

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1952 of 2015**

Nitin Keshwani S/o Shri Dilip Keshwani, Aged About 24 Years R/o
Opposite C. M. House, P. S. Civil Lines, Civil & Revenue District Raipur
(Chhattisgarh)

---- **Petitioner****Versus**

1. Indian Oil Corporation Ltd. Through Chairman, Shri R. S. Butola IOCL Bhavan, G -9, Aliyavar Jung Marg, Bandra East Mumbai (Maharashtra)
2. Chief Manager (Operations) Indian Oil Corporation Ltd. Marketing Division, Madhya Pradesh State Office, Indian Oil Bhawan, 16 Arera Hills, Jail Road, Civil & Revenue District Bhopal (Madhya Pradesh)
3. Dy. General Manager M P S O Indian Oil Corporation Ltd. Marketing Division, Madhya Pradesh State Office, Indian Oil Bhawan, 16 Arera Hills, Jail Road, Civil & Revenue District Bhopal (Madhya Pradesh)
4. Chief Area Manager Indian Oil Corporation, Raipur Area Office, V.I. P Road, P. S. Telibandha, Civil & Revenue District Raipur (Chhattisgarh)

-----**Respondents**

For Petitioner:
For Respondents:

Shri Devershi Thakur, Advocate.
Shri Anand Shukla, Advocate.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board**Per Navin Sinha, Chief Justice****11/1/2016**

1. The Respondents published an advertisement on 7.7.2015 for Road Transport Contract for MS/HSD/Branded Fuels by Bottom Loading Tank Trucks Ex.Common User Terminal, Lakholi (Raipur). The last date for submission of bids was 4.8.2015. The Petitioner is not a Retail Outlet Dealer but applied in the category of an independent Transport Contractor.

2. Learned Counsel for the Petitioner submits that on 10.9.2015, the Respondents communicated in writing inter alia the deficiency in its bid with regard to acknowledged copy of DTO/RTO application not having been submitted. Time was granted for the purpose till 21.9.2015. The Petitioner obtained the necessary documentation from the office of the Regional Transport Officer on 30.9.2015 valid up to 30.9.2025 and submitted it before the authorities on 18.9.2015, well within the stipulated time mentioned in the letter dated 10.9.2015. The Petitioner, nonetheless was wrongly disqualified on the ground that the acknowledged copy of the DTO/RTO application is partial and the date of acknowledgment is 16.9.2015 after the date the tender was floated. Contending arbitrariness, it was submitted that once opportunity was given and the defects had been rectified, rejection of the bid on that ground was not proper. If the Respondents could permit a Retail Outlet Dealer to have an understanding with other Retail Outlet Dealer not having their own time trucks without the requirements for such certification, there is no reason why the same benefit could not have been granted to the Petitioner also. It was lastly submitted that the Petitioner was being victimized because in an earlier round of litigation up to the Supreme Court in Special Leave Petition (Civil) No.20701/2014 (M/s. Nitin RoadLines vs. Indian Oil Corporation Limited & Ors), directions were given to the Respondents to curtail the extended period of the earlier tender and to start the new tender process.

3. Learned Counsel for the Respondents refuted any allegation of mala fides because of the earlier order of the Supreme Court which was submitted to be in context of a completely separate contract. Learned Counsel submitted that according to Clause-9 of the Notice Inviting Tender, all

transporters eligible to bid were required to have a certificate of registration in line with Carriage by Road Rule, 2011 released by Ministry of Road Transport and Highways vide Gazette Notification of India dated 28.2.2011. Retail Outlet Dealers possessing transportation trucks and independent contractors for transportation of fuel, fall in separate class and the question of any parity does not arise. The Court may not interfere with the terms and conditions stipulated in the tender and the need for compliance by bidders with the same as the Corporation is the best judge of its requirements and the manner in which the tenders are to be worked. In any event, the Petitioner did not challenge the clause before submission of his tender, if he could have done so.

4. It is next submitted that it is apparent on the face of it that the requisite certificate of registration submitted by the Petitioner, after it was pointed out to him on 10.9.2015, was not a mere rectification in submission of a document which may have been overlooked by oversight. It is apparent that as on the last date of the tender dated 4.8.2015, the Petitioner was not in possession of the necessary certificate and applied and obtained the same only after the letter dated 10.9.2015. The bid submitted by the Petitioner was therefore clearly in violation of Clause-9 of the Notice Inviting Tender. The rejection therefore calls for no interference.

5. We have considered the submissions on behalf of the parties.

6. Normally speaking, it is not for the Court to interfere with the terms of a tender especially if there is no ambiguity in it and on the contrary, they are clear and specific. The Respondents having published the tender are the best judge and most suited to consider the terms and conditions incorporated

according to their needs and suitability of bidders. Retail Outlet Dealers owning transport trucks and who have an agreement with the Corporation for running of Retail Outlets including the trucks or the other dealers through their trucks, form a separate class from independent contractors who may be engaged only for transportation of fuel. The question of an independent transport contractor claiming parity in treatment with a Retail Outlet Dealers simply does not arise.

7. A bare reading of Clause-9 of the Notice Inviting Tender makes it apparent that it was mandatory for a bidder to possess a valid certificate of registration in accordance with the Carriage by Road, Rule 2011. A clear and simple reading of the condition leaves no doubt that such registration was to be possessed by an intending bidder before the last date for submission of bids i.e. 4.8.2015. If the Petitioner did not submit the necessary documentation and the Respondents gave him an opportunity to submit the same, it does not amount to novation, alteration much less modification of the terms of the tender. The Corporation may have believed that by oversight, the Petitioner had not submitted it and therefore provided it an additional opportunity to do so. This opportunity did not vest the right in the Petitioner to apply for a fresh certificate not possessed by it before 4.8.2015. The letter dated 10.9.2015 did not extend the last date for valid submission of bids. It is not open for the Corporation to provide any relaxation to an individual bidder as that itself would be violative of Article 14 of the Constitution. A relaxation given across the Board is an entirely different matter. There are no allegations of mala fides or acting contrary to the terms of the Notice Inviting Tender to favour any individual bidder.

8. In conclusion, we find no reason to interfere.
9. The Writ Application is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE

Priya