehicle; the number, nature and size of the tyres attached to each wheel; the gross weight of the vehicle and the registered axle weights relating to the several axles thereof; and whether the vehicle is used or adapted to be used for the carriage of passengers solely or in addition to goods. Section 58 (3) enacts what is implicit in Section 58 (1)- that the standards spelt out only and none other than those, can be adhered to in respect of “*the number, nature and size of the tyres attached to its wheels..*” Section 58 (3) proviso carves out an exception to its applicability to the extent the Central Government specifies in relation to a particular region.

21. Section 52 talks generally of the kind of alterations which a vehicle can undergo; some can be undertaken without intimation or approval of the registering authority; in the case of others, however, approval of the registering authority is required. Section 52 (1) however, specifically states that “*No owner of a motor vehicle shall so alter the vehicle that the particulars contained in the certificate of registration are at variance with those originally specified by the manufacturer*”. The exceptions which are permissible in succeeding provisions- Section 52 (1) and its proviso, Section 52 (3), relate to alterations which make the vehicle more fuel efficient and environmentally friendly, as well as pertain to replacement of engines, etc. Barring these changes, every alteration is impermissible; what is an

alteration is defined in Explanation below Section 52: “*“alteration” means a change in the structure of a vehicle which results in change in its basic feature.*”

22. A collective reading of Sections 52 and 58 would lead one to conclude that firstly, alterations, which result in change of a basic feature of the vehicle are prohibited. Secondly, such changes which result in fuel efficiency, if they conform to specific standards, are permissible: the condition being that the registering authority has to be notified. Thirdly, Section 58 (1) requires the prescription of standards to be followed by every transport vehicle, especially with regard to maximum axle weight having regard to the number of wheels it has. The mandatory nature of this provision is emphasized by Section 58 (3) which states that there cannot be variance (of a vehicle) with respect to *“the make and model of such vehicle and to the number, nature and size of the tyres attached to its wheels..”*

23. The notification spelling out the safe standards for “semi-articulated” transport vehicles of the kind which are in question here, provide, *inter alia*, that:

“....the Central Government hereby specifies that in relation to the transport vehicles (other than motor cabs) of various categories detailed in the Schedule below the maximum gross vehicle weight and the maximum safe axle weight of each axle of such vehicles shall, having regard to the size, nature and number of tyres and maximum weight permitted to be carried by the tyres as per rule 95 of the Central Motor Vehicles Rules, 1989, be-

(i) vehicle manufacturers rating of the gross vehicle weight and axle weight respectively for each make and model as duly certified by the testing agencies for compliance of rule 126 of the Central Motor Vehicles Rules, 1989, or

(ii) the maximum gross vehicle weight and the maximum safe axle weight of each vehicle respectively as specified in the Schedule below for the relevant category, or

(iii) the maximum load permitted to be carried by the tyre(s) as specified in the rule 95 of the Central Motor Vehicles Rules, 1989, for the size and number of the tyres fitted on the axle (s) of the relevant make and model, whichever is less:

Provided that the maximum gross vehicle weight in respect of all such transport vehicles, including multi-axle vehicles shall not be more than the sum total of all the maximum safe axle weight put together subject to the restrictions, if any, on the maximum gross vehicle weight given in the said schedule.

SCHEDULE

Transport Vehicles Category		Max GVW Tonnes	Maximum Safe Axle Weight
(ii)	Two Axle Tractor	35.2	
	Tandem Axle Trailer Tractor: 2 tyres on front axle 4 tyres on rear axle		6 tonnes on front axle 10.2 tonnes on rear axle
	Trailer: 8 tyres on tandem axle		19 tonnes on tandem axle
(iii)	Two Axle Tractor	40.2	
	Three Axle Trailer Tractor: 2 tyres on front axle		6 tonnes on front axle

	<i>4 tyres on rear axle</i>		<i>10.2 tonnes on rear axle</i>
	<i>Trailer: 12 tyres on 3 axles</i>		<i>24 tonnes on 3 axles.</i>
(iv)	<i>Three Axle Tractor</i>	35.2	
	<i>Single Axle Trailer</i>		
	<i>Tractor: 2 tyres on front axle</i>		<i>6 tonnes on front axle</i>
	<i>8 tyres on rear axle</i>		<i>19 tonnes on rear axle</i>
	<i>Trailer: 8 tyres on single axle</i>		<i>10.2 tonnes on single axle</i>

It is thus clear that as a matter of law, the *safety* standard required of each transport vehicle which describes itself as a semi articulated vehicle, comprised of two constituent parts, i.e. the prime mover and the tractor trailer, is that for a 40.2 MT vehicle, two axle front prime mover with 6 tonnes on front axle and 10.2 tonnes on rear axle; and 24 tonnes on 3 axles for the trailer (12 tyres on those 3 axles) is mandated.

24. In the present case, the IOCL and the BPCL, the two oil marketing companies rely on the minutes of meeting dated 11.11.2014 to say that so long as the PESO license and the registration are shown, any change in the vehicle description which varies from the manufacturer's description can be accepted, provided the concerned RTO endorses the registration certificate. Their further position is that such endorsement should have been obtained before the date of submission of the application form. Now, as discussed in this judgment, Section 58 is unrelenting as to the requirement which every

transport vehicle has to conform to, especially as regards maximum weight, number of axles and tyres. These are in no manner relieved in their application – except by a statutory notification of equal authority, i.e. by the Central Government, under proviso to Section 58 (1). However, no such notification exists in relation to the class of vehicles which the present case is concerned with. (Here the court is not expressing any opinion on the requirement of another category of transport vehicles for the eastern region, for which a lesser tonnage has been spelt out). Therefore, the petitioners of the second group- i.e. the Malik and the Balwan Singh group are correct in contending that the oil marketing companies could not have sought to dilute the standards spelt out in the 1996 notification. The oil marketing companies are concededly neither the Central Government nor even the registering authority. In this connection, the guidance and advice provided by the Additional Transport Commissioner, Maharashtra to the Chief Commissioner of Explosives on 28th October, 2014 is also in line with the conclusions of this Court. That letter had pertinently said that:

“.. if the operator who are using the tractor of 40200 kgs. with 2 axle trailers and whose GVW is noted as 40200 kgs. in the vehicle registration certificates are violating the provisions of MV Act, 1988, such kind of tractors are required to be provided with 3 axle semi trailer.

You are requested not to certify these tractors whose GVW is noted as 40200 kgs. in the registration certificates and fitted with 2 axle trailer. You are also requested to send these operators back to Registering Authorities for verification of records.”

25. As to the contention of the Baroda group that the tender conditions and specifications nowhere spelt out the details in regard to the number of

axles which were to be on different categories of TTs are concerned, the Court is of the opinion that this argument is fallacious. Firstly, Clause 11 of the General terms and conditions governing the tender specified that:

“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:”

Secondly, *arguendo*, even in the absence of the above specification, the imperative nature of Section 58 (1) and 58 (3) allow any exceptions, when a notification (read the 1996 notification) stipulates specifications. The contentions of the Baroda group regarding arbitrariness and discrimination, therefore, are unpersuasive. There can be no two opinions that tender conditions bind both the state agency which invites bids for goods and services, as well as the potential supplier of those goods and services, i.e. the tenderer/bidder. (Ref *G.J. Fernandez vs State Of Karnataka & Ors* AIR 1990 SC 958; *State of NCT of Delhi and Another v. Sanjeev alias Bittoo* (2005) 5 SCC 181). As to what should be the approach of courts in dealing with challenges to tender conditions and their applications, under Article 226 of the Constitution of India, [*Jagdish Mandal vs. State of Orissa & Ors*](#), a decision of the Supreme Court (reported as (2007) 14 SCC 517) spelt out the relevant considerations which weigh in such judicial review:

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are

essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR Whether the process adopted or decision made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached?”;

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226.”

The Court again recollects a later judgment of the Supreme Court in *Michigan Rubber (India) Limited Vs. State of Karnataka & Ors* 2012 (8) SCC 216. The court had then re-visited its previous rulings on the nature of

judicial review in respect of contractual matters of the State or its agencies and concluded as follows:

“23. From the above decisions, the following principles emerge:

(a) the basic requirement of Article [14](#) is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.

24. Therefore, a Court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"; and (ii) Whether the public interest is affected. If the answers to the above questions are in negative, then there should be no interference under Article [226](#)."

The last contention of the Baroda group, based on the decision of the Division Bench, in *Shah Logistics* (supra) is unmerited. In that case, the chassis of the vehicle had to be changed; this necessitated its inspection by the Controller of Explosives, who certified that the changed chassis also met with the specifications. This post tender development was duly notified to the oil company, which did not take the position at that time that the change could not have been effected. The Court held that at the time the bid was entered, there was no dispute that it complied with all specifications and that the subsequent change, duly intimated was not of such consequence as to undermine the essential basis of the bid; the Court then interpreted Clause 11 (b) of the Tender documents. Here, that is not the situation; the Baroda group is stating that the insistence that the offer of the bidder should comply with legal requirements, spelt out in the 1996 notification, is a post tender condition. As explained and held earlier, this is based on an inaccurate reading of the tender conditions.

26. That leaves the court to consider one of the contentions advanced by the Balwan Singh group with respect to acceptance of tenders of bidders in

the SC/ST categories; the complaint was that in regard to this group, contrary to the tender conditions, which required the certificates to have been issued within a year from the last date of submission of tenders, the oil marketing companies were accepting bids with certificates obtained earlier. This, in the opinion of the court cannot be termed as an illegality or irregularity of such magnitude as to be characterized as arbitrary or “so unreasonable that no reasonable man could have taken such a decision”. The object of ensuring submission of such certificates is to monitor whether the applicant is indeed falling in such SC/ST category. It cannot be overlooked or even overemphasized that the purpose of providing such reservation is to ensure that State largesse is distributed to those deserving it and in the process all sections of the society are given it. Here, the SC/ST caste status are in the nature of certification of their status which does not vary with time. Therefore the approach of the oil marketing companies is not arbitrary or discriminatory.

27. In view of the above conclusions, the writ petitions of the Baroda group W.P.(C) 8776/2014- fail. The other two writ petitions succeed in part to the extent that the respondent oil marketing companies are hereby directed to ensure that only those TTs which confirm strictly to the legal standards spelt out in the relevant notification (No. SO 728(E) dated 18.10.1996) are processed and awarded Letters of Intent (LoIs), in the tender process and all TTS which do not conform to such technical standards, are not awarded LoIs. The writ petitions W.P.(C) 8435/2014 and W.P.(C)

8568/2014 are partially allowed only to the extent and in terms of, such directions. There shall be no order as to costs.

S. RAVINDRA BHAT
(JUDGE)

VIPIN SANGHI
(JUDGE)

JANUARY 6, 2015

