IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2754 OF 2016
[Union Carriers and others .vs. The Ministry of Petroleum and Natural Gas and others]

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Ms. D.R. Muley, counsel for the petitioners,
Mr. A.M. Quazi, counsel for respondent no.3.
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CORAM : SMT. VASANTI A. NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATED : JULY 04, 2016.

By this writ petition, the petitioners challenge some of the tender conditions in the tender floated by the respondent–Hindustan Petroleum Corporation Limited, on 25.4.2016 as being arbitrary, irrational and discriminatory.

The five petitioners have filed the instant petition raising a challenge to the tender conditions in the notice, dated 25.4.2016, by which tenders were called for the transportation and distribution of LPG Cylinders from the refill station to the distributors. The petitioner no.1 is permitted to withdraw the writ petition on its request. The petitioner nos.2 and 3 have participated in the tender and hence the petition would not be maintainable as it is well settled that a candidate participating in the tender process cannot turn around and challenge the tender process subsequently. We are, therefore, inclined to entertain the petition in respect of the respondent nos.4 and 5 only.

Ms. Muley, the learned counsel for the petitioners, has challenged three tender conditions. According to the learned counsel, the respondent–corporation could not have fixed the maximum age of the truck that could have been utilized for the purpose of transportation of the LPG Cylinders from the refill station to the distributors. According to the learned counsel a truck could ply on a road for 15 years from the date of its purchase. It is stated that if the rule of the road transport authority permits the plying of a truck for 15 years, the corporation could not have reduced the age of the truck to 12 years, so far as the tender is concerned. Secondly, according to the learned counsel, the respondents could not have fixed the minimum and maximum rate of the price bid at less than 25 to 30% of the normal rates. It is stated that it would be harsh on the part of the respondent–corporation to fix the rates that are lower than the normal rate by 25 to 30 percentage, thereby causing loss to the tenderers. Thirdly, according to the petitioners, though the distributors are permitted to participate in the tender, even if they do not own the transportation vehicles or trucks, the transporters like the petitioners, are required to own the truck. It is stated that this clause is clearly discriminatory, inasmuch as it creates two classes of tenderers without any nexus, to the object sought to be achieved. It is stated that the tender process be quashed and set aside.

On the other hand, it is submitted on behalf of the respondent-corporation that there is no arbitrariness in any of the clauses, as stated on behalf of the petitioners. It is stated that with a view to ensure proper transportation of LPG Cylinders from the refill station to the distributors without any delay, the transporters are required to own a truck that is not more than 12 years old. It is stated that in the last year, the corporation was required to conduct 11 meetings for negotiating and bringing down the rates that were quoted by the tenderers and since that caused a lot of inconvenience and delay, the rates are fixed on the basis of the price bids, accepted during the last year. It is stated that the distributors are appointed by the respondent-corporation and since the distributors are accessible to the corporation and since the refills are to be transported from the refill station to the distributors only, the condition of ownership of the truck is relaxed in their case. The learned counsel sought for the dismissal of the writ petition.

On hearing the learned counsel for the parties, we do not find that any case is made out for effectively challenging the clauses in the tender notice. We do not find that there is any arbitrariness whatsoever in fixing the maximum age of the transportation vehicle as 12 years. We find that the maximum age of the truck is fixed with a view to ensure smooth and regular supply of the refills to the distributors without any delay. We also do not find any merit in the submission made on behalf of the petitioners that the rates are 25 to 30 percentage lower than the normal rate of transportation and hence the tender is liable to be quashed and set aside. It is brought to the notice of this court by the learned counsel for the respondent–corporation that for each of the five categories for which the tender has been floated, at least 20 applications have been received. Also, we find much force in the submission made on behalf of the respondent – corporation that the minimum and maximum rate of the price bid is rightly fixed so as to avoid further meetings and delay. There is also no merit in the last submission made on behalf of the petitioners that the action on the part of the respondent–corporation in permitting the distributors to only provide for the chasis numbers of the trucks that are not owned by them when the transports are required to own the vehicles is arbitrary. The corporation has appointed the distributors and the distributors are easily accessible to the corporation. The transporters are not associated with the corporation and it may not be possible to easily have access to them. In such background, the relaxation of the condition of ownership of vehicles for the distributors cannot be said to be arbitrary or discriminatory.

Since we do not find any merit in any of the three submissions canvassed on behalf of the petitioners, we dismiss the writ petition with no order as to costs.

JUDGE JUDGE

Gulande