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

% Judgment reserved on: 04th November 2015
Judgment delivered on: 23rd November 2015

\+ **W.P.(C) 8673/2015**

KHUSHWANT SINGH (HUF) AND ORS. ..... Petitioners

versus

HINDUSTAN PETROLEUM CORP LTD. AND ANR. ..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Rajiv Dutta, Sr. Advocate with Mr Anukul Raj, Mr Rahul Shukla and Mr Shravan Kumar, Advocates

For the Respondents : Mr Rikesh Singh, Advocate
Mr Awnish Kumar, Advocate in CM No. 24859/2015

CORAM:
HON'BLE MR. JUSTICE BADAR DURREZ AHMED
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

CM 24859/2015 (application for impleadment)

1. This application for impleadment has been filed by Shree Rama Roadways, a transporter to whom a letter of intent has already been issued under the existing tender. The impleadment has been sought on the ground that the tender stipulates minimum monthly mileage per truck and the respondents without providing the minimum mileage to

the existing TTs are calling for additional trucks and the requirement can be met from the existing TTs.

2. Learned counsel for the respondent has pointed to the tender conditions which stipulate that the range of mileage as mentioned in the tender document is purely indicative and depends on various factors like LPG availability at sources, demand fluctuations, turnaround of the trucks, commissioning of new plants, Supply Sources, Pipelines, railway sidings and alternative fuel etc. He further pointed to the tender stipulation that the corporation did not give any guarantee for Minimum mileage for each truck and for such reason, the Transporters cannot claim certain minimum mileage per truck and claim any consequent damages.

3. In view of the tender stipulation that the corporation did not guarantee any minimum mileage and the transporter could not similarly make any such claim for mileage or damage, there is no basis for the claim made by the applicant.

4. The application is accordingly dismissed. There shall be no orders as to costs.

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5. The Petitioners have filed the present Writ Petition seeking a direction to the respondent to fulfil its requirement of additional Tank Trucks (TTs for short) from the existing/qualified bidders and the TTs

which have been placed in the order of ranking after physical verification and have also sought quashing of the letter dated 01.09.2015 issued to the existing successful bulk LPG transporters only.

6. On 01.09.2014, Respondent Hindustan Petroleum Corporation Limited along with Indian Oil Corporation Ltd. and Bharat Petroleum Corporation Ltd. invited region/ zone wise tender bids from eligible bidders having LPG Tank Trucks (TTs) for transporting bulk LPG. As per the Notice Inviting Tender, after the credential bid of the bidders was evaluated, the price bid of the qualified bidders was to be opened. Thereafter the TTs were to be physically inspected. The successful bidders had to be ranked as per their quoted rates. In case more than one bidder had quoted similar rates, then those bidders were to be ranked on the basis of ascending order of weighted average age of the qualified quoted trucks. In case all the successful bidders quoted lowest rate, as in the present case, the ranking was done on the basis of ascending order of weighted average age of the qualified quoted trucks. The requirement of the TTs was to be fulfilled from the TTs in ascending order.

7. The Respondent HPCL by its letter dated 01.09.2015 called for 185 additional Tank Trucks on adhoc basis for a period till 31.03.2016. The said letter dated 01.09.2015 has been issued only to existing successful bidders of the subject tender.

8. The Petitioners are aggrieved by the action of the Respondents in calling for the additional TTs from the successful bidders only and not from the other qualified bidders who are in the ranking lower to the successful bidders. It is contended by the petitioners that the same is in violation of the criteria laid down under clause 4 of General Terms and Conditions of Tender (hereinafter referred to as the Tender Conditions) which provides for consideration of existing TTs, already qualified in the Technical bids and placed in the waiting list. Further, it is contended that the petitioners have been placed in the waiting list and their bids have been kept alive originally for 240 days and thereafter the same has been extended from time to time and the Ernest Money Deposit has been retained and the TTs quoted cannot be offered for any other tender during the bid validity period.

9. It is further submitted that in similar circumstances, Indian Oil Corporation Limited, for its requirement of 386 additional trucks in Northern Region, by its letter dated 21.07.2015 has asked the bidders who were in the waiting list to give consent for induction of their already quoted TTs on adhoc basis on the same rate, terms and conditions of the tender.

10. Learned Counsel for the respondents submitted that the Clause 4 of the Tender Conditions is applicable to the initial requirement as stipulated in the tender and is not applicable to additional requirement as in the present case. He further contended that the condition

applicable to additional requirement over and above the tender requirement is covered under clause 24. He has contended that under clause 24, discretion has been given to the Respondents to fill up the additional requirement from the existing transporters.

11. To resolve the controversy, we need to examine the relevant tender conditions. Clause 4 reads as under:

> "4. **EVALUATION OF TENDERS**:
>
> i. This e-tender is floated in two-bid system i.e. credential bid & price bid. Credential bid will be first opened on scheduled date and will be evaluated as per the terms and conditions of the tender. Price bids of the bidders, who have qualified in credential bid based on above evaluation by the Corporation, will be opened on subsequent notified date.
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> ii. **Ranking of bidders**:
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> a) Original of the bidder(s) i.e. L-1, L-2, L-3 etc. will be decided on the basis of ascending order of financial outgo to the Corporation on overall basis, considering the tentative volume, original rates quoted for all the sources and sectors as mentioned in the Price bids, as per (Annexure-C). ....
>
> b) In case, similar rates are quoted by more than one bidder and there is same financial outgo at any particular rank, these bidders shall be considered for further ranking on the basis of ascending order

of weighted average age of the qualified quoted trucks (owned as well as attached trucks) by them in terms of number of days. The age in no. of days shall be calculated as under:

xxxx xxxx xxxx

II. 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. In case quoted tank trucks are less than the requirement, then all the tank trucks quoted will be allocated subject to fulfilment of eligibility criteria as per tender conditions.

xxxx xxxx xxxx

e. In case, requirement of tank trucks is not met by the original quoted bidders at floor price (as mentioned in iii. a, b & c), then remaining bidders in order of their original ranking (as per 4. ii (a), (b), (c) & (d) shall be called one by one to match the floor price i.e. lowest quote for the tender till requirement of TT is met. All TTs offered by such bidders shall be taken subject to fulfilment of qualifying criteria and Corporation's requirement.

f. **Proposed trucks**: In case the requirement of trucks is still not met, then the quoted proposed trucks shall be allocated as per the ranking as mentioned at 4.ii.a, 4.ii.b, 4.ii.c and 4.ii.d amongst the parties who has either originally quoted or matched the floor price. In case of requirement at any stage is less than the availability of tank trucks in respect of any bidder is found, then latest model will be considered e.g. In case Corporation requires one tank truck against the offer of two proposed trucks.

g. **Additional trucks**: Even after, exercising the option upto (f) as mentioned above, full requirement of trucks is still not met, then Corporation reserves the right to accept more trucks at L1 rates (Floor price) from the bidders in their original order of ranking. Additional EMD @ Rs. 50,000/- per truck has to be deposited as per para (ix) below. Additional trucks will be taken as per the requirement of the Corporation. additional in form of own or attach can be offered by the bidders.

h. In case even after exercising the allocation of trucks as per (g) above, requirement of tank trucks is still not met, Corporation reserves the right to negotiate and finalise other acceptable rates other than floor price rates amongst the remaining bidders in order of their ranking and all TTs offered by such bidder shall be taken at the negotiated rates till the requirement of TT is met.

i. Corporation reserves its right to negotiate and induct TTs from the remaining bidders as per (h) above till the requirement of TTs is met.

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viii. **Proposed trucks**: In case the requirement of trucks is still not met, then the quoted proposed trucks shall be allocated as per the ranking as mentioned at 4.ii.a, 4.ii.b, 4.ii.c and 4.ii.d. In case of requirement at any stage is less than the availability of tank trucks in respect of any bidder is found, than latest model will be considered i.e. In case Corporation requires one tank truck against the offer of two proposed trucks then Corporation will take the latest model.

ix. **Additional trucks**: If, after exercising the option upto (vii) as mentioned above, full requirement of trucks is still not met, then Corporation reserves the right to accept more trucks at negotiated L1 rates from the bidders in their original order of ranking. Additional trucks will be taken as per the requirement of the Corporation. Additional in form of own or attach can be offered by the bidders.

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x. If the above still results in deficiency of trucks, then negotiations/counter offer exercise will be conducted with the balance bidders in their order of ranking till the full requirement of trucks is met. Bidders to note that a bidder placed in the lower order.

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12. Clause 4 of the Tender Conditions deals with evaluation of the tenders and the ranking of bidders. The allocation of the TTs is to be as per the rankings. The clause provides for the procedure for filling up the initial requirement and the procedure to be followed in case the quoted trucks are less or more than the requirement. Clause 4 (iii) (g) stipulates that if after exercising the option upto Clause 4(iii)(f), the requirement is still not met, then the respondents have reserved the right to accept more trucks at L1 rates from the bidders in their original order of ranking. The various sub clauses of clause 4 deal with the filling of the requirement as stipulated in the tender, this clearly shows that it operates in respect of the requirement as originally stipulated in the tender document. None of the sub-clauses

deal with a situation where there is a requirement for additional trucks after the initial requirement is fulfilled.

13. In the present case, the initial requirement has been fulfilled from the initial bids received. The Petitioners are the bidders who were lower in the order of ranking and the initial requirement was fulfilled from the bidders whose trucks were higher up in the ranking. Additional requirement has arisen for an ad-hoc period over and above the initial requirement stipulated in the tender.

14. Clause 24, reliance on which had been placed by the Respondents reads as under:

> "24. During the period of the contract due to business requirement of the Corporation, contracting Corporation reserves the right to shift/induct/move TTs as per the requirement. In case at any point during the pendency of the contract as per Contracting Corporation's assessment, additional tank trucks more than the contracted tank trucks is envisaged then Contracting Corporations reserve their rights to hire any tank truck, over and above the tank trucks accepted pursuant to this tender at any point of time and in such circumstances, Contracting Corporations will be free to hire tank trucks for such purpose as may be required by Contracting Corporations from the existing transporters at a rate not higher than their existing rates, and the trucks should not be running in any other Contract with any other Corporation including Pvt. Parties/ Companies and subject to

> other terms and conditions which the Corporation may stipulate for this purpose."

15. Clause 24 stipulates that during the pendency of the contract, if additional trucks more than the contracted TTs is envisaged, then the respondents have reserved their right to hire any tank truck, over and above the TTs accepted pursuant to the tender and the respondents are free to hire the TTs from the existing transporters. Clause 24 gives absolute freedom to the respondents to hire any truck for fulfilling the additional requirement, the corporations can even hire trucks from the existing transporters.

16. A conjoint reading of clauses 4 and 24 shows that while clause 4 deals with situations where the eligible TTs offered under the tender available fall short of the tender requirement and prescribes the procedure for filling up the same, clause 24 gives liberty to the corporation to fill up additional requirement from the existing transporters. Neither of the clauses obliges the respondents to fill up the requirement that has arisen after the filling of the original requirement from any particular category of bidders or transporters.

17. Clause 4 is clearly not applicable to the additional trucks required by the respondents on ad-hoc basis. The Petitioners have not been able to point out to any other provision that obliges the respondents to fill up additional requirement from the waitlisted bidders like the petitioners. Since there is no obligation on the part of

the respondents to fill up the requirement from the petitioners, there is no corresponding right of the petitioners. The petitioners have not been able to show any right in their favour so no mandamus can be issued to the respondents to fill up the additional requirement from the petitioners.

18. There is also no merit in the contention of the petitioners that they have a right to be considered as their bids were to be valid for 240 days and thereafter the said period has been extended. The respondents have provided a reasonable explanation for the same that the initial period of 240 days was stipulated as that much time was required for processing and finalisation of the tender. The period had to be extended in view of the challenge by some transporters in another Writ Petition, which had led to reworking of the ranking of the various bidders. In any event, since there is no right in favour of the petitioners to be considered for the additional requirement, this plea does not further the case of the petitioners.

19. The Writ Petition is accordingly dismissed. There shall be no orders as to costs.

SANJEEV SACHDEVA, J.

November 23, 2015 **BADAR DURREZ AHMED, J.**
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